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Children and Crime: In the Moment

How can we explain offending by children? How should we understand children's relationship with crime? First of all, we must recognise that there is nothing absolute or universal about the categories of 'offending' and 'crime'. Both are social constructions – the dynamic, contested and contingent creations of societies. Furthermore, the category of 'child' is itself a social construction - an invention/label that has been revised and reconstructed socio-historically within and between nation states (Hendrick, 2015; Soung, 2011; Aries, 1962/2002). These social constructions emerge from interactions between a multiplicity of socio-structural, cultural, economic, political, professional, academic, media and public influences and pressures (Hopkins-Burke, 2016; Bateman, 2014; Shore, 2011). The dominant influences/pressures at any given time and place, therefore, shape (even determine) our understandings of the processes by which children commit crime, are labelled as 'offenders' and are responded to through informal and criminal justice measures (cf. Case, 2018). Consequently, understanding children's relationship with crime is redolent with dynamic complexity, contingency and nuance, all of which warrant exploration through a social constructionist lens.

Notwithstanding the attendant complexity in understanding children's relationship with crime, hegemonic social constructions of children who offend have followed particular patterns of partiality; partial in the dual sense of biased and limited. Children who commit crime have been traditionally labelled as 'deviants', a term often favoured by psychologists and psychiatrists to describe a child who has committed (possibly very few) offences. Similarly, 'delinquent' is a term particularly favoured by North American criminologists, whilst British and Australian criminologists tend towards 'juvenile' or 'youth offender' – all labels assigned to any child who has committed an offence and even those who might commit offences. These terms are employed uncritically, as if they have precise and well understood meanings, which they do not (cf. Hendrick, 2015; King, 2006; Haines and Drakeford, 1998). What does this lexicon imply? One could argue that the use of such language is simply a professional academic lingua, value free and without prejudice. On the other hand, our position is that the uncritical use of terms such as offender, offending, delinquent, juvenile and youth offender masks the essential characteristic of the 'object of concern', namely *children*. This unhealthy habit of not talking (and writing) about 'children' has led to the child being written out of too much criminology, particularly when seeking to explain offending behaviour and to design 'appropriate' responses to it.

In explanatory/aetiological terms, the most influential/prolific group of theories of offending by children are quasi-positivist, deterministic, 'artefactual' risk factor theories (Kemshall, 2008; Case and Haines, 2009) that explain crime as the result of exposure to psychosocial risk factors in childhood and adolescence (see Farrington, 2000). The practical corollary of these theories is the Risk Factor Prevention Paradigm (RFPP), which originated in the USA (Hawkins and Catalano, 1992) and has been subsequently adopted internationally, most notably England and Wales (Youth Justice Board, 2017; Ministry of Justice, 2016; Stephenson et al. 2013). Despite its burgeoning evidence-base and widespread academic and professional popularity, the RFPP has been vilified by critics as deeply methodologically, conceptually and

ethically flawed to the point of invalidity (Case and Haines, 2009; see also Goddard and Myers, 2017; Bateman, 2011; O'Mahoney, 2009). The fundamental flaw across artefactual risk factor theories, beside an insidious partiality, is a basic failure to engage the child – in principle, theory and practice (Case and Haines, 2014).

This paper situates the child at the centre of our theorising and understandings of the child-crime relationship. We start this process by making an assertion that directly challenges the hegemonic deterministic explanations shaping understandings of and responses to offending by children; namely that children think and act 'in the moment'. We argue that the long-term consequences of their behaviour (i.e. anything subsequent to the act itself) are strangers to children – all children, in different places, at different times of boredom or excitement over the continuum of maturation. We seek to argue, therefore, that the behaviour of children is predominantly confined to the moment in which it takes place. Children, we assert, think and act 'In the Moment'. To develop this notion, the lead authors assembled a range of expert international scholars, inviting them to explore the idea that children who offend do so by thinking and acting 'in the moment' (hereafter ItM). Authors were offered limited additional guidance or prescription, except the request to explore the ItM idea from their own perspective. The aim was to push forward the boundaries of understandings of children and offending. We wish to see how far (theoretically, conceptually, empirically and geographically) the notion of ItM can travel. The outcome of this open-ended brief has been a welcome and necessary diversity of perspectives that broadly coalesce around the anchoring theme of ItM, whilst concurrently challenging the embedded determinism and adult-centrism of established explanations of and responses to offending by children.

Notwithstanding the diversity of approaches, common themes are identifiable, grounded in the sociologies of time (Urry, 1994; Adam, 1995) and childhood (James and Prout, 1997; Smith, 2010). Firstly, constructions of childhood are historically situated, being both contingent and transient, placing children in time, or 'in the moment', but in very specific and contestable ways. Secondly, partly as a consequence of contemporary constructions of childhood, the 'timings' of childhood assume a linear process of change and transition, both biologically and socially determined, but which place each and every child at a very specific point in the lifecycle ('in the moment'). Thirdly, children's own *sense* of time may well be distinctive, with a foreshortening of experience and a greater sense of living 'in the moment' than those of other generations, whose perspective and experience are necessarily much longer. As has been observed, even children's 'clock time' may not be the same as that of adults (Forman, 2015).

The journey to more holistic, inclusive, situated and constructivist understandings of children and crime begins with an exposition of the broader *context* and nature of *childhood*, within which constructions of children have developed. There follows an exploration of the implications of *gender* for explanatory arguments and the potential need for gendered explanations of children's offending in the moment. We follow this by examining in the moment in the context of the emerging *neurological* evidence-base that relates children's offending to developing brain function and the nervous system. Next comes a series of *constructivist* explanations that consider how children experience, negotiate, resist and therefore construct their environments; moreover, how these constructions may shed light on the relationship between children and crime ItM. These explanatory foci address ItM in

the context of *social ecology, risk/needs, critical moments* and *resilience*. The paper concludes by examining certain what could be perceived of as *new frontiers* in explaining and responding to children's offending, specifically contemporary, progressive incarnations of *diversion* from the formal criminal justice system and the *'children first'* model of positive youth justice.

Childhood ItM
Our approach to children who are identified as offenders depends crucially on how we understand childhood itself. We want to propose a particular characterisation which sees childhood as a common but differentiated experience for those passing through this particular life stage. Its common features are few, but significant, and are less defined by particular developmental features and fixed trajectories than by material aspects of changing lives which are specifically time limited – momentary, in fact.

Children are defined by their: physiological status, relatively limited experience, growing knowledge, and restricted access to material resources, and as a consequence of these necessary conditions, childhood can be typified as a period of relative vulnerability (Smith, 2010). By contrast, children's existence is not delimited by a lack of 'agency', limited capacity for understanding, or developmental constraints which render them less able than adults to exercise self-control or make (good or bad) moral judgements. They are not inherently either anti- or asocial.

The problem posed for those concerned with the ideologies, institutions, organisation and delivery of youth justice is that once we accept children's agency as a given, they become readily exposed to conventional and well-established forms of reasoning associated with attributions of blame and responsibility. These, though, need to be modified in light of both the generalised characteristics of childhood set out here; and, equally importantly, the differential manner in which these characteristics are impacted and modified by the contextualised real-life experiences of unequal social structures (class) and differentiation (ethnicity, gender) to which children are exposed. Here, then are the underpinnings of a case for a system of justice which is explicitly embedded in and springs from the identifiable shared features of childhood, against which they can be judged to share common needs and hold universally applicable rights.

We might perhaps go further and argue that 'offending' or problematic behaviour is intelligible in light of these potential influences and children's active choice-making in response, thus framing intervention in terms of the wider needs and factors which are inherently and inevitably constitutive of specific lived experiences. Matza's attempt to conceptualise the contingent nature of children's delinquent choices in terms of constrained or contextualised decision-making remains pertinent here: 'Drift stands midway between freedom and control. Its basis is an area of the social structure in which control has been loosened…. drift may be initiated or deflected by events so numerous as to defy codification' (Matza, 1964, pp. 28-9). As he also observes in this context, delinquent acts themselves take place periodically and inconsistently and do not represent or constitute the entirety of a child's life or identity. Offences are carried out ItM.

Offending behaviour may not be *caused* by a particular set of prior factors or characteristics, nor is it simply the result of unconstrained deliberate acts in pursuit of self-interest. Instead,

it can be located within the broader context of childhood experience and opportunities ('habitus', perhaps). In similar vein, then, interventions which seek to address offending behaviour 'out of context', or even simply to prioritise it as against other aspects of children's lives are bound to represent only limited or partial solutions. Instead, attention should be paid to those features of all childhoods which are a necessary prerequisite to 'good lives', as they progress through this particular phase, essentially constituted as: physical well-being, adequate resources, positive learning opportunities and effective safeguards. The criminal justice system, especially in its institutional elements, remains singularly ill-equipped to address these essential ingredients of a good childhood. Indeed, it may well be a source of further harm and neglect, therefore compounding the factors which are damaging for children. The argument here is that offending cannot be dealt with effectively unless these crucial aspects of children's lives are attended to; and it is therefore the primary duty of criminal justice (and other) agencies to ensure that they are met.

Of course, it is not new to argue that attending to the issues of childhood is the most important consideration when addressing the problem of youthful offending (leaving aside the equally crucial question of how such behaviour is defined and problematised). Rutherford (1992) argued that the most important task for practitioners was simply to 'hold on', to take a longer view – beyond the moment - and provide continuing support for children in trouble as their lives developed and changed; and of course, more recently, we have been urged to consider the child 'first' and the offending subsequently (Haines and Case, 2015).

Gender ItM
In the same way that we have made assumptions about the 'delinquent' as biologically, psychologically or socially flawed and somehow distinct from 'us', similar hegemonic assumptions are apparent when we look at the question of gender. The evidence is undisputable: boys are more likely than girls to commit crime, to commit violent crime and to wind up in youth justice systems (Kruttschnitt, 2013). This has been found to be the case across cultures and time. Since the late 1990s, however, international debates have emerged about whether this gender gap is narrowing – with males and females converging towards similar arrest patterns (Schwartz and Steffensmeier, 2015). Popular portrayals have characterised girls, in particular, as becoming increasingly more like their male counterparts in crime and violence (Chesney Lind, 2006), prompting a revisiting of the 'liberated female crook' hypothesis that correlates the increase in female participation in crime with women's liberation (Joe and Chesney Lind, 1995). Some observers argue that this increasing convergence is related to 'greater gender equality' (Beatton, Kidd and Machin, 2017:15; Prothrow-Stith and Spivak, 2005) or lower national levels of patriarchy (Savolainen et al. 2017).

Whether one subscribes to the gender gap or convergence model, it remains the case that there are – whether small or large – gender differences in children's offending and representation in youth justice systems. The task at hand is to understand this difference in the context of how and why boys and girls engage in crime. While there has long been the desire in criminology to derive a general theory of crime based on biopsychosocial positivist explanations, the subjective understanding and experience in the commission of crime is central to theorizing and to policy – what was s/he thinking at the time and what was s/he

experiencing ItM? There are a number of instructive works to address this question of the subjective experience and the immediacy of the event in the context of gender differences.

Some criminologists argue that much of crime involves a rational calculation of the costs and benefits of an immediate site for crime (Cohen and Felson, 1979; Cornish and Clarke, 1987). Yet cultural criminologists argue that even taking into account the instrumental nature of crime, there is an emotional currency involved. Hayward (2007), for example, argues that what may appear to be a reasoned response to immediate opportunities is very likely, instead, a reflection of youthful engagement with the 'culture of now' – an expression of the cultural logic and materialities of contemporary consumerism. Accordingly, children as 'sensation gatherers' of late modernity (drawing on Bauman) are caught in a whirlwind of emotions – 'dis-satisfaction, narcissism, impulsivity, and spontaneity – frequently the very emotions behind a whole host of risk-laden criminal acts... illegal forms of excitement represent a break with the banalities of everyday life and mark the entry into a new world of possibilities and pleasures' (2007: 239). Lyng's (1990) notion of edgework - a form of voluntary risk taking – operates with a similar cultural logic, drawing on the emotional engagement with danger, risk and the controlled feelings of loss of control to transcend mundane realities to a state of temporary existential freedom, although we note here that edgework may be of a spontaneous or planned nature.

Our point here is to underscore the emotional and expressive nature of children's crime. From a number of studies on the situational context of crime, the gender differences in the emotional dimensions and immediacy of children's crime become clear. Research on gangs and street-life, for example, have long recognized the salience of 'honour' and 'respect' on the streets and violence has been one expressive means – both a 'battleground and theater' – for adolescent minority boys to accomplish and reaffirm masculinity (Bourgois, 2003; Fraser, 2015). Yet "honour" and "respect" are also important for girls on the street, albeit differentially understood and in different situational contexts. For girls, street life is highly patriarchal and within this gendered environment, defending 'honour' in the immediate – is framed around sexual reputation and relationships with family, peers and lovers, and negotiated in the context of social and cultural norms of femininity (Joe Laidler and Hunt, 2003; Irwin and Adler, 2012).

In trying to understand the gender gap in relation to the immediacy of the moment, these studies suggest that a) situational context plays an important role in street interactions and in crime, and b) these interactions occur in a highly patriarchal environment in which there are ItM contestations about honour, respect and more broadly, masculinity and femininity. Stepping back, these studies call into question our adult-centric assumptions and reference points in understanding children and crime, including children and adult's understandings of 'risk'.

Neurological maturation and ItM
Developmental neuroscience traces the physiological maturation of the brain and nervous system through the ageing process. Recent advances in this science have challenged prior understandings in showing adolescence – defined as the period from puberty to adulthood – to be a key phase of functional brain development towards the 'adult form' and second only to infancy in the extent of maturation that is occurring within neural systems (Whittle et al.

2014). Several processes are now recognised as taking place during this period (Johnson et al. 2009). Counter to prior assumptions, it is now understood that certain regions of the brain continue to develop through adolescence. In particular, the frontal lobes are now known to be 'among the last areas of the brain to mature; they may not be fully developed until halfway through the third decade of life' (Johnson et al. 2009: 216). This region of the brain is key to the exercise of 'higher order executive functions', such as planning and sequencing complex tasks and responding to novel and changing circumstances. It is also now understood that the refinement of neural networks and the connectivity of brain regions 'continues to develop well into adulthood' (Johnson et al, 2009: 217-8). These processes are crucial to the consistent regulation of feelings, stress, and impulses in different social contexts, which is dependent on connectivity between the cognitive processes of the frontal lobes and the emotional processing performed by the amygdala.

Whilst generalisations mask significant heterogeneity in the timing of neuromaturation (Dahl, 2008), an understanding of the neuromaturation typically occurring into our mid-20s adds further evidence to the idea that in certain circumstances children are prone to behaviour ItM, governed not by rational thought, but by emotion. In combination, these ongoing processes of brain development mean that, while children generally have similar cognitive capacities to adults, in terms of their ability to understand and retain information and to recognize the risks associated with particular behaviours, adolescents might process information and make decisions differently from adults when in particular states of emotional arousal – often referred to as situations of 'hot cognition' (Spear, 2013: Casey et al. 2008). For example, inhibitory control may be more likely to be 'overcome' in 'stressful, emotionally charged, and arousing circumstances' for adolescents than adults, including under the influence of peers (Spear, 2013: S7). This has been evidenced using various experiments in which tasks are carried out in emotional and non-emotional contexts. Typically, in these experiments 'adolescents exhibited more risk-taking behaviour than adults only under the emotional version of the task' (Spear, 2013: S10). For example, Gardner and Steinberg (2005) used a driving simulation game to compare the propensity of adults and adolescents to make 'risky decisions', such as whether to speed through an amber light. Adolescents were found to make risky decisions significantly more often when driving in the presence of peers, compared to when they were alone. The presence of peers made no such impact on adults. Similar experiments have suggested that adolescents are typically less 'harm avoidant' than adults (Spear, 2013) and may discount larger future rewards in preference for smaller immediate gains – a phenomena known as 'temporal discounting' (Water et al. 2014; Lee et al. 2013). It has also been suggested that the still-developing adolescent brain weighs emotional and social aspects of decisions over longer term outcomes (Crone and Dahl, 2012). In particular, achieving social status or peer acceptance appear more highly salient to adolescent decision-making than the knowledge that the decision may have negative consequences, such as a criminal record that might affect future prospects.

Whilst recognising significant individual variability, the research reviewed so far broadly examines 'typical' neuromaturation processes fostering ItM behaviour. However, a wealth of research signifies the high levels of significant neurodevelopmental impairments disproportionately experienced by children in youth justice systems (Hughes et al. 2012). Neurodevelopmental impairments can occur when there is disruption in the development of the brain or other aspects of the nervous system, due to causes such as genetics, birth trauma,

injury, illness, or severe nutritional or emotional deprivation and are experienced as significant functional difficulties with cognition and learning, communication and/or emotional functioning (Patel et al. 2011; APA, 2013) – rendering ItM explanations for offending more likely than their rational or determinist counterparts because:

- Deficits in executive functioning can influence such behaviour by 'decreasing behavioural inhibition, impairing the ability to anticipate behavioral consequences and assess punishment and reward, [and/or] damaging the capability to generate socially appropriate behavior in challenging contexts' (Ogilvie et al. 2011: 1064);
- Impulsivity is particularly implicated in certain forms of ItM behaviour, with a 'de-coupling of cognition and emotion' being expressed as impatience, sensation-seeking and difficulties in restraining emotional reactions (Williams, 2013). This can increase the likelihood of spontaneous, impulsive acts, particularly in response to provocation or conflict;
- Poor social communication may result in difficulties understanding and expressing emotions, including through non-verbal communication techniques and therefore the use of challenging behaviour as a means to communicate emotions (Ryan et al. 2013).

In combination then, this diverse body of research regarding neuromaturation demonstrates that children may weigh decisions about behaviour differently to adults in certain contexts and situations and may do so inconsistently and irrationally. Children therefore have a greater propensity towards ItM behaviour, particularly when emotions 'run high' and in the presence of peers, including engaging in behaviour which they know to be criminal, antisocial or inappropriate. While potentially prone to deterministic accounts that sustain 'widespread prejudices and myths about children being incapable of rational thought, self-restraint and good judgment' (Bessant, 2008: 353), such conclusions simply suggest that children should not be assumed to be 'mini-adults', always exercising rational thought, but are instead in need of our understanding and support when their decision-making surprises us.

Critical moments and ItM
This aspect or case study of our ItM approach emphasises a 'double moment' operating at *both* structurally and individually. There is the 'moment', which constitutes a particular conjuncture of psychosocial, economic and political change, bringing together these aspects of rapid change at one time and in one place and into which a child is born and brought up. Then there is the individual 'moments' that constitute a child's experience as they live through this conjuncture, while being shaped by it.

The knowledge that children living under psychosocial conditions marked by stress, anxiety and insecurity are more likely to offend is commonplace. It is also the case that a lack of material resources can diminish parental support and the ability of family members to meet and overcome unexpected events and crises (Webster and Kingston, 2014). Social structurally, some children are more likely to experience their environment uncertainly as lacking purpose and predictability. This is something that is *done* to them rather than *chosen* by them, *done* to their family members rather than *chosen* by them. Some research argues that the influence of 'close relations' in families is more important than the 'social sorting and selection' of populations composing impoverished neighbourhoods, where poverty and inequality are concentrated in the wider society (Gash, 2016). Influential studies concur that

family, school and peer influences are more important than structural background factors like poverty or inequality (Sampson and Laub, 1993). In the context of these sorts of arguments what then does it mean to say that children live and act in the moment and does this claim help us understand why children offend and how we respond to offending?

One way of beginning to answer this question is to review a series of qualitative longitudinal studies of transitions from childhood to young adulthood carried out in the north east of England[1]. The aspect of these studies focusing on the impact of poverty on crime, showed what subsequently occurred in young lives was profoundly influenced by the 'moment' of where and when they were born. Significantly, the study population were born between 1974 and 1984, on the cusp and in the depths, of a period of rapid deindustrialisation and neighbourhood impoverishment. Again, they did not choose where and when they were born nor the diminishment of their families, who had mostly been employed as skilled manufacturing workers. The point thus far is that children's 'moments' can be born of conditions not of their choosing from the beginning – the historical moment or conjuncture of their birthplace and upbringing. In a sense, to live and act in the moment is always to do so in one's ineluctable time and place.

Among this research population, children reached early to late teenage in the early to mid-1990s, coinciding with the novel embedding of a cheap and plentiful local heroin market where they lived – places having no appreciable previous history of heroin use. For us though, a bigger picture emerged of heroin's function as a 'poverty drug', ridding users of the associated anxiety, boredom and depression of living poor lives in a deindustrialised place. Poor transitions characterised by early teenage truancy, school exclusion, parental rejection, children's homes and later, continuous unemployment and some 'fiddly work', led to feelings of depression and anxiety, that were momentarily alleviated and forgotten by heroin's *raison d'être*, 'living and acting in the moment'.

Over their lives, for the children to whom we spoke, 'stuff happened' in unpredictable, but not random ways. Life changing moments could turn people away from and toward offending and drug use, even within a single biography. Cumulative crisis moments and life experiences (e.g. accidents, ill health, bereavement, financial crises, drug-use opportunities, particular sorts of street encounters) could trigger or discourage offending. By this is meant that these crises are not merely random or chance occurrences – although sometimes this came into it – but that such moments are more likely to occur in the generation and place studied, where individual resilience and capacity to 'cope' with crises and critical moments is at a premium under conditions of severe social and economic hardship.

The Teesside research team scratched their heads about what policy, policing or criminal justice responses might help rather than hinder any positive developments among children leading disrupted, impoverishing lives. Except to argue that the particular timing and placing of this historical conjuncture of deindustrialisation, social and economic crisis, and generation *was* the policy. This policy moment *was* the systematic impoverishment and destabilisation of children's lives in the place and at the time as matters of government policy.

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[1] Together known as 'The Teesside Studies', see Webster et al. 2006, Shildrick et al. 2012)

Risk and need or ItM?

Responses to the behaviour of children who come into contact with the justice system have been generally understood to oscillate between welfare and punishment overlaid by risk-oriented logics and (recently) the emerging positive youth justice model based on a 'children-first' approach (Haines and Case, 2015). Or, more precisely, when it comes to handling children who are caught breaking rules or laws, what commonly takes place is a hybridized form of welfare, 'law and order' and actuarial assemblages that blend together in a somewhat contradictory yet compatible way (Goddard, 2012; Muncie, 2006; Gray, 2013). Nevertheless, regardless of which orientation dominates at a particular moment, the idea that children live and act ItM has the potential to significantly alter these logics, particularly when we consider the so-called 'risks' and 'needs' of children.

Although criminologists have observed the age-crime curve for some time now, recent neuroscience (see Neuromaturation section) suggests that the significant uptick in youth offending is closely linked to the knowledge that, quite literally, children are neurologically wired to act in the moment. Children are quite simply prone to risk-taking behaviours. What this implies is that risk-taking behaviours that violate norms, rules and laws are not evidence that children are 'delinquents'. They are evidence that children are children.

What then are the implications for youth justice explanations and responses? Specifically, what might understanding youth offending as acting ItM mean for the risk-oriented approach that forecasts the likelihood that a child will offend by assessing their personality, psychological state, peer networks and family, school and community environments? The hegemonic Risk Factor Prevention Paradigm (RFPP - see Introduction) has been encoded into the increasingly popular risk assessment instruments - assessing danger by retrospectively examining the lives of 'offenders', establishing links between the 'deficiencies' they demonstrate and the deficiencies demonstrated by offenders who were followed in longitudinal studies (West and Farrington, 1977) and then calculates a categorical predictive score about their risk/ likelihood to reoffend. The identified deficiencies (or 'risks' and 'needs') exist within individual personalities and psychologies of children or in relation to the family, school, community and the peer group of delinquent individuals (Farrington, 2000). The idea is that risks and needs increase the probability of offending, leading to the conclusion that criminality can be prevented by implementing measures designed to counteract them.

The paradigm is seductive, and there is evidence to support the association of each variable (risk factor) with offending. However, if we replace the analytic lens with the idea that children (regularly) live and act ItM, the relationship between risk factors and behaviour take on a different meaning. For one, *all* children are periodically but varyingly 'at risk'. Thus, categorising some youth and not others as 'at risk' is no longer accurate or meaningful. Of course, a reply may be to argue that the science of predicting should be viewed more dimensionally than categorically; that is, by understanding individuals along a continuum of risk of offending. Our rejoinder is that, regardless of the number of risks/needs a child is assessed as having, children act ItM. Risk factors may predict that a child will be at higher risk for offending, but they are just that: influencing factors. They tell us little about the mechanisms by which children end up offending, one of which being that they act on impulse ItM.

The conceptualisation that risk factors are a primary source of wayward behaviour is therefore removed from the picture. No longer can we think of children who are caught breaking rules or laws as different. All children may have the potential to offend or exhibit problematic behaviour. Labelling some children as 'at-risk' is literally inaccurate. Secondly, and somewhat parenthetically, the ItM perspective may well explain why there are dozens of risk factors in the RFPP and to why each risk factor is only modestly associated with delinquency. There are many different profiles of children that offend, but most common to children is that they are neurologically prone to act in the moment. We might even suggest that risk assessment instruments that encode risk factors are an elegant way to categorize acting ItM and impose the idea that children who have been caught have some proclivity for delinquency or what looks like motivation.

Given our argument, what does this mean for policy? First, zero tolerance for nearly every wayward or non-serious but nevertheless rule-breaking behaviour and punitive responses in general, seems ill-advised. Second, viewing 'offending' that integrates what we know about place and crime, serious and persistent young offenders and the ItM perspective opens the door to seeing more clearly a feedback loop ripe for policy interventions, namely that serious and persistent offending children regularly experience housing, food, clothing and safety insecurities—and persistent waves of adverse experiences associated with the conditions of poverty—that collectively undermine the effectiveness of their neurological behaviours and functions, such as planning, prioritizing and controlling impulses (Maroney, 2011). Policymakers should therefore not only prioritize keeping children away from youth justice involvement, but also target the troubling social ecologies surrounding children. We would do so, not because of 'risks' or 'needs' that these environments engender, but because they delay, interrupt, or undermine the regular transitions through childhood, including the maturation toward less impulse-driven behaviour.

Resistance and Resilience ItM
As discussed in the previous section, groups of children are labelled, through public discourse, as 'risky' or 'troubled' when they offend and become subject to stigmatising and counterproductive early involvement with youth justice systems (and preventative interventions). How do they respond to the label, and the limits that label places on them? Crucially, can these varying levels of agentic responses be seen to be ItM?

While processes of early and criminal activity may be chalked up to the impulsivity of children acting ItM, so too can their subsequent responses to imposed sanctions and reactions to those in positions of power. Current research is concerned with how children respond to stigma, aiming to uncover some of the ways they react to the label through resistance, resilience and resourcefulness (Harragan et al. 2018). These responses demonstrate longer-term resistance to adversity (Newman, 2004) and highlight the impulsive, reactive actions that happen in the moment. We argue, here, that ItM actions are likely to be impulsive and reactive. However, they occur within a 'contextual' moment formed from a crucial set of socio-demographic and experiential factors; in the moment actions are a response to situated injustice.

Thus, children's ItM actions can be seen as a complex response to stigma and the processes they face as they enter a world of youth justice intervention. There's a complexity to the

contextual 'build-up' of an off-the-cuff action – a series of triggering events, experiences and contexts - and while the action that sparks the authorial response may be ItM (impulsive, off-the-cuff, influenced by peers) it is borne out of a build-up of frustration and resentment (Harragan et al. 2018). It is a response to injustice and individual narratives and it is built on a series of presumptions, stigmas and labels.

The labelling of children as 'risky' typically generates tension: disproportionate targeting, labelling and problematic relationships between children and the police, for example, have been well-documented in the sociological/criminological literature (Newburn, 2011; Cohen, 2002) resulting in what has been described as a 'permanent suspect population' (McAra and McVie, 2005: 27). The child's reaction to the criminal marker can manifest as anti-social and criminal behaviour thus reinforcing the 'problem' label and perpetuating risk discourses.

Current responses to children seen to be 'at risk' of criminal behaviour, such as the use of systems of surveillance and control (Kemshall, 2008) and casting the net widely (not least through diversionary measures) (Smith, 2017), perhaps says more about the collective, accepted and normative views of our society than the children themselves. In her 2013 book '*Revolting subjects'*, Imogen Tyler theorises the concept of social abjection as a way of exploring the exclusion of certain stigmatised groups and addressing the processes by which social agreements about who is abject becomes a consensus through repeated citation. The entrenched stigmatisation of certain youth populations (typically those with criminal records or from 'high risk' neighbourhoods) as out-of-control, feral and problematic, becomes embedded in normative belief systems and impacts on youth policy.

Children's actions (whilst the action may be ItM) are a response to injustice and resistance to their treatment by authorities and society, to their abjection, to the poverty of opportunity they face and to experiences of adversity. It's because of these negative effects of stigma and marginalisation that opportunities for children to engage positively become limited and, as a result, much of the creativity, innovation and energy within these 'criminalised' groups is directed away from positive social action (Harragan et al. 2018) providing the perfect site for further ItM actions.

There's an opportunity here, for those involved in youth justice not only to recognise the complex build up that provides the context for ItM actions, but also to address the ways that formal responses to youth offending may trigger further ItM actions. If we agree that at least a proportion of children's actions happen ItM our next question is what to do about it. Any analysis must focus on the positives within the complex and intersectional context of children's actions: moving forward rather than looking back, positive youth justice rather than risk-based processes.

Social ecology ItM
Children being/acting ItM can be productively investigated through a social-ecological lens. From this perspective, human development occurs within 'nested' systems – microsystems, mesosystems, exosystems, macrosystems – that interrelate within a temporal and historic context: the *chronosystem* (Bronfenbrenner, 1995). Children in relationship with family, friends, school and neighbourhood settings live/act/interact *in time*. The processes that shape children's actions/interactions and identity-development – what they do and how it defines

them – operate simultaneously in a socio-political-historic moment *and* at the micro-processual scale of the everyday.

Within these interconnected ecologies, adolescent development is shaped by increasingly complex relations (Bronfenbrenner, 1995; France et al. 2012). Children make sense of the world and their place in it, through 'proximal processes'. Recognising *how* this sense-making occurs requires understanding the child, their spatial and temporal context and the proximal process itself (Bronfenbrenner, 1995). This way of understanding development has significant implications for youth justice interventions. It highlights the critical importance of *relationships*, built with increasing complexity, *over time*. To get to know how and why children live/act ItM workers need to understand, *chronosystemically,* the social processes influencing children's actions/interactions.

Recent research on children's prolific offending in Wales[2] reveals – through interviews with YOT workers/managers and young men previously (repeatedly) involved with the YOT – how effective youth justice practice reflects this understanding. For children, workers knowing 'what makes them tick' signifies caring relationships built on trust and respect, as 'Elis' described: *'[my worker] knew what made me tick, what I was a feeling…how to handle it'*. This implies deep understanding of his character and temperament, his rhythms, motivations and desires. 'Ticking' evokes motion, growth, development, not a static identity ('offender'). It reflects this young person's sense of being cared for *as young,* understood *in the moment* of adolescence.

For workers, seeing children in this way and identifying their genuine (not just 'offending-related') needs means recognising how disadvantage, dysfunction and exclusion shapes identity and behaviour. Meeting their needs requires persistence, 'sticking with them' over time. The following examples[3] are illustrative. One YOT manager evoked how children can change suddenly: *'that moment where they go, you know what? I'm sick of this…I want to move [away] from that nonsense'* (YM01). Others have the intention, but lack resolve or resources (YW17).

For YM04, effective intervention requires a deep understanding of *'what's going on'* in children's lives. Seeing substance misuse as symptomatic of disadvantage and a search for identity and belonging, for instance, allows workers to tailor interventions to those needs, not the substance use alone. For the young men interviewed, 'street Valium' was prevalent at the time and drove their escalating violence: *'Valium was the main thing…you start fights for no reason'* (Elis); *'We terrorised our streets'* (Gareth). YOT worker YW18 described how: *'Valium was increasing their confidence in who they were…[Their] offending just escalated…burglaries…car offences…violence, robberies…serious offending.'*

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[2] This 2015 study built on earlier work by YJB Cymru profiling a 'prolific offending' sample of 117 children who had 25+ offences recorded in 2009 and who reoffended in 2010. The 2015 study followed up this sample via case file analysis, reoffending data analysis, interviews with YOT staff and four of the young men, now aged 21-23 (Johns, Williams & Haines 2016, 2017).

[3] These examples are from interviews with YOT workers/managers (YW## or YM##), and young men who were part of the original 'prolific offending' sample, given aliases here to protect anonymity (Johns et al 2016).

As well as violence, these boys' lives – their micro/mesosystems – were characterised by dysfunction and abandonment. Understanding how these experiences shaped their interactions with others, within the context of place and time *and* in terms of their individual/group identity-development required spending time getting to know the children and what drove their behaviour, what made them 'tick', both in the moment – such as *'showing off…with the boys'* (Rhydian) – and over time.

Interrupting these cycles meant providing *boundaries* and *support*, meeting educational needs, *'making you feel rewarded'* (Gareth). *Trust* was key. Intensive supervision provided an extended period of regular interactions, becoming increasingly complex as a trusting relationship was built, often through practical activities – kayaking or *'working with animals'* (Elis). These activities represent positive 'moments' of interaction and relationship-building, in contrast to long-term experiences of stigmatisation and exclusion. Workers emphasised engaging with *'families, not just the individual'* (YM04), departing from a deficit view of children's lives, working instead with what is present and possible at that moment. Understanding the need to sequence responses over time – *'we need to address this before we can work on that'* (YW18) – rather than insisting on rigid processes.

A social-ecological lens thus locates adolescent offending ItM in an historic/cultural sense *and* its unique social/relational context, enabling youth justice assessments, interventions and outcomes – indeed any responses to children's harmful behaviour – to be accurate, well-informed and appropriate to young lives.

Diversion ItM
Children's tendency to act ItM can be better understood with reference to the practice of youth diversion. Many youth justice systems are premised on the concept that formal systemic contact is uniquely damaging and criminogenic for children. Diversionary measures – those that aim to reduce children's contact with the criminal justice system by channelling them out of the system – have thus been introduced with fervour during the last three to four decades (Jordan and Farrell, 2013; Pratt, 1986). Systems of diversion are supported in a range of normative frameworks relating to youth justice, including in United Nations frameworks such as the Standard Minimum Rules for the Administration of Juvenile Justice (United Nations, 1985), and the Guidelines on the Prevention of Juvenile Delinquency (United Nations, 1990).

Diversionary measures – such as police warnings, cautions, referral to therapeutic programs and youth justice conferencing – are typically packaged in a hierarchy. For example, across Australia's states and territories, youth justice legislation provides that a child is first to be offered the least intrusive diversionary measure (e.g. a verbal warning from police) before being escalated through a series of more serious diversionary practices for subsequent wrongdoing.

Despite the enthusiastic uptake of youth diversion, little scholarly attention has been paid to its conceptual or theoretical underpinnings (Richards, 2014). By and large, it is simply accepted that diversion is in the best interests of children (cf Weatherburn et al. 2012; for a discussion see Richards & Lee, 2013). It has rarely been recognised, therefore, that diversionary systems are premised on a classical model of human behaviour that is at odds

with the reality of children's risk-taking and offending behaviour. While systems of diversionary hierarchy assume rational subjects who will learn from the consequences of previous offending and make decisions based on objective and rational calculations of risk and reward, this is at odds with the realities not only of much offending generally, but of children's offending specifically. As has been well-documented, children's offending is typically unplanned, spontaneous, expressive and public (Cunneen et al. 2015). It is also heavily peer-driven compared with adults' offending (Gatti, Tremblay and Vitaro, 2009). As Steinberg's (2005) research shows, children understand risk and can weigh up the potential risks and rewards of a particular act, but often make decisions on social and/or emotional bases such as peer influence. Diversionary hierarchies also eschew the reality that pushing the boundaries – by taking risks, including illegal ones – is part and parcel of adolescent identity formation (Cunneen et al. 2015).

It is increasingly recognised that for the 'rational actor' basis of much youth justice policy is at odds with the offending and criminalisation patterns of children with cognitive disabilities (Parliament of Victoria Law Reform Committee, 2013). Cognitive disabilities, including Foetal Alcohol Spectrum Disorder (House of Representatives Standing Committee on Social Policy and Legal Affairs, 2012), can inhibit children's capacity to resist behaving impulsively – in other words, ItM. A range of personal characteristics associated with cognitive impairment, including impulsivity, are considered predisposing factors to offending (French 2007; Parliament of Victoria Law Reform Committee, 2013). Moreover, recent research suggests that such characteristics may not only increase the initial likelihood of a child with a cognitive disability coming into contact with the police as 'gatekeepers' to youth justice systems, but may impede their capacity and opportunity to evade ongoing interaction with youth justice systems and contribute towards high levels of overrepresentation (Richards & Ellem, 2019). Again, therefore, policies based on diversion are likely to fall short where the spontaneous and ItM nature of children's actions fail to be taken into account. In practice, systems of youth diversion that deny the situated realities of marginalised children's lives and behaviours can result in counterproductive outcomes. For example, while the legal doctrine of *doli incapax* (now abolished in the UK) in theory provides a protective mechanism for children, diversionary systems that assume calculating, rational actors have resulted in a sharp decrease in its use (see generally O'Brien and Fitz-Gibbon, 2017). If a child has been the subject of a diversionary measure such as a caution, which requires an admission of wrongdoing, the legal argument that they are *doli incapax* becomes untenable in the future. As a consequence, even those measures expressly designed to limit children's contact with the criminal justice system can have the opposite effect if the lived realities of youth offending are ignored. A recognition that children act ItM thus needs to more clearly inform even those measures that on the surface appear to be designed primarily to reduce their contact with youth justice systems.

In the moment in the future
In their introduction, the lead authors asserted that the dominant explanations of children's involvement in crime are often socio-political and cultural constructions developed by adults with little input from children themselves. The most influential of these accounts draws heavily on the 'Risk Factor Prevention Paradigm' (RFPP) (see Farrington, 2000) which places the blame for offending at the door of individual children and their families while downplaying the relevance of socio-structural constraints. While historians have debated whether children

were treated as mini-adults in medieval times, there is overwhelming agreement that childhood itself is a modern invention, with the 1600s demarcating a period in Europe where children came to be defined as innocent and in need of protection and care (Heywood, 2018). This attitude toward children came to the fore by the Victorian period and eventually became the philosophical basis for the juvenile court. Paradoxically, however, contemporary times, as evidenced by RFPP, have come full circle with presumptions of children as fully rational and responsible beings – like "mini-adults." As several critics have argued, risk-orientated accounts are fundamentally flawed (Case and Haines, 2009; Goddard and Myers, 2018). Children live in the 'here and now'. Therefore, explanations of their involvement in offending must be understood from their lived experience as they negotiate, resist and construct their social situation. This raises two issues in explaining and responding to children's offending.

First, research and practice guided by the concept of ItM must recognize children's right to be <u>actively involved</u> in all decisions that affect their lives. It must respect their views by tuning in to their understanding of the risks and needs that they experience in their daily lives and how they negotiate them. Such principles adhere to article 12 of the United Nations Convention on the Rights of the Child (UNCRC, 1989) and other European Human Rights Standards (see Council of Europe, 2010) which stress the importance of protecting the child's right to participation.

The second core issue raised by the ItM concept relates to concerns about *social justice*. The overriding problem for children in conflict with the law is not offending but social disadvantage. Such children have experienced high levels of socio-economic deprivation in every aspect of their personal and social life (Jacobson *et al*, 2010) and contact with youth justice systems simply reinforces the damage (McAra and McVie, 2010). The research evidencing their vulnerabilities and experience of deprivation is not new and has been known by policymakers and practitioners for many years. Yet little has changed. Underpinned until recently by the RFPP, youth justice policy and practice remain deficit-focused, intent on criminalising children for their social welfare difficulties by conflating need with risk of reoffending (Gray, 2016). Current austerity measures and cuts in public spending have further reinforced the pressure on children and their families to take responsibility to address their own risk and needs irrespective of the structural impediments under which they live. To be ItM we need to listen to children's accounts of how they negotiate socio-economic disadvantage on a daily basis. What is needed is a 'here and now' social justice response informed by children's voices.

In this respect there is hope on the horizon as in recent years several 'new frontiers' have opened with the appearance of 'children first' youth offending services (see Byrne and Case, 2016; Smith and Gray, 2018) which are informed by a 'positive youth justice' agenda (Haines and Case, 2015). Such services strive to adopt a markedly 'child- friendly' approach which draws upon the 1989 UNCRC and Council of Europe (2010) guidelines. Children who offend are viewed as first and foremost children with complex social welfare needs which must be addressed holistically. 'Children first' teams are structured to deliver integrated 'one-stop-shop' support services which call upon universal entitlements. All the above places the spotlight on the child, as the assessment of need is not conflated with risk of offending, as in the RFPP, but takes account of the wider contours of the child's 'whole' personal and social situation. 'Effective' practice is viewed positively in terms of developing the child's abilities,

resilience and motivation rather than being obsessed with deficits and pathologies as in the RFPP. Diversion from formal processing through youth justice systems into universal provision to avoid the taint of criminalization is seen to be a crucial component of this process.

Nevertheless, the 'children first' approach is not without limitations when put into practice. While 'children first' agencies offer a more principled, non-criminalising, child-friendly experience of youth justice and comply with article 12 of the UNCRC by respecting and listening to children's views, the extent to which such agencies uphold the broader spirit of the 1989 Convention by 'tackling poverty and promoting a wide social justice agenda', is, as McAra (2017:968) argues, questionable. Children's problems continue to be blamed on individual and family deficits, with socio-economic disadvantage given only limited attention. Conceptualisations of 'effective' intervention likewise remain very narrow, process orientated and mainly avoid facing up to the structural challenges which must be addressed in order to achieve 'social justice' outcomes. To engage with social justice outcomes the 'children first' approach must move beyond 'child-friendly' platitudes. This would necessitate a more strident commitment to challenge and confront structural inequalities through advocacy work and social action. In compliance with article 12 of the UNCRC and in response to the earlier discussion of participation, both advocacy work and social action could only be undertaken in partnership with children. Goddard and Myers (2018) offer some insights into how this might be achieved.

Conclusion
The various contributions to this paper have set out to explore and develop the notion that offending behaviour by children, behaviour that can bring them into conflict with the law, can best be explained and understood through the notion of ItM: that the behaviour of children takes place primarily ItM, where the future consequences of that behaviour are a stranger to the child. The contributors have approached the topic from a range of different perspectives. Whilst some of these perspectives are complementary, there is not (yet) a unanimity of viewpoints: reflecting the nascent quality of ItM theorising and the relatively underdeveloped thinking about the consequences of ItM for the treatment of children in conflict with the law.

As much as putting forward a new paradigm for understanding the behaviour of children (that may bring them into conflict with the law) and as much as answering questions, this paper has raised many more questions: for the authors as well as, hopefully, for readers. There remains much work to be done to develop theorising about ItM and in translating it into policy and practice. By way of conclusion, therefore, we seek to raise and (tentatively) answer a range of questions that have arisen from this work so far.

Are we arguing that children cannot see or understand the consequences of their behaviour or actions? Of course not. But this ability is highly mediated in children and nowhere near as developed as it is in an adult. We are arguing, however, that when children are bored or excited (at extremes of the continuum) their ability to foresee the consequences of their actions is very restricted indeed.

Are we arguing that all children are the same (in this regard)? Of course not. Children are unique individuals and each child needs to be understood in their own specific circumstances. The extent to which any child will be able to understand the consequences of their actions

will vary according to their mood, their age, their (neuro)maturity, their social context and so on. Old school, Newtonian thinking has no place in modern social science.

Are children just mad, bad or evil? Of course not. Children are not simply mini-adults, with adult thinking capabilities. Children are developing social beings, on learning trajectories of intense complexity and sophistication; in which both the journey and the outcomes are highly individualised, chaotic and unknown (even unknowable).

Can we hold children responsible for their behaviour? Of course not. Well, not entirely. The extent to which children can foresee the consequences of their behaviour (and, therefore, be held [criminally] responsible for it) varies enormously from child to child. Some children in some circumstances may be capable to a significant extent of understanding the consequences of their behaviour (although hardly ever to the same extent as a fully functioning adult). Most children in most circumstances do not possess this ability.

Can we grow the competence of children to foresee the consequences of their behaviour? We do not currently have the academic evidence to answer this question unequivocally but the answer seems to be: children will develop the ability to foresee the consequences of their behaviour as part of the maturation process of the brain, but this process can be speeded up (enhanced) by constructive pro-social interactions with the child.

Is ItM guilty of individualising our understanding of childhood and childhood behaviour (and the responsibility for it)? No, not at all. There are important individual aspects of our arguments about ItM but, as a number of the sections of this paper argue, there are significant socio-structural aspects to ItM thinking, theorising and practice that we must grapple with to generate a wholistic set of explanations/understandings of childhood behaviour.

We are all too aware that the arguments set out in this paper are preliminary and there is much work yet to do to develop (theoretically, empirically, in practice) the concept that the behaviour of children is best understood (and responded to) as ItM. The work we have done here is but the first tentative step in articulating ItM thinking. We hope this paper acts as a springboard for further academic work and, perhaps more importantly, for a more considered approach to responding to children who sometimes find themselves in conflict with the law.

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