

## **The Pitfalls of Separating Youth in Prison: A Critique of Age-Segregated Incarceration**

**Hedi Viterbo<sup>1</sup>**

**Abstract:** Age-segregated incarceration – the separation of youth and adults in criminal custody – has established itself as a legal and human rights norm. Contrary to conventional wisdom, I argue that it suffers from five acute pitfalls. First, it perpetuates age essentialism – the historically recent belief that certain age groups are inherently different and must therefore abide by constrictive (and questionable) age norms. Second, age-segregated incarceration sanctions harshness and apathy toward separated adults, whom it deems less vulnerable and less corrigible. Third, age segregation helps prison present itself as humane and effective, while also entrenching its punitive fixation with blame. Fourth, in conflating protection with age segregation, this practice harms youth: it downplays the risk they face from their peers and the prison staff, overlooks the support some imprisoned adults can offer, and occasions harmful practices such as solitary confinement. Finally, age segregation, in and beyond prison, has a long and ongoing history of oppressing disempowered communities by severing their intergenerational ties. Alternatives such as non-segregated incarceration, age-specific penal reforms, or more refined segregation fail to address – and in some respects aggravate – these pitfalls. What is needed, instead, is to simultaneously undo essentialism and carcerality.

### **Introduction**

Debates about youth justice focus on themes all too familiar to those in the field, such as rehabilitation, retribution, welfarism, justice, and the enforcement of international legal standards (e.g., Muncie and Goldson 2012). Very rarely, if ever, is age-segregated incarceration – the separation of youth and adults in criminal custody – called into question.

This taken-for-granted practice, however, is underpinned by two problematic conceptions: essentialism and carcerality. Crudely defined, essentialism is the belief that a type of person or thing, in this case a person within a certain age group, possesses an intrinsic, invariant, and constitutive nature. It is age essentialism that makes the separation of the young in certain sites appear natural and beneficial. Though ageism is often wrongly associated exclusively with older people (Hagestad and Unlenberg 2005), age essentialism is ageist toward youth (as well as adults, albeit differently, as I argue in this chapter). As for carcerality, it encompasses the ideologies, social forces, and institutions positing imprisonment as a necessary response to transgressions. Combined, these conceptions render age-segregated incarceration seemingly self-evident and desirable, or at least the lesser of all possible evils.

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<sup>1</sup> Lecturer in Law, Queen Mary University of London. For their helpful comments, deep thanks are due to Laura Abrams, Tamar Birckhead, Alexandra Cox, Barry Feld, Maayan Geva, Nicola Lacey, Daniel Monk, Leslie Moran, and Christine Piper.

Within these prevailing parameters, the only conceivable alternatives are non-segregated incarceration or youth-specific reforms. Illustrating this is the view – voiced by some proponents of a so-called toughness on youth crime – that young people in conflict with the law should be imprisoned in adult facilities. While potentially eroding age segregation, this position remains well within carceral logic. Also problematic, albeit differently, is the ostensibly progressive claim that young people must never be held behind bars, regardless of whether they are separated from their adult counterparts. Here, the opposition to incarceration is reserved exclusively for the young, the implication being that for others – namely, adults – prison may not be out of the question.

My aim in this chapter is to radically challenge both the practice of age-segregated incarceration itself and contemporary debates about it. The next section outlines the enshrining of this practice as a legal and human rights norm, at the international, regional, and domestic levels. In each of the sections that follow, I lay bare a hitherto overlooked pitfall of this norm. First, I argue that age-segregated incarceration reinforces the ageist, essentialist, and historically recent belief that “youth” (a term subject to varying definitions) are inherently different and, hence, must follow constrictive age norms. Second, age-segregated incarceration portrays the separated adults as less vulnerable and less corrigible, and thus sanctions harshness and apathy toward them. Third, this practice legitimizes imprisonment, by entrenching its false image as humane and effective as well as its punitive preoccupation with blame. Fourth, in conflating protection with separation from imprisoned adults, age-segregated incarceration harms youth. It does so in several ways: downplaying the risk youth face from their peers and the prison staff; overlooking the support some incarcerated adults can offer; and leading prison staff to use harmful measures such as solitary confinement in order to maintain age segregation. Lastly, age-segregated incarceration, as well as comparable practices beyond prison, have a long and ongoing history of oppressing communities by breaking their intergenerational ties.

Familiar alternatives, such as non-segregated incarceration, age-specific reforms, or more refined segregation, fail to adequately address these pitfalls, and in some respects actually aggravate them. What is needed, instead, is to move past essentialism and carcerality. This chapter provides an outline of the issues in question, with the aim of stimulating further conversations and offering a more exhaustive analysis in the near future.

### **The law of separation: Age-segregated incarceration as a legal and human rights norm**

Over the course of the 19th century, discrete youth justice systems started to emerge in Western countries (May 1973; Magarey 1978; Platt 1977; Shore 2003). Since then, with very few exceptions, age-segregated incarceration has become the norm across the Global North, including jurisdictions where such separation is not legally mandatory (Siegel and Welsh 2017). There remain instances of non-separation (Goldson and Kilkely 2013; Goldson and Muncie 2012), but these are limited exceptions, rather than the rule. The United States, for instance, generally prohibits “sight or sound contact” between incarcerated youth and adults, defined as “any physical, clear visual, or verbal contact that is not brief and inadvertent” (Juvenile Justice and Delinquency Prevention Act 1974, §§ 103, 223). Non-separation, though permitted in some US states in certain circumstances, has sharply decreased following recent reforms, and is expected to shrink further as a result of a 2018 amendment to federal law (Pilnik and Mistrett 2019). In England and Wales, pursuant to statute, youth are held separately in so-called Young Offender Institutions (currently about 73% of incarcerated youth), Secure Training Centers (18%), and Secure Children’s Homes (8%) (Her Majesty’s Prison and Probation Service 2019).

International law, too, now overwhelmingly enshrines age-segregated incarceration as the norm. Article 37(c) of the 1989 UN Convention on the Rights of the Child (hereinafter: CRC), the world's most extensively ratified international treaty, formulates the separation principle in the following terms: "Every child deprived of liberty shall be ... separated from adults unless it is considered in the child's best interest not to do so."<sup>2</sup>

Thus, though non-separation is permitted in exceptional and unspecified circumstances, as a default, age-segregated incarceration is presumed to be in young people's best interest. This perceived sanctity of the separation norm is further reinforced by the dominant human rights discourse. Instituted by the CRC, the UN Committee on the Rights of the Child (2007, ¶ 104) has emphasized: "The permitted exception to the separation of children from adults stated in article 37(c) of CRC, 'unless it is considered in the child's best interests not to do so', should be interpreted narrowly." This was later reconfirmed by the UN Special Rapporteur on Torture (2015, ¶76): "Children should be appropriately separated in detention, including ... those in conflict with the law, children awaiting trial and convicted children ... Children detained under criminal legislation should never be detained together with adult detainees. ... [T]he permitted exception ... provided for in article 37 (c) of the Convention on the Rights of the Child should be interpreted *sensu stricto* [i.e., narrowly]."

So powerful is the separation norm that human rights organizations frequently quote Article 37(c) while entirely omitting its "best interests" exception. Such erasure of the non-separation exception is found in countless and varied human rights publications, including those of Amnesty International (2005, 6; 1997, 5), Human Rights Watch (2012), Save the Children (2005, 16), UNICEF and Terre des hommes (Albanian Ministry of Labor et al. 2010, 34, 100), the US-based Campaign for Youth Justice (2016), the Swiss Institut international des droits de l'enfant (2010), SOS Children's Villages – Canada (2009), Thai Lawyers for Human Rights (2017), and the Scottish Institute for Residential Child Care (2005, 4).

Other international legal documents enshrine age-segregated incarceration even more categorically, with no exceptions whatsoever. Thus, Articles 10(2)(b) and 10(3) of the widely ratified International Covenant on Civil and Political Rights (1966) stipulate: "Accused juvenile persons shall be separated from adults ... Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status." Equally unequivocal are two UN General Assembly resolutions: the Standard Minimum Rules for the Treatment of Prisoners (adopted in 1955, revised in 2015, and since the revision called the "Nelson Mandela Rules") and the Standard Minimum Rules for the Administration of Juvenile Justice (1985, also known as the "Beijing Rules"). The former instructs, in Article 11(d): "Young prisoners shall be kept separate from adults" (this provision was not revised in 2015). The latter expands on this unreserved commitment to age segregation (¶¶ 13.4, 26.3): "Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. ... Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults."

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<sup>2</sup> Article 1 of the CRC defines "a child" as "every human being below the age of eighteen years unless under the applicable law applicable to the child, majority is attained earlier." In addition, Article 9 generally prohibits separating a child from her/his parents against her/his will without due legal process; however, where such separation results from detention or imprisonment, all the Article requires (with certain caveats) is to inform the child or the family of the removed child's/parent's whereabouts.

In some documents, exceptions to the separation norm are allowed, but they are very specific and narrow. Under Article 77(4) of Additional Protocol I to the 1949 Geneva Conventions (1977), young people “arrested, detained or interned” in times of armed conflict “shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.” Aside from members of the same family, no incarceration of young people with adults is allowed. Beyond armed conflict, the Rules for the Protection of Juveniles Deprived of Their Liberty (1990, ¶ 29), a UN General Assembly resolution known as the “Havana Rules,” permit a similar exception while adding to it: “In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.”

Age-segregated incarceration has been legally codified at the regional level as well. Thus, Article 17(2)(b) of the African Charter on the Rights and Welfare of the Child (1990) requires party states to “ensure that children are separated from adults in their place of detention or imprisonment.” Slightly more flexible are the European Prison Rules (adopted by the Council of Europe in 1973 and last revised in 2006): “Children under the age of 18 years should not be detained in a prison for adults ... If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.” Relatedly, the American Convention on Human Rights (1969, Article 5(5)), which has been ratified by most Central and South American countries and is also known as the “Pact of San José,” stipulates: “Minors while subject to criminal proceedings shall be separated from adults.”

The separation of youth and adults in criminal custody, then, is a potent norm at the international, regional, and (with very few exceptions) domestic levels. Exceptions to age-segregated incarceration tend to be either narrowly carved, outright denied, or simply ignored. That instances of non-separation are relatively limited and roundly criticized helps further cement this as an otherwise uncontested norm.

### **Pitfall 1: Reinforcing age essentialism**

The essentialist dichotomy between adults and the young reigns over contemporary social and legal thinking. Notwithstanding contradictions and ambiguities in this dichotomy, society envisages the archetypal adult offender as competent, fully formed and, accordingly, as more culpable and less susceptible to reform (relative to youth). In contrast, young people in conflict with the law are perceived as still developing and dependent, easily influenced, relatively vulnerable and impulsive, lacking in knowledge, and, for these and other reasons, in greater need of protection and guidance (e.g., Ainsworth 1995). Age-segregated incarceration both manifests and contributes to this age essentialism.

An extensive body of scholarship has challenged this conventional knowledge. Neither natural nor universal, the youth and adulthood envisioned by practices such as age-segregated incarceration have been shown to be historically and culturally specific social creations. For instance, nearly a century ago, anthropologist Margaret Mead (1928) famously reported that adolescent rebellion – seen from Western eyes as a universal stage in human development – was largely absent in the Samoan Islands due to different local attitudes toward youth. Later anthropological studies have brought to light further intercultural disparity not only in the nature of childhood and youth but also, importantly, in their distinctiveness from adulthood (e.g., Montgomery 2008).

Similarly, from the seminal if imperfect work of Philippe Ariès (1962) to more recent historical literature (e.g., Cunningham 2005), scholars have argued that childhood and youth, as distinct stages separate from adulthood, are in many respects a modern invention. Pre-modern societies saw children working from an early age, mixing freely with adults, and consuming the same information. Age-specific legislation was rare and mostly unenforced at the time, and a person's social status changed not through legal age thresholds but gradually or through rites of passage. There were no universal compulsory education laws, and schools, where they existed, consisted of mixed-age classrooms (e.g., Chudacoff 1989; Lesko 2001). Neither courts nor prisons segregated youth and adults, and, in 19th-century England, separation was initially based on the perceived character of the incarcerated individuals, the severity of their offense, and their criminal record (May 1973).

Age essentialism operates to box people into rigid age categories and channel their life along constrictive age norms (Hagestad and Uhlenberg 2005; Lesko 2001; Chudacoff 1989). Having now established itself as received wisdom, it is rarely accounted for. When justifications are provided, they often focus on traits associated with very young children. However, younger children are exempt from criminal responsibility in most countries (Nowak et al. 2019), and they are rarely incarcerated even where no statutory age of criminal responsibility exists. Therefore, not only are assumptions about the distinctness of very young children open for debate, they also bear little relevance to incarceration. Those typically separated from adults do not include all young people, in other words.

Regarding youth, age essentialism – not unlike racism, patriarchy, and classism in past times – now finds support in mainstream science, with neuroscience increasingly at the forefront. However, the assumptions neurodevelopmental studies make about brain activity are contested and ever-changing, as is the testing equipment they use. Further, testing in a lab setting is limited, and countless variables that may influence the brain are ignored. Brain maps are also oversimplified to make them accessible to the public, in addition to being normalized for statistical “significance,” resulting in misrepresentation of the messy and complex data (Bessant 2008; Kelly 2012; Cox 2014). More fundamentally, neurological development is affected by exposure to social experiences and information (Bennett and Baird 2006), which in the contemporary era have become highly age-specific. Therefore, in a mixed-age society, cognitive development may well occur differently. In this respect, rather than bringing to light natural and universal age differences, neuroscience reflects and reinforces the age-stratified order of contemporary society.

Equally open to debate is the close association of young age with inexperience, incompetence, or vulnerability. Only in heavily age-stratified societies such as ours are these traits bound to be so closely intertwined. Insofar as youth lack certain social knowledge and skills, this is largely the consequence of their exclusion from ostensibly adult-only activities and spheres (such as work and politics) and their relegation to age-homogeneous spaces (such as school). “Shielding” youth from the adult world, sometimes with the best of intentions, can end up denying them valuable capacities and thus prolonging their vulnerability, dependence, and ignorance. As for the assumption (to the extent that it exists) that incarcerated youth are physically weaker than their adult counterparts, there is no reason to believe that all 17-year-olds, for example, are weaker than all 46-year-olds (quite the contrary, perhaps). Thus, it is not simply that differences dictate the division into youth and adults, but, to a large extent, the other way around. As youth came to be thought of as distinct from adults, so did their experiences, minds, and even bodies come to be shaped and regarded as different. It is society that attaches importance to, enhances,

and sometimes even creates certain differences while deeming others meaningless (cf. James, Jenks, and Prout 1998). Scholars now widely accept anti-essentialist insights analogous to these when it comes to other identity categories, such as gender, sexuality, race, and disability.

## **Pitfall 2: Sanctioning harshness and apathy toward adults**

Debates over youth imprisonment tend to consider only its impact on youth (an issue indeed examined later in this chapter). However, it is adults, no less than youth, whom age-segregated incarceration targets. By associating incarcerated youth with vulnerability, plasticity, and the need for special protection, age segregation signals that those at the other side of the divide are more dangerous, culpable, and incorrigible. Consequently, through essentialism, age segregation makes harshness and apathy toward imprisoned adults appear natural, obvious, and hence requiring little if any justification. Once separated, adults in prison can be denied protections reserved exclusively for youth. Notwithstanding differences across time and place in the scope and content of these protections, the overall message tends to be similar: incarcerated adults are less deserving of society's compassion and leniency.

Across the world, in addition to their adult status, adults in criminal custody tend to be predominantly men, from disempowered and marginalized socioeconomic, ethnic, racial, and national groups (e.g., Coyle et al. 2016). As such, they are commonly the targets not only of age essentialism but also of sexism,<sup>3</sup> classism, and racism, all of which potentially exacerbate prejudice toward them. Admittedly, most of these demographic features apply to incarcerated youth as well (e.g., Burns Institute for Youth Justice Fairness & Equity 2016; Goldson and Muncie 2012). Nevertheless, their supposedly distinguishing characteristic – their young age – commonly associated with relative innocence, is considered a mitigating factor (see Viterbo 2012a for exceptions), and hence invites relative leniency, at least rhetorically. In actuality, not all youth in conflict with the law are treated leniently: in the United States, for example, the recent decline in youth incarceration rates has been accompanied by a continued and even growing overrepresentation of racial and ethnic minority youth (Rovner 2017; Burns Institute for Youth Justice Fairness & Equity 2016).

Had adults not been locked up separately, their prison conditions would have directly impacted youth as well and, for this reason, may have garnered greater social concern. Conversely, introducing age segregation in prisons might make it easier for state authorities to worsen the conditions of imprisoned adults with relatively little public outcry. This is no mere hypothetical eventuality. There is evidence of youth-specific prison reforms, including age segregation, facilitating a steady erosion in the rights of previously non-separated adults along with the introduction of new adult-focused restrictions (Viterbo 2018).

Far from being exclusive to age-segregated incarceration, the legitimation of harshness toward adults is intrinsic to modern child law and policy.<sup>4</sup> To mention but a few examples, in international humanitarian legal discourse, “women and children” are often a shorthand for civilians, while adult male civilians are overlooked. This framing disregards men's unique vulnerabilities in armed conflict and, at times, has even paved the way for their indiscriminate targeting by the belligerent parties (Carpenter 2006). The privileging of young people in

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<sup>3</sup> Indeed, when imprisoned women are concerned, some countries view incarceration with them as beneficial for girls (e.g., UNICEF 2009, 13).

<sup>4</sup> At the same time, some child-related laws and policies also enable various forms of harshness toward young people, such as physical chastisement, curfews, and, as discussed later, so-called “status offenses.”

humanitarian aid campaigns likewise disenfranchises adults by deeming them less deserving of empathy and assistance (Burman 1994). Similarly, the rhetoric of an endangered childhood innocence has, in some contexts, repeatedly served to expand the policing and incarceration of purportedly dangerous adults (Meiners 2016). Some attempts at redesigning family law courts in a “child-sensitive” fashion, too, have drawn an antithesis between innocent children, who are assumed to need protection, and adults in conflict with the law (parents or others), who are portrayed as culpable criminals deserving imprisonment (Ananth 2014). It is probably no coincidence that across these contexts, as in age-segregated incarceration, the adults bearing the brunt are often from “othered” and disempowered groups.

Time and again, supposedly progressive critiques of the youth justice system play into society’s abandonment of incarcerated adults (Cox 2015). Some of them do so while decrying insufficient age segregation, as exemplified by an op-ed titled “Children, even teenagers, don’t belong in adult jails” (Washington Post editorial board 2013). The piece rehashes essentialist claims about the reduced capacity of youth for moral reasoning, impulse control, and mastery over their environment, and then adds: “There is also more hope of rehabilitating young offenders. ... When minors are thrown into adult jails and prisons, ... they don’t get the structure and educational opportunities necessary for growth or rehabilitation. They are also extremely vulnerable to harm.” The implication is that adults, unlike their younger counterparts, do belong behind bars, that they are relatively irredeemable, and that they deserve less support and protection.

Other youth justice reforms leave intact the mistreatment of incarcerated adults by, for instance, banning solitary confinement only for youth (Equal Justice Initiative 2016) or ensuring that no person under 18 in prison is legally considered an adult (Kelly 2018). Calls to abolish youth imprisonment exhibit similar sentiments. A *Guardian* op-ed titled “Child prisons are beyond reform – it’s time to stop jailing young people” thus maintains: “Desperate levels of child suffering combined with terrible outcomes [of youth incarceration] should lead us all to reject imprisonment” (Willow 2018). Far from rejecting imprisonment, however, the piece reserves its compassion exclusively for youth. In so doing, it effectively condones the damaging incarceration of those making up the overwhelming majority of the prison population: adults.

Rather than trickling into adult incarceration, the reforms that self-identified progressives advocate for thus cement age differentiation. A case in point is the steady decarceration of youth in Canada in recent decades: it has not reduced the adult incarceration rate and, in addition, has arguably enabled the government to focus its punitive rhetoric on adult crime (Webster, Sprott, and Doob 2019). This ubiquitous approach – reinforcing harshness and apathy toward adults by reserving decarceration or reforms for youth – figures centrally in academic studies (e.g., Bowman 2018), journalistic books (e.g., Bernstein 2014), and NGO publications (e.g., Equal Justice Initiative 2017). This leads me directly to the next pitfall of age-segregated incarceration: its legitimization of incarceration.

### **Pitfall 3: Legitimizing incarceration**

Incarceration is irredeemably problematic. As some critics argue, the endemic violence in prisons stems first and foremost from the punitiveness and violence inherent to incarceration itself (often compounded by staff violence), not from the imprisoned population – most of whom tend to be there for physically nonviolent crime, primarily property and drug offenses. Further, imprisonment has repeatedly proven to be neither effective in discouraging harmful behaviour

nor in preventing reoffending. Incarceration and policing are also damaging to the public, socially and economically, among other reasons because their high costs come at the expense of funding for welfare, healthcare, education, housing, and other imperative areas. For these and other reasons, prison abolitionists and other critical prison scholars have pressed for non-punitive responses to harm, which focus on healing and, by addressing root causes, prevention. Such alternatives, it has been argued, must be flexible and context-specific, with possible examples including various forms of restorative justice, anti-poverty policies, community-based restitution initiatives, affordable housing, free and high-quality healthcare and education, recreational projects, decriminalizing drug use, and empowering marginalized communities (Goldman 1910; Hulsman 1991; Davis 2003; Lamble 2011).

In order to understand the role age-segregated incarceration plays in this regard, one must recognise the ties it encapsulates between imprisonment and reform. The genesis of prison was in attempts to reform punishment: to place lawbreakers behind bars as a more humane substitute for castigating and torturing them in public (Foucault 1995; Davis 2003). As criminal punishment became less publicly visible, so did its violence become more deniable (Kahn 2008). Against this backdrop, age-segregated incarceration emerged. As noted earlier, youth were initially tried and imprisoned with adults, but the transformation of childhood into a separate social realm entailed age segregation within the criminal legal system. Age segregation thus served as a reform enabling prison to maintain its false image as a humane, effective, and hence acceptable solution to transgressions.

Rather than undermining carceral thinking, then, separate incarceration entrenches it, making prison more immune to criticism. This problem is by no means unique to age segregation. Comparable issues arise from separating imprisoned people based on their gender or sexual identity, as well as from attempts at making prisons “responsive” to their needs. Such measures, some critics have argued, occasion new – and sometimes more far-reaching – forms of punishment, while also jeopardizing incarcerated people who do not fit into the binaries imposed on them (Spade 2011; Shaylor 2008; Carlton and Russell 2018; Davis 2003).

There is yet another sense in which age segregation lends legitimacy to incarceration. By dividing imprisoned people on grounds including their perceived culpability, it feeds into the punitive fixation with blame – a fixation with identifying and distinguishing between the blameworthy and those deemed less blameworthy (cf. Ananth 2014; Meiners 2016). Indeed, age has come to dictate both culpability and the spatial arrangement of prison. On its one side, age-segregated incarceration places adults, whose purported maturity and competence is said to render them fully culpable, and on its other side youth, who are supposedly unknowing, undeveloped, impressionable, and hence less culpable. In this respect, age-based separation and differentiation epitomize the preoccupation of modern penalty not simply with acts (offenses) but with the identities, minds, and bodies of those classified as offenders (Foucault 1995; Platt 1977; May 1973).

Regrettably, even radical proposals to abolish youth courts have merely suggested substituting them with unified courts, thereby neither questioning imprisonment generally nor age-segregated incarceration specifically (Ainsworth 1991, 1995; Feld 1997). My argument here, in contrast, is that the solution lies neither in non-segregated incarceration nor in more refined segregation. Only within a carceral logic are these the only imaginable options. Instead of readjusting state violence, a wholesale rethinking of both carcerality and age essentialism is necessary.



#### **Pitfall 4: Harming youth**

Age-segregated incarceration claims to protect youth. However, in associating protection with separation from imprisoned adults, it ends up putting incarcerated youth at risk, in three key respects. First, the conflation of protection with age segregation downplays the risk incarcerated youth face from one another. Perhaps for this reason, among others, there has been relatively little research into youth-on-youth abuse and aggression in prison, as several scholars have noted (Monks et al. 2009; Liefgaard et al. 2014; Klatt et al. 2016). To the extent available, self-reported data from carceral facilities for youth in a variety of countries indicates a high level of peer abuse and violence (e.g., Davidson-Arad et al. 2009 and the sources cited there; Bartollas et al. 1976; Liefgaard et al. 2014; Klatt et al. 2016). Advocates of age segregation may bemoan this reality but insist that incarceration with adults would expose youth to even greater harm. In actuality, studies comparing the experience of youth incarcerated in youth and adult facilities are scarce (Fagan and Kupchik 2011; Ng et al. 2012) and are also, at best, inconclusive.

One widely cited study involved interviews with a few dozen youth imprisoned for serious physically violent offenses in the United States. It found that those incarcerated in adult prisons, where there was only partial age segregation, reported higher assault rates than those in youth facilities (Forst et al. 1989). However, a later study with more participants found that youth in adult facilities are better protected from criminal victimization (Fagan and Kupchik 2011). According to several other studies, youth are involved in more violence toward other incarcerated people, as well as more disciplinary infractions and assaults on staff, compared with their adult counterparts (McShane and Williams 1989; MacKenzie 1987; Kupchik 2007). Similarly, youth facilities in the United Kingdom were recently reported to have higher violence rates than any adult prison (Allison 2014). At the same time, other studies found no significant correlation between people's age and the perpetration of prison violence (Klatt et al. 2016).

Where youth and adult facilities do vary in their rates of violence and abuse between incarcerated people, this may stem not from the existence or lack of age segregation, but from other distinguishing features of youth prisons. Such features sometimes include higher staff-per-prisoner ratios, smaller facilities, differences in the offending histories and ages of the incarcerated youth, and a greater professed commitment to treatment and rehabilitation (Fagan and Kupchik 2011; Kupchik 2007; Bishop 2000; Birckhead 2015). It is therefore impossible to isolate the effects of age segregation from other factors. And even if this were possible, to generalize about age-segregated incarceration is to make two problematic assumptions: one, an essentialist assumption that all youth (and adults) across time and space are one and the same; the other, a context-insensitive assumption that age segregation would have similar effects in vastly different circumstances.

Second, in associating risk with imprisoned adults, age segregation dangerously mischaracterizes the prison's adult population, both in terms of risks to youth and the available support. Often, as mentioned previously, only a small minority of the incarcerated adults – who at any rate are sometimes held in separate facilities or wings – actually committed physically violent offenses (and many of them have an otherwise nonviolent record). Perhaps conveniently passed over is the risk frequently posed by other adults in prison: the prison staff, whose abuse and violence toward people in criminal custody (youth and adults) has been documented on countless occasions (e.g., Goldson and Muncie 2012 and the sources cited there; Miller et al. 2017; Willow 2018). Further, the separation of ostensibly different incarcerated groups fails to take into account the support, solidarity, care, and protection they sometimes offer one another (e.g., Arkles 2009 and the sources cited there; Shaylor 1998). Such assistance is certainly possible between older and younger inmates (Laws and Lieber forthcoming), including – on the rare

occasions that they are incarcerated together – between adults and youth (Viterbo 2012b, 2018). Unwittingly or not, these various blind spots of age-segregated incarceration place imprisoned populations at greater risk, physically and mentally.

Third, to ensure age segregation, prison staff occasionally resort to harmful practices, such as solitary confinement – some forms of which, incidentally, are also referred to as “segregation.” Where incarcerated youth cannot be separated from adults by other means, they have repeatedly been placed in solitary confinement. This has occurred in different parts of the globe, on numerous occasions, and often for long periods of time (UN Special Rapporteur on Torture 2011; Viterbo 2012b; Birckhead 2015 and the sources cited there; Equal Justice Initiative 2017). In addition to its grave psychological effects, solitary confinement cuts off the imprisoned person from crucial sources of support and information, and can also facilitate uninterrupted staff abuse (e.g., Arkles 2009; Dolovich 2011). Thus, in the name of protection, the commitment to age segregation yet again begets greater harm. A similar protective rationale, it is worth noting, has also been used to justify placing incarcerated women and LGBTQI people in solitary confinement (Arkles 2009; Dolovich 2011; Lamble 2011). This, as I pointed out earlier, is not the only troubling parallel between the effects of segregation on youth and other incarcerated groups. Hence, it is identity-based segregation generally that requires dismantling, not solely age segregation.

The harm inflicted on youth is yet another pitfall that age-segregated incarceration shares with other forms of age segregation and differentiation. For example, youth courts – the face of age-segregated adjudication – often deny young defendants important rights that are granted in adult criminal courts (e.g., Feld 2017; Howard League for Penal Reform 2016; Ainsworth 1991). The norm of closing youth hearings is likewise problematic. As critics have observed, closed hearings might shield the youth court from scrutiny more than they protect young people, particularly given the less deleterious alternatives available (e.g., Geis 1957; Trasen 1995). A similarly questionable form of age differentiation, in some countries, is charging youth with “status offenses” – conduct that would not be illegal for adults, such as skipping school and running away (e.g., Coalition for Juvenile Justice 2015). Beyond the youth justice context, the list of examples (such as the separation of school from work) could go on. The harm caused by age-segregated incarceration, then, is but a symptom of a broader problem.

### **Pitfall 5: Fragmenting oppressed communities**

A final pitfall of age-segregated incarceration is its use to oppress certain communities by breaking their intergenerational ties. A recent case in point concerns the thousands of noncitizen Palestinians self-identified as political prisoners, including hundreds of youth, whom Israel puts behind bars every year.<sup>5</sup> Over the years, Israel has increasingly sought to fragment Palestinian territory and society. This has recently included segregating Palestinian political prisoners – whose collective endeavours Israel has long decried – based on their regions of residence, as well as cracking down on their study groups and barring them from electing central representatives. Incarcerated Palestinian youth and adults, who until the first decade of the century were mostly held together, are also now systematically separated – a change presented by Israeli authorities as both consistent with international law and in Palestinian youth’s “best interests.” The Israeli judiciary pushed for age segregation as a means to prevent the exposure of Palestinian youth “to ... [the older] prisoners’ ideologies” by removing them from “adults who wished to capture [their] ... soul.” However, Palestinian youth’s testimonies and other sources suggest that, prior to their separation, incarcerated adults provided them with invaluable care and support. These adults

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<sup>5</sup> For background information, see Ben-Naftali et al. (2018).

also represented their concerns to the Israeli prison authorities and, given Israel's frequent denial of family prison visits, could offer the closest substitute for parental care. Moreover, age segregation has left Palestinian youth less protected against the abuse they commonly report suffering at the hands of the Israeli prison and security staff. Human rights organizations, possibly due to their enshrining of age-segregated incarceration, tended to criticize Israel for not separating incarcerated Palestinian youth, and mostly started doubting the desirability of such separation only after the fact (Viterbo 2018). Broader lessons, it seems, have yet to be learned, judging by criticism recently voiced by the Special Representative of the UN Secretary-General for Children and Armed Conflict: "well-established principles of detention are ... [being] overlooked in the context of armed conflict ..., [including] children ... being held together with adults" (Zerrougui 2016).

Another contemporary example is to be found in China's north-west Xinjiang region.<sup>6</sup> For decades, the Chinese government has been targeting and closely surveilling Uyghurs and other Muslims in Xinjiang to ensure their loyalty to the state and assimilation into the Han-dominated society. Their private lives have been closely monitored, national expression has been censored, religious activities have been criminalized and persecuted, and, as a complementary measure, Chinese language and culture education has been forcefully promoted (Roberts 2018). In recent years, China has reportedly subjected Xinjiang's Muslim populations to age segregation as well. Hundreds of thousands and possibly even 1.5 million adults, it is estimated, have been preemptively and extrajudicially placed in so-called "re-education" internment camps. "Re-educating these people," a Chinese official has explained, "is like spraying chemicals on the crops. That is why it is a general re-education, not limited to a few people." Government publications have warned that adults affected by "extremist thought" instill in their children animosity toward non-Muslim groups and Han culture. Having interned such adults, China has removed many of their children and placed them in securitized and centralized education facilities, where it claims they can develop more "open personalities" and improve their Chinese skills. A staff member of one such facility has couched these measures in pedagogical terms: "I tell the children: 'Your parents and you all alike are studying'" (Zenz 2019a, 2019b).

Such use of age-segregated incarceration shares parallels with other forms of generational segregation. Modern child law partly developed to remove young people from perceived problem groups and "civilize" them away from allegedly depraved or unfit parents, often in the name of national interests. Among those thus treated were hundreds of thousands of young Indigenous people in Australia, Canada, and the United States, who were placed in special boarding schools (commonly described by them as prison-like) or put up for adoption. Proponents depicted such segregation as salvaging young Indigenous people from "deleterious influences" and turning them into "honorable, useful, happy citizens." In North America, state authorities also saw generational segregation as a counterinsurgency measure: "It is unlikely," one official argued, "that any Tribe ... would give trouble of a serious nature ... whose members had children completely under Government control" (Viterbo 2012b, 2017). Others subjected to similar segregation include Andamanese tribes in British colonial India (Sen 1999), the Yenish (often described as "gypsies") in 1970s Switzerland, "mixed-race" families in both French colonial Morocco and the Dutch East Indies (today's Indonesia), the Inuit in Danish-ruled Greenland in the 1950s, impoverished immigrants in the 19th–20th-century United States, non-European Jewish immigrants in 1950s Israel, and Christians in the Ottoman-ruled Balkans. To this could be added

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<sup>6</sup> Juxtaposing these two parts of the world is not unheard of: Chinese scholar and dissident Wang Lixiong once warned of an "interminable ethnic war" in Xinjiang amounting to a "Palestinization" of the region (Finley 2019).

other forms of generational segregation in modern times, including child emigration and transnational child adoption programs (Viterbo 2017).

Parallels can also be drawn to elements of incarceration other than the separation of incarcerated youth. Specifically, many of the men in prison – who, as I have noted, tend to be overwhelmingly poor, non-white, or noncitizens – are fathers. Incarceration cuts them off from their children, while also further impoverishing their families. Thus contextualized, age-segregated incarceration lies at the juncture of two practices – age segregation on the one hand and incarceration on the other – each of which has operated to drive a generational wedge in oppressed populations.

## Conclusion

Age-segregated incarceration has established itself as an undisputed social, legal, and human rights norm. Its pitfalls, therefore, have so far largely escaped critical notice, including from youth justice critics. This chapter has brought to light five such interrelated pitfalls.

First, age-segregated incarceration buttresses age essentialism, which boxes people into constrictive and historically specific categories based on dubious assumptions. Second, in attributing greater corrigibility and vulnerability to imprisoned youth, age-segregated incarceration signals that their adult counterparts are less deserving of compassion and leniency. Thus, these separated adults can more easily be denied youth-only protections and treated harshly, with relatively little public outcry. A third pitfall is the legitimation of incarceration. Through age segregation, prison presents itself as humane and effective, while also maintaining its punitive fixation with blame. Fourth, in the name of protection, age-segregated incarceration can also harm youth. It downplays the risk posed by their peers and the prison staff, neglects the support they can receive from some imprisoned adults, and has led to harmful practices such as solitary confinement. Finally, age segregation, in and beyond prison, has long served as a means to oppress disempowered communities by severing their intergenerational ties. This occurred, and is still occurring, across different parts of the world.

A more in-depth analysis of these pitfalls exceeds the scope and space constraints of this chapter, as does an exploration of possible alternatives to age-segregated incarceration. I intend to delve into these issues in a forthcoming publication. This chapter is aimed to stimulate further conversations, while bringing into dialogue childhood studies, critical prison studies, youth justice, and other ways of thinking. At this stage, suffice it to reiterate that non-segregated imprisonment (incarcerating youth with adults) ought not be the only conceivable alternative. Nor does the solution lie in age-specific penal reforms, more refined separation, or non-carceral age segregation. With the pitfalls of age-segregated incarceration now in plain sight, the need arises for more imaginative alternatives, by moving past essentialism and carcerality. This enterprise is as imperative as it is challenging.

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