Child and youth misbehaviour in South Africa
A Holistic Approach

Christiaan Bezuidenhout
Editor
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A HOLISTIC APPROACH

Third edition

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EDITOR

Van Schaik

PUBLISHERS
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This chapter gives a brief overview of the position of the child within European and South African society. This is followed by a discussion of the dilemma those in the helping professions face when defining certain key concepts pertaining to child and youth misbehaviour.

### Objectives

You should be able to

- critically highlight the position of children within South African society
- explain that certain concepts that are central to the theme of child and youth misbehaviour are difficult to define
- define the concepts "child", "youth", "misbehaviour" and "status offences".

### 1.1 Introduction

Throughout the world people believe that children should be cherished, nurtured and protected until they can fend for themselves. This, however, was not always the case. For centuries it was believed that children came into the world as miniature adults and as the property of the father. As little adults, children could therefore be assigned functions or roles such as workers in coal mines or factories (in the case of boys) or chambermaids or wives from a certain age (in the case of girls). Until the 14th century, paintings depicted children as having adult body proportions and facial characteristics. Children were distinguishable from adults in these paintings only by their size. Socially they were treated like adults, although the privileges enjoyed by adults were denied them. Popular views of childhood during the 16th and 17th centuries differed radically from those held today (Bezuidenhout & Little 2012:369–405; Clarke-Stewart, Friedman & Koch 1985:4; Crain 1980:4). The lack of attention to and recognition of children as unique beings contributed to the high rate of childhood mortality during previous centuries. Crain (1980:5) states that "knowing that their children might very well die, parents were hesitant to attend to and cherish their unique qualities". Santrock (1983:10–11), who concurs with this point of view, emphasises that only two stages of human development were thought to exist in the past, namely infancy (birth to about six years) and adulthood.

Between the ages of five and seven, children were introduced to the adult world by being assigned certain adult tasks (Thom 1983:27). There is no scientific evidence of adolescence being regarded a separate developmental period before 1900. In 1904, Stanley G. Hall, known as the father of the psychology of adolescence, published his two-volume book entitled Adolescence, and in so doing laid the foundation for the scientific study of adolescence and its
recognition as a specific developmental period (Thom 1988:30). Since the identification and recognition of this unique stage in a human’s life, much has been said about its impact and importance in personal development.

Siegel (2002:3) rightly claims that “adolescence is a time of trial and uncertainty, a time when youths experience anxiety, humiliation, and mood swings”. Their major task in adolescence is to turn out to be their “own person” one day. Their personalities are still being established and their bodies are also changing dramatically during this period. In late adolescence, youths experience problems with role identity. During the process of role identity formation, youths develop a strong sense of who they are and what they stand for. Role diffusion occurs when adolescents experience uncertainty, and place themselves at the mercy of authoritative figures who promise them a sense of identity they cannot establish for themselves. To add to this confusion, youths between 16 and 18 yeard for independence from their parents. All these problems obviously impact drastically on any youth’s life. Fortunately in this age we are well informed about adolescence. This is a difficult life stage that humans have to go through, and it takes almost 10 years for youths to become adults who can contribute positively to society. Unfortunately some Third World societies still do not fully appreciate the importance of this dramatic phase in a human’s life.

Knowledge about human development was sorely lacking in the past. Historical documents show that for centuries children were abused, and that infanticide was a common practice in ancient Egypt, Rome, China, India and Europe during the Middle Ages as well as during the 16th and 17th centuries. In some instances children were killed as part of socially sanctioned religious sacrifices.

In modern times there are many parents who kill their children intentionally. Although “infanticide” literally means “the killing of an infant”, it is currently used to refer to the killing of children by their parents. The term “neonaticide” is generally used to refer to the killing of a baby within the first 24 hours of its life. In the case of a child older than 24 hours who is killed by one or both parents, the term “filicide” is used (Bartol & Bartol 2011:273; Bartol & Bartol 2005:319).

Before the recognition of childhood and adolescence as distinct developmental phases, child-rearing practices in England and America were, to a large extent, characterised by cruelty and inhumane treatment. The absence of legislation to protect children, and the belief that they were the property of their parents gave parents the right to abuse and treat their children in any way they saw fit. Rules according to which children had to behave were rigid and not adapted to their special needs and limitations. Behaviour contrary to that laid down by adult society was considered misbehaviour, and infractions were punished with beatings and other harsher punishments, such as lopping by the city elders or even stoning. Children had to stand whenever adults entered a room, and had to remain standing and be silent until they were given permission to sit down or speak. Children who continually disobeyed their parents could be given the death penalty.

In European countries, infants were tightly swaddled and hung like bundles on the walls while parents went about their daily tasks. Noisy infants and children were sometimes given alcohol or opiates to quieten them. Behaviour today considered as “cute” and essential to normal child development was then scorned or discouraged. Crawling, for example, was likened to animal-like behaviour and considered unacceptable by many adults. From the moment children could stand they were compelled to wear special clothes, reinforced with iron and bone. This was to ensure that they would have “adult” postures. For many centuries most scientists believed that a tiny, fully formed human, or horunculus, was implanted in the sperm or the egg at conception. It was claimed that a miniature person, who merely grew in size and bulk until birth, was created at conception (Crain 1980:5).

Contrary to the previously held belief that all children were innately bad, the English philosopher John Locke proposed in 1690 that children were neither innately good nor innately bad at birth. He saw the child’s mind as a tabula rasa or blank slate, and claimed that whatever the child became was almost completely as a result of learning and experience. Although Locke conceded that individual temperaments might be innate, he emphasised that the development of the mind was influenced by environmental factors. His focus on
the importance of learning during infancy resulted in a gradual change in perceptions concerning child behaviour (Clarke-Stewart et al. 1985:5).

During the era in which Locke lived, many children were sent away from home to work as servants as soon as they reached the age of six or seven. (Although this is the age at which South African children currently enter the first grade at school, in the past under the apartheid regime many young children were employed to sell newspapers, work in gardens, help with harvesting on farms or do domestic chores.) During the 17th century, children who started to work fulltime were treated even more harshly at work than at home. It was believed that if a child's will was not broken by harsh treatment, society would soon fall into disarray.

The Dutch, and later the British, who ruled South Africa adhered to the same socialisation practices that were the order of the day in their own and other European countries. Since it was believed that the main danger facing the youth was committing sin, the goal of child rearing was salvation (Thom 1988:28). To achieve this, religious instruction, the stamping out of sin by means of hard work and the regular meting out of severe punishment played an important role. In this way the innate tendency to sin and to behave according to the will of Satan could be controlled (Clarke-Stewart et al. 1985:5; Crain 1980:8). It was less important to raise a healthy or happy child than to save the child's soul. In many instances playfulness and cheerfulness were seen as indicative of the devil's control of the child.

Knowledge of child health and child-rearing practices was seriously lacking, thus many children died because of poor health, an inadequate diet, unhygienic circumstances, ineffective care and abandonment. The lack of effective birth control methods and ignorance about procreation and the care of mothers during and after pregnancy resulted in the birth of many unwanted children, and a high mortality rate of mothers during or after childbirth. Unwanted, illegitimate and orphaned children were sometimes abandoned or killed.

From the outset, children were expected to fit into the adult world and to display adult behaviour without receiving adequate guidance and support. This lack of guidance and the meting out of harsh discipline for the slightest deviation from the prescribed behavioural code meant that many children were perceived to be exhibiting misbehaviour. Little or no understanding of the normal development of children and the reasons for their misbehaviour contributed to an increase in their abuse. Hyperactive behaviour was, for example, seen as naughtiness or demon possession that could be controlled by physical abuse. Fortunately today most cases of conduct disorders (CDs), hyperactive behaviour and attention deficit disorders are described in diagnostic terms that are used to refer to habitual misbehaviour or problem behaviour. This enables us to help children who manifest these characteristics. Therapy, support and, in some cases, medication can ensure that children with problem behaviour can be helped before they come into contact with the legal system, yet some parents continue to abuse their children constantly whether they display any behavioural problems or not. Cultural beliefs and customs that have been transferred from culture to culture still impact on disciplinary methods and abuse today.

Although child abuse has been rife for centuries, a turning point was reached during the 1960s when researchers and professionals from the caring professions started to focus on the seriousness of this problem. The social problem of violence towards children was highlighted in an article entitled “The battered-child syndrome”, which appeared in the prestigious Journal of the American Medical Association in 1962 (Brown, Esbensen & Geis 2007:469; Clarke-Stewart et al. 1985:5). This article heralded the development of a collective consciousness regarding the plight of children, and resulted in legislation and global initiatives to care for and protect them. Although most countries in the world developed some form of juvenile justice over time, most juvenile justice systems can be attributed to a few major role-players. These role-players are the British, the North Americans, the Germans and the French (Kratcoski 2012:1).

1.2 The Eurocentric influence on South African children and youth

In South Africa, as well as in other countries previously under colonial control, Eurocentric
influence played a fundamental role in shaping the way in which white children were raised (Kassey-Hara 2002:371). Although the socialisation and disciplining of black children differed among ethnic groups, these groups were not untouched by Eurocentric influences (e.g. the colonisation of South Africa by the Dutch and the British) since the education system, religious teachings and the criminal justice system with which they came into contact were largely based on the Eurocentric model. Even before being influenced by Eurocentric child-rearing practices, many black cultures also imposed severe punishment for misbehaviour, while abandoning children was also accepted traditionally among some black groups in South Africa. History tells that sometimes ethnic groups on the move forced mothers to leave their infants behind in the bush to ensure that the weary mothers would not jeopardise the progress of the group. In some groups it was customary to kill deformed or handicapped newborns. A ritual practiced by some others was to offer a baby to the ancestors or to a totem, or to use specific organs of a baby for the preparation of muti (medicine) by a witch-doctor (Bezuidenhout & Klopper 2011:198; Bartoli 2002:241; Brown et al. 1998:450; Van Zyl, Malan, Marais, Olivier & Riordan 1994:12).

The “New World” that was exported from Europe to Africa via the settlers and the colonial administrators resulted in a process of acculturation. This acculturation, in which black people found themselves caught between their traditional and Western culture, resulted in blacks adopting some Western views regarding childrearing and punishment for misbehaviour. In addition, formal employment (e.g. gardening or selling newspapers), the migration of labourers (from rural to urban settings), cheap labour practices (e.g. using children to sell newspapers on the street or to work on farms during harvesting time) and the brutal approach of their own families and societies to any unacceptable behaviour or genetic abnormalities had a severe impact on the black youth of South Africa.

Another factor that significantly influenced the lives of black families and the way in which children were raised was the introduction of the apartheid system in 1948. Malpractices such as the imposition of the pass laws, forced removals to so-called homelands, the disruption of the family unit, inferior schooling, the lack of compulsory education and the use of children as labourers left most black youths and youths of colour marginalised. Young people who grew up during the apartheid era are generally referred to as the “lost youth” of South Africa. Many of these young people experienced alienation and became embittered. Furthermore, as they were unable to obtain an education and prepare for an occupation, they frequently experienced frustration and aggression, which predisposed them to becoming involved in acts of violence and crime.

Being socially and economically marginalised, many turned to political activism and exhibited radical behaviour that landed them in trouble with the criminal justice system (Kassey-Hara 2002:371; Van Zyl et al. 1994:9–18). The absence of proper child justice legislation resulted in high numbers of children being subjected to oppressive practices and inhumane treatment both in prisons and in other criminal justice organisations (Stout & Wood 2004:115). The struggle that ensued to rid the country of the oppression of apartheid used the power of the youth. Although the outcome was positive in that South Africa eventually became a democracy, the negative side was that the youth grew up in a culture of violence: violence perpetrated by the authorities to suppress the masses as well as to achieve freedom and equality resulted in a disregard for human life and property. Although the struggle is over and liberty has been attained, these conflicting energies still guide the thinking and actions of many South Africans.

This, in conjunction with poor or no education, the breaking of ties with traditions that previously aided the youth in their transition from childhood to adulthood, parental loss of control over children, a lack of supervision, child-headed households and a slow transition process following democratisation, has resulted in many youths turning to various forms of misbehaviour to compensate for their disappointment in what the change has to offer to them, along with their unfulfilled expectations of democracy.

Despite the dawning of a new era in South Africa, many previously disadvantaged families still have to endure the pressures and difficulties associated with factors such as poverty and competition in a labour market where
skills and training are prerequisites, and unemployment is prevalent. In addition, major technological advances (e.g., computers) and changing paradigms (e.g., freedom of speech, equality, and a human rights culture) have reshaped the international community, which in turn makes demands on South Africa for which communities and individuals have not necessarily been equipped. Although South Africa is growing economically because of investment by foreign countries, the necessary skills are sorely missing. In addition, South Africa is experiencing a skills and brain drain because of the crime situation and the fear of crime among a significant number of the people.

The juvenile justice landscape in South Africa has experienced many changes and influences up until now with regard to the treatment and processing of youths in the justice system. In addition to the legal changes, children are also confronted with other societal changes on a daily basis (Bezuidenhout & Little 2012:369).

Change always introduces new challenges to children and the youth. In South Africa, the challenges facing young people are in many respects greater than those that their counterparts in other developed and developing countries have to deal with. The democracy that followed the apartheid regime has brought about drastic changes, such as requiring individuals to function on a skills level for which the past did not prepare them. Youths in South Africa now have to be part of a process where the diverse groups that make up the population have to be integrated into one nation, the so-called rainbow nation. Educationally, they have to prepare themselves on a Eurocentric-modelled schooling system to enter a labour market that requires international competitiveness. The political activism of the 1970s and 1980s now has to make way for political participation, while traditional views have to be attuned to the requirements of globalism.

In addition, youths are also influenced by the political climate in South Africa. Democracy also brought with it the freedom to strike. Teachers are sometimes absent from school because of national strikes for better wages or for other political and social reasons, and thus neglect their responsibility as educators. Such situations sometimes cause school learners to react out of frustration by vandalising their school. Although they may think this is the correct way to react, it directly impacts on their schooling in the future. If a school is vandalised and infrastructure is, for example, reduced to ashes in a fire, schooling will still be affected by this after the strike has ended and normal schooling should have recommenced.

The saying “The future belongs to the youth” has taken on a new meaning in South Africa, since the youth have to face and prepare for challenges completely foreign to their parents. The Constitution that was drawn up following democration in 1994 is hailed as one of the most liberal in the world, as it addresses human rights as no constitution has before. This is also paradoxical if one considers that the youths who grew up in a culture of violence, where little respect and consideration were shown for human life, now have to internalise the human rights values as set out by the Constitution. Unlike youths in other democratic countries who are born into a culture of human rights, South African youths have had to acquire this culture gradually, which will most probably become a part of South African society in time. When this happens it is possible that the extent of youth misbehaviour will decline. Currently, however, the increasing crime rate among youth, their incorrigible rejection of authority and intensified misbehaviour, as well as the general level of crime in South Africa, paint a dismal picture indeed. In addition, many children are being hindered in their endeavour to be properly educated in South Africa. Currently a huge public furor is going on because many school textbooks have been found dumped illegally instead of being delivered to schools in areas that are in dire need of these books. More and more of these concerns are articulated in the media on a regular basis. This hinders children to be properly educated in a safe environment - a guarantee that is stipulated in the South African Constitution.

The most widely documented problems South African youths faced before democratisation were the following (Van Zyl et al. 1994:9–18):

- A dysfunctional schooling system
- Poorly qualified teachers
Poorly equipped schools
A lack of career guidance facilities
A lack of bridging programmes
High failure rates at schools
Lack of employment for school leavers (both dropouts and those who completed school)
A lack of or blocked opportunities
School absenteeism
The breakdown of established patterns of authority between young people and their parents, teachers, state authorities and other authority figures like religious leaders
Sexual ignorance
High rates of teenage pregnancy
Ignorance regarding HIV infection and AIDS
Substance abuse
Factors that forced children to run away from home
Hostility towards the older generation and the wider community (characteristically caused by the acculturation process)
Non-existence of a youth policy
Inequality
 Corporal punishment used by teachers and the criminal justice system
Disunited family systems (e.g. due to influx control laws)
Sanctions against South Africa

From the above it appears that, in the past, environmental (nurture) factors probably played a more significant role in the causes of misbehaviour in children and youths than inborn (nature) factors. Currently it is accepted that both nature and nurture are major forces in human development, as well as in the behaviour that is displayed (Clarke-Stewart et al. 1985:5). Nurture is, however, at the forefront when the right of children to be brought up in a healthy environment is emphasised. The current approach in South Africa is to acknowledge the rights of children and to put legislation in place that will ensure that past atrocities are not repeated and that children enjoy adequate protection. Legislation specifically aimed at protecting children has been incorporated into Chapter 2 of the Constitution, as well as into the new Child Justice Act. In addition, the South African legal machinery is trying to use restorative justice (RJ) and diversion to ensure that past atrocities are not repeated.

The challenge lies in the restoration of harmony if a child derails and in avoiding the brutalisation and rejection of the person.

The marginalisation of the youth in the past was not accepted unconditionally. History shows that the South African youth rebelled against their treatment in various ways. The Sharpeville incident in the 1960s and the Soweto uprising in 1976 show that young people played a fundamental role in the struggle against apartheid and the shaping of society. This eventually culminated in the democratisation of South Africa. With democratisation and the emphasis on human rights, the majority of the youth from all racial groups have participated actively in the process of transformation and in building a better South Africa (Van Zyl et al. 1994:19). Although this ideal still exists, it appears that society has encountered problems in coping with the changes. This is evident from the high crime rate (which includes misbehaviour of children and youths) and the continuous reports of the abuse of children and youths in various ways (e.g. the rape of babies, children and adolescents). Children are also increasingly becoming the victims of sex predators and murderers in South Africa. These social ills definitely violate the post-apartheid vision for children in the new South Africa. According to Hawker and Smook (2007), children are raped, maimed and/or killed daily in South Africa. Formerly and at present, children of South Africa live with very few safe spaces and they live within a context of multiple and continuous exposure to traumatic situations. This still poses different social and psychological challenges to the youth of South Africa. It can result in various bio-psychosocial consequences for the child, among which could be behavioural, emotional and somatic problems (Van Wyk 2011:411).

A large proportion of South African youths have undoubtedly been negatively affected by the decades during which the majority of South Africans were in a disadvantaged position. The disempowerment caused by the previous political regime contributed to the derailment of many children and youths in the past, and even today. Van Zyl et al. (1994:20) point out that the aftermath of apartheid is "seen in the form of crime, substance abuse, disease, violence, homelessness and other forms of social pathology. It is these people who are
sometimes described as alienated, marginalised or ‘lost’. In addition, marginalised youths in the new South Africa still experience negative external circumstances which include unemployment, poverty, family disorganisation, poor discipline, inadequate or no housing, overcrowding, inferior status and position, limited or no educational opportunities, inadequate facilities for recreational and leisure pursuits, as well as a low standard of living. The lack of adequate health, social and municipal services often exacerbates this. Also many youths in South Africa experience the brunt of physical and sexual abuse. The South African Police Service (SAPS) states in this regard that these types of crime against children are often sexual offences. Most of the victims of contact crimes committed against children are between 15 and 17 years old. Their analyses indicated that almost a third of the sexual offences against children involved children aged 0–10 years (Crime Report 2010/2011). Victimized children often derail because of internal and external pressures as well as inner conflict. They experience uncertainty and lack confidence. Children are more often than not abused by their own parents, siblings or guardians. This compounds to the inner conflict and lack of self-belief that they experience. In many instances vulnerable children are also abused by people in positions of power (e.g. a teacher or sports coach).

It is incorrect to view sex offenders as a homogeneous group. In addition many misconceptions about sexual intercourse with a child exist. An example is the misconception by certain males from certain ethnic groups that sexual intercourse with a young virgin girl will cure sexually transmitted diseases or AIDS. The truth is that many factors play a role in the sexual-offending behaviour of humans. It needs to be noted that the sex offender profile is diverse and sex offenders are as diverse as non-sexual offenders. No single profile encompasses the majority of sex offenders. This makes children even more vulnerable and the prevention thereof almost impossible (Hesselink & Bezuidenhout 2012:241).

This is one of the most difficult issues to address in a youth who becomes incorrigible because of sexual abuse by another human. Their naivety, spontaneity and zest for life will be damaged and corrupted, which impacts on many different levels of their existence. It usually leaves the innocent child victim confused, insecure and abstracted from reality. They cannot share the ordeal with a family member because in many instances the family member is the offending party. Children need to experience a sense of belonging – it is a basic human need. This may drive them to seek alternatives such as joining a group with similar feelings or a gang that provides a superficial sense of belonging.

Feelings of hopelessness and uncertainty could therefore contribute to the involvement of youths in misbehaviour and the formation of gangs. The level of organisation within a community determines the extent to which the environment exerts a preventative or stimulating influence on the commission of crime. Residential areas characterised by social disorder imply the existence of conditions that serve as a breeding ground for gang formation, the committing of crime and recidivism. Gang formation can be regarded as a phenomenon that arises mainly because of the particular needs of underprivileged youths in transitional areas of big cities. These areas are characterised by family disorganisation, inadequate educational and religious institutions, the exhibiting of superficial moral values, poor incomes and limited possibilities for participating in healthy recreational activities as well as abusiveness towards children. The external environment should, however, not be considered as divorced from individual-human factors, as a complex interaction exists between people and the environment they live in. This is why children are also abused in the higher more affluent social areas. The disorganised, informal poor areas are however more conducive to wrongs against children (Pistorius, Bezuidenhout, Mbokazi, Kotzé & Pretorius 2012:25).

Besides environmental factors that may influence human behaviour, individual-human factors also play a role in determining human behaviour. Individual-human factors that could be involved in choosing to become a member of a gang or to commit a crime include personality defects such as setting egocentric objectives, poor impulse control, aggressiveness, the desire for the immediate gratification of needs, limited social skills and a tendency towards socially destructive actions. In addi-
tion, a poor self-image, limited communication skills, loneliness, alienation from the family, an inability to take responsibility and fulfill social roles, being emotionally labile, and being subject to emotional disorders or psychiatric conditions (e.g. schizophrenia or paranoia) could contribute to a person seeing the gang as a pseudo-family or alternative supportive structure.

In the past it was the responsibility of the extended family to provide both children and adults with the space, opportunities and means to spend their leisure time in a positive way. However, the development of the nuclear family, technology and urbanisation has played a major role in shifting this responsibility to the community. As a result of overpopulation, limited or poor recreation facilities and poverty, a large number of youths are compelled to explore alternative recreational activities that may involve negative behaviour. One example of this is train surfing.

Although a minority of South African children and youths display serious misbehaviour, their behaviour cannot be condoned on account of the heritage of apartheid alone. In most countries, a number of children and youths misbehave despite the socioeconomic and political circumstances that prevail. Any country that cares about its children and youths is responsible firstly to identify and address the historical factors contributing to the misbehaviour. Secondly, factors within the current dispensation that contribute to the misbehaviour should be identified and addressed. Thirdly, care should be taken not to focus exclusively on the minority who misbehave, thereby alienating those who are positive in their outlook and geared towards making a success of their lives. Focusing only on those who misbehave creates the impression that all children and youths show unacceptable behaviour. The attitudes of society can be influenced by the mass media also reporting on positive behaviour, while researchers need to establish why some children and youths do not misbehave. Knowledge gained in this way could be used to empower those who transgress and encourage them to change their behaviour for the benefit of society and themselves.

South Africa is following a growing international trend towards materialism, thus materialism, individuality, gluttony and indulgence are becoming a cultural identity in South Africa. This change is gradually impacting on the moral values and thinking of the youth. Three factors seem to play a fundamental role in determining success:

- What you earn (your income or financial status)
- Where you live (type of house and address)
- What you drive and wear (the car you drive; the brand of clothes you wear)

These factors, as well as those such as the absence of a proper guardian in concurrence with other social pressures, impact on the youth in South Africa in a very challenging way. Youths also face a scarcity of job opportunities. In addition, women are entering the labour market at a rapid rate, and children are sometimes left to their own devices. Childcare facilities and schools are then blamed if children misbehave. However, it has been shown that the instilling of a morality and conscience takes place in the first five years of a child’s life. According to Sigmund Freud, all of the essential ingredients of a child’s adult personality are determined by the age of five (Bartolás 1987:197), thus children who do not receive the necessary healthy guidance, love, discipline and example from their parents or guardians are set up for derailment. Although the healthy guidance of either parent or a guardian is key in the rearing of any child, one cannot emphasise the role of a healthy male role model enough. Probably the biggest need a young child has in childhood is that of a father’s protection.

In this book we will try to explain most of the reasons why children end up in conflict with the law. We will also try to highlight the most contemporary misbehaviours children commit, and underline the position of children in the legal machinery of South Africa. Before we embark on this journey, specific concepts that are controversial in youth misbehaviour research and texts globally will be clarified.

The use of certain concepts when referring to children and youths who misbehave has become a very sensitive issue in South Africa. Concepts such as “lost”, “marginalised” and “alienated youth” have fallen into disrepute since 1994. On the other hand, those such as “youth at risk” have gained popularity. This
has given rise to a terminology dilemma because all children and youths are at risk of becoming victims in the ongoing so-called crime conflict and crime wave in South Africa. To clarify this dilemma it is necessary to define the central concepts as they will be used in this book, such as "infant", "child", "adolescence", "youth", "misbehaviour" and "status offence".

1.3 Terminology dilemma

In the following section, central concepts that tend to be problematic in textbooks dealing with child and youth misbehaviour will be explained.

1.3.1 Child and youth

Although all humans go through several developmental phases during their life, with each one bringing new challenges, it is not the purpose of this book to elaborate on this topic. Hook (2002:350–351) rightly warns researchers that concepts and categories generated within developmental psychology have an impact on how individuals live their lives, are raised, and treated, and how they think of themselves. These different viewpoints on development translate into laws and legal identities. In this regard, Hook postulates that "of course these developmental norms are imported to other countries, often with problematic results". Another problem is that these norms are not free from cultural influence. Our understanding of the concepts "child" and "youth" is replete with social, political and cultural meanings. These meanings reflect our current times and beliefs rather than being timeless and universal values.

Instead of trying to explain what each concept means — namely neonate (the few days after birth) and infant (birth to 18 or 24 months), toddler and early childhood (2–5 years), middle and late childhood (7–12 years) or adolescent (11–13 years up to 18–21 years) — it may be more appropriate to use the definition of a child from the 1996 Constitution of South Africa. In section 28(3), a child is referred to as anyone under the age of 18. In this book, the words "child" and "youth" will be used interchangeably and, where necessary, specific problems or issues with regard to specific developmental phases will be highlighted and explained.

Please note that the Child Justice Act 75 of 2008 defines a child as "any person under the age of 18 and, in certain circumstances, means a person who is 18 years or older but under the age of 21 years whose matter is dealt with in terms of section 4(2)". Gallinetti (2009:13) interprets this section as meaning that "the Child Justice Act can apply to persons 18 or older but under 21 years if they had committed an offence when they were under the age of 18".

1.3.2 Misbehaviour

Eurocentric textbooks refer to child and youth misbehaviour as juvenile delinquency (Bartholomew 1997:7). Delinquency implies criminal activities and guilt, thus many children who are involved in minor misbehaviours are labelled juvenile delinquents (Siegel 2002:56). This label in turn causes a great deal of negative reaction from the community, which can influence such children to become involved in serious misbehaviour and crime. The concept "misbehaviour" will therefore be used in this text to refer to any type of wrongdoing, and "juvenile delinquency" will be avoided where possible.

In this text we will try to address child and youth misbehaviour holistically. This implies that we are sensitive to the different degrees of misbehaviour, but to make deliberation easier, the concept of misbehaviour will encapsulate the concepts "criminal offences" and "status offences". These two concepts are clarified in the next section.

1.3.2.1 Criminal offences, crime or unlawfulness

- DEFINITION

Different people define crime in different ways. In contrast to individuals who have had legal training and see crime as an illegal action, those in the human sciences see it as behaviour harmful to the individual and to society. Some theologians define crime as sin, while those who place a high premium on truth are of the opinion that crime occurs when the moral code is broken and that it is a sign of falsehood. Despite the different views on what the term "crime" entails, most definitions can
be divided into either of two categories, namely juridical and non-juridical (Van Zyl 1996:5).

The word “crime” is derived from the Latin word *crimen*, which means “judgement, accusation and defence”. This root has resulted in the view that crime relates to actions that are legally prohibited. The juridical definition, therefore, stresses crime as an illegal action committed by an individual who can be blamed for it and can be punished by the authorities (Bartolias 1997:3). This definition is supported by Van Zyl (1996:7), who defines crime as “the illegal, willful, human action that constitutes a transgression of the law; to which is linked sentencing by a court of law after a hearing and conviction” [own translation].

Crime consists of actions that are legally prohibited and that people perform or fail to perform, and includes actions like robbery, rape and murder. Failure to act is punishable when, for instance, people do not pay their taxes, fail to care for children in their custody or fail to stop when party to a hit-and-run accident. Law must prohibit an action before it is considered a crime.

Moral disapproval of behaviour does not make it a crime unless the action is legally prohibited. To witness someone drowning and do nothing about it is not a crime. In order for individuals to know what behaviour is considered a crime it is necessary that criminal law must explain, in language that is clearly understandable, what type of action is prohibited or required (Conklin 1998:420).

Contrary to the juridical definition, Van der Walt, Cronje and Smit (1985:5) define the non-juridical approach as “an antisocial action that involves a threat, violation or infringement of the stability and security of society and its members” [own translation]. According to this definition, the study of certain actions falls within the field of study of criminology, even though they do not violate or contravene national laws and are therefore not legally punishable.

A criminal offence or an unlawful act therefore literally means “in contrast with or against the law”. Criminal law addresses the question of whether or not the type of behaviour for which the child is charged is recognised by the law as a crime (e.g. murder, rape, robbery, theft, assault, etc.). This implies that a child can be charged with crime(s) and can be punished to the full extent of the law. If the child commits a certain crime, such as murder, he or she can be treated as an adult. One factor that ensures that a child is not treated with the same severity as an adult is his or her age or youthful status. The influence of age is very important in criminal law because it has a continued effect on a person's status. Age is an important factor in a court of law as it can, in fact, justify a criminal offence.

**AGE AND CRIMINAL RESPONSIBILITY**

Previously in South Africa it was legally stated that a child had limited legal capacity from birth until the age of seven. Such a child had no capacity to act or to litigate personally, thus he or she had an irrefutable lack of criminal responsibility. An infant consequently could not be accountable or criminally responsible or legally guilty.

Irrefutable lack of criminal responsibility was applicable to children from the age of seven but under the age of 14. The general rule was that such children were not responsible for their actions, but this presumption could be disputed by the state. The state had to, however, prove that the child was criminally responsible at the time the offence was committed. This meant that the child had to have been able to comprehend the nature, extent and consequences of the act before the state could confer capacity to act on the child. In this respect a distinction had to be made between intellectual ability and the ability to judge.

Children of 14 years and older were considered responsible except when the opposite could be proven. Youthfulness, however, could always be considered a mitigating factor when imposing punishment. This is also known as irrefutable criminal responsibility. The law grants full capacity to act only to those who are in possession of both intellectual ability and the ability to judge.

Because of these different levels of responsibility, the law typically distinguished between three groups: infant (from birth to seven years), minor (7-21 years of age) and major (21 years of age and older) (Davel & Jordaan 1998:43-44).

A few changes have since been promulgated. The Child Justice Act 75 of 2008 came into effect on 1 April 2010. The Child Justice Act has
risen the minimum age of criminal capacity to 10. In terms of section 7(1) of the Act, a child who (at the time of the alleged commission of the offence) is below the age of 10 cannot be prosecuted. Nowadays there is a rebuttable presumption that a child between the ages of 10 and 14 lacks criminal capacity. In both common law and civil law, a rebuttable presumption is an assumption made by a court, and is taken to be true unless someone comes forward to contest it and proves otherwise. For example, a defendant in a criminal case is presumed innocent until proven guilty. A rebuttable presumption is often associated with *prima facie* (face value) evidence. A child of 14 lacks criminal capacity until proven otherwise. Essentially, this means that the presumptions of *doli capax* (i.e. that the child has criminal capacity) and *doli incapax* (i.e. that the child does not have criminal capacity) presumptions are retained, while it is just the minimum age that has changed.

Further protections for children aged 10 years or older but under the age of 14 are contained in section 10 of the Act. In terms of this section, a prosecutor can only prosecute a child if he or she considers various factors, which are the following:

- The educational level, cognitive ability, domestic and environmental circumstances, and the age and maturity of the child
- The nature and seriousness of the alleged offence
- The probation officer’s assessment report
- The impact of the alleged offence on any victim
- The interests of the community
- The prospects of establishing criminal capacity
- The appropriateness of diversion
- Any other relevant factor

This prevents prosecutors from prosecuting a child as an impulsive process, hoping that he or she will prove criminal capacity further during the course of the matter. This section requires the prosecutor to consider the likelihood of success based on the above factors before deciding to prosecute (Gallinetti 2009:19).

There is furthermore a rebuttable presumption in our law that where a child commits a crime in the company or presence of a (more) adult person, the latter influenced or forced the child to do so. Here again the state has to rebut this presumption beyond reasonable doubt. (Consider the recent court case for the murder of the Afrikaner Weerstand Beweging (AWB) leader Eugene Terre'Blanche. A 29-year-old black farm worker, Chris Mahlangu, was convicted of the crime while his alleged accomplice, 18-year-old Patrick Ndlovu, was acquitted of the murder but found guilty of house breaking.)

After turning 14, a child is deemed to be completely accountable and therefore in the same position as an adult. In this instance, the proof rests with the accused to prove on a balance of probability that he or she was not accountable at the time of the act.

In the South African legal system, first-time offenders under the age of 21 are usually treated as youths or minors, and are not punished as harshly as adults. In this connection “minority” and “majority” refer to the developmental phase individuals find themselves in (emotionally, physically and intellectually). In Western society, “minority” implies that a person is dependent on others (e.g. parents), while “majority” means that the person has the ability to manage his or her own affairs. In the past, the coming of age was 21 years. This meant that society and the legal system deemed a person to be an adult when he or she turned 21. This changed on 1 July 2007 when the then president, Thabo Mbeki, signed a proclamation that instituted the commencement of certain sections of the Children’s Act 38 of 2005. One section regarding the legal age of adulthood or age of majority is now in power. “Adulthood” is now reached as soon as a person turns 18. This implies that 18-year-olds can now marry and sign contracts without the consent of their parents or guardians (Government Gazette 2007:3).

The age of majority must not be seen as synonymous with maturity as an adult. Adults are considered mature enough to manage their own affairs. In other words, the adult person is someone who has, in a legal sense, obtained the full ability and capacity to act independently. A large percentage of individuals will be in Grade 12 (if they are still at school) when they reach the modified age of majority. Some may have reached a degree of maturity by the
age of 18, but this will not be true of everyone. "Majority status" does not imply that the full ability and capacity to act independently has been reached. The criminal justice system, especially the courts, will probably still take youthfulness into consideration when a person is sentenced. It is also the author's opinion that the Department of Correctional Services will still be attentive to the issue of youthfulness when a person is sentenced to prison, and will still consider separating 21-year-olds and those younger from the adult prison population. It is the author's opinion that the status of youthfulness will therefore still be used as a mitigating factor in our common law.

In the South African context, not all youths grow up in households that provide security, stability and average incomes. Before 1994, more than 40% of the black households in South Africa were headed by a female (Van Zyl et al. 1994:44). This, together with many other social forces, led to various social distortions such as the effect the past system had on human development and the natural maturation process. Many youths, especially black youths, did not experience the normal stages of development. It can therefore be argued that some young people in South Africa in their 20s or even 30s are still "youths". Although these "youths" have reached adulthood, the past system of apartheid blocked their opportunities to develop (e.g. through segregated schools), which contributed to their slower development into independent adults. The law, however, provides enough leniency for defendants to prove to the court that they are still infantile or not fully responsible for their actions. In view of this it is not deemed necessary to elaborate extensively on the dilemma regarding age and development, and criminal liability in South Africa. In conclusion, it may be said that the South African legislature is very lenient and sensitive with regard to youth matters. However, a youth's minority status also implies that certain actions, which are not against the law for adults, can bring him or her into contact with the criminal justice system.

1.3.2.2 Status offences

Age is one of the most important factors influencing a child's status. Young people under the age of 18 may come into contact with the law because of behaviour that is generally not seen as unlawful, such as rebelliousness, truancy, running away from home, sexual promiscuity, consuming alcohol and smoking. Bartollas (1997:4) also refers to these children as pre-delinquent, incorrigible, beyond control, un governable or wayward. In the case of adults committing these acts (status offences), nothing can nor will be done to them because they are seen as minors. The criminal justice system therefore sees the conduct as illegal only because the child is underage (Siegel 2002:15). This means that even though these acts do not violate or contravene national laws and are not legally punishable, many youths make contact with the justice system because general society perceives these acts as unbecoming for people under the age of 18 (Bezuidenhout & Little 2012:13).

1.4 Conclusion

This introductory chapter briefly reviews some of the more important concepts relevant to child and youth misbehaviour. It also outlines the child's position in society. The approach adopted is largely objective and philosophical in the hope of stimulating further reading of the text and critical thinking by the learners or practitioners of these matters.

**CRITICAL QUESTIONS**

1. Discuss critically the position of children in society and indicate how this could contribute to misbehaviour.

2. Discuss in detail the concepts central to the theme of child and youth misbehaviour that are usually difficult to define.
REFERENCES


