

# **Just for kids? How the youth decarceration discourse endorses adult incarceration**

**Hedi Viterbo**

Queen Mary University of London, UK

## **Abstract**

This article lays bare three interrelated and previously overlooked pitfalls of calls to reduce or abolish youth incarceration. First, despite their anti-carceral semblance, such calls persistently portray the overwhelming majority of people in trouble with the law—namely, adults—as incorrigible, blameworthy, and therefore as deserving of punishment and imprisonment. Second, this ageist rhetoric often disregards adult vulnerability. Thus, despite adults' greater medical vulnerability to the COVID-19 disease, it is youth whom some organizations singled out or even called to prioritize for release from prisons during the coronavirus pandemic. Third, at the heart of the youth decarceration discourse are essentialist assumptions about youth, which rest on questionable science and downplay the socially constructed dimension of age differences. All three pitfalls epitomize a dual fault of the child rights discourse more broadly, as evidenced in other contexts: repeatedly lending legitimacy to punitiveness and apathy toward adults while also working to the detriment of children. Doubtless, there are compelling arguments against penal confinement, but it is only decarceration across the age spectrum that can truly challenge carceral thinking—and ageism.

## **Keywords**

decarceration, ageism, essentialism, coronavirus, vulnerability, critical discourse analysis, prison reform rhetoric

## **Introduction**

Various academics, human rights organizations, and state officials have demanded that the incarceration of young people be minimized or abolished. At first glance, this may appear to be part of, and a service to, the broader anti-carceral movement. However, in this article I lay bare how much of the youth decarceration rhetoric does quite the

opposite: lending legitimacy to the imprisonment of “adults,” who make up the overwhelming majority of people in penal custody. Indeed, more than 98 percent of the US prison population (Prison Policy Initiative, 2020), and more than 99 percent in England and Wales (Sturge, 2019), are aged 18 years or older.<sup>1</sup> When it comes to most imprisoned people, then, this discourse tends to condone—and, potentially, even entrench—carceral thinking, and it does so in the name of child rights.

To set the scene of youth decarceration, the next section outlines its key models as well as existing criticisms that focus on the negative impact of decarceration initiatives on young people. Going beyond such criticisms, each of the three sections that follow brings to light a pitfall of the dominant youth decarceration discourse that has so far escaped critical notice. First, I expose how “adults” in trouble with the law are depicted in this discourse as incorrigible, culpable, and, therefore, as deserving imprisonment. Second, I highlight the disregard of adult vulnerability. With the coronavirus pandemic as my case study, I throw into sharp relief how some youth decarcerationists insist on singling out or prioritizing young people for release from prison even in situations where older people are, indisputably, more vulnerable. Third, I call into question the assumptions that youth decarcerationists make about age differences. These assumptions, I argue, both rely on questionable science and downplay the extent to which the “child”/“adult” distinction is socially constructed.

Through a range of examples, the article then demonstrates that all three pitfalls epitomize a broader fault of the child rights discourse. On the one hand, this discourse legitimizes harm and apathy to “adults”; on the other hand, it repeatedly works to the detriment of “children.” The concluding section summarizes my key arguments, highlights additional implications, and emphasizes that nothing in this article detracts from the importance of decarcerating youth; instead, what is needed is to push for decarceration across the age spectrum.

## **Models and criticisms of youth decarceration**

Various definitions of “decarceration” can be found in the literature.<sup>2</sup> I, like others (e.g., McLeod, 2012; Webster et al., 2019; Cox and Godfrey, 2020), define it broadly to encompass a range of models—including diversion, decriminalization, and abolition—that share a stated aim of decreasing or eliminating incarceration.

Youth decarceration, as a discourse and praxis, is hardly new.<sup>3</sup> My focus throughout most of this article, however, is on publications by scholars, human rights organizations, and state bodies since the turn of this century. The publications examined

relate to two countries—the United States and the United Kingdom<sup>4</sup>—with the only exception being the section on adult vulnerability in the coronavirus pandemic (a global issue warranting some globally oriented references).

As evidenced by the publications examined, youth decarcerationists do not speak in a single voice. Some categorically advocate abolishing the incarceration of young people (e.g., Haines and Drakeford, 1998; Goldson, 2005; Nowak et al., 2019). Others believe that a minority of youth do belong in penal custody, especially those who, having been convicted of grave crimes, are deemed a serious threat to society (e.g., McCarthy et al., 2016; Howard League for Penal Reform, 2016). The proposed alternatives to prison also vary: some youth decarcerationists espouse restorative justice alternatives (e.g., Gavin, 2014; Byrne and Case, 2016), while others suggest therapeutic options (e.g., Bernstein, 2014; Willow, 2015). Another issue on which opinions differ is the scope of decriminalization: Case and Haines (2021) call for all unlawful behavior by young people to be decriminalized, whereas Bowman (2018) proposes to specifically abolish status offenses (actions unlawful only if committed by a “minor,” such as truancy and running away from home).

For decades, youth decarceration initiatives have been criticized for their detrimental impact on the young people they profess to serve. Such initiatives, it has been argued, often replicate within the community the modes and logic of control they claim to replace, while also increasing the number of youth under surveillance and even expanding the powers of the penal system (e.g., Blomberg, 1977; Cohen, 1979; Austin and Krisberg, 1981; Cate, 2016; Fishwick and Wearing, 2017; Bugnon, 2020; Gray and Smith, 2021). This bears out Platt’s (1969) argument that, from the nineteenth century onward, ostensibly humanitarian youth justice reformers have brought about intrusive control into the lives of disadvantaged youths. Others have found, unsurprisingly, that racialized minority youth are less likely to be diverted from the prison system than their White counterparts (e.g., Rodriguez, 2010; Nadel et al., 2021).

This literature is highly valuable. My critique, however, differs from it in two key respects. First, my focus is not on youth. Instead, I turn the spotlight elsewhere: to older people in conflict with the law, as subjects of the youth decarceration discourse. This analytical framing throws into sharp relief my argument, elsewhere (Viterbo, 2018, 2021a), that ostensibly child-focused discourses and practices are often concerned no less with older people, including those who are neither related to nor responsible for the “children” concerned.

The second difference is that my critique, unlike these previous studies, is not an inquiry into impact. That is, I am making no claims about how the youth decarceration

rhetoric impacts policies and practices on the ground. Instead, this article offers a critical discourse analysis, unmasking a seemingly anti-carceral discourse by revealing its espousal of the incarceration of the vast majority of people in trouble with the law.

## **The carceral streak of the youth decarceration rhetoric**

Most youth decarcerationists share a common characteristic: invariably, they lend legitimacy to the incarceration and punishment of people classified as adults.<sup>5</sup> Such legitimation takes various forms, some implicit and others explicit.

Examples of implicit legitimation abound. One is the call for young people in conflict with the law to be treated as “children, not offenders” (e.g., Howard League for Penal Reform, 2016: 10; McAra and McVie, 2016: 71, 76) or, alternatively, as “children first, offenders second” (e.g., Haines and Drakeford, 1998: 89–92, 110–111, 239–241; Towler, 2009: 42; Byrne and Case, 2016: 73; Brown, 2020: 6, 10, 44).<sup>6</sup>

Another example is the depiction of criminal confinement and childhood as two mutually exclusive realms: “children do not belong in prison” (e.g., Meuwese, 2003: 9) and “prison is not a place for children” (e.g., Gavin, 2014: 37, 45; Willow, 2015: 276; Howard League for Penal Reform, 2019: 2–3, 9). Likewise embodying this childhood/prison dichotomy is “No Kids in Prison”—the website of the Youth First Initiative, a coalition of US youth decarceration NGOs. Similar is the accusation that incarceration deprives youth not only of their liberty but also of their childhood (Nowak et al., 2019: 2; Goldson, 2005: 85). Lastly, adult imprisonment is implicitly legitimized when calls are made to decarcerate youth because they are “the future of our nation” (Physicians for Criminal Justice Reform, 2020: 3).

This rhetoric, while referring to “children” and “youth,” has implications for older people as well. If “prison is no place for kids,” then whom is it for? If “youth are the future,” whose potential is less valuable? If “children are not offenders,” then who does deserve the “offender” label? Under the motto “children first, offenders second,” whose offending is not secondary? Is incarceration any less deplorable when those affected are deemed too old to be “denied” their childhood?

The answer to all these questions is one and the same: such rhetoric is premised on the belief that older people are less deserving of mercy. After all, if they too had been depicted as “adults, not offenders,” as “adults first, offenders second,” as belonging outside prison, as society’s future, or as having their adulthood denied by incarceration, then singling out the young would have neither made sense nor be necessary. Youth decarceration could then have been replaced by a bolder decarcerative vision, one that

views everyone in trouble with the law—regardless of their age—as “people, not offenders.”

On occasion, proponents of youth decarceration also make explicit their support for denying older people in trouble with the law the leniency afforded to the young. Haines and Drakeford (1998: 89), for instance, assert in no uncertain terms that “children should be treated differently from adults,” a socially dominant notion shared by other youth decarcerationists (e.g., Byrne and Case, 2016; Willow, 2015; Bowman, 2018; Brown, 2020). According to this view, young people must neither be handled “as mini-adults” nor be given “sentences that resemble . . . [those] handed down to adults—broadly: fines, community service, community supervision and imprisonment” (Case and Haines, 2015: 15, 48). Incarceration and punitiveness are thus presented as perfectly legitimate, as long as they are targeted at “adults.”

Young people, and they alone, are said to deserve a “child-friendly,” “child-appropriate,” “developmentally appropriate,” “developmentally informed,” and “developmentally sensitive” treatment (e.g., Case and Haines, 2015: 2, 8–9, 19, 32–33, 42–43; McCarthy et al., 2016: 2, 18, 21, 24; Youth Justice Board for England and Wales, 2019: 4; Case and Browning, 2021: 2, 6–8, 10–11, 13, 15–18, 24–26, 31–33, 36, 38, 41, 44, 51–52, 56, 61–62, 65, 68–71, 73–74). This child-specific treatment involves “special understanding,” “protection,” reduced responsibility, and an overall “privileged status” (Haines and Drakeford, 1998: 200; Case and Haines, 2015: 15, 25–26, 76–77; Byrne and Brooks, 2016: 7; Nowak et al., 2019: 622). As such treatment is reserved exclusively for the young, their elders are rendered fully responsible, with no “special understanding” or “privileged status” to shield them from the penal and carceral system.

Leaving no doubt as to their support for responsabilizing older people, Case and Haines (2015: 47, 77) maintain that “adults . . . are . . . responsible for making their own decisions in life and for bearing the consequences of their decision making. . . . Adults are responsible for decisions, where children are not” (also cited in Centre for Youth and Criminal Justice, 2020). Quoting the US Supreme Court, McCarthy et al. (2016: 5) assert that “a child’s character is not as ‘well formed’ as an adult’s, his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].’” Put differently, an older person in conflict with the law is, by implication, expected to be “irretrievably depraved,” and should be treated accordingly. Yaffe (2018: 9), whose book—a defense of leniency toward young people—has been cited by an NGO pushing for youth decarceration (Centre for Youth and Criminal Justice, 2020), also notes his support for responsabilizing “adults”:

[T]his book will not provide an account of how we ought to respond to crime by adults. But this is not to say that I remain neutral . . . on the question of whether criminal punishment is an appropriate response to [such] crime: I hold that it is [appropriate].

Thus, rather than undermining carceral thinking, the youth decarceration discourse casts “adults” in trouble with the law as incorrigible, culpable, expendable, and, therefore, as warranting punishment, including incarceration.<sup>7</sup> In the process, it also feeds into the punitive fixation with blame—a fixation with identifying and distinguishing between the blameworthy and those deemed less so.

### **Disregarding adult vulnerability: The coronavirus pandemic as a case study**

A growing body of literature has called into question dominant assumptions about vulnerability. Some scholars (e.g., Fineman, 2008; Mackenzie et al., 2014) emphasize the centrality of vulnerability to human subjectivity. Others (e.g., Herring, 2018) observe that not only “children,” but also “adults,” are inherently vulnerable. In the field of childhood studies, numerous scholars (e.g., Christensen, 2000) have shown how child vulnerability is, to a considerable extent, the product of social factors. Against this backdrop, it becomes clear that young age does not neatly correlate with vulnerability. While this fact is not often sufficiently acknowledged, there are some contexts in which it is virtually undisputed. Among them is the coronavirus pandemic.

In late 2019, the highly infectious SARS-CoV-2 virus, which causes the COVID-19 disease, appeared in China. The outbreak quickly turned into a global pandemic of historic proportions, costing between 6 and 18 million lives within two years, according to different estimates (Wang et al., 2022).

Carceral facilities—often overcrowded, unsanitary, poorly ventilated, and with substandard health care—are hotbeds of infection. Their population—estimated at more than 11 million worldwide—with high rates of preexisting medical conditions, has been particularly vulnerable to the new disease (Penal Reform International and Thailand Institute of Justice, 2020; Garrett and Kovarsky, 2022).

Attempts to enforce social distancing in such settings without reducing crowding proved unfeasible (Byrne et al., 2020; Garrett and Kovarsky, 2022), infringed on the basic rights of those behind bars, and increased their risk of suffering violence and self-harm (Blackwell, 2020; Telegraph reporters, 2020). Consequently, by late May 2020, at least

580,000 incarcerated people across 80 countries were authorized for release (Human Rights Watch, 2020).

Since the early stages of the pandemic, it has been common knowledge that society's youngest members were generally the least medically vulnerable to COVID-19 (Royal College of Paediatrics and Child Health, 2020). Older age, in contrast, was among the strongest predictors of mortality from the disease (Caramelo et al., 2020; Mueller et al., 2020). This had clear implications for prison populations, whose average age, in many parts of the world, is increasingly higher than that of the general public (Skarupski, 2018; Penal Reform International and Thailand Institute of Justice, 2020; Sturge, 2019). For this reason, many of the countries that pursued decarceration during the pandemic included old age among their release criteria (Human Rights Watch, 2020).

Nevertheless, some human rights organizations ignored the greater medical vulnerability of "adults" by singling out or even calling to prioritize for release only incarcerated youth. In so doing, such organizations failed to seize the unique opportunity for decarcerating people of all ages. For example, a publication by the United Nations International Children's Emergency Fund (UNICEF, 2020: 4, 6), which was endorsed by 14 NGOs and four UN bodies, called for the "prioritizing [of] children for immediate release," adding: "Public authorities . . . should exercise their detention powers cautiously, considering . . . the heightened vulnerability of the child . . . , particularly in the current context of COVID-19. . . . States should prioritize the diversion of children away from formal justice processes."

Even the Inter-Agency Standing Committee (IASC, 2020: 3), a forum of UN and other humanitarian organizations whose work is not otherwise child-focused, asserted that "detention even as a last resort, is never in the best interests of a child . . . Thus, non-custodial alternatives to detention . . . should be favored for any person under 18 years, especially in the context of COVID-19." This language leaves open the possibility that for older people penal confinement is deemed justifiable even during the pandemic.

In some of their publications, youth decarcerationists noted in passing that young people were generally the least vulnerable to COVID-19, but they did so without acknowledging the implications for decarceration (Terre des hommes, 2020; Fair and Just Prosecution, 2020; Lawyers on Behalf of Parents Against Child Detention, 2020). Instead, these and other publications (UN Committee on the Rights of the Child, 2020; No Kids in Prison, 2020; UNICEF, 2020; UNOCHA, 2020; Fore, 2020; Washburn and Menart, 2020; Defence for Children International—Palestine, 2020) focused on how youth were at greater risk of infection in prison than outside. Yet, this is equally true for older people.

One NGO, Lawyers on Behalf of Parents Against Child Detention (2020), went even further by asserting that releasing incarcerated “minors while halting the arrests and new incarceration of [other] minors can significantly reduce the overcrowding in prisons and the risk to all incarcerated people, with minimum risk to society.” The argument that youth decarceration poses “minimum risk to society” seems to suggest that older people behind bars are a greater danger and that, therefore, their continued incarceration is necessary to minimize the risk to the public. Such risk prevention discourse has rightly been criticized by various scholars (Ericson and Haggerty, 1997), including some youth decarcerationists (Case and Haines, 2015). But it is flawed even on its own terms, given the absence of any inherent correlation between age and the likelihood to offend (e.g., Steffensmeier et al., 2020).

### **Questionable presumptions about age differences**

As shown so far, proponents of youth decarceration promote a hierarchy of deservingness, casting young people in conflict with the law as more deserving of decarceration than their older counterparts. Youth decarcerationists relentlessly base this deservingness hierarchy on what they portray as intrinsic differences between “children” and “adults.” This approach evinces what I have elsewhere called “age essentialism”—the widely held yet problematic belief in the existence of naturally and universally distinct age groups with inherently unique characteristics and needs (Viterbo, 2021b). An ideology (Schnell, 1979) in which most of today’s “adults” are personally invested (Firestone, 1970; Farson, 1974), age essentialism boxes people into rigid age categories (such as “children” and “adults”), makes broad generalizations based on age stereotypes, and channels people’s lives along constrictive age norms. Thus, despite society’s tendency to wrongly associate ageism exclusively with older age (Hagestad and Uhlenberg, 2005), age essentialism is variously ageist toward people of all ages.<sup>8</sup>

Often, advocates of youth decarceration attach the broad term “children” to those they deem deserving of decarceration. Case and Haines (2015: 13) explain: “we have chosen to privilege the [term] . . . ‘children’ over ‘youth’ and ‘young people’, in accordance with [international law’s definition] . . . of a child as anyone under the age of 18 years.” But the truth is that most countries exempt pre-teens, let alone toddlers, from incarceration (Nowak et al., 2019). Hence, the people whom youth decarcerationists distinguish from “adults” are, in fact, a narrower age group—usually teenagers under the age of 18 years.<sup>9</sup> They are, according to youth decarcerationists, impulsive, reckless, prone to irrationality, and susceptible to negative social influences—traits that are then attributed, at least partly, to their alleged psychological and neurological immaturity (e.g.,

McCarthy et al., 2016; Centre for Youth and Criminal Justice, 2020; Case and Browning, 2021; Haines et al., 2021).

Proponents of youth decarceration thus do more than simply promote a hierarchy of deservingness based on age differences. They actively help make these differences appear self-evident, natural, normal, and scientifically substantiated. However, the science cited by youth decarcerationists has faced growing criticism. Developmental psychology, critics argue, is a reductive and essentialist enterprise of creating rational subjects amenable to existing socio-economic power relations (Burman, 2016; Morss, 1996; Stainton Rogers and Stainton Rogers, 1992). Neurodevelopmental studies, too, have been roundly criticized: their assumptions about brain activity are contested and ever-changing; they ignore countless variables that may influence the brain; they generalize based on participants from particular social backgrounds; their brain maps are oversimplified for media and statistical purposes; and testing in a lab setting is limited (Bessant, 2008; Kelly, 2012; Cox, 2014).

Moreover, human development is heavily affected by social stimuli (Bennett and Baird, 2006; Fine et al., 2019), which only in modern times—with the aid of such social tools as child rights (Burman, 1996; Boyden, 2003)—have become highly age-regimented. With “age-inappropriate” experiences and knowledge being withheld from many young people well into their teens, if not beyond, it is no wonder—nor is it inevitable—that they appear to be less developed.

Anthropological and historical studies of childhood further defy the sort of age essentialism that dominates the youth decarceration rhetoric. The previously mentioned image of adolescence as innately turbulent, for example, overlooks societies with no such adolescent unrest (Montgomery, 2008; Lancy, 2015; Kehily and Montgomery, 2009). Similarly, it is only in fairly recent times that age became a significant determinant of what people experience, learn, and do. Only then did distinct age groups emerge as having dissimilar capacity, behavior, and knowledge. In earlier societies, the very young normally mixed with their elders in the public sphere, performed similar work, and absorbed similar information (Cunningham, 2005; Gittins, 2009).

Until the nineteenth century, a person’s date of birth was rarely known, celebrated, or accurately recorded—a situation still true for hundreds of millions around the world (UNICEF, 2013). Age-related legislation was also relatively rare and mostly unenforced. Personal status changed gradually or through rites of passage. There were no universal compulsory education laws, and the schools that did exist consisted of mixed-age classrooms (Chudacoff, 1989; Lesko, 2001). When imprisoned people started being

separated, it was not by their age but, rather, by their perceived character, the severity of their offense, and whether they had prior criminal record (May, 1973).

As noted by childhood sociologists James et al. (1998: 139–140), an extensive body of scholarship “rejects any idea that childhood rests on some pre-given essential nature ... The idea of childhood, in this view, came into being through discourses that created their own objects.” Indeed, to a much greater extent than youth decarcerationists suggest, age differences are (re)produced and amplified by certain social institutions and attitudes, including the youth decarceration discourse itself and the questionable science on which it relies. If society were to dismantle these institutions and attitudes, age differences would likely diminish significantly. This could then give rise to a broader, and much-needed recognition that age-based deservingness is not only normatively problematic, as I have argued earlier, but also at odds with social reality.

### **Epitomizing the pitfalls of child rights**

Advocates of youth decarceration frequently frame their arguments in terms of child rights. Case and Haines (2015: 43), for example, describe their vision as “grounded in the children’s rights movement,” while others emphasize the need to “[p]rioritise the best interests of children, recognising their particular rights” (Youth Justice Board for England and Wales, 2019: 4). Such language is typical of the genre (e.g., Towler, 2009; Byrne and Case, 2016; Byrne and Brooks, 2016; Centre for Youth and Criminal Justice, 2020).

Accordingly, youth decarcerationists also cite international child rights law. “The arrest, detention or imprisonment of a child . . . shall be used only as a measure of last resort,” stipulates Article 37(b) of the UN Convention on the Rights of the Child (1989), the world’s most widely ratified treaty.<sup>10</sup> This principle is reiterated in three resolutions of the United Nations General Assembly on youth justice, known as “the Beijing Rules” (1985), “the Riyadh Guidelines” (1990), and “the Havana Rules” (1990). All these documents are cited by youth decarcerationists to support their claims (e.g., Haines and Drakeford, 1998; Goldson and Kilkelly, 2013; Gavin, 2014; Byrne and Brooks, 2016; Brown, 2020; e.g., IASC, 2020; UNOCHA, 2020; Terre des hommes, 2020; Case and Browning, 2021).

Yet, where older people are concerned, international law affords no comparable leniency. The closest provision, applicable regardless of age, is Article 9(1) of the International Covenant on Civil and Political Rights (1966), which merely prohibits arresting or locking up a person arbitrarily or without due process.<sup>11</sup> Similarly, since its invention as a discrete legal realm in the nineteenth century, the youth justice system has

contributed to older people in trouble with the law being subjected to extreme standards of criminal responsibility (Ainsworth, 1995). In reserving special protection exclusively for the young, child rights law paves the way for the continued penal confinement of their older counterparts.

This pitfall is hardly unique to the carceral context. Across various settings, the child rights discourse denies leniency and compassion to those it defines as adults. For example, some attempts to redesign family courts in a “child-sensitive” fashion have depicted the “adults” who are brought before the court as culpable criminals warranting imprisonment (Ananth, 2014). Similarly, in humanitarian aid campaigns, the frequent privileging of young people casts their elders as less worthy of assistance and empathy (Burman, 1994).

Another case in point is armed conflict, in two respects. First, laws and policies presented as serving “the child’s best interests” have been deployed to discipline and govern “the other side’s adults” (Viterbo, 2017, 2018, 2021a). Second, the conflation of “children” (and “women”) with innocent and vulnerable civilians harms men of legal age: it overlooks those of them who are non-combatants, it disregards their higher exposure to certain forms of state violence, and it even facilitates their indiscriminate targeting by the warring parties (Carpenter, 2006).

Often, the child rights discourse also works to the detriment of the young people it purports to serve. The so-called child’s right to be heard, as formulated in international law, is a case in point. It grants decision-makers almost limitless discretion over whether and how to take young people’s views into account, thereby enabling them to disregard these views if they differ from their own (Daly, 2018; Lundy, 2007). Laws and policies aimed at abolishing “child labor” have, time and again, harmed working children by pushing them into more covert, hazardous, exploitative, and less well-paid work, or by entirely depriving them of income, without addressing the socio-economic reasons why they work in the first place. Meanwhile, the voices of these working children tend to be ignored, including their view of their work as necessary or even beneficial (e.g., Myers, 2001; Liebel, 2004). The legal requirement to incarcerate youth separately has likewise led to them being subjected—needlessly and harmfully—to solitary confinement when they cannot be separated from their older counterparts by other means (Viterbo, 2021b). Similarly, young people under colonial or military rule have been segregated from their older counterparts and exposed to harm, all allegedly to protect them (Viterbo, 2017, 2018, 2021a).

The youth decarceration discourse, then, epitomizes the twofold disservice done by child rights in various other contexts as well: legitimizing harm and apathy to “adults,”

on the one hand, while repeatedly harming “children” and disregarding their views, on the other.

## **Conclusion**

Despite its anti-carceral veneer, much of the youth decarceration rhetoric endorses incarceration. It does so by casting the vast majority of people in trouble with the law—namely, those defined as adults—as culpable, incorrigible, expendable, and, hence, as requiring punishment and imprisonment. Meanwhile, proponents of youth decarceration often disregard adult vulnerability. Thus, during the coronavirus pandemic, there were those who singled out or even called to prioritize youth for release from prison, despite the consensus that with age comes greater medical vulnerability to the virus.

The age-based deservingness that is advocated by youth decarcerationists is not only normatively problematic. It is also reliant on questionable science and is at odds with social reality. In particular, it downplays the extent to which age differences are socially constructed and, as such, could diminish significantly if society were to repudiate ageism. All of these issues epitomize a dual fault of the child rights discourse, evidenced across various other contexts: on the one hand, this discourse repeatedly lends legitimacy to apathy and punitiveness toward those it defines as adults, while, on the other hand, it often harms the young people it professes to serve.

For analytical, epistemological, and normative reasons, explained elsewhere (Viterbo, 2021a: 40–41), I have avoided speculating on *why* youth decarcerationists depict “adults” as they do, focusing instead on *what* it is that they argue.<sup>12</sup> Yet, even from a purely strategic perspective, if such a thing exists, advocating youth decarceration by legitimizing adult punishment is doubly questionable. First, it is hardly guaranteed to benefit “children,” as explained by critics such as those cited earlier in this article. And second, even if meant to be a temporary or localized strategy, it risks transcending its intended confines and entrenching a binary conception of age—and of deservingness—without significantly challenging the root causes of identity-based injustice (similar critiques of so-called strategic essentialism, in relation to other identity markers, appear in the works of Hall (1998) and Duggan (1994)).

This article avoids speculating on the impact of the youth decarceration rhetoric on policies and practices on the ground. As noted earlier, numerous studies have already provided such impact-focused analysis. At the same time, incarceration rates may illustrate one of the shortcomings of youth decarceration campaigns. Time and again, a decline in youth incarceration has been accompanied by an unchanged or even increased

adult incarceration rate. Such has been the case in the United Kingdom, both in the 1980s (Bateman, 2005) and throughout most of the past two decades (Willow, 2015; Sturge, 2019). Similarly, in Canada, the youth incarceration rate has shrunk by a staggering 73 percent since the turn of this century, but the adult incarceration rate has remained virtually unchanged (Webster et al., 2019). In US local jails, the youth population nearly halved between 2005 and 2017, whereas the number of older people increased (Zeng, 2019). While a causal link between youth decarceration and adult incarceration is impossible to establish, these trends provide food for thought about the limitations of youth decarceration campaigns. Given how youth decarcerationists legitimize punitiveness toward “adults,” there is no reason to expect youth decarceration to necessarily reduce adult incarceration; in fact, the opposite can occur.

None of this detracts from the importance of decarceration. While penal confinement is not a one-dimensional experience,<sup>13</sup> it suffers from undeniable ills, varying in degree and kind across different facilities and locations. Among these ills are those relating to the prison conditions, including the lack of proper care, underqualified and overstretched staff, prevalent racism, sexism, homophobia, and transphobia, and widespread violence (e.g., Liebling and Maruna, 2011). Other ills are: the hyperincarceration of people from marginalized, disadvantaged, and disempowered groups (Jacobson et al., 2017); the failure of imprisonment and punishment to achieve their stated objectives, both in terms of reducing crime (DeFina and Arvanites, 2002; Pritikin, 2008) and meeting victims’ needs (Braithwaite, 1998); and the high incarceration rate for physically nonviolent offenses or even for technical parole or probation violations (e.g., Sawyer and Wagner, 2020). And all of this, at an immense financial cost, which instead could have benefited anti-poverty and community empowerment initiatives, affordable housing, welfare services, free health care, high-quality education, recreational projects, and other social enterprises (Lamble, 2011).

Although advocates of youth decarceration mention most of these issues, they tend to associate them primarily, if not exclusively, with youth (e.g., Haines and Drakeford, 1998; Goldson, 2005; Gavin, 2014; Willow, 2015; Howard League for Penal Reform, 2016; McCarthy et al., 2016; Bowman, 2018; Youth Justice Board for England and Wales, 2019; UNICEF, 2020; Case and Browning, 2021). This framing of the problem sidelines older people behind bars yet again, as if they were less important, less worthy, or less exposed to such ills.

Reflecting on these issues, one US prison reform campaigner recently noted that “the efforts to reverse mass incarceration for adults and to deinstitutionalize justice-involved youth have remained curiously distinct. But the two systems have more

problems . . . in common than one might think” (Sawyer, 2019). I, however, would not characterize youth decarceration advocacy as “curiously distinct” from other decarceration campaigns. There is nothing curious about its distinctness. Not only do proponents of youth decarceration largely detach their claims from those of broader decarceration efforts, but they also potentially undermine such efforts by lending legitimacy to adult imprisonment.

What is needed, therefore, is a bolder decarceration vision, one that would benefit people of all ages. Notwithstanding the previously mentioned pitfalls of decarceration initiatives to date, carceral thinking deserves to be roundly criticized—and so does ageism. Only by pushing for decarceration across the age spectrum can both these problematic mindsets be adequately opposed.

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## Notes

- <sup>1</sup> The Scottish government (2022) recently vowed to divert all under-18s from incarceration to “care-based alternatives,” in order to shift “the approach from one of punishment to one of love and support.” If the Scottish government delivers on its promise, Scotland’s prison population would consist solely of “adults.” As argued in this article, the question arises as to how and why these “adults” are denied such “love and support.”
- <sup>2</sup> For example, Austin and Krisberg (1981) distinguish decarceration from both diversion and decriminalization.
- <sup>3</sup> On some earlier instances of youth decarceration in the US and the UK, see, respectively, Austin and Krisberg (1981); Cox and Godfrey (2020).
- <sup>4</sup> Justice systems vary not only between the US and the UK, but also from one US state to another, as well as from one UK nation to another. Nonetheless, the ageism expressed by youth decarcerationists—which is the focus of this article—transcends these undeniable differences, as borne out by the quotes provided.

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- <sup>5</sup> A similar point appears in a short op-ed by Cox (2015): “When we focus criminal justice reforms only on teenagers, we suggest that there is an age at which it is appropriate for an individual to receive an excessively long sentence . . . This is misguided and fails to value the need to extend mercy to all individuals who have transgressed the law.”
- <sup>6</sup> Recently, some youth decarcerationists (e.g., Bateman, 2020; Youth Justice Board for England and Wales, 2021) have omitted the “offender second” part, leaving only “child first,” to avoid the stigmatizing effect of the offender label. This rhetorical shift, however, fails to address my criticism in this article.
- <sup>7</sup> On how the notion of criminal incorrigibility informs the so-called “rehabilitative ideal” of the penal system, see, e.g., Grasso (2017).
- <sup>8</sup> In addition to their adult status, incarcerated people in many parts of the world tend to be men from marginalized socioeconomic, racial, ethnic, and national groups. As such, they are subjected not only to ageism but also to sexism, classism, racism, and nationalism (Viterbo, 2021b). This trend is reinforced by, among other things, prison reform or abolition campaigns that depict incarcerated women as more deserving than their male counterparts. For critiques of such campaigns, see Shaylor (2008); Carlton and Russell (2018); Heiner and Tyson (2017).
- <sup>9</sup> Some youth decarcerationists, citing neurodevelopmental claims that brain development continues into the mid-20s, also advocate “a distinct approach for young adults” (Just for Kids et al., 2018: 5). But this merely raises the age threshold above which older “adults” are cast as undeserving of decarceration.
- <sup>10</sup> This principle diverges from both the reality on the ground and some national laws. For instance, the state of Queensland (Australia) has removed from its youth justice legislation the requirement to use detention as a last resort (O’Leary, 2014). On youth hyperincarceration worldwide, see, e.g., Human Rights Watch (2016).
- <sup>11</sup> At the same time, some domestic laws (e.g., Australia’s Crimes Act 1914 and Canada’s Criminal Code 1985) do require courts to only impose custodial sentences as a last resort. Such a requirement also appears in the legally non-binding European Prison Rules (Council of Europe, 2006).
- <sup>12</sup> For example, some may justify youth-specific campaigns as responsive to the logistical reality that carceral institutions for youth are a separate set of institutions, with their own rules, regulations, and governing bodies.
- <sup>13</sup> For instance, people may experience certain aspects of their imprisonment as empowering (e.g., Viterbo, 2017, 2018, 2021a) or otherwise positive (e.g., Crewe and Levins, 2021).