

Chapter 1, Nicola Carr and Siobhán McAlister: The Double-Bind – Looked After Children, Care Leavers, and Criminal Justice

Research consistently shows that young people from out-of-home care are over-represented in criminal justice systems. The disproportionate numbers of people with a care history within the youth justice system and adult prisons has led some to pose the question as to whether OHC is simply a stepping stone to custody (Blades, Hart, Lea & Wilmot, 2011). Concerns regarding over-representation while in care, among young people transitioning from care and ex-care leavers have been reported in a wide range of contexts including England and Wales (Barn & Tan, 2012; Darker, Ward & Caulfield 2008;), Northern Ireland (Youth Justice Review Team, 2011), Australia (Malvaso & Delfabbro, 2015; Mendes, Snow & Baidawi, 2014; Mendes et al. in this volume) and the United States (Cusick & Gretchen, 2007; Jonson-Reid & Barth, 2000; Vaughn, Shook & McMillen, 2008). Findings from the research literature on why young people transitioning from care may be more vulnerable to becoming involved in the criminal justice system can be distilled into three main themes. Firstly, many young people in care have experienced a range of adversities that place them at higher risk of offending. Secondly, the care experience may in itself be 'criminogenic' (i.e., a factor leading to an increased likelihood of offending). Thirdly (and linked to the first two points), the transition to adulthood for young people leaving care is often compressed and accelerated, placing them at increased vulnerability of a range of negative outcomes.

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This chapter charts these three themes by considering the research on care leavers transitioning to youth or adult justice. We note the application of criminological theory in a small number of studies, and argue that the findings from research on desistance, while focused on the reasons why people cease offending, may provide a useful framework for considering future areas of research and implications for practice. This is because it holds potential for an examination and understanding of the interplay of agency, structure and the importance of identity in young people's lives and in transitions.

RISK FACTORS

Much of the research on the overrepresentation of young people in care and care leavers within the criminal justice system has been influenced by 'risk factor' research, which seeks to establish and quantify a range of characteristics that place young people at risk of offending (Farrington, 1996; 2007). This broad body of research, sometimes referred to as the 'Risk Factor Prevention Paradigm' (RFPP) (Haines & Case, 2008) is premised on identifying precursors to personal and socially harmful behaviours in order to intervene to reduce risk and harm (Haines & Case, 2008; O'Mahony, 2009). It has been particularly influential in the sphere of youth justice, but has also permeated other areas of social policy relating to families, communities, child and youth development and education and health (Armstrong, 2004; Kemshall, 2002; Turnbull & Spence, 2011).

RFPP is derived from longitudinal research such as the Cambridge Delinquency Study (Farrington, 2007), which followed a group of young people over the life course, and sought to retrospectively identify factors that led some to become

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involved with offending in order to develop predictive tools that would enable earlier intervention. This work and further developments have led to the identification of a range of putative risk factors focusing on the characteristics of the individual and their immediate environment. Individual factors include: hyperactivity, low self-control, low IQ, poor ability to delay gratification, and poor school performance. Environmental risk factors include: lack of parental supervision, disrupted families, low family income and living in poor, high crime areas (see Farrington, 1996, 2007).

There are numerous critiques of risk factor research and its applications. Some question its predictive utility, arguing that it lacks explanatory power by virtue of its conflating of correlations and causality (O'Mahony, 2009). Others have observed that the narrow conceptions of what constitutes risk (i.e., those focusing on the characteristics of individuals) do not sufficiently account for wider structural influences such as levels of inequality and the extent of social welfare provision (France, 2008; MacDonald, Shildrick, Webster & Simpson, 2005). Linked to this are observations that the focus on the level of the individual is associated with neo-liberal strategies of 'responsibilization' whereby the target of intervention (i.e., the risk-bearing subject) bears both the burden of these risks and the responsibility for effecting change (Phoenix & Kelly, 2013).

Given the orientation of the RFPP, it is therefore unsurprising that research regularly points to an overlap between the backgrounds of those with experiences of care and the risks associated with offending (Darker et al., 2008; Hayden, 2010; Schofield et al., 2012). Similar risk factors, which are said to increase a young person's propensity to offend, are extensively reported in studies of care populations, e.g., poor caregiver

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attachments, lack of parental supervision, and experiences of maltreatment (Smith and Thornberry, 1995; Stewart, Livingstone and Dennison, 2008). Some studies therefore seek to explain the over-representation of young people from state care in the criminal justice system by reference to the fact that they are more likely to score highly in many risk factor domains (Schofield et al., 2012; Schofield, Biggart, Ward & Larsson, 2015; Vaughn et al., 2008).

While identification of risks can add to our understanding and potentially help to target services and interventions, the application of the RFPP lens (particularly in relation to individual risk) is potentially tautological. And even where attention is paid to wider factors, such as family composition and community context, these tend to be narrowly constructed in that they preclude consideration of wider important structural factors, such as levels of inequality or social welfare provision. In an attempt to widen this lens, an emerging body of work has sought to integrate a consideration of individual factors alongside the characteristics of the care system. This research has focused on systemic issues within the care system and provision of supports (or the absence of these) for young people leaving care (Fitzpatrick, 2014; Mendes et al., 2014).

CRIMINOGENIC CARE?

The type and quality of care placement may have an impact on whether a young person becomes involved in offending and/or comes to the attention of authorities for criminal behaviour (Darker et al., 2008; Hayden, 2010; Taylor, 2006). In particular, problematic issues have been identified regarding residential care placements when

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compared with foster care placements. Residential care is often considered a placement of 'last resort' (Hayden, 2010; Shaw, 2014). In many instances young people in residential care have experienced multiple previous placements. Residential care may also be used for older teenagers who are considered 'too difficult' to place in foster care. This positioning of residential care means that young people with multiple and complex difficulties are placed together in an environment which is ill-equipped to meet their complex developmental needs (Littlechild, 2011; Shaw, 2014). Within this context, peer influences may be particularly significant (Ashford & Morgan, 2004; Taylor, 2006; Shaw, 2014).

Furthermore, policies in residential units may lead to the criminalization of young people. Examples include calling the police for relatively minor infractions, which in a non-care context would be dealt with by parents or other adults without recourse to authorities (Darker et al., 2008; Hayden, 2010; Fitzpatrick, 2014). Other policies may also lead to young people in residential care coming to the attention of the police, and therefore increasing their likelihood of being charged with incidental offences (Hayden, 2010). For example, within the UK there are policies in place requiring residential units to report a young person as missing if they fail to return home at a particular time. In some instances this can lead to young people incurring criminal charges (e.g. being found in possession of a drug when they are located), and early contact with the police can impact on future contact. This issue has garnered recent policy attention in the context of reviews focusing on child sexual exploitation and the particular vulnerabilities of young people who go missing from care (Jay, 2014). Here it has been noted that in some instances young people are treated as potential offenders and that within this context the fact that they have been the victims of crime

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may not be recognized (Fitzpatrick, 2014; Jay, 2014;). Further still, wider research shows that young people who have had prior negative experiences of police contact may be reluctant to make reports when they have been the victim of crime themselves, thereby compounding this negative effect (McAlister & Carr, 2014).

The criminalization of young people in care is an issue that intersects with other areas of social policy and the extent to which boundaries between child welfare and youth justice systems are delineated. One of the obvious differences that impacts on this is the fact that the minimum age of criminal responsibility varies widely across countries. In Europe alone it ranges from 10 (England, Wales, Northern Ireland, Switzerland) to 18 (Belgium), in the United States it varies from 6 to 14, in Australia it is 10 (although *doli incapax* provisions also apply) (Cipriani, 2009; Cuneen, White, & Richards, 2011; Dunkel, 2015). *Doli Incapax* refers to a presumption that a child is incapable of a crime because they do not have sufficient understanding of right and wrong. This can be used as a rebuttable presumption, i.e., it must be taken as true by the court unless proven otherwise. In Australia, this applies to children aged 10-14. In some countries (e.g. England, Northern Ireland, Republic of Ireland), *doli incapax* provisions previously existed in legislation but have been repealed. Where the age of criminal responsibility is lower, there are clearly higher risks of young people being officially processed through the criminal justice system and as a consequence, acquiring a criminal record (Carr, Dwyer & Larrauri, 2015). If, as the research evidence cited above suggests, young people from care are more likely to come into contact with the criminal justice system by virtue of the fact that they are on the radar of the child welfare system, then this may have a long-reaching effect.

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The impact of system contact and the potential for young people to be 'recycled'

through the criminal justice system is supported by findings from the *Edinburgh Study of Youth Transitions and Crime* (a longitudinal study on pathways into and out of offending of a large cohort of young people who started secondary school in 1998). In this research, McAra and McVie (2007, p.319) found that 'selection effects in the youth justice process mean that certain categories of young people – the 'usual suspects' – become propelled into a repeat cycle of referral into the system'. Given the issues highlighted regarding the disproportionate contact that looked after children may have with criminal justice agencies, it is not hard to see how they too may be construed as 'usual suspects'. Moreover, the further a young person progresses through the system, the greater the difficulty in desisting from offending. This has led McAra and McVie (2007, p.315) to conclude that 'the key to reducing offending lies in minimal intervention and maximum diversion'.

Placement stability also emerges as a key area in relation to explorations of the link between care environments and involvement with the criminal justice system (both within care and for young people who have left care) (Barn & Tan, 2012; Cusick, Havlicek & Courtney, 2012; Ryan & Testa, 2005). Placement instability is typically associated with a range of more negative outcomes for care leavers (Cashmore & Paxman, 2006; Stein, 2006a). However, disentangling whether placement instability is a causal or correlational factor in subsequent negative outcomes is difficult, particularly in light of the fact that placements break down for a range of reasons, including young people's behaviour, their dissatisfaction with a placement, their age at placement, placement type, supports provided, and the capacity of carers to cope (Koh, Rolock, Cross, & Eblen-Manning, 2014; Leathers, 2006; Sallnas, Vinnerljung

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In a study specifically considering the impact of placement instability on juvenile delinquency, Ryan and Testa (2005) found that young people who had experienced maltreatment and been placed in substitute care had higher rates of delinquency than similar children who had not been removed from their family. Placement instability increased the risk of delinquency for male foster children, but not for females (Ryan & Testa, 2005). This differential is probably explained by the fact that females generally have much lower levels of involvement in delinquency. In this study the authors employ the concepts of social capital and social control to explain their findings, noting that:

...multiple placements after entering substitute care further depletes a child's stock of social capital, which weakens social attachments and social controls and increases the probability of delinquency (Ryan & Testa, 2005, p.245).

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TRANSITIONS FROM CARE AND CRIMINAL JUSTICE INVOLVEMENT

The processes associated with transitioning from care have been the focus of a growing body of research in recent years. Set alongside a broader focus on youth transitions in the context of changing social, institutional and demographic patterns, literature in this area has explored the variable patterns of transition for young people who experience multiple disadvantages and social exclusion (e.g., MacDonald et al., 2005; Thomson, Bell, Anderson, McGrellis & Sharpe, 2002). Numerous empirical studies in a range of countries attest to the challenges faced by young people transitioning from care, particularly when these transitions are fractured, accelerated, and poorly supported (Courtney, Hook & Lee, 2010; Mendes & Moslehuddin, 2006; Stein, 2006a). While official data suggest an over-representation of people with care experience in the criminal justice system, the links between the difficulties faced in this transitional period and involvement with the criminal justice system have only been explored in a small range of studies to date.

Findings from the Midwest Study identify significantly higher rates of self-reported offending among young people transitioning from care at age 17-18 compared to the general population (Cusick & Courtney, 2007). However, as the study progressed, two years later at age 19, fewer differences in self-reported offending rates were found between the two populations; that said, young care leavers reported higher rates of certain types of offending, including damage to property and engagement in violent offences (Cusick & Courtney, 2007). Notably, while differences in self-reported rates of offending between the two groups declined over time, a significantly higher proportion of care leavers reported having been arrested by age 19. The report authors

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comment that this finding may reflect the higher engagement in serious offending by youth in out-of-home care, *or* it could be because care leavers face higher levels of scrutiny by both child welfare systems and the police (Cusick & Courtney, 2007).

Another US-based study conducted in Missouri explored the characteristics associated with a heightened risk of involvement with the criminal justice system for young people transitioning from care (Vaughn et al, 2008). In this research, 20 per cent of young people (n=404) reported an arrest experience over a three-year period (from ages 17-19). Notably, most young people (69 per cent of the sample) were classified as presenting a 'low-risk' of criminal involvement. Exploring a range of variables including experiences of maltreatment as children, neighbourhood characteristics, levels of family supports, mental health difficulties and substance misuse, this research generated typologies indicating factors most associated with risk of criminal justice involvement.

Young people at 'low-risk' of legal involvement were more likely to be female, 'of colour' and less likely to associate with deviant peers or to live in socially disorganized neighbourhoods. While the difference between genders is not surprising given the differential rates at which men and women are processed through the criminal justice system, the lower rates of contact for young people 'of colour' (an aggregate group of 'non-white' young people) is surprising, particularly in light of a wide body of research noting disproportionate minority contact with the criminal justice system. The authors posit that this finding may reflect the fact that white young people may be less likely to be placed in care, but that when they are, they may present with more complex needs.

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Having employment and family supports also reduced the risk of legal involvement (Vaughn et al., 2008). Conversely, young people at 'high risk' of involvement in offending were more likely to have a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) or a conduct disorder. They were also more likely to live in socially disorganized neighbourhoods and associate with delinquent peers. Further, they experienced higher levels of prior physical abuse compared to other young people in the sample. The range of factors identified in this study focus more on the individual characteristics of young people rather than the nature of the care system, although one variable included the number of caseworkers a young person had experienced during their time in care. Young people in the higher risk group had a greater number of caseworkers throughout their time in care, although this was not found to be statistically significant (Vaughn, et al., 2008).

THEORETICAL EXPLANATIONS

Earlier findings from the Midwest Study cited above (Cusick & Courtney, 2007) and Vaughn et al.'s (2008) research suggest that an interplay between individual characteristics and a young person's environment may place young people at risk of offending in the period during which they transition from care. Importantly also, Cusick and Courtney note that young people who are in receipt of services may be subject to greater surveillance leading to quicker escalation into the criminal justice system. In further studies on this topic, criminological theory, exploring the relevance of social bonds and the impact of 'strain' has been employed to help explain why

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some young people transitioning from care may be at heightened risk of involvement in the criminal justice system.

Additional analysis of the Midwest data-set by Cusick et al., 2012, following young people's arrest rates up to age 24, employed Hirschi's (1969) 'social bond' theory to explore the factors which place youth transitioning from foster care at greater risk of criminal justice involvement. Social bond theory posits that individuals bonded to social groups (e.g. family, church, schools) are less likely to engage in delinquency (Hirschi, 1969). Sampson and Laub's (1990) elaboration of this theory integrates a life-course perspective in considering these mechanisms of social control and their variable influence over various life stages. This perspective may have particular salience given that placement in the care system is likely to have an effect on social bonds. Placement in care may enable young people to form alternative social bonds, (Cusick, et al., 2012), and/ or it may disrupt existing social bonds (for good or ill). Movement from the care system may also mark a point of disruption in social ties and links to institutions.

Analysis of the Midwest data shows that for young people transitioning from care, social bonds in the interpersonal domain (i.e., attachment to birth parents or substitute caregivers) did not have a significant effect on likelihood of arrest. The one notable exception to this was where young people reported not having a biological mother. Foster youth without a living mother experienced a 64 per cent increase in the risk of arrest. However, bonds to education and employment were associated with a lower risk of arrest (Cusick et al., 2012). With regard to the characteristics of care placements, young people who were in residential care at the time of the baseline

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interview faced a significantly higher risk of arrest compared to young people in non-relative foster care. Multiple placement moves were also associated with higher risks of arrest (Cusick et al., 2012).

Further analysis of this data highlights important gender differences in regard to criminal justice involvement for young people transitioning from care (Lee, Courtney & Hook, 2012; Lee, Courtney & Tajima, 2014). For young women who had become parents and had their child residing with them, there was a lower risk of arrest. However, a similar effect was not found for young men. Drawing on wider research on the impact of motherhood as a mechanism of informal social control for women from poorer backgrounds, Lee et al. (2014) note that further research is required into the longer-term impact of social exclusion for young women who become parents at an early age.

Another study of young people leaving care in England explored whether they experienced particular strains that made them more vulnerable to offending (Barn & Tan, 2012). This drew on Agnew's (1992, 2001) concept of 'General Strain Theory' (GST) which argues that strains or stressors increase the likelihood of negative reactions, such as criminal behaviour. According to Agnew, there are several possible categories of 'strain'. These include loss of positive stimuli (e.g., end of a relationship), the presence of negative stimuli (e.g., experiencing abuse) and 'goal blockage' (e.g., failure to achieve just goals) (Agnew, 2001, p.319) This research explored whether strains such as experiences of victimization, unemployment, school exclusion or homelessness placed young care leavers at risk of offending.

Significantly, many young people were themselves victims of crime (40.7%), and

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young women reported high rates of serious victimization such as rape, attempted rape and domestic violence. Perhaps unsurprisingly, young people who experienced a range of these strains were more likely to engage in criminal activity, while those who acquired higher education and employment skills were less likely to do so (Barn & Tan, 2012).

EXPANDING THE GAZE

The need to develop theoretical perspectives in relation to a growing body of empirical literature on the challenges facing young people leaving care has been noted (Stein, 2006b). As we have observed at the outset of this chapter, the literature on the overrepresentation of young people from care in criminal justice systems has predominantly focused on three main domains – individual risk factors, the nature of the care system, and the difficulties facing young people as they transition from care. Some of the literature has integrated these elements. The application of criminological theory to analysis of this issue has so far focused on the strains that young people experience and their social bonds. Both of these perspectives provide useful insights, however, we argue there is a need to look more broadly at the intersection of structural and individual factors, and at how a young person's sense of identity is bound within this intersection.

Findings from research on desistance from crime may provide a useful framework, both for research and practice. This body of work focuses on the reasons why people stop offending, but through this lens we can gain insights into onset of offending, and what causes people to cease offending over time. While different emphases are placed

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on the relative importance of structure and agency in desistance literature (e.g., Giordano, Cernkovich, & Rudolph, 2002; Healy, 2014; LeBel, Burnett, Maruna & Bushway, 2008), more recent syntheses note the importance of the interplay between structure and agency in the process of desistance (Farrall, Sharpe, Hunter and Calverley, 2011; LeBel et al., 2008; McNeill, Farrall, Lightowler & Maruna, 2012). Also, the need to pay adequate attention to both *objective* (e.g., employment) and *subjective* dimensions (e.g., motivation or self-beliefs) of the desistance process is emphasized (Laub & Sampson, 2001; LeBel et al., 2008).

Summaries on this topic identify three main domains in the research literature: maturational reform, social bonds and subjective narratives (Maruna, 2001; McNeill et al, 2012). Maturational reform encompasses both age-related changes in patterns of offending behaviour (best illustrated by the age-crime curve which shows peak rates of offending in the late teens/early twenties and a decline in offending over time), and age-related life transitions (Kazemian, 2007). Research on social bonds demonstrates that desistance from offending is linked to informal social controls as a result of stronger links between an individual and society (e.g., through employment or parenthood) (Sampson & Laub, 1993). Important subjective level themes include feelings of hope and self-efficacy, shame and remorse, the extent to which stigma is felt and internalized and the capacity of a person to envisage and build an 'alternative identity' (see: Giordano et al., 2002; LeBel et al., 2008; Maruna, 2001). Underscoring the relationship between subjective narratives and life transitions that are often associated with maturation, the types of 'alternative identities' identified in research on this topic include 'being a good parent' or a 'family man' (LeBel et al., 2008).

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Further important contributions of desistance research note the importance of both social and human capital in desisting from crime (McNeill et al., 2012). Advocates of desistance-based approaches argue that this perspective provides a useful counter-balance (if not a corrective) to deficit models that view individuals as risk subjects to be managed (McNeill et al., 2012; Weaver & McNeill, 2008). Importantly there is also recognition of the capacity of individuals to change. It is worth noting that there are resonances between the strengths-based perspective of desistance scholarship and research on resilience, particularly its later iterations which have focused on wider social domains (Fitzpatrick, 2011). Although for an overall critique of the manner in which the concept of resilience has been deployed in social work, see Garrett (2015).

Some of the key themes of desistance research – maturational reform, social bonds and subjective narratives have clear resonance with the over-representation of young people leaving care in the criminal justice system. Focusing attention towards social bonds underscores the need to develop strategies to support young people in their transition from care. That some research suggests an association between desistance from crime and 'the opportunities ... afforded in the transition to adulthood' (Barry, 2010, p. 165) further emphasizes the need for support during this period. Further to this, greater recognition of the importance of subjective narratives underlines the degree to which identity is bound up in interaction with systems that have the power to inscribe labels.

CONCLUSION

Integrative approaches to the study of desistance (i.e., those that aim to capture the interplay of agency and structure) and the importance of reflexivity and personal identity (e.g., Farrall et al., 2011; Weaver, 2011), provide a useful framework for research and practice in this area. Of course the interplay between structure and agency and debates about the relative significance of each is not new (e.g., Giddens, 1984). However, in our reading of the research on the intersection of looked after populations and criminal justice systems, we note that insufficient attention is paid to both macro (such as social security provisions) and micro level factors (such as young people's sense of identity) and the interactions between these domains. With an over-emphasis on individual risk factors there has been limited attempt to bridge the divide between structure and agency. Even where structure is explored, this has tended to be at the cursory level of system characteristics (e.g., placement types and number of placement moves). This occludes attention towards the wider social policy context in which the care system operates, where comparative analysis highlights significant variation – e.g., in the rates of children in care and the range of welfare entitlements and supports available to families (Carr, 2014; Munro, Stein & Ward, 2005; Stein & Munro, 2008; Stein, 2014). Of course a similar point can be made in respect of demographic patterns in criminal justice systems (Cavadino & Dignan, 2005).

Similarly, attention has focused on the characteristics of young people in identifying risk factors that may increase their likelihood of becoming involved in offending. Within this body of work, limited attention has been paid to young people's subjective accounts – that is the manner in which they interpret, navigate and make

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sense of their situations. Given that identity is a core issue for young people in care

(Fransson & Storo, 2011; Lee & Berrick, 2014) the question of identity in relation to the transition from care and involvement in the criminal justice system would seem to be an important area to focus attention - not least because both systems (i.e., care and criminal justice) potentially shape identity in profound ways. Findings from research on desistance provide a useful bridge across some of these areas, directing attention towards the individual in context, a young person's journey through the care system, questions of identity, transitions from care and the wider social context of support and opportunities.

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