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No place for children: A case for the abolition of child imprisonment in England and Wales

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Abstract

This paper provides an argument for the abolition of child imprisonment in England and Wales. England and Wales is not Ireland, but the cultural and social similarities suggest that children face a great deal of the same pressures, difficulties, trials and tribulations regardless of which side of the Irish Sea they live on. Therefore, it may provide a useful analogy for Irish policy makers. The paper argues that the incarceration of children has a wide range of negative effects on children and is provided at an excessive cost to the exchequer. Restorative justice is put forward as a viable alternative which is highly cost effective and has yielded positive results in terms of recidivism.

Keywords: abolition; children; imprisonment; youth justice; incarceration; restorative justice

Introduction

Prison is not a place for children. According to Goldson (2002), the incarceration of children has proved to be spectacularly ineffective for many years. Despite this, more children are locked up through the youth justice system in England and Wales than in almost any other country in Western society (NACRO, 2011; Ruxton, 1996). This is hardly surprising, as according to Fionda (2005) one of the dominant themes in youth justice policy has always been the incarceration of young people. According to the Prison Reform Trust (2011), at the end of September 2011 there were 2,061 children in custody in England and Wales. This represents a decrease of approximately 4% on the figure for 2010, and a decrease of 30% on the figure in 2008 (Allen, 2011). However, this decrease is a relatively new phenomenon. According to Fionda “the general statistical trend over the course of the twentieth century has been escalatory” (2005, p. 164), and this was never more evident than during the period 1992 -2002. During this period the number of children sentenced to custody rose by 85% even though the level of youth crime being detected actually fell by over 25% (NACRO, 2010). Critics have long argued that sending children to prison is counter-productive, ineffective and expensive (NACRO, 2011; Goldson, 2002; Miller, 1991). Over the course of this paper this argument will be supported and it will also argue that the time has now come for the abolition of custody for children.

This paper will be divided into three separate sections. The first section will examine the historical trends of child incarceration. This will focus on what Fionda refers to as the “escalatory” (2005, p. 164) trend in child custody over the course of the twentieth century. It will also consider the exceptions to this rule which occurred in 1969, the 1980s and the more recent reduction since 2008. The second section will then examine

the arguments which have been put forward by a wide range of academics, social scientists and think tanks (Goldson, 2002; NACRO, 2003; New Economics Foundation, 2010), which favour the abolition of child imprisonment. The three principle arguments which will be considered which favour abolition are: the extensive cost of imprisonment, the damaging effects of imprisonment and high recidivism rates. The third section will then discuss the potential of restorative justice as an alternative to custody. This paper will examine schemes in which restorative justice has been used in a youth justice setting (Northern Ireland) as well as with adults (England and Wales), as well as discussing the potential that it has shown to reduce re-offending and encourage reintegration into the community, especially in the youth justice context (Lyness, 2008; Campbell et al., 2006; Trimboli, 2000).

The history of youth justice in England and Wales

Examination of the literature and statistics available reveals that throughout virtually all of the twentieth century the numbers of children in custody increased (Allen, 2011; New Economics Foundation, 2010; Fionda, 2005; Soloman & Garside, 2008; Goldson, 2002). According to Goldson, the practice of locking up children in England and Wales is “well established” and “casts its shadow over the best part of two centuries” (2002, p. 387). This section will trace the historical narrative of child incarceration thus providing an accurate context in which to understand today’s failings. It is the authors contention that the failure to provide any meaningful reform in this area over the last century has resulted in what Goldson describes as “a long history of failure and inhumanity” (2002, p. 387), which results in nothing more than harm and damage to children on physical, emotional and psychological levels (Goldson, 2005).

Prior to the nineteenth century there was very little to distinguish between the treatment of adult and juvenile offenders (Gelsthorpe, 2002). It is argued that over the course of the nineteenth century there was a “re-conception” (Hendrick, 2006, p. 4) of juvenile delinquency and this was due to a number of factors: “Firstly, the emergence of a discourse on juvenile delinquency as a distinct social problem; secondly, the expansion of summary jurisdiction; and thirdly, the emergence of Reformatory and Industrial schools” (Gelsthorpe, 2002, p. 48).

By the early twentieth century this shift in thinking was well underway. The Youthful Offenders Act (1901) and the Probation of Offenders Act (1907) extended the use of non-custodial sanctions and introduced the principle of supervising juvenile offenders in the community. Furthermore, under the Children Act (1908) imprisonment of juveniles under 14 was ended and replaced by the Borstal system, which was to focus on training, work and discipline, provided in a secure environment. The 1908 Act was notable for its attempt to “reconcile welfare and justice imperatives through the establishment of the ‘juvenile court’ with both civil jurisdiction over the ‘needy’ child and criminal jurisdiction over the offending child” (Hendrick, 2006, p. 8). Further reforms were introduced throughout the twentieth century such as the Children and Young Persons Act (1933) which provided that juvenile courts act *in loco parentis* for those juvenile offenders who required it. The Children Act (1948) established a local authority childcare service, and by the end of the 1960s the Labour government had passed the Children and Young Persons Act (1969). This Act sought to raise the age

of criminal responsibility from 10 to 14; to substitute non-criminal care proceedings in place of criminal proceedings for the 10-14 age group; to encourage a more liberal use of non-criminal care proceedings for the 14-17 age group; and to ensure that court appearances were used only as a last resort. This was described as “a moment when the approach taken seemed poised to move decisively towards making children’s welfare paramount in juvenile justice” (Independent Commission on Youth Crime and Anti-Social Behaviour, 2010, p. 31).

However, the Conservative government which was elected in 1970 ensured that key sections of the Act were not introduced. What actually resulted was a system of bifurcation, whereby serious young offenders saw more custody, and those who committed minor offences were diverted away from the criminal justice system (Bottoms, 2002). As a result, between 1971 and 1975 the number of 14 – 16 year olds remanded into prisons or remand centres before conviction increased by 103% (Pope, 1977). When the Conservative government returned to power in 1979 many expected that this would result in a more punitive and expansionist agenda in youth justice (Goldson, 2002). According to Newburn, the 1979 Conservative election manifesto was “the most avowedly 'law and order' manifesto in British political history” (1997, p. 642). What actually resulted was quite a progressive period in youth justice whereby the numbers of children in custody fell, albeit inadvertent of government policy. While there was no actual government policy seeking to reduce numbers, “practitioners at ground level had adopted a working ideology which was fundamentally opposed to any form of institutionalization ... Probation officers and social workers then began a campaign to divert as many young people out of the criminal justice system at an early stage through cautioning, and, where a young person was prosecuted, to implore magistrates not to use their custodial sentencing powers As a result, the rate of imprisonment of juveniles fell extensively between 1982 and 1990, from 7,100 to 1,400 (the juvenile prison population as a whole falling from 1,717 in 1980 to 284 in 1990)” (Fionda, 2005, p. 165). However, in 1993 the tragic murder of Jamie Bulger altered youth justice policy in the UK forever. After this tragedy occurred we were told by the Prime Minister that we should “condemn a little more and understand a little less,”ⁱ as well as being told that “prison works”.ⁱⁱ In 1994 the Criminal Justice and Public Order Act was introduced and “for the first time in many decades, imprisonment was to be available again for young people under 15” (Fionda, 2005, p. 165). The Act also doubled the length of custodial sentences for those over 15 (section 17) and allowed children as young as 10 to be transferred to the Crown Court for the trial of grave offences (section 16). The Audit Commission stated:

“The current system for dealing with youth crime is inefficient and expensive, while little is being done to deal effectively with juvenile nuisance. The present arrangements are failing the young people - who are not being guided away from offending to constructive activities. They are also failing victims” (1996, p. 96).

In 1997 New Labour came into power. The previous year the Labour Party had published a consultation document entitled “Tackling Youth Crime: Reforming Youth Justice” (Labour Party, 1996), which echoed the findings of the Audit Commission (1996). New Labour was to be “Tough on crime and tough on the

causes of crime”ⁱⁱⁱ, and to achieve this they proposed a radical overhaul of the youth justice system. Within two months of taking office, six consultation documents on youth crime were published (Newburn, 2002). The Crime and Disorder Act was introduced in 1998 and Section 37 stated that the principal aim of the youth justice system was “to prevent offending by children and young persons.” The Act established the Youth Justice Board, replaced cautions with a new reprimand and final warning scheme and restructured the non-custodial sanctions available to the courts. It also reduced the age of criminal responsibility to ten by abolishing the principle of *doli incapax*. Despite hoping to “prevent offending by children and young persons” (s. 37 Crime and Disorder Act), Labour’s reform of the youth justice system created “a more rigid response to offending and has drawn individuals into the criminal justice system more easily. Since 1997 the average length of custodial sentences for several offence groups has doubled” (New Economics Foundation, 2010, p. 3). Their policies have resulted in a rate of imprisonment for juveniles which is higher than in nearly every other Western European country (New Economics Foundation, 2010). Since 2008 there has been a reduction in the number of children imprisoned but this has not been linked to any specific effort on behalf of the last Labour government or the present coalition. Rather, the fall in the use of custody for children is accounted for “both by a drop in overall numbers being sentenced by the courts and by a drop in the proportion sentenced to custody ... and in part by the improved performance and focus of Youth Offending Teams” (Allen, 2011, p. 25). According to Morgan (2010), at any one time there are approximately 3,000 10-17 year olds in penal custody in England and Wales.

No place for children: A case for the abolition of child imprisonment

The argument for abolishing, or at the very least significantly reducing the use of imprisonment for children, has been “cogently made” (Bateman, 2005, p. 91) by academics, criminologists and think tanks for years (Miller, 1991; Goldson, 2002 & 2005; NACRO, 2003; New Economics Foundation 2010; National Audit Office, 2010). The opening sentence of this paper clearly sets out the view of the author on this matter, that prison is not a place for children. This section of the paper will examine three arguments which support this contention.

Cost

The first argument for the abolition of imprisonment for children comes from a financial point of view. Given the current economic crisis no decision can be made by government without due consideration being given to cost. The numbers are quite staggering. For the financial year 2010 -2011 the budget for the Youth Justice Board was £452 million (Youth Justice Board, 2010). This is almost double what it was in 2000 – 2001, £241 million (Soloman & Garside, 2008). Of the budget for 2010 – 2011, 59% of overall expenditure was spent on secure accommodation (£268.9 million). Other areas included crime prevention (£36.2 million), supervision and surveillance (£33.3 million) and resettlement and substance misuse (£15.1 million) (Youth Justice Board, 2011). However, the expenditure of the Youth Justice Board “only tells a part of the fiscal story” (Goldson, 2005, p. 83). Further costs include the public expense incurred in processing children through the courts and imposing penal remands and/or custodial sentences. The National Audit Office (2010) estimates that the true figure is much higher than the Youth Justice Boards budget

alone, stating that “the youth justice system spends some £800 million annually on dealing with youth crime” (2010, p. 9). This figure is almost double the budget of the Youth Justice Board.

The National Audit Office also provides a breakdown of the individual costs associated with imprisonment in the youth justice system. It costs £215,000 per place per year in a Local Authority Secure Children’s Home; an average of £60,000 in a Young Offender Institution; and £160,000 in a Secure Training Centre (National Audit Office, 2010). According to the New Economics Foundation (2010) the additional costs of imprisonment, such as exclusion from the labour market as well as a disconnection from the education system, amount to at least an additional £40,000 per year, per individual sentenced. Considering the financial austerity that we are currently experiencing these figures do not make for pleasant reading. Perhaps they would be acceptable if the imprisonment of children was having a positive effect in areas such as rehabilitation and reducing recidivism rates. However, this is not the case and according to the New Economics Foundation, “despite the massive resources that prisons require, they have many damaging effects on the lives of children who are locked up” (2010, p. 4).

The damaging effects of imprisonment

Concerns over personal safety, bullying, racism, insulting comments, boredom, insufficient health and psychiatric care, self-harming and suicide are only some of the characteristics of many young offender institutions in England and Wales (HMIP, 2010; Howard League, 2008; Fionda, 2005; CRAE, 2003; Wade, 1996). Research published by HMIP (2010) showed that 31% of young men and 22% of young women felt unsafe during their time in a Young Offender Institution. Victimization was also an issue with 24% of young men and 18% of young women reporting that they had been victimised by one person or a group of people while at the establishments. 23% of male respondents and 20% of female respondents claimed to have been victimised by members of staff. Most commonly this manifested itself in physical abuse or insulting remarks. There is clearly an issue of rights here and such findings suggest that Article 37 (c) of the United Nations Convention on the Rights of the Child is being breached (Smith et al, 2007). Article 37 (c) states:

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”. These findings also suggest that the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990) are being breached, as Rule 1 states that the juvenile system should “uphold the rights and safety and promote the physical and mental well-being of juveniles”.

The UN Convention on the Rights of the Child also states that detention or imprisonment of a child should only be used as “a last resort” (Art. 37 [b])^{iv}. Throughout the years since the Convention was ratified it has been argued that imprisonment has not been used as a last resort (Muncie, 2009). All four of the Children’s Commissioners in the UK have all reported serious violations of the UN

Convention with various concerns including: the criminalisation and demonisation of children, the failure to use custody as a last resort and the failure to protect children who are in custody (UK Children's Commissioners, 2008). There is no excuse for mistreatment as described above. All prisoners, adult and child, retain the same human rights that they had before entering into prison. This has been acknowledged by the courts since the case of *Raymond v Honey*^v when Lord Wilberforce stated that, "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication."

Imprisonment and the loss of one's liberty is the most severe sanction which the British courts can administer (Richardson, 1985). Therefore when an individual loses his / her right to liberty, it becomes even more important for the State to protect the rights which remain intact. In the case of children, prison places them in an incredibly vulnerable situation. They have the right to expect a minimum standard of care from the State, not to be bullied and to have their mental health needs addressed. They most certainly have the right not to be victimized by staff that should be focused on helping them through their time in prison. All of these concerns, over both the physical and mental well-being of children in prison, contribute to another aspect as to why there is no justification for sending children to prison in the first place: it does not work. The (mis) treatment of children who are imprisoned in no way assists with their rehabilitation or acts as a deterrent to them to not re-offend. While it is obvious that prison successfully incarcerates the child thus preventing him / her from offending in the community while locked up, many juveniles sentenced to custody "pose no risk to the community (and) about half have committed non-violent offences but they may become a significantly greater danger on their return" (Muncie, 2009, p. 339).

Recidivism

Custody does nothing to address recidivism upon release and there is "considerable evidence to suggest that for many children incarceration actually increases the risk of recidivism" (NACRO, 2010, p. 1). Goldson states that child imprisonment imposes "an iatrogenic effect: it compounds the likelihood of re-conviction" (2005, p. 81) and this re-conviction rate is as high as 80% (Muncie, 2009). This has been recognised by the Home Office which has stated that "the failings of penal custody to prevent children from re-offending are well illustrated by analyses of re-conviction rates that relate to the proportion of prisoners discharged from prison who are convicted on a further occasion within a given period (usually two years)" (2003, p. 150). However, this is not breaking news. Older studies reveal the same failings (Milham et al, 1978; The Children's Society, 1993) and all of the evidence suggests that locking young people up is both harsh and ineffective while actually making offending behavior worse (Prison Reform Trust, 2008). According to Miller, "the cold hard truth is that juvenile penal institutions have minimal impact on crime" (1991, p. 181).

This section has only been able to briefly examine some of the reasons why children should not be sent to prison. Muncie offers an excellent summary when arguing the case against youth custody. He makes his case with the following concise points:

- (1) Custody fails to prevent re-offending or act as an individual deterrent.

- (2) Custody compounds pre-existing disadvantages.
- (3) A juvenile in custody is making no restitution or reparation to the victim or the community.
- (4) Custody exasperates broken links with family, friends, education, work and leisure.
- (5) Penal custody is not safe for mental or physical health (2009, p. 339).

Alternatives to child imprisonment

Up to this point this paper has provided a historical narrative of the youth justice system as well as setting out some of the reasons why prison is no place for a child and why custody for children should be abolished. However, it would be irresponsible to simply recommend that punishment for children be done away with completely. Children can and do commit some terrible crimes and there needs to be some form of sanction. As this paper has argued, prison is not the right choice and should not be considered. This section will discuss the potential of restorative justice and consider some of the reasons why it should be utilised to a greater extent. The current use of restorative justice in the Republic of Ireland as well as restorative justice schemes in Northern Ireland and in England and Wales will be considered. The principal arguments are, that based on the success rates of restorative justice in reducing recidivism, and given the cost benefits associated with restorative justice, restorative principles should be considered on a much wider scale and used as an alternative to child imprisonment.

Restorative justice

Restorative justice has developed as a victim - centred response to criminal offending and since the 1980's it has "made a remarkable impact on criminal justice in numerous jurisdictions around the world" (Muncie, 2009, p. 328). It has been described as "a process whereby all the parties resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1999, p. 5).

Restorative justice in the Republic of Ireland

In an Irish context, restorative justice was defined by the National Commission on Restorative Justice as "a victim sensitive response to criminal offending, which, through engagement with those affected by crime, aims to make amends to the harm that has been caused to victims and communities and which facilitates offender rehabilitation and integration into society" (National Commission on Restorative Justice, 2009, p. 9).

The Children Act (2001)^{vi} provided the statutory basis for restorative justice in the Republic of Ireland. Although the Act does not specifically refer to restorative justice, the provisions of the Act do facilitate its use. Section 26 of the Act provides the legislative basis for the Garda Youth Diversion Programme to facilitate restorative conferencing and restorative cautioning. Section 29 of the Act provides for the convening of a conference in respect of a child who is being supervised by a Juvenile Liaison Officer. The 2001 Act placed the Garda Youth Diversion Programme on a statutory footing (projects were first established in Dublin in 1991 and soon spread nationwide). The aim of the programme is to divert children who

take responsibility for their offending behaviour away from the criminal justice system, by use of a formal or informal caution.

There are currently over 100 Garda Diversion Projects in operation throughout the country and in 2011 there were 27,384 incidents referred to the Diversion Programme. Many of these cases involved cases of assault, robbery, arson, burglary and public order (Garda Office for Children and Youth Affairs, 2011). The total number of children referred to the Diversion Programme in 2011 was 12,809. Of these, 903 referrals were dealt with using restorative justice. Although 903 is a small percentage (7%) of over 12,800 referrals, the increased use of restorative justice year on year has been described as encouraging (Gavin & Joyce, 2013). In 2006 there were only 307 cases where restorative justice was used. This equates to an increase of over 150% in the use of restorative justice in five years.

Court referred Probation Service conference

Under Section 78 of the Children Act (2001), there is a provision for family conferencing which is organised by the Probation Service. These conferences explore ways in which young people can take responsibility for their behaviour and face the consequences of their actions, and if possible, make amends to the victims. Between October 2004 and January 2009, 173 such conferences were referred to the Probation Service by the Courts. A total of 145 took place and, of these, 97 were successful, leading to the completion of 86 action plans and the disposal of the cases concerned. Forty eight cases were unsuccessful which resulted in the criminal proceedings being re-activated in the Courts (National Commission on Restorative Justice, 2009).

Restorative justice in Northern Ireland

In Northern Ireland the Youth Conference Service was established in 2003. It has a statutory basis in the Justice (Northern Ireland) Act (2003)^{vii} and was first run on a pilot basis in respect of young people aged 10-16 from the greater Belfast area. Typically a conference will involve young people reflecting on their actions and offering some form of reparation to the victim. The attendance of the victim is voluntary, and if they attend they are given the opportunity to explain to the offender how the offence has impacted on them. These conferences have changed the face of the youth justice system in Northern Ireland and were the subject of a major evaluation (Campbell et al., 2006). This involved the observation of 185 conferences and interviews with 171 offenders and 125 victims who participated. The findings were very positive for victims and offenders. Over two thirds of conferences (69%) had a victim in attendance and most victims seemed to appreciate that the conference provided a means by which both parties could hopefully move on from the offence. Only 11% of victims said that they would prefer to have the offence go to court.

Offenders were grateful for the opportunity to apologise to the victim and many held this to be the hardest part of the process. Eighty eight per cent of victims said that they would recommend conferencing to a person in a similar situation. More recent research (Lyness, 2008) has shown very positive results in terms of recidivism. These findings compared re-conviction rates for young offenders who had been

given different disposals. The results showed that those participating in restorative conferences had a re-conviction rate of 38% after one year, compared with a re-conviction rate of 73% for those given a custodial sentence.

Restorative justice in England and Wales

The use of mediation and reparation, both key tenants of restorative justice began in an ad hoc fashion in England and Wales in the 1970s (Gelsthorpe & Morris, 2002). In 2001 three schemes to provide restorative justice services under the Home Office Crime Reduction Programme were implemented. A major evaluation of the three schemes was carried out between 2004 and 2008. The evaluation drew on the records of 840 restorative events, observed 285 conferences and interviewed 180 offenders and 259 victims who experienced the restorative justice process.

Overall the reports concluded that offenders who participated in the schemes committed significantly fewer offences in the subsequent two years compared to offenders who received a custodial sentence. It also found that a positive likelihood existed of avoiding re-conviction over the next two years (Shapland et al., 2004, 2006, 2007 & 2008).

Potential savings from Restorative justice

Previously this paper discussed finance and the cost of detaining a young person in the UK - £215,000 per place per year in a Local Authority Secure Children's Home, an average of £60,000 in a Young Offender Institution and £160,000 in a Secure Training Centre (National Audit Office, 2010). The evaluations of the restorative justice schemes in England and Wales also contained an analysis on costs. It was estimated by Shapland et al (2008) that the average cost per case referred, at 2005/06 values, ranged from £248 in one scheme to £1,458 in another. The average cost of a case where restorative justice was fully completed was higher, ranging for £3,261 to £4,666 per case. Sherman and Strang (2007) identified three main areas where restorative justice may provide savings to the exchequer:

- (1) Potential savings from a reduced court process.
- (2) Potential savings from the reduced use of imprisonment.
- (3) Potential savings arising from reduction in victim post-traumatic stress disorder.

Given the excessive costs of detaining a child for one year in England and Wales and the comparatively meagre costs of restorative justice, it seems ridiculous that young people are still being locked up. Restorative justice is a much more cost effective way of dealing with young offenders and there is also the benefit of a higher success rate at reducing recidivism than by incarceration.

Conclusion

Prison is not a place for children and the damaging effects of imprisonment on children are well documented. There is no moral justification for spending close to a billion pounds a year on a system that clearly does not work and seems to do more harm than good. The vast sums spent on locking children up could be better spent on education and training, counselling and healthcare, areas which could have a real

effect and make a real difference in people's lives. Finally, simply locking young people away will not provide them with any sense of responsibility for their actions. A restorative approach would force them to face up to any harm that they have caused and make restitution with the victim. Making them aware of this will have a much better chance of ensuring that they do not repeat their offence. Unless a new approach is taken to youth justice, Goldson (2002) will continue to be proved correct – that locking up children will remain ineffective, and that children will leave prison angrier, more damaged, more alienated, more expert in the ways of crime and more likely to commit more serious offences.

Notes

ⁱ <http://www.independent.co.uk/news/major-on-crime-condemn-more-understand-less-1474470.html>

ⁱⁱ <http://www.theguardian.com/politics/2004/aug/26/conservatives.uk>

ⁱⁱⁱ <http://www.labour-party.org.uk/manifestos/1997/1997-labour-manifesto.shtml>

^{iv} This is also stated in the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985) Rule 19.1 states: The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

^v (1983) 1AC 1

^{vi} <http://www.irishstatutebook.ie/pdf/2001/en.act.2001.0024.pdf>

^{vii} <http://www.nilsc.org.uk/uploads/home/documents/ajo.pdf>

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