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Prieur, Annick; Henriksen, Ann-Karina

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‘SO, WHY AM I HERE?’ AMBIGUOUS PRACTICES OF PROTECTION, TREATMENT AND PUNISHMENT IN DANISH SECURE INSTITUTIONS FOR YOUTH

Ann-Karina Henriksen* and Annick Prieur

This article explores how a nexus of punishment, treatment and protection creates unique mechanisms of control in secure institutions for young people. It is based on a study in Danish secure institutions, which accommodate young people confined on legal and welfare grounds. In these hybrid institutions, protection, treatment and punishment merge in ambiguous and contradictory practices that are experienced as unjust or even harmful by the young people and possibly breach the UN Convention of the Child. These practices are explored through a Foucauldian theorization highlighting the disciplinary practices unique to the confinement of minors. The article contributes to wider debates on the treatment–punishment nexus, Nordic exceptionalism and criminal justice for youth in an era of neoliberal penal-welfarism.

Key Words: young people, closed institutions, Nordic exceptionalism, punishment, lived experience, children’s rights

Introduction

This article aims at analysing how multiple purposes of providing protection, treatment and punishment for troubled and troublesome young people merge in Danish secure institutions and how young people experience these merged purposes. While secure institutions are placed within Child Protection, they share significant traits with prison regimes such as being surrounded by high walls or fences and aiming to motivate young people to a life without crime. The institutions largely serve the purpose of confining young people in surrogate custody, to comply with the Convention of the Rights of the Child (CRC) stating that children should not be confined with adults. This urges us to explore what happens when protection merges with treatment and punishment in attempts to better troubled young people.

In Denmark, few minors end up in prison, as the age of criminal responsibility is 15 and lenient sentencing applies to minors in the age range 15–18 (Storgaard 2005). However, a substantial number of minors, also under 15, are placed in secure institutions, which accommodate young offenders serving sentences, youth in protective care and youth in surrogate pre-trial custody in the same units. The overarching research question for this article is how young people experience being subjected to confinement with multiple purposes and how institutional practices possibly breach the CRC.

*Ann-Karina Henriksen, Department of Social Work, Copenhagen University College, Kronprinsesse Sofiesvej 35, 2000 Frederiksberg, Denmark; ankh@kp.dk; Annick Prieur, Department of Sociology and Social Work, Aalborg University, Krogshøjvej 7, 9220 Aalborg Ø, Denmark; ap@socsci.aau.dk
We will first present the historic context, purposes and clientele of Danish secure institutions. Thereafter, we will review literature on treatment in confinement, before highlighting key theoretical perspectives on the ambiguities involved in the combination of treatment and confinement or of help and control. After a description of the study follows an analysis divided into three sections titled: treatment, protection and punishment. We demonstrate how these purposes are imbued with ambiguities and contradictions, producing uncertainty, adversity and distrust among the young people. From a children's rights perspective we argue that some of these practices may breach the CRC, while other practices reveal inadequate legal protection in Danish law. Finally, findings are discussed in light of scholarship on the treatment–punishment nexus.

The Penal Rationalities Behind Secure Institutions for Youth

The purposes of confinement have been multiple and changing (cf. Foucault 1979; Christie 1981; Engbo and Smith 2012). Confinement is thought to have a deterrent effect, so the confined do not want to return after release. Confinement may serve to incapacitate, as criminals cannot harm the public while being locked up, and are incapacitated to pursue a dangerous lifestyle with drugs, violence and self-harming behaviour. Furthermore, confinement may serve the purpose of rehabilitation, through various forms of work training, schooling or treatment.

The idea that confinement can and even should be beneficial for the confined lies at the heart of modern penal rationalities (Christie 1981; Garland 2001; Engbo and Smith 2012). Since the beginning of the 19th Century, the ‘disciplinary apparatus’ (Foucault 1979) of penal institutions have included various forms of work, education and treatment with a series of special institutions and programmes for different kinds of offenders. Rehabilitation through penal institutions has, however, always been difficult to accomplish and took a blow in the 1970s discouraging era of ‘nothing works’ (Martinson 1974). In the United Kingdom and the United States, a neoliberal era of punishment took over, according to Garland (2001). Garland suggested that this punitive turn mainly replaced rehabilitation and treatment, as it showed little interest for offenders’ background, wellbeing and future. In Denmark, however, it seems that rehabilitation instead has changed in focus and merged with punitive practices in new ways. This is for instance evident in a wide range of programmes offered in Danish prisons, such as cognitive skills, anger management training and drug treatment programmes, thus merging treatment and punishment to accomplish rehabilitation through the use of rewards and sanctions.

Scandinavian countries have low incarceration rates, relatively short sentences and relatively good prison conditions – a combination that has been termed Scandinavian exceptionalism (Pratt 2008). Compared to the United States or United Kingdom, Scandinavian penal practices are undoubtedly in the soft end, but, as many scholars have shown (i.e. Barker 2013; Reiter et al. 2018), the pains of imprisonment are still there. They may even be quite severe, as Smith (2012) has shown, for solitary confinement. Such studies demonstrate the importance of looking beyond formal structures and rhetoric towards explorations of the lived experiences of confinement. This article extends on this scholarship, challenging the imaginary of an exceptional Nordic penal
culture as well as of the Nordic welfare states, renown for protecting and providing extensive services for troubled and troublesome children and youth.

Danish criminal justice has been based on the utilitarian idea that punishment should reduce crime (Balvig 2005). Penal services have therefore had the double purpose of executing punishment and providing rehabilitation. The purpose of rehabilitation was written into the Danish penal code in 1930 and a series of specialized institutions for different kinds of offenders (alcoholics, mentally retarded, etc.) were established, aiming at effectuating punishment while securing rehabilitation. To put it simply, they were expected to be doing good while doing harm. A youth prison modelled after the British borstals was introduced in Denmark in 1933 (Vestergaard 2017), but public criticism pointing to the severity of the sanctions, the strains of indeterminate sentences and the disappointing rates of recidivism contributed to its abolition in 1973. The youth prisons were, however, quite rapidly replaced by so-called secure institutions, placed within Child Protection. The replacement suggests a rehabilitative stance to youth offending and, while being the most intrusive intervention within Child Protection, the objective is not to punish but to rehabilitate and motivate the young people to a life without crime.

Muncie (2008) has argued that in spite of a general adherence to the CRC, a punitive turn has reached youth justice in much of Western Europe, where ‘punitive values associated with retribution, incapacitation, individual responsibility and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support’ (Muncie 2008: 110). Sallée (2017), for instance, points to a new French model of ‘rehabilitation under constraint’ that (Sallée 2017: 3) ‘underpins a moral economy based on a responsibilization imperative’. He claims that while this model may reflect a neoliberal thinking that currently permeates juvenile justice around the world, there are also important cultural differences. The French juvenile justice system has not adopted the so-called neoliberal subject of penal law, who, in order to manage his/her own risks, needs to develop self-control. The French version of a neoliberal and punitive turn relies more on a paternalistic view drawing on psychoanalytic thinking, where the juvenile delinquents are seen as small savages in need for civilization.

With this in mind, we turn to the Danish context, where ideas of rehabilitation seem to stand particularly strong. Remaining at the softer end of the rehabilitation–punishment continuum, Denmark has also experienced a ‘punitive turn’ from the early 1990s on (Balvig 2005) with longer prison sentences and a gradual move within penal services to focus on the protection of society rather than rehabilitation. The capacity of secure institutions has expanded, particularly after Denmark signed the CRC in 1991, obliging not to confine children with adults and to keep confinement as lenient as possible. In the heyday of secure institutional capacity from 2010 to 2012, there were a total of 145 places. Today, there are 106, primarily due to a significant drop in youth crime. Currently 75 per cent of young people in secure institutions are placed on legal grounds, either in pre-trial custody or to serve a sentence, and the remaining 25 per cent are placed on welfare grounds for ‘pedagogical observation’, for protection (being considered a danger to others or themselves) or for treatment (Danske Regioner 2017). Placement on welfare grounds requires a decision by a Municipal Board of Children and Youth based on a caseworker’s assessment and recommendation. Secure placement should be a last but necessary intervention to protect the child, i.e. from developing a drug abuse or
serious crime involvement (Danish law on Social Services §63). Since 2010, placement in pre-trial custody has decreased by 40 per cent, while placement on welfare grounds has more than tripled (Danske Regioner 2017), suggesting a punitive turn in welfare provision for troubled young people. While those placed on legal grounds are between 15 and 18, the minimum age for placement on welfare grounds is 12.

Secure institutions are closed facilities. Fences surround the premises, staff carry alarms and focus on risk management and security. The institutions are small, with two to four units typically accommodating five young people living in private rooms, sharing a living room and a kitchen. They all offer school and sports activities, as well as selected cognitive programmes aimed at reducing violent behaviour and drug abuse. The average length of stay is 65 days; however, a considerable number of young people are confined for more than six months. The young people rarely leave the premises during their stay, and most of them do not know when their stay terminates.

The secure institutions thereby serve multiple purposes, as they deliver both punishment, protection and treatment to the confined. The three purposes correspond neatly to the three ways that penal sanctions can work on the sanctioned: through deterrence, through incapacitation and through resocialization (cf. Christie 1981). A core argument of this article is that when the Danish secure institutions seek to accomplish all aims concurrently, the result is a series of contradictory practices that are difficult to understand and handle for the ones subjected to them.

Studies on treatment in confinement

Much of the literature on treatment in confinement examines whether rehabilitation is accomplished (e.g. Wilson et al. 2005; Tong and Farrington 2006; Lipsey et al. 2007), while our purpose is to explore how an amalgamation of treatment, protection and punishment is experienced and complies with children’s rights. Researchers have found that treatment and care within institutions with a mandate to punish result in ‘contradictory, uneven and diffuse strategies of governance’ (cf. Svensson 2003; Pollack 2009, 126), which undermines the good intentions of rehabilitation (Fox 1999; Hannah-Moffat and Shaw 2000; Kendall 2011). Crewe (2011) argues that prison-based treatment adds elements of ‘tightness’ to the pains of imprisonment because treatment goals are opaque, yet deeply embedded in the penal governance of prisoners giving or depriving them of access to resources, privileges and even early release (see also Laursen and Henriksen 2018). Scholars also highlight how treatment within the prison panopticon produces ‘embodied surveillance’ (McCorkel 2003), where prisoners monitor themselves and each other as a part of treatment practices. Nielsen and Kolind (2016) have explored similar dilemmas with respect to drug treatment within Danish penal facilities. The staff make rapid shifts between treating inmates as offenders and as clients, for instance, using isolation cells as sanctions for lack of treatment compliance. Feminist scholars argue that treatment is gendered and that women offenders are subjected to ‘therapunitive’ interventions (Carlen and Tombs 2006) that require women to build self-esteem and take responsibility and control of their lives while ignoring structural constraints and disadvantages in women’s lives (McCorkel 2003; McKim 2008; Wyse 2013). This is particularly relevant for how young women are treated in secure institutions.
The scholarship on youth in confinement remains limited yet documents how children and young people are confined in institutions serving multiple purposes, often in a blurred space between criminal justice and child protection services. As pointed out by Bessell and Gal (2008), to see children as bearers of human rights rather than as mere recipients of welfare and protection was, at the time of their writing, a recent and marked shift in social policy in several Western countries. The implication was that care and protection shifted from being an act of adult benevolence to an entitlement for all children without discrimination (Bessell and Gal 2008: 13–14): ‘Rather than viewing children as vulnerable, needy and incompetent, children would be recognized as bearers of rights who have competencies, legitimate views and experiences.’ Quite symptomatically, a special issue of *Youth Justice* (Kilkelly 2008), also from 2008, presents the international standards supposed to regulate this field and reports a series of violations of international conventions in several countries. Nonetheless, the conventions serve to set minimum standards and provide benchmarks for measuring practices.

The CRC’s article three states that adults should consider the best interests of children and young people when making choices that affect their lives. Bessell and Gal (2008) identify the ‘best interest principle’ as the most popular phrase in child protection terminology but also emphasize that it suffers from vagueness. In relation to troubled and troubling youths, it is quite clear that the idea of their best interest is embedded in the language of interventions. In the Nordic countries, as in the United States, United Kingdom and Australia, therapeutic euphemisms proliferate interventions such as ‘intensive care units’ (isolation cells), ‘secure institutions’, ‘secure training centres’, ‘protective care’, ‘locked residential care’, ‘boys’ homes’, or ‘reform schools’. This resonates with Cohen’s (1985) discovery of a new behaviourism in social and penal work that merges punishment and treatment through a euphemistic language that turns punitive measures into protection and care. Thus, youth are increasingly subjected to treatment based on sanctions and reward systems aimed at ‘responsibilization’ (Goodkind 2009; Franzen 2015), empowerment and altering faulty thinking. Studies highlight that youth find the panoptic supervision and disciplining highly intrusive (Schliehe 2014; Henriksen 2017a), that they suffer the pains of indeterminate placement (Vogel 2018), that they struggle to understand unclear grounds of placement and release (Roesch-Marsh 2014; Enell 2017) and that a focus on individual factors may obscure how welfare inaction or institutional neglect contributes to young people’s troublesome behaviour (Myers 2013).

**Theorizing competing logics of treatment, protection and punishment**

This study draws on Foucauldian theorizing of punishment as a disciplining apparatus producing ‘docile minds and useful bodies’ (Foucault 1979:138). Foucault views penal systems as an entangled and comprehensive ‘apparatus of observation, recording and training’ (Foucault 1979: 173), which shapes how confined subjects can be known and can know themselves in settings of confinement. We use this theorization to explore secure institutions as an apparatus in which a range of normalizing, protective and punitive interventions constitute micro-techniques of governance. We also draw on Foucault’s conceptualization of power as a productive force that shapes identities and possibilities, which enables an exploration of not only the powerful effects of
institutional practice and discourse but also of how young people attempt to resist and subvert the apparatus to reclaim agency.

Our concern about competing and conflicting logics also draws on Aubert’s (1958) sociology of law. He compared the different logics of law and medicine to understand the conflicts embedded in the meeting of them. While the former logic considers human problems in normative terms, the latter considers them as illness. The fundamental difference in approach means that the former will focus on the act rather than on the person involved, delimiting the issues relevant for the case, while the latter will take interest in the whole person. The former will react with time-limited sentences, while the latter will prescribe interventions to last until healing is accomplished. While equality is a value for law, medical doctors seek the specific treatment most appropriate for the patient in question. Law ultimately rests on the use of force, while medical practices demand consent. An evident problem emanating from these differences is the question of trust and cooperation between the offender/patient and the punishers/therapists when their contact is not based on a voluntary decision by the latter part. The two logics also regard the question of responsibility differently. From a medical logic, people are usually not held responsible for their illnesses, while legal justice is based precisely on the idea of personal responsibility for one’s acts. We use these insights to analyse the clash between different logics stemming from the multiple purposes of treatment, punishment and protection in the secure institutions. We argue that they produce contradictory practices with potentially harmful effects.

**Methods**

The article draws on an ethnographic study in Danish secure care institutions conducted by Henriksen in 2015. The study was designed as a multi-sited fieldwork based on interviews with management in all eight secure institutions followed by fieldwork in four institutions/ten units where 25 young people and 20 pedagogical staff were interviewed. Ten of the twelve interviewed girls were placed on welfare grounds, and ten out of thirteen boys were placed on legal grounds. Fieldwork usually extended over two to three days per unit with participation in daily activities such as school, meals, cleaning, cooking, playing sports and relaxing. The research also included attending staff meetings and informal conversations with staff. Access to the institutions was negotiated with managers; however, access to unit activities required on-going negotiations with the staff and the young people present, just as consent to participate had to be obtained with consideration of the power structures in a secure institution, such as the implicit pressure being placed by management on staff and young people to participate. Ethnographic fieldwork in young people’s (temporary) homes requires sensitivity to implicit rejections or acceptances. Most of the young people were eager to participate in interviews, initiated invitations to join activities and generally welcomed the research as a break in the institutional routine. While it has been argued that prison settings make it difficult to include the perspectives of both staff and inmates, the dual perspective of this study produced valuable insights on the dynamics and interactions between staff and young people (cf. Liebling 2001). It nevertheless entailed having to negotiate the researcher position in the institutional context by establishing a liminal, albeit temporary position as an ‘atypical adult’ (Corsaro 2005). Field notes
and transcribed interviews were thematically coded in NVivo 10 allowing for multiple theoretically informed analyses of themes relevant for understanding secure care practices. Coding and analysis make up an iterative process (Okely 1994), supplemented by reading scholarship on the treatment–confinement nexus and studies on young people in confinement. From this iterative process, an analytical lens emerged focussing on narratives of protection, treatment and punishment. For this analysis, the codes ‘pedagogy’, ‘treatment’ and ‘sanctions’ were applied, extending on previous analyses of the same data (Henriksen 2017a; 2017b). The quotes are exemplary to illustrate patterns in the aggregated data.

Analysis

The analysis identifies logics and practices of providing punishment, protection and treatment, taking a point of departure in how the staff define the purpose of certain practices or the organization of secure units. It is not easy to keep them apart, as it is a core finding that multiple purposes blend together. In each section, we will, however, foreground one element while showing how the other elements are also present. The aim is to highlight how hybrids of protection, treatment and punishment produce ambiguities and contradictions, which are experienced as unfair and even harmful to the young people, disturb the intentions of the intervention and are contestable from a children’s rights perspective.

Treatment

Secure institutions provide treatment in a pedagogical rather than medical sense, seeking to regulate behaviour, provide safety and stability, teach basic social skills and motivate to a life without crime. As expressed by a staff member: ‘These boys really profit from the structure in here. It is a time-out from their chaotic everyday lives. They need that stability and that is what we give them’. All the young people have an individual ‘plan of action’, identifying their specific development aims. In every unit, large billboards visualize the daily structure displaying who does what with who, when and where. Healthy meals, regular sleep, a tight temporal structure, access to school and physical activity are considered essential elements in the institutions’ pedagogic practice.

The pedagogic practice aims at providing a safe environment and encourage the young people to relate to the staff rather than each other. Normally, a unit with five young people will include three staff members at daytime. The young people are thus constantly supervised, except when they are in their rooms. This limits the exchanges of experiences related to illegal activities, thus preventing secure institutions from becoming sites of ‘learning to become a gangster’ (Bengtsson 2012) and enables the staff to observe and assess the young people’s behaviour in a range of situations. Thus, secure placement implies a panoptic gaze that is difficult to evade. As expressed by Sophia, who was serving time in a prison’s youth unit: ‘Secure institutions are tight. I am so done with pedagogues, always talking and in your face. I never want to go back to a secure unit’. She preferred the prison because of the constant presence and regulation.

1 A one-week visit to a youth unit in an open prison was included to contextualize the secure institutions within the penal institutional landscape.
by staff in secure institutions. Her experience corresponds to Crewe’s (2011) identification of ‘tightness’ as a pain of imprisonment stemming from elusive yet omnipresent forms of treatment and regulation.

As ‘in loco parentis’, the staff attend to the young people’s various needs and concerns: talking to them, sharing meals and regulating their behaviour, including bad language, inappropriate clothing, body posture, table manners and a range of other practices considered inappropriate. The young people frequently experienced this regulation as excessive, as expressed by Adil, aged 17:

*If they think, you shouldn’t sit quite like that on the chair, because they think it looks stupid or because they wouldn’t sit like that, then no one should sit like that. That is what happens with them, how can I say it, they have too much power. They have a say on things that are irrelevant, they control things they shouldn’t be controlling.*

Teaching how to sit on a chair exemplifies what treatment can mean in a secure unit. The staff explain that teaching the young people good manners will improve their chances of functioning in contexts such as school or work, thereby protecting them from future failure and conflict. Adil regards this ‘treatment’ as something they shouldn’t be controlling. If he objects, however, he risks being sent to his room or having the incidence registered in his electronic log. This exemplifies how ‘treatment’ includes ideas of protection from future failure, which is exerted on the backdrop of a variety of potential micro-punishments. The electronic logs are used for the final assessments that inform which interventions are set in place after secure placement. These assessments shape everyday interactions and youths’ resistance to treatment (Enell 2017) and thus work as a micro-technique of control embedded in the wider ‘disciplinary apparatus’ (Foucault 1979) of secure institutions.

Treatment also includes manual-based Aggression Replacement Training (ART) and counselling by a psychologist seeking to motivate the young people to end drug abuse and crime involvement. Many of the young people expressed doubt regarding ART, as many of the techniques and cognitions would not be useful in life outside (cf. Laursen and Laws 2016). Inside, however, ART could be useful, as explained by Mikkel:

*I have taken the ART course, so I know how to articulate an argument with him [staff]] And I did that in the argument earlier in the hallway. I had prepared myself, like I said, ‘Niels, I would really like to talk to you’, all quiet and calm. I don’t know if you have noticed, but I make an effort to talk nicely, because I know that if I am cheeky in the wrong way even just once, then I go down there [pointing to his room], and then I am stuck there for the rest of the day.*

Mikkel uses ART techniques in disagreements with the staff to avoid being confined to his room. Thus, ART provided valuable tools for navigating between treatment and punishment in secure units.

Some of the boys rejected attending ART or counselling aimed at altering their ‘criminal mind set’. While participation was voluntary, staff viewed those who did not attend as particularly difficult and as ‘holding on to that whole gangster-attitude.’ In everyday negotiations of privileges, the staff expressed the need to keep some boys ‘on a tight leash’, anticipating conflict and violence. This exemplifies the dilemmas involved in providing treatment within institutions with a mandate to punish (Svensson 2003; Pollack 2009), as treatment becomes difficult to reject or evade. The treatment–confinement nexus is further complicated by paternalistic views on the young people needing treatment for their own safety and the safety of society. Treatment is thus
embedded in penal governance regulating access to resources, privileges and terms of release (Laursen and Henriksen 2018).

A few young people are placed in secure institutions on grounds of treatment, even though the institutions are not treatment institutions per se but rather aim to secure, access and motivate the young people for future interventions. A substantial number of the young people have psychiatric diagnoses demanding insight in their treatment needs, which the staff obtain through an external psychiatrist. Some staff members provide pedagogical treatment informed by psychiatric insights on self-harm, anxiety, depression or post traumatic stress disorder. However, as not all the staff had these competences (especially not the vicarious staff), the result was somewhat incoherent forms of treatment coupled with punitive forms of protection (see Henriksen 2017a). The young people with psychiatric difficulties expressed frustration with staff not always knowing how to handle their difficulties, which sometimes resulted in the use of force or isolation. A self-harming girl explained that ‘it makes it worse, not knowing if they can handle it’. Three other girls with serious psychiatric diagnoses also expressed feeling insecure whether staff responses could trigger self-harm or violent behaviour.

Treatment in the shape of observation, micro-regulation and assessment constitutes a unique assemblage of disciplinary power in the institutional landscape of both child protection and criminal justice. The behaviour of Danish pre-trial remand prisoners is not observed and assessed by prison staff nor are assessments made in pre-trial remand that inform their conviction or future interventions. Children living in residential care are not subjected to panoptic observation, cannot be locked up and prevented from leaving the institutions. Thus, the hybrid of treatment, protection and confinement produces a tight ‘disciplinary apparatus’ of behavioural regulation and control, which is punitive not only compared to child protection but also to the criminal justice system.

From a children’s rights perspective, the fact that the practices are experienced as invasive does not necessarily represent a violation of the CRC or Danish law. The legislation regulating their confinement is vague and provides them with limited protection for privacy and self-determination. To confine young people with severe psychiatric problems without providing specialized care does, however, violate article 19, stating that children should be protected from negligent treatment while in the care of the state.

Protection

Placement of young offenders in secure institutions constitutes an alternative to incarceration, intended to protect them from violence and the negative influence of hardened, adult prisoners. Secure institutions also provide protection for young people assessed as posing a danger to themselves and/or others. Protection is provided by fences, locked doors and staff carrying alarms. Staff explain that ‘the walls do their work’ implying that confinement creates a controlled environment enabling them to work with the young people without being disturbed by them doing drugs or running away.

The protective measures convey, however, a sense of punishment, as expressed by Tanja, a 15-year-old girl: ‘The fence out there really scared me, I thought, I am really in prison now’. Especially those placed on welfare grounds report the sight of fences, barred windows and heavy metal doors as shocking. Feelings of injustice were clearly articulated with statements like ‘I don’t think I need to be confined’, ‘I don’t know why
I am here’ or ‘it’s just time passing, there is no point of me being locked up’. While the young people regarded confinement as a legitimate response to repeated and/or serious offending, it was experienced as a punitive response to having social problems, expressed by a girl as ‘being confined in a place for criminals’.

During their stay, the young people rarely leave the premises except for court appearances or medical visits. Thus, secure placement implies an absolute loss of freedom and autonomy over aspects ranging from getting out of bed, what and when to eat, what to do and who to spend time with. Access to phones and computers is limited and controlled, thus limiting social bonds to peers and family. For the young people in pre-trial custody, this is a condition set by the judge, while for most of the young people in protective care, it is a consequence of being placed in units together with those in pre-trial custody. The staff considered reduced contact with the outside world, particularly the absence of mobile phones and social media, beneficial to the young people. Illustrating yet another blurred line between punishment and protection, these restrictions are legitimated as either a ‘consequence’ of offending or a way of protecting them from chaotic social relations. However, access to social media and mobile phones is pivotal for maintaining social relations and staying informed about life on the outside. Such restrictions on young people without a court order of controlled communication potentially breaches the CRC, which states that children have the right to maintain social relations to family (article 9) and should have access to multiple forms of information and mass media (article 17). However, these rights must be observed except when competent authorities assess contact to be against the interest of the child, thus leaving the young people without the protection intended in the CRC.

The number of young people placed in secure institution on welfare grounds has increased from 34 (out of a total of 740 placements) in 2010 to 128 (out of 535 placements) in 2016 (Danske Regioner 2017). According to staff, the most common reasons for being placed in secure institutions on welfare grounds—and hence for protection—was drug abuse, crime involvement and running away from out-of-home care. All these concerns were present in the placement of Betty, aged 17, who found her placement ‘strange’:

*It’s strange I think, because they place me here just before turning 18, and they won’t help me after I’m 18. So why am I here? That’s what I think. Because I can’t get on with my education or start drug treatment, you know start my life or something. I am just stuck here. The only thing they take away is three months, where I don’t smoke marihuana, that’s it. But then what, are they just going to throw me away or what?*

Betty was placed on grounds of danger against herself and others. The staff explained that she had a history of being violent and was in ‘a very poor state when she arrived’ due to heavy drug abuse and several months of street life allegedly with involvement in transactional sex for shelter and food. The purpose of placement in secure care was to protect her from a lifestyle detrimental to her mental and physical health as well as to her future life chances and successful transition to adulthood. However, the protective measure left her without an intervention she felt would help her in the long-term, such as drug treatment, permanent housing or access to education.

Secure units can apply a range of restrictive measures to enable treatment and protection of young people as prescribed by the Law on Adult Responsibility for Children and Youth in Out-of-home Care. The law clearly states, however, that restrictive measures

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2 LBK 507, Lov om voksenansvar for anbragte børn og unge.
are only permitted as protective interventions, while using them as sanctions would be illegal. The measures include locking young people in their rooms, body searches, room searches, placement in isolation cells, confiscation of personal items and the use of physical force if the young person poses a danger to themselves or others. It is, however, not always clear when the use of physical force is necessary for protection, as illustrated in this discussion of an incident:

**Interviewer:** I’m just not sure I understand why you didn’t just leave her, like to cool off in her room?

**Staff:** In that case, we had to get in there, she was throwing the furniture and breaking stuff.

**Interviewer:** But she wasn’t hurting anyone, so why not just let her be, let her act out?

**Staff:** And end up with a huge bill for repairs, a broken TV, broken furniture? It could cost her thousands of Kroner, we have to protect her from that kind of expense.

The staff explains why the use of force and a timeout in the isolation cell is a form of protection, preferable to leaving the young person to ‘act out’. This exemplifies how the distinction between protective and punitive measures is blurred, and the young people may experience them as punishment (Børnerådet 2014; Henriksen 2017a).

The staff expressed some frustration with the placement of young people suffering from severe psychiatric troubles like anxiety, self-harm, trauma or being suicidal. Unit managers expressed concern about an institutional vacuum leaving some young people rejected by both youth psychiatry and Child Protection services. As one unit manager said, ‘they [psychiatry] say she is too dangerous and we say yes, but we cannot provide her with the treatment she needs’. While secure care cannot provide specialized treatment, they can protect the young people through a range of restrictive measures such as locking up, room and body searches, placement in isolation cells, etc. In cases of self-harm or suicide risk, they can remove all personal items from the young person’s room. However, being deprived of a personalized space with clothes, posters and other personal items can be experienced as punishment. This was expressed by Sandra, aged 15:

> Thomas [staff] told me that when I just got here, they all thought I would kill myself at any moment. That was really odd, like knowing they had thought that way, and I remember how they would empty my room really often, take out all my things, so it looked like room no. 7, you know the box over there with just a window.

Room no 7 is the isolation cell, which is a bare, tiled room without furniture. The comparison of her cleared room with the isolation cell conveys a sense of punishment. While she admits to having been self-harming, she objects to having been suicidal, so the protective measures appear excessive. Feelings of injustice may not be the only result of such practices, as Pollack and Brezina (2007) found that punitive responses to self-harm or to ‘acting bad’, such as 24-hour surveillance, placement in isolation or the removal of personal items from private rooms might reinforce the need to self-harm or ‘act out’. Another girl, Anna, who was suicidal and self-harmed by eating sharp objects, was protected by 24-hour surveillance with staff sitting outside her open door throughout the night in full view of her bed. This measure, common in psychiatric care, was considered necessary to protect her from harming or even killing herself. Occasionally her room was also cleared of personal items including posters and curtains. After eight months in a secure unit, Anna expressed great despair with the lack of treatment: ‘It really, really bothers me that they don’t understand that I need help. Professional help instead of this detention-people-help’. The latter reference is not clear, but seems
to suggest a call for psychiatric treatment rather than confinement. While her case is atypical, it illustrates how neglect and even legal violations can take place. Removing the curtains of her ground level room violates CRC article 16 regarding children’s right to privacy. The long-term placement in a secure unit constitutes negligent treatment, impinging on article 19. The narratives suggest that the so-called protective measures do not always address the needs of these young people, who may experience them as punitive, excessive and unjust.

Punishment

Punishment is never the explicit purpose of placement in secure institutions. Even for those placed in surrogate remand, the overarching purpose of the stay is rehabilitation, while for those in pre-trial custody the purpose is incapacitation during police investigation. In contrast to prisons, secure institutions provide access to school and have a pedagogical staff. While disciplinary logics and practices may resemble prison regimes, they are justified as pedagogical measures aimed at teaching the young people that their actions have consequences. As a unit leader put it:

*It’s not about punishment. In here, we don’t punish them, we leave that to the judge. We teach them about consequences. When you don’t attend school, it has consequences, when you don’t do chores it has consequences.*

The large majority of the young are placed in surrogate pre-trial custody or serve a sentence. For many of the young people, especially those aged 15 or 16, secure institutions are experienced as lenient compared to prison, while for others it becomes a burdensome amalgamation of punishment and treatment that they would trade with prison if given the choice (cf. Bryderup 2010; Schliehe 2014). Alternatively, they may do as Mohammed and only accept the punitive purpose:

*They forced me in here; now they want to force me to change. No thank you. If I need to talk to someone, I’ll talk to Adil [peer in their unit] or my sister. They are not going to change anything.*

There are many rules in secure institutions and a range of sanctions are applied to maintain order in the units. The most frequently used is ‘sectioning’, which implies having to stay in one’s room for a time period ranging from a few hours to several weeks and losing one’s allowance for this duration. If a young person refuses to get out of bed, to participate in scheduled activities or to comply with institutional rules, s/he is eligible for this sanction. Hence sectioning may be imposed after defiant behaviour, but is mainly framed as a pedagogical intervention. In some institutions sectioning is referred to as ‘individual time’, as a person follows an individualized program in his/her room rather than the program of the unit. As these individual programs should include ‘time for reflection’, the TV-signal was usually cut. The euphemistic language, reminiscent of Cohen’s new glossary of control talk (1985), contributes efficaciously to the blurring of purposes. However, sectioning resembles isolation, which has been critiqued for being a normalized sanctioning practice in the Danish prison system (Reiter et al. 2018) and is included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The use of sectioning in secure units has recently been critiqued by the Danish Children’s Ombudsman for being too frequently used and not systematically reported (Folketingets Ombudsmand 2018). However, while the Law
on Adult Responsibility limits the time in an isolation cell to two hours (four hours in maximum secure units), there is no limit to how long young persons can be sectioned in their rooms.

Sectioning also served a protective purpose. At arrival, the young people were sectioned in their room for the first 24 hours; in one institution, this lasted a week. The staff explained that it allowed the newcomers to adjust to the institutional context, become acquainted with the rules and get past the worst symptoms related to drug abstinences. While none of the young people commented on this initial sectioning, many narrated having been sectioned unfairly and for extended periods. Sometimes a person was sanctioned for longer periods after a violent conflict or repeated trouble in shared activities such as meals or sports. This was the case with Adil, 17, as explained by a staff:

Adil doesn’t eat with the rest of us. He will take his food now and eat it - with a staff member of cause - in the room over there. It’s for his own good, because he always gets worked up and starts silly things at the table. So for him it’s better with that time out. We take away the opportunity of getting into that trouble-making state of mind.

Adil is sectioned for an hour every evening at dinnertime, to give him a timeout and prevent him from getting into trouble, which suggests that his sectioning is legitimated by treatment and protection rationalities. Adil does not comment on this sectioning in the interview but expresses a general experience of being heavily policed by staff and sanctioned for minor transgressions of unit rules. His unit peer, Peter, comments on this too, ‘it’s crazy with Adil, I mean he is in that room all the time, they are hard on him’.

Sanctions could also be collective. Cigarette buds thrown outside the bin could result in closing off the smoking area. If the one in charge of preparing meals was sectioned, nobody would receive a warm meal for dinner, but get leftovers or cold cuts and rye bread. As these sanctions were imposed collectively due to transgression of institutional rules, they were experienced as punishment by the young people. However, the staff maintained that it was not punishment, just ‘a consequence’ of their behaviour. It served as a pedagogical lesson about collective responsibility and team unity.

Another sanction was referred to as ‘one-on-one’: A staff member would be assigned to a specific young person following him/her throughout the day except when s/he stayed in his/her room. One girl got this sanction after the staff had caught her having sex with a boy in her unit and staff suspected she had sex with other boys too. There was an institutional ban against sexual relations to protect the young people from involuntary sexual relations. The unit manager paraphrased the correctional talk he intended to have with her: ‘I will explain to her that we are worried about her and that it is so abnormal. It is not healthy for you to have sex with all of them. You can deny it, but…’ Thus, the sanction included elements of treatment, protection and punishment in a rather unclear entanglement. However, the severe punishment for violating this ban, lasting several weeks, some what conflicts with the age of sexual consent in Denmark being 15. The girl, aged 15, denied having had sex with any of the boys and claimed that ‘really, I can take care of myself’. She found the protective measures unnecessary and humiliating, saying, ‘it makes me feel like a dog’, because she was forced to follow a staff member, rather than the staff member following her. The only way she could avoid supervision was to stay in bed, sleep and wait until her sanction would be lifted. The example illustrates the blending of purposes: The girl was placed on legal grounds, but
instead of punishment she was offered rehabilitation that aimed at normalizing her sexual conduct to protect her mental and physical health. Studies on girls in confinement find that staff often view girls as overly sexual and irresponsible, which legitimates forms of treatment and protection that the girls experience as unfair, unnecessary or punitive (see Overlien 2003; Ericsson and Jon 2006; Henriksen 2017b).

Conclusion

This article has shown how competing and contradictory logics of protection, treatment and punishment merge in secure institutions. A girl was quoted for asking: ‘So why am I here?’ We believe a reason for her uncertainty and confusion is the blending of purposes in these institutions. The young people are awarded a status betwixt and between—not children but not adults either, just as they are not prisoners but not traditional patients either. The scholarship on treatment and punishment largely looks at how logics of help and control collide and contradict each other. Our study highlights how logics of protection adds an extra layer to the treatment–punishment nexus, significantly altering the mechanisms of control and depriving the young people of legal protection against restrictive measures they find unjust or harmful. While children self-evidently need protection, other clients can be constructed as child-like and subjected to protective measures with punitive or counterproductive effects. Thus, the dynamics identified here may be relevant to a range of institutions in the nexus between criminal justice, child protection and mental health. More studies on such merging logics of treatment, punishment and protection could advance our understanding of how efforts to provide treatment and protection for vulnerable groups may be counterproductive when delivered within a punitive frame.

The confinement of minors is imbued with dilemmas of balancing the potential benefits of treatment and protection against the harmful effects of confinement, such as the loss of autonomy and broken social relations. As shown, the blending of purposes may result in welfare neglect. Vulnerable young people, often girls without a criminal record but with a psychiatric diagnosis, are provided only rudimentary treatment and protection in a prison-like setting, with rules and practices bordering on violation of their human rights. Understanding the effects of these merging logics is an important first step for safeguarding troubled and troublesome young people and improving the interventions set in place for their betterment.

The large majority of the practices that the young experience as unfair and even harmful do not violate Danish law and only a few potentially breach the CRC. This suggests that some particularly troubled and troublesome children have limited legal protection while being taken care of by the state. However, it remains important to inform staff and the young people about their rights, including the CRC, to ensure that everyday practices, particularly sanctions, comply with national law and the CRC’s general intentions of providing all children with a healthy and safe environment and the experience of being treated with dignity and respect.

Based on the insights presented in this article, we want to draw attention to a new legislation on young offenders (Folketinget 2018) that the Danish government is about to pass, which extends on the quasi-penal logics documented in this paper. While the age of criminal consent remains at 15, the legislation opens for quasi-judicial proceedings of criminal
offences perpetrated by children as young as ten. Based on a suspicion investigated by the police, a Board of Criminal Youth Justice will adjudicate so-called ‘responses’ that can include any intervention from treatment to secure placement. Only ‘responses’ including out-of-home placement can be appealed. The Ministry of Justice holds that this quasi-judicial practice does not violate children’s right to a fair trial (CRC article 40) because it is not a legal process. However, concerns should be raised regarding children’s rights, as this legislation exemplifies how quasi-penal interventions within child protection and quasi-judiciary proceedings set up to protect children from criminal justice proceedings continue to undermine children’s dignity, worth and rights to fair and equal treatment.

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HENRIKSEN


