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THE CIRCULAR MOTIONS OF PENAL POLITICS AND THE PERVASIVE IRRATIONALITIES OF CHILD IMPRISONMENT



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Mapping the historical trajectory of youth justice law, policy and practice in England and Wales exposes the jurisdiction's persistent affinity with custodial institutions (Goldson, 2015; Hagell and Hazel, 2001). Following the separation of child from adult prisoners in the hulks of ships in the early nineteenth century, and the establishment of the first land-based penal institution exclusively for children at Parkhurst Prison in 1838, an array of policy initiatives, statutory reforms and carceral experiments have created and sustained a panoply of institutional forms. The Youthful Offenders Act 1854 provided the *Reformatory*; the Prevention of Crime Act 1908 ushered in *Borstals*; the Children and Young Persons Act 1933 created *Approved Schools*; the Criminal Justice Act 1948 established *Remand Centres* and *Detention Centres*; the Criminal Justice Act 1982 set up *Youth Custody Centres*; the Criminal Justice Act 1988 introduced *Young Offender Institutions*; the Criminal Justice and Public Order Act 1994 prefaced the opening of *Secure Training Centres*; the Crime and Disorder Act 1998 served to 'modernise' the 'juvenile secure estate' and, more recently, the Ministry of Justice (2013: 17) has outlined its 'vision for a youth estate of "Secure Colleges"', claiming that it will provide 'a new model of youth custody'

(Ministry of Justice, 2014a: 5). In other words, penal custody, in various forms, has retained a permanent foothold in the youth justice system: from the ‘invention’ of ‘juvenile delinquency’ in the early-mid nineteenth century (Magarey, 1978), through the establishment of child-specific legislation, court structures, policies, procedures and practices at the beginning of the twentieth century, to the present day when ‘secure colleges’ are currently being mooted as the latest innovation in child imprisonment.

Despite the omnipresent nature of penal institutions, however, the actual size and shape of child prisoner populations have fluctuated – and continue to fluctuate – over both time and place. The related claims that the ebbs and flows of child imprisonment are symptomatic of variations in the volume and/or gravity of youth crime, and that penal custody is a necessary and effective institutional mechanism for reducing – if not preventing – youth crime and protecting the public, are not uncommon. Such claims are essentially fallacious, however. As Hagell observes, ‘it is clear from a range of statistics and research that levels of custody ... do not necessarily reflect levels of juvenile crime nor do they particularly reflect evidence of its effectiveness’ (2005: 157). To elaborate further:

One axiom of the sociological literature is that punishment and penal measures are, to a considerable degree, independent of crime. Punishment, it has been pointed out, is a social process with social causes and social effects and not – or ‘not merely’ – a reaction to crime. (The sociological insight here is that neither individual crimes nor aggregate crime rates determine the nature and extent of penal measures. It is not ‘crime’ that dictates penal laws, penal sentences, and penal policies but the ways in which crime is socially perceived and problematized and the *political* and *administrative decisions* to which these perceptions give rise) ... Penal processes develop in a complex relation to crime processes, and one does not directly or immediately determine the other. ‘Crime problems’ are subject to competing definitions and are sometimes proxies for other issues; penal ‘solutions’ are contested both pragmatically and ideologically; and punishments may be selected for symbolic rather than instrumental effect. (Garland, 2013: 486–87, emphases added)

In building upon and extending such propositions, and by focusing explicitly on the application of penal custody within the youth justice sphere over the last 20 years or more – principally in England and Wales – this chapter seeks to develop two core contentions. First, the extent to which the practices of child imprisonment are applied at any given time (the punitiveness or otherwise of law, policy and practice) are best explained by reference to the deliberate and calculated politicisation or depoliticisation of youth crime, rather than to the volume and/or gravity of youth crime itself. To put it another way, rates of child imprisonment tend to be driven, in circular motions, by *penal politics* (‘political and administrative decisions’) as distinct from the nature and scale of *youth offending*. Second, penal custody is spectacularly counter-productive – even iatrogenic – when measured against its capacity to either meet the needs of children, prevent (or even to reduce) youth crime, or offer best value for public money.

Indeed, volumes of empirical data testify to the harmful and damaging impositions of child imprisonment, to high rates of post-custodial recidivism and reconviction and to the enormous financial costs that penal custody imposes, rendering its application profoundly *irrational* on all counts.

THE CIRCULAR MOTIONS OF PENAL POLITICS: FROM A 'REDUCTIONIST AGENDA' TO A 'RUSH TO CUSTODY' AND BACK ROUND AGAIN

A 'reductionist agenda': 1982–1992

Newburn described the 1979 Conservative Party Manifesto as 'the most avowedly "law and order" manifesto in British political history': it 'promised, among many other measures, to strengthen sentencing powers with respect to juveniles' (1997: 642). Indeed, the 1980 White Paper *Young Offenders* proposed the re-introduction of Detention Centres with tough regimes designed to deliver a 'short, sharp, shock' and William Whitelaw, the Home Secretary at the time, warned that the children and young people 'who attend them will not ever want to go back' (cited in Newburn, 1997: 642; see also Muncie, 1990). Paradoxically, however, the decade that followed comprised what Rutherford (1995: 57) has described as 'one of the most remarkably progressive periods of juvenile justice policy', during which a 'reductionist agenda' consolidated (Rutherford, 1984).

A coincidence of four otherwise disparate developments combined to legitimise a significant reduction in the number of children held in penal detention. First, a substantial volume of academic research revealed the counter-productive consequences of over-zealous criminal justice intervention, particularly custodial sanctions (Goldson, 1997a). Second, juvenile/youth justice practice innovations – especially the expansion of community-based 'alternative to custody' schemes – demonstrated the efficacy of non-institutional responses to youth offending (Haines and Drakeford, 1998). Third, notwithstanding early Conservative Party Manifesto statements, the fiscal constraints imposed by specific policy objectives of 'Thatcherism' created the conditions within which decarceration suited the wider political objective of radically scaling back public expenditure. As Pratt observed, 'to reduce the custodial population on the grounds of cost effectiveness ... led to a general support for alternative to custody initiatives' (1987: 429). Fourth, there was increasing, if uneven, recognition that such initiatives were consistent with the stated aims of the police and the courts to reduce the incidence of youth crime. Indeed, whilst some reservations remained, many senior police officers and court officials positively embraced the 'reductionist agenda' (Gibson, 1995) in the light of 'the plethora of Home Office research ... that evidenced the discernible success of such policies' (Goldson, 1994: 5).

The combination of permissive statute¹ and innovatory ‘alternative to custody’ practice was not insignificant. The number of custodial sentences imposed on children fell from 7,900 in 1981 to 1,700 in 1990 (Allen, 1991). Furthermore, the ‘reductionist agenda’ was effective not only in terms of substantially moderating child imprisonment but also, according to David Faulkner, the Head of the Home Office Crime Department between 1982 and 1990, it was ‘successful in the visible reduction of known juvenile offending’ (cited in Goldson, 1997b: 79). Indeed, faith in the effectiveness of decarceration was such that penal reform organisations confidently advocated ‘phasing out prison department custody for juvenile offenders’ and ‘replacing custody’ (Nacro, 1989a and 1989b). Government support for the ‘reductionist agenda’ was always conditional and contingent, however, and its fortunes ultimately depended upon the extent to which it continued to suit wider political priorities.

A ‘rush to custody’: 1993–2007

Throughout the 1980s the strength of successive Conservative governments’ electoral mandates and parliamentary majorities were such that the Party was both able and willing to relax its long-established attachment to a punitive ‘law and order’ politics. Between 1989 and 1992, however, Britain experienced a major economic recession that indirectly, but no less dramatically, served to subvert political support for the ‘reductionist agenda’. The opinion polls appeared to signal that public confidence in the government was abating and, as a consequence, the triumphalism of ‘Thatcherism’ finally looked vulnerable. In particular, ‘with ... a prison population falling from 50,000 to 42,000 ... the Conservative lead over Labour as the party best able to guarantee law and order’ appeared tenuous ‘for the first time in over 30 years’ (Downes, 2001: 69). With a General Election looming, leading figures in the Conservative Party became conscious of the need to take corrective action. The Party reacted in 1990 by deposing Margaret Thatcher and installing John Major as Leader and Prime Minister and, alongside senior colleagues, he set about restoring electoral viability. Restating the Party’s traditional ‘hard line’ on ‘law and order’ comprised a key plank of the recovery strategy. In his ‘Foreword’ to the Conservative Party’s General Election Manifesto in 1992, Major expressed a commitment to ‘protect law-abiding people from crime and disorder’ and, under a sub-heading

¹ For example: the Criminal Justice Act 1982 imposed tighter criteria for custodial sentencing and introduced the ‘Specified Activities Order’ as a direct alternative to custodial detention; the Criminal Justice Act 1988 tightened the criteria for custodial sentencing further; the Children Act 1989 abolished the Criminal Care Order; and the Criminal Justice Act 1991 abolished prison custody for 14 year old boys and provided for the similar abolition of penal remands for 15–17 year olds (although this provision has never been implemented). For a fuller discussion, see Goldson, 2002b and Goldson and Coles, 2005.

‘Freedom Under Law’, the Manifesto drew particular attention to children and young people:

The Conservative Party *has always stood* for the protection of the citizen and the defence of the rule of law ... Our policies on law and order, and the rights of individuals, are designed to protect the people of this country and their way of life ... And the challenge for the 1990s is to *step up the fight against lawlessness* ... We must tackle crime at its roots. Two-thirds of the offences dealt with by our courts are committed by only seven per cent of those convicted. *Most of these constant offenders started down the path of crime while still of school age.* (Conservative Party, 1992: np, emphases added)

The 1992 General Election result took many commentators by surprise. Polling leading up to the day of the election – 9 April – had shown the Labour Party to be consistently, if narrowly, ahead, but the electorate returned the Conservative Party to government for a fourth consecutive term. Within months following the election youth crime came into sharp focus. With increasing regularity and developing force, the media drew attention to car crime, youth disorder, children and young people offending whilst on court bail and the activities of so-called ‘persistent young offenders’. There was minimal effort to distinguish, and thus account for, the various forms of ‘anti-social behaviour’, youth ‘disorder’ and/or the different ‘types’ of child ‘offender’; rather, every troublesome child was portrayed as ‘out of control’ and a ‘menace to society’. Indeed, there was a burgeoning sense that ‘childhood’ was in ‘crisis’ (Scruton, 1997), and any lingering doubts were seemingly extinguished by a single case, in February 1993, when two 10 year old boys were charged with the murder of 2 year old James Bulger. The ‘Bulger case’ imposed enormous symbolic purchase and activated processes of moral panic and child demonisation (Davis and Bourhill, 1997; Goldson, 1997a; Goldson, 2001), as ‘myth and fantasy [began] to replace objectivity and detachment and conjure monsters that seem to lurk behind the gloss and glitter of everyday life’ (Pratt, 2000: 431). Troublesome children were ‘essentialised as other’ (Young, 1999) and an ‘ecology of fear’ (Davis, 1998) was awakened and mobilised. For a recently elected government determined to establish its ‘tough’ credentials with regard to law and order, reactive political posturing was predictable. The Prime Minister, John Major, argued that the time had arrived for society ‘to condemn a little more and understand a little less’ (cited in Goldson, 1997a: 130–31), and at the Conservative Party Conference in 1993 the Home Secretary, Michael Howard, announced that ‘we shall no longer judge the success of our system of justice by a fall in our prison population’, proceeding to proclaim that ‘prison works’ and, as such, ‘more people will go to prison’ (Conservative Party Conference, 6 October 1993).

The Labour Party – that had effectively been consigned to the political wilderness since the Conservative Party’s victory in the General Election of 1979, and now faced the prospect of a further five years in opposition – was deeply wounded by the outcome of the 1992 election. The failure of the Party to seize power from the Conservatives provided succour for a radical ‘rebranding’ initiative – the New Labour project – that had been emerging under the steadily

increasing influence of Tony Blair. New Labour broke away from the conventionally moderate position of the Labour Party on questions of penal policy and, just three days after returning from a visit to the USA in 1993, Blair, Opposition Home Secretary at the time, declared his intention to be ‘tough on crime, tough on the causes of crime’ (Labour Party Conference, 30 September 1993). Blair had seemingly been persuaded by what he had seen and learnt in the USA where Bill Clinton’s New Democratic Coalition had re-politicised crime to positive electoral effect in the 1992 Presidential campaign (Tonry, 2004). The ‘Americanisation’ of New Labour’s position on criminal justice in general, and their approaches to youth justice in particular, came to operate *both* at the symbolic level of ‘tough’ political rhetoric *and*, more significantly, at the formal level of legislation and policy (Jones and Newburn, 2004; Muncie, 2002; Pitts, 2000).

Throughout the period 1993–97, New Labour policy-makers published a wide range of documents focussing on youth justice and related matters, within which a creeping punitivity was increasingly evident (Goldson, 2010; Jones, 2002). It was not until the election of the first New Labour government in May 1997, however, that the full weight of its ‘toughness’ agenda was practically realised. Within months of coming to office, the newly elected government produced a raft of consultative documentation in relation to youth justice (Home Office, 1997a, 1997b, 1997c), followed by a White Paper ominously entitled *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales* (Home Office, 1997d). Clinton adopted and applied the notion of ‘zero tolerance’ in the USA. Blair settled for ‘no more excuses’ in England and Wales. Just as ‘the rise of “law-and-order” politics and the mobilization of cross-party support for tough-on-crime measures’ (Garland, 2013: 480) came to characterise the criminal justice landscape in the USA, so it was in England and Wales. Political opportunism had trumped criminological rationality, the ‘reductionist agenda’ was abandoned and, instead, a ‘rush to custody’ concretised (Rutherford, 2002: 102).

Taken together, in the period 1993–2007 both Conservative and successive New Labour governments translated ‘tough’ political rhetoric into a seemingly relentless stream of youth justice legislation and policy (for a fuller discussion, see Goldson, 2002a, 2010). Hough et al. noted that the combined effect of ‘tough’ legislative provisions, framed within contexts of heightened media attention and politicisation, precipitated significant penal expansion:

The increases in custody rates and sentence length strongly suggest that sentencers have become more severe. This greater severity undoubtedly reflects, in part, a more punitive legislative and legal framework of sentencing. Legislation, guideline judgements and sentence guidelines have all had an inflationary effect on sentences passed. At the same time, the climate of political and media debate about crime and sentencing has become more punitive, and is also likely to have influenced sentencing practice. (2003: 2)

The ‘inflationary effect’ was plain to see as imprisonment in England and Wales escalated significantly. In 1994, just months after Michael Howard’s ‘prison works’ claim and Tony Blair’s ‘tough on crime’ pledge, the average prison

population was 48,631 (Prison Reform Trust, 2004: 3). By the time that New Labour came to government in May 1997, however, the average prison population had risen to 60,131 (ibid.), and by 2007 it stood at 80,216 (Berman and Dar, 2013: 20). The trends specific to child imprisonment followed similar contours. In the 10-year period 1992–2001 inclusive, the *total number* of custodial sentences imposed upon children rose from approximately 4,000 per annum to 7,600, a 90 per cent increase (Nacro, 2003, 2005). During the same decade the child remand population grew by 142 per cent (Goldson, 2002b). Whilst such trends commenced prior to the election of the first New Labour government in 1997, they simply consolidated afterwards (Hagell, 2005). The *average* ‘juvenile secure estate’ population for the year 2000/01, for example, was 2,807, but by 2007/08 it had risen to 2,932 (Youth Justice Board, 2014).

At least five additional observations help to further contextualise the ‘rush to custody’ and to comprehend its impacts. First, whilst it is difficult to engage truly comparative analyses of youth justice systems – not least because accurate international data with regard to child imprisonment are not readily available (Goldson and Muncie, 2006, 2009; Muncie, 2005; Muncie and Goldson, 2006) – it appears that during this period greater use of penal custody for children was being made in England and Wales than in most other industrialised democratic countries in the world (Youth Justice Board for England and Wales, 2004). Second, in addition to substantial increases in the number of child prisoners, periods of penal detention also increased in length (Home Office, 2003b), and proportionately more children were sentenced to long-term detention (Graham and Moore, 2004). Third, law and policy provided for the imprisonment of younger children and ‘as a result the detention of children under the age of 15 years [became] routine’ (Nacro, 2003: 12). Fourth, the expansionist drift was disproportionately applied in terms of gender and the rate of growth was higher for girls than for boys (Nacro, 2003). Furthermore, girls were regularly detained alongside adult prisoners, a practice that was seriously problematised by penal reform organisations (Howard League for Penal Reform, 2004) and Her Majesty’s Chief Inspector of Prisons (2004) alike. Fifth, racism continued to pervade youth justice sentencing processes and custodial regimes. For example, black (African-Caribbean) boys were 6.7 times more likely than their white counterparts to have custodial sentences in excess of 12 months imposed upon them in the Crown Court (Feilzer and Hood, 2004), and black child prisoners were more likely than white detainees to encounter additional adversity within custodial institutions owing to racist practices (Cowan, 2005).

And back round to a ‘reductionist agenda’: 2008–?

Following 15 years of cross-party punitivity it seemed that high rates of child imprisonment had become an immovable feature of the youth justice policy landscape but, in 2008, the circular motions of penal politics turned again.

In the period 2000–08, the annual average number of child prisoners in England and Wales fluctuated between a low of 2,745 and a high of 3,029. By December 2008, however, the number stood at 2,715, the lowest it had been in almost a decade (Bateman, 2012: 37). Three years later, Allen (2011: 3) reported that child imprisonment had fallen ‘by a third ... from about 3,000 in the first half of 2008 to around 2,000 in the first half of 2011’ and, in 2013, Her Majesty’s Chief Inspector of Prisons observed that it ‘fell by almost 30 per cent again from 1,873 to 1,320 in one year alone between February 2012 and February 2013’ (Hardwick, 2014: 22). By April 2014, the number of child prisoners had dropped further still, to 1,177 (Ministry of Justice, 2014b). Penal reduction was clearly back on the political agenda, but why?

To re-state one of the core propositions underpinning this chapter: rates of child imprisonment cannot necessarily be taken to comprise either accurate reflections of, and/or proportionate responses to, the incidence or severity of youth crime at any given moment. It follows that the contemporary ‘reductionist turn’ – and the substantial diminution of the child prisoner population in England and Wales from 2008 – simply cannot be accounted for by any singular reference to the volume or nature of youth crime over the same period of time (Allen, 2011; Bateman, 2012; Bateman, this volume). It seems equally implausible to posit that either ‘practitioner activism’, of which there are ‘few signs’ (Bateman, 2012: 39), or any deliberative actions taken by the Youth Justice Board have imposed any determinative bearing on such trends. Indeed, Allen (2011: 9) points to the paradox that when ‘reducing the use of custody was one of the Youth Justice Board’s corporate targets from 2005–8’ there was actually ‘no decline in numbers’, but after ‘the target was dropped in the corporate plan for the following three year period (2008–11)’ the size of the child prisoner population, as we have noted, began to shrink quite significantly. In other words, the irony lies in the fact that the number of child prisoners began to fall at precisely the same time that the Board *withdrew* its explicit and publicly stated commitment to penal reduction. Furthermore, despite the best efforts of academic researchers, non-governmental organisations and authoritative human rights agencies to influence government policy in the direction of penal reduction, there is little, if any, evidence to suggest that the combined effect of such interventions have, in and of themselves, realised significant political purchase (Goldson, 2010; Goldson and Kilkelly, 2013; Goldson and Muncie, 2012; Goldson and Muncie, this volume).

Just as Pratt (1987: 429) had argued that ‘cost effectiveness’ was a key driver during the period of penal reduction in the 1980s, Faulkner (2011: 80) detected that the ‘crisis in public debt’ – that emerged some 20 years later – also provided ‘opportunity for progress in penal practice’. Indeed, if the relatively generous investment in public services during the decade following the general election of 1997 (Chote et al., 2010) had, paradoxically, been accompanied by penal expansion and the consolidation of ‘new punitiveness’ (Goldson, 2002a), the global financial crisis of 2008 triggered a discernible shift in political mood, not least because ‘authoritarianism is very costly’ (Sanders, 2011: 15).

In this way, it is no coincidence that the latest reductionist turn has been, and remains, framed within a context of deep cuts in public expenditure and conditions of austerity (Muncie, 2015; Yates, 2012). In the period between February 2008 and August 2010, for example, the Youth Justice Board ‘decommissioned 710 places’ from within the ‘juvenile secure estate’ producing ‘estimated savings of £30 million per year’ (House of Commons Justice Committee, 2013: 38). Whatever other influences are at play, therefore, it seems likely that it is the instrumental imperatives of cost reduction, as distinct from any intrinsic priorities of progressive reform, that ultimately provide the key to comprehending the substantial fall in child imprisonment in the post-2008 period.

Although the New Labour government’s comprehensive spending review in 2007 was ‘tighter than its predecessors’ (Chote et al., 2010: 5), it was the economic recession in the second quarter of 2008 that prompted unparalleled cuts in public expenditure. It follows that the Conservative Party’s 2010 election pledge to ‘create strong financial discipline at all levels of government’ (Conservative Party, 2010: 27) soon translated into a sweeping ‘austerity programme’. Whilst the impact of ‘austerity’ has produced devastating consequences for young people – for example, ‘youth services have been disproportionately hit by government-imposed public spending cuts, with more than £100m axed from local authority youth services by April 2011 [and] some councils cutting 70%, 80% or even 100% of youth services’ (Williams, 2011: np) – it has also produced conditions within which youth crime and youth justice have been steadily depoliticised. Even in cases where ‘grave and newsworthy incidents involving children’ have occurred, therefore, they have generally not ‘led to the calls for tough responses that might have been expected’ (Allen, 2011: 23). More significantly, on the limited number of occasions when such ‘calls’ have been heard, ‘politicians have hesitated to rush to make changes, aware perhaps that the costs of a more expansive use of prosecution or custody would have been unaffordable’ (ibid.: 23). So, although the government has fallen short of making explicit policy statements favouring child decarceration, dramatic penal reduction has evolved by stealth, under the public radar and largely as a result of manoeuvres ‘behind the scenes’ (ibid.: 10).

If, as noted at the outset of this chapter, child imprisonment retains a permanent foothold in the youth justice system, the level and extent of its application are, as stated, subject to the vagaries of political, economic and administrative conditions. In this way, and as we have seen, the logics underpinning decision-making processes in the youth justice sphere are rarely, if ever, exclusively driven by the nature of offending or the incidence of crime. To put it another way, the power to punish and/or imprison children is variously applied, or reserved, in accordance with ulterior motives; political calculations that ultimately operate independently of crime. This gives rise to circular motions, to ebbs and flows of punitivity and to low points and high points of child imprisonment. Notwithstanding such *inconsistency*, however, the imposition of imprisonment is strikingly *consistent* in failing to attend to the needs of child prisoners, to prevent (or even to reduce) youth crime and/or to offer best value

for public money. Indeed, whilst particular – essentially disingenuous – *political rationalities* might well drive penal trends upwards or downwards, the corrosive impact of custodial institutions, their lack of success in ‘preventing youth offending’ (the ‘principal aim’ of the youth justice system as provided by s37 Crime and Disorder Act 1998), and the enormous financial burden that they impose on the public purse, are indicative of an interrelated complex of *penological irrationalities*.

THE PERVERSIVE IRRATIONALITIES OF CHILD IMPRISONMENT

Meeting the needs of children?

Wherever we might care to look in the world, child prisoners are routinely drawn from some of the most disadvantaged, distressed and impoverished families, neighbourhoods and communities (Goldson, 2002b, 2009; Goldson and Coles, 2005; Goldson and Kilkelly, 2013). In the jurisdiction of England and Wales, Her Majesty’s Chief Inspector of Prisons (1999: 3) has noted that penal custody often marks ‘just one further stage in the exclusion of a group of children who between them, have already experienced almost every form of social exclusion on offer’, subsequently adding:

Before any work can be done to sensitise [child prisoners] to the needs of others and the impact of their offending on victims, their own needs as maturing adolescents for care, support and direction have to be met. (Her Majesty’s Chief Inspector of Prisons, 2000: 25)

Many child prisoners are, or will have been, ‘open cases’ to statutory child welfare agencies as a result of neglect and/or other child protection concerns and a significant proportion have biographies scarred by adult abuse and violation (Association of Directors of Social Services et al., 2003; Challen and Walton, 2004; Holmes and Gibbs, 2004; Prison Reform Trust, 2004; Social Exclusion Unit, 2002; Social Services Inspectorate et al., 2002). Although no centralised records are maintained by either Her Majesty’s Prison Service or the Youth Justice Board, the House of Commons Justice Committee (2013: 44) has reported that ‘children in care ... are over-represented in the prison population; [d]espite accounting for less than 1 per cent of the total population, the most recent survey of 15–18 year olds in custody found that 30 per cent [of boys] and 44 per cent [of girls] had spent time in care’, and a further study of 200 child prisoners revealed that 39 per cent had been on local authority child protection registers and/or had experienced abuse (Jacobson et al., 2010).

In a major review of the educational needs of children in penal custody, Her Majesty’s Chief Inspector of Prisons and the Office for Standards in Education (2001: 10) found that: 84 per cent of child prisoners had been excluded from

school; 86 per cent had regularly not attended school; 52 per cent had left school aged 14 years or younger; 29 per cent had left school aged 13 years or younger; and 73 per cent described their educational achievement as 'nil'. Over 25 per cent of child prisoners have literacy and numeracy skills equivalent to a 7 year old (Social Exclusion Unit, 2002) and 'most' have 'very significant learning needs and problems' (Social Services Inspectorate et al., 2002: 70). Over 10 years later, Her Majesty's Inspectorate of Prisons and the Youth Justice Board (2013) and the Ministry of Justice (2014a) presented strikingly similar data.

Turning to health, the British Medical Association, commenting upon the relationship between poverty, disadvantage and poor health, has observed that

patients within prison are amongst the most needy in the country in relation to their health care needs. Over 90 per cent of patients who reside in our jails come from deprived backgrounds ... 17 per cent of young offenders were not registered with a general practitioner and generally the young people had a low level of contact with primary health care. (2001: 1 and 5)

Again, more than a decade later Murray (2012) found that 27 per cent of boys in prison reported emotional and mental health problems, perhaps a predictable finding given that the experience of imprisonment itself is known to impose deleterious effects on the physical and mental well-being of children (Farrant, 2001; Goldson, 2002b; Goldson and Coles, 2005; Leech and Cheney, 2001; Mental Health Foundation, 1999).

In sum, when taking account of the personal/familial, educational and health profiles of child prisoners, 'it is evident that on any count this is a significantly deprived, excluded, and abused population of children, who are in serious need of a variety of services' (Association of Directors of Social Services et al., 2003: 6) and the 'Juvenile Secure Estate' is 'not equipped to meet their needs' (Her Majesty's Chief Inspector of Prisons, 2000: 69–70).

In 2012/13, 74 per cent of child prisoners in England and Wales were detained in Young Offender Institutions (state and/or privately managed prisons), 16 per cent were confined in Secure Training Centres (privately managed jails) and the remaining 9 per cent were held in Secure Children's Homes (smaller and more 'child-centred' facilities managed by local authorities) (Ministry of Justice and Youth Justice Board, 2014: 41). The fact that the substantial majority of child prisoners are held in Young Offender Institutions raises important issues with regard to conditions and treatment:

One of the most important factors in creating a safe environment is size. The other places where children are held – Secure Units and Secure Training Centres – are small, with a high staff-child ratio. The Prison Service, however, may hold children in what we regard as unacceptably high numbers and units. Units of 60 disturbed and damaged adolescent boys are unlikely to be safe ... There are therefore already significant barriers to the Prison Service being able to provide a safe and positive environment for children; and the question whether it should continue to do so is a live one. (Her Majesty's Chief Inspector of Prisons, 2002: 36–7)

The Children's Rights Alliance for England (2002: 49–137) undertook a detailed analysis of the conditions and treatment experienced by children in

Young Offender Institutions, drawing on reports prepared by Her Majesty's Inspectorate of Prisons. The results were illuminating: widespread neglect in relation to physical and mental health; endemic bullying, humiliation and ill-treatment (staff-on-child and child-on-child); racism and other forms of discrimination; systemic invasion of privacy; long and uninterrupted periods of cell-based confinement; deprivation of fresh air and exercise; inadequate educational and rehabilitative provision; insufficient opportunities to maintain contact with family; poor diet; ill-fitting clothing in poor state of repair; a shabby physical environment; and, in reality, virtually no opportunity to complain and/or make representations. Such conditions led Mr Justice Munby, a High Court Judge, to conclude that:

They ought to be – I hope they are – matters of the very greatest concern to the Prison Service, to the Secretary of State for the Home Department and, indeed, to society at large. For these are things being done to children by the State – by all of us – in circumstances where the State appears to be failing, and in some instances failing very badly, in its duties to vulnerable and damaged children ... [these are] matters which, on the face of it, ought to shock the conscience of every citizen. (Munby, 2002: paras 172 and 175)

Penal custody for children, therefore, can never be a neutral experience. Apart from the emotional and psychological harms that are typically endured by child prisoners, standards of safety and physical integrity are also compromised. Her Majesty's Chief Inspector of Prisons (2005: 56) surveyed children in one Young Offender Institution and found that 56 per cent reported that they had felt 'unsafe', 'nearly a quarter said they had been hit, kicked or assaulted' and there 'had been 150 proven assaults in eight months'. Similarly, having surveyed 942 boys and young men in prisons, Her Majesty's Inspectorate of Prisons and the Youth Justice Board reported that '30 per cent ... said they had felt unsafe at their establishment ... 22 per cent said they had been victimised by other young men and 22 per cent said that they had been victimised by staff' (2013: 11). Only 29 per cent of the boys and young men said that they would tell a member of staff if they were being victimised and, in his annual report for the year 2012/13, Her Majesty's Chief Inspector of Prisons noted that, even when reported, 'the quality of investigations into alleged violence was poor' (2013: 59). Physical assault – or physical abuse – is clearly commonplace, under-reported and inadequately investigated in penal custody. Child prisoners are also exposed to other forms of 'bullying' including sexual assault; verbal abuse (including name-calling; threats; racist, sexist and homophobic taunting); extortion and theft; and lending and trading cultures – particularly in relation to tobacco – involving exorbitant rates of interest that accumulate on a daily basis (Goldson, 2002b). Moreover, random violence is framed within a context in which physical force is formally institutionalised:

The Office of the Children's Commissioner found evidence ... of a tendency in youth custody to focus on physical controls ... rather than on relationships. Restraint is supposed to be a 'last resort', to prevent individuals from causing harm to themselves or others. However, there were 8,419 incidents of restrictive physical intervention used in the youth

secure estate in 2011/12, up 6 per cent from 2008/09 and 17 per cent from 2010/11. 254 of these restraints involved injury to young people. (House of Commons Justice Committee, 2013: 42)

For some child prisoners, their troubled lives together with the treatment and conditions that they experience in penal custody are literally too much to bear. Between 1998 and 2002, for example, there were 1,659 reported incidents of self-injury or attempted suicide by child prisoners in England and Wales (Howard League for Penal Reform, 2005). At the sharpest extremes, 33 children died in penal custody in England and Wales between 1990 and October 2012; all but two of the deaths were apparently self-inflicted (Goldson and Coles, 2005; the Prison Reform Trust and INQUEST, 2012).

As Miller has observed, penal institutions ‘have always been, and continue to be, neglectful, demeaning, frequently violent and largely ineffective’ (1991: 3). Indeed, the corrosive effects of child imprisonment have been recognised and reported for decades. Despite this, however, and irrespective of the harmful impositions of penal institutions and the publication of ‘critical report after critical report’, there is little evidence of ‘fundamental change’ (Hardwick, 2014: 23). Indeed, whilst *rates* of child imprisonment might ebb and flow, the *practices* of imprisoning children appear to be irrevocable. Ultimately this implies, to paraphrase Cohen (2001: 1), that children’s suffering is being ‘denied’, ‘evaded’, ‘neutralised’ or ‘rationalised away’.

Preventing and/or reducing crime?

It is a well-established criminological ‘fact’ that, when measured in terms of crime prevention and/or crime reduction, child imprisonment fails miserably. In this way, Miller has noted that ‘the hard truth is that ... juvenile penal institutions have minimal impact on crime ... incapacitation as the major tenet of crime control is a questionable social policy’ (1991: 181–2). Similarly, Hagell and Hazel (2001) have observed that concern with ‘poor performance’ (with regard to reconviction rates) is a recurring theme in penal discourse.

The enduring failure of penal custody as a measure of crime reduction is clearly illustrated by analyses of the ‘the proportion of [child] prisoners discharged from prisons [who] are convicted on a further occasion within a given period’ (Home Office, 2003a: 150). An evaluation of nearly 6,000 children subject to custodial sentences, for example, reported high rates of reoffending, particularly in the first few weeks following release (Hazel et al., 2002). This echoed the results from earlier research that had revealed that 11 per cent of children were arrested for a further offence within 7 days of their discharge from a Secure Training Centre, 52 per cent were similarly arrested within 7 weeks and 67 per cent were arrested within 20 weeks of release (Hagell et al., 2000). The Chairperson of the House of Commons Committee of Public Accounts (2004: Ev. 1) referred to what he termed ‘an absurdly high reconviction rate’ of 84 per cent following children’s ‘release from prison’. Almost a

decade later, the Prison Reform Trust (2013: 26) noted ‘that 72.3 per cent of children (10–17) released from custody ... reoffended within a year’, and the Ministry of Justice (2013: 8) reported institutionally variable reconviction rates ranging from 70 per cent to 76 per cent.

The persistent failure of penal custody in this respect is conspicuously at odds with the statutory ‘principal aim’ of the youth justice system in England and Wales – to ‘prevent offending’ (and re-offending) – as provided by the Crime and Disorder Act 1998, s.37. To put it another way, the practices of child imprisonment are irrational when set against the failure of custodial institutions to prevent (or even to reduce) youth crime in accordance with the provisions of statute. Such irrationality is only exacerbated when account is taken of the extraordinary costs – human and fiscal – that such practices impose.

Offering best value for public money?

Although estimates vary, an enormous amount of public money is spent on imprisoning children in England and Wales. The Audit Commission (2004: 2) reported that to ‘place’ a single child in a young offender institution (a state or privately managed prison) costs £977.00 per week or £50,800 per year. Almost a decade later and the corresponding costs had risen to £1,250 and £65,000 respectively (Ministry of Justice, 2013: 8). In 2004, the costs of a similar ‘placement’ in a Secure Training Centre (a private jail) were substantially higher, standing at £3,168 per week or £164,750 per year (House of Commons Committee of Public Accounts, 2004: 4). By 2013, significant inflation was again evident, with the weekly cost of imprisoning a child in a private jail standing at £3,423 and the yearly cost amounting to £178,000 (Ministry of Justice, 2013: 8). According to the Chairperson of the Youth Justice Board for England and Wales the gross costs of imprisoning children amounted to £293.5 million in the financial year 2003–04 alone (Morgan, 2004) and, despite the substantial reduction in the numbers of child prisoners in the post-2008 period, child imprisonment continues to absorb millions of pounds of public money:

In 2012/13 the Ministry of Justice and the YJB have budgeted that £245m will be spent on commissioning the youth secure estate. This estimates to an average cost of almost £100,000 a place per annum ... and in some cases we are paying more than £200,000 per annum [a]t a time of particular financial challenge ... but in spite of such excessively high costs reoffending outcomes are consistently unacceptable. (Ministry of Justice, 2013: 13–14)

Indeed, it remains the case that ‘large sums of money’ are being spent ‘to achieve poor outcomes’ or, to put it another way, ‘places in the secure estate ... [are] five times the cost of sending a child to a top private boarding school ... [but] we see many of the same young faces back at the gate within a matter of months’ (Grayling and Gove, 2013: 4). In actual fact, such figures tell only part of the fiscal story in that they exclude the considerable public expense incurred in processing children through the courts. The Social Exclusion Unit reported, for

example, that: ‘the average cost of a prison sentence imposed at a crown court is roughly £30,500, made up of court and other legal costs’ (2002: 2). When the annual gross costs of child imprisonment are calculated, therefore, the £245 million that the government budgeted in 2012/13 for directly ‘commissioning’ places from penal institutions will only have paid for part of the total bill.



CONCLUSION

Garland contends that:

Social currents may ebb and flow, but they have no penal consequence unless and until they enlist state actors and influence state action. It follows that the character of the penal state and the processes whereby it responds to social forces, translating (or not translating) political pressures into specific penal outcomes, are always the proximate causes of penal action and penal change. (2013: 494)

To focus more sharply, the ebbs and flows of child imprisonment are, ultimately, best understood as adaptations and responses to ‘political pressures’ rather than reactions to the incidence and nature of youth crime. In other words, the circular motions of penal politics, the politicisation or depoliticisation of youth crime, high rates or low rates of child imprisonment – the extent to which the penal state might ‘translate (or not translate) political pressures into specific penal outcomes’ – are ultimately driven by ulterior motives that are situated beyond the immediate governance and regulation of youth crime itself. It follows that rates of child imprisonment are contingent; subject to the vagaries of social, economic and political conditions.

If penal politics give rise to unpredictable and inconsistent *rates* of child imprisonment, the *outcomes* of custodial interventions are, by contrast, strikingly predictable and consistent. Penal institutions reliably and persistently fail to meet the needs of child prisoners, prevent (or even reduce) youth crime and/or offer best value for public money. In this way – and irrespective of whether child imprisonment is moderated by a ‘reductionist agenda’ or applied excessively via a ‘rush to custody’ – it typically comprises a harmful, ineffective and expensive response to children in trouble.

Stern describes her experience of a conference in Brooklyn, New York, attended by people living in disadvantaged neighbourhoods:

They were talking about housing, employment, health and education and they were adding up dollars. They had done some geographical plotting. They had analysed where the prisoners lived, where the poor people lived, where the victims lived, where the most social services were needed and were not available in sufficient quantity. They found, not surprisingly, that where the poor people lived and where the services are needed is also where the prison population comes from. Some blocks, single streets, consume one million dollars worth of imprisonment in a year ... Now those people in Brooklyn were asking, ‘Can we have that money and spend it on the people here ... instead of sending them to prison?’ (2005: 83)

Bearing in mind all that is known about the adverse social circumstances from which child prisoners are routinely drawn, the damaging conditions and treatment to which they are typically exposed, the failings of penal institutions to deliver in terms of crime prevention, crime reduction and/or community safety, and the enormous expense that child imprisonment imposes on the public purse, serious questions have to be asked. Stern's account of her conference experience conveys a persuasive logic. But such logic is muted within a context in which the circular motions of penal politics continue to turn, the pervasive irrationalities of child imprisonment endure and the government has announced its intention to:

Bring forward legislation to create Secure Colleges as a new form of youth detention ... This legislation will pave the way for the development of a first pathfinder Secure College ... [a] 320-place establishment ... It is envisaged that construction of the Secure College will commence in 2015, with the establishment opening in spring 2017 ... the Government's long-term ambition is the complete transformation of the youth custodial estate through the introduction of a network of Secure College[s] across England and Wales ... demonstrating the strength and appetite of the market to deliver a new form of youth custodial provision. (Ministry of Justice, 2014a: 6–8)

If and when youth crime is next politicised, therefore – in such a way to invoke a further wave of re-penalisation – a ‘network’ of ‘320-place establishments’ will seemingly be at hand to meet demand and reproduce failure.

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