



# Youth justice and social harm: Towards a 'theory of the good'

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## Abstract

This article seeks to develop a distinctive conceptual framework for the purpose of (re)imagining progressive youth justice. We begin by utilising zemiological insights to relate the widely recognised impacts of neoliberalism to the social harms associated with the youth justice system. Then, drawing on a classification of children's needs, informed by a 'theory of the good', and interrogating the idea of 'utopia as method', we move on to set out the guiding principles ('archaeology') and operational drivers ('architecture') which we believe provide an effective basis for the development of progressive forms of youth justice. We also acknowledge the value of several 'noble attempts' which go some way to achieving these objectives, despite limitations and systemic constraints.

## Keywords

Neoliberalism, (re)imagining progressive youth justice, social harm, 'theory of the good', 'utopia as method'

## Introduction

In this article, we attempt a distinct critique of youth justice informed by a zemiological position (see Canning and Tombs, 2021). Our rationale is that this offers a 'replacement discourse' or alternative way to make sense of the impact of social, economic, and political harms on young people's experiences in the youth justice system (Copson, 2021: 331).

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This perspective also advances a transformative pathway towards a more holistic and socially just approach to dealing with children in conflict with the law. We suggest that this theoretical exercise is particularly pertinent when practice and policy discourses in youth justice have turned towards ideas of putting the child's interests and wellbeing 'first'; and actively engaging young people in the resolution of those issues and circumstances which have led to them being formally identified as offenders (Case and Browning, 2021; Youth Justice Board (YJB), 2024).

Raymen (2019) acknowledges that what is missing from zemiological scholarship is a transformative 'theory of the good' or a vision of 'the good society' (Copson, 2021); in Zizek's (2008) words, a new view of 'symbolic order' and the 'big other' that epitomises the notion of human flourishing. Speculation about a 'theory of the good' for society as a whole is beyond our scope, but we do want to consider what constitutes a 'theory of the good' in the context of youth justice. We believe that Levitas' (2013) utopian method may provide the tools to translate Raymen's argument into an agenda for action in this field. Levitas distinctively refutes the notion that utopian thinking merely seeks to espouse an idealistic or absolutist blueprint for 'the good society' (Copson, 2021). Instead, 'utopia as method' offers a framework to critically reflect on the social world as it is and debate the possibilities for the 'imaginary reconstitution of society' (Levitas, 2013), and we shall draw on this framework to evaluate and build on present trends and developments.

First, though, we analyse the generative socio-political and economic processes by which harms are produced in the youth justice system. This is in response to Garside's (2013) criticism that a lot of zemiological scholarship focuses too much on the 'effects' and 'consequences' of social harm which leads to an emphasis on reform through 'better regulation . . . rather than a more profound agenda for social transformation' (p. 248). Drawing on Levitas' conceptual framework, we then develop an ontological position on children's needs and evidence the harms which deny the fulfilment of these needs for children experiencing youth justice interventions. Part 3 builds critically on existing attempts to reform and ameliorate youth justice policy and practice to consider how to engage in utopian, transformative thinking about the 'archaeology' (principles) and 'architecture' (organisational and institutional drivers) of youth justice in a 'good society'.

## **Neoliberalism, structural harms, and youth justice**

Although this pathway is by now well-trodden, the contemporary context of neoliberalism, its harms and their implications for youth justice is a necessary starting point. This section considers how structural factors, particularly those arising from the neoliberal socio-political and economic project (De Giorgi, 2006), undermine human flourishing, deny self-actualisation, and so produce social harm. We will then explore how harms generated by neoliberalism are reproduced in the sphere of youth justice.

### *Neoliberalism and austerity*

In the current global context, most socio-political and economic systems are shaped according to the logic of neoliberalism: '... a political project to re-establish the

conditions for capital accumulation and to restore the power of the economic elites' (Harvey, 2007: 19). This overarching social fact necessarily permeates youth justice policymaking and practices. Neoliberalism embraces core principles which allegedly support human flourishing and self-actualisation. Everyone is held as individually responsible for their own economic prospects, self-management and welfare in a system which favours market forces over state regulation. The market is attributed a disciplining effect, which promotes independence of thought, a spirit of enterprise and self-sufficiency. Failure to succeed or to act responsibly is deemed to reflect personal shortcomings rather than systemic deficiencies. The main objective of the neoliberal project, according to Harvey (2007), is not the generation of economic growth for the equal benefit of all, but the redistribution of wealth from the poor and vulnerable to the rich; as evidenced by significant widening of inequalities within societies worldwide since the late-20th century (Oxfam International, 2023).

Davies (2017) contends that the economic logic of neoliberalism has reached the limits of persuasion following the 2008 financial crash and subsequent crises; and it increasingly relies on authoritarian and punitive measures to survive. Austerity policies form a key component of the new punitive phase of neoliberal capitalism. Before the appearance of the COVID pandemic in 2019, the preceding period of austerity had been marked by significant cuts in public expenditure and the privatisation of public sector agencies. While privatisation and budget cuts have worked in favour of financial and business elites, the poor and vulnerable have been exposed to a wide range of social harms (Cooper and Whyte, 2017). Most of these harms have been the result of the dismantling of health, welfare, and educational services and the increasing 'flexibility' of the labour market which has left the unskilled vulnerable to low paid and precarious work, particularly young people. Considering children's specific needs (see below), we can anticipate the implications of neoliberalism for younger members of society, especially those who fall within the remit of the youth justice system, in the context of increasing poverty, worklessness and structural exclusion (Woodman et al., 2020).

### *Youth justice, structural harm, and the 'therapeutic' turn*

New Labour reforms epitomised by the 1998 *Crime and Disorder Act* radically reshaped the problematisation of youth crime and the delivery of interventions to address it. Informed by the neoliberal logic of the 'risk factor prevention paradigm' (RFPP) and 'new' public management techniques, youth crime was blamed on children's exposure to a series of personal and familial problems which placed them at risk of offending (Case and Haines, 2009). These risks were seen to be predictable, measurable, and largely manageable through early intervention. Drawing parallels with Davies' (2017) caricature of the neoliberal state acting not unlike a business corporation, the youth justice system began to deploy actuarial reasoning and the implicit logic of the market to measure and manage youth crime (Goldson, 2010).

Critical criminologists have repeatedly emphasised the harmful effects of a risk-based, managerialist approach to youth crime (Myers et al., 2021). The RFPP viewed young people's personal and social difficulties as the outcome of individual or family-based pathological shortcomings which required correction to reduce the likelihood of

offending. The conflation of need and risk meant that children's social welfare problems became individualised and criminalised (Gray, 2009). Young people were expected to take responsibility for reforming themselves, while structural constraints and societal harms would be overlooked. According to Goshe (2019), the influential RFPP 'embraces a "myopic model" of rehabilitation that loses touch with the social roots of youth problems and focuses too heavily on improving internal thoughts and behaviors . . .' (p. 559); precisely following the responsibilising logic of neoliberalism, prioritising self-help, and personal resilience. The de-contextualised individualisation, criminalisation, and dematerialisation of children's needs led to net widening and net strengthening (Cohen, 1985) during this expansionist phase of the neoliberal project; with large numbers of young people being sucked into the youth justice system and subjected to increasingly rigorous forms of correctional intervention (Goldson, 2010). Unsurprisingly, during the period of New Labour's early youth justice reforms between 1998 and the mid-2000s, there was a distinct rise in rates of youth custody (Goldson, 2020).

Davies' (2017) argument that the neoliberal socio-economic and political project has taken on more authoritarian, punitive dimensions aligns with Wacquant's (2009) analysis of the state's increasing reliance on punitive measures in the adult criminal justice system, and high rates of imprisonment. However, such dystopian predictions fail to account for what has been happening in youth justice, where since 2009 there has been a significant and prolonged reduction in the numbers of children entering both the youth justice system and custody in England and Wales, and elsewhere (Goldson, 2020). Between 2012 and 2022, there was a 78% fall in the number of 'first time entrants': children with no previous involvement becoming subject to criminal justice interventions. During this same period, there was a 77% reduction in the rate of youth custody; although significantly, the relative rate of decline was much greater for white than Black young people or those from a Mixed ethnic background (YJB, 2023a).

These trends are described by Cunneen et al. (2017: 4) as indicating a move to a culture of 'penal moderation' in youth justice. This suggests a return to a more 'caring' rationality in the problematisation of youth crime and a more therapeutic orientation towards intervention. In this sense, 'childhood' has become a clear and effective form of demarcation between criminal justice regimes, marking out a modification of the underlying logic of neoliberalism. Gray and Smith (2021) describe this 'about face' as signifying the emergence of 'therapeutic surveillance' or 'therapeutic penal governance' as the new formula for the regulation of children who offend. Crucially, the spotlight remains on the individual and their personal 'shortcomings', rather than the systemic harms and discriminatory practices to which they may be subject. Structurally generated social harms are ignored and the failure of state agencies to meet the child's wider social needs go unchallenged, suggesting that there are limits to what 'reform' of the justice system might be able to achieve (see Copson, 2016). The emphasis is still on 'the danger *inside the child*, rather than the danger *of the state*' (Cox, 2019: 553).

Greater social harms occur at the further reaches of neoliberal youth justice where punitive neoliberalism reasserts itself, and the system's institutional racism is starkly demonstrated through a series of 'bifurcatory' practices. While 'therapeutic surveillance' is mainly directed at low-level offenders, more serious offenders, particularly those identified as being involved in knife crime and county lines drug trafficking, continue to be

‘othered’, and earmarked for custody. Black children are disproportionately likely to be assessed as exceptionally both needy and risky and so subjected to more interventionist and punitive disposals (Cunneen et al., 2017); accounting for 28% of those in youth custody in 2022, despite comprising only 4% of the equivalent age group (10–17) in the general population (YJB, 2023a).

### *‘Child first’?*

The shift towards therapeutic penal governance has intensified in recent years, partly justified by belated recognition that children in the youth justice system have high levels of socio-economic need (Myers et al., 2021; YJB, 2020); neoliberalism accounting for its own impact, in effect. This is reflected in growing interest in neo-positivist, trauma-informed youth justice interventions derived from neuroscience (Cox, 2019); and turning youth custody facilities into therapeutic style environments such as ‘secure schools’ (Taylor, 2016). Perhaps the most significant sign of moves towards therapeutic styles of penal governance can be seen in the prominence afforded ‘child first’ principles by the Youth Justice Board (YJB) (2024), and their popularity among Youth Offending Teams (YOTs) in England and Wales (Smith and Gray, 2019) and elsewhere, including the United States (Cox, 2019). The ‘child first’ model of youth justice views young people in conflict with the law as being first and foremost children whose psycho-social problems must be viewed holistically. Interventions centre on avoiding criminalisation by directing them into universally available and non-stigmatising welfare support services (Case and Browning, 2021).

Regrettably, a therapeutic style of penal governance does not necessarily reflect a more progressive approach to youth crime, or a reduction in the social harms experienced by children who are identified as offenders. ‘Penal moderation’ has not meant that there is less regulatory interference in children’s lives. They are nominally diverted into a range of therapeutic style welfare services, such as those relating to education, mental health, and substance misuse, where they are subject to more subtle and (predictably) cheaper forms of surveillance and responsibilisation (Gray and Smith, 2021). Ironically too, many such specialist services are highly limited in capacity, subject to activation delays or simply inaccessible, in the face of cuts in resources and skilled staff. Selman et al. (2019: 528) describe these mechanisms of selection and differentiation as ‘shadow carceral measures’ which mark children out as ‘dangerous’, ‘high-risk’ and ‘unsafe’ individuals replete with health, mental health, family and educational deficiencies which ‘disqualify’ them from conventional educational and work opportunities; offering them little of a positive nature and confining them to a life on the socio-economic edges of society.

The post 2008 neoliberal austerity package remains a challenge to the underlying rationale of ‘therapeutic’, ‘child first’ youth justice policy and practice. As Cooper and Whyte (2017) observe, austerity has disproportionately affected the poor and vulnerable. Austerity reinforces the heightened levels of systemic deprivation experienced by children who offend (Bell, 2019). The Youth Justice Board (YJB) (2020) report on the characteristics of this group based on AssetPlus<sup>1</sup> data evidences the extent of personal and social needs, while cuts in public expenditure have meant that relevant health, mental

health, educational and social welfare services have been decimated (Bateman, 2020). ‘Penal moderation’ in policy talk and the ‘therapeutic’ vision for practice become little more than rhetoric if not backed up by adequate financial support (Bell, 2019).

‘Penal moderation’ and ‘therapeutic penal governance’ may limit the criminalisation of children who offend but without eliminating the stigmatisation and social exclusion associated with justice system contact. Children who offend are subject to ‘stigma power’ (Tyler, 2020) through the hidden, subtle controls of ‘shadow carceral measures’ (Selman et al., 2019). These label young people as ‘risky’ and ‘needy’, and, even in a context of providing welfare support, subject them to a form of social abjection which reduces and limits their ‘life chances’, ‘opportunities for development’ and ‘constructive engagement in wider society’ (Deakin et al., 2020: 17). ‘Shadow measures’ in youth justice expose young people to subjective, ‘symbolic’ harms (Žižek, 2008) which destroy their sense of self-esteem and self-worth and deny them social recognition (Yar, 2012).

Some have questioned whether the impact of the COVID-19 pandemic marks the ‘death knell of neoliberalism’ because of significant increases in government spending (Tooze, 2021). However, as Sumonja (2021) points out, Keynesian style interventions since 2020 simply reflect a pragmatic attempt by the state to safeguard the neoliberal socio-economic project and support capital accumulation in the interests of the rich without reducing levels of poverty or inequality. The effects on children, particularly those from disadvantaged backgrounds (including most children in conflict with the law), have been ‘devastating [as a] decade of austerity and rising child poverty resulted in services for children and young people . . . poorly prepared for the pandemic, with increasing demand for . . . education, health and social care services that were already struggling’ (Harris and Goodfellow, 2021: 6–7).

## **Children’s needs and the harms of youth justice**

A chink of light is opened by the continued recognition of childhood as a distinct life stage, even under the distorted worldview offered by the neoliberal lens. We should take this as an invitation to pursue this line of inquiry, in order to gain a clearer perspective on the relationship between children’s needs, social harms, and their resolution. Levitas (2013) and some zemilogists (Canning and Tombs, 2021) argue that a key step in theorising how social harm is either reproduced or resisted is to develop an ontological position on human flourishing. Accordingly, the avoidance of ‘social harm’ requires that certain human needs be met consistently and universally (Pemberton, 2015: 28). Building on this assumption, we will articulate a typology of indicators of human flourishing which encompasses the unique common needs of children, including of course those who are identified as offenders.

### *Developing an ontological position on children’s needs*

Prior attempts to define and specify human needs famously include Maslow’s (1943) hierarchy, according to which meeting survival needs would be the precondition for addressing higher order, social and emotional needs. Doyal and Gough (1984) believe that it is unhelpful to separate out types of need in this way, suggesting that they are

necessarily ‘systematic or interwoven like a web’ (p. 11). Physical survival and good health depend on having the appropriate knowledge and skills to ensure them; and these, in turn, necessitate certain types of human relationships and purposeful transactions, such as educational exchanges and effective communication. We cannot helpfully separate ‘individual’ and ‘societal’ needs, as might be implied by the kind of abstract framework developed by Maslow.

In the case of children, this argument strengthens. Children do not have the resources to meet all their needs innately or independently, so the processes by which they gain the capacities to do so are, inevitably, social. These, in turn, involve the provision of appropriate guarantees, safeguards and capabilities by others – parents, educators, carers, peers, communal organisations, the state and so on. The basis of the contention that we should develop a specific theory of children’s needs lies in the distinctive characteristics of childhood itself (Smith, 2010). There are common features of childhood, irrespective of particular individual qualities, characteristics, or circumstances; these in turn, point towards a bundle of requirements for building the capacity to grow and develop, and maintaining a ‘good life’. While drawing on the language of ‘deficits’ or ‘vulnerabilities’ (Fineman, 2017), we should not think in terms of the limited capabilities of children; rather, we must recognise and take account of the restrictions or risks of harm they necessarily experience, deriving from:

1. Lack of independent means
2. Physical immaturity
3. Limited ‘life experience’
4. Knowledge gaps
5. Lack of ‘voice’

Although they may affect individual children differentially and to a greater or lesser extent, these are nonetheless pervasive features of early human life. Childhood is a life stage in which we can be certain that these phenomena will be experienced universally, at some point and to some degree. Although family backgrounds and social circumstances may differ, all children will be dependent on others for access to material or financial resources, for example. How this type of ‘need’ is met, of course, varies hugely, but it remains common to all children. Similarly, all children lack life experience, and their knowledge of the world around them will be gained only with the passage of time. Once again, circumstances and external influences will inevitably shape their developing understanding. We suggest that children have distinctive ‘needs’ in respect of each factor identified above and we advance the normative claim that these should be met for all, irrespective of circumstances. Clearly, too, these needs will be shaped and changed by socio-economic factors, and the behaviours of others; they are manifested in different ways according to children’s specific contexts and relationships.

Pemberton (2015: 28–31) groups ‘social harms’ under three headings: physical/mental health, autonomy and relational. These map onto the bundle of children’s needs set out above. Physical and mental health depend on nurture and nourishment, for example, in the context of physical immaturity and lack of independent access to resources. Autonomy or self-actualisation is attained through life experience and the acquisition of



knowledge, as well as the achievement of independence in the sense of being able to control key decisions about one's life. Relational needs are met through inclusion in social networks, the achievement of a distinct 'voice', or 'recognition', in Pemberton's terms, and through positive care and affirmation. The failure of adult societies to meet children's needs equates to the infliction of 'social harm' (Pemberton, 2015). Societal obligations to children must be held collectively, across communal, organisational, and institutional domains. It is unacceptable for any interest, or sector, simply to shift blame, and decline to intervene to secure children's needs; or worse, to continue to enact practices which are bound to compromise them.

The contextualisation of need is associated with an equivalent level of responsibility on the part of (adult) society, given the limited capacities of children – they cannot know what they do not know, for example. There is thus a case for translating the basic needs of children into 'rights', to be held universally and equitably, irrespective of background or origin (Fineman, 2017; Hollingsworth, 2013).

### *Youth justice as a site of harm*

For young people who encounter the youth justice system, children's universal needs are compromised in various ways. Children in contact with the youth justice system are likely to have previous experiences of social harm (Bateman, 2020), and to experience additional harms through their system involvement, which may well lead to compound effects of disadvantage and social exclusion. Arnez and Condry (2021), for example, offer a thorough analysis of the links between vulnerabilities and discrimination, punitive environments, school exclusions and exposure to the criminal justice system, acknowledging but also providing contextual nuance to the notion of the 'school-to-prison pipeline' (p. 97). They conclude, in effect, that these are interlocking 'harms' which have a cumulative impact, and should not be viewed, or addressed, in isolation.

The educational challenges associated with school exclusion may be further intensified by the quality of provision associated with court-imposed sanctions. According to HM Inspectorate of Prisons (Green, 2019), this problem is particularly acute for children in custody, with 89% of boys in young offender institutions (YOIs) being excluded from education at some point. Furthermore, between 20% and 23% of those in custody (depending on sentence length) have been permanently excluded (Ministry of Justice and Department of Education, 2022: 63), while the permanent exclusion rate for the general population of secondary school children is 0.2%. Educational provision for young people in custody is also associated with 'limited choice'; 'barriers to learning'; and lack of understanding of their learning needs (National Association of Youth Justice (NAYJ), 2021: 2).

We know, too, that health care for young people involved with the youth justice system remains problematic, and mental health needs are consistently unrecognised and unaddressed (YJB, 2020). Dyer and Gregory (2014) and Roe (2022) have identified substantial mental health issues among young people involved with youth offending services, while they experience considerable difficulties in getting support.

HM Inspectorate of Prisons (2023) has highlighted the vulnerability of children in custody, with widespread evidence of self-harm, risks to personal safety and physical



restraint by members of staff. Bateman (2020: 113) reports only 37% of children in custody in one survey stating that they had enough to eat. Taylor's (2020) overview of 'the use of pain in the youth secure estate' (p. 18) makes the link between prior experiences of harm and the dehumanising custodial setting. While there are fewer children or young people experiencing the rigours of custody than in previous years, for those who are subject to this kind of regime the associated harms are, if anything, becoming more and more extreme.

Voice and recognition are consistently denied to young people through the youth justice process (Phoenix and Kelly, 2013). Violence within and beyond the institution may indeed be a consequence of systematic unwillingness to listen or treat young people's concerns as valid (Shenton and Smith, 2021). Accounts of inadequate provision and social harm experienced by young people within the remit of the youth justice system mirror their wider life worlds. Inadequate educational provision, poverty, violence, poor health, and lack of care are common themes, underlining the importance for those involved in the organisation and delivery of youth justice of taking a proactive view of the harms to which children are exposed. Billingham and Irwin-Rogers' (2022) research offers a powerful insight into the interrelationship between violence and structural social harm.

## **Towards utopian youth justice**

Social institutions which provide for children, such as schools and specialist welfare and health services, are expected to meet their needs and prevent harm. These basic entitlements are generic and inalienable, irrespective of individual circumstances or behaviour. The youth justice system must be designed around their needs and in accordance with wider social obligations towards children, rather than expecting them to adapt to or endure its own peculiar features and shortcomings. The youth justice system should not be the source of harm, whether by omission or commission (Hollingsworth, 2013). This is the case, though, where interventions compromise young people's physical or mental wellbeing; where their capacity 'to achieve self-actualisation' (Pemberton, 2015: 29) is curtailed; or where they experience relational harms by way of 'exclusion from personal relationships and social networks' (Pemberton, 2015: 30).

To address the structurally generated harms associated with the delivery of 'youth justice' we must look beyond merely invoking human rights measures such as the *United Nations Convention on the Rights of the Child 1989*; and we must develop a more substantive formulation of underlying rights and 'a more profound agenda for social transformation' (Garside, 2013: 248). Levitas' (2013: xviii) distinctive utopian method is not specifically interested in creating a blueprint for youth justice in the 'good society' but sets about 'both making explicit the kinds of society implied in existing programmes' and at the same time 'constructing alternatives'. We call such initiatives 'noble attempts' as we seek to uncover them in past and present youth justice policy and practice. Informed by 'utopia as method' (Levitas, 2013), which imagines not just a better life ('the good'), but also the institutional arrangements which might support it (Levitas, 2017: 4), the next section outlines a new 'archaeology' or set of normative principles for youth justice, linked in turn to a new 'architecture' or way of organising and structuring interventions

in this particular area of human activity. Presented in this way, we seek to move beyond aspirational measures which are constrained by their context and the dynamics of 'reform', and to present these ideas and initiatives as clues to what is possible in terms of wider transformation, *because* it is thinkable (see Scott and Bell, 2016).

Clearly, we cannot lay the responsibility for solving all social ills at the door of the youth justice system or expect it to pre-empt the transformational changes similarly required of providers of children's services in general. The positive role of 'youth justice' must be seen in terms of listening, affirmation, negotiation, problem-solving and advocacy in the specific context of childhood behaviour deemed problematic, rather than mistakenly claiming responsibility for areas of intervention which should not rest with criminal justice agencies, such as drug treatment, mental health support or education.

### *The archaeology of utopian youth justice*

By 'archaeology', Levitas (2013) means 'piecing together the images of the good society that are embedded in political programmes and social and economic policies' (p. 153). These are undoubtedly aspirational, but at the same time, it is important to emphasise that they are signposted or hinted at by ideas and policy goals already articulated somewhere. The focus on social harms and the necessity of challenging these is central and is a fundamental principle of practice rather than just a beneficial side effect. We must therefore evaluate youth justice and its practices considering its capacity to resolve harms and promote 'the good', above all else.

We now set out certain core principles, building on those identified by Goldson and Muncie (2006); and we introduce some 'noble attempts' to realise such principles, and their partial successes. The 'archaeology' (Levitas, 2013) of youth justice we outline is underpinned by the ontological position that children who offend are first and foremost children whose needs and experience of harm are specific to them and distinct from those of adults. Commendably in this respect, the Youth Justice Board's (YJB) (2024: 7) recent 3-year Strategic Plan makes an explicit commitment to champion 'child first' as its 'central guiding principle' across the youth justice sector. Most YOTs have already incorporated these principles into their youth justice plans (Smith and Gray, 2019).

Second, children who offend are 'socially situated actors' whose physical, mental, relational and autonomy needs are complex and interrelated as are the harms they experience (Cox, 2019). A strength of the 'child first' approach, advocated too by zemiologists (Canning and Tombs, 2021), is the primacy placed on viewing children's needs holistically. The 'whole system approach' (WSA) pivotal to youth justice in Scotland prioritises an inclusive view of the problems of children who offend (Murray et al., 2015). Holistic interventions rely on collaboration between YOTs, other departments of government and third sector agencies. Both the evaluation of the WSA (Murray et al., 2015) and inspections of multi-agency work in England and Wales (HMIP, 2021a) have endorsed such partnerships.

Third, children who offend must be treated like all children, with access to universal resources, to avoid the harms of 'misrecognition' (Fraser, 2003) and 'stigmatisation' (Deakin et al., 2020) associated with specialist provision for 'delinquent' children. Prevailing risk-based approaches, therapeutic governance, and neo-positivistic

interventions subject children to ‘shadow carceral measures’ within education, mental health, and substance misuse networks (Selman et al., 2019). On a positive note, HM Inspectorate of Probation (HMIP) (2021a) has found that the work of YOTs with children has become increasingly effective in supporting ‘community integration and access to mainstream services’ (p. 14).

We have outlined earlier some ‘noble attempts’ to activate the archaeological principles of ‘child first’, ‘holism’ and ‘universalism’ within youth justice. However, the fourth principle we suggest, ‘social justice’, highlights the limitations of the other three in realising a transformative vision. Children who are identified as offenders have overwhelmingly experienced high levels of socio-economic deprivation. Their experiences of harm are more strongly linked to poverty than to crime (McAra, 2017). In the interests of social justice, we must (Fraser, 2003: 13) engage not only in a ‘politics of recognition’ by challenging criminalisation and the destruction of children’s feelings of self-worth, but also a ‘politics of redistribution’ by challenging material injustice. A sentiment wholeheartedly shared by zemologists (Canning and Tombs, 2021). Despite talk of holism, the Youth Justice Board’s ‘child first’ agenda continues to dematerialise the personal and social problems of children who offend. While its latest plan (YJB, 2024) acknowledges the existence of ‘structural inequalities’, there is limited discussion of how these barriers will be challenged. The emphasis remains on changing the child and improving the delivery of youth justice.

This omission is reinforced by neoliberal austerity measures which have culled social welfare services (Bateman, 2020). Austerity has undermined social justice by attacking economically and socially marginalised groups including children who offend (Cooper and Whyte, 2017), deepening the impact of poverty and social division (McAra, 2017). The 2022 announcement by government<sup>2</sup> of a ‘significant funding increase for youth justice services’ will do little to achieve a more equitable distribution of resources given the monumental damage to core services inflicted over the preceding decade.

Finally, in an era of penal moderation, while large numbers of young people who offend have been diverted from the formal youth justice system and custody, the system remains biased and discriminatory. Disproportionately large numbers of young Black people are not considered to be suitable candidates for penal moderation and end up in custody earlier than their white counterparts (Goldson, 2020). Yet there have been ‘noble attempts’ to challenge such institutionalised inequalities. Spurred on by the ‘Black Lives Matter’ protests, the Youth Justice Board has consistently challenged the failure to protect the rights of Black children, arguing that the time is ripe for more decisive, lasting action to promote racial equality (HMIP, 2021b).

### *The architecture of utopian youth justice*

In Levitas’ (2013: 197) terms, ‘architecture’ refers to the social forms and modes of organisation necessary to achieve the aspirations represented in the underlying archaeology and its ontological assumptions. How can we give substance to hopes and expectations of a ‘good life’ for children who are identified as offenders? How should youth justice be structured and delivered to support children to flourish and self-actualise?

First, children who offend must be dealt with by children's services with access to *generic* mental health, education, and substance misuse provision. This would mean supplanting the youth justice system as a discrete site of direct intervention (Case and Haines, 2021). As Canning and Tombs (2021: 147) argue, the criminal justice system, whether for adults or children, is principally a site of 'pain delivery' and 'harmful practices'. Unfortunately, recent evidence indicates that supposedly universal child welfare agencies have been hit by such massive financial cuts that they are no longer capable of providing effective services (MacAlister, 2022). Yet there have been examples of projects which deliver services informed by a clear and integrated vision of children's needs (Smith and Gray, 2019). In Surrey, youth justice provision was subsumed under a wider 'youth support service', with the associated aim of taking an inclusionary approach to young people identified as offenders (Byrne and Case, 2016). The widely welcomed 'child first' model can also be viewed as an attempt to enshrine this principle in practice (Case and Browning, 2021), although it has been criticised for seeking an accommodation with the existing justice system rather than acting to transform it (Gray and Smith, 2021).

Second, policymakers, agencies and practitioners involved in youth justice must be more actively and consistently involved in *advocacy and social action* to secure children's entitlements and challenge structural disadvantage (Gray and Smith, 2021). Here, there is clearly a role for non-statutory and community organisations to act as the focal point of alternative mechanisms for securing children's rights and promoting social justice. The campaigns of the Children's Rights Alliance for England (CRAE) (2020) and recent work by the Chief Inspector of Prisons<sup>3</sup> represent attempts to change the remit of services in this way. An innovative endeavour to facilitate a meaningful 'voice' for children in youth justice processes is the *Participatory Youth Practice* project in Greater Manchester (Smithson and Gray, 2021). Canning et al. (2023) provide a thought-provoking insight into how *zemiologists* can become more actively involved in addressing social harm and injustice.

Third, all children who offend should be offered communitarian and socially *inclusive* rather than exclusionary and stigmatising interventions. Their educational and experiential opportunities should be no different to those available to all other children. When the concept of restorative justice was given legislative substance by New Labour in the late 1990s it was seen to have three core objectives. First, to hold children in conflict with the law accountable for their offending; second, to encourage children to make amends to their victims; and third, and of equal importance, to reintegrate children who offend into the law-abiding community (Gray, 2005). Since these developments, responsabilisation has become the dominant principle guiding restorative interventions whether by way of out of court disposals or sentences of the court, and reintegration and social inclusion have been lost in translation (Maglione, 2021). This was not originally the case in New Zealand which has been seen as the inspiration for the restorative youth justice movement internationally, where social inclusion and welfare support have remained prominent features of practice (Maxwell and Morris, 2006); although positive views of the New Zealand approach to youth justice should not obscure the wider evidence of systemic discrimination against Maori young people, both within and beyond the field of criminal justice (Polglase and Lambie, 2024). Several UK youth offending teams have

also made ‘noble attempts’ to develop restorative practice from an inclusionary perspective, recognising the importance of the child’s voice (Restorative Justice Council, 2015).

Finally, youth diversion could be developed as a form of ‘transformative’ intervention to support children to *develop* and *flourish* (Smith, 2021). Models of diversion, such as that pioneered in Northamptonshire in the 1980s, which encouraged collaborative troubleshooting of problems surrounding the reported offence, and promoting social inclusion (reinstatement in mainstream education, for example) are consistent with this objective (Smith and Gray, 2019). Here, the recognition of the harms associated with social exclusion and labelling is crucial (McAra and McVie, 2010). Diversion represents the realisation of the principle of reinsertion and revalidation of children within the ‘normal’ configurations of communities and society. In recent years, as demonstrated by the significant drop in new entrants to the youth justice system, the Youth Justice Board (YJB) (2023b) seems to have had considerable success in promoting diversion. Unfortunately, these achievements may be short-lived as research shows that practitioners draw on a mixture of risk-based and child first criteria in making diversionary decisions which is likely to lead to the continued criminalisation of children who offend (Day, 2023).

## Conclusion

We do not suggest that any of these ‘noble attempts’ provide a complete solution; this is not plausible, given the wider constraints of neoliberal social formations. Indeed, they may be regarded as nothing more than a realignment (or rebranding) of established modes of securing consent for the marginalisation and selective disciplining of young people viewed as problematic, especially given the persistent evidence of discrimination on grounds of ethnicity within youth justice (Bateman, 2020). We note, too, the persistent problems associated with resettlement of children and young people who have experienced institutional interventions, whereby systemic exclusion appears to be the norm for many (HM Inspectorate of Prisons, 2023). However, we still cautiously suggest that the examples cited above are indicative of potential gains because of their progressive characteristics; and the possibility of generating momentum towards sustainable improvements in the ways in which we treat children whose behaviour causes offence. We remain conscious that we are treading a narrow path between the shortcomings of reformism and the ‘unfinished’ nature of abolitionism (McLeod, 2013), but we are emboldened by some elements of the argument for mapping out ‘realistic utopias’ (Copson, 2016: 89). In this light, we suggest that these examples offer partial validation (and hence, justification) for the conceptual framework offered by combining a ‘social harm perspective’ with theorising about ‘the good society’ and ‘utopia as method’; insofar as they continue to both challenge and go beyond conventional and debilitating notions of punishment, constraint, and control.

Many features of the ‘archaeological’ and ‘architectural’ underpinnings of progressive practice appear to exist already, as in the work of ‘child first’ YOTs. But the ‘transformative’ capacity of these forms of intervention is likely to be limited. Albeit child friendly and less harmful, they mainly adopt an ‘affirmative’ stance promoting piecemeal reforms to the organisation and delivery of youth justice. Some are, discouragingly, moving in a neo-positivist direction by adopting trauma-informed individualising therapies

which continue to pathologise children identified as offenders; thus, succumbing to ‘the natural tendency of institutions to pursue external goods’, in the form of validation and resources, ‘that are corrosive to the internal *telos* of social practices’ (Raymen, 2019: 158). Instead, all such services need to be proactively and consciously engaged in work that challenges the basic structural socio-economic disadvantages experienced by children who offend.

Raymen (2019) concludes that ‘to pursue the overall good . . . we will require a strong Symbolic Order of shared meanings, values and customs . . . . We will require institutions to enshrine those values’ (p. 158). This should be the starting point for youth justice intervention, and the basis for its evaluation, rather than the application of pre-designed diagnostic tools and decision-making frameworks which assume difference and create stigma. Advocacy work and participatory practice are rare features of youth justice but not absent (Alliance for Youth Justice and Leaders Unlocked, 2022). Youth justice services are capable of being reimagined and regenerated as shared ‘spaces of hope’ where, as Harvey (2000) and Levitas (2013) believe, meaningful alternative practices could be developed in accordance with a vision of the ‘good society’.

There remains the issue of whether we can talk about a new ‘archaeological’ and ‘architectural’ vision of ‘the good’ specific to youth justice without considering the socio-economic and political organisation of society as a whole, and the persistence of structural inequalities. It may seem unrealistic to suggest that transformation in one sector is possible in isolation; or even if it was, that it would be capable of providing the momentum for achieving wider change. However, the symbolic importance of youth justice, and the way in which society deals with the ‘infractions’ attributed to its children, is of great significance. We can therefore reasonably argue that to envisage a different and socially just way of dealing with their reported offences is of particular value, given their position typically at the oppressed margins of society; and enables us to prefigure some of the more extensive social changes, such as a less ‘exclusionary’ and hierarchical education system, which must go together with it. We suggest that this, in turn, legitimises ‘utopian’ thinking, especially in this critical area of criminal justice practice.

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### Notes

1. An assessment and planning tool developed by the Youth Justice Board (YJB) and collated by Youth Offending Teams (YOTs).



2. See Ministry of Justice and YJB press release 20 May 2022 <https://www.gov.uk/government/news/significant-funding-increase-for-youth-justice-services>
3. For example, after a visit to Rainsbrook Secure Training Centre in 2020, the Inspectors invoked the Urgent Notification procedure, which requires an immediate government response because of serious concerns about the treatment of children (HM Chief Inspector of Prisons, 2021: 70).

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