

Making Youth Justice Local penal cultures and differential outcomes: lessons and prospects for policy and practice

Howard League for Penal Reform

Key points

- This summary, together with the longer research report from which it derives, are publishing 21 years after Youth Offending Teams (YOTs) were established across all Local Authority Areas (LAAs) in England and Wales.
- The creation of YOTs represented a key element of a major programme of youth justice reform that was ostensibly characterised by more rigorous national direction, centralised control, and standardised practice.
- Notwithstanding this, the two decades that have followed have exposed the enduring presence of discernibly differential practices and outcomes at sub-national levels.
- The reports examine, and account for, the ways in which youth justice is variably made at both regional and local levels in ways that give rise to such differential outcomes.
- A key lesson communicated by the research is that the conversion of national youth justice policy into local practice is largely contingent on the discretionary and relational actions, adaptations, discernments, and decisions of local actors.
- More specifically, by identifying the distinguishing features of (localised) penal cultures - that can either moderate or compound recourse to penal detention - the research signals important lessons and prospects for the development of policy and practice.
- Six key constituent elements of local penal cultures are especially important: (i) leadership; (ii) philosophical foundations and service configurations; (iii) perceptions of diversion; (iv) perceptions of custodial detention; (v) knowledge-informed approaches; and, (vi) human rights consciousness.

Introduction

Youth justice is not static or fixed. Rather it is dynamic and ever-changing, and it is constantly being *made* (and re-made) within both temporal and spatial contexts (Goldson *et al*, 2021). But even if the necessity to engage with both temporality (analysing reforms over time) and spatiality (examining place-based differences) is increasingly understood - to comprehend youth justice as a 'moving image' - traditionally researchers have tended to adopt the discrete *national* jurisdiction as their principal unit of analysis. This is potentially problematic in so far as it implies that national jurisdictions are homogeneous entities where, at any given time, law, policy and government guidance is applied uniformly and youth justice practices are consistent across the piece. In other words, this way of seeing fails to recognise that, at the very same moments in time, variable practices *within* national jurisdictional borders might be as great, if not greater, than some differences *between* nation states.

Set against this backdrop, we are principally interested here in the ways in which youth justice is made at the *sub-national* level and how otherwise discrete national jurisdictions - in this case England and Wales - can, in effect, be stratified and distinguished by *local penal cultures* that give rise to markedly different outcomes. More particularly, we focus attention on rates of child imprisonment and, by drawing on secondary quantitative data and primary qualitative research, we aim to both illustrate, and to account for, significant localised variations in such rates (ranging from moderate to excessive penal outcomes).

This summary, together with the longer research report from which it derives, are publishing 21 years after Youth Offending Teams (YOTs) were established across all Local Authority Areas (LAAs) in England and Wales. The creation of YOTs represented a key element of a major programme of youth justice reform that was ostensibly characterised by more rigorous national direction, centralised control and standardised practice. Notwithstanding this, the two decades that have followed have exposed the enduring presence of discernibly differentiated practices and outcomes at both regional and local levels. By exploring such phenomena our research builds upon and extends an established

tradition of 'justice by geography' studies. More significantly, by identifying the distinguishing features of (localised) penal cultures - that can either moderate or compound recourse to penal detention - the research signals important lessons and prospects for the development of policy and practice.

Re-visiting 'justice by geography'

Comprehending the vital importance of sub-national contexts - for the purposes of analysing youth justice outcomes - necessitates taking account of the operationalisation of discretion, the individual agency of managers, practitioners and key individuals and the complex 'partnerships' that they co-ordinate. This is not to deny the obvious power that government departments (including the Home Office and the Ministry of Justice), national bodies (including the Youth Justice Board) and the related corpora of national statutes, policies, standards and guidance bring to bear on youth justice outcomes, but rather to recognise the significance of local contexts for understanding the inter-relational processes of policy-practice translation and implementation. In short, we contend that researching local penal cultures is crucial for understanding how national youth justice policies are 'visioned and reworked (or made to work) by those "on the ground"' (Muncie, 2021: 459).

Reflecting upon what they term 'local justice', Bell and Dadomo (2006: 350) note that 'research findings have indicated great differences of approach in different areas - or even in adjacent areas'. It is not just different *approaches* that are of primary interest here, however, but rather the extent to which such variability gives rise to differential *outcomes*. As stated above, our research chimes with a wider body of work that focuses upon 'justice by geography', a term coined to describe the spatially contingent nature of 'justice' and the extent to which national policies are conditioned by local practices.

For present purposes we are not principally concerned with analyses that centre *discrete stages* of the youth justice process, for example pre-arrest, pre-court, court and/or sentencing, or with examining geographical variability in relation to *specific practices/interventions* for example, stop-and-search, prosecution decision-making, bail and remand determinations, assessments (including 'risk' assessments), the preparation of

court reports and the presentation of sentencing proposals, court adjudications and/or sentencing itself. Rather, by taking child imprisonment as a marker or emblematic signifier of the 'deep-end' of youth penalty, we are interested in exploring *qualitatively* the contrasting constituent elements of *penal cultures* – inter-relational milieu comprising values, principles, professional dispositions, actions, knowledge-informed orientations and modes of human-rights consciousness – that produce locally differentiated outcomes.

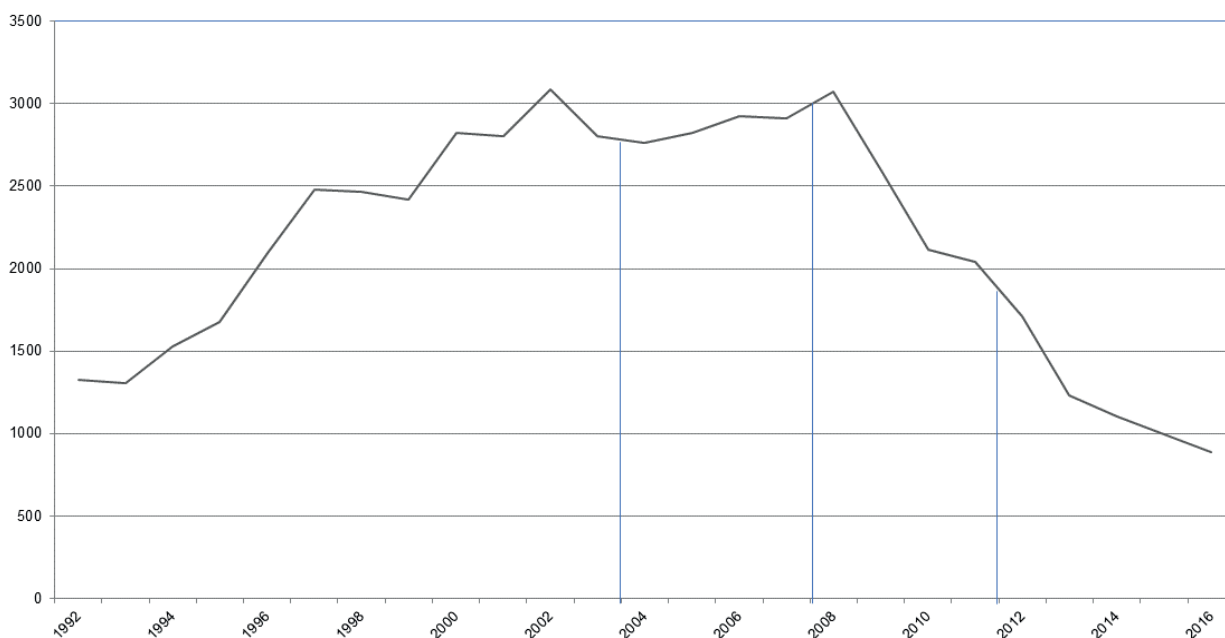
Re-affirming justice by geography: regional and local variations in child imprisonment

Despite the march of political devolution, England and Wales essentially remains a nationally centralised criminal justice polity and a single youth justice jurisdiction. Notwithstanding this, *national* youth justice policy is configured around a *sub-national* network of ten geographical 'regions' and

gives rise to both *regionally* and *locally* differentiated outcomes (Her Majesty's Prison and Probation Service, 2020).

To explore locally-differentiated outcomes we collated and analysed secondary quantitative data that allowed us to examine localised variance in child imprisonment over an eight-year period 2004/05-2011/12. We adopted this extended period to mitigate any aberration effects (short-term dips or spikes) that might otherwise skew the data and to ensure that identifiable patterns held firm over time. Furthermore, the eight-year period can broadly be divided into two sub-periods that take account of interesting national-level counter-trends: 2004/05-2007/08 when the number of child prisoners was high and relatively constant (from circa 2,763 on an average day in 2004/05 to circa 3,072 on an average day in 2007/08), and 2008/09-2011/12 when the number of child/young prisoners began to drop very significantly (from circa 2,596 on an average day in 2008/09 to circa 1,228 on an average day in 2011/12) (see Figure 1).

FIGURE 1: Numbers of child prisoners (aged 10-17 years) in England and Wales 1992 – 2016 - with emphasised sub-periods (2004/05-2007/08 and 2008/09-2011/12)*



Sources: Years 2000-2016 (Ministry of Justice and Youth Justice Board for England and Wales 2017); Years 1992-1999 (House of Commons 2003).

* Number of 10-17-year-olds detained in SCHs, STCs and YOIs on June 30 of each year.

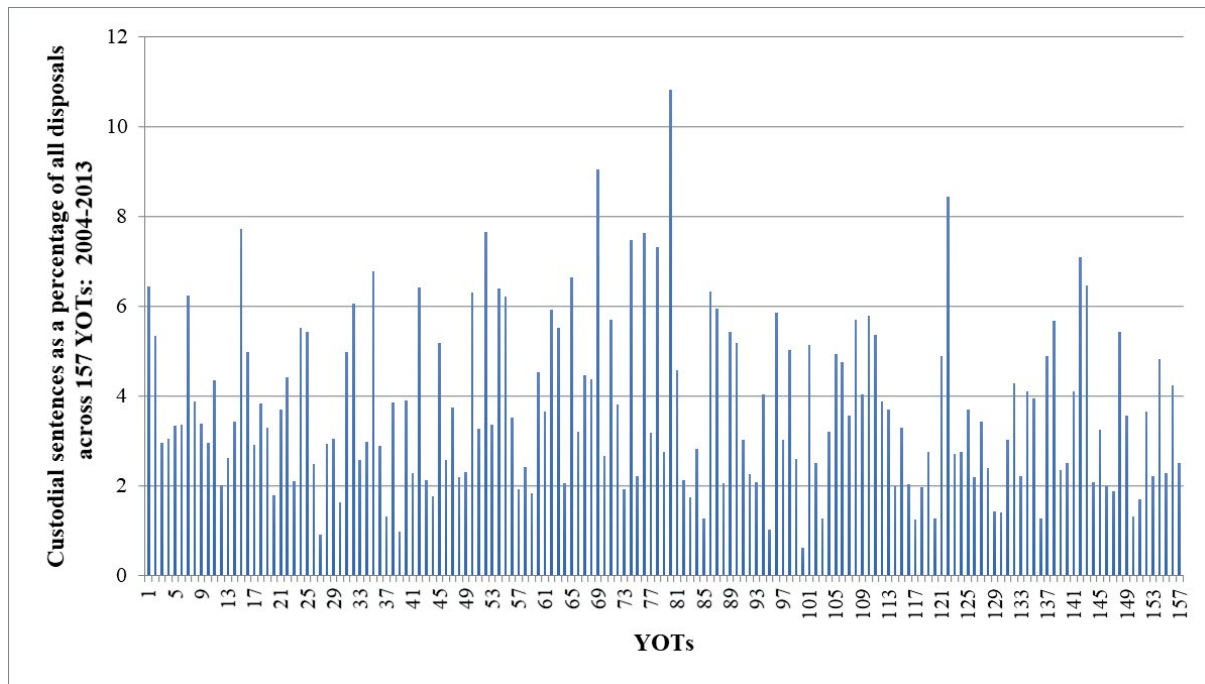
more than 150 Youth Offending Teams (YOTs) – mostly located within discrete Local Authority Areas (LAAs) – and evidence provides that such geographical diffusion

To introduce further refinement over the specified time period, we collated and analysed additional secondary quantitative data that enabled us to calculate the imposition of custodial disposals

on children as a percentage/rate of all court disposals (at the YOT/LAA-level) (see Figure 2). The data reveal very significant patterns of variance across the YOTs where custodial disposals as a percentage/rate of all court disposals range from a low of circa 0.6% to a high of circa 10.8%.

primary research sites (YOTs/LAAs): two in the north of England, two in the south of England and two in Wales. Within each regional pairing one site had a comparatively high rate of child imprisonment (as a percentage/rate of all court disposals issued during the period 2004/05-2011/12) and the other a comparatively low rate

FIGURE 2: Imposition of custodial disposals on children (aged 10-17 years) as a percentage/rate of court disposals across all YOTs in England and Wales: 2004/05-2011/12



Sources: Data derived from Ministry of Justice (2005; 2006; 2007; 2008; 2009; 2010; 2011; 2012; 2013).

The temporally enduring nature of spatially differentiated outcomes (at both regional and local levels) re-affirms justice by geography, but the key challenge is not simply to *illustrate* and *observe* such variable outcomes but rather to attempt to *comprehend* and *explain* them. Here we appeal to the concept of *penal cultures* to provide insights into the manner in which youth justice is made at local levels. But first we must be assured – as much as is practicable – that our research design and methods genuinely allow for comparing like-with-like.

Matching and mining localities: quantitative and qualitative methods

By initially collating and analysing secondary quantitative data over the period 2004/05-2011/12 it allowed us to calculate the imposition of custodial disposals on children as a percentage/rate of all disposals at the YOT/LAA-level and it revealed very significant patterns of variance (see Figure 2 above). In order to drill deeper, purposive sampling was adopted to identify six

of child imprisonment (over the same period). To protect the identity of each site, we refer to them as *Hihertown One and Lowertown One* (northern England), *Hihertown Two and Lowertown Two* (southern England) and *Hihertown Three and Lowertown Three* (Wales).

To ensure the validity and methodological integrity of the comparative focus, the paired sites were *matched* by taking account of numerous forms of census and other publicly available quantitative data including: the size of the general population; the size of the youth population (10-17 years); the youth population as a proportion of the general population; the ethnic composition of the population; the area ranking of the research sites by reference to indices of multiple deprivation; the percentage of children living in poverty; the percentage of children claiming and/or eligible for free school meals; unemployment rates; employment distribution profiles (the percentage of employed persons engaged in the following categories of employment: ‘elementary/manual’, ‘service

industries', 'trades', 'secretarial', 'managers/professional' and 'technical'); the percentage of benefit claimants; police recorded crime rates *per se* and, more specifically, police recorded youth crime rates. In this way, we are as certain as possible that the paired sites are genuinely comparable; comprising strikingly similar demographic and socio-economic profiles but notably dissimilar penal profiles when measured in terms of child imprisonment as a percentage/rate of all court disposals.

Finally, to test the extent to which the variable rates of child imprisonment (across the six primary research sites) held firm over a longer period of time (beyond 2004/05 - 2011/12), we have analysed 'local pivot data' provided by the Ministry of Justice and the Youth Justice Board for an additional six-year period (years ending March, 2013/14 - 2018/19) (see Figure 3).

were interviewed including: prosecution lawyers; judges and magistrates; YOT managers and practitioners; police officers; representatives from government and non-government organisations; policy officers and independent consultants. The substantial volume of qualitative data generated by the interviews was analysed thematically, and it has served to directly inform our understanding of both the *constituent elements* and the *differential outcomes* of local penal cultures.

Making youth justice: the constituent elements and differential outcomes of local penal cultures

By subjecting our qualitative data to thematic analysis we aimed to identify the specific constituent elements of local penal cultures that – in *relational combination* - appear to *explain and account for* comparatively high or low rates

FIGURE 3: Imposition of custodial disposals on children (aged 10-17 years) as a percentage/rate of all court disposals in the primary research sites over the six-year period: 2013/14 – 2018/19*

Site	Custodial disposals as a percentage/rate of all court disposals
Highertown 1 (North)	10.9%
Lowertown 1 (North)	5.6%
Highertown 2 (South)	8.0%
Lowertown 2 (South)	6.0%
Highertown 3 (Wales)	9.7%
Lowertown 3 (Wales)	6.0%

* Years ending March

Source: Data derived from Ministry of Justice and Youth Justice Board (2020).

During this latter six-year period it can be seen that for every 56 children facing the prospect of imprisonment in Lowertown One, 109 children faced a similar prospect in Highertown One. For Lowertown and Highertown Two, the corresponding prospects were 60-80 respectively and in Lowertown and Highertown Three they stood at 60-97.

If the processes of identifying and *matching* our primary research sites have been underpinned by secondary analyses of (a substantial volume of) quantitative data, the *mining* of the same sites has been enabled by in-depth qualitative inquiry. In total (across the six primary research sites), 91 youth justice professionals and allied experts

of child imprisonment. For present purposes, six such elements are especially significant.

1. Leadership

The impact(s) of different forms of leadership on 'culture creation' (shaping local penal cultures, either positively or negatively) was a central theme running through the interview data. In particular, several interviewees referred to the importance of enthusiastic, supportive, purposeful, value-led, knowledge-grounded, credible and outward-facing leaders who inspired confidence and built trust (within and between agencies) and helped – they believed – to explain lower rates of child imprisonment.

'The previous YOT Manager... he had worked solidly for 20 years-plus to maintain a very close on-going relationship with the courts... I mean there was one day I went down to the magistrates' liaison meeting and... the YOT Manager at the time spent an hour and a half justifying and extolling why custody was a less preferred option to working with young people than services 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' (Lowertown One, YOT Practitioner – Community Supervision).

In contrast, interview data drawn from participants in the *Highertowns* suggested that the leadership style was more rigidly prescriptive and inward-looking and several interviewees referred to environments in which key agencies - including the courts and the police - had limited confidence in the YOT:

'I don't think we are very good as a YOT... at publicising the breadth of the work we do...'
(Highertown Three, YOT Practitioner - Post-Court).

'... certainly, here we are not very good at selling ourselves... we should be out there... selling ourselves...'
(Highertown Three, Intensive Supervision and Surveillance Practitioner).

2. Philosophical foundations and service configurations: penal welfare v offender management

The qualitative data implies that the philosophical underpinning of local penal cultures – often embodied within different service configurations – correlates with particular practice outcomes. In this sense, the *Lowertowns* were more inclined towards 'penal welfare' orientations (and they were literally located in Local Authority Children's Services Divisions).

'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 both a multi-agency basis and 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 belief that] young people can change' (Lowertown One, YOT Practitioner – Community Supervision).

'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... the principles that you are applying are more welfare principles than they are criminogenic principles in truth' (Lowertown One, District Judge).

In contrast the *Highertowns* tended to privilege notions of 'offender management' (and were more likely to be located within Local Authority Community Safety Divisions).

'The thing I would say here is that being part of the Community Safety and Offender Management side is that you are far more up to speed with the impact on the victim and the community as a whole. YOTs that 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... And [youth justice staff]... all sit out there together and they work on the cases together which is really really useful... you don't get an understanding of the need for justice from just welfare-based sentencing... I mean I probably would say this but, I feel it gives us a bit more of a balanced approach on enforcement' (Highertown Two, Youth Justice Service Manager).

3. Perceptions of diversion

It is well-established within international research that optimising diversion (at the 'shallow end' of youth justice systems) normally has the effect of driving down rates of child imprisonment (at the 'deep end' of the same systems) (Smith, 2017; McAra and McVie, 2019). Notwithstanding this, the qualitative data across the six primary research sites revealed considerable variation in both practitioner values and attitudes, and in YOT systems and processes, in relation to diversion and the use of pre-court disposals.

The data shows that the principle and practice of diversion was central to the local penal cultures in each of the *Lowertowns*.

‘... diverting young people... is the best thing’ (Lowertown One, Crown Prosecution Service Lawyer).

‘When we did the visits [to other 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 who we liaise with here is of the basic opinion that kids will be kids and they will grow out of it [offending], end of story. But it is not the same elsewhere’ (Lowertown Two, Police Officer).

Alternatively, a culture of scepticism and ambivalence towards diversion was more evident amongst many practitioners in the *Hightowns*.

‘I would say that it is the view of most district judges, most magistrates certainly as well, 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’ (Hightown Three, District Judge).

4. Perceptions of custodial detention

Domestic and international law, together with numerous human rights standards that have been ratified by the UK government, provide that penal custody should only ever be used as a ‘last resort’. At the national level, the ‘definitive sentencing guideline on sentencing children and young people’ also serves to remind magistrates and judges that:

‘under both domestic and international law, a custodial sentence must only be imposed as a “measure of last resort” [and] statute provides that such a sentence may be imposed only where an offence is “so serious that neither a fine alone nor a community sentence can be justified”’ (Sentencing Council, 2017: para. 6.42).

Notwithstanding the benchmarks set out in law and associated national guidelines, however, we encountered markedly different perceptions of custodial detention between the *Lowertowns* and the *Hightowns*.

‘I think it’s [custodial detention] such a sign of dreadful failure and I’ve been to [name of YOI]... I mean that isn’t a place that’s going to be a really helpful environment for young people...’ (Lowertown Two, Youth Court Magistrate).

‘I think that they always benefit more out of custody than in custody because once they go into custody 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’ (Lowertown Three, Youth Court Magistrate).

‘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’ (Hightown Two, Youth Court Magistrate).

‘... most of the custodial sentences are for 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... they’ll resort to custody and I think that happens in the YOT’ (Hightown One, YOT Manager).

5. Knowledge-informed approaches

Explicit knowledge-informed approaches were apparent in the *Lowertowns* where knowledge-exchange was an intrinsic feature of practice culture.

‘... if you look at something like triage we have had the local university examining our figures and triage was producing a re-offending rate within a year to 18 months of about half of what [more interventionist] final warnings were over the same period’ (Lowertown One, YOT Interventions Manager).

‘Now the beauty of the way that we work is that knowledge is power and you can use the research to highlight where the issues are. If you apply research you can adjust your resources appropriately’ (Lowertown Three, YOT Remand Manager).

6. Human rights consciousness

Further to the findings presented above – perhaps especially in respect of philosophical approaches and perceptions of diversion and custodial detention – it is perhaps not surprising that familiarity with the provisions and obligations laid down by international standards, rules, conventions and treaties (human rights consciousness) was most apparent in the *Lowertowns*.

‘... I think the UN Convention on the Rights of the Child underpins all of the work around supporting young people. We don’t bring young people into the criminal justice system unnecessarily and those young people who are in the system who have committed harm aren’t punished disproportionately... We have reduced the number of young people brought into the youth justice system unnecessarily and we are heading in the right direction in terms of the number of young people we send to custody... I think the UN Convention on the Rights of the Child is very helpful... a set of important guiding principles’ (Lowertown One, Court Services Manager).

‘We have to consider... at a policy level that we are dealing with children... with a significant responsibility relating to, not just criminal justice, but social justice as well... So, the balance between 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... So, what we are looking for is a process that educates rather than one that punishes. That’s a very critical factor’ (Lowertown Three, YOT Manager).

Conversely, many interviewees from the *Hightowns* expressed negative perspectives in respect of the human rights of children and young people in youth justice systems, ranging from mildly ambivalent to overtly resistant:

‘I have to admit I don’t even know what it is. Human rights framework? Is it something to do with the European Union? I have never heard anybody speak about it. I have never spoken about it. I don’t know about it’ (Hightown One, Police Officer).

‘People are aware of it [UNCRC]. But it does not have any effect... Not at all’ (Hightown One, YOT Operations Manager).

Synthesising the constituent elements of local penal cultures

Through an extended programme of empirical research, we have explored how youth justice (and related agency) managers and practitioners, within distinctive YOTs/LAAs - *Lowertowns* and *Hightowns* - construct and operationalise local penal cultures.

In sum, we conceive the *Lowertowns* as applying ‘positive power’ through a combination of: charismatic, enthusiastic, supportive, purposeful, value-led, knowledge-grounded, credible and outward-facing leadership; a philosophical commitment to welfare-oriented and community-based service delivery; an informed and determined embrace of diversionary and decarcerative principles and practices; greater awareness and wider engagement with knowledge-based approaches and a recognisably developed human rights consciousness.

Conversely, we have come to understand the *Hightowns* as sites where ‘negative power’ is expressed through: more rigidly prescriptive and inward-looking leadership styles and practices; a conceptual emphasis on offender management; more ambivalent perceptions of diversion; misguided (including unduly optimistic) perceptions of custodial detention; less refined understandings of the youth justice knowledge-base and an under-developed human rights consciousness.

We are not suggesting that either the three *Lowertowns* or the three *Hightowns* comprise identical entities or archetypes. Rather we contend that it is the inter-locking and relational *combinations* of the respective constituent elements – embedded and enduring tendencies – that shape distinctive penal cultures at the sub-national level in ways that either moderate or inflate the incidence of child imprisonment.

Conclusions: lessons and prospects for policy and practice

A key lesson communicated by our research is that the conversion of *national* youth justice policy into *local* practice – the means by which youth justice is ultimately *made* - is largely contingent on the discretionary and relational actions, adaptations, discernments and decisions of local actors. More specifically, we have identified

the core constituent elements of distinctive penal cultures and we have aimed to account for differential outcomes - principally spatially variable rates of child imprisonment ranging from high to low respectively - and to consider the implications for policy and practice.

The constituent elements of Lowertown penal cultures are vital in four key respects.

- First, they appear to succeed in sustaining lower rates of child imprisonment irrespective of the vagaries of national trends.
- Second, they promise to mitigate the problematic impacts and well-documented failings of child imprisonment.
- Third, they signal the means by which youth justice can be made and operationalised, both in accordance with evidence-based approaches and the provisions of international human rights standards (Goldson, 2019).
- Fourth, they provide a foundation for realising the authoritative injunction issued by the United Nations to nation states to: 'develop strategies aimed at replacing the detention of children in penal facilities' (Nowak: 2019: 336).

More immediately, perhaps, the same constituent elements might be taken to shape staff induction, training and development programmes across the full range of youth justice agencies and to inform the criteria and assessment methodologies employed by the relevant national inspectorates.

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About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues.

We work with parliament, the media, criminal justice professions, stakeholders and members of the public, influencing debate and forcing through meaningful change.

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