

PRISON SERVICE JOURNAL

September 2011 No 197



Special Edition
Young people in custody

Reforming the Juvenile in Nineteenth and Early Twentieth Century England

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In a recent Green Paper on punishment, rehabilitation and sentencing the coalition government promised a 'rehabilitation revolution' in relation to its plans for dealing with offending by young people, 'We must do better so that we can stop the young offenders of today becoming the prolific adult offenders of tomorrow'.¹ An emphasis on prevention, on restorative justice, and on informal intervention points to successive governments concerns about the juvenile prison population. The proposed alternative to youth custody, the Young Offenders Academy, will instead focus on community and localism, harnessing integrated education, mental health and family services in order to focus on the education and development of the children.² However, the ethos of a more child-centred approach to the penalty of juvenile delinquents is not an innovation. Historically, the development of juvenile penal institutions has weaved a course between the needs of the children and the potential for reform on the one hand, and the political and public demands for retribution in the form of custodial sentences on the other.

The early roots of the modern juvenile justice system in Britain were established at the mid-nineteenth century with a slew of legislation that effectively formalised the shift of large numbers of juvenile offenders to summary jurisdiction, thereby establishing the roots of the future juvenile courts that would be introduced under the Children Act 1908. Moreover, the move to separate juvenile offenders from adult offenders in court was also reflected with the passage of legislation that established separate provision of a penal type for juvenile offenders. The Youthful Offenders Act 1854 (also known as the Reformatory School Act) allowed for the certification of voluntary reformatory schools. The Industrial Schools Act followed in 1857. However, these Acts were only passed as a result of cumulative processes. Thus strategies to deal with convicted juveniles had been tried out with varying success prior to the 1850s.

Early Penal Strategies

During the early decades of the nineteenth century it was the representatives of what might be broadly perceived as a voluntary or philanthropic sector that provided much of the momentum for change. As early as 1817 plans for a juvenile penitentiary had been presented to a parliamentary committee by Samuel Hoare the Quaker banker and philanthropist and the architect James Bevan. Despite progressing as far as survey, costing, and the selection of a location, the plan disappeared without a trace. This plan had intrinsically conflicted with the tenor of contemporary thought on penalty. Thus, whilst it was accepted that the new penalty needed to be a reformatory experience, contemporaries were also aware of the need for the preservation of the principle of 'less eligibility'. As the Governor of Coldbath Fields House of Correction remarked of juvenile inmates in 1831:

The punishment of prison is no punishment to them; I do not mean that they would not rather be out of prison than in it, but they are so well able to bear the punishment, and the prison allowance of food is so good, and their spirits so buoyant, that the consequences are most deplorable.³

In other words, it would be unwise to make the prison too attractive. Consequently, despite calls for separate juvenile penitentiaries throughout the period, it took until 1838 for the first state-run juvenile institution, the ill-fated Parkhurst to materialise. The separation and categorisation of juveniles within the prison system was recommended from the 1810s, and practiced during the 1820s and early 30s, in theory through the auspices of Peel's Gaol Act 1823, which emphasised the separation and classification of prisoners. The 1820s and 30s were arguably an era of experimentation in terms of penal policy. In reality the 'separation' of young from older offenders was rather limited, and characterised by a lack of uniformity. For example, in Gloucester prison there was no separation

1. Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Cm 7972, December 2010, p. 67.
2. The Foyer Federation, *Secure Foundation: Young Offenders Academy Towards a Pathfinder* (January 2011), p. 13.
3. *Select Committee on Secondary Punishments*, 1831, p. 33.

or education provision. At Worcester, younger prisoners were separated and received educational instruction for two and a half-hours daily. It was clear that, on the ground at least, the Act was not working particularly well. However, it was not until the mid-1830s, that the government finally recognised the need for some sort of state juvenile penitentiary.

The 1835 Select Committee on Gaols and Houses of Correction had recommended the establishment of a separate juvenile prison. Despite two decades of calls for such an institution from the voluntary sector, it was actually a very different atmosphere that created Parkhurst. Parkhurst was to embrace the ideology of colonial citizenship. Thus, the training element, which would be a key feature of the new penitentiary, would produce better and more useful colonial citizens. Consequently, the majority of Parkhurst prisoners were to be transported. Boys could be transported as free emigrants, or under a conditional pardon, or more hardened offenders could be confined in the colonial penal system. After the passage of the Parkhurst Act in August 1838, the institution opened its doors to its first young inmates in the following December. The twin goals of reform and deterrence underpinned the regime in the early years, with cautious acknowledgements of the potential difficulties of balancing punishment and reformation:

... the utmost care must be taken to avoid any species of discipline which is inconsistent with the habits and the character of youth, or calculated in any degree to harden and degenerate. The second object ... [reformation] ... can only be effected by a judicious course of moral, religious and industrial training, but the means adopted for this purpose should not be of such a nature as to counteract the wholesome restraints of the corrective discipline ...⁴

The history of Parkhurst as a juvenile specific penitentiary was to be relatively short-lived; closing its

door to juveniles in 1864. Overall, the first juvenile penitentiary has been remembered as a failed experiment. Whilst Parkhurst was subjected to vociferous criticism, it also had to compete with the move toward the reformatory school system. In 1852, the Select Committee on Criminal and Destitute Children (with evidence from some of Parkhurst harshest critics) challenged the role of Parkhurst as a reformatory model.⁵ Indeed, it was in this Committee that discussions took place that would inform the passing of the first of the Reformatory Schools Acts in 1854. Thus from 1854, a number of new reformatory schools would increasingly limit the role of Parkhurst, which was essentially seen as part of the convict prison system.

Industrial and Reformatory Schools

By the eve of the First World War, as Radzinowicz and Hood pointed out, 'there was a network of 208 schools: 43 reformatories, 132 industrial schools, 21 day industrial schools and 12 truant schools'.⁶ The vast majority of these had been certified as a result of the legislation of 1854 and after. The Reformatory and Industrial Schools Inspectors in 1866 reported that there were 65 Reformatory Schools (51 in England and 14 in Scotland) and

50 Industrial Schools (30 in England and 19 in Scotland) in December 1865.⁷ Thus by the early twentieth century, the industrial school in its various forms, had become the dominant experience for young delinquents. The number of reformatory schools stayed fairly constant throughout the period. Whilst it would not be until the Approved School was created as part of the Children and Young Persons Act 1933 that these distinctions were finally eroded, in reality throughout their history, these two forms of institutions were firmly intertwined. It would be useful to review the distinctions between the two institutions. To a large extent this was a conscious adoption of the divisions that had already been made in the voluntary system.

Thus in the 1790s, the Philanthropic Society had placed delinquent boys into the Reform where they were provided with a moral and social education. Once

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4. Reports Relating to Parkhurst Prison, PP, 1839, xxii, 643, 1.

5. *Report from the Select Committee on Criminal and Destitute Juveniles*, 1851, viii.

6. Radzinowicz, L. and Hood, R. (1990) *A History of English Criminal Law and its Administration from 1750, V: The Emergence of Penal Policy*. Oxford: Oxford University Press, p. 182.

7. 9th Report of the Inspector appointed under the provisions of the Act 5/6 Will. 4 c. 36 to Visit the Certified Reformatory and Industrial Schools of Great Britain 3686, 305-464 (001-158).

'sufficiently reformed' they were transferred to the Manufactory where they were taught practical skills and undertook employment. This division between the Reform and Manufactory would be reflected in the evolution of the reformatory and industrial schools. Thus reformatory schools were to be reserved for convicted offenders, whilst industrial schools (formally and nationally legislated from 1857) took the potential delinquent and neglected child. The divisions between the reformatory and industrial schools were also a reflection of the divisions between those reformers who were pushing government for action. Essentially the camp was divided into those who supported a more punitive approach to juvenile delinquency, including the Chaplain of the Philanthropic Society, Sidney Turner (soon to be the first Home Office Inspector of reformatory and industrial schools), Jelinger Symons (Inspector of Schools, and the editor of the *Law Magazine*) and T. B. Lloyd-Baker (a Gloucestershire magistrate). Advocating a more humanitarian approach were the reformers Mary Carpenter and Matthew Davenport Hill. Turner, Symons and Lloyd-Baker supported the requirement that all children sentenced to reformatory schools should initially be sentenced to at least 14 days imprisonment. Indeed, the thrust of their argument during the early years of the Reformatory Schools Act seemed to be that prison and reformatory schools were the only way to deal with 'hardened' juvenile offenders, who they saw as 'the leaders in crime'.⁸ They fundamentally disagreed with the debate about criminal discretion, and believed that most criminal children were fully aware of their actions.

The political tone of this debate is apparent from an address by Symons to the Royal Society of Arts in 1855, when he attacked 'the belief that juvenile offenders are little errant angels who require little else than fondling'.⁹ This was a direct attack on the opposing side of the reformatory debate, which absolutely disagreed with any form of child imprisonment, and viewed the reformatory as potentially penal, though supporting them in a

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modified form. More implicitly, this was an attack on Mary Carpenter, who in her work advocated a rather more compassionate approach to juvenile delinquency. Consequently, whilst the industrial school would gain precedence over the reformatory school during the later nineteenth century, the pre-imprisonment requirement for reformatory schools remained and so this tended to be the institution for more 'hardened' offenders. The industrial school became essentially a diversionary institution for a variety of delinquent and neglected children.

In the early years the criteria for entrance to the industrial schools was very narrow, essentially focussing on vagrant children. The boost to industrial schools was provided in 1861 with an Amendment Act which specified four different categories of children who could be sent to industrial schools: (1) children under 14 who were found begging or receiving alms; (2) children under 14 who were found wandering and had no home or visible means of subsistence, or who frequented the company of reputed thieves; (3) children under 12 who had committed an offence punishable by imprisonment, or some lesser punishment; and (4) children under 14 whose parent (or parents) was unable to control him or her.¹⁰ The scope of children to be catered for by the industrial schools was further broadened in 1866, when a new category was added, those, 'in need of care and protection', aimed at children aged under 14, with further provisions for those aged under 12.¹¹

The key piece of legislation that would enable the expansion of the industrial school was the Consolidation Act 1866, and within a year of the passage of the Act the number of admissions to industrial schools had doubled. Increasingly the distinction between the industrial and reformatory schools was blurred, suggesting that magistrates were, by the later eighteen-sixties, inclined to use the industrial school for both criminal and destitute children. Thus as well as the categories established by the 1861 Act, it further allowed for the detainment of

8. Lloyd Baker, T. B. (1889) *'War with Crime': Being a Selection of Reprinted Papers on Crime, Reformatories, etc, by the Late T. Barwick Lloyd-Baker, Esq.* London: Longmans, Green, and Co, pp. 206-7.
 9. Symons, J. C. (1855) 'On Juvenile Crime as it affects Commerce, and the best means of Repressing it', *Journal of the Society of Arts*, III, p. 416.
 10. An Act for amending and consolidating the Law relating to Industrial Schools, 24 and 25 Vict., c. 113, s. 9.
 11. 29 & 30 Vict. C. 118; 25 & 26 Vict. C. 10.

children, 1) found destitute either being an Orphan or having a surviving parent undergoing penal servitude or imprisonment; 2) under 12 charged with an offence punishable by imprisonment or a less punishment, but not a felony; 3) under 14 whose parents or step-parents or guardians were unable to control their children, could make representation to a magistrate that 'he desires that the Child be sent to an Industrial School'; and, 4) workhouse or pauper school children under the age of 14, deemed refractory by the Guardians of the Poor (or the child of criminal parents).¹² These criteria both built upon and expanded previous criteria, and allowed the magistrates a high level of discretion. It would seem fair to conclude that by the late nineteenth century local government was given a high degree of latitude in dealing with the disorderly children of the working-class. Hence, the journey from the reformatory school for juvenile offenders in the mid-nineteenth century seems to have transformed into the industrial school for the refractory working-class by the latter part of the century.

Arguably, a range of social legislation extended the hand of the state into working-class family life at this time. Day industrial schools and truant schools were allowed for under the Education Act 1876. The Industrial Schools Amendment Act 1880 and the Criminal Law Amendment Act 1885 allowed for children found in houses used for 'immoral purposes' to be removed to an industrial school. An 1891 Reformatory and Industrial Schools Act (54 and 55 Vict. C. 23) allowed discharged children to be apprenticed or sent overseas against their parents wishes; and an Industrial Schools Act in 1894 (57 and 58 Vict. c. 33) allowed discretionary powers to industrial school managers to keep children (who had completed their sentence) in the industrial school to the age of 18. For later nineteenth and early twentieth century commentators the 1866 Act had been an effective means of suppression of crime and pauperism. As one commentator John Watson noted in relation to the Industrial and Reformatory Schools, 'The danger, which menaced society some forty years ago from the hordes

of savage children prowling the streets of our large cities to beg, borrow, or steal...has, through their agency, been rooted out and removed'.¹³

These institutions however, were not without their critics. By the late nineteenth and early twentieth century scandal had been attached to one particular development of the Industrial and Reformatory School movement, the training ship establishment. Training ships were established by a variety of institutions with the intention of training and disciplining young, working-class lads for the navy. Mutiny broke out on the Akbar training ship, moored on the River Mersey, on the 25 September 1887. The breakdown of discipline on the ship was attributed to poor management of the boys, 'the cause may readily be traced to a want of firmness and energy in dealing with

a mere handful of vicious and depraved youths'.¹⁴ Essentially, the Inspector of Reformatory Schools argued that the management of the ship had become complacent and were unprepared for trouble, 'The boys got the upper hand for a time, and this they ought never to be allowed to do'.¹⁵ According to this report, the mutiny had broken out whilst the captain had been absent, and a number of lads had broken into the ships stores and the captain's cabin. Seventeen of the ringleaders absconded, but were later recaptured and tried by local magistrates. Later, ten of the boys were tried at the Winter Assizes

in Liverpool, but were not subject to punishment by the presiding magistrate, Mr. Justice Day, who was critical of the 'defective' discipline on the ship.¹⁶ Nevertheless, the boys who were returned to the ship were punished with the birch, solitary confinement and a diet of biscuit and water.

In July 1899, another of the Merseyside training ships, the Clarence, was completely destroyed by a fire on a day in which the ship was receiving illustrious visitors, including the Bishop of Shrewsbury. An official inquiry into the fire reached no firm conclusions, though it was noted that 'There remains the theory that the ship was deliberately fired'.¹⁷ Concerns about excessive violence used in carrying out punishments,

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12. Ibid.

13. Watson, J. (1896) 'Reformatory and Industrial Schools', *Journal of the Royal Statistical Society*, 59 (2), pp. 255-317, pp. 306.

14. *Inspector of Reformatory Schools of Great Britain, Thirty-first Report, 1888* [C. 5471], 78.

15. Ibid.

16. *Inspector of Reformatory Schools, 1888*, p.78.

17. *The Times*, 20 September 1889, p.10.

and general poor treatment of the boys were also the subject of an inquiry into the Wellesley Industrial Training Ship moored on the Tyne. Inspections into the ship revealed high levels of absconding boys, and the heavy use of flogging. The problem of ill-treatment on the training ship was more fully revealed in the Akbar 'Scandal' of 1910. By this time the ship was no longer being used, and the school had been transferred to the Nautical Training School at Heswall, in the Wirral. Based on evidence from a former Master and Matron of the School, the magazine *John Bull* published a report detailing cruel treatment that had apparently led to a number of deaths. This resulted in a Home Office internal inquiry carried out by the Under-Secretary of State, C. F. G. Masterman.¹⁸ Whilst the report exonerated the Akbar staff, it did lead to a Departmental Committee into reformatory and industrial schools in 1913, which made considerable inquiry into the punishment practices used, and the welfare of the children.¹⁹

The Legacy of the Reformatory and Industrial Schools

After the report of the 1913 Committee, the next watershed would be the Children and Young Person's Act 1933, which would effectively call an end to the history of the Victorian Industrial and Reformatory School System. The 1913 committee, meeting shortly after the Akbar affair, focussed on problems with administration, control and the public image of certified schools. As a result the last two decades of the system were in many ways the most turbulent, underlined by a move towards the unification of the reformatory and industrial schools in the face of increasing accountability. Arguably it was also a more enlightened period. Certainly, there seems to have been a return to some of the ideals of the early years of the system. Undoubtedly in this period, reflecting the influence of the Children's Act, there was a new emphasis on the care and protection of children, as well as new prescriptions for adolescence. This was

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reflected not only in the legislation to deal with delinquent children, but can also be seen in concerns about boy labour and street trading. Indeed, a separate Home Office branch was established to deal specifically with such issues.

It was also in this period that energetic practitioners like Alexander Paterson (later to be associated with Borstal) and Charles Russell emerged. Russell's appointment from 1913 as Chief Inspector of the Reformatory and Industrial Schools did much to shape new ideas about boy welfare, and to revive the ailing Boys' Clubs, as well as to improve the reformatory and industrial schools. Despite the new Chief Inspector sharing Russell's beliefs in reform, the reformatory and industrial school system was increasingly to be caught between the conflicting ideas about adolescence and delinquency which were to characterise this period. By 1920, committals to the schools had greatly declined and the organ of the system, the Certified Schools Gazette was voicing the concerns of its members that they were increasingly under attack.²⁰ Moreover, that there was a deliberate policy by the Home Office to marginalise the schools.²¹ Part of the problem was the new accountability. Hence the schools, which had strong traditions of autonomy, were increasingly open to inspection in the face of a barrage of criticism about methods and administration. The decline in committals to the schools was

also explained by the wider use of probation, and the increasing expense of the schools.

Moreover, there was something of a backlash against institutionalisation. Whereas the institutional experience had underpinned the Victorian system, and removed children from their families, in the 1920s attention was turned to the home-lives of children. Thus family-life and the home environment of children was increasingly seen as significant to the improvement of a child's character. Of course, this had to be the right sort of family life; indeed the Children's Act had enabled legislation that punished

18. 'Reformatory School Horrors — How Boys at Akbar School are Tortured — Several Deaths', *John Bull*, 22 October 1910 and 'Report of Inquiry by Mr. C. F. G. Masterman M.P., into Charges made Concerning the Management of the Heswall Nautical School', (Cd. 5541), PP, 1911, vol. 72.

19. *Report of the Departmental Committee on Reformatory and Industrial Schools*, 1913.

20. *First Report Home Office Children's Branch*, HMSO, 1923, 17.

21. *Certified Schools Gazette*, v. 13/8, 1921, 94; v. 14/11, 1922, 299, 310; v. 15/4, 1923, 63.

'wayward' parents. The discourses of the post-war period would eventually feed into the Departmental Committee on Young Offenders in 1925.²² Whilst the Committee gave over much of its time to the discussion of the new Borstal experiment, it did recommend the merging of the reformatory and industrial schools, and their replacement with the Approved Schools. The Committee also supported a proposal for more short-term institutional training. Magistrates were increasingly unwilling to commit a child to a reformatory for three years, which they saw as an essentially penal experience. This proposal was supported by the Howard League for Penal Reform, who by this time had become an important voice in the debate about the schools. Nevertheless, whilst the abolition of the distinction between the reformatory and industrial schools would not be fully formalised and codified until the 1933 Act, it was during this Committee that the groundwork was done. Perhaps more importantly, in acting as a vehicle to bring together the many voices, it achieved something very important. Thus it cemented the relationship between the various different pressure groups, reformers, magistrates, and practitioners. As Victor Bailey concludes, 'The strength of the alliance lay in a shared experience of voluntary social work amongst school-children and working-lads, in an interchange of personnel between the voluntary and

official spheres of child welfare, and in a like-minded evaluation of the causes and correctives of juvenile delinquency. The way now seemed clear for a new Children Act, some twenty years after the initiatory statute of 1908'.²³

Conclusion

The history of juvenile penalty helps us to understand the ebb and flow of debate as to the appropriate forms of punishment, reform and care of young offenders. Institutionalisation has been seen as both a cure for juvenile crime and a cause. Thus the Victorian system essentially understood reform and rehabilitation as a process that could mostly be affected away from the family and the community and within the structured confines of reformatory institutions. Despite attempts to mould institutions that provided specific forms of penalty for juveniles and delinquent children, the experience of the reformatory and industrial schools of the nineteenth century was fundamentally penal. By the early twentieth century the recognition that family and community should form part of the multi-agency approach to dealing with young offenders was recognised. The voluntary sector, which had been such an urgent voice pushing the early development of juvenile justice, now helped to consolidate this approach.

22. *Report of the Departmental Committee on the Treatment of Young Offenders*, 1927.

23. Bailey, V. (1987) *Delinquency and Citizenship: Reclaiming the Young Offender, 1914-1948*. Oxford: Clarendon Press, p. 66.