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Kinder Justice: Communicating Legitimacy to Children in Sentencing Courts

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Abstract

This article examines the impact and significance to child defendants in England and Wales of sentence communication. Drawing on a qualitative study with justice-experienced children, I suggest that how sentences are delivered matters deeply to children's perceptions of legitimacy in three ways that coalesce around the concept I call 'kinder justice'. First, legitimacy is enhanced by approaches that communicate care (invoking kinder as a verb); second, children want recognition of their status as a child (employing kinder as a noun); and third, children value sentencing remarks that reflect their family's (kin's) version of the child's self, not the 'proper criminal' they feel portrayed as in court. Together, drawing on Honneth's theory of recognition, I argue these three forms of kinder justice highlight the importance of recognitional justice during the sentencing process.

Keywords

sentencing, sentencing remarks, child defendants, legitimacy, recognition theory, communication

Introduction

Almost 12,000 children are sentenced every year in the criminal courts of England and Wales (Youth Justice Board, 2024). While the overall number of child defendants has declined significantly over the past two decades, for those who remain, particularly the

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five percent who receive an immediate custodial sentence, the delivery of the sentence marks a life-changing moment, the memory of which ‘will stick with you forever’.¹ Yet very little attention has been paid in either law or research to children’s experiences of sentence communication or to the purpose and duties of judges and magistrates in relation to *how* they deliver sentences to children rather than *what* sentence they impose.² Given the prevalence of prior trauma (Liddle et al., 2016), increased needs (Office of National Statistics, 2022; Youth Justice Board/Ministry of Justice, 2021), communication difficulties (e.g., see Anderson et al., 2016) and racial and/or care-experience disproportionality (Hunter et al., 2023; Youth Justice Board, 2024) among child defendants, combined with their developmental and highly formative life stage, the imperative to better understand the significance of sentence communication for this group of vulnerable defendants is pressing.

This article addresses the research gap by reporting the findings from a qualitative study with justice-experienced children in England and Wales that explored their experiences of sentencing and their responses to different styles of sentence delivery. In doing so, it contributes more broadly to the (limited) literature on defendants’ sentencing experiences (see e.g., Jacobson et al., 2016; Lount et al., 2018; McGrath, 2009; Metzger et al., 2018) and helps to give voice to those who have been ‘silenc[ed] and marginalis[ed]’ in research (Tata, 2020: 157). It also contributes to research on legitimacy in criminal justice first, by identifying sentence delivery as an important legitimacy ‘moment’ in children’s meaning-making as they journey through the criminal justice system and second, by developing conceptual understandings of legitimacy for children. Specifically, I argue that how sentences are delivered matters deeply to children’s perceptions of legitimacy in three ways that coalesce around the concept I call *kinder justice*. First, children value care in the communicative process, and legitimacy is positively shaped by sentence delivery experienced as caring (employing *kinder* as an adjective). Second, legitimacy for children hinges on judicial acknowledgement of their unique status as a *child*; children want to see a demonstrable commitment to recognising and treating those aged under 18 as a vulnerable group of rights-holders worthy of special treatment in sentencing, including in sentence communication. *Kinder* is thus used in this second sense to invoke the collective noun for children. Finally, children value sentencing remarks that reflect their true, authentic self as an individual who, at their core, is good rather than the stigmatised ‘proper’ (adult) criminal they see portrayed in the court. Their ‘real’ self is the person their family (i.e., their kin) recognises, hence *kinder justice* here is used as *kin-der justice*.

In identifying *kinder justice* as a key factor in shaping children’s perceptions of legitimacy, this article responds to Bottoms and Tankebe’s (2017, 2020) call for studies that explore further the ways in which ‘basic legitimisation expectations’ vary among cohorts and between criminal justice contexts, such as policing, prisons and – as here – courts. While I make an empirical claim about what matters to children, the analysis has broader significance because the three elements of *kinder justice* reflect Honneth’s (1995) three forms of recognition – love, respect and esteem. As such, *kinder justice* constitutes a form of recognitional justice; that is, justice that aims to recognise the dignity of all individuals through mutual recognition of their standing as right-holding individuals (Honneth, 2004). It therefore also underpins a normative claim about how judges *should*

communicate sentences to children, and – while kinder justice is child-specific – it may also point the way to the significance of recognition to other defendants in the sentencing process.

I begin this article by locating the study within the legal framework for sentence delivery and the existing literature on sentence communication and legitimacy in criminal justice. I then describe the study. The remainder of the article is structured around the three sub-themes of kinder justice ('caring practice', 'the in/visible child', and 'I am not a proper criminal') to bring together the empirical analysis and the theoretical framing.

Communicating Sentence: Law, Legitimacy and Children

The legal framework for communicating sentences to children is, in contrast to that governing sentence outcome (see Sentencing Act 2020; Sentencing Council, 2017), relatively minimal. Sentencing courts are required only to give reasons 'in ordinary language' (Sentencing Act 2020, section 52) and to explain the sentence in a way the defendant can understand (Criminal Procedure Rules 25.16(7)(b)(iii) (Crown Court) and 24.11(9)(d) (Magistrate courts)). Within the context of the Crown Court, where around 500 children are sentenced every year for the most serious offences, the Crown Court Compendium (Judicial College, 2023) provides guidance to judges on communicating sentences to children, recognising the combined impact of developmental stage and age and the high prevalence of speech, language and communication needs among child defendants. However, the guidance focuses primarily on clarity of communication and, although endorsed by the Court of Appeal (ZA v R, 2023), compliance is discretionary. The Youth Court Bench Book (Judicial College, 2024: 57) suggests only that the presiding justice 'may' wish to adapt their language so that it is appropriate for the child, and otherwise refers sentencers to pronouncement cards which appear more directed to appeal-proofing decisions than to engaging the child. Bar the occasional Court of Appeal decision (see e.g., R v Chin Charles, 2019; ZA v R, 2023), this framework leaves considerable scope for sentencers to adopt whatever communicative style, language (as long as it is 'ordinary') or tone they wish.

This light-touch approach to sentence delivery ostensibly balances judicial individuality with demonstrating the legitimacy of the sentence *outcome*.³ However, there is little in the legislative framework, guidance or case-law that recognises the centrality of sentence delivery *in and of itself* to a legitimate system of criminal justice. This is not surprising. The criminal justice system (and the criminal law) is premised, still, upon the fiction of the rational and atomistic agent, stripped from their social, familial and individual contexts. In such a world, communication is a process of conveying neutral information to an audience of rational agents who receive and process that information in an identical manner and in the way intended by the sentencer; who, similarly, is imagined as detached, impersonal, passive and unemotional (Hunter et al., 2016; Roach Anleu and Mack, 2017: 3). In reality of course, communication – including communication in the court – is inherently relational and takes place between embodied and embedded individuals and within complex social structures where power is likely to be unevenly distributed. It is norm-reflecting and norm-shaping; it can be identity-forming

and profoundly affective; and its impact – including on perceptions of legitimacy – can be different between different individuals and groups.

But while the legal regulation of sentencing ignores these more complex – and potentially transformative – relational aspects of communication, research has not. Content analysis of sentencing remarks, for example, highlights the ways in which shared social values and norms of right and wrong behaviour are reflected and created by sentencing courts and the powerful messages they convey about how to treat defendants and victims (Daly and Bouhours, 2008; Hunn et al., 2018). Elsewhere, research has examined the extent to which communication enables judges to ‘perform’ judicial authority and legitimacy (Roach Anleu and Mack, 2013, 2017; Tata, 2007; Tombs, 2008); engage in humanising and individualising work (McLeod, 2020; Tata, 2020); alter public opinions and attitudes (Hopkins et al., 2023; Tait, 2002) and influence defendants through pedagogy or ‘moral dialogue’ (Weijers, 2004). It illuminates the affective power of sentencing communication by showing how sentencers ‘... can be instrumental in encouraging a defendant to feel remorse, guilt, shame, perhaps, relief or gratitude, and fear of the consequences of re-offending rather than anger, contempt or indignation’ (Roach Anleu and Mack, 2005: 602–603). Research has also applied different theoretical lenses to explore judicial communication (including sentence) (Hunter et al., 2016, 2021) and, in the specific context of sentencing children, Lowenstein’s (2022) study of youth court magistrates in England and Wales explores the challenges magistrates identify in communicating with children, and their hopes for impactful and transformative communication. Other, broader, relational aspects of sentencing are addressed by Tata (2020) who describes sentencing as a social process. Through this lens, sentence communication is shaped (inter alia) by other agents and agencies who determine the information available to sentencers in pre-sentence reports (including information on the accused’s language capacity or attitude to offences), by efficiency concerns (encouraging standardised remarks), or by ‘appeal proofing’ the decision (writing for the Court of Appeal rather than the defendant). These factors may encourage sentencers to focus less on how the remarks are received by the defendant and more on getting the job done.

Relational understandings of communication – that see the communicative process as a dialogic, meaning-making endeavour, to which those involved bring their full, messy, historically and societally constituted, human, emotional and embodied selves – underpin the type of ‘engaged’ judging (Hunter et al., 2016) characteristic of therapeutic jurisprudence (see e.g., Wexler, 1990, 2014; Winick and Wexler, 2003) and procedural justice (see e.g., Kirby and Jacobson, 2022; Tyler, 2007). However, whereas therapeutic jurisprudence stresses the relevance of communication to therapeutic outcomes (e.g., to emotional wellbeing or engagement with treatment programmes (Hunter et al., 2016)), it is procedural justice that draws the link with perceptions of legitimacy (Tyler, 2007). Tyler, whose work has shaped the field, identifies four key aspects of procedural justice: neutrality, voice, respect and trust (see e.g., Tyler and Huo, 2002), all of which are relational criteria (Meyerson et al., 2020a) shaped by and within interactions between state actors and citizens. Where these factors are present, Tyler argues, perceived legitimacy (which he defines as seeing the authority – police, prisons, courts – as having the right to command and be obeyed and having confidence in them) is increased and in turn people are more likely to voluntarily comply with the law, avoiding coercion

(Tyler, 2009; see also Murphy, 2015). While numerous empirical studies suggest that procedural justice is a – if not *the* – most important aspect of legitimacy for those subject to criminal justice processes (Bottoms and Tankebe, 2020: 85), much of the research has focused on policing and prisons. As Jacobson et al. (2016) note, very few studies examine the ‘high stakes’ (Bottoms and Tankebe, 2020: 103) context of court (see e.g., Ansems et al., 2020; Hunter and Jacobson, 2021; Kirby and Jacobson, 2022; and in the United States, Benesh and Howell, 2001; Tyler, 2007; Tyler and Huo, 2002) and even fewer are concerned with children in the court. Where children are the focus, it is either in jurisdictions outside of England and Wales (Sprott and Greene, 2010) or it is largely theoretical. As Beneitez and Dumortier (2018: 43) conclude ‘... it remains unclear whether children perceive justice institutions and professionals as fair (or not)’.

This current study fits within this wider research context by examining the impact on child defendants – particularly on perceptions of fairness and legitimacy – of different judicial communicative styles of sentence delivery, including ‘engaged’ or relational approaches usually associated with procedural justice and therapeutic jurisprudence. I suggest however, that explorations of the (relational) communicative interactions and processes of sentencing and their impact on individuals also resonate with the principles and insights from theories of recognition (see e.g., Fraser and Honneth, 2004; Honneth, 1995, 2004). Recognition theory shifts attention from justice as redistribution (e.g., of social goods) towards justice that aims to recognise the dignity of all individuals (Honneth, 2004: 352), thus speaking to the ‘vital human need’ (Taylor, 1992: 26) of being recognised, and recognising in others, their standing as a rights-holding individual. For Honneth, this type of justice occurs when conditions of mutual recognition that support ‘personal identity formation, and hence individual self-realisation’ are met (2004: 354). He identifies three such conditions which support (in turn) the three forms of recognition of love, respect and esteem: self-confidence (the ability to trust in oneself, developed in the context of loving or caring-type relationships); self-respect (regarding oneself as entitled to the same rights and treatment as all others, achieved through legal and institutional recognition of one’s status as a rights-holder); and self-esteem (a sense of one’s unique value, developed through social recognition of one’s worth). Bottoms and Tankebe (2020) suggest that recognition (understood as esteem) implicitly informs explanations for why, empirically, procedurally just criminal justice systems increase perceptions of legitimacy (because they confirm the individual’s place as a valued member of the wider social group (Jackson et al., 2012; Meyerson et al., 2020b; Murphy et al., 2022; Tyler and Lind, 1992)). However, I argue that recognitional justice has a greater role to play in explaining what is important to defendants in sentencing. This encompasses, but goes beyond, the four tenets of procedural justice and, as such, I suggest that recognitional justice may, at least for some groups, be a basic legitimacy expectation (Bottoms and Tankebe, 2017, 2020) in the sentencing process. However, what recognitional justice comprises is likely to vary between groups given that misrecognition, and hence the ‘struggle for recognition’ (Honneth, 1995, 2004), will differ depending on social positioning. Children, for example, occupy a unique place in the polity due to their liminal rights-status and the specific obligations owed them by the state (Hollingsworth, 2013). This is why ‘kinder justice’ is used here, empirically and normatively, to capture recognitional justice as it specifically applies to those

aged under 18 years. I turn now to describe the study before setting out the analysis that forms the basis of kinder justice and the argument made here.

The Study

The purpose of the study was to better understand the experiences and meaning-making of justice-experienced children during sentencing and their perspectives on different judicial communicative styles. To explore these issues, I undertook a qualitative analysis of data drawn from in-depth interviews ($n = 9$), supplemented with survey data from participants in custody ($n = 35$) shared with me by the Howard League for Penal Reform (on this study, see Howard League for Penal Reform, 2018). All participants had experienced the justice system as children (aged 13–17 years) and were aged between 14–24 years at the time of interview or survey completion. Ethical approval was granted by Newcastle University, following which informed consent was acquired using information sheets written in appropriate language and – for some participants – images, and an oral explanation provided by a support worker.

Interviewing justice-experienced children and young people, especially about a highly stressful time of their life, required careful consideration of a number of issues including power inequalities, the child/young person's – and my own – communicative abilities, the need to build trust and rapport, and ensuring that participants found value in the process (Kirk, 2007; O'Reilly and Dogra, 2017). Interviewees were thus recruited through three children's charities with whom they had pre-existing contact. This acted as an endorsement and helped to establish trust and mitigate the potential 'tainting' effect that may arise where recruitment is via a criminal justice-related agency, such as a youth justice service. The charities also provided me with detailed advice about the participants' communication needs (e.g., frequency of breaks, use of fidget toys etc) and supported interviewees before and after the interviews in case of distress caused by reliving their sentencing experience. I purposively avoided asking about their offending for the same reason. I scheduled two hours for each interview to ensure sufficient time to build rapport and bridge differences arising from our respective ages, class, gender or ethnicity. I informed the participants that, with their permission, I would share their anonymised experiences to help judges understand children's perspectives of sentencing (the study has subsequently informed judicial training and guidance). Participants derived a sense of value from knowing this, with all reporting afterwards that the interview experience was an empowering and positive one.

The interviews consisted of two parts. First, a semi-structured interview explored experiences of courtroom communication and sentencing. Second, I asked for reflections on sentencing extracts chosen for their different communicative approaches. The first set of remarks (an extract from *R v Bower*, Bower and Cartledge, 2019) contained acronyms, legal concepts and complex and stigmatising language. The second extract was from a decision of the Court of Appeal (*R v Chin Charles*, 2019) which rewrote the original sentencer's remarks to (ostensibly) provide an accessible, exemplar, sentence. The final extract was written for this project by an experienced youth court magistrate, and designed to reflect a more child-sensitive approach. This fictive example – the 'Letter to Joe' (reproduced in Hollingsworth, 2021: 16) – was necessary to exemplify an

approach that was not, at that time, available in published remarks.⁴ The use of the extracts helped to scaffold the formation, and not only the expression, of participants' views by presenting a range of alternative approaches to sentence delivery – both negative and positive – to contrast, reinforce or supplement their own experiences (Lundy and McEvoy, 2011). It prompted reflections, emotions and opinions that had not emerged during the first part of the interviews and added considerable depth and richness to the data. The participants' responses to the 'Letter to Joe' were especially powerful, generating lengthy and often enthusiastic responses; though of course those responses were shaped and limited by its content. In the final two interviews, I also included an extract from sentencing remarks handed down to a 15-year-old convicted of manslaughter in March 2022, shared with me by the sentencing judge. These were noteworthy for their simple language, explanations and compassionate approach, and for their application of the principles in the 'Letter to Joe' to a real case concerning a very serious offence (Hollingsworth, 2023; see also *R v Baz*, 2022).

I employed Braun and Clarke's (2006, 2021a) method of reflexive thematic analysis (TA) to interpret the data, starting with a process of familiarisation, followed by coding with an unlimited number of codes that were later combined and refined during a second round. This process was iterative, and the analysis was shaped by my familiarity and knowledge of children's rights-based approaches to criminal justice and the literature on procedural justice and therapeutic jurisprudence. It can thus be described as deductive reflexive TA, offering a 'theoretical exploration of qualitative data' that 'remains within a framework of openness and situated meaning' (Braun and Clarke, 2021a: 210). My curiosity was centred around participants' accounts and experiences of courtroom communication: what stayed with them; how, with the benefit of hindsight, the communicative experience affected them; what, as a justice experienced young person, their views were of alternative approaches to sentence delivery; and the implications and consequences of their meaning-making. As such, I was not concerned with the 'truth' of their recollections. Therefore, neither the temporal distance between the sentencing occasion and the interview nor the child's uncertainty around certain 'factual' issues was a central concern. As the research is not intended to produce quantitative-style generalisations (though it is intended, as Braun and Clarke suggest (2021b), to have qualitative generalisability), my sample size was not determined by a saturation point (Braun and Clarke, 2021b; Low, 2019) or representativeness, but by the desire to generate sufficiently rich and complex data that allowed me to identify a number of important issues and provide new insights through my interpretation, while chiming with other research and experiential practice (Smith, 2018). The sample size was also informed by practical considerations including the intensity of the process for the participants and pandemic-related challenges for the gatekeeper charities. From the iterative analytical process of the two data sets, I developed the over-arching theme of 'kinder justice'.

Kinder Justice

Judicial communication, including sentence, was central to participants' experiences in the court.⁵ They described judges in different ways, from a cheerleader to a parent, but an overarching perception was the judge as an all-powerful God-like figure who

‘makes or breaks the rest of your life’ (Joshua) and ‘holds people’s lives in [their] hands’ (Sasha). They (inaccurately?) perceived judges as having unconstrained agency and, as the embodiment of the system, what judges said and how they said it carried enormous weight, especially to perceptions of legitimacy. Three aspects of communication during sentencing are identified as especially important and coalesce around the overarching concept of ‘kinder justice’:

1. Caring practice: where kinder is used as an adjective to denote a demonstrably caring approach to sentence communication.
2. The in/visible child: where kinder is used as a noun (as in kindergarten) to convey an explicit acknowledgement of the child’s status as child and of children as a societal group deserving special treatment.
3. I am not a proper criminal: where kinder justice captures a more complex idea that speaks to sentencing remarks that portray the child as a unique individual who at their core is good and not a ‘proper criminal’; that is, that sees the child the way their *kin*, their family, do.

The centrality of the three sub-themes is an empirical claim based on my interpretation of what matters to children and why. But, as noted above, the kinder justice sub-themes also resonate theoretically with Honneth’s (1995) recognitional theory and his identification of the three conditions for self-realisation that depend on establishing relationships of mutual recognition: self-confidence (dependent on ‘loving’ relationships); self-respect (achieved through legal and institutional recognition and treatment as rights-holder); and self-esteem (deriving from social solidarity and shared values which recognise a person’s unique value in and to society). In this way, the factors identified as important to children in sentencing spoke to their ‘struggle for recognition’ during that process. Thus, I argue that the concept of kinder justice illuminates the centrality of recognitional justice to children in the sentencing process.

Caring Practice

Grace: He [the judge] read like he actually cared, and you know, when he was reading you could see that he was understanding a bit more⁶

The first sub-theme speaks to the centrality of care to children’s experiences and views of sentence communication and the sentencing process more broadly. The word ‘care’ appeared across the data sets, largely in the negative (‘judges don’t care’), with the young people expressing feeling like ‘just a number in the system, just like social services’ (HL23) where judges, for whom sentencing is ‘just a job’ (HL28) ‘go home to their families and forget about us’ (HL9). Sasha felt particularly adept at reading such communicative signals:

Well, I think when you like grow up in care, especially in like a children’s home or foster care, whatever, like you’re really good at picking up like body language. Um, and it was just their body language. Like none of them made eye contact with us. Um, they were like looking down on pieces of paper, like not really even acknowledging that we were

there. Um, it was kind of like, oh, this is just like another task for them to complete today. Um, and like really like, this is our lives and I don't feel like they even cared, like, it was just a complete lack of care.

As well as the frequent explicit reference to the word 'care', care – and its absence – can be inferred as underlying their other reflections, aligning at times with the procedural justice tenets of respect, neutrality, trust and voice. For example, many of the children and young people reacted strongly to tone or stigmatizing language that was disrespectful, and to judicial carelessness about its impact on the child. Marcus and Grace commented that 'judges don't realise' that 'even tone means a lot of things in a courtroom, you know...' (Marcus) and 'if you come to me and speak to me like I'm a dog off the street or, you know, some idiot, then of course we're going to disrespect you' (Grace).⁷ For Joshua, the stigmatising language in extract one was 'unprofessional', indicating to him not only disrespect for the defendant but a disregard and lack of care for judicial neutrality: 'He thinks they are like scum. He's speaking to them like it seems quite personal like he hates them. He just hates them. It doesn't seem to be professional like'. Others spoke of communicative experiences that left an impression that child defendants (including themselves) are pre-judged or misunderstood because of their age ('just another little kid' – Nathan), how they look 'on a piece paper' (Andrew), or their ethnicity:

Louis: Um, and obviously he saw me and when you kind of hear, okay, it's like the demographic of the person you've made your judgement, like a young male of mixed black heritage, like that's predominantly like, ah, he's likely to be like a threat.

The importance of judges adequately, and demonstrably, communicating care about the child as a specific individual (rather than a stereotype) was also evident in the way some participants inserted a backstory for the defendants in the first two extracts, using imagined facts and narrative to explain or mitigate the offence. They were unhappy at what they saw as misrepresentation, minimisation (e.g., of the impact of bereavement) and silencing of the defendants and their backgrounds; a likely reflection of their own experience and the absence of 'therapeutic affirmance' (Ronner and Winick, 2003). Consequently, they did not trust the right outcome was reached either. Many of the children and young people also recounted an absence of procedural care, especially for their participation. Samuel described how '[t]he judges, they were whispering to each other... and I didn't know what they were saying and then whispering to each other again ... And I just didn't understand them ... I just didn't really get it. I just like blanked out'. For Marcus, the one-sided communication and resulting lack of voice led to a sense of powerlessness:

... people are talking about you, people like talking about you, but it's like in front of your face, like four people just be talking about you in front of your face. You'll just be standing there, it's like you won't, you can't do anything about it. You can't, yeah, you just, you just feel powerless ...

Nathan, like Grace (in her comment above), responded to these care-less approaches with a reciprocal rejection or, at best, 'passive acceptance' (Jacobson et al., 2016: 191) of the process and its legitimacy:

Nathan: So if you don't know what it [words in the sentencing remarks] means, you're not gonna care really. You're just gonna think it is what it is sort of thing.

My analysis therefore has similarities with procedural justice in recognising the importance of respect, neutrality, trust and voice. However, caring practice more accurately describes what was at the heart of justice-experienced children's perceptions of legitimacy, captured by three inter-related and mutually supporting elements: *taking care over* the decision-making process, *expressing care for* the child, and *showing care about* the child (understanding their past and investing in their future). These are communicated through the sentence process, delivery, and – as with the adults in Jacobson et al.'s study of Crown Court (2016: 172ff) – outcome. Indeed, when the children and young people spoke about their own experiences or their responses to the first two extracts, sentence outcome – especially avoiding custody – was most prominent. However, the Letter to Joe prompted great enthusiasm about and much deeper consideration of, the judge's communicative style, with most participants identifying important factors they had not earlier identified. That is, they could not imagine or articulate what it was they needed to see until they saw it.

Specifically, taking, expressing and showing care transformed what was otherwise perceived as mere *performances* of fairness into *authentically* legitimate processes. Some children, for example, perceived 'respectful' treatment pejoratively, assuming it to be motivated by professional obligation ('They treat people with respect because they can be reported if they are unprofessional' (HL 9). Others, like Sasha, equated a lack of feelings with a lack of understanding:

I just felt like there was just no understanding. There was no empathy. Like they was just, there was nothing like there was like zero feelings because I didn't get anything from them.

For Marcus, a failure to emotionally engage conveyed perfunctory communicative processes:

Like there's lot of, there's a lot of communication that goes on in a courtroom, but it's more, but it's more of a robotic communication. It's not mental communication. It's like, it's like reading off the page or, or even the thoughts. It's like robotic thoughts.

In contrast, the caring approach in the Letter to Joe added a relational depth which conveyed authenticity, increasing trust in the judge and in their exercise of 'power':

Marcus: Yeah, it would make me, make me feel better. Like it actually would, cause it's like, cause it's like the judge is like they have power over you. So it's like you're like, you're scared. Like they got power over you, so they saying, like they, look not even if they saying it, if they meant it, like they meant everything they say. If they're not just saying

it, like they meant it then. Yeah, cause it's like both, the judge cares about me... yeah. I wish every judge was like that

Such caring practice was conveyed through a judge's personal effort (for example, Joshua liked that Joe's judge had '... actually done the research himself ... He done it himself personally. And he understands'); friendliness (Marcus: 'She came in, she spoke to me, she gave me eye contact. She had like a small smile, a little smile on her face, like not like, but just like a friendly look on her face ... She didn't make any judgements. Like she was just generally a nice person'); empathy (Joshua: 'This judge [i.e., Joe's judge] is being more like 'we' like he's saying like I'm a judge, but I've done stupid things'); and emotional honesty (Andrew, speaking about the remarks in *R v BAZ*: 'I really think that was him speaking from his heart and him really telling everyone the truth about how he felt').

In addition to demonstrating that the judge had taken care of the decision-making and had expressed care for the child through gestures, body language and empathy, the children and young people particularly valued judges who showed care about the child and their future. Here, the sentencing outcome and communication were entwined. Participants wanted to see the judge believed in them by giving them a second chance (most clearly realized where they avoided custody), and the judge wanted to help them by addressing the child's wider needs (for example, parental support, education, or training and employment). All of which, as Marcus expressed when discussing the Letter to Joe, communicates hope:

Let them know that yes, although you made a mistake, there's still a chance you can make yourself better. Like give them hope. Don't give them the fear, give them hope.

For Marcus, hope is not self-generated nor is it isolated from the outcome (Ashworth and Zedner, 2019). Rather, it is something the judge *gives* to the child through a (perceptibly) fair sentence *and* through their communication ('let them know that...'). It is highly relational and temporal (future focused) (see Trotter, 2022), and rather than an expression simply that the judge 'hopes' the child will be rehabilitated (e.g., see Mrs Justice Yip's sentencing remarks in *R v Jenkinson and Ratcliffe* (2024)) it is inferred through kindness, expressions of faith in the child, and other cues that signal that the judge 'wants to help Joe in the best way that she can or he can without causing that violence'.⁸ Louis describes the positive impact this could have:

... I think [it] could encourage them and say alright I wish you success by giving them that empowerment and that bit of 'yeah you can do this. Come on now, I'm on your side'. I think in this situation it would definitely help.

For these justice-experienced children, sentencing judges therefore play a crucial role in cultivating the 'garden in which a person's resilience, sense of agency and self-worth grow' (Brownlee, 2021: 597; see also Abrams and Hila, 2007; Wigzell et al., 2024: ch. 1). Where judges convey care about the child's future, express care for the child, and take care over the decision-making processes, they may therefore contribute to the

development of the child's positive attitudes to self, including their self-trust. Trent, for example, imagines that had his judge spoken to him like Joe's '... my whole view on where I go from here would have been so different', and for Marcus:

.... at least I know that it's, that it's me like, it's not because someone just thought, they wanted to just do this and ... that thought is reassuring because, yeah, because it's like, it's better to know that you're going to prison is down to you than down to the judge. Right, right. It's so much better; it's a much soothing thought.

In this way, kinder justice as a caring practice helps children to feel that they 'matter' in the dual sense described by Billingham and Irwin-Rogers (2022: 58ff): that they can have a material influence on the world (or agency, as Marcus and Trent describe), and that they have social significance, a sense of belonging, social worth, and dignity. Grace describes how, when this happens, trust is built, leading to a type of "exchange" or "reciprocity" in interactions between offenders and the state' (Barry, 2016: 94) that is associated with a system of justice founded on recognition:

... the thing that made me want to actually prove myself was the judge because I felt like he didn't have to give me that chance... But he made me feel like, okay, you know, he's read my thing, he's understood me a little bit, you know, he's got to know me better so ... so it's like your mum say, 'Oh go to the shop. You know I'm going to trust you to go to shop'. You know, if you don't come back your mum's never going to trust you again. And I just feel like it's so important to have that level of trust with people. Even though I might not see this man again. ... He gave me a chance already... It allows you to be a better person.

This sense of self-trust, developed relationally as described by Grace, Marcus and Trent through 'caring practice', resonates with the first condition for self-realisation in Honneth's recognitional theory: self-confidence. For Honneth, self-confidence is located and nurtured in the private sphere of friend and family relationships. While sentencing is very much in the public sphere, children occupy a liminal space between the public and the private, with duties to protect and develop them shared by the state and parents/carers (which for care-experienced children may be one and the same). This includes, or should include, the development of relational capacities necessary for self-reflection so that a child can begin to form and act on their own preferences (Mackenzie, 2014), a crucial foundation for self-realisation. While these qualities – including self-trust/self-confidence – are ordinarily developed within the context of family, when the child is brought into the public sphere, including in criminal justice processes, these developmental duties arguably apply also to state actors, including judges (Buss, 2015, 2016): the legal duty on courts to have regard to the child's welfare (Children and Young Persons Act 1933, section 44(1)) can be seen as an articulation of this. Children's encounters with the law thus become an opportunity to positively develop children's capacities, including their self-confidence.

Therefore, I suggest that 'caring practice' not only more accurately describes (compared to procedural justice) the aspects of sentence communication that are important to children's perceptions of legitimacy; it also captures the normative obligation on judges, as

‘developmental agents’ (Buss, 2015, 2016), to adopt this approach. As such, Grace’s choice of analogy – comparing her relationship with the judge to that between parent and child – and Louis’ description of the Letter to Joe as being ‘... almost like a letter from his dad... yeah it’s good’ seem particularly apposite. In this way, although caring practice may also prove to be empirically important to adults (e.g., Winick and Wexler, 2003), I argue there is a duty owed to child defendants that moves this form of recognition from the realm of judicial choice to one of judicial obligation for those aged under 18.

The In/visible Child

Trent: ... at the end of the day, you know, I am still a child and it’s like, when you, when I was in the [court] environment, whether I was a child or not didn’t matter. That’s honestly how I felt.

Trent’s words capture the injustice expressed by all participants of the perceived invisibility and irrelevance of their status as children to their treatment during sentencing. In this sub-theme, ‘kinder’ is therefore used as a noun to draw attention to children’s membership of this unique social and legal group, and how (mis)recognition of this status informs their perceptions of legitimacy.

The reason age was significant to the respondents varied. For some, it was linked to children’s (assumed) lower levels of capacity and understanding. Nathan, for example, encountered difficulties because ‘the terminology they use is just hard, hard to understand’ which he put down to ‘being young’; something reflected also in Grace’s description of the sentencing remarks in *Chin Charles* as being ‘all for adults’. For Marcus, age contributed to the heightened anxiety most children feel:

[S]top treating them like they’re fully grown adults that yes, cause there’s a lot of pressure. Like um, they just, stop talking to, stop talking to young kids like they been and done something worse than they have....

For other interviewees, age was important but not because they associated it with a lack of capacity. Indeed, both Louis and Trent were keen to demonstrate their own capabilities in navigating the adult-focused processes and structures. Louis for example ‘performed’ his understanding to me by using correct legal terminology throughout the interview, and Trent described his bootstraps approach to participation when I asked if he knew who was in the courtroom:

No, I didn’t know, but the only reason why I basically started to gain a little understanding was because I was inquisitive myself and I would ask my lawyers like, who is this person? Oh, that’s the bailiff. Ok, who’s that person? That’s the clerk. Who’s that person... Do you know what I mean? It’s only because I was inquisitive that’s the reason why I found out. If it wasn’t for me wanting, my desire to learn more, I would not have known.

Instead, age was relevant for Louis because he thought rehabilitation was more likely for children, and for Trent it was because of the increased need for emotional support

(‘nobody was there to comfort me, being that I am, being that young’). In addition to the more inherent vulnerabilities associated with children’s physiological, psychological, emotional, or cognitive development, the interviewees identified the social conditions of childhood, and particularly the lack of opportunities for legitimate activities. Joshua spoke about how ‘[t]here’s nothing for when you’re under the ages of 14–16, school isn’t for everyone’ and ‘so young people’s only choices are to going country [county lines drug trafficking] or going robbery or whatever’. Others identified the situational vulnerabilities arising from the intersections of age and one or more of care status, ethnicity, and socio-economic background. Sasha, for example, described the impact of growing up in the care system:

I thought that they [magistrates] were just, they were like very old middle class, white people who probably didn’t, couldn’t even begin to understand what, like us type of [care-experienced] children go through on a daily basis.

Sasha’s care experience (which included being placed in a predominantly white area as a dual heritage child) was an important aspect of her identification as a vulnerable child, misunderstood by magistrates unable to relate to that experience. Andrew more broadly drew a distinction between his limited life opportunities and those of the judge:

...I really hate stereotyping people, but I I think judges have ... grown up in such a bubble that they think, ah, he had a choice to sell those drugs. Don’t get me wrong. Everyone has a choice, but your, your choice is saying no, can sometimes be a very very hard, hard, hard, hard choice, but they don’t seem to ... quite understand that not everyone can have the opportunities, privileges, um, to have a good, honest life.

Some interviewees drew attention to the temporal context and how different childhood is now. Joshua described how ‘[I]like maybe back in the olden days there were things like paper rounds and now like there’s nothing like ...’ and Grace similarly identified generational differences and how ‘when you think about the, the generation nowadays, a lot of people are forcing young kids to go out and sell drugs for them’.

Age was therefore perceived as important for its combined impact on cognitive capacities, emotional resilience and situational agency, and they wanted recognition of this:

Andrew: So, I mean on, on a piece of paper, um, I’m a county lines drug dealer, that’s supplied drugs up and down the country. Um, and you can look at me that way or you can look at me as a young person that groomed at the age of 10 years old, um, and was forced to go up and down the country; that didn’t actually have, I wouldn’t really say I had capacity over the fact that I didn’t know what I were doing, I didn’t, I didn’t really have a clue. Um, so I, I don’t want him just to see on a piece of paper that I am, this county lines, boy, that supplies drugs. I want him to be able to see a 14-year-old.

Yet, the respondents felt this important aspect of their self-identity was invisible due to generational, experiential, and age differences between them and the judge. The invisibility spanned across the sentencing hearing, the sentencing outcome, and the sentence

communication, each of which contributed to perceived injustice and diminished legitimacy. In relation to the sentencing process, Andrew described a sense that judges 'just silence them [young people], um, and not let 'em have their voice' and Louis felt that delays between trial and sentence need to be addressed for children because 'the longer you kind of draw out, the more kind of a pressure it puts on the child's shoulder and like dealing with that kind of stress and uncertainty can really impact them'. For Grace, a particular source of unfairness was the failure to take account of the child's age in sentence calculation:

He [the defendant in the first extract] got seven years and 10 months and they basically trying to say that regardless of the different like ages and things and you know, it doesn't matter, you two are basically - he's saying that basically these two [child and young adult] are equivalent.

And for Sasha, like others, how the sentence was communicated, including both the use of simple language and broader caring approaches (set out above), are needed for children even where the sentence outcome reflects their youth:

Interviewer: [referring to the Letter to Joe] Would you have liked the judge to speak to you like this?

Sasha: I mean, it would have just treated me like a human. So yeah. In fact it would have just treated me like a child because I *was* a child and like understand, understood me from like a child's perspective. And granted like I said, like, yes, my court sentences, they did, they did ultimately lead to like no further action and stuff. Um, but you know, I didn't even think I even said anything. I don't think the judges even said anything to me other than you're guilty. You know what I mean? They didn't take into any account of my life circumstances or the fact that like I had been in care from like a very young age and what trauma that might have caused. Do you know what I mean?

Where age was visible in the judge's communication, for some it was experienced as patronising and stigmatising (Nathan: 'What do I think the judge thought of me? Just a little kid...') or stereotyping and racist (Marcus: 'So it was like they saw, they saw knives, they saw robberies and they saw just another black kid. It's just another black kid. Yeah, just send him to prison'). However, a minority felt that their status as children was recognised in beneficial ways. Louis commented that:

Yeah. So he seemed like quite like genuinely concerned, kind of wanting to make a difference. Not just kind of throw the book, which I thought was a good, good thing cos a lot of judges would throw in a book in that scenario, they're more kind of concerned with laying down the law rather than, you know, rehabilitation. But he genuinely seemed kind of interested in, in making sure that you *as a youth* [emphasis added] were rehabilitated...

Louis went on to say how this 'empowered' him at that point, because he'd been given a chance that was 'more than fair' and attributed this second chance to his later success in

life (university and a graduate-level job). He was doing his GCSEs at the time of sentence and felt the judge gave him this chance because it was such a 'pivotal time'. The judge's explicit regard for his age was a key factor in the perceived legitimacy of the outcome.

However, crucially Louis found this 'surprising' and felt 'lucky' to have this judge, who had also adapted the proceedings to make them more child-sensitive:

I think I was lucky, my judge, the judge that I got was pretty, pretty good. It was a man. He was pretty good. He took his time and made sure like, um, are you ok? You need a rest? You need a break from the proceedings?

Grace's experience of a judge who saw her as a child and treated her in a caring manner befitting of that status was also seen as exceptional: 'at the end of the day not every judge is going to be like this'. And Trent described the Letter to Joe as 'out of a movie or something', going on to say:

Because my whole experience in the court, I've never heard such a thing. I've never had a judge speak in such a manner, honestly... That is the best way for a judge to describe it to the young person ...it's free to speak to a child in that manner. So why don't they ...?

In short, and in contrast to Tyler and Trinkner's analysis in the USA (2017: 94), where they suggest children are taught they have rights and thus expect fair and respectful treatment, the participants in this study *wanted* a sentencing system that took account of their age but none of them *expected* it. When this played out as anticipated – that is, their status as children was invisible (or visible but in a detrimental way) – the system was perceived as unfair. When their sentencing experience exceeded their expectations and they *were* treated differently on account of their age, it was perceived as luck, not a right. And so, while they may have appreciated the treatment they received, it was insufficient to increase their perceptions of the legitimacy of the system *per se*.

This analysis suggests that legitimacy hinges not only on caring practice towards the individual child, as set out above, but also on recognition of their status as children; and this needs to infuse the entire sentencing process – adapted proceedings, adjusted sentences *and* differential communication that is caring and age-appropriate. Crucially, it must also be explicitly communicated that the special treatment is *because* they are a child; that it is a right that all children have and not simply a matter of 'luck'. Sentencing communication thus becomes a place where Honneth's second condition of self-realisation – self-respect, achieved through legal and institutional recognition and treatment as a rights-holder – is developed and/or reinforced. However, it is not enough that sentencing recognises that children have the *same* rights as adults. The participants in this study (correctly) regard children as a group of citizens who experience a unique form of marginalisation and stigmatisation (in other words, misrecognition (Barry, 2016)) deriving from the combined effect of inherent and situational vulnerabilities; thus kinder justice, that makes visible the *child*, provides a form of recognitional justice. Such recognition reflects back to the child their status as rights-holder and may help them assert their rights outside the court (including in custody when they are most vulnerable (Janes, 2018)). It may also allow them to regard themselves as

accountable in ways appropriate to age and status; as Laitinen argues in relation to children and young people, ‘recognition from others seems to play a significant role in the development processes where human persons learn to be agents of recognition themselves’ (quoted in Barry, 2016: 96). The children interviewed did not deny their offence, but their willingness to accept responsibility was overshadowed by perceived injustices in their treatment, including the denegation of their status as children. Restoring – or, for some, especially those who have experienced ‘adultification’ (Davis and Marsh, 2020) – *bestowing* (Barry, 2016) this status through recognitional processes may therefore facilitate their acceptance of accountability. As Trent comments:

So let’s show them why they done wrong. And assist them in reforming and being rehabilitated. And I feel like the judge could start in process of that rehabilitation. And if the judge doesn’t start it, how the hell was it ever supposed to happen?

Of course, this recognitional function cannot be the job of the sentencing judge alone, and children’s (low) expectations in sentencing speak to their wider experiences within and outside the justice system. But the sentencing judge is a voice of the state and sentence communication provides an important forum for the legal and institutional recognition of children as rights-holders. A kinder justice approach to sentence communication can therefore address earlier misrecognition (particularly where failures to confer or protect children’s rights led to conditions conducive to their offending) and support the second of Honneth’s conditions for self-realisation: self-respect.

I am not a Proper Criminal

Trent: ...[T]he way they tried to describe and put me across to the court and the people. And I know that’s not myself, my family know I’m not like that. It was like God, like, you are trying to paint me to be this most horrible person. And if I was this horrible person, I would potentially be going away for so many years.

The final sub-theme of kinder justice concerns the disconnect between children’s self-identity – formed relationally and reflecting (for many) how their family, their ‘kin’, perceive them – and how they are portrayed in the court. The descriptions of their experiences and reactions to the sentencing extracts demonstrate an acute awareness of how narratives are created in the courtroom. Some children come to the sentencing process from a trial where everything ‘bad’ is said about them. They already feel that *they* – not only their behaviour – have been condemned. Louis for example described how in the court the judge ‘presented me as a character’ through a narrative that did not ‘really acknowledge the good things that were going on. It’s just all the bad things ...’ and Marcus felt the judge is ‘trying to make you look as worse, the worst version of you as possible’. The stories told, the characters and the versions put forward about who they are and their nature, did not align with their self-image. As Trent said: ‘I knew within myself that I’m not this sort of person’. The distrust resulting from judicial portrayals about ‘who they are’ was also evident in discussions of the first and second sentencing remarks (defendants who were, or who participants presumed to be, under 18). Nathan riled against the judge in the first extract for ‘telling them what they are ...

You should be [saying] what they've done wrong but can't be telling them what they are sort of thing'; and for Marcus the image constructed by the judge was wrong: '[s]o it's like he's not really like he's, he's not really this person. He is, but he's not really'. There was thus a deep sense of unfairness in the misrepresentation in the courtroom narrative.

In contrast, they felt their 'true' self was the one their family knew, and who is, at their core, 'good'. But this identity, this 'version' of themselves, went unseen. As Trent said:

... it's like, when I'm with my family, they don't know me to be this person. So it's like, I'm not that person. And you're trying to paint me that person. And it's like, just, yeah, it wasn't fair.

Their dissatisfaction in part stemmed from the lack of control they had over their presentation to the outside world. Trent 'wanted to articulate myself in a way for them to see who I am, as opposed to who they think I am based on what they hear, you know?' Partly it stemmed from the injustice that their 'good self' was unseen and their desire to differentiate themselves from 'proper criminals'. To them, a proper criminal was an adult with an entrenched criminal mindset, who gets 'enjoyment' (Joshua) from criminality and who is thus deserving of punishment, especially prison. But *they* were not this type of criminal. Rather, their 'choice' to offend was seen as one constrained by external circumstances or restricted life opportunities and it did not align with their enduring values; it simply was *not* them. Instead, children were searching for recognition of their 'core' good self; to (as above) see they 'matter' in the dual sense of social significance and influence/agency (Billingham and Irwin Rogers, 2022). This is evident in Grace's response, set out above, when she describes feeling understood by the judge resulting in her wanting 'to prove' herself to him. It is also seen in Sasha's comments about the Letter to Joe:

This is how things should be done. Especially if you are under 18. If it's explaining things to him, it's actually having conversations; it's making him feel like he's actually worth something and not just a criminal. This is how things should be done.

The analysis highlights 'the salience of identities for young people and the way they strive for validation and a sense of self' (Robinson, 2016: 22) and the difficulties the participants in this study faced in reconciling a self-identity as, fundamentally, a 'good guy' (Marcus) with the version presented in court. However, although identity is re/formed through relational processes, such misrecognition in court did not result in a questioning or reshaping of their pre-existing sense of self. Rather, it led to a questioning of the fairness and legitimacy of the process. It speaks, therefore, to legitimacy as recognitional justice; this time in relation to the demand for recognition of their unique social worth and Honneth's third condition of self-realisation – self-esteem. Here, sentencing remarks play a role in showing – or not – the child (and, potentially, others) their value in and to society, reinforcing their social significance and reaffirming their identity as a 'good' person who made a mistake.

Drawing on wider criminological research, this analysis also points to the role sentence communication may have on children's future desistance.⁹ Robinson describes

for example, the importance of young people feeling seen and treated as an individual, and the increase in resilience that comes when they share power and influence over how they are defined, and where they are able to ‘maintain a sense of personhood separate from the labels they are given’ (2016: 26). In sentencing, this demands better participatory mechanisms and caring practice so that judges not only fully understand the child and accurately reflect this back, but that children perceive it as authentic. This may be especially important in high-profile cases, where sentencing remarks become the ‘official story’ of who they are and which – especially if broadcast – may impact identity development (see e.g., Watkins, 2014). Emphasising the child’s ‘true self’ as ‘not a proper criminal’ also supports the child’s self-narrative that they have a ‘good core’, which Maruna (2001: 88) observes in adult desisters as a mechanism that allows reconciliation between who they once were (when they offended) with who they strive to be.¹⁰ Judicial emphasis on the child’s ‘good core’ is likely to be most important for children with ‘fragile and faltering identities’ who are more likely to be impacted by the stigma of criminal justice processes; or for those who have experienced the criminal justice system ‘as illegitimate, deficit-focused or stigmatising’ and where there is a need to ‘recognise and develop their incipient pro-social self-identity, rather than seek to change it’ (Wigzell and Bateman, 2024: 13). Finally, desistance research suggests that alongside emphasising the child’s good ‘core’, there might be instrumental benefits in judges explicitly identifying the child’s immaturity as a part of their identity and a reason for their offence (Coyle, 2019). In this way, the distinction the respondents drew between themselves as children and the *adult* others who are ‘proper criminals’ is reinforced and a clearer path to desistance, and self-esteem (as Honneth uses it), may be forged. It may therefore suggest an instrumental link – as with procedural justice – between sentencing that fulfils a recognitional justice function and increases perceptions of legitimacy, and future compliance with the law.

Concluding Remarks: Kinder Justice as Recognitional Justice: Achieving Legitimacy in Sentence Delivery

The way sentences were delivered to the children and young people in this study, and the form that communication took, constituted an important legitimacy moment in their journey through the criminal justice system. Most described an absence of care (about them and their future) and a lack of fairness in the decision-making and communicative processes. Where they did observe an ostensibly fair process, they regarded it as performative and inauthentic. Similarly, they felt there was little concern for their status as child; or, where a judge did take account of their age, this was seen as a matter of luck not right. Finally, they did not feel their real self – as a good person – was seen, and instead, they felt portrayed as a ‘proper’ criminal. Combined, these factors diminished, in their eyes, the legitimacy of the sentencing – and criminal justice – process.

From these accounts and drawing also on participants’ reactions to and reflections on different styles of sentencing remarks, I suggest that ‘kinder justice’ is a basic legitimisation expectation (Bottoms and Tankebe, 2017) for child defendants when being sentenced. Kinder justice captures communication that is caring, that overtly recognises

the child's status and rights as a child, and that reflects the child's 'real' self. In doing so, it provides a form of recognitional justice. However, kinder justice is just one aspect of a legitimate criminal justice system for children, and it cannot, and should not, be used to justify the imposition of sentence outcomes that fail when measured against other basic legitimisation expectations including the rule of law (the legality of the sentence) and distributive justice (the fairness of the sentence, taking account of all the circumstances). Nonetheless, this study suggests that regardless of the sentence outcome, how sentencing judges communicate – particularly through their sentencing remarks – is a central aspect of children's perceptions of legitimacy that should not be ignored. This empirical claim, drawn from a small qualitative study, can be tested in future, larger-scale, studies. Future research with adults may also explore whether recognition is central to their perceptions of legitimacy in sentence delivery as well.

However, as well as describing what is important to children and their perceptions of legitimacy, kinder justice also captures a normative claim about what judges *should* do when sentencing child defendants. As argued above, in law, children occupy a liminal position as rights-holders. Once over the age of criminal responsibility, they are treated as a 'full' rights-holder who is accountable for their actions in much the same way as an adult (Hollingsworth, 2013, 2020). But, simultaneously, the law recognises that they are 'not-quite' a (full) rights-holder, and it thus confers special protections for child defendants (including, for example, the duty to have regard for their welfare). I suggest that bridging the two states that children occupy (full and 'not quite' rights-holder) is an obligation to develop the child and to secure, in Honneth's terms, the conditions for self-realisation: self-confidence (through caring practice), self-respect (through recognition of the child's status and rights as a child) and self-esteem (recognising their unique value). The role of sentencers – and sentencing law more broadly – as a developmental agent should not be controversial. Indeed, in the House of Lords' leading decision, *R (Smith) v Secretary of State for the Home Department* (2005: para 25), Baroness Hale stated that 'some would think the most important aim of any sentence imposed [on a child] should be to promote the process of maturation, the development of a sense of responsibility, and the growth of a human adult personality and identity'. While Baroness Hale was referring to the nature of specific sentences (in that case, the mandatory life sentence for children), I suggest that the same imperative applies to the sentencing *process* and especially to the way the sentence is communicated to the child. This is best achieved, I argue, by a kinder justice approach.

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Notes

1. Participant in the Howard League survey. See below.
2. Hereafter, 'judge' will be used to refer to both judges and magistrates.
3. Specifically in relation to three of the four elements of legitimacy identified by Bottoms and Tankebe (2012, 2020): rule of law compliance (the sentence is legal and rights-compliant, e.g. the defendant understands and is treated with dignity); distributive justice (the sentence was determined without 'fear or favour' (Jamieson, 2018) and is fair taking account of the offence and offender's circumstances) and effectiveness (that the purposes of sentencing, e.g. rehabilitation or deterrence, are met). The fourth element, procedural justice, is discussed below.
4. In addition to the use of simple language and clear structure, the 'Letter to Joe' included phrasing such as 'I listened to what everybody, including you, had to say about what happened...'; 'I thought about it very carefully...'; 'You will think a sentence is just a way to punish you but it's more than that. I'll try to explain'; 'Before deciding what to do, I wanted to know a lot more about you...'; 'I talked to you about your future... I enjoyed talking to you...'; 'It was very stupid of you to attack that young boy. But we all do stupid things.
5. Nb The participants were not always able, or did not, differentiate communication in sentencing from communication in trial proceedings and their views of sentencing were sometimes informed by their wider experiences in the court system.
6. Pseudonyms are used for interview participants and numerical indicators (e.g. HL1) for the Howard League data.
7. See McGrath's (2009) Australian study which suggests such stigmatization during sentencing increases the likelihood of reoffending.
8. On developing hope in children, see Marques and Lopez (2018).
9. Although see McGrath's (2009) Australian study which found no relationship between those who felt reintegrated during sentencing and whether they went on to reoffend.
10. For examples of magistrates adopting this approach, see Centre for Justice Innovation (2020). See also Droppelmann (2017: 21) and McMahon and Jump (2018: 11). As Wiggall et al (2024) note: 'Droppelmann's (2017) findings highlight the complex relationship between identity and behaviour, indicating that children can simultaneously be significantly involved in offences and not see themselves as 'offenders' or regard this as only a partial aspect of their identity'.

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