Shifting sands: The reconfiguration of neoliberal youth penality

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Abstract

This article begins by tracing the emergence of 'therapeutic surveillance' as a new formula for neoliberal disciplinary power. It maps and interrogates the reconfiguration of a hybrid array of neoliberal rationalities and technologies for the penal governance of young people who offend. It then engages with the challenges posed by critical realists to the governmentality position by questioning how human agency can contest, subvert and resist the dystopian reach of 'therapeutic surveillance' in action. While 'therapeutic surveillance' is steeped in a disciplinary logic of individualization and responsibilization, we argue that it also opens the space for a more transformative youth penality to be articulated; one which challenges the constraints of structural disadvantage in the pursuit of social justice. The article concludes by arguing that newly emerging youth justice configurations which have appeared in response to dramatic cuts in public spending offer a plausible or transformative challenge to the regulatory logic of neoliberal youth penality.

Keywords

Critical realism, governmentality, neoliberal youth penality, strategic-relational, therapeutic surveillance, transformative social justice

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Introduction: Times are changing and the limitations of dystopian accounts of penality

The study of penality focuses on the complexities of how socio-political, economic and cultural forces interact and shape penal practices (Garland, 2013). The rise to prominence in the 21st century of neoliberal politico-economic strategies, epitomized by economic deregulation, the disciplines of managerialism and actuarialism, and the retraction of the welfare state, has had a profound impact on penality (Reiner, 2017). This is reflected in youth justice policy and practice in England and Wales[1] where in the last decade there has been a marked reduction in both the number of first-time entrants and the rate of youth custody.[2] These changes have occurred in a climate of financial austerity which has seen severe cuts in public spending, accompanied by a reduction in centralized performance targets and the localization of youth justice services (Bateman, 2017).

This article seeks to interrogate, from two standpoints, the implications of such a 'substantial penal downsizing in the youth justice sphere' (Cunneen et al., 2018: 406). First, what do these changes suggest to us about the micro dynamics of penal practices; and, second and more precisely, what do they tell us about youth penality in neoliberal times? In particular, how does the governance project of the neoliberal state adapt to market driven processes of withdrawal, restructuring and 'hollowing out', while still seeking to maintain discipline and control? The decision to focus on the theorization of 'youth penality' and not 'youth justice' is informed by Phoenix's (2016) criticisms of the latter for being too narrow and limiting. The concept of youth justice, according to Phoenix, simply offers a self-referential critique of existing policy and practice in relation to youth crime, geared towards reform rather than transformation. Like Phoenix, we believe that a theoretical framework centred on the concept of youth penality offers a more sophisticated, critical and realistic tool for analysing young people's penal experiences and the broad array of powerful socio-political and economic forces that affect them. It also 'provides the platform for a new youth penal politics' to emerge which seeks to challenge and transform 'the unjust nature of the youth penal realm' (Phoenix, 2016: 135).

Debates about neoliberal penality have been significantly influenced by the work of Loïc Wacquant. For Wacquant (2009) the neoliberal state is essentially a penal state which has deployed social and criminal justice policies to clean up the horrors of 'advanced marginality' or the heightened levels of marginalization and social exclusion generated by its divisive socio-economic strategies of market deregulation and welfare cuts. The centrepiece of neoliberal statecraft is a complex mix of 'welfare' and 'prison-fare' programmes with the former directed at the 'penalization of poverty' or the disciplining of the poor into accepting precarious low paid work and the latter relating to the 'punitive turn' or the way in which the rapid expansion of imprisonment has been used not as a reaction to crime but to regulate and warehouse marginalized and potentially disruptive social groups. This aspect of Wacquant's argument is relevant to us because the UK has recently been experiencing a particularly rapid process of restructuring, driven by 'austerity', which poses the same challenge to those state agencies and functions concerned with maintaining control and managing problematic populations. Our focus is on the specific consequences of the resultant process of reimagining and

reorganizing the project of 'youth governance'. How is hegemony over this sector of the population maintained in the (relative) absence of direct coercive control? This scenario is very different, of course, from the carceral strategy adopted in the USA, and increasingly with the adult population in the UK.

Wacquant's (2009) analysis of penality has been subject to a range of criticisms (Squires and Lea, 2012), many of which challenge his dystopian, gendered and raced view of the spread of neoliberal strategies and the globalizing assumption that this brand of penality will automatically be translated from the USA into penal strategies across Europe. As Nelken (2010: 338) argues, this oversimplifies the policy transfer process and ignores the different socio-political and cultural 'shields' against the pervasive spread of punitiveness. The other problem with Wacquant's (2009) account is that it provides a generalized analysis of neoliberal penality. What is missing is a more nuanced and 'grounded' account of the micro dynamics of 'governing practices' and the influence of gendered and raced power differentials (Valverde, 2010: 119).[3] In particular, the analysis cannot apply in the same way in a context where there is evidence of considerable reduction in custodial measures, as in the case of young people in England and Wales; although the disproportionate use of such measures with Black young people does offer some support for Wacquant's arguments about the racialization of control, and we should not overlook this important caveat.[4] However, the significant drop in youth custody and first-time entrants suggests that the 'penal state' may deploy a softer set of surveillance technologies which are framed to be just as controlling of 'advanced marginality'.

Realigning the boundaries of punishment

A good starting point for considering the complexities of neoliberal youth penality is the call by Hannah-Moffat and Lynch (2012: 120) to interrogate the 'boundaries of punishment' by challenging 'prevailing theories that dichotomise and contrast "punishment" and "welfare"'; and instead, exploring how punishment and welfare are often interwoven in penal measures of surveillance which 'produce new architectures of risk/need management'. Feeley and Simon (1992) initially argued that neoliberal penality simply sought to categorize and manage offenders based on an actuarial assessment of their risk of reoffending. However, other work has shown that this argument is too simplistic (Smith, 2006). Neoliberal penality is informed by a hybrid range of thinking which extends beyond actuarialism (O'Malley, 2004) and conflates offenders' needs with their risk of reoffending to create the 'transformative risk subject' whose criminogenic needs are open to change through therapeutic interventions (Hannah-Moffat, 2005). The advantage of this 're-imagining' process is that it offers 'new sites and possibilities for governing' (Maurutto and Hannah-Moffat, 2006: 451).

A significant body of writers (Hannah-Moffat and Maurutto, 2012; Moore and Hirai, 2014; Quirouette et al., 2016) have taken on the above challenge to research the 'boundaries of punishment' represented by specialized problem-solving courts such as bail and drug courts in the USA and Canada. This research explores how such courts combine a hybrid configuration of welfare, responsibilizing and punishment principles to expand the opportunities to regulate and control offenders. Problem-solving type courts adopt a holistic approach to address the complex welfare needs of offenders by allowing access

to a range of health, psychological and social services. However, the availability of this supportive package is not totally benevolent. Often it is accompanied by a series of conditions to secure compliance. Failure to conform is likely to have punitive consequences. This combination of welfare interventions and regulatory punishment is described by Moore (2011) as 'therapeutic surveillance', and by Gray (2013) as 'therapeutic penal governance'. While specialized courts provide a venue for the administration of 'therapeutic surveillance', they also engage in what Turnbull and Hannah-Moffat (2009: 533) describe as 'targeted governance' by focusing on specific need and risk factors such as drug and alcohol misuse, educational underachievement and unstable mental health, constituted purely as individual deficits. Our examination of youth justice strategies and practice in England suggests some common ground with this analysis, especially where a consciously 'targeted' approach is adopted by some youth offending services, with the associated problematization of young people, and the potential criminalization of need (Smith and Gray, 2018).

Youth penality and the emergence of therapeutic surveillance

The current transformations in youth penality indicate that the boundaries between punishment and welfare are shifting once again. This in turn suggests that the neoliberal state is subtly diversifying and maintaining power over young people who offend. We propose that, amid these changes, 'therapeutic surveillance' enacted in new sites of power has been refashioned as a central neoliberal strategy for the 'targeted' penal governance of young offenders.

Our methodological design draws on Foucault (1991) and other scholars' (Garland, 1997, 2014; Rose, 2000; Rose and Miller, 1992; Walters, 2012) work on the analytic of governmentality. Foucault's (1991) theorization of governmentality centres on the 'art of governance' or how individuals and populations are managed through what he describes as 'technologies of the self' and 'bio power'. The governmentality perspective 'offers a powerful framework for analysing how crime is problematized and controlled' (Garland, 1997: 174). Pertinently, it illuminates the hybrid 'rationalities' or 'ways of thinking' that inform the problematization of young people who offend, and the related 'technologies', in the form of policies and practice (Rose, 2000). Here, too, the reintroduction of notions of 'agency' into the youth justice arena aligns with the language of 'responsibilization', whereby control is devolved to agencies, communities and young people to solve their own problems. The consequence, though, is that this 'micro' terrain becomes an active (agentic) site of continual negotiation and recalibration of the 'rules of the game' and the patterns and outcomes of situated practice, as 'the political emerges as a mobile field of agonic and uneven strategic interactions that continuously define, redefine and transform both power and subjects' (Zanotti, 2013: 294).

We began our own inquiry by interrogating recent changes in the rationalities (ways of reasoning) and technologies (ways of acting) for governing young people who offend. Between 2015 and 2017, we undertook a thematic analysis (see Braun and Clarke, 2006) of:

- Youth Justice Board (YJB) and Ministry of Justice (MoJ) policy and research, particularly on assessment and effective practice (Adler et al., 2016; YJB, 2014, 2016a, 2016b);
- a purposive sample of 'Full' and 'Short Quality Screening' inspection reports of youth offending teams (YOTs);[5]
- thematic inspection reports of specific aspects of YOT work—for example, diversion, protecting the public, troubled families; desistance; restorative justice; child protection (Criminal Justice Joint Inspection [CJJI], 2012, 2015, 2017; HMI Probation, 2014, 2016, 2017);
- 34 youth offending plans which by statute all YOTs produce annually;[6]
- the Taylor review (2016), the government response (MoJ, 2016) and reports produced by various children's rights organizations to influence and respond to it; for example, Standing Committee on Youth Justice and National Association of Youth Justice;
- the YJB resource hub, launched in 2016 to bring together effective practice resources, training material and research evidence for practitioners, policymakers and academics (see https://yjresourcehub.uk/).

The outcomes are presented below, drawing on an analytical framework offered by the governmentality perspective. We are aware of the strengths and limitations of adopting a pure governmentality approach; therefore, in the following section we problematize this perspective and set out the framework for a critical realist governmentality position which gives due weight to agency, resistance, struggle and the differential distribution and impacts of the mechanisms of power.

Shifts in the rationalities for governing young people who offend

We start, logically, with the strategies deployed to delineate and construct young people and their behaviour as problematic. In recent years, the Youth Justice Board has developed a new 'comprehensive end-to-end assessment and planning framework' (AssetPlus) to 'holistically' assess the problems of young people who offend and plan interventions to reduce their risk of further offending (YJB, 2016a: 6). Shifts in the *rationalities* for governing young people who offend are evidenced by analysis of the reasoning behind the replacement of Asset with AssetPlus and the associated training programmes put in place (see https://yjresourcehub.uk/).[7] AssetPlus is informed by a hybrid array of psychological and sociological theories and research beyond actuarialism (O'Malley, 2004; Smith, 2006) which 'claim to speak the truth' about young offenders (Foucault, 1980). AssetPlus emerged from a critical debate over the reliance of the previous Asset framework on the hotly disputed 'risk factor prevention paradigm' and practitioners' resistance to its rigid disregard for professional discretion (Baker, 2014). While discernible shifts in the problematization of youth crime have resulted from this debate, the discursive rationalities embedded in AssetPlus continue to reinforce the 'pathologization' and 'medicalization' of young people who offend.

The dramatic decrease in first-time entrants from 2008 onwards has meant that the remaining young people who enter the youth justice system are constituted as

exceptionally 'needy' and facing ever more complex welfare problems (Taylor, 2016: 7). AssetPlus is represented as a more sophisticated tool to assess the complex neediness of these hyper-marginalized young people (YJB, 2016a). It takes account of new needs that have been uncovered—for example, speech, language and communication difficulties—and offers 'improved identification and analysis' of appropriate interventions (YJB, 2014: 7). Already known needs, such as mental health difficulties, are given more prominence. On the positive side this highlights the research findings on the high prevalence of unmet emotional and mental health difficulties faced by young offenders (see Jacobson et al., 2010). However, these needs are abstractly pathologized in policy and practice as individual deficits linked to offending, with only lip service given to the failure of mental health agencies to offer adequate provision (YJB, 2016a). The widespread dissemination of AssetPlus extends the scope for more intensive surveillance and the justification for a more therapeutic orientation towards young people who offend. Hannah-Moffat's (2005) 'transformative risk subject' has now become the subject of 'therapeutic transformation'.

AssetPlus has also cherry picked extensively from desistance literature and research (HMI Probation, 2016). Unlike Asset, AssetPlus places considerable emphasis on identifying the 'foundations for change' which will empower young people to discover the pathways out of crime (YJB, 2016a). However, while the language of risk no longer swamps this process, it has not totally disappeared. The emphasis is on achieving greater balance between minimizing risk and building the young person's individual strengths, resilience and motivation to change (YJB, 2014). Hence, risks are no longer linked to deficits but to strengths. There is increasing emphasis on young people's agency, and the capacity for them to take the initiative in changing their lives; chiming with the neoliberal principle of 'responsibilization'.

While AssetPlus acknowledges that desistance is a complex interactional process shaped by changes in both the individual and social context in which young people offend (Baker, 2014), it successfully manages to hear the first part of this message while overlooking the second. For example, the section of the AssetPlus guidance document (YJB, 2016a: 123–124) which advises practitioners on the interaction between factors linked to young people's offending lists eight 'individual' type considerations, such as 'pressures', 'triggers' and 'periods of desistance'. Only one reference suggests that practitioners should take account of the wider 'social' context of offending by considering 'how the young person interacts with their environment'. The emphasis on 'individual' change, strengths and resilience supports the neoliberal ethos of responsibilization or 'moral reconstruction' (Rose, 2000: 335) as the key route out of crime. Importantly, too, the apparent neutrality of instruments such as AssetPlus tends to gloss over, or even misrepresent key dimensions of young people's lives and behaviour such as race or gender differences. The Lammy (2017) report, for example, highlights evidence of systemic discrimination, which is likely to result in disproportionate numbers of young Black people becoming 'eligible' for assessment, on grounds such as prior exclusion from school, and de facto more likely to be deemed to require some form of intervention.

Despite its appeal to therapeutic diagnostic ideals, AssetPlus remains rooted in the managerialist culture of neoliberal penality. It has been progressively 'rolled out', with all YOTs identifying 'local change leads' to oversee the process (YJB, 2017a). AssetPlus

is promoted as a more 'systematic' yet 'flexible' assessment tool allowing continuous, in-depth assessment and positive intervention planning throughout the young person's time in the youth justice system (YJB, 2014). On the other hand, Hampson (2018: 27) illustrates some of the confusion experienced by practitioners seeking to make sense of and apply AssetPlus as a progressive tool for change, and their tendency to revert to framing young people's experiences and behaviour in predominantly risk-based terms. Fundamentally, then, AssetPlus continues to act as a powerful legitimizing tool to enact the 'normalizing gaze' of disciplinary regulation which, as so insightfully described by Foucault (1977), turns the spotlight on all, and especially the most 'problematic', aspects of the offender's character and lifestyle as a prelude to selective yet purposeful behaviour management.

Shifts in the technologies for governing young people who offend

Our investigation has also uncovered significant shifts in the *technologies* of intervention, evidenced by a reconfiguration of 'effective practice'. 'Effective practice' remains firmly embedded in the neoliberal logic of 'responsibilization' and 'ethical reconstruction' but the mechanisms for achieving this have changed. The Ministry of Justice commissioned report on 'what works' (Adler et al., 2016) was used to produce guidance on 'effective practice' with young offenders (YJB, 2016b). This document, along with other supporting materials showcased at the youth justice resource hub,[8] is clear that 'therapeutic' type interventions are the most effective in reducing reoffending. These include skills building through cognitive behaviour therapy, restorative practices and counselling. Such interventions are reputedly best enacted through 'therapeutic alliances' built on meaningful relationships between young people and workers from different 'psyche' backgrounds (HMI Probation, 2014, 2016). While workers act as moral entrepreneurs or conduits of responsibilization in this alliance, young people are expected to be active and engaged participants (YJB, 2016b).

Community-based diversionary (CJJI, 2017; YJB, 2017b) and restorative justice programmes (CJJI, 2012) are promoted as key vehicles for implementing therapeutic interventions (YJB, 2016b). However, the form of diversionary intervention promoted is quite different to previous incarnations (Smith, 2014a). While there is a strong emphasis on diverting from formal justice, there is also a preference for 'interventionist diversion' (Kelly and Armitage, 2015) whereby the young person may be referred to treatment-based welfare services. Examples of these are Youth Justice Liaison and Diversion and Triage schemes which aspire to divert young people with mental health, communication or learning difficulties from the youth justice system to 'appropriate services' (Adler et al., 2016: 26). Interestingly, as Kelly and Armitage (2015: 130) observe, the relaxation of central government controls resulted in 'considerable local variation' in service delivery arrangements, and this raises questions for those seeking to offer a coherent account of change. If these 'new interventionist' (Kelly and Armitage, 2015: 129) interventions amount to anything consistent (Smith, 2014a), we suggest that they achieve a significant task in redefining offending in terms of 'criminogenic need'; although where they are provided, welfare services may be conditional, judgemental and just as coercive as their criminal justice equivalents.

A distinctive construction of restorative justice (see CJJI, 2012) displaces cognitive therapeutic type interventions as the means of instituting responsibilization. A recent mapping exercise commissioned by the Restorative Justice Council found that it was widely used at all stages of the youth justice process with most YOTs reporting that it was a core component of their work (Institute for Criminal Policy Research, 2016). As with the interpretation of desistance pointed out earlier, changing the 'individual' is constituted as more effective than changing the 'social' in restorative type interventions (Gray, 2005). Hence, much of the focus of such work is on holding the young person individually accountable for their offending and generating a sense of responsible citizenship (Cunneen and Goldson, 2015). Restoration is not just about making good but also about being good.

Shifts in the architecture for the delivery of youth penality

Youth offending teams (YOTs) can be likened to 'assemblages of penal governance in action' (Gray, 2013: 518). In recent years, they have made significant changes to their structure and service delivery creating 'new architectures of risk/need management' (Hannah-Moffat and Maurutto, 2012: 215). Supporting evidence comes from inspections of youth offending services (see also YJB, 2015):

> Nowadays, YOTs are organised in many different ways [. . .] In some parts of the country YOTs have merged with other local authority services for young people, and other YOTs have merged across local authority boundaries. Many are no longer called YOTs, and work under a generic title relating to services for youth or young people.

> (HMI Probation, 2017: 6)

Commentators link these changes to the dramatic drop in first-time entrants, cuts in public expenditure, relaxation of centralized targets and greater flexibility in the delivery of youth justice services (Smith, 2017).

Previously, we mapped changes in the structure and service provision of YOTs, based on a thematic analysis of youth justice plans and in-depth interviews with YOT managers and practitioners at eight sites.[9] We identified three main typologies or 'architectures of risk/need management': 'offender management'; 'targeted intervention'; and 'children and young people first' (Smith and Gray, 2018). Their common feature is that they have supported, to varying degrees, the emergence and strengthening of 'therapeutic surveillance', delivering what appears to be entirely benevolent welfare support underpinned by expectations and conditions of compliance. Each, too, is geared towards achieving change in the characteristics of the young person and achieving a form of 'normalization' of their behaviour. System change, advocacy and rights are not typically at the top of this agenda!

'Offender management' teams focus on addressing and reducing offending behaviour through the supervision of young offenders on out-of-court and court-ordered disposals. While the management of offending is their core business, such teams may still contain strong therapeutic elements as they conflate welfare need with risk of offending, based

on the belief that by addressing welfare concerns they will reduce the likelihood of further offending. For example, the Bracknell Forest Youth Offending Service plan (2016) states 'reducing offending in Looked After Children is particularly important as this group [. . .] are already disadvantaged by their earlier life experiences and their offending can be the result of poor coping skills, rather than criminal intent'.

'Targeted intervention' teams are also interested in addressing the problems associated with offending but place a stronger emphasis on the 'therapeutic' component of their work as young offenders are assessed as warranting intervention because they are both exceptionally 'risky' and 'needy'. Hence, these teams sit alongside other specialist youth support services who together target young people's composite welfare difficulties, rather than simply their offending. The Gloucestershire Youth Offending Service plan (2017: 2, 6) comments that it 'has been integrated into the Youth Support Team; a multi-agency, multi-disciplinary service working with vulnerable young people' which gives them access to 'substance misuse workers, housing workers, social workers [. . .]'. Inspections of desistance-based and trauma-informed (HMI Probation, 2016, 2017) practice have also endorsed 'targeted' approaches, emphasizing the value of therapeutic interventions with 'high risk' offenders.

'Children and young people first' teams[10] are, however, perhaps the most viable vehicles for 'therapeutic surveillance'. They prioritize the child's well-being irrespective of their behaviour, on the premise that young people who offend are first and foremost children. Whereas 'targeted intervention' teams turn their therapeutic gaze specifically and exclusively on young offenders, 'children first' teams pride themselves on offering a generic, holistic and integrated youth support service to address all young people's vulnerabilities; including, for example, homelessness, mental health and substance misuse. Guided by inclusionary principles, they advocate that children who offend have the same entitlements as all children and should be dealt with by mainstream services. The Bournemouth and Poole Youth Offending Service (2015) plan states:

> [our] work is underpinned by a set of principles that inform all we do. We value the worth of all young people and by working with them and their families to prevent or reduce offending, we aim to assist the communities in which they live.

Inspections of youth offending teams also refer to an 'ethos of seeking to provide a high level of support to the child and their family' (CJJI, 2017: 23), although this is balanced with a concern that risk of harm should not be overlooked (HMI Probation, 2017).

The government-commissioned Taylor review of youth justice (2016: 3) firmly endorsed the 'children and young people first' model because: 'offending should not mean forfeiting the right to childhood'. Taylor's (2016: 49) argument is that it offers the foundation for a 'system that moves from justice with some welfare, to a welfare system with justice'. The latter objective was expected to be enveloped in a 'therapeutic culture'; as from Taylor's (2016: 9) perspective offending behaviour is rooted in poorly diagnosed or inadequately resourced services for mental health, behavioural or learning difficulties. The integration of YOTs into wider children services, as in the 'children first' model, is crucial to the realization of this therapeutic vision. Undoubtedly, following

Cohen (1985), this would provide further opportunities to widen and strengthen the surveillance net over all vulnerable young people, not only those who offend.

Taylor's recommendations have been met with some resistance. In the Government's response (MoJ, 2016) one can discern a struggle over how therapeutic, responsibilizing or punitive youth penality should be, which places it more strategically in the 'offender management' rather than the 'children first' camp. While it agrees with Taylor that children who offend are very 'needy' and that these needs must be met, it does not support an exclusively therapeutic approach as young offenders 'must face the consequences of their actions' (MoJ, 2016: 3). Government is also more restrained than Taylor in the extent to which it will support devolution and flexibility. Here we see the 'working out' of the tension between state withdrawal and control as the neoliberal project evolves. While YOTs will be encouraged to be more creative in the delivery of youth justice services, the statutory requirement on local authorities to retain a YOT and the role of the Youth Justice Board in monitoring performance will remain. As Crawford (2006: 471) points out, the neoliberal state may have diffused power to a network of micro political sites, but it needs to maintain the machinery to exercise 'command and control'.

From governance towards a critical realist youth penality

The previous section exemplifies the emergence of 'therapeutic surveillance' as the contemporary blueprint for the penal governance of young people who offend. 'Therapeutic surveillance' acts as a double-edged sword which combines a benevolent mask of welfare support with intensive yet discreet state regulation, aiming to constitute the responsible subject. However, critical realists (Bhaskar, 2008 [1975]; Collier, 1994) would argue that the governmentality perspective on which this analysis is based can provide only a partial understanding of the realities of neoliberal youth penality. The main proponent of critical realism is Roy Bhaskar (2008 [1975]) who would advocate digging beneath the surface to investigate the underlying socio-economic structures, powers and processes that generate social reality. Bhaskar also directs us to take account of the duality of structure and agency and their dynamic mutually constitutive relationship.

Walters (2012: 47) argues that there are variations in Foucault's interpretation of governmentality in different areas of his work which have allowed governmentality scholars to engage in 'a certain degree of conceptual development and refinement' and use his ideas 'across academic borders [. . .] in very diverse settings and contexts'. Building on critical realist concepts, critical criminologists (Edwards and Hughes, 2012; Garland, 1997; Phoenix, 2016) and social policy analysts (McKee, 2009; Parr, 2009, 2017; Prior and Barnes, 2011) would between them argue, albeit from rather different viewpoints, that the governmentality perspective has four fundamental flaws which reduce its critical edge. First, some critics (Crawford, 2006; Hallsworth and Lea, 2011) argue that the governmentality position underplays the role of the state as a determining social force. They contend that while the state may exercise power through a plurality of micro political networks infused with neoliberal ideology and practices, it retains a pivotal position in the form of its sovereign authority. It is 'superstructural', in Foucault's (1980) terms; and it is the engine which drives the practices which constitute self-regulation and self-control.

Second, the governmentality perspective obfuscates the unequal and socially structured terrain of human relationships and interactions. This then understates the extent to which the rationalities and technologies for the penal governance of young people have material dimensions that interact unevenly with embedded gender and racial discrimination and class inequality, and has differential effects and consequences (Burman and Gelsthorpe, 2017; Miller and Stuart, 2017; Parr, 2009, 2017). As Garland (1997) contends, by aligning the concept of freedom to act with the concept of power the governmentality position fails to recognize that structural influences themselves often modify the way power and agency are exercised and experienced. Youth justice professionals are '"situated agents" [. . .] acting in contexts [. . .] shaped by external realities' (Prior and Barnes, 2011: 266). It is no coincidence that youth justice policies are mainly directed at 'the most disadvantaged and structurally vulnerable young people' (White and Cunneen, 2015: 19) and that Black young people constitute almost half of inmates in custody (MoJ, 2018); and yet governmentality alone is insufficiently nuanced or agile to be able to account for this.

Third, governmentality is said to underrate the part of agency, as exercised by the youth justice professions who translate rationalities and technologies into policy and practice (Parr, 2009, 2017); and, in so doing, adapt and modify them. In this process rationalities and technologies are rarely realized as intended as there is substantial room for resistance, struggle, negotiation and subversion; not least on the part of young people themselves (Goddard and Myers, 2018; Phoenix and Kelly, 2013). Numerous research studies have shown how youth justice practitioners have actively resisted punitive trends to uphold welfare principles (Gray, 2016; Phoenix, 2016). Of course, this is not overlooked by governmentality theorists, who recognize 'the element of struggle and disagreement [. . .] in the making of the present' (Walters, 2012: 138).

Finally, governmentality-based theorizing over-rationalizes the realities and impacts of penal governance (McKee, 2009). The mentalities and technologies that inform 'therapeutic surveillance' are presented in an abstract way which makes their influence appear omnipresent and totalizing and disregards the messiness and diversity of empirical reality, and the pre-existing subjectivities with which they are engaging. This leads Phoenix (2016) to argue that the governmentality position paints too dystopian a picture of youth penality in which any positive reforms are simply interpreted as providing more sophisticated forms of control that negate any possibility of progressive change. The key challenge posed by Phoenix (2016: 133) is 'how can a theoretical space be opened in which it is possible to glimpse the conditions of possibility for change [. . .]?'

We believe that the first step in opening this space and addressing wider criticisms is to merge governmentality and critical realist positions. A cogent case for such a combination has been argued by several distinguished theorists who contend that there is a high degree of congruence between the two ontologies (see Frauley, 2007; Garland, 1997; Jessop, 2015; McKee, 2009; Parr, 2009, 2017).[11] The significance of this connection is that it provides the tools to complement governmentality insights into the micro physics of power with a critical analysis of the realities of struggle, resistance and negotiation as human agency and material constraints are played out. As Frauley (2007: 623) points out, Foucault was 'sympathetic to realism' and fully cognizant of the influence of both

agency and material reality on governmental practices. It is simply under-theorized in his work (Hardy, 2019).

However, critical realism is not without its limitations because while it guides one to look beneath the surface, further layers of theorizing are required to ascertain what to look for (Parr, 2009). As Jessop (2015: 243) argues, 'this poses the challenge of how to translate general meta-theoretical work into relevant research questions, strategies, studies and conclusions regarding particular analytical objects, generative structures, actual events and processes'. Several critical sociological positions can do this and Gray (2009, 2013) makes the case for adopting Jessop's (2008) strategic-relational approach to analyse youth penalty. This integrates the theoretical insights of Foucauldian governmentality with that of state-centred neo-Marxism[12] to develop a 'critical realist governmentality' framework for analysis; this is further reinforced by Jessop's (2003: 138) articulation of a 'methodological commitment' to the development of a strategic-relational approach via critical realism (see also Montiel, 2007).

Informed by Jessop (2008), youth penalty is conceptualized as an intricate power invested ensemble of social relations, institutions, organizations, practices and subjectivities through which neoliberal strategies for the penal governance of young people who offend (along with those of other social forces) are articulated and at the same time, mediated (Gray, 2009, 2013). These strategies are not simply viewed as the results of conspiratorial planning by a centralized state authority, as strategic-relational concepts are grounded in a Foucauldian analytic of the micro physics of power and current theorizing on networked 'governance at a distance' (Edwards and Hughes, 2012). Hence, youth justice practitioners are viewed as 'reflective, strategically-calculating' actors (Jessop, 2008) guided by an eclectic mix of rationalities and technologies to translate 'therapeutic surveillance' into action; and at the same time, provided with the capacity to modify or challenge it. The active choices that they make are not free of structural constraints as they contain 'strategic' elements and imbalances which have real material consequences in preserving 'class inequality and socio-economic disadvantage by individualizing and dematerializing young offenders' needs' (Gray, 2013: 527). In this sense, they are active but not always intentional contributors to the task of reframing the rationalities, technologies and architectures of practice to which we have previously referred. As Walters (2012: 145) suggests, 'power really is diffuse' and change may well originate from a range of sources, including practitioners, beyond 'the usual centres and agents of power'.

The advantage of adopting a strategic-relational perspective is that it offers a more nuanced analysis of the interplay between agency and structure in the exercise of class power and the power dynamics of networked governance. Youth justice practitioners are viewed as active subjects who engage in a complex but 'structured' process of contestation and negotiation as policy is translated into practice at various micro sites of governance beyond the state. However, while from a strategic-relational perspective 'therapeutic surveillance' is steeped in neoliberal classed logic, its emergence is credited to the active agency of youth justice experts who must also engage with and accommodate a diverse range of other socio-political and economic interests. It is this messy cauldron of diversity and active agency which both problematizes and simultaneously opens opportunities for the individualizing and dematerializing logic of neoliberalism to be recognized for

what it is, challenged, and then a more transformative progressive and critical youth penality to emerge.

In response to Phoenix's (2016) earlier challenge, we will now reflect on the basic ingredients of such a critical youth penality perspective by considering three questions. First, how is the regulatory logic of neoliberal youth penality currently challenged—its rationale, technologies and modes of delivery? Second, how can agencies and practitioners further strengthen this challenge to reframe 'therapeutic surveillance' as a form of critical intervention to fight social inequality? Third, what are the possibilities for launching such a challenge given that 'strategic' elements are articulated through interventions which limit their progressive and transformative potential to pursue social justice?

Challenging rationalities

Neoliberal youth penality individualizes, pathologizes and dematerializes the social problems and vulnerabilities of young people who offend (Goddard and Myers, 2017; Haines and Case, 2015). While as an assessment tool AssetPlus has taken on board the desistance paradigm to accommodate strengths and potential for change, it continues to downplay the social context of young people's involvement in crime. However, both AssetPlus and its predecessor have been subject to concerted challenge by policymakers and practitioners alike. As the youth justice system has been reconfigured, so too have the underpinning policy positions and explanatory accounts for intervention. The active reconceptualization of youth justice has involved a phase of questioning and rethinking of core assumptions informing previous configurations of policy and practice. Here, we can discern the emergence of new lines of radical criticism of key features of the field, as is perhaps signalled by the shift from Asset to AssetPlus.

Asset was significant because it formed a pivotal point of the purportedly 'radical' youth justice reforms of New Labour. As the core assessment tool, Asset acted as the determinant of all subsequent decisions and actions taken in respect of young people's offending. Typifying thinking and practices at the heart of the youth justice system, Asset became symbolically representative of the prevailing ideology informing the construction and delivery of youth justice. Although subject to extensive criticism from all quarters, the original formulation of Asset remained in place with only minor revisions for some time. It required acknowledgement of its shortcomings following internal struggles within the Youth Justice Board (Souhami, 2015) to prompt its reformulations as AssetPlus. Informed by desistance thinking, instead of atomized amalgams of 'risk factors', AssetPlus provides a more 'holistic' balanced picture of young people's offending and the complex individual and social factors to be considered in framing assessments and determining appropriate interventions. Some attention has also been paid to young people's own voices and aspirations, to incorporate notions of 'rights' and self-determination. 'Children first' teams have led the struggle against the preoccupation with 'risk' and have even gone so far as to reject AssetPlus in favour of 'children first' assessment tools (Byrne and Case, 2016). However, the 'children first' approach is not without its opponents. In Hampson's (2018) research most youth justice practitioners resisted wholescale adoption of the latter, remaining committed to risk and offence focused ways of thinking.

To what extent the reformulation of Asset has affected practice rather than merely following and rationalizing practitioner initiatives is unclear, but to the extent that it was permissive and appeared to constitute a new 'settlement' of recurrent themes in the organization of youth justice, this realignment is of some significance. Precisely because the assessment process sets the terms for subsequent interventions, it is arguably the critical moment, not just in determining what happens next, but also in defining the ways in which youth offending is perceived and problematized. Arguably, too, AssetPlus is significant in terms of the key questions which it does not address—by retaining an essentially individualized, problem-orientated bias, wider opportunities and aspirations, as well as embedded inequalities and discriminatory experiences, are excluded from routine scrutiny. As Goddard and Myers (2018) argue in the context of the USA, such wider considerations could and, arguably, should, be reinfused into the assessment process. The recent 'loosening' of prescriptive controls over youth justice practitioners in England and Wales may serve that purpose.

Challenging technologies

So, if the reorientation of AssetPlus represents a (contested) reconfiguration of the rationalities of youth justice, reflecting wider ideological and structural changes, how are these represented in its technologies? As 'needs talk' re-emerges as a significant and re-legitimated feature of the youth justice terrain, opportunities arise for new approaches to practice. Neoliberal youth penality conflates 'effective practice' with therapeutic style interventions which aim to responsibilize young offenders. Diversion, restorative justice and desistance are framed as individual moral journeys stripped of any social structural ramifications. However, any kind of rational, strategic patterning would be hard to discern from this change process, with Haines and Case (2018: 145) arguing that 'the current state of youth justice in England and Wales [. . .] is one of incoherence and divergence approaching chaos' as evidenced by the complex and multi-faceted variance in policy and practice at the local level. Similarly, Phoenix and Kelly (2013: 420) found that young people still resist attempts by youth justice practitioners to transform them 'into risk-calculating prudential citizens of neoliberalism'.

Our research mapped out a less chaotic youth justice landscape with 'children and young people first' and 'targeted intervention' practitioners leading the struggle to contest the neoliberal constitution of 'effective practice' and effect a more critical vision (Smith and Gray, 2018). Guided by desistance theory, they orientate their interventions towards building young people's strengths and resilience rather than tackling pathologies. Diversion from formal youth justice procedures into universal services is prioritized (see Smith, 2017 for a discussion of 'rights-based diversion'). Restorative type interventions are also extoled as yet other pinnacles of 'effective practice'. The promotion of such interventions is not driven primarily by concerns about responsibility or accountability. Instead, social inclusion and participation become central foci of restorative practice (see White, 2003, for example).

It is unclear the extent to which the 'children first' and 'targeted intervention' visions of 'effective practice' represent sustainable changes in the machinery of youth justice, but they do draw support from a renewed spirit of legitimacy, ascribed to forms of practice geared towards achieving improvements in young people's lives. From a social justice outlook, this is still somewhat limiting. It is less individualizing and less problematizing than 'offender management' approaches but is still lop-sided in that the

social context is inadequately tackled; and this is even more the case in the context of state retrenchment and denial of access to key services. The inevitable focus on the young person arising from a criminal justice referral is only one side of the equation, and any intervention must be balanced with an equivalent concern to create the conditions for that young person to enjoy their rights and entitlements (Smith, 2014b). As Goddard and Myers (2018) suggest, this would necessitate a greater commitment by policymakers and practitioners to advocacy work and mobilizing young people to engage in constructive social action to counter the impact of socio-economic disadvantage.

Challenging the architecture for the delivery of youth penalty

Haines and Case (2018) argue that the chaotic messiness of practice interventions is matched by disruptions in the delivery of youth justice services. Amid this chaos, our research has highlighted the emergence of several innovative delivery models by way of adaptation to contemporary challenges and budget cuts in a neoliberal political climate (Smith and Gray, 2018). 'Targeted' models still implicitly rely on the identification of 'difference', as the starting point for intervention, rather than drawing on principles of normalization and universalism as do 'children first' approaches. Both nonetheless invoke the principles of children's rights. On the other hand, both are poised on a knife-edge, and might still inadvertently problematize children identified as offenders.

Here, we question the extent to which 'challenging' practices can free themselves from overarching assumptions and expectations; and how far they are able to reflect a genuine spirit of transformation. On the face of it, 'children first' practitioners offer greater prospects of achieving this sort of outcome; as the offence-related factors which mark young people out as problematic are accorded less prominence. Contrarily, structural factors which underlie the process of criminalization, such as poverty and discrimination, may come to be de-emphasized, in favour of more conventionally understood and tractable 'personal problems'.

In neoliberal times 'children first' agencies and practitioners, like their counterparts in the USA (Goddard and Myers, 2018), are subjected to performance monitoring around 'offender management' criteria because of their reliance on public sector funding. Despite this, the structure and objectives of these agencies place practitioners in a strong position to initiate transformative and socially just policy and practice based on advocacy and social action. Leeds Youth Offending Service (2019), for example, aligns itself with the broader 'child friendly' policies of the city council, prioritizing children's interests and rights. Aligned with this, progressive youth justice interventions must also remain explicitly 'oppositional' in the face of the responsibilizing logic and practices which characterize prevailing discourses and mechanisms of governance—there is no middle ground or comfortable compromise position.

Ways forward: Beyond dystopian thinking

This article has shown how logic and necessity have coalesced, leading to several recognizable strategic choices, including the integration of youth justice services with other provision geared towards children and young people. As we have previously observed, such realignments are by no means uniform or readily predictable, but there has emerged

at the very least an influential organizational template drawing on a holistic frame of reference, encapsulated in 'children first' principles. Rights and social justice, then, are able to form the logical framework for practitioners to re-structure services and delivery arrangements—supporting a transformation of practice models (Gray, 2016; Smith, 2014b). At the same time, it is noted, adopting a 'human rights' frame for understanding and addressing oppression in youth justice will also provide a basis for challenging unequal and oppressive treatment, especially on the grounds of gender and ethnicity (Cunneen et al., 2018). Models of progressive practice need to respond, too, to the trenchant criticisms and challenges offered by young people themselves (Phoenix and Kelly, 2013).

Nancy Fraser (2003) argues that there are two kinds of social justice—'affirmative' and 'transformative'. 'Affirmative' justice suggests addressing social disadvantage through piecemeal changes in vulnerable young people's access to socio-economic opportunities in the mainstream and making social welfare partnerships more efficient vehicles of service delivery to such young people. 'Transformative' justice seeks more fundamental changes to the division of socio-economic resources by challenging social structural constraints in pursuit of socially just outcomes. Youth penalty is at a crossroads. Opportunities exist for practitioners to challenge the neoliberal and often racialized and gendered problematization of young people who offend and reconfigure 'effective practice' to strive for 'transformative' social justice (see Goddard and Myers, 2018). Newly restructured youth justice organizations have appeared, such as those inspired by 'children first', which may have the capacity and authority to launch such a challenge. The key question is do these agencies have the desire and motivation to rise to the challenge or will their good ideas be appropriated in another re-configuration of social control (Cohen, 1985), and their resistance sidelined? This is a constant battle, subject to the continual reassertion of the will to power epitomized by those in dominant positions, and we can only point towards transformative possibilities rather than expect a miraculous or instantaneous resolution of these long-standing challenges.

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Notes

1. While this article focuses empirically on England and Wales, the theorization of neoliberal youth penalty is of international relevance.

2. The latter fell by 74% and the former (which refers to young people receiving a formal caution or court disposal for the first time) by 81% over the last decade (MoJ, 2018).
3. Deeper exploration of these issues is beyond the scope of this article, but see Burman and Gelsthorpe (2017) and Miller and Stuart (2017).
4. Black, Asian and Minority Ethnic young people represented 45% of those in custody (although less than 5% of the 10–17 age group) at the end of March 2017 (MoJ, 2018).
5. Sampled according to their overall rating on a four-point scale: 'outstanding'; 'good'; 'requires improvement'; inadequate (see https://www.justiceinspectorates.gov.uk/hmiprobation/about-our-work/youth-inspection-programmes/inspecting-youth-offending-work).
6. Analyses of some of these data were used to produce a different article on models of youth justice (see Smith and Gray, 2018).
7. In this section most of the extracts to illustrate 'shifts' in rationalities are taken from the ASSET documentation. These are 'gateway' documents which typify key themes and are woven into the wider data sets outlined in the text. Word limits restrict the provision of extracts from all documents reviewed for the thematic analysis.
8. This section draws on analysis of a range of therapeutic interventions to be found at https://yjresourcehub.uk/. Space once again limits the number of extracts that can be presented.
9. See note 6 above and Smith and Gray (2018) for an account of the methodology underpinning this exercise.
10. These are informed by the 'positive youth justice movement' (Haines and Case, 2015).
11. We acknowledge that other theorists might argue that Foucauldian and critical realist perspectives are incompatible.
12. Garland (1997) contends that the Marxist problematic is incompatible with a governmentality position, but several theorists have challenged and rebutted this argument (see Gray, 2009, 2013; Jessop, 2007; Melossi, 2017).

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