RESEARCH NOTES[*]

DAVID CONWAY

Troubled Children

The genesis of my research is to be found in many years of working with troubled youths in the family and criminal court settings, both in private practice and now in the public sector. I have practiced long enough to see the generational consequences of the systemic failures of addressing childhood maladies, as my juvenile clients have graduated to adult criminal and family courts. In a system driven increasingly by risk management there is an understandable temptation to instrumentalise responses and circumscribe risky or contingent responses to complex and chaotic lives. However, in my anecdotal experience some of the best approaches to such difficulties, for both parents and children, have been when courageous judges have taken the blame aspect out of the proceedings and focused on creatively addressing the underlying issues for the child, and the parents.

In Northern Ireland the respective court jurisdictions operate separately to each other, save that the judges and participants are often the same, and are driven by establishing significant risk of harm[†] or criminal culpability, with consequential prescribed orders or sentencing. The focus is upon utilising a prescribed range of powers to stem the tide of troublesome behaviours and activities, rather than a cohesive and community led attempt to address the deep-seated issues, which have brought them to the door of the court. Yet, whilst judicial discretion and contingency do not sit well with risk management strategy, my argument is that such time and resources spent now may reflect a better return on investment than a rush to a conclusion of criminal or family proceedings.

My research has led me to consider the alternative Children's Hearing system set up in Scotland pursuant to Lord Kilbrandon's report in 1964, which at its inception conceptualised a very different model of engagement with the troubled child. The lay body panel created, which was not a court forum, contained local community members who would make decisions, "with and for children and young people in their community."[‡] It provided for the possibility that

---

[*] © David Conway
[†] Article 50(2) of the Children (Northern Ireland) Order 1995 sets out this test as the of the public law interventions of Care and Supervision Orders.
[‡] http://www.chscotland.gov.uk/the-childrens-hearings-system/history/

these representative bodies would work with the children in their communities to develop the resources of character and maturity to flourish to the best of their abilities.

The dialectic of the hope and hopeless of the cross as enunciated by Jurgen Moltmann provides an invaluable exemplary model of the type of enduring engagements with such troubled children, in which contemporary models of success are not the only assumed outcome of state intervention in the lives of these children. Such a model does not assume as its starting point that reformation of the individual is linear or ordered and is more about enduring and sometimes costly interaction with the contingencies of such children. The realism of this approach calls for durable commitments by local communities to offer gracious responses to individuals who may never conform with societal assumptions of normative behaviours, but to whom the offer of life in all its fullness ought to be offered and exemplified. It assumes that the primary response of the local community ought not to seek distance the troubled child from the rest of the community, but to sacrificially work with and through the issues that inhibit their development in growth and maturity.

What follows is a paper I delivered earlier this year to the BIAPT conference, originally to have been held in Glasgow, but which due to the current Covid-19 pandemic had to move to an on-line platform and represents a precis form of my research on this area to date. The overall theme of the conference was Public Practical Theology in the Scottish and Irish Contexts and included presentations by Anne Dimond that considered the roles of the Scottish University Chaplaincy to the global mental health crisis. Dr Eric Stoddart also gave a presentation on theological issues that arose from the Named Person scheme in Scotland with respect to children and concept of well-being which undergirded the scheme.

David Conway
Honorary Research Fellow

BIAPT PAPER

'THE TROUBLED CHILD'- FEARFULLY OR WONDERFULLY MADE? REFLECTIONS ON KILBRANDON FROM ACROSS THE IRISH SEA.

A PAPER GIVEN AT THE BIAPT CONFERENCE ON 31ST MARCH 2020

Aims

My intention in this paper is threefold namely:

a. To consider the differing approaches of the devolved administrations in Scotland and Northern Ireland in addressing the issue of the troubled child over recent decades; and

b. To consider how these differing approaches evolved from differing emphases on the justice versus welfare debate and how present practice is increasingly being formed by socially and economically implicated usages of fear and risk management; and

c. To provide an eschatological challenge to how Christians individually and corporately might challenge and exemplify a different model of power to that of the risk society, through the paradigmatic representation of the Christ event to both the ecclesial and secular polities through the eschatological lens of Jurgen Moltmann.

I will throughout this paper use the term the troubled child and it was such children in Scotland that the Kilbrandon Committee was set up to consider. [1] One might categorise such children as those who would require the intervention of the state through the family care or juvenile justice systems.

Justice or welfare?

How society deals with the issue of the troubled child is not a new one. The tension between welfare and justice responses was present in all jurisdictions in the UK, but a stark divergence began to develop between Scotland and the rest of the UK in the 1960's with the commissioning of the Kilbrandon Report. The Social Work (Scotland) Act 1968 gave legislative effect to the outworking of the Kilbrandon Committee's recommendations in creating the Children's Hearings system. It recommended that all such troubled children, whether criminal or otherwise would enter a system of cohesive local tribunals aimed at addressing the entirety of the child's needs in one local community forum, without in most cases, criminalising the child.

---

[1] Report on Children and Young Persons, Scotland, Cmnd. 2306, 1964.

The late 1960's saw the Troubles erupt in Northern Ireland and the Northern Irish response to these issues was delayed until the publication of the 1979 Black Report.[2] This report whilst sympathetic to the welfarist approach did, *"not consider that children who commit offences should be dealt with by the same method as children in need of care."*[3] Hence whilst juvenile criminality could be dealt with in a more informal setting, the response would be one where justice, rather than welfare was given primacy.

Risky business

The Children's Hearing system in Scotland has not been immune to the incursions of the risk-based analysis that pervades so much of contemporary policy making. Indeed, as Ara and McVie highlight, the reformation of the Scottish Parliament in 1999 ironically led to less distinction from the rest of the UK and the Kilbrandon approach had, *"a more punitive and actuarial set of rhetorics...grafted onto the system."*[4] This risk based analysis also led to a greater push for uniformity and conformity in social work practice, in contrast to the more localised and community-based flexibility envisioned in the Kilbrandon model.

In Northern Ireland, post the Good Friday agreement in 1998, restorative approaches entered the criminal justice system generally, in part as a response to the illegal paramilitary type community justice, and that approach flourished in youth justice. Yet, contrary to the Scottish model, criminal and care issues remained segregated, under the control of a legally qualified judge, even though many troubled children fell under both systems. Unlike in Scotland, the state response to criminality in youths, is reactive to a finding of criminal guilt, crippling the ability of the youth court to stage early interventions in a troubled child's life.

The fear factor

No-one living in these present times can doubt the ability of fearfulness to form our responses to risk and contingency. This transition to a "risk society" is part of a wider range of technologies and processes that seek to manage and contain risk and contingency. Its management, according to Ulrich Beck, is intrinsically linked to the economic and social systems of modernity.[5] Furthermore, as Eric Stoddart reminds us the way in which risks are

---

[2] Report of the Children and Young Persons Review Group, (HMSO, December 1979), 28.
[3] Ibid, 39.
[4] Lesley Ara, & Susan McVie, *"Youth crime and justice in Scotland"* in *Criminal Justice in Scotland*, Hazel Croall, Gerry Mahoney & Mary Munro, eds., (London: Routledge, 2013), 71.
[5] Ulrech Beck, *Risk Society: Towards a New Modernity* (London: Sage,1992), 19.

constructed, named and defined is inherently linked to those in political and social control.[6] Bader-Saye, argues that we must interrogate the basis upon which our fears arise, and apply theological principles to evaluate them and our responses correctly.[7]

Risky identification evidence

Moltmann believes eschatology to be founded upon the dialectic of the cross and the resurrection of Christ.[8]   Through the cross Jesus identified with the negativity of this present age in its sin, suffering, death and ultimate godforsakeness, but by virtue of the resurrection of Christ, establishes God's promise of a new creation. The ongoing activity of the Holy Spirit acts to draw that future reality of the Kingdom of God into the present reality of brokenness and suffering. It is exemplified by costly identification and solidarity with the brokenness of this present created order. [9]

Whilst that hermeneutic is not solely to be the property of the church, Christians ought to be in the vanguard of modelling what it means to embody the values and priorities of Christ's new Kingdom in this present reality. The ramifications of this means of interpretation are radically iconoclastic, not only for the church, but also for wider society in challenging the hegemony of Western capitalist thinking that de-humanises and elevates the needs of the market, above that of recasting this current broken world in the image of God's future.

Hope springs eternal

Whilst neither system is perfect it is important to be reflective about the future envisaged in these distinctive approaches to addressing the complex issues that provoke state intervention in the life of a troubled child. In so doing consideration must be given to the primary impulse upon which these constructs are based, namely welfare or justice, and what that hardwiring might say about the hope proffered to the troubled youth, their parents, their community and to those who suffer the consequences of their behaviour.

Both methodologies of state intervention are reactive, whether as a result of care or criminal law concerns, with the welfare aspects being founded upon the best interests of the child test. Similarly, they envisage the vital role of the family in addressing these issues, but are not blind to the fact that their reformation may not be found with their present families.

---

[6] Eric Stoddart, *Theological Perspectives on a Surveillance Society: Watching and Being Watched* (Farnham: Ashgate,2011), 103-104

[7] Scott Bader-Saye, (2007), *Following Jesus in a Culture of Fear* (Grand Rapids: Brazos Press, 2007).

[8] Jurgen Moltmann, *Theology of Hope,* Translated by J.W. Leith, (London: SCM Press, 1967, Repr. 2002).

[9] Richard Bauckham, *The Theology of Jurgen Moltmann,* (London: T & T Clark, 1995), 5.

Both assume that the intervention of the state would have a preventive and educational aspect to their problems. Yet, it seems to me that there are a few qualitative and fundamental differences hardwired into Kilbrandon, which using Moltmann's hermeneutic methodology, represent the possibility of a more hopeful future for troubled children and for the communities from which they come.

First, the Kilbrandon approach, in all but the most serious of criminal cases, does not expend vital time and resources in establishing whether a crime has been committed, nor does the potential intervention of the state depend upon whether a crime can be proven beyond a reasonable doubt. Indeed, this pathway to assistance does not come to an end, merely with an acquittal, nor does it tacitly accept that a one-off punitive sentence is a determinant of success in addressing the underlying and enduring needs of the child. Whilst sentencing options such as deferrals and youth conferencing are aimed at stopping ongoing criminal behaviour, they act to suppress, and not to address the underlying disease.

Secondly, by placing the welfare of the child as the primary rationale for the state's intervention in the life of such troubled children there is a cohesive and ongoing commitment to addressing their underlying issues, which accepts that the lives of these children may not always be on an upward trajectory. If we slavishly pursue the risk management approach, which sees the troubled child primarily as a risk to be managed or mitigated, success will largely be determined by when that individual is no longer a real or perceived risk to society and/or someone who is, in the short term, a reduced drain on the public purse.

Thirdly, the professionalisation of the Northern Irish Family Proceedings and Youth Courts, removes the community aspect of the Children's Hearing approach to addressing the needs of these individuals. Notwithstanding the fact that lay magistrates are involved in the decision-making process, anecdotally the legally qualified member of the tribunal is the one who has primacy in making decisions about the life of the child, which they are rarely making for their own local communities. That being the case the likelihood of a paid employee of the state making a difficult and risky decisions, on behalf of a community from which they do not come, seems highly unlikely.

Clearly both systems are increasingly implicated by a risk culture, with the attendant impulse to intervene based upon fear, and an assumed future for these children based on actuarial calculations, which are entangled in the assumptions and demands of the economic and social systems of our present day. In so doing state power is utilised with a view to retaining effective control of the future actions of the errant child, thereby decreasing their agency and their hope of transformation, in the lived reality of their often-hopeless circumstances. For

Moltmann an alternative understanding of power is to be found in suffering with the other in a calling of embodiment and solidarity with broken humanity. The exemplification by Christians of a different understanding of power and a willing acceptance of suffering and contingency offers a paradigmatic realization of what political authority ought to look like in God's Kingdom, to both the ecclesial and secular authorities. I would argue that the localised welfare driven Kilbrandon approach offers greater possibilities of a response, which holds in tension, not only the suffering and contingency of the troubled child, but also that of their families, communities and victims who have to contend with the outcomes of their troubles.

In sum

In conclusion we have considered the way in which differing welfare and justice emphases, in the Scottish and Northern Irish legal and social work systems, seek to deal with the issue of the troubled youth and how these responses are increasingly tempered by risk management approaches. We have seen that the prevalence of such risk society thinking is intimately embedded within Western Capitalism and as Christians we should be mindful of the risk in its appropriation of our moral language and practical acts. Clearly Christians are not immune to socio-economic capture by the capitalist agenda and critical analysis is required of how, we as a Christian community, need to re-focus on our primary calling to embody the self-sacrificial identification modelled by Christ. Such acts of costly identification may radically challenge the choices that are made about how we deploy our material and time resources to address these issues and open ourselves up wisely to the contingency and dislocation of these young lives.

The challenge in engaging with these variant models of state responses with troubled youths in Christian activity and advocacy is whether our activity will provide anticipations of the future Kingdom in the present, or merely accept their present troubled lives will define their futures. Our participation and agitation within such systems will only be authentic in so far as we as Christians, corporately and individually, reflect the model of Christ in self-sacrificial love and costly identification. If, Christian involvement in engaging with troubled youths can create theodic ecclesial communities that represent these values and anticipate the new creation, then such activity can be positively evaluated. Whilst Kilbrandon does not reflect perfection in addressing the multitude of complex issues that our children are confronted with; it does provide the possibility of localised early interventions with them. For Christians it offers opportunities to exemplify an alternative approach of enduring engagement in the complexity and contingency of such children.

BIBLIOGRAPHY

Ara, Lesley & McVie, Susan, "*Youth crime and justice in Scotland*" in *Criminal Justice in Scotland*, Hazel Croall, Gerry Mahoney & Mary Munro, ed., London: Routledge, 2013.

Bader-Saye, Scott, *Following Jesus in a Culture of Fear.* Grand Rapids: Brazos Press, 2007.

Bauckham, Richard, *The Theology of Jurgen Moltmann.* London: T & T Clark, 1995.

Beck, Ulrech, *Risk Society: Towards a New Modernity*. London: Sage,1992.

Forrester, Duncan B., *On Human Worth: A Christian Vindication of Equality*. London, SCM Press Ltd, 2001.

Foucault, Michel, *Discipline and Punish: The Birth of the Prison,* Translated by Alan Sheridan. London: Penguin, 1977, Repr. 1991.

Moltmann, Jurgen*, Theology of Hope.* Translated by J.W. Leith, London: SCM Press, 1967, Repr. 2002.

Hollenbach, David S.J., *The Common Good and Christian Ethics*. Cambridge: Cambridge University Press, 2002.

Nussbaum, Martha C., *Creating Capabilities: The Human Development Approach.* London: Harvard University Press, 2011.

Norrie, Kenneth McK, *Children's Hearings in Scotland.* Edinburgh: W. Green & Son Ltd, 2nd ed., 2005.

Stoddart, Eric, *Theological Perspectives on a Surveillance Society: Watching and Being Watched.* Farnham: Ashgate, 2011.