'BEYOND THE AMELIORATION OF PRISON PRACTICE': CHILDREN, YOUNG PEOPLE AND PENAL ABOLITION

Deena Haydon, Independent Researcher
Phil Scraton, Emeritus professor, Queen's University Belfast
Contact details: deena.haydon@gmail.com and p.scraton@qub.ac.uk

Abstract
Civil rights organisations and critical social research demonstrate that, within advanced democratic states, economic marginalisation and political exclusion - institutionalised and manifested in structural relations of classism, racism and sexism - underpin systemic criminalisation and incarceration. They reveal that prisoners endure egregious rights violations, restricted regimes and minimal opportunities for rehabilitation. In 'advanced' democracies children's incarceration amounts to what has been described as a 'cradle-to-prison pipeline'. This article focuses specifically on the incarceration of under-18s, arguing that a current fault line is commitment to penal reformism, what Angela Davis terms 'the amelioration of prison practice', rather than abolition of custodial facilities. It interrogates tensions between the realities of incarceration and penal reformism concerning child custody. Focusing on the diversity of incarceration across UK jurisdictions, it considers the climate and consequences of punitive responses to children's law-breaking and behaviour labelled 'anti-social' in the context of internationally agreed children's rights standards. This is followed by a review of literature theorising the 'dichotomous relationship' of penal reform in a climate of punitivity. Advocating the abolition of incarceration, the article concludes with a discussion of decriminalisation and decarceration in the context of children's rights; promoting community-based alternatives and use of welfare-oriented secure accommodation solely to protect a child or others from immediate harm.

Keywords
Children; punishment; criminalisation; reformism; abolition; community justice

Introduction

However critical of institutional deficiencies within prisons and conditions under which prisoners are incarcerated, penal reformism remains committed to deprivation of liberty as an appropriate form of punishment for a range of law-breaking activities. In a political climate that condemns prisoners to longer sentences within over-populated, under-staffed, under-resourced and increasingly dilapidated UK prison estates, those seeking alternatives are dismissed as idealists. Yet, prisoners spend lengthy periods alone or with a cellmate - many in cells designed for one person - without opportunities for education, work, 'purposeful activity' or recreation. Drugs, prescribed and illicit, are readily available. High numbers of prisoners are mentally unwell. Violence against others, self-harm and self-inflicted deaths are constant reminders of prevailing, unbearable tensions. With limited support, maintaining family relationships is difficult for prisoners and their loved ones (HMCIP, 2024; HMIPS, 2024). While prevalent across the prison estates, these issues have a particularly damaging impact on the well-being and development of incarcerated children and young people. In his 2023-24 annual report, the Chief Inspector of Prisons in England and Wales specified 'drift and decline in conditions for children, despite substantial resources in the youth estate' (HMCIP, 2024: 79).

Critical prison researchers consistently have exposed the inherent limitations of penal reformism, their critiques establishing grounds for prison abolition. They have a well-documented history. The USA-based Prison Research Education Action Project's *Instead of Prisons* quotes multiple sources spanning the twentieth century, the earliest from a Judge who considered '[a]ny system of imprisonment or punishment' to be a 'degradation' without the potential to reform those subjected to the dehumanisation of prison regimes (Critical Resistance, 2005:13). In 1938 criminologist Frank Tannenbaum stated, 'We must destroy the prison root and branch' for alternatives 'cannot be more brutal and more useless' (Critical Resistance, 2005: 14). Two decades later the former head of psychiatry at Sing Sing maximum security prison, Ralph Banay, concluded, 'on my own experience, I am convinced that prisons must be abolished' (Critical Resistance, 2005: 14). Barnes and Teeters (1951: 419) concluded that 'the institutional and routine aspects of prison administration' are central to 'the cruelty and personal demoralisation that goes on in contemporary prisons'.

In the late 1960s 'a balanced approach to crime' was suggested by successive U.S. commissions, combining a robust criminal justice process with necessary socio-economic reforms, challenging endemic poverty and social exclusion identified as the main drivers of criminalisation and punishment (Currie, 1998: 185). Resistance to progressive reformism, however, prioritised tougher legislation, hard-line policing, and uncompromising punishment. A balanced approach was rejected, and successive governments took the punitive path. The consequences were catastrophic: 'bursting prisons, devastated cities and a violent crime rate still unmatched in the developed world' (Currie, 1998: 186).

During the 1990s, UK imprisonment also expanded with many condemned Victorian prisons remaining open and overcrowded. Between June 1993 and June 2012 the prison population in England and Wales increased by 41,800 prisoners to over 86,000 (MoJ, 2013: 1). This figure remained constant, marginally reducing during the COVID-19 pandemic. In 2024, however, the prison estate reached full capacity, with several jails dangerously

overcrowded (Rowland, 2024). In responding to yet another 'prison crisis', the newly elected Labour Government committed to building more prisons and, in the short-term, introduced an immediate early release on licence of eligible prisoners who had served 40% of their sentence (Brader, 2024).

The Continuum of Punitive Responses to Children

In the UK, hardening public discourse regarding offences committed by children and young people has inhibited advocacy of alternatives to prison, portrayed in the media as being 'soft on crime'. This reflects a long history of condemnation directed against the behaviour of children and teenagers who challenge social regulation and societal rules, reinforced by unacceptably low ages of criminal responsibility - children are deemed responsible for criminal acts from the age of 10 in England, Wales, Northern Ireland and 12 in Scotland, inconsistent with other social responsibilities usually assumed when they are aged 16-18.

In December 1991 the UK Government ratified the UN Convention on the Rights of the Child (UNCRC), which defines a 'child' as 'every human being below the age of 18 years'. Although not incorporated into domestic law across the UK,[1] its four general principles and fifty-four Articles are the most comprehensive articulation of children's rights and State obligations. Alongside the UNCRC, internationally agreed standards focus on: the administration of youth justice (Beijing Rules, UN General Assembly, 1985); the prevention of juvenile delinquency (Riyadh Guidelines, UN General Assembly, 1990); use of non-custodial measures (Tokyo Rules, UN General Assembly, 1990); and the rights of children held in detention (Havana Rules, UN General Assembly, 1990). Their intended impacts are: preventing juvenile 'delinquency' through 'child-centred' interventions, thus minimising criminalisation; promoting community-based services that respond to children's identified needs, diverting them from the formal criminal justice system; and ensuring that deprivation of liberty is used as a last resort for the shortest possible period.

Within two years of UNCRC ratification an exceptional event came to dominate debate regarding children's culpability for committing serious crimes. On Merseyside in November 1993, two children aged 10 were charged with the abduction and killing of a two-year old child, James Bulger. Held in secure units for nine months without counselling or psychological support, in a climate of moral outrage, they were subjected to intense interrogation and tried in an adult court. The prosecution argued the killing had been premeditated. Summing up, the judge stated that both boys had committed 'an act of unparalleled barbarity'. Sentencing them to indefinite detention at Her Majesty's Pleasure, he revealed their identities. Beneath ferociously condemnatory headlines, the tabloids published prominent photographs of the boys. Public outrage was inflamed by political opportunism and reactionary responses from professional 'experts' and journalists. In a substantial article, Gerald Warner (*Sunday Times*, 3 July 1994) claimed the 'abducted toddler' had been 'beaten to death' for 'entertainment'. Releasing the 'school population' of 'sullen, introverted, ignorant and loutish young people' into 'general circulation' for

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[1] Following years of campaigning and commitment in the Scottish Parliament to embed children's rights, the UNCRC Incorporation (Scotland) Act 2024 came into force in July 2024. Wales has adopted a process of indirect incorporation, in which the Rights of Children and Young Persons (Wales) Measure 2011 includes a duty on Welsh Ministers to have 'due regard' to the UNCRC when exercising any of their functions.

summer holidays was 'life-endangering'. A 'nation of vipers', whose 'prevailing ethos is anti-social', a consequence of 'political correctness', threatened 'civilisation itself'. Warner's ill-judged tirade reflected a vindictive discourse directed against children while their voices remained silent.

An atypical case was projected as signifying a collapse in law and order. Conservative Ministers and their Labour Shadows used their annual conferences to elevate the vitriolic response; focusing on policing and punishing children defined as 'young offenders' and promising that new legislation would be introduced to clamp down on 'anti-social behaviour', 'disorder' and 'crime'. This discourse reflected Cohen's previous analysis of the creation of 'folk devils' and societal response to their actions as 'moral panics' (Cohen, 1972). Writing about the moral panic's impact as it engulfed the aftermath of the James Bulger case, Goode and Ben-Yehuda (1994: 31) argued that when 'young and morally weak' children are condemned for 'dabbling in evil', thereby 'wounding … the body social', their actions are signified as a societal 'crisis'. The political reaction hardens 'the social control apparatus of society - tougher or renewed rules, more intense public hostility and condemnation, more laws, longer sentences, more police, more arrests, and more prison cells … a crackdown on offenders' (Goode and Ben-Yehuda, 1994).

Negative representations of children and young people within their communities have been well charted by social historians and academics; from late 19th Century 'hooligans' (Pearson, 1983) through to contemporary 'yobs' and 'hoodies' (Bawdon, 2009; Gordon, 2018). Following the James Bulger case, however, the crime's severity was presented as the most extreme point on a continuum from 'anti-social' behaviour to acts of extreme violence. Within four years a newly elected Labour Government announced 'root and branch' overhaul of youth justice. Home Secretary, Jack Straw, committed to dismantling what he termed a prevailing 'excuse culture' that encouraged children 'to go on wasting their own, and wrecking other people's lives' (*The Guardian*, 28 November 1997).

A year later the Crime and Disorder Act 1998 established the principal aim of the youth justice system in England and Wales: 'to prevent offending by children and young persons'. The rebuttable presumption of doli incapax, incapacity to commit an offence, was abolished for 10-14 year olds. The overhaul of youth justice adopted a 'crime prevention' agenda, incorporating civil orders which became criminal offences if breached, with imprisonment a potential consequence. These included: Anti-Social Behaviour Orders (ASBOs); parenting orders; parental compensation orders; local child curfews; and child safety orders. Police forces, local authorities and magistrates were given unprecedented discretion in defining 'anti-social behaviour', loosely described as 'conduct which caused or was likely to cause alarm, harassment, or distress to one or more persons not of the same household'. The consequent criminalisation of children had a lasting impact on children's rights (Scraton, 2007). Criticised by the European Human Rights Commissioner as 'personalised penal codes' (Gil-Robles, 2005: 34), ASBOs undermined rights to the presumption of innocence, due process, a fair trial, access to legal representation, and privacy. The conditions imposed on children's movement breached their rights to family life, freedom of expression and association.

Cohen (2000) responded to the consolidating climate of profound hostility, arguing that the image of the 'folk devil' now appeared benign. Within a 'moral discourse of sin, monstrosity and perversion coupled with a medical model of sickness, pathology, and untreatability', children were condemned as 'essentialist offenders' (Cohen, 2000: 41-42). This synthesis underpinned a dominant discourse in which prevailing rhetoric targeted the marginalised, the destitute, and the dispossessed. It led directly to reaffirming claims for the renewal of moral order and social discipline, reflected in the language of zero tolerance, increased regulation and control of children, and harsher responses to those in conflict with the law. In October 2002, under-18s in youth custody in England and Wales peaked at 3,200. In 2014 ASBOs were abolished in England and Wales, replaced by age-related civil injunctions. Their breach results in harsh punishment, including detention. This development prompted further concerns about 'criminalisation creep', the blurring of civil and criminal law, the negative impact on children's rights resulting from imposed restrictions and criminal conviction arising from their breach (JUSTICE, 2023: 47-75).

Across UK jurisdictions a commitment developed to diversionary, community-based interventions as alternatives to prosecution. Consequently, in partnership with other agencies, the police are expected to be flexible in their response to minor offending or 'anti-social' behaviour. In Scotland, this includes restorative or recorded warnings, a fixed penalty notice for anti-social behaviour, referral to a specific agency, or targeted intervention. In Northern Ireland, police-led responses comprise of informed warnings, restorative cautions, or diversionary youth conferences. In England and Wales, a distinction is made between informal 'point of arrest diversion' involving community resolutions and formal 'out-of-court disposals' - either 'simple' youth cautions or cautions with attached conditions which are supervised by the local Youth Justice Service.

Expansion in diversionary responses has resulted in a decrease in formal criminal sanctions. However, concerns about the processes involved include: inconsistent practice; 'race' discrimination; the requirement that guilt should be admitted, without access to legal representation; differential capacity to give informed consent and participate in the process. Although not a criminal conviction, a diversionary disposal remains on police files and may be disclosed to employers, education providers, in immigration applications or applications to travel abroad. Within restorative justice, while responding to the individual who has been harmed, the welfare needs and rights of the alleged 'harmer' are often compromised through a process often experienced as 'shaming' (see: Haydon and Scraton, 2017). The Youth Justice Board emphasises earlier support as a priority for all agencies, commenting: 'children should not have to enter the youth justice system to have their needs met' (YJB, 2023: 20). Yet mainstream social welfare provision in communities, particularly interventions such as Sure Start and key public services - notably youth and community provision, drug and alcohol treatment, child and adolescent mental health services - has been decimated through government imposed 'austerity' measures, including substantive budgetary cuts.

When a child is found guilty of an offence, non-custodial disposals as alternatives to imprisonment are intended to identify their needs, addressing the underlying reasons for their harmful behaviours within the context of their family, school and community. In England and Wales, non-custodial sentencing options include referral orders and youth

rehabilitation orders. The latter may include supervision, curfew, electronic monitoring, 'community payback', restricted movement, involvement in specified activities, attendance at offence-related programmes, treatment for addiction or mental health conditions. In Northern Ireland, community sentences range from court-ordered youth conferences to attendance centre, reparation, community responsibility, community service, probation and combination orders.[2] In Scotland, disposals include absolute discharge or admonition, deferred sentences, a fine or compensation order, restitution, drug treatment and testing, restriction of liberty, and 'community payback' orders. Community-based responses, however, focus on pathologising or repairing the 'broken' individual, regularly restricting children's movements and associations while expecting restitution for harms caused through engagement in 'restorative justice' processes. In addition, recent legislation in England and Wales has toughened community sentences with the intention of deterring involvement in crime and re-offending (Home Office, 2022).

Child Incarceration

Throughout the UK there has been a significant decline in under-18s held in youth custody (see: Haydon, forthcoming). Children on remand or sentenced in England and Wales can be detained in one of the eight Secure Children's Homes (SCH) which provide places for Youth Custody Services as well as welfare placements (six SCHs are welfare only), a Secure Training Centre (STC), or one of four Young Offender Institutions (YOI) with units for 15-17 year olds. In Northern Ireland, the Juvenile Justice Centre detains 10-17 year olds for short periods as a 'place of safety' under the Police and Criminal Evidence (NI) Order 1989 (PACE), on remand, or following a custodial sentence. In Scotland, 12-17 year olds are placed alongside welfare placements in one of four Secure Care Units as a place of safety prior to court, on remand, or when sentenced.[3]

In the year to March 2023 children held on remand constituted 44% of the youth custody population in England and Wales, almost two thirds of whom subsequently did not receive a custodial sentence (YJB, 2024a: 32-35). Although the number given custodial sentences has decreased, responding to an assumed need to ensure that courts 'give sentences that provide justice for victims, reflect the seriousness of the crime and ensure that the public are protected' (Home Office, 2022), sentences have become harsher. The average length of a custodial sentence, excluding life and indeterminate sentences, increased from 12.4 months in 2013 to 19.6 months in 2023 (YJB, 2024a: 31). Children can be sentenced to a Detention and Training Order lasting between 4 and 24 months, half in custody and half in the community under supervision. Longer terms for specified periods are imposed for serious violent or sexual offences. The 2022 Police, Crime, Sentencing and Courts Act adjusted the automatic release point from half to two thirds of a custodial sentence of seven years or more. 'Life' sentences are mandatory for murder throughout the UK. In England and Wales, detention for a child convicted of murder is at 'His Majesty's Pleasure' - an indeterminate period reviewed periodically. In 2022, the minimum period a 10-17 year old

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[2] Current plans, outlined in the Strategic Framework for Youth Justice 2022-2027 (DoJ, 2022: 18-30), include reduction of these multiple orders to a single, flexible court-ordered community order which can be tailored to an individual child's circumstances.

[3] Enactment of the Children (Care and Justice) (Scotland) Act 2024 ended the holding of under-18s in YOIs from September 2024, replaced by use of secure care or intensive residential, community-based alternatives.

spends in custody on this sentence before being considered for release by the Parole Board was changed from 12 years to age-based tariffs.

In Scotland, a recently introduced sentencing guideline emphasises that sentencing for a young person (aged under 25) is different because they 'will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, than an older person' (Scottish Sentencing Council, 2022: 3). Establishing the factors to be taken into account when sentencing, the guideline states that a custodial sentence should only be imposed on a young person when the court is satisfied that no other sentence is appropriate. Custodial sentences include: an Order of Lifelong Restriction for those convicted of serious violent or sexual offences and assessed as presenting a risk of harm to others; an Extended Sentence; a Supervised Release Order; and 'detention without limit of time' for which the judge sets a 'punishment' element for those convicted of murder. In Northern Ireland, children are sentenced to custody under a Juvenile Justice Order for between six months and two years, half under community supervision. Similarly, detention is extended for serious offences or if the child is assessed as a danger to the community. The sentence for murder is 'detention during the pleasure of the Secretary of State' and the judge decides the tariff period.

In UK jurisdictions, most custodial sentences are imposed for violence-related offences (YJB, 2024a: 17; SCRA, 2023: 11; Brown, 2023: 12). The *Youth Justice Blueprint for Wales* notes that young people with four or more Adverse Childhood Experiences (ACEs) are fifteen times more likely to commit violence and twenty times more likely to be imprisoned. Murphy (2018: 4) argues the prevalence of ACEs, psychological distress and mental ill-health suggests that children's violence should be 'reframed as a vulnerability or distress behaviour that highlights unmet need'. Across the jurisdictions, there is an over-representation in secure care and custody of: boys; 15-17 year olds; children with disabilities or neurodevelopmental disorders; children with speech, language and communication difficulties or who are neuro-divergent; care experienced children; Roma, Gypsy and Traveller children; Black, Asian and Mixed heritage children; Catholic children in Northern Ireland (Robinson et al, 2017; McAlister et al, 2022; HMIP, 2023).

Roe (2022: 3) demonstrates that 'children entering welfare and youth justice secure settings have a high level of complex needs', with 'marked similarities' in their early life experiences and needs when deprived of their liberty. Experiences of trauma, together with socio-economic disadvantage, poverty, and discrimination, are typical. They are 'likely to face multiple difficulties and risks arising from mental health problems, challenging and offending behaviours, problematic substance use, self-harm, educational needs, and risk of sexual and criminal exploitation' (Roe, 2022: 3). As Goldson (2019: 229) argues, 'police stations, juvenile courts, various residential facilities and penal institutions are routinely populated by children … who suffer the most acute social and economic adversities and for whom the infrastructure of everyday life is disfigured by multiple deprivations and social harms.'

The Youth Justice Board recognises that 'patterns of violence, self-harm and trauma' among children in custodial settings 'are unacceptable' (YJB, 2024b: 5). Pre-existing vulnerabilities often are exacerbated by incarceration, particularly in YOIs which 'perpetuate the pain that many … have experienced' (Independent Care Review, 2020: 91; see: Goldson, 2002;

Vaswani and Paul, 2019; Haydon, 2020). The Scottish Prison Inspectorate has been committed to removing children from Polmont YOI stating, 'children should not be held in prison while more therapeutic alternatives are available' (HMIPS, 2023: 5). In England, according to the National Audit Office (2022: 18), the Ministry of Justice and His Majesty's Prison and Probation Service [HMPPS] acknowledge 'that much of the youth custodial estate does not meet children's need for tailored interventions, effective staff relationships, and access to family and local services'. Many establishments are 'outdated, too large, far away from children's families and poorly linked to community services' (HMIPS, 2023: 18). HMPPS notes that 'unsuitable provision, alongside a cohort of more serious offenders, has led to decline in children's safety and outcomes' (HMIPS, 2023: 18). This is evidenced in successive inspection reports detailing high levels of violence and poor behaviour management (see: Haydon, forthcoming).

In January 2016, a BBC *Panorama* investigation, Teenage Prison Abuse Exposed, into allegations of abuse and mistreatment in a privately-run STC revealed use of excessive force by staff in areas not covered by CCTV. In 2017, the Chief Inspector of Prisons reported the situation in England and Wales as 'dire', noting that 'there was not a single establishment that we inspected … in which it was safe to hold children and young people'. A 'vicious cycle' of violence prevailed, leading to restrictive regimes which, in turn, frustrated those detained (HMCIP, 2017: 9-10). Behaviour management 'focused on punishment rather than incentive', with responses to poor behaviour 'locked in a negative cycle of ever greater restriction' (HMIP, 2018: 5). Subsequently, the Chief Inspector reiterated concern regarding violence in STCs and the 'significant proportion' of children subjected to bullying or intimidation. Bullying in YOIs also remained 'serious' with an 'absence of adequate formal support for victims' (HMCIP, 2019: 56). In evidence to the Independent Inquiry into Child Sexual Abuse (IICSA), the Inspectorate had reported that the 'everyday nature of violence and intimidation affects the likelihood that children will trust the institution to protect them if they report sexual abuse from other children or staff' (HMCIP, 2019: 55). The Inquiry recorded that between January 2009 and December 2017 there were 1,070 alleged incidents of child sexual abuse within custodial institutions, involving 1,109 victims. Only nine allegations resulted in criminal charges, of which four resulted in conviction. More alleged incidents occurred during 2016 and 2017 than in any previous period, with incidents in STCs accounted for most of this increase (IICSA, 2019: 30-32). In 2020 and 2021, following a series of 'inadequate' inspection judgements and the issuing of Urgent Notifications, two STCs were closed. A third remains open, despite an Urgent Notification in October 2021.

In England and Wales during the year ending March 2023, in YOIs and the STC there were 1,900 assault incidents with over 3,200 assailants (YJB, 2024a: 48); 1,900 incidents of self-harm (YJB, 2024a: 47); 4,600 use of force incidents (YJB, 2024a: 46). There were 1,000 separation incidents in Secure Children's Homes and the STC plus 1,000 in YOIs (YJB, 2024a: 49). Between 2013 and 2023, three deaths occurred in youth custody (YJB, 2024a: 44). In 2023, the Inspectorate issued an Urgent Notification regarding one of the YOIs. It concluded, 'Solitary confinement of children had become normalised … Over a quarter of the population was completely segregated from the main population', most 'locked in their cells for 23.5 hours a day with no meaningful human interaction', breaching Mandela Rule 44 regarding solitary confinement. Records revealed that it was 'not unusual for this group of children to not come out of their cells for days on end', with education and other

interventions 'almost never delivered'. Two boys requiring protection from their peers were subjected to isolation for more than 100 days (HMCIP, 2023: 2). In Northern Ireland's Juvenile Justice Centre, a 2022 inspection recorded high use of single separation, often used as 'the conventional response and not a last resort' (CJINI, 2022: 42-44).

Punishment and Reform: A Dichotomous Relationship

In a graphic account of initiation into prison, Trevor Hercules reflects on the moment of transition from citizen to prisoner and loss of freedom. Arriving in a prison van, cuffed and isolated except for his escort, the 'driver bibbed his horn and the gates of hell swung open' (Hercules, 1989: 30). Disembarking, his last glimpse of the outside world fading, he was handed to reception guards. His hesitant answers to routine questions now defined him. Stripped for a full body search, he changed into well-worn prison clothes, then was escorted along an empty reception landing which wreaked of body odour, urine and disinfectant. Intimidated, he was silent. The cell was bare, mattress worn, in-cell toilet and sink soiled. The guard left without comment and a metallic turn of the key. As his footsteps receded, a harsh realisation hit home. For the foreseeable future Trevor would not unlock or open a door, move unescorted beyond the wing, determine when he ate, exercised or breathed fresh air, read unopened personal correspondence, or have contact with loved ones. He had entered the physical and psychological confines of unfreedom. Regardless of age, this is the experience of all prisoners. For children, however modified the process, the initial shock of incarceration is profound (Goldson, 2002: 125-143; Willow, 2015: 193-210).

As Goffman (1968: 24) wrote, the enforced detachment of prisoners from their social and personal environments is unrelenting, imposing a 'series of abasements, degradations, humiliations and profanations of self'. Deprivation of liberty remains the severest punishment administered within most advanced democratic states.[4] To what end? Echoing the literature on moral and political justifications for imprisonment, Cavadino and Dignan (2006) identify two distinct objectives: *retribution*, inflicting punishment proportionate to the crime, and *reductivism*, deterrence through incapacitation. Acts defined as crimes are condemned and punished, prison sentences are justified as giving reparation to victims. Foucault (1977: 82) observed that the primary objective of penal reformism is not to 'punish less' but to 'punish better'. However, as Garland (1985: 260) concluded, regimes fail to prioritise reform, culminating in prisons descending into 'closely supervised spirals of failure and continued failure'.

Dichotomous relationships between punishment and reform, between incapacitation and rehabilitation, are central to popular discourses regarding prisoners' rights and welfare. According to Fleury-Steiner and Longazel (2014: 8), the consolidation of a retributive climate has remained evident in the 'stunning evisceration of prisoners' rights'. Reformist objectives became overwhelmed by reactionary policies incorporating 'aggressive incapacitation' and 'containment'. Profound inhibitions placed on prisoners' physical movement and social interaction - markedly increased during the Covid-19 pandemic (Maruna and McNaull, 2023) - have resulted in prison as 'a space of pure custody, a human warehouse … a kind of social waste management' (Simon, 2007: 142). According to Rhodes (2006: 76), harsh

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[4] In the USA, twenty three states have abandoned the death penalty, although it remains in twenty seven states.

conditions demonstrate the 'overriding emphasis on efficiency and security', requiring 'intense surveillance' alongside systemic denial of 'sensory stimulation, social contact and privacy'. Although most evident in the USA, where children regularly are chained, 'individualization and resocialization' have been eliminated 'from the practice of punishment, substituting retribution, incapacitation, and determinate sentencing' (Whitman, 2005: 69).

Yet as Davis (2003: 15) notes, jails occupy a 'simultaneous presence and absence' in public consciousness, often 'taken-for-granted' while 'the realities they produce' remain hidden. Public ambivalence and indifference to the operation of prison regimes are compounded by often salacious 'entertainment' of fictional television series and tightly controlled 'factual' documentaries. Within those regimes prisoners suffer the consequences of debilitating institutional control of their daily experiences and social interaction, with restrictions imposed on contact with the world beyond the prison. For Leder (2004), incarceration is purposefully infantilising and disempowering. In cells, on landings, in workshops and education classes, and during unlock, prisoners are contained and controlled, their actions determined by the regime's operational priorities and guards' discretion. They are subjected to 'normative commitments and ritual compulsions' perpetuating 'routine sources of order' (Carrabine, 2005: 910). Consequently, the prisoner is reduced to a 'disciplined subject', receptive to 'habits, rules, orders, and authority … exercised around him [sic] and upon him [sic] which he must allow to function automatically in him [sic]' (Foucault, 1977: 128).

Derived in her experience as a prisoner, Davis (1990: 52-53) identifies tensions within regimes on two levels: 'routines and behavior prescribed by the governing penal hierarchy' – determined and controlling; and the 'prisoner culture itself' – spontaneous and volatile. Together, they generate a 'resistance of desperation' derived in prisoners' awareness that the State's priority is 'that the prison system will survive'. While prisoner culture reflects the 'dance of … inmate and captor, prisoner and non-prisoner' (Quinney, 2006: 270), its potential to initiate change through challenging the regime's operational policies and practices are minimal. The 'dance' that Quinney eloquently expresses is not one of equal partners. Prisoners are well aware of the limitations imposed on their capacity to negotiate or affect carceral power.

Given the punitive emphasis of incarceration, Scott (2018: 23-25) critiques 'liberal humanitarian penological thinking' and the creation of 'a kind of penal utopia' through which 'lawbreaker[s] with complex needs' can 'turn their life around'. He questions the proposition that prisons can function on principles of 'safety and reform'; the latter predicated on the notion that 'morally deficient' prisoners can be transformed by 'virtuous' and fair regimes which prioritise positive moral values, respect human dignity, and safeguard prisoners' rights. Liberal humanitarianism aligns with the World Health Organisation's four tests of 'healthy prisons': safety; respect; purposeful activity; resettlement (HMIP, 2024). In this vision, jail can transform prisoners' lives 'through personal reflection' in 'inclusive, healing, respectful' regimes within a 'democratic egalitarian community of care and respect' (Scott, 2018: 27). Yet the history of penal reformism is one of persistent failure where 'moral exclusion and moral indifference' trump 'moral inclusion'. In political and popular discourse, prisons 'label, stigmatise, categorise

and distance a perceived morally inferior person – the prisoner'; they 'deliver pain' (Scott, 2018: 28).

Law (2009: 168) argues that penal reforms 'mask the inequities and injustices inherent in the prison system and historically have strengthened its capacity and ability to separate and punish those who transgress social mores, particularly the poor, people of color and other marginalized populations'. Analysing the USA's 'new geography of mass incarceration', Norton, Pelot-Hobbs and Schept (2024: 5) note that, while reformists challenged the prevalent 'tough on crime' agenda, the unforeseen consequence was 'massive carceral growth' incorporating 'the language of human rights, therapeutic justice and reform'. Appealing to 'kinder, gentler' regimes under the mantle of 'carceral humanism' reflects the compromised history of reformist paternalism, its focus being 'principles of rehabilitation and treatment'. Welfare programmes derived in carceral humanism claim to provide marginalised populations with 'access to a variety of mental and physical health services, poverty programs, and substance abuse programs'. They also feed a demand 'for greater carceral capacity' and 'no one is safe inside a jail' (Norton, Pelot-Hobbs and Schept, 2024: 8).

As Herzing and Piché (2024: 7) note:

> 'prisons are the least effective environments for the promotion of positive change in people's lives … [they] are locations of substantial harm … along with emotional, financial, and social damage experienced by loved ones of prisoners'.

Over forty years ago, Christie (1981: 13) named the 'shield of words' masking the regulatory 'character' of prisons through which the prisoner becomes 'client' or 'inmate'; the 'cell' becomes 'room'; 'solitary confinement' becomes 'single-room treatment'. Carceral humanism assumes prisons can be a 'hygienic operation' through which 'pain and suffering' are 'vanished … from the applied labels' but 'not from the experience of those punished'. Prisoners remain 'as they used to be: scared, ashamed, unhappy' (Christie, 1981: 13).

Evidencing Garland's 'spirals of failure and continued failure', in August 2024 the End Child Imprisonment campaign provided a review of evidence demonstrating why child imprisonment in England and Wales is *beyond reform*. Between 1998 and 2024 there has been a 'recurring policy goal of transformation', with 'consistent, discrete government and Youth Justice Board pledges focused on individual aspects of children's safety and welfare' (End Child Imprisonment, 2024: 2). In addition, commissioned reviews and inquiries have considered the youth justice system and the youth custodial estate as well as the use of pain-inducing techniques, physical restraint, solitary confinement and strip searching. Since 2001, annual surveys by the Inspectorate of Prisons have revealed the extent to which children in YOIs and Secure Training Centres feel unsafe and uncared for. Thematic reviews by the Inspectorates of Prisons and Probation have focused on topics ranging from children on remand and outcomes for girls in custody to behaviour management and restraint, the separation of children in YOIs, and resettlement (End Child Imprisonment, 2024).

Yet change has been minimal and the majority of children 'are still detained in institutions whose history, culture and practices originate and in many respects replicate the confinement and punishment of adults' (End Child Imprisonment, 2024: 2). In July 2024, just 84 (16%) of the 540 children in custody were placed in secure childcare establishments, with 386 (71%) in YOIs and 70 (13%) in the Secure Training Centre (GOV.UK, 2024: Table 1.8) where, as this article has established, many continue to experience harm in violent and unsafe environments. As Medlicott (2001, cited in Goldson and Kilkelly, 2013: 369) observes, many policies 'exist more at the level of claim and representation on paper than in operational practice'.

In analysing child deaths in custody in England and Wales between 1990 and 2005, Goldson and Coles (2005: 61) criticised the concepts of 'safer custody' or the 'caring prison' as 'in essence, an oxymoron', with 'little or no evidence to imply that the innumerable policies, practices and procedures designed to provide safe environments for children in penal custody have succeeded.' Clearly, punitive regimes prevail in YOIs and the Secure Training Centre in England and Wales, inhibiting any form of education or rehabilitation and subjecting children to the discretionary power, both formal and informal, institutionalised in the authority of adult guards and their managers. The principles of humanitarianism are not implemented, these are not communities of care and respect. The Inspectorate has noted 'long-running failures to educate children or keep them safe'; 'declining outcomes for purposeful activity'; 'safety outcomes more volatile year on year'; 'breakdown of behaviour management'; failure to meet children's statutory entitlement to education; and imposition of 'keep apart' restrictions affecting access to health care (HMCIP, 2024: 80-86).

Discussing the limitations of human rights standards and debate about penal reform, Goldson and Kilkelly (2013: 369) argue that 'profound questions' must be raised regarding the legitimacy of 'so-called "human rights approaches" to the penal detention of children'. While noting the anomaly that 'human rights law permits the detention of children - in the knowledge that it often imposes serious and harmful effects - and then attempts to limit such effects', they conclude: 'Irrespective of reform efforts and no matter how the practices of penal detention are "dressed up" in human rights and/or penal reform "talk" … to punish a child by way of imprisonment ultimately amounts to the deliberate imposition of "organised hurt"' (Goldson and Kilkelly, 2013: 370). The damage inflicted on children by incarceration, in whatever form it takes, is a stark extension of the retributive regimes imposed on all prisoners. As the above discussion demonstrates, while prisons are presented as places of behavioural reform and resettlement, they remain locked into a dominant ideology of containment and punishment regardless of prisoners' class, race, gender, or age. Given the abject failure of penal reformism, what progressive alternatives might be advanced?

Towards Prison Abolition

Prison abolition has a long history, its contemporary focus owing much to Mathiesen's (1974) ground-breaking text, *The Politics of Abolition*. He argued that, as material value ascribed to citizens relates directly to their productivity, prisoners are rendered powerless, even worthless, by non-productivity. Rather, they appear on the metaphorical balance sheet as a net cost. Hulsman (1986: 64) emphasised that the unscrutinised closed relationship between the state and prisons is 'alarming, since the typical products of the

system are the infliction of suffering and stigmatisation'. Mathiesen (1990: 139) argued over thirty years ago that the 'prison fiasco' had worsened, a product of penal expansionism sustained by media support for prisons, criminal justice agencies' operations, and prisons' collaboration with non-state professional groups.

As Scraton and Carlton (2018: 185) conclude, 'from its inception', the 'modern prison' has been 'the focus of abolitionist critique, consistently challenging the ever-expanding prison-industrial complex'. Abolitionism interrogates incarceration, conceptually and structurally, as an 'inevitable fact of life' (Davis, 2003: 15). Unless experienced directly, prisons are taken-for-granted, their reality rarely noticed. Davis concludes, 'The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers'. Incarcerating 'others', 'relieves us of the responsibility of seriously engaging with the problems of our society' (Davis, 2003: 15).

Contextualising the abolitionist critique, Sim (2009: 8) considers 'the material role of the modern prison, as a *state* institution' to be 'intimately connected with the reproduction of an unequal and unjust social order divided by the social lacerations of class, gender, "race", age and sexuality'. Incarceration, therefore, functions within 'the complex process of defending and reproducing these social divisions' (Sim, 2009: 8). Identifying 'the complex interrelationship between the prison, the state and the wider social order', abolitionists reject the liberal reformist narrative that places trust in 'benevolent reform', and faith in managers, guards and other professionals who service prisons. It is misplaced trust given that 'the prison is a place of soul-crunching punishment and pain for the economically and politically powerless' (Sim, 2009: 8).

As Davis et al. (2022: 47) argue, the 'criminal justice system is purposefully retributive'. Punishment is established as 'the very essence of justice ... naturaliz[ing] the assumption that the only way balance can be created in the aftermath of harm is by proportional punishment'. Policing, prosecutions and incarceration focus on communities and individuals made vulnerable by socio-economic marginalisation, resulting in a 'process' driven by 'vengeance, not justice' (Davis et al., 2022: 47). Abolitionism, however, 'moves beyond the literal incarceration of bodies', addressing the 'broader set of cruel constraints that incapacitate and police whole communities'; foregrounding 'race, gender, class, and sexuality' as 'important determinants of who goes to prison' (Davis et al., 2022: 48).

Committed to 'removing the prison from sociological and ideological landscapes', Davis (2003) proposes an 'overarching strategy' *towards* 'decarceration' with prisons replaced by a 'continuum of alternatives', including 'comprehensive revitalisation of education at all levels, a health system that provides free medical and mental healthcare to all' connected to a 'justice system based on reparation and reconciliation rather than retribution and violence' (Davis, 2003: 107). Abolitionist alternatives 'disarticulate crime and punishment, race and punishment, class and punishment, and gender and punishment'. The prison system, she argues, cannot be decoupled from the 'social relations' that 'support its permanence' (Davis, 2003: 112).

Thus, Davis (2005: 96) advocates the funding of 'an array of social institutions that would begin to solve the social problems that set people on the track to prison'. Such a preventive programme requires state-sponsored, fully resourced initiatives responsive to the needs of impoverished communities. She concludes, 'the problems with which so many communities are afflicted – poverty, homelessness, lack of healthcare, lack of education' are neglected by a 'system' that 'throws people who suffer from these problems into prison' (Davis, 2005: 96). Prison has become the 'institution *par excellence* in the aftermath of the disestablishment of the welfare state' (Davis, 2005: 118).

Conclusion: Decriminalisation and Decarceration

The vulnerabilities described by Davis et al. (2022) are experienced at an early age as the behaviours of children in marginalised communities are defined 'anti-social' or 'criminal'; affirming *age* as an additional significant determinant of who is incarcerated. Punitive initiatives in communities and in prisons have exacerbated children's debilitating experiences of rejection, low esteem, minimal opportunities and diminished hope. Institutional rigidity alongside harsh rhetoric adopted by commentators, self-appointed 'experts' and politicians, have maintained the intolerance implicit in naming, shaming and condemnation.

Regardless of stated commitment to the 'child first, offender second' principle across UK jurisdictions, a regulatory consciousness prevails. Diversionary responses intended to limit involvement in the formal criminal justice system remain unnecessarily restrictive and punitive. Experienced as shaming, these can have unanticipated consequences affecting educational, employment, or travel options. Community-based alternatives to custody for those found guilty of offences invariably lead to significant restrictions on children's movements and relationships, alongside stringent requirements to attend programmes and engage in unpaid work or activities. In England, children are held in institutions assessed by inspectors as inadequate and dangerous, without potential for rehabilitation or 'reintegration' into communities that are the sites of their marginalisation (see: Haydon, forthcoming).

Goldson and Kilkelly (2013: 370) highlight that politicians, policy-makers and courts of law are not *obliged* to lock up children but *choose* to do so…

> 'in the knowledge that penal detention is not only deleterious to the well-being of child prisoners, but that it is also profoundly irrational and spectacularly counter-productive when measured in terms of crime prevention and community safety'.

In 2016, the Taylor Review of youth justice in England and Wales recommended replacement of YOIs and STCs with small, local 'Secure Schools'; defined as 'schools with security' rather than 'prisons with education' (National Audit Office, 2022: para 15). Progress, however, has been slow. The first school, Oasis Restore, a charity-run Secure Academy Trust accommodating up to forty-nine 12–18-year-olds on remand or sentenced, opened in October 2024. Significantly, Hart (2018: 52) argues that such initiatives simply 'perpetuate a flawed model rather than being genuinely transformative'. They fail to 'break down the barriers between the welfare and justice systems' or 'tackle the reasons for

troubled and troublesome behaviour' (Hart, 2018: 56). Small secure care facilities with appropriate staffing and a childcare ethos are intended to provide safe, welfare-oriented environments prioritising personal support, care, educational and healthcare provision. Although more appropriate than STCs and YOIs, these remain sites of incarceration and are often perceived as punishment by detained children (see: Gough, 2017; Haydon, 2018).

Also applying to adults, decriminalisation and decarceration for children and young people require analytical and political shifts: from corrective, punitive processes of criminalisation towards supportive child-centred welfarism; from the intervention of criminal justice agencies to responsive, integrated children's services. Promotion and protection of children's rights is grounded in recognition of the additional care and protection required by children who are inherently and structurally vulnerable (Haydon, 2012: 30-31). In 2018, the Special Rapporteur on the right to enjoyment of the highest attainable standard of health emphasised that child detention 'is linked to the social determinants of health' (Human Rights Council, 2018: para 57). He continued: 'Poverty, social exclusion … gender, ethnicity and disability are all factors associated with the loss of liberty in childhood', with children from economically and socially disadvantaged communities, including those from ethnic minorities and those in the care system, disproportionately incarcerated (Human Rights Council, 2018: para 57). Arguing that investment to tackle underlying determinants of poor health 'is not only an obligation for the progressive realisation of the right to health', but also a 'promising strategy to prevent incarceration over the long term', the Special Rapporteur concluded the 'scale and magnitude of children's suffering in detention and confinement call for a global commitment to the *abolition of child prisons and large care institutions alongside scaled-up investment in community-based services*' (Human Rights Council, 2018: para 53, emphasis added). This call was affirmed in the UN Global Study on Children Deprived of Liberty (Nowak, 2019).

In its 2023 Concluding Observations on the implementation of children's rights in the UK, the administration of child justice was a priority raised by the Committee on the Rights of the Child (CRC). It remained 'deeply concerned about the draconian and punitive nature' of the child justice system. Proposing an increase in the age of criminal responsibility to at least 14, it recommended the State should ensure that no children are prosecuted as adults and the child justice system is applied to all below the age of 18 at the time of the offence. Detention should be a last resort, only for minimal time and regularly reviewed with an eventual objective of withdrawal. Life imprisonment should be abolished for those who committed offences when under 18. Early intervention should be expanded, alongside active promotion of non-judicial measures for children accused of criminal offences and non-custodial disposals for those found guilty of offences in formal court proceedings. Children accused or found guilty of an offence should be guaranteed access to qualified, independent legal representation throughout the process.

The CRC is clear that children should not be remanded to police custody, nor detained overnight. Pre-trial detention should be a last resort. All detained children should be held in conditions consistent with international standards, including access to education, visits, physical and mental health services. Children should not be held in solitary confinement. When separation is used, the child should be closely supervised by appropriately trained staff. Allegations of violence, including sexual abuse, should be promptly investigated.

Racial profiling by law enforcement authorities should be ended and measures to address over-representation of children from minority groups in detention should be informed by consultation with children and their families. All professionals involved in the youth justice system should receive training about child-friendly justice, children's rights and the UNCRC (CRC, 2023: para 54a-k).

Reflecting on international evidence, Goldson and Kilkelly (2013: 371) recommended ten years previously that 'the global juvenile/ youth justice policy, practice and research communities should collaborate to develop determined strategies to secure the abolition of child imprisonment'. Meanwhile, interventions restricting the liberty of the 'small number of children whose behaviour is legitimately deemed to place them and/or others at *demonstrable serious risk*' should be 'far more rigorously monitored … in accordance with international law as a minimum and non-negotiable standard'.

As this article demonstrates, progress in achieving these goals in UK jurisdictions has been inconsistent. In England and Wales, building on recommendations in independent reviews of the youth justice system (Taylor, 2016) and children's social care (MacAlister, 2022), the End Child Imprisonment campaign (2024: 30) recommends closure of YOIs for children and the remaining Secure Training Centre, as well as transfer of Ministerial and civil service responsibility for children deprived of their liberty through criminal courts from the Ministry of Justice to the Department of Education, with the Youth Custody Service moved out of HM Prisons and Probation Service and integrated within teams responsible for Secure Children's Homes and other relevant children's social care policy. Further, it recommends establishing an independent review of the circumstances in which children may be deprived of their liberty - through criminal justice, mental health and social care routes - to ensure that it is a measure of last resort for the shortest period of time. Finally, it argues that publication of a strategy and timetable for the closure of child prisons should prioritise supporting children and families in their communities, using childcare establishments when deprivation of liberty is the only means of avoiding serious, immediate harm to the child or others.

Although Northern Ireland's Juvenile Justice Centre operates a 'child centred' approach it remains a custodial institution provided by the Youth Justice Agency, an agency of the Department of Justice. Proposals to establish a regional care and justice campus comprising a Secure Care Centre as well as multi-agency community-based provision were shelved in 2022 when the Ministers of Justice and Health decided that the existing Secure Care and Juvenile Justice Centres would continue to operate independently but with shared health and education services to support young people and common standards across both facilities. In Scotland, there has been a shift towards use of community-based initiatives and Secure Care Centres operated by independent charitable providers for vulnerable children requiring intensive support to address their complex needs. The *Reimagining Secure Care* Report prioritises rights- and community-based alternatives to the current secure care model (CYCJ, 2024).

This article makes a compelling case for the abolition of custody and the necessity of appropriately resourced, non-punitive interventions to support those in conflict with the law. While unpopular within a retributive political climate and reactionary media discourse,

alternatives to confinement in harsh regimes are required for all – adults, young people and children. The populist appeal of punishment and retribution must be rejected and replaced by political commitment to social and economic investment in communities, redressing structural inequalities, recognising vulnerabilities and providing humanitarian alternatives to the deprivation of liberty. For children and young people, the impacts of economic marginalisation, social exclusion, personal trauma and adverse childhood experiences cannot be addressed through the criminal justice system.

Acknowledgements

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