3 Welfare and justice: incompatible philosophies

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Imagine a meeting between two people whose business temporarily brings them together. The exact location of the meeting is not important—it is just somewhere transitory, a neutral venue such as a club, an airport departure lounge or a hotel conference room—a place where people on such business matters come and go. The business meeting on this occasion is something of an enforced encounter, and neither party is really looking forward to it. They represent different interests in the matter, but must work out a resolution to it before they are thankfully allowed to go their separate ways. But why the antipathy between the two? First, they look completely different and the differences make them uneasy in each other's company. One is somewhat older than the other and dresses in a rather conservative but elegant fashion, and has the poise and confidence that is acquired through involvement in a profession that carries high status. The younger person is dressed altogether more casually: if male, he is wearing a sports jacket and corduroy trousers, sports a beard and an earring, and is zealous and earnest rather than assured and confident. In addition to their very different social and professional backgrounds, there is another problem. They have great difficulty in understanding each other, since they speak a different language from each other. Some words and concepts may sound familiar, but communication is made with the greatest difficulty. Indeed, they could be talking about two completely different matters.

Let it be understood that these two characters are stereotypes. They represent a lawyer and a social worker, and the setting which brings them together is a juvenile court which the legislative history of jurisdictions such as England and Wales has decreed must incorporate them both as well as the different perspectives they represent in discharging its business. The social worker is the representative of a tradition which decrees that the court must act in 'the best interests of the child' (s.1. *Children and Young Persons Act* 1933 [Eng.])—and should therefore make whatever order is

appropriate to serve those interests when coming to a decision in each particular case. The lawyer's presence necessitates that the business of the court be conducted in a strictly juridical way. Once guilt has been established, a sanction must be imposed which fits the lawyer's typical expectations of justice. There should be consistency in sentencing, the sanction should be appropriate to the offence rather than the offender and should be as low as possible on the available tariff scale of punishment.

The subsequent confusion and lack of understanding given the differing concepts, histories, training, traditions and languages that each of these key representatives (social worker and lawyer) brings with them should be of no surprise to us, as has been periodically illustrated in the development of juvenile justice systems in Australia, England and Wales. The criticisms by magistrates of the English *Children and Young Persons Act* 1969 were not simply that the legislation did not seem to be working very effectively and was not sufficiently punitive; it had also let social workers into the juvenile courts (replacing the more traditional probation officers). The social workers did not know how things worked; they themselves looked 'different'. Here, then, as in any other contest when two people are brought together from different backgrounds and speaking different languages, confusion is likely to arise and their concerns can appear to be mutually incompatible.

Clearly such divisions and antipathies are not typical of all juvenile justice jurisdictions. No doubt in some there are different traditions which allow social workers and lawyers to work much more effectively together. And it might be thought that much more forceful differences exist between say, police and social workers. Nonetheless, I have used the particular example to try to show how two crucial parties in the administration of juvenile justice are frequently forced to work together in this setting, as a result of the legislative history of a jurisdiction like that of England and Wales.

The end product of this history has been an amalgam of these two different traditions that the social worker and the lawyer in my example represent—what is known as the welfare model on the one hand and the justice model on the other—concepts discussed earlier by Naffine. Thus in this Anglo–Welsh system we find the format of the 'individualised juvenile court'. Its main features are the retention of the basic procedure and approach of the criminal court, but with the court sittings made private, and with an injection into the court proceedings of a more individualised approach to, and concern for, each young person appearing there. This is evident in both the general attitude of the court to children and their parents, and in the kinds of sanctions available to it (Bottoms, 1984). However, as I will attempt to demonstrate by reference to developments in this system over the course of the last two decades, the problem resulting from this amalgamation seems to reflect an inherent and inevitable tension between the combined welfare and justice goals of juvenile justice. The two, I will argue, simply cannot work coherently together. Naffine has discussed these

two theoretical approaches mainly in the Australian context. To develop my argument, I will look at developments in the Scottish juvenile justice system and compare them with the juvenile jurisdictions in England and Wales.

In Scotland there seems to be as complete a commitment to a welfare model of juvenile justice as it is possible to find. And this seems to have successfully avoided the range of problems that have occurred in England. These two jurisdictions are exemplars of what, I would argue, is the fundamental incompatibility of welfare and justice models.

The welfare model

From the late nineteenth century until the 1960s, there had, in effect, been only one way forward for juvenile justice policy in the western world—at least as far as penal reformers were concerned. They were committed to what we now recognise as the welfare model.

The initial aim of welfare reformers was simply to separate child offenders from their adult counterparts to ensure that they would not be contaminated, and become even more inclined to criminality. Thus the late 19th century saw the development of juvenile reformatories in Britain, initially as the result of the pioneering work of Mary Carpenter. This shift in thinking was mirrored in the United States with the growth of the 'childsaving' movement (Platt, 1969)—the work of mainly middle-class (often women) reformers, again determined to 'save' child offenders from being contaminated by their adult counterparts and, more generally, by the vices of urban life (hence the building of reformatories out in the countryside away from such influences).

From these initiatives, aimed at providing separate *institutions* for juveniles, the next stage in the reform program was the provision of separate *systems* of justice for juveniles—based on a recognition that juvenile offenders were 'different' from adults, and should have a special status in law. Again, there was fear of contamination if they were not separated from adults. Indeed, in the early years of the twentieth century, when the pressure for juvenile justice reform was building (particularly in the United States), some extraordinary claims were made about the shift in the form of justice that was being advocated. One writer described the juvenile court movement as 'toiling to prepare for the building of the Kingdom of childhood on earth'. Another writer, himself a juvenile court judge, declared the newly constituted juvenile court to be 'the best plan for the conservation of human life and happiness ever conceived by civilised man' (see Parsloe, 1978: 59).

The *Children Act* 1908 established a separate juvenile justice system in England and Wales: sittings were to be in private and a specific system of penalties for juveniles was introduced. Subsequent developments and further reforms have produced the 'individualised juvenile court' format denoted earlier. This is not to say that there was a straightforward unilinear path

towards such policy development. In the 1920s, for example, attempts to take the juvenile justice system further along a welfare trajectory by abolishing corporal punishment and raising the age of criminal responsibility were rejected (see Bailey, 1987).

The welfare model in England and Wales reached its highwater mark with the introduction of the *Children and Young Persons Act* 1969. The Act had a number of goals. It was directed towards phasing out existing punitive sanctions in the juvenile justice system such as detention, attendance centres and borstal training, as well as disposing of cases prior to court, where possible, through consultation between social services and the police. Dealing with cases informally would, it was argued, avoid the stigma of court appearances and the subjection of mainly working-class juvenile offenders to the scrutiny of unsympathetic middle-class magistrates. But at the same time—and importantly for the purposes of the welfare model this form of disposition would not only take children away from courts but allow for early intervention by appropriate experts in child care. Indeed, prior to the Act, there was criticism that the police caution per se meant that:

> the police are in this way taking the place of the professional experts who assess the child's needs . . . and of the trained social case workers who help him . . . They are not trained to recognise or to deal with the cases where deep emotional disturbance is present . . . the only tool they have is the threat of a court charge (Cavenagh, 1957:203).

This concern led to a provision in the 1969 Act prescribing pre-court consultation and liaison between police and social work agencies to prevent prosecution and to provide appropriate treatment and assistance. The Act also determined that the court would be a place of investigation and enquiry, trying to find a course of action which would resolve the problem thought to have led to a child's offending. To this end social workers (the child-care experts) would replace probation officers in the court, and would prepare reports for court. Sanctions would allow for full investigation into a child's background, would be non-punitive and quasi-indeterminate in nature and fitted to a child's needs rather than determined in advance by court order. This led to plans for the establishment of observation and assessment centres and intermediate treatment programs. The latter sanction was designed for delinquents and children at risk, a kind of midway stage between long-term residential provision and remaining at home.

The same hyperbole which was associated with the earlier juvenile justice reforms accompanied the introduction of the 1969 Act. For example, Boss (1967:91) in describing the reforms that were subsequently introduced in the 1969 legislation in England and Wales, observed that: 'the whole purpose . . . is to concentrate on treatment needs, and therefore what is done for a

child is done in the interests of his welfare'. Then there is the remarkable claim made by Joan Cooper (1970:16) about the intermediate treatment sanction:

> A program of group activities to absorb aggressive feelings, to use up the abundant physical energy, and to enable adolescents to test their strength and abilities in acceptable but exciting and sometimes a dangerous way—for adolescents want to live dangerously before the inertia of middle age overwhelms them—will only be creative if it embraces a variety of young people who have the same needs but too few ways of expressing them without too much discomfort for the rest of us. But "muscular" groups alone offer a restricted program if we do not also provide in these situations for the artistic, musical and rhythmic talent of the young; above all for their yearning to learn more about man and his place in society and the universe.

More generally, the shift away from the procedures of adult criminal justice was most notable in the generic referrals to the juvenile justice system, so that it could accommodate both dangerous children and children in danger (Donzelot, 1979)—young offenders on the one hand and lost, abandoned, neglected or abused children on the other. Furthermore, such matters as the relaxing of formal procedures, the growing importance of social workers, and dispositions of an indeterminate nature (which were designed to 'meet the needs' of individual children) made for a very different approach and a very different language of justice from the adult court. As Boss (1967) indicates above, so great was the faith in the welfare model that its advocates assumed that justice would result without the need for procedural safeguards.

The justice model

By the 1970s the welfare model was beginning to seem increasingly ineffective, given the apparent growth of juvenile delinquency (at least as indicated by rising crime statistics) in most western countries. Indeed, in England, the 1969 Act was, in large part, held to be responsible for this growth because, as right-wing politicians claimed, it seemed to condone rather than punish juvenile crime (see Taylor, Lacey and Bracken, 1980). The welfare model also seemed expensive. Those involved in the planning of treatment-type institutions for young offenders established under the auspices of the welfare model often seemed oblivious to the costs of their programs (which, incidentally, achieved unsatisfactory results in terms of preventing further crime amongst their recipients).

It was in response to such criticisms that an alternative juvenile justice discourse—justice itself—began to emerge. Its characteristics are contrasted with those of the welfare model in Table 3.1.

Table 3.1 Models of juvenile justice

Parameter	Welfare	Justice
Characteristics	Informality Generic referrals Individualised sentencing Indeterminate sentencing	Due process Offending Least restrictive intervention Determinate sentences
Key personnel	Child-care experts	Lawyers
Key agency	Social work	Law
Tasks	Diagnosis	Punishment
Understanding of client behaviour	Pathological	Individual responsibility
Purpose of intervention	Provide treatment	Sanction behaviour
Objectives	Respond to individual needs	Respect individual rights

In many respects, the justice model represented an inversion of the welfare model. It stipulated that the process of juvenile justice should be reorganised. This would mean the abandonment of the 'closed, informal and non-adversarial proceedings in the juvenile courts' (Morris 1978), and its replacement by due process, right to counsel, and visible and accountable decision-making (Morris et al. 1980). In effect, such ideas necessitated a return to what has been referred to as a *Gesellschaft* legal process. This style of justice

> emphasises formal procedure, impartiality, adjudicative justice, precise legal provisions and definitions and the rationality and predictability of legal administration. It distinguishes sharply between law and administration, between the public and the private, the legal and the moral, between the civil obligation and the criminal offence (Kamenka and Tay, 1975:137).

After adjudication of guilt, the court should then impose punishment. This would get 'rid of individualized (i.e. discriminatory) penalties, indefinite periods of control and wide discretion' (Morris and McIsaac, 1978:155). Here was a reform movement, then, which resurrected long-discarded ideas of classical penology, such as the moral obligation to inflict punishment and the right to receive it, the need for certainty in punishment, and approximation of punishment to the degree of harm done.

For the justice movement, there was a necessity to impose punishment. This would constitute retribution, but in a precise and restricted form. It would entail the least restrictive intervention, minimum programs rather than maximum, and community-based rather than custodial sentences. Moreover, such punishment was to be worked out in accordance with penological mathematics.

There was thus no scope for open-ended and indefinite social work intervention. At the same time, the specificity of the offence (rather than a generic set of problems) was to determine the form and mode of administration of punishment.

Amalgamating welfare and justice

Given their differing histories, it is hardly surprising that there is an inherent tension between the two models of justice. Developments in the Anglo-Welsh jurisdiction from the 1960s through to the 1980s illustrate that any attempt to integrate them—to marry what are thought to be the best features of both—not only highlights these tensions but may lead to an immeasurably worse hybrid model.

The problems of combining the two began in England and Wales with the *Children and Young Persons Act* 1969. It paved the way for the introduction of social workers, indeterminate care orders and the like. However, the framework of the formal criminal justice system was retained. Existing punitive sanctions, such as detention centres were retained, as was the adversarial setting of the juvenile court. This meant that social workers were compelled to have a dialogue with lawyers and members of the judiciary about their clients. Given the different languages of justice they speak (the one whose etymology seemed to be derived from 'needs', the other from 'rights'), it should hardly be surprising that there was little mutual understanding between them.

Then in 1982, and partly as a response to the burgeoning criticisms of welfare ideas and practices (see e.g. Thorpe et al., 1980), the *Criminal Justice Act* 1982 attempted to incorporate further elements of the justice model into the juvenile justice system. For example, in an attempt to legislate for the principles of least intervention, the autonomy of the judiciary and its power to impose custodial sentences was considerably restricted under s.1(4). Custodial sentences could not be imposed unless non-custodial penalties had already been tried with the particular offender or the seriousness of the offence merited such a disposition. Furthermore, any notion of the 'therapeutic community' associated with the Borstal training sentence was abolished and replaced with the determinate sentence of 'youth custody' (s.6). Also, in accordance with a stronger justice approach, the Act was accompanied by further resources for the development of alternative-to-custody programs and diversion for court schemes—both initiatives being justified by the principle of least restrictive intervention.

Indeed, the popularity of diversion has led, in some parts of England and Wales, to the development of a separate tariff system outside of the court, and the development of penalties which are designed to minimise the reaction to offending and also to take note of different kinds and quantities of delinquent behaviour. To meet these demands in one area, for example, a five-tier framework has been developed: 'no further action; instant warning caution; warning by police sergeant; inspector's warning; official caution' (Devon and Cornwall Constabulary, 1984). Thus the practice of diversion in the justice model framework has lost all of its rehabilitative overtones. However, the development of court diversion programs in the 1980s has had the perverse effect of undermining the power and authority of the judiciary. It has also considerably enhanced the discretionary power

of social workers. This can be seen in the development of the precourt cautioning sector, where various organisations have become involved in the establishment of multiagency tribunals and juvenile bureaux. Take the following example:

> [the bureau] employs full time a social worker, probation officer, youth worker, teacher and police officer, and is administered by a management team consisting of local managers of the represented agencies . . . Team members . . . undertake the consultation process involving all the parent agencies and possibly some others as well, for example, the education welfare service and child guidance clinic (Northampton Juvenile Liaison Bureau, 1982:2).

A large majority of juvenile offenders are now diverted from court and cautioned: 86 per cent of males aged ten to thirteen in 1988, 60 per cent of males aged fourteen to sixteen in the same year (Home Office Statistics, 1989). Meanwhile, some of the tribunals that dispense justice in this way have become more court-like in form and have developed their own 'tariff' and range of sanctions:

> in straightforward cases, a file is closed when confirmation of the disposal is received from the police. When there is some further involvement this may range from supervising an apology, administering voluntary agreements to pay compensation, organising reparation, referring cases to other agencies, getting youngsters involved in community activities or undertaking to visit a family periodically for a length of time to monitor a child's progress (Northampton Juvenile Liaison Bureau, 1985:25).

In effect, administrative, rather than judicial, decision-making has become the most predominant form of justice dispensation.

The discretion of social workers in the administration of juvenile justice has also increased with the development of alternatives to custody projects. This has meant that the concept of intermediate treatment has changed markedly since Cooper's lyrical consideration of its possibilities (1970). These originally took the form of outward-bound type projects, then changed to more focused forms of group work in the late 1970s. In the last decade the main thrust of intermediate treatment has been towards providing facilities for diverting young offenders from custody (see Pratt, 1987). In these respects, the innovatory and discretionary powers of social workers have actually increased because the statutory vagueness of the sanction has remained largely unchanged since the 1969 Act. Program content is likely to be dependent on whatever they think is appropriate, depending on their own interests and local resources. This has led to considerable variation in the dispensation of punishment (which again seems to be in contradiction to justice model principles of uniformity and consistency).

In different parts of the country, an intermediate treatment condition in

a supervision order (intended to function as an alternative to custody) may take such forms as community service or 'tracking' (consistent checking by the 'tracker' on the offender, whether by phone or visits to home, school or workplace) or derivatives of tracking (such as 'intensive befriending', which seem to involve 'shadowing' the offender as closely as possible) or a 'wagon train' adventure elsewhere (a kind of camping tour through the more remote parts of the British Isles). One project, known as 'linking', even involves the offender bringing a 'guest' home:

> in one scheme the linker lived with the family every weekend for a month and was responsible for the linkee from Friday at 4.30 p.m. until Monday at 8.30 p.m. The linkee in question had been involved in the commission of offences during the weekend period for some considerable time and this input over a relatively short period is effective and gives time for other less intensive alternatives to be worked out between the linkee, their family and the linker and caseholder (Thorpe, 1983: 2).

Additionally, in many projects, it seems that social workers have chosen to award themselves powers to deal with their clients' non-compliance rather than sending cases back to court for judicial punishment. For example,

> Minor breaches or problems will be dealt with by counselling and/or restriction of privileges etc. If these should continue, or when serious violations occur, the young person will be recalled to the residential unit and a conference held, in order to discuss reasons for the action, and to outline new objectives as necessary, with return to the community in mind. (Coventry PACE, n.d.: 3).

There would seem to be no doubt that some of these initiatives have been successful in restricting custodial sentencing. In England and Wales it declined from 7400 young offenders aged fourteen to sixteen in 1978 to 3200 in 1988, although custodial sentences as a percentage of court dispositions remained static at 13 per cent (Home Office Statistics, 1989). But this success should not be overstated. Other factors such as demographic change (Pratt, 1984) are also likely to have played a significant part in bringing about this reduction. Indeed, it remains a matter of conjecture as to whether, by simply restricting the sentencing power of the judiciary, some of this decline would have taken place anyway, without the vast and diverse range of projects now representing themselves as alternatives to custody.

What also seems inevitable is that some projects have led to net-widening: that is, more young people have been brought into the juvenile justice system because police have chosen to caution them rather than deal with them informally as they might have done if the diversion programs had not existed. They may also have encouraged an 'up-tariffing'; that is, giving alternative-to-custody dispositions to those juvenile offenders who might otherwise have received a less severe penalty such as a fine or discharge.

However, the empirical evidence for such contentions remains slight (see e.g. Ditchfield, 1976 on the effects of cautioning).

These developments raise other contentious issues. First, the wide-ranging differences in the form that intermediate treatment might take seems contrary to justice model principles (by which rhetoric such initiatives are usually justified). It also seems contrary to principles of natural justice by virtue of the fact that the form such punishment takes is likely to depend on its geographical location. Second, the commitment to justice model policies has increased (or at least extended into new areas) the discretionary power of social workers. That this now takes place under the guise of a different model of juvenile justice does not make it any less contentious than it was during the heyday of the welfare model and the attempt to redirect the Anglo-Welsh system along its lines.

Even if we cast the most favourable light on the effects of policy development in the 1980s, we must ponder the question of whether these ends justify the means to achieve them. For example, was there no other way of saving some juvenile offenders from custody other than by developing coercive and intrusive community-based sanctions which might have a much wider use?

One model system of justice

At this stage I want to stress that my main criticism of the effects of amalgamating two models of juvenile justice within the Anglo-Welsh jurisdiction relates to the way in which it has lent itself to intensified forms of control in the community while maintaining penal institutions, and enhancing the discretionary power of social workers. Indeed the very language of social workers has been modified in the course of this amalgamation to become a form of 'social control talk' (Cohen, 1985). The lesson to be learned is that if we wish to avoid such unwelcome developments, then we must recognise the incompatibility of the two concepts and the mutation produced by their amalgamation. Indeed, developments in 'one system' jurisdictions suggest that it is possible to avoid these unworkable tensions and unwanted effects. I will go on to suggest that a 'one system' jurisdiction may result in a style of justice which satisfies all parties concerned. In contrast to the history of partial accommodation and adaptation that lies behind current developments in England and Wales, full commitment to a welfare model in Scotland has produced very different results and has not engendered any significant pressure for change. The fact that the Scottish welfare model survived intact despite the right-wing social policy programs of successive Thatcher governments in Britain in the 1980s is, itself, a testament to its local popularity.

Advocacy of the welfare model, in the light of the foregoing criticisms, might seem strange, if not blatantly contradictory. I believe, though, that a case can be made for this position. But first let us consider the Scottish

welfare model in some detail. Since the introduction of *The Social Work (Scotland) Act* 1968, the juvenile justice system has been well described by Stewart and Tutt (1987:21):

> Children who were deemed to be in need of compulsory measures of care were referred to a lay hearing as opposed to a court. The reasons why a child might be deemed to be in need of compulsory measures of care included allegations that a child was beyond the control of his parents, that he failed to attend school regularly without reasonable excuse, or that lack of parental care was likely to cause the child unnecessary suffering or seriously impair his health or development that he himself had been offended against. No distinction was made between those children who were referred on an allegation that an offence had been committed by the child, and the other grounds. Whatever the grounds, the welfare principle of whatever was in the best interests of an individual child was to be the sole criterion for decision making.

For offenders under the age of sixteen, disputed cases go to the Sheriff's court for adjudication. Other cases go to the lay hearings—or children's hearings as they are known—for disposition and treatment. These hearings are administered by lay people (usually with a social work or education background), and the only orders available are (i) no further action, (ii) supervision, or (iii) a residential order. Prior to this, each case will have been screened by the 'Reporter' (a lawyer with a social work background) and will only be sent on to a hearing if it is thought that compulsory intervention is necessary. In 1985, there were 25 100 offence referrals to the Reporter who subsequently sent on 9900 to the hearings (Stewart and Tutt 1987:25). Cases may also be referred back to the police or social work departments.

In 1983, a review of the 1968 Act rejected an attempt to put the children's hearings on a more judicial footing and to confer on the panel the power to impose fines and conditional discharges. It appears, then, that the large majority of cases are dealt with informally or that no action is taken. In their sample of 301 hearings (dealing mainly with offenders), Martin et al. (1981:97) found that 94 cases were discharged, supervision orders were made in 171 and a form of residential supervision was ordered in 36. Stewart and Tutt (1987:25), however, show a somewhat different pattern of outcomes: 6000 cases were discharged, 6400 led to supervision and 2000 entailed a residential order. The statistics, though, are somewhat ambiguous since they include outcomes of offence and non-offence cases. Importantly, no alternative to custody domain has been introduced to this system, perhaps because of lack of need, or perhaps because the system itself does not allow the space for it. If residential orders are only made in a child's best interests, as it is claimed, there is no point in trying to prevent them.

As to the administration of justice itself, then certainly some procedural slackness has been observed in the conduct of the hearings. In some cases information might be kept from families, or they might not be told of their right to appeal against the decision (Martin et al., 1981). At the same time, the dialogue that takes place therein tends to be commonsensical rather than being overlaid with treatment and rehabilitative mystique. Martin et al., (1981:138) comment that:

> panel members focused on a number of obvious areas of enquiry that are usually included in the reports, such as attendance record and behaviour at school and behaviour at home and in the community. They seemed to look for formal and informal responsibilities of children and parents in respect of these areas of life and sometimes to offer suggestions about ways of approaching these that might be more constructive. *A good deal of the dialogue did not appear to reflect any systematic searching for the specific etiology of the child's behaviour . . . What panel members strikingly did not do in the language of hearings was echo the terminology and thought processes of any professional group. The imperviousness of panel members to social work or any other professional language and ideology is manifest in our study of the dialogue of the hearings* (my emphasis).

The hearings also seem to produce large numbers of satisfied customers: 'in general parental response to the hearing was extremely favourable in certain key respects. In terms of perceived informality and ease of communication, the majority of parents spoke very positively of their experiences. Most parents also felt that they had understood everything that had happened' (Martin et al., 1981:233). Again, this stands in contrast to the consumer views of the Anglo-Welsh system of the same period. Parker et al. (1981) highlight the perception of the lack of fairness and the lack of understanding experienced by the consumers of that system.

In short, the Scottish system seems to have developed without the punitive aspects of the Anglo-Welsh model, and without the trappings and rhetoric of welfare that were so discredited in the 1970s. Interestingly, Asquith (1983) illustrates that the members of the children's panels 'think' about juvenile justice in a very different way from magistrates sitting in the Anglo-Welsh juvenile courts. This is partly because of their training and partly because of the structure of the system of justice itself. He suggests that systems of justice structure the 'frames of relevance' through which its participants come to understand the problem of delinquency. The Scottish welfare setting means that 'the frames of relevance espoused by the panel members were predominantly concerned with the social, environmental and personal characteristics of the children' (Asquith, 1983:210). This stands in contrast to the juvenile court magistrates in England and Wales whose frames of relevance are preoccupied with intention, guilt and punishment. Thus 'more concerned with welfare considerations, panel members will

interpret information and reports about offenders generally in terms of the need for care rather than in terms of what he has done' (Asquith, 1983:212).

At the same time, it seems clear from the research of Martin et al. (1981) that the panel members do not allow their concerns for the welfare of children to become clouded by social work rhetoric. Furthermore, the emphasis on the welfare of children is a qualitatively different objective from that of the 'linkers' and 'trackers' in the Anglo-Welsh model whose purpose is to prevent custodial sentences. It is in the name of this latter objective that the innovative and controversial alternatives to custody have been developed.

In other words, Scotland seems to have overcome the problems of the welfare model by adopting a minimalist approach to juvenile delinquency. This is also the case in the Scandinavian countries which have developed a pure-welfare model. In Norway and Denmark it was observed that:

> [juvenile institutions] have been largely abolished, with no community-based replacements and there also seems to be a general consensus in the welfare boards: delinquency has only a very low profile and intervention is kept to a minimum. Accordingly, there is very little space for the development of a community corrections/ community control industry. As such, 'welfare' discourse and practice would seem to have produced very different results indeed from 'justice' counterparts (Pratt, 1985:47).

What of the previous criticisms of the welfare model? In the Scottish context, a number of replies come to mind. First, the criticisms themselves may have been exaggerated, based on anecdote rather than empirical data. Second, the Scottish panel members—the people who make the decisions—are not actually social workers themselves, and are thus not blindly uncritical of benevolent sounding social work rhetoric. Third, although there is still an element of social work discretion within the Scottish model, it seems in practice to be much more limited (e.g. in terms of inflicting penalties, devising new community-based sanctions and so on) than in the Anglo-Welsh system. Fourth, many of the problems in the latter system seem to have been facilitated by the attempted amalgamation of the welfare and justice principles. The pure welfare model in Scotland seems to have avoided these difficulties and produced a qualitatively different justice system. Here there is no penal institution designed specifically to be very unpleasant such as the English short, sharp shock detention centre. It is therefore unnecessary to construct alternative community-based sentences. And in contrast to Scotland, the Anglo-Welsh system, with its language of guilt and responsibility and the presence of police and lawyers, seems to have maximised the problem of delinquency and the level of reaction to it, as we can see in the development of coercive programs of control in the community, which have come to take their place *alongside* (rather than replacing) very punitive institutions.

If in Scotland there seems to be general satisfaction with the existing system, I know of no such satisfaction in those countries where there has been a commitment to the justice model. Perhaps this is because the justice model itself has never, to my knowledge, been fully operationalised but has, in effect, been cobbled with some longstanding ideas about the importance of the welfare of children who appear before the juvenile court. And yet new problems have emerged from the commitment to the justice model. Attempts to introduce diversion schemes have led to net-widening and the extension and enhancement of social control through attempts to introduce alternatives to custody programs. Sarri (1983:70), herself a leading advocate of diversion, rather apologetically states that 'the majority of those who have studied diversion state that about 70 per cent of all youth referred for diversion could just as well be "warned and released" '. Thus, one continuously confronts the conclusion that diversion has first and foremost resulted in an expansion of the juvenile justice system. It appears that systems of justice that are committed to the welfare model do not lend themselves to such developments. Their structure and conceptual parameters do not allow for such initiatives and their resulting problems.

The contrast between the Scottish and Anglo-Welsh systems of juvenile justice would seem to bear out the claim that there is an inherent tension between welfare and justice models. The results of this tension are manifest in the format and framework of the Anglo-Welsh system which moved away from the adult process of justice towards a welfare model and then tried to reintroduce elements of the justice model. It is in such a setting that we are likely to see those awkward, unsatisfactory meetings that I described at the beginning of this chapter. Indeed, in England, the common language has become that of 'social control talk'. North of the border, the wholesale commitment to welfare has produced a very different picture partly, it would seem, because everyone speaks the same language of justice. These developments contain important lessons for Australian juvenile justice which is also trying to amalgamate the incompatible concepts of welfare and justice. Perhaps Australia should reconsider the possibilities of the welfare model on its own.