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Living in the present, imagining a future: Children and young people navigating the mandatory life sentence

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Between 2015 and 2019, an average of 27 children each year were sentenced to mandatory life terms for murder.¹ Though small, the number appears to be increasing and these children face challenges distinct from their determinate sentenced peers.² This article explores these challenges through an analysis of primary research³ with male children serving long sentences (defined as determinate sentences of more than five years, or indeterminate sentences of any minimum term) at HMYOI Wearside, a young offender institution in England.

Sentencing children to life imprisonment and context of the article

The Powers of Criminal Courts (Sentencing) Act 2000 provides that the mandatory sentence for a person convicted of murder, committed when under 18, is Detention at Her Majesty's Pleasure (DHMP). Between 2011 and 2019, 224 children were sentenced to DHMP for murder.⁴ Of these, almost all were aged between 15-17 (n=130) or 18 years and older (n=84) at the point of sentencing. The remainder (n=10) were aged 10-14 years.⁵ The minimum term — the tariff —

for both children and adults convicted of murder is set by the sentencing judge with reference to a minimum starting point outlined in the Criminal Justice Act 2003. At the time of writing, the starting point for children aged under 18 at the time of the offence is 12 years in custody. Changes to this are proposed in the current Police, Crime, Sentencing and Courts Bill, which sets out a matrix based on age at the time of the offence and the relevant starting point for adults. In practice, this will increase the starting point for most children, with starting points for minimum custodial tariffs ranging from between 8-15 years for children aged 14 and under, to between 15 and 27 years for those aged 17 or over at sentencing.⁶

Recent data from the Ministry of Justice shows that children in England and Wales are now being sentenced to minimum tariffs which have long been considered 'barely survivable' for adults.⁷ For example, the majority of children sentenced to DHMP between 2011 and 2019 (85 per cent) were given tariffs of between 12 and 20 years, while 5 per cent were sentenced to tariffs of 23 years or more.⁸

Boys sentenced to DHMP remain in the youth secure estate until 18, when they move into the young adult estate, and then onto the adult estate at 21 years

1. Ministry of Justice (2020) *Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures: Impact Assessment* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967787/MOJ_Sentencing_IA_FINAL_2021.pdf
2. The number of children serving life sentences is no longer routinely published. Data obtained by Channel 4 News found an increase in the numbers of young people convicted of murder over the last five years – see Channel 4 News: Exclusive: Number of teenagers convicted of murder more than doubles in 5 years 3 December 2021. Available at: <https://www.channel4.com/news/exclusive-number-of-teenagers-convicted-of-murder-more-than-doubles-in-5-years>
3. For details of the study and its methods, see: Tynan, R.R. (2019) *Young Men's Experiences of Long-Term Imprisonment: Living Life*, London: Routledge.
4. See n.1.
5. Ministry of Justice (2021) *Police, Crime, Sentencing and Courts Bill 2021: youth custodial sentences* factsheet, 7 July 2021. Available at: <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-youth-custodial-sentences-factsheet>. The time taken to reach trial and conviction means a significant number of under 18s convicted of murder are over 18 by the time they are sentenced. However, they will be sentenced to DHMP.
6. *Police, Crime, Sentencing and Courts Bill (as amended on report) HL Bill 95, 18 January 2022*, Available at: <https://bills.parliament.uk/publications/44739/documents/1259>
7. Crewe, B., Hulley, S. and Wright, S. (2020) *Life Imprisonment from Young Adulthood: Adaptation, Identity and Time*, London: Palgrave Macmillan.
8. See n.1.

old.⁹ There is no separate provision for young women — at 18, they move into the adult women's estate.¹⁰ The youth secure estate is made up of Secure Children's Homes (holding children aged 10 to 17 years), a Secure Training Centre (holding boys aged 12 to 17 years), and Young Offender Institutions (holding boys — and, at the time of writing, some girls — aged 15 to 17). The latter most closely resembles an adult prison in structure and regime.¹¹

Despite the increasingly routine nature with which courts in England and Wales are sentencing children to the state's most severe punishment, little data is available on the lived experience and impact (either short- or long-term) of such sanctions. Drawing on the author's broader research into long-term imprisonment among male children noted above, this article offers a close analysis of the narratives and experiences of the only four boys within their original study who were serving sentences of life imprisonment. The first, Aaron, was 17 years old at the time of the research, having served almost four years of a 12-year tariff. The second, Jerome, was almost 16 at the time of interview and had served two years of a ten-year tariff. Ricky, the third, had been sentenced to a 14-year tariff at the age of 15, and was 17 at the time of interview. Lastly, Abdi was aged 18 at interview, convicted at aged 16 and serving a 14-year tariff.¹² In the absence of empirical work on child lifers in England and Wales, specifically, this paper offers a rare insight into their experiences.

What follows is an analysis of the specific experiences of Aaron, Abdi, Jerome and Ricky, which suggests that the difficulties inherent in serving a life sentence are compounded for children by three additional and interconnected challenges:

1. A perceived absence of legal legitimacy, and the impact of this on coping: a significant number of children serving life sentences are convicted using joint enterprise (a legal doctrine, which enables more than one person to be convicted of

a single offence — outlined in more detail below).¹³ This creates concerns about legitimacy which can be compounded by experience in prison and influence engagement.

2. The pains of childhood imprisonment: There are striking similarities in the ways children and adults describe the pains of long-term imprisonment, but the significance of these is arguably greater for children.
3. The stalling or corrupting of the developmental and maturation process: Starting a life sentence at a young age removes responsibility and self-sufficiency and access to conventional markers of adult development. Without this, children and young people find it more difficult to develop an adult identity.

Alongside these challenges, children — like adults — serving life sentences must find ways to demonstrate that they have reduced their risk, so they can progress towards release. This article explores these concerns through the lives and experiences of the four children identified above; boys aged 15-17 years serving mandatory life sentences for murder.

The pains of childhood imprisonment: There are striking similarities in the ways children and adults describe the pains of long-term imprisonment.

Perceived absence of legal legitimacy and impact on coping

All four boys in this article were convicted of murder using the legal doctrine of joint enterprise, an umbrella term encompassing three broad sets of circumstances in which multiple individuals can be held legally culpable for a single offence:

- a) Multiple principal defendants commit the criminal act, with the necessary intent for criminal liability
- b) Secondary parties intentionally encourage or assist the principal in the commission of an offence
- c) Multiple defendants agree to commit one crime and, in the course of it one party commits a second crime.¹⁴

9. HMPPS/Youth Custody Service (2017) *The Youth Custody Service Placement Team: Overview of operational procedures*. London: HMSO.

10. Epstein, R. (2019) Policy and Practice for Young Adult Women in the Criminal Justice System, *British Journal of Community Justice*, 15(1), pp.53–66.

11. HM Chief Inspector of Prisons for England and Wales (2020) *Annual Report 2019–20* (HC 856). London: HMSO.

12. 'Wearside' and the names of young people are pseudonyms.

13. Statement from Just for Kids Law, following Supreme Court judgment in Jogee, 18 February 2016, Available at: <https://www.justforkidslaw.org/news/statement-just-kids-law-following-supreme-court-judgment-jogee>

14. Crown Prosecution Service (2019) *Secondary Liability: charging decisions on principals and accessories*, available at: <https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories>

Between 1985 and 2016, a secondary party could be convicted of murder if they 'foresaw' the principal might commit GBH or kill with intent, even if the secondary party did not intend the lethal violence.¹⁵ In 2016, the Supreme Court ruled that the law had taken 'a wrong turn' and that a defendant could only be found guilty if they intended to assist or encourage the principal to commit GBH or kill with intent.¹⁶ However, secondary parties' intent may still be inferred from foresight and joint enterprise continues to create a flexible definition of culpability, leaving questions about the legal legitimacy of the conviction and sentence.¹⁷

Like many young people and adults convicted using joint enterprise, Aaron struggled to make sense of it, highlighting the unfairness and illegitimacy that he believed to be inherent in this legal practice:¹⁸

You can still convict me, even though you don't know that I've done it...how's that? If you don't know what I've done personally, you can't convict me on other people's actions. I know who did what... [But] the guy that done it said that I done it.

An important note for establishments now holding a growing number of children serving life sentences for murder.

Aaron and 'the guy that done it' were convicted of murder, while several co-defendants received convictions for the lesser offence of manslaughter. The circumstances of all convictions vary but the use of joint enterprise to achieve murder convictions in each of these cases, the boys argued, masked the complexities that were rarely documented and explained in prison records or explicitly addressed in interventions.

This lack of legitimacy permeated the ways in which these four children approached their sentence, influencing their ways of coping, their attitudes to staff, their progress and their orientation to the future. For instance, both Ricky and Abdi continued to maintain their innocence, but both had appeals dismissed. Despite maintaining innocence, Ricky occasionally bragged about his offence and told varied, fantastical stories about his family and criminal empire which made him an object of fun to staff and other boys. Abdi regularly failed mandatory drug tests and was confined

on the wing. In this sense, both were seeking ways to cope which were ultimately obstructive to their chances of imagining and reaching a future beyond prison. The ambiguity of their convictions — in their eyes — made it feasible to continue to deny their culpability and justified their ways of coping; however, offending behaviour programmes, progression and parole usually require recognition of culpability as a demonstration of insight. Without this, progression and release are less likely (though not impossible). Accountability requires engagement with complexities, but these young people were reluctant to do so within a system they found opaque and untrustworthy; an important note for establishments now holding a growing number of children serving life sentences for murder.

In contrast, Jerome and Aaron each saw prison as inevitable, although both similarly questioned the legitimacy of their convictions (and those of their co-defendants). Having spent their early adolescence in the company of adults involved in crime, they were resigned to paying a price. There was no resentment, just acceptance: '*Except for get married and have kids, I've done everything else you can think of*', said Aaron. This minimised to some extent the direness of his

current circumstances (as a boy who, at the time of the study, had served four years from the age of 13). Both boys maintained a narrative of 'choice' — that is, that they had willfully chosen to be compliant within the prison system, rather than having this forced upon them — and this seemed to help them both navigate and bear the weight of their sentences. Well-known by their peers outside and in, both felt they had nothing to prove, and their compliance made them popular with staff, often being selected to meet with official visitors and for family days. Theirs was an *instrumental* compliance (that which is 'based on incentives and rewards or disincentives and deterrents'),¹⁹ designed to make their daily life and progression to release more straightforward. Aaron had a trusted job in the staff mess. Jerome looked forward to going home to his young son — he, more than any of the other boys, could envisage a future beyond prison.

15. For a fuller description of the law see Jacobson, J. Kirby, A. And Hunter, G. (2016) *Joint Enterprise Righting a Wrong Turn?: Report of an exploratory study*, Institute for Criminal Policy Research, Birkbeck, University of London.
16. R v Jogee [2016] UKSC 8
17. Hulley, S., Crewe, B. & Wright, S. (2019). 'Making Sense of 'Joint Enterprise' for Murder: Legal Legitimacy or Instrumental Acquiescence?', *British Journal of Criminology*, 59(6), pp.1328-1346.
18. Crewe, B. (2013). 'Compliance in Prisons'. In P. Ugwuodike and P. Raynor (eds) *What Works in Offender Compliance* (pp.119-142). Palgrave Macmillan, London.
19. Hulley, S. Crewe, B. and Wright, S. (2016) 'Re-examining the Problems of Long-Term Imprisonment', *British Journal of Criminology* 56, pp.769-792

None of the boys reported being advised or supported to find positive ways to cope — except by their peers — and there was no clear structure for this. Each found their own way — for better or worse. Ironically this meant that children with knowledge of prison gleaned from friends, associates or family members were better equipped to cope than those without. It underlined the need to establish a peer group in prison, but this came at a potential cost including being expected to engage in violence, being a target for violence and being viewed by staff as part of a gang.

Pains of childhood life imprisonment

Children described the pains of long-term imprisonment in largely the same terms as adults, with the pain of missing loved ones the most widely reported.²⁰ The pain of separation is not revelatory, but its significance is greater for young people, as they have not developed the emotional or practical resources to manage it and they are at the earlier stage of the life sentence, a time at which such pains are known to be more severe.²¹ The widely held belief that prison is not particularly punishing — or not punishing enough — was shared by many staff and repeated by Ricky, who said:

Prison ain't really a punishment — your family will come to see you. You get fresh air, you get decent jobs, go to the gym, do this do that.

Yet Ricky's family did not come to see him and his bravado was not shared by others who had spent longer in prison and were more circumspect. The pain of separation was often overlooked by Wearside staff who expressed less awareness of the invisible pains of separation and loneliness and focused more commonly instead on the 'accessories' young people had access to (chiefly games consoles and TVs).

All four children described prison as less terrifying than they had imagined or seen on the television, but

the reality was of a life curtailed and constrained — seeing the same faces and the same surroundings day after day. The range of material goods available — games consoles, the ability to wear their own clothes, a phone in their cell — was wider than that available in some other prisons and was appreciated (at least privately). Many even suggested that it was too much, too comfortable. Yet they found prison far from easy. The interaction with staff, the imposition of rules and warnings were daily reminders that freedom was no longer theirs and this weighed heavily on young minds. They engaged in banter about the life lived before — partying, sex and the fun they experienced,²² but gave away the pain associated with no longer being able to make choices about how to spend the day, or with whom, and deep distress at being removed from

mothers and (often younger) siblings in particular. All agreed that the most significant pain was separation, with Jerome using the seemingly casual language of 'stressed out' and 'pissed off' to describe the pain, shame and guilt of causing another family member such distress:

My mum misses me. Like when I was talking to my mum earlier today she was like 'I miss you, you need to hurry up and come out so I can see you', and that... So... It's kinda like... It pisses me off in a way cos... I

stressed my mum out innit. I know I do like... My little brother will write me letters telling me he's cryin' and that.

Jerome's reflections highlight the painful ripple effect experienced by families of people serving custodial sentences. Prior to his imprisonment, Jerome's mother and younger brother relied on him emotionally and financially; despite being a 15-year-old child at conviction, he felt that he had let his family down by being unable to support them. His sense of responsibility towards them made him seem older than his years and yet it is precisely this that highlights the difficulty of the life he was leading before prison. Jerome's articulation of his family's distress — and the distress that it caused him — is a reminder that prisons and the people in them do not exist in isolation. In

Children described the pains of long-term imprisonment in largely the same terms as adults, with the pain of missing loved ones the most widely reported.

20. Richards, B. (1978). 'The experience of long-term imprisonment', *British Journal of Criminology*, 18(2), pp.162–169. See also n.23.
 21. Wright, S. Hulley, S. and Crewe, B. (2021) 'The pains of life imprisonment during late adolescence and emerging adulthood'. In L. Abrams and A. Cox (eds) *Palgrave International Handbook of Youth Imprisonment* (pp. 479-501). Houndmills: Palgrave MacMillan.
 22. E.g. See Ministry of Justice (2017) *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*, London: Ministry of Justice. Also see Adams and McCarthy this issue.

recent years the impact of a prison sentence on families and relationships has been highlighted to some extent²³ but more needs to be done to support children serving life sentences to maintain their relationships.

Assessments of maturity are difficult, and physical size and demeanour, combined with the conviction for murder, can make it easy to forget that these are still — in law and fact — children, away from home for a long time, and with no certain release date. In other settings, the separation of children and teenagers from their parents and home is recognised as a damaging experience with lifelong consequences.²⁴ Yet in prison, it is unquestioned; baked into the punishment. Some might argue that public protection demands separation, but this is not inevitable: the imprisonment of children is a legal and policy choice. Questions remain, such as, even if separation is necessary, what is the basis for creating family contact arrangements that mirror those for adults? Why are prisons for children based on prisons for adults, rather than wholly redesigned? Some recognition of this paradox is evident, however, in the move towards developing 'secure schools' for young offenders, which are intended to 'align the youth custodial estate with international evidence that smaller, more therapeutic units are more successful in rehabilitating offenders and reducing reoffending.'²⁵ The Ministry of Justice is working towards an opening date for the first of these at the end of 2022, on the former site of Medway Secure Training Centre.²⁶

Racialised identities, maturity and stalled development among child lifers

Traditional conceptions of childhood, framed around innocence and dependency,²⁷ are disrupted by a

Separation of children and teenagers from their parents and home is recognised as a damaging experience with lifelong consequences.

conviction for murder. In prison, being late, cheeky or untidy become discipline issues or risk factors rather than behaviour expected of children and adolescents. For the children described in this paper, this is underscored by their joint enterprise convictions for murder, which makes all parties equally guilty — and therefore also equally risky. In addition, three of the four children described in this paper were Black. The use of joint enterprise is racialised²⁸ and young Black people in prison are more readily 'adultified' — denied childhood status — and less likely to be given opportunities to learn from mistakes.²⁹ These elements combine into an identity that is bestowed by the conviction and by demographic characteristics rather than individual traits or behaviour. Staff at HMYOI Wearside consistently

identified 'London boys' as more difficult to manage, regardless of their IEP status or conduct. All four of the boys discussed here were from London, yet Ricky (who was white) was never referred to as such by staff. 'London', then, was a coded term, a form of colour-blind racism that rendered vulnerabilities invisible.³⁰

The constraints of imprisonment make the transition from adolescence to adulthood more difficult to achieve. The usual rites of passage are absent from the lives of children serving life sentences and, with no work experience and limited social networks, imagining or planning for the future is next to impossible. Traditional markers of maturity are also trickier to demonstrate in ways that are acceptable to those making decisions about progression and release. Transition is closely scrutinised and risk assessed and, if successful, young prisoners may have a future adulthood in the community to look forward to in years to come. If that transition is less successful, marked with non-compliance and challenging behaviour (or simply that which does not

23. Waddoups, A., Yoshikawa, H. and Strouf, K. (2019) 'Developmental Effects of Parent-Child Separation', *Annual Review of Developmental Psychology* 1(1), pp.387-410.

24. See n.5.

25. Justice Committee (2021) *Children and Young People in Custody (Part 2): The Youth Secure Estate and Resettlement: Government Response to the Committee's Sixteenth Report of Session 2019-21*, 19 April 2021, available at: <https://committees.parliament.uk/publications/5479/documents/54646/default/>

26. James, A. and Jenks, C. (1996) Public perceptions of childhood criminality, *British Journal of Sociology* 47(2), pp.315-331

27. Williams, P. and Clarke, B. (2016) *Dangerous associations: Joint enterprise, gangs and racism*. London: Centre for Crime and Justice Studies

28. Gilmore, A.A. and Bettis, P.J. (2021) 'Antiblackness and the Adultification of Black Children in a U.S. Prison Nation', 25.

29. For more on colour blind racism and constructing risk see Young, T., Hulley, S., & Pritchard, G. (2020). 'A 'good job' in difficult conditions: Detectives' reflections, decisions and discriminations in the context of 'joint enterprise', *Theoretical Criminology*, 24 (3), pp.461-481.

30. See n.3 and n.8.

conform to the expectations and standards of HMPPS), it could be a few years longer, as they may be less likely to be released from prison. Even if they are recommended for release by the Parole Board, they will be released without the social capital which might otherwise enable them to integrate into society. In addition to this, they will still be carrying the life sentence and all associated restrictions of the subsequent life licence.

Time in prison provided an opportunity for reflection that there was simply no time for outside. This enabled (what was felt to be) a process of growth and maturity, as Aaron explained:

I would have always grown up but... In here you've got time to sort of analyse yourself and... Outside everything happening quick, boom boom boom, but in here you can sort of sit back and say 'woah', at the silly stuff.

The feeling of having developed a deeper sense of maturity in prison has been reported by children serving determinate sentences, and young adult lifers.³¹ However, this did not make difficult contemplations any easier to deal with, as the boys struggled with a lack of certainty about the future and a sense of relinquishing control. Most were unable to think beyond the end of their sentence — for instance, when asked about his future, Aaron replied: 'I ain't even thought about that, that's just too... it's too soon'. At Wearside, children and young people serving life sentences were simply waiting — and wanting — for the future to come to them but with little real idea of how they might shape it and virtually no preparation for it.

Conclusion

Children serving life sentences describe the experience of imprisonment in similar ways to those reported by adults, suggesting that these pains of imprisonment are universal. It is no surprise that these fundamental pains — these human pains — are what characterise long-term imprisonment. A prison sentence is not an isolated event in a person's life; it connects the past, and the present and the future are shaped by it. Nor is imprisonment conceptually isolated from other aspects of public policy or discourse. Longer sentences for more crimes, decisions about culpability and release, and narratives about crime and dangerousness are woven into daily life.

However, it is possible, that the pains of long-term imprisonment are felt more painfully by individuals who are given life sentences when they are still children. The pains of imprisonment are intangible but at their heart is loss of control, freedom to self-determine and to make choices; an experience which is acutely felt among children on the cusp of autonomy and independence. The transition into adulthood within prison is scrutinised and documented in a manner uncommon to children in the community, and without context or transparency. Children in prison are disempowered in their own lives and attempts at agency can be viewed as insubordination, with far reaching and long-lasting consequences. It is unsurprising, then, that some choose passive coping mechanisms and let the future happen rather than plan ahead. However, children are capable of navigating their sentence if they have sufficient motivation to do so. While some young people found compliance difficult, those that understood what made life easier found ways to demonstrate what was expected of them.

This instrumental compliance was not faked or unthinking, but a consequence of recognising what could be gained: a better job, the chance to interact with different people or the hope of getting through the sentence as quickly as possible. It highlights the need for a regime that meaningfully rewards compliance and engagement, rather than simply punishing transgression. Some young people spoke of a restorative justice meeting that had taken place, privately, at the prison between a young person serving a life sentence and the mother of the boy he killed with the support of the Forgiveness Project, an organisation that 'collects and shares stories from both victims/survivors and perpetrators of crime and conflict who have rebuilt their lives following hurt and trauma'.³² The second-hand knowledge of this meeting was powerful — perpetrator and bereaved mother viewed with obvious respect. This suggested an appetite for creative, challenging work from children themselves that third sector organisations — like the Forgiveness Project — could match given more opportunity.

Ricky, Abdi, Aaron and Jerome are approaching or past their tariff expiry dates now but they will have been replaced in the secure youth estate by other young people serving life sentences who will, in turn, be replaced by others. What might prison be like if a more relational approach was integrated into these children's punishment?

31. The Forgiveness Project: Our purpose Available at: <https://www.theforgivenessproject.com/our-purpose/>

32. Masters, G. and Smith, D. (1998) 'Portia and Persephone revisited: Thinking about feeling in criminal justice. *Theoretical Criminology*. 2(1): 5-27.