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Title: **Children in Custody**

Synopsis

The focus of these submissions is the UK. But the gendered nature of depriving children of their liberty is a global phenomenon. It is useful to put the UK position in the global context because the UK is amongst the very worst offenders as regards the tendency to incarcerate boys overwhelmingly more than girls.

In 2019 the UN published an 804 page study on children in custody worldwide, Ref.[2]. It identifies that, globally, 94% of detained children are boys. The UN Secretary General has stated that, “*deprivation of liberty constitutes a form of structural violence against children*”, Ref.[3]. In view of the overwhelming preponderance of boys in custody, can we not conclude that this is an instance of gendered structural violence – against boys?

The greater criminality of boys is not the complete explanation of their prevalence in custody. In the global context Ref.[2] notes “*Although girls are less likely to commit serious criminal offences than boys, the detention rate does not reflect the crime rate. More than one-third (35-40%) of all criminal offences worldwide are attributed to girls. However, only one fourth of all children (25%) who come in formal contact with the criminal justice system are girls. Finally, only 11.6% of all convicted children are girls, and only 6% of all children who end up in detention are girls*” (see **Figure 1** in the Notes below). There is evidence that in the UK too girls tend to be deflected away from custody to a far greater degree than boys (see Notes below).

Ref.[2] observes that “*the penal system is the most gendered institution in society*”. The section on Discrimination Against Boys puts England and Wales amongst the top few countries in terms of gender ratio: “*In some States, the percentage of boys detained in the context of the administration of justice is close to 98% (England and Wales, Argentina) or even 99% (South Africa, Georgia)*”.

Did we want to be in such company?

In some countries this arises in the context of armed conflicts or other forms of State unrest or insecurity. What is our excuse?

Cultural / Policy Bias (UK)

In June 2018 the Government announced, for adult women, its “female offender strategy”, Ref.[9]. Its stated aim is to reduce the number of women sent to prison by “shifting our focus from custody to the community”. This approach was initiated by the 2007 *Corston Report* on women in prison. Its ethos is that many of the women who commit crime are amongst the most vulnerable and disadvantaged women in society, often with a background of abuse and chaotic family lives. The argument was that we could constructively intervene at an earlier stage to address the drivers of their offending, and, whilst it is right that people who commit crime are punished for those crimes and that we keep our communities safe, it is also important that those within our criminal justice system are rehabilitated.

Leaving aside the issue of adult male offenders (who account for 95% of those in prison) what part of this does not apply also to children? Where is *The Corston Report* for children? Is the absence of such a thing because 97% of incarcerated children are boys?

Ref.[10] tells us that 52% of children in custody had been “in care” (a phrase which increasingly sounds like a euphemism). Disturbingly, 8% of the children were also parents, generally the boys. (Respondents from Youth Offender Institutions were all male and 8% were fathers). Of those held in secure training centres, 9% of respondents (8 children) reported sexual assault by staff. All were boys.

In March 2018, there were 984 boys and just 33 girls in the secure estate in England & Wales (97% boys), Ref.[5]. In that month, Anne Longfield, then the Children’s Commissioner for England, reported on a visit to some of these children “*to learn about their lives before entering custody and understand the factors that led to them being imprisoned and what, if anything, could have been done to change their trajectory*”, Ref.[6]. Perfectly laudable...except that the 10 children she chose were all girls.

[I have not addressed the race issue here, because the remit is gender. But I note in passing that it is black boys who are most disproportionately incarcerated. The socio-economic and educational factors which many people will readily turn to in the context of black boys should be more widely appreciated as applicable also to boys irrespective of race.]

References

- [1] William Collins, [The Empathy Gap](#), Ips Publishing, 2019.
- [2] Manfred Nowak, [UN Global Study on Children Deprived of Liberty](#)”, November 2019.
- [3] UN Secretary General, “[Global study on children deprived of liberty, Note by the Secretary-General](#), 11 July 2019.
- [4] Bruce Abramson, “[Juvenile Justice: The Unwanted Child: Why the potential of the Convention on the Rights of the Child is not being realised and what we can do about it](#)”, Eric L Jensen & Jorgen Jepson (eds) *Juvenile Law Violators, Human Rights, and Development of New Juvenile Justice Systems*, Oxford, Hart Publisher, 2006.
- [5] Office for National Statistics, [Youth custody data: Monthly statistics on the population in custody of children and young people within the secure estate](#), data to present data.
- [6] Children’s Commissioner, [Voices from the Inside: The experiences of girls in Secure Training Centre](#), March 2018.
- [7] Ministry of Justice, [Youth Justice Statistics 2018/19, England and Wales](#), January 2020.
- [8] As Ref.[7], Youth Justice Statistics: 2018 to 2019 supplementary tables.
- [9] Ministry of Justice, [Managing Vulnerability: Women - Fact pack](#), June 2018.
- [10] HM Inspectorate of Prisons, [Children in Custody 2019–20: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions](#), February 2021

Conclusions

- Children deprived of liberty are invisible to the large majority of society and their fate constitutes the most overlooked violation of the UN Convention on the Rights of the Child.
- Overwhelmingly this means boys – especially in the UK.
- Of all children cautioned/sentenced in England & Wales, the percentage of girls has decreased from 26% to 15.3% between 2009 and 2019, and just 3% of those subject to custody are girls.
- 97% of children in custody in England & Wales are boys.

Recommendation

Address the overrepresentation of boys in detention by various means, above all by promoting diversion at all stages in the criminal justice system and by proportionally applying non-custodial solutions to boys, as it is more widely practised with girls (and, increasingly, with adult women).

Notes

In these brief notes I expand upon the global issue of incarceration of children, and then discuss the data from the UK (specifically England & Wales).

Global Position: UN Reports

I quote firstly the UN Secretary-General's own words from Ref.[3],

“The data collected for the study (i.e., Ref.[2]) indicate significant gender disparities in the situation of children deprived of liberty. Altogether, there are far more boys deprived of liberty worldwide than girls. In the administration of justice and in the contexts of armed conflicts and national security, 94% of all detained children are boys.....

Compared with the overall crime rate for children, the data gathered for the study show a tendency of the child justice system to be more inclined to apply diversion measures to girls than boys. While approximately one third of all criminal offences worldwide committed by children are attributed to girls, only 6% receive a prison sentence.....

...according to traditional gender stereotypes, girls are more in need of protection than boys.”

The Secretary General refers here to the data in Figure 1, below, and amplified by Nowak in Ref.[2] as follows,

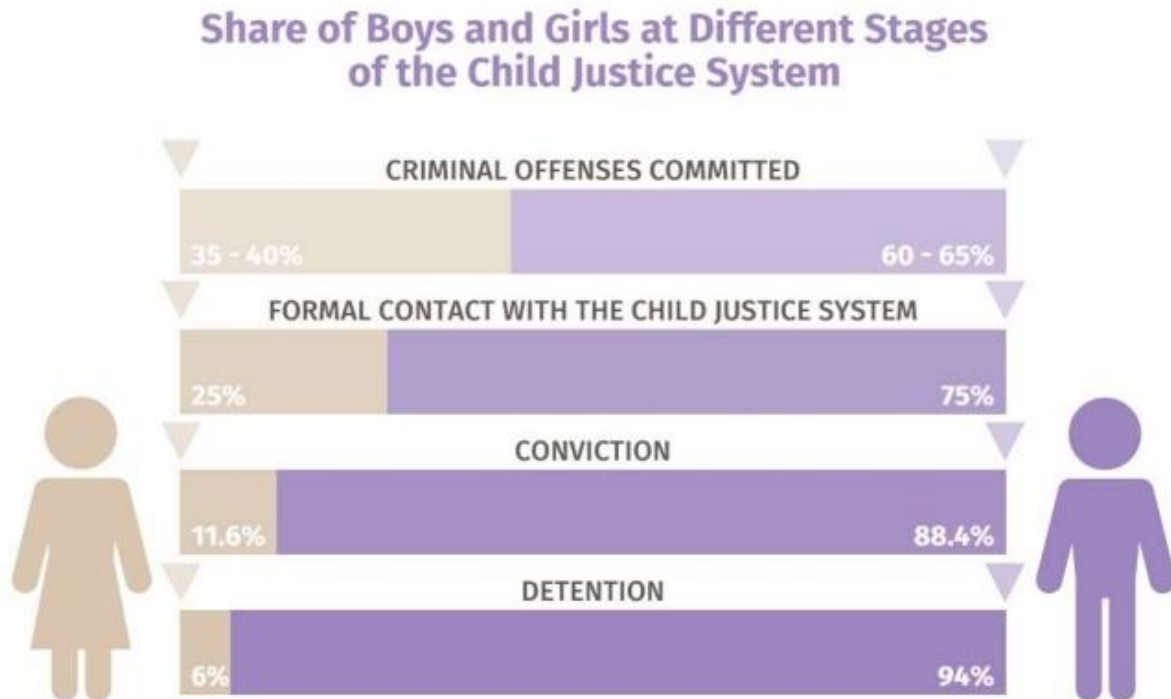
“Although girls are less likely to commit serious criminal offences than boys, the detention rate does not reflect the crime rate. More than one-third (35-40%) of all criminal offences worldwide are attributed to girls. However, only one fourth of all children (25%) who come in formal contact with the criminal justice system are girls. Finally, only 11.6% of all convicted children are girls, and only 6% of all children who end up in detention are girls.”

Nowak, Ref.[2], amplifies the gender bias issue thus,

“Most research on the gender dimension of deprivation of liberty relates to the administration of criminal justice and primarily addresses cases of discrimination against girls, not against boys. Yet in 2006, Paulo Sergio Pinheiro noted that ‘millions of children, particularly boys, spend substantial periods of their lives under the control and supervision of care authorities or justice systems, in institutions such as juvenile detention facilities and reform schools.

*According to research conducted by Bruce Abramson in the same year, the ‘penal system, adult and juvenile, is the most heavily gendered institution in society, even more so than the military, given current trends. He adds that the human rights movement, and the children’s rights movement in particular, is contributing to this male-female gender gap by **discriminating against boys**.” (my emphasis)*

Figure 1 (from Ref.[2])



Nowak continues with this quote from Abramson, Ref.[4],

“Whether we look at the CRC movement, or at the broader human rights movement, or at the specialized juvenile justice advocacy, we find the same pattern of avoiding the gender dimension of juvenile justice. Some adults are in deep denial of the gender issue when boys are at the losing end of the disparities. But most people recognise that there is a gender issue. The problem is that no one has found an effective, positive way to address it. I think that juvenile justice professionals and CRC activists are paying a dear price in credibility for their failure to address gender: the public knows – at some level of awareness – that the advocates for reform are not addressing the problem when they duck the gender dimension of delinquency....Sad to say, there is outright sex discrimination against boys in the CRC movement.”* (*CRC is the UN Convention on the Rights of the Child)

England & Wales

The annual number of first-time entrants (FTEs) into the Youth Justice System in England & Wales has fallen markedly over the last dozen years. In 2009 the total FTEs was 80,200 (of which 25,700 were girls, 32%). By year 2018/19 the total FTEs had reduced to 11,700 (of which 2,100 were girls, 18%), Ref.[7].

Taking into account also repeat offenders, in the year ending March 2019, there were around 3,300 girls and 18,300 boys who received a caution or sentence (15.3% girls, 84.7% boys). In contrast, in year 2009/10, about 27,500 girls and 80,000 boys received a caution or sentence (26% girls, 74% boys), Ref.[7].

Hence, the number of children being cautioned or sentenced annually has been falling very markedly, for both sexes, but faster for girls than for boys. As a result the percentage of girls cautioned/sentenced has dropped from 26% to 15.3% in a decade, Ref.[7].

This contrasts with the numbers of children in custody by sex, of which only 3% are girls. (In March 2021, 19 girls and 565 boys are in custody, Ref.[5]).

Of all children sentenced, between 6% and 7% are sentenced to immediate custody, and this has not changed over the last decade. However, the average sentence length has increased substantially between 2009 and 2019 from 11.4 months to 17.7 months (55% increase), Ref.[7].

Despite much recent concern over knife crime, the total number of knife or weapon offenses resulting in a sentence or caution of a child was lower in 2019 than in 2009 (4,500 cf about 6,500). Robbery and Violence Against the Person (VAP) offences account for about two-thirds of children in custody, VAP offences alone now accounting for 50% of incarcerated children.

What accounts for the 15.3% of girls who are cautioned/sentenced reducing to only 3% being awarded a custodial sentence? One might expect that the severity of the offence is the explanation. Ref.[7] Figure 4.4 indicates that, indeed, whilst 15% of proven offences by boys are in the upper half of the severity range (gravity score 5 to 8), only 5% of proven offences by girls are this serious.

The offences which account for the bulk of those rated with gravity scores 5 to 8 are, in this order: robbery, domestic burglary, drug offences and sexual offences, Ref.[8]. But Ref.[7], Figure 7.4, indicates that the proportion of children in custody for all of these offences has reduced between 2009 and 2019.

On the other hand, VAP offences, which account for half of children detained, are by far the most common proven offence categories for both sexes – but especially so for girls. VAP accounts for 27% of boys' offences and 47% of girls offences, Ref.[8]. Surprisingly, however, 95% of VAP offences are rated in the lower half of the severity range (gravity score 3). This suggests that these less serious VAP offences are significant as regards the numbers given custodial sentences – in which case the custodial gender disparity remains unexplained.

The second most common offence for both sexes is theft/handling stolen goods (11% of boys' proven offences and 13% of girls'). But again these offences are rated only at gravity score 3.