

# Security Laws and Children in Prison : The Issue of Psychological Impact

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In order to situate the debate on this topic, I shall highlight what seem to me to be three central issues. These are the political: the reasons for state oppression of youth, the notion of childhood inherent in certain appeals on behalf of incarcerated children, and the manner in which provisions of the law regarding children are overridden by security legislation.

"Children" as referred to in the paper, concerns persons under the age of 18 who are legally classified as not having attained adult status and for whom special provision exists within Common law, the Criminal Procedure Act 51 of 1977 and the Child Care Act 74 of 1983. The term youth will be used to refer to those between the ages of 18 and 23, being an

age definition coined by Keniston (1970) to refer to students at tertiary institutions of education and young workers.

Why are children major targets of repression in South Africa?

The children of the disenfranchised in South Africa are not unique in the world in experiencing state repression. Bundy (1986) cites several instances of this kind including the Mexican senior school pupils movement which culminated in 1968 with the death of hundreds of young people, and the imprisonment of many others. Similarly to Mexico, because school children and youth in South Africa have been at the forefront of organised opposition to a beleaguered state, we should not be at all surprised that their protest is met with repression. The state has acted because it sees these young people as a genuine threat. The plan to win the hearts and minds of the disenfranchised with promises of reform, tri-cameral systems and the like, has backfired. Since the widespread effort to obtain consent for reformist policies failed, the state was forced to rule by coercion and a heightened utilisation of its repressive apparatuses. Young people have played a central role in rejecting the political socialisation program of the state, and while the detailed reasons for this are beyond the scope of this paper, it is appropriate to offer some pointers.

Students at all levels have a convenient physical base from which to organise resistance. This has been most obvious since 1976. It was recognised by the state in 1985 when the Department of Education and Culture in the House of Representatives and the Department of Education and Training closed hundreds of schools which provided such bases (Hall 1986).

Students, by virtue of their age and the fact that they attend schools and colleges, are not engaged in full-time employment. In addition they are, as adolescents, unlikely to have major family responsibilities which as primary economic provision or the care of children. It is of course so that a substantial number of young people may share such responsibilities in poor communities, but it could be said that their responsibilities in this regard are less than their post-school adult counterparts. These factors give a further space to this population to mobilise without necessarily facing a major disruption of the economic base of the family. The risk of having their school careers terminated is of course real, but as the problematic slogan "liberation before education" showed, this threat was of secondary importance to many. With the "return to school" (D.P.S.C. 1986) (Detainees Parents Support Committee) policy, the chances for organisation and alliance could be said to have improved once more.

A final and crucial point here is that this population has a clear set of objective issues on which to focus protest. Starting with the rejection of a race based inferior educational system, students have moved to a consideration of the structural impact of apartheid on their lives, and have begun to form alliances on issues such as rents, employment etc (D.P.S.C. 1986). Bundy's (1986) paper implies that it is the increase in black education (albeit inadequate) which has played a major role in the increasing articulateness of the student protest movement. He also suggests that the looming spectre of mass unemployment and inferior employment opportunities for black school leavers has further sensitised the youth to wider socio-political issues.

What we have then, is a rising population of children and youth who have a level of education which enables them to begin to place an intellectual and theoretical framework over their raw personal experience of life under apartheid and capitalism. Student enrolment figures make this clear in Tables 1 & 2.

TABLE 1

## Increases in African\* education since 1960

	Matriculants	University
1960	717	1871
1970	2938	4578
1975	9009	7845
1984	86873	36604

(From Bundy 1986)

TABLE 2

Total School enrolments 1985

African*	5547467
"Coloured"	769282
Indian	228737 (From DPSC 1986)

\*African refers to persons classified as black attending schools in all areas of South Africa including homelands and T.B.V.C. "states".

The history of student resistance, particularly over the last ten years has given rise to a set of traditions, slogans and modes of analysis which form the basis of much of the socialisation experience of children entering school. These commonly held artifacts of a resistance culture will continue to provide impetus to further struggle and hence further repression for children and youth.

#### Focusing on Children

Concern about the position of child detainees and convicted offenders has increased over the past year, to the point

where the state has attempted to silence organised protest on this matter.

There is no question of validity of calls for the release of all detainees. This is valid on moral and psychological grounds. Despite official denials to the contrary, strong evidence exists concerning the psychologically damaging effects of detention (Foster and Sandler 1985). I have seen such effects in my own clinical case work. In the case of children, concerns about the effects of detention and imprisonment are even more valid. One would assume that children's psychological vulnerability is likely to increase in inverse proportion to their age. This contention though, needs to be considered carefully. It is a common assumption that children, because of their age are inevitably going to be severely traumatised and probably permanently damaged by such experiences. This assumption, while in all likelihood holding a large measure of truth needs to be contextualised.

Levett (1987) has argued in the case of sexual abuse, that an understanding of the context of female socialisation is crucial in accounting for reactions to this form of repression. Swartz (1987) has questioned common assumptions regarding the likely effects of political repression on children and youth. He also draws on the role of the context of childhood in mediating the effects of repressive practices such as imprisonment. Regardless of

their potentially politically contentious nature, these ideas need airing here.

Swartz comments that a focus on dramatic aspects of political repression such as imprisonment of children and the voicing of concerns about the psychologically damaging consequences thereof, is often based on an assumption of the innocence of childhood. By innocence is meant unsullied, naive or pure and undamaged. It is thus not used in the legal sense of not being guilty of an offence.

In all cultures there is a concern to avoid damage being done to the young. Embedded within this concern are beliefs about the damage resulting from certain forms of trauma. A common belief about childhood is that dramatic trauma is damaging and always so. It is also often assumed that children are unable to appreciate much of the world of adults until they approach adulthood.

These presumptions certainly have some truth, but in other senses they need to be questioned. They are not very useful unless they are understood with reference to a particular social context and psycho-developmental framework.

The experience of childhood is inherently repressive in a psychological sense. The child from birth is provided with a set of prohibitions on behaviour through the authority of

the family and social convention no matter how "child centred" the family may be. The adjustments required in becoming human are painful in the normal course of events. This process involves adaptation by the child and the building of psychological defences which enable the child to cope with the frustrations of his or her desires by powerful social agencies.

We know that temperamental characteristics of children play a role in shaping their responses to everyday life and to trauma (Thomas, Chess and Birch 1970). We also know that meaning is given to one's position as a child and indeed to trauma by the conventions existent in the society (Levett 1987 and Swartz 1987). For this reason, political repression may not have the impact we expect because it becomes accepted as part and parcel of life during a period of political struggle. This by no means legitimises political repression (which is undoubtedly extremely stressful) but indicates that its impact is mediated socially and that its outward manifestation and long term effects must be understood in terms of this mediation. The effects may thus vary from child to child depending on age, temperament, personality make-up, socialisation and the context of child-rearing.

What is the context of being a child in a South African disenfranchised community? For the majority it is one of abuse by the structural design of apartheid and conditions

of poverty. This occurs over and above the "normal" psychological repression of entering society which every child must experience. The fact of being classified according to the Population Registration Act is the first step in this process which fundamentally structures childrens' lives.

For me these children are not innocent, but have already developed scars and defences in order to cope with their situation. Their response to harsh repression such as detention must be understood against this background. In addition their response must be understood in terms of the political meaning system surrounding acts which may lead to state repression.

In addition, I don't believe we can see these children as being naive to many of the reasons for their scars. Studies in political socialisation show that as the child moves towards teenage years, this understanding grows (Leahy 1983). To develop into action, this understanding requires a set of political ideas and slogans to be provided which can then give content, meaning and direction to resistance. This content also gives meaning to the pain which flows from the consequences of state action. Examples of such slogans are; "No surrender" "Almal is saam in die struggle", and "an injury to one is an injury to all".

To reiterate, concern about the psychological sequelae of detention and imprisonment is both necessary and valid. However we should be wary of assuming that these practices will have uniform effects on all children and youth.

Many adolescents have become involved in protest as a response to objective abuse in their everyday lives. As such, their protest most often takes place within a certain ideological framework which gives meaning to their action and to their response to repression. The very facts of the abuses suffered and the ideological content of their action is contrary to assumptions of childhood naivety. This does not mean that their actions are necessarily always politically wise, or that they do not at times show the emotional immaturity of their years in some of these actions. But what it does suggest is that they act from some informed base. To deny this would be disrespectful to their valid analysis of their conditions of life. The response of more committed young activists to detention and imprisonment is likely to be mediated by the fact that their suffering is given a political purpose and content. This factor alone is likely to provide strength under harsh conditions (Gibson 1986).

Those children who are responding similarly to their life situation, but who lack a reasonably entrenched ideological framework, and whose involvement is more peripheral, are likely to be more severely affected as they have only their

inner resources to fall back on. Finally, pre-adolescent children should cause us most concern. They have neither the emotional maturity nor the intellectual competence to draw on abstract political ideas so as to mediate their response to harsh repression. They may simply become caught up in the emotionally charged atmosphere of a protest situation without being able to appreciate the significance or consequences of their behaviour.

#### Some Contradictions in South African Law.

Provisions for the protection of children's rights are enshrined in the United Nations Declaration of Children's Rights of 1959. These provisions recognise the emotional vulnerability of the child and declare that no child shall be subject to arbitrary confinement by any state. They state further that children must be protected from physical and mental abuse by those who are responsible for their care. These provisions seem to be based on the notion that a child is not of the same mental status as an adult. They do not suggest that children are all shining angels but do indicate that their actions must be understood in terms of their age and their emotional and intellectual competence.

It is no doubt for similar reasons that South Africa has enacted a series of legal provisions for the protection of children - the most recent being the Child Care Act 74 of

1983. It is also why, in Common Law, children under 7 years are not held criminally responsible for their actions. Children between the ages of 7 and 14 years are also deemed not responsible but this is rebuttable. Those over 14 years are held to be responsible, but provisions for sentencing are governed by the Criminal Procedure Act 51 of 1977.

These statutes provide for a series of legal procedures which recognise the difference between children and adults in their provisions. Despite these provisions however, McLachlan (1986) notes "It is (therefore) legally possible in South Africa for a child as young as seven to be arrested, detained, tried, convicted and sentenced without his/her parent's knowledge" (p 29). To quote her further in an earlier publication, McLachlan states: "the discretion of the courts and police, practical difficulties in the implementation of alternative welfare sentences, the technical complexity and the inadequate provisions of the law itself, cause the Criminal Procedure Act to provide little real protection for children" (1984 p 29).

What McLachlan's criticisms point to is the fact that provisions for children are often not stated in the Criminal Procedures Act as necessities of procedure, but rather as strong recommendations. Thus a child's parents should be present in court but this is not mandatory. A series of sentencing provisions are available but it is up to the

court to decide, in terms of the offence, the status of the child, and the provisions of law, what alternative to employ. These vary from the death sentence through to imprisonment, reform school, probation and release into parental custody. Midgely (1975) noted that juvenile sentencing in South Africa was punitive and depended on classical notions of retribution and deterrence. We need to establish whether this has changed, but it seems unlikely.

In theory, a series of well intended provisions exist which take cognisance of the immaturity of children. But it appears that they leave great latitude for practices which seem to violate the intentions and reasoning of those who framed the statute.

I turn now to security legislation. Most of the concern with respect to children in recent times has focused on incarceration under the Emergency Regulations, and sentences meted out for offences committed under such acts as the Internal Security Act 74 of 1982. The Emergency regulations contain no special provisions with regard to children are not influenced by the provisions of the Child Care Act. Normal provisions for court appearances and sentencing of juveniles under the Criminal Procedure Act apply to offences governed by security legislation. This has only been the case since 1982 when the Rabie Commission's findings were adopted (McLachlan 1984).

Previously sentencing procedures for juveniles were excluded for political offences.

Despite the restoration of provisions for juveniles at the sentencing stage, no protections exist for juveniles held in detention for purposes of interrogation prior to their court appearance. This is extremely serious and again contradicts the spirit and provisions of the Child Care Act.

This may appear to be a perplexing situation. One set of legal provisions clearly wishes to protect the interests of the child, while another does not consider this at all. In my view it is not at all curious as it clearly indicates that when acts are perceived as threatening the state, then the "best interests" of the "vulnerable" child are easily dispensed with. The protection of childrens' rights is acceptable as long as this practice is in the interests of the state. The state has criminalised actions aimed at the establishment of democracy and human rights and young people who seek justice and who participate in such acts are thereby criminals who should endure harsh punishment.

As noted earlier, various sentencing provisions exist for juveniles. Have any such alternatives been applied in recent cases? It seems not. Recently a group of seven juveniles were sentenced to prison for periods of between three and five years (two years suspended in each case) for throwing stones at a demonstration in 1985 (South April 15 1987). It may seem extraordinary that children have been

given prison sentences for throwing stones (which is, I accept, a dangerous past-time), while others who commit common assault may be placed on probation or sentenced to a reformatory. In my view it is understandable that if the courts generally apply notions of retribution and give harsh sentences (Midgely 1975) for non political juvenile offences, then such an approach is even more likely when the offence is perceived as "political".

The alternative sentencing provisions for juveniles of the Criminal Procedure Act seem to suggest that prison sentences should not be used as a matter of course. It is well-documented that prison environments are not conducive to the healthy psychological development of vulnerable minds (\*Midgely 1975), and that is why alternatives are preferable. Again it seems to me that in "political" offences, the sentencing practice has shown an intent to punish as a primary consideration which does not seem concerned with the negative effects of prison on a young person.

We should note that it is characteristic of a state which is loosing ideological ground and which is perceived by the majority as illegitimate, to resort to increasingly coercive forms of control (Bundy 1986). There is little doubt that this is the situation in South Africa. For this reason we must expect individual rights to be further curtailed and

that short shift will again be given to protestations regarding the vulnerability of children.

Thus imprisonment and detention are likely to continue to be employed as ways of controlling activist youth. But another scenario is possible. It appears as though recent campaigns against the detention and imprisonment of juveniles (e.g. Free the Children Alliance) have had an impact on the state. The number of detained children was reduced during May and June of 1987 - a period of intense local and international protest against detention of children. (Cape Argus June 20, 1987). An obvious question is prompted by these events. Is the state changing its approach to the management of youth activism?

In recent times, the state has emphasised that a critical factor in the current struggle in South Africa is the psychological dimension (Cape Argus 25 April 1987). The government and the resistance movements are involved in a battle for the minds of the people - both realising the importance of controlling the perspectives which people bring to bear on their situation.

Some Evidence that the state is experimenting with alternative forms of control is provided by the appearance of residential "re-education" camps for children who would otherwise be in detention (Cape Times September 12, 1986). This model of management has received strong support in the

recent President's Council report on youth (Cape Times June 18, 1987).

It is also noteworthy that psychologists have been employed as consultants in this program (Cape Times September 16, 1986). The residential camps and the reported intent behind their existence, represents a dangerous reorientation of repressive practice. It is not as obviously repressive as imprisonment and is an effective response to those who protest against the deleterious effects of imprisonment on children. It can be presented as a reasonable form of management which aims at the development of "healthy" attitudes in adolescents. What could be more acceptable? Instead of the children being regarded as criminals, they will be re-labeled "misguided" and in need of help to redirect them to a more socially responsible approach to their lives and their country.

Such a strategy removes much of the basis for outrage (imprisonment) and employs a clear attempt to re-orient the political consciousness of the young person. Whatever the actual approach employed, it seems clear that more directly psychological approaches will be used to manage political deviance. Concerned mental health workers will have to be vigilant to this practice which seems set to become a major component of modernised repression, and is not far removed from the re-education strategies employed in China during the cultural revolution.

### Conclusion

Childrens' responses to repression and the abuses of apartheid will continue to invite the wrath of the state. As the politicisation of juveniles increases as a response to further state coercion, they are likely to increase their level of political activism. The "innocence" of childhood will be further reduced.

Harsh prison sentences and detentions will scar the youth. Whether this scarring will take the form of long-lasting psychological damage leading to forms of mental break-down, will depend on emotional and intellectual maturity, age, and the degree to which suffering is given political meaning. For some the result will be increased emotional vulnerability, anxiety and inability to cope optimally in the everyday world. For others it will mean a strengthening of commitment, a deepening of anger and a lessening of their acceptance of anything other than revolutionary change. For this reason alone, repression will not crush resistance.

Studies of the harshest of forms of repression and civil conflict indicate, that despite many psychological casualties, the human psyche has a remarkable adaptive capacity. For example, Kinzie et al (1986) comment that during the repression of the Pol Pot regime in Cambodia, the

amount of trauma experienced by children was not related in any simple way to their psychological condition. They suggest that deeply held religious beliefs and family support helped mediate the impact of appalling conditions of brutality. The use of the defence mechanism of denial also seemed important and was complimented by a Buddhist value structure which was relatively fatalistic. It would therefore be overstating the case to suggest that all young people suffering repression will end up as highly clinically disturbed adults. Some will emerge in this way, but for many the scars of repression will provide the driving force for a commitment to social change.

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