



Risks, Rights and Justice: Understanding and Responding to Youth Risk

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Abstract

This article reviews current social policy and penal policy responses to risk, with particular attention to how policies of responsabilization have implications for rights leading to an increased emphasis upon conditional rights. Responsibilization has also framed risk policies as increasingly preventative (and potentially exclusionary) and the limits of this 'risk factorology' approach are examined. The article concludes with a brief review of the implications for current youth justice practice and the possibility for practitioner resistance to current policy responses to 'problematic' and 'risky' youth.

Keywords: responsabilization, rights, risk, youth

Introduction: Risk and Youth

The terms risk and youth have become synonymous (Green et al., 2000), and young people are increasingly perceived as either 'at risk' or as 'posing a risk' (Armstrong, 2004, 2006; Goldson, 1999, 2002; Swadner and Lubeck, 1995). This risk discourse has significant implications for young people, especially young offenders, and this article will review its pervasiveness in contemporary social and penal policy. In particular, the role of risk in the erosion of rights and justice for young people will be explored, and the extent to which the 'responsibilization agenda' has promoted a conditional notion of rights and social justice will be discussed.

Life for young people in contemporary society is both challenging and uncertain. The individual life course is no longer mapped out and predictable (Giddens, 1991, 2001), and the 'risk society' is described as inherently uncertain (Giddens, 1991, 1998a, 1998b; Beck, 1992, 1995, 1999, 2006) within which risks are individually framed, experienced and negotiated. This is particularly acute for young people who are the first generation to 'grow up' in the risk society (Wyn and Dwyer, 1999). Biographies are no longer 'normal' or standard, but are experienced as complex and ambivalent (EGRIS, 2001; Furlong and Cartmel, 2006; Lopez and Hernandez, 1999; Kelly, 2003, 2006). In the 'risk society'

individuals are framed as shapers of their own worlds 'making decisions according to calculations of risk and opportunity' (Petersen, 1996: 47), but facing blame and punishment if they get their choices wrong. Indeed, identifying 'at risk' youth has spawned an industry, with Swadener and Lubeck (1995) arguing that in the United States between 1989 and 1995 over 2500 articles on 'at risk' children and families were published – see also Tait (1995) for the framing of the 'at risk' discourse; and Muncie (2005) on the globalization of crime control and implications for youth justice. Policies and interventions also proliferated in the 1990s, ranging (in the UK) from early interventions (Farrington, 1995) including Sure Start (Glass, 1999), assessing children in need (*Every Child Matters*; DES, 2003), those in danger of a 'Mis-spent Youth' (Audit Commission, 1996; Audit Scotland, 2002), and those at risk of developing a criminal career (Farrington, 2000).

Within this risk discourse, risk taking and young peoples' attitudes to risk have attracted much interest. This has often focused on education campaigns to encourage young people away from risky behaviours without exploring how such decisions are made over time and the decisions young people make about risks (Mitchell et al., 2001). This approach presumes the rational actor, the 'Prudential Human' who will make rational and normatively correct choices if only the relevant risk information is given and processed correctly (Adams, 1995), for example about drugs, alcohol, sexual behaviour and offending (Mitchell et al., 2001). Within this approach young people are often characterized as imprudent, irrational and hence vulnerable, by failing to calculate risks properly or to act wisely upon risk information (for example about drug taking, healthy eating, or committing crime). These factors are seen as significant in the risk (particularly crime) trajectories of young people (Liddle and Solanki, 2002; Wiesner and Capaldi, 2003).

Policy Responses to 'Problem Youth'

This 'problematization of youth' (Kelly, 2000, 2001) has resulted in particular criminal justice and social policy responses that promote increased regulation and control of youth (Armstrong, 2004). Youth has become the 'prism' through which the social ills of society are perceived (Brown, 2005), although such distortions of youth are hardly new (Pearson, 1983). In the context of this article, social policy is interpreted more broadly than 'mere' welfare, as the strategic state organization of social provision in its many forms and its use within broader public policy – for example to regulate youth transitions into adulthood (Lavalette and Pratt, 1997). Whilst there is continued debate about the role of risk in criminology, crime control and penal policy (Kemshall, 2003; O'Malley, 2006), there is little doubt that risk (however practically deployed) has become a significant factor in the responses to crime and, in this context, youth crime (Goldson, 2000; Kelly, 2000, 2001; Muncie, 2006). For some commentators (most notably Goldson, 1999, 2000, 2002; Kelly, 2003; Sharland, 2006; Tait, 1995; Whyte, 2003), the 'problematizing of youth' has resulted in a blurring of social policy and crime policy in which *social* problems are reframed as *crime* problems and crime control strategies are increasingly deployed to manage intractable social ills. This has been

particularly prevalent in responses to marginalized and excluded communities (Yates, 2004, 2006), and the failure to effectively regulate youth through the labour market (Jordan, 2000). For Muncie (1999) this has resulted in an ‘institutionalized intolerance’ of youth and, for others, an over-regulation of youth (see for example R. Smith, 2003).

Whilst the existence (or otherwise) of the ‘risk society’ is much debated (see Kemshall, 2003), what is empirically evident is the increased ‘responsibilization’ of citizenry including youth (Rose, 1996a, 1996b); Kelly (2001), for example, has argued that the discourse of risk – whether ‘at risk’ or ‘dangerous’ youth – individualizes risk and responsabilizes young people and their families for its effective management. In brief, the thesis is that the individualistic and blame-laden language of risk transforms social and collective risks into individual ones, for example unemployment is not a product of economic conditions but a product of the skill deficit or lack of enterprise of the individual (Rose, 1996a, 1996b, 2000). The thesis is most associated with the work of Rose, who contends that governance in neo-liberal societies is carried out at the ‘molecular level’ in which the active citizen is required to self-regulate towards the pre-set norms of society. Those who fail to exercise the prudential risk choice are excluded, marginalized and demonized. In this sense, risks are the product of individual decision making and individuals are responsible for their avoidance and for the exercise of prudential choice (e.g. skill training and life-long learning) (Rose, 1996a). Empirically, responsabilization has been evidenced in health policy with emphasis upon self-care and self-regulation (e.g. healthy eating) (Petersen, 1996); criminal justice policy and the cognitive behavioural transformation of offenders (Kemshall, 2002a; Rose, 2000; O’Malley, 2006); drug policy and the individualization of responses (O’Malley, 2004); and the transformation of collective welfare needs to individual risk management of misfortune (Kemshall, 2002b). Bandalli (2000) has particularly addressed how the ‘new youth justice’ responsabilizes youth, and pursues a responsabilization agenda with young offenders. Muncie (2006: 771) has eloquently argued that despite the emphasis upon responsabilization it is ‘difficult to identify any consistent rationale and/or philosophical core’ in current youth justice policy and that in fact youth justice policy is dependent upon a ‘wide range of government technologies’. Notwithstanding his well supported argument, Muncie does identify responsabilization as a core theme, with individuals now framed as shapers of their own worlds ‘making decisions according to calculations of risk and opportunity’ (Petersen, 1996: 47).

‘Active’ rather than ‘passive’ citizens are seen as the desirable norm, and the essence of the active citizen is the ability to self-manage risk from an early age. This has resulted in proactive and preventative risk policies, focused on the early identification of those ‘at risk’ or ‘posing a risk’. Farrington (2000: 1) has called this the ‘risk factor prevention paradigm’ borrowed from the public health arena and applied to the identification of risk factors for offending and the prevention of future delinquency. As Armstrong (2004) has pointed out, this approach has been central to the UK’s youth crime reduction approach (Youth Justice Board, 2001) with some variability in Scotland (Whyte, 2003). The paradigm is dependent upon profiling individuals against risk factors identified by the use of formal risk assessment tools such as ASSET (Youth Justice Board, 2001). This ‘risk factorology’ approach has been extended to other areas of social policy, not

least to concerns about social exclusion, ending dependency and ‘moral hazard’, and in ensuring cost-effective and unproblematic transitions from youth to adulthood, and most particularly into active citizenship and productive labour (Batten and Russell, 1995; Withers and Batten, 1995). Both social and criminal justice policy is aimed at preventing pathways into welfare dependency or criminal careers. This approach has proved attractive because it appears to promise a more effective focus for policy, better targeting of programmes and practitioner resources, and the emphasis on prevention is seen as both morally and economically desirable for dealing with youth crime. In a climate of shrinking welfare resources, the reduction of dependency and the promotion of social inclusion via the labour market is also favoured (Kemshall, 2002b).

However, translation into policy has not always been smooth. As Goldson (1999) has pointed out, the decade following the murder of James Bulger in the UK in 1993 saw a ‘punitive populist’ response to youth crime, with a doubling of custodial sentences since 1992 in a decade that has seen youth crime decrease by 16 per cent (Nacro, 2003, 2005). This has led some commentators to argue that policy has led research rather than the other way around (Raynor, 2004), and the Crime Reduction Programme (CRP) in the UK has been prey to political influence, poor planning, and differential implementation on the ground (Maguire, 2004). This approach to both criminological research and youth crime stems in large part from New Labour’s ‘electoral anxiety’ around law and order (Brown, 2005) resulting in an ‘approach to criminological research which, despite rhetorical commitments to evidence based practices has been primarily driven by political opportunism’ (Yates, 2006: 34–5).

Other Implications of Risk Based Policies: Conditional Rights and Conditional Justice

Prudentialism requires the active citizen to adopt a calculating attitude towards almost all of his or her decisions (Rose, 1996a, 1996b; Kemshall, 2002b: 31). For Rose, the promotion of individual responsibility is the hallmark of ‘advanced liberal societies’, and the implications for the excluded ‘irresponsible’ are stark:

Those ‘excluded’ from the benefits of a life of choice and self-fulfilling aspirations have been deformed by the dependency culture, whose efforts at self-advancement have been frustrated for so long that they suffer from ‘learned helplessness’, whose self-esteem has been destroyed... they are to be assisted... through their engagement in a whole array of programmes for their ethical reconstruction as active citizens – training to equip them with skills of self-promotion, counselling to restore their self-worth and self-esteem, programmes of empowerment to enable them to assume their rightful place as the self-actualising and demanding subjects of an ‘advanced’ liberal democracy.

(Rose, 1996b: 60).

Youth has become a key site for such self-actualization, with a range of programmes covering ‘active citizenship’ (Rose, 1996b), educational transitions, and integration into the labour market (Jordan, 1998). This emphasis upon self-actualization has had a significant impact upon individual need(s) and individual rights. Individual needs

have been reframed from the language of universal entitlement and welfarism to a language of ‘social investment and opportunity creation’ (Kemshall, 2002b: 32). The latter emphasizes social inclusion via the labour market and equality of opportunity to succeed by one’s own efforts. Rights are reframed as ‘rights of access’ to education, training and labour rather than to universal benefits (Jordan, 1998: 18), and may even carry aspects of compulsion (for example ‘workfare programmes’). Rights also carry a moral imperative with emphasis upon civic obligation, active citizenship and personal responsibility, epitomized in the New Labour catch-phrase that there are ‘no rights without responsibilities’ (Blair, 1998, 2004). As Jordan expresses it, the focus is on a ‘something for something society’ in which ‘rights are matched by responsibilities’ (Jordan, 1998: 42; Goldson and Muncie, 2006: 204). Rights are therefore ‘conditional’, differentially allocated between those who contribute to society and civic good and those who do not.

This ‘rebalancing’ of rights and responsibilities derives from the communitarianism of Etzioni¹ (Etzioni, 1995, 1997; Home Office, 2006). A conditional framing of rights claims to redress the balance between individual rights and community good, and the individual no longer reigns supreme (Hudson, 2000, 2003). This is particularly acute in a criminal justice system pre-occupied with public protection. This conditionality characterizes many aspects of youth policy (see Sharland, 2006), and will be briefly examined here.

The United Nations Convention on the Rights of the Child (UNCRC), ratified by the UK government in December 1991, provides the rights of children and the duties of the State towards them (Freeman, 2000; UNCRC, 1995, 2002). These rights include: age of criminal responsibility, presumption of innocence, privacy, and custody as a last resort; and effective social programmes to provide care and support including the appropriate development of non-custodial measures (Scraton and Haydon, 2002: 318–19). Rights are presented within a context of universality and certainty, yet ‘rights discourses are complex’ and can be negative and exclusionary as well as positive and inclusionary (Scraton and Haydon, 2002: 312). Scraton and Haydon (2002: 313) contrast the limitations of children’s rights and their experience of harms such as abuse, trafficking and exploitation to the rights and safety enjoyed by adults (see also Howard League for Penal Reform, 2005; Children’s Rights Office, 1995: 8). The imbalance between the harms children pose to society and the social harms they are exposed to has been the subject of increasing comment (see Hillyard et al., 2005).

Human Rights as expressed by the European Convention on Human Rights (ECHR) are also expressed as universal and unconditional but are actually qualified by considerations of public protection, particularly to disclose information on risk, to restrict liberties post-release from prison, and to justify intrusive community interventions on the grounds of risk and prevention (Kemshall, 2003; Elliot, 2006). Community or public good is seen to outweigh individual rights where justified by risk levels, or by the need to provide protection. This approach might be justified for some young offenders, for example sex offenders (Levi, 2000), but it also extends to other young people through the use of Anti-social Behaviour Orders (ASBOs) and the introduction of regulatory

mechanisms that only require a civil standard of proof to impose (A.P. Brown, 2004; Burney, 2005). A recent report on ASBOs for the Youth Justice Board noted that there was variation in the use of ASBOs: they were not necessarily linked to the types of behaviour of concern; multi-agency decision-making procedures (including YOTs) were bypassed; they were perceived by young people as 'double punishment'; exclusion clauses were often very general; and they could potentially widen the net of those brought into the criminal justice system (Solanki et al., 2006).²

The United Nations Commissioner on Human Rights noted that 'juvenile trouble-makers' in the UK were 'too rapidly drawn into the criminal justice system and young offenders are too readily placed in detention' (Gil-Robles, 2005: 27). The United Kingdom currently has one of the highest juvenile prison populations in Western Europe (Goldson, 2005). This is against a back-drop of falling crime rates, but heightened public, media and political perceptions to the contrary (Tonry, 2004; Pitts, 2000, 2003).

The rights of the community predominate and 'criminal justice is a one-way street' (Reiman, 1989: 124). This 'one-way street' between communities and 'at risk' youth is particularly acute (Scraton, 2004), with the 'new youth justice' emphasizing responsibilities and rights (Muncie, 2004). The increased regulation and surveillance of young people, particularly in public spaces, and the increased use of intensive supervision (for example Intensive Supervision and Surveillance Programmes) has also raised concerns, not least from the former Chairperson of the Youth Justice Board (Morgan, 2006). Such intensive intervention programmes have not reduced the use of custody, and in some instances their breach rate has resulted in faster routes to custody for young people (Morgan, 2006). Arguably such over-regulation (and particularly the over-use of custody) erodes the rights of young people and prevents their passage into the much desired 'active citizenship' (Kelly, 2003; Goldson, 2002).

Central to this position has been the early identification of 'problematic' children and families for early interventions, and programmes targeted at the alleviation of risk factors at particular points during the life course, for example *Sure Start*, literacy programmes, school inclusion projects, and assistance in the transition from school to work, for example *Connexions* (Glass, 1999; Schoon and Bynner, 2003). Fundamental to the approach is the identification of risk factors and risk trajectories whereby one risk factor 'reinforces another, leading to increasingly restricted outcomes in later life' (Schoon and Bynner, 2003: 23). Children and their families are then constructed as repositories of risk factors, with predetermined risk trajectories ripe for intervention.

What does justice mean for young people in this context? It means the right of access to education, training and the labour market, and the conditional right to belong to a community as long as positive behaviours and non-criminality are maintained. It is the social justice of equality of access but not necessarily of outcome, and the schism between deserving and non-deserving is sharp (Goldson, 2002). 'Demonized others' such as problematic youth are not entitled to justice. As Hudson (2003: 183) expresses it: 'governance according to principles of rights and justice is only for those who are accepted as conforming to the defining characteristics of the rational liberal subject', those who have suppressed the 'savage within' can claim the 'privileges of citizenship'.

The Limits of Risk Based Policies

The risk prevention paradigm has been critiqued on a number of grounds (see Armstrong, 2004; France, 2006; Goldson, 2005; Kemshall, 2003), and is seen as having a number of key limitations. The most notable is the difficulty in linking particular risk factors to predictable trajectories of risk (Farrington, 2000). This is due to the methodological and empirical difficulties in establishing causal relationships rather than mere correlations between risk factors and predictable outcomes. This is exacerbated by the difficulty in attributing ‘weight’ to different risk factors when causes may be multi-factorial, and how to use risk scores when such scores are not merely additive (Farrington, 2000: 7). The relationship between risk factors, trajectory and final outcome for young people is complex in respect of social context, social processes and the interaction between individual agency and social structure (Armstrong, 2004; Kemshall et al., 2006). As Farrington puts it, the greater challenge is in establishing ‘processes or developmental pathways that intervene between risk factors and outcomes, and to bridge the gap between risk factor research and more complex explanatory theories’ (Farrington, 2000: 7). This may require the recognition that pathways are social processes that have multiple causes, and that such causes are not merely additive; and that subtle differences in initial conditions may over time produce large differences in outcomes (Byrne, 1998: 2–28). ‘Pre-determined pathways’ have not always turned out to be that ‘determined’, and the ‘rates question’, that is, the extent to which a behaviour occurs in the population as a whole, and the ‘conduct question’ that is ‘Why particular individuals do what they do?’ continues to prove difficult to predict (Leavitt, 1999).

The relation between individual agency and risk decision making has attracted much research interest, with attention to how risks are negotiated, how choices are constrained, and the context within which decisions are made (Rhodes, 1997). Bottoms et al. (2004) argue that social context has two components: social structure and culture/habitus. Social structure is defined as external constraint on agency, and at its most obvious this can include social class, gender, ‘race’ and social exclusion (Furlong and Cartmel, 2006; MacDonald, 1998). Habitus, derived from the work of Bourdieu (1977), refers to the cultural rules and resources we draw upon to make our life choices, the repertoire of daily life (Schultz, 1976). In essence, actors are characterized as both social and volitional, seeking to make sense of their world through the available stock of knowledge and values. For some young people this available stock can be severely limited by the constraints of class, gender, ‘race’ and power (Furlong and Cartmel, 2006); in this way agency can be limited by both social structure and habitus.

More recently the role of social structure in risk decision making has been extended beyond social factors to include notions of power, opportunity, and constraint – for example social exclusion, access and use of social networks, and the range of ‘social capital’ available to the decision maker (Boeck et al., 2006; Morrow, 2001, 2004). This is not merely about the decision maker’s capacity to make informed choices; it is about the structure of opportunity itself and the range of choices and resources genuinely available.

Evans (2002), in summing up the tricky relationship between agency and structure refers to ‘bounded agency’, a concept useful in that it does not reduce young people to

mere 'cultural/structural dopes' (Giddens, 1984), but does take account of significant limits to agency. As Evans (2002: 265) expresses it:

Young people are social actors in a social landscape. How they perceive their horizons depends on where they stand in the landscape and where their journey takes them. Where they go depends on the pathways they perceive, choose, stumble across or clear for themselves, the terrain and the elements they encounter. Their progress depends on how well they are equipped, the help they can call on when they need it, whether they go alone or together and who their fellow travellers are.

Protective factors have presented similar difficulties, and their relationship to how and why a particular risk pathway develops or is avoided is not clear. Protective factors are no longer understood as the mere inverse of risk factors (Farrington, 2000), although knowledge about them and how to enhance them is still developing (Rutter, 1990). Whilst protective factors are broadly understood as 'any influence that ameliorates or reduces risk' (Hackett, 2005), causally linking particular protective factors to particular risks has proved difficult. The cumulative effect of protective factors is seen as important although which factors, how to weight them, and how they interact, is less clear. This has led more recent commentators to consider protection as a process, and protective factors have been extended into the notion of 'resilience' (Garmezy, 1993; Hackett, 2005; Rutter, 1990; Schoon, 2006) with research increasingly interested in why some children are resilient to adversity and why others are not.

David Blunkett (2006) referred to early intervention as a mechanism to deal with what he called 'intra-generational social exclusion'; to end the inheritance of poverty and exclusion from one generation to another. This can of course be reframed as a question of intra-generational risks, with parents literally bequeathing their risks (and their failure to risk manage them properly) to their children. When framed like this, a key question for policy makers and practitioners is 'How can we help young people to escape these risks?' Whilst the ensuing interventions are often presented in the discourse of care, protection and support (DoH and DEE, 2000; Garrett, 2003), ensuring social cohesion and economic performance are also key considerations (Kelly, 2006). The cost-benefit equation of risk has also permeated social policy itself, with considerations of the societal and economic benefits of pursuing a particular policy. The costs of not pursuing policies are also pertinent, for example in the costs of social exclusion (Social Exclusion Unit, 2000a, 2000b), the perpetuation of a dependent (and potentially criminal) 'underclass' (Murray, 1990), and the social dislocation of 'sink estates' (Campbell, 1993).

The implications for rights and justice are clear. The right to refuse interventions and the 'care of the State' is eroded. It is no longer about rights to universal welfare services, but about increasingly corrective and compulsory services, and diminished rights to refuse the regulation of the State.

Relevance to Practice and the Voices of Young People

The risk prevention paradigm has been increasingly influential on practice through the use of risk assessment tools such as ASSET, early identification tools (Farrington, 2000;

see Smith for the growth of actuarialism in youth justice), and the production of evidence-based research that has ostensibly guided policy and practice (Armstrong, 2004). Political and policy pre-occupations with youth ‘at risk’ and ‘posing a risk’ in areas as diverse as health, social exclusion, delinquency, and exclusion from the labour market can be discerned (see for example Home Office, 2003; Social Exclusion Unit, 2000a, 2000b; Sharland, 2006; Coleman and Schofield, 2003). Work with youth is increasingly about ‘tough love’, promoting self-risk management, self regulation and active citizenship (Jordan, 2004). The language of ‘need’, ‘at risk’ and vulnerability has begun to elide into the language of risk, harm and danger (Goldson, 2000, 2002, 2005). *Every Child Matters* (Department of Education and Skills, 2003) and the Children Act 2004 extend concerns and interventions to children not only in need of protection but also to children seen as presenting a risk to others (Sharland, 2006). The Youth Inclusion Projects targeted at the 50 most troubled children in the community also characterize such children as the most troublesome.

However, the translation into practice has not been without difficulties and some resistance (Kemshall, 1998), not least because practitioners do not always share the objectives and values of the risk prevention paradigm (Robinson, 1999), and object to the demonization of young people and the erosion of their rights associated with risk-based approaches (Armstrong, 2004). This has presented something of a ‘firewall’ to the complete implementation of a risk prevention paradigm in work with children and young people (Kemshall, forthcoming; O’Malley, 2004; Maynard-Moody et al., 1990). It is important to recognize that policies are often mediated by the practitioners tasked with implementing them (Maynard-Moody et al., 1990) and agencies may seek to reconstitute much of their work based on risk (Kemshall et al., 1997). Practitioners bring their own values and ideologies to bear on policy interpretation and delivery; they may, for example, focus on resilience rather than risk, care rather than control, and empowerment rather than marginalization. In some instances practitioners have argued for a focus on ‘youth development and youth engagement in their societies’ (Pittman et al., 2001 cited in Schoon, 2006: 159), although this approach has received less funding and policy support. In short many practitioners are ‘ambivalent’ about concepts of risk and youth (Sharland, 2006: 248).

Professional discretion can still mediate risk principles (Kemshall et al., 2005), and risk led interventions do not necessarily follow from risk led assessments (Kemshall, 1998, 2003). Within the wider criminal justice system, risk-based sentencing is often adhered to until custodial places are exhausted (Austin et al., 1999; Morgan, 2006), or until interventions become too costly and/or sentencers exercise discretion and their interpretations of risk vary (Frieberg, 2000).

It is also important to recognize that children and young people do not necessarily experience their lives as a source of risk, nor do they necessarily see themselves as posers of risks to others (Boeck et al., 2006). Problematic behaviours and risk taking may be framed positively and seen as both rewarding and justified (Sharland, 2006), and corrective action by adult led institutions is both resisted and resented. Recent studies have shown young people as proactive risk takers (Essau, 2006; Green et al., 2000), capable of constructing alternative selves to those framed by policy (Yates, 2006), and capable of

negotiating risk and adverse circumstances contrary to current risk prevention predictions (Evans, 2002; Schoon and Bynner, 2003). In recent research (Boeck et al., 2006; Kemshall et al., 2006) young people were able to display a calculative attitude to risk – cost–benefit, desirability of the outcome and intentionality – but also recognized the constraints upon acting prudentially. For example, restrictions on their choice, the speed with which some decisions are made (‘spur of the moment’), and that some risks are ‘accidents and not planned at all’. Interestingly, adults were seen as a group who should be more prudential, but who often weren’t, for example by drink driving, exposing young people to risks (for example by giving school detentions that meant they had to walk home alone in the dark), or committing illegal activities in front of them. Prudentialism was also seen as contingent, dependent upon the likely outcome of the risk (how big it might be), whether it was illegal or not, and whether the behaviour was age dependent or not.

Within the predominantly young offender group, respondents could identify the prudential aspects of risk decision making, but felt that being prudential about the future was pointless; their lives are lived almost exclusively in the present:

I think it is better to just take each day as it is and see what happens.

Yes live for today and not for tomorrow.

Because if you are relying on one thing then you are going to get stressed out and you will have a shit life anyway.

It is a bit hard to aim here, I am not thinking about it anymore because when I get back to reality it really pees me off.

(From a focus group with attendees at a Youth Inclusion Project)

This attitude to the future framed approaches to risk. In essence, respondents perceived that they had little to lose and this re–framed any calculative approach to risk decisions. Interestingly this resulted in a more ‘cavalier’ and reckless attitude to committing crime, but a rather risk averse attitude to leaving established peer groups and immediate locale to take up other opportunities. Incentives to change were seen as limited and unrewarding, and the potential losses attached to changing networks, activities and behaviours were seen as high.

Conclusion

The tension between risks and rights needs to be located within a broader context of social opportunity and choice, and perhaps a greater emphasis upon the resources young people have to enable them to make the ‘right choice’ about risk. Rights without opportunities are rather illusory and it is difficult for young people to exercise responsibility as ‘active citizens’ if they are fatalistic about their future and considered only as a repository of risks. Such an approach ‘dematerialises and decontextualises’ (Goldson, 1999: 3) the situations within which young people live and whilst the Youth

Justice Board urges a holistic view of young people (Maguire et al., 2004: 11), there is less policy concern with structural context. As Scraton and Haydon (2002: 325) put it, the life experiences of young offenders are ‘located within powerful, structural determining contexts’. Structural factors are still key determinants in the world of risk inhabited by young people (Furlong and Cartmel, 2006), and attention to social factors, social processes, and contextual issues will take us ‘beyond traditional risk factors’ (Kemshall et al., 2006).

At a time when youth custody is rising and youth crime is falling (Morgan, 2006) it is perhaps appropriate to reflect on what politicians, policy makers and practitioners alike are doing to youth. Conditionality and ‘responsible rights’ designed to produce active citizens may inadvertently produce disillusioned and distanced non-citizens who are excluded from the neo-liberal social contract. If so produced at such a young age, their presumed life trajectory may well be one of increased social exclusion, formal social control and over-regulation. The costs for them will be great, but also for society at large. Such costs are not merely financial, but also moral and social, and raise questions about the type of society we want to create and live in. As Jock Young (1999) would put it, one of inclusion and fairness, or one of exclusion and inequality. This requires urgent, wide public debate about ‘youth’ (Armstrong, 2004), including those directly engaged in service delivery. As Sharland (2006: 260) puts it:

Rather than simply going along with neo-liberal orthodoxies, we need consistently to question the distinction between what is normal and abnormal, acceptable and unacceptable risk – between youth in transition, youth in trouble and youth as trouble.

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Notes

- 1 For a critique of communitarianism see Crawford (1996) and Hudson (2003); see also Bauman (1996) for a review of key issues.
- 2 See www.yjb.gov.uk site for full report. See also HomeOffice.gov.uk (2006) What is an Anti-social Behaviour Order? URL (consulted 16 October 2006): <http://www.homeoffice.gov.uk/anti-social-behaviour/what-is-asb/?View=Standard>

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