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Challenging the Logics of Reformism and Humanism in Juvenile Justice Rhetoric

Alexandra Cox[1]

Abstract

This article draws on contemporary policy discourse in order to advance claims about the intractable figure of the 'bad' child in contemporary juvenile justice reforms in the United States. The article focuses in particular on the discourses of trauma and 'brain science' to point to a form of neo-positivism that has arguably emerged and which challenges efforts to engage in systematic decarceration. The article also focuses on the idea of the 'bad child' that persists in the commitment of some reformers to the necessity of confinement for some children. The article questions the extent to which new forms of positivism challenge our ability to leverage structural claims.

Corresponding author:

Alexandra Cox, email: alexandra.cox@essex.ac.uk

Introduction: Contemporary Constructions of Young People in Trouble with the Law

This article reflects on contemporary reform logics and rhetoric about juvenile justice systems in the United States (US) and explores the idea of "the child" that emerges from it. In recent years, juvenile justice reformers, who work from a putatively child-centered, progressive and social justice-oriented approach to reform in the Canada, the United Kingdom (UK), and US, have arguably focused their efforts on several core areas: the downsizing of youth custody and the diversion of young people into community-based care; the introduction of "trauma-informed" practices into youth justice interventions; and the transmission of knowledge about the "teenage brain" into sentencing practices and youth justice interventions. Driving these seemingly

[1] Senior Lecturer in the Department of Sociology, University of Essex, Colchester, UK

progressive reforms are a growing group of local and national advocacy and reform organizations in Canada, the UK and the US, including system commissioners and lawmakers, who have been approaching a new kind of "penal common sense" (Wacquant 1999) with respect to the punishment and rehabilitation of young people charged with crimes—an approach that rejects the harsh punishment and demonization of children, views custody as harmful, promotes young people's diversion from the system (and recognizes the labeling effects of system contact), and promotes care over control. Yet, this "common sense" still remains *penal* in that it is rooted in the idea that offending by young people should and can be addressed *within* the justice system.

In this article, I attempt to trace the shifting boundaries between normal and so-called "deviant" children in the present day, illuminating how these shifts impact on our ideas about who is "truly" dangerous and in need of intervention. More specifically, I argue that there are sometimes-competing logics about criminality, growth, potential and trauma that circulate within this rhetoric. There are also broader cultural and socio-structural pressures that animate public and policy discussions. These are arguably the market-driven pressures on liberal advocates and organizations to engage in public relations and messaging campaigns in order to advance progressive reform. These campaigns arguably minimize the complexities of young people's lives by promoting messages about the individual lives of children that are palatable and legible to everyday citizens accustomed to neoliberal messages about individual effort and responsibility.

Liberal-progressive juvenile justice reform movements, led largely by non-state actors, have a longstanding history in Europe and the US. Progressive (often wealthy) reformers in the late-nineteenth century promoted the development of a separate legal system for adjudicating the offenses of young people and a separate system of reformatories where they could be helped and changed (Platt 1969/1977). Since then, children's aid societies, children's rights organizations, legal defenders, and various foundations have attempted to reform the juvenile justice system on both sides of the Atlantic, with several "peak" decades of reform in the US, in particular, including significant due process reforms in the 1960s and a decarceration movement in the 1970s and early 1980s (Bernard and Kurlychek 2010). As others have shown, reform movements and movement actors are themselves an important site of inquiry. They help us to understand the drivers and obstacles to shifts in the penal landscape, but also provide crucial insights into the ways that individuals who offend are constructed for the purposes of intervention, enabling us to interrogate

more critically what effect reform has had in actually transforming punishment (Goodman et al. 2017; Gottschalk 2015; Rothman 1980).

This article focuses on an analysis of the policy rhetoric and public messaging of the largely liberal-progressive reformers in the US who advocate for ostensibly more child friendly approaches to young people in trouble with the law. There is, however, arguably a consensus from across the political spectrum in a number of countries, from the US to the UK, on approaches to juvenile justice, which are all what I will argue are *neo-positivist* in their orientation. Here I use the term *neo-positivism* to express the idea that contemporary approaches to juvenile justice are oriented around the idea that we can isolate and discern young people's criminality in their biological and psychological makeup, and act on it through the use of extensive interventions.[1] Individual and sociological positivism came under question in the 1960s when scholars and activists began to ask questions about the power of labeling in law making and law breaking, the determinism inherent in searches for the aetiology of offending, and the potentially iatrogenic effects of systemic interventions (Muncie, 2009). While it is clear that positivist approaches and orientations have never fully disappeared, I argue that the arguments that drive contemporary juvenile justice reforms have revived a positivist orientation that was active in the early part of the 20th century, but has been reconfigured and reconstituted to fit present day demands.

The article draws from an analysis of an array of policy advocacy reports, opinion-editorials, and from personal engagement in the field of juvenile justice reform as both a researcher of and as a participant in state and national level sentencing reform processes, including meetings, conference calls, conferences, and lobbying efforts (see also Cox 2018).

Liberal-progressive juvenile justice reform strategies may play a role in entrenching rather than demystifying and subverting the public fear of the so-called "violent child." I contend that we continue to be transfixed and threatened by the violent child in ways that may actually serve to embed violence rather than disrupt it. I suggest that the interest by reformers with an individual's internal dynamics—from the brain to the physiological processes set into motion through the experience of trauma—place hope for change in abstract notions of healing and care that are connected to theories about what is appropriate for children (smaller, kinder settings as opposed to harsher and scary prisons)—perspectives that are deeply rooted in middle class sensibilities about what constitutes change, and in positivist approaches to criminality. And it is these theories

that have resulted in a perpetual drive to make systems kinder and softer for children, but which could actually make them more repressive and painful.

In this article, I assert that liberal American reformers' contemporary constructions of young people in trouble with the law draw from several conflicted and contradictory logics, all of which serve to embed, rather than disrupt, ideas about the inherent criminality of the largely young people of color who populate America's juvenile justice systems. They follow four core and potentially competing threads: 1) young people in trouble with the law have experienced significant childhood trauma which has led to their offending; 2) young people's offending is affected by their developmental immaturity, measured by their brain development; 3) prison-like facilities are criminogenic; and 4) we must close most youth facilities, but there will always be some young people who require placement, in small, home-like facilities. As I will explain below, these ideas about children in trouble with the law, which have emerged as a commonsense narrative in reform contexts, not only sustain and entrench ideas about criminality—particularly the criminality of children of color—but draw from and endorse bio-psycho-social perspectives that sometimes compete with, and ultimately undermine, claims about the *criminalization* of impoverished children of color by the state. I will treat each of these claims in turn, drawing from these recent discourses of reform.

The Narrative of Trauma

Although it is arguable that juvenile justice system actors have long constructed young people who offend as victims of neglect and abuse, in more recent years, the term "trauma" has been used to characterize young people's experiences prior to their system engagement. This is consistent with a broader emergence of the concept of trauma in the late 20th century—which has become "a major signifier of our age" (2009: xi) according to two key genealogists of trauma, Didier Fassin and Richard Rechtman. Post-traumatic stress disorder was introduced as a term in the Diagnostic and Statistical Manual of Mental Disorders in 1980 (Fassin and Rechtman 2009: 15), and there exists in contemporary life an assumption of the "line of imputability and inevitability…. between abuse and its consequences" (Fassin and Rechtman 2009: 4).

Fassin and Rechtman point to the emergence of trauma as part of a humanistic enterprise; the experience of trauma links everyone from Holocaust survivors, to Vietnam War veterans, to HIV/AIDS patients, to contemporary "juvenile offenders." In the literature and rhetoric of

"trauma," this shared history of suffering does not distinguish between people of different social positions—at least in theory (Fassin and Rechtman 2009: 39). Yet, as Fassin and Rechtman show, there is a *moral* significance to trauma that cannot be overlooked. They argue that we should study trauma because it has shaped the politics of knowledge and intervention. It is thus a uniquely contemporary, liberal concept, often used in a colorblind and humanistic way; in one trauma-informed model of juvenile justice interventions, young people *and* staff in juvenile justice and residential child care settings are recognized for their *shared* trauma histories (Bloom 2005). Not only does the model recognize that young people have prior traumatic pasts that may impact their experiences of residential care, the model also recognizes that staff members themselves may have their own experiences with/of trauma that they import into the facilities, and which may affect their care of, and responses to, young people. This humanizing enterprise of "trauma" could potentially link almost anyone in any socio-economic position to the young person who has been arrested; in other words, "trauma" is a language that is legible across social classes. Arguably, this becomes important to the enterprise of trauma because it is the shared social use and knowledge of this term that leads reformers to believe that they can reach key audiences who would not ordinarily have much sympathy for young people charged with crimes.

"Trauma" in juvenile justice contexts

The uses of "trauma" terminology in the juvenile justice context have been relatively recent. A 1985 article in *Pediatrics* charted the epidemiology of trauma among young people in juvenile facilities, looking at their exposure to injuries and violence (Woolf and Funk 1985). This focus on the harms of incarceration and exposure to violence would later become leveraged in claims about the inherent chaos and violence of prison-like facilities for children. Although there were some scholarly articles on the relationship between trauma exposure and juvenile delinquency in the 1990s (e.g., Burton et al. 1994), the early focus appeared to be on the experiences of posttraumatic stress disorder and maltreatment leading to delinquency among specific groups of young people in the system (Steiner et al. 1997). The first appearance of the term "trauma" in liberature produced by US governmental agencies appears to be in a 2001 publication about the experiences of girls in Pennsylvania's juvenile justice system (Griffin 2001). The discussion of "trauma" in the context of juvenile justice received little traction until 2010, when the Office of Juvenile Justice and Delinquency Prevention published a guide for family court judges on what they should know

about trauma and delinquency (Buffington et al. 2010). In keeping with broader discourses of girls' delinquency, which tend to focus on girls' psychological makeup, as opposed to their offending (Chesney-Lind and Shelden 2004; Sharpe 2009), the initial nods to trauma were centered largely on girls.

By the beginning of the second decade of the twenty-first century, a common discourse had begun to emerge about trauma in juvenile justice settings, reform language and local system practices, such that the term "trauma" has become nearly ubiquitous in reform accounts of the juvenile justice system. The diagram below (Figure 1) demonstrates the sharp rise in the co-occurrence of trauma and juvenile justice in Google Books results. The website, *Juvenile Justice Information Exchange* (http://www.jjie.org), which was launched in 2010 in order to cover juvenile justice issues for a policy and practitioner audience, has over 625 results for the word "trauma" in its archive. In a recent systematic review of the literature on trauma-informed practices in juvenile justice systems, the authors identified 900 articles published since the year 2000 which connected "trauma-informed" practices and juvenile delinquency (Branson et al. 2017).

Figure 1.: Google ngram for terms 'trauma+juvenile justice', produced by author. Data source: Google Trends.

In some of the juvenile justice reform literature, advocates make direct links between the causes of offending and the experience of early childhood trauma. The liberal progressive Justice Policy Institute, a national criminal justice reform organization, argued that "[a]ny number of factors can contribute to a person becoming involved in the criminal justice system,

including a history of trauma or victimization" (2010: 1). Rise for Youth, a Virginia-based juvenile justice advocacy organization, describes the effects of pre-system trauma on children who offend: "That trauma can manifest as inability to focus, disinterest, or being on "high alert." This can lead to trouble in school and with law enforcement for young people who are simply reacting to past abuse" (2016: 9).

In a more recent turn in the advocacy literature, the emphasis on pre-system trauma focuses on the ways that the system can exacerbate pre-existing trauma. In a publication advocating for the closure of youth facilities, McCarthy and colleagues (2016:5) argue:

> The trauma many of these young people have experienced makes them especially sensitive to environmental triggers, and yet, many are kept in institutional environments that seem designed to trigger trauma and rage: long periods of isolation; harsh, sterile surroundings; bright lights; a constant din; and a near-constant threat of violence.

Other advocates point to the research about traumatic experiences that young people bring with them into the systems where they are placed. In a publication that was a joint effort between several major advocacy organizations and government bodies, Seigle and colleagues (2014: 47) contend:

> ….research indicates that many youth are likely to have experienced trauma prior to their involvement in the juvenile justice system. Trauma can interrupt or redirect cognitive development and increase the likelihood of psychological impairment that, if unaddressed, will limit youth's responsivity to services, no matter how well matched to their dynamic risk factors.

In a report about girls in the justice system, Watson and Edelman (2012: ii) claim:

> The set of challenges that girls often face as they enter the juvenile justice system include trauma, violence, neglect, mental and physical problems, family conflict, pregnancy, residential and academic instability, and school failure. The juvenile justice system only exacerbates these problems by failing to provide girls with services at the time when they need them most.

In each of these reports, advocates make a case for the harms of the current system as a traumatic force in the lives of already damaged young people. This claim that the system exerts damage resonates with Murakawa's (2014) arguments about early post-World War II procedural reforms

to policing, which suggested that poor and unfair treatment of Black people by the police could *exacerbate* violence and crime, more generally. Yet, these arguments simply situate criminality in the life experiences of the children who have transgressed the law in a neo-positivist approach to justice making, reviving somewhat claims about the causal relationship between an individual's exposure to neglect and violence and their offending, while containing them in arguments about failing social systems. This approach obfuscates the role that cultural, social and structural processes play in shaping crime and criminalization (see also Bell 2016; Green 2008).

Trauma-based reforms

One of the reform proposals that has been offered entails situating juvenile facilities "close to home" or closer to the families of the children who have violated the law and to provide children and their families with Functional Family Therapy or Multisystemic Therapy. While in one respect, young people who transgress the law are being constructed as "victims" at the hands of their families, in another respect, their families are constructed as the *solution* to their problems. This reform rhetoric exists at the intersection of responsibilization politics and humanizing discourses. The elevation of the family as the source of hope and healing is a liberal recognition of autonomy, cultural respect, and self-determination, but also a perspective that upholds longstanding conservative attitudes about the family as the ultimate source of social control and societal well-being, as well as resurrects positivist ideas about the causes of criminality.

Another solution that is offered to the problems of trauma is the introduction of what is termed a "trauma-informed" approach to secure facilities. Trauma-informed care is described as "an approach to organizing services that integrates an understanding of the impact and consequences of trauma into all interventions and aspects of organizational functioning" (Branson et al. 2017: 636). New York State, for example, has introduced a "trauma-informed" treatment program called the Sanctuary Model into their residential facilities (National Research Council 2012); other states have done so as well.

This solution proposes an ostensibly more *humane* system—one where the lighting is softer, the design less oriented around punishment, and the space aimed at facilitating treatment. For example, the Virginia juvenile justice system, supported by the Annie E. Casey Foundation, proposed building a new juvenile justice facility that embraced what they called "trauma-centered design" principles, including:

…. furnishings, lighting, and architectural features, such as:

- Open interior spaces with views to the outside;
- Natural lighting, as well as adjustable lighting;
- Ready access to outdoor spaces from housing and program areas;
- Light colors; and
- Sound absorbing materials

(Secretary of Public Safety and Homeland Security 2017)

This approach to imprisonment is arguably one that activist James Kilgore (2014) has termed "carceral humanism," which includes attempts by local authorities to try to improve the conditions of confinement, but still maintain the commitment to custody and incarceration as a solution for the social problems it reflects (see also Gilmore 2015; Schept 2015).

Discourses of Developmental Immaturity

One of the other prominent discourses of reformers in the contemporary age is focused on the idea that young people in the justice system are developmentally immature—that their *brains* are less developed than adults and, as such, that they should thus receive shorter and less punitive sanctions than adults. The brain development discourse is prominent and pervasive, and juvenile justice advocates have become well-versed in the discourse of the frontal lobe and its putative underdevelopment (Cox 2014; Maroney 2009).

The discourse of development arguably lies in tension with the discourse of trauma. In the rhetoric about "trauma," young people charged with crimes have had *compromised*, as opposed to *normative* development. In contrast, advocates' assertions regarding young peoples' brain development advances the claim that *all* teenagers have underdeveloped brains and that deviant behavior in the adolescent years, until the early twenties, is normative. It is arguable that the ideas about normative development have a strong rooting in middle-class notions of acceptable behavior, suggesting that young people can and should move through "appropriate" stages of development—from the "storm" of adolescence to compliance with societal norms (Bessant 2008; Burman 2000). The developmental discourse suggests that young people who engage in deviance are often doing so in a way that is consistent with their transition to adulthood. Yet, this idea of a transition to adulthood involves assumptions about family, home and work in adulthood that are bound strongly

to economic and social citizenship, as well as access to social institutions that facilitate development (Furlong and Cartmel 2007); it is now well established that impoverished children, particularly in highly unequal societies, lack this access.

Neuroscience literature has been used to advocate for lesser sentences for teenagers charged with crimes but also for more specialized services for young people charged with crimes. In a pilot program in Connecticut state prisons, for example, a separate unit has been created for young adults, and correctional staff in those units receive training in "brain science" and trauma (Chammah 2018). Relying on neuroscientific literature has gained popularity outside the US, and is now used by advocates in the UK to advocate for raising the minimum age of criminal responsibility, for the special treatment of young adults charged with crimes, and for "child centered" youth justice approaches.

Yet, the framework of developmental immaturity raises significant and puzzling questions about contemporary approaches to serious and violent offending. For what is suggested through the uses of the literature on neuroscience in the advocacy literature, which is that teenagers lack "impulse control, judgment, future orientation, and emotional maturity" (McCarthy et al. 2016: 5), is not sufficient evidence to combat state mandatory sentencing policies and practices, prosecutorial power, and judicial biases that work strongly in favor of sentences of incarceration for violent crimes committed by teenagers. Legal scholar Terry Maroney (2009: 89) has found that most efforts to deploy the "brain science" research in the lower courts have failed, in part because doctrinal factors prevent the courts from finding that "persons with immature brains are incapable of forming the requisite *mens rea* for serious crimes." Maroney argues that in the courts, the science on the underdeveloped brain will almost likely be subordinated to other considerations, such as the harm caused by the young person, in a way that is not consistent with its "developmental logic" (2011: 792). Maroney's arguments do not necessarily spell a deep cynicism about the potential of the science, but rather raise questions about the logic of its use in contexts where discussions of dangerousness and harm predominate.

A number of advocates point to the Supreme Court's reliance on "brain science" in three key cases in the last fifteen years: in *Roper v. Simmons* (2005), which held unconstitutional the death penalty for children under the age of 18; in *Graham v. Florida* (2010), which held that teenagers under the age of 18 could not be sentenced to life in prison without parole in non-homicide cases; and in *Miller v. Alabama* (2012), which held unconstitutional mandatory life

sentences of life without the possibility of parole for juvenile offenders. The neuroscience literature that was presented in amicus curiae briefs was relied on heavily by the majority of the members of the Court in their decisions in these cases (Maroney 2011). Yet, it was in the dissent in *Graham v. Florida*, where Associate Justice Clarence Thomas's relied on studies by criminologist Terrie Moffitt (1993)—specifically, her work on "adolescent limited" and "life course persistent" offending—to put forth the argument that crimes committed by teenagers are not those committed by the "average teenager" (Maroney 2011). Moffitt had developed a taxonomy of youth offending based on her analysis of large-scale data sets, suggesting that there are some teenagers who engage in offending across the life course; Thomas drew on these findings to suggest that the decision by the Court to extend mercy to teenagers was misguided, and that some teenagers—those who are the most violent—are undeserving of such mercy.

"Brain science" as an advocacy strategy

The interest in "brain science" in juvenile justice has coincided with the rise of corporate-style public relations strategies in non-profit organizations; most, if not all, of the major criminal justice and juvenile justice reform organizations, at least in the US, have communications departments, write press releases, and develop "messaging" around key issues, which includes media trainings for advocates. It is arguable that they have had to do so in response to an increasingly competitive market for attention in state and federal legislatures, as lobbying and advertising budgets have risen, and the law and order agenda advanced by conservative politicians has continued to receive strong public purchase since the 1990s (Garland 2001). The US-based Frameworks Institute, for example, aims to enhance the communications work of non-profits by providing trainings and support regarding non-profits' messaging about social issues; they have a "message memo" on talking about juvenile justice reform, which encourages advocates to focus on brain development when they talk about reforms:

> This is a critical chapter in the new narrative on juvenile justice reform. Unless and until people can see the systems that are at work, they cannot overcome their fixation on individual-level choices and solutions. But this dominant explanation can be dislodged; people also possess an incipient understanding that that childhood is a formative period, and that context matters. To build on these recessive beliefs, communicators need to offer help from careful framing and explaining of two sets of mechanisms at work: that of the

> developing adolescent brain, and that of the dysfunctional and inequitable juvenile justice system. (Bales et al. 2015: 13)

The Frameworks Institute claims that their approach combats assumptions about crime as an "individual-level" issue—an implicit critique of conservative rational-choice models. One of their positions, however—on the "developing adolescent brain"—advances the neo-positivist approach of situating the causes of crime in the individual while linking the argument to a critique of the system. By essentially neutralizing claims about the morally corrupt "superpredators" of the past with an argument about the sameness of adolescent difficulties (through an appeal to the nightmarish teenage brain), they attempt to nullify previous critiques with an appeal to rationality and science (see also Brisman, 2016). But this very appeal to rationality opens the door for a claim about the aberrant teenager—the one whose development is *not* "normal" and who thus deserves harsher punishment.

The Frameworks Institute suggests that this messaging "works." Indeed, in the last ten years, there has been a proliferation of brain science literature and an unprecedented level of reforms, from the abolition of the death penalty and life without parole for teenagers to over 70 pieces of legislation that have been passed since 2005 to move young people out of adult criminal justice systems (Thomas 2017). States across the US have engaged in a large-scale downsizing process of their residential juvenile facilities (National Juvenile Justice Network 2018; National Juvenile Justice Network and Texas Public Policy Foundation 2013), and a number of states have passed laws ending shackling practices and solitary confinement for young people. The changes have been enormous, but two questions remain: Has the discourse of brain development itself been the sole driver of that change? What are the sentencing practices and conditions of confinement for those who remain in the systems?

The Limited Effects of Brain Science Discourse

New York State offers an instructive case study. In 2016, the state legislature passed what was described nationally as a measure to "raise the age" of criminal responsibility. New York is an ostensibly "liberal" and progressive Northern state, with a great degree of political significance and importance, but one where claims to liberalism can often obscure more punitive practices. Before the law passed, teenagers as young as 16 were automatically charged as adults; for certain enumerated felonies, 13-15 year olds were also automatically charged as adults. The law raised

the age for all individuals under the age of 18 who were previously charged with misdemeanors in the adult courts, effectively transferring their cases to the Family Court. For young people charged with felonies under the age of 18, their cases are now heard in a specialized youth courtroom that was previously hearing the cases of 13-15 year olds. The adult court staill retains jurisdiction over the cases of this latter group of young people, in other words.[2] For 16 and 17-year olds charged with felonies and sentenced to jail and prison, the 2016 law provided that they would now be sent to a prison created through the New York State Department of Corrections that would be "specialized" for young people (much like those described above, including "trauma-informed" care). Thus, pursuant to the 2016 law, in New York State, 13-18 year olds charged with violent felonies still face mandatory imprisonment for certain offenses, even though the law was intended to "raise the age" of criminal responsibility. For example, if a 14-year-old is charged with attempted murder, he/she still faces a maximum indeterminate sentence of 3-10 years in prison. In short, the New York State legislature enacted a change in the law that, though substantial, still, in effect, requires large groups of young people to be charged, prosecuted, and sentenced to lengthy terms in custody, conveying the message that youth dangerousness can be dealt with effectively *only* through removal.

Many advocates, particularly in the US, increasingly recognize the need to shift the debate towards young people charged with crimes of violence (Sered 2017), but advocacy agendas still remain focused largely on the low hanging fruit of juvenile justice—the outlier examples, from egregiously harsh practices in confinement to draconian punishment for minor crimes—to advance change. This strategy is one that views incremental change—and change in the public "conversation"—as an essential precursor for more significant changes. Yet, it raises substantial questions about the core mechanisms for change, as well as for abolitionist futures. Scholars acknowledge the power of prosecutorial discretion in shaping outcomes for individuals in the justice system, and prosecutorial practices are incredibly difficult to adjudicate. As John Pfaff (2017) argues, even if minimum sentences are altered through a legislative process, prosecutors still possess absolute power in a plea deal to set the sentence.

In stark and simple terms, advocates simultaneously suggest that young people's offending has two competing neo-positivist explanations: first, that offending has social roots (caused by exposure to adverse experiences) and; second, that offending is normative or normal, and rooted in the neurophysiology of the "teenage brain." While this is an oversimplification of what are

somewhat more complex and nuanced claims, I do so in order to illustrate what may be the potential pitfalls of an advocacy strategy that aims to save children from punitive interventions. If that strategy presents two messages about the etiology of offending, then arguably each strategy can be deployed for the sake of a political argument in favor of punitiveness or of punitive restraint, and neither—indeed, *no*—strategy speaks effectively to the child at the center of the intervention, undermining the possibility of a broader movement for social change and ultimately entrenching a binary about youth offending—that there are some kinds of offending that are normative and there are some kinds that are so severe that they reflect deep social and personal adversity. In an effort to deliver messages about the etiology of youth offending or to provide an explanation of a child's criminal behavior, whether from a trauma perspective or a "brain science" perspective, there is not always an attendant effort by advocates to identify the failures of state agencies and institutions (and the adults) to meet a child's needs that may have contributed to his or her offending (see also Muncie 2005). One such critique has been offered, however—the failure of custodial institutions for children to effectively address their offending. I will describe below some of the ways that efforts to close juvenile facilities, if reliant on and committed to ideas about the traumatized and violent child offender, may fail in the context of the binary that emerges when two competing explanations for offending (the traumatized child and the risk-taking teenager) become embedded more deeply in our construction of children who offend.

The Requirement Rationale

In recent years, there has been a shift by American juvenile justice organizations towards a stance that youth "prisons" should be closed. Revivifying arguments that were presented during the 1970s (Miller 1991), advocacy organizations and foundations, such as the Annie E. Casey Foundation, have argued for the end of juvenile prisons. Often, however, they pointedly avoid the use of the term "abolish" and, in almost all of the literature, stress that there are some youth—a "small number"—who *require* custody. For example, the head of the Annie E. Casey Foundation, writing with a prominent juvenile justice advocate, argues that "[t]he call for the closure of youth prisons does not mean that there are not some young people for whom secure confinement is the right and necessary solution" (McCarthy et al. 2016: 17). Other prominent youth justice funders contend that "[i]nstitutionalizing young people must be the choice of last resort, reserved only for those who pose such a serious threat that no other solution would protect public safety" (Peterson

2006: 16). In the contemporary reform language, advocates have started referring to large institutions as "youth prisons"—in part to invoke the horrors of adult prisons. Those same advocates offer an alternative:

> We concluded that large, distant and correctional youth prisons should be abolished as a construct in the landscape of American juvenile justice, and should be replaced by a rigorous continuum of in-home services, supports and opportunities for youth. Moreover, we concluded that, when young people need to be deprived of their liberty, it should be done in small, rehabilitative programs close to their homes and home communities—and for only as long as is needed to meet the ends of justice, public safety, and rehabilitation. (Schiraldi 2017)

This builds on the idea that the teenagers at the center of the incapacitation effort must be constrained from engaging in crime—a comment on their inherent criminality and dangerousness. It also assumes that rehabilitation works—and works best in "small" facilities that resemble a "home." The current critique of the youth prisons, then, rests on the assumption that large facilities are harmful and criminogenic and that more individualized care is conducive to change.

There is a powerful assumption at the heart of this new strategy to close large-scale youth facilities and build a network of smaller facilities, and it is one that has not necessarily changed since the nineteenth century and the establishment of the very reformatory system that advocates critique—the idea that removal of children from their families can effectively end or, at least, curb juvenile delinquency and offending. This idea of punishment as "necessary" in solving social problems has a long history in the US (Goshe 2017, this issue). The size of the facility, its architecture and scale, and its appearance have long mattered in debates about the content of care, even though the parallel world of architectural design has long rejected notions of architectural determinism, while still recognizing that design matters. Similarly, in the sociological landscape, the idea that an environment can "cause" criminality has been discarded in favor of more complex theories of collective efficacy, policing practices, and resource provision (Sampson et al. 1997; Sharkey et al.; Takyar 2017). The argument, then, that if a facility is smaller and the facility staff are trained more effectively, then young people's behaviors will improve, is a tenuous one, at best. It is also one that continues to rest on the assumption that there are certain kinds of children who can be managed only through coercion and removal, and that their social environments (especially their home environments) are the key determinants of their actions. Yet, when we begin to reveal the social construction of this "bad" child, we can begin to unpack our dependence on the use of coercion to "treat" that child.

Indeed, it is the notion of the danger *inside of the child*, rather than the danger *of the state*, that seems to have the most profound impact on the majority of social justice-minded advocacy literature. This idea about violent children is one that has grave consequences for their evaluation by the courts and justice systems, and can be highly classed, gendered and racialized. And this has historical roots: throughout American history, white children have been associated with ideas of innocence, and Black children excluded from it (Bernstein 2011). Black and brown children's dangerousness has often *excluded* them from considerations of their youthfulness (Henning 2013). And yet, young people may often engage only in a single act of violence for them to be considered imprisonable; and that act of violence often excludes them from all other frames of analysis—as the criminalized or excluded child, the despairing child, the fearful child, the neglected child, or even the child soldier (see also Lopez-Aguado 2018).

Advocates almost never address the failing and under-resourced mental health system for poor people (Cummings et al. 2017), the impoverished educational and social welfare systems that are incentivized to remove and exclude as opposed to include and protect, the child welfare removals (of which there were close to 433,000 in foster care in the US in 2016, compared to 48,000 children in residential juvenile placements), the homelessness (there were 1.3 million homeless children in the US in 2014) (Children's Defense Fund 2017), and public health inequalities that disproportionately subject impoverished people to chronic disease and illness. These figures point to the question of the persistence of the individual child, and child saving, at the heart of these reform initiatives. The language of the reformers also demonstrates some of the tensions inherent in an advocacy strategy that focuses on individual trauma, but that does not adequately point to the structural causes of this "trauma," or target those causes in the strategy. For the strategy itself focuses on the individual child, and arguably draws its force and fire from the familiar and protectionist narrative of child saving, which constructs children as victims and targets of humanitarian intervention, but rarely allows them room for living complex lives in which they are *participants* in their social worlds (Rosen 2007; Scheper-Hughes and Stein 1987).

Conclusion

Recently, in the context of the large drop in the numbers of young people in custody in the US (National Juvenile Justice Network and Texas Public Policy Foundation 2013; Schoenberg and Broadus 2018), advocates have begun to think about the challenges of meeting the needs of

children who engage in serious and violent offending. And they have begun to question whether the improvement of facilities themselves is the solution. The US national organization, Youth First, which is oriented towards closing youth prisons, has worked actively towards the closure of facilities, as well as the reinvestment of cost savings into community based programs. Rise for Youth, the Virginia-based advocacy organization, mentioned earlier in this article, actively opposed the building of the more "child friendly" youth prisons and argued strongly for more youth services in affected communities. Equal Justice USA, a national organized aimed at promoting responses to violence, has been engaged in a training in Newark, New Jersey—one aimed at educating police about the experience of trauma people have *at the hands of* the police themselves, at recognizing that trauma can be systemic, and at explaining how violence is structural. These are some of the examples resistance to the narratives that I have described earlier in this article.

The question remains, however, to what extent the existing rhetoric—and in particular, the ideas about trauma and development, which have achieved such purchase in the life of contemporary reforms—actually forecloses structural claims and in fact entrenches longstanding positivist approaches toward the child who harms. For the child who harms, he or she is already mired in the web of cultural, historical, legal, social and systematic structures that have played a role in shaping and framing their actions. Yet, the reality is also that the child who harms is often one who *has been harmed*, which is also often invariably true for the adults who harm. The power of the reformers has been to advance an idea of deviance that has implications for the reproduction of the harms that the group of "bad" kids faces.

In this article, I have argued that the approach to reform in juvenile justice today is overly incrementalist and relies upon three strands of rhetoric—about trauma, brain development, and "friendly" custodial care for serious and violent offending—that ultimately redraw the boundaries between normal and deviant. The rhetoric is problematic insofar as it simultaneously stresses the *normalcy* of young people's offending while it also elevates the *exceptional* nature of particular kinds of offending—arguing both for the end of custody as a standard of care but also elevating custody as the only adequate response for the "care" of particular kinds of youth (those who engage in violence). The contradictions are troubling in that they will arguably result in rhetorical *cul de sacs* which can be exploited by the very powerful forces of punitive social control which almost always seek out the undeserving and the dangerous, and find every opportunity to carve out space

for them to be contained, confined, and punished. In fact, the contemporary juvenile justice reform rhetoric derives its strength in the very appeals to reason, science, and "evidence" that have for so long been marshalled in support of processes that justify, as oppose to dismantle, systems of social control (see, e.g., Muhammad 2010). In this sense, the reform rhetoric is *neo-positivist* in that it relies upon the old tools of positivism, which arguably entrench positions about criminality in the individual, to advance new, ostensibly "liberal" claims, aimed at lessening the burden of punishment on those individuals. The reforms that are promoted are generally what Gottschalk has termed "micro-interventions" at the local and community level, which are aimed at changing individual behavior (2015: 18), or they are 'child friendly' practices intended to make punishment less harsh for children; these are a far cry from the types of economic and social policies that would systematically address the conditions in which children become criminalized in the first place (see also Goshe 2015). Instead, following Carlen (1989), I would offer that we should develop an approach to children in trouble with the law which demands that the state respond to the individuals under its care as socially situated actors whose relationship (and that of their parents') to a broad range of state and social institutions—from child welfare, to education, to housing, to labor, to policing, to public health and mental health care, to urban planning—has deeply and profoundly shaped their lives. In arguing for change, I would *begin* with the goal of eliminating the social disgust that is aimed at the most hated among us—the people deemed to be the least reformable—the child who sexually offends, the gang member who murders, the chronic and violent child "offender"—and envision a strategy that does not rely upon custody as a mechanism to effect change. The temptations and seductions of the neo-positivist approaches to understanding sexual violence, gun violence, gang formations, and serious violence are understandably difficult to resist; they are the approaches that are culturally legible and socially acceptable, and ostensibly seek to change systems for the better. Yet, these temptations have led us not to dismantle the systems we rely on, but simply to reconfigure them. The idea of the dangerous child may have shifted, but the dangerous *state* remains relatively unscathed.

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[2] However, the law broadens the ability of defense attorneys to argue for the cases to be removed to Family Court.