

Neo- Liberal Governmentality and Babies in Prison

INTRODUCTION

The number of babies in prison could be significantly reduced if the international human rights framework was recognised by nation-states. The problem is the monitoring of compliance and implementation of international human rights relies on politicians, reformers, activists, and academics that continually battle to create priorities, policies, and institutional practices. It is widely thought that female prisoners represent a population who have had a lifetime of discrimination. Conditions in prisons across the world can shock and in some instances are so bereft of humanity that they challenge the notion we are a civilised society (Perlin, 2014). While mothers in prison are central to public policy or research, the focus has rarely been entirely on infants who live in prison mother and baby units.

There is an international consensus that babies can be accommodated by prisons to live with their mothers from new-born. This topic does not attract attention within mainstream media or political discourse because in comparison to the whole of imprisoned populations around the world; babies in prison are a marginal concern. Internationally there is no known accurate data of the number of dependent infants with their mothers. The age limit of children is different throughout the world and there is a lack of consistency with the treatment of this minority population. Within England and Wales the age limit may change following the release of a policy document called a 'Review of Operational Policy on Pregnancy, Mother and Baby Units and Maternal Separation (Ministry of Justice, 2020)'. Criminologists are now exploring ways to take into account connections between local and global contexts. The focus for some criminologists has been to recognise the importance of global relations and how a constantly evolving context means there is a need for new insights into justice and humanity (Freidrichs, 2011; Pakes, 2013; Van Swaangen, 2011).

The Covid-19 pandemic provides important context for this article. During 2020, there have been a lot of critical contributions within the media and academic publications that are trying to make sense of political responses and interventions towards protecting the public, including babies in prison. Due to the ongoing problem of Covid-19, it is not possible to provide a comprehensive account of the current situation, a guide to what is to be done or hear from the people most affected. In thinking critically about the coronavirus and prisons David Scott and Joe Sim published a blog about the exercise of power and social divisions (March 2020) and this provides a useful starting point which establishes a need for radical alternatives to public policy solutions.

This article uses a methodology that does not advocate grand generalisations. Governmentality is an approach to analyse techniques and procedures for directing human behaviour (Rose et al, 1996). This perspective is useful for recognising that there are a variety of authorities who govern on different sites and in different ways. An analysis that uses this perspective means that different styles of thought are

identified as well as their principles or knowledges it is borrowed from. The emphasis of governmentality literature is on empirical analysis therefore, I will outline a preliminary interpretation of the governmentalities embodied in the existence of mother and baby units in England and Wales. I will first describe what is known about human rights and the governance of mother and baby units in the United Kingdom.

Human Rights for Babies in Prison

Human Rights are applicable to all individuals who live in a prison. The Universal Declaration of Human Rights (1948), and the Vienna Declaration and Program of Action (1993), states that the foundation of freedom, justice and peace means recognising the inherent dignity and inalienable rights of all individuals (Birgden & Perlin, 2009). International human rights for all prisoners are safeguarded through covenants such as the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1987) which gives freedom from torture or cruel, inhuman or degrading treatment. This universal legislation, in conjunction with regional and domestic legislative frameworks must guide the work of activists, practitioners and other stakeholders to support the human rights of people in detention.

Human rights are not a homogenous framework but consist of complex, overlapping legislation governed through complex international, regional and domestic mechanisms. Nation-states that have ratified the Convention of the Rights of the Child should provide ante-natal care for pregnant women and when children are born their rights are recognised. Regional legislation such as the European Convention on Human Rights also provides an important part of a legal normative framework for babies in prison (Dimond, 1999; Epstein, 2011). Political philosophers of human rights explain that although states may ratify and agree to complex international legislative frameworks, interpretations vary and these frameworks are not necessarily implemented (Van Gundy and Buamann-Grau, 2013; Risse and Ropp, 2013).

The international level of governance also has specific rules that relate to conditions in prison. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) were internationally adopted in 2010 (United Nations General Assembly, 2011). The intention was for the Bangkok Rules to accompany the Standard Minimum Rules for Prisoners and other international or regional non-binding treaties to form an international regulatory framework stating the conditions for women detained in custody. In particular, the Bangkok Rules state that for women with dependent children non-custodial sentences are preferred where possible.

Mother and baby units within the United Kingdom have another complex layer of legislation and governance due to the devolution of the four nations: England; Northern Ireland; Scotland and Wales. These nations have commitments

internationally through the sovereignty of the United Kingdom. On a national level there are differences with legal and policy frameworks. For example in England the main domestic legislation for human rights is within the Human Rights Act 1998. Scottish governance is legislated by the Human Rights Act 1998, as well as the Scotland Act 1998 which was established by the Scottish Parliament and the Scottish Government (Scottish Human Rights Commission, 2014). The Scottish Parliament can only pass laws that are compatible with human rights and unlike England, Scotland has a national action plan which explains how human rights must be respected and realized at all levels of governance in Scotland (SNAP, 2013). Despite this, many people question the applicability of rights and claim that human rights cannot be translated into a reality.

The incarceration of women has a similar history in England and Scotland and it is known that formal arrangements for mothers to keep their babies started in the 1980's. Prior to this period, a study of English and Scottish prisons found pregnancy was mentioned as a 'pathological condition' for female life in prison (Dobash, Dobash and Gutteridge, 1986). Moreover, both England and Scotland have been associated with a history of the medicalization of women's problems in prison (Carlen, 1983; Dobash et al, 1986; Sim, 1990). The difficulty concerning mother and baby units is that compliance with international standards is not straightforward and often nation-states have to create compliance processes which depend on elite-initiated agendas, litigation and political mobilization (Simmons, 2009). Human rights activists claim new forms of international law are not unified and there is a need to engage with sociological analysis in order to acknowledge multiple and complex realities (Follesdal et al, 2013; Nash, 2009; Walby, 2011). It is in recognition of these claims that I shall focus on the forms of knowledge, particularly economic principles, which are embodied in a review of mother and baby units in England and Wales.

Mother and Baby Units in England and Wales

England has the largest number of female prisons in Europe. Within the prison estate there are six prisons that have a special Mother and Baby Unit (MBU). This was confirmed in the recent policy document published by the Ministry of Justice (2020). Two mother and baby units within the two private prisons are managed by different contractors. HMP Bronzefield and HMP Peterborough were purpose built private prisons and have run according to PFI contracts since 2005. These contracts have been criticised for not ensuring value for money and in prisons there have been problems such as a high turnover of staff, low pay, and in-experienced staff (Prison Reform Trust, 2005).

In managing private prisons, the state is obligated to keep prisons at capacity otherwise it has to pay the private company for un-used beds. It is difficult to find out whether the contracts with HMP Peterborough and HMP Bronzefield require 90 to 100 per cent prison occupancy. Contract details are not available; despite this the

financial cost of keeping women at HMP Bronzefield was published on 29 October 2015. This was less than a month before the announcement of the closure of HMP Holloway which at the time was the largest female prison in Europe. HMP Bronzefield is the only private prison that has sole occupancy of women. In 2015 the cost per prisoner was £64,445 per year and was the most expensive private prison for women. HMP Peterborough charges £38,569 per prisoner per year and this is £25,876 less than HMP Bronzefield per prisoner per year. In 2011, a Ministry of Justice Service Specification for Mother and Baby Units highlighted how public prisons estimated that baby food and clothing for 12 children would cost approximately £8,000 per year. This may not be up to date, but it is significant because the recent policy document states that children can be provided for through the prison budgets on a case-by-case basis (Ministry of Justice, 2020).

One of the most important changes to the governance of prisons in recent years has been the involvement of the voluntary sector within prisons and this has attracted attention from governors as well as academic literature. The voluntary sector is not a self-explanatory term because these organisations use paid employees, have their own infrastructures and overheads (Hucklesby and Worrall, 2007). It is diverse, performs all kinds of work and supports hard to reach groups such as pregnant women in prison. The influence of the involvement of the voluntary sector within prisons is clear in recent stakeholder consultation, where eight organisations were invited to attend thematic workshops (Ministry of Justice, 2020). Governors have criticised the involvement of voluntary sector and outside agencies working within prisons. For example, changes within the prison estate in England and Wales have led the president of the Prison Governors Association claiming, *“For prisons to be successful the Governor must be responsible and accountable for all business activities inside the wall”* (O’Connell, 2014).

The increasing range of services within prisons has been described as a hybridised widening net of governance because each prison uses services from their local communities differently and increasingly volunteers are encouraged to control rather than support women (Kendall, 2013). For example, criticisms of women only services providing community resettlement has focused on the expectations of voluntary sector organisations to provide rehabilitation programmes without consent, adequate training, or financial support (Mythen, Walklate and Kemshall, 2012). Multi-agency working has been described as particularly difficult because of different operational cultures and ways of working within legislative or contracting frameworks (Cocheran and Fox, 2013). Tension could be interpreted as an expression of the UK’s pattern of relations between public, private and voluntary sector organisations. It is this complex arrangement of working practices and attempts from central government in England to dominate the agenda for supporting children of female offenders that the concept of governmentality proves particularly useful.

Neo-Liberal Governmentality

The stance taken by Foucault is that it is important to question the present (Foucault, 1986). In the spring of 2020, the Covid-19 pandemic produced events that highlighted how the state and markets are not separated, governments from all nation-states use strategic dimensions and their rationality can be challenged by the

threat of a global health crisis. The present can be described as a globally uncertain time for humanity. Despite this unusual context, the government in the UK produced a policy document that recommends changes for mother and baby units, including an extension of separation between baby and mothers from 18 months to 2 years. Central to the concept of neo-liberal governmentality is a critique of the effects of government and it is a methodology which is useful for analysing the breadth and depth of domination and exploitation (Lemke, 2000).

The concept of governmentality was first used in a lecture by Michael Foucault at the College de France in 1978. Government is defined by Foucault as the 'conduct of conduct (Foucault, 2001)'. This is not just understood in terms of state practices, but also other activities which try to co-ordinate or 'steer' processes, people, and things. The intention of Foucault was to separate objects of governance from modes of thought. This linking of governing with ideas understands that it is not possible to study technologies of power without an analysis of political rationality.

The analysis will use elements of neo-liberal governmentality that were originally developed by Lemke (2000). First, there is a focus on the rational and reflective aspect to governance. Literature on governmentality explains that there is a need to ask: by what means, mechanisms, procedures, instruments, tactics, techniques, and vocabularies is authority constituted and rule accomplished? (Dean, 1999). Rationalities appear on the basis of data and intelligence that can include a reflection on the process of government itself.

The second element concerns the strategic dimension. This means it is possible to consider the conflicts and resistances that are put forward against technologies and rationalities of government (Lemke, 2000). There may be an appearance of stability and places, such as mother and baby units, are not necessarily in crisis when they relate to an incoherent political program. Neo-liberalism can relinquish social securities and political rights as well as use processes that exclude or marginalize certain populations. The importance is to explain gaps not as a failure but as a condition of existence.

Finally, the economic dimension involves tactics of governance. This understands that the state and markets are not separated, and rationality forms an economic government. An apparent retreat of the state may not mean they are not involved. For example, this element will be particularly relevant for non-governmental organisations that are linked to the state through economic tactics.

There are many other elements to the governmentality approach; however these are the main areas which are directly relevant to the situation of the penal voluntary sector and their inclusion in the mother and baby unit's policy-making process.

Neo-Liberal Governmentality and the Penal Voluntary Sector

The neo-liberal governmentality approach is not a policy evaluation technique. It is a methodology for disrupting taken-for-granted assumptions within new forms of coercion and domination.

The starting point is to consider the inclusion of the penal voluntary sector within the recent review of the management of prison mother and baby units as documented by the Ministry of Justice in England and Wales (MoJ, 2020). The type of research conducted by the Ministry of Justice can be defined as a stakeholder approach which means that issues for study are based on the views of people involved within the program (Buchman and Schutt, 2012). This process involved consultation with the penal voluntary sector and has led to recommendations for the implementation of new rules for the management of prison mother and baby units.

Crucial for the stakeholder analysis conducted by the Ministry of Justice (2020) is the responsiveness of policy so that participants who help with the evaluation are then more likely to accept and use its results. This technique is a form of rationality that it is hoped its conclusions will be implemented by a diverse network of penal voluntary sector organisations who have been involved. It is important to consider not only which organisations were included but the role of those who were excluded. A notable exclusion from this process is the work of stakeholders from Scotland. In 2014, a document produced by the NSPCC and Barnardo's presented six recommendations relating to the management and work of mother and baby units in the UK and devolved governments (Galloway, Haynes and Cuthbert, 2014). This reported some of the detrimental effects of prison mother and baby units for the health and well-being of infants and it also highlighted the need for data sharing on a local and national scale, including the devolved governments within the UK (Galloway et al, 2014). This is evidence that practices don't exist without a certain regime of rationality (Foucault, 2000). In this case the current political climate in the UK consists of a range of contested issues such as the UK preparing to leave the European Union as well as tensions with Scotland over its independence.

The rational and reflexive element of governmentality involves formulating strategies, policies and plans based on data intelligence. In the absence of data, the literature review produced by the Ministry of Justice (2020) was significant for their evaluation of the management and provision by the range of staff, including contracted workers from the penal voluntary sector. The main focus within this literature review and subsequent consultations with stakeholders' concerned women as offenders or mothers, rather than their babies who live with them. This focus meant literature relating to babies appears to have been disregarded. In particular a crucial piece of research conducted by Liza Catan and published by the Home Office in 1989 was missed from the literature review. This research by Catan (1989) is the only research available that has been conducted in English female prisons and focussed on the on mother and baby units to assess the physical and mental development of babies. It found that babies who spent longer than average in the mother and baby unit suffered with declined developmental performance (Dillner, 1992). In the recent publication from Scotland about mother and baby units it was this research by Catan (1989) that formed the basis of their questions about the best psychological and emotional needs of infants need that still need to be asked in research. The report by Galloway explained a dilemma that mother and baby units "may reduce the trauma of separation of children, but it might also mean living in an environment that is detrimental to child development (Galloway et al, 2014). This dilemma has also been

identified by a former baby in prison (Jiang-Stein, 2013) who asked: Should she have been allowed to form a bond with her prison mother? Was it correct that she was separated?

Strategically, the recent review by the Ministry of Justice used voluntary sector organisations that are working within mother and baby units. Other possible charitable organisations that could contribute to a debate about babies in prison during the Covid-19 pandemic were excluded. A notable exclusion was the Howard League that provides support in many forms, including legal representation for mothers. It is significant that in May 2020 the Howard League for Penal Reform (2020) reported that they had been successful in releasing a young mother and her baby after taking her case to the court of appeal. The Ministry of Justice (2020) policy review announced that 17 babies were resettled with their mothers during the Covid-19 crisis. It did not include the Howard League as a stakeholder, despite this organisation being involved with the All Parliamentary Group on Women which was chaired by Baroness Corston who published an influential report with recommendations for the reduction of women in prison.

The importance of this omission of the Howard League and research by Catan (1989) can be explained as an effort to maintain stability and economic dominance. In developing the penal voluntary sector, the Ministry of Justice (2020) have drawn on existing knowledge and developed their own. In the background of most of the current documents relating to women or mothers in prison there is an assumption about women with 'vulnerabilities' that include mental health problems, poverty and in need of support. This discourse has been defined as 'gender-responsive (Bloom, Owen, Covington and Render, 2002)' by dominant feminisms. From the perspective of governmentality the impact of this received wisdom on the development of the 'shadow state' is important.

Within England and Wales, economically successful non-governmental organisations are those that have gained advantage by exploiting the distinctive characteristics of 'vulnerable' women. A small charity called Babies in Prison became insolvent in 2019, primarily because its work did not engage with 'best practice'. Successful organisations who work with babies in prison such as Birth Companions are able to work with governmental departments and have informed the recent Ministry of Justice (2020) review for England and Wales. Indeed the policy taskforce consultations included an academic who had conducted her research with Birth Companions in a private prison's mother and baby unit situated in England. Evidence of this is with direct reference to the focus of Birth Companions, through an emphasis on 'separation' and the establishment of accessible data relating to babies born in prison.

The concerns within the review document from England and Wales about mother and baby units directly embed knowledge from practitioners, management and academic research. This inclusiveness is typical of the stakeholder approach to public policy making in England and Wales. The danger is its broad nature and lack of critique from social movement based interventions that address 'hetero-patriarchal and white supremacist systems of domination (Whalley and Hackett, 2017)'.

Re-thinking Imprisonment in the Interests of Babies

Currently it is difficult to conceive a transformation from narrowly conceptualised legislation and policies that focus on women as offenders or mothers in prison. Struggles exist, however challenges from the margins are often defined as ‘irrelevant radicalism’, and proponents of alternative ideas are not discussed which further entrenches the existing order (Mathiesen, 2006).

Central to the Foucauldian perspective is the disciplinary form of power. Alternative thought in academia focuses on resistance to ideas and practices that are integral to punishment. In particular, abolitionists oppose legal pluralism and the imposition of law from a supranational level to national laws (Santos, 2002). Abolitionist thought remains focused on resistance against ideas and practices that are integral to institutionalised punishment and exclusion. It is asserted that liberalism is often a façade that masks material and power differentials between groups (Whalley and Hackett, 2017).

The taken-for-granted character of international legislative frameworks has arguably seen a diminution in the profile of active efforts to combat human rights abuse and the many forms of discrimination. What seems to happen is that penal voluntary organisations and documents produced by the Ministry of Justice in England and Wales include a section or statement about human rights, the Bangkok Rules (2010) or ‘best interests of children’; while leaving much of the rest of their strategies unchanged. Human rights and reference to international legislative frameworks for babies in prison is not the only aspect of policies produced by government or the ‘shadow state’ that exemplifies the operation of governmentality. Foucault emphasised that in the ‘act of government’ it is often the most taken-for-granted and commonplace areas of life that the exercise of power is significant, in part because it is the most hidden. The operation of power is at its most successful where it is embodied in routine. Policy and practice routinely focuses on the impact of imprisonment for women as offenders with infants rather than babies as individuals who will have their own family (including fathers or grandparents), social and community support.

The topic of cost-effective measures for key groups such as women has been discussed by the UK House of Commons Justice Committee (Justice Committee 2009). This identified that benefits to finding alternatives to custody would include a social return to a wider range of stakeholders beyond the criminal justice system. Gelsthorpe and Hedderman (2012) explain that supporting women in the community could bring both financial and social benefits such as few living on benefits and fewer children in care, that don’t accrue to the criminal justice system.

As suggested above, there is a need to reconsider evidence, what matters to the futures of babies and what is seen as legitimate evidence as well as how this is translated in practice. Alternative economic frameworks exist that have been actively promoted as one of reducing levels of imprisonment by diverting expenditures from prisons to fund services in communities. The justice reinvestment model has had some promising results in several jurisdictions around the world. This alternative economic model is currently a concept for activists and

criminologists to actively engage in shaping emergent meanings and practices (Stubbs, 2016).

Conclusion

To summarize, the priorities, policies and institutional practices which lead to babies in prison are brought into being as a reality through the theoretical concept of governmentality. A neo-liberal governmentality approach has been useful for linking international human rights with a micro-level analysis of a recent review by the Ministry of Justice (2020) called, *“Review of operational policy on pregnancy, Mother and Baby Units and maternal separation: Summary report of the review of PSI 49/2014 and operational policy on pregnancy and women separated from children under 2 in prison”*.

In April 2020, my article about the invisibility of babies in prison explained that struggles relating to this topic are localised, private and invisible (Crewe, 2020). It is noticeable that the subsequent review by the Ministry of Justice (2020) has included opinions of participants in their research. Despite this, conflict in the form of a legal case by the Howard League and research from Scotland has been concealed.

The exercise of power is not necessarily negative. There is evidence that the Ministry of Justice (2020) has attempted to include a range of stakeholders from public, private and voluntary sectors. The neo-liberal governmentality approach helps to reveal inconsistencies, gaps and the use of public policy which steers a direction towards women as mothers in prison rather than the effects of imprisonment for babies.

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