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YOUTH JUSTICE AND YOUTH
PENALTY IN
ENGLAND AND WALES:
A THEORETICAL AND
EMPIRICAL EXPLORATION

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YOUTH JUSTICE AND YOUTH PENALTY IN ENGLAND AND WALES: A THEORETICAL AND EMPIRICAL EXPLORATION

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ABSTRACT

This thesis is concerned with the nature of contemporary youth penalty in England and Wales. Some international comparative analysis suggests that over the last 40 years or so there has been a convergence towards a number of interrelated global trends in youth justice law, policy and practice leading to increased punitiveness, intolerance, control and imprisonment of children and young people in conflict with the law across the West. Yet other comparative evidence suggests that the picture is more complicated and that youth penalty significantly varies over time and is spatially differentiated at the local, national and international levels. For example in England and Wales youth imprisonment rates significantly vary between Youth Offending Team (YOT) areas and since 2008 there have been significant reductions in the numbers of first time entrants into the youth justice system and young prisoners. Within this context - and even when socio-economic factors and crime rates are controlled for - similar YOT areas still appear to produce quite different sentencing outcomes or differential justice. This thesis explores the spatial and temporal nature of youth justice policy and practice and the cultural, political, social and economic contexts and conditions that give rise to increased rates of youth custody – penal expansion – or decreased rates of youth custody – penal reduction – at a local and a national level. It is concerned with unpicking the proximate influences on, or causes of, differential justice and/or justice by geography in England and Wales. Semi-structured interviews with youth justice practitioners across three pairs of matched YOTs with higher and lower rates of penal custody in England and Wales, together with a further series of interviews with national policy “experts” were conducted. The thesis builds upon and extends the argument that, at a national level, the direction of youth penalty is subject to the vagaries of social, political and economic influences. At a local level it is argued that youth penalty and the use of custody is influenced by differences in: local organisational and practice cultures; practitioner values; perceptions of the nature of youth crime; discretionary practices; and individual leadership and management. Ultimately, it is argued that in order to understand youth penalty analysis needs to move beyond the national and focus on the influences and effects of the international, national and local that shapes youth penalty at all levels.

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CHAPTER ONE

INTRODUCTION

This thesis is concerned with the nature and extent of contemporary youth penalty (defined later) in England and Wales. More specifically it explores the spatial and temporal nature of youth justice policy and practice and what cultural, political, social and economic contexts and conditions give rise to increased rates of youth custody – penal expansion – or decreased rates of youth custody – penal reduction – at a local and national level. It is concerned with unpicking the proximate causes or influences on differential justice and justice by geography in England and Wales. This introductory chapter will outline the research context, sketch the rationale and aims of the research and introduce the conceptual approaches before providing an overview and outline of the thesis itself.

RESEARCH CONTEXT

Our understanding of the “sociology of punishment” (Garland, 2013a) has significantly increased over recent years. It is argued commonly that the impact of globalisation on penalty is inextricably linked with a “new punitiveness”, a carceral boom, a form of neo-liberal penalty and an overriding “culture of control” (Young, 1999; Garland, 2001; Wacquant, 2001a, 2001b, 2005, 2009a, 2009b; Pratt *et al.*, 2005; De Giorgi, 2006). Such dystopic narratives of penalty suggest a homogenization of punishment across the Western world (Cavadino and Digan, 2006a, 2006b). Furthermore, some comparative analyses of youth justice policy and practice suggest a convergence towards a near “global” “punitive turn” (Muncie and Goldson, 2006a; Muncie, 2008, 2011a, 2011b, 2011c, 2013, 2014 2015; Bailleau *et al.*, 2013, Goldson, 2014) in which there has been a decline in welfare and a movement towards risk management and a “new penology” (Feeley and Simon, 1994; Simon and Feeley, 2003), and an emphasis on responsabilization, adulteration and racialization, fuelled by penal populism and intolerance towards children and young people. Such changes have had the net effect of increasing the reach and control of youth justice systems and ultimately increasing the number of children and young people incarcerated in many Western states. For example, in England and Wales the number of children and young people imprisoned increased from just under 1,500 to just over 3,000 between 1991 and 2008 (Lewis, 2010).

Similarly, during this time penal expansion under the “new youth justice” system (Goldson, 2000) was said to have created a system of governance amounting to “institutionalised intolerance” (Muncie, 1999).

Yet paradoxically whilst “global” trends can be observed, evidence also suggests that youth penalty is also significantly spatially localised through national, regional and local enclaves of difference (Goldson and Hughes, 2010). Inter and intra national analysis of youth penalty indicates that some states and sub-jurisdictions have resisted the excesses of neo-liberal penalty and “cultures of control” (Cavadino and Dignan, 2006a, 2006b; Lappi-Seppala, 2011; Dunkel, 2013a). Penal policies are not becoming tougher everywhere (Tonry, 2007). Despite the unreliability of world youth custody rate statistics (Muncie, 2008, 2015), evidence suggests huge variance in the use of custody across the West, and many states have maintained welfare protections and high rates of diversionary measures for children in conflict with the law (Dunkel, *et al.*, 2010a, 2010b). Intra state analysis also reveals a more complex picture. For example, in England and Wales looking at nationally collated statistics of sentencing data for the 157 local Youth Offending Teams (YOTs) the use of custody (as a proportion of all disposals imposed) can vary between 1.9 per cent and 18.5 per cent (Gibbs and Hickson, 2009). Bateman and Stanley’s (2002) study of 20 YOTs in England and Wales also found significant variation in sentencing. Analysis conducted for this study further exposes significant local variation. Of the 157 YOT areas the mean percentage of custodial disposals as a proportion of all disposals for the years 2004 – 2012/13 varied from a high of 10.82 to a low of 0.62. Some studies have suggested that whilst recorded crime rates might account for some of the variation in custody use, variation cannot be fully determined by recorded crime rates and seriousness of offending (Bateman and Stanley, 2002; Goldson, 2013a). Therefore, it is suggested that allowing for demographic characteristics and other significant variables, it is possible to identify patterns of “justice by geography” or “differential justice”, whereby similar YOTs, with comparable social and economic profiles and recorded crime rates, produce quite different sentencing outcomes (Goldson and Hughes, 2010). The local, space and place, therefore, appear to be highly significant.

In addition to global narratives ignoring the spatial nature of youth penalty, they also overlook the temporal nature of youth penalty. Critics suggest that such narratives portray a dystopian vision of penalty, which is on a path towards ever-more punitive forms of control and governance (Zedner, 2000; O’Malley, 2000; Loader and Sparks, 2004; Matthews, 2005; Hutchinson, 2006). However, looking at international

comparative evidence over time one can see that youth penalty is temporally differentiated. For example, despite many states, such as the U.S., England and Wales, Canada and the Netherlands, displaying significant increases in rates of youth custody since the 1990s, there have recently been significant reductions in prison use for young people in these states (see: AECF, 2013; Ministry of Justice, 2013b; Goshe, 2015; Boztas, 2016; Statistics Canada, 2016). If one looks at England and Wales the average youth custodial population has reduced by about one third since 2008 and there has been a significant reduction in the number of first time entrants (FTEs) into the criminal justice system from 2008 to 2014 (Ministry of Justice, 2015a).

RATIONALE AND THE AIMS OF THE RESEARCH

It is posited that a vast proportion of youth justice analysis ignores the complexity, contradictions and local nature of youth penalty by promoting “totalising narratives” (Goldson and Muncie, 2012) and “criminologies of catastrophe” (O’Malley, 2000), prompting some to contend that theorizing youth justice is in a “gloomy” state (Phoenix, 2015:1). Likewise, some theoretical analysis has arguably tended to frame youth justice as though it were one, coherent, monolithic entity (Phoenix, 2015) ignoring the polycentric, complex, “messy”, contradictory and varied nature of youth penalty (Goldson, 2014). The “national” is thus an imperfect unit of analysis (Goldson and Hughes, 2010). It is this localised differentiation that this research seeks to understand by moving beyond grand narratives and the “national”, and by engaging with the “local” and the temporal. How might we account for “differential justice” or “justice by geography” in relation to the use of custody for children and young people in England and Wales over time and space? How might we account for the reductions of FTEs and the number of children and young people incarcerated since 2008 in England and Wales?

There have been few, if any, directly comparable recent studies that explore youth justice policy, practice and sentencing across multiple localised sites. There have been some studies, which have looked at the differences in sentencing practices across England and Wales (see for example: Feilzer and Hood, 2004; Gibbs and Hickson, 2009; YJB, 2010), and others, which have explored some factors associated with differential sentencing (see for example: YJB, 2000; Bateman and Stanley, 2002). However, despite their value, such studies fail to capture the nuanced, qualitative and multifaceted nature of youth penalty at a local level. Likewise there has been little

empirically detailed exploration of the factors associated with the reduction in FTEs and the number of children and young people imprisoned since 2008 in England and Wales.

This study will aim:

- i. To develop theoretical understandings of differential justice/ justice by geography in youth justice sentencing and practice by focusing on localised patterns of custodial sentencing across different YOT areas in England and Wales;
- ii. To explore what cultural conditions, systems, processes, policies, political contexts and practices might promote higher or lower use of custody at a local and national level;
- iii. To advance knowledge and understanding of the key features of contemporary youth penalty in England and Wales.

CONCEPTUAL AND METHODOLOGICAL APPROACHES

The concept of “youth penalty” is adopted for this study. Penalty refers to the wide-ranging field of institutions, practices, discourses and social relations, that frame the ideas and practices of punishment (Cunneen *et al.* 2013). Penalty is concerned with punishment and penal institutions, it shares its main subject matter with “penology”, but it is distinct from the latter because of its wider remit (Garland, 1990). Whereas penology positions itself within penal institutions and seeks to gain an understanding of their “internal ‘penological’ functioning”, penalty observes the institutions from the “outside” and seeks to comprehend their role as a distinct set of social processes, which in turn are situated within a wider set of social networks (Garland, 1990: 10). So in this sense the concept of penalty implies an understanding of punishment

“that is social, historical and political. It is a view that sees punishment as far more than a calculative task by sentencers or a technical apparatus administered by experts. Similarly penalty implies a study of punishment that extends beyond the effects on a discrete offender. It is concerned with the social meaning and cultural significance of punishment, of its broader social, political and economic effects” (Cunneen, *et al.*, 2013: 20).

As previously mentioned, many youth justice studies have been criticised for treating youth justice as a single system or unit (Phoenix, 2015). Rather the (youth) penal realm is not a “singular, coherent unit” (Garland and Young, 1983:15), but rather the punishment and control of young people in conflict with the law extends across many different institutions, organisations, and individuals (Cunneen, *et al.*, 2013; Phoenix, 2015). There are a number of often contradictory and conflicting drivers or influences on punishment including, government policy, politics, domestic and international laws and frameworks, judicial decisions, parliamentary reviews, practitioner lobby groups and media and social cultural representations of crime and justice (Cunneen *et al.*, 2013). The concept of penalty permits one to explore this broader, intricate, multifaceted realm of punishment and understand the interconnections to social, economic, political and legal policy, whilst seeing the effect that these political and social institutions simultaneously have on punishment (Cunneen, *et al.*, 2013).

Taking an approach that recognises wider social, political and economic influences or forces and at the same time the legal, institutional and state actor influences on punishment, allows for the exploration of the national and local drivers of penal expansion and penal reduction. In order to comprehend “differential justice” and the nature and extent of youth penalty a “trifocal analytical lens” is applied. It is an approach that focuses on the interplay of power between global or international influences, national influences and sub-national or local influences on youth penalty (Edwards and Hughes, 2005, 2009, 2012; Muncie, 2005; Goldson and Muncie, 2006; Goldson and Hughes, 2010).

The thesis takes an in-depth mixed methods approach, utilizing both secondary analyses of quantitative sentencing data and qualitative analyses of in-depth semi-structured interviews with a range of youth justice practitioners across six different YOTs in England and Wales and a range of national experts. A matched case design has been employed, whereby the six sites have been divided and matched into three pairs of higher and lower custody use areas, taking into account demographics, including recorded crime rates. This methodological approach permits analyses of the local nature of youth penalty including what cultural, political and practice conditions and contexts might explain higher or lower uses of custody. The research also includes in-depth semi-structured interviews with a range of national “experts”, such as former senior civil servants, senior officers at non-governmental organisations, research consultants, academics and senior YOT directors/ managers, in order to explore the drivers of penal expansion and reduction at a national level.

OUTLINE OF THE THESIS

The thesis first contextualises and grounds the research by presenting a detailed examination of the existing literature and research on youth penalty.

Prior to exploring youth penalty specifically, Chapter Two provides an overview of contemporary thought regarding the trends and contradictions within the sociology of punishment. It draws out international trends in punishment and penal control, by principally looking at the use of imprisonment across Western democracies. Using international data the chapter illustrates that since the 1970s, despite crime rates remaining stable or in decline in many Western states, prison rates and sentence lengths have significantly increased, leading some to contend that there is a “new punitiveness” (Pratt *et al.*, 2005) evident in crime control strategies across the West. The chapter presents a number of theories that have evolved to explain the rise in imprisonment rates and punitivity across the West. The spread of neo-liberalism and neo-liberal penalty, a decline in “penal welfarism” and the rehabilitative ideal, the rise of penal populism in conjunction with a decline in trust in policy elites and experts and the rise in the significance and power of the victim in law and policy, have all been said to have contributed to a “culture of control” (Garland, 2001) and “hyperincarceration” (Wacquant, 2009a, 2009b, 2010; Cunneen, *et al.*, 2013) across the West. Despite there being a convergence towards a number of international trends, Chapter Two also illustrates that there has not been a homogenisation of punishment across the West (Cavadino and Dignan, 2006a, 2006b). Rather closer inspection of international evidence reveals that not all states follow a path towards penal excess and it explores the significance and influence of varieties of capitalism and difference in political economies on rates of imprisonment.

Chapter Three explores whether such international trends and movements are reflected and apparent within youth penalty specifically. It presents international evidence that suggests that a number of interrelated international trends have taken hold over the last 30 years or so leading some to contend that there is a “global youth justice” (Muncie, 2005) and “punitive turn” within policy and practice (Muncie and Goldson, 2006a, 2012; Muncie, 2008, 2011a, 2011c, 2013, 2015; Bailleau *et al.*, 2013, Goldson, 2014). The predominance of a number of other “softer” countervailing global trends within youth penalty are also explored: namely the spread of restorative justice and international human rights frameworks, which are said to have promoted informalism, children’s “best interests” and acted as a bulwark against punitivity.

Whilst evidence suggests that global trends are apparent within youth penalty, Chapter Four unpicks the contradictions and differences in youth penalty across states in relation to prison rates, ages of criminal responsibility and how states support or punish young people in conflict with the law. The local nature of youth penalty is explored and evidence is presented that reveals significant differences between and within states. Using England and Wales as the unit of analysis the chapter unpicks what the existing literature reveals about the spatial and temporal nature of youth penalty and the potential drivers of such differences.

Chapter Five then lays out the methodology and analytical framework utilized to explore the drivers of penal expansion and reduction at both a national and a local level. The chapter elaborates the rationale and aims of the research and describes how a matched case design was implemented. The methods and criteria used to select the three pairs of higher custody use and lower custody use YOT areas across England and Wales and subsequent difficulties are discussed along with details of the participant sample of youth justice professionals, magistrates and national experts ($n = 91$). The analytical framework, ethics and limitations of the research are also considered.

Chapters Six to Eight present the principal research findings.

Chapter Six explores the temporal nature of youth penalty and unpicks the drivers of penal expansion between 1990 and 2008 and the drivers of penal reduction from 2008 to present. The chapter illustrates how the direction of youth penalty is subject to the vagaries of social, political and economic influences. More specifically the chapter provides further evidence to extend an existing body of research that suggests that the politicization of youth and crime, the formalization of youth justice policy and practice – including the limitation of diversion and the promotion of custody as an effective measure in policy – contributed towards an expansion of the youth penal state and increased numbers of children and young people being imprisoned. Conversely, the expert interview data illustrates that – since 2008 – the depoliticization of youth and crime allowed a number of changes to be implemented “under the radar”, including the promotion of diversionary and decarcerative strategies and scrapping of some net-widening targets. In addition, evidence is presented as to the serendipitous nature of the formation of youth justice policy. It demonstrates how a combination of new leadership in the Youth Justice Board (YJB), Magistrates’ Association, and Police from 2008, coupled with austerity measures caused by the global economic downturn in 2008,

created opportunities for the promotion of diversionary measures, decarceration strategies and the contraction of the penal state. Such changes have altered the lines of governance between the national and local with regard to power, control and the dilution of managerialism.

Chapters Seven and Eight are focused on the spatial nature of youth penalty and draw on the interview data obtained from youth justice practitioners, magistrates and district judges across the six sample sites, of which three have higher use of custody and three have lower use of custody. More specifically the drivers of “differential justice” or “justice by geography” at a local level are demarcated.

Chapter Seven explores how local organisational cultures and practitioner values affect the use of custody and punitivity. Similarly, practitioner perceptions of their locality are also explored in regards to their impact on sentencing outcomes.

Chapter Eight then explores the impact of local power on the policy process and disentangles the influence of discretionary practice regarding recommending penal custody, sentencing guidelines and instigating breach proceedings and enforcement. Finally, the impact of individual leadership and key individuals on the creation of organisational cultures and how this might influence the frequency of custodial disposals at a local level are explored.

In conclusion, Chapter Nine argues for a reappraisal of the nature and extent of youth penalty in England and Wales and social forces theses, such as the “punitive turn”. The conclusion draws on the study’s empirical evidence to outline the significance of the “local” and the temporal for the theorization of youth penalty and “differential justice”. It demonstrates that by moving beyond the “national” we are able to qualitatively highlight the intricate, contradictory and multifaceted nature of youth penalty. Furthermore, it suggests that “differential justice” and “justice by geography” cannot entirely be explained by differences in local demographic characteristics, including recorded crime rates, rather the caprices of local culture, practice, processes, practitioner values, leadership and discretion are all significant in promoting either penal expansion or reduction a local level. The limitations of the study and areas for further research are also considered in this chapter.

CHAPTER TWO

THE SOCIOLOGY OF PUNISHMENT: GLOBAL TRENDS AND CONTRADICTIONS

INTRODUCTION

With more than 10.35 million people currently incarcerated in penal institutions around the world (Walmsley, 2016), the growth of the prison has been a primary focus in criminology over the last three decades (Garland, 2013a, 2013b). Prison populations world-wide are significantly expanding. In 78 per cent of countries the incarceration rate has increased since 2008 (in 71 per cent of countries in Africa, 82 per cent of jurisdictions in the Americas, in 80 per cent of Asian countries, 74 per cent of states in Europe and 80 per cent of countries in Oceania) (Walmsley, 2011). Likewise, looking at global youth imprisonment rates it is estimated that approximately one million young people aged 14 to 18 years are locked up at any one time (UNICEF cited in Children's Legal Centre/YCare International, 2006). Since 1970 an unprecedented expansion of penal control has occurred across the Western world (Lappi-Seppala, 2012) leading many to contend there is a "new punitiveness" (Pratt *et al.*, 2005) evident in crime control strategies (Young, 1999; Garland, 2001; Wacquant, 2001a, 2001b, 2005, 2009a, 2009b; Goldson, 2002a; Pratt *et al.*, 2005).

Punitiveness is difficult to conceptualise and does not only have a quantitative dimension, such as prison populations, but it might also be measured qualitatively too (Snacken and Dumortier, 2012). Mounting punitiveness has been reflected in increased length and severity of sentences, harsher prison conditions and the decline of the rehabilitative ideal and penal welfarism. Similarly, a dominance of zero tolerance strategies, increased surveillance and the rise in the importance of both the victim and public opinion, fuelled by the hegemony of neo-liberal governance, arguably represents a new "exclusive society" (Young, 1999), a "culture of control" (Garland, 2001) and "penal populism" (Pratt, 2007) resulting in "global hyperincarceration" (Wacquant, 2009b) of the most marginalized individuals in society.

Whilst there is a growing dependence on the prison to control crime, which is said to illustrate an acceleration of international penal convergence, many contend we are still a long way from a global homogenization of punishment (Cavadino, and Dignan, 2006a).

This chapter seeks to analyse the supposed “punitive turn” (Hallsworth, 2000) since 1970 in order to comprehend punitiveness and penalty. It will focus on the social, political and economic conditions that may promote or reduce penal excess.

THE GROWTH OF THE PRISON

Unparalleled growth of penal control in many countries around the world has taken place in a relatively short period of time. Rising prison populations and overcrowding are common threads in the current international penal landscape (Snacken *et al.*, 1995). Between 1870 and 1970 the American incarceration rate remained stable between 100 and 200 persons per 100,000 of the population (Muller and Wildeman, 2013). Before 1970 stable imprisonment rates prompted Blumstein and Cohen (1973) to predict that such rates would not diverge substantially from their then trendless path (Muller and Wildeman, 2013). Wacquant (2009b: 6) cited in Drake (2012: 16) noted that early 1970s penal scholars saw:

“imprisonment not merely as a stagnant institution but as a practice in irreversible if gradual decline, destined to occupy a secondary place in the diversifying arsenal of contemporary instruments of punishment”.

However, from the mid 1970s American prison rates spiralled upwards: a base rate of approximately 170 prisoners per 100,000 doubled to 310 in 1985 (Wacquant, 2005) increasing to 776 per 100,000 in 2011 (Walmsley, 2011). The U.S seems to have had an influential model-effect on the rest of the Western world (Sim, 2009; Lappi-Seppala, 2012). Whilst the U.S appears to be an exceptional outlier (see Tables 2.1 and 2.2), analysis of trends across the Anglophone states indicates significant growth in prison rates. From 1970 to 2007 New Zealand’s prison rate increased by 123 per cent from 83 to 185 prisoners per 100,000. English and Welsh rates increased by 114 per cent from 71 to 152 per 100,000 for the same period. Australia and Canada’s rates have also risen substantially, although Canada’s appears to have stabilised over the last 15 years. In Western Europe a rise in prison rates in many states can also be observed. France and Belgium increased their incarceration rates by 75 and 52 per cent respectively since the 1970s. The Netherlands witnessed a meteoric rise: the prison rate in 1970 was just 21 per 100,000, but by 2007 it rose to 100 per 100,000, an increase of 376 per cent, matching the European average.

Table 2.1: Prisoner rates in selected countries 1970-2007 (per 100,000 pop.) and percentage changes.

Grouping	State	1970	1980	1990	2000	2005	2007/8	Change 1970-2007 %	Change 1990-2007 %
Anglophone	USA	166	221	461	684	738	756	+355	+64
	New Zealand	83	88	114	151	186	185	+123	+62
	UK	71	85	90	125	144	152	+114	+69
	Australia		59	84	113	125	129		+54
	Canada	88	98	113	101	107	116	+32	+3
Western European	France	55	66	77	82	88	96	+75	+25
	Belgium	61	58	66	86	93	93	+52	+41
	Germany	86	92	82	97	97	89	+3	+9
	Switzerland		62	77	79	83	76		-1
	Austria		107	83	85	108	95		+14
	Spain	38	85	113	145	160			+88
	Netherlands	21	23	43	84	127	100	+376	+133

Source: National Statistics, ICPS in Lappi-Seppala, (2012)

From 2000 to 2011 there was further increase in the use of the prison in the majority of selected countries (see Table 2.2). Most notably Spain has had an increase of 44.54 per cent from 110 to 159 per 100,000. Finland and Denmark appear to utilize prison the least, whilst Germany has seen a reduction of 10.52 per cent since 2000.

Table 2.2: Prisoner rates in selected countries per 100,000 of the population (2000 - 2011)

State	2000	2011	% Change
USA	680	743	+9.26
New Zealand	150	199	+32.66
Spain	110	159	+44.54
England and Wales	125	153	+22.4
Australia	110	133	+20.9
Canada	110	117	+6.36
France	90	97	+7.77
Netherlands	90	94	+4.44
Germany	95	85	-10.52
Switzerland	85	79	-7.05
Sweden	60	78	+30
Denmark	65	74	+13.84
Finland	45	59	+31.11

Source: Drake, 2012

Examination of the Scandinavian countries (see Table 2.3) reveals an increase in prison rates since the 1950s, however rates remained relatively low and stable compared to their Anglophone and Western European neighbours. Norway has witnessed a change from 51 to 73 per 100,000 from 1970 to 2008, whilst Sweden has seen a change from the 1970s rate of 35 to 74 per 100,000 in 2008. Finland is an exception however. It has seen a rapid decrease in prison rates from 187 to 67 per 100,000 for the same period.

Table 2.3: Prisoner rates in selected Scandinavian countries per 100,000 of the population (1970 - 2008)

State	1970	1980	1990	2000	2005	2008	Change 1970-2008 %	Change 1990-2008 %
Norway	44	44	56	57	68	73	54	21
Denmark	70	63	67	67	78	68	11	16
Sweden	65	55	58	60	78	74	20	34
Finland	113	106	69	55	74	67	-35	7

Source: National Statistics, ICPS in Lappi-Seppala, 2012

Although comparative analysis of prison populations is methodologically problematic, we have seen that the available data implies that there is a modern trend towards an increased dependence on the use of the prison¹. So how can we account for penal expansion across North America, the Anglophone states and Western Europe?

TOWARDS HOMOGENEITY: A CATASTROPHIC OUTLOOK

THE “DEATH” OF SOCIAL DEMOCRATIC INCLUSION

The concepts of the “neo-liberal” and the transition from the Fordist to Post-Fordist political economy have become central in criminological debates exploring globalized uses and increases of imprisonment and punitive crime control strategies (Young, 1999;

¹ International comparisons of prison populations have the potential for many pitfalls (Snacken *et al.*, 1995). One of the most common measurements of punitiveness across states is the number of prisoners per 100,000 of the general population. This measure does not take account of structural differences between justice systems and the availability of alternative sanctions (Kommer, 1994). For example disparities exist between what states classify as penal institutions, prisons, asylums, mental health institutions, juvenile institutions, care homes etc. (Kommer, 1994; Snacken *et al.*, 1995). Furthermore, this is an imperfect measure as it only records the number of people held in prison each year and does not detail length of sentence. Thus this raises difficult questions when attempting to measure punitiveness; a country could have fewer people in prison but exceptionally long sentences compared to a country with high numbers being incarcerated but for short periods of time (Kommer, 1994; Snacken and Dumortier, 2012). Likewise, when measuring punitivity it is important to bear in mind the types of sentences given in relation to the type of crime.

Wacquant 2001a, 2001b, 2005, 2009a, 2009b, 2010; De Giorgi, 2006; Lacey, 2008, 2010; Muncie, 2013, 2014).

Jock Young (1999), Loic Wacquant (2001a, 2001b, 2005, 2009a, 2009b) and Alessandro De Giorgi (2006) have explored the inter-relations between the rise of neo-liberal policy/governance and the decline of Fordism and “penal regressions” (Radzinowicz, 1991) in the U.S and much of Western Europe. Whilst their work is distinct a synthesis of the major tenets and themes of their theses is outlined. Wacquant (2001a, 2009a), Young (1999) and De Giorgi (2006) chart the social and economic changes from the “golden era” of a post war “inclusive” society in the 1950s to an “exclusive” (Young, 1999), individualistic society from the 1970s onwards. It is argued that society has moved from a Keynesian state coupled with Fordist waged-work to a post-Fordist mode of production and neo-liberal economy. Fordist capitalism, the definition of which is contested (see Vallas, 1999 and De Giorgi, 2006), refers to the period between the end of World War Two and the 1970s in which there was: mass industrial expansion; stable if not full employment (mainly for men); a large manufacturing sector; standardised job prospects and clearly delineated career prospects; defined social roles; corporatist government policies; and mass consumption of uniform products (Young 1999; De Giorgi, 2005). It also had at its core a philosophy of ameliorating social inequality and protecting the vulnerable through welfare state policies (Wacquant, 2009a).

Economic decline in the 1970s and consolidating patterns of globalisation saw society enter into post-Fordism, in which the state promoted competition, individual responsibility, *laissez-faire* politics and the dismantling of state apparatus. Under a post-Fordist economy in Western democracies Young (1999) and De Giorgi (2006) contend that there was a mass dismissal of workers from the labour market. More specifically downscaling of the economy has involved the depletion of the primary labour market (secure, long-lasting careers with social security), the expansion of the secondary market (low paid, temporary insecure employment), and created an “underclass” of the structurally unemployed (Young, 1999). Unemployment rose from the 1970s across the U.S and Western Europe with the introduction of new technologies and the reshaping of employment, resulting in fewer goods-handling jobs and an increase in information-handling and service industry jobs. This “global transformation” sought to dis-embed the economy from society (Standing, 2011: 43) and was said to have destroyed the secure and regulated wage labour market through individualization of employment contracts, fragmented work through “flexibilization” and dispersed traditional employment paths (Vallas, 1999; Standing, 2011) creating a “regime of surplus” workers (De Giorgi, 2006:

47). The commitment to an open market economy caused a race to the bottom for cheap labour from newly industrialised countries displacing workers at a “local” level (Standing, 2011).

Rising crime rates across Western Europe, the U.S, Australia and New Zealand from the 1960s onwards (Tonry, 2014), coupled with a burgeoning “underclass” of unemployed and precarious workers, triggered insecurity and focused attention on “problem youth”, immigrants, delinquents, the “feckless”, the unemployed, street crime and problem urban neighbourhoods (Young, 1999). Wacquant (2009a: 4) asserts they are “the living and threatening incarnation of generalized insecurity” created by the destruction of the Fordist economy, which haunts society, particularly the middle classes, prompting political elites and media to spread and capitalise on this fear by developing policies to deal with such insecurity swiftly and aggressively. Wacquant (2009a: 4; 2009b) suggests that it is not the characteristics of crime in America and across Western Europe that have substantially altered; rather it is “the gaze that society trains” on certain illegalities that has shifted, which has prompted societal “one-way” thinking towards penal expansion and harsher laws and policing regarding issues of insecurity².

Findlay (2008:15) broadly defines the neo-liberal philosophy of governance as an attack on state-centred governance, a reduction in welfarism as the primary motivation for state enterprise, the dominance of the market model, and the promotion of individual responsibility. Wacquant (2009a: 5, 307) in relation to penal control notes three trends to this transformation to a “transnational political project” of neo-liberal penalty. Firstly, economic deregulation and the commodification of public goods, against a milieu of working poverty in the U.S and mass unemployment in Europe. Secondly, the remodelling of social protection schemes and the replacement of the collective right to financial protection against joblessness and destitution with “workfare” policies. Thirdly, the reinforcement and expansion of the punitive apparatus tasked to control the space and behaviour of the “feckless poor” with prison used as a:

² Wacquant suggests that there is disconnection between crime and punishment. This explanation is arguably too simplistic. Young (1999) and Garland (2013b) suggest quite the opposite, that whilst there is no linear relationship, rises in crime do have some relationship with punishment and the use of prison.

“social vacuum cleaner to sweep up the human detritus from the economic transformations and to remove the dross of the market society from public space” (Wacquant, 2009a: 273)³.

Unlike traditional conceptions of neo-liberal governance (see Findlay, 2008), Wacquant (2009a: 1-3) brings the penal apparatus directly to the centre of the neo-liberal state as a key component of governance and social control. Explaining the “punitive upsurge” he describes how neo-liberal policies have six characteristics. Firstly, punitive responses are legitimized through a cultural trope of putting an end to an “era of leniency” and dealing with crime head-on without exploring its causes. Secondly, an explosion of laws, policies and new technologies such as: security partnerships between the police, social services and other public services; video surveillance; electronic tagging; and genetic finger-printing extending the reach of penalty. Thirdly, an alarmist and catastrophic discourse of “insecurity”, crime and risk is propagated to legitimate punitive action. Fourthly, working class youths, immigrants and marginalised groups are stigmatised and become targets for repressive intervention. Fifthly, the rehabilitative ideal being supplanted by managerialist strategies paving the way for the privatization of correctional facilities. Finally, the implementation of these punitive policies has hardened and accelerated judicial processes and ultimately increased the prison population and penal “drag net” of probation (Wacquant, 2009a: 1-3; Muncie, 2011a, 2011c, 2013).

Traditional conceptions of neo-liberalism place the principle of “small government” at its heart. However, ironically neo-liberal penalty has weakened and reduced large elements of the state by cutting welfare, but at the same time has increased its size due to the burgeoning and expanding penal apparatus (Wacquant, 2009a; Muncie, 2011a, 2011c, 2013).

THE “DEATH” OF PENAL WELFARE

Wacquant’s work on global neo-liberal penal excess offers a dystopian vision. David Garland (2001) also offers a “criminology of catastrophe” (O’Malley, 2000) on the state of penalty in modernity (Loader and Sparks, 2004; Hutchinson, 2006). In *The Culture*

³ The size of the U.S. prison population has become an important factor in the macroeconomic environment. Beckett and Western (1997) cited in Downes (2001: 62) contended that the U.S. prison population amounted to some two per cent of the male labour force. As a result of prisoners being excluded from the unemployment count, this factor alone has reduced the official figure for male unemployment by some 30-40 per cent since the 1990s (Downes, 2001).

of Control (2001: 3), Garland argues that since the 1970s British and American crime control strategies have taken a “startling” about-turn from the trajectory of previous years. With its roots in the 1890s and developed in the 1950s and 1960s, penal welfarism was by 1970 the conventional policy framework for dealing with people in trouble with the law (Garland, 1990). Its fundamental principle was that penal measures should be rehabilitative interventions, opposed to retributive punishments. It also tended to work against the use of excessive incarceration. Its main tenets included: an emphasis on early release and supervision; the application of specialised social inquiry and psychiatric reports; specialised courts for juveniles bound by a child welfare philosophy; personalisation of treatment; social work intervention; and imprisonment which emphasised education, support and reintegration when released (*ibid*). During the post-war period professionals proliferated – social workers, probation officers and psychologists – and were given maximum latitude to perform their duties. This trust of professionals extended to policy makers, who were given freedom to develop initiatives, with rehabilitation being the primary focus, with little interference from politicians (*ibid*). However,

“in the course of a few years, the orthodoxies of rehabilitative faith collapsed in virtually all of the developed countries, as reformers and academics, politicians and policy makers, and finally practitioners and institutional managers came to disassociate themselves from its tenets” (Garland, 2001: 54).

This led many to contend that penal welfarism had failed. A dire “culture of control”, “preventative partnerships” and “punitive segregation” emerged due to successive governments in the U.S and U.K believing they needed to tackle the perceived crime problem with a new approach. Thus new crime control strategies have been implemented, including: increased use of the prison and draconian sentences; increased deprivation in prison conditions; retribution in children’s courts; “three strikes laws”; zero tolerance; mandatory prison terms; strict sentencing guidelines; supermax prisons; increased humiliation of prisoners by naming and shaming; and a strengthening of surveillance and control measures of offenders in the community. Dubbed the “crime complex” Garland (2001) argues that such policies and practices have emerged from a particular set of cultural conditions:

- i. high crime rates are regarded as normal social facts;
- ii. emotional investment in crime is widespread and intense, encompassing elements of fascination as well as fear, anger and resentment;

- iii. crime issues are politicized and regularly represented in emotive terms;
- iv. concerns about victims and public safety dominate public policy;
- v. the criminal justice state is viewed as inadequate or ineffective;
- vi. private, defensive routines are widespread and there is a large market in private security;
- vii. a crime consciousness is institutionalized in the media, popular culture and the built environment (Garland, 2001: 163).

Garland (2001) contends that the punitive turn that has occurred in the U.K and the U.S has not been caused solely by perceived increases in crime but especially by the problematization of late modernity itself – a moral decline since the 1960s, the erosion of the traditional family model, countercultures and the amorphous nature of a changing society.

THE “DEATH” OF THE RATIONAL EXPERT AND THE RISE OF POPULISM

Extending Garland’s (2001) thesis, others have drawn attention to overt politicization and penal populism (Roberts *et al.*, 2003; Pratt, 2007; Pratt and Eriksson, 2013). Canovan (1999: 3) defines populism “as an appeal to ‘the people’ against both the established structure of power and the dominant ideas and values of the society” and is an attempt to involve the “will of the sovereign people directly into the democratic decision-making process” (de Raadt, 2004: 3). Populism represents a feeling, mood, or voices of distinct and sometimes diverse public groups, who feel that their views have been ignored or side-lined by the ruling elite (Pratt, 2007). Thus populist politicians, vying to show their thinking is in line with that of the people, attempt to reengage the public by supporting policies that will appeal to such groups. Therefore penal populism, or “populist punitiveness” (Bottoms 1995) is when governments derive penal policy, not to advance penal effectiveness, reduce crime rates or promote justice, but to appeal to popular discourse and to win votes from the disenfranchised electorate. Roberts *et al.*, (2003) argue that the central tool of penal populism is imprisonment providing an explanation for the rise in incarceration rates across many parts of the globe⁴.

The phenomenon of publics feeling distanced from, and resentful of, the politics, systems and individuals that serve them, has resulted in a rise in penal populism and a new politics across the Anglophone, as well as many Western European states (Roberts

⁴ Garland (2014) notes that in fact penal populist policies are not always draconian. For instance he suggests that Barak Obama’s vow to close Guantanamo Bay was a liberal populist gesture in the sense that it was stated without consultation of evidence and expert opinion but appeal to the liberal electorate. Thus populism and punitivism need not always go together.

et al., 2003; Pratt *et al.*, 2005; Pratt, 2007; Dumortier *et al.*, 2012). Pratt *et al.*, (2005) and Pratt (2007) contend this new politics is apparent in a number of ways. Firstly, there has been a rise in political parties that are specifically populist, campaigning on matters such as asylum seekers, immigration, law, order and reducing the power of the state and international unions by axing bureaucrats and civil servants. Secondly Pratt (2007) argues that there has been the growth of more direct democracy agendas such as citizen ballots and referenda.

These political changes associated with populism have had dramatic effects on the structure and development of penal policy (Ryan, 1999, 2003, 2005; Loader, 2006; Pratt, 2007, Dumortier *et al.*, 2012). In England and Wales Loader (2006) argues that after the Second World War penal policy was designed by a small group of liberal elites or “platonic guardians” who had little interference from the public or politicians. It is argued that these liberal elites had three specific commitments when forming penal policy: “a project of being civilized” so as to balance punishment, effectiveness and humanity; “building good thinking consensus” in which policy was based on expert knowledge; and “managing public opinion” to lead thinking on issues of penalty and to temper political and sometimes public lust for more punitive action (Loader, 2006: 564-570). Law and order were secondary issues separate from party politics and formed the mainstay of work for liberal elites across much of Western Europe and Anglophone nations (Downes, 1991 cited in Ryan, 1999; Pratt, 2007).

However, Ryan (1999, 2003, 2005), Loader (2006) and Garland (2001) posit that from the 1970s onwards a loss of faith in the rehabilitative ideal saw the exclusion of liberal elites and an inclusion of public opinion leading to the politicization of penal policy. It is contended that the predominance of the executive over the judiciary, police and criminal justice agencies, coupled with the rise of public voices, has increased since the fall of the “platonic guardians” across both sides of the Atlantic (Ryan, 2005; Dumortier *et al.*, 2012). Penal populism has increased societal dissatisfaction with the penal system and its practitioners creating a gulf between popular expectations of how to control and treat offenders and the complexities of the core issues (Roberts *et al.*, 2003; Pratt, 2007).

Garland (2001) suggests that:

“what this amounts to is a kind of retaliatory law-making, acting out the punitive urges and controlling anxieties of expressive justice. Its chief aims are to assuage popular outrage, reassure the public, and restore the ‘credibility’ of the system, all of which are political rather than penological concerns. It is hardly

surprising that these measures often fly in the face of penological advice” (Garland, 2001:173).

These factors have had a dramatic effect on prison populations in many states across the world. As stated earlier the Netherlands, previously a bastion of humanitarian treatment towards offenders, with minimal use of the prison (Wacquant, 2009b), has seen a dramatic increase in prison rates since the 1970s of 376 per cent (van Swaanigen, 2005; Lappi-Seppala, 2012). Since 1994, successive governments anxious to rid themselves of their international reputation of “leniency” (Wacquant, 2009b: 105) have implemented what some have called “the new severity” (Wijkerslooth, 2005 cited in Dumortier *et al.*, 2012: 111). This new model promotes zero tolerance to all offending with an emphasis on long stretches of imprisonment as “society no longer accepts arguments in support of moderate or alternative sentences” (ibid: 111). The Dutch government even congratulated themselves that they managed to increase their prison population up to the levels of their European neighbours (Wacquant, 2009b).

A defining moment in the development of penal populism in Britain, Pratt, (2007) argues was when, in 1993 the then Home Secretary, Michael Howard, proclaimed:

“Prison works. It ensures that we are protected from murderers, muggers and rapists...This may mean that more people go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in our prison population” (Howard, 1993 cited in Ryan, 2005: 139).

Howard ignored the evidence, but rather proclaimed to have the interests of the general public at the forefront of his thinking (Pratt 2007). Law and order was politicized off the back of a one-off incident in 1993 in which a two-year-old child was killed by two ten-year-old boys in Liverpool (Goldson, 1997a). A media frenzy bemoaning the moral decline of Britain led to a political battle between the parties on who could be the toughest on law and order, neither party wishing to back down for fear of losing the median voter (see Chapter Four).

THE POPULARISATION OF THE “VICTIM”

Garland (2001:142) noted the rise of victims’ rights is pivotal in the escalation of punitive and populist penal policies. The “victim” now enjoys a privileged place in the penal sphere, yet that place is taken up by a projected “politicized” persona of the “victim” rather than by the real interests of the victims themselves (ibid: 143). The victim’s experience is no longer viewed as individual or abnormal, rather the victim

plays a representative character in which their experiences are commonplace and collective (Kaminski, 2012: 191). Ironically, despite crime rates decreasing for non-violent property crimes in all Western countries and for non-homicidal violent and sexual crimes in most English speaking and Western European states since the early 1990s (Tonry, 2014), we have seen a qualitative rise in societal fear of crime, penal populism and the prevalence of the victim in popular and political discourse, leading many to wonder whether “we are all victims now?” (Walklate, 2009). Fuelled by the idea of the collective victim, sensationalist media reporting of crime and penal populism, it is contended we no longer live in a “risk society” (Beck, 1992) but an “accident society” (Languin *et al.*, 2012: 178). A society in which there is a potential victim of crime at every juncture, hungry to consume validation for the wrongs dealt against them and eager for punishment to be administered swiftly to offenders. Underlying penal populism, is the idea that offenders’ rights have been privileged over those of the victim and the general public causing resentment, bitterness and disenchantment with the efficacy of the penal apparatus (Kaminski, 2012).

Jonathan Simon (2007: 110) asserts that lawmakers

“By writing laws that implicitly and increasingly explicitly say that we are victims and potential victims...have defined the crime victim as an idealised political subject, the model subject, whose circumstances and experiences have come to stand for the general good”.

Perhaps Tony Blair’s valedictory speech to the Labour Party in 2006 in which he commented: “When crimes go unpunished, that is a breach of the victim's liberty and human rights” is an example of the importance of the victim in crime control management (Walklate, 2009). Walklate (2009) suggests that the focus upon victims in England and Wales reached its peak in the passing of the Domestic Violence, Crime and Victims Act (2004) which established a new Victims Fund and allowed victims to have greater say in the criminal justice system. More recently in 2010 the government created the role of Victims’ Commissioner charged with the task of promoting the interests of victims and witnesses (Ministry of Justice, 2015b) and in 2013 the Crown Prosecution Service (CPS) launched the Victims’ Right to Review Scheme in which victims can request a review of CPS decision-making when offenders have not been charged (CPS, 2016). The rise in the prominence of victims’ rights has led to the return to the “gothic”; the public’s insatiable lust for suffering for those who have offended against society (Walklate, 2007).

Likewise, Garland (2001, 2004) has charted how politicians and the media have invoked victims and brought them into full public view by naming crime initiatives after victims such as Megan's Law and Sarah's Law for example.⁵ This canonization of victims tends to diminish concern for offenders. It is said a "zero sum relationship" prevails between the two parties which ensures any display of compassion for offenders, call for more humane treatment or championing of their rights, can easily be represented as an insult to victims and their families (Zimring, 2001: 147; Garland, 2001: 143). Yet despite this hardening attitude and treatment towards offenders, Languin *et al.*, (2012) suggests that victims' expectations remain unfulfilled by the realities of the penal system. Thus the rise of the victim within the penal sphere has had a chilling effect. Politicians' fervour for sympathy towards the victim has produced, not only in the U.S, but also in many parts of Europe including the U.K, a significant increase in prison sentences and their severity, including whole life tariffs, punishments and more punitive and degrading treatment whilst inside (Kaminski, 2012). Simon (2007), writing about the U.S, contends that the idea of victims' rights has allowed the state to govern through crime:

"In a competition for demonstrating loyalty to victims as an abstract and generalizable public, prison will always prevail...because only prison provides the illusion of total security for the victim and complete deprivation for the offender. Any kind of supervised release is a compromise on both and seen as such by victims and their political advocates" (Simon, 2007: 164).

NEO-LIBERAL LAW AND ORDER: A GLOBAL U.S IMPORT?

With the U.S being the personification of neo-liberal penalty, Wacquant (2001b, 2009a, 2009b) argues that the U.S has become a global exporter of its penal expansion, crime strategies, theories and slogans leading to worldwide "one-way" thinking regarding "insecurity". But how plausible is this assertion? In Young's (1999: 27) comparative analysis of penal control in the U.S. and Western Europe he warns that his assertions are "over schematic" and there is a tendency to over generalise from the U.S to Europe

⁵ The murder of eight-year-old Sarah Payne, by a convicted child sex offender in July 2000 and subsequent societal and political fallout, is perhaps a prime example of the power of the victims' movement and its centrality in society. Sara Payne, mother to Sarah Payne, along with the now defunct *News of the World* newspaper campaigned for the successful implementation of the Child Sex Offender Disclosure scheme (Sarah's Law), which allows parents to check the criminal records of sex offenders. Her campaigning for victims has elevated her to the status of 'celebrity victim' and has become celebrated and endorsed by many state and public institutions. For instance she was: named as the Victim's Champion by the government in 2009; awarded the Most Inspirational, Pride of Britain, Children's Champion and Woman Of The Year; made an MBE in 2009; and even awarded an Honorary Doctorate from the Open University in June 2012 (Open University, 2012).

“without acknowledging the profound cultural differences” and warns that this must be resisted. However, Wacquant argues that one can chart the diffusion of U.S. style neo-liberal penalty across to Western Europe. As displayed in Tables 2.1, 2.2 and 2.3 above one can observe the increase in rates of imprisonment across the majority of European states like the U.S.. DeGiorgi (2006) notes similar patterns in the racialization of penal control between the U.S and Europe confirming the spread of neo-liberal penalty. Garland (2016) suggests that the disproportionate imprisonment of black and minority ethnic people is not unique to the U.S, rather rates of overrepresentation are evident and comparable in all Western states. Whilst prison rates are significantly lower across Europe than the U.S. the proportion of prisoners from groups deemed to be the “other” on racial and cultural grounds is comparable with the U.S.. For example in the U.S. Black and Hispanic people are significantly disproportionately overrepresented in the penal population (Alexander, 2010; U.S. Department of Justice, 2014a). In 2012 black non-Hispanic males were imprisoned at the rate of 2841 inmates per 100,000 residents of the same ethnicity and gender which was four times greater than their white counterparts (US Department of Justice, 2014a). If you are male and black between the ages of 30 and 34 the imprisonment rate per 100,000 of the population increases to 6,932 and if you are aged between 18 and 19 years and a black male you are 9.5 times more likely to be imprisoned than your white counterpart (ibid). On any given day one third of African-American men in their twenties find themselves incarcerated, on probation or on parole (Donziger, 1996 in Wacquant, 2001b).

It is empirically evident that the association between incarceration rates and “race” has become greater since the 1970s (Beckett and Western, 2001). In the Netherlands in 2014 six in 10 prisoners had a non-Dutch background (10.7 per cent were of Moroccan origin compared to 2.2 per cent in the general population, 9.7 per cent were of Surinamese origin almost five times the proportion of Surinamese in the general population) (CBS, 2015; Dutch News, 2015). In France the proportion of people of North African origin, and often Muslim, in prison is almost 10 times higher than the proportion in the general population (Khosrokhavar, 2005; Nachmani, 2010). In Belgium 16 per cent of prison inmates are of Moroccan and Turkish origin, but only comprise two per cent of the country’s general population (Nachmani, 2010). In Germany it is citizens of Turkish descent who are significantly overrepresented in the prison population (Dollinger and Kretschmann, 2013). In England and Wales in 2010 almost 26 per cent of all prisoners were from black and minority ethnic (BME) groups, whereas it is estimated that BME groups represent just 16.7 per cent of the population (Bell, 2013). Indeed black people represent the largest minority ethnic group in prison – 14.5 per cent in 2009 compared to

under three per cent of the total population (Bell, 2013: 66). In other Western European states it is “foreigners”, as described by the International Centre for Prison Studies, immigrants or non-nationals that are disproportionately imprisoned; in Switzerland 74.3 per cent, Greece 63.2 per cent and in Italy 32.4 per cent of the prison populations were “foreigners” or migrants (see Table 2.4). Interestingly, U.S. “foreign” prisoner rates are significantly lower, at around 5 per cent, than rates in European states (see Melossi, 2013a, 2013b, 2014 for discussion).

Table 2.4: Proportion of “foreign” prisoners in selected European countries (2010)

State	Proportion of foreign prisoners (%)
Switzerland	74.3
Greece	63.2
Austria	48.6
Belgium	44.2
Norway	33
Italy	32.4
Sweden	31.6
Spain	30.4
Denmark	28.2
Germany	27.1
Netherlands	23.2
France	21.7
Finland	14.6
England and Wales	13

Source: ICPS, 2016

Baker and Roberts (2005) also suggest a convergence of responses to crime – at a rhetorical level at the least – to adaptations of specific crime control strategies across English speaking countries. Following a dystopian narrative of penalty they argue that “hyperincarceration” and punitive policies have taken hold due to the processes of globalization. They summarize the impact of globalization on penal policy in three ways: (i) homogenization or harmonization of problems and responses across a diversity of jurisdictions; (ii) acceleration of penal policy transfer across jurisdictions; (iii) promotion of short-term punitive policies at the expense of longer-term, evidence-based policies (Baker and Roberts, 2005: 136). Both Wacquant (2009b) and Young (1999) cite the transfer of the “zero tolerance” policing strategy, from its gestation in American neo-

conservative think-tanks, “to the four corners of the globe” beginning with the U.K as an example of the globalised spread of neo-liberal penalty (Wacquant, 2001b, 2009b). Wacquant further argues the notion of “zero tolerance” policing spread like wild fire and was evident in much of the penal discourse across, France, Italy and Holland, amongst others. However, Jones and Newburn’s (2002) analysis of global policy transfer from the United States to England found that whilst there clearly was a globalized policy transfer of “zero tolerance” it was on a rhetorical or symbolic level rather than on a practice level. They suggest that the “zero tolerance” strategies associated with the New York Police Department, have not been visible in mainstream British policing other than in one or two minor experiments at a local level (Jones and Newburn, 2002).

EXPLORING HETEROGENEITY: COMPLEXITY AND DIFFERENCE

The work of Wacquant, Garland, Young and others on the notion of penal populism and neo-liberal penalty, offers a somewhat bleak and dystopian vision of the penal landscape in the Western world. Such work posits a convergence of ever more punitive and expansive penal policy with a retraction of the welfare state affecting the poorest and most marginalized groups in society. A change that has witnessed punishment move from a utilitarian philosophy to one of a penal “economy of excess” (Hallsworth, 2000: 156). In many ways such theses offer a “totalising narrative” (Goldson and Muncie 2012), characterised as providing what O’Malley (2000) has called a “criminology of catastrophe”:

“that is, genealogies of transformation and rupture, usually pessimistic, that imagine us to be on the brink of a global social and political watershed” (O’Malley, 2000: 153).

Zedner (2002) warns against adopting such a dystopian approach whilst Matthews (2005) alludes to “the myth of punitiveness” around the globe. One of the main criticisms O’Malley (2000) focuses on is catastrophic approaches tend to characterise penal history as the succession of distinct periods united by a common ethos but neglect to focus on the struggles involved in the disorderly transitions between them (Loader and Sparks, 2004; Hutchinson, 2006). In addition, it is said catastrophic accounts tend to focus on grand theorization and wide macro forces and neglect the local embedded nature of the criminal justice apparatus (Hutchinson, 2006). Matthews (2005) suggests that this exaggerated focus on the “punitive turn” has detracted from a more nuanced understanding of contemporary crime control. The remainder of this chapter, therefore, will primarily focus on presenting a different narrative that recognises the heterogeneous

nature of penalty across the West.

AMERICAN EXCEPTIONALISM

Analyses that tend to extrapolate tendencies observed in the U.S and apply them to other contexts tend to overlook the exceptional nature of American Penalty. The same analyses are also inclined to assume that the U.S is a homogenous entity and they neglect the internal differentiated nature apparent between states (Matthews, 2005; Mary and Nagels, 2012; Garland, 2013a, 20013b). The exceptional nature of U.S penalty is evidenced by the fact it is by far the most incarcerating nation state on earth; it imprisons at a rate which is typically seven times the European average and 10 times greater than the Scandinavian norm (Muncie, 2014). Average sentence lengths and the probability of receiving a custodial sentence for a given offence are also significantly higher in America (Garland, 2004). Distinctively, 38 states and the U.S federal government retain the death penalty (after it has been abolished everywhere else in the Western world) and still will not commit to international court and human rights conventions (Garland, 2004, 2013a; 2016). With regards to the wholesale reliance on the prison, America is an extreme outlier and the same seems to hold for other forms of correction such as probation; as of 2011 4.8 million people were subject to penal supervision such as probation and parole (Garland, 2013a). Whereas in other Western states probation and parole aims to promote some form of rehabilitation and resettlement, probation in America is geared more towards risk management and policing (Vacheret *et al.*, 1998 and Brownlee, 1998 cited in Mary and Nagels, 2012; Garland, 2013a, 2016).

Muncie (2014) warns there is a danger in assuming American exceptionalism is homogeneous and static. For example from 2006 to 2012 sentenced prison admissions have declined from 492,315 to 444,591 (Muncie, 2014). Muncie (2014) also cites the fact that although American incarceration rates are far higher than elsewhere in the world, prison rates in particular states such as Minnesota and Maine are closer to a European average than states such as Oklahoma and Texas. Similarly, Justice Reinvestment schemes across many states including, Texas, Alabama, Hawaii, Washington and West Virginia, amongst others, have seen a reconfiguration of services to provide more treatment programmes that are accompanied by reductions in prison populations (Cunneen *et al.*, 2015; The Council of State Governments, 2016). Furthermore, to speak of American exceptionalism tends to essentialize difference, to compare the U.S. against some specious unvarying international standard and also to ignore the fact that every state is distinctive in social and political character (Garland,

2004). Garland (2004) thus suggests every state is and isn't exceptional at the same time. From this position, Lacey (2010, 2013), critiques Wacquant's neo-liberal penal state thesis and contends that due to inter-state variation in prison use and patterns of ethnic disproportionality in prisons (the black prison rate varies from highs of 4,416 per 100,000 in Wisconsin to "lows" of 851 in Hawaii and 1065 in Washington DC) there cannot be a "monolithic" neo-liberal state (Lacey, 2010: 782). Even in the U.S., the archetype of neo-liberal governance, the penal apparatus or "workfare to prisonfare" is playing out differently in different parts of the country (Lacey, 2013).

VARIETIES OF CAPITALISM

Welfare and penalty

Cavadino and Dignan (2006a) note that there is a definable connection between differing types of modern political economy and the relative severity of punishment in modern societies. In their interesting study they divided their sample of 12 states into four groups based on Esping-Anderson's (1990) seminal work on welfare states in capitalist economies (see Table 2.5). The four groups of political economies comprised: "neo-liberal", "conservative corporatist", "social democratic corporatist" and "oriental corporatist". Cavadino and Dignan's (2006a) characterisation of neo-liberalism is that it is led by right-wing governance, free market economy, residual or minimalist welfare state, extreme income differentials and a pronounced tendency towards social exclusion. The U.S., South Africa, New Zealand, England and Wales and Australia are classified as having this political economy. The Netherlands, Italy, Germany and France fit within the conservative corporatist political economy which is characterised by a moderately generous welfare state, mixed economy, pronounced but not extreme income differentials, moderately hierarchical with some social exclusion in the form of limited participation in civil society. Sweden and Finland fall within the next group that is social democratic corporatism. This political economy is described as having a universalistic and generous welfare state, with limited income differentials, broadly egalitarian, generous state rights, limited levels of social exclusion and politically left-wing. Oriental corporatism is characterised as paternalistic, bureaucratic, private sector based welfare corporatism, limited income differentials, extremely hierarchical, has little social exclusion and is derisive of alien outsiders. Its politics are centre right. (See Cavadino and Dignan, 2006a, for more detail).

Table 2.5: Political economy and imprisonment rates

	<i>Imprisonment</i>	
	<i>rate (per</i>	<i>Year</i>
	<i>100,000 pop.)</i>	
<i>Neo-liberal countries</i>		
USA	714	2003
South Africa	413	2004
New Zealand	168	2004
England and Wales	142	2005
Australia	117	2004
<i>Conservative corporatist countries</i>		
The Netherlands	123	2004
Italy	98	2004
Germany	96	2004
France	91	2004
<i>Social democracies</i>		
Sweden	75	2003
Finland	71	2004
<i>Oriental corporatism</i>		
Japan	58	2004

Source: Cavadino and Dignan, (2006a)

Cavadino and Dignan (2006a) suggest that there are firm dividing lines between the different types of political economy and prison rates in these countries. With one exception, they show all neo-liberal countries have higher prison rates than conservative corporatist countries, whereas Nordic social democracies and the single oriental corporatist country have the lowest prison rates.

From analysing Cavadino and Dignan's (2006a) work it would appear that states with a stronger welfare structure have lower imprisonment rates. Beckett and Western (2001) have empirically tested this hypothesis using imprisonment rate and welfare spending data for 32 individual states in America. Analysing data at specific time periods from 1975, 1985 and 1995 and controlling for confounding variables, they found that investment in social welfare is negatively related to incarceration: that is incarceration rates were significantly lower in states with generous social welfare systems (and vice versa). They also found a clear positive relationship between imprisonment, ethnicity,

poverty rate and Republican representation in that state. So put simply, states that had significantly higher prison rates also had high numbers of poor and ethnic minorities (predominately African-Americans), were more likely to be run by Republican administrations and spent significantly less on welfare provision. This strong negative relationship did not come into existence until 1995, however, and appears to have “crystallized” relatively recently (Beckett and Western, 2001).

Downes and Hansen (2006) have also explored the relationship between welfare spending and imprisonment rates. Using comparative data from 18 countries from the Organisation for Economic Co-operation and Development (OECD) they looked at the correlation between the percentage of GDP spent on welfare and imprisonment rates. Their findings confirmed that there appeared to be an inverse correlation between welfare spending and imprisonment rates. Of the seven countries with the highest prison rates, all spend below average proportions of their GDP on welfare provision, while the eight countries with the lowest imprisonment rates all spend above average proportions of their GDP on welfare (Japan is an exception however) (ibid). The U.S. spends the smallest amount of GDP on welfare and has the highest prison rate, followed by Portugal, New Zealand, U.K., Canada and Spain. At the other end of the spectrum Japan, then Finland, Sweden, Denmark and Belgium all have low imprisonment rates and above average expenditure on welfare (excluding Japan as it has low levels of GDP spent on welfare) (ibid). Even excluding the results of Japan and the U.S as they appear to be extreme outliers, the relationship between welfare spending and imprisonment rates is statistically significant (ibid). Downes and Hansen (2006) have also shown that when spending on welfare provision is increased across time, imprisonment rates decrease or remain stable.

Lappi-Seppalla (2012) utilizing Esping-Andersen’s (1990) classification of capitalist welfare societies, has also endeavoured to look at the orientation between social policy and penal control. Widening the sample of countries so as to create six regional groups (Scandinavia, Western Europe, Mediterranean Europe, Anglo-Saxon countries, Eastern Europe and Baltic countries), his analysis confirmed that countries with higher levels of welfare spending had lower levels of imprisonment. The results indicated countries within the Baltic, Eastern, Mediterranean and Anglo-Saxon Regions had higher imprisonment rates and lower welfare spending compared to countries within the Scandinavian and Western Regions that had lower prison rates and higher welfare spending.

Prior to exploring the possible causes of such a relationship, it is essential to note that such typologies can be simplistic and reductionist. O'Malley (2000) posits the staunchly anti-welfare stance of the U.S' neo-liberalism, for example, has little in common with neo-liberalism in Australia, Canada and New Zealand (and the U.K) where remnants of welfare apparatuses are intact or aspects of welfare provision are maintained, if partially adapted to fit with forms of neo-liberal economics. Equally, Canada, despite being labelled as neo-liberal has managed to resist penal expansionism (Downes, 2012). Notwithstanding such qualifications, however, it is empirically evident that welfare spending is related to levels of prison use. It has been empirically shown that more equal societies are less punitive (Wilkinson and Pickett, 2009). States that foster egalitarianism also have low prison use, for example there is a strong positive correlation between income inequality and prisoner rates in Western countries (Lappi-Seppalla, 2012). Social democratic and conservative corporatist states with strong social welfare structures tend to have high levels of social and institutional trust, which is associated with low prison rates (Lappi-Seppalla, 2012). Conversely, the stratified and unequal nature of neo-liberal societies, such as the Anglophone nations, offers an explanation for their high incidence of prison use (Pratt, 2008a; Pratt, 2008b; Lappi-Seppalla, 2012; Pratt and Eriksson, 2013). Furthermore, welfarist social policy is said to enhance the development of social cohesiveness and foster a sense of collective responsibility and offset the pathologizing of problems onto individuals or certain groups. In this way Greenberg (1999) cited in Garland (2013b: 33) argues that differences in punitivity across European countries

“can be substantially explained as a consequence of the degree to which the country embraces an incorporative stance towards its not so well-off citizens”.

Political economy, structure and penalty

The thread of much contemporary analysis of comparative penalty has tended to focus on economic, cultural and demographic factors as explanations for certain penal approaches within different jurisdictions. Yet little attention has been placed on the effects of different political institutional structures on penal policymaking itself (Lacey, 2012). In Nicola Lacey's (2008) *The Prisoners' Dilemma: Political Economy and Punishment in Cotemporary Democracies* she contends that the dynamics of political structures and electoral systems can be used to explain how varying political economies manage to sustain low prison rates over time even amidst shared pressures produced by a globalizing economy (Lacey, 2008; Lacey, 2012). Exploiting Hall and Soskice's (2001) “varieties of capitalism” and Cavadino and Dignan's (2006a) typology (see

above) she argues that differences in punitivity can be explained by a distinction in political approach between “liberal” and “coordinated” market economies (Lacey, 2012, 2013). Coordinated Market Economies (CME) (Sweden, Denmark, Finland and Norway) are linked to a more measured and less punitive penal policy, egalitarianism, strong welfare provision, low crime rates and crucially electoral systems based on proportional representation and frequent coalition governments. Conversely, Liberal Market Economies (LME) (U.S, New Zealand, England and Wales, Australia, Scotland, the Netherlands and Germany) are characterised by residual welfare provision, high crime rates, punitive and exclusionary penal policy, flexibilization and importantly electoral systems based on first past the post and majoritarian governments (Lacey, 2008, 2012, 2013). Lacey (2012, 2013) argues that electoral systems have a significant and powerful impact on criminal justice policy. Coalition governments tend to garner stability over time allowing support for long-term investment in welfare, education and forms of criminal justice intervention whose benefits do not usually yield short-term returns. Furthermore, majoritarian systems, characterised by an adversarial and individualistic political culture and low voter turn out against a milieu of distrust in the professional and high levels of fear of crime, are more susceptible to law and order politics with politicians scrambling to establish support from median voters by way of short-term quick fix policies (Lacey, 2012, 2013). Conversely, in proportional representation systems there are significant organisation buffers, which constrain executive power as well as established institutional arrangements, and foster coordination and a “consensus orientation in politics” (Lijphart 1984 cited in Lacey, 2012: 213), which makes penal populism easier to resist.

Criminal justice policy is not only affected by differences in political systems at a national level but political cultures at the sub-national level are also important to consider. Barker (2009: 10-11) explored the difference between state level criminal justice policy in Washington, New York and California and found that differences in political organisation within each state had marked effects on levels of penalty across all three jurisdictions. In California, she argued that, politicians operated within a “neo-populist mode of governance” with limited and cursory citizen participation by way of referenda, which has led to punitive penal policy and high prison rates. In Washington, conversely, the political economy invites a more “deliberative democracy” permitting multiple actors and publics to formulate more inclusive and measured penal policy. In New York, Barker (2009: 11) suggests that politicians act within a mode of “elitist pragmatism”; whereby crime is not viewed from a moral perspective but rather as a public health matter that needs to be contained and managed, by way of policy that is

not democratically conceived but developed by expert opinion. Thus, despite these three U.S. states operating within an overarching LME, at the sub-national level two of the three states have managed to achieve more moderate penal policy due to their localised political organization.

Nordic penal exceptionalism

A social democratic welfare regime is not the only explanatory component for moderate penal policy. Pratt (2008a, 2008b) and Pratt and Eriksson (2013) through their extensive socio-cultural exploration of Nordic states reveal that a complex amalgam of social conditions is likely to prevent penal excess, namely: a strong state bureaucracy free from political meddling and high levels of autonomy; a centralist interventionist state; a mass media largely operated by a neo-corporate organization free from marketization ideology providing objective rather than sensationalised crime reporting; and high levels of social cohesion. However, Pratt (2008b) and Pratt and Eriksson (2013) call the long-term prospects for Scandinavian exceptionalism into some doubt. They argue that Sweden, particularly, though Finland and Norway not so, is at risk of jeopardizing the future of low levels of imprisonment and moderate treatment of offenders as the dark creep of neo-liberalism is said to be taking hold. The expansion (if limited) of privatised services, increased popularity of conservative party politics, some reduction in social welfare provision (from lavish to very generous however), declines in social solidarity, security and homogeneity, the side-lining of expert over public opinion in the development of penal policy and harmonization of policy to fit with European Union instruments has seen some increase in the use of prison and length of sentences since the 1970s (Pratt, 2008b; Lappi-Seppala, 2012). The high proportion of “foreign” prisoners incarcerated in Sweden, Denmark and Norway is also an area of concern (see Table 2.4).

It is important, nevertheless, not to overplay the risks to exceptionalism in Sweden. There are still huge differences in prison conditions, levels of imprisonment and societal notions of punishment compared to most nation states across the globe. Other than Sweden’s Nordic neighbours, nowhere else across the developed world emphasises – to the same extent – the importance of rehabilitation and dignity for offenders and the vast use of open prisons for a large majority of prisoners (Pratt and Eriksson, 2013). Likewise, current prisoner rates amongst the Nordic states are still extremely low in comparison to the European average and Anglo-Saxon states.

CONCLUSION

Determining whether or not there is a global punitivity is an arduous and difficult task. There is striking evidence to suggest a global convergence towards penal excess. There are over 10 million people incarcerated in the world today. We have seen significant increases in imprisonment rates in Anglophone and Western European countries since the 1970s. The world is said to have taken a “punitive turn” in which the socially excluded, marginalised, poor, immigrant and young are targeted by an evermore repressive and punitive penal state. It is contended that a strategy of “governing through crime” (Simon, 2007) and the creep of neo-liberalism into policy has led to a “culture of control” and “exclusive society”. No longer is the offender treated under the auspices of penal welfarism in which rehabilitation and reintegration remain the sole focus. Rather modern societies have reverted to penal populism in which getting tough and appeasing victims is the order of the day and increases in prison rates and evermore punitive and controlling systems of governance prevail.

But, importantly, dystopian narratives of penal excess, whilst alluring, do not tell the whole story of crime control across Western democracies. Such “totalising” outlooks take little account of the “contradictory nature and profound incoherence of transnational” criminal justice and systems in modern democracies (Goldson, 2014:46). Rather comparative analysis across borders indicates that whilst there may be penal convergence towards the use of prison in many states, there is no homogenization of punishment (Cavadino and Dignan, 2006a). Differences between and within states, in regards to political economies and welfare provision, indicate that penalty across states is heterogeneous and made up of contradictions of both punitive and liberal exceptionalism. States with high welfare spending and low levels of inequality, high ages of criminal responsibility and high levels of societal trust manage to control crime with very low rates of imprisonment. Thus it is said effective and inclusive social policy is the best crime policy (Lappi-Seppalla, 2012). Inherent within this literature and much of the criminological field is a preoccupation with polarities that fail to adequately recognise the contradictions, diversity and tensions within crime control policy (Matthews, 2005). In this dual world of

“punitive versus non-punitive, inclusion versus exclusion...populism versus elitism...[neo-liberal versus conservative corporatist etc.]...we are in danger of becoming lost in a series of false dichotomies” (Matthews, 2005: 195).

This chapter has attempted to illustrate that penalty is complex and contradictory. It is far from the simple picture the social forces theorists tend to paint and it is a story that has more qualitative detail than the political scientists and statisticians might imply. From this general analysis of contemporary penalty I now focus more sharply to examine the specificities of youth penalty.

CHAPTER THREE

YOUTH PENALITY: EXPLORING THE “PUNITIVE TURN”

INTRODUCTION

Our understanding of penality or “the sociology of punishment” (Garland, 2013a) has significantly increased over recent years. Yet how does the wider literature speak to the ways in which Western states – which have afforded special criminal justice measures for juveniles since the early 20th century – deal with young people in conflict with the law? How far is the “new punitiveness” evident in youth justice throughout the Western world? This question lies at the heart of this chapter.

Comparative analysis of youth justice policy and practice across many Western states suggests a growing intolerance towards young people in trouble with the law over the last 40 years with a number of interrelated “global trends” (Cavadino and Dignan, 2006b; Muncie and Goldson, 2006a, 2012; Muncie, 2008, 2011a, 2011c, 2013, 2015; Bailleau *et al.*, 2010; Goldson, 2014). The “punitive turn” towards a neo-liberal penality within youth justice has involved the decline in welfare, a focus on justice and a movement towards risk management, responsabilization, adulteration and racialization fuelled by penal populism and intolerance towards children and young people.

Conversely, research literature also indicates countervailing trends. For example, universal and European human rights instruments detailing the rights of children and young people in conflict with the law, including the United Nations Convention of the Rights of the Child (UNCRC) which have been ratified on a near global level (Goldson and Muncie, 2012, 2015; Goldson and Kilkelly, 2013; Goldson, 2014). Likewise, the prominence of the application of restorative justice, with an emphasis on informalism, has also been cited as a bulwark against punitivity (Muncie, 2005). Whether such moves actually secure children’s rights and instil a more “child friendly” youth justice is debatable, however (Cavadino and Dignan, 2006b; Muncie and Goldson, 2006a, 2012; Goldson and Muncie, 2012, 2015; Muncie, 2008, 2011a, 2011c 2013, 2015; Bailleau *et al.*, 2010; Goldson and Kilkelly, 2013; Goldson, 2014). Many suggest that despite these “protective” changes there has been a hardening of youth justice policy and expansion of penal control across many Western democracies.

“GLOBAL” TRENDS AND CONVERGENCE IN YOUTH JUSTICE

TOWARDS A “PUNITIVE TURN”

The concept of globalization has gradually become more significant within the discipline of criminology (Drake *et al.*, 2010; Muncie, 2015). As Chapter Two demonstrated the movement of criminal justice policies around the world is a powerful indicator of the power of globalization. Its importance in the analyses of trends within youth justice is relatively new however (Muncie, 2005, 2015). International comparative analysis indicates that whilst there are significant differences among Western countries in how their youth justice systems are organised (see: Junger-Tas and Decker, 2006; Dunkel *et al.*, 2010a, 2010b), there has been a notable correspondence within youth justice reform across many Western states over the last forty years (Muncie, 2005, 2008, 2011c, 2015; Muncie and Goldson, 2006a). It is said that there has been a “punitive turn” in juvenile justice towards more repressive, but not necessarily more efficacious interventions (Goldson, 2002a; Muncie, 2005, 2008, 2015; Junger-Tas, 2006; Bailleau *et al.*, 2010; Cartuyvels and Bailleau, 2010; Dunkel, 2013a). So how and why has this transformation taken place?

From welfare to justice

Considering the long history of penal systems in Western democracies, the conception of a separate and distinct system of justice for juveniles is relatively new (Radzinowicz and Hood, 1986; Goldson, 1997b; Hendrick, 2002, 2006; Magarey, 2002; Platt, 2002; Rush, 2002; Junger-Tas, 2006; Bradley, 2008, 2009; Thane, 2009, Platt, 2009; May, 2009; Pruin, 2010; Bates and Swan 2014). Whilst not every Western state developed a distinct youth justice system at exactly the same chronological moment⁶ or had exactly the same systems of operational governance, a number of similarities emerged across Western states until the 1970s, which can be described as the welfare period or regime (Junger-Tas, 2006; Platt, 2009; Cipriani, 2009; Goldson and Muncie, 2009a, 2009b;

⁶ Many historical accounts suggest that the first juvenile court was created in 1899 in Cook County, Illinois which placed welfare and rehabilitation at the heart of all intervention (Platt, 2009; Bradley, 2008, 2009; Bates and Swan, 2014). However, Cunneen and White (2006) note that in fact the first juvenile court was actually established in 1895 in Southern Australia. Europe soon followed the Australian and American idea of a separate youth justice system supporting the tenets of welfare, rehabilitation and education and also passed specific child welfare legislation and juvenile justice legislation. Separate jurisdictions, courts and laws for child welfare and juvenile justice were founded in the Netherlands in 1905 (Pruin, 2010), England and Canada in 1908 (Smandych, 2006; May, 2009), the Child Protection Act in Belgium was passed in 1912 (Van Dijk, *et al.*, 2006), the Juvenile Courts Act in Germany was given assent in 1923 (Dunkel, 2006), in Switzerland juvenile justice laws were made in 1942 (Hebeisen, 2010), in 1945 an education and protection edict was passed in France (Wyvekens, 2006), Spain in 1948 (de la Cuesta *et al.*, 2010), and then the Social Work (Scotland) Act 1968 was passed in Scotland (McVie, 2011). Further afield in Japan in 1948 it passed the Juvenile Law placing welfare at the centre of intervention (Cipriani, 2009).

Pruin, 2010; Bailleau and Cartuyvels, 2014). Welfare principles focussed on: the creation of specialised courts and judges/magistrates; high levels of professional discretion, based on *parens patriae*, to act in “the best interests of the child”; the young person’s needs rather than the offence; a shared responsibility for the actions of the child; treatment rather than punishment; primacy of “protective educational” measures and limited custodial sentences and punishments; and the adoption of indeterminate duration of “protective educational” measures for children and rejection of summary legal measures and protections (Muncie, 2005; Junger-Tas, 2006; Pruin, 2010; Bailleau and Cartuyvels, 2014; Muncie, 2015).

In general this welfare and rehabilitative regime remained largely unchallenged for many years. The belief in the rehabilitative ideal and welfarism, or “penal welfarism”, was said to have reached its peak in the 1960s across many Western democracies (Garland, 2001) (see Chapter Two for discussion of Garland’s penal welfare complex). However, by the mid 1900s support started to wane and “destructuring ideologies” took hold (Cohen, 1985:30-35). Stanley Cohen (1985: 31-35) plots this “destructuring impulse”, which took root in the 1960s and notes a number of profound interlinking transformations in penological thinking. There was a movement towards “decentralization, deformalization, decriminalization, diversion and non-intervention” to divest the state (welfare agencies in the case of youth justice) of certain control functions (Cohen, 1985:30-35). Secondly, there was also a movement towards “deprofessionalization” due to distrust of experts and their claims of competence in rehabilitating offenders’ behaviour. Thirdly, there was a movement away from the institution as a function of reform and fourth a movement away from positivist ideas of psychology, treatment and rehabilitation to neo-classicism and “back to justice” ways of working (Cohen, 1985).

The rationale for change was an underlying fatigue of benevolent state intervention, or paternalism, which legitimated the juvenile court, indeterminate sentences, and the whole “child saving” movement, that was said to erode basic civil and human rights (Cohen, 1985: 129). The tenets of this argument were reflected in three U.S Supreme Court decisions (*Kent v. United States* 1966, *In re Gault* 1967, *In re Winship*, 1970) and had a significant impact on youth justice (Cipriani, 2009; Platt, 2009; Bates and Swan, 2014). These judgements ended the ascendancy of the welfare model in many states, as they held that due process and the rights of children be increased, including: rights to legal representation; the ability to cross-examine and confront evidence, complainants and witnesses put before them; and the increase in the standards of proof required for a

conviction (Cipriani, 2009; Platt, 2009; Bates and Swan, 2014). This caused a fundamental reassessment of welfare and eroded the automatic principle of *parens patriae* (Junger-Tas, 2006; Platt, 2009; Bates and Swan, 2014) prompting legal and social reform across some Western states towards a justice approach (Junger-Tas, 2006; Cipriani, 2009). However many European states held onto principles of welfare resolutely (Junger-Tas, 2006; Cipriani, 2009).

Simultaneously an anti-professionalism movement arose. Cohen (1985:130) notes that there was a questioning of “professional monopolies and claims to expertise” leading to a cultural assertion that:

“Professionals were not just emperors without clothes but had been doing damage by their pretensions to omniscience and benevolence. Groups like social workers had their moral licence to be doing good severely questioned: they were now just agents of social control, disguised-storm troopers of the state” (Cohen, 1985: 130).

In conjunction with a lack of faith in professionals and a questioning of paternalistic state welfare, academic and professional confidence in the possibility of offender rehabilitation was also beginning to be questioned due a number of influential studies exploring the efficacy of a large number of intervention programmes (von Hirsch, 2007). Martinson’s 1974 meta-analysis of over 200 studies, looking at the effectiveness of a range of rehabilitative intervention programmes, concluded there was scant evidence for such interventions stating there was

“...little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation” (Martinson, 1974: 49).

Martinson’s (1974: 48) work led many to contend that “nothing works”, pertinent at a time when societal and governmental angst about rising crime was high (Pratt, et al., 2005).⁷

This view was bolstered by growing doubts in the fairness of making the severity of a child’s sentence dependent upon his/her social situation, given the “evidence” that rehabilitation “did not work” (von Hirsch, 2007; Cipriani, 2009; Muncie, 2011a; Muncie and Goldson, 2012). Furthermore, discretionary judgement, the variability of interventions and unwarranted social control, said to be inherent within the welfare and

⁷ Violent interpersonal crime had been increasing from the 1960s onwards across the majority of Western countries including the US and Europe (Eisner, 2008).

rehabilitation model, led to concerns that the model was an “arbitrary form of power” (Muncie, 2011a: 283).

In the U.S the foundation for the “back to justice” movement was laid by the American Friends Service Committee (1971) and the work of John Klenigs (1973) (Howell, 1997; von Hirsch, 2011). Howell (1997) notes that the “back to justice” movement focussed specifically on youth justice due to its strong emphasis on rehabilitation. To overcome the perceived inconsistencies of welfarism, sentencing moved to a “just deserts model”. Von Hirsch’s (1976) work was particularly influential in the development and adoption of “deserts theory” in juvenile justice (von Hirsch, 2007, 2011). Stemming from post World War Two moral philosophy the overall premise of von Hirsch's argument is that punishment is an exercise in blaming, and proportionality is a necessary mediator (Tonry, 2011). Thus persons committing more serious offences are more blameworthy and deserve more severe punishments (Tonry, 2011) with sentences to be proportionate in their severity to the seriousness of the defendant’s offence (von Hirsch, 1976, 2007, 2011; Tonry, 2011). Desert theories purport to be about just outcomes. The emphasis is on what the offender should fairly receive for his/her crimes, rather than how his/her punishment might affect his/her future behaviour or the behaviour of others (von Hirsch, 2011). The length and severity of sentences therefore should not be determined by predictive or rehabilitative factors but by the gravity of the offence (von Hirsch, 1976, 2007, 2011). Imprisonment should only be used for the most serious of offences. Humanitarians and liberals were persuaded as individual rights were championed over the intrusive, all-powerful benevolent state. Neo-conservatives agreed too as the power of the state was (supposedly) diminished, ineffective welfare policies cut back and individual responsibility raised (Cohen, 1985; Muncie and Hughes, 2002).

By the 1980s in many states within the U.S, England and Wales and European countries a justice based model emerged. Despite critics arguing just deserts ignored the needs of young people and the unequal nature of society, or as von Hirsch (1976) coined it “just deserts in an unjust society” (Tonry, 2011), initially the “back to justice” movement appeared to show some effective outcomes (Goldson, 1997a; Muncie and Goldson, 2012:344). Diversionary measures were promoted by informal cautioning and diversion from custody through intensive community-based programmes (Goldson, 1997a; Muncie and Goldson, 2012). It was, however, “deeper structures” (Cohen, 1985) that contributed to the “punitive turn” within youth penalty across many Western democracies, rather than the adoption of a deserts model. Neo-liberalism and neo-conservatism’s rise, and the subsequent changes to economic structures coupled with an

increase in youth unemployment and societal fears of insecurity and politicization of crime are said to have changed the course of youth justice across Western democracies.

The advance of neo-liberalism, neo-conservatism and authoritarianism have contributed to the “punitive turn”, to a lesser or greater extent, across many Anglophone nations and some European states. Dunkel *et al.*, (2010a, 2010b) contends, from a European comparative perspective, systems based entirely on child welfare are on the retreat, only Belgium and Poland have maintained a “purely” welfare-orientated approach. Muncie (2004:156-158), Bailleau *et al.*, (2010) Dunkel, (2013a) and Bailleau and Cartuyvels (2014) posit that in addition to the diminution of welfare within youth justice law and policy we have also witnessed a convergence towards a number of recurring and interconnected themes over the last 30 years: the problematization of youth; the implementation of actuarial justice and risk management strategies; responsabilization; “adulteration” of youth and penal expansionism; and racialization.

The problematization of youth

Childhood is a socially constructed concept that varies across time and place (Goldson, 1997b; Hendrick, 2002, 2006; Thane, 2009; Cipriani, 2009; Jewkes, 2011). Different ideas of childhood predispose individuals to comprehend, perceive and tackle children’s issues from various and distinct positions (Boyden, 1997 cited in Cipriani, 2009). Jenks (1996) cited in Stokes (2000: 66) asserts that the child in many Western societies has become “an index of civilisation” with the health of civilization projected onto the behaviour and actions of the young (see also: Corteen and Scraton 1997; Scraton, 1997; Jewkes, 2011). Societal angst about wayward youth and crime is not a new phenomenon as Pearson’s (1983) study of media reporting over the last two hundred years in Britain illustrates. However, the proliferation of media – deregulation of print media and growth of private television networks in the 1980s to the growth of social media and 24 hour news (Jewkes, 2011; Marsh and Melville, 2014 Cere *et al.*, 2014) – and a rise in penal populism and the politicization of crime control policy have significantly altered conceptions of youth and crime and how states tackle the “problem”.

Despite youth crime rates having remained stable or declined across Europe, (Cartuyvels and Bailleau, 2010) and the U.S (Merlo and Benekos, 2010), in recent years youth crime has become a central issue within Western political and media discourse (Muncie, 2004, 2005; Cartuyvels and Bailleau, 2010; Bailleau *et al.*, 2010; Bailleau and Cartuyvels, 2014). Fear of young people, crime and antisocial behavior, fuelled by exaggerated media coverage and dramatization of offences committed by young people, has resulted

in the demonization of youth and increased state control of children and families (Muncie, 2005; Merlo and Benekos, 2010; Cartuyvels and Bailleau, 2010; Bailleau and Cartuyvels, 2014). Goldson (2002b) suggests that the “symbolic demonization” of children by the media and others has raised anxieties about children in general and in doing has provided the legitimacy for a correctional and punitive emphasis in policy and law by states. As such “it is at this juncture that the symbolic meets the institutional...[which leads to the]... institutional demonization” (Goldson, 2002b: 39) of children in conflict with the law.

Many U.S states allow media outlets to identify and publicize the names of young people alleged to have been involved in criminal activity (Snyder and Sickmund, 2006). In recent years media reporting of intermittent local disturbances between young people from minority ethnic communities has sparked national outrage concerning out of control ethnic youths in the Netherlands (Pakes, 2010). Likewise, excessive reporting of (rare) youth violence in urban locales in France and England helped make collective disturbances and violence appear part of the makeup of certain places (Body-Gendrot, 2014). Sensationalist journalistic reporting of extraordinary serious offending involving children is also a common factor across states causing “moral panics” (Cohen, 2002) and calls for governments to get a grip on juvenile crime. The van Holsbeek case in Belgium – a fatal stabbing committed by two minors to facilitate the theft of an MP3 player – prompted a clamouring for ever more punitive punishment (Cartuyvels *et al.*, 2010). Similarly, in the early 2000s Scotland saw the emergence of a moral panic about anti-social behaviour and youth crime, the genesis of which could be traced to the government justice minister, later supported by the media (McAra, 2010).

In France, Bailleau (2010) suggests that the reporting of extraordinary crimes had led to media campaigns about the ineffectiveness of the French youth justice system. In Canada youth offending continued to be a “hot topic” in the media with public pressure for the state to react more punitively to youth offenders (Hastings, 2010: 63). In the 1990s Portuguese juvenile delinquency became prominent in societal consciousness due to pronounced media attention (Castro, 2010). Petty offences against property, drug use and gangs were reported to be rife in “problem neighbourhoods” prompting youth and crime to be conflated which was met with tough political rhetoric (Castro, 2010). In Spain de la Cuesta (2010: 1291) and Bernuz (2010) note that since the 1980s an increase in media attention on delinquency created a culture of “fear of crime” without there necessarily being a real increase in crime rates. This has prompted

“the image of the young person as inspiring “pity, compassion or tolerance” and needing help...to disappear, leading to growing demand for justice to be more repressive and efficient” (de la Cuesta, 2010: 1291).

In Denmark Storgaard (2010: 352) noted the influence of single cases shaking the media and influencing policy more than the actual evidence. In England and Wales in the early 1990s there were public and media claims that Britain’s streets were being overrun by young miscreants, joyriders, drug addicts and “persistent young offenders” (Goldson, 1997a; Davis and Bourhill, 1997; Jewkes, 2011). John Major, the then Prime Minister, exclaimed society should “condemn a little more and understand a little less”. A general fear was compounded by the killing of James Bulger, by two ten-year-old boys in 1993 (Bandalli, 1998; Haydon and Scraton, 2000; Stokes, 2000; Pickford, 2000; Cohen, 2002; Muncie, 2004; Pickford, 2006). Jenks (1996) suggests that the death of James Bulger, became an allegory for the supposed decline of morality in society.

Media representation, penal populism and the politicization of youth crime appears to have contributed to the problematization of youth in many Western democracies. Cunneen *et al.*, (2013: 157) reflecting on the interconnected relationship between media, crime and politics assert that:

“When news and popular culture echo the simplified or punitive approaches to criminal justice issues often touted by politicians, this reinforces the public position on these issues, feeding from the public to politicians and back to the public, signaling yet harsher penalties or conditions for offenders.”

Actuarialism and risk management

Risk and its management have become central to youth justice since the diminution of the welfare model in many Western states and has contributed to the “punitive turn”. Commentators have observed that rather than focusing on the benefits and positive possibilities of modernity, the late modern “risk society” emphasizes the negatives and is characterized by attempts to “manage” them (Beck 1992; Kelly, 2001; Kemshall, 2003; Mythen, 2007). Thus risk analysis has become ingrained in the public and private spheres (Hudson, 2003). The “risk society” thesis posits that the corrosion of traditional societal bonds has resulted in widespread distrust amongst modern citizens (Hudson, 2003; Kemshall, 2003). In particular, it has been suggested that risk, crime and youth

have become synonymous in modern popular discourse (Case and Haines, 2009; Kemshall, 2008). Young people are increasingly perceived as “posing a risk” or are “at risk” of partaking in criminal behaviour (Armstrong, 2004; Smith, 2006a; Haines and Case, 2008; Kemshall, 2008)

Simon and Feeley (2003) and Feeley and Simon (1994) contend that a “new penology” has emerged in the form of an actuarialist approach to crime management that relies on positivistic techniques for identifying, categorizing and managing groups with reference to their perceived level of dangerousness (Feeley and Simon, 1994; Kempf-Leonard and Peterson, 2000; Silver and Miller, 2002; Simon and Feeley, 2003). Scientific calculation of the potential for the commission of offences and managerial techniques are deployed to control the potential danger to the community (Hudson, 2003). Rehabilitation is not a consideration within this model. In the youth justice sphere the new penology is arguably most clearly expressed through the concept of “risk factors” (Haines and Case, 2008; Case and Haines, 2009).

Actuarial assessment has been identified as a technique (in varying degrees and forms) in the (youth) criminal justice systems of many Western states, including the U.K., U.S., Australia, New Zealand, Canada, France, Germany and Italy (O’Malley, 2009, 2010). David Farrington’s work has been hugely influential within modern youth justice policy and practice identifying risk factors considered to precipitate delinquency and youth crime. West and Farrington’s (1973) early work suggested a range of factors – with “transatlantic replicability” - which increase the prospect of juvenile criminality including: low intelligence and limited cognitive functioning; restlessness and limited concentration; harsh and/or erratic parental supervision and discipline; social and economic deprivation (Farrington, 1996, 2006; Farrington, 2000 in Muncie, 2005: 39). A “risk factor prevention paradigm” (RFPP) has arguably become the dominant discourse in youth justice in not only in England and Wales (Haines and Case, 2008; Case and Haines, 2009) and the U.S (Muncie, 2004), but also in Canada (Bonta *et al.*, 2004; Smandych, 2006; Hastings, 2010), Australia (Cunneen and White, 2006), New Zealand (Becroft and Thompson, 2006; Becroft, 2009) and the Netherlands (Beijerse and van Swaaningen, 2006; van der Laan, 2006). The identification and assessment of risk factors associated with offending behavior to target those in need of early intervention has become the cornerstone of youth justice practice (Goldson, 2000). The RFPP has effectively created an environment in which young people and families “displaying” risk factors, or in other words economically deprived and socially marginalized, are now ripe for intervention, producing a significant net-widening effect.

Responsibilization

Risk discourse emphasizes the concepts of individualisation, responsabilization and active citizenship (Giddens, 1990; Kelly, 2001; Kemshall, 2008; O'Malley, 2009, 2010). Individuals are perceived as shapers of their own worlds “making decisions according to calculations of risk and opportunity” (Petersen, 1996 cited in Kemshall, 2008: 22) or, as O'Malley (2009) terms it, “prudentialism”. This discourse individualizes risk and responsabilizes young people and their families with the duty to ensure its efficient management (Kelly, 2001). The individualized culpability-laden language of risk converts social risks into individual ones (Rose, 1996 cited Kemshall, 2008). It follows that governance in neo-liberal societies is conducted at the “molecular level”, with the active citizen expected to self-rule whilst those who fail, or refuse to do so, are demonized and excluded (Kelly, 2001; Rose, 1996 in Kemshall, 2008). Perhaps an illustration of this is the use of parenting orders for parents of children who have committed offences (Goldson and Jamieson, 2002). In Belgium parents can be made subject to a 30 hour parenting order and if not complied with or followed can receive up to seven days in prison (Pruin, 2010; Christiaens *et al.*, 2010). In France under the Perben Law of 2002 parents can be issued with orders and sanctions, including two years imprisonment and a 30,000 euro fine if they “compromise the health, security, morality or education of their minor children” (Wyvekens, 2006: 185) and have their child benefit withdrawn (Pruin, 2010). In England and Wales, Ireland, Scotland and Greece parenting orders with sanctions have been established since the mid 1990s (Pruin, 2010).

“Adulteration” and penal expansion

The “adulteration” (Muncie, 2004) of youth justice policy by the erosion of long standing special measures to shield children from the formality and stigma of adult courts has consolidated in many countries (Muncie, 2004: 156; Bishop and Decker, 2006; Merlo and Benekos, 2010; Bates and Swan, 2014). Whilst the legal power to transfer children to adult courts for particular grave crimes has always existed in many jurisdictions, it was not until the 1980s and 1990s that a major shift occurred in the numbers of young people being transferred or “waivered” to adult courts in the U.S (Feld, 1997: 74; Bishop and Decker, 2006). Influenced by increases in youth violence and excessive media coverage nearly every state and federal jurisdiction enacted laws, which expanded the criteria for eligibility for transfer and expedited young people's removal from the juvenile court (Bishop and Decker, 2006; Merlo and Benekos, 2010). Many states have introduced “blended sentencing” representing a hybrid between

juvenile and adult systems introducing lengthy mandatory sentences for young people (Bishop and Decker, 2006). The age of criminal responsibility is set at a state level and some states have set the minimum age of criminal responsibility as low as 6 years old. Consequently, in the U.S. juvenile imprisonment increased substantially; by 1997 14,500 juveniles under the age of 18 were confined in state and local institutions (Strom, 2000 in Bishop and Decker, 2006). 42 of the 50 American states now allow children under 16 to be given life sentences without parole and there are currently at least 2,225 people incarcerated in the U.S who have been sentenced to spend the rest of their lives in prison for criminal acts which they committed as children (Human Rights Watch and Amnesty International, 2005).

In England and Wales adultification of children in conflict with the law is also evident. The rebuttable presumption of *doli incapax*, which provided children between the ages of 10 to 14 years some protection from the full force of the law, was abolished by the Crime and Disorder Act 1998 (Fionda, 1999; Bandalli, 1998; Haydon and Scraton, 2000). Critics argued this undermined an important distinction between childhood and adult criminal responsibility (Fionda, 1999; Bandalli, 1998) resulting in younger children being criminalised (Haydon and Scraton, 2000). The punitive edge of policy has been evident in the rates of child incarceration in England and Wales: from 1991 to 2008 the number of juveniles imprisoned increased from just under 1,500 to just over 3,000 (Lewis, 2010); from 1993 to 2006 there had been an 800 per cent increase in the number of child prisoners aged 14 and under, a 142 per cent increase in child remand prisoners, and a 400 per cent increase in the number of female children in prison (Goldson, 2006). The duration of custodial sentences increased dramatically in England and Wales also (Nacro, 2006; Bateman, 2012). Contrasting the average sentence imposed on a young person in 1994 compared with that of a young person in 2004 revealed: for a violent offence sentences increased from 3.6 to 7.1 months; for robbery sentences had increased from 4.0 to 9.5 months; and for criminal damage sentences had increased from 3.6 to 7.0 months (Nacro, 2006).

New Zealand, thought by many to be the vanguard of a progressive and liberal juvenile and youth justice system through a framework of restoration, also appears to have converged towards an erosion of protections for children. Whilst the minimum age of criminal responsibility for children in New Zealand is set at 10 years, prior to 2010 children between the ages of 10 and 14 years could only be prosecuted for murder (Crimes Act 1961, s.21 cited in Lynch, 2012). However, under the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Act 2010

the prosecution of 12 and 13 year olds for serious or persistent offenders is now legal (Lynch, 2012). Lynch (2012) notes a discernable populist rhetoric towards children and young people, which has led the centre right government to legislate allowing youth courts to sentence young people to military style boot camps under residency orders. Such changes represent a significant departure from a philosophy of restoration and family group conferencing. Similarly, these trends can also be witnessed in aspects of varying Australian state policies. Whilst pre-court and diversionary measures have been formalized over recent years contributing to reduced rates of penal custody for young people since 2000, rates of child imprisonment and punitive adultfied sentencing policy have increased in many states (Cunneen and White, 2006; Richards, 2011; Cunneen, 2014). For example, in 2013 Queensland introduced boot camps as a sentencing option for child “offenders”, other states have introduced tough policing of public space specifically targeting young people and there has been an increased use of penal remand for children awaiting trial (Cunneen and White, 2006; Cunneen, 2014). Penal expansion appears to have taken hold in recent years in Australia; from 2003 to 2010 there has been a 21.9 per cent increase in rate of imprisonment for young people (Richards, 2011).

In 2000 Japan lowered its minimum age of criminal responsibility from 16 to 14 years (Muncie, 2011a). Japan has since made amendments in 2007 to the Juvenile Law, which have allowed Family Courts to commit children as young as 11 years old to Ministry of Justice juvenile training schools (Cipriani, 2009). In France the ordinance of 2 February 1945 has been modified more than 20 times from a base of protection to evermore severe and harsh treatment of children in conflict with the law (Castaignede and Pignoux, 2010; Muncie, 2011c). Castaignede and Pignoux (2010:521) have noted the significant legal changes over the years for example: the law of 1 February 1994 created a custodial sanction for 10-13 year olds (later strengthened in statute in 2002); the law 1 July 1996 allows the immediate intervention of a police officer to bring him/ her to the juvenile judge for punishment, the acceleration of proceedings against juveniles in courts for punishment under the “near delay (speedy) judgement” by the law of 9 September 2002; the 5 March 2007 law also strengthened the law to ensure that juveniles faced court immediately for offences; the creation of educational sanctions by the law of 9 September 2002 applicable to children from the age of 10 eroding the age at which courts can intervene in children’s lives; and for 16-18 year old repeat offenders a status of “pre-majority” has emerged treating them as “small adults” (Castaignede and Pignoux, 2010: 544). The use of custodial sentences has increased substantially. Custody use as a percentage of all convictions has risen from 22.6 per cent in 1980 to 42.4 per cent in 2002 (Castaignede and Pignoux, 2010: 521).

In Scotland despite the minimum age at which a child can be prosecuted having been raised from eight years of age to 12 in 2010 (Criminal Justice Directorate, 2011), here too 16 – 18 year olds are not afforded the same protections under the children’s hearing system and are routinely tried in adult offender courts (McAra, 2010). Scotland’s youth prison rate is currently the highest of all the Western nations according to the United Nations’ Office on Drugs and Crime 2013. Between 2003 and 2010 there has been a 34.9 per cent increase in Scotland’s youth imprisonment rate (United Nations’ Office on Drugs and Crime 2013), despite the jurisdiction proclaiming that welfare lies at the heart of the system.

Similarly, adultification of youth justice policy can be seen in Canada. In 1995 “presumptive” offences were created for individuals aged 16 to 17 years old, in which if a young person was charged with any of four serious offences (aggravated sexual assault, manslaughter, attempted murder and murder) then they would be “presumptively” transferred to adult court (Smandych, 2006:23). By 2003 under the Youth Crime and Criminal Justice Act this age limit for presumptive offences was lowered from 16 to 14 years old to include “other serious violent offences” (Smandych, 2006:23). However, Canada has seemed to be able to resist penal expansion and youth prison rates have declined; from 1996/1997 to 2005/2006 rates have dropped from 18 per 10,000 to 7.5 per 10,000 of the youth population (Hastings, 2010).

In the Netherlands the age limits of juvenile criminal law are being “defined up”: 16 and 17 year olds are more frequently being judged according to adult criminal law (Beijerse and Swaanigen, 2006: 67). The minimum age of criminal responsibility is set at 12 years in Holland, however in 1999 the preventative programme STOP was implemented for offenders under that age resulting in young people receiving penal intervention despite being under the age of criminal responsibility (Beijerse and Swaanigen, 2006: 67; van der Laan, 2006). Police officers may arrest and interrogate children below the age of 12 years in the Netherlands for up to six hours, leading some to contend that the MACR is in fact 10 years (Cipriani, 2009). In Holland, crime policy has grown evermore intolerant of young people and has resorted to zero tolerance, punitive measures and increased imprisonment of young people in conflict with the law (van Swaaningen, 2005). In 2010 there were 14 youth custodial institutions in the Netherlands with a capacity of about 2,700 places and Pakes (2010:111) notes this combined figure is the result of substantial expansion over the last three decades; the total capacity in 1985 was 660, in 1995 it rose to 1,045, and in 2005 it was 2,579, approximately a four-fold

increase in 20 years.

In Belgium, despite its youth justice system being strongly founded within the welfare tradition around 100 years ago – including having one of the highest ages of criminal responsibility (set at 18 years) – changes passed through parliament in 2006 have ushered in the influence of just deserts and adulteration (Christiaens *et al.*, 2010). Christiaens *et al.*, (2010) survey of youth justice indicates that since the 2006 reforms the ability for 16-18 year olds to be tried in adult criminal courts for “serious offences” and face adult sentencing has been made easier and the frequency of this age group appearing in adults courts is on an upward trend. There has also been a trend of increasing the overall detention capacity for minors since the end of the 1990s. In the 1990s detention capacity was capped at 100 places, in 2010 capacity was at approximately 500 places, which was “proudly” announced by the Federal Minister of Justice (Christiaens, *et al.*, 2010: 118). In Germany, it has been shown that the average number of over 14 year olds in prison increased by 21 per cent during the 1990s (Suhling, 2003 in Muncie, 2005). Even in states known for their penal tolerance, such as Denmark, we can see the rise of adulteration. In 2010 the minimum age of criminal responsibility was lowered from 15 to 14 years (Lappi-Sepalla, 2011) and the law also provides provision for the police to hold children as young as 12 years of age for up to 24 hours (Cipriani, 2009).

Racialization of youth justice

The racialization of “criminal” youth is a pertinent issue. Across Western jurisdictions one can see the overrepresentation of ethnic minority youth. Of 18 Western European countries critiqued by the United Nations Committee on the Rights of the Child, 15 jurisdictions were denounced for discriminating against minorities/asylum seekers and having overrepresentations of immigrant and minority groups in prison or under arrest (Muncie, 2008).

In the Netherlands the chances of being arrested as a youth significantly increase for children of Moroccan, Surinamese, or Antillean descent and they are 2.5 times more likely to be taken into custody and 2.3 times more likely to be charged than their native counterparts (Van de Laan *et al.*, 2010 and Weenink, 2007 cited in Pakes, 2010). In Belgium non-native young people are disproportionately represented in the secure estate and in one institution over 40 per cent were of non-EU descent (Florizoone and Roose, 2000 cited in Van Dijk *et al.*, 2006). In Germany Dunkel (2013b) notes foreign nationals aged 14-18 years made up 24 per cent of the youth prison population in 2002.

In Denmark despite its welfare orientated approach to youth justice the overrepresentation of male immigrants and descendants receiving penal disposals is 30 per cent (Storgaard, 2010). In France on average “foreign” juveniles accounted for 9.7 per cent of convicted youth between 1988 and 2005, which is double their proportion in the general youth population (Castaignede and Pignoux, 2010). Italy is famed for its progressive, non-punitive, welfare orientated youth justice system and parsimonious use of custody (Padovani, *et al.*, 2010; Field and Nelken, 2010; Dunkel *et al.*, 2010a, 2010b), but migrant youth do not appear to benefit. Statistics show that from 1999 to 2004 “foreign” juvenile offenders were consistently and significantly overrepresented from four to six times the rate of Italian juvenile offenders (Padovani *et al.*, 2010: 776). In Australia indigenous young people are disproportionately stopped and searched, overrepresented before the courts for minor offences such as swearing, less likely to be granted bail and disproportionately incarcerated compared to the general population (in Western Australian states indigenous youth were 44 times more likely to be imprisoned) (Cunneen, 2006, 2010, 2014). In New Zealand Maori youths aged between 14 and 16 years accounted for half of all apprehensions in that age category despite the fact that Maori’s only make up 17 per cent of the total population of that age group (Becroft, 2009).

In England and Wales discrimination in the youth justice system against young people from a black and minority ethnic origin is rife (Gibbs and Hickson, 2009); young people from a black and minority ethnic background make up 17 per cent of the youth prison population compared to three per cent of the general 10 – 17 population (Ministry of Justice, 2012a). Discriminatory practice against ethnic minority youth in the U.S is starkly apparent; ethnic minority youth make up a third of the general juvenile population yet they make up about two thirds of the incarcerated youth population (Muncie, 2008).

EXPLORING COMPLEXITY: COUNTERVAILING FORCES AGAINST THE “PUNITIVE TURN”

Paradoxically a number of global “softer” trends can also be charted at the same time as the “new punitiveness” and appear to have consolidated in international youth justice. International youth justice is said to be a complex amalgam of, often, conflicting principles and ways of working and is “beset...by ambiguity, paradox and contradiction” (Muncie, 2013: 43). So despite evidence suggesting a hardening of youth

justice across Western states, a number of other countervailing trends have been observed, which claim to promote children's "best interests", the use of custody as a "last resort" and informalism across the globe, namely international human rights frameworks and restorative justice.

GLOBAL HUMAN RIGHTS FRAMEWORKS

Human rights discourses have become central in the discussion of contemporary youth justice (Muncie, 2004, 2005; Goldson and Muncie, 2006, 2012; Kilkelly, 2006; Goldson and Hughes, 2010; Muncie and Goldson, 2012; Goldson and Kilkelly, 2013). Commentators have suggested that the advent of international conventions, rules and guidelines for the protection of children since the 1980s have enabled a more progressive and humane global youth justice system in contrast to the hegemonic "punitive turn" and neo-liberal penalty theses.

Global human rights provisions for the protection of children in conflict with the law were initially formulated via three crucial instruments (Goldson and Muncie, 2012, 2015; Muncie, 2013). First, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("the Beijing Rules") were established in 1985 and created a framework with the "aim at promoting juvenile welfare to the greatest possible extent" (United Nations General Assembly, 1985: Part 1 commentary). Second, *the United Nations Guidelines on the Prevention of Delinquency* ("the Riyadh Guidelines"), established in 1990, provide that youth justice measures in member states should: not seek to criminalise young people for misdemeanours; utilise diversionary methods for non-serious offending (para.5); respect the notion that youthful non-conformist behaviour is normal and part and parcel of the maturation process (para.5(e)); only use formal agencies to control young offenders as a "last resort" (para.6) (United Nations General Assembly, 1990a). Thirdly, *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty* ("the Havana Rules"), endorsed in 1990, decree detention of children should be used as a "last resort" and for the least amount of time possible (United Nations General Assembly, 1990b).

These rules were later strengthened by the United Nations Convention on the Rights of the Child (UNCRC) (Goldson and Muncie, 2006, 2015; Goldson and Kilkelly, 2013). The UNCRC came into force in 1990 and outlines guidelines and standards necessary for the protection of children's human rights. The UNCRC has been ratified by 195 countries, making it the most endorsed international convention in the world (UN Committee on the Rights of the Child, 2012; Goldson and Muncie, 2015). Of the 54

Articles within the UNCRC, a number are of particular importance to the protection of children in conflict with the law. Articles Three and Four outline the fundamental philosophy of the convention, that all state intervention with children and families should have the “best interests of the child” as the primary consideration (UNCRC, 1989: article 3.1.) and that every state party has a duty to implement the Convention into legislation (Article 4). The convention states that:

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age...The arrest, detention or imprisonment of a child...shall be used only as a measure of last resort and for the shortest appropriate period of time” (Article 37a-b).

Article 37 also provides that every child deprived of his or her liberty should have prompt access to legal advice and be kept separate from adults if imprisoned. Article 39 determines that a state party should promote the wellbeing of children who have been the victims of abuse or degrading punishment and such reintegration should be carried out in an environment that fosters dignity and self-respect for the child. Article 40.3.(a) pronounces state parties should establish a “minimum age below which children shall be presumed not to have the capacity to infringe the penal law”⁸ and all judicial proceedings should remain in private. Article 40.3.(b) also emphasizes the importance of avoiding judicial proceedings through the establishment of informal measures. Lastly, Article 40.4. bestows the importance of state parties making alternative arrangements, such as community support, for young people instead of the use of institutional care or incarceration.

Within a European context, the three UN guidelines and the UNCRC are further bolstered by the Council of Europe’s *Guidelines for Child Friendly Justice* (Council of Europe, 2010 cited in Goldson and Muncie, 2012: 50, 2015: 228). The European *Guidelines for Child Friendly Justice*, echo the UN’s global human rights conventions and bring them in line with European human rights standards (ibid).

Many states have now used the UNCRC to improve protections for children, and appointed children’s commissioners to champion children’s rights (Muncie, 2015). A

⁸ While the UNCRC does not stipulate an acceptable age of criminal responsibility (UN, 1989) the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* or *Beijing Rules* (1985) do however, refer to ‘emotional, mental and intellectual maturity’ (UN, 1985).

number of countries have incorporated or partly incorporated the UNCRC into domestic law, for example in: Belgium (forms part of domestic law and the constitution); Norway; Spain (part of domestic law); Denmark (all courts are bound to consider the convention); Iceland (constitution is undergoing amendment); and Sweden (constitution amended so as public authorities must safeguard the ‘rights of child’) (Lundy *et al.*, 2012). Diversion has experienced a “triumphant expansion” in the last 10 years in Austria, Belgium, England and Wales, Germany, Ireland, the Netherlands, Northern Ireland, Spain, and Sweden where diversion is used between 50 and 80 per cent of the time in all cases (Dunkel *et al.*, 2010b: 1677).

Whilst human rights conventions can be seen as drivers for positive change; to help to disseminate a certain justice culture marked by discernable human rights discourses (Bailleau *et al.*, 2010; Dumortier *et al.*, 2012); and as having had a unifying effect for youth justice across the globe (Lundy *et al.*, 2012), evidence suggests that there is considerable “disjunctures between international standards and national policies” in many localities (Goldson and Hughes, 2010: 213). There is an unequivocal disparity between the rhetoric of policies and the reality of provision across many states, prompting one to consider whether human rights instruments offer only a veneer of protection for children in conflict with the law? (See Goldson and Muncie, 2006, 2012, 2015; Goldson and Kilkelly, 2013; Goldson, 2014 for further discussion).

RESTORATIVE JUSTICE

Critics of U.S. inspired neo-liberal globalization would posit that restorative justice has become a powerful countervailing force. Over the last 30 years restorative justice has become an international phenomenon in the field of contemporary youth penalty (Cunneen, 2010; Cunneen and Goldson, 2015). Restorative justice, purportedly founded on the ideas of informal customary practices of indigenous populations such as Native Americans, Maori and Aborigine, centres on dispute resolution between the perpetrator and the victim (McLaughlin, *et al.*, 2003; Muncie, 2005). Pioneered in Australia and New Zealand, restorative justice conferencing within juvenile justice is now commonplace across European and Anglophone states and is seen as an alternative to formal criminal justice procedures (Cunneen, 2003, 2010). Restorative justice processes can be observed within family group conferencing, pre-court diversion schemes and restorative cautioning, mediation sessions between the victim and offender and sentencing circles (Cunneen and Goldson, 2015:138). Restorative justice has been heralded as a common sense, non-punitive and decriminalising force within criminal

justice (McLaughlin *et al.*, 2003; Cunneen, 2003, 2010; Goldson, 2011a; Goldson and Muncie, 2012; Cunneen and Goldson, 2015). Cunneen and Goldson (2015: 139) observe:

“it is no exaggeration to suggest that what we have seemingly learnt to call ‘restorative justice’ – in all its heterogeneity – has induced a paradigm shift in global criminal justice (in general) and transnational youth justice (in particular).”

Indeed restorative justice has been firmly cemented into the bedrock of global youth justice practice. Both the Council of Europe and the United Nations’ Economic and Social Council and the Eleventh United Nations’ Congress on Crime Prevention and Criminal Justice have all strongly endorsed the tenets of the model and urged member states to use and develop restorative programmes, policies and procedures (Goldson and Muncie, 2012; Cunneen and Goldson, 2015).

CONCLUSION

Within criminal justice in general and youth justice in particular it has been argued that a neo-liberal “punitive turn” has taken place across Western democracies leading to the exponential growth of imprisonment and a harsh “culture of control”. A global convergence towards a neo-liberal penalty and inter-related themes are seemingly apparent. Since the creation of separate youth justice systems in Western states, from around 1900 onwards, principles of welfare were at the heart of intervention with young people in conflict with the law. However, it has been argued that a series of “destructuring ideologies” (Cohen, 1985) took hold in the 1960s and a movement away from welfare to justice ideologies occurred across many Western democracies. This occurred due to a movement towards decentralization, deformalization, decriminalization, diversion and non-intervention in attempts to divest the state (including welfare agencies) of certain control functions. Similarly, deprofessionalization, in which distrust in professional expertise and the rehabilitative ideal occurred, leading to ideas that nothing worked when working with young people who transgressed the law.

Due to the politicization of youth crime policy in many states and the advancement of neo-liberal, neo-conservative and authoritarian impulses, “just deserts” faced critique that it was not adequately punishing or dealing with young people. As such get-tough

measures, based on ideas of responsabilization and risk management, emerged. Children and young people have become increasingly viewed as problematic, risky and dangerous in many Western states. Societal fears fuelled by populist politicians and media attention – often concentrating on infrequent yet high profile child offences – have created more punitive measures being taken against children in conflict with the law in many Western democracies. A trend of adulteration, in which long standing special measures to protect children from the full force of the law have dissolved, has also been witnessed over the last forty years. This has resulted in many more children being formally prosecuted in adult courts as the reach of the youth justice system has expanded in many Western states. Evidence also suggests that Western youth justice systems have become increasingly racialized, with black and minority ethnic children and young people being significantly overrepresented in the spheres of penal control.

However, countervailing forces against penal excess are also evident, in particular global human rights instruments and restorative justice approaches. International human rights standards provide a wide range of protections for children in conflict with the law. However, the degree to which states adhere to the UNCRC is disputable, given the fact that its provisions are routinely violated by member states. Similarly, whilst restorative justice has been hailed as a non-punitive and decriminalizing force, in practice evidence suggests that it is applied unevenly across states, often “bolted” onto existing criminal justice systems, and neglects to address the social aspects of young people’s lives, namely that young people are often “victims” as well as “offenders” (Cunneen and Goldson, 2015).

The international picture is complex and within this context the following chapter will explore the spatial and temporal nature of youth penalty and demonstrate that whilst there has been a convergence towards a “new punitiveness”, exploration between and within states, in addition to analysis of trends over time, indicates that youth penalty is both spatially and temporally differentiated.

CHAPTER FOUR

THE TEMPORAL AND SPATIAL NATURE OF YOUTH PENALITY: DRIVERS OF PENAL EXPANSION AND REDUCTION IN ENGLAND AND WALES

INTRODUCTION

International evidence suggests a convergence towards the use of a number of standardised and homogenised punitive practices to govern youth across many Western democracies since the 1970s leading to a “global youth justice” (Muncie, 2005). However, closer comparative analysis also indicates that youth penalty is spatially differentiated nationally and locally (Goldson and Hughes, 2010) and is also temporally differentiated and subject to constant change (Goldson, 2015). Comparative inter and intra state analysis of youth penalty indicates that some states and sub-jurisdictions have resisted the excesses of neo-liberal penalty (Cavadino and Dignan 2006a, 2006b; Lappi-Seppala, 2011; Dunkel, 2013a) and youth prison rates vary significantly between and within states (UNODC, 2013; Muncie, 2015). Furthermore, over the last five to 10 years in some countries and some U.S. states the number of children and young people incarcerated has been declining (Ministry of Justice, 2015a; UNODC, 2013). Also analysis of child and adult prison rates within states indicates that they are not coterminous and are differentiated. These trends inconvenience the dominant “punitive turn” thesis and it appears that “penal policies are not becoming harsher everywhere” (Tonry, 2007: 1). Rather youth penalty is temporally and spatially differentiated locally, nationally and internationally.

The dichotomised nature of much of the comparative youth justice research literature tends to assign systems of youth governance as punitive or non punitive, welfare or justice, rights compliant or inhumane, neo-liberal or conservative corporatist. Visions of “global” youth justice are often “dystopian” or “utopian” (Goldson, 2014), pessimistic or optimistic (Muncie, 2013). But in reality the picture is more complex and international youth justice policy appears to comprise an amalgam of conflicting philosophies and incoherence. Youth penalty is a “messy” (Goldson, 2014) phenomenon, as is the task of unpicking it.

This chapter begins by exploring how youth penalty is spatially and temporally

differentiated internationally, nationally and locally. Later it is argued, using England and Wales as an example, that whilst much comparative criminology suggests that youth penalty has taken a “punitive turn” since the 1990s, the picture is more nuanced. It is this nuance that this chapter seeks to draw out. The temporal nature of youth justice in England and Wales is explored by analysing the drivers of penal expansion and reduction since the 1970s. Then the local drivers of differential justice are investigated.

EXPLORING DIVERGENCE AND CONTRADICTIONS: NATIONAL AND LOCAL YOUTH PENALTY

VARIATION BETWEEN STATES

Whilst much international comparative evidence suggests a convergence towards the use of a number of standardised and homogenised punitive practices to govern youth across many Western democracies, paradoxically there is considerable variation in youth penalty between states including examples where “moderation” remains the mainstay. Grand social forces these neglect the local nature of penalty and inherent nuance and contradictions within and between states (O’Malley, 2000; Zedner, 2002; Loader and Sparks, 2004; Matthews, 2005; Hutchinson, 2006; Goldson and Muncie, 2012; Muncie, 2013, 2014) (see Chapter Two). Youth justice, policy practice and law appear

“formed, applied, and fragmented through a complex of political, socio-economic, cultural, judicial, organisational and local filters. It is also the case that the sovereignty of nation states continues to be vigorously defended and expressed through diverse national domestic law and order agendas” (Muncie, 2013: 47).

The variance in the age of criminal responsibility across borders is illustrative of these points.

Variance in age of criminal responsibility

Table 4.1: Minimum age of criminal responsibility for selected countries

State	Age of criminal responsibility
USA	6+ (state variance, however some states have set no age)
South Africa	7
Scotland	8 (but no criminal court prosecution before age 12)
Australia	10
Switzerland	10
England & Wales	10 (<i>doli incapax</i> abolished 1998)
Northern Ireland	10
Ireland	12 (raised from 7 in 2001)
Canada	12
Netherlands	12
Portugal	12
Greece	12
France	13
Japan	14 (lowered from 16 in 2000)
Austria	14
Germany	14
New Zealand	14
Italy	14
Spain	14 (raised from 12 in 2001)
Denmark	14 (lowered from 14 in 2010)
Finland	15
Norway	15 (raised from 14 in 1990)
Sweden	15
Belgium	18

Source: derived from Cipriani (2009), Dunkel *et al.*, (2010a), Muncie, (2015).

There is no harmonization of the age of criminal responsibility across states (Goldson, 2014) with considerable variation as shown in Table 4.1. Whilst the age of criminal responsibility is not a marker of “punitiveness” alone, comparative analysis of Western nations indicates that age of criminal responsibility is negatively correlated with prison rates (Downes, 2012). Therefore, the variance in the age of criminal responsibility does not represent a homogenised “punitive turn” across the West. Perhaps the U.S., England and Wales, Australia, and Northern Ireland are exceptional cases. Indeed Norway, Spain, Ireland and Scotland have either raised the age of criminal responsibility or the age at which children can be prosecuted (Dunkel *et al.*, 2010a).

Variance in custody use

Statistics for youth custody rates across the world are patchy and unreliable due to differences in the way states view “children”, “juveniles” or “young people” across jurisdictions (Goldson and Muncie, 2006; Muncie, 2008). Countries collect different data on crime and prison numbers. Muncie (2008, 2015) notes that comparison is made more arduous as one is never sure whether statistics are based on “stock” or “flow”, to under 18s or under 21s, to convicted populations or to those awaiting sentence. Difficulties arise in disparities in classifications of penal institutions and interventions. The incarceration rate for juveniles in one country could be extremely low whereas at the same time the rates of juveniles in closed residential facilities of the welfare system could be high (Dunkel *et al.*, 2010a). In one jurisdiction “education measures” might denote intervention without the use of custody whilst in other countries “education measures” might take place within secure and closed institutions. Pitts and Kuula (2005), cited in Snacken and Dumortier (2012), estimated that Finland via its youth welfare system may remove from home and institutionalise more children per year than do England and Wales, yet a cursory look would indicate that they have a low incarceration rate. (See also: Peas, 1994 for wider discussion of prison rates and punitiveness).

Chapter Three noted statistics describing increases in the use of custody for juveniles since the 1990s in a number of Western countries as contributing evidence of “a punitive turn”. However, looking at the rates of custody across the West we can see great divergence and complexity. The United Nations’ Office on Drugs and Crime (2013) statistics, whilst the reliability and validity are questionable, show significant variation in custody rates with Scotland, Greece, and Canada having the highest rates per 100,000 of the youth population and Sweden, Norway and Japan having the lowest rates (see Table 4.2).

Table 4.2: Prison rate per 100,000 juveniles aged 17 or below for selected countries (years 2003-2010) ordered from highest to lowest

State	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>% change from initial to most recent count</i>
Scotland	47.6	71.1	78.5	86.5	89.1	87.0	86.8	73.1	+34.9%
Greece	-	-	4.1	4.0	22.2	27.0	27.7	30.3	+24.2%
Canada	34.3	31.9	28.8	28.7	28.8	27.2	-	-	-26.0%
Netherlands	-	-	66.2	66.9	67.4	50.1	35.0	19.6	-237.9%
Spain	21.0	20.3	-	-	-	-	-	18.1	-15.9%
Portugal	23.8	26.2	26.6	25.5	-	-	17.0	16.5	-44.1%
Australia	-	-	-	-	-	12.8	19.5	16.3	+21.9%
England and Wales *	16.1	18.9	19.1	20.0	19.8	20.4	16.9	13.2	-22.0%
United States of America		13.0	12.2	11.4	12.7	14.0	13.3	13.1	+0.5%
Austria	-	-	11.2	13.8	8.9	10.8	12.0	-	+6.0%
Italy	7.6	8.4	8.9	7.8	9.9	11.3	-	-	+32.7%
New Zealand	-	-	9.9	10.6	8.9	8.7	7.5	8.5	-16.3%
Finland	9.1	8.7	8.3	8.8	7.1	8.5	9.3	6.7	-35.4%
Germany	5.4	5.1	-	-	-	-	-	-	-6.3%
France	-	-	-	-	5.3	4.9	4.9	-	-8.8%
Ireland	4.2	5.8	-	-	5.3	4.3	5.0	4.4	+3.5%
Switzerland	-	-	4.9	3.6	-	-	-	2.7	-81.8%
Iceland	-	0.0	2.5	1.3	1.3	2.5	2.5	-	+100.0%
Denmark	0.7	0.6	1.7	1.5	2.1	0.7	1.6	-	+59.0%
Sweden	0.1	0.1	0.7	0.7	0.6	0.8	0.3	0.8	+86.7%
Norway *	1.0	0.9	1.0	0.6	0.6	0.5	0.7	-	-42.2%
Japan	0.2	0.3	0.3	0.2	0.1	0.2	0.2	0.1	-187.4%

** Changes in definitions and/or counting rules are reported by the Member State to indicate a break in the time series.*

Source: Derived from the United Nation's Office on Drugs and Crime (2013).

However, figures compiled by Muncie (2015), using multiple collated sources, which he argues has greater accuracy, change the picture slightly (see Table 4.3). The U.S has the highest rate of youth imprisonment and Scandinavian nations have the lowest. Comparing global youth imprisonment rates illustrates Japan and the Nordic countries are far from witnessing neo-liberal penal “hyperincarceration”. Imprisonment is used extremely parsimoniously. In Nordic states all child offenders under 15 are dealt with only by child welfare authorities and 15 to 17 year olds are processed by the child welfare agencies *and* the criminal justice system (Lappi-Seppala, 2011). The Nordic

countries observe international obligations to restrict the use of imprisonment for juveniles⁹. Despite some commentators suggesting that there has been a slight shift towards a punitive tone in political rhetoric, the Nordic nations have been able to promote decarceration and rehabilitation and resist media calls for a clamping down on “troublesome” youth (see Pratt 2008a, 2008b). In Western Europe, Greece, England and Wales and Germany remain the “most custody prone” (Muncie, 2015: 362). Muncie (2015) also remarks that England and Wales, France and Italy have roughly the same youth populations, yet in 2011/12 England and Wales had just under 2000 under 18 year olds in custody, whilst France held 737 and Italy 456.

Table 4.3: Estimated number and rate of juveniles (under 18 year olds) in penal custody for 2011/13 for selected countries (ranked by rate of imprisonment)

State	Number in custody	Imprisonment rate per 100,000 0-18 year olds	Approximate increase/decrease in rate since 2004
USA	70,792	91.5	-45.5
Greece	586	30.5	+10.5
Canada	1457	21.1	-7.8
Australia	794	16.1	+4.7
England & Wales	1963	16	+9
Germany	1995	14.5	+7.5
Ireland	83	7.5	No change
Netherlands	233	6.5	+1.5
Scotland	70	6.3	-10.7
France	737	5.3	+1.3
New Zealand	51	4.7	-4.3
Italy	456	4.4	No change
Belgium	84	3.8	+2.8
South Africa	625	3.4	-15.6
Northern Ireland	14	3	-12
Japan	324	1.5	+1.2
	(Under 20s)		
Sweden	12	0.6	No change
Denmark	8	0.6	+0.4
Finland	6	0.5	-0.4
Norway	3	0.2	-0.3

Source: Reproduced from Muncie (2015: 363)

⁹ Detractors of the Nordic model suggest that this achievement is diminished by the relatively high number of placements of children into state care. However, Lappi-Seppala (2011) asserts that such criticism is unfounded as such Nordic institutions are institutions of welfare and do not administer punishment.

Winterdyk (2002: xxii - xxiii) explored the diversity within youth penalty across borders and suggests the following typology: “crime control” emphasising due process, punishment and retribution (USA); “justice” focussing on due process but the least restrictive and educative interventions (Germany); “modified justice” using both law and social work professionals stressing informality, due process and the bifurcation of offenders (Canada); “corporatism” led by justice professionals emphasising diversionary measures, administrative decision-making and interagency working (England and Wales); “welfare” utilising informality, indeterminate sentencing and social work professions (Austria, Netherlands, Italy, Scotland and Belgium); “participatory” focussing on informality, individualised indeterminate sentencing and minimal formal intervention (Japan).

Dunkel *et al.*, (2010b: 1679-81) comparing European juvenile justice structures formulate three “clusters”: the “neo-liberal cluster”, with an emphasis on more serious punishment and custodial sanctions, contains England and Wales, Spain, Lithuania and Romania; the “stability cluster” has a moderate educational/welfare-orientated approach characterised by a strong degree of stability and moderation in sentencing, the Scandinavian countries, Switzerland and Germany are within this group (Denmark’s lowering of the age of criminal responsibility and the introduction of more punitive and intrusive sanctions could jeopardise its position within this cluster); the “lenient cluster” extends diversion, educational and restorative measures and focuses on reducing custodial disposals, Belgium, Austria, Finland and Northern Ireland are within this group. Dunkel *et al.*, (2010b) cite Finland as the prime example, which succeeded in reducing the frequency of custodial sentences for 15 to 17 year olds from 400/500 in the 1980s to 60-70 in the 2000s.

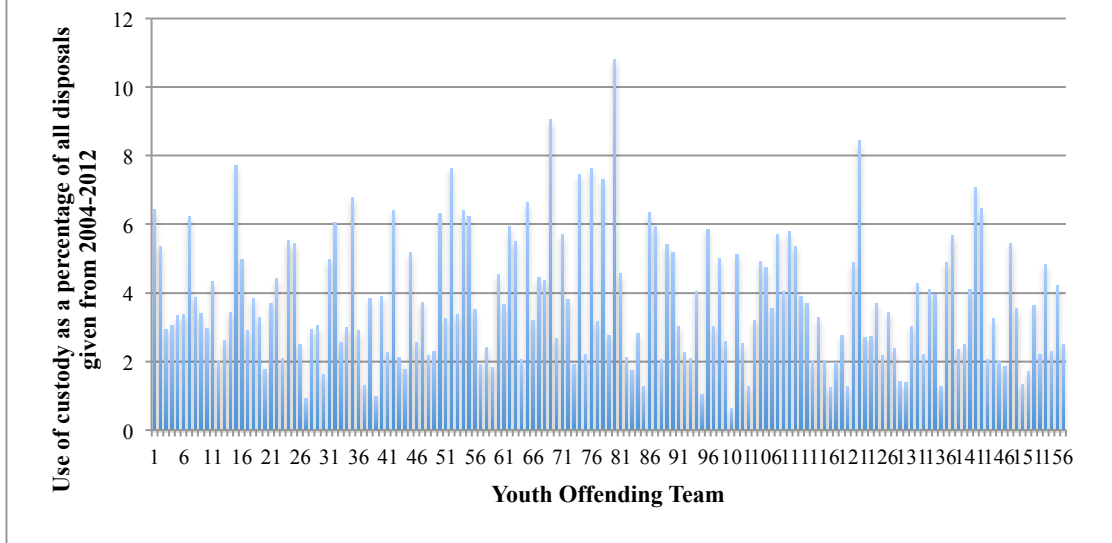
Whilst such typologies provide useful contextual frameworks, however, they lack detail, accuracy, rarely go beyond descriptions of procedural systems and have questionable applicability (Muncie, 2005, 2008; Goldson and Muncie, 2006). Categorisations fail to recognise the “hybridity” of political rationalities, for instance neo-conservative and social democratic rationalities often are melded together to form messy forms of governance within states (Stenson and Edwards, 2003; Edwards and Hughes, 2012: 443). Political economies are far from uniform or clear-cut. Typological models neglect the realities of provision. For example, Scotland is grounded in welfarist policies, such as children’s hearings, but this does not explain its extraordinarily high imprisonment rate of 73.1 per 100,000 of the under 18 year old population (UNODC, 2013).

VARIATION WITHIN STATES

The “national” is arguably an inadequate unit for policy analysis (Goldson and Hughes, 2010) because local variation within a state indicates the difficulty of categorising it within one typology. Looking at custody use within states, significant divergence and variance is evident. Bishop and Decker (2006) note that the U.S average youth prison rate for the nation was 371 per 100,000, however Hawaii and Vermont held 96 youth per 100,000 (the lowest) compared with the District of Columbia and Connecticut which had rates of 704 and 513 per 100,000 respectively (the highest). In Denmark there is variation in the severity of community orders given between the Western and Eastern High Court (Storgaard, 2010). Disparities between regions also exist in Finland, although the data is incomplete (Lappi-Seppalla, 2010). In France the national average for formal prosecution was 42.4 per cent in 2006 yet the issue rates for individual courts varied from 30.7 to 69.7 per cent of all responses (Castaignede and Pignoux, 2010). In Germany more serious punishments for youths prevail in the southern regions compared to the northern ones (Dunkel, 2010). Variance also exists between East and West Germany; despite the East having higher rates of robbery in 1997 it had a lower rate of imprisonment for that crime than its Western neighbour (Kroplin, 2002 cited in Dunkel, 2010: 586).

In England and Wales, the use of custody and pre-court disposals varies significantly across different Youth Offending Team areas (YOT). Of the 157 YOT areas the mean percentage of custodial disposals for the years 2004-2012/13 varied from 10.82 in Merthyr Tydfil (ranked highest), 9.05 in Lambeth (ranked second highest), to the lower end of 0.62 in Pembrokeshire (the lowest) (see Figure 4.1).

Figure 4.1: Graph showing the variance in the use of custody as a percentage of all disposals given across 157 Youth Offending Teams in England and Wales from 2004-2012



Source: data derived from Ministry of Justice, 2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a.

The variation in custody use does not alter significantly if we look at custody use per 1000 of the 10 to 17 year old population per YOT area. For 2012/13 the average custody rate per 1000 of the 10-17 population for 157 YOTs was 0.72. However, Lambeth (2.32), Southwark (2.18), Derby (1.90) and Doncaster (1.89) exceed the average, and Gateshead (0.45) and Barnet (0.52) remain below. For 2012/13 Bracknell Forest had a rate of 0 as no children were sentenced to custody.

Haines (2010) has argued that Welsh youth justice should be analysed as a distinct entity. Whilst youth justice in Wales is governed by Westminster and the YJB in England, health and education services have been devolved to Wales since 1998 (Haines, 2010). This has supposedly resulted in distinct changes to the composition of youth justice in Wales (Cross, *et al.*, 2002). Haines (2010) argues there has been a “dragonization” of policy in Wales focused on a Children First and Offenders Second model based on welfare entitlement, diversion and the use of prison as a last resort. However, again there is significant variation within Wales. Whilst Wales has YOTs with some of the lowest incarceration rates, it also has YOTs with some of the most consistently highest rates of child incarceration in England and Wales. Merthyr Tydfil between 2004 and 2010 had an average custody rate (measured as custodial sentences as a percentage of all court outcomes) of 18.32 per cent compared to the Welsh average of

6.63 (Nacro, 2011a). Bridgend over the same period also had a higher than average use of custody (Nacro, 2011b).

Bateman and Stanley (2002) and Gibbs and Hickson (2009) have also found significant variation in the use of custody across YOTs in England and Wales. Goldson and Hughes (2010) suggest that similar YOTs, matched on socio-economic factors, produce quite different sentencing outcomes indicating that youth penalty is spatially differentiated. Using the national as a unit of analysis can hide and obscure regional and or local differences within territorial jurisdictions (Goldson and Hughes, 2010). Youth penalty appears to be significantly localised through national, regional and local areas of difference (Muncie, 2005; Goldson and Hughes, 2010). Thus Goldson and Hughes (2010: 218) suggest that:

“variations *within* nation state borders may be as great, or even greater, than some differences *between* them, then taking the national (let alone the international or global) as the basic unit for understanding policy shifts and processes...becomes highly questionable (Goldson and Hughes, 2010: 218. *Original emphasis*).”

TEMPORAL DIFFERENTIATION OF PENALITY

Historical analysis suggests that penalty is also temporally differentiated. As discussed in Chapter Two dystopian visions of contemporary penalty assume Western states are headed for a downward, unchanging course towards a harsh “culture of control” and neo-liberal penalty (Garland, 2001; Wacquant, 2009b) with increased use of the prison and penal control and responsabilization (Muncie, 2008, 2011c). But historical analyses suggest that the development of youth justice policy and practice is cyclical driven by fluctuations in societal angst regarding youth crime and fluctuation between harsh and restrictive penalties to more lenient and parsimonious interventions (see: Schultz, 1973; Gilbert, 1986; Ferdinand, 1989; Bernard and Kurlychek, 2010)

Penalty is affected by time and history illustrates times of penal moderation and excess. Despite the U.S, England Wales, Canada and the Netherlands displaying significant increases in the numbers of young people being detained since the 1990s, there have recently been significant decreases in prison use for young people. In the U.S, although not evenly distributed across all states, since 1995 the rate of youth confinement has dropped by 41 per cent from a rate of 381 to 225, lower than the rate in 1975 of 241

(AECF, 2013). There has also been a reduction of the juvenile arrest rate of 31 per cent since 2002 (Puzzanchera, 2013 in Goshe, 2015). In England and Wales the number of first time entrants (FTEs) into the youth justice system has fallen by 59 per cent from 88,984 in 2001/02 to 36,677 in 2011/12 (Ministry of Justice, 2013b). FTEs peaked in 2006/07 and have fallen by 67 percent (ibid). The average population of young people in custody has reduced by approximately one third since 2008/09 (ibid), marking the largest decline in custody for children since the 1980s (Allen, 2011). The number of custodial sentences in 2011/12 stood at 3,925, a fall of 48 percent since 2001/02, when 7,485 custodial disposals were given to children and young people (Ministry of Justice, 2013b).

In the Netherlands in 2013 19 prisons were marked for closure due to a record crime drop and a refocus on community sentences and electronic tagging (Boztas, 2016). In Canada the youth prison rate fell by 26 per cent in the years 2010/11 to 2014/15 and stood at 6 per 10,000 of the 12 to 17 year old population and reported a decrease in formal prosecutions (this varies across the 12 reporting territories) (Statistics Canada, 2016).

UNDERSTANDING THE TEMPORAL AND SPATIAL NATURE OF YOUTH PENALTY IN ENGLAND AND WALES

A THEORETICAL FRAMEWORK FOR UNDERSTANDING YOUTH PENALTY

Significant attention within criminological thought, regarding penalty, falls within two traditions of analysis, the “nomothetic” and the “idiographic” (Edwards and Hughes, 2005; Muncie, 2011b). The nomothetic tradition seeks to establish connections, universality and generalisable themes between states, such as the global “punitive turn”. Mathews (2005) notes nomothetic theses are usually unidirectional and neglect the local nature of crime control strategies. The idiographic seeks to find uniqueness and differences between and within jurisdictions (Edwards and Hughes, 2005: 347-48). This approach is context specific and attempts to distil the localised nature of social relations. Young (2003) cited in Edwards and Hughes (2005:349) warns against a “hermetic localism” in which criminologists striving to discover native qualities of crime control fail to acknowledge how local systems are affected by external influences. Geertz (1973: 21) cautions against the “microcosmic” nature of the idiographic tradition and the notion of a “world in a grain of sand”. So both traditions of investigation, if applied in

isolation, fail as an analytical framework. The application of a *trifocal analytical lens* is vital. This focuses on the interplay between international, national and subnational policy and practice (Edwards and Hughes, 2005, 2009, 2012; Muncie, 2005; Goldson and Muncie, 2006; Goldson and Hughes, 2010).

David Garland (2013a), recently, has added to the debate regarding the exploration of the sociology of punishment and suggests a way forward:

“we should focus more on the specific processes that “translate” social causes into penal effects...in different jurisdictions...My suggestion is that we should shift our attention – for the time being – away from the broad range of social forces that exert pressure for penal change and instead concentrate more narrowly on the institutional processes that directly produce specific penal outcomes. We should, in short, focus on the state...We should recognise that the *proximate* causes of changing patterns of punishment lie not in *social* processes but in *state and legal* processes: chiefly in legislative changes made to sentencing law and in the actions of the legal decision makers such as prosecutors, sentencing judges, corrections departments, and the parole boards pursuant of these legal changes” (Garland, 2013a: 483-484. *Original emphasis*).

Garland’s (2013a) methodological call to focus on state rather than social forces will be adopted as the over-homogenised conception of the (monolithic neo-liberal) state, inherent in many criminological studies (Phoenix, 2010; Phoenix and Kelly, 2013; Pitts, 2012), is ineffective for the task of capturing the fragmentation of authority within liberal democracies (Edwards and Hughes, 2012). To aid this interrogation of varied state processes a governmentality approach has been adopted. Rose (1999: 21) describes governmentality as an:

“...emergent pattern or order of a social system, arising out of complex negotiations and exchanges between ‘intermediate’ social actors, groups, forces, organizations, public and semi-public institutions in which state organizations are only one – and not necessarily the most significant – amongst many others seeking to steer or manage these relations. But the object of analytics of government is different. These studies do not seek to describe a field of institutions, of structures, of functional patterns or whatever. They try to diagnose an array of lines of thought, of will, of invention, of programmes and failures, of acts and counter-acts. Far from unifying all under a general theory of government, studies undertaken from this perspective draw attention to the

heterogeneity of authorities that have sought to govern conduct, the heterogeneity of strategies, devices, ends sought, the conflicts between them, and the ways in which our present has been shaped by such conflicts”.

Such a governmentality focus ostensibly invites us to consider that the governance of (youth) crime is primarily concerned with multiple relations of power and processes (Stenson and Edwards, 2004; Stenson, 2005:272; McKee, 2009; Phoenix and Kelly, 2013).

UNDERSTANDING THE DRIVERS OF PENAL EXPANSION AND REDUCTION AT A “NATIONAL” LEVEL

As stated above analysing penalty across time reveals periods of both penal moderation and penal expansion in England and Wales.

1969 – 1979: a melding of welfare, punishment and increased incarceration

The Children and Young Persons Act 1969 was the culmination of a sustained period of welfare-orientated intervention in youth justice under Labour governments from 1964 (Parker *et al.*, 1989). It was the political belief that youth offending was considered mainly petty, commonplace and fleeting, so the full force of the law would be counterproductive (Muncie, 2011a). The Act aimed to raise the age of criminal responsibility to 14 years, implement community treatment interventions and care proceedings, and reduce the numbers of young people appearing in criminal courts (Muncie, 2011a). Also it attempted to minimise court, judiciary and police powers and place more power in the hands of the local authority with the welfare of children under 14 the prime consideration through civil care proceedings rather than criminal prosecution. Young people convicted of criminal charges were to be placed in care rather than prison (Parker *et al.*, 1989; Haines and Drakeford, 1998; Cavadino *et al.*, 2013).

The new Conservative government in 1970 resulted in vital elements of the Act not being implemented (Thorpe *et al.*, 1980; Parker *et al.*, 1989; Rutherford, 1992; Haines and Drakeford, 1998; Muncie, 2011a; Cavadino *et al.*, 2013). It refused to raise the age of criminal responsibility and replace criminal with care proceedings (Muncie, 2011a). Under considerable lobbying by the Magistrates’ Association (Parker *et al.*, 1989; Rutherford, 1992), rather than phasing out Borstals and Detention Centres for custodial

sentences, the government created a number of welfare measures to run alongside penal measures (Thorpe *et al.*, 1980; Parker *et al.*, 1989; Rutherford, 1992; Haines and Drakeford, 1998; Cavadino *et al.*, 2013), including the Care Order and Supervision Order, not only for “young offenders”, but also for young people in need (Haines and Drakeford, 1998). The welfare elements “grafted” (Thorpe *et al.*, 1980: 22) onto the existing justice focused system tended to “thin the mesh” of the boundaries of the juvenile court; countering the offence became less important than responding to the needs of the young person (Haines and Drakeford, 1998: 37). Thorpe *et al.*, (1980: 22-23) describe the implications of the altered Children and Young Persons Act 1969:

“If one compares the sections of the Act that were implemented and those that were not, the answer is obvious: a new system came in but the old one did not go out. Intermediate treatment arrived, but detention centres and attendance centres remained; the community homes system was created, but approved schools retained their character and borstals were still available...The systems have, in effect, become vertically integrated and an additional population of customer clients has been identified...the two systems are, in the final analysis, opposed to each to other. But the present situation is one of more or less peaceful coexistence...the new system has become deployed with the younger age groups and has adopted a ‘preventive’ policy...in the identification of a new population for whom social work intervention is appropriate prior to confrontation with the courts. Once such children begin to appear in court, however, they are fairly rapidly phased into the penal system...It is tempting to argue...that if field social work has already ‘failed’...more social work is not likely to succeed and it is therefore time to try something new and different. Hence there is a form of collusion: the agreement between magistrate and social worker that it is now necessary to remove the child from home and place him, initially at any rate, in care”.

As the decade progressed magistrates became frustrated about the use of care orders and the level of discretion social work departments had and issued fewer care orders for 14 to 17 year olds in criminal cases (Haines and Drakeford, 1998). There was a rapid decline in community orders for juvenile offenders and a dramatic increase in custody, from 3,000 custodial sentences in 1970 to over 7,000 in 1978 (Cavadino *et al.*, 2013: 260). Matthews (1995) notes that by 1979 there were more incarcerated young people than at anytime since the introduction of the juvenile justice system in 1908.

1980 – 1992: diversion, decriminalization and decarceration

From the mid 1970s dissatisfaction with the welfare model grew and a desire for increased protections for children in conflict with the law against its discretionary power emerged. A group of influential academics and practitioners, namely Thorpe *et al.*, (1980) and Norman Tutt from Lancaster University, Schur (1973) and Andrew Rutherford (1986, 1992), advocated the reduction in formal prosecution, use of prison or Care Orders and the promotion of intermediate treatment in the community based on Rutherford's (1986) thesis that children "grow out of crime" and Schur's (1973) call for "radical non-intervention" (Parker *et al.*, 1989; Goldson, 1997a; Cavadino *et al.*, 2013).

The Lancaster group published and campaigned vigorously and advocated a "systems management" approach or the "new orthodoxy" as it was later named (Jones, 1984 cited in Bell and Haines, 1991), which argued that institutional treatment, custody and too much system contact were harmful for juveniles. The approach called for systemic interagency working and gatekeeping of decisions at each stage of the justice system emphasising cautioning, intermediate treatment, robust community sentences and alternatives (Tutt, 1980; Tutt and Giller, 1987; Bell and Haines, 1991). This was supported by a growing wealth of persuasive research evidence regarding the harmful effects of custody, which set the ball rolling for a change of approach in youth justice policy (Bell and Haines, 1991; Rutherford, 1992; Matthews, 1995; Goldson, 1997a; Hughes *et al.*, 1998; Morgan and Newburn, 2012).

The 1979 Conservative election victory heralded in an era of "law and order" politics with an emphasis on "short, sharp, shock" detention centre regimes and militarised intervention for young people to counteract claims that the system had become soft on crime (Matthews, 1995; Hughes *et al.*, 1998; Haines and Drakeford, 1998; Morgan and Newburn, 2012). Nevertheless government policy began to echo an approach of diversion, decriminalisation and decarceration due to an acceptance that welfare had failed to reduce offending, the back to justice movement, an increased focus on rights, an acceptance at the Home Office of the "growing out of crime" thesis and the fiscal benefits of minimum intervention (Matthews, 1995; Hughes *et al.*, 1998; Haines and Drakeford, 1998; Muncie, 2011a; Morgan and Newburn, 2012).

The White Paper, *Young Offenders* (1980) and the Criminal Justice Act 1982 strengthened the criteria for the imposition of custody for under 21 year olds, shortened the detention centre sentence, introduced a statutory basis for the provision of social enquiry reports, signalled the end of borstals and introduced the non-custodial Specified

Activities Order (Rutherford, 1992; Gibson *et al.*, 1994; Goldson, 1997a; Morgan and Newburn, 2012). Another significant national policy shift was in 1983 when the Department of Health and Social Security made available £15 million for intermediate treatment projects in England (and a similar scheme was developed in Wales) for local authorities and third sector agencies to develop alternatives to custody (Nacro, 1989; Rutherford, 1992; Gibson *et al.*, 1994; Goldson, 1997a). 110 initiatives were set up in 62 local authorities (Nacro, 1989; Rutherford, 1992). Police cautioning and informal warnings increased substantially during this period, the support of which, echoed in government policy (Kemp and Gelsthorpe, 2003). In 1985 Home Office Circular 14/1985 increased the use of formal and informal police cautions for all but the most serious offences (Evans and Wilkinson, 1990). The government went further, in the Green Paper *Punishment, Custody, and the Community* (1988), against the use of custody arguing: most young offenders grow out of crime; that it reduces the offender's responsibility hindering their ability to acknowledge their wrong doing; criminalises them; and increases the likelihood of further offending (Nacro, 1989).

The government consolidated the decarcerative approach through the: Criminal Justice Act 1988, which tightened the criteria for custodial sentencing; the Children Act 1989 which removed civil care proceedings from the juvenile court; Home Office Circular 5/1990 cemented the use of cautioning further into practice; and the Criminal Justice Act 1991 abolished the use of prison custody for 14 year old boys, and extended the newly created youth court's remit to include 17 year olds (Gibson *et al.*, 1994; Matthews, 1995; Goldson, 1997a; Kemp and Gelsthorpe, 2003; Morgan and Newburn, 2012). Faulkner and Burnett (2013: 48) note that the government's position on penal policy and custody was reflected in the White Paper, which proceeded to the Criminal Justice Act 1991, which stated that custody "was an expensive way of making bad people worse".

A number of forces coalesced resulting in a significant drop in the number of children incarcerated in penal institutions (Allen, 1991; Hughes *et al.*, 1998; Telford and Santatzoglou, 2012, Bateman, 2012). In 1979 7,000 children aged 10 to 16 years received custodial sentences; by 1990 it declined to 1,400 (Rutherford, 1992; Matthews, 1995; Bateman, 2012; Pitts, 2012). There was also a decrease in the number of young people being drawn into the system: males found guilty of an indictable offence fell from 80,400 in 1980 to 22,200 in 1990, females from 9,800 to 2,500 respectively (Rutherford, 1992). Goldson (1997a:127) suggests that it is a "curious paradox" of the 1980s and early 1990s, a period of punitive law and order rhetoric and cuts to public services, that the legal framework provided for custodial parsimony and diversion. The

government approach was not built on ideas of welfarism or zeal for ensuring children's rights, rather on the economic benefits of minimal intervention and dismantling of state apparatus (Fergusson, 2007).

1993 – 2008: the revival of punishment and prison

Despite what appeared to be an emerging consensus among politicians, policy makers, academics and practitioners about youth crime, a dramatic and startling about-turn occurred in the early 1990s (Newburn, 1998). A number of social disturbances, concern around youth "joyriding", anti-social behaviour, the rise of "persistent young offenders" (PYO), and in 1993 the killing of James Bulger, by two ten year old boys and subsequent media outrage, sparked a moral panic around the health of the nation, young people and crime (Gibson *et al.*, 1994; Newburn, 1998; Downes, 1998; Muncie, 1999; Goldson, 2000; Pickford, 2000; Stokes, 2000; Haydon and Scraton, 2000; Cohen, 2002; Morgan and Newburn, 2012). These events fuelled media attention and political sparring between the Conservative Government and the Labour opposition, regarding who could be toughest on crime (Goldson, 1997a; Newburn, 1998; Downes, 1998). The Labour party attempting to claim ground on "tough law and order" policy, a stance traditionally held by the Conservatives, (Downes, 1998) started their assault with tough rhetoric including Blair's speech "tough on crime, tough on the causes of crime" and Straw's zero tolerance approach (Goldson, 1997a; Newburn, 1998; Downes, 1998).

Not wishing to be outdone, the Conservative administration stepped up its tough penal policy (Gibson *et al.*, 1994). The Criminal Justice and Public Order Act 1994 introduced the Secure Training Order for children aged 12 to 14 years who failed to comply with community orders (Newburn, 1998; Morgan and Newburn, 2012). The Home Office released guidance to the police and the Crown Prosecution Service through Circular 18/1994 seeking to limit the use of cautioning for young people by way of decreased discretion for the police (Gibson *et al.*, 1994; Kemp and Gelsthorpe, 2002). The Conservative government through the Criminal Justice and Public Order Act 1994 edged towards increased punishment for young people by doubling the maximum sentence from one to two years for 15 to 17 year olds (Gibson *et al.*, 1994; Goldson, 1997a; Morgan and Newburn, 2012). In 1996 and 1997 two boot camps opened for "young offenders" (Newburn, 1998; Muncie, 1999). Before the 1997 general election the Crime (Sentences) Act 1997 introduced mandatory minimum sentences for specific offences, extended the use of electronic tagging/ monitoring of 10 to 17 year olds and permitted, for the first time, the courts to disclose the identities of convicted juveniles if "deemed"

in the public interest (Muncie, 1999). Jones (2001) notes New Labour, in opposition, published 20 policy proposals from 1992-1996 relating to young people, families and crime. Youth justice and crime control was firmly placed on the political and media agenda. Custody numbers for 15 to 17 year olds increased by almost four fifths between 1992 and 1998 (Morgan and Newburn, 2012).

After New Labour's election victory in 1997 they instigated "root and branch reform" (Home Office, 1997) of youth justice. The White Paper *No More Excuses* (1997) suggested an excuse culture had emerged in youth justice; too often young offenders and parents were not being held responsible for their actions. It proposed an evidence-based "what works" approach advocating early intervention and tough measures for young offenders (Jones, 2001; Smith, 2006a; Goldson, 2010). It was influenced by the Audit Commission's report *Misspent Youth: Young People and Crime* (1996), which bemoaned the youth justice system's inefficiency regarding processing, delays and high costs (Jones, 2001). The Crime and Disorder Act 1998 followed which, as Goldson (2015) notes, consolidated New Labour's drive towards penal expansion and "get tough policies" for children and young people. With the creation of the national Youth Justice Board (YJB) (a non departmental public body), and local YOTs they

"transformed the architecture of the youth justice apparatus; radically reconfigured lines of power, management and responsibility; and facilitated substantial system growth. Alongside such sweeping organizational change the pace of legislative activity, producing an almost perpetual stream of new statute and fundamentally restructuring the sentencing framework, has also been extraordinary" (Goldson, 2010: 156).

Critics have suggested that the reforms created criminalising and net-widening tendencies (Goldson, 2000; Pitts, 2001a, 2001b, 2001c; Muncie and Hughes, 2002; Goldson, 2002a; Muncie and Goldson, 2006b) resulting in the "institutional intolerance" of children and young people (Muncie, 1999). The Crime and Disorder Act 1998 made a number of significant changes: it further reduced the use of formal and informal cautioning introducing a two strikes system of reprimands and final warnings, after which the young person would have to appear in court; created a number of new community orders for young people; the Anti-Social Behaviour Order (ASBO); and the Detention and Training Order (half the order is spent in custody and the other half in the community) (Pickford, 2006). The Youth Justice and Criminal Evidence Act 1999 introduced the Referral Order, a largely compulsory order for all young people

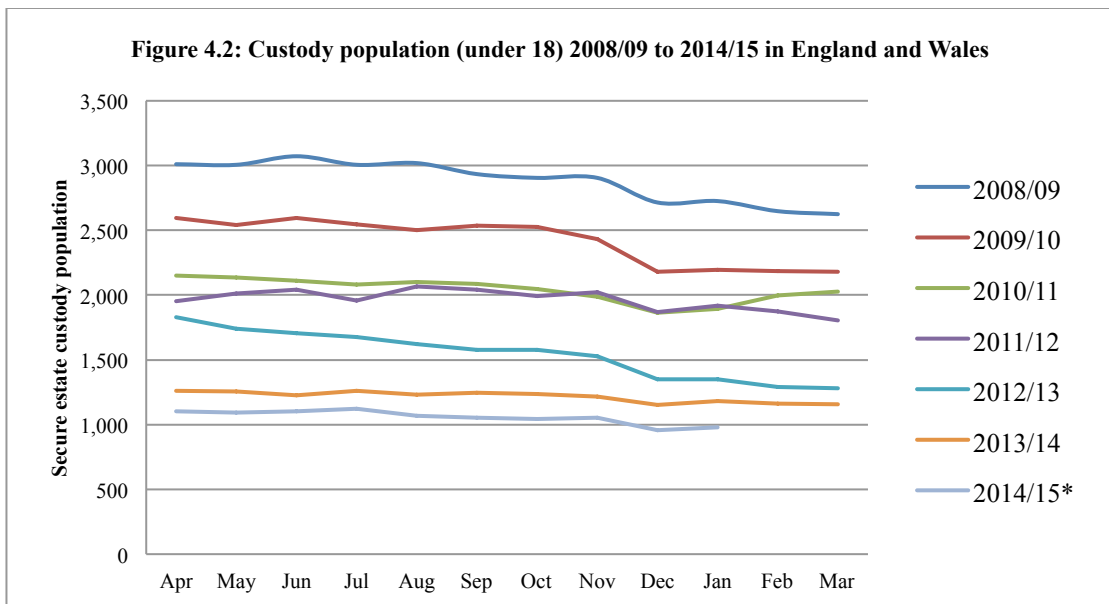
appearing in court for the first time regardless of the charge (Goldson, 2000; Muncie, 2015). The Powers of the Criminal Courts (Sentencing) Act 2000 introduced electronic monitoring for 10 year olds and the Criminal Justice and Police Act 2001 extended powers to remand young people in custody (ibid). The Criminal Justice Act 2003 introduced more orders, increased sentencing powers in relation to extended sentences and detention for public protection. The Police and Justice Act 2006 and Offender Management Act 2007 extended the conditional caution to attach more onerous and punitive conditions, increased the number of agencies able to apply for ASBOs, and expanded the number of secure facilities available for children (ibid).

One of the most significant policy developments was the Offences Brought to Justice (OBTJ) Target for the police in 2001 (Bateman, 2008). In 2005 the police were set a target of resolving, or bringing to justice, by way of conviction, caution or penalty notice, 1.25 million offences per year by 2007/8 (House of Commons Home Affairs Committee, 2008). The police met their target early, but it soon became clear that a high proportion of offences were brought to justice by way of caution and penalty notices (Select Committee on Home Affairs, 2007). Analysis revealed the police disproportionately focused on children and young people as they are more likely to commit petty offences and are generally easy to apprehend, making their target much easier to achieve (Bateman, 2008). Morgan (2007) described this as picking the “low hanging fruit” to meet police targets. Subsequently, detected youth crime rates between 2003 and 2006 increased substantially for juveniles and more young people were drawn into the criminal justice system; by 2006 the number of first time entrants (FTEs) had risen to 110, 757 (Ministry of Justice, 2015a). The use of custody continued on an upward trajectory from mid 1990s. In October 2002/03 the under 18 custodial population had risen to 3,200, and the average yearly custodial count peaked in 2007/08 to 2,932 (Ministry of Justice, 2015c). The length of sentences had also increased; almost doubling for certain offences over a ten-year period from 1994 (Nacro, 2006).

2008 – present: back to the future? “Pragmatic” diversion, decriminalisation and decarceration

It seemed within the “new youth justice” (Goldson, 2000) early intervention and penal detention remained at the heart of policy and practice. Custody numbers remained consistently high being higher than the numbers of children detained across Europe and many other Western nations (Pruin, 2010). From 2001 to 2008 the average custodial

population stood at 2,800 to 3,000 per year (Ministry of Justice, 2015a). Yet, the “circular motions” (Goldson, 2015) of youth justice became evident and a shift began to occur. From 2008 the number of young people incarcerated began to fall year on year and at the same time a significant reduction in the number of children drawn into the youth justice system occurred. Young people in custody continued to decrease; the average population of under 18s in custody in 2013/14 was 1,216, a 56 per cent fall from 2,771 in 2003/04 (see Figure 4.2) (Ministry of Justice, 2015c).¹⁰ In December 2014 the custodial population sunk below 1000 to 957 for the first time in decades (Ministry of Justice, 2015a). At the front end of the justice system, the number of FTEs also decreased dramatically. FTEs dwindled by 75 per cent from 88,403 in 2003/04 to 22,393 in 2013/14 (Ministry of Justice, 2015c, 2016a) and by 80 per cent, since the peak in 2006/07 (Ministry of Justice, 2015c, 2016a).



Source: Ministry of Justice 2016b.

In 2007 a softer tone, at ministerial level, towards youth crime was observed, which acknowledged that the further a child advanced into the justice system the likelihood of further offending increased (Branigan, 2007 cited in Bateman, 2012). The administration of youth justice transferred from the Home Office to the Ministry of Justice and the Department for Children, Schools and Families, possibly enhancing a focus on children’s welfare and the need for local government to address them (Allen, 2011). Perhaps more salient though, was the abolition of the police OBTJ target in 2007/08,

¹⁰ However, whilst significant reductions in custody use are evident, Bateman (2013) notes that average sentence lengths for young people have risen.

which had previously incentivised the prosecution of high numbers of petty offences, commonly committed by young people (Bateman, 2008; Fergusson, 2013). Instead the Youth Crime Action Plan (2008) aimed to reduce the number of FTEs by 20 per cent by 2020, which was achieved within 12 months (Bateman, 2014; Smith, 2014). Around the same time a number of diversion schemes and disposals, largely funded by the Youth Crime Action Plan (2008) or set up by an amalgam of government departments, YJB, police and local bodies, for example: the Youth Restorative Disposal (YRD) given for minor offences by the police and based on a restorative intervention; the Triage scheme operated by the police which aims to divert young people away from formal interventions; and the Youth Justice Diversion and Liaison Initiative set up by the Department of Health to divert young people away from the youth justice system who displayed mental health and developmental problems (Smith, 2014). The National Audit Office (2010) noted that of the 69 priority areas funded by the Youth Crime Action Plan (2008) the reduction of FTEs was far greater.

Legislative changes also appeared to limit the use of custody for young people. The Criminal Justice and Immigration Act 2008 tightened the criteria for a custodial sentence and required sentences to justify why the offence was so serious that a community order (Youth Rehabilitation Order) could not be used (Nacro, 2011c; Allen, 2011; Bateman, 2012, 2014; Smith, 2014). The Act also extended the use of conditional cautions (Nacro, 2011c; Allen, 2011; Bateman, 2012, 2014; Smith, 2014). In 2009 the Sentencing Guidelines Council issued the Overarching Principles – Sentencing Youth Definitive Guidance (Allen, 2011). Previously no specific youth sentencing guidelines were in operation other than for sexual offences and robbery (Sentencing Guidelines Council, 2009). They dissuaded the overuse of custodial sentences and remand, and reminded sentencers of their international legal obligation that “a custodial sentence must be imposed only as a ‘measure of last resort’” (Sentencing Guidelines Council, 2009:22). The Overarching Principles diverge from the “No More Excuses” New Labour ethos and remind sentencers that:

“offending by a young person is frequently a phase which passes fairly rapidly and therefore the reaction needs to be kept well balanced” (Sentencing Guidelines Council, 2009: 7).

The Coroners and Justice Act 2009 strengthened sentencing guidelines by stating any court sentencing an offender for an offence committed after 6 April 2010 “must follow any sentencing guidelines, unless it is contrary to the interests of justice to do so”

(Sentencing Guidelines Council, 2016).

In the lead up to the general election in 2010 crime and justice was not a prominent issue compared to previous elections (Downes and Morgan, 2012; Chaney, 2015) and appeared to have been supplanted by concerns regarding the state of the economy (Downes and Morgan, 2012). The election of the Conservative Liberal Democrat Coalition government in 2010, therefore, did not spark another about-turn in youth justice policy, but rather continued the focus on parsimony and penal reduction (Morgan and Newburn, 2012; Bateman, 2012, 2014; Goldson, 2015). The government's Breaking the Cycle Green Paper (Ministry of Justice, 2010b) argued that rigid systems of cautioning and prosecution:

“can needlessly draw young people into the criminal justice system, when an informal intervention could be more effective” (Ministry of Justice, 2010b: 68).

The Coalition government advocated for more freedom locally for practitioners and a movement from top-down centralist governance (Briggs, 2013; Drake *et al.*, 2014), reflected in reforms brought about by the Legal Aid, Sentencing and Policing of Offenders Act 2012 (LASPO) which: replaced the reprimand and final warning two strikes system with discretionary youth cautions and youth conditional cautions; enabled the ability for a young person to receive more than one referral order; tightened the criteria for use of remand and custodial sentences; and transferred the costs of remands to local authorities to incentivise community alternatives (Muncie, 2015).

In the 2015 general election youth crime, or crime generally, were further overshadowed by the economy and the National Health Service. In the Conservative Party Manifesto it featured on two of 84 pages (Conservative Party, 2015). In Labour's manifesto crime and justice did not feature predominately either (Labour Party, 2015).

Yet the drivers of more moderate times are not simple to determine. Loader (2010: 361-62) suggests two forms of penal moderation: “moderation-by-stealth” and “moderation-as-politics”. The latter describes the process of the government actively engaging the public and attempting to dispel myths about crime and promote more moderate measures. “Moderation-by-stealth” evades engagement with citizens whose conceptions of punishment do not match penal moderates in government. It seeks to make gradual gains by adopting strategies that neutralize public opinion regarding harsh punishments. Loader (2010) terms the first strategy “decoy rhetoric”, in which harsh punitive rhetoric masks more liberal policies, for example the strategies of the Thatcher Government in

the 1980s. Another tactic is “playing the treasury card”, in which the government declares the penal apparatus too expensive to maintain in its current state. Or there is a strategy of “cultivating indifference”, by way of the government turning down the heat on the debate about crime and punishment, thus creating space for moderate penal bureaucrats and experts to push their influence on policy.

The last two strategies of “playing the fiscal card” and “cultivating indifference” are particularly relevant when considering the recent decline in the use of custody and FTEs in England and Wales set against the backdrop of global austerity. The impact of the economic downturn on criminal justice policy constitutes another echo of the Thatcher era (Bateman, 2012, Morgan and Newburn, 2012; Downes and Morgan, 2012). Perhaps it is no coincidence that the rapid decline in custody use and FTEs started during the global financial crash in 2008 (Bateman, 2014; Goldson, 2015). Since the Coalition Government’s Comprehensive Spending Review in 2010 England and Wales have experienced swingeing cuts to youth justice and welfare budgets (Puffett, 2011, 2012; Yates, 2012; Goldson, 2015) with a 23 per cent reduction to the Home Office budget over four years (Downes and Morgan, 2012) and the youth justice budget decreased by £179 million since 2010/11 (Lepper, 2014). Since 2009 the YJB has cut nearly 50 per cent of its workforce (Bateman, 2013), and between 2009 and March 2014 due to secure estate bed decommissioning the YJB has saved £207 million (YJB, 2014a). The dismantling of the penal apparatus by way of increased cautioning, diversion and penal reduction amounted to a “pragmatic” (Bateman, 2014) response to the financial situation because “authoritarianism is very costly” (Sanders, 2011: 15 cited in Goldson, 2015: 177). Goldson (2015:178) concludes:

“it seems likely that it is the instrumental imperatives of cost reduction, as distinct from any intrinsic priorities of progressive reform, that ultimately provide the key to comprehending the substantial fall in child imprisonment in the post-2008 period”.

UNDERSTANDING THE DRIVERS OF DIFFERENTIAL PENAL EXPANSION AND PENAL REDUCTION AT A ‘LOCAL’ LEVEL

Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a) youth disposal statistics for the years 2004 to 2012/13 reveal that the use of custody and community orders varies greatly from one YOT to another. Differential justice or justice by geography is not a new phenomenon. During the 1950s and 1960s a number of

studies investigating youth sentencing, Grunhult (1956), Mannheim (1957, 1958), Hood (1962) (on adult sentencing) and Patchett and Mclean (1965), noted considerable variation in sentencing practices across England and Wales and within neighbouring areas (Bottomley, 1973; Parker *et al.*, 1983). Crucially, Hood (1962) developed the concept of “equality of consideration” and found evidence of unequal treatment of like for like cases, whereby men who were imprisoned by some courts would have probably received a different sentence elsewhere (Bottomley, 1973; Parker *et al.*, 1983). Tarling (1979) also found considerable variation across 30 court areas with regard to adult sentencing and demonstrated that types of offending and offenders appearing before the court could not account for the disparities (Tarling, 2006). Later, Parker *et al.* (1989) study of four different towns, but with similar socio-economic profiles or “inputs” as they termed it, produced quite different “outputs” in terms of sentencing practices. More recent studies have also shown differential sentencing for young people depending on location and race (see: Feilzer and Hood, 2004; Tarling, 2006 (in adult sentencing); Gibbs and Hickson, 2009; YJB, 2010). A Nacro study commissioned by the YJB in 2000 entitled “Factors Associated with Differential Rates of Youth Custodial Sentencing” explored the relationship between youth crime rates and custodial rates across locations.¹¹ The analysis indicated that many low crime rate areas had high custody rates suggesting that crime rates and severity of offending are not correlated with custody rates (Goldson, 2013a). A second Nacro and YJB study prepared by Bateman and Stanley (2002) entitled “Patterns of Sentencing: Differential Sentencing Across England and Wales” found significant variation in sentencing and the use of custody for children and young people but importantly asserted that whilst levels of youth crime might explain some variation in sentencing:

“differential levels of custody, and broader variations in the distribution of sentencing, are not fully determined by the seriousness of offending” (Bateman and Stanley, 2002:22).

So what other factors might explain variation in sentencing and penalty at a local level?

The importance of inter-dependent power

The contested interrelation between place, space and power from the global to the national to the local is important to consider when considering localised penalty. The work of Rhodes (1997) on “differentiated polity” and “intergovernmental relations”

¹¹ The author has attempted to locate this report from multiple sources, archives and libraries but to no avail.

(IGR) is crucial to understanding how the governance of youth crime is differentially implemented and localised by geography and space (Stenson and Edwards, 2004; Edwards and Hughes, 2005, 2009, 2012; Goldson and Hughes, 2010). Rhodes (1997:7-8) suggests that IGR – referring to the interaction between all units of government and quasi non-governmental organisations at all levels of governance – are founded on “power-dependence”. He asserts organisations rely on each other for resources (not only monetary) and enter “exchange relationships”, described as a “game”, in which central and local participants jostle for advantage by using discretionary powers (Rhodes, 1997) defining this as “asymmetric interdependence”. In other words, would be sovereigns “depend...on subordinates for the exercise of power” (Stenson, 2005:271). The interdependent power relationship recognises the “intentional political actor” within a system of governance (Stenson and Edwards, 2004: 212). Power dependency facilitates the possibility of avoidance, resistance and subversion by local actors which can result in an “implementation gap” between state policy and the local delivery of the same policy by actors on the ground (Miller, 2001; Hughes and Edwards, 2002; Stenson and Edwards, 2004, Stenson, 2005, Edwards and Hughes, 2005, 2009, 2012). McKee (2009:480) suggests that by exploring differing localities where governmental rationalities and strategies are actively contested opens the door to

“a critical space in which to explore how central ‘plans’ are mediated from below and the way in which projects of rule are applied differently in different places”.

Community and professional cultures

Local community and professional cultures are said to be particularly influential on differential justice. Research into Community Safety exemplifies the significance of regional professional and cultural differences and local policy implementers (Hughes and Edwards, 2001). For example Community Safety in Merseyside has seen the promotion of an intricate and far-reaching network of CCTV cameras within the commercial and shopping district through a partnership between commercial, council and police bodies (Coleman *et al.*, 2001). In contrast Stenson (2001:131) found Community Safety strategies were a “liberal enclave” within the Conservative heartland of the Thames Valley region. Stenson (2001) asserts that Thames Valley Police have been highly critical of zero tolerance policing and opted for restorative justice-based interventions for their Community Safety strategies. Kelly and Armitage (2014) found divergent professional cultural attitudes towards diversionary practice across two different YOTs in England and Wales. The first area, a traditional YOT structure with

seconded social workers and probation officers, perceived their working style as primarily based on principles of restorative justice. The second site had subsumed the YOT into a general young person's service primarily founded on principles of welfare and children's needs. Burnett and Appleton's (2004) case study/ ethnography of the formation of the Oxfordshire YOT describes how workers attempted to champion a traditional culture of social work based on welfare and chose what they believed to be the more positive aspects of the ideologically mixed Crime and Disorder Act 1998. Workers allayed their fears about the increasing number of incarcerated youth, the punitive tone of incoming policy documentation and the possible net-widening effects of the New Labour policy, by focusing on what they believed were more positive aspects of policy such as restorative justice.

The multi-agency makeup of YOTs provides latitude for professional cultural splits within YOTs also (Ellis and Boden, 2005). Bailey and Williams' (2000) research exploring two separate YOTs found evidence of practitioners feeling their profession's aim was incompatible with the primary aim of the youth justice system and its offence focus. Education and health workers expressed uncertainty about conforming to a youth justice focused culture (Bailey and Williams, 2000). Souhami's (2007) ethnography of one newly formed YOT suggested that social workers perceived their role to be distinct from the youth justice system and had a duty to set themselves apart and shield young people from its criminalising nature. Occupational cultural conflicts were observed; social workers felt conflicted about working with the newly appointed YOT police officers as some felt they had no place in the team as their primary tie was with the criminal law and justice system (Souhami, 2007).

Hughes' research into Welsh Community Safety partnerships concludes:

“The often unstable and contradictory governance outcomes in community safety and neighbourhood policing in this case, depend on contingencies of power, negotiation, struggle and resistance and the existence of subaltern discourses” (Hughes and Rowe, 2007: 332).

In the western States of America, Myers and Goddard's (2012) study of community-driven youth justice intervention set against the backdrop of a coercive neo-liberal penal agenda, elucidates the effect of professional culture. Whilst practitioners' values often came from a welfarist perspective they felt unable to make changes to the often dire structural and social conditions created by the fallout of neo-liberalism their young people experienced. Rather than disregard the social, economic and racial factors young

people routinely face, practitioners provided interventions recognising and contextualising the inequalities confronting young people.

However, some cautionary notes must be considered when exploring the notion of “imaginary penalties” (Carlen, 2008). This local culture/ practitioner versus national administrator power struggle can produce

“both the advancement of specific youth justice strategies (for example punitivism) and the dilution – even negation – of others (for example , human rights compliant practice)” (Goldson, 2014: 11).

Two Nacro studies exploring practice in Merthyr (Nacro, 2011a) and Bridgend in Wales (Nacro, 2011b) found consistently higher than average custody use and comprise pertinent examples of Goldson’s (2014) assertions. Both studies alluded to the presence of a punitive culture among magistrates and YOT court staff. In Merthyr a local punitive youth justice culture had emerged in which magistrates felt they had to “make examples” of young people, intolerance of youthful misbehaviour and a sense that this was “best” for the local area (Nacro, 2011a: 5-14). In Bridgend a “hard bench that would deliver more punitive outcomes than its neighbours” was found (Nacro, 2011b: 5). The studies noted both localities had small, stable groups of youth court practitioners, magistrates and court clerks suggesting that cultural traditions and norms had developed without any external challenge. Whilst one has to be cautious not make any causal aspersions regarding high custody rates and a perceived court culture, as there are numerous confounding variables associated with the use of custody (see Nacro, 2011a, 2011b for full details), it is reasonable to suggest that the high custody numbers in Merthyr and Bridgend, coupled with the observed culture, is at odds with the “Children First, Offenders Second” culture apparently inherent within Welsh youth justice according to Haines (2011).¹²

The policy – practice process: discretion, resistance and subversion

Lipsky’s (1980) seminal work on “street level bureaucrats” highlights the significance of the policy process and the impact of discretionary practice locally. Lipsky (1980) found that for low-level professionals in bureaucracies – such as police officers and social workers – high levels of discretionary practice and subversion of policy were apparent (Lipsky, 2010). Resistance, subversion, bargaining and the exercise of professional discretion alert us to the fact that national policies are subject to alteration, contestation

¹² Perhaps such rhetoric offers only an “illusion of difference” to English policy (Muncie, 2011b)

and reconfiguration by actors on the ground. Policy maybe followed to the letter or diluted substantially by autonomous practice. These processes highlight the inherent problems and complexities of power relations when national-level strategies are carried out locally (Goddard and Myers, 2011; Myers and Goddard, 2012)

Barnes and Prior (2009) suggest that the implementation of policy by street level practitioners has become more complex since the advent of managerialism. Youth justice policy and practice is no exception, with the New Labour government advancing the managerialist agenda significantly (McLaughlin and Muncie, 2000; Pitts, 2001a, 2001b; Eadie and Canton, 2002). The Crime and Disorder Act 1998 charged local authorities with managing youth justice in England and Wales through multidisciplinary YOTs. The Ministry of Justice and the YJB govern local authorities and YOTs through strict national standards to “prevent offending” including: standardised assessment tools, standardised approaches to working with young people, standardised breach procedures, routine auditing and best practice guides (Pitts, 2001b; Eadie and Canton, 2002; Bateman, 2011). Infrastructural changes have resulted in both the devolution *and* centralisation of state responsibility for youth justice (Muncie and Hughes, 2002). Local authorities were handed more power but the Home Office (and now Ministry of Justice) via the YJB set targets and goals to be achieved locally accompanied by strict guidance on how it should be achieved limiting professional discretion and autonomy (Pitts, 2001b). Pitts (2001b) dubbing it a seemingly “franchise” form of governance. Crawford’s (2006:453) work on governance and regulation assists in delineating the power relationship between the local and the national and issues of control and draws on the work of Osborne and Gaebler (1992) on state regulation. The state performs “steering” functions whilst local authorities perform the “rowing” function of carrying out those directives. Implicit in this description is some notion of state withdrawal and devolved power, however central command, hierarchy, interventionism and engineering still remain (Crawford, 2006).

With prescriptive national youth justice policy devolved to local authorities, subversion and resistance can be found (Goldson and Hughes, 2010). Hughes’ (2009) research into the Bail, Supervision and Support Scheme (BSS) illustrates the contested nature of the scheme’s implementation. YJB guidance instructed YOT practitioners to devise rigorous and restrictive bail support packages to fulfill its desire to reduce the number of children on remand. However, the YJB’s guidance was recognized locally to be contradictory. Professional experience demonstrated the more restrictive bail support packages were, the more likely it was for young people not to follow the restrictions due to vulnerable

young people's chaotic and complex lives. So YOT professionals recommended the least restrictive BSS packages (with high levels of welfare support), in contravention of official guidelines (Hughes, 2009). Field's (2007) study of Welsh YOTs explored whether a common practice culture had been established due to the formation of a national youth justice system in England and Wales and found subversion of policy and divergence in practice was common. His findings suggest that while many YOT practitioners recognised the governance of youth had been repackaged by the government so as to appear tough on crime, they strived to implement welfare-based interventions and resisted recommending perceived punitive measures, such as parenting orders. In England, Prior (2009) suggested that the implementation of the New Labour Government's Anti-Social Behaviour (ASB) strategies highlighted pockets of resistance amongst practitioners and partnerships responsible for rolling out the agenda. The ASB strategy had a strong discourse of "enforcement", but discretionary and resistant practice by practitioners from the local Children's Funds centered on prevention (based on meeting welfare needs) through child, family and community development rather than "enforcement" of ASB legal civil measures (Mason and Prior, 2008 in Prior, 2009).

Resistance is also evident in the application of governmental standardised tools for practice. Youth justice professionals in England and Wales at every juncture of the system are statutorily obliged to use standardised assessment and sentencing tools. Empirical studies suggest that these "technologies of mistrust" (Tombs, 2008: 88) are routinely subverted by professionals. A "compliance drift" has been observed in the use of the standardised actuarial assessment, ASSET, used for all young people who have committed offences (Baker 2004, 2005). Briggs (2013) found youth justice practitioners in England subverted risk-based policy such as the ASSET, and manipulated the standardised assessment to implement welfare-based interventions. Phoenix (2010) and Field's (2007) research into magistrate decision-making illustrates that, whilst magistrates claimed to use aspects of sentencing guidelines and recommendations from pre-sentence reports, what was felt to be more influential was their own experience of the court, life and "gut reactions"¹³. Similarly, Parker *et al.*'s (1989) study of magistrate decision-making suggested that sentencing was a personal craft and not a rigid science.

Police decision-making regarding cautioning young people has been found to be influenced more by the vagaries of police officers rather than legal factors such as patterns of offending behavior (Evans and Wilkinson, 1990). Local (see Kemp and Gelsthorpe, 2003) and national studies (Puech and Evans, 2001) into New Labour's

¹³ Social work literature asserts that practitioners frequently apply "practice wisdom" a form of personal "everyday life" knowledge (Sheppard, 1995: 279).

changes to the cautioning system and implementation of reprimands and final warnings demonstrated differentiated justice, inconsistency and resistance to sovereign governance. In a review of 90 cases of police decision-making regarding issuing reprimands and final warnings, one third were inconsistent in the parity of decision-making (Puech and Evans, 2001). Police officers were found to ignore the official gravity scoring system for decision-making and relied on personal and professional knowledge of cautioning instead (Puech and Evans, 2001; Kemp and Gelsthorpe, 2003).

The significance of local power, individuals and leadership

It would be erroneous to place too much attention on elite policy networks, to view policies as descending from on high and local actors important only as obstacles to the implementation of centralised and imported policies (Stenson and Edwards, 2004). Policy agendas can emerge from below (ibid). An alliance of youth justice professionals and personalities in the 1980s were instrumental in making changes to policy and practice which significantly decreased the number of children and young people being incarcerated in penal custody in England and Wales (Rutherford, 1992; Haines and Darkeford, 1998; Bateman, 2011; Jones, 2012; Telford and Santatzoglou, 2012). The Lancaster group of academics, policy experts and practitioners and Andrew Rutherford were key players in driving change at a local and then national level (Haines and Drakeford, 1998; Jones, 2012).

In the mid 1980s Norman Tutt, the Lancaster group and local chief officers from the police, education and social services pioneered a multi-agency diversion bureau in Northamptonshire focusing on minimum intervention (Hughes *et al.*, 1998). This group and local practitioners were successful in driving down custody numbers and changing attitudes and policies towards children in trouble (ibid). Rutherford (1992:22) described the impact of practitioners and key individuals driving for “reform at the coalface”. He suggests that the impetus for reform largely came from basic grade social workers from statutory and voluntary organisations, which slowly gathered pace as they started to organise. Rutherford’s (1992) research notes the establishment of the Association for Juvenile Justice (AJJ) by practitioners led to a powerful group, which spread reform and new ideas nationally. Rutherford (1992) cites the impact of local key individual leaders on policy initiatives leading to changes in penal culture at a local level. In “Growing Out of Crime” he describes how in 1981 several people led by Margaret Bairing (chairperson of the juvenile bench) and later by Chris Green in Basingstoke set up the Woodlands Centre with the aim of providing quality alternatives to custody and intermediate treatment. Basingstoke later achieved the status of a custody free zone (Jones, 2012).

Similarly, Telford and Santatzoglou's (2012) study of local practitioner policy development in the 1980s notes how individual practitioners and local power created decarcerative policy and practice. They highlight how a number of key practitioners in different localities were influential. For example Sue Wade, a leading youth justice practitioner of the Hampshire Juvenile Justice Unit, was to have pioneered joint working with the police to promote and increase youth cautioning. Thus key individuals, leadership and vision can change policy from the ground up and is highly influential in steering local and even national penal culture (for better or worse).

We must not hold discretionary practice or local culture to be the panacea for a more fair, just or right form of justice and be aware of the "discriminatory potential" (Eadie and Canton, 2002) of decisions made by practitioners or within regional groups or cultures within the youth justice system. The racialization of youth crime and its governance across the globe is another prime example. Goldson (1997c) has stressed that the supposedly "progressive" approach to youth justice adopted in England and Wales in the 1980s, when discretionary practice was unfettered, attitudinal and institutional discrimination was rife. Eadie and Canton (2002) described this as a period of wide discretion and low accountability.

CONCLUSION

Whilst evidence suggests that there are discernable trends within youth justice on a global scale, research exploring penalty between and within states and across time indicates that penalty is temporally and spatially differentiated. Comparative analysis reveals penalty, including use of custody and age of criminal responsibility, vary significantly between countries. Despite evidence suggesting a "punitive turn" in youth justice across the West, minimum intervention and diversion remain central in the vast majority of Western states and custody use for children remains moderate and low in the Nordic states and Belgium. Furthermore, analysis locally reveals sentencing varies significantly. Comparative analysis also reveals the use of custody changes over time, as evidenced by significant reductions in many states.

Bearing in mind this complex picture of youth penalty this chapter has attempted to explore the drivers of penal expansion and reduction at both a national and a local level using England and Wales as the principal unit of analysis. It has utilised a

governmentality approach, which recognizes the governance of youth crime is a social act, rather than exclusively a policy process (Stenson and Edwards, 2004).

The literature presented illustrates that youth justice policy in England and Wales is not set on a trendless path but appears to be cyclical: from penal expansion, drawing more young people into the system under the guise of welfare, punishment or both, to penal reduction, employing decarceration, decriminalization and diversionary measures. Analysis suggests that the “circular motions” (Goldson, 2015) of youth justice cannot be attributed to rates of offending alone, local and national politics and economics are influential.

The prominence of professional values, morals and discretion coupled with practitioner cultures are of particular importance to understanding differential justice. The research literature on discretionary practice, resistance and subaltern discourses demonstrates the “corruption” inherent within the policy process and shows the discrepancies between policy rhetoric, policy interpretation and policy “as the lived experience” of implementation (Fergusson, 2007: 182). Olivier de Sardan (2008) describes the divergence between the “official norms” governing devolved state institutions and the actual behaviour of actors on the ground, as “practical norms”. Rather than viewing policy and practice as separate entities, it is necessary to understand street-level implementation, or “practical norms”, as forms of policy making (McDonald and Marston, 2005). In doing so one is able to see that youth penalty is far from uniform and is differentiated by geography, national and local political and professional cultures and is altered by discretionary practice on the ground. Dunkel (2013a:164) suggests that “this differentiated picture of a ‘new complexity’ (Habermas, 1985)” should be the main message of contemporary comparative youth justice.

CHAPTER FIVE

METHODOLOGY

INTRODUCTION

This chapter outlines the methodological approach adopted for this research. The chapter will firstly outline the background, aims and research design of the study. Then it will delineate the quantitative data collection methods employed and the process of research site selection including a discussion and analysis of the demographic characteristics of each of the sample sites. The chapter then delineates the qualitative methods employed by outlining the sample selection criteria and characteristics and the merits and disadvantages of semi-structured interviews, followed by a discussion of thematic analysis as the framework for analysis. The reliability and validity of the research project and its methods are then examined, followed by the ethical considerations and reflexivity of the research.

BACKGROUND, AIMS AND RESEARCH DESIGN

This research is unique; there is no directly comparable study in the public domain. Up-to-date national studies exploring youth justice policy, practice and sentencing across multiple localised sites - combining both qualitative and quantitative methods - are limited. There are some studies examining differences in sentencing practices across England and Wales (see, for example, Feilzer and Hood, 2004; Gibbs and Hickson, 2009; Youth Justice Board, 2010). A Nacro study commissioned by the YJB in 2000 entitled “Factors Associated with Differential Rates of Youth Custodial Sentencing” explored the relationship between youth crime rates and custodial rates across locations, but is now dated and limited in scope and depth. A second Nacro and YJB study prepared by Bateman and Stanley, “Patterns of Sentencing: Differential Sentencing Across England and Wales” (2002), examined 10 areas of apparent high and low custody use, invited a sample of Magistrates to complete questionnaires and interviewed a small sample of YOT managers. Findings indicated that areas with low custody use were characterised by: higher levels of perceived effective communication between the YOT and the Court/Magistracy; Magistrates having high levels of trust in YOT interventions; greater use of unconditional bail; more informative pre-sentence reports; and higher use of low level interventions. They provide valuable insights but fail to

capture how the youth justice system (Police, Crown Prosecution Service, YOT, Magistrates/District Judges, Non-governmental organisations) intersect and the implications for practice “on the ground”.

Elsewhere, Feld’s (1991) study in Minnesota, USA, explored the impact of location and social structures on sentencing patterns. Juvenile justice within diverse urban counties tended to be characterised by formality, bureaucracy and due process that correlated with greater severity at both pre-trial and sentencing. In more stable, homogeneous suburban and rural counties juvenile justice processes were procedurally less formal, with more lenient decision- making and sentencing outcomes. However, the results are by no means generalisable and/or transferable to England and Wales (some 24 years on).

The majority of previous studies are dated and/or based on analyses of sentencing data or case records. Such studies fail to embrace the nuanced qualitative insights provided by detailed engagement with the various professional constituencies as is presented here. There is little detailed research focusing on the reduction in first time entrants into the youth justice system in England and Wales and the significant decline in children and young people in penal custody since 2008.

This research project takes a systemic approach to understanding the temporal and spatial nature of youth penalty by focusing on three central aims:

- i. To develop theoretical understandings of differential justice/ justice by geography in youth justice sentencing and practice by focusing on localised patterns of custodial sentencing across different YOT areas in England and Wales;
- ii. To explore what cultural conditions, systems, processes, policies, political contexts and practices might promote higher or lower use of custody at a local and national level;
- iii. To advance knowledge and understanding of the key features of contemporary youth penalty in England and Wales.

In order to address these aims a mixed methods approach, or triangulation, was adopted. Both quantitative and qualitative methods were utilized: a secondary analysis of quantitative sentencing data and in-depth semi-structured interviews. Triangulation provides a fuller picture of the phenomenon under investigation by enhancing the completeness and breadth of data (Draper, 2006; Hammersely, 2008). Triangulation also bridges the methodological gap between the dichotomous qualitative-quantitative split

and offers different methodological perspectives on the same phenomenon (Draper, 2006; Bergman, 2008; Hammersley, 2008). This approach utilizes the strengths of one method to overcome any weaknesses of the other (Brent and Kraska, 2012).

QUANTITATIVE DATA COLLECTION AND SITE SELECTION

As the research is concerned with how and why the use of custody varies across YOTs in England and Wales, national statistics were collated and analysed to explore the variance in custody use and to inform the selection of research sites. Ministry of Justice annual YOT workload datasets entitled “disposals by region” for each year beginning 2004-05 and ending 2012-13 were analysed. The “disposals by region” datasets provide raw data for the total number of disposals including, pre-court¹⁴ community and custodial orders¹⁵ per YOT ($n=157$)¹⁶ broken down by age, gender and ethnicity. The YJB and the Ministry of Justice have published this data annually since 2004.

Using Microsoft Excel and SPSS computer software the proportion of all disposals that were custodial (per cent) per YOT and the mean proportion of all disposals that were custodial for each YOT ($n=157$) for the years 2004 to 2012/13 were calculated. These proportion calculations for each YOT were then ranked in descending order from higher use of custody to lower use of custody. Pre-court and community disposal proportions were also calculated per YOT and year. Reporting trends in actual or raw custodial disposals using percentages/ proportions can be problematic as the numbers of custodial disposals for many YOTs are relatively small. Small differences between YOTs over time can produce disproportionately large differences or increases and decreases. Thus a custody rate per 1000 of the 10 to 17 year per YOT ($n=157$) per year (2004 to 2012/13) using 2010 Census population estimates of the 10 to 17 year population per YOT (supplied in the Ministry of Justice “Disposals by Region 2013 to 2014” dataset)¹⁷. A mean rate for the years 2004 to 2012/13 was calculated which allowed the results to be ranked in descending order from high to low.

¹⁴ A pre-court disposal is classified as reprimand, final warning and conditional discharge. However, under the LASPO Act 2012 changes were made to pre-court disposals, which will be discussed later in the thesis.

¹⁵ A custodial disposal is classified as the following sentences: Detention and Training Order; Section 226 (life); Section 226 (public protection); Section 90-91; and Section 228.

¹⁶ The number of YOTs has changed overtime due to demarcation changes and mergers between YOTs. 157 YOTs have been used for this research project.

¹⁷ Using the 2010 Census youth population estimates to calculate a custody rate per 1000 of the youth population for the years before and post 2010 causes some methodological problems. The validity of the measure could be put into question as a population estimate in 2010 would not necessarily be the same as an estimate for the years leading up to and beyond 2010 due to changes in population growth and migration. In the absence of reliable population estimates for years pre and post 2010, it was felt that this method was acceptable.

Using disposal data over a nine-year period revealed sentencing patterns over time and enabled an exploration of which YOTs consistently had lower and higher rates and proportions of custody use rather than aberrations or anomalies in sentencing at a local level.¹⁸

Using the “disposals by region” datasets (2004 to 2012/2013) a YOT throughput was calculated, as measured by the frequency of disposals imposed after prosecution. This could be considered an apposite method of measuring the workload for each area. Ministry of Justice datasets “offences by region” for each year beginning 2010/ 2011 and ending 2012/ 2013 detailing the number and types of offences per YOT broken down by age, ethnicity and sex, were also analysed to explore breach rates across YOTs.

Using this collated data and analysis purposive sampling was adopted for the selection of the research sites to explore differential justice. Six research sites were selected from the 157 YOTs; two in the south of England, two in the north of England and two in Wales. Within each region one site had a comparatively higher use of custody and one site a comparatively lower use of custody.

The research sites are matched taking comprehensive account of recorded crime profiles and demographic characteristics in order to demonstrate their suitability for comparison. To protect the identity of each paired fieldwork site they have been given the following pseudonyms: *Highertown One and Lowertown One* (Northern England); *Highertown Two and Lowertown Two* (Southern England); *Highertown Three and Lowertown Three* (Wales). Selection was also dictated by pragmatic issues; namely an ability to gain access to organisations and ease of travel to sample sites.

HIGHTERTOWN ONE AND LOWERTOWN ONE

Use of custody

Table 5.1 shows the use of custodial disposals as a rate per 1000 of the 10 to 17 year old population and Table 5.2 shows the use of custodial disposals as a proportion of all disposals imposed in *Highertown One and Lowertown One*.

¹⁸ Bateman and Stanley’s (2002) study exploring differential justice only analysed sentencing data for one year.

Table 5.1: Custodial disposals per 1000 of the 10-17 year old population for *Highertown One* and *Lowertown One* (2004 to 2012/13)

	<i>Highertown One</i>	<i>Lowertown One</i>
2004-05	3.28	1.48
2005-06	3.82	1.57
2006-07	3.08	1.44
2007-08	3.85	1.36
2008-09	3.38	0.89
2009-10	2.17	0.89
2010-11	1.87	0.72
2011-12	2.42	0.21
2012-13	1.64	0.56
Mean 2004-13	2.83	1.01

Source: data derived from Ministry of Justice 2005, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a.

Table 5.2: Custodial disposals as a proportion of all disposals imposed in *Highertown One* and *Lowertown One* (per cent) (2004 to 2012/13)

	<i>Highertown One</i>	<i>Lowertown One</i>
2004-5	5.77	1.52
2005-6	8.36	1.59
2006-7	7.74	1.26
2007-8	9.48	1.34
2008-9	8.22	0.93
2009-10	5.82	1.17
2010-11	6.51	1.33
2011-12	10.71	0.56
2012-13	9.22	1.7
Mean 2004-13	7.98	1.27

Source: data derived from Ministry of Justice 2005, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a.

The difference in custody use in *Highertown One* and *Lowertown One* is stark and *Highertown One* appears shows consistently higher use of custody over a nine-year period compared to *Lowertown One*. Using the measure of custody use as a rate per 1000 of the youth population one can see that *Highertown One*'s mean rate of 2.83 contrasts with *Lowertown One*'s mean rate of 1.01 custodial disposals. Table 5.2 shows that when comparing the average custody use as a proportion of all disposals imposed for the years 2004 to the end of 2012 the difference between *Highertown One* and *Lowertown One* is even starker. The mean custody use as a proportion of all disposals imposed for 2004 to 2012/13 for *Highertown One* is just over 6.2 times higher than *Lowertown One*'s mean of 1.27 per cent.

Demographic and socioeconomic characteristics

Highertown One and *Lowertown One* are demographically and socioeconomically similar making them a close comparable pairing (see Table 5.3).

Table 5.3: *Highertown One* and *Lowertown One* demographic characteristics

Measure	<i>Highertown One</i>	<i>Lowertown One</i>
General population*	473,100	289,800
Youth population (10-17 years)*	39,143	23,236
Youth population proportion (%)	8.27	8.02
Ethnicity (%)**		
White British	86.2	83.61
Black/ minority ethnic	13.8	16.39
Indices of multiple deprivation 2010 area ranking***	Within top 40 of most deprived	Within top 40 of most deprived
Children in poverty (%)****	33	33
Claiming/ eligible for free school meals (%)*****	29.6	27.2
Unemployment (%)*	7.5	8.6
Main benefit claimants (%)*	19.2	14.5
Employment distribution* (%)		
Elementary/ manual	20.2	21.3
Service industries	17.7	20.4
Trades/ secretarial	19.3	16.9
Managers/professional/ technical	42.8	41.4
No qualifications (%)	13.6	11

Source: * Nomis (2015); ** Census (2011), ***DCLG, 2011/NSW (2011); ****Barnados (2013); *****Department for Education (2013); *Nomis (2015).

Crime profile

The research sites have, as far as possible, also been matched by taking account of recorded crime data. A number of sources have been considered for this purpose: Police UK analysis of “similar” crime areas; Police recorded crime data; rates of FTEs into the youth justice system; recorded youth offence rates; and the Crime Survey for England and Wales (CSEW).

Police recorded crime

Police U.K has analysed recorded crime rates and demographic data for the majority of local authorities in England and Wales and assigned local authorities into “most similar

groups”. These are groups of local areas assessed as the most similar to each other using a statistical method, known as principal component analysis, based on demographic, economic and social characteristics relating to crime (Police UK, 2015). In their analysis socio-demographic variables were chosen based on their correlation with crime levels, which allowed local authorities to be grouped with similar areas. Areas that have similar social, economic and demographic characteristics will “generally have reasonably comparable levels of crime” (Police UK, 2015: 6).

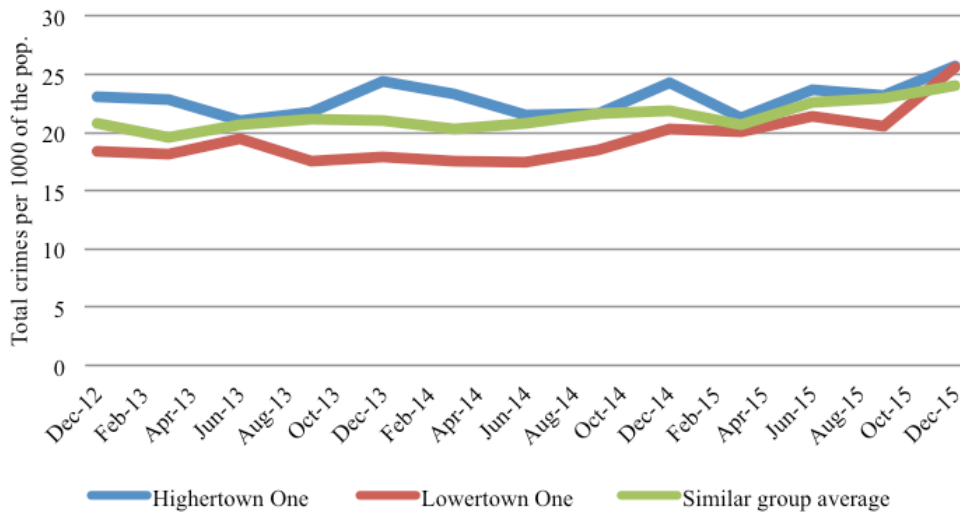
Police UK (2016) data for all recorded crimes per quarter for the years 2012 to 2015 shows similar crime rates for *Highertown One* and *Lowertown One* overtime. *Highertown One* has a mean quarterly rate of 22.89 crimes per 1000 of the population for the years 2012 to 2015, which is slightly higher compared to 19.44 crimes per 1000 of the population in *Lowertown One*. Both rates are close to the most similar group average of 21.39 crimes per 1000 of the population (see Table 5.4 and Figure 5.1).

Table 5.4: Recorded total crimes per 1000 of the resident population per yearly quarter in *Highertown One* and *Lowertown One* (2012-2015)

	<i>Highertown One</i>	<i>Lowertown One</i>	Similar group average
Dec-12	23.07	18.36	20.79
Mar-13	22.81	18.12	19.55
Jun-13	20.98	19.49	20.67
Sep-13	21.7	17.49	21.18
Dec-13	24.37	17.94	21
Mar-14	23.36	17.58	20.26
Jun-14	21.53	17.45	20.82
Sep-14	21.6	18.54	21.66
Dec-14	24.24	20.26	21.9
Mar-15	21.32	20.04	20.69
Jun-15	23.7	21.35	22.55
Sep-15	23.2	20.51	22.94
Dec-15	25.67	25.61	24.02
Mean	22.89	19.44	21.39

Source: Police UK, (2016).

Figure 5.1: Recorded total crimes per 1000 of the resident population per yearly quarter in Highertown One and Lowertown One (2012-2015)



Source: Police U.K (2016).

Looking at the breakdown of specific offences for the same period *Highertown One* and *Lowertown One* have similar rates of violent and sexual offending at around 18 per 1000 of the population, and comparable recorded robbery rates at around one per 1000 of the population. The rate of possession of weapons is also comparable at 0.64 in *Highertown One* and 0.97 per 1000 of the population in *Lowertown One*. Rates of public order offences are also comparable at 4.87 (*Highertown One*) and 5.35 (*Lowertown One*) per 1000 of the population. Theft from the person offence rates are similar at 2.6 (*Highertown One*) and 1.84 (*Lowertown One*) per 1000 of the population.

Youth FTE rates

A key measure of detected youth crime recorded at a local authority level is to look at the rate of FTEs into the youth justice system. An FTE is considered as an offender recorded on the Police National Computer by an English or Welsh police force as having received their first conviction, caution or youth caution. Looking at Table 5.5 one can see that in fact *Lowertown One* had a consistently higher number of FTEs per 100,000 of the population up until 2009/10 than *Highertown One*. From 2009/10 the rate decreases substantially but the pattern between the two sites remains more-or-less constant. Despite *Lowertown One* having consistently lower custody rates than *Highertown One* its average number of FTEs per 100,000 of the population is significantly higher at 2,389.44 compared to 1,532.45 respectively.

Table 5.5: Rates of youth first time entrants* to the youth justice system per 100,000 of the 10 - 17 year old population for *Highertown One* and *Lowertown One* (2000-2015/16)

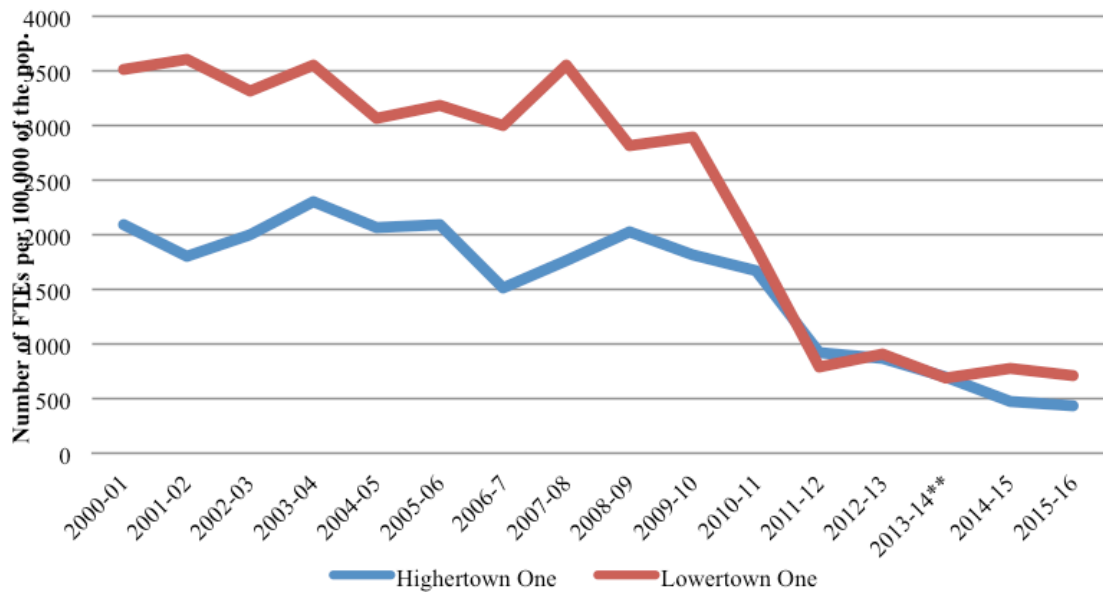
	<i>Highertown One</i>	<i>Lowertown One</i>
2000-01	2090	3510
2001-02	1800	3600
2002-03	2000	3310
2003-04	2300	3550
2004-05	2070	3070
2005-06	2,095	3,189
2006-7	1,515	2,995
2007-08	1,758	3,547
2008-09	2,021	2,810
2009-10	1,809	2,900
2010-11	1,668	1,885
2011-12	923	790
2012-13	870	906
2013-14**	702	688
2014-15	470	775
2015-16	428	705
Mean	1532.45	2389.44

**Offenders recorded on the Police National Computer by an English or Welsh police force as having received their first conviction, caution or youth caution. Offenders residing only in England and Wales at the time of their caution or conviction are counted. Offences resulting in Penalty Notices for Disorder are not counted as first offences.*

***Since 8 April 2013 there have been a number of changes in out of court disposals. The previously known reprimand and warning disposal categories for young people have been replaced with a new out of court disposal: The Youth Caution for young offenders.*

Source: data derived from Department for Communities and Local Government (2010); Ministry of Justice (2016a).

Figure 5.2: Rates of youth first time entrants* to the youth justice system per 100,000 of the 10 - 17 year old population for Highertown One and Lowertown One (2000-2015/16)



Source: data derived from Department for Communities and Local Government (2010); Ministry of Justice (2016a).

Recorded youth offence rates

Looking at types and frequencies of offences that receive a formal disposal from the court in each YOT area it is possible to analyse the offence rate per 1000 of the 10 to 17 year old population. Using YOT statistical returns from 2010 to 2012/13 a mean rate has been calculated for each offence. Both sites have comparable recorded offence rates (see Table 5.6). However despite *Lowertown One* having lower rates of custody it has higher recorded offence rates across many types of crime, including higher tier offences, than *Highertown One*. For example, higher mean rates of criminal damage, motoring offences, non-domestic burglary, public order, theft and handling stolen goods, and violence against the person.

Table 5.6: Selected offences resulting in a court conviction per 1000 of the 10-17 year old population for *Highertown One* and *Lowertown One* (2010 - 2012/13)

	2010 to 2011		2011 to 2012		2012 to 2013		Mean (2010-2012/13)	
	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown One</i>	<i>Lowertown One</i>
<i>Criminal Damage</i>	2.71	7.66	1.99	4.95	1.64	4.82	2.11	5.81
<i>Domestic Burglary</i>	2.07	1.46	1.25	0.60	0.92	0.82	1.41	0.96
<i>Drugs</i>	8.58	3.49	5.24	3.27	5.16	3.31	6.33	3.36
<i>Motoring Offences</i>	1.81	6.50	1.53	3.31	1.99	2.88	1.78	4.23
<i>Non Domestic Burglary</i>	0.41	2.67	0.54	1.68	0.49	1.51	0.48	1.95
<i>Public Order</i>	4.83	11.75	3.42	9.90	1.66	5.08	3.30	8.91
<i>Robbery</i>	0.95	1.21	1.99	0.30	0.82	0.60	1.25	0.70
<i>Sexual Offences</i>	0.38	0.65	0.74	0.43	0.15	0.09	0.43	0.39
<i>Theft/ Handling Stolen Goods</i>	5.57	15.36	3.91	10.37	3.30	10.37	4.26	12.04
<i>Vehicle Theft</i>	0.95	1.12	0.66	0.47	0.82	0.43	0.81	0.67
<i>Violence Against The Person</i>	5.29	9.94	5.14	7.88	3.81	6.07	4.74	7.96

Source: Data derived from Ministry of Justice (2011b, 2012c, 2013c).

Crime Survey for England and Wales: Experience of anti-social behaviour and risk of personal and household crime

The CSEW, formerly known as the British Crime Survey, is a national self-report survey, which asks respondents about their experiences of being a victim of crime for the previous year (ONS, 2015). Commencing in 1981 the survey asks the representative sample about their experiences and perceptions regarding personal and household crimes (ONS, 2015). The CSEW cannot give detailed indication of local crime trends. However, some analysis has been undertaken at a Police force level exploring respondents' experience of anti-social behaviour, and modelling in regards to the risk of experiencing personal and household crimes. Police force areas usually cover large geographical areas. The presented data is drawn from a wider area than the sample site of cities and cannot give an accurate representation of crime and anti-social behaviour at a local authority level. Despite this difficulty, the CSEW data can give a picture of experiences of anti-social behaviour and risk of crime within the police force area where each of the six fieldwork sites are located.

For the year ending September 2015 the percentage of the resident population within the police force area where *Highertown One* is located, who report to have experienced anti-

social behaviour, is 30 per cent compared to 31 per cent in *Lowertown One* (national average is 28 per cent). The risk of personal or household crimes within each of the police force areas where both sample sites sit is comparable (see Table 5.7).

For year ending September 2015 CSEW analysis of data suggests that the risk of experiencing crimes against the person in both sites was comparable.

Table 5.7: Experience of antisocial behaviour and risk of personal and household crime in police force areas in which *Highertown One* and *Lowertown One* sit (%) (year ending September 2015)

	<i>Highertown One</i>	<i>Lowertown One</i>	<i>National average</i>
Experienced or witnessed any sort of anti-social behaviour (%)	30	31	28
Risk of being victim of personal crime (%)	4	4	4
Risk of being victim of household crime (%)	11	10	12

Source: CSEW (2015)

YOT throughput

Table 5.8 shows that across the matched sites YOT throughput is broadly comparable. Considering the national average throughput for 2004 to 2012/2013, standing at 9,388.38, both *Highertown One* and *Lowertown One* could be considered busy YOTs with total throughputs over a nine-year period of 13,365 and 16,694 respectively. Despite *Lowertown One* having a smaller general population than *Highertown One* it has consistently had a higher throughput than its partner site and the national average.

Table 5.8: Youth Offending Team Area throughput for *Highertown One* and *Lowertown One* (2004 – 2012/13)

	<i>Highertown One</i>	<i>Lowertown One</i>	<i>National average</i>
2004-05	2307	2296	1,261.18
2005-06	1855	2332	1,360.58
2006-07	1614	2698	1384.69
2007-08	1645	2389	1341.85
2008-09	1666	2251	1177.39
2009-10	1511	1794	992.71
2010-11	1167	1276	824.86
2011-12	906	893	629.63
2012-13	694	765	462.16
Total 2004-13	13365	16694	9388.38

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a).

HIGHTOWN TWO AND LOWERTOWN TWO

Use of custody

The difference in custody use between *Highertown Two* and *Lowertown Two* is not as stark as the first site pairing, but is still significantly different over time. Looking at the mean custodial disposal rate per 1000 of the youth population for the years 2004 to 2012/13 in Table 5.9 *Highertown Two's* rate is around 1.4 times higher at 2.21 compared to *Lowertown Two's* rate of 1.56. The difference is slightly more pronounced if one observes the use of custodial disposals as a proportion of all disposals imposed for both of these sites. *Highertown Two's* mean custodial proportion is 1.83 per cent higher at 6.72 compared to 4.89 per cent in *Lowertown Two*.

Table 5.9: Custodial disposals per 1000 of the 10-17 year old population for *Highertown Two* and *Lowertown Two* (2004 to 2012/13)

	<i>Highertown Two</i>	<i>Lowertown Two</i>
2004-05	2.34	1.3
2005-06	2.58	1.01
2006-07	2.82	2.26
2007-08	2.68	1.92
2008-09	1.9	2.16
2009-10	1.75	1.2
2010-11	1.61	1.1
2011-12	2.47	2.13
2012-13	1.74	0.92
Mean	2.21	1.56

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a)

Table 5.10: Custodial disposals as a proportion of all disposals imposed in *Highertown Two* and *Lowertown Two* (per cent) (2004 to 2012/13)

	<i>Highertown Two</i>	<i>Lowertown Two</i>
2004-5	6.14	3.67
2005-6	5.8	4.43
2006-7	6.58	5.38
2007-8	7.68	4.74
2008-9	5.16	5.95
2009-10	6.2	4.11
2010-11	5.7	3.57
2011-12	8.81	7.65
2012-13	8.41	4.48
Mean 2004-13	6.72	4.89

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a)

Demographic and socioeconomic characteristics

Highertown Two and *Lowertown Two* are districts within a large urban conurbation. The districts have grown in size and population over the last 100 years and serve as residential areas for the surrounding city. The demographics of the districts are varied and immigration has changed the demographics in the area significantly and both districts have high levels of poverty and deprivation. *Highertown Two* and *Lowertown Two* are socioeconomically comparable.

Table 5.11: *Highertown Two* and *Lowertown Two* demographic characteristics

Measure	Highertown Two	Lowertown Two
General population*	198,300	284,000
Youth population (10-17 years)*	20,537	21,699
Youth population proportion (%)	10.36	7.65
Ethnicity (%)**		
White British	67.54	47.66
Black/ minority ethnic	32.46	52.34
Indices of multiple deprivation 2010 area ranking***	within top 30 of most deprived	within top 30 of most deprived
Children in poverty (%)****	31	42
Claiming/ eligible for free school meals (%)*****	29	53
Unemployment (%)*	9.80	7.7
Main benefit claimants (%)*	14.90	12.1
Employment distribution* (%)		
Elementary/ manual	26.10	13.2
Service industries	23.60	18.9
trades/ secretarial	23.70	15
Managers/professional/ technical	26.50	52.9
No qualifications (%)	11.30	12

Source: * Nomis (2015); ** Census (2011); *** DCLG, 2011/NSW (2011); **** Barnados (2013); ***** Department for Education (2013); *Nomis (2015).

Crime profile

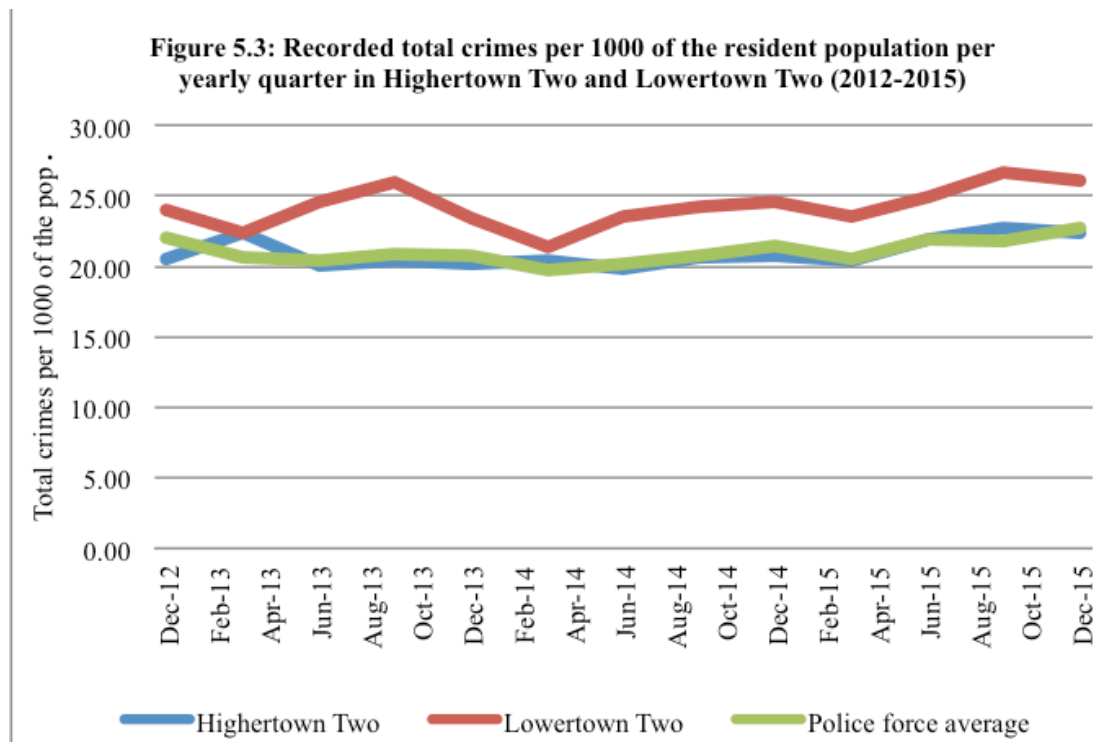
Police recorded crime

Highertown Two and *Lowertown Two* sit within the same police force area. Both sites have higher rates of recorded crime than the police force area average. In the year ending December 2015 *Highertown Two*'s total number of reported crimes per 1000 of the resident population was 87.48 compared to the police force area average of 86.94 total crimes per 1000 of the population (Police UK, 2016). *Lowertown Two* has a higher recorded crime rate than *Highertown Two*; in the year ending December 2015 there were 101.26 recorded crimes per 1000 of the resident population (Police UK, 2016). Police UK data for total recorded crimes per 1000 of the population per quarter from 2012 to 2015 shows a similar pattern is evident (see Table 5.12 and Figure 5.3).

Table 5.12: Recorded total crimes per 1000 of the resident population per yearly quarter in *Highertown Two* and *Lowertown Two* (2012-2015)

	<i>Highertown Two</i>	<i>Lowertown Two</i>	<i>Police force average</i>
Dec-12	20.53	23.99	22.06
Mar-13	22.37	22.38	20.62
Jun-13	20.10	24.54	20.47
Sep-13	20.38	25.92	20.92
Dec-13	20.15	23.45	20.77
Mar-14	20.37	21.38	19.74
Jun-14	19.80	23.53	20.21
Sep-14	20.67	24.23	20.73
Dec-14	20.77	24.64	21.47
Mar-15	20.46	23.56	20.51
Jun-15	21.90	24.98	21.90
Sep-15	22.75	26.61	21.82
Dec-15	22.37	26.10	22.70
Mean	20.97	24.25	21.07

Source: Police UK (2016)



Source: Police UK (2016)

Highertown Two and *Lowertown Two* have comparable rates of recorded violent and sexual offences of around 28 crimes per 1000 of the population, drugs offences of 5.94 and 6.20, possession of weapons offences 0.49 and 0.71 and public order offences of

4.83 and 6.52 crimes per 1000 of the population respectively. *Lowertown Two* has a slightly higher number of recorded robberies per 1000 of the population of 4.02 compared to 2.89 in *Highertown Two* and slightly higher rates of theft from the person offences of 4.90 compared to 1.61.

Youth FTE rates

Comparing the number of FTEs per 100,000 of the resident population for both *Highertown Two* and *Lowertown Two*, over a 15-year period, both sites have comparable rates with an average of 1,426.25 and 1,442.96 respectively (see Table 5.13 and Figure 5.4).

Table 5.13: Rates of youth first time entrants* to the youth justice system per 100,000 of the 10 - 17 year old population for *Highertown Two* and *Lowertown Two* (2000-2015/16)

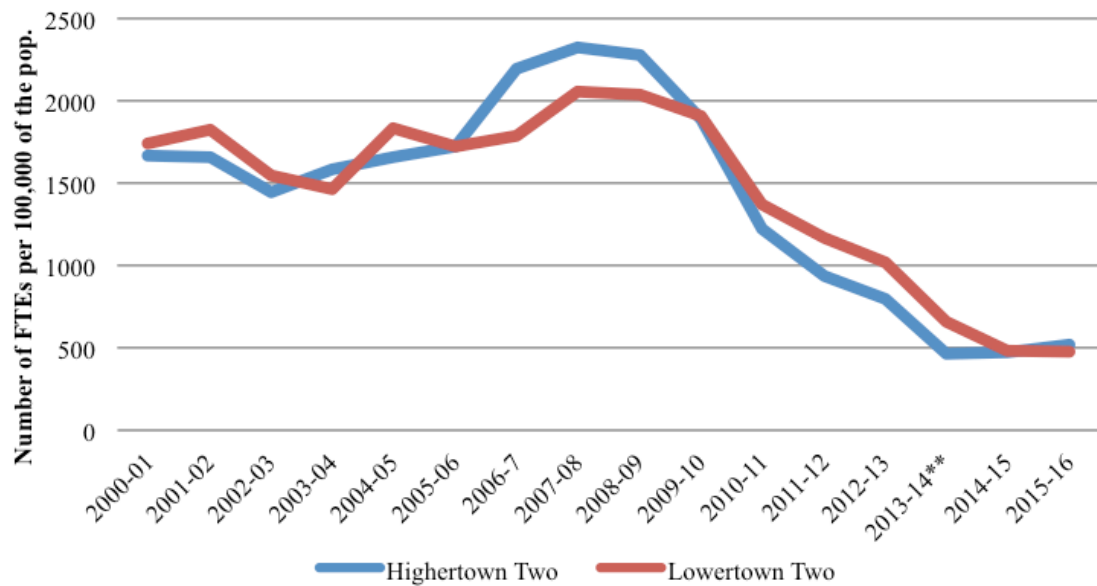
	<i>Highertown Two</i>	<i>Lowertown Two</i>
2000-01	1670	1740
2001-02	1660	1820
2002-03	1440	1550
2003-04	1580	1460
2004-05	1660	1830
2005-06	1,721	1,718
2006-7	2,189	1,790
2007-08	2,322	2,059
2008-09	2,278	2,040
2009-10	1,892	1,908
2010-11	1,220	1,369
2011-12	937	1,170
2012-13	798	1,017
2013-14**	464	655
2014-15	473	484
2015-16	517	477
Mean	1426.25	1442.96

*Offenders recorded on the Police National Computer by an English or Welsh police force as having received their first conviction, caution or youth caution. Offenders residing only in England and Wales at the time of their caution or conviction are counted. Offences resulting in Penalty Notices for Disorder are not counted as first offences.

**Since 8 April 2013 there have been a number of changes in out of court disposals. The previously known reprimand and warning disposal categories for young people have been replaced with a new out of court disposal: The Youth Caution for young offenders.

Source: data derived from Department for Communities and Local Government (2010); Ministry of Justice (2016a).

Figure 5.4: Rates of youth first time entrants to the youth justice system per 100,000 of the 10 - 17 year old population for Highertown Two and Lowertown Two (2000-2015/16)



Source: data derived from Department for Communities and Local Government (2010); Ministry of Justice (2016a).

Recorded youth offence rates

Table 5.14: Selected offences resulting in a court conviction per 1000 of the 10-17 year old population for Highertown Two and Lowertown Two (2010 - 2012/13)

	2010 to 2011		2011 to 2012		2012 to 2013		Mean (2010-2012/13)	
	Highertown Two	Lowertown Two	Highertown Two	Lowertown Two	Highertown Two	Lowertown Two	Highertown Two	Lowertown Two
<i>Criminal Damage</i>	2.09	1.94	2.24	1.52	1.41	1.01	1.92	1.49
<i>Domestic Burglary</i>	1.85	0.28	1.22	0.46	0.73	0.41	1.27	0.38
<i>Drugs</i>	2.78	7.51	2.73	4.24	2.92	4.52	2.81	5.42
<i>Motoring Offences</i>	1.61	2.49	1.90	2.30	1.61	1.89	1.70	2.23
<i>Non Domestic Burglary</i>	0.19	0.55	0.44	1.20	0.24	0.37	0.29	0.71
<i>Public Order</i>	2.43	4.01	2.48	2.95	1.46	2.12	2.13	3.03
<i>Robbery</i>	3.02	3.41	4.92	4.75	3.75	2.07	3.90	3.41
<i>Sexual Offences</i>	0.05	0.69	0.24	1.24	0.15	0.14	0.15	0.69
<i>Theft/ Handling Stolen Goods</i>	6.04	3.13	6.52	4.56	4.38	2.72	5.65	3.47
<i>Vehicle Theft</i>	0.63	1.06	1.07	0.74	0.44	0.97	0.71	0.92
<i>Violence Against The Person</i>	7.30	8.53	6.67	8.02	5.75	5.58	6.57	7.37

Source: Data derived from Ministry of Justice (2011b, 2012c, 2013c).

Recorded offence rates in both *Highertown Two* and *Lowertown Two* are similar across the majority of offences (see Table 5.14). However, *Lowertown Two* has nearly double the mean rate of drugs offences and slightly higher rates of violence against the person and motoring offences than *Highertown Two*. Rates of domestic burglary and theft/handling stolen goods are slightly higher in *Highertown Two* than its matched site.

Crime Survey for England and Wales: experience of anti-social behaviour and risk of personal and household crime

Highertown Two and *Lowertown Two* are within the same police force area, therefore it is not possible to compare experience of anti-social behaviour and risk of personal and household crime data.

YOT throughput

Highertown Two and *Lowertown Two*'s throughput is very similar over a nine-year period with a total of 6,217 and 6,031 disposals respectively. Both *Highertown Two* and *Lowertown Two*'s throughput is lower than the national average.

Table 5.15: Youth Offending Team Area throughput for *Highertown Two* and *Lowertown Two* (2004 – 2012/13)

	<i>Highertown Two</i>	<i>Lowertown Two</i>	National average
2004-05	782	735	1,261.18
2005-06	914	535	1,360.58
2006-07	882	873	1384.69
2007-08	716	844	1341.85
2008-09	756	756	1177.39
2009-10	581	609	992.71
2010-11	579	645	824.86
2011-12	579	588	629.63
2012-13	428	446	462.16
Total 2004-13	6217	6031	9388.38

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a)

HIGHTERTOWN THREE AND LOWERTOWN THREE

Use of custody

The average custodial disposal rate per 1000 of the 10 to 17 year old population for 2004 to 2013 for *Highertown Three* is 2.21, around two times higher than *Lowertown Three* (see Table 5.16). Looking at custodial disposals as a proportion of all disposals given for *Highertown Three* has a higher proportion than *Lowertown Three*; the proportions are 5.56 per cent and 4.35 per cent respectively.

Table 5.16: Custodial disposals per 1000 of the 10-17 year old population for *Highertown Three* and *Lowertown Three* (2004 to 2012/13)

	<i>Highertown Three</i>	<i>Lowertown Three</i>
2004-05	3.96	1.83
2005-06	3.69	1.74
2006-07	3.23	1.65
2007-08	1.45	1.22
2008-09	2.04	1.18
2009-10	1.52	0.28
2010-11	1.85	1.03
2011-12	1.46	0.66
2012-13	0.68	0.53
Mean 2004-13	2.21	1.12

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a).

Table 5.17: Custodial disposals as a proportion of all disposals imposed in *Highertown Three* and *Lowertown Three* (per cent) (2004 to 2012/13)

	<i>Highertown Three</i>	<i>Lowertown Three</i>
2004-5	8.68	4.93
2005-6	9.36	4.5
2006-7	8.11	5.01
2007-8	3.62	3.8
2008-9	4.23	4.01
2009-10	3.48	1.58
2010-11	5.13	4.75
2011-12	4.74	4.58
2012-13	2.67	5.95
Mean 2004-13	5.56	4.35

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b,

2013a).

Demographic and socioeconomic characteristics

Highertown Three and *Lowertown Three* are comparable with regard to social and economic factors.

Table 5.18: *Highertown Three* and *Lowertown Three* demographic characteristics

Measure	<i>Highertown Three</i>	<i>Lowertown Three</i>
General population*	146,800	241,300
Youth population (10-17 years)*	14,796	21,259
Youth population proportion (%)	10.08	8.81
Ethnicity (%)**		
White British	90.67	94.00
Black/ minority ethnic	9.33	6.00
Indices of multiple deprivation 2010 area ranking***	within top 20 most deprived areas	within top 20 most deprived areas
Children in poverty (%)****	24	21
Claiming/ eligible for free school meals (%)*****	19	18
Unemployment (%)*	8	6.7
Main benefit claimants (%)*	17	15.8
Employment distribution* (%)		
Elementary/ manual	18.50	15.6
Service industries	18.80	19.9
trades/ secretarial	18.70	25.3
Managers/professional/ technical	44.00	39.2
No qualifications (%)	11	12.8

Source: * Nomis (2015); ** Census (2011); *** DCLG, 2011/NSW (2011); **** Barnados (2013); *****Department for Education (2013); *Nomis (2015).

Crime profile

Police recorded crime

Police U.K analysis of local authority demographics and crime rate data places *Highertown Three* and *Lowertown Three* in the same group of 15 “similar areas” in regards to crime and socio-demographic data. In the year ending December 2015 the “most similar group” average was 70.99 total crimes per 1000 of the resident population. *Highertown Three* has a higher recorded crime rate than *Lowertown Three* standing at 84.04 crimes per 1000 of the resident population compared to 68.55 crimes per 1000 of

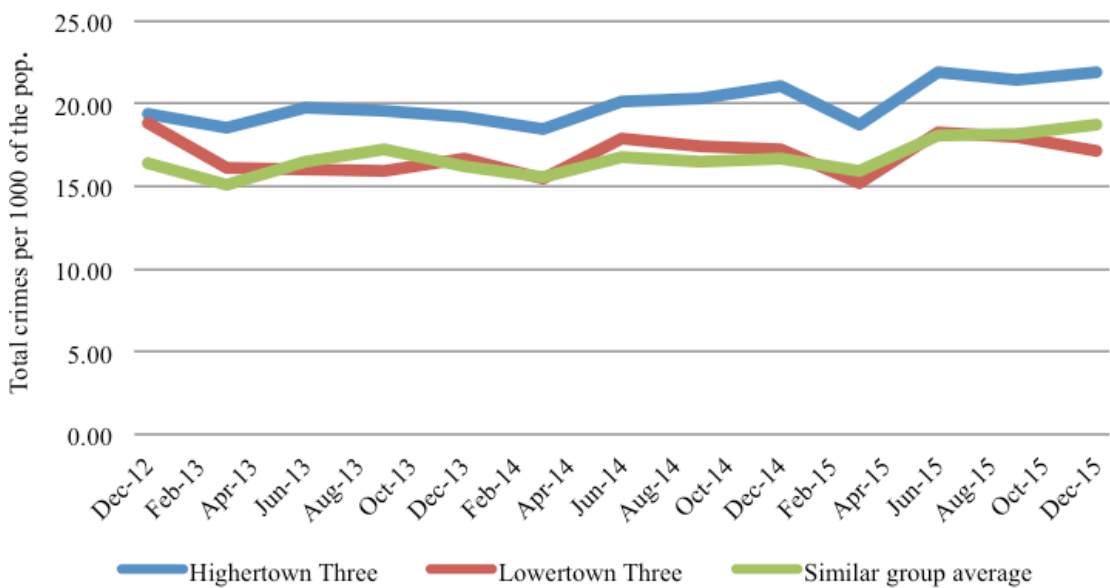
the resident population in *Lowertown Three*. Looking at quarterly crime rates from 2012 to 2015 *Hightown Three* has a slightly higher crime rate than *Lowertown Three* and the “most similar group” average (see Table 5.19 and Figure 5.5).

Table 5.19: Recorded total crimes per 1000 of the resident population per yearly quarter in *Hightown One* and *Lowertown One* (2012-2015)

	<i>Hightown Three</i>	<i>Lowertown Three</i>	<i>Similar group average</i>
Dec-12	19.37	18.79	16.43
Mar-13	18.51	16.08	15.06
Jun-13	19.72	15.99	16.49
Sep-13	19.61	15.97	17.22
Dec-13	19.16	16.71	16.25
Mar-14	18.47	15.47	15.60
Jun-14	20.17	17.88	16.74
Sep-14	20.34	17.45	16.49
Dec-14	21.06	17.27	16.71
Mar-15	18.78	15.20	15.97
Jun-15	21.94	18.23	18.05
Sep-15	21.40	17.99	18.22
Dec-15	21.91	17.13	18.75
Mean	20.03	16.94	16.77

Source: Police UK (2016)

Figure 5.5: Recorded total crimes per 1000 of the resident population per yearly quarter in *Hightown Three* and *Lowertown Three* (2012-2015)



Source: Police UK (2016)

However, *Highertown Three* and *Lowertown Three* have more comparable crime rates for specific offences. Looking at the same time period *Highertown Three* had an average of around five reported drugs offences per 1000 of the population compared to *Lowertown Three* which had around four reported drugs offences per 1000 of the population. Similarly, both sites had comparable reported robbery rates of around 0.5 offences and similar violent and sexual reported offences of around 17 offences per 1000 of the population (Police UK, 2016). *Highertown Three* and *Lowertown Three* have similar recorded rates for possession of weapons at 0.34 and 0.38, public order offences at 4.7 and 4.8 and theft from the person at 0.9 and 0.81 crimes per 1000 of the population respectively.

Youth FTEs rates

Highertown Three appears to have consistently higher numbers of FTEs per 100,000 of the population compared to *Lowertown Three* over a 15-year period from 2000 to 2015/16 (see Table 5.20 and Figure 5.6). The mean rate of FTEs per 100,000 of the population (2001 to 2015/16) in *Highertown Three* is 1,784.09 compared to 1,133.51 in *Lowertown Three*.

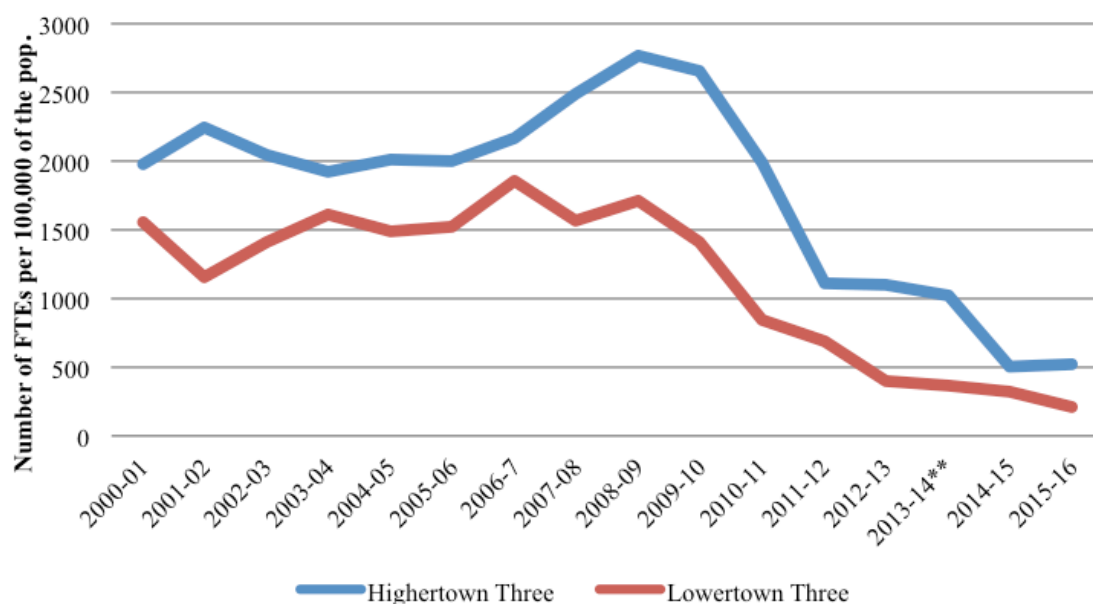
Table 5.20: Rates of youth first time entrants* to the youth justice system per 100,000 of the 10 - 17 year old population for *Highertown Three* and *Lowertown Three* (2000-2015/16)

	<i>Highertown Three</i>	<i>Lowertown Three</i>
2000-01	1980	1560
2001-02	2250	1160
2002-03	2050	1410
2003-04	1920	1610
2004-05	2010	1490
2005-06	1,999	1,525
2006-07	2,166	1,853
2007-08	2,493	1,563
2008-09	2,770	1,715
2009-10	2,656	1,415
2010-11	1,991	845
2011-12	1,109	690
2012-13	1,102	400
2013-14**	1,020	366
2014-15	504	327
2015-16	525	206
Mean	1784.09	1133.51

**Offenders recorded on the Police National Computer by an English or Welsh police force as having received their first conviction, caution or youth caution. Offenders residing only in England and Wales at the time of their caution or conviction are counted. Offences resulting in Penalty Notices for Disorder are not counted as first offences.*

***Since 8 April 2013 there have been a number of changes in out of court disposals. The previously known reprimand and warning disposal categories for young people have been replaced with a new out of court disposal: The Youth Caution for young offenders. Source: data derived from Department for Communities and Local Government (2010); Ministry of Justice (2016a).*

Figure 5.6: Rates of youth first time entrants to the youth justice system per 100,000 of the 10 - 17 year old population for Hightown Three and Lowertown Three (2000-2015/16)



Source: data derived from Department for Communities and Local Government (2010); Ministry of Justice (2016).

Recorded youth offence rates

Table 5.21: Selected offences resulting in a court conviction per 1000 of the 10-17 year old population for Hightown Three and Lowertown Three (2010 - 2012/13)

	2010 to 2011		2011 to 2012		2012 to 2013		Mean (2010-2012/13)	
	Hightown Three	Lowertown Three	Hightown Three	Lowertown Three	Hightown Three	Lowertown Three	Hightown Three	Lowertown Three
<i>Criminal Damage</i>	3.85	4.23	2.97	2.68	3.58	1.08	3.47	2.67
<i>Domestic Burglary</i>	4.12	0.66	3.04	0.61	2.10	0.47	3.09	0.58
<i>Drugs</i>	2.97	2.21	4.60	1.98	2.37	1.03	3.31	1.74
<i>Motoring Offences</i>	2.97	3.39	1.89	2.54	1.08	1.27	1.98	2.40
<i>Non Domestic Burglary</i>	1.76	1.46	0.95	0.56	0.74	0.28	1.15	0.77
<i>Public Order</i>	5.88	3.29	5.00	2.07	2.84	1.27	4.57	2.21
<i>Robbery</i>	0.81	0.42	0.74	0.38	0.20	0.05	0.59	0.28
<i>Sexual Offences</i>	0.74	0.14	0.47	0.05	0.47	0.00	0.56	0.06
<i>Theft/ Handling Stolen Goods</i>	9.53	5.46	7.16	4.47	6.35	2.21	7.68	4.05
<i>Vehicle Theft</i>	1.15	1.08	0.41	1.32	0.54	0.38	0.70	0.93
<i>Violence Against The Person</i>	8.31	5.08	5.27	3.34	4.93	1.79	6.17	3.40

Source: Data derived from Ministry of Justice (2011b, 2012c, 2013c).

Highertown Three and *Lowertown Three* have similar rates of criminal damage, motoring, non-domestic burglary, robbery, sexual, and vehicle theft offences. But *Highertown Three* has higher recorded rates of domestic burglary, drugs, public order, theft, and violence offences. Prima facie it would appear that the differences in recorded crime rates between *Highertown Three* and *Lowertown Three* might explain the higher and lower use of custody. However, further analysis and consideration of a number of other factors explain the discrepancies in youth recorded crime rates and rates of FTEs between both sites. Bateman (2015) has argued that rates of FTEs and recorded youth crime do not necessarily reflect an accurate measure of youth crime, but rather they are an expression of local processes in regards to offences that receive a formal sanction or not. Thus such measures are representative of local practices regarding charging decisions and processing of “offenders”. This is particularly important to consider for *Highertown Three* and *Lowertown Three*.

In two recent Her Majesty’s Inspectorate of Probation reports (2014, 2016) on *Highertown Three* YOT they noted “significant concern” as they assessed the YOT had unusually high rates of FTEs, recidivism and custody compared to national averages and comparable YOT areas. Analysis reveals that there are significant differences in the use of informal diversion and pre-court disposals across both sites. *Lowertown Three* has an average pre-court disposal rate (the proportion of all disposals that are pre-court) of 48.96 per cent for the years 2004-2012/13 compared to a rate of 34.40 per cent in *Highertown Three*. *Lowertown Three*, therefore, consistently appears to have filtered out or diverted more young people through pre-court disposals than *Highertown Three*. It is suggested that this would then impact upon *Lowertown Three*’s rates of FTEs and recorded youth offending resulting in lower rates of recorded youth crime rates. Interestingly, Her Majesty’s Inspectorate of Probation (2014, 2016) also noted that a reduction in the FTE rate over recent months in *Highertown Three* was explained by a change in local policing tactics, including a reduction in on-street police activity. This is further evidence for the suggestion that the rate of FTEs and recorded youth crime is a marker of processing rather than a true reflection of all youth offending in an area. Bearing this in mind and evidence which suggests that diversion and reductions in FTEs are correlated with reduced custody use (Bateman, 2012), one could question whether *Highertown Three*’s higher rates of recorded youth crime reflect all youth crime in that area or are in fact a consequence of systems and processes around diversion, processing of pre-court disposals and policing activity, resulting in inflated rates of recorded youth offending. (See Chapter Seven for further discussion).

Crime Survey for England and Wales: experience of anti-social behaviour and risk of personal and household crime

CSEW victim data shows the percentage of residents reporting experiencing anti-social behaviour and the risk of personal and household crimes in the police force areas in which *Highertown Three* and *Lowertown Three* are located are similar (See Table 5.22). 31 per cent of people in the police force area covering *Highertown Three* reported experiencing or witnessing antisocial behaviour compared to 29 per cent in the police force area covering *Lowertown Three*. The risk of being a victim of personal and household crime was comparable.

Table 5.22: Experience of antisocial behaviour and risk of personal and household crime in police force areas in which *Highertown Three* and *Lowertown Three* sit (%) (year ending September 2015)

	<i>Highertown Three</i>	<i>Lowertown Three</i>	<i>Natioal average</i>
Experienced or witnessed any sort of anti-social behaviour (%)	31	29	28
Risk of being victim of personal crime (%)	4	4	4
Risk of being victim of household crime (%)	16	13	12

Source: CSEW (2015)

YOT throughput

Highertown Three and *Lowertown Three* have comparable throughputs of 5278 and 4954 disposals over a nine-year period respectively. Table 5.23 indicates, *Lowertown Three* had a higher throughput than *Highertown Three* but declined more sharply after 2008-2009 than *Highertown Three*. Both sites' throughput is lower than the national average of 9,388.38 over a nine-year period.

Table 5.23: Youth Offending Team Area throughput for *Highertown Three* and *Lowertown Three* (2004 – 2012/13)

	<i>Highertown Three</i>	<i>Lowertown Three</i>	National average
2004-05	691	791	1,261.18
2005-06	598	823	1,360.58
2006-07	604	699	1384.69
2007-08	607	684	1341.85
2008-09	733	623	1177.39
2009-10	661	380	992.71
2010-11	546	463	824.86
2011-12	464	306	629.63
2012-13	374	185	462.16
Total 2004-13	5278	4954	9388.38

Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a).

QUANTITATIVE DATA ANALYSIS

A range of demographic and socioeconomic sources of data, including recorded crime rates, have been used to pair the three sets of matched research sites. The demographic data outlining social and economic characteristics suggests that the three pairs of matched sites are suitable for comparison. Multiple sources of crime and recorded crime data have been used to match the research sites as no one reliable and comprehensive local level youth crime data source is in existence. Additionally multiple sources of data have been utilized to temper the inherent weaknesses of some of the individual data sources used. It is suggested that whilst there are complexities and inaccuracies within the sources of crime data, the data taken together suggests that the selected sites are valid for comparison.

POLICE RECORDED CRIME DATA: A TRUE REFLECTION OF CRIME?

Police recorded crime data is the only statistical source for gauging crime at a local authority level, however there have been multiple concerns raised about its accuracy, validity and reliability (see: HMIC, 2000; Home Office, 2000; Simmons *et al.*, 2003; Statistics Commission, 2006; Smith, 2006b; Audit Commission, 2007; HMIC, 2009, 2012, 2014a, 2014b, 2014c; UKSA, 2010; ONS, 2011, 2013, 2015; PASC, 2014). It is suggested that the inherent unreliability of recorded crime data, which is delineated

below, may explain some of the differences in recorded crime rates across the matched fieldwork sites and as such may not directly reflect the “true” nature of youth offending in an area.

A substantial body of evidence suggests that Police Recorded Crime statistics do not represent a full, accurate picture of crime in England and Wales due to significant underreporting (ONS, 2011, 2013; 2015; Maguire, 2012; PASC, 2014). Police Recorded Crime statistics require police forces to record all offences reported to them on the “Notifiable Offences List”. Police recording practices and processes significantly vary across police forces and discretionary practice around whether to record a crime is influential on varying recorded crime rates (PASC, 2014). This has prompted HMIC (2014c) to state they are “seriously concerned” regarding the under-reporting of crimes. The House of Commons Public Administration Select Committee (2014:9) suggested that targets acted as “perverse incentives” for police forces to massage figures “that result in under recording of crime”. Audits have revealed incorrect practices of “no criming” recorded offences (where police judge no crime took place after investigation) when they should have remained recorded. A recent HMIC (2014a) audit of a selection of cases across all police forces found of the 3,246 decisions to cancel a crime record, 664 were incorrect (just over 20 per cent). The rate of incorrect “no criming” has been found to vary significantly across England and Wales (HMIC, 2014a).

Likewise, Police Recorded Crime data is affected by local policing priorities, strategies and politics (ONS, 2013, 2015). Research suggests that police forces are proactive in targeting particular offences, such as anti-social behaviour, violence and drugs offences, which can lead to more crimes being brought to their attention and being recorded and, thus, may not provide an accurate picture of the true extent of criminality in an area (ONS, 2015). Local policing priorities will vary across England and Wales, therefore impacting the types and prevalence of recorded crimes. Police recorded crime data on drugs offences are said to be particularly inaccurate for this reason (ONS, 2015). Similarly, Police Recorded Crime statistics are primarily based on reports from the public, suggesting that variations in public reporting behaviour (influenced by levels of trust and satisfaction with the police) can impact upon the rates of recorded crime locally (Maguire, 2012).

Because of this unreliability of Police Recorded Crime data other sources were utilised to match the research sites on levels of crime and offending. The CSEW is said to provide a better reflection of the “true extent of crime” than Police Recorded Crimes

data (ONS, 2015: 8), as it captures all crimes experienced (reported and unreported) by a representative sample across England and Wales. Since the CSEW was introduced results have consistently suggested that victims from CSEW report three or four times more offences from a “comparable subset” of crimes than appear in the Police Recorded Crime statistics (Maguire, 2012). An ONS (2013) analysis indicates for the year 2011/12, using the “comparable subset” and a restriction of figures in CSEW to those offences that respondents reported to the police only, reveal the volume of comparable police recorded crime was 70 per cent of the total estimated to have been reported to the police by victims in the CSEW. Other research suggests that the under recording of crime by the police varies significantly across the 43 police forces areas in England and Wales (HMIC, 2009, 2012, 2014a, 2014c; ONS, 2011, 2013, 2015; PASC, 2014). Because of the unreliability of police and court data, CSEW results for 2015 in four of the police force areas in which *Highertowns One and Three* and *Lowertowns One and Three* sit were used, demonstrating a much closer alignment between the matched sites on experience of antisocial behaviour and risk of personal and household crimes.

The local rate of FTEs into the justice system was also employed as alternative measure of recorded youth crime across the six sites. The youth FTE rates per fieldwork site give a slightly different picture to Police Recorded Crime data. As noted earlier Bateman (2012) posits there is correlation between the number of children prosecuted and the number in custody. Therefore the higher the numbers of FTEs in an area could result in higher rates of custody. However, this relationship is equivocal across the matched research sites. *Lowertown Two* and *Highertown Two* over 15-year period have similar rates of FTEs per 100,000 of the population, however *Lowertown Two* has a lower rate of custody. *Highertown Three* appears to have a significantly higher rate of FTEs per 100,000 of the population than *Lowertown Three* over a 15-year period and higher rates of custody confirming Bateman’s (2012) thesis. The opposite is true in *Highertown One* and *Lowertown One*. *Lowertown One* over 15-years appears to have significantly higher rates of FTEs than *Highertown One*, but consistently lower rates of custody over the years than *Highertown One*.

Care must also be used when using FTEs data. As stated earlier like Police Recorded Crime data FTE statistics are only a measure of crimes that have received formal intervention from the police and do not include unrecorded crimes (Bateman, 2015). Data is also affected by local policing priorities, YOT systems and processes, and the discretion of the police, Crown Prosecution Service, the courts and the YOT. Thus the

picture using FTE data adds further complexity to the research sites' local crime profiles.

FTE data is likely to include many low level offences receiving cautions and is not necessarily a measure of serious youth crime. As such the comparison of offence rates per 1000 of the 10 to 17 year old population across the six sites was used to assess differences in recorded offending. *Highertown Two* and *Lowertown Two* have the most similar rates of offences compared to the other pairings and demonstrate their suitability for comparison. Interestingly, *Highertown One*, with significantly higher rates of custody, has lower rates of violence, theft, public order, non-domestic burglary and criminal damage offences compared to *Lowertown One*, which has significantly lower custody rates. *Highertown One* does have double the rate of youth drugs offences than *Lowertown One*, however recorded rates of drugs offences are particularly unreliable (ONS, 2015). The similar recorded youth offence data in *Highertown and Lowertown Two* and higher youth recorded offence rates in *Lowertown One* suggests that other factors are influencing rates of custody across the sample sites.

Youth recorded offence rates appear to indicate discrepancies between *Highertown Three* and *Lowertown Three*, with higher rates of some offences recorded in *Highertown Three*. As discussed earlier other factors, such as higher rates of pre-court disposals and informal measures in *Lowertown Three* might account for the lower rates of recorded youth crime in this area.

The multiple sources of crime data used to match the sites are imperfect and show some discrepancies across the sites in recorded crimes. However, even if the data and slight differences in recorded crime rates were taken at face value, research evidence on the relationship between crime rates, including seriousness of offences, and custody use, demonstrates that seriousness and prevalence of crime are not necessarily the defining factors in explaining variation in sentencing across space (Bateman and Stanley, 2002; Mason *et al.* 2007; Goldson, 2013a, Garland, 2013a). Taking all of the factors and sources into account, the selected fieldwork sites are considered suitable and legitimate for comparison.

QUALITATIVE DATA COLLECTION

Quantitative analysis provided a picture of sentencing trends but did not enable a nuanced exploration of cultural conditions, contexts and systems that might impact upon

the trends identified. As the research aims to understand the drivers of differential justice locally and nationally in England and Wales, qualitative data was also obtained by in-depth semi-structured interviews with key stakeholders in the youth justice system across the six research sites and a “national expert” sub-sample.

PARTICIPANT SAMPLE

The 91 participant sample comprised 71 people drawn from the six fieldwork sites and 20 national experts from statutory and non-statutory agencies. The research has not included young people as the focus was on the processes of policy development and implementation.

Nonprobability purposive sampling was utilised to select the sample across the sites. To gain an understanding of the processes, systems, cultures, personal beliefs and working styles at a local level it was decided a sample of key decision makers at a senior level, within each of the agencies comprising the youth justice system, would be selected rather than basic grade practitioners. This ensured the data obtained focused on the actors responsible for policy and practice with a higher level of understanding and expertise. Each YOT area manager for the fieldwork sites was written to seeking their participation with a request for interviews with the following: the YOT manager; three senior YOT operational managers responsible for remand, pre-court orders and community orders; YOT police officer; YOT senior police officer; and two senior representatives from the Crown Prosecution Service. The selection criteria attempted to form a sample that was representative of the population of senior YOT professionals. Self-selection bias is a problem with purposive sampling techniques but unavoidable in research of this type.

The research design also involved interviews with four to six magistrates and district judges per research site. This required authorization from the Judicial Office, which will only approve requests if a member of the senior judiciary consider the research: to be in the public interest; would not impair judicial discretion and independence and draw the judiciary into political controversy; and would not ask the judiciary to comment on individual cases (Judicial Office, 2013). Judicial participation was granted after approximately 11 months of deliberation. The senior court clerk within each fieldwork site was then contacted requesting participation of magistrates and district judges.¹⁹

¹⁹ Probability sampling was not an option for the selection of senior YOT professionals in each site because for the most part the size of the YOT team and numbers of people fulfilling senior YOT roles was small.

Purposive sampling was adopted for the selection of participants for the national expert sample who were selected to reflect the range of expertise in youth justice from former and current senior civil servants, NGO managers, research consultants, heads of youth justice services and academics. The practitioner and magistrate samples across the six sites and the national expert samples are set out in Tables 5.24, 5.25, 5.26 and 5.27.

Composition of *Highertown One* and *Lowertown One* interviewees

Table 5.24: Sample characteristics for *Highertown One* and *Lowertown One*

	<i>Highertown One</i>	<i>Lowertown One</i>
Gender	4 male, 10 female	7 male, 4 female
Ethnicity	14 White British	11 White British
Professional roles	YOT manager YOT pre-court manager YOT court manager YOT police officer YOT interventions manager YOT senior practitioner 2 CPS youth prosecutors 4 Youth magistrates 2 District judges	YOT manager YOT remand manager YOT court manager YOT police officer YOT interventions manager 2 CPS youth prosecutors 3 youth magistrates District judge
Total sample	14	11

No senior police officers were recruited in *Highertown One* or *Lowertown One*.

However, probability sampling could have been adopted for the selection of magistrates if time and practical constraints allowed. For example within each of the six sample sites, in consultation with the Magistrates Association, a sampling frame of all Magistrates sitting on Youth Court benches and District Judges sitting in Youth Courts could have been determined. Random sampling, without replacement, could then have been employed in order to select prospective interviewees from the sampling frame. This would have served to ensure that each interviewee was randomly selected, thus offsetting any prospect of self-selection bias.

Composition of *Highertown Two* and *Lowertown Two* interviewees

Table 5.25: Sample characteristics for *Highertown Two* and *Lowertown Two*

	<i>Highertown Two</i>	<i>Lowertown Two</i>
Gender	5 male, 5 female	6 male, 6 female
Ethnicity	9 White British, 1 Black/ Black British	11 white British, 1 Asian/ British Asian
Professional roles	YOT head of service YOT operations manager YOT team leader YOT practitioner YOT police officer YOT police inspector 4 youth magistrates	YOT manager YOT remand manager YOT court manager YOT pre-court manager YOT police sergeant YOT police officer 4 youth magistrates 2 district judges
Total sample	10	12

No Crown Prosecution Service youth prosecutors were secured in *Highertown Two* and *Lowertown Two*.

Composition of *Highertown Three* and *Lowertown Three* interviewees

Table 5.26: Sample characteristics for *Highertown Three* and *Lowertown Three*

	<i>Highertown Three</i>	<i>Lowertown Three</i>
Gender	7 male, 5 female	6 male, 6 female
Ethnicity	12 White British	11 White British, 1 Asian/ British Asian
Professional roles	YOT manager YOT post-court team manager YOT senior practitioner YOT ISS manager 7 magistrates District judge	YOT manager YOT remand manager YOT court manager YOT pre-court manager YOT police sergeant YOT police officer CPS youth para-legal 5 youth magistrates
Total sample	12	12

No CPS prosecutor was secured and Two YOT police representatives withdrew from the research in *Highertown Three*. As the YOT practitioner sample was smaller in *Highertown Three* in comparison to *Lowertown Three* more magistrates were included in the sample to increase the sample size in line with *Lowertown Three*.

Composition of national expert interviewees

Table 5.27: Characteristics of national expert sample

National expert sample	
Gender	12 male, 8 female
Ethnicity	19 White British, 1 Black/ Black British
Professional roles	Former senior manager of an NGO 2 senior officers of NGOs Independent consultant 5 former senior civil servants 9 academics 2 YOT heads of service
Total sample	20

SEMI-STRUCTURED INTERVIEWS: BENEFITS AND LIMITATIONS

The use of semi-structured interviews was adopted as the main qualitative data collection technique. Three interview schedules were developed for the three distinct groups within the sample: YOT practitioners; magistrates and district judges; and the national experts. The schedules covered the same themes and used many of the same questions to create symmetry, but were tailored to the expertise and experiences of each sub-sample group. The interview schedules (see Appendices) comprised 10 thematic sections and around 40 questions, with further sub-questions for prompting participants, if required, covering: professional information about the participant; young people and youth crime; policing of young people; pre-court disposals and diversion; bail and remand; community disposals; penal custody; post-custody support; perceptions of penalty and punishment; and age and international human rights standards.

The interviews were approximately 60 to 90 minutes long and, with permission, were digitally sound recorded. All interviews were conducted in person, other than four Skype interviews and two telephone interviews. Interviews took place between the start of January 2014 and the end of February 2015. All the interview recordings ($n=91$) were transcribed.

Through open ended questions semi-structured interviews provide detailed qualitative

data enabling participants to give reasons, motives, and rationales, and, to a certain extent allow respondents to frame their own responses and realities while keeping the interview focused on the themes identified in the aims/ objectives (Punch, 2005; Rubin and Rubin, 2005; Mathers and Huang, 2006; Crowther-Dowey and Fussey, 2013; Withrow, 2014). The use of semi-structured in-depth interviews can produce “thick description” in which respondents’ data gives not only details of the phenomena, but the context including personal and cultural meanings, motives and feelings (Ryle in Geertz, 1973: 6). Rubin and Rubin (2005:3) suggest that qualitative interviews “can understand experiences and reconstruct events in which you did not participate”.

Semi-structured interviews increase reliability and validity of data collected compared with unstructured interviews (Postmus, 2013). They can increase replicability by reducing researcher bias, and allow participant answers to be compared across individuals, groups and locations (Postmus, 2013). The degree of flexibility enables new themes to emerge because it permits some discretion for the interviewer to ask new questions in response to the interviewees’ answers (Carey, 2012). Interviewees can actively shape the interview as they can express themselves and introduce their own knowledge or experience (Crowther-Dowey and Fussey, 2013).

Semi-structured interviews are susceptible to the effects of social desirability bias (McIntyre, 2005; Mathers and Huang, 2006; Crowther-Dowey and Fussey, 2013) when a respondent provides answers which s/he feels is more socially acceptable than his/her true attitude or behaviour (Kaminska and Foulsham, 2016). The research had to be authorised by gatekeepers, such as YOT managers and the Judicial Office. Some participants may have felt they were “representatives” of their organisation, affecting how they responded to questions despite reassurances of confidentiality and anonymity. This may have been particularly acute for magistrates and district judges in view of their codes of conduct. Judicial Office rules for research participation restricted questions on politics, particular policies and cases. Judicial participants will have self-censored their responses to questions about politics or policy. Social desirability bias as a measurement error is difficult to recognise.

Interviewer effect or reactivity is a concern with semi-structured interviews (Rubin and Rubin, 2006; Bachman and Schutt, 2014) and the background of the interviewer and interviewee is important to consider. Interaction may develop in different ways depending on the gender, age, ethnicity, class or sexuality of those involved (Postmus, 2013). The balance of power in the interview must be considered, as adopting a semi-

structured methodology disperses some of the power from the researcher to the respondent, however because the researcher ultimately leads the interaction, an imbalance of power remains, which could effect the process (Postmus, 2013). Gender, race, class, sexuality or level of education in comparison to the respondent could have influenced the interaction and responses garnered (Postmus, 2013). Many participants stated they were nervous about being interviewed, which could have affected their answers. The interview is a social process; my reactions to participants could have influenced their answers. Fontana and Frey (2005:696) suggest that the interview is not a neutral interaction, as the exchange and interaction is mutually created and contextually bound.

QUALITATIVE DATA ANALYSIS

THEMATIC ANALYSIS

The analytical framework adopted for this study relies on thematic analysis and some of the tenets of grounded theory. Thematic analysis is a process for systematically encoding and “making sense” of qualitative data by analysing, often seemingly unrelated, information through the creation of themes and codes in order to find patterns in the data (Boyatzis, 1998). Guest *et al.*, (2012:15-16) characterise thematic analysis as:

“a rigorous, yet inductive, set of procedures designed to identify and examine themes from textual data in a way that is transparent and credible...[The] method draws from a broad range of several theoretical and methodological perspectives, but in the end, its primary concern is with presenting the stories and experiences voiced by study participants as accurately and comprehensively as possible.”

Thematic analysis, like grounded theory, requires more involvement and interpretation from the researcher (Guest *et al.*, 2012). Thematic analysis focuses on identifying implicit and explicit ideas and concepts within the data to make themes. Codes are developed to represent the identified themes and linked to the raw data (Guest, *et al.*, 2012). As the act of “thematizing” is the foundation of, or borrows from, various analytic traditions, such as phenomenology, grounded theory and discourse analysis, thematic analysis is not considered a specific method in its own right (Boyatzis, 1998; Braun and Clarke, 2006; Guest *et al.*, 2012). Nevertheless, Boyatzis, (1998), Braun and

Clarke (2006) and Guest *et al.*, (2012) do suggest a number of processes/ stages to the method, which have been adopted for this research.

Stages of analysis

Clarke and Braun (2006) outline six phases of thematic analysis: familiarisation with the data; generating initial codes; searching for themes; reviewing themes; defining and naming themes; and writing up. Boyatzis (1998) though suggests three stages: deciding on sampling and design issues; developing themes and a code; and validating and using the code. Whilst Boyatzis' (1998) description has fewer defined phases, both contain the same processes, which are applied when analysing the data.

Familiarisation with the data is crucial to analysis (Boyatzis, 1998; Clarke and Braun, 2006; Guest *et al.*, 2012) and where analysis of the data begins (Lapadat and Lindsey, 1999; Bird, 2005). Familiarisation of the interview data was undertaken by transcription of the recorded interviews. Transcription allowed immersion in the data and an opportunity to identify potential codes and themes at an early stage.

After transcription and familiarisation, coding and analysis of the two data sets commenced using Nvivo 10 computer software - the practitioner interviews from the six research sites and the expert interviews. Both sets were analysed separately. Through reading and rereading the texts initial codes were developed. The design of the interview schedule of 10 thematic sections (professional information about the participant, young people and youth crime, policing of young people, use of pre-court disposals and diversion, the use of bail and remand, the use of community disposals, the use of penal custody, post-custody support, perceptions of penalty and punishment, and age and international human rights standards) allowed the data to be sorted into 10 "natural" themed areas. Then from that further categories and themes were developed. Data from all six sites were compared and analysed in order to develop themes between and within the six research sites.

Boyatzis (1998: 31) posits that a "good thematic code is one that captures the qualitative richness of the phenomenon". Codes were given definition labels. From the codes, themes were developed. Saldana (2009) cited in Guest *et al.*, (2012:65) defines a theme as a:

“phrase or sentence that identifies what a unit of data is about and/or what it means”.

Developed themes were then reviewed, merged and refined. A process of “categorization” borrowed from grounded theory, was adopted, whereby common themes and patterns were abstracted from multiple codes into an analytic concept (Charmaz, 2014; Urquhart *et al.*, 2014). The analysis moves from mere description to a more abstract, theoretical level (Charmaz, 2014; Urquhart *et al.*, 2014) and involves interpretative work, which can be theoretical (Boyatzis, 1998; Braun and Clarke, 2006). One of the primary aims of this research project was to develop a theoretical understanding of differential justice and penalty. The generation of theory through analysis of data was of crucial importance. An inductive approach was taken, whereby identified themes were driven by the data, rather than being derived from pre-existing theories (Bryant and Charmaz, 2010; Charmaz, 2014). It was not the aim of the research project to test hypotheses, rather the analytical approach engendered the “generation of hypotheses” (May, 2001) and theories.

Thematic analysis is data driven and closely aligned to grounded theory (Braun and Clark, 2006; Guest *et al.*, 2012) developed by Glaser and Strauss (1967), which seeks to develop and create theoretical constructs and frameworks through inductive analysis of qualitative data. A defining feature is the creation of codes and themes using the “constant comparative method” adopted in this analysis to ensure themes are closely related to the data (Glaser and Strauss, 1967; Corbin and Strauss, 2008; Strauss and Corbin, 2014). The process starts with reasonable codes, categories and themes, or emerging theory, suggested by the initial narrative text, and then the next instance is compared with reference to the emerging theory from the first (Glaser and Strauss, 1967; Corbin and Strauss, 2008; Strauss and Corbin, 2014; Grinnell JR and Unrau, 2014). The next text is similarly compared to the tentative theory, and so on. The task becomes one of constantly comparing the emerging but tentative structure to new information until a pattern for classifying and understanding the data becomes coherent (Grinnell JR and Unrau, 2014). This allows theoretical concepts to be refined, establishing strong links between data and theories generated (Glaser and Strauss, 1967; Corbin and Strauss, 2008). Using a thematic approach generates “analytic description” (McCall and Simmons, 1969) defined as employing: the pragmatic generalisations of a body of scientific theory as the essential guide in reporting and analysis; and systematic and methodical gathering, coding and reporting of data. This generates empirical generalisations based on the data collected (McCall and Simmons, 1969).

The final stage of the analysis process was the writing-up phase, in which themes and theories generated were presented using extracts of the data as illustrative evidence. Within the analysis chapters (see Chapters Six, Seven and Eight) participant data extracts are referenced in a number of different ways due to the fact the data was not collected in sequence across all of the sample sites and come from different data sets. Participants' data extracts from across all six sites from the YOT, CPS and police are referenced in the following manner: "participant", reference number, name of sample site followed by their profession/role (for example: "Participant 13, *Lowertown One* YOT interventions manager). Magistrates and district judges are referenced as "judicial participant", reference, followed by the name of the sample site and then role/ profession (for example: Judicial participant 7, *Lowertown One* district judge). National expert participants are referenced as "national participant", reference number and then their professional or expert role.

RELIABILITY AND VALIDITY

The research's design has ensured the reliability and validity, or "trustworthiness" (Lincoln and Guba, 1985) of its findings. Lincoln and Guba (1985) suggest that this is ensured by "transferability", "dependability", "confirmability" and "credibility". "Transferability" (external validity) refers to evidence supporting the generalisation of findings to other contexts and detailed descriptions to enhance "fittingness" (Grinell JR and Unrau, 2014). The results of this study are applicable to the wider YOT practitioner, magistrate and national expert population as they offer "fittingness". Guba and Lincoln (1981 and 1982) cited in Ward Schofield (2000) suggest that human behaviour is inextricably linked to context and time and generalisations intended to be context-free have little relevance. "Fittingness" refers to the degree to which the situation under investigation matches other situations one is interested in. Goetz and LeCompte (1984) suggest that qualitative studies gain their potential for applicability by offering "comparability" (Ward Schofield, 2000):

"the degree to which components of a study – including the units of analysis, concepts generated, population characteristics, and settings – are sufficiently well described and defined that other researchers can use the results of the study as a basis for comparison with other studies addressing related issues. Establishing the comparability of a study makes it scientifically useful" (Goetz and LeCompte, 1984: 228).

Goetz and LeCompte (1984) also introduce the related concept of “translatability” for increasing levels of external validity in qualitative studies:

“[the] degree to which the researcher uses theoretical frames, definitions and research techniques that are accessible to or understood by researchers in the same or related disciplines” (Goetz and LeCompte, 1984: 228).

A study is of little use to other researchers if the theoretical constructs are so unique that only the person who conducted the study understands them. The concepts of “fittingness”, “comparability” and “translatability” have been used to measure and increase the generalisability of the research findings. Detailed descriptions of the data, concepts and theories have been used to allow “transferability” rather than the use of inferential statistics to calculate the representativeness and generalisability of the findings.

Researcher bias and “projection” are said to be inherent within qualitative methods/processes because of the subjective nature of the interpretive act (Boyatzis, 1998:13), reducing the reliability and validity of the results. A thematic analysis approach, with detailed step-by-step procedures, has enhanced the replicability and “dependability” of the results. Using a second coder method could have increased reliability further and provided inter-coder reliability, monetary and time constraints precluded this.

Qualitative data cannot be analysed in an epistemological vacuum using positivistic objectivity. Interpretation is essential for the generation of theory in qualitative analyses such as thematic analysis (Strauss and Corbin, 2014). It is suggested that:

“Objective knowledge and truth is the result of perspective. Knowledge and truth are created, not discovered...Knowing is not passive...human beings do not find or discover knowledge so much as construct it or make it. We invent concepts, models, and schemes to make sense of experience and, further we continually test and modify these constructs in the light of new experience.” (Schwandt, 1994: 125-6).

Nevertheless, “confirmability” relating to objectivity in qualitative studies is important to consider (Grinell JR and Unrau, 2014). Achieving complete objectivity, even through positivistic data collection techniques, is impossible (Patton, 1990). “Confirmability”

relates to the steps required to make sure findings are the result of the respondents' experiences and concepts not the researcher's (Shenton, 2004). Guba in Patton (1990:481) has suggested replacing traditional objectivity with being:

“balanced, fair and conscientious in taking account of multiple perspectives, multiple interests and multiple realities.”

I have attempted to be as neutral as possible in reflecting participants' views and multiple perspectives through the use of “thick description”, an “audit trail” of methods used, and use of ample examples of experiences and concepts to back up theoretical constructs and hypotheses (Shenton, 2004). However, I am not an “outsider” from youth justice practice. I am a qualified social worker having worked in a youth offending team and child protection services, but not in any of the research sites. My practice experiences will undoubtedly have helped in my understanding of youth justice policy and practice, but might also have coloured my interpretation and limited my ability to give a dispassionate interpretation of the data. Nevertheless all efforts were made to record and interpret the data as accurately and impartially as possible.

Positivist researchers are concerned with internal validity, seeking to ensure the test is measuring what is actually intended (Shenton, 2004). The concept of “credibility” is the qualitative equivalent (Patton, 1990; Grinell JR and Unrau, 2014). Provisions were made in the design of the research to promote “credibility”. Triangulation, through the use of interview and sentencing statistical data, and a wide range of respondents from varying fields ($n=91$) to gain multiple perspectives and viewpoints to verify against each other, was adopted to ensure “credibility” (Patton, 1990; Miles and Huberman, 1994; Shenton, 2004; Grinell JR and Unrau, 2014). “Negative case analysis” was utilised to enhance “credibility”, in which disconfirming evidence and deviant cases from generated hypotheses were searched for, discussed and accounted for (Shenton, 2004; Rubin and Babbie, 2013). Other strategies, such as “thick description”, examination and use of previous research findings to confirm and support the research findings and reflexivity (see below) were utilised to enhance data “credibility” (Patton, 1990; Miles and Huberman, 1994; Shenton, 2004).

ETHICS

Ethics within research are vital. As the research project sought to interview a range of people concerned with youth justice practice across England and Wales it was essential

for the project to have academic ethical approval. It was screened by the University of Liverpool School of Law and Social Justice Ethics Committee and granted approval to proceed on 13th August 2013. The British Society of Criminology's Statement of Ethics (2015) and the British Sociological Association's Statement of Ethical Practice (2004) were consulted and strictly adhered to.

All participating organisations and respondents were provided with full details of the study (see Appendices) and were required to give informed consent. Those taking part in the research were informed they may withdraw from the study at any time and given assurances their anonymity and confidentiality would be maintained. All interviews were recorded and transcribed with all personal and geographical details anonymised. All names of places and individuals have been changed. Identifying characteristics and features have also been removed to protect the anonymity and confidentiality of all participants and organisations.

This research did not involve the participation of any vulnerable groups or individuals. All participants were aged over 18 years, were employed by one of the participating agencies or were responding in their own capacity as an expert in youth justice.

It was not envisaged that the themes discussed in interviews would cause any emotional distress or any adverse psychological effects. No personal information was sought from participants. They were not required to reflect on any aspects of their own personal relationships or private lives. Participants were reminded that they were not required to answer any question if they did not wish to. Participants were fully debriefed after interviews. If in the unlikely event a participant became emotionally distressed, it was agreed the interview would be terminated.

To ensure the safety and protection of the participants and the researcher all interviews took place at the participant's place of work in a private room, via Skype or the telephone.

Data protection principles of the Data Protection Act 1998 were followed. No raw data was shared with other organisations or individuals; data was held securely; and data was only used for the purposes of this study.

REFLEXIVITY

Reflexivity is an essential component of qualitative research particularly regarding demonstrating “trustworthiness” (Patton, 1990; Miles and Huberman, 1994; Shenton, 2004). This was an ambitious research project. On reflection it was successful in many ways, but at the same time I faced multiple challenges.

As far as I am aware, no other recent studies have attempted to explore the drivers of differential justice and the spatial nature of youth penalty by looking at the effects of culture, systems and processes nationally and locally. The project has been successful in advancing knowledge in this area. Bateman and Stanley’s (2002) work provided a statistical analysis of sentencing patterns across YOTs and provided some practical factors that might have been associated with high and low use custody. This research has gone further, providing an in-depth, nuanced qualitative analysis of how local penal cultures can affect sentencing outcomes for young people and the drivers for the temporal nature of youth penalty. At the heart of the research project’s success is the rich data obtained through the semi-structured interviews with a substantive sample of practitioners from the constituent parts of the youth justice system across six different YOTs in England and Wales and a range of national experts. This allowed me to explore the nuanced and complex nature of youth penalty and the drivers for differential sentencing. The use of six different fieldwork sites with a large sample allowed me to unpick the localised nature of youth penalty and its inherent complexity and contradiction neglected by many studies.

The complexity of the subject-matter created many challenges to the research, particularly regarding fieldwork site selection. No two areas can be matched exactly on socio-economic characteristics, there will always be imperfections. This was made more arduous due to the well-rehearsed problems associated with recorded crime statistics. Once the sites had been matched the agencies and professionals had to be recruited to take part. Two of the initial sites selected declined to participate in the research project, therefore new matching searches had to be conducted. Matching and then recruiting participants from selected sites was time-consuming. Inevitably, there are some anomalies in the demographic data, particularly the crime rate statistics, for the final selection of fieldwork sites. Despite the complexities and some inconsistencies the methods applied have been systematic and rigorous.

The recruitment of magistrates and district judges was particularly difficult. Judicial Office approval processes took approximately 11 months meaning I had to revisit the six research sites to interview magistrates and judges.

The fact that I had an extensive data set, covering multiple themes, obtained from a large sample ($n = 91$) was not only a key strength regarding providing in-depth data for analysis, but presented major challenges. Transcribing, collating, “making sense of” and analysing the data were very time-consuming with the potential to become overwhelmed by and lost in the sheer volume of the data.

With hindsight, I would make amendments to the method to gain deeper insight into the drivers of differential justice locally and the macro-drivers of penal expansion and reduction. I would include a sample of pre-sentence reports from each of the sample sites to analyse if there were any differences in sentence recommendations for like-for-like offences to explore whether higher custody areas were more punitive. If data detailing offence type and sentence outcome per case were available for each YOT from the Ministry of Justice I would conduct an analysis to see whether there were any differences across the higher and lower use of custody sites to see if some areas were giving longer or harsher sentences for the same offence.

Regarding gaining a fuller understanding of the temporal nature of youth penalty, if I could conduct the research again I would increase the number of participants from the civil service and possibly politicians who have first hand experience of the designing, negotiating and implementing youth penal policies to better understand the drivers and rationales of penal change.

CHAPTER SIX

EXPLORING THE VICISSITUDES IN YOUTH PENALITY: PENAL EXPANSION AND PENAL REDUCTION IN ENGLAND AND WALES

INTRODUCTION

This chapter presents and analyses data drawn from interviews with the national policy experts. Its primary aim is to explore the political, social, and economic contexts, national policies and cultural settings that might give rise to penal expansion and reduction at a national level through the reflections of some of the individual decision-makers and experts involved in the shaping, administration and critique of youth penalty over the last 30 years. There has been considerable criminological attention on the drivers of penal expansion in youth justice policy and practice since the 1990s in England and Wales (Haines and Drakeford, 1998; Muncie, 1999; Fionda, 1999; Goldson, 2000; Crawford, 2001; Pitts, 2001a, 2001b, 2001c; Goldson and Muncie, 2006; Muncie and Goldson, 2006b; Souhami, 2007; Fergusson, 2007; Goldson, 2010, 2011a). Much of this has focused on an analysis of “policy products”, such as legislation, political pronouncements and statements, Green Papers, White Papers, action plans and frameworks, by exploring their discourses, content and scope and their subsequent effects on youth justice policy and practice (Souhami, 2015a: 2). However analyses of the “macro” drivers of youth penalty and national policy often neglect the individual nature or “micro” influences of policy production. For example, Souhami, (2015a: 2) suggests that whilst the analysis of “policy products” is vital as it provides a picture of the direction of the youth justice system, lines of control and an insight into the intentions of a powerful group of state actors, i.e. government ministers, “policy products” are not “wholly constitutive of policy”. Rather policy in the youth justice arena in England and Wales is said to be formed, decoded and implemented by a wide range of actors, not only ministers and civil servants in government departments, but also by actors in the YJB (Souhami, 2011, 2015a, 2015b), police and Magistrates Association. Therefore, this analysis not only explores changes in policy and legislation that may give rise to penal expansion or reduction and the wider social, political and economic structures, which influence them, but also, crucially, considers the role and influence of individuals in the construction, direction and implementation of policy.

Initially the drivers of penal expansion will be delineated in order to later explore the drivers of penal reduction. This chapter demonstrates the temporal nature of youth penalty and argues that its direction is hostage to the caprices of political, cultural, and economic conditions and the actions of key policy elites and actors involved in the youth penal realm.

NATIONAL DRIVERS OF PENAL EXPANSION: EXPLORING THE “PUNITIVE TURN”

The “punitive turn” in youth justice in England and Wales can be observed in the significant increase in the use of penal custody for children and young people in conflict with the law. From 1991 to 2008 the average annual youth prison population rose from just under 1,500 to over 3,000 (House of Commons, 2003; Ministry of Justice, 2016b). In what follows interview data is presented outlining the significance of: the politicization of youth justice policy; the enduring influence of the killing of James Bulger; the rise of formalization and managerialism; the decline of diversion; and promotion of the notion of constructive custody, in driving penal expansion during this period.

POLITICIZATION: YOUTH CRIME AS “POLITICAL FOOTBALL”

There has been significant academic criminological focus on the influence of politicization in the shaping of youth crime control strategies and policies (see: Davis and Bourhill, 1997; Goldson, 1997a, 1999, 2000, 2015; Muncie, 1999, 2006, 2008; Garland, 2001; Pitts, 2001a, 2001c, 2003; Smith, 2003; 2005, 2011; Goldson and Muncie, 2006; Pratt, 2007; Haines and Case, 2008). Politicization of youth justice policy as a major driver for penal expansion, increased control of young people and punitivity was also a major theme emerging from the interview data.

Many respondents described the early 1990s as a turning point in the treatment of young people in trouble with the law:

- 6.1 *“The late 1980s and the beginning of the 90s was the beginning of a transformation in the way in which society decided to respond to the problem of youth crime...Youth crime as a subsection of crime generally was perceived by politicians as a mechanism for engendering a sense of fear by exaggerating and ratcheting up the problem of crime in such a way they could...offer a tough*

response to crime with a view to garnering votes at the next general election. Crime and youth crime as part of that became a political football... We had the sudden focus by Ken Clarke on persistent young offenders and then... we had the 'prison works' doctrine from then... Home Secretary Michael Howard. And throughout the 1990s we had... the 'arms race' between the political parties in terms of who could appeal to the population in terms of their toughness, who could appeal to the population as the most attractive politically."

(National participant 8, former senior civil servant)

One expert suggested that the “*big wave of decarceration*” (National participant 7, former senior civil servant) and diversionary practice in the 1980s was levelled in the 1990s due to a political environment in which youth crime became a “*political football*”. Political parties were said to have been highly influenced by the “*media, perceived public opinion, [and the] terrible gutter press*” (National participant 2, former senior manager of NGO) creating punitive populist policies. Some participants considered that punitive political statements regarding crime had a real effect on the treatment and sentencing of young people, especially Prime Minister John Major’s “*Condemn a little more*” statement (Major in Macintyre 1993) and Michael Howard’s “*Prison Works*” (Howard, 1993 in Nicholls and Katz, 2004) proclamation:

6.2 *“Magistrates get significantly influenced by political pronouncements. So [Michael] Howard is saying ‘prison works’. I mean what a stupid, evil thing to say because it makes an immediate difference in what magistrates do on a day-to-day basis.”*

(National participant 11, academic)

AN ATYPICAL CASE: THE ENDURING INFLUENCE OF JAMES BULGER

The significance of the seminal case of James Bulger, and general societal angst regarding youth and crime was mentioned by the majority of the sample as a key driver of punitive policies and penal expansion. Participants perceived how the death of James Bulger in 1993 and subsequent conviction of two ten-year-old boys, further fuelled political and media reaction to young people in conflict with the law and increased custodial sentences:

6.3 *“Well the stir the Jamie Bulger [sic] murder [created]... was off the scale... Literally if you look at the graphs you just see how public attitudes and then*

political sentencing decisions were all kind of flung in the direction of punish and lets not even begin to try and understand this.”

(National participant 9, senior officer of NGO)

Participants suggested that the media outcry regarding the James Bulger case, against a backdrop of societal unease about young people and crime, increased the political focus on youth crime and tougher penalties. A number of participants considered the media and political furore could have been dampened if the anonymity of the two children convicted had been maintained. However, it was suggested that the decision to waive the children’s anonymity by the trial judge was driven by personal ambition, which was to have dire implications on the nature of world-wide coverage:

6.4 *“This is about the judiciary handling [Thompson and Venables’] anonymity...I was involved in the case...and it took me and everybody by surprise...I believe it was a nasty sting in the tail driven by...self-publicity and a case of ‘what is going to make me sound good’...The case had more publicity than any other in history and anywhere in the world. He [trial judge] wanted to be the person to say that this needed to be debated and discussed.”*

(National participant 14, former senior civil servant)

International evidence suggests that high profile cases, sensationalised and reactionary media and political responses increase the likelihood of penal expansion and punitive responses to children in trouble with the law (Bailleau *et al.*, 2010).

FORMALIZATION, MANAGERIALISM AND THE DECLINE OF DIVERSION

Another overarching theme to emerge from the expert interview data concerned the movement towards formalization under a strategy of managerialism within youth justice policy and practice between 1990 and 2008, driven by politicisation and “popular punitivism” (Bottoms, 1995). A number of the respondents within the sample, some of whom were working in government at the time, considered that the turn towards formalization in youth justice policy and practice was built upon a misreading of the research evidence by key decision makers in the Home Office, the Audit Commission and the YJB. National Participant 4 describes how a belief in minimum intervention was strong at ministerial level up until the early 1990s:

6.5 *“It was in the 1980s towards the period of minimum intervention there was evidence, which I don’t think has ever been proved wrong. Its not as well favoured as it used to be, but when you are dealing with children the less you do to treat them as a criminal the less likely they are to become one. There was a time when even ministers sort of gave talks to Magistrates about minimum intervention being a good thing.”*

(National participant 4, former senior civil servant)

However, some of the sample explained how the political tide turned against the concept of minimum intervention and diversion:

6.6 *“Things changed fairly rapidly around what people have frequently termed the ‘punitive turn’ in the early 1990s with a clear steer from government that cautioning was being over used and that it was encouraging young people to think they could offend with impunity...I guess by the time you got to the Audit Commission report in 1996 and the New Labour government those reservations about diversion extended to reservations about anything that wasn't formally recorded. So that even when children were not going to be prosecuted there was still a requirement to deliver a form of sanction of some sort. That trend led to a larger number of children going to court even though the overall level of detected crime was declining quite substantially.”*

(National participant 16, academic)

The reform in the 1990s to which this extract refers was the Home Office Circular 18/1994, which issued guidance to the police, and the Crown Prosecution Service limiting the use of cautioning for young people by way of decreased discretion (Gibson *et al.*, 1994; Kemp and Gelsthorpe, 2002). Unsurprisingly a dominant theme within the data was the influence of the Audit Commission’s (1996) report that deemed the youth justice system to be ineffective and paved the way for New Labour’s youth justice reforms, including their vision laid out in the 1997 *No More Excuses* White Paper and the Crime and Disorder Act 1998. A former civil servant reflected on the significance and influence of the Audit Commission’s (1996) report and its author on the creation of the “new youth justice” (Goldson, 2000) and managerial structures:

6.7 *“Under the Crime and Disorder Act [1998] the whole of the youth justice system was devolved to the YJB. That sort of heralded the introduction of a managerialist approach to youth justice and I think that was heavily influenced*

by the Audit Commission and its report 'Misspent Youth' [1996]. Actually that was probably one of the most influential reports ever published by the Audit Commission. That report was written by Mark Perfect and Judy Renshaw. Mark [Perfect] went onto become the chief executive of the YJB and that report definitely created the performance management framework, which then was embedded within the whole of the youth justice system from top to bottom."

(National participant 8, former senior civil servant)

The Audit Commission and the role of Mark Perfect as the first chief executive of the YJB were said to be influential in creating the culture and structure of performance management in the YJB and the new youth justice system. Souhami's (2015a) ethnography of policy making within the YJB also found that key individuals sitting on the original board at the YJB were instrumental in setting out the role and purpose of the YJB and youth justice policy with its movement away from informalism. Given the importance of youth justice to New Labour's election priorities (Souhami, 2015a), many of the sample described how there was a significant steer from ministers for a tightening up of the system and a movement away from diversion towards a managerialist approach. One participant describes how Jack Straw inaccurately dispelled the research evidence regarding the maturation thesis and an informal approach within the *No More Excuses* White Paper:

6.8 *"It is instructive to read his [Jack Straw] introduction to the White Paper 'No More Excuses'. Now first of all he started with a title 'No More Excuses', it tells you powerfully what Jack Straw thought about all the things that happened leading up until that moment. But also he says boldly something like 'it's suggested to us that children grow out of crime, that is simply not the case'. That is just simply a misreading of the evidence."*

(National participant 7, former senior civil servant)

Participants suggested that the formalization of pre-court disposals, through the two strikes system of Reprimands and Final Warnings and then prosecution through court and the mandatory Referral Order for all first appearances produced increased numbers in the youth justice system and ultimately penal custody. This was followed by the "Street Crime Initiative" and "Offences Brought to Justice Target" (OBJT) in 2002:

6.9 *“I suppose the impact of new public management, targets, performance indicators and so on, which is where offences brought to justice came in...that was very damaging.”*

(National participant 13, academic)

6.10 *“I think it’s the impact of political policy on police that has changed dramatically. The police, I think if you look over many years and the type of organisation they are with a very structured hierarchy, you give them a target and they will meet it. So you have to be careful what target you give them and the classic example of that is the Offences Brought to Justice target, which saw a huge rise in FTEs, and I don’t think the police actually wanted to police in different ways. It’s just that they weren’t given an option. The discretion of the frontline officer was removed. If they were called out to an offence and it was on the record, there had to be an outcome. Therefore sticking the kid in the back of the police car and taking him/ her home to the parents to get a bollocking from the parents was no longer a possibility. But cops will do what they are told by their paymasters.”*

(National participant 20, YOT head of service)

This illustrates the immediate effect of the introduction of the OBJT and Morgan’s (2007) “low hanging fruit” thesis in which children were disproportionately targeted by the police and given formal measures such as the Penalty Notice for Disorder (PND) Reprimand, Final Warning for minor offences in order to meet targets. National statistics indicate that detected youth crime between 2003 and 2006 increased substantially; by 2006 the number of first time entrants (FTE) had risen to 110, 757 (Ministry of Justice, 2015a, 2016a). OBJT increased the number of PNDs issued to 10-17 year olds from an estimated 600 in 2003 to 14,500 in 2008 and reprimands and final warnings from 86,500 to 127,300 in 2007 (Ministry of Justice 2010 in Morgan and Newburn, 2012).

“CONSTRUCTIVE CUSTODY”

The New Labour government on coming to power in 1997 placed considerable weight on a notion of “constructive custody” and introduced the Detention and Training Order (DTO) to “punish and rehabilitate” (Home Office, 1997) young offenders under the provisions of the Crime and Disorder Act 1998. Such misplaced optimism clearly

derived, again, from the highly influential Audit Commission (1996) *Misspent Youth* report and key individuals at the YJB at the time:

- 6.11 *“The first chief executive of the YJB was a guy called Mark Perfect and he was the guy who had written the Audit Commission's Misspent Youth report. Now Misspent Youth classically gets the evidence wrong. If you look at the appendix of Misspent Youth around value of custody it just gets the evidence wrong. It imagines that custody plays a significant part in reducing reoffending.”*
(National participant 7, former senior civil servant)

The *Misspent Youth* (1996) report suggests that “Imprisonment can, in principle, reduce offending behaviour by deterring others and by keeping prolific offenders out of circulation” (Audit Commission, 1996: 110). It discounts Bottoms (1995) study, which found intermediate treatment to be more effective in reducing offending behaviour than custodial sanctions as the sample was too small and the results not statistically significant. However, 100 per cent of the expert sample suggested that custodial sentences were ineffective and largely damaging to young people, as supported by Goldson (2010: 165):

“A voluminous research literature, together with deeply embedded practice experience, confirms that custody comprises the least effective (crime-reducing) disposal available”.

The focus on custody and the new DTO offering something “new” and effective for young people was a dominant theme emerging from the expert participant data:

- 6.12 *“I can tell you a bit of history which I think is interesting, which is when the Crime and Disorder Act [1998] was being introduced. This was the advent of the Youth Justice Board and all of the orders were being introduced really really quickly and I was working in a children's research charity and we were responsible for all the training for everyone coming into the new youth justice system...It was a real nightmare because it was when Norman Warner was the Chair of the YJB and he was driving it like a train and he wanted everything to happen. The thing I can remember quite distinctly is that they brought in the DTO first which was just tactically idiotic because it is such an attractive sentence. It is kind of like releasing sentencers into a sweet shop really because it has got the elements that many of them think young people need...So you kind*

of get both things. You get that experience of prison - shocking terrible, be a good deterrent. [Then] out in the community - proper supervision, help to rehabilitate. It just felt like a very good sentence. So the sentence that should have been at the far end of the disposals was the top because it was the first and as the other orders were being introduced we were sorting of sewing them into the training programme and it was really dispiriting because everybody working in that team felt that if they had done it differently and started with community orders and thought it through as a set and worked from the other end of the telescope [it] would have been different. I think that particular order, the DTO, was instrumental in increasing child prison numbers pretty rapidly actually and you always have to watch that”.

(National participant 9, senior officer of NGO)

Again the interview data suggested that the recommendations of the Audit Commission (1996) report relating to the promotion of the use of custody as an effective measure and later the appointment of the author of the Misspent Youth (1996) report, Mark Perfect, as the first chief executive of the YJB was significant to the subsequent implementation of the report recommendations in regards to the use of custody. Similarly, the promotion of the notion of constructive custody through the creation of the DTO and its swift roll out by the YJB headed by Norman Warner was also said to drive penal expansion from 1998 onwards. Tangentially, Souhami (2011, 2015a) suggests that in 1998 with the establishment of the YJB, its aims and personal relationships were then strongly entwined with the New Labour project of creating tough youth justice reforms. For example, she notes that the first Chair of the YJB, Lord Norman Warner, had been then Home Secretary Jack Straw’s senior policy advisor in opposition and helped draft New Labour’s youth justice system reforms. Likewise, Souhami (2015a) notes the significance of Mark Perfect, previous Audit Commission report (1996) co-author, being appointed as the first Chief Executive of the YJB, as being evidence of him being closely aligned to government priorities.

The expert interview data suggests that penal expansion occurred in England and Wales from the 1990s onwards as a result of a number of interlinking influences and forces. The data suggests that the politicization of youth and crime during the 1990s ramped up political rhetoric and policy between the two main political parties as to who could be the toughest on crime. At the same time the murder of James Bulger in 1993 created a “moral panic” (Cohen, 2002) regarding youth and crime in the media, influencing political rhetoric and toughening up of youth justice policy. These findings support a

wealth of evidence regarding the impact of politicization on youth justice policy (Gibson *et al.*, 1994; Newburn, 1998; Downes, 1998; Muncie, 1999; Goldson, 2000; Pickford, 2000; Stokes, 2000; Haydon and Scraton, 2000; Cohen, 2002; Morgan and Newburn, 2012). Participants also suggested that as part of New Labour's managerialist reforms to youth justice, inspired by the Audit Commission (1996) report, increased formalization of practice decreasing practitioner discretion, limited the use of pre-court disposals and target setting incentivised the police and other agencies to tackle youth crime and incivilities swiftly through early intervention and tough measures such as custody. This was said to have created an environment in which penal expansion could occur with numbers of FTEs into the system and young people imprisoned increasing substantially under the Crime and Disorder Act (1998) reforms. Similarly, the expert interview data also demonstrates how key actors and individuals, such as government ministers making political pronouncements or directions, trial judges through judgements, or YJB policy elites, also contributed towards a toughening up and formalization of policy and practice, ultimately leading to penal expansion.

NATIONAL DRIVERS OF PENAL REDUCTION: EXPLORING THE “PUNITIVE DOWNTURN”

Since 2008 there has been a significant reduction in the numbers of young people being drawn into the criminal justice system including a rapid fall in those being incarcerated. Allen (2011) notes this largely “unexpected” fall represents the largest decline since the 1980s. The interview data suggested that whilst the drivers of penal reduction are complex and difficult to untangle, a number of interrelated and sometimes conflicting factors could explain penal reduction since 2008, including: a number of possible environmental forces; increased diversion; a general change in the “*penal zeitgeist*”; the development of more nuanced policy; leadership and management by policy elites; the depoliticization of youth crime and justice; and economics.

“A COALITION OF FORCES”: ENVIRONMENTAL AND SOCIAL FACTORS

A general consensus amongst the expert sample pointed towards multiple drivers for the decline in young people entering the youth justice system, it was “*complicated*” (National participant 3, independent consultant) to unpick. A whole range of “*different things*” (National participant 5, senior officer of NGO) and a “*coalition of forces*” (National participant 17, academic) were responsible:

6.13 *“Well the straight answer is I don’t know...Now if I ask that question, no one else is able to give me a sensible answer...Because I think the big mystery, certainly in terms of the young people in custody and indeed things about youth crime...the figures in terms of youth crime are going down aren’t they? Now we don’t actually know why... Or is it actually that young people are less likely to be wanting to get involved with crime? Is it less lead in petrol? I think it is not clear.”*

(National participant 15, former senior civil servant)

6.14 *“I would want to look at changing demographics...I think there has been a slight dip in the demographics. So if there are fewer younger people eligible by reason of age...But other things; changing crime patterns. I mean arguably a crime drop, but questionable given the controversy about what the police are recording or not. But certainly a decline in violent crime. Maybe that is linked to a decline in the misuse of alcohol...Or even PC Rain...wet weather stops people going out. I am only half serious. So again there is no one reason. We need to take a holistic approach to understanding the change.”*

(National participant 13, academic)

6.15 *“Higher literacy rates? It may or may not be lead in petrol, who knows? That was an interesting one...A whole number of different things. Social pressure. I mean some of the media coverage last night about how it’s not acceptable to go out on a Friday night for a rumble anymore and that maybe actually be increasing the feminisation of society in that most women are saying this is not sexy don’t do this.”*

(National participant 5, senior officer of NGO)

A sizeable proportion of the sample suggested that the substantial decline in youth custody had an air of mystery around it and no one policy or driver could explain the reductions in the youth prison population and decline in FTEs. These findings echo Souhami’s (2015b)’s results from her interviews with civil servants and YJB staff in regards to youth justice policy-making. Her sample also cited environmental influences such as the removal of lead in petrol being associated with reduced criminality (see: Reyes, 2007; Levy *et al.*, 2014). A multitude of environmental and social factors were said to explain the decline in this study. National statistics indicate that crime has been falling since the mid 1990s in England and Wales (ONS, 2016), including a reduction in violent crime and homicides (Sivarajasingam, 2014; ONS, 2016). Similarly research

data also indicates a significant reduction from 2009 in alcohol consumption amongst underage teenagers in the UK compared with alcohol consumption in 2001 (Bhattacharya, 2016). Therefore participants suggested that the decline was multifaceted, complex and attributable to environmental and social factors rather than just social policy alone.

DIVERSION AND DECARCERATION REVISITED

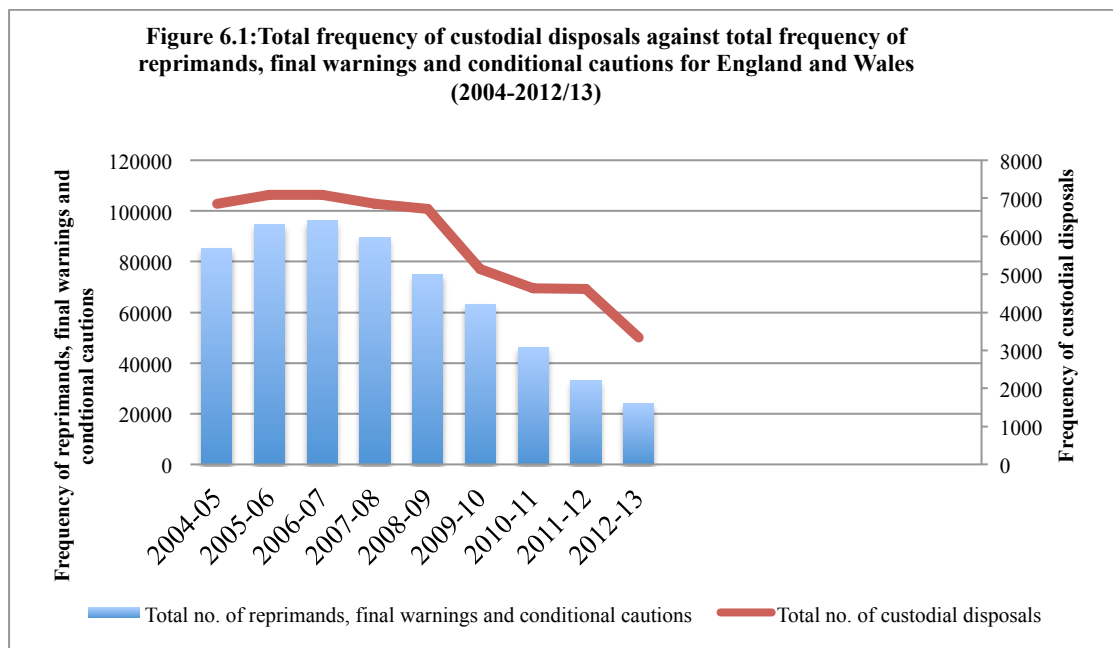
Many participants emphasised shifts in system behaviour over possible shifts in children's behaviour: *"the extraordinary reductions in detected youth crime [is] almost all a consequence of a shift in the way that policing is delivered"* (National participant 16, academic). The data suggested that there had been a movement away from policy, which *"formalised trivia"* (National participant 14, former senior civil servant). Bateman's (2015) analysis asserts that whilst evidence suggests that there has been a long-term fall in the underlying level of youth crime, the reduction in FTEs (a marker of detected youth offending) since 2003 onwards follows national policy changes regarding diversion and prosecution. The national expert sample echoed this proposition and emphasised the increased use of diversionary processes, including the scrapping of the OBJT, and the Youth Crime Action Plan (2008), which set a target to reduce FTEs by 20 per cent by 2020 by encouraging informal measures as being primarily responsible both for the reduction in FTEs but also crucially for the numbers of young people entering custody:

6.16 *"I think primarily it is about the reduction in the court population which is the consequence of the reduction in FTEs...There is a very strong correlation between how many kids go into the court and how many get custodial sentences. At one level people think that is obvious. But on another it isn't actually because if it is true that you have a custodial threshold which delineates the range of offences which will get custody, those offences will still go to court however many of the less serious offences you pull out. So you would expect, in other words that whether the overall court population goes up or down you will still have that layer at the top of very serious offences that result in custody because it is above the custodial threshold. There is very very strong statistical evidence, that that does not happen. As the court population comes down it pulls the whole lot of cases down and in effect pushes the custodial threshold up...One of the reasons...is that frequently kids get locked up not because they have committed very serious offences but because of*

persistence. If you delay substantially though diversion the first time children come into court, inevitably the opportunities they get to accrue a long list of offences is seriously curtailed...Now if kids didn't grow out of crime all you would be doing is delaying the persistency before they get to the adult court, which is no bad thing, but because we know that most kids do grow out of crime, what you do by diverting them is give them an extra opportunity and provide the maximum space for them to mature and the natural process of desistance to kick in.”

(National participant 16, academic)

Ministry of Justice data presented in Figure 6.1 shows the total numbers of formal reprimands, final warnings and conditional cautions (a marker of entrants into the system) against the total number of custodial disposals imposed from 2004 to 2012/13 in England and Wales, as the number of formal pre-court interventions decreases so too the frequency of custodial disposals.



Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a)

The abolition of the OBJT and the introduction of triage schemes under the umbrella of the Youth Crime Action Plan (2008) increased discretion and informalism and impacted on reducing the number of children in the system. National participant 9 explained how her organisation was instrumental in influencing the Home Office and Police to bring about increased discretion by officers and more informal measures:

6.17 *“There has been a 60% drop in custody for under 18s and one of the ways we did that was work very closely with the Home Office, with police, to work on changing discretion...Once they were introduced to the idea that they could use their discretion more freely then they could be telling someone off but not recording that, taking someone home, trying to see if there is another adult who could be a support person for that youngster.”*

(National participant 9, senior officer of NGO)

Whilst it was clear from the interview data and wider research literature (Allen, 2011; Bateman, 2012, 2014, 2015) that an increase in diversion is related to a decrease in custody, how this reduction in FTEs was politically achieved is less clear. So how did the national expert sample explain this?

A CHANGE IN THE “PENAL ZEITGEIST”

A substantial proportion of the national expert sample asserted that a shift in penal culture started to emerge in policy and practice during the mid 2000s, which started to question the usefulness of punitiveness, targeting young people and high prison rates:

6.18 *“I think it is more about the penal zeitgeist...I think after about 15 years there was just a weariness of the, sort of, kind of, ratcheting up of punitiveness from 93...onwards...My sense was that within the police service, probably within the sentencing circles and some of the magistracy and certainly some judges, Youth Offending Teams and possibly some practitioners. I think there was a kind of tiredness of it all...that sense of progressively targeting people and driving more and more people into prison...There is something more ephemeral in the waters...the zeitgeist and actually there has been a slight falling out of love with the whole thing... There has been something of a change in mentality and approach...I think there has been a deliberate attempt to reduce the number of young people in custody...the top level change in the penal mentalities of the moment and then at the bottom the numbers of people coming into the system.”*

(National participant 17, academic)

Similarly, *“an increasing awareness about the harm that detention causes”* (National participant 18, academic) started to emerge and change the position of policy makers and practitioners towards reducing custody numbers and achieving a more *“child friendly”* youth justice system. The posited *“top level change in penal mentalities”* was

charted by some of the sample, and suggests that there were a number of subtle policy “milestones” which shifted youth justice policy towards a supposedly “more child friendly” approach. Participant 7 explained that whilst New Labour’s youth justice policies initially were extremely “tough”, they became more “nuanced” over time with the implementation of some child-focused policies. The appointment of the first Children’s Minister and creation of *Every Child Matters* in 2002 set in motion a drive for government to consider their responsibilities towards disadvantaged children. The joint sponsorship of the YJB by the Ministry of Justice and the Department for Children, Schools and Families in May 2007 was said to have significantly created a more child-friendly approach:

6.19 *“Then moving forward in 2007...the YJB would be jointly sponsored by the Ministry of Justice and by the Department for Children's Schools and Families, which you know the incoming government has torn up. That was very significant. I remember during my period of sitting between those two departments was that you would be pulled in two different directions. There was an occasion where I was asked very clearly by political advisers in the Children, Schools and Families Ministry to provide them with information for a row they wanted to have with the Ministry of Justice, which was definitely about having a more child-friendly approach on certain policies within youth justice.”*

(National participant 7, former senior civil servant)

Participant 7 explained that the Youth Crime Action Plan in 2008 was an important policy development as it allowed the YJB to focus resources towards diversion:

6.20 *So that I think all culminates in the Youth Crime Action plan which, while there is lots of tough rhetoric about responsibility and accountability and those sorts of things, nevertheless it was also putting money into things which were much more child friendly...Frances Done [former Chair of the YJB] was very clear about Children First and we were also very clear with our memory of the 1980s and what could be done. And we wanted to shift government towards decarceration in particular and the things that were needed around that and we had a particular approach about how you might do that which is about building alliances...How we work with YOTs. So we were not dictating. We were trying to get much more alongside and work on the basis for developing a consensus of what we were trying to do...Not a perfect thing, flawed in many ways and*

still with a balance within it between punitive and a penal approach and a child-friendly approach. But nevertheless...have continued to drive the reductions”.

(National participant 7, former senior civil servant)

Similarly, Allen’s (2011) refers to “behind the scenes” changes and manoeuvrings. Souhami’s (2015b) study of the YJB also noted individuals at the YJB were able to manoeuvre policy and the debate towards issues of child welfare and “best interests” and make “behind the scenes changes” (Souhami *et al.*, 2012: 38).

THE IMPORTANCE OF INDIVIDUAL LEADERSHIP IN CHANGING PENAL CULTURE

The influence of leadership at a national level on achieving penal reduction was a dominant theme within the data. Leadership styles at the YJB were said to be significantly influential regarding diversion, decarceration and a movement towards what some of the sample called a more “*child-friendly*” youth justice system. The influence of key individuals was prevalent in the data, namely Frances Done and John Drew at the YJB, Ian McPherson in the ACPO and John Bache, Deputy Chairman of the Magistrates Association.

Frances Done and John Drew: the “dream team”

The importance of Frances Done, Chair of the YJB (February 2008 to February 2014), setting a child-centred and decarcerative tone to policy was discussed at length by a large proportion of the expert sample. Similarly, John Drew, Chief Executive of the YJB (January 2009 to March 2013) was also perceived to be significant in helping to achieve penal reduction and a more moderate youth justice system:

6.21 *“That [2004] report was by far the most influential Audit Commission study of its era I think. She used it a lot in order to, in a sense, guide her when she moved into her new job as the Chair of the YJB...I think a lot of things, which were in that report then influenced what happened in the YJB over the next couple of years. I actually think she made a lot of changes that one would not have anticipated. Changes that led to fewer numbers of young people in the youth justice system and most importantly of all, fewer numbers of young people in custody... I have to say this was a deliberate policy of the YJB to*

reduce FTEs. It did not just happen. It was unexpected politically but it was a deliberate policy of the YJB under Frances Done's leadership. She wrote to every YOT in the country and every Magistrate's court. I think there is no doubt that those targets had some influence."

(National participant 8, former senior civil servant)

6.22 *"I thank John Drew. He was very determined to succeed I think."*

(National participant 14, former senior civil servant)

6.23 *"And then John Drew was appointed as they were specifically looking for someone who came from local government and had a youth justice background...So it was the first time that they appointed someone with a youth justice background. Frances, our Chair did not have that background. She is an accountant, but she knew there was a background to be had and she was looking for someone to bring that in. It is just my repeated experience that if you get to a position of some authority and you put up a flag that says this is what we believe in all sorts of people elsewhere in the organisation begin to lift their heads and say I do too. And actually what we found was much greater, I wouldn't say consensus, but there was more, more force. There was no hegemony but it wasn't far off that."*

(National participant 7, former senior civil servant)

6.24 *"But certainly the new Chief Executive is not a John Drew. They were actually a bit of dream team him and Frances [Done]. They created a culture, interestingly enough, which sort of went down to YOTs that you are not going to get brownie points by being super punitive. We are looking for evidence from you really that you are innovative and child-centred and that is what we want from you...I think [those ideas and personality] does filter down because if you were a newly qualified worker...when I was first a social worker I did not have a clue what I was doing. Not the first idea and I learned from the people around me what a good piece of work looks like. This is our ethos you just sort of absorb it, don't you"?*

(National participant 3, independent consultant)

It was suggested that Frances Done and John Drew's leadership set a new policy and practice culture within which child-centred work was called for. The significance of

national leadership was also deemed important to shaping local penal practice and cultures.

Souhami's (2011, 2015a, 2015b) ethnography of the workings of the YJB also found evidence of the importance of individuals at the YJB in policy formation and its direction. She suggests that post – 2006 the YJB's relationship had become more tenuous and less entwined with central government, allowing policy to be driven and developed, to a certain extent, by policy elites at the YJB. Rock's (2004:69) research into policy making in the Home Office during the early New Labour governments also found that the direction of policy and initiatives was heavily influenced and shaped not only by the personalities, drive and leadership of individual ministers but also often by key officials. However, Souhami (2015a: 3) suggests that the YJB's positioning as a quasi-autonomous non-departmental body at arms length from a ministerial department

“enabled decision-making produced by [Youth Justice Board] officials to be structured according to emergent values and objectives unconnected to ministerial outcomes, and, on occasion, consciously in opposition to them” (Souhami, 2015a: 3).

Chief Constable Ian McPherson and John Bache JP

Many of the expert participants suggested that the leadership of key individuals within and alliances between the Association of Chief Police Officers, John Bache, Deputy Chairman of the Magistrates Association and the YJB were central in achieving a diversionary and decriminalising approach in youth justice from 2008 onwards:

6.25 *“Our [YJB] principal alliances were with ACPO...They had a family and children's commander...Ian McPherson...and he and most chief constables were very strongly of the view that criminalisation wasn't the way to go with children...They were enthusiastic about...how we could push back some of the over- rigorous regulation in pre-court disposals.”*

(National participant 7, former senior civil servant)

6.26 *“A leading member of the magistracy is John Bache, you will see John being quoted...about dealing with children as children first and offenders second. Now where you have very strong personalities within the Magistracy who give that as a lead you're likely to see that as outcomes in sentencing locally.”*

(National participant 20, YOT head of service)

The data suggests that individual leadership in the police and magistracy with a focus on diversion has been a central contributory factor to policy changes leading to penal reduction since 2008. Schein (2004) considers that leadership is strongly related to the creation of macro and micro cultures amongst workers. Leaders use a number of mechanisms to embed and reinforce new cultures in an organisation including: what issues leaders pay attention to, measure and control regularly; how leaders allocate resources; how leaders allocate rewards and status; deliberate role modelling; how leaders initiate organization systems and procedures; and how leaders use formal statements of philosophy, goals and targets. These leadership mechanisms for engendering change in policy and organisational culture, coupled with Souhami's (2011, 2015a, 2015b) findings, signal the significance of the leadership of the YJB, Police, Magistrates Association with regard to developing penal downsizing.

DE-POLITICIZATION: ACHIEVING CHANGE UNDER THE “RADAR”

A major theme within the expert interview data was the notion that youth crime has been taken off the political agenda allowing for penal reduction and a more parsimonious, nuanced or “*child-friendly*” youth justice policy to develop. Participants suggested that youth crime has not been on the “horizon” from all political parties and the strategy has been to “*say nothing*” (National participant 14, former senior civil servant):

6.27 *“The heat went right out of it and it is so interesting. It was interesting that in the general election last time round [2010] crime did not feature very much. It did not feature”.*

(National participant 12, academic)

6.28 *“Tough when they want to appear tough. But a lot of the time 'lets just not talk about all this very much' and when they stop talking about it, and I think this is a good lesson for penal policy which is the more you can get politicians to stop talking about that stuff the better off we all are really particularly in the current model because when they talk they feel the need to present themselves in a particular way. ”*

(National participant 17, academic)

6.29 *“Crime and justice doesn’t seem to have the same political currency any more...I just think if you take a look at what’s in the newspapers now it feels very different.”*

(National participant 10, academic)

The cooling of political attention even applied to governmental responses to serious cases and participants drew attention to the Edlington case in 2009, involving two young brothers robbing and seriously assaulting two boys (see Walker and Wainwright 2010), as a potential flashpoint:

6.30 *“So there has been some sort of shift since the day when John Major said ‘we must condemn a little more and understand a little less’. So I think in [David] Cameron's time there has been the very close murder of two young men who were tortured by two other boys and it was particularly Cameron, who can be very condemnatory, wasn’t. It did not take us anywhere near the Norwegian response to a child murder by a child, but it took us closer to the idea that it is not enough just to condemn somebody, you have to try and understand why it has happened. It feels that way.”*

(National participant 9, senior officer of NGO)

Similarly, there have been several serious cases involving child violence since 2008 (see: Jones 2010; Pidd, 2014, 2015; Parveen 2016), however the political response has been restrained and managed down by government. This data illustrates how the issue of youth crime became less politically prominent in the years leading up to the 2010 general election. This allowed policy and practice to be rolled out *“under the radar.”* The Coalition Government employed a strategy of appearing tough when they desired to be, but at the same time making a deliberate effort not to make it a primary issue and to allow more pragmatic policies to be implemented. The YJB had to play politics and downplay reductions in the number of FTEs and children in custody to avoid penal populist reactions. Penal parsimony can only be achieved in the shadows without full public and political knowledge:

6.31 *“I think the second thing the YJB have been very successful at is managing the national politics around it. So actually, given that we have been in a climate where the political gut reaction has kind of been lock 'em up kind of stuff you might argue, so to have got the numbers down has been really tricky...I think it has been significant that the YJB haven’t been trumpeting this as a great*

triumph or whatever and I think they have been very wise to do that. So I think it has been below the radar. They haven't made a big fuss about it. They have just quietly just gone and dealt with it. So I think they have managed the national politics of it very well actually.”

(National participant 15, former senior civil servant)

Participants discussed how the Coalition Government set three high level targets for the youth justice system, which were highly significant. The Coalition Government's Breaking the Cycle (2010) report set out three key outcomes for YOTs including: “reducing the number of first time entrants to the youth justice system; reducing reoffending; and reducing custody numbers” (Ministry of Justice 2010c: para 263). Participant 16 suggests that the use of language around the use of “first time entrants” instead of diversion is significant:

6.32 *“I think there is quite a lot of tension. On the one hand you have got the Coalition Government having adopted the first time entrance measures as one of the three high level outcomes for youth justice and in some ways you could see that as a bit of a surprise because under New Labour it was one of a myriad set of indicators and targets. It is now one of three and one of the other ones is reduction of custody, which had been abandoned pretty much by the YJB previously. So there is that kind of commitment, but at the same time there is a discourse, which is quite prominent, about the inappropriate use of cautioning and so far what the government appears to have been able to have carried off is a fairly nifty tight-rope act by saying when we talk about the inappropriate use of cautioning we mean adults which is perhaps why they keep on talking about FTEs because it is a different language rather than saying we need to increase diversion and things like that”.*

(National participant 16, academic)

Another example participants provided of changes being made towards more moderate penal policy was said to be the extension of “looked after” status to children on penal remand under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO):

6.33 *“The Coalition have been very quiet but they have made a lot of changes. They have brought in changes which, some of which, are really [moderate]...like extending looked after status to kids on remand for example.”*

(National participant 10, academic)

However some participants suggested that the London “riots” in 2011 were said to have reignited attention on youth crime and suggested it started to become repoliticised with the government and the police wishing to disproportionately blame young people. However, it was suggested by some participants that the YJB had been active in managing the politics around the high profile event by releasing information that the young people involved were vulnerable children often with learning needs:

6.34 *“David Cameron said something rather unwise early on that the riots could have been blamed on 16 and 17 year olds. The YJB at the time had a calm and controlled thing going on. We had very good information about who was being arrested from the YOTs and we absolutely knew from the information on a daily basis that just was not accurate to say it was just 16 and 17 year olds. So behind the scenes we did a lot of work to say to people [politicians] this is not borne out by the statistics. That includes the Metropolitan Police who were very keen to blame teenagers for it so we did our best to defuse the situation. A colleague of mine had an extremely bright eyed idea which was just when it was six weeks on...we were about to publish the first detailed break down of the children and young adults arrested en masse. We were looking at the raw data and the raw data was showing hugely disproportionately we were talking about black and minority ethnic young people, which they would be given where the crimes were committed etc. etc. He said I wonder if we go to the Department for Education and cross-reference these names with any records. I thought that wouldn't work. I thought they wouldn't have that level of detail. But it was possible and so we managed to change the story that would have been about black and minority youths, to kids with learning disabilities and educational disadvantage. We changed the debate.”*

(National participant 7, former senior civil servant)

The disturbances and governmental punitive rhetoric did lead to harsher sentences for young people involved²⁰, however it did not lead to any wholesale changes to youth justice policy or any clamping down on wider non-riot related youth offending.

²⁰ The custody rate for riot-related offences was higher and the sentence length longer than comparable offences from the previous year (see Berman, 2011).

Policy changes towards more parsimonious and moderate intervention is an example of what Loader (2010) terms “moderation by stealth.” “Moderation by stealth” is a process in which government and policy makers avoid engagement with citizens, whose ideas about punishment may not fully correspond with those of a government promoting more moderate penal policies. Instead it strives to make gradual

“gains using strategies, and through institutions, that either disregard public sentiment, address the citizenry in a circumscribed manner, or set out to neutralize public opinion as a significant determining force in the field of punishment” (Loader, 2010: 361).

“Moderation by stealth” is operationalized through a number of strategies including the use of “decoy rhetoric” (Loader, 2010: 361). The YJB and government cloaking the drive for diversionary policy in technical language, or the government using tough rhetoric when needed, whilst at the same time making changes towards penal moderation behind the scenes on the advice of officials. The current depoliticized climate and cloaked moderation strategies are reminiscent of the 1980s in which the then Thatcher Conservative government at times used punitive rhetoric regarding youth crime, whilst at the same time instituting changes which reduced the youth custody population and the number of children entering the youth justice system through high rates of cautioning, amongst other things (Pitts, 2003).

ECONOMICS, AUSTERITY AND THE CONTRACTION OF THE PENAL STATE

Justice on the cheap

Another prominent theme found within the data was the relationship between economic crisis and penal reduction. Economic conditions prompted by the global financial crisis in 2008 were considered to be a major influence on penal reduction and declines in the numbers of young people being drawn into the criminal justice system. In particular, it was felt that the diversionary measures adopted and the push towards decarceration was primarily driven by fiscal considerations:

6.35 *“It’s cheaper...[laughs]. I don’t think they [the government] want to talk about it too much because it looks like they are being soft. But it is actually what they are encouraging. It has to be because there are fewer police, they are closing more courts, the CPS is being strangled. So that is what you have to do. You*

have to push people out of the system in order to save money. Fantastic, wonderful, very pleasing, no problem, good...

(National participant 5, senior officer of NGO)

6.36 *“Crime and justice doesn’t seem to have the same political currency anymore. I think its been over taken by the recession, the economy.”*

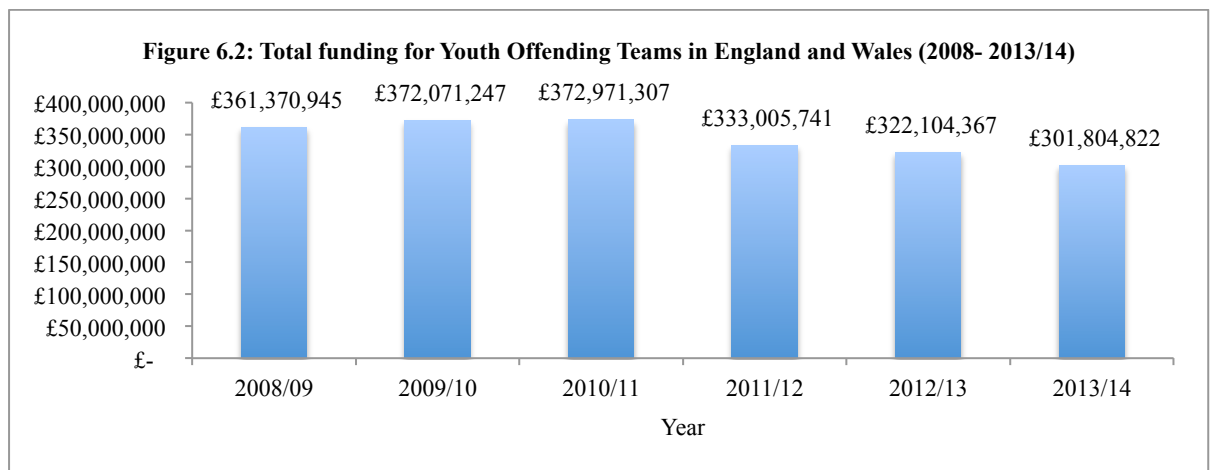
(National participant 10, academic)

This illustrates the belief that reductions in the numbers of young people coming into the system has been caused by the fact that varying key stakeholders cannot afford to maintain the same levels of intervention due to the economic recession. Diversionary measures are “*cheaper*” than intensive interventions and custody, and thus a large penal state is too expensive. The criminal justice system including the Probation Service, National Offender Management Service, Youth Offending Service, courts and prisons since 1998 under New Labour governments all received significant upward real terms investment and growth in a time of relative economic prosperity (Garside and Mills, 2011; Garside, 2012). Investment in policing from 1998 to 2008 received nearly a 50 per cent increase in funding from £7.72 to £14.55 billion (Mills *et al.*, 2010). This investment drastically “enhanced the scale and reach” of criminal justice (Garside, 2012). In the run up to the to the general election of 2010 crime and criminal justice was not such a prominent issue as past elections, but analysis indicates that it was still a feature in all the party political manifestos (Roberts and Silvesti, 2012). The Conservative Party manifesto promised to “increase capacity” in the secure estate as necessary to prevent the early release of prisoners due to over-crowding under Labour (Conservative Party, 2010), whilst the Liberal Democrats were against a prison building programme (Roberts and Silvesti, 2012).

However, the global recession prompted Western states to reassess what could be achieved under austerity (Garside, 2012). In May 2010 the Coalition Government asserted that managing the economic crisis and national debt was their main priority (Garside and Mills, 2011; Garside, 2012) and swiftly released the Comprehensive Spending Review in October 2010. The latter called for a £1.6 billion reduction to the Ministry of Justice budget by 2014/15 through “reforming sentencing to stem the unsustainable rise in the prison population” (HM Treasury, 2010: 55). An about-turn from the Conservative manifesto pledge. Similarly, the police faced a break from the fiscal past as Her Majesty’s Inspectorate of Constabulary in 2010 proclaimed the police in England and Wales had become a service “geared towards growth, not austerity”

(Garside and Mills, 2011: 8). As such the spending review called for a 14 per cent real terms reduction to the policing budget by 2014/15 amounting to £1.2 billion (HM Treasury, 2010).

The YOT national budget shrunk by £71,166,485 between 2010 and 2014/15 (see Figure 6.2). The government position on use of custody for children and young people appeared to be substantially based on fiscal considerations. The Breaking the Cycle report (2010b: para 240) asserts that prison is an “expensive option that does not deliver good outcomes for young people”. Such budget cuts have resulted in significant reductions in national staffing levels across YOTs. Table 6.1 shows that the number of staff contracts, including permanent workers, sessional staff, trainees and volunteers, across England and Wales fell from 19,704 in 2009/10 to 9,201 in 2013/14, a 51.73 per cent reduction.



Source: data derived from Ministry of Justice (2015d)

Table 6.1: National staffing levels by contract within Youth Offending Teams in England and Wales (2008-2013/14)

Contract type	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Managers, practitioners and admin staff within YOTs	10,114	10,421	10,222	8,567	8,116	7,683
Sessional staff, students/trainees and volunteers within YOTs	8,949	9,283	8,647	7,388	1,641	1,518
Total	19,063	19,704	18,869	15,955	9,756	9,201

Source: Data derived from Ministry of Justice 2015d

National participant 8 said there was a deliberate attempt by political parties, post 2010 and in era of austerity, not to make crime and criminal justice a political issue and agreed to place a “*moratorium*” on the topic of criminal justice as it was “*too expensive*” to start another bidding war to appear the toughest on crime:

6.37 *“I think another thing which happened...which happened in 2010 with the new government was that, which I understand I don’t think this is public knowledge. I understand that there were some discussions between the political parties about whether it would be sensible to essentially place a moratorium on the ‘arms race’ on the grounds that it was expensive...And the reason it did not happen was because of the riots in 2011. That changed everything. At that point the government had no choice but to go back to the doctrine of being tough. But nevertheless with the exception of the sentencing of those young people caught up in the riots, I think the overall trend towards being less tough on young people caught up in the youth justice system was sustained.”*

(National participant 8, former senior civil servant)

Altered governance: reshaping youth justice

Another dominant theme within the data was the notion that economic austerity within youth justice services has not only been a primary driver for penal reduction it has also altered modes of governance at a national and local level. New Labour on coming to power in 1997, with its modernization agenda and aim to overhaul the system, was said to have wholeheartedly embraced and later “institutionalised” managerialism (McLaughlin *et al.*, 2001: 313). Fergusson (2007) asserts the functioning and governance of the YJB with its highly bureaucratized forms, target-setting through prescriptive national standards, strict monitoring of YOTs through analysis and inspection of quarterly statistical returns of workload data epitomise managerialism. Strict standardised assessment procedures and prescribed interventions for specific offences highlight the highly managerial style of governance over workers (McLaughlin *et al.*, 2001; Sutherland, 2009). However, a theme within the data suggests that as a consequence of cuts to youth justice budgets, the YJB and government’s direct managerialist control has diminished and been replaced with a subtler form of governance:

6.38 *“But in that period [from 1997 onwards] it was largely felt that a Minister could tell a practitioner what to do on a day-to-day basis. There was an intimate connection. But the current government following the financial crisis...immediately realised that if you tell people what to do you have to provide the money to do it and if you don’t you are going to get hung out to dry politically...But it has come to an end all of a sudden because of the financial crisis. And governments can no longer tell people what to do because they haven’t got the money to pay them to do it. So we have gone from a situation in which there was massive central control to massive local discretion...And...You know what ministers now talk about is achieving certain outcomes...It’s no longer about central control its about central direction settings and target setting, outcome setting and tying budgets to that. And that changes the whole nature of the debate...I attended a meeting with two representatives from the Home Office...I think it was to do with reducing remands in custody or something and...a practitioner manager said ‘how are we supposed to do this?’ [And the Home Office representative said] ‘we are not allowed to say anything about how you do it. How you do it has now got to be entirely up to you’, which is the complete reverse of managerialism, because managerialism would specify absolutely everything that you would have to do. So there is a sense in which the global financial crisis has changed the nature of politics and the political control of the country and the organs of the state.”*

(National participant 11, academic)

6.39 *“So the YJB have significantly shrunk so they can only do what they can do. They cannot do everything they used to do and hold that sort of big brother view over each single individual and each YOT. They cannot get out there and interrogate the data like they used to, you know like the inspection regime like it used to be. So they have to push things out to enable local areas to be able to have a sort of a continuous improvement plan approach and pushing it over to sector led improvement. That is what they are calling it. Where we have YOT managers, where they are trained to be peer reviewers and will go out and peer review another YOT and then provide a report and insight into what they could be doing and stuff like that rather than YJB consultants coming in or inspectorate coming in. So what has happened is that because they have shrunk they have had to push a lot of the work out...I think there is a push around cutting your cloth according to the resources that you have and a significant proportion of that is ‘we [YJB] can’t do what we used to do. We used to be x*

amount of hundred and now we are few, so we are going to hand it over to you.’’

(National participant 1, YOT head of service)

A shrinking pool of economic and human resources (since 2009 the YJB has cut half of its workforce (Bateman, 2013)) appears to have altered the form and reach of governance. As a result of the “*YJB having its wings clipped, to such an extent, it can no longer fly*” (National participant 20, YOT head of service), the government and the YJB have difficulty in maintaining such strict monitoring of YOT activity but instead they have had to ask YOTs to peer review and self manage to some extent. This represents a break from the past if one looks at Briggs’ (2013) research findings relating to YOT practitioners feelings of subordination under YJB monitoring and control. The strictures have been loosened and government is less interested in how targets are achieved. A movement away from managerialism to “managerialism light” perhaps, or certainly a system with increased latitude. This change in governmental tone can also be witnessed in policy. The Breaking the Cycle (2010) report asserted the government wished to increase the

“freedoms and flexibilities for local areas...and put our trust in the professionals who are working with young people on the ground” (Ministry of Justice, 2010c: para 240-241).

Economic austerity and cuts to youth justice services have not only altered lines of control from the national to the local but locally YOTs’ powers, reach and responsibilities have also been altered and reduced or subsumed under wider local authority children’s services. Several participants indicated that the traditional role and make up of the YOT was diminishing in many areas since austerity measures were instigated. The demise of the traditional YOT was contended by some:

6.40 *“One of my concerns about Heads of Services’ of YOTs is that they have been downgraded collectively, in essence, into someone no more than a team manager who is accountable to directors of children’s services, not as independent arbiters of multi-agency partnerships with a view of youth justice but to someone who’s making sure that the local authorities expenditure has not been expended in a particular year...I think there has been a contracting of the role...So there has been a change in structure and governance of YOTs. Some local authorities have gone smaller in terms of youth justice but maybe*

bigger in terms of youth services. Directors are responsible for youth services, children's services and now have taken over YOT services which has resulted in the YOTs remit being very small indeed."

(National participant 20, YOT head of service)

It seems there has been a contraction of the central penal state, which has allowed, to some extent, a contraction and change in shape of the penal state locally creating considerable sub-national variation.

CONCLUSION

The data obtained from the interviews with the national expert sample suggest that the drivers of penal expansion and reduction are varied, diverse and multifaceted. A number of dominant themes were found. The politicisation of youth crime and youth justice policy was said to have been a primary driver of increased punitivity and penal expansion. The two main parties entered into a political "*arms race*" as to who could be the toughest, which resulted in a movement away from decriminalization, decarceration and diversion in the early to mid 1990s. A focus on punishment by politicians and subsequent policy was said to have been a primary driver for penal expansion. But crucially a major component of penal expansion between 1990 and 2008 relied on government and a number of key actors "*misreading*" or neglecting to adhere to what the evidence says about effective intervention with young people in conflict with the law. Minimum and diversionary intervention was replaced with a system, which relied on formalization, criminalising interventions and targets, such as limiting the use of cautions, and setting police sanction detection goals. An over-reliance on the use of prison occurred as policy and national frameworks asserted that it was an effective measure of intervention.

Regarding the drivers of penal reduction since 2008 it was said that there had been a number of both implicit ("under the radar") and explicit (major policy statements), which focussed on the operation of a more pragmatic youth justice system with diversion and decarceration at its heart. This movement occurred due to a change in the "*penal zeitgeist*" and tiredness with punitivity at a macro level. Key individuals and personalities have been central to achieving this cultural, political and policy shift towards decarceration and diversion "under the radar". Many participants reported that penal reduction has only been able to take place because of the process of depoliticization. At the same time the expert sample felt a significant factor for penal

reduction has been the global financial crash, limiting government expenditure, making it difficult for the state to afford the upkeep of an extensive and pervasive youth justice system. Diversion and decarceration is more fitting with economic austerity. When New Labour came to power in 1997 the penal state received significant investment producing an increase in adult and child prison rates. Severe cuts to criminal justice services have occurred since 2010 and have led to a contraction of the youth penal state, which in turn has contributed penal reduction. Austerity measures have altered the lines of governance between the national and the local. There has been a movement away from New Labour's strict top down managerialist youth justice structures to increased local discretion and latitude resulting in increased variation in YOTs' structures, responsibilities and, in many cases, a reduction in the role and power of YOT services at local government level.

The interview data coupled with national statistics demonstrates a change in the way children who fall foul of the law are governed; from a system of formalized punitive intervention to more informal measures. Some participants suggested that there has been a movement towards a more pragmatic youth justice system. However, this purported shift in penalty is also contested. Recent changes towards penal reduction are in no way certain, permanent or enduring and could revert back to penal expansion with numbers "*shooting up*"(National participant 18, academic) if youth crime became politicized again. Thus changes in penalty appear to be fragile and changeable. Some national experts contended that whilst the current diversionary turn and subsequent penal reduction are positive, while penal custody, as we know it, remains the ultimate sanction for children in trouble with the law, punitivity still remains at the heart of the youth penalty in England and Wales:

6.41 *"I think [the youth justice system] has probably always been punitive underneath fundamentally...If you have juvenile justice and you have a court-based system and you have custody as a potential outcome, there is a punitive strand that always goes through it."*

(National participant 12, academic)

CHAPTER SEVEN

THE SPATIAL NATURE OF YOUTH PENALTY: THE INFLUENCE OF LOCAL PENAL CULTURES

INTRODUCTION

This chapter explores the spatial nature of youth penalty and provides a local level analysis of the factors associated with justice by geography. As discussed in Chapter Four national sentencing data reveals significant variation in custody use across YOT areas in England and Wales (Goldson and Hughes, 2010) and such variation is mirrored in the selection of research sites. Despite the six research sites being matched on socioeconomic and demographic characteristics, including recorded crime rates, they appear to produce distinctive and different sentencing outcomes (see Chapter Five). How is this to be explained? Youth justice law and policy is determined at a national level, yet delivered by 157 YOTs. Each of the six YOTs, or youth justice areas, selected as sample sites represent distinct units of local organisation and it is the influence of the “local” that is of concern for this chapter. Using interview data obtained from YOT practitioners, Crown Prosecution Service officers, magistrates and district judges from across the six sites, local practice culture, values, principles, perceptions, systems and processes will be explored in relation to their influence on sentencing practices and, more specifically, the use of custodial disposals for children and young people.

The interview data suggests that numerous factors and forces influence differential sentencing at a local level. Differences in local penal cultures, including practitioner values and principles, across the six sites appear to be significant in shaping sentencing outcomes. Variation in local systems, for example around the use of pre-court measures, impact upon the use of penal custody also. Whilst, the data indicates the dominance and significance of local cultures, systems and practices that might give rise to higher or lower use of penal custody, it also suggests that these factors are not evenly distributed or applied across each site, revealing the inherent “messiness” (Goldson, 2014) of youth penalty.

LOCAL PRACTICE CULTURE, ETHOS, VALUES AND PRINCIPLES

A dominant theme to emerge from the data was the significance of local practice culture amongst practitioners, including: ways of working; perceptions of the working environment; philosophies or professional ethos. Organisation theories are founded on the assumption that the organisation has an agreed “objective”, or something that it is “for”, but such conceptions are problematic when thinking about the development of youth justice agencies (Eadie and Canton, 2002). Through their evolution and development youth justice services have claimed, acquired, or had thrust upon them, competing tasks and responsibilities that might unsettle their sense of function (Eadie and Canton, 2002) and be subject to constant change (Hendrick, 2006). Youth justice policy is complex, diverse and disparate and is difficult to conceptualise it by appealing to any one policy rationale (Fergusson, 2007; Goldson and Muncie, 2006; and Smith, 2005, 2006a). Welfare, decriminalisation, decarceration, justice, rights, responsabilization and punishment are all apparent (Smith, 2005, 2006a; Goldson and Muncie, 2006; Fergusson, 2007) (see Chapters Three and Four). The Crime and Disorder Act 1998 by introducing multi-agency YOTs is said to have cemented further the conflicted nature and remit of youth justice with the coming together of several organisations and professions each with distinctive organisational remits, values and functions (Eadie and Canton, 2002). Whilst youth justice is governed nationally through national laws, policies and directives, it is also conducted and organised at a local level by YOTs. Each YOT area represents a separate unit with its own culture, norms and practices or organisational culture.

Analyses of youth justice have often failed to attend suitably to the organisational realities of the implementation of policy into practice (Eadie and Canton, 2002). Organisational and occupational cultures are influential in influencing and mediating the relationship between policy and practice (ibid). Therefore it is vital to consider what is meant by “culture”, which has long been contested within sociology and anthropology (Williams, 1983; Hall *et al.*, 2003). Geertz’s (1973) “idealist” conception (Hall *et al.*, 2003: 7) is helpful:

“an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men [sic] communicate, perpetuate, and develop their knowledge about attitudes towards life” (Geertz, 1973: 89).

Although there is no consensus about a definition for culture, many agree that it is historically and socially constructed, holistic, pervasive and can endure over time (Bloor and Dawson, 1994). Bloor and Dawson (1994: 276) define organisational culture as a:

“patterned system of perceptions, meanings and beliefs about the organization which facilitates sense-making amongst a group of people sharing common experiences and guides individual behaviour at work”.

Eadie and Canton (2002:15), specifically in relation to youth justice practice, describe occupational culture as professional and historical traditions including “training, values and practice wisdom” which is “neither intractable nor infallible, but is grounded in the requirements of the job.”

The locally generated data suggests that local organisational culture – including how practitioners perceive their role, local practice and perceptions of their local environment – can produce differential outcomes. Unsurprisingly local practice culture appeared to reflect a “melting pot” (Fergusson, 2007) of philosophies and practices and was evident across all six sites. Each site’s practice culture and ethos was multifaceted and similar cultures and philosophies were not necessarily mirrored across all of the *Lowertown* or *Hightown* sites, nor were they uniform. Yet some practice philosophies appeared more dominant than others in their influence over higher or lower use of custody. The data suggests that the *Lowertown* sites tended to have practice cultures leaning more towards welfarism, decarceration, diversion, children’s rights, evidence-based practice and perceptions of their areas as having low crime rates, compared to the *Hightown* sites which tended to focus more on crime based offender management, victims’ rights, anxiety towards the increased use of diversion and perceptions of high crime in their areas. In what follows the varying practice cultures found within the research sites will be delineated making note of the similarities and differences between the *Lowertown* and *Hightown* sites.

WELFARE AND DECARCERATION

Practitioners and magistrates across all sites stated that they recognised the importance of considering the welfare of the young people known to their service and some made reference to the welfare principle as laid out in the Children and Young Persons Act 1933 and Children Act 1989. At least on a rhetorical or surface level many participants said they believed “*custody should always be used as a last resort*” and only reserved

for the most serious offenders (see Chapter Eight for further discussion of “last resort” principle). However, it was apparent that a distinct practice culture of working from a welfare perspective, coupled with a strong emphasis on decarceration, appeared to be more dominant within the *Lowertowns* than the *Highertowns*.

For example *Lowertown One* participants appeared to demonstrate a welfarist and decarcerative culture most clearly:

7.1 *“I suppose we are characterised by historically low custody rates. A welfare orientated perspective I would say, and that characterises itself by the staff being very committed to the welfare and needs of young people and prepared, on a kind of multi-agency basis but also in terms of our individual efforts, to go well beyond the line to give people the opportunities that they need...The beating heart for me is around [the idea that] young people can change.”*

(Participant 13, *Lowertown, One* YOT interventions manager)

7.2 *“We are very much a welfare-based YOT. Our previous YOT manager was welfare- oriented, welfare-based and fought fiercely that this YOT was like that even when the [national] trend was different and more punitive...That was always the agenda, that what we were dealing with was disadvantaged young people, who had a multitude of problems, who were very complex, who were probably children who had been failed in other systems along their life, and that is what we were dealing with, and yes they offend. Not – we are dealing with offenders.”*

(Participant 12, *Lowertown One* YOT court orders and remand manager)

7.3 *“Isn’t that the way it should be? The youth court is really an adjunct of the family court, rather than an adjunct of the magistrate’s court in truth because the principles that you are applying are more welfare principles than they are criminogenic principles in truth...”*

(Judicial participant 7, *Lowertown One* district judge)

Lowertown One practitioners showed an awareness of the “*historical*” and enduring nature of their working philosophy and described how they have fought “*fiercely*” over time to keep focused on the welfare of children even when the national climate was perceived to have become more punitive. The sentencers within *Lowertown One*’s youth court also appeared to operate within a welfare-orientated culture. Extract 7.3 highlights

the welfare focus within sentencing. It was also striking that all of the magistrates and the district judge in *Lowertown One* (the site with the lowest custody rates within the sample and very low rates nationally) were acutely aware of their custody figures, knowledgeable of their rates in comparison to the rest of the country and were “*proud*” (Judicial Participant 10, *Lowertown One* magistrate) of it.²¹

In contrast the majority of magistrates and district judges across the *Highertowns* were significantly less clear idea about what proportion of their sentences were custodial disposals:

7.4 *“I can’t tell you because, I have to say, I haven’t looked it up...I think probably perhaps less than some cities.”*
(Judicial participant 15, *Highertown One* magistrate)

7.5 *“It’s not something that I am aware of.”*
(Judicial participant 32, *Highertown Two* magistrate)

7.6 *“I haven’t got a clue, I have absolutely no idea.”*
(Judicial participant 22, *Highertown Three* magistrate)

Practitioners within *Lowertown Two* also appeared to conform to an organisational culture orientated towards welfare and decarceration. The YOT manager described the ethos and how he has attempted to craft a system based on diversion and prevention:

7.7 *“But as I say we try and put a lot of effort into diversion and prevention...I was asked in 1998 what my vision for the service would be, and I still believe this now, is that we should become increasingly diversionary. We should try and stop so many kids coming through the system and get to the root causes...You are sitting on a riverbank and a body floats down the river and you fish it out. And then another one comes and you fish that out and then another two and then another one. So do you stand there and carry on fishing out bodies? Or do you go up stream and find out what is going on?”*
(Participant 39, *Lowertown Two* YOT manager)

²¹ These findings are of note as Tarling (1979) and Acres’ (1987) studies exploring magistrate sentencing practice reveal that magistrates did not take much notice of what other courts’ sentencing practice in different localities.

Similarly, YOT practitioners expressed how it was their role to push for children to receive support and how they strove to keep children's welfare on the agenda:

7.8 *"I don't care if they have accepted that is what the system is like, I am not accepting that this is good enough for our young person...I am always saying to staff that if a young person is not getting the service from social care, from education, from the YOI, it is your job to make sure that it happens. It is not for you to make a referral to social care and then them to say it does not meet the criteria, or they are not accepting the case and you say okay that's fine. You have to come and tell me and then I'll decide whether it needs to be escalated...We have pushed so many cases forward through using that approach."*

(Participant 36, *Lowertown Two* community supervision manager)

Many *Lowertown Two* YOT practitioners talked about an adopted practice culture, which focused on welfare and a movement away from systems of "case management...[to]...being social workers with young people" (Participant 29, *Lowertown Two* YOT court team manager). Some YOT practitioners emphasised how they had adopted a "family systemic approach", which focused on engaging with and understanding the dynamics and problems within the family as a whole and offered holistic support to prevent offending rather than treating young people as individual offenders in isolation. Similarly, others suggested that they had adopted a "community" and relational focused approach rather than slavishly imposing managerial offending programmes and statutory orders:

7.9 *"Essentially it is more to do with what is being offered in the community. That is more important for me as, how relevant are we making it for the young person, those are more key, as oppose to what orders young people are on. It's about the worker, how they use resources, engage resources, rather than the individual order...We shouldn't be sending young people to prison or such institutions. I know there are some young people that need to be supported in a secure environment because of their own personal safety. But on the whole that should be a rare occurrence. But if we can support young people in the community I would prefer and advise towards that."*

(Participant 37, *Lowertown Two* pre-court manager)

These findings echo Burnett and Appleton's (2004) study which found that YOT workers in one locality were attempting to work from a traditional social work ethos, which they felt was at odds with the Crime and Disorder Act 1998.

A strong organisational culture of welfare and decarceration was equally found in the *Lowertown Three* data also. Participants described how legal and policy changes during the 1990s tipped the balance of their work away from welfare and decarceration towards early interventions with a clear criminal justice focus. However, over recent years the majority of practitioners considered that they had been able to refocus on ideas of diversion and decriminalisation. The following extract is an example of this belief:

7.10 *“If you can keep young people out of the criminal justice system the better...The way we work with young people has changed, possibly because we now, we are not as court orientated. I think we are more young person orientated than we used to be. We tried to be young person orientated, but because the system was such as it was then, we couldn't change, but now the system has changed...I have always been a great believer in working with young people in the community. Locking them up doesn't do anything as far as I'm concerned.”*

(Participant 2, *Lowertown Three* YOT court manager)

These findings of welfarist and decarcerative practice cultures being created by practitioners are supported by Kelly and Armitage (2014), Briggs, (2013) and Souhami's (2007) studies which also found that some YOT practitioners, felt they were practicing from a welfare perspective in their YOTs resisting and subverting changes in practice culture, particularly brought about by New Labour, which attempted to focus practice towards increased punishment, risk management, adultification and zero tolerance strategies (see Chapter Eight for discussion of discretionary practice).

A CHILDREN'S RIGHTS BASED APPROACH

An interrelated and dominant theme found within the data for *Lowertown Three* was the notion of an explicit rights based practice culture based on the principles of the United Nations' Convention of the Rights of the Child (UNCRC) which was said to be the foundation philosophy to all of their work. *Lowertown Three* and *Hightown Three's* YOTs are located within Wales. Key aspects of youth justice policy in Wales are devolved to the Welsh Assembly and the YJB of Wales. The Welsh Assembly's Children and Young People: Rights to Action (2004a) report states that the devolved

government has adopted the UNCRC as the basis for all their policy and work with children. The All Wales Youth Offending Strategy (2004b) states that all youth justice interventions should be underpinned by the UNCRC and that young people should be treated as “children first and offenders second”. The principles of the UNCRC were evident in the practice of *Lowertown Three*. Extract 7.11, below, explores the idea of children’s rights for children who offend, but also how youth justice practitioners have responsibilities to honour and fulfil young people’s rights. Practitioners within *Lowertown Three* suggested that their role was to strike a balance between two objectives. Firstly to address offending behaviour, by ensuring young people take responsibility for their actions, as outlined by the Crime and Disorder Act 1998. Secondly, to ensure that young people’s rights to a “stake” in society, through education, sports and leisure, as outlined by the UNCRC, is also achieved. Similarly, a practice culture, which seeks to recognise the welfare, vulnerabilities and rights of children was said to be present:

7.11 *“We have to consider...at a policy level that we are dealing with children first and offenders second...with a significant responsibility relating to, not just criminal justice, but social justice as well...So in part at least what we have to do is consider when working with young people our function is set out as preventing offending, that’s the clear policy issue set out in the Crime and Disorder Act [1998] and it embraces everybody involved with young people. So the way of doing that we have to make sure that young people have a stake in the society in which they live. So we have to make sure they have the skills to exercise that stake. So the balance between the rights and responsibilities becomes not just about talking to young people about what they have done wrong, but also about enabling them to access their rights and entitlements to education, to support from professionals, to sports, culture, leisure activities. A whole range of things, which are built in as expectations through the UN Convention of the Rights of the Child, which, after all, we as a country have signed up to...So what we are looking for is a process which educates them, rather one which punishes them. That’s a very critical factor.”*

(Participant 3, *Lowertown Three* YOT manager)

Young people’s inclusion, “partnership” working, and opportunities to “have far more of a voice” (Participant 2, *Lowertown Three* YOT court manager) was important to participants:

7.12 *“It [UNCRC] is empowering. I think young people need to know about this and I don’t think they do. I think agencies are aware of the scope that we have under the UNCRC, but I don’t think the message is filtering through to young people...They [children at the YOT] were complaining ‘this is not fair, that’s not fair’ [being banned from the commercial shopping district]. So I remember speaking to the young people and saying ‘I don’t think that is right, you need to speak to the children’s commissioner directly’...We are huge on participation. You know part of this process is getting the young person to participate in anyway that is possible. It’s inclusive and we want them to participate...It’s about children’s rights.”*

(Participant 1, *Lowertown Three* YOT police officer)

Participants also described how the YOT had initiated a rights panel to investigate young people’s awareness of their rights under the UNCRC and secondly to promote young people’s understanding of their entitlement to universal rights and provision. Participants also pointed out that posters outlining the UNCRC were displayed in rooms of the YOT building.

Interestingly the majority of practitioners in *Highertown Three*, despite being in the same country as *Lowertown Three*, did not articulate the significance of a rights based approach or philosophy in anywhere near the same way. When asked directly about the impact of the UNCRC and championing a children’s rights based approach, many participants felt that it was limited in their day-to-day work:

7.13 *“I think in all honesty in practice it is less influential than the legislation and procedural and the organisational objectives of the state. It isn’t central enough. It is often more lip service in terms of criminal justice system and more so in relation to young people in general...Although, I would say young people in general get quite a difficult name. Even being a young person is a very difficult process let alone if the young person commits criminal offences. But I think [that the UNCRC] really in practice is secondary to the legislation and procedures and the need to be seen to be addressing youth crime.”*

(Participant 24, *Highertown Three* YOT post-court team manger)

So despite both *Lowertown Three* and *Highertown Three* sitting under national Welsh governance, which has a policy emphasis on the UNCRC, the data indicated that only practitioners in *Lowertown Three* had a clear culture of children’s rights embedded

within practice. This illustrates the difference between policy as rhetoric and policy as implementation (Fergusson, 2007). Whilst a focus on rights might be claimed at a policy level and distinct to Welsh youth justice (see Haines, 2009; Drakeford, 2010; Case and Haines, 2015) it being evident within all local practice culture and values is not so certain.

A RESEARCH BASED APPROACH

A practice culture based on a research led approach was particularly evident in two of the *Lowertown* sites. The *Lowertown One* data suggested that the use of research and formal links with the local university was key to practitioners' working. Participants talked about collaborating with the university to conduct research on the effectiveness of their interventions in reducing reoffending, and that these links were crucial in creating an evidence-based approach to practice:

7.14 *“So for example we have a formal partnership with Lowertown One University”*
(Participant 8, *Lowertown One* YOT court manager)

7.15 *“We do presentations to partners around evidence-based practice but using practice to evidence what we do...Good links with Lowertown One University, in terms of offenders and offending”*
(Participant 10, *Lowertown One* YOT manager)

7.16 *“Like if you look at something like triage we have had the local university looking at our figures and it was producing a re-offending rate within a year to 18 months of about half of what final warning periods were over the same period.”*
(Participant 13 *Lowertown One* YOT interventions manager)

In *Lowertown Three* a culture of applying research to inform practice was also strongly evident. There was a belief that a research led approach was essential as *“knowledge is power”*. Participants suggested that conducting research, with the local university and their *“resident researcher”* provided evidence of their effective working to gain funding for innovative practice pilots. YOT practitioners talked about strong research links with European criminal justice agencies and universities to inform their own practice from an international perspective. For example *Lowertown Three's* remand manager (participant

5 below) explained how they collected evidence to persuade local councillors to fund a local project to close the remand centres and increase community alternatives, such as remand foster carers:

7.17 *“Now the beauty of the way that we work is that knowledge is power and you can highlight where the issues are. If you research you can adjust your resources appropriately...But what I can say is this. It took me ages. We have been going since 1996 [on the remand management strategy], but it took me eight years before that to do the research to get the money.”*

(Participant 5, *Lowertown Three* YOT remand manager)

7.18 *“Our resident researcher does a lot around rights and advocacy and that sort of thing.”*

(Participant 6, *Lowertown Three* YOT pre-court manager)

7.19 *“I went to Finland, because we do quite a lot of European work as well. We have got a lot of European projects going on as well.”*

(Participant 3, *Lowertown Three* YOT manager)

Links with local universities and the use of research appeared to be used to validate and energise a welfare and decarceration philosophy in *Lowertown One* and *Lowertown Three*, thus cementing the organisational culture further into practice.

“CRIME BASED OFFENDER MANAGEMENT”

In contrast, *Highertown Two*'s practice culture appeared to be different to the *Lowertowns*. Unlike *Lowertown Two*, *Highertown Two*'s YOT sits within a local government framework of Community Safety and Offender Management Services rather than Children's Services, which appeared to alter practitioners' conceptions of their role and practice culture. Participant 34, the YOT manager, explains the significance of this positioning to their practice ethos:

7.20 *“The thing I would say here is that being part of the Community and Offender Management side is that you are far more up to speed with the impact of the victim and the community as a whole. YOSs who are just in children's services and just insular, are maybe almost too welfare based because they just see the young person in front of them, and as important as they think that is, they don't*

often see the impact. So my anti-social behaviour team, whose entire work comes off of complaints and fear from the community and public, see things from an entirely different perspective from the YOS. And the fact that they all sit out there together and work on the cases is really really useful...So when you are looking at court you are looking at being justice...but you do get an understanding of the need for justice more than just a sole welfare based sentencing...I think, I mean I probably would say this but, I feel it gives us a bit more of a balanced approach on enforcement.”

(Participant 34, *Highertown Two* YOT manager)

In *Highertown Two* a conceptual emphasis on the impact of young people’s offending was a central part of their work. This notion of seeking and achieving what the YOT manager refers to as “*justice*” was a common theme amongst many of the practitioners at the YOT. Ideas of achieving fairness for the community were central:

7.21 *“If they [children] are rearrested quite often I will have a chat with the police officer here and we will decide what is the best course of action...For example one young woman...We were asked if I could give her an out of court disposal. But given the case history, her type of offence etc. it was just not possible. You know, we could not do it. We could not justify it, it would not have been fair in terms of holding up justice.”*

(Participant 33, *Highertown Two* YOT practitioner)

Whilst participant 33 during the full interview talked of occasions when she had championed out of court disposals for other young people, her comments are indicative of an approach and rationale not based on ideas of welfare, decriminalisation or “growing out of crime” but rather a decision based on “*holding up justice*” for the community. This notion seemed to be an important element of her role as a youth justice worker and was a cultural theme expressed by many in *Highertown Two*. This is in stark contrast to *Lowertown Two*. These findings echo the work of Hughes and Edwards (2001) on how community safety partnerships vary depending on differences in regional professional culture and the implementation of policy.

VICTIMS’ RIGHTS

In contrast to the *Lowertowns* the *Highertown One* data suggested a dominant organisational culture, which privileged the role of the victim in many YOT

interventions. The majority of participants suggested that whilst preventing offending was a primary aim when working with young people, so too was representing victims' voices and needs in the process. Participants noted that they were following a "government driver" to ensure that "victims can make their voice heard...[as] the victim is very important" (Participant 17, *Highertown One* YOT police officer). The idea of "defending victims out there and defending the community" (Participant 15, *Highertown One* YOT court manager) against youth offending was a common trope in the data when discussing the aims of their work. The following extract is illustrative of the central role victims' rights played in the cultural identity of the court and YOT:

7.22 *"I think it's very important that we don't lose sight of the fact that, although these are only young people, they are committing crimes and there is a victim on the other side of all of this. And I think it is very important that victims are aware that the courts, when they sit, are as interested in them feeling validated as helping the young people...But not really to the expense of the victim. I think we really must not forget, in amongst all of this, there is always a victim at the back of it somewhere."*

(Juridical participant 15, *Highertown One* Magistrate)

Some participants in other sites considered the victims' perspective useful in helping young people think about their actions and thought about how young people might "repair harm" from a restorative approach. It was only in *Highertown One*, the site with the highest custody use, that participants often placed the role of the victim on the same level or sometimes higher than the young person's needs. Garland (2001), Simon (2007) and Walklate (2009) contend the rise of victims' rights and their privileged position are pivotal in the escalation of punitive, populist penal policies and the use of penal custody. The data suggests that a victim focus and higher use of custody are related.

CULTURES OF DIVERSION: THE USE OF PRE-COURT DISPOSALS

As discussed in Chapters Four and Six, under New Labour administrations local youth justice practice was strictly governed by the YJB, by applying top down directives and national standards for YOTs to adhere to in an attempt to create uniform practice and governance of children and young people in conflict with the law (Pitts, 2001a, 2001b; Eadie and Canton, 2002; Bateman, 2011). One such area was the use of diversion and pre-court interventions. Under the Crime and Disorder Act 1998 cautions were abolished and replaced with Reprimands, for a first offence, and then Final Warnings for a second

offence. For any subsequent offence a young person would have to appear in court as part of the “No More Excuses” agenda. Later, however, under the Youth Crime Action Plan (2008) a number of Triage pilot schemes were initiated, in which YOT officers were placed in Police custody suites to filter and divert out young people committing low level offending from formal prosecution (Department for Education, 2010). A low level offence is considered to be a level one or two as defined by the *ACPO Youth Offender Case Disposal Gravity Factor Matrix* (See: CPS, 2013; YJB, 2014b). The Coalition Government relaxed some areas of governance and championed decentralization, but retained local “compliance” to national standards (Drake *et al.*, 2014: 25). For example, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed the escalator or two strikes approach to cautioning by abolishing Final Warnings and Reprimands and replaced them with three out of court disposals administered by the police: the community resolution; youth caution; and youth conditional caution. The LASPO Act 2012 has, therefore, cemented further informal diversion measures, such as the use of Triage, Community Resolutions and cautions. The YJB have since issued guidance outlining how and when such disposals should be used (see YJB, 2014b). These interventions can be used a number of times before the matter is taken to court unlike previously (CPS, 2013; YJB, 2014b).

Despite such guidance and national policy the data suggested that there was considerable variation in organisational culture, practitioner values and attitudes, systems and processes in relation to diversion and the use of pre-court disposals between the *Lowertown* and *Hightown* sites.

Diversion and “growing out of crime”

The data suggested that the principle and practice of diversion was central to the organisational cultures in the *Lowertowns*. Participants suggested that diversion was a key element of their practice culture in *Lowertown One*. There appeared to be a strong culture of support as “*diverting young people...is the best thing*” (Participant 11, *Lowertown One*, Crown Prosecution Service) for most young people as it avoids bringing them into court meaning they “*won’t have a criminal record*” (Judicial participant 9, *Lowertown One* magistrate) and won’t hamper future life prospects.

Support amongst magistrates for adopting a culture of diversion was also apparent in *Lowertown Two*. A common belief was that it gives “*an opportunity for those that made a mistake to see the error of their ways*” without taking them to court (Judicial

participant 1, *Lowertown Two* magistrate). Further evidence of a decarceration and diversion focus is illustrated by participant 40, a YOT police officer, who describes the approach to charging decisions in relation to categorising offence seriousness at *Lowertown Two* compared to other districts:

7.23 *“When we did the other visits [to fellow YOTs] we just got the feeling that it was just a general difference in terms of the staff that they had and who was talking to who. I thought it was as simple as that actually. The member of staff that we liaise with here is of the basic opinion that kids will be kids and they will grow out of it end of story.”*

(Participant 40, *Lowertown Two* YOT police officer)

Similarly, a culture of maximising opportunities for diversion in *Lowertown Three* was apparent. Participants suggested that diversion allowed young people to have a second chance as offending was a part of the growing up process and a real passion from YOT managers and staff in the promotion of diversionary measures and their effectiveness was evident:

7.24 *“Speaking at length with YOT managers and others they say that they are very confident that the diversion isn’t just working, but it’s about everybody doing the right thing.”*

(Judicial participant 19, *Lowertown Three* magistrate)

7.25 *“I am really really behind it to be honest...We are all as teenagers capable of doing something wrong so why not say to them ‘take on board what you have done is wrong, but don’t let that ruin your life, get back on track and get straight back on track’ and in the most case that does work...I think everybody is behind it to be honest. Certainly the social workers up at the YOS they are 100 per cent behind it.”*

(Participant 7, *Lowertown Three* YOT police sergeant)

7.26 *“I feel we have evolved in the last 10 years. Our thinking has changed. [Police] supervisors are seeing that what we do works and it’s having an impact on detections and on statistics generally. Magistrates, due to the YOS manager spreading the word...about what we do, I think they are starting to take on board what we do and how not being as punitive, understanding that there are other options open to them...we have seen a decrease in youth offending”*

(Participant 1, *Lowertown Three* YOT police officer)

Questioning diversion: a culture of scepticism

In contrast to the *Lowertowns* a culture of scepticism, anxiety and concern towards the widespread use of diversion for some young people was evident amongst many practitioners and magistrates in the *Highertowns*. In the *Highertowns* a dominant theme in the data was the idea that post-2008 national policy trends for the increased use of diversion, through triage, was concerning as it allowed repeat offenders to “escape” justice and not address their offending behaviour. Many participants across the *Highertowns* supported and were committed to diversion for low level one off offences which were due to the “*exuberance of youth or part of growing up*” (Judicial participant 16, *Highertown One* magistrate), but at the same time many participants, particularly magistrates and district judges, expressed some concern about the principles of diversion, multiple cautions for repeat offences and the idea that young people will grow out of crime without some formal criminal justice intervention. Typical responses included:

7.27 “*You are sort of a bit appalled and we think ‘oh God this is the sixth or eighth time’ [to be diverted]. I do believe that plans are afoot to actually reduce the number that they can have now. I was told the other day...that they can have eight, it’s going down to two [cautions].*”

(Judicial participant 14, *Highertown One* magistrate)

7.28 “*The other thing that worries me...the term, first offender. Yes they are first offenders in so much as...it’s the first time they’ve been in court, but they’ve got several youth cautions, several warnings, several reprimands...So they’ve got no criminal record, they are not offenders, but they might have five or six run ins with the criminal justice system...I can’t justify this. But I do feel that a number of those have become hardened criminal mind types.*”

(Judicial participant 24, *Highertown Three* magistrate)

7.29 “*I would say, is that the view of most district judges, most magistrates certainly as well, is that, whilst I’m not applauding the bringing of youths into the criminal justice system, I do think that the diversionary system is probably too liberal.*”

(Judicial participant 25, *Highertown Three* district judge)

There was a dominant culture within *Highertowns* that the current approach to diversion was “*too liberal*” and allowed too many chances for young people. Many practitioners stated that they felt the government was pushing increased diversion in an attempt to save money and as such more serious offences were being “*shoehorned*” (Participant 24, *Highertown Three* YOT post-court team manager) into the diversion scheme by prosecutors, as it was cheaper and easier to do so.

YOT practitioners and magistrates routinely mentioned concern, “*surprise*” (Participant 25, *Highertown Three* YOT senior practitioner) and “*shock*” (Participant 21, *Highertown One* YOT senior practitioner) about the types of offences, particularly sexual offences receiving cautions:

7.30 “*But we were looking at very bold figures. Once somebody pointed out that somebody got a caution for rape and we were just all absolutely horrified.*”
(Judicial Participant 32, *Highertown Two* magistrate)

7.31 “*The next line read rape...diverted...and I said excuse me why was this done?*”
(Judicial participant 31, *Highertown Two* magistrate)

7.32 “*I don’t think it’s effective at all, I just think it’s a sticking plaster. One of the sex cases that I’ve just done, which was a particularly disturbing one, the boy had been touching up other boys in the school toilets...He was triaged whatever that means. It means that his parents were told where they could seek help, they didn’t, nothing happened about it and he’s gone [on] to seriously sexually assault an eight year old boy. So that’s triage for you. It’s all a bit limp...Very often when children are before us and they’ve had previous cautions or...they’ve been diverted. When we ask what happened, what has happened?...They will say ‘oh they came round once, asked us if we needed anything and we told them to bugger off’ and that seems to be, you know, the extent of it. So I am very worried.*”
(Judicial participant 11, *Highertown One* district judge)

A culture of mistrust and concern about the use of cautioning and pre-court disposals, the motivation for the use of triage and cautioning, the type and seriousness of offences being cautioned, the robustness of the disposal and the number of cautions administered to young people was significantly more evident in the *Highertowns*.

The use of pre-court disposals

This variation in culture and beliefs towards diversion was also reflected in the use/frequency of pre-court disposals across the six sites. Table 7.1 shows the proportion of all disposals that are pre-court for the six research sites over the period 2004 to 2012/2013. A pre-court disposal is classified as: Police Reprimand; Final Warning; and Conditional Caution. These figures exclude children and young people being “Triaged” as it is an informal measure and not uniformly recorded. Looking at Table 7.1, the *Lowertown* sites have a higher proportion of pre-court disposals than the *Highertown* sites. *Lowertown One* has a pre-court proportion of 36.47 per cent for the years 2004 to 2012/13, 11.99 per cent higher than *Highertown One* with a pre-court proportion of 24.48 per cent of all disposals for 2004-2012/13. The proportion of disposals that are pre-court in *Lowertown Two* for the years 2004 to 2012/13 is 28.05 per cent compared to 26.46 per cent in *Highertown Two*, but the differences are not so marked. *Highertown Three* uses pre-court disposals less than *Lowertown Three* with 34.40 per cent of all disposals being pre-court compared to 48.96 per cent for the years 2004 to 2012/13.

Table 7.1: Pre-court disposal use as a proportion of all disposals for sample sites (per cent) (2004-2012/13)

	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown Two</i>	<i>Lowertown Two</i>	<i>Highertown Three</i>	<i>Lowertown Three</i>
2004-05	30.47	37.67	32.35	33.88	21.27	48.55
2005-06	21.40	36.45	40.81	34.58	25.42	50.55
2006-07	23.48	39.14	31.97	32.76	26.66	45.64
2007-08	19.70	37.46	24.44	35.78	35.26	56.43
2008-09	29.41	40.92	22.75	34.52	49.52	53.13
2009-10	33.49	34.67	25.65	18.88	45.54	43.95
2010-11	18.68	24.61	13.82	18.76	33.70	44.71
2011-12	9.38	32.14	8.29	12.41	35.56	40.85
2012-13	6.20	31.37	5.61	8.52	41.44	42.16
2004-2012/13	24.48	36.47	26.46	28.50	34.40	48.96

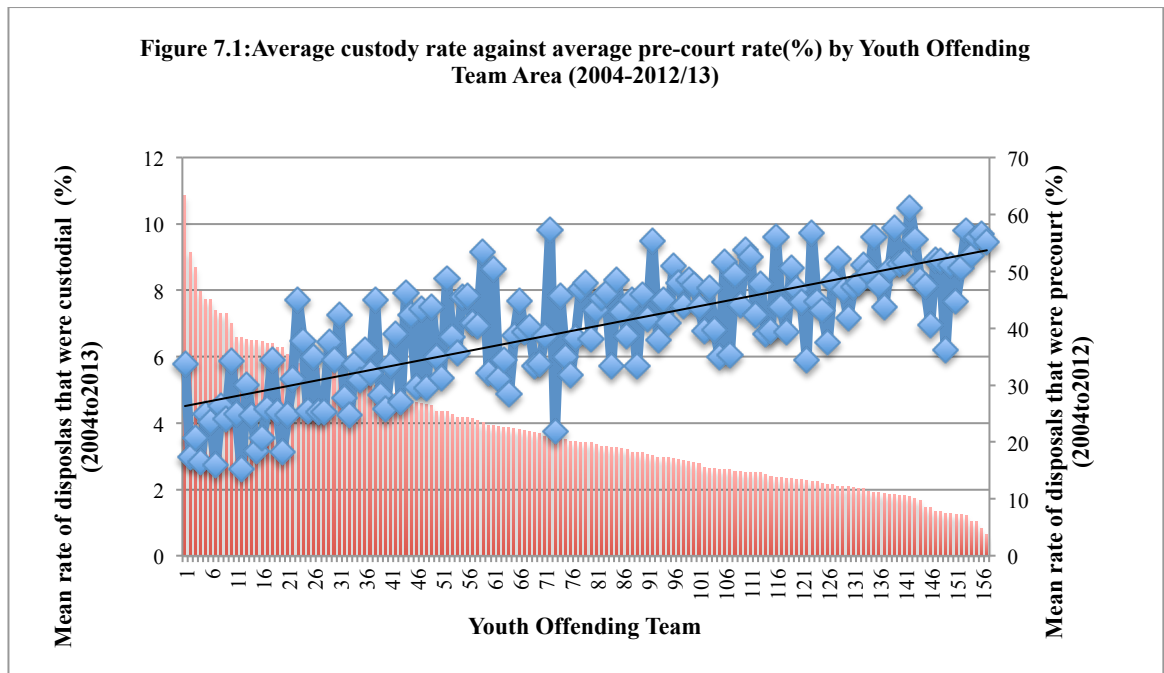
Source: data derived from Ministry of Justice (2005, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a).

Table 7.2: Custodial disposals per 1000 of the 10-17 year old population for each sample site (2004- 2012/13)

	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown Two</i>	<i>Lowertown Two</i>	<i>Highertown Three</i>	<i>Lowertown Three</i>
2004-05	3.28	1.48	2.34	1.30	3.96	1.83
2005-06	3.82	1.57	2.58	1.01	3.69	1.74
2006-07	3.08	1.44	2.82	2.26	3.23	1.65
2007-08	3.85	1.36	2.68	1.92	1.45	1.22
2008-09	3.38	0.89	1.90	2.16	2.04	1.18
2009-10	2.17	0.89	1.75	1.20	1.52	0.28
2010-11	1.87	0.72	1.61	1.10	1.85	1.03
2011-12	2.42	0.21	2.47	2.13	1.46	0.66
2012-13	1.64	0.56	1.74	0.92	0.68	0.53
Mean	2.83	1.01	2.21	1.56	2.21	1.12

Source: data derived from Ministry of Justice (2005, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a)

Table 7.1 illustrates that the *Lowertowns* (which have lower rates of custody), generally have a higher proportion of pre-court disposal use than the *Highertowns* (which have higher rates of custody) (see Table 7.2). Even after the implementation of post-2008 pre-court policy changes and initiatives the *Lowertowns* generally maintained higher rates of pre-court measures (see Table 7.1) and lower rates of custody use (see Table 7.2). Table 7.2 indicates that whilst custody rates reduced from 2008 onwards the *Highertown* sites still inclined more to the use of custody than the *Lowertown* sites. This relationship can also be found if one looks at the national picture. Figure 7.1 charts the mean proportion of all disposals given that were custodial (custody rate) against the mean proportion of all disposals that were pre-court (pre-court rate) for the years 2004-2013 for 157 YOTs, which shows an inverse relationship. As the pre-court rate increases the custody rate decreases. There appears to be a strong correlation between both variables ($r = -.763$, $n = 157$, $p = 0.01$, two tailed test). Bateman (2011) also found this relationship but only using annual statistics for one year. Similarly, Bateman and Stanley (2002) revealed that YOTs with lower rates of custody tended to have greater use of disposals below the community penalty threshold, such as pre-court disposals, and greater use of reparation orders.



Source: data derived from Ministry of Justice (2005, 2006, 2007, 2008, 2009, 2010a, 2011a, 2012b, 2013a).

Local youth justice systems with higher levels of pre-court disposals tend to have lower levels of custody. The interview data suggests that organisational processes coupled with practitioners’ views and culture appeared to play a role in the frequency of pre-court disposals, particularly triage, utilized. For example if we compare rates of pre-court disposals against cultural attitudes to diversion we can see that there was far greater levels of support and practice culture in favour of diversion in the *Lowertowns* which also had higher rates of diversion in comparison to the *Highertowns* which had lower rates of pre-court disposals and higher levels of practitioner concern about their use. As will now be explored this variation in the frequency of pre-court disposals and attitudes was also reflected in the systems/ processes YOTs had put in place to administer pre-court disposals.

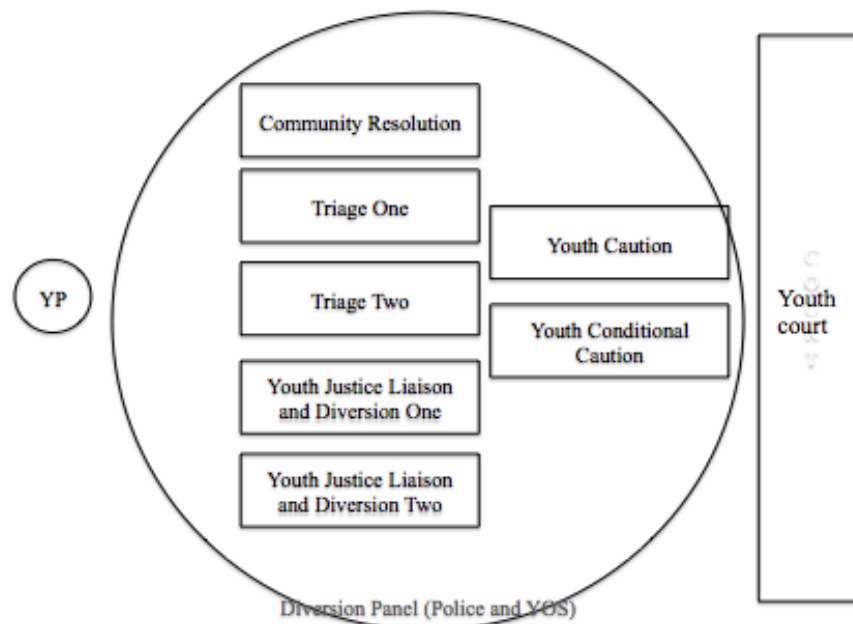
A “systems management” approach

The data suggested that a “systems management” approach has been adopted in *Lowertowns One* and *Three*. Diversion using a “systems management” approach is not new (Haines *et al.*, 2013). Developed in the 1980s, the approach considers that the majority of young people grow out of crime and that formal contact with the criminal justice system causes stigmatising, labelling, net-widening and harmful effects leading to further offending (Davis *et al.*, 1989; Bell and Haines, 1991; Haines and Drakeford,

1998; Bell *et al.*, 1999; Haines, *et al.*, 2013). It views youth justice as a “system”. Arresting, processing and sentencing of offenders is a process that maybe manipulated by targeting points within the process to change outcomes for individuals i.e. towards diversion (Bell and Haines, 1991). For practitioners in the 1980s diversion, by way of cautioning, became a primary aim (Davis *et al.*, 1989; Bell and Haines, 1991; Haines and Drakeford, 1998; Bell *et al.*, 1999; Haines, *et al.*, 2013). Northamptonshire’s pioneering Juvenile Liaison Bureau (JLB), set up in 1981, provided the blueprint for diversion systems around England and Wales (Hughes *et al.*, 1998; Bell *et al.*, 1999; Haines *et al.*, 2013). Its philosophy and practice was based on the belief that premature prosecution causing escalation was dangerous and a joined-up way of working between the criminal justice and welfare agencies could reduce the flow of young people being formally prosecuted for low level offences (Bell *et al.*, 1999). The JLB comprised a director, a social services social worker, probation worker, two police constables, a youth worker, an education officer and an administrator. The police made referrals to the JLB for young people aged 10 to 16 years who had committed non-grave crimes. Meeting twice weekly it aimed to: consider every alternative option for a young person before prosecution; divert juveniles from formal intervention systems to informal measures; enable professionals to address delinquent behaviour and reduce offending behaviour through community services; promote community involvement and understanding of the nature of youth crime (Bell *et al.*, 1999). Diversion rose exponentially, supported by national policy, which coincided with a rapid decline in the use of custody in the 1980s. However, the “new orthodoxy” (Jones, 1984) fell out of favour in the 1990s due to the politicization of youth crime and the new “get tough” politics (Hughes *et al.*, 1998) (see Chapters Four and Six). However, the data suggests that systems management approaches prevail in *Lowertown One* and *Lowertown Three*.

As stated above, *Lowertown One* data reveals the centrality of diversion and the use of pre-court disposals for young people in conflict with the law. Whilst the LASPO Act 2012 may have removed the “escalator approach” to pre-court disposals and increased levels of informality into the cautioning and diversion system nationally, *Lowertown One* YOT practitioners stressed the use of pre-court disposals and maximum diversion was well established and the “*core of the job*” (Participant 13, *Lowertown One* YOT interventions manager) for many years. Participants suggested that many of the diversion schemes were originally piloted and pioneered by the Police and YOT in *Lowertown One* in an attempt to move away from a police culture of sanction detections.

Figure 7. 2: *Lowertown One* pre-court and diversion structure

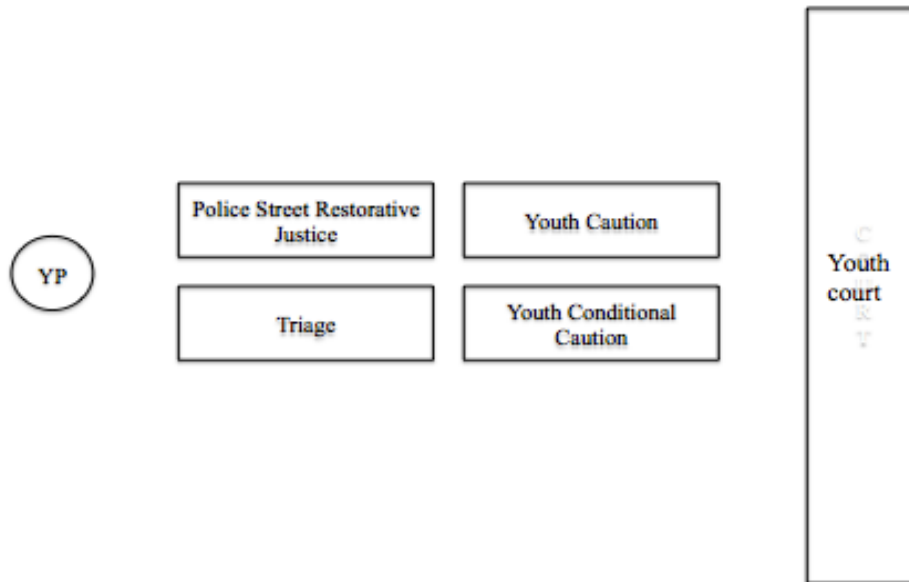


Participants described a multi-tiered pre-court structure (see Figure 7.2). The pre-court structure comprised multiple levels: community resolution administered by the police for low level offences; Triage One for first time offences rated as three or below on the *ACPO Youth Offender Case Disposal Gravity Factor Matrix*; Triage Two, was said to have been devised by *Lowertown One* YOT, and directed at young people arrested for drunk and disorderly offences; Youth Justice Liaison and Diversion One, sponsored by the National Health Service, was said to divert young people with physical and mental health needs who have committed offences rated as three or below on the *ACPO Matrix*; Youth Justice and Diversion Two developed by *Lowertown One* YOT, for young people at risk of offending and referred by schools; the Youth Caution for offences rated as three or below on the *ACPO Matrix* ; and the Youth Conditional Caution for offences rated as three or below on the *ACPO Matrix*. All of these pre-court stages can be applied as multiple “steps” on the ladder before a child is charged and brought to youth court for minor offences. Crucially, representatives from the police and Youth Offending Service make diversion decisions at a weekly panel meeting. Although practitioners did not overtly state that they were adopting a systems management approach it appeared the diversion structure and practitioner beliefs followed its tenets.

Highertown One’s diversion structure is not as developed as *Lowertown One* and does not adopt a systems management approach. The data suggests that far fewer levels of

pre-court diversion have been developed and no decision-making panel existed. Figure 7.3 outlines the pre-court and diversion structure in *Highertown One*.

Figure 7.3: *Highertown One* pre-court and diversion structure



The pre-court structure comprised four disposals: the Police Street Restorative Justice (the same as *Lowertown One*'s Community Resolution) for low level offences rated as two or below on the *ACPO Matrix*; Triage for offences rated as three or below on *ACPO Matrix*; the Youth Caution again for offences rated three or below on the *ACPO Matrix*; and the Youth Conditional Caution for offences rated below three on the *ACPO Matrix*. There are less “rungs” on the diversion ladder in *Highertown One*. Similarly, participants suggested that the drive for diversion and multiagency processes for maximization had only recently been established:

7.33 “Also recently, I would say this has been in the last four months, policy has changed where the YOT police officers and the YOT were not consulted by the custody sergeant or investigating officer before they made a decision to charge. That is happening now though. Every single time a young person is taken into custody now I am sent to task and they are saying what do you think about this? So we give our opinion...That has had a massive effect.”
(Participant 17, *Highertown One* YOT police officer)

So in *Highertown One* there appeared to be less of a tiered / multi-layered approach to the use of pre-court disposals, less of a defined systems management approach and a

stronger feeling/ culture of anxiety and concern about the use of diversion and its effectiveness.

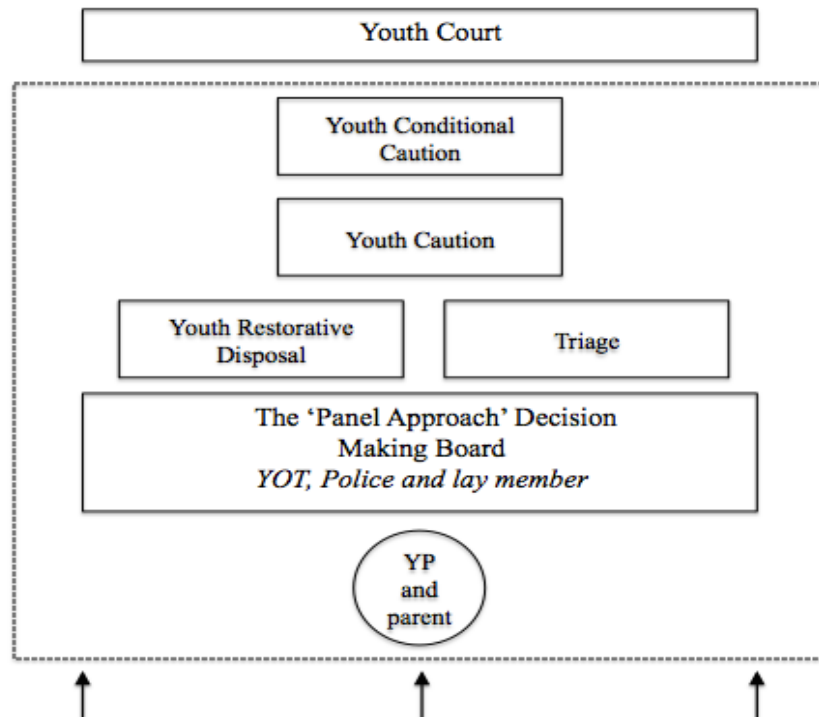
Like *Lowertown One*, *Lowertown Three* appeared to be adopting a systems management approach, with practitioners more explicit about the underlying philosophy of diversion:

7.34 *“So what I mean is that in the 1980s here...I was talking about systems management where we would do maximum diversion. Now, you’re asking why am I talking about that? Because I am talking about history. That went because of the 1998 Crime and Disorder Act [1998], which was fast fast fast fast. Well guess what? 12 years later, the YOS manager wont like me saying this, but we have got the 80s system back. Its called ‘The Panel Approach’ and its bigger and better...Is he going to get a caution like he was in those days? No, it’s youth restorative disposal. So maximum diversion is even further. You have admitted committing an offence, but because we have had an assessment we are actually pushing you out and de-labelling you completely.”*

(Participant 5, *Lowertown Three* YOT remand manager)

The majority of YOT practitioners recognised that they had adopted a systems management approach to diversion hailing it as important for removing young people from formal prosecution and therefore “*de-labelling*” them as offenders. Figure 7.4 details the “The Panel Approach”, as described by *Lowertown Three* participants. The pre-court structure does not have any more diversionary disposals than *Highertown One*, however all decisions about diversion and charging are carried out at the panel and not in the police station. “The Panel Approach” receives referrals from the police for children and young people charged with offences rated three or below on the *ACPO* Matrix. The YOT will prepare a report on the young person’s offending, social care and education history for the panel. The panel, consisting of representatives from the YOT, police and a layperson will review the evidence and decide on the diversion level (either a Youth Restorative Disposal, Triage, - both recorded as NFA on the police national computer - Youth Caution, or a Youth Conditional Caution) and whether informal voluntary intervention is required. The young person and the their parent(s) attend the panel meeting once a decision has been made. A young person could attend the panel any number of times if their offending is not serious.

Figure 7.4: *Lowertown Three* pre-court and diversion structure



Informalism was said to be central to the “Panel Approach”. Part of the rationale for the “Panel Approach” was to keep young people out of formal criminal justice processes. The YOT manager, in extract 7.35, describes how the use of “*voluntary attendance*” for young people referred for diversion has allowed the processing of young people’s cases to be operationalised outside of the formal custody suite, but within an anteroom in the police station and then within the YOT offices:

7.35 “*We’ve introduced something called voluntary attendance now, which means young people can come to the Panel and then they are not going into the charge room and that has huge impact because not only are they not going onto the police national computer they are not swabbed, finger printed, photographed, none of that is taking place. We are just using an anteroom in the police station, which then processes them on bail straight to us [at the panel].*”
(Participant 3, *Lowertown Three* YOT manager)

Further evidence of systems management within *Lowertown Three* was the presence of “*gatekeeping*” of decisions to ensure maximum diversion from formal prosecution and to keep things within the panel. For example, the YOT manager described how

gatekeeping at the panel had ensured that the more formal cautions, such as Youth Conditional Cautions, had only been used on “three occasions” in the last six months up to the end of September from the start of the LASPO Act 2012 coming in.

Highertown Three had instituted the same model of diversion as *Lowertown Three* one year previously as the regional local government and police forces decided to roll out the “Panel Approach” (see Figure 7.4) across the whole of the region. Despite the introduction of the LASPO Act 2012 and the “Panel Approach” practitioners remarked that the YJB was concerned about their “traditionally...high” (Participant 24, *Highertown Three* YOT post court team manager) FTE numbers as they were “going against the national trend” (Participant 26, *Highertown Three* YOT ISS manager). Her Majesty’s Inspectorate of Probation 2014 report for *Highertown Three* confirms these assertions and reports that for January 2013 to December 2013 the FTE rate was considerably higher than the national average. The number of FTEs per 100,000 of 10 to 17 years was just over 600 compared to the national average of 444 per 100,000 of 10 to 17 year olds (HMI Probation, 2014). The data suggested that a culture of scepticism towards diversion and the “The Panel Approach” was a contributing factor towards its lower use of diversion and higher numbers of FTEs.

Whilst *Highertown Three* and *Lowertown Three* both are using the “Panel Approach” differences in organisational culture appeared to differ across both sites and affect the frequency of diversion. It could be argued that differences in attitudes is due the “Panel Approach” not being fully embedded within practice in *Highertown Three* due to it only having been in operation for one year. However, looking at the pre-court figures (see Table 7.1) *Highertown Three* has historically used pre-court disposals significantly less than *Lowertown Three*. Thus suggesting that practice beliefs, attitudes and working cultures endure over time and are difficult to shift.

PERCEPTIONS OF LOCAL YOUTH CRIME

Bateman and Stanley’s (2002) study into YOT sentencing patterns asserted that:

‘differential levels of custody, and broader variations in the distribution of sentencing, are not fully determined by the seriousness of offending’ (Bateman and Stanley, 2002:22).

Mason *et al.*, (2007) analysing adult sentencing in magistrates' courts suggested local variation in sentencing could not be explained by the differences in local crime rates (apart from a weak but statistically significant correlation between custody rates and recorded crime rates for theft and handling stolen goods offences). Overall they suggested that recorded crime rates accounted for only 25 per cent of the observed local variation in magistrates' court custody rates, therefore crime rates were not a central factor in explaining variation in local sentencing. Furthermore, Mason *et al.*, (2007) found that there was no association between changes in crime rates and sentencing practices (i.e. sentencing behaviour changes in response to changes in crime rates) in the magistrates' and Crown Courts.

Herbert's (2004) study sentencing patterns also found considerable disparity between court decision-making in adult magistrates courts and lays out a number of contributory factors for such differentiation. He noted the concept of "local justice" in which sentencers believed policy and practice needed to be adapted for local conditions including perceived local patterns of crime. Parker *et al.*, (1989) study into sentencing practices across four comparable towns/ cities in England posited that differences in the perceptions of local youth crime were significant in explaining sentencing variation. The towns in which magistrates did not feel that crime was rife or was manageable appeared to use community sentences more and custodial disposals less frequently (Parker *et al.*, 1998: 82). This relationship appeared to be mirrored across some of the six research sites. Despite the paired research sites having comparable rates of recorded crime (see Tables 7.3 and 7.4) and similar socio-economic characteristics (see Chapter Five), the data indicated that participants in *Highertowns One* and *Three* (with higher rates of custody than their matched pair) appeared to perceive the prevalence and seriousness of youth offending to be more of an issue and a causal factor for high custody use, compared to *Lowertowns One* and *Three* participants who expressed low levels of concern regarding youth crime rates.

Table 7.3: Selected offences resulting in a court conviction per 1000 of the 10-17 year old population for *Highertown One* and *Lowertown One* (2010 - 2012/13)

	2010 to 2011		2011 to 2012		2012 to 2013		Mean (2010-2012/13)	
	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown One</i>	<i>Lowertown One</i>	<i>Highertown One</i>	<i>Lowertown One</i>
<i>Criminal Damage</i>	2.71	7.66	1.99	4.95	1.64	4.82	2.11	5.81
<i>Domestic Burglary</i>	2.07	1.46	1.25	0.60	0.92	0.82	1.41	0.96
<i>Drugs</i>	8.58	3.49	5.24	3.27	5.16	3.31	6.33	3.36
<i>Motoring Offences</i>	1.81	6.50	1.53	3.31	1.99	2.88	1.78	4.23
<i>Non Domestic Burglary</i>	0.41	2.67	0.54	1.68	0.49	1.51	0.48	1.95
<i>Public Order</i>	4.83	11.75	3.42	9.90	1.66	5.08	3.30	8.91
<i>Robbery</i>	0.95	1.21	1.99	0.30	0.82	0.60	1.25	0.70
<i>Sexual Offences</i>	0.38	0.65	0.74	0.43	0.15	0.09	0.43	0.39
<i>Theft/ Handling Stolen Goods</i>	5.57	15.36	3.91	10.37	3.30	10.37	4.26	12.04
<i>Vehicle Theft</i>	0.95	1.12	0.66	0.47	0.82	0.43	0.81	0.67
<i>Violence Against The Person</i>	5.29	9.94	5.14	7.88	3.81	6.07	4.74	7.96

Source: Data derived from Ministry of Justice, (2011b, 2012c, 2013c).

Prior to unpicking this contradiction, a word of caution. Crime statistics do not represent an objective pre-existing truth (Desrosieres, 1998). Like the participants' subjective perceptions of crime detailed in this study, crime statistics are "not a natural phenomenon, but a social product" or construct created by individuals for specific audiences (Lomell, 2011: 192). However, the data does suggest a possible relationship between heightened perceptions of youth criminality and higher use of custody. Looking at Table 7.3 *Lowertown One* has higher rates of criminal damage, motoring, non-domestic burglary, public order, theft/ handling stolen goods, and violence against the person offences than *Highertown One*. Yet *Lowertown One* participants expressed less concern regarding crimes rates in their area. *Highertown One* participants suggested that "serious gang activity," substance misuse, violence and robbery were extremely prevalent in some areas of the city. It was felt that there was a hard-core group of risky and "complex" young people committing "high profile" offences. The data suggested that there was concern about the level and seriousness of youth crime in the city. A significant proportion of practitioners and magistrates believed it was the prevalence of serious criminal offences that prompted young people to be sentenced to custody. A large proportion of the sample considered *Highertown One* and serious crime inextricably linked or that crime was an innate feature of the city:

- 7.36 *“It’s Highertown One! It’s a city and there is quite a lot of serious crime here.”*
(Judicial participant 11, *Highertown One* District Judge)
- 7.37 *“We do have high rates of custody here but that’s to do with the offences and that’s a static factor we can’t do anything about. If it’s down to dynamic factors they are more likely to get a community penalty.”*
(Participant 20, *Highertown One* YOT interventions manager)
- 7.38 *“If people say our youth justice system is brutal by the way we treat our children by locking them up I think we could also say that we are brutal as a country. We have got young people...they are coming from families that commit significant harm and come from criminogenic families. If you look at books that explore the gangs of this area in Victorian days, it’s the same surnames. The Victorian gangs of the past are the same surnames as now. Is that the problem? Is crime inherent in British society and in our big cities?...Certainly a few years ago this was considered to be a high custody use YOT. So we drilled down on all the areas and looked at every single one and we couldn’t think of any good alternatives so it’s just the national government or the YJB saying your custodial rate is too high and not listening to us when we said ‘yes there might be a high number of kids that go to custody but lets look at the offences.’”*
(Participant 21 *Highertown One*, YOT senior practitioner)

Many participants in *Highertown One* thought the city synonymous with crime and criminal gangs and that *Highertown One* has a “reputation” of “lawlessness” and tough policing (Participant 15, *Highertown One* YOT court manager). Participant 15 reflected on how his perceptions of crime and young people might have been tarnished and “skewed” over time:

- 7.39 *“My views are sometimes skewed because I do this work everyday. When I started doing this work, very very early on in doing this work, I can remember driving along a road and there would be a group of young people sitting on a wall, on a corner of a street and I think ‘oh a group of young people sitting on a wall on a corner of street’. Thinking nothing of it. But as time has gone by and in terms of the media pressures out there and having done the job over the years, now I would be driving along and see a group of young people and say ‘oh what are they up to?’ Instead of ‘they have got a right to be sitting on a wall’.”*

(Participant 15, *Highertown One* YOT court manager)

The perceived prevalence and seriousness of youth crime did not appear such a dominant issue for *Lowertown One* participants. They described two strata of offences and offending, trivial and more complex, but the majority offences to be non-serious “*acquisitive crime*” (Participant 8, *Lowertown One* YOT court manager). Whilst it was felt that serious, violent and sexual offences did take place and that they dealt with some very complex young people, the mainstay of offences were low level, acquisitive crimes mainly related to poverty resulting in a “*relatively stable offending population*” (Participant 10, *Lowertown One* YOT manager). Unlike *Highertown One*, participants in *Lowertown One* did not perceive there to be “*a large number of youths being involved in gangs*” (Participant 11, *Lowertown One* CPS youth prosecutor). Rather the data suggested that the concept of gang related offending was challenged by some of the sample:

7.40 “*I can remember at one point we had three lads and they had put pictures up of themselves as a gang...on Facebook and the next thing they had been arrested for an offence dah dah dah and the judge was like ‘right well at Crown Court we are not tolerating gangs, here in our city you will go to prison’. If you were to mention the word gang in a report I can tell you for a fact that they would go to custody...I would not put that in a report right. It’s too emotive. And what is a gang? Because sometimes my staff will say to me ‘oh I think they are a gang’ and I will say ‘but are they a gang or just a group of kids?’ Gangs have specific features to them. Are they not just a group of kids who are randomly coming together and committing crime?”*

(Participant 12, *Lowertown One* YOT remand manager)

Participant 12 believes that the city does not have a youth gang offending problem but raises concerns about the labelling of youthful group offending as being gang related and questions the concept of “gangs” more generally urging her staff not to use it in court reports due to its “*emotive*” nature and propensity to inflate the severity of sentences (For a discussion of the concept of gangs see: Centre for Social Justice, 2009; Goldson, 2011b; Young *et al.*, 2014). While participants in *Lowertown One* did not appear to perceive their city be over run with serious youth criminality, like in *Highertown One*, there seemed to be a consensus that *Lowertown One* is not “*a wealthy city...with a lot of poorer housing estates...areas of deprivation*” (Judicial participant 8, *Lowertown One* magistrate), and is not an easy city to govern, as evidenced by

Participant 12 who stated that policing the city on a Friday night was *“like stepping into hell...it’s a horrendous job”*.

A similar relationship was found within the interview data in *Highertown Three* and *Lowertown Three*. The majority of *Highertown Three* participants considered substance misuse, possession and supply of drugs, robberies and burglaries a recurrent theme in the perceived local crime profile. The location of *Highertown Three* and that it was a city with *“inner city social problems”* *“and more in the way of poverty”* than surrounding areas was cited by a large proportion of workers as the reason for high youth crimes rates. Like in *Highertown One*, workers in *Highertown Three* believed that the prevalence of serious youth crime necessitated a high incidence of the use of custodial disposals in the city and that working with offenders was arduous and complex:

7.41 *“But we certainly have higher custody levels than other areas. But again it is linked into the level of crime and the type of or make up of the young people and the offences which they are committing in this area as well”*

(Participant 24, *Highertown Three* YOT post-court team manager)

7.42 *“There are a lot less people getting locked up [nationally] although we do have high custody figures here in this YOT. But I think that is because of the seriousness of the offence especially the possession with intent to supply...We have just had an inspection and I think the inspectors sort of come down here and just look at the figures and I am not sure they really take into account the complexity of the cases...How difficult it is to engage with some of these people. Like if you are living in a well off area, the majority of the population are going to be well educated and their children are going to be quite well brought up and receptive to intervention. Where we work in this area not so much.”*

(Participant 25, *Highertown Three* YOT senior practitioner)

In contrast *Lowertown Three* participants did not perceive youth offending in their area to be particularly serious in nature. For example, participant two below stated:

7.43 *“I think the majority offences we have now are the low gravity scores, the minor thefts, the minor criminal damage, public orders that type of thing. Luckily the gravity sixes and seven offences we don’t have that many of them these days.”*

(Participant 2, *Lowertown Three*, YOT court manager)

But participants perceived there to be a small proportion of young people each year committing serious offences presenting

7.44 “...a real and present threat to the wellbeing of the public. But that sometimes gets over stated and lost and that is partly where some of the... differences between adult services and young people’s services needs to be retained because very little youth crime is actually at that level where it is so serious where public protection has to be paramount interest”

(Participant 3, *Lowertown Three*, YOT manager).

Like some of the other sample sites *Lowertown Three* participants felt that whilst there had been a reduction in the numbers of young people entering the youth justice system the complexity of those remaining had increased, and there was a “a thickening of the soup” (Participant 3, *Lowertown Three*, YOT manager) as it were. But practitioners did not show the same levels of alarm as participants in *Highertown Three* as they felt crime was manageable and that “public protection” was the key criteria for the use of custody.

Table 7.4: Selected offences resulting in a court conviction per 1000 of the 10-17 year old population for *Highertown Three* and *Lowertown Three* (2010 - 2012/13)

	2010 to 2011		2011 to 2012		2012 to 2013		Mean (2010-2012/13)	
	<i>Highertown Three</i>	<i>Lowertown Three</i>	<i>Highertown Three</i>	<i>Lowertown Three</i>	<i>Highertown Three</i>	<i>Lowertown Three</i>	<i>Highertown Three</i>	<i>Lowertown Three</i>
<i>Criminal Damage</i>	3.85	4.23	2.97	2.68	3.58	1.08	3.47	2.67
<i>Domestic Burglary</i>	4.12	0.66	3.04	0.61	2.10	0.47	3.09	0.58
<i>Drugs</i>	2.97	2.21	4.60	1.98	2.37	1.03	3.31	1.74
<i>Motoring Offences</i>	2.97	3.39	1.89	2.54	1.08	1.27	1.98	2.40
<i>Non Domestic Burglary</i>	1.76	1.46	0.95	0.56	0.74	0.28	1.15	0.77
<i>Public Order</i>	5.88	3.29	5.00	2.07	2.84	1.27	4.57	2.21
<i>Robbery</i>	0.81	0.42	0.74	0.38	0.20	0.05	0.59	0.28
<i>Sexual Offences</i>	0.74	0.14	0.47	0.05	0.47	0.00	0.56	0.06
<i>Theft/ Handling Stolen Goods</i>	9.53	5.46	7.16	4.47	6.35	2.21	7.68	4.05
<i>Vehicle Theft</i>	1.15	1.08	0.41	1.32	0.54	0.38	0.70	0.93
<i>Violence Against The Person</i>	8.31	5.08	5.27	3.34	4.93	1.79	6.17	3.40

Source: Data derived from Ministry of Justice, 2011b, 2012c, 2013c.

So are the variations in perception of youth crime between *Highertown Three* and *Lowertown Three* supported by recorded crime rates? Looking at specific offence rates per 1000 of the youth population (see Table 7.4) *Highertown Three* appears to have slightly higher offence rates than *Lowertown Three* and higher rates of FTEs (see Chapter Five). However, Her Majesty's Inspectorate of Probation (2014) noted "significant concern" in relation to key YJB indicators. They reported that *Highertown Three* had above national average rates of recidivism, FTEs and custody at a time when nationally FTE and custody rates were falling and as such a full inspection was required. Bearing this in mind and evidence that suggests increased diversion and reduction in FTEs are correlated with reductions in custody (Bateman, 2012), one could question whether *Highertown Three's* higher rates of recorded youth crime reflect youth crime or are in fact as a consequence of systems management and behaviour such as low levels of diversion, higher numbers of FTEs and local policing strategies.

This connection between heightened perceptions of crime and higher use of custody was not as clear in the data obtained from *Lowertown Two* and *Highertown Two*. *Lowertown Two*, with lower rates of custody has a higher general crime rate of 101.26 reported crimes per 1000 of the population in the year ending December 2015, compared to 87.48 reported crimes per 1000 of the population for the same period in *Highertown Two*. Youth crime in *Lowertown Two* and *Highertown Two* is comparable (see Table 7.4). Participants from both sites said despite an overall decrease in the numbers of young people being brought into the system, the prevalence of serious offending was substantially increasing with upsurges in violent, drug and gang related offences:

7.45 *"So there has been a big rise in gang related violence, class A drug supply and obviously the associations of territory and all that kind of thing...it has come here in a big way all of a sudden."*

(Participant 36, *Lowertown Two* YOT community supervision manager)

7.46 *"In 07/08 I looked at FTEs on referral orders for 07/ 08 and then looked at it for 08/09...So we went from criminal damage one year and then the next year the profile had massively changed to robberies, burglaries, acquisitive crimes and that was within a 12-month period and that was a big eye opener."*

(Participant 31, *Highertown Two* YOT operations manager)

The results of this study cannot determine any causal connection between heightened perceptions of high crime rates and higher use of custody in an area. However the data suggests that within some of the sites with higher custody use, such as in *Highertown One* and *Highertown Three*, the concern for and perceptions of youth criminality being more problematic appeared to be more common. Perhaps this is unsurprising considering that the nature of youth crime would undoubtedly differ from site to site to some extent. However, for the perception of the seriousness and prevalence of crime to differ so markedly between some of the paired sites, and from the breakdown of youth crime rate statistics, one must consider this disjuncture significant to the exploration of the drivers of differential justice.

CONCLUSION

This chapter has attempted to explore the local nature of youth penalty by looking at the local level factors, such as practice culture, perceptions of place and space and the use of different systems and processes, that might influence rates of custody and create local justice". Comparing interview data and national statistics suggests that crime rates and their perceptions appeared significant. Despite the matched research sites having comparable crime rates, perceptions of crime and prevalence of offending varied. The majority of participants in *Highertowns One* and *Three* perceived youth offending and the prevalence of crime to be more problematic and the cause of more young people being sent to custody than participants in *Lowertown One* and *Three*.

Organisational and practice culture varied significantly. Whilst, the majority of practitioners across all six sites stated that they recognised the importance of protecting the welfare of the child, a practice culture of welfare, decarceration and diversion was more dominant in the *Lowertowns* than the *Highertowns*. A rights based approach was evident in *Lowertown Three* also. Furthermore, the data also shows that *Lowertown One* and *Three* promoted a culture of using evidence to inform practice and nurturing strong relationships with local universities. In contrast in *Highertown Two* participants felt they were working from a "crime based offender management" philosophy and felt that a traditional social work ethos was too heavily tilted in favour of welfare. *Highertown One* data suggested that there was an organisational culture championing the rights of the victim, sometimes over the rights of the young person. The *Highertown* sites also had a strong culture of scepticism, concern and anxiety over high levels of diversion. Sites, which used custodial disposals less, had a practice culture of decarceration, diversion, rights and welfare more so than the *Highertowns*.

Systems regarding pre-court disposals were also found to influence rates of custody. Analysis of national sentencing data suggests YOTs that have higher rates of pre-court diversion tend to have lower rates of custody. This was also mirrored in the research sites. Similarly, the sites with higher levels of support and cultural approaches towards diversion, the *Lowertowns*, generally had higher rates of pre-court disposals. Pre-court structures based on a systems management approach were applied in *Lowertown One* and *Three*. Sites with higher rates of custody, such as the *Hihertowns* tended to have fewer pre-court disposals and no weekly decision making panels for the coordination of diversion, as such they did not appear to be using a systems management approach. The data obtained from *Hihertown Three* showed that an organisational culture of scepticism and anxiety about the use of diversion was influential on the uptake of systems management processes and higher rates of diversion. Anxiety and concern amongst practitioners appeared to be more dominant in the *Hihertowns* than the *Lowertowns*.

The interview data has demonstrated that local factors such as organisational and practice cultures including perceptions of crime and the use of custody, and local systems and processes for diversion are all influential in regards to the use of custody at a local level.

CHAPTER EIGHT

THE SPATIAL NATURE OF YOUTH PENALTY: THE INFLUENCE OF INDIVIDUALS, LOCAL POWER, DISCRETIONARY PRACTICE AND LEADERSHIP

INTRODUCTION

Using interview data obtained from the sample of professionals and magistrates across all six sites, this chapter explores the differentiated nature of youth penalty by focussing on: the influence of discretionary practice, individual agency, personality and leadership on local penal cultures and how this might give rise to higher or lower use of custody. “Street level” practitioners’ influence on the application and/ or dilution of national policy imperatives is well established (see: Lipsky, 1980; Standfort, 2000; Maynard-Moody and Musheno, 2003; Hill and Hupe, 2009; Lipsky, 2010; Tummers *et al.*, 2012; Tummers and Bekkers, 2014). More specifically, some youth justice studies have explored the impact of practitioner discretion on practice (see: Baker, 2004, 2005; Field, 2007; Hughes, 2009; Goldson and Hughes, 2010; Briggs, 2013). The dominant themes found within the data extends this literature examining how discretionary practice in relation to custodial sentencing and intervention varies across space and the influence of team leadership, individuality and personality on local penal cultures. Specifically, this chapter will look at variation in discretionary practice across the six research sites in relation to the use of and the motivations for recommending penal custody for young people and the decision-making and operation of breach proceedings. The latter part of the chapter will look at the influence and power of individual leadership on the direction and focus of penal culture within the research sites.

DISCRETIONARY PRACTICE

Discretion refers to the flexibility and freedom to exercise one’s own professional judgment and decision-making (Allen and Sawhney, 2015), and is a central component of the policy making and implementation process (Fergusson, 2007; Barnes and Prior, 2009; Henderson, 2015). Fergusson (2007) provides a framework for analysis of the policy-making and implementation process and sets out three distinct phases. Firstly, there is the “policy rhetoric” stage in which politicians decree their aims. Secondly, there is the “policy codification” stage in which these aims are translated into legislation

and national policies. Thirdly, there is the “policy as lived experience of implementation” stage in which professionals and practitioners strive to interpret and carry out legislation and directives on the ground, which is of particular interest here to see how the implementation of policy may differ across the six research sites. With the advent of the “new youth justice” (Goldson, 2000), under the Crime and Disorder Act 1998, managerialist top down structures of governance were implemented over all areas of youth justice practice (McLaughlin and Muncie, 2000; Pitts, 2001b, Eadie and Canton, 2002; Muncie and Hughes, 2002; Bateman, 2011; Robinson, 2015). Eadie and Canton (2002: 16) argue that while it has been asserted that national standards represent the government’s managerialist efforts to control local managers and practitioners, it is their *interpretation*, which defines whether they become a “managerialist or professional tool”. They argue that national standards can serve to impose limits on individual discretion, but it is the way in which such standards are *implemented* which is of importance. Defining guidance too loosely could end in inconsistent and idiosyncratic practice, but defining them too rigidly can suffocate professional discretion (Eadie and Canton, 2002). Goldson and Hughes’ (2010) intra-system analysis of local and national youth justice policy and practice and Henderson’s (2015) engagement with local and national power dependencies relating to the Probation Service are apposite. Henderson (2015) suggests that local criminal justice agencies, such as YOTs and local magistrates benches in our case, are subordinate to pressures from national laws, policy makers and guidance (for example national standards, standardised assessments and sentencing guidelines). The professional practitioner, magistrate or district judge is also both subordinate and superordinate: subordinate to national standards, laws and sentencing guidelines while being superordinate and in substantial power over decision-making in relation to sentencing (Henderson, 2015). This balance between the subordinate and superordinate worker is of interest, particularly in the application of penal custody.

THE IMPOSITION OF CUSTODY: ALWAYS A “LAST RESORT”?

A dominant theme that emerged from the interview data related to varying rationales for and practices regarding the imposition of custody. Under article 37 of the UNCRC, of which the UK government is a signatory, all member states are expected to use custody as a “last resort”. At a domestic level the U.K Sentencing Guidelines Council issued the *Overarching Principles – Sentencing Youth Definitive Guidance 2009* reminded sentencers of obligations under international legal frameworks that “a custodial sentence must be imposed only as a “measure of last resort”” (Sentencing Guidelines Council, 2009:22). The threshold for the use of custody for young people is technically

determined by the nature and gravity of their offences. Under section 152(2) of the Criminal Justice Act 2003 a custodial sentence can only be imposed if the offence is “so serious that neither a community sentence nor a fine alone can be justified” (Sentencing Guidelines Council, 2009). Custody decisions are informed by a court determining whether the offence has resulted, or could reasonably have resulted, in serious harm (Sentencing Guidelines Council, 2009). In deciding upon the imposition of custody a court must consider the primary aim of the youth justice system, to prevent offending (as provided by section 37 of the Crime and Disorder Act 1998) and consider the welfare of the young person (as provided by section 44 of the Children and Young Persons Act 1933).

Across all six sites – both *Lowertown* and *Highertown* sites – the majority of practitioners and sentencers stated that they thought custody was only ever used as a “*last resort*” for young people:

8.1 “*Custody is a really, really, last resort, and I don’t think we, I can’t remember when I last sent a young person to prison?*”

(Judicial participant 25, *Highertown Three* magistrate)

8.2 “*I will do everything in my power...not to send them to the YOI. It is the last resort and that has never been different and it never will be and I’ve met some very unpleasant people.*”

(Judicial participant 1, *Lowertown Two* magistrate)

Whilst, at a rhetorical level, therefore, practitioners across all sites suggested that the principle of detention “as a last resort” appeared to feature in their consciousness²². Some participants also alluded to competing rationales for recommending custody, perhaps in contravention to the principle of “last resort”. Discretionary practice regarding decision-making around the imposition of custodial sentences will now be explored.

Using the penal state as the welfare state: the allure of custody

Interview data from across the six research sites reveals that, whilst the principle of detention “as a last resort” featured across practitioners’ consciousness – at least at a

²² Hough *et al.*, (2003) research in relation to sentencing of adults also found that sentencers stated they always used custody “as a last resort”.

rhetorical level – a sizable proportion of the *Highertown* participants suggested that trying to meet welfare needs through youth justice interventions, including custody, sometimes trumped the “last resort” principle. Across all sites participants mentioned a lack of support from children’s services for vulnerable children known to them, routinely mentioning that thresholds for intervention appeared to be so high that securing child welfare services was extremely difficult. However, in the *Highertowns* gaps in children’s social care provision appeared to be more acute particularly with regard to children and young people known to the YOTs. For example, the shortage of welfare services providing accommodation was a recurrent theme:

8.3 *“I know this happened once in the last six months, when I was in court when basically we couldn’t find an address, so he went in [to custody].”*
(Participant 25, *Highertown Three* YOT senior practitioner)

8.4 *“Cases are more and more complex and they are not having a lot of support that they should be having from social services really a lot of the time.”*
(Participant 24, *Highertown Three* YOT post court team manager)

8.5 *“In my small limited experience quite often they will use remand because social services haven’t pulled their finger out and come and represented that child in court and stood there so we can’t remand to local authority accommodation because they are not there. Therefore the kid ends up getting locked up into a custody suite on remand which is quite frankly disgusting...It is about the YOT and children’s services working together to ensure the best outcomes and quite often they will say ‘well you are the youth offending team can’t you just deal with it?’ And its like we can’t because we are not in charge of housing kids.”*
(Participant 33, *Highertown Two* YOT practitioner)

Such findings echo the work of Gray (2016) who also found “resource tensions” between YOTs and children’s services with YOT practitioners concerned about high children’s social care thresholds and a lack of willingness by children’s social care to intervene in the lives of children known to the YOT. Similarly, these findings echo the results of Hucklesby and Goodwin’s (2004) work that found that poor and limited accommodation from welfare services was a factor in high use of custodial remands. There appeared to be a structural/ organisational deficit with regard to securing welfare for young people in the youth justice system. Furthermore, the data also revealed that in some sites custodial sentences were conceptualised as a form of welfare. The link

between custody or youth justice interventions and meeting welfare needs for young people was explored when discussing the efficacy and use of penal custody. The majority of participants across all sites believed custody to be ineffective in terms of reducing offending behaviour, and often damaging to young people's wellbeing, echoing Solanki and Utting's (2009) research into sentencing attitudes of youth court magistrates. However, a sizeable proportion of magistrates particularly across *Highertown One* and *Three*, believed that custody could also offer support, intervention, structure and, significantly, education that was not available in the community:

8.6 *"The help and support that's needed goes beyond what is available in the community, but is available in a young offenders unit and there are certain young people in this world who can only benefit by going away."*

(Judicial participant 13, *Highertown One* magistrate)

8.7 *"But I've been to quite a few of the young offenders institutes, Neptune House [pseudonym] that's an amazing place...The education they were giving was absolutely superb and the just getting through to them...An example of a young boy...Come from a very sad background and he just really didn't know what to do but to go out on the streets and cause as much trouble as he possibly could...And then he fetched up at Neptune House...It was quite a shock to his system...He said 'people were so nice to me. I couldn't believe it. They were kind and thoughtful and then I started doing some of the education that they had on offer'. And he thought well I'd never understood that you could learn things like this, and the activities and the myriads of things and then he got into maths...He was about to go off and do his maths A-level...The woman who took us around said 'it's awful some of them burst into tears when it's time to go, they fling their arms around me and say please please don't send me home.'"*

(Judicial participant 26, *Highertown Three* magistrate)

These quotes illustrate that some magistrates, particularly in *Highertown One* and *Highertown Three*, felt that the use of penal custody could offer a form of sanctuary for some young people providing effective support and education. The allure of some "amazing" penal institutions appeared to be a driver for magistrates imposing custodial sentences to meet young people's needs that were unmet in the community. These findings resonate with the work of Solanki and Utting (2009) who found that some magistrates believed that custody could offer chances of rehabilitation, structure and

support. These beliefs contrasted to magistrates' and professionals' beliefs in the *Lowertowns* who appeared more sceptical of the "benefits" of custodial sentences:

8.8 *"We all know from our prison visits and from the statistics that prison doesn't work. You know too many of them come out and within a short space of time both adults and youths they are back on the streets doing the same things."*
(Judicial participant 6, *Lowertown Two* magistrate)

8.9 *"I think it's such a sign of dreadful failure and I've been to Monks Hall YOI [pseudonym]...I mean that isn't a place that's going to be a really helpful environment for young people...But I mean getting...350 sort of testosterone young men all in one place all sort of seething away together, I mean rehabilitation, very very difficult."*
(Judicial participant 2, *Lowertown Two* magistrate)

8.10 *"I am not convinced that putting young people into custody stops them reoffending...These places are, well they are like Fagan's den if you like."*
(Judicial participant 10, *Lowertown One* magistrate)

8.11 *"I prefer to think that they benefit more out of custody obviously than in custody because once they go into custody again they are mixing with like offenders and when they come out they're not going to get the support that they would if they'd actually gone through a [community] order. So the chances are that they're just going to go through the cycle all over again."*
(Judicial participant 17, *Lowertown Three* magistrate)

This data appears to suggest that some practitioners and sentencers felt conflicted about the use of custody for young people. Practitioners and magistrates in the *Lowertowns* tended to hold the view that custody was ineffective and should only be used as a "last resort". On the other hand, particularly in the *Highertowns*, it seems that, because of the perceived failure of children's services provision and a belief that custody could offer education and structure for young people, the application of custody was conceived as helpful for some of the most vulnerable "offenders". Indeed the theme of meeting children's welfare needs through youth justice interventions, including penal custody, appeared to be more dominant in the *Highertown* sites. The link between meeting welfare needs and youth justice interventions/ penal custody is well established within the literature. Thomas (1982:93) suggests that youth justice agents' attempts to meet

young people's welfare needs can result in children being "hoisted" up the sentencing tariff, net-widening and further criminalisation suggesting that "the road to custody is often paved with good intentions".

The "short, sharp, shock"

A large proportion of sentencers and some practitioners across the *Highertown* sites suggested that a "short, sharp, shock" in custody could give young people a taste of prison to deter future offending, though this theme was significantly less apparent in the *Lowertowns*:

8.12 *"...but you know, to restrict their liberty, I think is quite effective, and sometimes a short, sharp shock, you know. Yes."*
(Judicial participant 14, *Highertown One* magistrate)

8.13 *"We would like to say 'lock 'em up'. The short, sharp, shock, may do it and we do that, to some people when they are in court lolling around trying to buck the system."*
(Judicial participant 31, *Highertown Two* magistrate)

8.14 *"I have often thought ideally you would have something that was about two or three days that would frighten them. I don't know whether frighten is the right word but would make people think well this isn't a nice place to be. But you have to get them back out before they become acclimatised...I certainly know a Crown Court judge who did it to three girls once...And he decided to put off sentencing to the next day. So we heard all the arguments and he sent them to a YOI overnight and then he brought them back the next day and gave them all community punishments and I think he was quite clear in his summing up. He said 'you know now what it would be like if I had given you a prison sentence, go away, do your community punishment and don't come back before me again'."*
(Participant 28, *Highertown Three* YOT manager)

This idea of a "short, sharp, shock" echoes the findings of Solanki and Utting's (2009) study of youth court magistrates' attitudes to the use of penal custody, that magistrates considered a short spell in custody could be useful for some young people. Furthermore,

Graham and Moore (2006) suggest that the principle of “short, sharp, shock” sentencing for young people in conflict with the law tends to inflate rates of custodial sentencing.

Running out of patience

Another key theme within the data was how individual beliefs and practices in relation to recommending custody differed across the research sites. A discernible theme was the idea that young people on being sentenced to custody had reached that point because all other options had been exhausted. However, the interviews revealed differences in participants’ attitudes and practices about imposing custody across the *Highertowns* and *Lowertowns*. One such apparent difference centred on the degree to which the frustrations of sentencers and practitioners regarding the non-compliance of young people affected decision-making. In the *Highertowns* some practitioners believed that young people often received custodial sentences for repeat “*lower level*” offences as a result of magistrates and other practitioners becoming “*frustrated*” with their non-compliance suggesting that custody was not always used as a “last resort”:

8.15 *“So most of the custodial sentences are from offences that are lower level...It’s not unusual to get custodial sentences here. Sometimes there is a culture where people can get frustrated with a young person’s lack of ability to comply and rather than thinking look what can we do and how do we get round this, they’ll resort to custody and I think that happens in the YOT.”*

(Participant 18, *Highertown One* YOT manager)

8.16 *“Unfortunately it does sometimes happen particularly if a youngster refuses to engage in the community side of it and refuses to engage with the YOT that a quite minor offence can almost end up passing the custody threshold simply by means that the youngster has refused on various occasions or breached their order and has been brought back to court and given a more onerous order and not done that...Ultimately you can get to a stage where you are thinking this was a relatively minor offence...for something that should normally be dealt with in a community situation you can end up having to consider custody for him.”*

(Judicial participant 32, *Highertown Two* magistrate)

8.17 *“Even if they are fairly prolific as long as you are trying to do the work because they are not going to cause serious harm to anyone. They could be a nuisance and eventually they might get sent to custody.”*

(Participant 25, *Highertown Three* YOT senior practitioner)

The *Highertown One* YOT manager particularly suggested that practitioners’ inability to find community solutions to non-compliance has resulted in young people being imprisoned prematurely due to frustrations and exasperation rather than their level of offending.

In contrast, whilst *Lowertown* participants recognised that persistence was a factor in imposing custodial sentences, the theme of magistrate and practitioner frustration with low level repeat offending – leading to premature custodial sentences – was not so apparent:

8.18 *“I think that it should be used for the most risky. I don’t think it should be imposed because of our frustrations about our inability to change them or work with them but if there is a real serious risk of harm to others then yes.”*

(Participant 36, *Lowertown Two* YOT community supervision manager)

8.19 *“I think there’s a general analysis that you use custody in exceptional cases and an awful lot of that has to do with completely exhausting our sentencing possibilities. I mean you try and be as constructive as you can with sentencing, you know, you’ll sort of say this person’s underlying problem is their drug or alcohol usage or mental health and you will try and sentence with a view to tackling the underlying problem and you won’t just do it once and go ‘you’ve failed’. You’ll keep on trying. But you get to a point where it all looks a bit ridiculous that you are for the fifth time in four years trying a drug rehabilitation requirement when the person themselves is clearly not in a place where they actually want to engage and in a sense you’re sort of almost corralled into saying ‘the only thing I can do is impose a custodial sentence’...[But] you can try the suspended sentence first.”*

(Judicial participant 3, *Lowertown Two* district judge)

8.20 *“You can put all the community punishments into place but if they don’t conform to that there must be something that will say well look you can’t carry on like this then custody is the only thing. Albeit, as I said, it’s the end of the*

line, it's, you know, it's a little, I don't know if it's a failure of the system or perhaps it's a little bit of both."

(Judicial participant 20, *Lowertown Three* magistrate)

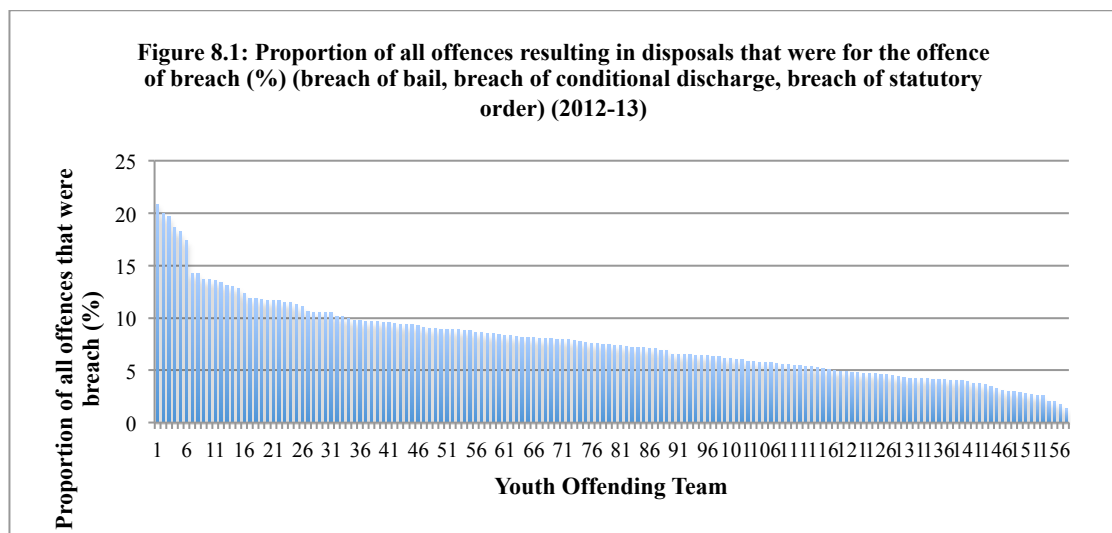
This data illustrates the subjective nature of decision-making around imposing custody and that magistrates and practitioners talked about frustrations with non-compliance and the idea of a natural time or tipping point when custody could be the only option for some young people. However, in *Highertown One* and *Three* respondents suggested that impatience with young people's behaviour led to the imposition of custody prematurely when further engagement in the community could have been possible. This raises the question of when is the point of "last resort"? It appears that sentencers' and practitioners' thresholds for the point of "last resort" or tolerance of non-compliance differed across the research sites affecting higher or lower levels of custody. Individual tolerance thresholds appeared to be influenced by dominant practice cultures within each of the research sites (see Chapter Seven). The *Lowertowns* demonstrated a stronger cultural affinity with welfare, decarceration and diversion that lent itself to higher tolerance of nuisance behaviour and its management in the community rather than through custody.

TO BREACH OR NOT TO BREACH? VARIATION IN ENFORCEMENT PRACTICES

Another area where discretion and individual power created variation in practice was the process of "breaching" young people for non-engagement with statutory orders. The YJB's National Standards for Youth Justice Services (2013), in addition to schedule 2 of the Criminal Justice and Immigration Act 2008 and schedule 1 of the Powers of Criminal Courts (Sentencing) Act 2000, outline the processes and standards that must be met in relation to handling "compliance and enforcement" of Youth Rehabilitation Orders and Referral Orders. The national standards state "every effort" should be made to support young people to complete their court order. However, if a young person's failure to comply is "judged unacceptable" a written warning must be issued (YJB, 2013: 30). All unacceptable non-compliance with Referral Orders should be reported to the Referral Order Panel so it can decide whether to refer the matter back to court. Regarding Youth Rehabilitation Orders the Criminal Justice and Immigration Act 2008 (schedule 2) states that if the responsible officer is of the opinion that the offender has failed without "reasonable excuse to comply" with the order he/she must be issued with a written warning. It also states that if the offender does not comply for a second time or

is given a second warning, during the period of the first warning, the young person must be breached and returned to the court to consider possible revocation and re-sentencing. The terms “judged unacceptable” and “reasonable excuse” are open to subjective interpretation and afford practitioners a degree of latitude and discretion in their decision-making about what would be deemed a reasonable or acceptable excuse for non-compliance. The degree to which a practitioner uses that discretion and latitude regarding the “reasonable” test will affect whether a warning is issued or breach is initiated.

Nationally collated youth justice statistics for England and Wales chart a significant amount of variation in the use of breach proceedings. For the year 2012-13 for 157 YOTs the proportion of all offences resulting in a disposal for breaches ranged from a high of 20.86 per cent to a low of 1.31 per cent (see Figure 8.1). Such variation is important as breach rates are significantly correlated with custody rates (Bateman, 2011). Studies also show that a significant proportion of children and young people are imprisoned due to breach of community orders for non-violent or sexual index offences, and not actually for the commission of further offences (Glover and Hibbert, 2008; Hart, 2011).



Source: Ministry of Justice (2013c)

The breach rate, as a proportion of all substantive offences, varied across the *Highbertowns* and *Lowertowns*. Table 8.1 shows that the mean breach rate for *Highbertown One* was 14.71 per cent compared to 9.25 per cent for *Lowertown One*. Similarly, the mean breach rate for *Highbertown Two* was higher at 9.49 compared to

7.62 per cent in *Lowertown Two*. In *Highborough Three* the breach rate was nearly twice that of *Lowertown Three* at 8.36 per cent in contrast to 4.62 per cent.

Table 8.1: Proportion of all offences resulting in disposals that were for the offence of breach (%) (breach of bail, breach of conditional discharge, breach of statutory order) for sample sites (2010-2012/13)

	<i>Highborough One</i>	<i>Lowertown One</i>	<i>Highborough Two</i>	<i>Lowertown Two</i>	<i>Highborough Three</i>	<i>Lowertown Three</i>
2010-11	13.27	11.46	8.66	7.09	6.46	5.49
2011-12	16.61	6.90	10.31	6.76	8.82	5.79
2012-13	14.26	9.39	9.50	9.02	9.79	2.58
Mean	14.71	9.25	9.49	7.62	8.36	4.62

Source: data derived from Ministry of Justice (2011b, 2012c, 2013c).

The interview data also suggested that there was some variation across the six sites in relation to attitudes regarding compliance and enforcement. In *Lowertown One* the data suggested that discretionary practice worked to maximise young people’s chances to avoid breach proceedings and was more common than in *Highborough One*. Indeed a theme in the data relating to breaching in *Lowertown One* was that YOT practitioners appeared to exercise discretion in relation to the two strikes warning guidelines in order to support the young person and to avoid bringing them back to court. Participant 12, responsible for managing the majority of the breach decisions in *Lowertown One*, describes the approach taken:

8.21 *“Breach is a thorny issue because young people can end up in custody because of breach and we deal with that quite carefully...We don’t take them back to court unless we have sat down with them and the family to try and find out what is going on and why they are breaching...One time at a breach meeting, what I decided, and again this is just our policy here...If a young person is not complying I will sit down with them any number of times. Another thing I will do is tell them that their behaviour is not acceptable and that I am lodging a breach, but if over the next three weeks they prove to me that they have got back on track I will pull the breach on the day.”*

(Participant 12, *Lowertown One* YOT court orders and remand manager)

Participant 12 describes how their approach to breach *“is just our policy here”*. Rather young people who are not complying are spoken to *“any number of times”* to try and support and re-engage them before any breach proceeding is launched or a warning

breach initiated, but with the opportunity for it to be recalled if the young person reengages. This discretionary practice was said by practitioners to be used to avoid bringing young people back to court and further criminalised or incarcerated. The flexibility of staff to support young people rather than breach them back is further expressed below:

- 8.22 *“We are having a breach meeting and we will change the officer. We will give you a different YOT worker. We will meet you at different times of day. We will include in the order different things you like to do as part of that process. Or in some cases we will reduce the frequency of contact from intensive to enhanced say, if that is going to be more manageable and you do the things that we are requiring you to do. So we can be that flexible with young people to make the order work and so long as there is no further offending then great.”*
(Participant 8, *Lowertown One* YOT court manager)

Participant 8’s comments are representative of the *Lowertown One* interview data, which suggested that staff were extremely adaptable to young people’s needs and will change orders, workers or frequency of contacts in order to “*make the order work*” or make it more “*manageable*”. *Lowertown One* participant 12 explained how discretionary practice applied with regard to Detention and Training Orders:

- 8.23 *“The other gap for me is breaches of a DTO licence. A fine or back to custody. What good is that? There ought to be able to tag them or put something in place about the community and containing their behaviour in the community or tightening up on them. But just going...to be fined £50...They haven’t got any money so how are they going to pay it? Their parents haven’t got any money either. So inevitably they end up back in custody and that really irritates me because that puts you in a position as a manager of making decisions not to breach somebody in breach of their DTO licence because I know they will go back to custody and what would be the point?”*
(Participant 12, *Lowertown One* YOT court orders and remand manager)

Some participants in *Lowertown One* also said that non-compliance was not a satisfactory reason for a young person to be recalled to prison because whilst they might not be compliant with an order they still had not reoffended. In these cases participant 12 said she advised her staff to recommend conditional discharges to be imposed on people by the court to avoid the use of custody.

Discretion regarding enforcement was also found in *Lowertown Two*. Many participants suggested that young people were given ample chances to comply prior to breach proceedings being brought to court:

8.24 *“I only get to know about enforcement when we have breached proceeding brought by the relevant YOT and you will have what is called a breach report which will set out the background of the breached proceedings being brought. You know the YOT is supposed to have a protocol whereby they will bring breach proceedings after the second breach. That has completely gone out of the window...We are talking about children here [who] will repeatedly breach orders...[The YOT] sort of give informal tickings off and then formal tickings off and then warnings.”*

(Judicial participant 3, *Lowertown Two* district judge)

Increased discretion and understanding regarding young people’s non-engagement with the YOT in *Lowertown Two* also appeared in the YOT practitioner interview data. Extract 8.25 suggests that there had previously been a culture of swiftly breaching young people back to court due to workers’ frustrations with non-compliance, rather than due to any increased risk. However, it was suggested that practice has now changed. Breaching is avoided if at all possible and discretionary practice applied:

8.25 *“The things that I see less and less of it here is that I used to see a lot of workers giving kids stuff to do and when they wouldn't do it and they couldn't manage their frustrations. [So] they would write a really terrible breach report, and it was more about the frustration than anything to do with the young person's risk. I think that is starting to change, well it certainly is here.”*

(Participant 36, *Lowertown Two* YOT community supervision manager)

In *Lowertown Three* a dominant theme in relation to breach procedures was also the idea of giving young people multiple chances to avoid them being brought back to court or remanded in custody for non-compliance. The following quote from the Crown Prosecution Service youth prosecutor is illustrative of the *Lowertown Three* YOT’s understanding around young people’s reasons for non-engagement with court orders:

8.26 *“He breached his bail before it had even got to court and I think, right okay this is your first time, I will give you a warning. The second time he breached his*

bail I said 'right okay you have done it once before, what's happening? What's going on?' 'Oh there is a problem in Cherry Tree House [supported housing]' [pseudonym] [say the YOT]. Right ok. Third time he has breached his bail, somebody from the YOT said this is his last chance putting in ISSP...and I remember writing on my hearing results chart, I wrote 'he was told this was his last chance'. So I get him up for the fourth time, I walk into court and said remand then is it? Not paying any attention, we are remanding him are we? 'No. There is a problem with his ISSP, the problem with his tag da da da da...Look he is complying with everything else, it's just there is a problem with that' ...I have absolute respect for the YOT in the magistrates' [court], and as I say they are the first person that we would go to."

(Participant 4, *Lowertown Three* youth CPS prosecutor)

In contrast to the *Lowertown* sites, in *Highertown One* and *Highertown Three* the data suggested that practitioners were much more punitive with non-compliance. Practitioner 21 summed up the belief of many participants in *Highertown One*:

8.27 *"Hit non-compliance, then yes, we are more punitive."*

(Practitioner 21, *Highertown One* YOT senior practitioner).

Extract 8.28 below is further illustration of the compliance and enforcement procedures in *Highertown One*:

8.28 *"We get high breaches on licences actually. But what we do now is stay breaches because what we used to do is bang bang, two failed appointments, you'll be back in court and it was seen as positive that you had done that. There was a positive spin on doing that and they would be back. Now we do a lot more where we sit down with them and their families and say what is happening and we do a lot more of trying not to take them to breach if we think we are going to lose them. So I think that happens on licences. But we do have some young people who come out on licence and bang bang they are straight back in because we are really worried about what they might do."*

(Participant 18, *Highertown One* YOT manager)

In *Highertown Three* breach proceedings and the issue of discretion were also significant. The YOT manager asserted, *"Breach is the highest one [reason for custodial*

disposals over a one year period]” (participant 28). Enforcement of breach procedures was deemed to be important to many *Highertown Three* participants:

8.29 “...at the end of the day they have committed an offence, and if you are not enforcing it properly you are giving them the wrong message. They are here often because they don’t understand boundaries and if they are not getting the boundaries here as well it is just reinforcing that message that brought them here in the first place.”

(Participant 26, *Highertown Three* YOT ISS manager)

There appeared to be a strong belief in enforcing the rules around non-compliance so as not to give young people “*the wrong message*”, that there should be consequences and not to enforce breach of national standards would not allow young people to understand that there are “*boundaries*”. Participant 28 suggested that *Highertown Three* had a tradition of being more “*punitive*” than other places in their region when it came to enforcement of orders:

8.30 “When I was doing my social work diploma...I think we were very much minimum intervention, growing out of crime. That was the ethos and you never breached anyone. I remember as a student I found that as bit of a shock because somebody gets an order and if they don’t turn up you keep sending them letters saying you will breach them. But you don’t and to be honest I didn’t feel that was giving out a very good message. And then when I qualified and...[I] went back into youth justice [in *Highertown Three*]. It was about the time when we were actually changing things. Things had changed and become, with the Crime and Disorder Act, things had become quite punitive overnight almost. *Highertown Three* had been far more punitive than our neighbouring city I must admit.”

(Participant 28, *Highertown Three* YOT manager)

Bateman’s (2011) work into imprisonment and breach suggests that a change in practitioner culture and the introduction of strict national standards under the Crime and Disorder Act 1998, and subsequent youth justice legislation, saw some practitioners believing that swift breaching back to court for non-compliance at the earliest opportunity was positive and the proper course of action. Bateman (2011) asserts that this marked an about-turn in practitioner culture of decriminalisation and decarceration from the 1980s and early 1990s. Bateman’s (2011) research chimes with the data

obtained from *Highertown One* and *Highertown Three* in which adhering to national standards around breaching was deemed to be important.

SUBORDINATE TO GUIDELINES: THE IMPOSSIBILITY OF SECURING CUSTODY

Whilst participants stated that custody should only be used a “last resort”, paradoxically the interview data also suggested that there appeared to be frustrations with sentencing guidelines limiting the use of custody for young people. This theme of concern about the impossibility of securing custodial sentences appeared dominant within the *Highertown* sites by a small, but significant, proportion of the sample, who felt for some young people “the last resort” principle had been satisfied yet current guidelines prevented the imposition of custody. The following extracts from *Highertown Two* participants 31 and 34 are illustrative of this:

8.31 *“If you look at the latest guidance, which has been sent out to magistrates...it now has increased all the thresholds for custody yet again...But for me the problem is there appears to be now no deterrent. So we are now getting young people who are breaching, who are at the ISS level, who are saying they won’t comply and yet they come before the magistrate time and time again and the magistrate is going okay you are not going to comply, order to continue. Why? At the moment there is no logical sense to sentencing. It seems very much that they have been given a directive not to use custody...That is just crazy for us. I know custody is massively problematic...but there are some young people who need a deterrent and at the moment they don’t seem to have one.”*

(Participant 31, *Highertown Two* YOT operations manager)

8.32 *“I mean actually ironically it’s the other way round where sometimes my YOT practitioners are going ‘you really should put this kid in custody’ and the magistrates are saying no...We are not a YOS who shies away from recommendations of it [custody] if we think it is in the public interest.”*

(Participant 34, *Highertown Two* YOT head of service)

Participant 31 reflects on the implications of the sentencing guidance, Overarching Principles – Sentencing Youth Definitive Guidance 2009, which was interpreted as having introduced a “*new custody threshold*” effectively telling magistrates “*not to use custody*” even in cases where the YOT was not offering a community package. Some

participants in the *Highertown Two* sample suggested that the increased custody threshold and policy driver to reduce numbers in custody was having an adverse effect as there was now no deterrent for young people to stop offending. Participant 34's comments illustrate YOT practitioners' frustrations with magistrates not following their recommendations of custodial sentences. The data suggests that despite the YOT feeling concerned about the reluctance of the court to impose custodial sentences *Highertown Two* YOT were not a service that "shies" away from recommending the use of custody. Participant 34 describes how he has sought to change an old social work culture from one in which "staff were told that they could not recommend...custody or remand" to one where workers can.

In *Highertown One* some judicial participants also suggested that the legal frameworks regarding custody and the Overarching Principles – Sentencing Youth Definitive Guidance 2009 steer magistrates away from imposing custody which results in young people believing they can offend with impunity:

8.33 *"I think that we have perhaps a perception that youths feel a little bit invulnerable because they know in order to get sent to custody they have to jump through hoops because no-one was willing to send them to custody and they get many many bites of the cherry before they get there...In youth [guidelines effect sentencing] enormously because it's very very strict isn't it...and a lot of them know that fine well...Oh yes they know. They'll say out loud in court 'there's nothing you can do to me is there you fucking bitch'."*

(Judicial participant 11, *Highertown One* district judge)

Magistrates and district judges often felt constrained by the law and the Overarching Principles that seek to limit the use of custodial sentences allowing young people to have "many many bites of the cherry" through often ineffective and "limp" community orders. Unease amongst practitioners in *Highertown Three* centred on a belief that young people were not being given custodial sentences for serious offences anymore. Extract 8.34 is illustrative of this unease with the decarcerative drive within policy and guidelines:

8.34 *"But I think that for me personally a lot of the issues seem to be around finances and possibly there is a lot of young people from this city who have done robbery offences in the last few years and they have got community orders, where as*

when I first started doing the job they would get custody and I am not sure that is right.”

(Participant 25, *Highertown Three* YOT senior practitioner)

Previous studies (see: Baker, 2004, 2005; Field, 2007; Hughes, 2009; Goldson and Hughes, 2010; Goddard and Myers, 2011; Myers and Goddard, 2012; Goddard and Myers, 2013; Briggs, 2013) together with the results from this research project suggests that some YOT practitioners have endeavoured to work from a welfare and decriminalisation-orientated approach through subversive discretionary practice against what they perceive to be a managerialist, responsabilizing, zero tolerance and justice-orientated neo-liberal framework of penalty. Conversely, the data also illustrate that since the decline in the number of young people being imprisoned and the recent decarcerative and diversionary policy changes (see Chapter Six) some practitioners, particularly in the *Highertown* sites, felt subordinate to and dissatisfied with national guidelines, policies and laws which limit the use of penal custody. These findings, detailing feelings of subordination to, and concern with, decarcerative guidelines in an era of penal reduction, are in contrast to previous studies (see Burnett and Appleton, 2004; Hughes, 2009; Briggs, 2013) which suggested that some practitioners felt subordinate to strict justice orientated or criminalising national standards and guidelines in a time of penal expansion.

THE INFLUENCE OF KEY INDIVIDUALS, LEADERSHIP AND MANAGEMENT

Empirical studies exploring the impact of individual leadership and personality within criminal justice agencies are limited (Stojkovic *et al.*, 2015). Yet leadership is highly significant within organisations because not only do leaders ensure the day-to-day running and organisation of tasks to fulfil agency core duties, but leadership also plays a central role in the creation of working cultures (Stojkovic and Farkas, 2003; Stohr and Collins, 2009; Stojkovic *et al.*, 2015). Stohr and Collins (2009: 184) define leadership as an:

“ongoing process of activity involving organising, decision making, innovating, communicating, team building, culture creation and moulding that is engaged in by workers and supervisors to achieve organisational goals.”

Leadership and its interrelation with organisational culture were central within the interview data across the *Lowertown* and *Highertown* research sites and appeared to influence higher or lower use of custody. The data showed dynamic leadership and key individuals were significant in achieving lower rates of custody. This theme was dominant within the *Lowertown* sites. In *Lowertown Three* the data suggested that workers and magistrates believed that their YOT manager was very influential to the direction and culture of the organisation as he was a “*politician*” who created opportunities and scope for successful interventions and initiatives based on children’s rights. The YOT manager was credited with the development of, and driving force for, the roll out of the “Panel Approach” (see Chapter Seven) and a practice culture of decriminalisation. The following quotes are illustrative of this:

8.35 *“As I said I think legislation is very positive at the moment but that is not the be all and end all because within any legislation there’s flexibility and I think as a YOS we have searched out that flexibility. We’ve always thought well we can see the way the legislation is going, but I don’t like that bit, is there anyway we can go round that, you know, and I think we have done that very successfully. The YOS manager has always been very supportive, if we think an element of legislation is not quite what we need, we will look at it and he will say ‘look if you think that is a better way of doing it, we will do it.’”*
(Participant 2, *Lowertown Three* YOT court manager)

8.36 *“Because Lewis [pseudonym], who is the YOT manager here, is a politician and he knows how to get money. He knows how to work rooms and it is his job to allow me to do my job and that’s how it works...He can work a room like there is no tomorrow...He has an idea, he knows the way the politicians are going and new developments and people like me who have been doing this job for 30 years, he trusts us to do the hands on stuff, the day-to-day running and every thing else.”*
(Participant 5, *Lowertown Three* YOT remand manager)

These extracts reveal a wider belief within the respondents that the manager’s leadership has been central to the YOT’s success as he acts like a “*politician*” to pioneer and champion their work but also creates a culture and space for practitioners to carry out and develop their own work free from centralised national control. Stohr and Collins (2009) assert that the political role within criminal justice leadership is often essential because, whilst the majority of criminal justice managers are not politically elected, their

role and function has a strong political component in relation to garnering resources and funding from central government. In contrast, interview data from practitioners in *Highertown Three* suggested that they did not feel like they were good, as an organisation, at promoting and “selling” themselves and key leadership regarding YOT development and promotion was lacking. There was a strong perception that they were an ineffective YOT:

8.37 *“I don’t think we are very good as a YOT, although I think we have got better particularly with the YJB, at publicising the work we do and the successes we have. It’s always perceived to be about oh the YOT is working with someone that has committed horrendous offences. I don’t think we are good enough at necessarily publicising the positives and how many people we are working with and how many successes we have with young people.”*

(Participant 24, *Highertown Three* YOT post-court team manager)

8.38 *“In a way certainly here we are not very good at selling ourselves. We are not salesmen...We should be out there...selling ourselves...When the inspection report comes out it will be quite clear that it is bit of a failing YOT.”*

(Participant 26, *Highertown Three* YOT ISS manager)

Participants in *Highertown Three* felt that they did not have the leadership or management to promote a culture in which the youth offending service publicised and sold what it was doing either to the public, to inspectors, or to the YJB. At the time of the data collection *Highertown Three* had just been inspected. Initial feedback from inspectors was that they deemed it a “failing YOT” with concerns around organisation, assessment of risk, planning and conduct of interventions, lack of managerial gatekeeping of assessments and planning of interventions and a high use of custody in comparison to their YOT family. The manager of the *Highertown Three* YOT reflected on the inspectors’ preliminary findings:

8.39 *“Oh no it was what I was expecting. I think it came as a bit of shock to some of the staff...But basically to a certain extent they don’t have it bad here compared to being in some other places like children’s services. But some people will always moan [laughs]...I think they thought that the inspectors would come in and empathise with them over their terrible work [load], which they haven’t got, and the fact that they came in and basically told them they didn’t know when*

they were well off and that they should get off their backsides and get on with stuff, came as a bit of a shock [laughs].”

(Participant 28, *Highertown Three* YOT manager)

The data suggested that there appeared to be low morale amongst workers in the *Highertown Three* YOT and some level of discord between management and practitioners. The *Highertown Three* YOT manager suggested that the general workforce were “*shocked*” to learn about the areas for improvement and inferred that what was required was a more energised workforce to get on with the tasks in hand. No participants in the sample specifically attributed the reported poor performance of the YOT to specific individuals or the YOT manager but it was clear from the interview data that *Highertown Three* was in stark contrast to *Lowertown Three* in regards to the presence of a strong leader setting the cultural tone, driving local policy and promoting the successful work of the YOT. The research data suggests that charismatic and strong leaders were deemed important to the success of a YOT and achieving a culture of low custody use and effective practice.

In *Lowertown One* key individuals and powerful leadership also appeared to be a significant theme for practitioners in setting the tone and culture of the organisation. There was a consensus amongst *Lowertown One* participants that the previous and current YOT managers have been influential in setting a culture of welfare, decarceration and innovation at the YOT. Participant 12’s comments are illustrative of the historical and enduring influence of the previous YOT manager’s “*passion*” for minimum intervention and anti-custody approach:

8.40 *“The YOT manager...he had worked solidly for 20 years plus to maintain a very close and sort of on-going relationships with the courts...I mean there was one day I went down to the magistrates’ liaison meeting...and the idea was I was on the agenda to talk about Referral Orders and extension or some gobbledegook around exceptional circumstances, which I think tied them up for about six or seven minutes. But Jamie [pseudonym], who was the YOT manager at the time, spent the next hour and half justifying and extolling that why it was that custody was a less preferred option to working with young people in the community with a real passion. With a real passion and we have maintained that with absolute consistency all the time that I have been in local government.”*

(Participant 13, *Lowertown One* YOT interventions manager)

This quote illustrates the belief held by the majority of the sample in *Lowertown One* that the previous YOT manager was central in promoting and maintaining a welfare approach based on minimum intervention. The leadership style and philosophy of the current YOT manager was also believed to be influential in maintaining a welfare and low custody approach in *Lowertown One*. The YOT manager explained the approach he attempts to foster:

8.41 *“We are constantly trying to reinvent and reinvigorate and think of new ways of doing things and again that links into the confidence agenda. We have this thing called the ‘hoop of hope’...A basic continuous improvement cycle that goes along the lines of: if somebody had a great idea and would like to do X and you say to your partners if you let us do X this will be the result. So they allow us to do X. We do it and it produces the results that we said it would do. They are happy...We then have another idea...and so on...I think that’s what we are quite good at...You need to constantly engage staff in new ways of working and take partners along with you.”*

(Participant 10, *Lowertown One* YOT manager)

Like in *Lowertown Three* the YOT manager appeared to be a key player in driving innovation in practice and was said to be able to persuade key stakeholders to garner funds to further the YOT’s work. A key component of this role was promoting the work of the YOT through evidence-based practice. Thus the theme of leader as politician was also evident in *Lowertown One*. In addition to the YOT manager being central in terms of leadership the theme of other key individuals driving practice in *Lowertown One* was noteworthy. Participant 12 appeared to be a forceful individual bent on championing young people’s rights, minimum intervention, and the decarceration of young people and was often rebellious in her approach:

8.42 *“We had a kid suspended from school because he was taking them [legal highs] into school and selling them. And I said to the school ‘what is he doing?’ and they said ‘well um...’ and I said ‘its not illegal for him to sell legal highs’ and they were like ‘ah!’ So I said ‘why have you suspended him?’ ‘Well he is selling them to the kids at school.’ So I said ‘what has he actually done which is illegal, they can go to the shop and buy them?’...I said ‘what is your policy about bringing legal highs in’ and they said ‘we don’t have one’. But they need to write one quick because you are excluding him, but it needs to be against some rule.”*

(Participant 12, *Lowertown One* YOT court orders and remand manager)

Tummers *et al.*, (2012) suggest that the personality of practitioners and professionals is highly instrumental to the direction of their practice and rule following. They posit that the personality trait of rebelliousness amongst staff is influential in whether workers are autonomous or passive and thus affecting policy and practice implementation. Eadie and Canton (2002) suggest that management style is also influential on levels of discretion. They contend that with the advancement of managerialism and tighter national standards under successive New Labour governments practice had generally moved from a position of low accountability and high discretion, to “constrained practice” of high levels of accountability and low levels of discretion. However, they suggest management style and decision-making regarding the *implementation* of national standards and policy is central to whether this practice environment is created. Rather they suggest a culture of “best practice”, with high levels of discretion and accountability, can be created through senior managers allowing their team to act autonomously using discretion, but maintaining high levels of accountability over staff through monitoring and supervision. Eadie and Canton (2002) assert that such an environment allows practitioners to recognise they are part of an organisation but to use personal beliefs, discretion and “reflective practice” to engage with young people on an individual basis in order to minimise discriminatory practice (often brought about by constrained “one size fits all’ national standards”). It would appear that leadership in *Lowertown One* promotes a culture, which allows practitioners to use discretion and to be reflective and push boundaries if necessary.

The theme of key individuals being influential to driving a policy and culture of minimum intervention in respect of cautioning and triage at a local level was also seen within the interview data in *Lowertown Two*. The YOT police officer and police sergeant discuss in the following extracts how the power of individuals and personalities affects the policy of triage implementation in *Lowertown Two*:

8.43 *“I mean I don’t want to reduce this just down to personalities, but I think for the purposes of research I think it is important to recognise that it does have a massive impact that if you have got certain key players within the system...”*
(Participant 38, *Lowertown Two* YOT police sergeant)

8.44 *“I think it is a specific personal thing...we have a member of staff who we have to negotiate and liaise with. The staff next door always go very low [in terms of*

severity of order] ...The member of staff that we liaise with here is of the basic opinion that kids will be kids and they will grow out of it end of story. So regardless of what they have done we need to give them a second chance”

(Participant 40, *Lowertown Two* YOT police officer)

These extracts are illustrative of the belief that particular individuals, “*personalities*” and “*key players*” have a “*massive impact*” within the system and how a YOT operated in regards to minimum intervention and diversion.

CONCLUSION

This chapter has attempted to explore the individual nature of youth penalty at a local level and how this might give rise to higher or lower rates of custody. The interview data highlights that discretionary practice, the power of the individual, leadership and personality all appear to be influential on penal cultures and the use of custodial disposals at a local level. The majority of the sample across both the *Lowertown* and *Hightown* sites suggested, at a rhetorical level at least, that custody was always used a “last resort” in accordance with international standards and domestic guidance. However, further analysis of the interview data suggested that perhaps one person’s “last resort” could be later or earlier than another person’s “last resort” due to discretionary practice and personal beliefs. The data suggested that other factors or considerations took precedence over the principle of “detention as last resort” in some sites more than others. In the *Hightown* sites a more dominant theme within the data was a practice of attempting to deliver welfare interventions through youth justice services and penal custody because of perceived shortfalls in children’s social care provision. Whilst participants in the *Lowertown* sites also commented that children’s social care provision was poor and often inadequate for children in conflict with the law they were significantly less inclined to seek substantive “care” via youth justice.

The data also suggested that discretionary practice and beliefs allowed some sentencers to use custody as a “short, sharp, shock” because it was felt it would stop young people from further offending. This strategy was also more dominant in the data obtained from the *Hightown* sites than the *Lowertowns*.

Another key theme from the data in relation to discretionary practice and the imposition of custodial disposals, which might be related to variation in sentencing, was the idea of thresholds for, or impatience, to young people’s non-compliance. In *Hightown One*

specifically it was suggested that some young people are sentenced to custodial sentences because of frustrations of the bench and practitioners rather than their perceived level of risk. Furthermore, in relation to the imposition of custodial disposals and discretionary practice the data also appeared to show feelings of subordination to, and frustrations with, sentencing guidelines and policy restricting custody use were stronger in the *Highertowns* compared to data obtained in the *Lowertown sites*.

Discretionary practice in relation to practitioner responses to non-compliance and enforcement appeared to be significant in the data and varied across the *Highertown* and *Lowertown* sites. *Lowertown One* participants suggested that they were creative with the breaching guidelines in comparison to *Highertown One* who reported a more tough and rigid response and reported a high breach rate leading to recalls to custody. *Highertown Three* reported a tough response to non-compliance in comparison to the perceived approach in *Lowertown Three*. A more adaptive approach was adopted in *Lowertown Two* when compared with its *Highertown* matched pair.

The interview data showed that strong leadership and key individuals were significant in relation to culture creation and local practice and varied across the sites. Key individuals and strong leadership wedded to ideas of welfare and minimum intervention with a focus on innovation within policy and practice were said to be present in the *Lowertowns*. In contrast *Highertown Three* participants suggested that leadership was lacking and staff morale and confidence in the service was low. Taken together the data indicates that discretionary practice, leadership and the power of the individual are related to, or influential on, penal cultures and organisations' use of custodial sentences.

CHAPTER NINE

CONCLUSION

INTRODUCTION

This thesis has explored the spatial and temporal nature of youth penalty in England and Wales by moving beyond the “national” as a unit of analysis and looking at the significance of the “local” on penalty. It has interrogated the drivers of penal expansion and reduction at a national policy level and the factors contributing towards justice by geography at a local practice level. This concluding chapter will offer an analytical synthesis of the thesis. It will distil the existing theory and literature on the sociology of punishment and the growth of the prison over recent years. It will then summarise the research findings, including outlining their implications for theory, policy and practice. The limitations of the research project will also be delineated and areas of further research and development addressed.

THE RESEARCH CONTEXT: UNDERSTANDING THE GROWTH OF THE PRISON

Chapter Two explored how the increasing use of the prison, as a primary control strategy, across the West since the 1970s, has caused considerable concern and interest within the field of criminology over recent years (Garland, 2013a, 2013b). Records indicate that prison populations have been expanding across the Western world (Walmsley, 2011) with longer and harsher sentences for those who break the law leading some to contend a “new punitiveness”(Pratt *et al.*, 2005) is present. Theorists have identified a number of global forces to account for such changes in the way nation states respond to crime. Much of this work can be attributed to Jock Young (1999), Loic Wacquant (2001a, 2001b, 2005, 2009a, 2009b) and Allesandro De Giorgi (2006) who have explored the interrelation between the rise of neo-liberalism and increased use of the prison and harsher control strategies against offenders across the U.S and Europe. Due to the expansion of globalisation and neo-liberalism they argued that there was a movement from a Fordist to a post-Fordist economy creating mass unemployment and insecure waged work, the further dismantling of the state apparatus and welfare services and the promotion of individualism. It is argued that the penal sphere is an integral part

of the neo-liberal state, to control those who fail in the free market post-Fordist economy (Wacquant, 2009a).

Similarly, the death of “penal welfare” (Garland, 2001) from the 1970s onwards - which focussed on the rehabilitation of offenders, social welfare intervention, the reintegration, support, education, and treatment for offenders - was said to have paved the way for a “culture of control” with increased punishment, zero tolerance and imprisonment of offenders (Garland, 2001). Furthermore, the rise of penal populism and the politicization of crime and punishment across many Western states have further contributed towards increased punitiveness and imprisonment of offenders (Garland, 2001; Roberts *et al.*, 2003; Pratt, 2007; Dumortier *et al.*, 2012; Pratt and Eriksson, 2013) (see Chapter Two).

The popularisation of the victim has also been said to have resulted in increased punitiveness and penal expansion (Garland, 2001; Simon, 2007; Walklate, 2009; Languin *et al.*, 2012). The persona of the victim has been politicized and popularised to the extent that victims’ rights have become of paramount importance in law making and sentencing. In order for victims’ rights and needs to be satisfied ever more punitive and severe sentences have been imposed, further contributing towards penal expansion (see Chapter Two).

Chapter Three explored youth penalty specifically and presented evidence that argued that there have been a number of interrelated “global trends” over the last 40 years leading towards a “punitive turn” (Goldson, 2002a, 2014; Muncie and Goldson 2006a, 2012; Muncie, 2008, 2011a, 2011c, 2012, 2015; Bailleau *et al.*, 2011; Dunkel, 2013a). International comparative analysis suggests that youth justice in Western states, which previously afforded special measures for children in trouble with the law, has moved away from the principle of welfare – recognising the needs of young people by providing treatment, protection and care rather than punishment – towards actuarial justice and risk management, adulteration, responsabilization, intolerance of youth and crime, and targeting of black and minority ethnic youth, which has ultimately led to increased use of the prison and penal expansionism.

DIFFERENTIAL JUSTICE OVER TIME AND SPACE: UNPICKING YOUTH PENALTY

International evidence suggests a convergence towards a number of standardised and homogenised punitive practices to govern young people across Western societies

(Muncie, 2005). Such grand theories offer “totalising narratives” (Goldson and Muncie, 2012) of “criminologies of catastrophe” (O’Malley, 2000) in which youth penalty across Western democracies is on a path towards ever more punitive and controlling systems of neo-liberal governance (see Chapters Two and Three). Closer inspection of comparative analyses or international evidence, however, suggests that the picture is far from clear and the exaggerated focus on the “punitive turn” has detracted from a more nuanced understanding of penalty (Matthews, 2005). Rather the “new punitiveness” is not evenly distributed and there is considerable variation between states. Many states have resisted neo-liberal law and order and have instead operated under conservative corporatist, social democratic, oriental corporatist modes of governance and retained strong welfare services and comparatively low prison rates (Cavadino and Dignan, 2006a, 2006b). Similarly, there is significant variation in the age of criminal responsibility across Western countries (Goldson, 2009, 2013b). The use of prison for children and young people also varies significantly with penal expansionism not occurring across every state (Goldson and Muncie, 2006; Muncie, 2015). Scandinavian countries along with Belgium and Japan, for example, have been able to maintain low levels of youth incarceration compared to the U.S, Greece, Australia and England and Wales, which have significantly higher rates of youth imprisonment (see Chapter Four).

Analysis also reveals that youth penalty changes overtime and is not moving towards evermore-punitive governance across the globe as some social forces theses suggest. Whilst youth imprisonment rates increased from the 1990s onwards in many Western states, recently there have been significant decreases in prison use for young people in the U.S, England and Wales, Canada and the Netherlands (Allen, 2011; Ministry of Justice, 2013b; Goshe, 2015; Goldson, 2015; Boztas, 2016; Statistics Canada, 2016) (See Chapter Four).

Furthermore, the “national” is arguably an inadequate unit of analysis (Goldson and Hughes, 2010). Intra-state analysis of international data reveals significant variation in sentencing and the use of custody within many Western states (Bateman and Stanley, 2002; Bishop and Decker, 2006; Storgaard, 2010; Lappi-Seppalla, 2010; Castaignede and Pignoux, 2010; Dunkel, 2010). In particular, in England and Wales analysis of national YOT data returns reveals significant variation in the use of custody across 157 YOTs. For the years 2004 to 2012/13 custodial disposals varied from a “high” of 10.82 to a “low” of 0.62 (mean rate as percentage of all disposals imposed). Importantly, if socio-economic characteristics, including crime rates, are accounted and controlled for, it is argued that similar YOT areas still produce different sentencing outcomes (Bateman

and Stanley, 2002; Goldson and Hughes, 2010; Goldson, 2013). Likewise, whilst there has been a significant decline in the number of FTEs in the youth justice system and a reduction in the use of the prison for young people since 2008, this “punitive downturn” or “progressive turn” is not evenly distributed across YOT areas in England and Wales. Custody rates within some YOTs remain higher than the national average and there have not been as significant reductions at a local level (See Chapter Four).

This evidence suggests that youth penalty is temporally and spatially differentiated. The “national” thus obscures local and regional differences in youth penalty (Goldson and Hughes, 2010). The concepts of differential justice or justice by geography are therefore critical to consider. It is these contradictions and variances that this thesis has attempted to address.

EXISTING RESEARCH AND KNOWLEDGE

Some researchers have explored the differentiated nature of penalty and focused on the idea of justice by geography. Multiple studies reveal significant variation in sentencing across England and Wales and the localised nature of penalty. Crucially, evidence suggests that recorded crime rates were not correlated with custody rates and there was unequal treatment of like for like offences across different areas (Bottomley, 1973; Tarling, 1979; 2006; Parker *et al.*, 1989; Bateman and Stanley, 2002; Feilzer and Hood, 2004; Gibbs and Hickson, 2009; YJB, 2010; Goldson, 2013a). However, the majority of these studies exploring variation in sentencing and justice by geography are dated and/or based on analysis of sentencing data or case records only. Such studies fail to explore the nuanced qualitative nature of practice on the ground. Bateman and Stanley’s (2002) authoritative investigation of variations in sentencing across different areas with high and low use of custody, for example, whilst interesting and informative on some factors associated with higher use of custody, is primarily concerned with the effect of technical processes in youth justice rather than the qualitative aspects of YOT practice culture (see Chapter Five).

Inter-dependent power relations between national and local government and individuals (Hughes and Edwards, 2002; Stenson and Edwards, 2004; Stenson, 2005; Edwards and Hughes 2005, 2009, 2012), “differentiated polity” and “intergovernmental relations” (Rhodes, 1997) are essential to consider when analysing localised penalty. It is argued that national and local government is inextricably linked through “power dependence” and rely on each other for resources, delivery of services and resources and so forth.

Thus opening up the potential for “intentional political actors” to subvert national policy at a local level. Discretion, resistance and subversion of national policy by “street level bureaucrats” (Lipsky (1980) leads to an “implementation gap” (Miller, 2001). Equally, in youth justice, studies indicate that practitioner discretion and subversion of national managerialist policy prescriptions have resulted in variation in practice (Evans and Wilkinson 1990; Puech and Evans, 2001; Eadie and Canton, 2002; Fields, 2007; Hughes, 2009; Prior, 2009; Goldson and Hughes, 2010; Phoenix, 2010; Briggs, 2013). Some studies looking at practice in individual YOTs indicate that community and professional cultures were significant to local practice on the ground and either promoted more lenient, welfarist and or punitive interventions with young people in trouble with the law (Bailey and Williams, 2000; Hughes and Edwards, 2001; Burnett and Appleton, 2004; Ellis and Boden, 2005; Souhami, 2007; Hughes and Rowe, 2007; Nacro, 2011a, 2011b). Other studies have noted how local management and actors were influential in developing more parsimonious approaches during the 1980s (Rutherford, 1992; Hughes *et al.*, 1998; Telford and Santatzoglou, 2012). However, there have been few theoretically informed empirical investigations that have focussed specifically on youth justice practice culture and the interrelations between the various component parts of the youth justice system. Likewise no studies before the research presented here have systematically examined the variance of occupational cultures, practice and systems across multiple YOTs using a comparative method of analysis (see Chapter Five, Seven and Eight). Similarly, there has been some policy and statistical analyses exploring the reduction of FTEs into the youth justice system and decline in the number of young people incarcerated over recent years (see Bateman, 2011, 2012, 2014). Allen (2011) notes a number of “behind the scenes” changes; yet there has been limited empirical exploration of the drivers of penal reduction in England and Wales drawing on the experiences of national policy experts (see Chapter Six).

AIMS AND METHODS

This research is unique as there is no directly comparable study in the public domain. The research has taken a systemic approach to understanding the temporal and spatial nature of youth penalty by focusing on three aims:

- i. To develop theoretical understandings of differential justice/ justice by geography in youth justice sentencing and practice by focusing on localised patterns of custodial sentencing across different YOT areas in England and Wales;

- ii. To explore what cultural conditions, systems, processes, policies, political contexts and practices might promote higher or lower use of custody at a local and national level;
- iii. To advance knowledge and understanding of the key features of contemporary youth penalty in England and Wales.

In order to accomplish the research aims three paired sites, matched on socioeconomic characteristics, including recorded crime rates, were selected (two in the north of England, two in south of England and two in Wales). In each pairing one site had a higher use of custody and one site had a lower use of custody (see Chapter Five). A sample of YOT, police, and CPS practitioners/officers, magistrates and district judges were interviewed in each site to interrogate the research aims. Similarly, a sample of “policy elites” including former senior civil servants, senior NGO officers, academics and heads of service, were interviewed in order to explore the drivers of penal expansion and reduction at a “national” level (total sample: $n = 91$).

RESEARCH FINDINGS

THE DRIVERS OF THE “PUNITIVE TURN” AND THE “PUNITIVE DOWNTURN”

Over the last 30 years or so there has been significant criminological attention paid to the “punitive turn” in youth justice policy and practice in England and Wales and how we might account for its hybridity, its contradictions, the supposed decline of welfare principles and its punitive characteristics and effects (Phoenix, 2015). Much of this work has been theoretical in nature focusing on changes in policy, law and political rhetoric as a cause for the “new youth justice” (see: Muncie, 1999, 2006, 2008; Goldson, 2000, 2006; Pitts, 2001a, 2001b, 2001c; Smith, 2003, 2005, 2011; Goldson and Muncie, 2006; Haines and Case, 2008). However, until now there has been little attention paid to the cultural conditions and political contexts associated with penal reduction since 2008 in England and Wales. A number of themes related to the drivers of penal expansion and reduction emerged from the expert interview data.

Political, policy and cultural conditions leading to penal expansion

Politicization

The interview data from the expert sample indicated that the politicization of youth justice policy was central to penal expansion in England and Wales from 1990s onwards. Participants suggested that during the 1990s crime, and particularly youth crime became a “political football” in which there was a so called “arms race” in which the Conservative government and Labour, in opposition, battled to claim who could be toughest on youth crime and punishment. National expert participants also remarked that political pronouncements in relation to being “tough on crime” appeared to have a material effect on magistrates’ and judges sentencing decisions and increased use of prison.

An atypical case and moral panics

A second dominant and interlinking theme to emerge from the expert interview data relating to drivers of penal expansion was the enduring influence of the murder of James Bulger in 1993 in the politicization of youth crime. These findings support a plethora of evidence which suggests that the killing of James Bulger marked a defining moment in the construction of children and child “offenders” contributing towards a media frenzy, moral panic and toughening up of penal policy (Davis and Bourhill 1997; Goldson, 1997a, 2013; Haydon and Scraton, 2000).

Increased formalization and intervention

A third driver of penal expansion identified is the movement towards formalization within youth justice policy and practice between 1990 and 2008 driven by politicization and “popular punitivism” (Bottoms, 1995). A number of former senior civil servants in the expert sample suggested that there was a movement away from minimum intervention, an approach popular in the Home Office during the 1980s, towards formalization and early intervention through the criminal justice system. However, many of the expert sample stated that government policy, particularly under early New Labour administrations, was founded on inaccurate evidence and abandonment of the “growing out of crime” thesis. The formalization and tightening up of the cautioning process and the implementation of national targets, such as the Offences Brought to Justice Target (OBJT) in 2002, were said to have contributed towards the rapid increase in FTEs and young people being incarcerated.

A policy position that custody is effective

A fourth driver of penal expansion reported by the expert sample was the belief amongst policy elites that the use of custody for children and young people was an effective measure. It was said that the Audit Commission's Misspent Youth (1996) report, co-authored by Mark Perfect who later became the first chief executive of the YJB, asserted that imprisonment could reduce offending by way of acting as a deterrent. It was stated that the Audit Commission's report was hugely influential on the incoming New Labour government's reforms of the youth justice system. Similarly, it was suggested that a policy focus on custody and the creation of the Detention and Training Order fostered an environment in which sentencers and practitioners felt the use of custody was an effective measure, despite the evidence stating otherwise. Key individuals at the YJB were said to be influential in driving through the New Labour reforms to youth justice policy and practice.

Political, policy and cultural conditions leading to penal reduction

Since 2008 there has been a rapid decline in the number of FTEs into the youth justice system and a significant reduction of young people being imprisoned. FTEs declined by 75 per cent from 88,403 in 2003/04 to 22,393 in 2013/14 (Ministry of Justice, 2015c). Similarly, since 2008 the average youth custodial population declined significantly from around 3,000 to just under 1000 in 2016 (Ministry of Justice, 2016b). A number of interlinking drivers of penal reduction were suggested.

Diversion and decarceration

Despite some of the expert sample reporting that the drivers of penal reduction in the youth justice system were hard to determine and that there was an air of mystery around them, many national expert participants suggested that primarily a movement away from formalization and targets towards diversion and decarceration was responsible for the rapid decline in FTEs and children and young people incarcerated. Crucially, the abolition of the OBJT under the Youth Crime Action Plan in 2008 was said to be a key driver in the rapid decline of FTEs. These assertions echo the work of Allen (2011) and Bateman (2012, 2014, 2015), which posits that the reduction of FTEs is correlated to decreases in custody. However, much of this work does not empirically explore how this reduction in FTEs was politically achieved. The national expert interviews suggested

that a number of other factors were also responsible for a decline in the youth penal population.

A change in the “penal zeitgeist”

A subtle change in what was termed the “penal zeitgeist” was said to have taken place. Participants posited that there was a growing acknowledgement amongst policy elites and many practitioners of the harmful effects of imprisonment and the criminalization of a significant number of children through formal criminal justice interventions. Similarly, it was suggested that there was a growing weariness of a policy agenda driven by punitiveness and tough rhetoric. This change in the “*top level penal mentalities*” (National participant 17, academic) enabled a movement towards a “*more child friendly*” (National participant 7, former senior civil servant) or pragmatic youth justice through a number of subtle and nuanced policy changes and instruments including: the appointment of the first Children’s Minister and the Every Child Matters initiative in 2002 to focus government on the needs of disadvantaged children; the joint sponsorship of the YJB by the Ministry of Justice and the Department for Children, Schools and Families in 2007; and finally the Youth Crime Action Plan (2008) with a focus on diversionary measures.

A change in leadership at the YJB

A change in leadership at a national level from 2008 was said to have been influential on creating a more “moderate” youth justice system. The appointments of Frances Done as Chair of the YJB in 2008, and John Drew as chief executive in 2009, were said to have been significant drivers for penal reduction. Participants suggested it was their ideas, drive and leadership towards diversion and decarceration that helped change the focus of policy and practice at the YJB. Similarly, it was asserted that the leadership of Ian McPherson, ACPO children and families commander, and John Bache, Deputy Chairman of the Magistrates Association, was instrumental to a movement in youth justice policy and practice towards diversion and away from mass criminalising strategies. Thus, just as top-level leadership was instrumental in penal expansion and the “punitive turn”, key individuals and their leadership were an instrumental force for penal reduction.

Depoliticization

Another driver associated with penal reduction and a more parsimonious youth justice system has been the depoliticization of youth crime. National expert participants submitted that youth crime was taken off the political agenda allowing a “diversionary turn” to be taken in policy and practice, essentially “under the radar” of public and political scrutiny. It was suggested that the Coalition Government implemented “decoy rhetoric” (Loader, 2010) of sounding tough when necessary to satisfy the public and media, whilst also instigating targets for reducing FTEs into the justice system; an approach reminiscent of the 1980s Thatcher governments. It was also stated that the YJB had been prominent in managing down attention on the recent decline in FTEs and the number of young people incarcerated by using the technical language of FTEs rather than cautioning and also by keeping such reductions from public attention by not publicising them. Since 2008 political responses to high profile child offences involving violence were also said to have been restrained and muted contributing to the depoliticization of youth crime.

Economic austerity

A fourth driver of penal reduction was said to be the economic downturn commencing in 2008. The national expert sample suggested that economic conditions prompted by the global financial crisis were a major influence on the number of young people being drawn into the youth justice system and the contraction of the youth penal state. It was said that there was an agreement between the two political parties to place a moratorium on talking up crime and ever-increasing punitive crime policy due to its expense. Similarly, it was stated that a focus on diversion and decarceration in youth justice was complementary to an ever-shrinking fiscal budget under austerity. Under the Coalition Government significant cuts to criminal justice were implemented as part of the Comprehensive Spending Review (2010). More specifically there have been significant reductions to YOT budgets, including vast cuts to YJB and YOT staff numbers (Ministry of Justice, 2015d). It was suggested that such cuts have altered the reach and scope of the youth justice system, not only changing the governance of young people in trouble with the law through increased diversion and cautioning, but also on those practitioners working within the system. Many of the national expert sample argued that under austerity the nature and shape of the youth justice system has changed significantly. A reduced budget has seen a watering down of managerialist principles changing lines of governance between the national and the local. With stringent cuts,

managerial control from the YJB over YOTs and practitioners has decreased with increased levels of discretion, fewer and streamlined national standards and reduced monitoring. Likewise, in many instances YOTs have become smaller with shrinking remits and responsibilities with increased local control. Thus “crisis conditions” in the economy and a programme of austerity have provided an opportunity for a more progressive, parsimonious or pragmatic youth justice system (Faulkner, 2011; Goldson, 2015).

Analysing the temporal nature of youth penalty reveals that youth justice policy and practices are susceptible to the caprices of social, political and economic drivers. The findings of the expert sample interviews reveal a number of dominant factors responsible for penal expansion and more recently penal reduction. However, this analysis while useful is at the level of the “national” and obscures local variation or the sub-national spatial nature of youth penalty. The most recent “punitive downturn” has not been experienced across every YOT area in England and Wales. Indeed this study reveals the centrality of the power of the local on youth penalty

THE DRIVERS OF JUSTICE BY GEOGRAPHY

In order to interrogate the factors associated with justice by geography three matched pairs of YOT areas were selected across three different regions in England and Wales. Within each pairing, matched on socio-economic factors and recorded crime rates as far as possible, one had comparatively higher use of custody and the other a comparatively lower use of custody. Despite each matched pair having similar socioeconomic profiles (see Chapter Five) they appeared to be producing different sentencing outcomes. This study sought to unpick this apparent contradiction. The research results found significant variation in practices and processes across all six YOT areas. More specifically local organizational cultures, use of diversionary disposals, perceptions of the prevalence of crime, discretionary practice around the use of custody and breach procedures and local leadership and management differed between the *Highertown* and *Lowertown* sites appearing to effect levels of custody.

Varying local organisational and practice cultures: the importance of welfare, decarceration and diversion

Local penal cultures appeared to be central in forming a YOT's identity, practice and perceived role, which in turn impacted upon and influenced an areas' use of custody for young people. Each YOT represented a separate unit with its own culture, norms and organisational values/ beliefs. Each site's practice culture and ethos was multifaceted and similar cultures and philosophies were not necessarily mirrored across all of the *Lowertown* or *Hightown* sites, nor were they uniform. However, some practice cultures appeared more dominant in their influence over higher and lower use of custody. The *Lowertown* sites tended to lean more towards organisational cultures of welfare and decarceration. The *Lowertown* participants suggested that their working cultures were characterised as championing a welfare approach, providing opportunities to young people, meeting their social and familial needs and supporting decarceration. *Lowertown* participants also described moving away from a case management culture to one of traditional social work with young people and their families in attempts to address their needs. Linked to an organisational philosophy of welfare was a children's rights based approach found particularly within *Lowertowns One* and *Three*. A practice culture focusing on a research based approach, of commissioning and using research evidence to inform practice, was also apparent in *Lowertowns One* and *Three* but not evident in the *Hightowns*.

In contrast in *Hightown Two* the interview data suggested a dominant practice culture based on ideas of "crime based offender management" rather than welfare as a primary driver. *Hightown Two* participants suggested that their positioning within a local government framework of Community Safety and Offender Management framed children as "offenders" and focused their service on the needs of the victim and ensuring justice had been done. There was a cultural belief in *Hightown Two* that the youth justice services governed by Children Services at a local level were too focused on children's welfare, where as it was suggested that a YOT's role was to manage criminal behaviour. Similarly, in *Hightown One* the data suggested a dominant organisational culture which privileged the role of the victim in many YOT interventions. Practitioners felt their role was to defend the victim and the community against youth offending.

The principle and practice of diversion was also central to the divergence in organisational cultures in the *Lowertown* and *Hightown* sites. Analysis of national sentencing data suggests that higher rates of pre-court disposals are correlated with

lower rates of custodial disposals (see also Bateman and Stanley, 2002; Bateman, 2011). This relationship was echoed in the six sample sites. The *Lowertowns* tended to have higher rates of pre-court disposals than their *Hightertown* counterparts. Within the *Lowertown* sites there was a strong organisational culture of promoting diversion, as there was a belief that the majority of children grow out of crime. This dominant practice culture was supported by a systems management approach in *Lowertown One* and *Three*, which optimised the use of diversion and pre-court disposals such as triage systems. Whilst *Hightertown* participants supported the idea of diversion for low level offending, participants suggested that there was a general unease with the post 2008 and LASPO Act 2012 levels of diversion for repeat young offenders. This general unease was reflected in their lower rates of diversion and less well developed systems of diversion in the *Hightertowns*.

An additional component of organisational culture that appeared to be influential on the use of custody was the degree to which participants perceived youth crime to be particularly problematic in their area. Whilst the paired sites were matched on recorded crime rates (as far as was possible), the data indicated that many *Hightertown One* and *Three* participants perceived youth crime to be particularly serious and prevalent in their localities and was thus the reason for higher custody rates in their areas. *Hightertown Two* participants said they felt offending had increased in seriousness and prevalence in recent years. Yet in the *Lowertowns*, participant perceptions of the seriousness and prevalence of youth crime appeared to be less of a concern.

Discretionary practice and local power

The impact and influence of “street level” practitioners (Lipsky, 1980, 2010) on the implementation of policy is well established (Lipsky, 1980, 2010; Standfort, 2000; Maynard-Moody and Mushero, 2003; Hill and Hupe, 2009; Tummers *et al.*, 2012; Tummers and Bekkers, 2014). More specifically some youth justice studies have explored the impact of practitioner discretion on practice (Baker, 2004, 2005, Fergusson, 2007; Field, 2007, Hughes 2009; Goldson and Hughes, 2010; Briggs, 2013). The findings of this study extend this literature. The interview data suggests that variation in discretionary practice had a significant impact on the imposition of penal custody across the six research sites, namely discretionary practice and personal beliefs regarding sentencing decisions and the imposition of custody and breach proceedings. Interrelated to this theme of discretionary practice was the influence of local power, such as

individual leadership, management and personality, on levels of punitivity and custody use across the six sites.

The subjective nature of sentencing: key factors in decision-making regarding the imposition of custody

Despite international human rights frameworks, national standards and sentencing guidelines expecting custody to be used as a “last resort” (see Sentencing Guidelines Council, 2009) the interview data suggested that discretionary practice often subverted this guidance. On a rhetorical level, practitioners across all six *Lowertown* and *Hihertown* sites tended to state that they only imposed custody as a “last resort”. However, a number of competing rationales and beliefs appeared dominant in decision-making regarding the imposition of custody.

Custody as a form of welfare

Firstly, in the *Hihertowns* there appeared to be a dominant theme of using custody to secure welfare for children. Whilst both *Hihertown* and *Lowertown* practitioners suggested that there was a lack of support from children’s services for vulnerable children known to the YOT, it was in the *Hihertowns* that practitioners stated that young people were sometimes remanded into penal custody due to limited accommodation and welfare support offered by children’s services. In addition to this, in *Hihertown One* and *Hihertown Three* there appeared to be a belief amongst magistrates and practitioners that custody could offer support, structure and education to children in conflict with the law that was not available in the community. In contrast, this theme was not apparent in the *Lowertown* data, rather there appeared to be a strong belief that custody was deleterious and harmful for young people.

“Short, sharp, shock”

A second theme of discretionary practice, which could be associated with penal expansion, was a belief amongst many *Hihertown* practitioners that a “short, sharp, shock” through a short spell in custody was effective. Many participants suggested that such an approach reduced reoffending rates and sent young people a clear message. In contrast this theme was not found in the *Lowertown* data.

“Running out of patience”

A third factor of differing individual beliefs and practices relating to the recommendation of custody, which differed between the *Highertown* and *Lowertown* sites, was the idea of sentencers and practitioners running out of patience with young people. A discernable theme within the data was a belief amongst *Highertown* professionals that young people received custodial sentences for repeat low level offences as a result of magistrates and other professionals becoming frustrated with their non-compliance, rather than a young person’s level of risk, suggesting that custody was not always used as a “last resort”. Persistency of offending combined with sentencer and professional frustration was, therefore, considered a driver of the imposition of custody in the *Highertowns*. In contrast in the *Lowertowns*, whilst participants recognised that persistence was a factor in imposing custodial sentences, the theme of magistrate and practitioner frustration with low level repeat offending - leading to premature custodial sentences – was not so apparent.

Subordinate to the guidelines

A fourth theme associated with decision-making regarding the imposition of custody was the idea of practitioner frustrations with sentencing guidelines limiting the use of custody in the *Highertowns*. Feelings of the impossibility of securing custody due to changes to the sentencing guidelines were apparent amongst a small, but significant, proportion of the sample in the *Highertowns*. Some *Highertown* participants submitted that in some instances their decision-making was constrained as the YOT could not impose custody when they felt it was needed and in the public interest. These findings detailing feelings of subordination to, and concern with, decarcerative guidelines in an era of penal reduction are in contrast to previous studies (Burnett and Appleton, 2004; Hughes, 2009; Briggs, 2013), which suggested that practitioners felt subordinate to strict justice orientated or criminalising national standards and guidelines in a time of penal expansion.

Differing attitudes to breach: the importance of managing down non-compliance

The Powers of the Criminal Courts (Sentencing) Act 2000, the Criminal Justice and Immigration Act 2008 and National Standards for Youth Justice Services (YJB, 2013) outline the processes and standards that must be met in relation to handling compliance and enforcement on statutory orders. However, guidance allows some level of discretion

for practitioners in processes around breaching, thus opening up the possibility for variance in practice. Such variation is important to consider as breach rates are correlated with custody rates (Bateman, 2011). Analysis of breach rates across the *Lowertown* and *Hightown* sites revealed significant variation: the *Hightowns* tended to have higher rates of breach than the *Lowertowns*. Such differences in breach rates were also echoed in practitioners' attitudes to, and processes around, non-compliance between the *Hightowns* and *Lowertowns*. The interview data suggested that in the *Lowertowns* practitioners exercised discretion and maximised latitude in guidelines to allow numerous chances and support to young people who were not complying with their community orders. Similarly, there was a strong belief that non-compliance and further offending should not be conflated and as such every effort should be made to avoid recalls to court or new sentencing merely for non-compliance. In contrast, particularly in *Hightowns One* and *Three*, participants stated that enforcement was swift for non-compliance and children and young people were given few chances before they were breached back to court.

Local power: the importance of individual leadership and management

The analysis of the drivers of penal expansion and then penal reduction indicated that key individuals and leadership amongst penal policy elites were central to a movement towards diversion and decarceration from 2008 onwards. Exploring the drivers of penal expansion and reduction at a local level also revealed the centrality and importance of key individuals, management style and leadership in relation to the creation of culture and practice, which varied across the sites. Strong leadership by key individuals wedded to ideas of welfare and minimum intervention with a focus on innovation within policy and practice were present in the *Lowertowns* and not so evident in the *Hightowns*.

THEORETICAL IMPLICATIONS: MOVING BEYOND “THE PUNITIVE TURN” THESIS

The results of this study make a critical contribution to understanding the nature and extent of contemporary youth penalty in England and Wales. Significant attention has been paid to identifying the generalised and interlinking themes present within youth penalty through the analysis of political, policy and legal pronouncements coupled with social and economic forces theses. The “punitive turn” thesis has suggested that youth justice took an about-turn from the diversionary and decarcerative approach in the 1980s

to an ever more controlling, responsabilizing, intolerant and ultimately punitive form of governance from the 1990s onwards and strengthened under New Labour reforms from 1997. However, as some have contended these arguments offer “totalising narratives” (Goldson and Muncie, 2012) and ignore the complex, “messy” (Goldson, 2014) local nature of youth penalty (Goldson and Hughes, 2010). Similarly, it is also argued that theoretical analysis has tended to frame youth justice as though it is a “coherent system and as though it has some type of monolithic character” which ultimately has the effect of “flatten[ing] the...complex and highly diverse field of social relations, bureaucratic organisations, social actors and the ways in which power infuses these relations” (Phoenix, 2015: 9).

Rather this study has specifically sought to empirically understand the fragmented and local nature of youth penalty in England and Wales, which a substantial proportion of traditional analyses have failed to capture. Following Garland’s (2013a) methodological call, this study has moved away from social forces theses and concentrated on the “the state”. The “state” being state and legal processes, legal changes and the organisations and professionals pursuant of those laws, guidance and legal changes at both the national and local levels.

The empirical data highlights the importance and significance of local organisational cultures, local power and discretionary practice in explaining the differentiated nature of youth penalty. Despite the fact that it has been nearly two decades since the passing of the Crime and Disorder Act 1998 and the formation of the “new youth justice” (Goldson, 2000) Phoenix (2015) notes that apart from a limited number of studies (see: Eadie and Canton, 2002; Baker, 2005; Souhami, 2007, 2015a, 2015b; and Field, 2007) there have been very few, if any, theoretically informed empirical investigations that have explored youth justice occupational culture, practice and the interrelations between the differing component parts of the youth justice system. However, this study illustrates how local penal culture, processes, and discretionary practice can support, augment or disrupt central law and policy leading to either penal expansion or reduction through increased or decreased use of custody at a local level.

The findings demonstrate that theoretical analyses need to move beyond reductionist theories, which explain the nature and extent of youth penalty through purely macro narratives of social forces and political rhetoric and policy analysis, to focus attention on the nuanced and multifaceted nature of penalty by exploring local conditions, factors and practices on the ground for a deeper theoretical understanding. By exploring how

practitioners and magistrates conceive their roles, interpret law, national standards and sentencing guidelines in relation to pre-court, community and custodial disposals, it has been empirically demonstrated that sentencing outcomes, practice and ultimately youth penalty are spatially differentiated. Penal trends and narratives are not equally distributed, rather local organisational culture, practice and the power of practitioners, as autonomous individuals, are the vehicles to create either a more parsimonious, moderate or “punitive” youth justice system depending on locality.

Of course it is the national that provides the “steering” (Crawford, 2006) through national directives, law and policy, but it the local that has the power to create different and varied interpretations of policy, and crucially local penal cultures, which appear to set the differentiated “tone” for how young people are governed. Thus during periods of penal expansion, many YOTs managed to buck national trends and maintain relatively low custody rates and high rates of pre-court disposals through welfare, decriminalisation and diversionary approaches. Similarly just as we are experiencing a “punitive down turn” some YOTs have bucked national trends and maintained higher rates of custody, low rates of diversion and “punitive practices” through less of a focus on welfare, decarceration and diversion and more of a focus on an approach of victims rights, community safety and offender management forms of governance. This research demonstrates that discretionary practice and increased local power do not always lead to more moderate local penal practice and policy, however. Discretionary practice and local leadership can also lead to discriminatory or more “punitive” practice at a local level. The current macro narrative in regards to penal reduction since 2008 has been one of fewer government targets, increased discretion at a local level and a push for diversionary practice on the ground as being responsible for recent declines in numbers of FTEs and young people imprisoned (see earlier section on the temporal nature of penalty and Kelly and Armitage, 2014; Phoenix, 2014; 2015). Whilst the research findings here are corroborated by such studies, they also suggest that increased local discretion has not yielded increased diversion everywhere. Indeed it has also shown a growing dissatisfaction and unease, amongst some practitioners in sites with higher rates of custody, with recent changes to diversion and cautioning since 2008 and changes to the sentencing guidelines attempting to limit the use of custody.

Thus youth penalty is variable across time and *crucially* space; the nature and extent of which is determined by the vagaries and caprices of national and local policy, culture and power. Indeed youth penalty is complex, “messy” (Goldson, 2014) and multifaceted. So in order to try and understand contemporary youth penalty, analyses

need to move beyond the dichotomous approach of either the “nomothetic” or “idiographic” traditions of enquiry (Edwards and Hughes, 2005, 2009, 2012; Muncie, 2005; Goldson and Muncie, 2006; Goldson and Hughes, 2010). Instead it is argued that a “trifocal analytical lens” needs to be adopted to acknowledge the effects of the international, national and local, including the individual, forces and determinants that shape contemporary youth penalty at all levels.

LIMITATIONS OF RESEARCH

This study employed a rigorous methodological approach (see Chapter Five). Reliability, validity and replicability were maintained through the use of semi-structured interviews with a relatively large sample of 91 participants from a range of criminal justice agencies, former senior civil servants, officers of NGOs and academics. The selection of the six research sites also utilised a systematic and rigorous method to ensure that each matched pair was suitable for comparison as far as was possible. A thematic analysis was applied utilizing the tenets of grounded theory to maintain replicability and objectivity. The data collected produced “thick description” of the phenomenon concerned. Whilst every effort was made to maintain academic rigour, however, there are some limitations to the research.

Whilst the concepts of “transferability”, “confirmability” and “credibility” are more useful measures than the traditional concept of external validity in qualitative studies such as this (Lincoln and Guba, 1985), the degree to which the findings are representative of the wider YOT population and other “national experts” beyond the sample is open to question. The study only compared three paired sites of higher and lower custody use out of a possible 157 YOTs and had a sample of 91 participants. Whilst, it was unequivocal that there appeared to be some similar themes within the three *Lowertowns* and three *Hightowns* respectively, due to the limited number of research sites and the sample size it would be problematic to generalise these findings to the wider population of YOTs with lower and higher rates of custody and the professionals working there.

Semi-structured in-depth interviews were employed as the main primary data collection technique in this study. Semi-structured in-depth interviews whilst having many strengths, including increased replicability, validity, reliability and the potential production of “thick description” compared to other self-report measures (Carey, 2012; Postmus, 2013), are also susceptible to the effects of social desirability bias and

interviewer effect or reactivity (Mcintyre, 2005; Mathers and Huang, 2006; Crowther-Dowey and Fussey, 2013). As such it would have been advantageous to have analysed documentary evidence such as pre-sentence reports, records, and more detailed court sentencing data to have served as a cross reference to participants' assertions. It was not possible to have access to court sentencing data at an individual case level in relation to a young person's offence, sentence imposed and YOT pre-sentence report recommendations (if applicable). If this data were available a more detailed and nuanced analysis could have been conducted to interrogate whether there were discrepancies in sentences for like for like crimes across the matched sites.

Similarly, whilst the interview data obtained did produce "thick description", coupled with the analysis of the available local sentencing data, and allowed for a nuanced understanding of participants perceptions of youth justice policy and practice, the data obtained and subsequent analysis was confined to what participants stated in a relatively short interview. It would therefore have been desirable to conduct follow-up interviews with participants and to have conducted an ethnography of each site to deepen the understanding of the workings and culture of each YOT area.

DIRECTIONS FOR FURTHER RESEARCH

This study is distinct and unique. There are no comparable recent multi-site explorations of youth penalty and differential justice that I am aware of. Whilst the study yielded interesting, valid, and reliable results, further research and enquiry is needed into the fragmented nature of youth penalty. More specifically further research is needed to extend knowledge and understanding of the effects of national and local organisational culture, policy and practice on youth penalty. This could be achieved by revisiting the six sample sites and conducting further interviews with an expanded sample of youth justice professionals. Similarly, it is also suggested that further research should not focus exclusively on the "youth justice system" in a narrow sense. As this study and others have shown, youth justice is not confined to the work of the YOT. Other agencies, such as children's social care and education services are involved with supporting children in conflict with the law. Therefore, future analysis within each research site should include a sample of children's social care professionals, and relevant education professionals to gain a deeper understanding of how inter-agency working effects youth penalty at a local level. In order to interrogate further the temporal nature of youth penalty it is argued that a larger sample of civil servants and ministers responsible for making decisions in government and the YJB should be interviewed too to increase our

understanding of the macro level changes and decision making processes around penal policies also.

As previously mentioned in order to further understand the complex and nuanced nature of the workings of youth justice at a local and national level taking an ethnographic approach in each site and within the YJB would be advantageous. An ethnographic approach would permit a more detailed exploration of how organisational culture, practice, systems and processes within each sample site and the YJB effect youth penalty. In conjunction with this ethnographic approach future research should focus on a documentary analysis of practice documentation such as pre-sentence reports, breach reports and court level data of individual sentencing to explore whether there is parity or difference in practice across the sites, which might explain higher or lower use of custody. This would serve to triangulate the research findings.

The methods adopted in this study should be replicated again not only with an increased sample size but with an increased number of matched research sites. This would allow one to “test” whether similar themes are apparent and further increase our understanding of the drivers of differential justice. Such an approach would also increase levels of external validity.

REFERENCES

- AECF (2010) *Youth Incarceration in the United States*. Available at: <http://www.aecf.org/m/resourcedoc/aecf-YouthIncarcerationInfographic-2013.pdf> (accessed: 01.03.15).
- Acres, D. (1987) Consistently achieving our sentencing aims. In Pennington, D.C. and Lloyd-Bostock, S. (eds) *The Psychology of Sentencing: Approaches to consistency and disparity*. Oxford: Centre for Socio-Legal Studies. pp.61-65.
- Alexander, M. (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.
- Allen, J. M. and Sawhney, R. (2015) *Administration and Management in Criminal Justice a Service Quality Approach*. London: Sage.
- Allen, R. (1991) Out of Jail: The Reduction in the Use of Penal Custody for Male Juveniles 1981 – 88. *The Howard Journal*, 30 (1): 30 – 52.
- Allen, R. (2011) *Last resort? Exploring the reduction in child imprisonment 2008 – 11*. London: Prison Reform Trust.
- Amnesty International Human Rights Watch (2005) *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*. Available at: <https://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf> (accessed: 01.12.15).
- Armstrong, D. (2004) A Risky Business? Research, Policy and Governmentality and Youth Offending. *Youth Justice*, 4 (2): 100—16.
- Audit Commission (1996) *Misspent Youth: young people and crime*. London: Audit Commission.
- Audit Commission (2007) *Police data quality 2006 – 07*. Available at: archive.audit-commission.gov.uk/auditcommission/SiteCollectionDocuments/AnnualReports/2007/policedataquality2006_07REP.pdf (accessed: 01.05.16).

Bachman, R. and Schutt, R. K. (2014) *The Practice of Research in Criminology and Criminal Justice*. Fifth edition. London: Sage.

Bailey, R. and Williams, B. (2000) *Inter-agency Partnerships in Youth Justice: Implementing the Crime and Disorder Act, 1998*. Sheffield: University of Sheffield, Joint Unit for Social Service Research.

Bailleau, F. (2010) France: breaking with the European line of juvenile justice? In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*. Brussels: VUB Press. pp. 155-186.

Bailleau, F. and Cartuyvels, Y. (2014) Juvenile justice in Europe: between continuity and change. In Body-Gendrot, S., Hough, M., Kerezsi, K., Levy, R. and Snacken, S. (eds) *The Routledge Handbook of European Criminology*. London: Routledge. pp.453-469.

Bailleau, F., Cartuyvels, Y. and de France, D. (2010) The criminalization of youth and current trends: the sentencing game. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*. Brussels: VUB Press. pp.7-28.

Baker K (2004) Is Asset really an asset? Assessment of young offenders in practice. In Burnett R and Roberts C (eds) *What Works in Probation and Youth Justice Developing Evidence-based Practice*. Cullompton: Willan Publishing. pp. 70-87.

Baker K (2005) Assessment in youth justice: Professional discretion and the use of Asset. *Youth Justice* 5(2): 100–116.

Baker, E. and J. Roberts (2005) Globalization and the New Punitiveness. In Pratt, J., Brown, D., Brown, M., Hallsworth, S., and Morrison, W. (eds) *The New Punitiveness: Trends, Theories, Perspectives*. Cullompton: Willan Publishing. pp. 121-38.

Bandalli, S. (1998) Abolition of the Presumption of Doli Incapax and the Criminalisation of Children. *The Howard Journal of Criminology*, 37(2): 114-123.

Barker, V. (2009) *The Politics of Imprisonment: How the democratic process shapes the way America punishes offenders*. New York: Oxford University Press.

Barnardos (2013) *Child poverty map of the UK*. Available at: https://www.barnardos.org.uk/130212_eep_local_report_final__2_.pdf (accessed 01.09.15).

Barnes, M. and Prior, D. (2009) Examining the idea of ‘subversion’ in public services. In Barnes, M. and Prior, D. (eds) *Subversive Citizens Power, agency and resistance in public services*. Bristol: Policy Press. pp. 3-16.

Bateman, T. (2008) ‘Target practice’: sanction detection and the criminalization of children. *Criminal Justice Matters*, 73 (1): 2-4.

Bateman, T. (2011) ‘We Now Breach More Kids in a Week Than We Used to in a Whole Year’: The Punitive Turn, Enforcement and Custody. *Youth Justice*, 11(2) 115-133.

Bateman, T. (2012) Who pulled the plug? Towards an explanation of the fall in child imprisonment. *Youth Justice*, 12(1): 36-52.

Bateman, T. (2013) Youth Justice News. *Youth Justice*, 13 (1): 85-95.

Bateman, T. (2014) Where has all the Youth Crime Gone? Youth Justice in an Age of Austerity. *Children and Society*, 28: 416-424.

Bateman, T. (2015) *The state of youth justice 2015 An overview of trends and developments*. Available at: <http://thenayj.org.uk/wp-content/uploads/2015/10/State-of-Youth-Justice-Oct15.pdf> (accessed 01. 02. 16).

Bateman, T. and Stanley, C. (2002) *Patterns of Sentencing Differential sentencing across England and Wales*. London: Youth Justice Board/ Nacro.

Bates, K. A. and Swan, R. S. (2014) *Juvenile Delinquency in a Diverse Society*. California: Sage.

Beck, U./ Translated by Ritter, M. (1992) *Risk Society: towards a new modernity*. London: Sage Publications.

Beckett, K. and Western, B. (2001) Governing social marginality: Welfare, incarceration, and the transformation of state policy. In Garland, D. (eds) *Mass Imprisonment Social Causes and Consequences*. London: Sage Publications. pp.35-50.

Becroft, A. (2009) *What causes youth crime, and what can we do about it?* Available at: <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/what-causes-youth-crime-and-what-can-we-do-about-it> (accessed: 01:02:14).

Becroft, A. J. and Thompson, R. (2006) *Youth Offending: Factors that Contribute and how the System Responds*. Available at: <http://www.justice.govt.nz/courts/youth/publications-and-media/speeches/youth-offending-factors-that-contribute-and-how-the-system-responds> (accessed: 01.06.16).

Beijerse, J. and van Swaaningen, R. (2006) The Netherlands: Penal Welfarism and Risk Management. In Muncie, J. and Goldson, B. (eds) *Comparative Youth Justice*. London: Sage. pp. 65-78.

Bell, C. and Haines, K. (1991) Managing the transition: implications of the introduction of a youth court in England and Wales. In Booth, T. (ed) *Juvenile Justice in the New Europe*. Sheffield: Joint Unit for Social Services Research. pp. 118-132.

Bell, C., Hodgson, M., and Pragnell, S. (1999) Diverting Children and Young People from Crime and the Criminal Justice System. In Goldson, B. (ed) *Youth Justice: Contemporary Policy and Practice*. Aldershot: Ashgate. pp. 91-109.

Bell, E. (2013) Punishment as politics: the penal system in England and Wales. In Ruggiero, V. and Ryan, M. (eds) *Punishment in Europe a critical anatomy of penal systems*. Basingstoke: Palgrave Macmillan. pp.58-85.

Bergman, M. M. (2008) The straw men of the qualitative-quantitative divide and their influence on mixed methods research. In Bergman, M. M. (ed) *Advances in Mixed Methods Research: Theories and Applications*. London: Sage. pp.11-21.

Berman, G. (2011) *The August 2011 Riots: a statistical summary. Research paper 11/71*. London: Ministry of Justice.

Bernard, T. J. and Kurlychek, M. C. (2010) *The Cycle of Juvenile Justice*. Second Edition. Oxford: Oxford University Press.

Bernuz, M.J. (2010) The game of sanctions in the Spanish juvenile justice system The tension between primary and secondary criminalization. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth Juvenile Justice in Europe and Canada*. Brussels: VUB Press. pp. 135 -155.

Bhattacharya, A. (2016) *Youthful Abandon Why are young people drinking less?* Available at: <http://www.ias.org.uk/uploads/pdf/IAS%20reports/rp22072016.pdf> (accessed: 01.11.16).

Bird, C. M. (2005) How I stopped Dreading and Learned to Love Transcription. *Qualitative Inquiry*, 11(2): 226-248.

Bishop, D.M. and Decker, S.H. (2006) Punishment and Control: Juvenile Justice Reform in the USA. In Junger-Tas, T. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. Dordrecht: Springer. pp. 3-36.

Blair, T. (2006) *Valedictory Speech to Labour Party Conference 26 September 1996*. Available at: <http://www.guardian.co.uk/politics/2006/sep/26/labourconference.labour3> (accessed 15.03.13).

Bloor, G. and Dawson, P. (1994) Understanding Professional Culture in Organisational Context. *Organization Studies*, 15(2): 275-295.

Body-Gendrot, S. (2014) Place, space and urban insecurity. In Body-Gendrot, S., Hough, M., Kerezsi, K., Levy, R. and Snacken, S. (eds) *The Routledge Handbook of European Criminology*. London: Routledge. pp. 222-240.

Bonta, J., Ruge, T., Sedo, B. and Coles, R. / Manitoba Department of Justice: Corrections (2004) *Case Management in Manitoba Probation*. Available at: http://www.publicsafety.gc.ca/res/cor/rep/_fl/2004-01-cse-mana-eng.pdf (accessed 10/08/09).

Bottomley, K. (1973) *Decisions in the Penal Process*. London: Martin Robertson and Company.

Bottoms, A. (1995) *The Philosophy and Politics of Punishment and Sentencing*. In Clarkson, C. and Morgan, R. (eds.) *The Politics of Sentencing Reform*. Oxford: Clarendon Press.

Boyatzis, R. E. (1998). *Transforming qualitative information: Thematic analysis and code development*. Thousand Oaks, CA: Sage.

Boztas, S. (2016) *Netherlands doesn't have enough criminals to fill its prisons as crime to drop*. Available at: <http://www.telegraph.co.uk/news/worldnews/europe/netherlands/12201375/Netherlands-doesnt-have-enough-criminals-to-fill-its-prisons-as-crime-to-drop.html> (accessed: 08.07.16).

Bradley, K. (2008) *Juvenile Delinquency and the evolution of the British juvenile courts, 1990-1950*. Available at: <http://www.history.ac.uk/ihr/Focus/welfare/articles/bradleyk.html> (accessed: 13.02.15).

Bradley, K. (2009) 'Growing up with a City': Exploring Settlement Youth Work in London and Chicago, c 1880-1940. *The London Journal*, 34 (3): 285-298.

Braun, V. and Clarke, V. (2006) Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2): 77-101.

Brent, J. J. and Kraska, P. B. (2012) Moving Beyond Our Methodological Default: A Case for Mixed Methods. In Copes, H. (ed) *Advancing Qualitative Methods in Criminology and Criminal Justice*. London Routledge. pp.25-43.

Briggs, D. B. (2013) Conceptualising Risk and Need: The Rise of Actuarialism and the Death of Welfare? Practitioner Assessment and Intervention in the Youth Offending Service. *Youth Justice*, 13 (1): 17- 30.

British Society of Criminology (2015) *Statement of Ethics 2015*. Available at: <http://www.britisoccrim.org/new/?q=node/22> (accessed: 01.02.16).

British Sociological Association (2004) *Statement of Ethical Practice for the British Sociological Association*. Available at: <http://www.britisoc.co.uk/NR/rdonlyres/801B9A62-5CD3-4BC2-93E1-FF470FF10256/0/StatementofEthicalPractice.pdf> (accessed: 01.02.16).

Bryant, A. and Charmaz, K. (2010) Discursive Glossary of Terms. In Bryant, A. and Charmaz, K. (eds) *The Sage Handbook of Grounded Theory*. Paperback edition. London: Sage. pp. 603-612.

Burnett, R. and Appleton, C. (2004) Joined-Up Services to Tackle Youth Crime A Case-Study in England. *British Journal of Criminology*, 44 (1): 34-54.

Canovan, M. (1999) Trust the People! Populism and the Two Faces of Democracy. *Political Studies*, 2: 2-16.

Carey, M. (2012) *Qualitative Research Skills for Social Work*. Farnham: Ashgate Publishing.

Carlen, P. (2008) Imaginary penalties and the risk-crazed governance. In Carlen, P. (ed) *Imaginary Penalties*. Cullompton: Willan Publishing. pp. 1-25.

Cartuyvels, Y. and Bailleau, F. (2010) Youth criminal justice in Europe. At the intersection of protective thinking, a neo-liberal turn, and neo-conservative ideology. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*. Brussels: VUB Press. pp. 236-284.

Cartuyvels, Y., Christiaens, J., De Fraene, D. and Dumortier, E. (2010) Juvenile justice in Belgium seen through the sanctions looking-glass. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*. Brussels: VUB Press. pp. 29-58.

Case, S. and Haines, K. (2015) Children First, Offenders Second Positive Promotion: Reframing the Prevention Debate. *Youth Justice*, 15(3): 226-239.

Case, S., and Haines, K. (2009) *Understanding Youth Offending: Risk Factor Research, Policy and Practice*. Collumpton: Willan Publishing.

Castaignede, J. and Pignoux, N. (2010) France. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 1*. Monchengladbach: Forum Verlag Godesberg. pp. 483-546.

Castro, J. (2010) 'The punitive turn' – are there any points of resistance? An answer from the Portuguese experience. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth Juvenile Justice in Europe and Canada*. Brussels: VUB Press. pp.111-134.

Cavadino, M. and Dignan, J. (2006a) Penal Policy and political economy. *Criminology and Criminal Justice*, 6 (4): 435-456.

Cavadino, M. and Dignan, J. (2006b) *Penal Systems A Comparative Approach*. London: Sage Publications.

Cavadino, M., Dignan, J. and Mair, G. (2013) *The Penal System*. Fifth edition. London: Sage Publishing.

Census (2011) *Census data*. Available at: <http://www.ons.gov.uk/ons/guide-method/census/2011/census-data/index.html> (accessed 01.09.15).

Central Bureau for Statistics (2015) *Prisoners; gender, age and ethnic background*. Available at: <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=82321ned> (accessed: 21.11.16).

Centre for Social Justice (2009) *'Dying to Belong': An In-depth Review of Street Gangs in Britain. A Report by the Gangs Working Policy Group*. London: Centre for Social Justice.

Cere, R., Jewkes, Y. and Ugelvik, T. (2014) Media and crime: comparative analysis of crime news in the UK, Norway and Italy. In Body-Gendrot, S., Hough, M., Kerezsi, K., Levy, R. and Snacken, S. (eds) *The Routledge Handbook of European Criminology*. London: Routledge. pp. 266-279.

Chaney, P. (2015) Populism and Punishment or Rights and Rehabilitation? Electoral Discourse and Structural Policy Narratives on Youth Justice: Westminster Elections, 1964-2010. *Youth Justice*, 15(1): 23-41.

Children and Young Persons Act 1933. London: HMSO.

Children's Legal Centre/YCare International (2006) *Youth Justice in Action Campaign Report 2006*. London: YCare International.

Christiaens, J., Dumortier, E. and Nuytiens, A. (2010) Belgium. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 1*. Monchengladbach: Forum Verlag Godesberg. pp. 99-130.

Cipriani, D. (2009) *Children's Rights and the Minimum Age of Criminal Responsibility A Global Perspective*. Surrey: Ashgate Publishing.

Charmaz, K. (2014) Grounded Theory in the 21st Century: Applications for Advancing Social Justice Studies. In Clarke, A. E. and Charmaz, K. (eds) *Grounded Theory and Situational Analysis Volume II Grounded Theory in Disciplines and Research*. London: Sage. pp. 157-194.

Cohen, S. (1985) *Visions of Social Control*. Cambridge: Polity Press.

Cohen, S. (2002) *Folk Devils and Moral Panics: The creation of the Mods and Rockers*. London: Routledge.

Coleman, R., Sim, J. and Whyte, D. (2001) Power, politics and partnerships: the state of crime prevention on Merseyside. In Hughes, G. and Edwards, A. (eds) *Crime Control and Community The new politics of public safety*. Cullompton: Willan Publishing. pp.86-108.

Corbin, J. and Strauss, A. (2008) *Basics of Qualitative Research*. Third edition. London: Sage.

Corteen, K. and Scraton, P. (1997) Prolonging 'Childhood', Manufacturing 'Innocence' and Regulating Sexuality. In Scraton, P. (ed) '*Childhood in Crisis*'. London: UCL Press. pp.76-97.

Crawford, A. (2001) Joined-up but fragmented: Contradiction, ambiguity and ambivalence at the heart of New Labour's 'third way'. In Matthews, R. and Pitts, J. (eds) *Crime, Disorder and Community Safety*. London: Routledge. pp.54-80.

Crawford, A. (2006) Networked governance and the post-regulatory state?: Steering, rowing and anchoring the provision of policing and security. *Theoretical Criminology*, 10 (4): 449-479.

Crime and Disorder Act 1998. Available at:

<http://www.legislation.gov.uk/ukpga/1998/37/contents> (accessed: 10.12.16).

Crime Survey for England and Wales (2015) *CSEW Perception and Anti-Social Behaviour by Police Force Area Year Ending September 2015*. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/005260csewperceptionandasbdatabypoliceforceareayearendingseptember2015> (accessed: 18.04.16).

Criminal Justice and Immigration Act 2008. Available at:

<http://www.legislation.gov.uk/ukpga/2008/4/contents> (accessed: 08.12.16).

Criminal Justice Directorate (2011) *The Criminal Justice and Licensing (Scotland) Act 2010 (Commencement Order No. 8, Transitional Savings Provisions) Order 2011*. Available at: <http://www.gov.scot/Resource/Doc/925/0114837.pdf> (accessed 04.03.15).

Cross, N. Evans, J. and Minkes, J. (2002) Still Children First? Developments in Youth Justice in Wales. *Youth Justice*, 2 (3): 151-162.

Crown Prosecution Service (2013) *ACPO Youth Offender Case Disposal Gravity Factor Matrix*. Available at:

<http://cps.gov.uk/legal/assets/uploads/files/Gravity%20Matrix%20May09.pdf> (accessed: 13.10.15).

Crown Prosecution Service (2016) *Victims' Right to Review Scheme*. Available at: http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html (accessed 09.09.16).

Crowther-Dowey, C. and Fussey, P. (2013) *Researching Crime Approaches, Methods and Application*. Basingstoke: Palgrave MacMillan.

Cunneen, C. (2003) Thinking critically about restorative justice. In McLaughlin, E., Fergusson, R., Hughes, G., and Westmarland, L. (eds) *Restorative Justice Critical Issues*. London: Sage. pp. 182-194.

Cunneen, C. (2010) The Limitations of Restorative Justice. In Cunneen, C. and Hoyle, C. (eds) *Debating Restorative Justice*. Oxford: Hart Publishing. pp. 101-160.

Cunneen, C. (2014) *Youth Justice in Australia*. Available at: <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-62#oxfordhb-9780199935383-e-62-bibItem-12> (accessed: 23.11.16).

Cunneen, C. and Goldson, B. (2015) Restorative Justice? A Critical Analysis. In Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*. London: Sage. pp. 137-156.

Cunneen, C. and White, R. (2006) Australia: Control, Containment or Empowerment? In Muncie, J. and Goldson, B. (eds) *Comparative Youth Justice*. London: Sage Publishing. Pp.96-110.

Cunneen, C., Baldry, E., Brown, D., Brown, M., Schwartz, M. and Steel, A. (2013) *Penal Culture and Hyperincarceration The Revival of the Prison*. Surrey: Ashgate Publishing.

Cunneen, C., Brown, D., Schwartz, M., Stubbs, J., and Young, C. (2015) *Justice Reinvestment: Winding Back Imprisonment*. Basingstoke: Palgrave Macmillan.

Davis, G., Boucherat, J., and Watson D. (1989) Pre-court decision-making in juvenile justice. *British Journal of Criminology*, 29, 3, 219-234.

Davis, H. and Bourhill, M. (1997) "Crisis": The Demonization of Children and Young People', in Scraton, P. (ed) *"Childhood" in "Crisis"?*, London: UCL Press. pp. 28-57.

De Giorgi, A. (2006) *Re-Thinking the Political Economy of Punishment Perspective on Post-Fordism and Penal Politics*. Aldershot: Ashgate Publishing.

De la Cuesta, J., Gimenez-Salinas, E., Castany, B. and Blanco I. (2010) Spain. In In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 3*. Monchengladbach: Forum Verlag Godesberg. pp. 1287-1328.

De Raadt, J., Hollanders, D. and Krouwel, A. (2004) *Varieties of Populism: An Analysis of the Programmatic Character of Six European Parties*. Working Papers in Political Science No. 2004/4. Amsterdam: Vrije Universiteit.

Department for Children, Schools and Families (2008) *Youth Crime Action Plan*. Available at: <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/docs/youth-crime-action-plan.pdf> (accessed: 01.12.16).

Department for Communities and Local Government (2010) *Data Interchange Hub – Data Download October 2010*. Available at: https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiDwv_s28fMAhWBLsAKHS3mCs4QFggdMAA&url=http%3A%2F%2Fwebarchive.nationalarchives.gov.uk%2F20111004125058%2Fhttp%3A%2Fwww.places.communities.gov.uk%2FNewsPages%2FNews_Documents%2FHubDownloadOct2010.xls&usg=AFQjCNH0sLf-dgTB-eqNIEzCjbOJAPgcEw&sig2=LQMifFjQk7g6m767upOgBQ (accessed 03.03.16).

Department for Communities and Local Government (2011) *English Indices of Deprivation 2010*. Available at: <https://www.gov.uk/government/statistics/english-indices-of-deprivation-2010> (accessed: 01.09.16).

Department for Education (2010) *Youth Crime Action Plan: Update*. Available at: <http://webarchive.nationalarchives.gov.uk/20130401151715/http://www.education.gov.uk/publications/eOrderingDownload/YCAP-Update.pdf> (accessed: 14.10.15).

Department for Education (2013) *Schools, pupils and their characteristics: January 2013*. Available at: <https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2013> (accessed: 03.09.15).

Desrosieres, A (1998) *The politics of large numbers: a history of statistical reasoning*. Cambridge MA: Harvard University Press.

Dollinger, B. and Kretschmann, A. (2013) Contradictions in German penal practices: The long goodbye from the rehabilitation principle. In Ruggiero, V. and Ryan, M. (eds) *Punishment in Europe a critical anatomy of penal systems*. Basingstoke: Palgrave Macmillan. pp.132-156.

Downes, D. (1998) Toughing it Out: From Labour Opposition to Labour Government. *Policy Studies*, 19 (3/4): 191-198.

Downes, D. (2001) The macho penal economy: Mass incarceration in the United States – a European Perspective. In Garland, D. (eds) *Mass Imprisonment Social Causes and Consequences*. London: Sage Publications. pp.51-69.

Downes, D. (2012) Political economy, welfare and punishment in comparative perspective. In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp.23-34.

Downes, D. and Hansen, K. (2006) *Welfarism and punishment. The relationship between welfare spending and imprisonment*. London: Crime and Society Foundation.

Downes, D. and Morgan, R. (2012) Overtaking on the left? The politics of law and order in the 'Big Society'. In Maguire, M., Morgan, R. and Reiner, R. (eds) *The Oxford Handbook of Criminology*. Fifth Edition. Oxford: Oxford University Press. pp. 182-205.

Drake, D. H. (2012) *Prisons, Punishment and the Pursuit of Security*. Basingstoke: Palgrave Macmillan.

Drake, D. H., Fergusson, R. and Briggs, D. B. (2014) Hearing new voices: Re-viewing Youth Justice Policy through Practitioners' Relationships with Young People. *Youth Justice*, 14 (1): 22-39.

Drake, D.H., Muncie, J. and Westmarland, L. (2010) *Criminal Justice: Local and Global*. Cullompton: Willan Publishing.

Drakeford, M. (2010) Devolution and youth justice in Wales. *Criminology and Criminal Justice*, 10(2): 137-154.

Draper, J. (2006) The relationship between research question and research design. In Crookes, P. A. and Davies, S. (eds) *Research into Practice Essential Skills for Reading and Applying Research in Nursing and Health Care*. London: Balliere Tindall. pp.69-84.

Dumortier, E., Gutwirth, S., Snacken, S. and De Hert, P. (2012) The rise of the penal state: what can human rights do about it. In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp.107-132.

Dunkel, F. (2006) Juvenile Justice in Germany: Between Welfare and Justice. In Junger-Tas, T. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. Dordrecht: Springer. pp.225-262.

Dunkel, F. (2010) Germany. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 2*. Monchengladbach: Forum Verlag Godesberg. pp. 547-622.

Dunkel, F. (2013a) Youth Justice Policy in Europe – Between Minimum Intervention, Welfare and New Punitiveness. In Daems, T., van Zyle Smith, D. and Snacken, S. (eds) *European Penology?*. Oxford: Hart Publishing. pp.145-170.

Dunkel, F. (2013b) *Migration and ethnic minorities in Germany: impacts on youth crime, juvenile justice and youth imprisonment*. Available at: http://www.rsf.uni-greifswald.de/fileadmin/mediapool/lehrstuehle/duenkel/Germany_youngMig.pdf (accessed: 10.03.15).

Dunkel, F., Grzywa, J., Pruin, I. and Selih, A. (2010a) Juvenile Justice in Europe – Legal aspects, policy trends and perspectives in the light of human rights standards. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in*

Europe Current Situation and Reform Developments Volume 4. Monchengladbach: Forum Verlag Godesberg. pp. 1813-1870.

Dunkel, F., Pruin, I. and Grzywa, J. (2010b) Sanctions systems and trends in the development of sentencing practices. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 4*. Monchengladbach: Forum Verlag Godesberg. pp. 1623-1690.

Dutch News (2015) *Dutch prison population rose 1.3% in 2014*. Available at: <http://www.dutchnews.nl/news/archives/2015/05/dutch-prison-population-rose-1-3-in-2014/> (accessed: 21:11.16).

Eadie, T. and Canton, R. (2002) Practising in a Context of Ambivalence: The Challenge for Youth Justice Workers. *Youth Justice*, 2(1): 14-26.

Edwards, A. and Hughes, G. (2001) Introduction: the community governance of crime control. In Hughes, G. and Edwards, A. (eds) *Crime Control and Community The new politics of public safety*. Cullompton: Willan Publishing. pp. 1-19.

Edwards, A. and Hughes, G. (2005) Comparing the governance of safety in Europe: A geo-historical approach. *Theoretical Criminology*, 9 (3): 345-363.

Edwards, A. and Hughes, G. (2009) The preventive turn and the promotion of safer communities in England and Wales: political inventiveness and governmental instabilities. In Crawford, A. (ed) *Crime Prevention Policies in Comparative Perspective*. Cullompton: Willan Publishing. pp. 62-85.

Edwards, A. and Hughes, G. (2012) Public safety regimes: Negotiated orders and political analysis in criminology. *Criminology and Criminal Justice*, 12 (4): 433-458.

Eisner, M. (2008) Modernity Strikes Back? A Historical Perspective on the Latest Increase in International Violence (1960-1990). *International Journal of Conflict and Violence*, 2 (2): 288-316.

Ellis, T. and Boden, I. (2005) *British Society of Criminology Is there a unifying professional culture in Youth Offending Teams? A research note*. Available at: <http://britsocrim.org/volume7/006.pdf> (accessed: 03.03.15).

- Evans, R. and Wilkinson, C. (1990) Police cautioning of juveniles: the impact of Home Office Circular 14/1985. *Criminal Law Review*, 3: 165-176.
- Farrington, D. P. (1996) *Understanding and Preventing Youth Crime*. York: Joseph Rowntree Foundation.
- Farrington, D. P. (2006) *Childhood Risk Factors and Risk-Focussed Prevention*. Available at: <http://www.number10.gov.uk/Page10027> (accessed 15/07/09).
- Faulkner, D. and Burnett, R. (2013) *Where next for criminal justice?* Bristol: Policy Press.
- Feeley, M. and Simon, J. (1994) Actuarial Justice: the Emerging New Criminal Law. In Nelken, D. (eds) *The Futures of Criminology*. London: Sage. pp. 173-201.
- Feilzer, M. and Hood, R. (2004) *Differences or Discrimination?* London: Youth Justice Board.
- Feld, B. (1991) 'Justice by geography: urban, suburban and rural variations in juvenile justice administration'. *Journal of Criminal Law and Criminology*, 82: 156 -210.
- Feld, B. (1997) Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy. *Journal of Criminal Law and Criminology*, 88(1): 68-136.
- Ferdinand, N. (1989) Juvenile Delinquency or Juvenile Justice: Which Came First? *Criminology*, 27(1): 79-106.
- Fergusson R. (2007) Making Sense of the Melting Pot: Multiple Discourses in Youth Justice Policy. *Youth Justice*: 7(3): 179–194.
- Fergusson, R. (2013) Risk, responsibilities and rights: Reassessing the 'economic causes of crime' thesis in a recession. *Youth Justice*, 13(1): 31 – 56.
- Field, S. (2007) Practice Cultures and the 'New' Youth Justice in (England and) Wales. *British Journal of Criminology*, 47 (2): 311-330.
- Field, S. and Nelken, D. (2010) Reading and writing youth justice in Italy and (England and) Wales. *Punishment and Society*, 12 (3): 287-308.

Findlay, M. (2008) *Governing through Globalised Crime Futures for international criminal justice*. Collumpton: Willan Publishing.

Fionda, J. (1999) New Labour: Old hat: Youth justice and the Crime and Disorder Act 1998. *Criminal Law Review*, January: 36–47.

Fontana, A. and Frey, J. H. (2005) The Interview: From neutral stance to political involvement. In Denzin, N. K., and Lincoln, Y. S., (eds) *The Sage Handbook of Qualitative Research*. Third Edition. Thousand Oaks, CA: Sage. pp. 695 – 727.

Garland, D. (1990) *Punishment and Modern Society A Study in Social Theory*. Oxford: Oxford University Press.

Garland, D. (2001) *The Culture of Control*. Oxford: Oxford University Press.

Garland, D. (2004) Beyond the culture of control. *Critical Review of International Social and Political Philosophy*, 7 (2): 160-189.

Garland, D. (2013a) Penalty and the Penal State. *Criminology*, 51(3): 475-517.

Garland, D. (2013b) Punishment and Social Solidarity. In Simon, J. and Sparks, R. (eds) *The Sage Handbook of Punishment and Society*. London: Sage. pp. 23-39.

Garland, D. (2014) Penal Populism. *British Society of Criminology Southern Group and London School of Economics Manheim Centre Seminar Series*. November. London: Unpublished.

Garland, D. (2016) Penal power: its forms, functions and foundations. *British Academy Law Lecture*. The British Academy, London, 07.06.16. Unpublished.

Garland, D. and Young, J. (1983) Towards a Social Analysis of Punishment. In Garland, D. and Young, J. (eds) *The Power to Punish*. London: Heinemann Educational Books. pp. 1-36.

Garside, R. (2012) Criminal justice and social justice at a time of economic crisis. In Silvestri, A. (ed) *Critical reflections: social and criminal justice in the first year of Coalition government*. London: Centre for Crime and Justice Studies. pp.10-11.

Garside, R. and Mills, H. (2011) *UK Justice Policy Review Volume 1 6 May 2010 to 5 May 2011*. London: Centre for Crime and Justice Studies.

Geertz, C. (1973) *The Interpretation of Cultures*. London: Hutchinson and Company.

Gibbs, P. and Hickson, S. (2009) *Children: Innocent until proven guilty. A report on the overuse of remand for children in England and Wales and how it can be addressed*. London: The Prison Reform Trust.

Gibson, B., Cavadino, P., Rutherford, A., and Harding, J. (1994) *The Youth Court One Year Onwards*. Winchester: Waterside Press.

Giddens, A. (1990) *Consequences of Modernity*. Cambridge: Polity Press.

Gilbert, J. (1986) *A Cycle of Outrage*. New York: Oxford University Press.

Glaser, B. G. and Strauss, A. L. (1967) *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Aldine Publishing Company.

Glover, J. and Hibbert, P. (2009) *Locking up or giving up? Why custody thresholds for teenagers aged 12, 13 and 14 need to be raised*. Available at: http://www.barnardos.org.uk/locking_up_or_giving_up_august_2009.pdf (accessed 25.08.16).

Goddard, T. and Myers, R. R. (2011) Democracy and Demonstration in the Grey Area of Neo-Liberalism: A Case Study of Free Los Angeles High School. *British Journal of Criminology*, 51 (4): 652 – 670.

Goddard, T. and Myers, R. R. (2013) Youth justice innovation on the west coast: Examining community based social justice organisations through a left realist lens. *Journal of the Western Society of Criminology*, 14(1): 55-62.

Goetz, J. P. and LeCompte, M. D. (1984) *Ethnography and Qualitative Design in Education Research*. London: Academic Press.

Goldson, B. (1997a) Children in Trouble: State Responses to Juvenile Crime. In Scraton, P. (ed) *'Childhood' in Crisis*. London: UCL Press. pp. 124-145.

Goldson, B. (1997b) 'Childhood': An Introduction to Historical and Theoretical Analyses. In Scraton, P. (ed) *'Childhood' in Crisis*. London: UCL Press. pp.1-127.

Goldson, B. (1997c) Children, crime, policy and practice: Neither welfare nor justice. *Children and Society* 11: 77–88.

Goldson, B. (1999) *Youth Justice: Contemporary Policy and Practice*. Aldershot: Ashgate.

Goldson, B. (2000) *The New Youth Justice*. Lyme Regis: Russell House Publishing.

Goldson, B. (2002a) New punitiveness: the politics of child incarceration. In Muncie, J., Hughes, G., and McLaughlin, E. (eds) *Youth Justice: Critical Readings*. London: Sage. pp. 386-400.

Goldson, B. (2002b) The demonization of children: from the symbolic to the institutional. In Foley, P., Roche, J. and Stanley, T. (eds) *Children in Society: Contemporary Theory, Policy and Practice*. Basingstoke: Palgrave/ Open University. pp. 34-41.

Goldson, B. (2006) Damage, Harm and Death in Child Prisons in England and Wales: Questions of Abuse and Accountability. *The Howard Journal of Criminal Justice*; 45 (3): 449—467.

Goldson, B. (2009) 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Criminal Responsibility. *Howard Journal of Criminal Justice*, 48(5): 514-521.

Goldson, B. (2010) The sleep of (criminological) reason: Knowledge-policy rupture and New Labour's youth justice legacy. *Criminology and Criminal Justice* 10(1): 155–178.

Goldson, B. (2011a) 'Time for a Fresh Start', but is this it? A Critical Assessment of the Report of the Independent Commission on Youth Crime and Antisocial Behaviour. *Youth Justice*, 11 (1): 3-27.

Goldson, B. (2011b) *Youth in Crisis? 'Gangs', Territoriality and Violence*. Abingdon: Routledge.

Goldson, B. (2013a) 'Justice by Geography'. In Goldson, B. (ed) *Dictionary of Youth Justice*. Cullompton: Willan Publishing. pp.203-204.

Goldson, B. (2013b) 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales. *Youth Justice*, 13(2): 111-130.

Goldson, B. (2014) Youth justice in a changing Europe: crisis conditions and alternative visions. In Astala, S., Blakely, G., and Dreber, M. L. (eds). *Perspectives on Youth 2020 – What do you see?* Strasbourg: Council of Europe Publishing.

Goldson, B. (2015) The Circular Motions of Penal Politics and the Pervasive Irrationalities of Child Imprisonment. In Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*. Second Edition. London: Sage. pp.170-190.

Goldson, B. and Hughes, G. (2010) Sociological criminology and youth justice: Comparative policy and analysis and academic intervention. *Criminology and Criminal Justice* 10(2): 211–230.

Goldson, B. and Jamieson, J. (2002) Youth Crime, the 'Parenting Deficit' and State Intervention: A Contextual Critique. *Youth Justice*, 2(2): 82-99.

Goldson, B. and Kilkelly, U. (2013) International human rights standards and child imprisonment: Potentialities and limitations. *International Journal of Children's Rights*, 21 (2): 345-371.

Goldson, B. and Muncie, J. (2006) Rethinking Youth Justice: Comparative Analysis, International Human Rights and Research Evidence. *Youth Justice*, 6 (2): 91- 106.

Goldson, B. and Muncie, J. (2009a). *Youth Crime and Juvenile Justice Volume 1: The 'Youth Problem'*. London: Sage.

Goldson, B. and Muncie, J. (2009b). *Youth Crime and Juvenile Justice Volume 2: Juvenile Corrections*. London: Sage.

Goldson, B. and Muncie, J. (2012) Towards a Global 'Child Friendly' Juvenile Justice? *International Journal of Law, Crime and Justice*, 40 (1): 47-64.

Goldson, B. and Muncie, J. (2015) Children's Human Rights and Youth Justice with Integrity. In Goldson, B. and Muncie, J. (eds) *Youth Crime and Justice*. London: Sage. pp. 227-257.

Goshe, S. (2015) Moving Beyond the Punitive Legacy: Taking Stock of Persistent Problems in Juvenile Justice. *Youth Justice*, 15(1): 42-56.

Graham, J. and Moore, C. (2006) Beyond Welfare Versus Justice: Juvenile Justice in England Wales. In Junger-Tas, J. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. New York: Springer. pp. 65-92.

Gray, P. (2016) 'Child friendly' international human rights standards and youth offending team partnerships. *International Journal of Law, Crime and Justice*, 45, June, 59-74.

Grinnell JR., R. M., and Unrau, Y. A. (2014) *Social Work Research and Evaluation: Foundations of Evidence-Based Practice*. Tenth Edition. Oxford: Oxford University Press.

Guest, G., MacQueen, K. M., and Namey, E. E. (2012) *Applied Thematic Analysis*. London: Sage.

Haines, K. (2010) The dragonisation of youth justice. In Taylor, W., Earl, R. and Hester, R. (eds) *Youth Justice Handbook: Theory, Policy and Practice*. Cullompton: Willan Publishing. pp.228.

Haines, K. and Case, S. (2008) The Rhetoric and reality of the 'Risk Factor Prevention Paradigm' Approach to Preventing and Reducing Youth Offending. *Youth Justice*, 8 (5): 5—20.

Haines, K. and Drakeford, M. (1998) *Young People and Youth Justice*. London: MacMillan.

Haines, K., Case, S., Davies, K., and Charles, A. (2013) The Swansea Bureau: A model of diversion from the youth justice system. *International Journal of Law, Crime and Justice*, 41 (2): 167-187.

Hall, J. R., Neitz, M. J., and Battani, M. (2003) *Sociology on Culture*. London: Routledge.

Hallsworth, S. (2000) Rethinking the Punitive Turn: Economies of Excess and the Criminology of the Other. *Punishment and Society*, 2 (2): 145-160.

Hammersley, M. (2008) Troubles with Triangulation. In Bergman, M. M. (ed) *Advances in Mixed Methods Research: Theories and Applications*. London: Sage. pp.22-36.

Hart, D. (2011) *Into the Breach: the enforcement of statutory orders in the youth justice system*. Available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf> (accessed: 25.08.16).

Hastings, R. (2010) The criminalisation of youth: developments in Canada. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*. Brussels: VUB Press. pp. 59-76.

Haydon, D., and Scraton, P. (2000) ‘Condemn a Little More, Understand a Little Less’: The Political Context and Rights and Implications of the Domestic and European Ruling in Venables-Thompson Case. *Journal of Law and Society*, 27 (3): 416—48.

Hebeisen, D. (2010) Switzerland. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 3*. Monchengladbach: Forum Verlag Godesberg. pp. 1363-1414.

Henderson, J. (2015) The value of values in the probation service. In Cowburn, M., Duggan, M., Robinson, A. and Senior, P. (eds) *Values in Criminology and Community Justice*. Bristol: Policy Press. pp. 165-186.

Hendrick, H. (2002) Constructions and reconstructions of British childhood: an interpretive survey, 1800 to the present. In Muncie, J., Hughes, G. and McLaughlin, E. (eds) *Youth Justice Critical Readings*. London: Sage. pp. 22-44.

Hendrick, H. (2006) Histories of Youth Crime and Justice. In Goldson, B. and Muncie, J. (2006) *Youth Crime and Justice: critical issues*. London: Sage. pp.3-16.

Herbert, A. (2004) Mode of Trial and Influence of Local Justice. *The Howard Journal of Criminal Justice*, 43 (1): 65-78.

Her Majesty's Inspectorate of Constabulary (2000) *One the Record Thematic Inspection Report on Police Crime Recording, the Police National Computer and Phoenix Intelligence System Data Quality*. Available at: <http://www.justiceinspectors.gov.uk/hmic/media/on-the-record-20000701.pdf> (accessed 01.05.16).

Her Majesty's Inspectorate of Constabulary (2009) *Crime Counts A review of data quality for offences of the most serious violence*. Available at: <https://www.justiceinspectors.gov.uk/hmic/media/crime-counts-20091019.pdf> (accessed: 01.05.16).

Her Majesty's Inspectorate of Constabulary (2012) *The crime scene A review of police crime and incident reports*. Available at: <https://www.justiceinspectors.gov.uk/hmic/media/review-police-crime-incident-reports-20120125.pdf> (accessed: 01.05.16).

Her Majesty's Inspectorate of Constabulary (2014a) *Crime-recording: making the victim count. The final report of an inspection of crime data integrity in police forces in England and Wales*. Available at: <http://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/crime-recording-making-the-victim-count.pdf> (accessed: 01.05.16).

Her Majesty's Inspectorate of Constabulary (2014b) *Crime data Integrity Inspection of XX Police Force*. London: HMIC.

Her Majesty's Inspectorate of Constabulary (2014c) *Crime recording: A matter of fact An interim report of the inspection of crime data integrity in police forces in England and Wales*. London: HMIC.

Her Majesty's Inspectorate of Probation (2014) *Full Joint Inspection of Youth Offending Work in Highertown Three: An inspection led by HMI Probation*. Available at: <https://www.justiceinspectorates.gov.uk/hmiprobation/inspections/> (accessed: 07.07.16).

Her Majesty's Inspectorate of Probation (2016) *Full Joint Inspection of Youth Offending Work in Highertown Three: An inspection led by HMI Probation*. Available at: <https://www.justiceinspectorates.gov.uk/hmiprobation/inspections/> (accessed: 07.07.16).

Her Majesty's Treasury (2010) *Spending Review 2010*. London: HMSO.

Hill, M. and Hupe, P. (2009) *Implementing Public Policy*. Second edition. London: Sage.

Home Office (1997) *No More Excuses: a new approach to tackling youth crime in England and Wales*. London: HMSO.

Home Office (2000) *Review of Crime Statistics*. London: HMSO.

Hough, M., Jacobson, J. and Millie, A. (2003) *The Decision to Imprison: Sentencing and the Prison Population*. London: Prison Reform Trust.

House of Commons (2003) *Hansard 21 January 2003: Column 299W- continued*. Available at: <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030121/text/30121w25.htm> (accessed: 14.07.16).

House of Commons Home Affairs Committee (2008) *Policing in the 21st Century Seventh Report of Session 2007-2008 volume 1*. London: HMSO.

Howell, J.C. (1997) *Juvenile Justice and Youth Violence*. London: Sage Publications.

Hucklesby, A. and Goodwin, T. (2004) *Pre-Trial Accommodation for Young People*. London: Youth Justice Board.

Hudson, B. (2003) *Justice in the Risk Society Challenging and Re-affirming Justice in Late Modernity*. London: Sage Publications.

Hughes, G. and Edwards, A. (2001) *Crime Control and Community: The New Politics of Public Safety*. Cullompton: Willan Publishing.

Hughes, G. and Rowe, M. (2007) Neighbourhood policing and community safety: Researching the instabilities of the local governance of crime, disorder and security in contemporary UK. *Criminology and Criminal Justice*, 7 (4): 317-346.

Hughes, G., Pilkington, A. Leisten, R. (1998) Diversion in a Culture of Severity. *The Howard Journal*, 37 (1): 16-33.

Hughes, N. (2009) Managerialism subverted? Exploring the activity of youth justice practitioners. In Barnes, M. and Prior, D. (eds) *Subversive Citizens Power, agency and resistance in public services*. Bristol: Policy Press. pp.155-170.

Hutchinson, S. (2006) Countering catastrophic criminology: Reform, punishment and modern liberal compromise. *Punishment and Society*, 8 (4): 443-467.

ICPS (2016) *Highest to Lowest – Foreign prisoners (percentage of prison population)*. Available at: http://www.prisonstudies.org/highest-to-lowest/foreign-prisoners?field_region_taxonomy_tid=14 (accessed: 01.06.16).

Jenks, C. (1996) *Childhood*. London: Routledge Publishing.

Jewkes, Y. (2011) *Media and Crime*. Second Edition. London: Sage Publications.

Jones, D. W. (2012) *Conditions for Sustainable Decarceration Strategies for Young Offenders*. Available at: http://etheses.lse.ac.uk/238/1/Jones_Conditions_for_Sustainable_Decarceration_Strategies_for_Young.pdf (accessed: 10:04:15).

Jones, D.W. (2001) Questioning New Labour's Youth Justice Strategy: A review article. *Youth Justice*, 1 (3): 14-26.

Jones, R. (1984) Questioning the New Orthodoxy. *Community Care*, 11 October, 26-29.

Jones, S. (2010) *Boys, 10 and 11, found guilty of attempted rape of girl, eight*. Available at: <http://www.theguardian.com/uk/2010/may/24/boys-found-guilty-attempted-rape> (accessed: 01.04.16).

Jones, T. and Newburn, T. (2002) Policy convergence and crime control in the USA and the UK: Streams of influence and levels of impact. *Criminology and Criminal Justice*, 2 (2): 173-203.

Judicial Office (2013) *Judicial participation in research projects Guidance for researchers*. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial-research-guidance-january-2013.pdf> (accessed 01.08.15).

Junger-Tas, J. (2006) Trends in International Juvenile Justice: What Conclusions Can be Drawn? In Junger-Tas, T. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. Dordrecht: Springer. pp. 503-532.

Kaminska, O. and Foulsham, T. (2016) Eye-tracking Social Desirability Bias. *Bulletin of Sociological Methodology*, 130(1): 73-89.

Kaminski, D. (2012) Victims and the criminal justice system: threat or promise? In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp. 190-201.

Kelly, L. and Armitage, V. (2014) Diverse Diversions: Youth Justice Reform, localized Practices and a 'New interventionist Diversion'? *Youth Justice, Online First*, 1-17.

Kelly, P. (2001) Youth at Risk: processes of individualisation and responsabilisation in the risk society. *Discourse: Studies in the Cultural Politics of Education*, 22 (1): 23—33.

Kemp, V. and Gelsthorp, L. (2003) Youth Justice: discretion in pre-court decision-making. In Gelsthorpe, L. and Padfield, N. (eds) *Exercising Discretion: Decision-making in the criminal justice system and beyond*. Cullompton: Willan Publishing. pp. 29-49.

Kempf-Leonard, K. and Peterson, E. S. L. (2000) Expanding Realms of the New Penology. In Muncie, J., Hughes, G. and McLaughlin E. (2002) *Youth Justice: Critical Readings*. London: Sage Publications. pp. 431- 451.

Kemshall, H. (2003) *Understanding Risk in Criminal Justice*. Maidenhead: Open University Press.

Kemshall, H. (2008) Risks, Rights, and Justice: Understanding and Responding to Youth Risk. *Youth Justice*, 8 (21): 21—37.

Khosrokhavar, F. (2005) *Anti-Semitism of the Muslims in France: the case of the prisoners*. Available at: <https://stanford.edu/dept/france-stanford/Conferences/Islam/Khosrokhavar.pdf> (accessed: 21.11.16).

Kilkelly, U. (2006) Operationalising children’s rights: lessons from research. *Journal of Children’s Services*, 1(4): 35-46.

Kommer, M. (1994) Punitiveness in Europe – a comparison. *European Journal on Criminal Policy and Research*, 2 (1): 29-43.

Lacey, N. (2008) *The Prisoners’ Dilemma Political Economy and Punishment in Contemporary Democracies*. Cambridge: Cambridge University Press.

Lacey, N. (2010) Differentiating among penal states. *The British Journal of Sociology*, 61 (4): 778-794.

Lacey, N. (2012) Political Systems and Criminal Justice: The Prisoner’s Dilemma After the Coalition. *Current Legal Problems*, 65: 203-239.

Lacey, N. (2013) Punishment, (Neo)Liberalism and Social Democracy. In Simon, J. and Sparks, R. (eds) *The Sage Handbook of Punishment and Society*. London: Sage. pp. 260-280.

Languin, N., Christian-Nils, R., Abbiati, M. and Rauschenbach, M. (2012) Victims and the Penal Process: Roles, Expectations and Disappointments. In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp. 177-189.

Lapadat, J. C. and Lindsay, A. C. (1999) Transcribing in research and practice: From standardization of technique to interpretive positionings. *Qualitative Inquiry*, 5(1): 64-86.

Lappi-Seppala, T. (2010) Finland. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 1*. Monchengladbach: Forum Verlag Godesberg. pp. 423-482.

Lappi-Seppala, T. (2011) Nordic youth justice. *Crime and Justice*, 40 (1): 199-264.

Lappi-Seppala, T. (2012) Explaining national differences in the use of imprisonment. In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp.35-72.

Legal Aid, Sentencing and Punishment of Offenders Act 2012. Available at: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted> (accessed: 01.08.16).

Lepper, J. (2014) *Custody spending to be slashed by Youth Justice Board*. Available at: <http://www.cypnow.co.uk/cyp/news/1144227/custody-spending-slashed-youth-justice-board> (accessed: 01.04.15).

Levy, L., Santhakumaran, D., and Whitecross, R. (2014) *What Works to Reduce Crime?: A Summary of the Evidence*. Justice Analytical Services Scottish Government. Available at: <http://www.gov.scot/Resource/0046/00460517.pdf> (accessed: 12:04.16).

Lewis, S. (2010) The criminalisation of juveniles and countervailing trends: youth justice in England and Wales. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth Juvenile Justice in Europe and Canada*. Brussels: VUB Press. pp. 77-92.

Lincoln, Y. S. and Guba, E. G. (1985) *Naturalistic Inquiry*. California: Sage.

Lipsky, M. (1980) *Street Level Bureaucracy: Dilemmas of the Individual in Public Service*. London: Russel Sage.

Lipsky, M. (2010) *Street Level Bureaucracy: Dilemmas of the Individual in Public Service*. Second Revised Edition. London: Russel Sage.

Loader, I. (2006) Fall of the 'Platonic Guardians' Liberalism, Criminology and Political Responses to Crime in England and Wales. *British Journal of Criminology*, 46 (4): 561-586.

Loader, I. (2010) For penal moderation: Notes towards a public philosophy of punishment. *Theoretical Criminology*, 14 (3): 349-367.

Loader, I. and Sparks, R. (2004) For an historical sociology of crime policy in England Wales since 1968. *Critical Review of International Social and Political Philosophy*, 7 (2): 5-32.

Lomell, H. M. (2011) Making Sense of Numbers the presentation of crime statistics in the Oslo police annual reports, 1950-2008. In Saetnan, A. R., Lomell, H. M. and Hammer, S. (eds) *The Mutual Construction of Statistics and Society*. Abingdon: Routledge. pp. 191-206.

Lundy, L., Kilkelly, U., Byrne, B. and Kang, J./ Unicef (2012) *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries*. Available at: http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCimplentationreport.pdf (accessed: 10.03.15).

Lynch, N. (2012) Playing catch-up? Recent reform of New Zealand's youth justice system. *Criminology and Criminal Justice*, 12 (15): 507-526.

Macintyre, D. (1993) *Major on crime: "Condemn more, understand less"*. Available at: <http://www.independent.co.uk/news/major-on-crime-condemn-more-understand-less-1474470.html> (accessed: 01.06.16).

Maguire, M. (2012) Criminal statistics and the construction of crime. In Maguire, M., Morgan, R., and Reiner, R. (eds) *The Oxford Handbook of Criminology*. Fifth Edition. Oxford: Oxford University Press. pp. 206-244.

Margarey, S. (2002) The invention of juvenile delinquency in early nineteenth-century England. In Muncie, J., Hughes, G. and McLaughlin, E. (eds) *Youth Justice Critical Readings*. London: Sage. pp.115-122.

Marsh, I. and Melville, G. (2014) *Crime, Justice and the Media*. Second Edition. London: Palgrave.

Martinson, R. (1974) *What works? –questions and answers about prison reform*. *The Public Interest*, no. 35, 22-54. Available at: <http://www.scribd.com/doc/58100576/MARTINSON-What-Works-Questions-and-Answers-About-Prison-Reform> (accessed: 14.08.13).

Mary, P. and Nagels, J. (2012) Penalization and social policies. In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp.86-104.

Mason, T., de Silva, N., Sharma, N., Brown, D., and Harper, G. (2007) *Local Variation in Sentencing in England and Wales*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217971/local-variation-sentencing-1207.pdf (accessed: 01.06.16).

Mathers, N. and Huang, Y. C. (2006) Evaluating qualitative research. In Crookes, P. A. and Davies, S. (eds) *Research into Practice Essential Skills for Reading and Applying Research in Nursing and Health Care*. London: Balliere Tindall. pp.85-94.

Matthews, R. (1995) The diversion of juveniles from custody: The experience of England and Wales 1980-90. In Albrecht, G. and Ludwig-Mayerhofer, W. (eds) *Diversion and Informal Control*. New York: De Gruyter. pp. 83-104.

Matthews, R. (2005) The Myth of Punitiveness. *Theoretical Criminology*, 9 (2): 175-201.

May, M. (2009) Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century. In Goldson, B. and Muncie, J. (eds) *Youth Crime and Juvenile Justice Volume One*. London: Sage. pp. 173-190.

May, T. (2001) *Social Research Issues, Methods, and Process*. Third Edition. Buckingham: Open University Press.

Maynard-Moody, S. and Musheno, M. C. (2003) *Cops, Teachers, Counsellors: Stories from the frontlines of public service*. Michigan: Michigan University Press.

McAra, L. (2010) Scottish Youth Justice: convergent pressures and cultural singularities. In Bailleau, F. and Cartuyvels, Y. (eds) *The Criminalisation of Youth: Juvenile Justice in Europe, Turkey and Canada*. Brussels: VUB Press. pp. 93-110.

McCall, G. J. and Simmons, J. L. (1969) *Issues in Participant Observation: A Text and Reader*. London: Addison-Wesley Publishing Company.

McDonald, C. and Marston, G. (2005) Workfare as welfare: governing unemployment in the advanced liberal state. *Critical Social Policy*, 25 (3): 374-401.

McIntyre, L. J. (2005) *Need to Know Social Science Research Methods*. New York: McGraw-Hill Publishers.

McKee, K. (2009) Post-Foucauldian governmentality: What does it offer critical social policy analysis? *Critical Social Policy*, 29 (3): 465-486.

McLaughlin, E. and Muncie, J. (2000) The Criminal Justice System: New Labour's New Partnerships. In Clarke, J., Gewirtz, S. and McLaughlin, E. (Eds.) *New Managerialism New Welfare?* London: Sage. pp.169-185.

McLaughlin, E., Fergusson, R., Hughes, G., and Westmarland, L. (2003) Introduction: justice in the Round – Contextualizing Restorative Justice. In McLaughlin, E., Fergusson, R., Hughes, G., and Westmarland, L. (eds) *Restorative Justice Critical Issues*. London: Sage. pp. 1-18.

McLaughlin, E., Muncie, J., and Hughes, G. (2001) The Permanent Revolution: New Labour, New Public Management and the Modernization of Criminal Justice. *Criminology and Criminal Justice*, 1 (3): 301-318.

McVie, S. (2011) Alternative models of youth justice: lessons from Scotland and Northern Ireland. *Journal of Children's Services*, 6 (2): 106-114.

Melossi, D. (2013a) Punishment and migration between Europe and the USA: A transnational “less eligibility”. In Simon, J. and Sparks, R. (eds) *The Sage Handbook of Punishment and Society*. London: Sage. pp. 416-433.

Melossi, D. (2013b) The process of criminalisation of migrants and the question of the European Union as a “land of immigration”. In Daems, T., van Zyl Smit, D., and Snacken, S. (eds) *European Penology?*. Oxford: Hart Publishing. pp. 125-144.

Melossi, D. (2014) The borders of the European Union and the process of criminalization of migrants. In Body-Gendrot, S., Hough, M., Kerezsi, K., Levy, R., and Snacken, S. (eds) *The Routledge Handbook of European Criminology*. London: Routledge. pp.499-513.

Merlo, A.V. and Benekos, P.J. (2010) Is Punitive Juvenile Justice Policy declining in the United States? A Critique of Emergent Initiatives. *Youth Justice*, 10 (1): 3-24.

Miles, M. B. and Huberman, A. M. (1994) *Qualitative data analysis: an expanded sourcebook*. Second Edition. Thousand Oaks, CA: Sage.

Miller, L.L. (2001) Looking for Postmodernism in all the Wrong Places. *British Journal of Criminology*, 41(1): 168-184.

Mills, H., Silvestri, A. and Grimshaw, R. (2010) *Police Expenditure, 1999-2009*. . London: Centre for Crime and Justice Studies.

Ministry of Justice (2005) *Disposals by region 2004/05*. London: Youth Justice Board.

Ministry of Justice (2006). *Disposals by region 2005/06*. London: Youth Justice Board.

Ministry of Justice (2007) *Disposals by region 2006/07*. London: Youth Justice Board.

Ministry of Justice (2008) *Disposals by region 2007/08*. London: Youth Justice Board.

Ministry of Justice (2009) *Disposals by region 2008/09*. London: Youth Justice Board.

Ministry of Justice (2010a) *Disposals by region 2009/10*. London: Youth Justice Board.

Ministry of Justice (2010b) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. London: The Stationary Office Limited.

Ministry of Justice (2011a). *Disposals by region 2010/11* London: Youth Justice Board.

Ministry of Justice (2011b) *Offences by region 2010/11*. London: Youth Justice Board.

Ministry of Justice (2012a) *Youth Justice Statistics - 2010/11 England and Wales. Youth Justice Board / Ministry of Justice Statistics bulletin*. Available at: <http://www.justice.gov.uk/downloads/statistics/youth-justice/yjb-statistics-10-11.pdf> (accessed: 10.10.12).

Ministry of Justice (2012b) *Disposals by region 2011/12*. London: Youth Justice Board.

Ministry of Justice (2012c) *Offences by region 2011/12*. London: Youth Justice Board.

Ministry of Justice (2013a) *Disposals by region 2012/13*. London: Youth Justice Board.

Ministry of Justice (2013b) *Youth Justice Statistics 2011/12 England and Wales*. Available at: www.justice.gov.uk/publications/youth-justice-statistics.htm (accessed 03.10.13).

Ministry of Justice (2013c) *Offences by region 2012/13*. London: Youth Justice Board.

Ministry of Justice (2014a) *Disposals by region 2013/14*. London: Youth Justice Board.

Ministry of Justice (2015a) *Youth Justice Statistics 2013/14 England and Wales*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf (accessed: 31.03.15).

Ministry of Justice (2015b) *Commissioner for Victims and Witnesses: Report for the Secretary of State for Justice 2013-14*. Available at: http://victimscommissioner.org.uk/wp-content/uploads/2014/09/VC_Annual-Report-2013-14.pdf (accessed 01.06.16).

Ministry of Justice (2015c) *Monthly Youth Custody Report January 2015*. Available at: <https://www.gov.uk/government/collections/youth-justice-statistics> (accessed: 31.03.15).

Ministry of Justice (2015d) *Annex B – Resources in Youth Offending Teams*. Available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015> (accessed: 01.04.16).

Ministry of Justice (2016a) *Supplementary Tables Chapter 2 First Time Entrants*. Available at: <https://www.gov.uk/government/collections/youth-justice-statistics> (accessed: 01.02.16).

Ministry of Justice (2016b) *Youth Custody Data*. Available at: <https://www.gov.uk/government/statistics/youth-custody-data> (accessed: 10.05.16).

Morgan, R. (2007) *A temporary respite*. Available at: <http://www.theguardian.com/commentisfree/2007/feb/19/comment.politics3> (accessed 01.06.15).

Morgan, R. and Newburn, T. (2012) Youth crime and justice: rediscovering devolution, discretion, and diversion. In Maguire, M., Morgan, R. and Reiner, R. (eds) *The Oxford Handbook of Criminology*. Fifth Edition. Oxford: Oxford University Press. pp. 490-530.

Muller, C. and Wildeman, C. (2013) Punishment and Inequality. In Simon, J. and Sparks, R. (eds) *The Sage Handbook of Punishment and Society*. London: Sage. pp.169-185.

Muncie, J. (1999) Institutionalized intolerance: youth justice and the 1998 Crime and Disorder Act. *Critical Social Policy*, 19 (2): 147- 175.

Muncie, J. (2004) Youth justice: globalisation and multi-modal governance. In Newburn, T. and Sparks, R. (eds) *Criminal Justice and Political Cultures: National and international dimensions of crime control*. Cullompton: Willan Publishing. pp.152-183.

Muncie, J. (2005) The globalization of crime control – the case of youth and juvenile justice: Neo-liberalism, policy convergence and international conventions. *Theoretical Criminology*, 9 (1): 35-64.

Muncie, J. (2006) Governing Young People: coherence and contradiction in contemporary youth justice. *Critical Social Policy*, 26(4): 770–793.

Muncie, J. (2008) The ‘Punitive Turn’ in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA. *Youth Justice*, 8 (2): 107- 121.

Muncie, J. (2011a) *Youth and Crime*. Third Edition. London: Sage Publishing.

Muncie, J. (2011b) Illusions of Difference Comparative Youth Justice in the Devolved United Kingdom. *British Journal of Criminology*, 51 (1): 40-57.

Muncie, J. (2011c) On globalisation and exceptionalism. In Nelken, D. (ed) *Comparative Criminal Justice and Globalisation*. Farnham: Ashgate.

Muncie, J. (2013) International Juvenile (In)Justice: Penal Severity and Rights Compliance. *International Journal for Crime, Justice and Social Democracy*, 2(2): 43-62.

Muncie, J. (2014) Global Criminal Justice. In Yeates, N. (ed) *Understanding Global Social Policy*. Second Edition. Bristol: Policy Press. pp. 237-260.

Muncie, J. (2015) *Youth and Crime*. Fourth Edition. London: Sage Publishing.

Muncie, J. and Goldson, B. (2012) Youth Justice: In a child's best interests? . In Simon, J. and Sparks, R. (eds) *The SAGE Handbook of Punishment and Society*. London: Sage. pp. 341-355.

Muncie, J. and Goldson, B. (2006a) States of Transition: Convergence and Diversity in International Youth Justice. In Muncie, J. and Goldson, B. (eds) *Comparative Youth Justice*. London: Sage Publishing. pp. 196-118.

Muncie, J. and Goldson, B. (2006b) England and Wales: The New Correctionalism. In Muncie, J. and Goldson, B. (eds) *Comparative Youth Justice*. London: Sage. pp.34-47.

Muncie, J. and Hughes, G. (2002) Modes of youth governance: political rationalities, criminalization and resistance. In Muncie, J., Hughes, G., and McLaughlin, E. (eds) *Youth Justice Critical Readings*. London: Sage. pp. 1-18.

Myers, R. R. and Goddard, T. (2012) Community-Driven Youth Justice and the Organizational Consequences of Coercive Governance. *British Journal of Criminology*, 53 (2): 215-233.

Mythen, G. (2007) Reappraising the Risk Society Thesis: Telescopic Sight or Myopic Vision? *Current Sociology*, 55 (6): 793- 813.

Nachmani, A. (2010) *Europe and its Muslim minorities: aspects of conflict, attempts at accord*. Eastbourne: Sussex Academic Press.

Nacro (1989) *Reducing Custody for Juveniles: The DHSS Intermediate Treatment Initiative report of the Department of Health and Social Security's Conference held on 3 February 1989*. London: Nacro.

Nacro (2006) *Youth Crime Briefing Reducing Custody: a systematic approach*. Available at: <http://www.nacro.org.uk/data/resources/nacro-2007010200.pdf> (accessed 15/03/08).

Nacro (2011a) *Reducing Custody Merthyr Tydfil*. Porthcawl: Nacro Cymru.

Nacro (2011b) *Reducing Custody Bridgend*. . Porthcawl: Nacro Cymru.

Nacro (2011c) *Reducing the number of children and young people in custody*. Available at: <https://www.nacro.org.uk/data/files/reducing-number-of-children-in-custody-953.pdf> (accessed: 28.03.15).

National Audit Office (2010) *The youth justice system in England and Wales: Reducing offending by young people*. London: The Stationary Office.

National Statistics Wales (2011) *WIMD 2011 individual domain scores and overall index scores for each lower layer super output area (LSOA)*. Available at:

<http://gov.wales/statistics-and-research/welsh-index-multiple-deprivation/?tab=previous&lang=en> (accessed: 01.02.15).

Newburn, T. (1998) Tackling youth crime and reforming youth justice: The origins and nature of 'new labour' policy. *Policy Studies*, 19 (3): 199-212.

Nicholls, M. and Katz, L. (2004) *Michael Howard: a life in quotes*. Available at: <https://www.theguardian.com/politics/2004/aug/26/conservatives.uk> (accessed 01.06.16).

Nomis (2015) *Local authority profile*. Available at: <https://www.nomisweb.co.uk/reports/lmp/la/contents.aspx> (accessed: 01.09.15).

O'Malley, P. (2000) Criminologies of catastrophe: Understanding criminal justice on the edge of the new millennium. *Australian and New Zealand Journal of Criminology*, 33 (2): 153-167.

O'Malley, P. (2009) *Risk, Crime and Prudentialism Revisited*. Available at: <http://ssrn.com/abstract=1492477> (accessed: 25.10.12).

O'Malley, P. (2010) *Crime and Risk*. London: Sage Publications.

Office for National Statistics (2011) *National Statistician's Review of Crime Statistics for England and Wales*. Available at: <https://www.statisticsauthority.gov.uk/national-statistician/ns-reports-reviews-guidance-and-advisory-committees/national-statisticians-reviews/national-statisticians-review-of-crime-statistics-for-england-and-wales/> (accessed: 01.05.16).

Office for National Statistics (2013) *Analysis of variation in crime trends: A study of trends in 'comparable crime' categories between the Crime Survey for England and Wales and the police recorded crime series between 1981 and 2011/12*. Available at: <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewjz1eqK6sfMAhWICsAKHYwyArcQFggdMAA&url=http%3A%2F%2Fwww.ons.gov.uk%2Fons%2Fguide-method%2Fmethod-quality%2Fspecific%2Fcrime-statistics-methodology%2Fmethodological-note--analysis-of-variation-in-crime-trends.pdf&usq=AFQjCNH8B9nb4WwRQ6BAENDZBfml5h8IUw&sig2=R0kEN-2IY0M1VuBYb34cGQ> (accessed: 01.05.16).

Office for National Statistics (2015) *User Guide to Crime Statistics for England and Wales*. London: HMSO.

Office for National Statistics (2016) *Crime in England and Wales: year ending June 2016 Crime against households and adults, also including data on crime experienced by children and crimes against businesses and society*. Available at: <http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2016> (accessed: 01.11.16).

Olivier de Sardan, J. P. (2008) *Researching the practical norms of real governance in Africa*. Available at: <http://www.institutions-africa.org/filestream/20090109-discussion-paper-5-researching-the-practical-norms-of-real-governance-in-africa-jean-pierre-olivier-de-sardan-jan-2009> (accessed: 01.02.15).

Open University (2012) *Child-protection campaigner Sara Payne receives OU Honorary Doctorate*. Available at: <http://www3.open.ac.uk/media/fullstory.aspx?id=23611> (accessed 19.03.13).

Padovani, A., Brutto, S. and Ciappa, S. (2010) Italy. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 2*. Monchengladbach: Forum Verlag Godesberg. pp. 765-802.

Pakes, F. (2010) Global forces and local effects in youth justice: the case of Moroccan youngsters in Netherlands. *International Journal of Law, Crime and Justice*. 38 (3): 109-119.

Parker, H., Summer, M. and Jarvis, G. (1989) *Unmasking the Magistrates*. Milton Keynes: Open University Press.

Parveen, N. (2016) *Two teenage girls found guilty of Angela Wrightson murder*. Available at: <http://www.theguardian.com/uk-news/2016/apr/05/angela-wrightson-two-teenage-girls-found-guilty> (accessed: 01.04.16).

Patton, M. Q. (1990) *Qualitative Evaluation and Research Methods*. Second Edition. London: Sage.

- Pearson, G. (1983) *Hooligans: A History of Respectable Fears*. London: MacMillan.
- Peas, P. (1994) Cross-National Imprisonment Rates Limitations of Method and Possible Conclusions. *British Journal of Criminology*, 34: 116-130.
- Phoenix, J. (2010) Pre-sentence reports, magisterial discourse and agency in the Youth Courts in England and Wales. *Punishment and Society*, 12 (3): 348-366.
- Phoenix, J. (2015) Against Youth Justice and Youth Governance, For Youth Penalty. *British Journal of Criminology*, doi: 10.1093/bjc/azv031 advance access published May 25, 2015.
- Phoenix, J. and Kelly, L. (2013) Responsibilization in Youth Justice and Young People's Situated Knowledge of Youth Justice Practice. *British Journal of Criminology*, 53: 419-437.
- Pickford, J. (2000) *Youth Justice: Theory and Practice*. London: Cavendish Publishing.
- Pickford, J. (2006) The current legal framework of youth justice practice. In Dugmore, P. and Pickford, J. (eds) *Youth Justice and Social Work*. Exeter: Learning Matters. pp.69-86.
- Pidd, H. (2014) *Will Cornick named and jailed: the boy who murdered his teacher*. Available at: <http://www.theguardian.com/uk-news/2014/nov/03/will-cornick-leeds-ann-maguire-murdered-teacher-jail> (accessed: 01.04.16).
- Pidd, H. (2015) *Pupil who stabbed teacher in racist attack given 11-year sentence*. Available at: <http://www.theguardian.com/uk-news/2015/aug/10/teacher-stabbed-pupil-racist-attack-court-bradford> (accessed: 01.04.16).
- Pitts, J. (2001a) The New Correctionalism: Young People, Youth justice and New Labour. In Matthews, R. and Pitts, J. (eds) *Crime, Disorder and Community Safety*. London: Routledge. pp.167-192.
- Pitts, J. (2001b) Korrectional Karaoke: New Labour and the Zombification of Youth Justice. *Youth Justice*, 1 (2): 3-16.

- Pitts, J. (2001c) *The New Politics of Youth Crime*. Basingstoke: Palgrave MacMillan.
- Pitts, J. (2003) Youth justice in England and Wales. In Matthews, R. and Young, J. (eds) *The New Politics of Crime and Punishment*. Cullompton: Willan Publishing. pp. 71-99.
- Pitts, J. (2012) The third time as farce: whatever happened to the penal state? In Squires, P. and Lea, J. (eds) *Criminalisation and advanced marginality: Critically exploring the work of Loic Wacquant*. Bristol: The Policy Press. pp.61-86.
- Platt, A. (2002) The Triumph of Benevolence: The Origins of the Juvenile Justice System in the United States. In Muncie, J., Hughes, G. and McLaughlin, E. (eds) *Youth Justice Critical Readings*. London: Sage. pp. 177-196.
- Platt, A. (2009) The Triumph of Benevolence: The Origins of the Juvenile Justice System in the United States. In Goldson. B. and Muncie, J. (eds) *Youth Crime and Juvenile Justice Volume One*. London: Sage. pp. 194-228.
- Police UK (2015) *Compare Your Area User Guide*. Available at: http://policeuk.s3.amazonaws.com/iqanta/Compare_Your_Area-_User_Guide.pdf (accessed 01.02.16).
- Police UK (2016) *Compare your area*. Available at: <https://www.police.uk/performance/compare-your-area/> (accessed: 01.02.16).
- Postmus, J. L. (2013) *Qualitative interviewing*. In Fortune, A. E., Reid, W. J., and Miller JR, R. L. (eds) *Qualitative research in social work*. New York: Columbia University Press. pp.241-263.
- Powers of the Criminal Courts (Sentencing) Act 2000*. Available at: <http://www.legislation.gov.uk/ukpga/2000/6/contents> (accessed: 05.12.16).
- Pratt, J. (2007) *Penal Populism*. Abingdon: Routledge.
- Pratt, J. (2008a) Scandinavian Exceptionalism in an Era of Penal Excess. Part I: The Nature and Roots of Scandinavian Exceptionalism. *British Journal of Criminology*, 48 (2): 119-137.

Pratt, J. (2008b) Scandinavian Exceptionalism in an Era of Penal Excess. Part II: Does Scandinavian Exceptionalism Have a Future? *British Journal of Criminology*, 48 (2): 275-292.

Pratt, J. and Eriksson, A. (2013) *Contrasts in Punishment An Explanation of Anglophone Excess and Nordic Exceptionalism*. London: Routledge.

Pratt, J., Brown, D., Brown, M., Hallsworth, S. and Morrison, W. (2005) *The New Punitiveness Trends, theories, perspectives*. Cullompton: Willan Publishing.

Prior, D. (2009) Policy, power and the potential for counter-agency. In Barnes, M. and Prior, D. (eds) *Subversive Citizens Power, agency and resistance in public services*. Bristol: Policy Press. pp. 17-32.

Pruin, I. (2010) The scope of juvenile justice systems in Europe. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume 4*. Monchengladbach: Forum Verlag Godesberg. pp. 1513-1556.

Public Administration Select Committee (2014) *Caught red-handed: Why we can't count on Police Recorded Crime statistics*. Available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/760/760.pdf> (accessed: 01.05.16).

Puech, K. and Evans, R. (2001) Reprimands and warnings: populist punitiveness or restorative justice? *Criminal Law Review*, 794-805.

Puffett, N. (2011) Councils with Most Children in Need face Greatest Cuts. *Children and Young People Now*, 1 (11): 6.

Puffett, N. (2012) Government Warned Against Using Payment-by-Results in Youth Justice. *Children and Young People Now*, 23 October, 2012. Available at: <http://www.cypnow.co.uk/cyp/news/1075071/government-warned-payment-results-youth-justice> (accessed 10.03.13).

Punch, K.F. (2005) *Introduction to Social Research Quantitative and Qualitative Approaches*. London: Sage.

Radzinowicz, L. (1991) Penal Regressions. *The Cambridge Law Journal*, 50 (3): 422-444.

Radzinowicz, L. and Hood, R. (1986) *A History of English Criminal Law Volume Five The Emergence of Penal Policy*. London: Stevens and Sons.

Reyes, J. W. (2007) *Environmental policy as social policy? The impact of childhood lead exposure on crime*. Available at: <http://www3.amherst.edu/~jwreyes/papers/LeadCrime.pdf> (accessed: 01.11.16).

Rhodes, R.A.W. (1997) *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*. Milton Keynes: Open University Press.

Richards, K. (2011) *Trends in Juvenile Detention in Australia*. Available at: <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi416.html> (accessed: 09.03.15).

Roberts, J. V., Stalans, L. J., Indermaur, D., and Haugh, M. (2003) *Penal Populism and Public Opinion Lessons from Five Countries*. Oxford: Oxford University Press.

Roberts, R. and Silvestri, A. (2012) May 2010-April 2011: Political promises and policy narratives. In Silvestri, A. (ed) *Critical reflections: social and criminal justice in the first year of Coalition government*. London: Centre for Crime and Justice Studies. pp.6-9.

Robinson, A. (2015) What's valuable, what's valued in today's youth justice? In Cowburn, M., Duggan, M., Robinson, A. and Senior, P. (eds) *Values in Criminology and Community Justice*. Bristol: Policy Press. pp. 295-312.

Rock, P. (2004) *Constructing Victims Rights*. Oxford: Oxford University Press.

Rose, N. (1999) *Powers of Freedom Reframing Political Thought*. Cambridge: Cambridge University Press.

Rubin, A. and Babbie, E. (2013) *Essential Research Methods for Social Work*. Third Edition. London: Brooks/ Cole, Centage Learning.

Rubin, H. J. and Rubin, I. S. (2006) *Qualitative Interviewing The Art of Hearing Data*. London: Sage.

Rush, P. (2002) The government of a generation. In Muncie, J., Hughes, G. and McLaughlin, E. (eds) *Youth Justice Critical Readings*. London: Sage. pp. 138-158.

Rutherford, A. (1986) *Growing Out of Crime*. London: Penguin.

Rutherford, A. (1992) *Growing Out of Crime, The New Era*. Second edition. Winchester: Waterside Press.

Ryan, M. (1999) Penal Policy Making Towards the Millennium: Elites and Populists; New Labour and the New Criminology. *International Journal of the Sociology of Law*, 27: 1-22.

Ryan, M. (2003) *Penal Policy and Political Culture in England and Wales Four Essays on Policy and Process*. Winchester: Waterside Press.

Ryan, M. (2005) Engaging with punitive attitudes towards crime and punishment. Some strategic lessons from England and Wales. In Pratt, J., Brown, D., Brown, M., Hallsworth, S. and Morrison, W. (eds) *The New Punitiveness Trends, theories, perspectives*. Cullompton: Willan Publishing. pp. 139-149.

Schein, E. H. (2004) *Organizational Culture and Leadership*. Third Edition. San Francisco: Jossey-Bass.

Schultz, J. L. (1973) The cycle of juvenile court history. *Crime and Delinquency*, 19: 457-476.

Schur, E. M. (1973) *Radical Non-Intervention: Re-thinking the Delinquency Problem*. Englewood Cliffs: Prentice – Hall.

Schwandt, T. A. (1994) Constructivist, Interpretivist Approaches to Human Inquiry. In Denzin, N. K. and Lincoln, Y. S. (eds) *Handbook of qualitative research*. Thousand Oaks, CA: Sage. pp. 118-137.

Scraton, P. (1997) Whose 'Childhood'? What 'Crisis'? In Scraton, P. (ed) '*Childhood in Crisis*'. London: UCL Press. pp.163-186.

Select Committee on Home Affairs (2007) *Fourth Report*. Available at: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/553/55305.htm> (accessed: 27.03.15).

Sentencing Guidelines Council (2009) *Overarching Principles – Sentencing Youths Definitive Guidelines*. London: Sentencing Guidelines Council.

Sentencing Guidelines Council (2016) *About guidelines*. Available at: <http://www.sentencingcouncil.org.uk/about-sentencing/about-guidelines/> (accessed: 12.07.16).

Shenton, A. K. (2004) Strategies for ensuring trustworthiness in qualitative research projects. *Education for information*, 22 (2): 63-75.

Sheppard, M. (1995) Social Work, Social Science and Practice Wisdom. *British Journal of Social Work* 25 (3): 265—293.

Silver, E. and Miller, L. L. (2002) A Cautionary Note on the Use of Actuarial Risk Assessment Tools for Social Control. *Crime and Delinquency*, 48 (1): 138—161.

Sim, J. (2009) *Punishment and Prisons Power and the Carceral State*. London: Sage Publications.

Simmons, J., Legg, C., Hosking, R. (2003) *National Crime Recording Standard (NCRS): an analysis of the impact on recorded crime*. Available at: <http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs2/rdsolr3103.pdf> (accessed 01.05.16).

Simon, J. (2007) *Governing Through Crime How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press.

Simon, J. and Feeley, M. M. (2003) The Form and Limits of the New Penology. In Blomberg, T. G. and Cohen, S. (eds) *Punishment and Social Control*. Second Edition. New York: Walter de Gruyter Inc. pp.75-118.

Sivarajasingam, V., Moore, S., Page, N., and Shepherd, J. P. (2014) *Violence in England and Wales in 2014 An accident and Emergency Perspective*. Available at: http://www.cardiff.ac.uk/__data/assets/pdf_file/0006/104649/nvit_20142.pdf (accessed: 01.11.16).

Smandych, R. (2006) Canada: Re-penalization and Young Offenders' Rights. In Muncie, J. and Goldson, B. (eds) *Comparative Youth Justice*. London: Sage Publishing. pp. 19-33.

Smith, A. (2006b) *Crime Statistics: An Independent Review*. Available: <http://webarchive.nationalarchives.gov.uk/20110220105210/rds.homeoffice.gov.uk/rds/pdfs06/crime-statistics-independent-review-06.pdf> (accessed: 01.05.16).

Smith, D. (2006a) Youth Crime and Justice: Research Evaluation and 'Evidence'. In Goldson, B. and Muncie, J. (2006) *Youth Crime and Justice: critical issues*. London: Sage. pp. 78-91.

Smith, R. (2003) *Youth Justice Ideas, Policy, Practice*. Collumpton: Willan.

Smith, R. (2005) Welfare versus Justice – Again!. *Youth Justice*, 5(1): 3-16.

Smith, R. (2011). *Doing Justice to Young People: Youth Crime and Social Justice*. New York: Willan/Routledge.

Smith, R. (2014) Re-inventing Diversion. *Youth Justice*, 14 (2): 109-121.

Snacken, S. and Dumortier, E. (2012) Resisting Punitiveness in Europe? An introduction. In Snacken, S. and Dumortier, E. (eds) *Resisting punitiveness in Europe? Welfare, human rights and democracy*. London: Routledge. pp.1-20.

Snacken, S., Beyens, K. and Tubex, H. (1995) Changing prison populations in Western countries: fate or policy. *European Journal of Crime, Criminal Law and Criminal Justice*, 3 (1): 18-53.

Snyder, H. N. and Sickmund, M. / US Department of Justice (2006) *Juvenile Offenders and Victims: 2006 National Report*. Available at: <http://www.ojjdp.gov/ojstatbb/nr2006/> (accessed 26.08.13).

Solanki, A. and Utting, D. (2009) *Fine art or science? Sentencers deciding between community penalties and custody for young people*. London: Youth Justice Board.

Souhami, A. (2007) *Transforming Youth Justice: Occupational Identity and Cultural Change*. London: Willan.

Souhami, A. (2011) Inside the Youth Justice Board: ambiguity and influence in New Labour's youth justice. *Safer Communities*, 10 (3): 7-16.

Souhami, A. (2015a) Creating the Youth Justice Board: Policy and policy making in English and Welsh Youth Justice. *Criminology and Criminal Justice*, 15 (2): 152-168.

Souhami, A. (2015b) The Central Institutions of Youth Justice: Government Bureaucracy and the Importance of the Youth Justice Board for England and Wales. *Youth Justice*, 15 (3): 209-225.

Souhami, A., Earle, R., Solomon, E., Case, S., and Haines, K. (2012) Was the reprieve of the Youth Justice Board a good thing? *Criminal Justice Matters*, 88 (1): 38-40.

Standfort, J. R. (2000) Examining Public Management from the Front Lines of the Welfare System. *Journal of Public Administration Research and Theory*, 10 (4): 729-756.

Standing, G. (2011) *The Precariat The New Dangerous Class*. London: Bloomsbury Academic.

Statistics Canada (2016) *Youth correctional statistics in Canada, 2014/2015*. Available at: <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14317-eng.htm> (accessed 07.07.16).

Statistics Commission (2006) *Report No. 30 Crime Statistics: User Perspectives*. Available at: <https://www.statisticsauthority.gov.uk/archive/reports---correspondence/archive/statistics-commission-archive/research/report-30--crime-statistics---user-perspectives.pdf> (accessed: 01.05.16).

Stenson, K. (2001) Community safety in Middle England – the local politics of crime control. In Hughes, G. and Edwards, A. (eds) *Crime Control and Community The new politics of public safety*. Cullompton: Willan Publishing. pp. 109-139.

Stenson, K. (2005) Sovereignty, biopolitics and the local government of crime in Britain. *Theoretical Criminology*, 9 (3): 265-287.

Stenson, K. and Edwards, A. (2003) Crime control and local governance: The struggle for sovereignty in advanced liberal polities. *Contemporary Politics*, 9 (2): 204-217.

Stenson, K. and Edwards, A. (2004) Policy Transfer in Local Crime Control: Beyond Naïve Emulation. In Newburn, T. and Sparks, R. (eds) *Criminal Justice and Political Cultures National and International Dimensions of Crime Control*. Cullompton: Willan Publishing. pp. 209-233.

Stohr, M. and Collins, P. A. (2009) *Criminal Justice Management Theory and practice in justice-centred organizations*. Second Edition. Abingdon: Routledge.

Stojkovic, S. and Farkas, M. A. (2003) *Correctional Leadership: A Cultural Perspective*. Boston: Wadsworth Publishing.

Stojkovic, S., Kalinich, D., and Klofas, J. (2015) *Criminal Justice Organizations Administration and Management*. Sixth Edition. London: Cengage Learning.

Stokes, E. (2000) Abolishing the Presumption of Doli Incapax: Reflections on the Death of a Doctrine. In Pickford, J. (2000) *Youth Justice: Theory and Practice*. London: Cavendish Publishing. pp. 51-74.

Storgaard, A. (2010) Denmark. In Dunkel, F., Grywa, J., Horsfield, P. and Pruin, I. (eds) *Juvenile Justice Systems in Europe Current Situation and Reform Developments Volume I*. Monchengladbach: Forum Verlag Godesberg. pp. 305-356.

Strauss, A. and Corbin, J. (2014) Grounded Theory Methodology: An Overview. In Clarke, A. E. and Charmaz, K. (eds) *Grounded Theory and Situational Analysis Volume I History, Essentials and Debates in Grounded Theory*. London: Sage. pp.83-104.

Sutherland, A. (2009) The 'Scaled Approach' in Youth Justice: Fools Rush In... *Youth Justice*, 9 (1): 44-60.

Tarling, R. (1979) *Sentencing in Magistrates' Courts Home Office Research Study No.56*. London: HMSO.

Tarling, R. (2006) Sentencing Practice in Magistrates' Courts Revisited. *The Howard Journal*, 45 (1): 29-41.

Telford, M. and Santatzoglou, S. (2012) 'It was about trust, - Practitioners as policy makers and the improvement of inter-professional communication within the 1980s youth justice process. *Legal Studies*, 32 (1): 58-77.

Thane, P. (2009) Childhood in History. In Goldson, B. and Muncie, J. (eds) *Youth Crime and Juvenile Justice Volume One*. London: Sage. pp.3-17.

The Conservative Party (2010) *Invitation to Join the Government of Britain The Conservative Manifesto 2010*. Available at: <https://www.conservatives.com/~media/files/activist%20centre/press%20and%20policy/manifestos/manifesto2010> (accessed: 20. 06.2015).

The Conservative Party (2015) The Conservative Party Manifesto 2015. Available at: https://issuu.com/conservativeparty/docs/ge_manifesto_low_res_bdecb3a47a0faf?e=16696947/12362115 (accessed: 12.07.16).

The Council of State Governments Justice Centre (2016) *Justice Reinvestment*. Available at: <https://csgjusticecenter.org/jr/> (accessed: 01.02.16).

The Labour Party (2015) The Labour Party Manifesto 2015. Available at: [BritainCanBeBetter-TheLabourPartyManifesto2015.pdf](#) (accessed: 12.07.16).

Thomas, H. A. (1982) The road to custody is paved with good intentions. *Probation Journal* September 29: 93-97.

Thorpe, D.H., Smith, D., Green, C.J. and Paley, J.H. (1980) *Out of Care: The Community Support of Juvenile Offenders*. London: George Allen and Unwin.

Tombs, J. (2008) Telling sentencing stories. In Carlen, P. (ed) *Imaginary Penalties*. Cullompton: Willan Publishing. pp. 84-112.

Tonry, M. (2007) Determinants of penal policy. In Tonry, M. (ed) *Crime, punishment, and politics in a comparative perspective*. London: University of Chicago Press.

Tonry, M. (2011) Proportionality, Parsimony, And Interchangeability of Punishments. In Michael, T. (ed) *Why Punish? How Much? A Reader on Punishment*. Oxford: Oxford University Press. pp. 217-238.

Tonry, M. (2014) Why Crime Rates Are Falling throughout the Western World. *Legal Studies Research Paper Series*, 14, 41.

Tummers, L. G., Steijn, B. and Bekkers, V. (2012) Explaining the willingness of public professionals to implement public policies: content, context and personality characteristics. *Public Administration*, 90 (3): 716-736.

Tummers, L.G. and Bekkers, V. (2014) Policy implementation, street-level bureaucracy and the importance of discretion. *Public Management Review* 16(4): 527-547.

Tutt, N. (1980) Forward. In Thorpe, D.H., Smith, D., Green, C.J. and Paley, J.H. (1980) *Out of Care: The Community Support of Juvenile Offenders*. London: George Allen and Unwin.

Tutt, N. and Giller, H. (1987) 'Manifesto for management' - The elimination of custody. *Justice of the Peace*, 151 (13): 200-202.

U.K. Statistics Authority (2010) *Overcoming Barriers to Trust in Crime Statistics: England and Wales*. Available at: <https://www.statisticsauthority.gov.uk/archive/reports--correspondence/reports/overcoming-barriers-to-trust-in-crime-statistics--england-and-wales.pdf> (accessed: 01.05.16).

U.S. Department of Justice (2014a) *Prisoners in 2014*. Available at: <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed: 01.12.15).

United Nations (1985) *Standard Minimum Rules for the Administration of Juvenile Justice -Beijing Rules*. Available at: http://www.unhchr.ch/html/menu3/b/h_comp48.htm (accessed 17/11/08).

United Nations (1989) *United Nations Convention on the Rights of the Child*. Available at: <http://www.unicef.org.uk/UNICEFs-Work/Our-mission/UN-Convention/> (accessed 01.04.13).

United Nations Committee on the Rights of the Child (2012) *Report of Committee on the Rights of the Child*. Available at: <http://tb.ohchr.org/default.aspx?ConvType=20&docType=36> (accessed 01.04.13).

United Nations General Assembly (1990a) *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*. Available at: <http://www.un.org/documents/ga/res/45/a45r112.htm> (accessed: 01.04.13).

United Nations General Assembly (1990b) *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. Available at: <http://www.un.org/documents/ga/res/45/a45r113.htm> (accessed: 01.04.13).

United Nations Office on Drugs and Crime (2013) *Juveniles held in prisons, penal institutions or correctional institutions*. Available at: <http://www.unodc.org/unodc/en/data-and-analysis/statistics/data.html> (accessed 04.08.13).

Urquhart, C., Lehmann, H. and Myers, M. (2014) Putting the theory back into Grounded Theory: guidelines for Grounded Theory studies in information systems. In Clarke, A. E. and Charmaz, K. (eds) *Grounded Theory and Situational Analysis Volume II Grounded Theory in Disciplines and Research*. London: Sage. pp. 63-90.

Vallas, S. P. (1999) Rethinking Post-Fordism: The Meaning of Workplace Flexibility. *Sociological Theory*, 17 (1): 68-101.

Van der Laan, P.H. (2006) Just Desert and Welfare: Juvenile Justice in the Netherlands. In Junger-Tas, T. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. Dordrecht: Springer. pp. 145-172.

Van Dijk, C., Dumortier, E. and Eliaerts, C. (2006) Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice. In Junger-Tas, T. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. Dordrecht: Springer. pp. 187-224.

Van Swaanigen, R. (2005) Public safety and the management of fear. *Theoretical Criminology*, 9 (3): 289 – 305.

von Hirsch, A. (1976) *Doing Justice: The Choice of Punishment*. New York: Hill and Wang.

von Hirsch, A. (2007) The “Desert” Model for Sentencing: Its Influence, Prospects and Alternatives. *Social Research*, 74 (2): 413-434.

Von Hirsch, A. (2011) Proportionate Sentences: A Desert Perspective. In Michael, T. (ed) *Why Punish? How Much? A Reader on Punishment*. Oxford: Oxford University Press. pp. 207-216.

Wacquant, L. (2001a) The penalisation of poverty and the rise of neo-liberalism. *European Journal on Criminal Policy and Research*, 9: 401-412.

Wacquant, L. (2001b) Deadly symbiosis: When ghetto and prison meet and mesh. In Garland, D. (eds) *Mass Imprisonment Social Causes and Consequences*. London: Sage Publications. pp.82-120.

Wacquant, L. (2005) The great penal leap backward: incarceration in America from Nixon to Clinton. In Pratt, J., Brown, D., Brown, M., Hallsworth, S. and Morrison, W. (eds) *The New Punitiveness Trends, theories, perspectives*. Cullompton: Willan Publishing. pp. 3-26.

Wacquant, L. (2009a) *Punishing the Poor The Neoliberal Government of Social Insecurity*. Michigan: Duke University Press.

Wacquant, L. (2009b) *Prisons of Poverty*. Minnesota: University of Minnesota.

Wacquant, L. (2010) Class, race and hyperincarceration in revanchist America. *Daedalus*, 139 (3): 74-90.

Walker, P. and Wainwright, M. (2010) *Edlington brothers jailed for torture of two boys*. Available at: <http://www.theguardian.com/uk/2010/jan/22/edlington-brothers-jailed-torture-boys> (accessed: 01.04.16).

Walklate, S. (2007) Conclusion. In Walklate, S. (ed) *Handbook of Victims and Victimology*. London: Routledge Taylore and Francis Group. pp. 484-494.

Walklate, S. (2009) Are We All Victims Now? Crime, Suffering and Justice. *British Journal of Community Justice*, 7 (2): 5-16.

Walmsley, R. (2011) *World Prison Population List (ninth edition)*. Available at: <http://www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf> (accessed 01.03.13).

Walmsley, R. (2016) *World Prison Population List Eleventh Edition*. Available at: http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition.pdf (accessed: 01.06.16).

Ward Schofield, J. (2000) Increasing the Generalizability of Qualitative Research. In Gomm, R., Hammersley, M., and Foster, P. (eds) *Case Study Method: Key Issues, Key Texts*. London: Sage. pp. 69-97.

Welsh Assembly Government (2004a) *Children and Young People: Rights to Action*. Available at: <http://gov.wales/docs/caecd/publications/090415rightstoactionen.pdf> (accessed: 10.08.16).

Welsh Assembly Government (2004b) *All Wales Youth Offending Strategy*. Available at: <http://gov.wales/dsjlg/publications/commmunitysafety/youthoffendingstrategy/strategye?lang=en> (accessed: 08.08.16).

Wilkinson, R. and Pickett, K. (2009) *The Spirit Level: Why More Equal Societies Almost always do Better*. London: Allen Lane.

Williams, R. (1983) *A vocabulary of culture and society*. London: Fontana Press Harper Collins.

Winterdyk, J. A. (2002) Introduction. In Winterdyk, J. A. (ed) *Juvenile Justice Systems: International Perspectives*. Second Edition. Toronto: Canadian Scholars. pp. XI- XL.

Withrow, B. L. (2014) *research Methods in Crime and Justice*. London: Routledge.

Wyvekens, A. (2006) The French Juvenile Justice System. In Junger-Tas, T. and Decker, S. H. (eds) *International Handbook of Juvenile Justice*. Dordrecht: Springer. pp. 173-186.

Yates, J. (2012) What prospects for youth justice? Children in trouble in the age of austerity. *Social Policy and Administration*, 46 (4): 432-447.

Young, J. (1999) *The Exclusive Society*. London: Sage Publications.

Young, T., Fitzgibbon, W. and Silverstone, D. (2014) A question of family? Youth and gangs. *Youth Justice*, 14 (2): 171-185.

Youth Justice Board (2000) *Factors Associated with Differential Rates of Youth Custodial Sentencing: Report to the Youth Justice Board*. London: Youth Justice Board.

Youth Justice Board (2010) *Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions*. London: Youth Justice Board.

Youth Justice Board (2013) *National Standards for Youth Justice Services April 2013*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/296274/national-standards-youth-justice-services.pdf (accessed 01.12.15).

Youth Justice Board (2014a) *The Youth Justice Board Annual Report and Accounts 2013/14*. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352794/yjb-annual-report-accounts-2013-14.pdf (accessed: 01.04.15).

Youth Justice Board (2014b) *Use out-of-court disposals: section 1 case management guidance*. Available at: <https://www.gov.uk/government/publications/use-out-of-court-disposals/use-out-of-court-disposals-section-1-case-management-guidance> (accessed: 12.08.16).

Zedner, L. (2002) The Dangers of Dystopias in Penal Theory. *Oxford Journal of Legal Studies*, 22 (2): 341-366.

Zimring, F. E. (2001) Imprisonment rates and new the politics of criminal punishment. In Garland, D. (eds) *Mass Imprisonment Social Causes and Consequences*. London: Sage Publications. pp.145-149.

**APPENDIX ONE
PRACTITIONER INTERVIEW SCHEDULE**

Interview Schedule - England and Wales (15.11.2013)

Date of Interview:

Interview Site:

Name:

Gender: Female
Male

Ethnic origin: White
Mixed
Asian or Asian British
Black or Black British
Chinese or Other

Designation/job title:

1. ABOUT YOU

1.1 How would you describe your professional role and experience?

1.1.a. What is the principal function and purpose of your professional role?

1.1.b. How long have you been in your current post?

1.1.c. What is your previous professional experience?

2. YOUNG PEOPLE AND YOUTH CRIME

2.1 What is the nature of youth offending in the area that you work in?

2.1.a. Could you tell me about the area you work in? (demographics, size, sense of community cohesion)

2.1.b. What type of youth offending is most common in your area?

2.2 Could you tell me about the characteristics of young people that your service comes into contact with?

2.2.a. What (other) agencies or services are involved with the young people that you work with? (schools, housing, child protection etc)

2.3 Why do you think young people offend?

2.3.a. *How do the young people that you work with first come into contact with the criminal justice system?*

2.3.b. *What issues are these young people commonly dealing with in their lives, and how do you think these issues relate to their offending?*

3. POLICING

3.1 How would you describe the relationship / dynamics between young people and police in your area?

3.1.a. *How often would the average young person in your area come into contact with police?*

3.1.b. *Are there any liaison officers in your local police force dedicated to young people or specific BME groups?*

3.1.c. *Has this changed over time? If so, how do you account for this change?*

3.2 Are there any policies that require police to meet certain performance standards?

4. DIVERSION / <u>PRE-COURT DISPOSALS</u>

4.1 How effective do you think diversionary measures are (i.e. cautioning or court diversion) and why?

4.1.a. *What types of offences do you think cautioning is suitable for?*

4.1.b. *Are there any types of offences or young people for whom cautioning or diversion would not be appropriate? (age, gender, personal characteristics or location of young person)*

4.2 For those young people for whom diversion is not appropriate what measures are more appropriate?

4.3 How do you think other agencies or individuals you work with perceive the use of diversionary measures such as cautioning?

4.3.a. *How do you think inter-agency working relationships might either decrease or increase the use of diversionary or low level measures?*

4.3.b. *Has this changed over time? If so, how do you account for this change?*

4.4 What, if any, impact does legislation have on decision making with regards to diversion?

4.5 Ministry of Justice and Youth Justice Board analysis of national data suggests that, over the last few years, there has been a sharp decline in the number of first time entrants into the youth justice system. How do you account for this change?

5. BAIL

- 5.1 Evidence suggests that the number of young people on remand is increasing. How might we begin to understand this?**
- 5.1.a. Evidence suggests that the number of African-Caribbean and Asian/Muslim young people on remand is increasing. How might we begin to understand this?*
- 5.2 What are the common obstacles to young people being given bail in your area?**
- 5.3 Has this changed over time? If so, how do you account for this change?**
- 5.4 What conditions are commonly placed on young people on bail in your area?**
- 5.4.a. How do police monitor compliance with bail conditions and/or community corrections orders in your area?*
- 5.4.b. How might young people be better supported in the community whilst on bail?*
- 5.5 What, if any, impact do you think that legislative amendments to the Bail Act have had on young people?**
- 5.6 Statistics indicate that (insert %) of young people in penal detention are on remand, for approximately/on average (insert) days. What impact do you think this has? (on children/young people, management of centres, provision of services etc)**

6. COMMUNITY SENTENCING

- 6.1 How common is it for young people in your area to be given community sentences?**
- 6.1.a. What are the most common community sentences given to young people in your area?*
- 6.1.b. What are the common characteristics of young people who receive community sentences (offence type, age, gender, ethnicity, prior contact with the system)?*
- 6.1.c. Has this changed over time? If so, how do you account for this change?*
- 6.2 How effective do you think community sentences are? Are there any particular disposals that are unsuitable or ineffective in your opinion?**
- 6.3 Are there any types of offences or young people for whom community sentences are not appropriate (age, gender, person characteristics or location of young person)? If so, what sentences/measures are most appropriate in these cases?**
- 6.4 What support is available to young people serving community sentences in your area? What agencies are involved and how do they work together?**
- 6.4.a. How do you think inter-agency working relationships might either decrease or increase the use of community sentences?*
- 6.4.b. Has this changed over time? If so, how do you account for this change?*
- 6.5 How do you think other agencies or individuals you work with perceive the use of community sentences?**
- 6.5.a. Has this changed over time? If so, how do you account for this change?*

- 6.6 **How do you think legislative principles and requirements in relation to sentencing affect judicial decision-making?**
- 6.7 **What, if any, influence do you think the principle of “detention as a last resort” has on sentencing young people?**
- 6.8 **Other than the offence before the court, are there other national or local issues that might influence sentencing?**
- 6.8.a. *Has this changed over time? If so, how do you account for this change?*

7. PENAL CUSTODY

- 7.1 **How common is it for young people in your area to be given custodial sentences?**
- 7.1.a. *Do you know how many young people are currently on remand or on custodial orders from your area?*
- 7.1.b. *Has this changed over time? If so, how do you account for this change?*
- 7.2 **Do you think that custodial sentences are appropriate for young people?**
- 7.3 **How effective do you think custody is in terms of reducing offending behaviour?**
- 7.4 **Are there any types of offences or young people for whom custodial sentences are not appropriate (age, gender, person characteristics or location of young person)? If so, what sentences/measures are most appropriate in these cases?**
- 7.5 **How do you think other agencies or individuals you work with perceive the use of custodial sentences?**
- 7.5.a. *How do you think inter-agency working relationships might either decrease or increase the use of custodial sentences?*
- 7.6 **Some people argue that children and young people should never be sent to custody. What is your perspective?**
- 7.7 **Ministry of Justice and Youth Justice Board statistics indicate a decrease in the use of custody since 2008. How do you account for this change?**
- 7.7.a. *Do you think this reduction in the use of custody is positive or negative?*
- 7.7.b. *Have there been any particular measures or drivers to reduce the use of custody in your area? If so, could you tell me about it?*

8. PERCEPTIONS OF PUNISHMENT

- 8.1 **Statistics appear to reveal that there is significant variation in the use of custody across England and Wales. How do you account for this?**
- 8.1.a. *Why do you think some regions might be more or less punitive than others?*
- 8.1.b. *What factors or organisational cultures do you think increase / decrease the use of custody?*

8.2 Thinking about the location you work in how do you think the use of custody has varied over time?

- 8.2.a. *Other than the offence before the court are there other national issues that might influence sentencing?*
- 8.2.b. *Other than the offence before the court are there other local issues that might influence sentencing?*
- 8.2.c. *Have you noticed or experienced any policy developments or particular programs which try to take juvenile justice in new directions?*
- 8.2.d. *Are you aware of any particular cases that have impacted on the development of juvenile justice policy?*

8.3 Evidence suggests that certain groups of young people are disproportionately over-represented in both the remand and custodial population. How might we begin to understand this?

- 8.3.a. *Evidence suggests that black and minority ethnic young people are disproportionately over represented both in the remand population and custodial population. How might we begin to understand this?*
- 8.3.b. *Evidence suggests that young people with cognitive and mental impairments are more likely to be incarcerated now than in previous periods. How might we begin to understand this?*
- 8.3.c. *Evidence suggests that young males are sent to custody more frequently than females. How might we begin to understand this?*
- 8.3.d. *Evidence suggests that looked after children are disproportionately over represented in the custodial population. How might we begin to understand this?*
- 8.3.e. *There have been considerable policy drives to reduce the use of custody. However, evidence suggests that this has had little impact on detention rates for young black males. How might we begin to understand this?*

8.4 Do you think the youth justice system has become more punitive or less punitive over time?

- 8.4.a. *Some academics have suggested that the way we treat children in trouble with law across the western world has hardened over the last 20 years. From your experience what do you think about this?*
- 8.4.b. *Evidence suggests that England and Wales is a conspicuously punitive place compared to other countries in the European Union. How might we account for this?*

9. POST CUSTODY/DETENTION

9.1 What services exist in your area to support young people exiting custody/detention?

- 9.1.a. *How effective do you think current programs are at supporting young people post-release?*
- 9.1.b. *How can young people be supported to effectively integrate back into the community post-release?*

- 9.2** What action is needed for young people who continue to reoffend? What do you think is the best course of action? Can you give me a case example?

10. AGE AND INTERNATIONAL HUMAN RIGHTS STANDARDS

- 10.1** What, if any, significance do you think that age should have in the punishment of a young person?

10.1.a. Do you think the (age) jurisdiction of the juvenile justice system in your area is appropriate?

10.1.b. How do you think young people in contact with the criminal justice system are different from adults? How can the criminal justice system reflect these differences?

- 10.2** What, if any, influence do you think the international human rights framework has on juvenile justice practice in England and Wales?

10.2.a. How aware are you (and how aware do you think other people in the sector are) of the UK's obligations under the United Nations Convention on the Rights of the Child and other international human rights standards?

10.2.b. Has this changed over time? If so, how do you account for this change?

11. ANY OTHER QUESTIONS

- 11.1** Do you have any questions or is there anything else you would like to discuss?

**APPENDIX TWO
MAGISTRATES/ DISTRICT JUDGE INTERVIEW SCHEDULE**

Magistrates/ DJ Interview Schedule - England and Wales

Date of Interview:

Interview Site:

Name:

Gender: Female
Male

Ethnic origin: White
Mixed
Asian or Asian British
Black or Black British
Chinese or Other

Designation/job title:

1. YOUNG PEOPLE AND YOUTH CRIME

1.1 Could you give me a very brief summary of the nature of youth offending in this area and the characteristics of the young people that you come into contact with?

2. DIVERSION / <u>PRE-COURT DISPOSALS</u>

2.1 How effective do you think diversionary measures are (i.e. cautioning or court diversion) and why?

2.1.a. What types of offences do you think cautioning is suitable for?

2.1.b. Are there any types of offences or young people for whom cautioning or diversion would not be appropriate? (age, gender, personal characteristics or location of young person)

2.2 For those young people for whom diversion is not appropriate what measures are more appropriate?

2.3 How do you think other agencies or individuals you work with perceive the use of diversionary measures such as cautioning?

- 2.4 **Ministry of Justice and Youth Justice Board analysis of national data suggests that, over the last few years, there has been a sharp decline in the number of first time entrants into the youth justice system. How do you account for this change?**

3. COMMUNITY SENTENCING

- 3.1 **How effective do you think community sentences are? Are there any particular disposals that are unsuitable or ineffective in your opinion? How does this affect your decision-making?**
- 3.2 **Are there any types of offences or young people for whom community sentences are not appropriate (age, gender, person characteristics or location of young person)? If so, what sentences/measures are most appropriate in these cases?**
- 3.3 **Do you know what support is available to young people serving community sentences in your area? What agencies are involved and how do they work together?**
- 3.4 **Do you hear about how young people’s community sentences are progressing? Please expand if you think this is relevant.**
- 3.5 **What response is taken for those young people who breach their community orders?**
- 3.6 **What action is needed for young people who continue to reoffend? What do you think is the best course of action?**
- 3.7 **How do you think legislative principles and requirements in relation to sentencing affect judicial decision-making?**
- 3.8 **How helpful are sentencing guidelines and in your experience have there been any discernable trends in sentencing guidelines?**
- 3.9 **What, if any, influence do you think the principle of “detention as a last resort” has on sentencing young people?**

4. BAIL

- 4.1 **What are the common obstacles to young people being given bail in your area?**
- 4.3 **Has this changed over time? If so, how do you account for this change?**
- 4.4 **What conditions are commonly placed on young people on bail in your area?**
- 4.5 **How effective/ how much confidence do you have in the ISS bail package?**
- 4.6 **What action is taken if a young person breaches their bail package?**
- 4.7 **Despite a fall in the remand population the proportion of BME young people being remanded remains stubbornly high. How can we begin to understand this?**

- 4.8 **There have been various commentaries about the changes to the bail act. In your experience is this likely to have any impact?**

5. PENAL CUSTODY

- 5.1 **How common is it for young people in your area to be given custodial sentences?**
- 5.2 **Do you think that custodial sentences are appropriate for young people?**
- 5.3 **How effective do you think custody is in terms of reducing offending behaviour?**
- 5.4 **How do you think other agencies or individuals you work with perceive the use of custodial sentences?**
- 5.5 **How influential are PSRs in your decision- making?**
- 5.6 **How likely is it for the YOT to propose a custodial sentence for a young person? What affect does this have?**
- 5.7 **How effective/ informative do you find the YOT court officer?**
- 5.8 **Is there a dedicated YOT court officer or does this change frequently? What impact do you think this has?**
- 5.9 **Some people argue that children and young people should never be sent to custody. What is your perspective?**
- 5.10 **Ministry of Justice and Youth Justice Board statistics indicate a decrease in the use of custody since 2008. How do you account for this change?**

6. PERCEPTIONS OF PUNISHMENT

- 6.1 **Statistics appear to reveal that there is significant variation in the use of custody across England and Wales. How do you account for this?**
- 6.2 **Thinking about the location you work in how do you think the use of custody has varied over time?**
- 7.2.a. *Have there been any particular measures or drivers to reduce the use of custody in your area? If so, could you tell me about it?*
- 6.3 **Evidence suggests that certain groups of young people are disproportionately over-represented in both the remand and custodial population. How might we begin to understand this?**
- 6.4 **Do you think the youth justice system has become more punitive or less punitive over time?**

- 6.4.a. *Some academics have suggested that the way we treat children in trouble with law across the western world has hardened over the last 20 years. From your experience what do you think about this?*
- 6.4.b. *Evidence suggests that England and Wales is a conspicuously punitive place compared to other countries in the European Union. How might we account for this?*

7. AGE AND INTERNATIONAL HUMAN RIGHTS STANDARDS

7.1 What, if any, significance do you think that age should have in the punishment of a young person?

- 7.1.a. *Do you think the (age) jurisdiction of the juvenile justice system in your area is appropriate?*
- 7.1.b. *How do you think young people in contact with the criminal justice system are different from adults? How can the criminal justice system reflect these differences?*

7.2 What, if any, influence do you think the international human rights framework has on juvenile justice practice in England and Wales?

- 7.2.a. *How aware are you (and how aware do you think other people in the sector are) of the UK's obligations under the United Nations Convention on the Rights of the Child and other international human rights standards?*
- 7.2.b. *Has this changed over time? If so, how do you account for this change?*

8. ANY OTHER QUESTIONS

8.1 Do you have any questions or is there anything else you would like to discuss

**APPENDIX THREE
NATIONAL EXPERT INTERVIEW SCHEDULE**

NGO and Expert Interview Schedule - England and Wales (28.02.2014)

Date of Interview:

Name:

Gender: Female
Male

Ethnic origin: White
Mixed
Asian or Asian British
Black or Black British
Chinese or Other

Designation/job title:

1. ABOUT YOU

1.1 How would you describe your professional role, the organisation you work for and your previous experience?

2. YOUNG PEOPLE AND YOUTH CRIME

2.1. What issues are young people who offend commonly dealing with in their lives, and how do you think these issues relate to their offending?

3. POLICING

3.1 Over the last 20 years or so how do you think policing of young people has changed?

3.1.a What have been the drivers of this change?

3.3 How significant do you think local police leadership is to the policing of young people? Can you give me any examples?

3.3.a Can you think of any differences in police approaches to young people across different locations?

3.4 How significant do you think Police Crime Commissioners have been/ will be in the relationship between young people and the police?

3.4.a *Have you observed any changes to the policing of youth due to PCCs actions or policies?*

3.5 Is there national consistency in regards to the policing of young people and how can we account for any differences?

4. DIVERSION / PRE-COURT DISPOSALS

4.1 How effective do you think diversionary measures are (i.e. cautioning) and why?

4.1.a *what does the evidence tell us about the use of cautioning?*

4.1.b *What types of offences do you think cautioning is suitable for?*

4.1.c *Are there any types of offences or young people for whom cautioning or diversion would not be appropriate? (age, gender, personal characteristics or location of young person)*

4.2 For those young people for whom diversion is not appropriate what measures are more appropriate?

4.3 What, if any, impact does legislation have on decision making with regards to diversion?

4.4 Ministry of Justice and Youth Justice Board analysis of national data suggests that, over the last few years, there has been a sharp decline in the number of first time entrants into the youth justice system? How do you account for this change?

4.5 Research into cautioning practices in the 1980s and more recently reveals disparities in use between regions. How can we account for this at a micro and macro level within these regions?

4.6 How do you think policy makers and the current government view diversion and cautioning?

5. BAIL

5.1 Evidence suggests that the number of young people on remand was increasing until recently. How might we begin to understand this?

5.1.a *Evidence suggests that the number of African-Caribbean and Asian/Muslim young people on remand is increasing. How might we begin to understand this?*

5.2 What are the common obstacles to young people being given bail do you think?

5.3 How has this has changed over time? How do you account for this change?

5.4 What conditions are commonly placed on young people on bail?

5.4.a *In your experience how realistic, just or effective do you think these conditions are?*

5.4.b. *How might young people be better supported in the community whilst on bail?*

5.5 What, if any, impact do you think that legislative amendments to the Bail Act have had on young people?

6. COMMUNITY SENTENCING

6.1. How effective do you think community sentences are? Are there any particular disposals that are unsuitable or ineffective in your opinion?

6.1.a. *Research indicates that in YOT areas with high custody use, the magistracy and YOTs have poor inter-agency working and magistrates have low trust in the effectiveness of community interventions. How do you think community disposals can be improved?*

6.2. How do you think legislative principles and requirements in relation to sentencing affect judicial decision-making?

6.3. What, if any, influence do you think the principle of “detention as a last resort” has on sentencing young people?

6.3.a. *Have there been any specific policy or government drives to promote this amongst youth justice practitioners of late?*

6.4. Other than the offence before the court, are there other national or local issues that might influence sentencing?

6.4.a. *Has this has changed over time? How do you account for this change?*

7. PENAL CUSTODY

7.1. Do you think that custodial sentences are appropriate for young people?

7.2. How effective do you think custody is in terms of reducing offending behaviour?

7.3. Are there any types of offences or young people for whom custodial sentences are not appropriate for (age, gender, person characteristics or location of young person)? If so, what sentences/measures are most appropriate in these cases?

7.4. Some people argue that children and young people should never be sent to custody. What is your perspective?

7.5. Ministry of Justice and Youth Justice Board statistics indicate a decrease in the use of custody since 2008. How do you account for this change?

7.5.a. *Have there been any particular measures or drivers to reduce the use of custody?*

8. POST CUSTODY/DETENTION

8.1 What action is needed for young people who continue to reoffend? What do you think is the best course of action?

8.1.a. *How effective do you think current programs are at supporting young people post-release?*

8.1.b. *How can young people be supported to effectively integrate back into the community post-release?*

9. PERCEPTIONS OF PUNISHMENT

9.1 Statistics appear to reveal that there is significant variation in the use of custody across England and Wales. How do you account for this?

9.1.a. *Why do you think some regions might be more or less punitive than others?*

9.1.b. *What factors or organisational cultures do you think increase / decrease the use of custody?*

9.1.c. *Other than the offence before the court are there other national issues that might influence sentencing?*

9.1.d. *Have you noticed or experienced any policy developments or particular programs which try to take juvenile justice in new directions?*

9.2 Evidence suggests that certain groups of young people are disproportionately over-represented in both the remand and custodial population. How might we begin to understand this?

9.2.a. *Evidence suggests that black and minority ethnic young people are disproportionately over represented both in the remand population and custodial population. How might we begin to understand this?*

9.2.b. *Evidence suggests that young people with cognitive and mental impairments are more likely to be incarcerated now than in previous periods. How might we begin to understand this?*

9.2.b. *Evidence suggests that young males are sent to custody more frequently compared to females. How might we begin to understand this?*

9.2.c. *Evidence suggests that looked after children are disproportionately over represented in the custodial population. How might we begin to understand this?*

9.2.d. *There have been considerable policy drives to reduce the use of custody. However, evidence suggests that this has had little impact on detention rates for young black males. How might we begin to understand this?*

9.3 Do you think the youth justice system has become more punitive or less punitive over time?

9.3.a. *Some academics have suggested that the way we treat children in trouble with law across the western world has hardened over the last 20 years. From your experience what do you think about this?*

9.3.b. *Evidence suggests that England and Wales is a conspicuously punitive place compared to other countries in the European Union. How might we account for this?*

9.4 The use of custody varies greatly across the 157 YOTs in England and Wales, controlling for socio-economic variables you can see striking patterns of justice by geography. How might we begin to understand this?

10. AGE AND INTERNATIONAL HUMAN RIGHTS STANDARDS

10.1 What, if any, significance do you think that age should have in the punishment of a young person?

10.1.a. Do you think the (age) jurisdiction of the juvenile justice system in your area is appropriate?

10.2 What, if any, influence do you think the international human rights framework has on juvenile justice practice in England and Wales?

10.3 Some people would argue that that human rights frameworks and to some extent restorative justice practices have acted as a bulwark against punitivity. To what extent to you agree/disagree with this statement and why?

11. ANY OTHER QUESTIONS

11.1 Do you have any questions or is there anything else you would like to discuss?

**APPENDIX FOUR
RESEARCH AND ETHICS INFORMATION FOR PARTICIPANTS**



Youth Justice and Penal Custody in England and Wales

Participant Information Sheet (30.07.13)

You are being invited to voluntarily participate in a national research study. Before you decide whether to participate, it is important for you to understand why the research is being undertaken and what it will involve. Please take time to read the following information carefully and feel free to ask if you would like more information or if there is anything that you do not understand.

Research study outline

The study aims to explore youth justice policy, practice and sentencing in England and Wales.

As part of the research a number of youth justice professionals, including Youth Offending Team practitioners, police officers, magistrates, judges, Crown Prosecution Service personnel, council officials and non-governmental organisation staff, will be consulted and interviewed.

Why have you been selected to take part?

The research team are looking to recruit approximately 75 participants to take part in the study. You have been selected as you have professional expertise in the area of youth justice and we are interested to hear your views on such matters. We are particularly interested to hear from practitioners in the following fields: Youth Offending Service; Magistracy; Judiciary; Police; Crown Prosecution Service; and non-governmental organisations that work with young people in conflict with the law.

The research study is being carried out by Damon Briggs. He is a doctoral research student at the Department of Sociology, Social Policy and Criminology, School of Law and Social Justice, The University of Liverpool. The PhD research is being supervised by Professor Barry Goldson and Professor Sandra Walklate, who are also based at the University of Liverpool.

Taking part

Participants are invited to take part in an interview with Damon Briggs, a PhD student researcher. The interview will last approximately 60 to 90 minutes (maximum). You will not be required to attend more than one interview.

Your participation is voluntary.

Are there any potential benefits to taking part?

Taking part in this research study will allow participants to share their expertise and potentially contribute to best policy/ practice development.

What if I am unhappy or if there is a problem?

If you are unhappy, or if there is a problem, please feel free to let us know by contacting the principal investigators, Professor Barry Goldson on...[redacted]...or Professor Sandra Walklate on ...[redacted]...and we will try to help. If you remain unhappy or have a complaint which you feel you cannot come to us with then you should contact the Research Governance Officer on 0151 794 8290 (ethics@liv.ac.uk). If contacting the Research Governance Officer, please provide details of the name or description of the study (so that it can be identified), the researcher(s) involved, and the details of the complaint you wish to make.

Will my participation be kept confidential?

All data obtained from interviews will be electronically recorded and then transcribed. All data will remain strictly confidential. Only the principal investigators, Professor Barry Goldson and Professor Sandra Walklate, and the co-applicant student, Damon Briggs, will have access to the data. During the transcription process all data will be anonymised. For example, pseudonyms will be used for participants and for any cases discussed. Likewise, geographical locations, and details regarding organisations will be anonymised.

The data will be securely stored and kept for the duration of the study until September 2015. Participants will be able to access their data upon request.

If in the unlikely event that information is disclosed to the researcher by the participant that relates to illegal activity or practice on the part of the individual or individuals within a professional organisation or institution then the research team will contact the manager for the relevant organisation.

What will happen to the results of the study?

The results of the study will be published in Damon Briggs' PhD thesis. It is also likely that the results will be published in journals, monographs and books. Participants will have access to the published PhD thesis upon request to the author.

No participants or agencies/ organisations will be identifiable from the results.

What will happen if I want to stop taking part?

Participants may withdraw from the study at anytime without providing an explanation. You are not compelled to complete an interview. Results up to the period of withdrawal maybe used, or participants may request that their data is destroyed and no further use is made of it.

Who can I contact if I have further questions?

Participants should contact the following persons if they have any further questions:

Damon Briggs, PhD student

[contact details have been redacted]

Prof. Barry Goldson

[contact details have been redacted]

Prof. Sandra Walklate

[contact details have been redacted]