



The criminal justice system in Wales

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Introduction

This chapter focuses, describes, and reflects critically on the criminal justice system in Wales, focusing mainly on the nature of its youth justice policy and practice since this is the most distinctive aspect of the system.

There has long been a tendency to regard Wales and England as a ‘common-sense’ and singular unit of criminological and policy analysis, in part, no doubt, because England and Wales form a unitary legal jurisdiction (Jones 2016). That this unit of analysis has been weighted in favour of England is captured well in the often-cited entry for Wales in the Victorian *Encyclopaedia Britannica*, ‘For Wales, see England’ (Thomas 1991). This dictum has also been reflected within the many studies comprising the discourse of criminology that continue to explore developments in England *and* Wales through the dominant lens of ‘England’ (Jones 2016). Such Anglocentrism in policy analysis has continued throughout the 20th century, with some notable exceptions (e.g. Field 2007; Haines 2010), despite the advent of democratic devolution and a series of ongoing constitutional renegotiations and accommodations. What is depicted here, therefore, is an attempt to take account of these complex constitutional arrangements and to assess what effects they have had, and indeed continue to have, on youth justice in the post-devolution era. The salient areas of Welsh–English convergence and divergence in policy and practice are duly highlighted in this chapter along with critical reflections on the Welsh policy agenda and how it is implemented, or not, in the work of practitioners across the country.

In order to understand the unique Welsh context more clearly, a brief and necessarily selective historical background is presented, with particular emphasis placed upon the development of democratic devolution since the end of the 20th century. This is followed by a brief introduction to the adult criminal justice system in Wales and the emergence of a distinctive Welsh criminological space. From here, the chapter then goes on to provide an account of the development of a distinctive Welsh policy agenda in youth justice—often referred to as ‘dragonisation’ (Edwards and Hughes 2009; Haines 2010)—and its seemingly somewhat uneven implementation across the country. There are three main elements to dragonisation. The first is a ‘Children First, Offenders Second’ philosophy, which is based on the recognition that children are still in the process of maturing and cannot therefore be expected to behave as fully competent rational actors. Consequently, it is to be expected that children will on occasions make immature decisions and challenge boundaries. Indeed, offending—usually of a minor or episodic nature—is recognised as normative for adolescent children. The second element is that children’s human rights should form the foundation of all work with children and this includes the youth justice system. The third element is based on a commitment to children’s citizenship. In the Welsh context, this is embodied primarily, though not exclusively, in the *Extending Entitlement* policy (National Assembly for Wales 2000). The chapter concludes by assessing the extent to which youth justice has been ‘dragonised’ and considers some of the challenges that lie ahead.

Putting the ‘Wales’ into England and Wales

The single jurisdiction of ‘England and Wales’ was established during the 16th century. Through the passing of two separate ‘Acts of Union’, Wales was effectively incorporated into the English state. The first statute in 1535/6 (the Act for Law and Justice to be Ministered in Wales in Like Form as it is in the Realm) was followed in 1542/3 by the Act for Certain Ordinances in the King’s Dominion and Principality of Wales. The aims of these statutes were twofold: to unite the two countries politically; and to sweep away indigenous Welsh laws and any other ‘customs and usages’, including the laws of Hywel Dda and Wales’ own penal code (Rawlings 2003: 460). It can be argued that the objective of establishing legal, and some would claim cultural (Thomas 1991), uniformity across England and Wales represented an assimilationist model

of political union. This is in marked contrast to the later Act of Union between England and Scotland.

Whilst the Welsh Acts of Union might justly be regarded as having vandalised and replaced indigenous legal practices, the establishment of the Courts of Great Session (which did not cover Monmouthshire) after 1542 conferred a distinctly Welsh ‘legal identity’ (Watkin 2012: 145) within the wider uniformity of the jurisdiction of ‘England and Wales’. Even though the English language had become the official language of the law in Wales, the Welsh language was widely used within the Great Sessions. The Acts of Union also meant that Wales was given a measure of political identity as the shires of the country were entitled to send representatives to the Westminster parliament. In 1830, however, the Courts of Great Session were

abolished and Wales was brought into complete legal and judicial conformity with England. It was from this point onwards that the 'unitary' system of England and Wales was created and would—up until the advent of democratic devolution in Wales in 1999—remain firmly intact.

By the early 1970s there were plans to establish a National Assembly in Wales, but this proposal was defeated decisively in a referendum in 1979. This did not, however, prevent a trend towards further administrative devolution to Wales. By 1996 the Welsh Office was responsible for a wide range of government functions including education, health, housing, local government, social services, and the Welsh language. Critics of administrative devolution pointed out that the role of the Secretary of State for Wales was akin to that of an unaccountable colonial governor. This criticism seemed particularly apposite when a Conservative government appointed MPs from English constituencies to the post because the Welsh electorate had culled any Welsh Conservative talent at the ballot box. When another opportunity to vote in favour of establishing a National Assembly was put to the Welsh electorate in September 1997 by Tony Blair's New Labour, the argument advanced was related to moving away from the unaccountable administrative devolution of the status quo to a form of democratic devolution that would involve the election of 60 Assembly members. Whereas Scotland voted overwhelmingly in favour of a Scottish Parliament, the Welsh gave only an unenthusiastic endorsement of the proposals. The margin of victory was a mere 6,721 votes on a turnout of just over half of those eligible to vote.

In spite of a narrow margin of victory, the National Assembly for Wales was 'formally empowered' in June 1999 (Rawlings 2003: 1). As set out within the UK Labour government's *A Voice for Wales* White Paper in 1997 (Wales Office 1997), the National Assembly was given executive responsibility for 20 separate areas of policy. These included responsibilities over areas of social policy such as housing, education, social services, community safety, and health. In the intervening years, the National Assembly has not only established itself on the political landscape of Wales, it has also developed from being a corporate body administering Welsh Office functions to a democratic institution with a more clearly demarcated Westminster-style division of responsibilities between Executive and Non-executive functions; the former is currently referred to as the Welsh Government (following a period of it being described as the Welsh Assembly Government), and the 'parliamentary' scrutiny function is described as the National Assembly. The Assembly has also, in the intervening period, incrementally accrued more powers in terms of assuming primary legislative competence, following the passage of the Government of Wales Act 2006 as well as another referendum in 2011 (Wyn Jones and Scully 2012).

Throughout the different stages of Welsh devolution, which have been informed by various reports and commissions (e.g. the Richard Commission 2004 and the All Wales Convention 2009), formal responsibility for both adult and youth justice in Wales has remained unchanged. That is to say that the single jurisdiction of England and Wales has remained intact, at least in name. Whilst Wales' latest devolution dispensation, the Wales Act 2017, will be responsible for the transfer of yet further powers to the National Assembly, including income tax varying powers and those relating to the size of the Assembly itself (those interested in such constitutional issues should explore the work of the Wales Governance Centre at Cardiff University: <http://sites.cardiff.ac.uk/wgc/>), responsibility for the adult and youth justice system in Wales remains a matter that is reserved for the UK government. In recent years, however, increasing attention has been directed towards the future of criminal and youth justice powers in Wales. In 2014, the second part of the Silk Commission's inquiry into the future of devolution in Wales concluded that aspects of policing and justice should be transferred to the National Assembly. In its evidence to the Silk Commission's inquiry, the Welsh Government (2013) called for the immediate devolution of policing and youth justice powers as well as the eventual transfer of functions relating to the prison and probation service in Wales. Within its own evidence submission, the UK government reiterated its commitment to ensuring that Wales remained part of the single England and Wales justice system (Wales Office 2013).

Although much of the recent focus has been placed upon the potential to devolve adult and youth justice powers to Wales, the Silk Commission's report, and indeed many of those who provided evidence submissions (e.g. Wales Office 2013; Welsh Government 2013), failed to adequately examine or assess the effects that devolution had already made to adult and youth justice services in Wales. This includes a failure to take account of the fact that the Welsh Government, despite having no formal responsibility for adult or youth justice services, is in fact responsible for developing strategies within policy areas that deal directly with the needs of adult and young offenders in Wales. Importantly, whilst the original aims underpinning the England and Wales system were about assimilating Wales with England in a deliberate effort to eradicate difference, devolution in Wales—without formally altering the single jurisdiction—has led to a situation whereby Wales is now, rather ironically, spoken of *because* of its separateness and difference to England. In 2006, for example, NOMS Cymru, the Welsh Government, and the Youth Justice Board (2006: iii) produced a joint strategy to take account of the fact that devolution had created a 'different Welsh perspective' to the delivery of UK justice policy in Wales. The report argued that devolution, within

areas such as health, education, housing, and substance misuse, meant that the Welsh Government was able to exercise ‘considerable autonomy’ in creating policy as well as delivering offender services (NOMS et al. 2006: 8). In more recent years, the Ministry of Justice (2014: 8) told a committee of MPs that while criminal justice in Wales is ostensibly non-devolved, ‘much of the work’ being done to support offenders upon release in Wales is being done by the Welsh Government.

It is against the backdrop of this major transformation in Wales’ position within the England and Wales system that this chapter aims to capture the developments that have taken place within post-devolution youth justice in Wales. Before doing so, however, the chapter will first consider the arrangements surrounding criminal justice in Wales.

Criminal justice in Wales

Criminal justice in Wales is officially reserved to the UK government. The many institutions that operate and run the criminal justice system in Wales, therefore, are administered and controlled by the UK government. The Ministry of Justice (MoJ), whose responsibilities include control over executive agencies including Her Majesty’s Prison Service, the National Offender Management Service, and Her Majesty’s Courts and Tribunals Service, falls under the ministerial responsibilities of the Secretary of State for Justice. Under the provisions set out in the Prison Act 1952, the Secretary of State has responsibility for the prison estate in Wales. In addition to control over matters such as prison conditions, security, and prison inspectorate, the UK minister also has the power to decide whether to expand or modify the existing prison estate in Wales. In 2013, the then Justice Secretary, Chris Grayling, announced the UK government’s decision to expand HMP Parc in Bridgend as well as its intention to build a ‘super’ prison in north Wales. HMP Berwyn, with a capacity of 2,100 places, opened in February 2017.

Further to the prison estate, the UK government is also responsible for the probation service in Wales. This includes a duty to shape the trajectory of probation policy and practice. In 2013, the UK government announced plans for a major overhaul of probation services across England and Wales. Introduced in 2014, after the Offender Rehabilitation Act 2014 had received Royal Assent in March, the UK government’s proposals include the decision to extend statutory supervision to prisoners serving sentences of less than 12 months as well as the delivery of major changes to the configuration of probation services in England and Wales. Since 1 June 2014, the National Probation Service (NPS) and 21 Community Rehabilitation Companies (CRCs) have been formed to

replace the 35 former Probation Trusts. In Wales, the Wales Probation Trust was replaced with a new National Probation Service for Wales. As part of its proposals for change across England and Wales, the UK government maintained that public sector probation services would retain a ‘distinct identity for Wales’ while working alongside the Welsh Government and other public organisations (Ministry of Justice 2013: 25).

Beyond its responsibilities for the structure and administration of prison and probation services in Wales, the UK government also has a responsibility for shaping the direction of criminal justice policy as a whole. This includes the power to introduce legislation that can potentially alter sentencing practices across Wales—in any direction it so chooses. One example includes the introduction by UK ministers of the provisions set out in the Criminal Justice Act 2003. According to Pratt et al. (2007), the measures contained in the Act were largely responsible for an increase in the number of people being handed custodial sentences (Pratt et al. 2007). In 2008, the UK government acknowledged that its own policies had led to an increase in the number of people sentenced to prison across England and Wales (Justice Committee 2008). However, while it is the UK government which is responsible for many of the controls over criminal justice policy in Wales, the devolved government does have considerable responsibilities when it comes to shaping the treatment of prisoners in and offenders of Wales. This includes full responsibility for the primary and secondary healthcare needs of prisoners in Wales (e.g. Welsh Government 2011, 2012) as well as the educational needs of those held in Welsh prisons (e.g. Welsh Government 2009). In addition, the devolved government has a wider set of responsibilities for tackling the housing needs of Welsh offenders (e.g. Welsh Government 2015a) as well as those relating to substance misuse (e.g. Welsh Government 2008, 2015b).

Since taking on these responsibilities as part of its wider programme of government, some of the Welsh Government’s policies within the area of prisoner rehabilitation and resettlement have been widely praised. Up until its recent removal in the Housing (Wales) Act 2014, the provisions contained in the Homeless Persons (Priority Need) (Wales) Order 2001 were widely regarded as a progressive policy in tackling homelessness amongst Welsh prison leavers. In 2010, for example, a report by HM Chief Inspector of Prisons (HMCIP) heaped praise on the Welsh Government’s approach to tackling homelessness when comparing the provisions in place for prison leavers in England. Following an inspection of HMP Altcourse in Liverpool, HMCIP (2010: 5) concluded that housing provisions in place for Welsh prisoners should be used to ‘provide an example’ to authorities in England. In addition to housing, in 2004 the Welsh Government rolled

out its very own Transitional Support Service (TSS) aimed at tackling the resettlement needs of short-term offenders suffering from substance misuse-related problems. According to an evaluation of the service in 2010, those in contact with TSS were 'overwhelmingly positive' about their experiences (Maguire et al. 2010: iv).

Justice is non-devolved; however, devolution has created a policy space in which the Welsh Government is

able to operate alongside the UK government in shaping and delivering justice services. In this policy space, the Welsh Government has—at least historically—demonstrated a willingness to adopt alternative approaches. Nevertheless, while this has been apparent in relation to criminal justice, the space opened up by devolution is perhaps most clearly viewed when examining youth justice policy in Wales.

The Welsh policy context: 'clear red water'?

When Rhodri Morgan, Assembly Member (AM), became Wales's second First Minister, he announced his intention of putting 'clear red water' (Morgan 2002; Chaney and Drakeford 2004; Drakeford 2007; Davies and Williams 2009) between the approach being taken by New Labour in London and the fledgling Assembly administration. It was declared that Welsh problems demanded solutions made in Wales. In order to help meet that objective, it was an explicit aim to facilitate ease of movement between universities and Welsh Government (Welsh Assembly Government 2003). Drakeford (2010), at the time a Cardiff University academic and Special Adviser to the First Minister, identified five principles that informed Welsh Labour's approach to government in respect of social policy.

The *first principle*, in contrast to neo-liberal orthodoxies and right-wing critiques of 'big government' and the state, is a commitment to the ideal of good government: the notion that it 'remains the most effective vehicle through which collective solutions can be applied to common problems' (Drakeford 2010: 142). The concept of 'community', it is argued, still resonates widely across Wales; as, indeed, it does in other small places (Evans et al. 2015). In Welsh political culture, though, the role of the state in supporting communities is generally accepted.

The *second principle* is a commitment to universal rather than narrowly targeted provision (although there is recognition that those in greatest need may require additional services). It is the principle of universalism, indeed, that informs the Welsh Government's continuing commitment to free prescription charges. The rationale for universalism is well known but is worth repeating here. First, any possible savings derived from means-testing or identifying target populations are insignificant and do not often outweigh the benefits of universalism. Secondly, universal services build a sense of social solidarity and a sense of common citizenship; they bind together the more affluent classes with working-class service users in a community of interest. Thirdly, if the middle classes are recipients of universal services, then those services are likely to be of a higher quality because middle-class service users

normally have greater social capital and therefore tend to be articulate advocates for improvement. Services designed exclusively for poor people have a tendency to be poor services. Finally, universal services are less likely to stigmatise their users. It should be noted that the commitment to universalism inevitably falls short in terms of its actual implementation on the ground, particularly since the impact of austerity budgets from London have been felt. Notwithstanding the aforementioned implementation gap in the imperfect present, the direction of travel and the navigational policy instruments of government are set towards the ultimate destination of equality. This approach is sometimes referred to as progressive universalism.

The *third principle* characterises the relationship between the individual and the state as one of citizenship rather than consumerism. The contract between the state and the individual involves guaranteeing a set of rights and a package of entitlements (as distinct from 'opportunities' in England). As will become apparent later in this chapter, this is a highly significant principle in relation to children and young people. They, too, are conceptualised as rights-bearing citizens with access to entitlements.

The *fourth principle* is a commitment to not only equality of opportunity but also equality of outcome. The vocal articulation of this traditional democratic socialist commitment to equality of outcome was, initially at least, not particularly in tune with the Third Way mood music of New Labour (Giddens 1998).

The *fifth principle* relates to a commitment to pluralism and diversity. This principle refers to engaging with the ethnically, religiously, and culturally diverse composition of Wales, including the 19 per cent of the population who speak Welsh. It is worth mentioning here, incidentally, that there are many obstacles to providing equality of provision to Welsh-speaking young people in the criminal justice system (Madoc-Jones and Buchanan 2004). The commitment to diversity is also reflected in a commitment to recognising children as citizens with rights, including participation rights.

Children's rights and children's social policy in Wales

The point should be emphasised that there has been a long-standing commitment to upholding children's rights, as evidenced by the creation of a Children's Commissioner (the first in the UK), the Welsh Assembly Government's early formal adoption in 2004 of the United Nations Convention on the Rights of the Child, and the construction of mechanisms of participation for young people to contribute to policies that affect them (Butler 2011). For Drakeford (2010: 144), 'as far as children are concerned, there is an inseparable relationship between welfare and rights, with rights being the guarantor of welfare and participation comprising the key to good governance'. The United Nations Convention on the Rights of the Child was duly translated into seven core universal aims of policy making that apply to children (Welsh Assembly Government 2004a). All children and young people should:

- have a flying start in life and the best possible basis for their future growth and development;
- have access to a comprehensive range of education, training, and learning opportunities, including acquisition of essential personal and social skills;
- enjoy the best possible physical and mental, social, and emotional health, including freedom from abuse, victimisation, and exploitation;
- have access to play, leisure, sporting, and cultural activities;
- be listened to, treated with respect, and have their race and cultural identity recognised;
- have a safe home and a community which supports physical and emotional well-being; and
- not be disadvantaged by child poverty.

The commitment to children's rights has been strengthened subsequently by passing the Rights of Children and Young Persons (Wales) Measure in 2011, which effectively incorporated the United Nations Convention on the Rights of the Child into Welsh domestic law in relation to those areas that have been devolved to Wales. The full implications of the Measure for policy and practice, which only became fully operational in 2014, are currently being worked out in practice.

The policy for children and young people aged between 11 and 25 years, *Extending Entitlement* (National Assembly 2000), probably represents the clearest articulation of the Welsh approach. It is not only an opportunity-focused policy in the best traditions of European youth policy (Williamson 2002, 2006) but also delineates the

relationship between the individual child/young person and the state, with the latter being the guarantor of both individual and social rights. Children and young people, whether or not they have attained the age of majority, are deemed to be citizens of Wales with inalienable rights and social entitlements. The ten universal entitlements are set out below:

1. Education, training, and work experience—tailored to their needs.
2. Basic skills which open doors to a full life and promote social inclusion.
3. A wide and varied range of opportunities to participate in volunteering and active citizenship.
4. High-quality, responsive, and accessible services and facilities.
5. Independent, specialist careers advice and guidance and student support and counselling services.
6. Personal support and advice where and when needed and in appropriate formats—with clear ground rules on confidentiality.
7. Advice on health, housing benefits, and other issues provided in accessible and welcoming settings.
8. Recreational and social opportunities in a safe and accessible environment.
9. Sporting, artistic, musical, and outdoor experiences to develop talent, broaden horizons, and promote a rounded perspective including both national and international contexts.
10. The right to be consulted, to participate in decision-making, and to be heard, on all matters which concern them or have an impact on their lives.

The above entitlements should be delivered in an environment where there is:

- a positive focus on achievement overall and what young people have to contribute;
- a focus on building young people's capacity to become independent, make choices, and participate in the democratic process; and
- celebration of young people's successes.

From the perspective of youth justice practice, what tangible difference can the *Extending Entitlement* policy

make? Reconnecting disengaged young people to education, training, and employment would be considered good practice on both sides of Offa's Dyke (the border between Wales and England). The fact that this is a universal 'entitlement', as opposed to a pious hope, should—for example—strengthen the position of the individual practitioner or local youth offending service specialist worker when seeking to broker access to a training placement on behalf of a young person. Another area in which the policy might be helpful is in relation to Entitlements 8 and 9. In the past, there has been nervousness about proposing Outward Bound-type activities for a bored young person unless it is part of a condition which also contains an explicitly punitive or disciplinary element. The same is true of connecting young people to sport, art, dance, and musical pursuits. Practitioners and courts are worried about being seen to be soft on crime or open to the allegation of 'rewarding' offending behaviour. Anxieties about attracting negative tabloid newspaper headlines have long haunted those committed to rehabilitation and reintegration (who are often characterised as 'bleeding heart liberal social workers', 'naive and misguided do-gooders', and 'Guardian readers'). The *Extending Entitlement* policy, however, removes this awkwardness. Magistrates and youth justice workers understand that some young people and their communities will benefit enormously from the provision of such activities, not only because it will 'keep them off the streets' for a period, but also because it will help them develop new skills, widen their social capital and friendship networks, and cultivate pro-social attitudes.

Making positive changes in one's life can, of course, also be fun. The provision of universal entitlements in the fields of leisure, sport, and recreation removes the need to construct a 'special case' argument for young people in trouble with the law. The youth justice practitioner simply needs to explain that an 'Entitlements' check or assessment has been undertaken and the young person, who is rather bored at the time, is being connected to an Outward Bound project or DJing course. As this is a universal provision, moreover, the young person will not be in an 'offender only' environment as would be the case if the selected activity were being run by the local youth offending service. If presented properly to the court at the pre-sentence report stage, for example, the strengths of the *Extending Entitlement* policy are clear. This holistic perspective was, from the outset, the aim of the policy.

... government policies have tended to focus on only one manifestation—the offender, the homeless young person, the school refuser and so on, and that particular policy context defines the problem rather than listening to the young person to see things more in the round and address the underlying causes. (National Assembly for Wales 2000: 25)

It has been suggested that a distinction can be made between children's rights and entitlements:

The concept of 'entitlements' is grounded in a forward-looking and proactive approach to the pursuit of *maximum outcomes* for children in terms of the (adult-facilitated) realisation of the support and service they can expect from adults, rather than the rights-based *minimum standards* for service established by the United Nations Convention on the Rights of the Child. (Case and Haines 2015: 229)

Whilst the Convention undoubtedly should ideally guarantee certain minimum rights, it is worth making the point that human rights are 'living instruments' which develop over time through a process of interpretation, application, precedent, and review. The Convention can be divided into: survival rights (e.g. the inherent right to life, food, and healthcare); development rights (e.g. cultural rights, education, and access to the arts); protection rights (e.g. protection from persecution, sexual exploitation, and injustice in the administration of criminal processes); and participation rights (e.g. right to freedom of expression, access to information, and freedom of peaceful assembly). It can therefore be argued that the Convention not only confers individual rights such as freedom but also unconditional social rights such as education. Access to such social rights is not dependent upon whether a young person has or has not broken the law. It is therefore important to emphasise the point that a binary distinction should not be made between rights and entitlements. The relationship should be essentially complementary. The *Extending Entitlement* policy (National Assembly for Wales 2000), which applies to all children and young people between the ages of 11 and 25 years, is:

... underpinned by an implicit human rights framework. Services are thus characterised as entitlements based on principles of universalism, citizenship and social inclusion (as opposed to being conditional and discretionary). (Evans 2014: 88)

In line with the spirit of the Convention, the Welsh policy extends to all children, irrespective of behaviour. It is based on a contract between the state and the young citizen. It is in sharp contrast to youth policy ideas being developed in England during the same decade. An example of the distinctively New Labour and communitarian (Etzioni 1995, 1997, 1998, 2000) approach can be found in *Youth Matters*, a document which distils the essence of individual responsabilisation by rewarding the pro-social and penalising the antisocial young person. A representative example is the mooted 'opportunity card':

... we will support Local Authorities to develop and pilot 'opportunity cards.' These cards would provide discounts on a range of things to do and places to go and could also be topped up by young people and their parents with money to spend on sports and other constructive activities. Subject to piloting, we will establish a national scheme to support the roll-out of local opportunity cards. Central Government will also top up the opportunity cards of disadvantaged 13–16 year olds. This subsidy would be withheld from young people engaging in unacceptable and anti-social behaviours and the card suspended or withdrawn. Over time, we could expect to see Local Authorities choosing to fund sports and other constructive activities for young people by topping up their opportunity cards. Top-ups could also be used to reward young people for volunteering or for making progress in improving their situation. (HM Cabinet Office 2005: 6)

Thus, those most likely to benefit from leisure, recreation, and constructive activities would have been denied access within this English policy model, therefore reinforcing their social exclusion.

Youth justice in Wales

In a formal and legal sense, youth justice in Wales remains a non-devolved matter. It is the responsibility of the Ministry of Justice and the Youth Justice Board. In the early days of the establishment of the new youth justice system, youth offending services in Wales, like England, were subject to the directives, National Standards, and key performance indicators of the Youth Justice Board in London. The arrival of democratic devolution in Wales, however, resulted in many of the areas of policy that impacted directly on children being devolved to the National Assembly, education, social services, health, and housing being the most obvious examples. Youth Offending Services, of course, comprise core staff from social services, education, health, probation, and the police—the first three policy areas falling under the direct control of Welsh Government in Cardiff and the other two being the responsibility of the UK government in London. According to Drakeford (2010: 139), between 50–70 per cent of the total budget of youth offending services derive from Welsh Government service areas. The asymmetrical and rather ragged constitutional settlement inevitably highlighted different policy positions between Cardiff and London and created the potential for inherent systemic tensions. An early example of philosophical differences leading to different policy emphases can be found in the Assembly's decision to locate youth justice in the portfolio of Health and Social Services rather than Crime Prevention and Community Safety, a decision made with

It is not suggested here that the *Extending Entitlement* policy has delivered in every respect. There has been an implementation gap and there are some aspects of the policy design that could be improved or refreshed (e.g. see the independent evaluation by Haines et al. 2004). Nevertheless, when compared with some of the ideas informing youth policy in England in the decade in which *Extending Entitlement* was launched, it can be seen that the philosophical starting points were radically different and belied a different social construction of youth. In England, young people were inherently risky and needed to be responsabilised through carrot-and-stick measures, whereas in Wales young people needed to be assisted to negotiate inherently risky social contexts. As Drakeford (2010: 143) observes, 'While in England the emphasis has been firmly on making individual young people responsible for fully exploiting available opportunities, in Wales the emphasis has been on ensuring that providers assume the responsibility for making services readily accessible—especially to those who need them the most.'

the conscious intention of trying to create a child-friendly environment within the recently established youth offending services (Cross et al. 2003: 156). At the inaugural meeting of the All Wales Youth Offending Strategy Group, Jane Hutt AM (the then Health and Social Services Minister) identified the need for negotiation of a common approach that acknowledged the respective responsibilities of the administrations:

It presents a real opportunity to establish valuable cross-cutting lines between the Youth Justice Board's criminal justice responsibilities and the Welsh Assembly government's devolved duties in respect of the social well-being of young people, including health, education, training and employment. (National Assembly for Wales 2002)

A process of negotiation between the Welsh Government and the Youth Justice Board (YJB) duly proceeded in the intervening years and continues today. The relationship has reportedly not been without tension and conflict at some points, particularly in the early years of New Labour when the YJB adopted a more responsabilising, interventionist, and prescriptive approach to youth justice practice. As Howard Williamson (YJB member for Wales from 2001 to 2009) commented, 'When I joined the YJB, it was dreadful—it paid no attention to the Welsh context' (National Assembly for Wales 2009a: para 88).

Even some years later the responsible Welsh Government minister, Edwina Hart, stated:

I do not always agree with UK Government policy in these areas. For example, we have grave concerns about fixed penalty notices and such issues. The UK Government over-emphasises some issues that I would not when, for example, trying to deliver children back into society. (National Assembly for Wales 2009b: para 34)

Over time, such issues were resolved through the good offices of the Youth Justice Committee for Wales (comprising, inter alia, representatives from the Welsh Government, YJB, Home Office, police, National Offender Management Service, YOT Managers Cymru, and third sector organisations). More recently this committee has been replaced by the Wales Youth Justice Advisory Panel, which has a broadly similar composition, but, amongst others, also now includes representation from the police, Crime Commissioners' offices, and university-based academic researchers. An early and successful product of this collaborative approach was the All Wales Youth Offending Strategy (Welsh Assembly Government 2004b), although Haines (2010: 238) exposes the underlying cracks in the document's joined-up approach in an analysis of three consecutive sentences: the first represents a YJB position; the second a joint YJB and Welsh Government position; and the third a distinctively Welsh Government perspective:

[1.] A balance between the interests of the child or young person and the interests of the wider and potential victims can be maintained through early intervention, restorative justice measures, appropriate punishment and supported rehabilitation.

[2.] Promoting the welfare of children and young people reduces the risk of offending and re-offending and in doing so protects the public.

[3.] The strategy therefore promotes the principle that young people should be treated as children first and offenders second.

This All-Wales Youth Offending Strategy from 2004 did, however, also include the following distinctive elements from the Welsh Government agenda (Drakeford 2010: 144–5):

- the direct identification of the United Nations Convention on the Rights of the Child as the cornerstone of the strategy;
- the explicit extension of the rights set out in *Extending Entitlement* to young people in trouble with the law;
- a commitment to ensure that professional qualifications for youth justice practitioners are integrated with those for the wider children's workforce and validated through the Care Council for Wales;

- a commitment to work with the Children's Commissioner for Wales, to mainstream and embed consultation with, and the participation of, children and young people in the youth justice system;
- a determination that (as has been mentioned previously) young people should be treated as children first and offenders second;
- a reaffirmation of the belief that, as far as law-breaking is concerned, prevention is better than cure and should be afforded priority in policy making and practice development; and
- an emphasis that custody for children really should be deployed only as a last resort.

The more recent joint statement of position by Welsh Government and the YJB (2014: 3), *Children First, Offenders Second* is—as the title implies—an explicitly child-friendly vision:

We want a country in which we all work to prevent children and young people from entering the youth justice system. But if young people do offend, we want to ensure the system and associated services do all they can to help and support them to have the best chance of not having further convictions. Children and young people at risk of entering, or who are in, the youth justice system must be treated as children first, offenders second in all interactions with services.

Five priorities for youth justice in Wales are identified:

1. A well-designed partnership approach.
2. Early intervention, prevention and diversion.
3. Reducing re-offending.
4. Effective use of custody.
5. Resettlement and reintegration at the end of a sentence.

(Welsh Government and Youth Justice Board 2014: 2)

The key principles of the Welsh youth justice practice approach are enunciated below:

- Young people are children first, offenders second;
- Young people in the youth justice system have the same access to their rights and entitlements as any other young person;
- The voice of the young person is actively sought and listened to;
- Services focus on early intervention and holistic multi-agency support;
- Promotion of a culture where identifying and promoting effective practice is fundamental to improving outcomes for young people;

- Services are held to account for addressing the needs of young people;
- The youth justice sector is supported to develop the knowledge and skills to understand and address the needs of young people;
- The voices of victims are heard, and they are provided with the opportunity to share their views and take part in restorative approaches.

(Welsh Government and Youth Justice Board 2014: 4)

Since the early days of the devolution project, the Welsh approach has attempted to move beyond interpreting the concept of youth justice in narrow criminal justice terms. Whilst addressing young people's offending and the harm they may have caused to victims and communities are clearly important aims for youth justice, the Children First philosophy is committed to also bringing justice into the lives of children. It should be remembered that clients of the youth justice system are overwhelmingly from socially disadvantaged backgrounds (Goldson and Kilkelly 2013; Bateman 2015: 17–20) and many of those with more persistent patterns of offending will have experienced victimisation (Jacobson et al. 2010; McAra and McVie 2010). The over-representation of children with a background in public care in the youth justice system (one-third of boys and two-thirds of girls in custody have been Looked After) is a reasonably good indicator of troubled and disrupted personal and family histories; in many cases, this includes the experience of abuse (physical, sexual, and emotional) and neglect, as well as exposure to domestic violence, substance misuse by parents/carers, bereavement, and periods of homelessness (Prison Reform Trust 2016; Evans 2017). When young lives have been blighted by trauma, poverty, and social exclusion, the need to redress such injustices is compelling.

There is sometimes a tendency to refer to socially excluded young people as 'disaffected', as well that might be and often with good reason. The cause of this disaffection, however, will often have its roots in social support systems that do not work for young people or in what seem to be, from the perspective of the child, unbridgeable fissures between service providers. The process of disengagement—from education, training, and employment, for example—is far from being the sole responsibility of the child. In a Children First model embedded in the *Extending Entitlement* policy, the role of the adults that work in the relevant agencies and systems is to actively 'reconnect the disconnected' child to mainstream services (Evans 2014). This includes assisting them in the increasingly risk-filled transition to employment and stable accommodation (MacDonald 2015), a journey that is challenging for all young people, but is particularly perilous for care leavers, for example (Evans 2013; Prison Reform Trust 2016). The youth justice worker has a critical

part to play in coordinating a joined-up response to a disadvantaged young person at odds with the law. This is implicit in the way in which young people in trouble with the law are viewed within the *Extending Entitlement* policy.

McAra and McVie (2010: 180) have identified four key findings that have emerged from the Edinburgh Study of Youth Transitions and Crime:

1. Persistent serious offending is associated with victimization and social adversity.
2. Early identification of at-risk children is not a water-tight process and may be iatrogenic.
3. Critical moments in the early teenage years are key to pathways out of offending.
4. Diversionary strategies facilitate the desistance process.

These findings, and the policy and practice responses they imply, resonate with the Welsh approach in its ideal form.

The *first* finding highlights the need to recognise that children's experience of victimisation should be duly factored in to any assessment or subsequent intervention. This lends itself to a Children First, Offenders Second philosophy. Whatever a young person has done, his or her personal experience of victimisation needs to be taken fully into account. The impact of the experience may, indeed, fall into the diagnostic categories of trauma, brain injury, and/or developmental delay (Skuse and Matthew 2015). Meanwhile, the reference to social adversity feeds into an analysis that requires a response at the structural and neighbourhood level. In Wales, there has been an attempt to address the challenges faced by poor neighbourhoods with the Communities First programme. The programme directs resources into anti-poverty and neighbourhood capacity-building measures which can be aligned with the *Extending Entitlement* policy.

The *second* research finding highlights the limitations and, indeed, risks of risk-based assessment and underlines the superiority of an approach based on universally available entitlements.

The *third* research finding highlights the critical importance of practitioner decisions in children's lives: whether to exclude a child from school or work more closely with the school leadership team; support a child within a struggling family or take her/him into the public care system; maintain or change a Looked After Children placement; mediate between a training provider and a young person when a placement breaks down; help to access a sporting or cultural activity; refer a young person with a substance misuse problem to a service that treats users as 'patients first'; prosecute an offence rather than deal with it informally; or remand on bail rather than in custody. Such critical decisions at critical points in the life course can have a profound effect on the future trajectory of a young person.

The *fourth* research finding emphasises how diversionary strategies can enhance the desistance process. The form that such diversion should take is an important debate and one which is discussed later in the chapter.

The Swansea Bureau model is one example of diversion that has received a great deal of academic attention.

The Swansea Bureau model

There is clear evidence that contact with the youth justice system can be counterproductive in terms of labelling young people as offenders or as ‘bad’ and facilitating contact with more criminally sophisticated peers, thereby delaying the desistance from offending process (Gatti et al. 2009; McAra and McVie 2007, 2010). Diversion (Evans 2008) from the youth justice system, through the deployment of systems management principles (Davis et al. 1989; Haines and Drakeford 1998), is therefore quite rightly regarded as a positive contribution to the desistance process. For many young people there is little, if any, need for further intervention. The case for such radical intervention might be regarded as ‘benign neglect’, but diverting young people away from the youth justice system without taking any positive action when they have unmet needs is likely to be experienced by them as ‘malign indifference’ (Drakeford and Williamson 1998).

The Swansea Bureau model, operating within a children’s rights framework and the philosophy underpinning the *Extending Entitlement* policy, makes the case for a more positive form of diversion (Haines et al. 2013; Case and Haines 2015; Haines and Case 2015). The ‘new youth justice’ (Goldson 2000), introduced by New Labour after its landslide victory in 1997, promoted an approach that individualised and responsabilised children and their parents for any offences committed. The focus of initial encounters with young people who had offended was thus on asking questions about whether they accepted responsibility for their actions, whether they were remorseful, and whether they were prepared to make amends to the victim. In the Welsh approach, such questions would be asked, of course. Additionally, though, questions were to be asked about whether the children’s rights were being upheld and whether the adults in these young people’s lives were discharging their responsibilities towards them. This includes parents and other adult family members, but also the adults responsible for providing education, social care, health, and other relevant services. Within the framework of the *Extending Entitlement* policy, the role of youth justice workers was to assess whether children were receiving all of their universal entitlements. If they were not, then they needed to be reconnected to those services, supports, resources, and opportunities.

Adults working in agencies and services for children are thus *responsibilised* to ensure young people receive

It also probably comes closest to operationalising both the Children First, Offenders Second philosophy and applying the *Extending Entitlement* policy. The next section therefore provides a brief account of its aims and how it works in practice.

their entitlements. This not only reaffirms the idea of children as citizens, but also promotes the notion that parenting is a public and collective responsibility and not merely the private concern of families. The approach described here should apply right across the youth justice system, from first contact to release from penal custody. As has been suggested, though, the approach has been most fully realised in the Swansea Bureau model. The essential elements of the model are summarised below.

The Bureau maximised diversion by utilising the inter-agency partnership between Swansea Youth Offending Service (YOS) and South Wales Police, which has been supported by the wider Safer Swansea Partnership (the local manifestation of a Community Safety Partnership, or what are known in England as Crime and Disorder Reduction Partnerships). The originally-stated aims of the Bureau are as follows:

- To divert young people out of the formal process of the youth justice system;
- To reduce the number of first time entrants entering the YJS;
- To treat young people as children first, offenders second;
- To provide programmes to tackle the underlying causes of offending behaviour through the promotion of positive and prosocial behaviour.

(Swansea YOS 2010: 2)

Haines et al. (2013: 171–2) explain that,

the Bureau is designed to be *children first* through its foci on: (re-) *engaging parents/carers* in the behaviour of their children, giving explicit place to hear the *voices of young people* and de-coupling the *needs of the victim* from the responses to the child. Bureau mechanisms seek to slow down the youth justice process (contra Youth Restorative Disposals and Triage which are designed to speed up disposals), whilst simultaneously eschewing offence-focused programmes (contra Youth Restorative Disposals and Triage which are focused on *young people making reparations to the victim of the offence*) in favour of interventions which promote young people’s access to their entitlements (contra Triage where, in some areas, additional *rehabilitative* measures are available).

There are five stages in the Bureau process.

Stage 1: Arrest and bail

When first arrested, the police determine whether the child meets the core criteria for the Bureau process: the young person admits that they have committed the offence; the offence has been accorded an Offence Gravity Score between 1 and 3 (1 is low and 4 is the highest); and the young person has First Time Entrant (or equivalent) status. If these criteria are met, the Bureau process is explained to the young person and a parent/carer/appropriate adult, the young person is bailed to attend the Bureau Clinic in a fortnight, and two assessment processes are triggered: one with the young person and his/her family (see Stage 2), and the other with any identified victims (see Stage 3).

Stage 2: The assessment of young people

A Bureau Co-ordinator, who will be a YOS worker, gathers information from a range of sources which will include the police, YOS, social services, school, and the Anti-Social Behaviour Team. The young person and the family/carers are met by the YOS worker and two areas are explored: the circumstances of the offence; and the identification of any underlying problems and points of disconnection from universal entitlements. The young person's views are also actively sought in terms of possibly repairing any harm caused to victims/the community and the identification of interventions that would be helpful. The co-ordinator then forwards a report to the Panel (see Stage 4). The report includes a recommendation as to whether formal processing or a Non-Criminal Disposal (NCD) is most appropriate. It is important to note that the recommendation of an NCD may also include a recommendation of an individually tailored package for the child and parents/carers, which may include reconnection with entitlements and services, strategies to address underlying issues, and plans to promote pro-social behaviour.

Stage 3: Assessing the needs of the victims

A Victim Support Officer from the YOS contacts the identified victims and records the impact of the offence along with any views on how the young person should be dealt with as a result, including any reparative elements such as a letter of apology or a Restorative Conference (which has to be agreed to by both parties). The victim's views are shared with the young person and incorporated into the Bureau report. As Haines et al. (2013: 173) point out,

Significantly, the victim plays no further active role in the Bureau Panel or Clinic (see Stages 4 and 5) and the outcome for the young person, in line with the children first approach, is not contingent upon securing the engagement or agreement of any victim. Victims, however, may be offered further support from the Police, YOS or referral to a specialist agency (e.g., Victim Support).

Stage 4: Panel

This is a closed multi-agency Panel comprising the Bureau Co-ordinator, a police sergeant, and a community representative (who has been trained in the Bureau process). The report is considered and discussed in relation to the recommendation (NCD, Community Resolution, Youth Caution, Youth Conditional Caution, or prosecution), along with any packages of support, reconnection to entitlements, or interventions (parenting support, referral to substance misuse agencies, anger management programmes, etc.).

Support packages and the services provided via the Swansea Bureau are voluntary and designed to be child-focused (not offence-focused); sensitive to the social circumstances and needs of the child and their parents. . . . The voluntary nature of Bureau interventions is intended to enhance young people's ownership of the process, which in turn can enhance levels of compliance and engagement/participation. (Haines et al. 2013: 174)

When a provisional decision is made by the Panel, the Bureau Clinic is convened, usually on the same day.

Stage 5: The Bureau Clinic

The Bureau Clinic comprises the members of the Panel, the young person, and their parents or carers and is run on broadly restorative principles (Braithwaite and Mugford 1994).

The Clinic is designed to be participatory in nature and the young person and their parents are given express opportunity to contribute to the discussion. The aim of the Clinic is to reach a mutually agreed and appropriate outcome/decision for each child. (Haines et al. 2013: 174)

The decisions available to the Bureau Clinic are as previously stated in Stage 4.

Where there is a mutual recognition that support is appropriate, an individualised package is developed. . . . The duration of services can range from single one-off meetings to long-term engagement, thus allowing for the personal growth of the young person within a time scale that suits their needs. Providing individualised, flexible, multi-agency service delivery, located within a preventative, prosocial

model that avoids blaming/responsibilising young people and their parents is a central objective of the Swansea Bureau process. (Haines et al. 2013: 174)

The Bureau model has been extremely successful in reducing first-time entrants into the system and reducing reoffending rates (Haines et al. 2013: 175–84). The Bureau

pre-court model has also saved public money, as the minutes of the City and County of Swansea Cabinet (2013: 110) attest: ‘an annual saving to the public purse of over £2.8m in Swansea alone’. At the time of writing, all but one local authority in Wales had adopted and implemented a Bureau. Diversion from the youth justice system exceeds 80 per cent in some areas and juvenile crime is declining.

Dragonisation: The myth, the reality, and future challenges

There have been two themes or questions that have formed the main organising principles of this chapter. The first relates to defining what has been distinctive about Welsh policy. The second theme has been concerned with interrogating whether this Welsh policy agenda has actually been implemented in practice across the country. To express these themes or questions more whimsically, what is a dragon and does it really exist? Does it have wings, does it fly, and does it breathe fire? The dragon is, of course, a mythical creature, but myths—particularly national myths—are not without meaning, significance, or power. ‘Mythtory’—for good or ill—is arguably a more important mobilising force in politics and policy formation than history or the social sciences. Nations are almost always socially, culturally, and religiously diverse. Myths, symbols, and national narratives therefore play an important part in binding together such diverse groups. Williams (1985) has argued that myth is a key element in the composition of national narratives; a way of drawing upon usable pasts in order to move towards attainable futures. Anderson (2006) has also depicted nations as ‘imagined communities’ rather than immutable, essentialised entities or empirical realities.

In the light of the above, then, to what extent have Welsh politicians, policy makers, and academics been in the business of myth-building with regard to the dragonisation of Welsh youth justice policy and has this narrative actually affected practice on the ground? In order to answer that question it is helpful to consider Fergusson’s (2007) distinction between *policy as rhetoric*, *policy as codification*, and *policy as implementation*. *Policy as rhetoric* refers to the public presentation of policy and can involve the authorship or the shaping of narratives, often within the discourses or parameters of what is considered politically acceptable within the public realm. This consensus is sometimes referred to as ‘Overton’s Window’ (*New Statesman* 2015). Ideas, beliefs, and attitudes that fall within the frames of the window are likely to win support, whereas those outside it are unlikely to command public support. The challenge for those seeking a

radical paradigm shift, therefore, is to shift the window towards those ideas that had previously been considered unconventional or even unthinkable. *Policy codification* refers to policy directives, standards, guidance, processes, and objectives. *Policy implementation*, meanwhile, refers to how practitioners interpret and apply directives. Notwithstanding the trend towards prescriptive practice under new managerialism, practitioners retain a great deal of professional discretion. The concept of ‘street-level bureaucracy’ (Lipsky 1980; Hupe et al. 2015) is one that both recognises the very real constraints within which many practitioners operate, but also asserts their independent agency in terms of how they use discretion and judgement to interpret statute and management directives in the light of their own professional knowledge and values.

If the above criteria are applied to the dragonisation project, how successful has the distinctive Welsh policy agenda actually been and how durable is it likely to be? At the outset, it should be noted that an early academic draft of a cogent Children First, Offenders Second manifesto took place at an inhospitable point in time, as New Labour was in the early days of its ascendancy (Haines and Drakeford 1998). However, the arrival of devolution in Wales resulted in Welsh Labour having to move beyond being a branch office of the UK Labour Party and assume some independent agency in terms of developing policies that met Welsh needs. The fact that Professor Mark Drakeford, a co-author of *Young People and Youth Justice*, was appointed as a Special Adviser to the First Minister of Wales has not been insignificant. His subsequent election as an Assembly Member and appointment as a minister have also ensured that an articulate and informed advocate of children’s rights has exerted influence on children’s issues at senior government level across key domains of social policy. The commissioning of work on how to de-escalate interventions with adolescents across youth justice, health, and social services is just one example (Public Policy Institute for Wales 2016).

Welsh Labour, particularly in its ‘clear red water’ (Davies and Williams 2009) phase of development, thus

became a viable vehicle for both promoting and delivering a Children First, Offenders Second philosophy. In terms of both *policy as rhetoric* and *policy as codification* there is incontrovertible evidence in the form of speeches, media releases, and policy papers that there has been tangible success of the promotion of this agenda. Overton's Window has not only been shifted within Wales with the publication of *Children and Young People First: Welsh Government/Youth Justice Board joint strategy to improve services for young people from Wales at risk of becoming involved in, or in, the youth justice system* (Welsh Government and Youth Justice Board 2014), but also beyond its borders. Charlie Taylor's review of the youth justice system (Ministry of Justice 2016: 48, para 172) is explicit in echoing the dominant policy discourse in Wales: 'I have described a new system in which young people are treated as children first and offenders second', although this is weighed against 'and in which they are held to account for their offending'.

The slogan or sound-bite of 'children first, offenders second' has travelled beyond Wales, but it is possible that the underpinning philosophy may have been lost or misunderstood in translation. It would be wrong to make a definitive judgement at this early stage, particularly as the Taylor Review contains many elements that resonate with the Welsh policy agenda. That said, this does raise a wider question about the criterion of *policy as implementation* within Wales. Muncie (2010), in an article entitled 'Illusions of Difference: Comparative Youth Justice in the United Kingdom' delivered a sobering judgement on the reality of youth justice in Wales, highlighting a yawning implementation gap between the rhetoric of the rights-based approach and practice on the ground. By way of illustration, he compares two areas with similar demographic and socio-economic profiles: Merthyr Tydfil and Newcastle: 'Notable differences remained in the proportion of convicted under 18-year-olds sentenced to custody in different YOT areas, ranging from 20 per cent in Merthyr Tydfil (in a 'rights-driven' Wales?) to 2 per cent in Newcastle (in a 'risk-driven' England?)' (Muncie: 2010: 52). On one level, Muncie can be criticised for rushing to judgement so soon after the initial devolution settlement in Wales. As has been mentioned already, devolution is a process and not a single event. Also, within Wales, the kind of exemplary practice being developed in Flagship Swansea (including the rights-based Bureau model embedded in the *Extending Entitlement* policy) had at that stage not been evaluated fully nor emulated by other youth offending services in Wales. This was, therefore, a premature judgement. Merthyr was, in fact, very untypical in Welsh terms (as Newcastle was untypical in English YOTs). Merthyr subsequently received considerable support from YJB Cymru in drastically reducing its custody levels.

That said, what Muncie's article does do is highlight the fact that there existed then—and continues to exist today—a wide diversity of practice at the sub-national level in all of the countries of the UK. Justice by geography has been a long and enduring aspect of youth justice practice in Wales and England. This suggests the importance of inspecting the granular detail of youth justice practice across Wales (and, of course, beyond).

Children First, Offenders Second may now be a more popular mantra than was the case in the early days of New Labour and the YJB, but to what extent has the essential philosophy been understood and embraced by practitioners at operational and ground level? Have the message and the practices associated with that message been diluted? Swansea Youth Offending Service, which has more recently been amalgamated with neighbouring teams, perhaps best represents the philosophy in action, particularly in relation to the operation of its Bureau model (Haines et al. 2013; Case and Haines 2015; Haines and Case 2015). Although Swansea's well-evaluated and much-celebrated Bureau model has been rolled out across youth offending services in Wales, it remains unclear whether the integrity of the model and the underpinning core principles have remained intact. The suspicion that in some areas Children First, Offenders Second is merely a branding exercise rather than a paradigmatic shift has been aroused by Thomas' (2015) comparative analysis of practitioner culture in two Welsh and two English Youth Offending Services. Further research is required before definitive judgements can be delivered, but it is reasonable to suppose that the dragonisation agenda may not have been rolled out evenly across the whole country.

The widely accepted narrative is that it has always been the Welsh Government pushing the children's rights agenda. In more recent years, since the passage of the Children's Measure in 2011, there has been a perception that the Welsh Government has been less proactive in this area—a perception supported, to some extent, by its scrapping of the post of Children's Minister. Whatever the truth of the matter, there is now clear evidence that Youth Justice Board Cymru is committed to the Children First, Offenders Second philosophy. It is evidenced in the latest jointly published strategy (Welsh Government and Youth Justice Board 2014) and the development of a community-based Enhanced Case Management practice model which draws upon trauma recovery research (Skuse and Matthew 2015).

Rolling out the Children First, Offender Second model across the whole of Wales is a challenge for a number of reasons. Firstly, the centralised command and control model of management that reportedly existed in the early days of the YJB has long gone. The grip of the centre has been relaxed. This is true not only in youth justice but also in other areas of public service delivery. The nature of governance in Welsh public services, as elsewhere, has

become far more dispersed than was previously the case. In education, for example, local authorities were once able to exert far greater influence over schools. The power of County Hall is now greatly diminished, with greater autonomy being delegated to individual schools and governance being mediated via governing bodies and local consortia. Youth Justice Board Cymru, like many other public service organisations, relies more heavily on the soft power of exhortation and effective partnership working. It should also be acknowledged that since the introduction of risk-led assessment following the establishment of youth offending services post-1998, risk-focused practice may well be deeply entrenched in practitioner culture. It may take some time to dislodge.

Secondly, there is the challenge of how to make the new assessment form, Asset+, work in the interests of child-friendly youth justice practice. It was initially believed that the replacement of the original risk-led assessment form, Asset (which was critiqued extensively: see e.g. Case 2007 and Case and Haines 2009), would create the space to liberate practitioners to work differently. It is worth mentioning that the preparatory training received

by practitioners for the introduction of Asset+ included familiarisation with desistance research (Maruna 2001; Maruna and Immarigeon 2008; Maruna et al. 2015) and the Good Lives Model (Purvis et al. 2011). Such research is, of course, entirely consistent with the kind of approach promoted in Wales. The challenge, however, is that it will be difficult to apply this new approach when youth offending services will apparently continue to have their performance evaluated by the Inspectorate on the old criteria and key performance indicators. This is a paradox that needs to be confronted and resolved.

A third challenge relates to the combined and cumulative impact of successive austerity budgets and the loss of European funding following Brexit. The principle of universalism embodied in Welsh Government policies such as *Extending Entitlement* is likely to come under intense pressure in the coming years.

The above challenges are undoubtedly immense but if practitioners, managers, policy makers, and researchers work in partnership, then there is hope that Wales can continue to make a contribution to the development of positive youth justice practice.

Conclusion

In spite of the original aims of a 'single' or 'unified' jurisdiction in Wales, devolution in Wales has paved the way for the emergence of differences between England and Wales.

These differences and their manifestation in (adult and) youth justice policy and practice have been the focus of this chapter. We have shown how these differences have been most strongly expressed in the political and social policy realms. Practice and the vicissitudes that mediate

policy and practice vary (sometimes quite widely) across Wales and there is a sense that practice has yet to fully catch up with policy. Nevertheless, we have made the case that, in terms of youth justice and broader social policy for children, there is a strong resonance between Welsh culture and the 'children first, offenders second' approach. We await, with great interest, the longer term outcomes of this journey.

FURTHER READING

Haines, K. and Case, S. (2015) *Positive Youth Justice: Children First, Offenders Second*. Bristol: Policy Press.

This book sets out in detail the key principles of the *Children First, Offenders Second* approach as developed in the Welsh context.

Pritchard, H. (2016) *Justice in Wales: Principles, Progress and Next Steps*. Cardiff: Wales Governance Centre.

This report maps out the key institutions responsible for the administration of criminal and youth justice in Wales. It provides any reader interested in justice in Wales with an in-depth understanding of the complex constitutional arrangements surrounding criminal and youth justice developments in the country.

Williams, C. (2011) *Social Policy for Social Welfare Practice in a Devolved Wales*. Birmingham: Venture Press.

This book offers a critical analysis and understanding of social welfare policy and practice in Wales. It considers the intersection between social and criminal justice policy in Wales and, as such, is an essential text for readers interested in understanding the role played by the devolved government within justice in Wales.

REFERENCES

- All Wales Convention (2009) *All Wales Convention Report*. Cardiff: All Wales Convention.
- Anderson, B. (2006) *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.
- Bateman, T. (2015) *The State of Youth Justice 2015: An Overview of Trends and Developments*. London: National Association of Youth Justice.
- Braithwaite, J. and Mugford, S. (1994) 'Conditions of Successful Reintegration Ceremonies' *British Journal of Criminology* 34(2): 139–71.
- Butler, I. (2011) 'Children's Policy in Wales' in Williams, C. (ed.) *Social Policy for Social Welfare Practice in a Devolved Wales*. Birmingham: Venture Press.
- Case, S. (2007) 'Questioning the "Evidence" of Risk that Underpins Evidence Led Youth Justice Interventions' *Youth Justice* 7(2): 91–106.
- Case, S. and Haines, K. (2009), *Understanding Youth Offending: Risk Factor Research, Policy and Practice*, Cullompton: Willan.
- Case, S. and Haines, K. (2015) 'Children First, Offenders Second Positive Promotion: Reframing the Prevention Debate' *Youth Justice* 15(3): 226–39.
- Chaney, P. and Drakeford, M. (2004) 'The Primacy of Ideology: Social Policy and the First Term of the National Assembly for Wales' *Social Policy Review* 16: 121–42.
- City and County of Swansea Cabinet (2013) 'Cabinet Meeting Minutes, January 31st, 2013'. Swansea: City and County of Swansea.
- Cross, N., Evans, J., and Minkes, J. (2003) 'Still Children First?—Developments in Youth Justice in Wales' *Youth Justice* 2(3): 151–62.
- Davis, G., Boucherat, J., and Watson, D. (1989) 'Pre-Court Decision Making in Juvenile Justice' *British Journal of Criminology* 29(3): 219–35.
- Davies, N. and Williams, D. (2009) *Clear Red Water: Welsh Devolution and Socialist Politics*. London: Francis Boutle Publisher.
- Drakeford, M. (2007) 'Devolution and Social Justice in the Welsh Context' *Benefits* 19(2): 173–80.
- Drakeford, M. (2010) 'Devolution and Youth Justice' *Criminology and Criminal Justice: An International Journal* 10(2): 137–54.
- Drakeford, M. and Williamson, H. (1998) 'From Benign Neglect to Malign Indifference: Housing and Young People' in Shaw, I., Thomas, S., and Clapham, D. (eds) *Social Care and Housing*, Research Highlights 32. London: Jessica Kingsley.
- Edwards, A. and Hughes, G. (2009) 'The Preventive Turn and the Promotion of Safer Communities in England and Wales: Political Inventiveness and Governmental Instabilities' in Crawford, A. (ed.) *Crime Prevention in Europe: Comparative Perspectives*. Cullompton: Willan.
- Etzioni, A. (1995) *The Spirit of Community*. London; Fontana.
- Etzioni, A. (1997) *The New Golden Rule*. London: Profile Books.
- Etzioni, A. (ed.) (1998) *The Essential Communitarian Reader*. Oxford: Rowman & Littlefield.
- Etzioni, A. (2000) *The Third Way to a Good Society*. London: Demos.
- Evans, J. (2013) 'Care Leavers and the New Offender Management System' *British Journal of Community Justice* 11(2–3): 195–8.

- Evans, J. (2014) 'Responding to Youth Crime: Reconnecting the Disconnected' *Perspectives on Youth* 2: 85–102.
- Evans, J. (2017 forthcoming) "'Objects of Concern" or "Risky Young Offenders"? Assessment and Intervention with Children in the Public Care and Youth Justice Systems of England and Wales' in Ulmer, J. and Bradley, M. (eds) *Punishment Decisions: Locations of Disparity*, Vol. 2 in the ASC Division on Corrections and Sentencing Handbook Series, New York: Taylor & Francis.
- Evans, J., Heath, B., and Raynor, P. (2015) 'Jersey Revisited: Reflections on the Influence of a Policy Review on Youth Justice in an Island Microstate' *Eurovista: Probation and Community Justice* 3(3): 38–53.
- Evans, R. (2008) 'Diversion' in Goldson, B. (ed.) *Dictionary of Youth Justice*. Cullompton: Willan.
- Fergusson, R. (2007) 'Making Sense of the Melting Pot: Multiple Discourses in Youth Justice Policy' *Youth Justice: An International Journal* 7(3): 179–94.
- Field, S. (2007) 'Practice Cultures and the "New" Youth Justice in (England and) Wales' *British Journal of Criminology* 47(2): 311–30.
- Gatti, U., Tremblay, R., and Vitaro, F. (2009) 'Iatrogenic Effect of Juvenile Justice' *Journal of Child Psychology and Psychiatry* 50(8): 991–8.
- Giddens, A. (1998) *The Third Way: The Renewal of Radical Politics*. Cambridge: Polity Press.
- Goldson, B. (ed.) (2000) *The New Youth Justice*. Lyme Regis: Russell House Publishing.
- Goldson, B. and Kilkelly, U. (2013) 'International Human Rights Standards and Child Imprisonment: Potentialities and Limitations' *International Journal of Children's Rights* 21(2): 345–71.
- Haines, K. (2010) 'The Dragonization of Youth Justice' in Taylor, W., Earle, R., and Hester, R. (eds) *Youth Justice Handbook: Theory, Policy and Practice*. Cullompton: Willan.
- Haines, K. and Case, S. (2015) *Positive Youth Justice: Children First, Offenders Second*. Bristol: Policy Press.
- Haines, K. and Drakeford, M. (1998) *Young People and Youth Justice*. Basingstoke: Macmillan.
- Haines, K., Case, S., Davies, K., and Charles, A. (2013) 'The Swansea Bureau: A Model of Diversion from the Youth Justice System' *International Journal of Law, Crime and Justice* 41: 167–87.
- Haines, K., Case, S., Isles, E., Rees, I., and Hancock, A. (2004) *Extending Entitlement: Making it Real*. Cardiff: Welsh Assembly Government.
- HM Cabinet Office (2005) *Youth Matters*, Presented to Parliament by the Secretary of State for Education and Skills, July 2005. London: HM Cabinet Office.
- HM Chief Inspector of Prisons (2010) *Report on a full unannounced inspection of HMP Altcourse*. 15–22 January 2010.
- Jacobson, J., Bhardwa, B., Gyateng, T., Hunter, G., and Hough, M. (2010), *Punishing Disadvantage: A Profile of Children in Custody*. London: Prison Reform Trust.
- Jones, R. (2016) 'The Hybrid System: Imprisonment and Devolution in Wales', PhD thesis. Cardiff: Cardiff University.
- Justice Committee (2008) *Towards Effective Sentencing* (House of Commons) Fifth Report of Session 2007–08, 8 July 2008. London: The Stationary Office.
- Wyn Jones, R. and Scully, R. (2012) *Wales Says Yes: Devolution and the Welsh Referendum*. Cardiff: University of Wales Press.
- MacDonald, R. (2015) 'Youth Transitions, Criminal Careers and Social Exclusion' in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*. London: Sage.
- Madoc-Jones, I. and Buchanan, J. (2004) 'Indigenous People, Language and Criminal Justice: The Experience of First Language Welsh Speakers in Wales' *Criminal Justice Studies: A Critical Journal of Crime, Law and Society* 17(4): 353–67.
- Maruna, S. (2001) *Making Good: How Ex-Convicts Reform and Rebuild and Their Lives*. Washington DC: American Psychological Association.

- Maruna, S. and Immarigeon, R. (eds) (2008) *After Crime and Punishment: Pathways to Offender Reintegration*. Cullompton: Willan.
- Maruna, S., Coyle, B., and Marsh, B. (2015) 'Desistance from Crime in the Transition to Adulthood' in Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*. London: Sage.
- McAra, L. and McVie, S. (2007) 'Youth Justice? The Impact of Agency Contact on Desistance from Offending' *European Journal of Criminology* 4(3): 315–45.
- McAra, L. and McVie, S. (2010) 'Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime' *Criminology and Criminal Justice—An International Journal* 6(1): 39–42.
- Ministry of Justice (2014) 'Written evidence submitted by the Ministry of Justice'. Written evidence submitted to the House of Commons Welsh Affairs Committee's Inquiry on Prisons in Wales and the Treatment of Welsh Offenders. July 2014.
- Ministry of Justice (2016) *Review of the Youth Justice System in England and Wales by Charlie Taylor*. London: Ministry of Justice.
- Morgan, R. (2002) 'National Centre for Public Policy Annual Lecture', Swansea, University of Wales, 11 December.
- National Assembly for Wales (2000) *Extending Entitlement: Supporting Young People in Wales, a Report by the Policy Unit*. Cardiff: National Assembly for Wales.
- National Assembly for Wales (2002) 'All Wales youth offending strategy group meets for the first time', Press Release. Available at <http://www.wales.gov.uk>.
- National Assembly for Wales (2009a) *Transcript Youth Justice Board for England and Wales*, 7 May. Cardiff: National Assembly for Wales.
- National Assembly for Wales (2009b) *Transcript Welsh Government*, 6 July. Cardiff: National Assembly for Wales.
- National Offender Management Service Cymru, Welsh Government, and Youth Justice Board (2006) *Joining Together in Wales: An Adult and Young People's Strategy to Reduce Reoffending*, January 2006.
- New Statesman* (2015) 'What is the Overton Window?', *New Statesman*, 27 April 2015. Available at <http://www.newstatesman.com/politics/2015/04/what-overton-window>.
- Pratt, J., Brown, D., Brown, M., Hallsworth, S., and Morrison, W. (2007) *The New Punitiveness: Trends, Theories and Perspectives*. Cullompton: Willan.
- Prison Reform Trust (2016) *In Care, Out of Trouble*, An Independent review chaired by Lord Laming. London: Prison Reform Trust .
- Public Policy Institute for Wales (2016) *De-escalating Interventions for Troubled Adolescents*. Cardiff: Public Policy Institute for Wales.
- Purvis, M., Ward, T., and Willis, G. (2011) 'The Good Lives Model in Practice: Offence Pathways and Case Management' *European Journal of Probation* 3(2): 4–28.
- Rawlings, R. (2003) *Wales: Constitutional, Legal and Administrative Aspects of National Devolution*. Cardiff: University of Wales Press.
- Richard Commission (2004) *Report of the Richard Commission*, Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, Spring 2004.
- Silk Commission (2014) *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*. Second Report of Commission on Devolution in Wales, March.
- Skuse, T. and Matthew, J. (2015) 'The Trauma Recovery Model: Sequencing Youth Justice Interventions for Young People with Complex Needs' *Prison Service Journal* 220: 16–25.
- Swansea YOS (2010) *The Swansea Bureau*. Swansea: Swansea YOS and South Police.
- Thomas, N. (1991) *The Welsh Extremist*. Talybont: Y Lolfa.
- Thomas, S. (2015) 'Children First, Offenders Second: An aspiration or reality for youth justice in Wales', thesis submitted for Professional Doctorate in Leadership in Children and Young People's Services. Luton: University of Bedfordshire.
- Wales Office (1997) *A Voice for Wales: A summary of the Governments proposals for a Welsh Assembly*. London: The Stationery Office.
- Wales Office (2013) *UK Government's Evidence to the Commission on Devolution in Wales: Part II: The Welsh Devolution Settlement*. March.

- Watkin, T. (2012) *The Legal History of Wales* (2nd edn). Cardiff: University of Wales Press.
- Welsh Assembly Government (2003) *Making the Connections*. Cardiff: Welsh Assembly Government.
- Welsh Assembly Government (2004a) *Children and Young People: Rights to Action*. Cardiff: Welsh Assembly Government.
- Welsh Assembly Government (2004b) *All-Wales Youth Offending Strategy*. Cardiff: Welsh Assembly Government.
- Welsh Assembly Government (2008) *Working Together to Reduce Harm, The Substance Misuse Strategy for Wales 2008–2018*.
- Welsh Government (2011) *A Pathway to Care for Older Prisoners: A Guide to Improving the Health, Well-Being & Healthcare of Older Prisoners*. October.
- Welsh Government (2012) *Together for Mental Health: The New Mental Health Strategy for Wales*. May.
- Welsh Government (2013) *Evidence Submitted by the Welsh Government to the Commission on Devolution in Wales*. Evidence Paper, 18 February.
- Welsh Government (2015a) *National Pathway for Homelessness Services to Children, Young People and Adults in the Secure Estate*. Cardiff: Welsh Government. December.
- Welsh Government (2015b) *Talk To Me: Suicide and Self Harm Prevention Strategy for Wales 2015–2020*. July.
- Welsh Government and Youth Justice Board (2014) *Children and Young People First: Welsh Government/Youth Justice Board joint strategy to improve services for young people from Wales at risk of becoming involved in, or in, the youth justice system*. Cardiff: Welsh Government and Youth Justice Board.
- Williams, G. A. (1985) *When Was Wales? A History of the Welsh*. London: Penguin Books.
- Williamson, H. (2002) *Supporting Young People in Europe: Principles, Policy and Politics*. Strasbourg: Council of Europe Publishing.
- Williamson, H. (2006) *Supporting Young People in Europe: Lessons from the 'Second Seven' Council of Europe International Reviews of National Youth Policy*. Strasbourg: Council of Europe Publishing.