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Negotiated Order

NEGOTIATED ORDER: THE GROUNDWORK FOR A THEORY OF

OFFENDING PATHWAYS

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Abstract

This article explores the role which formal and informal regulatory orders play in the development of offender identity. Drawing on quantitative and qualitative data from the Edinburgh Study of Youth Transitions and Crime, it argues that the cultural practices of formal orders (such as those imposed by Schools and the Police) and informal orders (such as the rules governing peer interactions) mirror each other in respect of their fundamental dynamics – animated primarily by an inclusionary-exclusionary imperative. Formal orders differentiate between categories of young people on the basis of class and suspiciousness. Informal orders differentiate between individuals on the basis of adherence to group norms, territorial sovereignty, and gender appropriate demeanour. Being excluded by either set of orders undermines the capacity of the individual to negotiate, limits autonomy and constrains choice. This renders the individual more likely to absorb identities ascribed to them with damaging consequences in terms of offending behaviour and the individual's sense of self.

NEGOTIATED ORDER: THE GROUNDWORK FOR A THEORY OF OFFENDING PATHWAYS

Introduction

This article provides the *groundwork* for a theory of offending pathways based on the concept of 'negotiated order'. This theory focuses on the role which formal and informal regulatory orders play in the development of offender and non-offender identities. For the purpose of this theory, formal orders comprise schools, the police, social work, and the courts. Informal orders include parenting, peer interactions and street culture. The day-to-day regulatory practices of these orders ascribe a range of (sometimes competing) identities to young people. In order to retain a sense of self-integrity (ego continuity) youngsters require to negotiate a pathway through the complex set of orders and actively engage with ascribed identities, absorbing them or fighting back.

As we aim to demonstrate the regulatory practices of formal and informal orders mirror each other in terms of their core dynamics. Both sets of practice are animated by an inclusionary-exclusionary logic. Youngsters who do not exhibit the appropriate appearance, manner or broader lifestyle of culturally-constructed insiders (as defined by the tropes of the variant orders) are ruthlessly 'expelled' through a process of, what we have termed, secondary labelling (multi-layered labelling processes which result in the young person being perceived by those in 'authority' *only* in terms of the ascribed identity, and *not* in terms of the whole person beneath). The process of expulsion can be manifested physically and temporally (as for example expulsion from school or from friendship groups) or at a more perceptual/symbolic level (where the youngster is construed by insiders as 'other'). While identities never become fully

embedded at an individual level (there is always choice), expulsion comes at a cost of increased marginalisation and sanctioning in respect of formal regulatory practices, and at a cost of friendships and group solidarity in respect of informal regulatory practices. Taken together our theory suggests that identity negotiation lies at the heart of impulsions to offend, it shapes the contexts and situational dynamics in which offending takes place, and it forms a key dimension of institutional encounters and cross encounters which impel variant conviction and offending pathways.

The article begins with an overview of the epistemological foundations of our theory and the broader research context from which it draws inspiration. We then provide a brief description of the aims and design of the Edinburgh Study of Youth Transitions and Crime - the empirical foundations of our theory. Drawing together evidence from over 10 years of fieldwork, a series of key findings relating to the nature and impact of formal and informal regulatory practices are then presented. The article concludes with a discussion of the findings and their implications for theory building.

Epistemological foundations: the research context

The epistemological foundations of our theory lie at the intersection between two distinct – and often antagonistic - paradigms within the broader field of criminology: the aetiology of crime (which aims to understand the causes of individual behaviour) and the sociology of punishment (which is broadly aimed at understanding the nature and function of regulatory/institutional practices). Work which has explored the interrelationship between identity and regulation (at the interstices of these paradigms), arguably falls into one of two methodological domains, which might loosely be described as the 'top-down' and 'bottom-up' approaches. Given limitations

of space, we can only give a flavour of, what we regard as, the most salient research within each approach.

The top-down approach

The top-down approach is aimed primarily at deconstructing the conceptions of criminal identity that both underpin and drive particular regimes of control. Strongly influenced by Foucauldian genealogy, it is a method of analysis which finds purchase in the work of commentators such as Rose (2000) and Garland (1996, 2001).

Rose (2000), for example, documents the ways in which contemporary crime control practices (in his terms – circuits of inclusion and exclusion) are informed by a view of the offender as an individual who has failed to accept his or her responsibilities as a subject of the moral community. In a similar vein, Garland (2001) claims that penal discourse has become increasingly bifurcated between the criminology of the self (the offender as normal and rational and capable of exercising choice) and the criminology of the other (offenders are differently constituted, they are abnormal or pathological).

More recently McAra (2010) has highlighted a rather more complex set of discourses which have come to animate youth justice policy in a range of western jurisdictions. According to McAra, policy is multi-textured – it is variously retributive, restorative, rehabilitative and actuarial in orientation and conceives the offender as both 'evil' *and* penitent, as consumer *and* commodity, as incorrigible *and* as treatable, as responsible *and* irresponsible. Rather than working against each other, McAra claims that the different dimensions of the policy frame become mutually legitimising serving to

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construct a carapace of control. Thus rehabilitative interventions which conceive

young people as over-determined by circumstances may gain acceptability precisely

because policy is undergirded by more punitive interventions requiring the young

person to take responsibility for their behaviour and situation; the corollary of this

being that the harshness of certain modes of sanctioning may become more

acceptable precisely because 'softer' more inclusive interventions also exist.

According to the top-down approach, penal practices serve to position subjectivities

through the *attribution* of identity to individuals and particular social groups. In the

introduction to their edited collection of essays on punishment, Armstrong and McAra

(2006) argue that such processes of identity attribution are not purely the province of

state-regulated penal institutions (such as the prison or asylum), but are also a feature

of the more micro and macro regulatory domains which shape the contemporary penal

enterprise such as neighbourhoods or community level institutions, supra or

transnational political entities, globalized information and surveillance systems.

Conferred status, they suggest, is a rather leaky category: the offender identities

which suffuse regime of control are selectively applied, and shaped by the cultural

practices of key institutions at different stages and levels of regulatory bureaucracies.

The bottom-up approach

In contrast, the bottom-up approach explores the ways in which regulatory

mechanisms are both experienced and lived: a core focus of analysis being the inter-

relationships between agency, structure and social action.

One of the earliest theorists to explore the dynamics of regulation in the context of everyday life was Irving Goffman. According to Goffman (1961), an individual's actions in public are governed by a set of unwritten, but commonly understood, modes of regulation or sets of rituals. Individuals have to be constantly alert to things which will disturb the equilibrium of their social appearance and be ready to adapt. In public life the individual is vulnerable (and particularly vulnerable when acting alone rather than in a group), requiring to display the correct situational proprieties in a variety of encounters. Goffman describes an intricate network of ritual behaviour patterns and appropriate responses to social encounters and cross-encounters which together contribute to a reciprocally sustained sense of identity (Goffman 1969). These ideas also find expression in his work on asylums (Goffman 1961), in which he sets out the devastating consequences for individual identity which ensue on entry to a total institution. Through a process of mortification and contamination, the individual is stripped of previous signifiers of self and encounters a situation in which every aspect of his/her actions/behaviour/responses is under scrutiny. Small humiliations become magnified as they cannot be normalised, contributing to the ontological insecurities which are intrinsic to the captive status. Survival comes at a cost – identity/sense of self is achieved through a series of role-adaptations (as for example intransigence, colonisation, or situational withdrawal) (Goffman 1961).

The work of Lemert (1970), and labelling theorists more generally (see Becker 1997, Matza 1964), also highlights the damaging consequences for self-identity that can come with repeated encounters with authority. For Lemert the process of labelling behaviour as deviant – particularly where this is harsh and possibly unwarranted – can lead the individual, whose conduct is being sanctioned, to reconstruct their identity around the deviant label (a process which Lemert terms as one of secondary

deviation). According to Becker (1997) outsider status becomes a self-fulfilling prophecy as the moral entrepreneurs construct and apply labels and assign a master-status which the 'deviant' finds hard to shrug off.

Whilst the research mentioned thus far has laid emphasis on individual responses to encounters with externally imposed orders, another important thematic within the bottom-up domain focuses on the immanence of identity within customary social practices. An early example can be found in the work of William Foote Whyte (1943). Based on three years of participant observation undertaken within 'Cornerville' a 'slum community' in Boston North End, Whyte argued that areas of the city which appeared to outsiders to be chaotic were, in practice, highly organised. The community embraced a complex set of rules and hierarchies based on the precepts of clientelism, patronage and mutual obligation, which echoed the Italian catholic heritage of immigrant groups. Young men within this community led very public lives, the so-called 'corner boys' hanging out on the street almost every night. Engagement with the informal regulatory order within the community was key to accomplishing and sustaining status and reputation. However this mode of insider status went hand in hand with outsider status in wider society: the corollary being that those who sought status via conventional activities (education, career, etc) outside the local community were treated as social outcasts.

Whyte's rich ethnography highlights the interrelationships between identity and social practice but also draws attention to the potential for conflict between variant regulatory orders such that empowerment in one setting can result in repression/rejection in another. Importantly, its ethnographic underpinnings mean

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that it avoids the more functionalist and deterministic readings of social practice which inhere in much subcultural work which emerged in the USA in the 1950s, as exemplified by the work of Albert Cohen (1955) and Cloward and Ohlin (1960) amongst others.

The conflicting imperatives of variant social orders identified by Whyte, is a theme which is also picked up in later British class-conflict theory, particularly in the work of Paul Willis (1977). Based on a study of 12 working class boys over the transition from school into work, Willis's research lays bare the ways in which informal regulatory practices paradoxically can serve to reproduce the very conditions which they were intended to subvert. The youngsters in Willis's study considered schooling to be irrelevant. They appeared to accept the limited life chances that went hand in hand with their structural position and sustained a masculine self-image through 'skiving, dossing and having a laff', as well as through violence. Rejecting and resisting dominant middle class conceptions of economic success (as absorbed by those they labelled as 'ear oles'), the 'lads' constructed a counterculture framed around their own customary practices. Although Willis argued that there was radical potential within this counterculture, ultimately it trapped the youngsters by legitimising manual labour and reinforcing their own subordinate position.

Taken together, research within the bottom-up domain indicates that formal and informal regulatory practices offer up a range of subjective positions and that identity is constructed and reproduced through a process of active engagement between the self – qua object of control – and the delimited social fields in which it is located: in Goffman's terms (1969) through a series of reciprocally sustained fictions. As

Willis's and Lermert's work reminds us, these fictions are not always liberating and empowering, but rather can function to enmesh, to devour and to crush.

Negotiated order and identity

In evolving our theory of negotiated order, we would suggest that a full understanding of the impact of regulation on subjectivity requires engagement ***both*** with the ways in which regulatory mechanisms attribute identity to individuals as well as with the ways in which individuals may resist or subvert such identities –a mode of analysis which synthesises key elements of the top-down and bottom-up approaches described above and which we have described elsewhere as *critical positivism* (see McAra and McVie 2012). A central argument of our 'third way' is that all individuals *process/categorise* tempo-spatial phenomena in a similar way. Taxonomic classification is one of the principal modes of conceptualising and cognitively responding to social experience; and individuals read the social world as a series of connections or disconnections. Law-like regularities in social phenomena are sought and scientific-empirical methods can be utilised to observe such phenomena (they are measurable and quantifiable, there is patterning and sequencing). Importantly, however the meaning accorded to patterns and sequences is never universally fixed. It can be shaped by variant power structures, and particular responses to social cues. The social world that the individual inhabits is partly given but partly self-constructed. Interrogation of social phenomena thus requires both deconstruction of patterns and sequences (how do they function, in what ways are they interconnected, how are they reproduced, whose interests do they serve) as well as deconstruction of the meanings which become attached to them (how are such patterns and sequences perceived, in what ways do

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such perceptions shift over time and space, why does ego continuity/identity become so vested in their reproduction).

The starting point for our broader theory of negotiated order lies in the encounters which young people have with variant institutional orders, more particularly the ways in which the dynamics of such encounters are shaped both by institutionally framed constructions of insider and outsider status *and* the responses of the young people as they grapple with fallout from the attribution of identity. We will revisit the epistemological and methodological framings of our theory in the final section of the paper.

Empirical Foundations: The Edinburgh Study of Youth Transitions and Crime

The evidence supporting our theory comes from the Edinburgh Study of Youth Transitions and Crime, a prospective longitudinal programme of research on pathways into and out of offending for a single cohort of around 4,300 young people who started secondary school in the City of Edinburgh in 1998[1]. Core aims of the Study are: (i) to explore from the early teenage years onwards the factors leading to criminal offending and desistance from it; and (ii) to examine the impact of interactions with formal agencies of control, such as the police, social work, the children's hearing system (the Scottish system of juvenile justice) and the courts, on subsequent behaviour. Young people from all school sectors (mainstream, special and independent) have been included and response rates have been consistently high over time (see McAra and McVie 2007).

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[1] The Edinburgh Study has been funded by grants from the Economic and Social Research Council (R000237157; R000239150), the Scottish Government and the Nuffield Foundation.

The programme of research has involved the collection of quantitative data about the whole cohort from multiple sources including: self-completion questionnaires (6 annual waves from age 12 to 17)[2]; school, police, social work, and children hearings records (the latter two from birth up to age 18); and conviction data from Scottish criminal records (up to age 22). Semi-structured interviews were also carried out with small sub-samples of the cohort at ages 13 and 18. The purpose of the interviews was to contextualise the quantitative data and provide some narrative to explore further the changing trajectories in offending in the early and late teenage years. At age 12-13, a sub-sample of 40 young people were selected for interview, stratified by gender and socio-economic status, and identified at age 11-12 as being involved in offending. At age 17-18, a further 15 youngsters who had self-identified as persistent serious offenders at age 14 were interviewed with a view to exploring differential patterns of desistance. This paper brings together and triangulates the findings from both the quantitative and qualitative components of the study. Definitions for all variables can be used can be found in Annex 1.

Previous analysis

The empirical foundations for our theory stem from three earlier phases of analysis which have shown that the working practices of key institutions (including schools, the police, the juvenile justice system, and friendship groups) impact negatively on both patterns of self-reported offending and conviction trajectories.

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[2] A range of strategies were employed to enhance response rates (see McVie 2003a, 2003b). Missing data were dealt with using a combination of multiple imputation and weighting. Further information on the Study can be found in Smith and McVie (2003) and on data handling in McAra and McVie (2010a).

Firstly, findings published in McAra and McVie 2005,2007, highlighted selection effects which operated at different stages of the juvenile justice process and resulted in certain categories of young people – 'the usual suspects' – being propelled into a repeat cycle of referral into the juvenile justice system, whereas other equally serious offenders escaped the attention of formal agencies altogether. The deeper the usual suspects penetrated the system, the more likely it was that their pattern of desistance from involvement in serious offending was *inhibited.*

In the second phase, (reported in McAra and McVie 2010a) trajectory modelling was used to explore criminal conviction pathways in more detail. Three pathways were identified: an early onset group that stopped (i.e. their probability of conviction rose from around age 9-10, stabilised between age 14-16 and declined thereafter, stopping by age 21-22); another early onset group that continued (i.e. their probability of conviction rose steeply and continuously from age 9-10 to 19-20 before starting to decline); and a late onset set group that declined (i.e. their probability of conviction rose from age 14-16 and peaked at age 19-20 before falling)[3].

Examination of the rising trajectories showed that they were animated by three core sets of regulatory practices: schooling, policing and the codes and practices of 'the street'. Importantly, the two early onset groups were indistinguishable from each other at age 12 across a number of core domains including family context (weakened parental tutelage, high conflict), poverty (as indicated by a number of indices of deprivation), schooling (higher levels of truancy and exclusion than other groups in

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[3] When interpreting such trajectories, it is important to remember that this is a heuristic devise based on probabilities and, as such, it is not intended to infer that there are only three discrete groups (since variability in the convicted population determines a far greater number of individual pathways). However, it does provide a useful representation of typical pathways or histories amongst the cohort.

the cohort); street life (hanging out daily, having friends who were heavily involved in offending), and institutional contact (higher levels of adversarial police contact than other groups). However, analysis of within group change over the 13 to 15 year age span provided evidence that a chronic conviction pathway was impelled by school exclusion and police warning/charges. Both of these rose significantly for the chronic group but stabilised and then diminished for the desister group. Neither conviction pathway could be accounted for by variations in self-reported serious offending (McAra and McVie 2010a).

While the late onset conviction group was significantly less problematic than its early onset counterparts across a whole range of variables (including key indices of poverty, schooling, policing and street-life), the years between 13 and 15 were found to be fairly turbulent ones, with a rising probability of conviction again being presaged by increased school exclusion, and increased levels of adversarial police contact as well as increased involvement in street based cultures (hanging out on the streets rose significantly as did involvement with offending peers).

In the third phase (recognising that conviction and offending pathways are not always coterminous), we undertook analysis to explore in more detail proximal and distal factors impacting on self-reported serious offending (see McAra and McVie 2010a, 2010b). As indicated in table 1, factors which were found to significantly predict involvement in serious offending in the mid teenage years were: gender (being male), deprivation (family socio-economic status), vulnerability (in the form of crime victimisation and high level of family crises), embracing moral values supportive of violence, having a risk taking personality, and 'state-dependence' (early involvement

in serious offending). However even when controlling for all of these variables, formal and informal exclusionary practices were still significant. Those who were excluded from school by age 14 were found to have one and half times greater odds of being involved in serious offending at age 15 than those with no such history. [4] Similarly those with police warnings and charges at 14 had around twice the odds of offending seriously at age 15 than those with no such adversarial police contact, and youngsters excluded by their peers at age 13 had odds of around one and half times greater involvement in serious offending than their more integrated counterparts.

INSERT TABLE 1 ABOUT HERE.

Analysis for the current paper

Taken together the findings from the earlier analysis suggest that patterns of both convictions and self-reported serious offending are underpinned by a set of broader exclusionary imperatives operating at the level of the street, the school and the police, which intertwine in complex ways.

In the sections which follow we build on this earlier analysis, to explore in more detail the underlying dynamics of these regulatory practices, and the nature and perceptions of the young people who become subject to their tutelage. The findings presented are based on analysis of the quantitative data (derived from the self-report questionnaires and administrative records) using multivariate analysis, and analysis of qualitative data from the semi-structured interviews.

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[4] The odds ratio measures the strength of effect of each independent variable on the dependent variable. An odds ratio of 1 indicates no effect, greater than 1 is a positive effect, and less than 1 is a negative effect.

<u>Encounters with the Regulatory Practices of Formal Orders: Schooling</u>

Exclusion is usually the final stage (the end-game) in a multi-layered network of sanctions brought to bear on unruly behaviour in the context of school. One could reasonably hypothesise that decisions about whether or not to exclude would be driven primarily by the relative seriousness of the child's challenging behaviour. Our analysis indicates, however, that other factors also underpin this decision-making process. Table 2 presents the odds ratios from a binary logistic regression model used to explore which factors best predicted school exclusion (measured using school records) for the Edinburgh Study cohort at age 15. The model simultaneously accounted for a wide range of possible explanatory factors which were found in earlier analysis to differentiate significantly between excluded and non-excluded young people. These covered five domains: social deprivation (as measured by free school meal entitlement, family socio-economic status, and neighbourhood deprivation); an active street life (hanging around the streets), family factors (non two-parent households and parental involvement in school), current self-reported bad behaviour (including serious offending, illegal drug taking, truanting, and bad behaviour in the classroom), and 'previous form' (an early history of exclusion and being rated as a troublemaker by teachers in previous years) (see McAra 2004).

Table 2 shows only the odds ratios for those variables that proved to be significant in the final model. Volume of self-reported bad behaviour at school did predict school exclusion at age 15, as expected; however, even when controlling for bad behaviour, the odds of boys being excluded from school were more than twice that for girls. In addition, those living in the top quartile of impoverished neighbourhoods had twice the odds of being excluded than their less deprived counterparts. Similarly, children

living in single parent households or living with a carer who was not their parent had greater odds of exclusion than those living with two parents (whether birth or step parents), as did those from low socio-economic status families (where the head of household was in manual employment or unemployed) compared to more affluent families.

Importantly, 'previous form' was a significant predictor, leading to a repeat cycle of exclusion for some young people. Those excluded during their first year of secondary education had almost three times greater odds of being excluded at age 15 than those with no such history, while those who were rated by their teachers at age 13 as having severe difficulties at school had more than three times the odds of exclusion at age 15 of other children. Essentially, certain pre-labelled youngsters are subject to a repeat cycle of exclusion whilst equally badly behaved youngsters, including girls and those from more conventional and affluent family backgrounds, escape such forms of sanctioning.

INSERT TABLE 2 ABOUT HERE.

These quantitative findings hint at the difficulty which young people have in resisting or shrugging off troublemaker identities once applied (regardless of their classroom behaviour). The data from the interviews reinforce such findings. At age 13, both boys and girls talked about the problems they experienced in terms of identity management in the context of school. It is important to note that identities are not earned solely through the individual's misbehaviour or recalcitrance within the school setting (although this is one obvious route); however, the label of troublemaker is also

ascribed as a result of events that occur outside school (either in the immediate vicinity or even in residential neighbourhoods). Young people talked of how reputations could spread quickly as the result of specific instances of deviant behaviour with even the bare minimum of information, as the following example illustrates:[5]

> *Every time you go near them* [teachers]*, you always think they are going to know who you are because you've done this.* [Do you think they treat you differently?] *Yes.* (F25, age 13)

Another source of labelling came from having individual connections with others who had been previously labelled as problematic, particularly older siblings. Examples of labelling as a result of family reputation were evident in the testimony of several young people, such as the following:

> *Some teachers have got grudges against you. They don't like you because your family has been like that, they just think you're like that too.* (M3, age 13)

There was, of course, recognition that not all teachers behaved in the same way, and some were considered to be fair and impartial. However, the way in which young people talked about schools indicated that once they were labelled by teachers, the strength of such labels meant that they stuck even when 'good behaviour' was demonstrated, such as in terms of their academic achievement, as the following example illustrates:

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[5] The gender of interviewees is indicated using M or F, followed by a unique identification number and their age at time of interview.

They call me dumb and then I get full marks on a test, and they still call me dumb. It's just I'm a wee bit more cocky and they get pee'd off with it. I've not been suspended from school once. But I've had millions of detentions. (M12, age 13)

Taken together, these findings indicate that exclusionary practices operate within schools to ascribe troublemaker identities, not only on the basis of behaviour that is labelled bad, but as the result of multi-layered labelling processes which take account of class and gender as well as wider family and community identities. Young people themselves are aware of such practices and feel powerless to shift these invisible yet ever-present labels. Tolerance is shown towards certain types of children (in truth, the majority), while others are systematically singled out and subjected to repeated forms of disapprobation which compound their troublemaker identity. A particular problem here is that schools are closed institutional orders. Youngsters, and often their siblings, encounter the same personnel and the same decision-making practices over many years – escaping the gaze only when they are permanently excluded or formally leave (which, for a high proportion of serious offenders in the cohort, was as soon as they were of age to do so). The identities constructed for young people and the dynamics of the closed institution make it hard for them to change their behaviour. Discipline in this context begets further discipline and confrontation, thus reinforcing the original impulsion to exclude. Within the confines of the school the labelled youngster has limited capacity to negotiate a new identity.

Encounters with the Regulatory Practices of Formal Orders: Policing

The labelling process in respect of school is similarly evident in young people's encounters with the police. We begin this section by building on earlier analysis (McAra and McVie 2005), in which we explored factors which best predict being warned or charged by the police at age 15 amongst the Edinburgh Study cohort (utilising self-report data). This earlier work highlighted a wide range of variables that were significantly associated with adversarial police contact in general and police warnings and charges in particular. These variables fell into six core domains: gender (being male); family factors (non-two parent households); social deprivation (family socio-economic status and neighbourhood deprivation); active street-life/availability for policing (hanging out in the streets most days with peers and high volume of truancy from school); 'previous form' (experience of previous police contact and having peers who had previous form with the police); and current self-reported bad behaviour (involvement in serious offending and experience of adversarial police contact).

Table 3 presents the odd ratios for the variables that proved to be significant in a binary logistic regression model where police warnings/charges at age 15 was the dependent variable. Two factors (hanging around the streets most days and family socio-economic status) were found to have a significant interaction in the model which meant it was not possible to interpret one independently of the other.

INSERT TABLE 3 ABOUT HERE.

As can be seen, current volume of serious offending and frequency of adversarial police contact within the last year were both strongly associated with police

warnings/charges. Importantly however, even when these variables were controlled

for, those living in the most deprived neighbourhoods and youngsters from non-two

parent households had greater odds of being warned/charged than those from more

affluent neighbourhoods and those living in two parent families (whether birth or step

parents). As noted above, there was an interaction effect between low socio-economic

status and hanging out most days which meant that of those who reported hanging

around the streets most days it was only those who were from low-socio economic

status backgrounds who had greater odds of being warned/charged.

Even when controlling for these other contemporaneous factors, previous form

emerged as a strong predictor of police warnings/charges at age 15. Youngsters who

had been dealt with formally by the police in previous years had twice the odds of

being warned/charged at age 15 then those who had no such history. Additionally,

hanging around with peers who had been in trouble with the police in previous years

(i.e. associating with others who were already labelled) increased the odds of being

warned/charged at age 15 by a factor of two.

Taken together these findings suggest that the police, like schools, operate

exclusionary practices that ascribe a troublemaker status to young people based on a

process of multi-layered labelling. The youngsters' own behaviour undoubtedly

underpins decision making to an extent; but, in addition, they are labelled by

association (with unconventional families, deprived communities and previously

labelled peers), by virtue of their previous form and, amongst those most visible to the

police (via hanging around) by their family socio-economic status. As we have argued

elsewhere (McAra and McVie 2005, 2007), this results in a cycle of repeated and

amplified police contact which propels young people further into the youth justice
system.

The narratives of young people in interview strongly resonate with these findings and
demonstrate the anxieties which youngsters have about such processes of labelling.
Young people reflected on their early contact with the police and recognised that their
engagement in offending was part of the reason for their coming to the attention of the
police. However, they were also acutely aware that reputations were established not
only on the basis of their own behaviour, but as a result of wider connections with
family, friends, communities or just stereotypical images of what a typical
troublemaker looks or acts like. The evidence provided below suggests there are
strong similarities between those interviewed at age 13 and those interviewed later at
age 18 in terms of the way in which labels are applied.

While there appeared to be no effect of gender on police warnings/charges from the
quantitative analysis, the interviews revealed some interesting gender differences. At
age 13, girls were generally more submissive towards the police and expressed
feelings of embarrassment at being caught. Several of them reported being "ashamed
and disgusted" at having been formally identified by the police as engaging in
offending. However, this embarrassment was at least partly underpinned by a strong
anxiety about being identified by the police as a troublemaker. One girl recalled
stressing to the police that "I've never done it before" in order to avoid being labelled
as a persistent offender.

Some of the boys also perceived there to be a gender difference in terms of how the police reacted to girls and boys. There was a strong sense of a 'chivalry effect' where girls were concerned, with the police making greater allowances for them. For example, one boy described how police decisions to stop and search were affected by whether a group consisted of mainly girls or boys:

> *If there's other people, ken if there's lassies, they'll sort of be alright. But if it's just a group of laddies they're not right at all, they search you, they stop and search you all the time, eh.* (M37, age 18)

To some of the boys at age 13, their experience of the police was a source of amusement. They actually relished having contact with them and encouraged it as a type of game of "chase", baiting them to come or trying to escape when the police appeared, as evidenced by these quotations:

> *One time we were phoning the police and saying "my grand-bairns are trying to get to sleep" or something, "can you send down a car to get the people away" and then we just used to get a chase.* (M3, age 13)

> *They were just jumping out the cars with the batons… and the first thing that comes to us is to jump on the bike and go away. They'll never catch up because we've got motor crosses so it's easy.* (M5, age 13)

Even though boys often gained a sense of excitement from being pursued by the police, they were also strongly aware that they could be unfairly targeted and labelled.

Youngsters talked about the way in which they and their peers were unfairly scrutinized by the police because of a general label that was applied to all young people based on age or appearance. Interviewees described being stopped by the police because they were wearing particular types of clothes or baseball caps, which were felt to be associated with *ned culture*, or simply for no reason at all. The following examples illustrate the feeling of persistent targeting felt by boys in particular:

They [police] just don't like people my age I don't think eh. I think they just don't like us eh. They just lift you for no reason…You're just walking along the street and they'll just decide to stop and search you, and then they give you a bit of cheek and so you give them a bit of cheek back and then they'll just lift you for it eh. (M37, age 18)

My friends had a car, and we got pulled [by the police] at the top of road. Five minutes later we got pulled half way down the road [by different officers]. Five minutes later got pulled at the bottom of the road [by a further set of police officers]. I think it's because we're young… they're young, they're wearing hats, they're in an old banging car, oh that car's stolen. (M26, age 18,)

Such labels were often enhanced because the young person was associated with a wider community label or had a particular family connection, as these examples show:

Well the police tend to check up on us a lot. More than they should. They just check up on us and search people for no reason...they just drive in and look at who's there just because they think things happen there. (M8, age 13)

But like, if I do get stopped or anything like that, sometimes my name, 'cause like my dad and my uncle have been in trouble and stuff like that. So I can get a bit of hassle. (M27, age 18)

By age 18, young people realised that the labels that were applied to them by the police at earlier ages could remain with them for a long time. The longer term effect of such unfair labelling was a strong sense of infringement of their civil liberties and a deep distrust and lack of belief in the police and the justice system as a whole, as illustrated here:

Young people are not really treated fairly - if they do one thing they're looked at for a long time. Just because they're young doesn't mean they're not human beings - they're still people and they still have rights. (M31, age 18)

It's happened to me when I'm by myself and it's happened to me when I'm with my mates as well…. Aye, not doing anything at all and they say that somebody said it was you, so you're getting blamed… They just dinnae give a fuck about you eh. They speak to you like you're a piece of shite. If they treat me like that there's no point me treating them with respect if they don't treat me with respect. (M37, age 18)

A pattern is emerging from these findings of a complex web of decisions that serves to focus attention on certain specific individuals. The master status of 'troublemaker' is as much ascribed on the basis of reputation, association and stereotype, as on the basis of behaviour, with the result that young people become disenfranchised and disillusioned with authority. Girls may be less readily labelled by the police as problematic and, when they do come into contact with the police, may be more able to negotiate their way out of conflict by adopting the appropriate demeanour. Whereas boys find a sense of excitement in police contact which serves to further limit their capacity to negotiate and exacerbates the labelling process. The longer term effects of the label demonstrate that young people are often repeatedly and unjustly targeted, resulting in deep-seated distrust of authority.

Encounters with the Regulatory Practices of Informal Orders: the Street

So far we have focused on the regulatory practices of the school and the police. In this section we turn to an exploration of more informal orders that operate at the level of 'the street'. In practice, we define the 'street' in social rather than geographical terms, as it may represent any context in which young people co-exist and relate to each other (including the school). Here, we suggest that the street is 'policed' by an alternative set of complex rules and codes of practice which both influence and constrain behaviour at the individual level. Unlike formal orders, youngsters have much greater input to rule construction and reproduction – indeed their routine activities serve to sustain and reinforce the network of rules to which they are both subject and object. And yet, such orders mirror their more formal counterparts: they are animated by the same inclusionary-exclusionary imperatives and processes of secondary labelling are evident.

Previous analysis of Edinburgh Study data has shown that, for many young people, street-centric activities such as hanging out with peer groups or attachment to 'gangs' are routine activities during the teenage years (see Smith and Bradshaw 2005, McVie 2010). However, peer group inter-relationships are complex and dynamic, such that individuals consistently need to internally evaluate and externally validate their identity in order to remain part of the group. Where young people fail to adequately negotiate the informal rules of acceptance, they may find themselves cast out, rejected or belittled in such a way that humiliates or embarrasses them. Here we present new evidence from the Study which explores the key characteristics of those who reported being excluded by their peers on a regular basis at age 15, using binary logistic regression. (Exclusion is defined by those who said that they had been bullied at least weekly by: being ignored on purpose or left out of things; by being hit, punched, spat at or had stones thrown at; by somebody saying nasty things, slagging or name calling; and by threats of harm). The independent variables for this analysis[6] fall into eight domains: gender (being male); social deprivation (family socio-economic status, neighbourhood deprivation and free school meal entitlement); family factors (single parent or non parental carer households, level of parental supervision and volume of conflict with parents, and level of family crises in the previous year); personality/identity (being highly impulsive, having strong attitudes in favour of violence and being perceived as a troublemaker by peers); exposure to risk (engagement in serious offending and experience of victimisation); previous form (experience of exclusion by peers in previous years); peer influence (feeling highly pressured by peers about dress, behaviour and interests; level of importance attached

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[6] These variables were highlighted in previous analysis as being core to understanding peer interactions and the dynamics of friendship groups (see especially Smith and Bradshaw 2005, McVie 2010, Barker et al. 2008).

to conforming to group norms on appearance and perception of being picked on for non-conformity); and exposure to formal orders (level of punishments at school, attachment to school, experience of police warnings and charges) .

The odds ratios for the significant variables from this analysis are presented in Table 4.   The results show that the odds of being excluded by peers were significantly increased amongst boys, which mirrors that of the formal orders we have already explored. In addition, family dynamics appear to have some influence here, with those who reported higher levels of parental conflict having greater odds of experiencing peer exclusion as did youngsters who were poorly monitored by parents and those who had experience of a high level of family crises.   Those with more extreme personalities in terms of impulsive behaviour and having moral values supportive of using violence also had greater odds of being regularly excluded by their peers. Engagement in serious offending significantly increased the risk of being excluded by peers when other factors were controlled for as did experience of crime victimisation. Importantly previous form also features within the final model – those who were excluded by peers on a regular basis at age 13 were almost twice as likely to be excluded again at age 15 than those with no such history. Finally two school related factors remained significant within the model – high volume of punishments and poor attachment to school.

INSERT TABLE 4 ABOUT HERE.

These findings indicate that peer exclusion is not class based in the sense that formal orders are exclusionary; however, it is targeted towards particular types of young people who might be defined as both vulnerable and challenging. Those who are subject to peer exclusion tend to be more impulsive and perceive violence to be a normal response to solving problems, reinforced by high levels of conflict in the home environment and the fact that they are frequently victims of crime themselves. Interestingly the measures of peer pressure did not turn out to be significant in the final model, suggesting that behavioural and attitudinal factors, more than internalised feelings regarding the need to fit in, prompt expulsion by the group.

Importantly involvement in serious offending did not lead to greater inclusivity, youngsters involved in such behaviours were more likely to be expelled from peer networks and to become socially isolated, with early experience of expulsion leading to continued expulsion in later years. Similarly being a persistent troublemaker within school (as measured by volume of punishments) contributed to exclusion, although one-off episodes of police adversarial contact did not, when other factors were held constant.

Taken together the findings reinforce previous analysis that has shown a strong and indeed causal relationship between vulnerability and offending, and the ways in which modes of tutelage (in this case peer expulsion) impel further tutelage (McAra and McVie 2010a, 2007). The implication of these findings is that entrenched troublemaker identities may offer limited rewards for young people and those perceived as too risky and troublesome may be shunned and excluded.

In order to explore the ways in which such processes of exclusion work in practice we turn to the narratives of young people.   Here we highlight three key dimensions of the informal rules that emerged in interview which appear to govern inclusive and exclusive identities namely: the rules of engagement, rules governing territorial sovereignty and gender order rules.

Rules of engagement

The rules of engagement relate particularly to street-based violence. The interview data suggests that young people work within a strict code as to when violence should be invoked and when it is tolerated. A common theme amongst interviewee responses was that experience of victimisation leads to reprisals, instigated either by the victim him/herself, close friends or family. Both girls and boys stated that it was legitimate to "get even" or mete out punishment with the aim of saving face or protecting oneself or one's friends, as illustrated by these interviewees below:

> *It was an older guy and he started calling me names so I went to hit him …everyman for his-self, right….and he dodged and he took out a knife and slashed my ankle. I was sure I hit him hard… his mouth was all bloody and you could see wee white bits.* (M21, age 13)

> *People have taken jewellery and stuff...its usually people who don't care much and you really really want to hurt them a lot…then the whole threatening people with knives and stuff comes out…if they deliberately destroyed it or anything then I would get back at them.* (F10, age 13)

Nevertheless, the quantitative analysis suggested that those whose attitudes towards violence exceeded the norms of the group were subject to exclusion. This was also evident from the qualitative data, where interviewees suggested that there was a fine line between acceptable and unacceptable levels of offending behaviour. As one interviewee pointed out:

> *If they were getting into too much trouble, like with the police or drugs or stuff, no one would hang about with them. If you got in trouble just a wee bit, no one would mind.* (M11, age 13)

Those who were involved in violence in their later teens appeared to be stuck in particular discursive pathways, normalising their offending by utilising narratives linked to the defence of others or as a legitimate reaction to their own victimisation. One older interviewee highlighted the difficulty of escaping his own offender identity:

> *If I'm up town or somewhere, and I'm just walking along the road and I see people fighting, and I look and it's somebody that I've known from years ago, it's one of these things. It's just instinctive to go and help them, 'cause they've done it for me in the past. And that's how a lot of the time you get big fights breaking out, 'cause it's sort of a friends thing.* (M39, age 18, NC)

Interestingly, the interview data indicate that continuities in discursive pathways relating to violence, are accompanied by an underlying *shift* in perceptions of autonomy. At age 13, interviewees did not perceive themselves to be under pressure

from others to be involved in offending. From their point of view, offending was a

free choice, as illustrated by the following quotes:

'Nobody forces me to do stuff.' (M12, age 13)

'It's my choice.' (F21, age 13)

'There's nobody really to pressure me. If they ask me then it depends if I want

to.' (M3, age 13)

By contrast, at age 18, those who were at most risk of exclusion, felt very strongly

constrained by pre-ascribed identities which served to sustain involvement in serious

offending. One young man stated:

Once you're involved [ ] you can never really just pull yourself away from it.

There's always a tie. You can't really disconnect... But at the same time some

people never forget so you've still got to watch yourself even if you're trying to

move on, 'cause a lot of people are still in gangs. They'll remember you. (M39,

age 18)

Territorial rules

Our findings show that street-life is a risky affair and requires careful understanding

of territory. Battle-lines are drawn around particular streets and estates, with graffiti

being used to mark out boundaries or to show where young people have invaded,

what they conceive to be, enemy territory ("to show I'd been there"). Again, at ages

13 and 18 young people reported that there were key areas of the city that they would

avoid, mainly because they were not safe there, as illustrated here:

I go quite far, well not that far. Just up to [Area W] and the shops. [Area P] - I go there sometimes [Do you ever go into Area Q] *No cos you get battered. People find out where you're from ….and they come looking for you… if you can run fast enough you'll get away from them.* (M4, age 13)

There's a big rivalry between this area and [Area C] and there's like gangs and everybody knows that if you're not in [Area C], you know what I mean, they know that you don't live there… It's just a rivalry thing. (F34, age 18)

While young people carefully monitor the behaviour of interlopers who come into their territory, interviewee responses also indicate that street-life is informally policed by older siblings and other extended family members. It is crucially important for a young person and the group to know about an interloper's connections before taking them on, otherwise they risk reprisals.

Some people called another person a Paki (sic) and after school they were fighting and somebody else was standing at the side shouting "kill the black bastard". So her sister got the other one down at the bus stop and fought with her. So she phoned her big brother, and her big brother came down and started fighting in the middle of the road with their big brother. (F15, age 13)

Gender order rules

Importantly both the rules of engagement and the rules governing territory have to be managed by young people in ways which do not subvert their established gender

identities. Both boys and girls within the cohort operated with very conventional conceptions of masculinity and femininity which had a key role to play in shaping their views on popularity and maturity and functioned as a touchstone for their own sense of self. In interview, both boys and girls commented that to be 'popular' (have status) girls had to be "good looking". Wearing designer labels, short skirts and high heels added to popularity as did liberal use of make-up. Being blonde and thin were also perceived as key attributes. Similarly, popularity amongst boys was associated with looks and designer clothes. However, unlike girls, 'reputation' (being hard) was a core element of male popularity. A key aspect on both sides was that they should be attractive to the opposite sex.

Girls become more popular because of the way they look. If they look more attractive than other girls, they'll become more well known than other ones. It's just the way they look.   (M6, age 13)

If they [Popular Boys] are strong, if they're hard, then they can be popular because everyone has to like them... and they wear all the right clothes and everything... The girls fancy them. (M19, age 13)

The relationship between popularity and offending was a slightly ambivalent one. Offending could be a strategy for the less attractive to increase their popularity (either through enhanced reputation or through access to ill-gotten but desirable goods); however, the effects were often short-lived. In addition, young people had to gauge their behaviour carefully. For example, aggressive behaviour amongst girls might

increase their popularity with girls, but it might make a girl unpopular (and, therefore, undesirable) in the eyes of boys.

> *If you slag off someone who is better than you and you beat them in a fight, that makes you so cool for a little while. And then the gossip dies down and you are just back to where you used to be. You are 'it' for about 2 days in high school, and then back to being who you used to.* (F10, age 13)

> *There's three girls in our school who are popular for fighting – they are the hardest in the school. They are not as popular with the boys. Some girls are scared of them, but others suck up to them.* (F7, age 13)

Boys also needed to ensure that they took on the 'right' people (neither too tough nor too soft), so that they were involved in just enough violence to keep their names in the headlines, but not so much that it would lead to them being shunned by others.

> *If I was to batter Peter that would be my popularity over the roof. But if I was to have a fight with someone unpopular it would be nothing.* (M12, age 13)

The evidence presented here indicates the importance of peer networks and the street as a locus of control and regulation. The quantitative data highlights the key characteristics of individuals who are most likely to be subject to street-based exclusionary practices, while the qualitative data reveals the complex dynamics of this informal order. Importantly, the interviews show the potential for tension and the need for negotiation between the three different components of the street-based

regulatory framework. For instance, the rules of engagement may demand reprisals (where someone is subjected to insults or physical violence), however informal street-based controls may inhibit an initial response (following evaluation of the likely consequences of violent reprisal) and yet the gender rules may dictate that greater popularity will ensue from risking such an encounter (increased status from taking on a superior combatant). Importantly, the daily routines of young people play a key role in reproducing this regulatory framework. By engaging with these rules, by negotiating a pathway through their competing demands (which gives the illusion of opportunity and control) the youngsters are reinforcing the very constraints to which they are subject.

Discussion and Implications

The evidence presented in this article, aims to provide the groundwork for a theory of 'negotiated order' in which offending pathways can be explained by the role of regulatory practices in assigning and reproducing individual identities. Three orders have been found to play a key role in determining conviction pathways and to be implicated in sustained patterns of serious offending: the school, the police and the street. In the context of these orders, young people must negotiate their way carefully through a complex web of rules and norms and, where they become the object of regulation, must cope with multiple potential forms of labelling and the ascription of outsider status. Those who manage to negotiate this web successfully can avoid the pitfalls and the consequences of hard and fast labels and retain a sense of self-integrity. However, those who lack the capacity or the opportunity to negotiate find themselves labelled, excluded and marginalised.

The dynamics of regulatory practices

Our findings suggest that the regulatory practices of formal and informal orders mimic each other in terms of their underpinning logics. Each is animated by inclusionary-exclusionary imperatives and each operates with culturally constructed conceptions of insider and outsider identities. Importantly, the day-to-day practices of both formal and informal orders utilise a form of secondary labelling – such that young people who encounter these orders and do not match up to their culturally defined notions of insider status, are perceived only in terms of the surface manifestation of the label ascribed to them.

There is strong evidence (with triangulation between the quantitative and qualitative data within the Edinburgh Study) that exclusionary practices operate within schools and the police in such a way as to discriminate against and label certain types of young people on the basis of reputation, association and stereotype - not merely at the individual level, but at the level of families and wider communities - resulting in an ascribed master status of 'troublemaker'. Young people are not ignorant of such practices but the inequity of the power relationships between the youngsters and the adult actors involved makes it very difficult for them to dislodge or amend these labels. Certain categories of youngsters are subject to repeated forms and instances of exclusion and labelling which only compounds their troublemaker identity.

Importantly, there is also evidence that informal orders discriminate against and label certain types of young people based on their appearance, the wider communities from which they come and on the degree to which they absorb and accept the legitimacy of street rules. The moral codes that police the street form a coherent set of principles

based on older biblical notions of justice (an eye for an eye) and group/family loyalty. Those who are shunned are the youngsters who breach these codes in somewhat random and dangerous ways. Expulsion from informal orders comes at the cost of group solidarity and broader networks of influence; and repeated exclusion ultimately leads to social alienation.

Autonomy

Our findings suggest that power relationships are fundamental to any understanding of individual identity, but the balance of autonomy and power in adolescence is not easily reconciled. A need for transcendence is evident – youngsters seek control over their day to day encounters and cross encounters with regulatory orders. But while control is sought, in practice it is rarely achieved.

Youngsters have very limited power to transform the regulatory practices of formal orders. Schools are fairly closed settings, and the interaction with the same staff over many years (often heavily influenced by family reputation), mean that the troublemaker label once applied sticks indefinitely. Similarly previous form and suspiciousness shape encounters with the police. Community policing may mean that the young people are in close contact with the same officers month after month. However, even when there is staff turnover, a background check, may rapidly affirm troublemaker status. Youngsters at age 13 have the illusion of control over their encounters with the police (baiting the police and running off), but the consequence of such adversarial contacts is to reinforce extant labels. This in turn will have consequences when or if they are eventually caught.

In respect of informal orders, belying the youngsters' perception of autonomy (particularly evident at age 13), our findings suggest that behaviour is constantly modified to fit in. This involves quite difficult decisions – in their encounters with peer groups, young people have to adopt the appropriate demeanour and appearance, and make careful judgements about behavioural proprieties. A ruthless process of exclusion is evident, particularly for those who are vulnerable (heavily victimised), those whose attitudes are too accepting of violence (and thereby breach the rules of engagement), and those who persistently fall foul of formal orders.

The longer term consequence of exclusion from the dominant peer group in the early teenage years is pressure to continue offending. When secondary labelling occurs the individual's capacity for change (and to express different versions of the self) is further diminished. Discipline in the context of formal regulatory practices (where it is perceived to have been ineffective) begets further and greater discipline, which reinforces the original impulse to exclude and further restricts the capacity of the labelled youngster to negotiate a new identity. Similarly, discipline in the context of informal orders results in further discipline (once someone is rejected from the group there is little possibility of return), restricting the capacity of the labelled youngster to project a different and more socially cohesive identity. Our findings show that young people involved in serious offending are isolated individuals who find it difficult to remain part of cohesive friendship networks and to sustain friendships. Expulsion from such networks does not lead to the construction of tightly organised delinquent sub-groupings. Indeed such youngsters make strenuous efforts at connecting back with dominant networks (as indicated by the pressure they feel to fit in). However the resources which they utilise to sustain connection, namely violence and fighting, are

the very resources which make exclusion more likely when used in random and unpredictable ways.

The complexity of regulatory logics

Taken together our findings highlight the complexity of these regulatory mechanisms. The current practice of formal orders is premised on a perception that informal mechanisms of social control which are too weak to prevent offending (e.g. poor parenting) or which contravene the normal rules of social order (e.g. delinquent peer groups) have negative effects on individual behaviour. The role of formal orders is to provide a corrective, with the aim of facilitating a positive outcome for the individual, including a reduction in offending.

However, from the point of view of certain individuals who are most at risk of offending, informal mechanisms of control may be beneficial and purposeful; for example, weakened parenting allows the individual to socialise more freely and take greater risks, which enhances their reputation, while the peer group provides wider protection and sense of belonging within the community. At the same time, formal mechanisms of control contradict the moral codes of the street, offering little in the way of benefit based on changing behaviour. The limited impact of formal controls causes the individual to be drawn even further into the grasp of the juvenile justice system, with the result that stronger forms of control are applied (still to little effect).The more a youngster is drawn into conflict with formal orders, the more likely it is that they will be expelled from the informal group (becoming perceived as too dangerous and too risky for association). And the more excluded from informal orders the more likely it is that the youngsters will continue to offend – with the

offender or troublemaker identity forming a core mode of ego-continuity. The

multiple modes of labelling mean that the youngster becomes trapped within a cycle

of exclusion. The exercise of authority at every level thus reinforces rather than

usurps the dynamics which underpin impulsions to offend.

Who makes the rules and how do orders retain legitimacy?

Our findings indicate that it is the working cultures of institutions - the folkways, the

mores, the customary practices - which cohere to form the complex web of rules

which enmesh the lives of young people. A mutually constitutive relationship exists

between rules and their application – disciplinary practices of inclusion and exclusion

reinforce and reproduce the boundaries of appropriate identity formation and thereby

reinforce and reproduce the rules themselves. The complexity of regulatory logics,

just described, means that unless institutions such as schools or the police make

efforts to understand the tolerance levels and protective dimensions of informal street

orders, they will merely serve to reproduce the conditions in which serious offending

thrives.

Taken together our findings underscore the fragile nature of legitimacy itself.

Regulatory practices are temporally and spatially located, they are never 'absolutes'.

Authority requires to be consistently re-established. Whilst underlying claims to

legitimacy are predicated on the construction of an audience of insiders, this

simultaneously constructs a legitimation deficit amongst the sets of outsider groups

who are excluded or expelled. Contemporary regulatory practices appear, as a

consequence, to be divisive (even when attempting to be inclusive) and shaped by

class and status wars.

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Implications for theory building

This reading of regulatory practices has a number of implications for our understanding of both cognitive development and institutional transformation. It highlights the immanence of 'othering' within conceptions of selfhood, the immanence of conflict within constructions of consensus, and the immanence of constraint within notions of autonomy. More especially it suggests that it is the *experiential encounters* between young people and regulatory orders which form the crucible in which both individual and institutional identities are forged.

Returning to the literature reviewed at the start of this paper, our empirical findings suggest that the characteristics of institutions are shaped by social action as much (if not more than) the official narratives bound up in policy discourse. Indeed, the deconstruction of institutional self-description (as per the "top-down" approach) tells only a very small part of the story of institutional functioning and impact. Institutions continually remake and restate their identities through their day to day practice and such identities emerge in the discretionary spaces constructed via the application or sublimation of rules. The interaction between formal and informal orders demonstrated within our analysis also confounds elements of those theories which highlight a symbiotic relationship between formal exclusivity and informal inclusivity (as per Whyte and Willis). In our account, exclusion results in further exclusion. Peer groups are not cohesive entities but constantly shift – and tolerance levels need to be carefully gauged within particular social interactions. Secondary labelling by formal orders compounds secondary labelling by informal orders and the resultant marginalisation limits autonomy and capacity to express alternative versions of self.

As noted above, ego-continuity becomes bound up with the serious offender label – the activity of offending becomes both literally and metaphorically a "see-me" moment in time and space. Stripped of alternative signifiers, the young person embraces the excluded identity as the core expression of self-hood (a dynamic akin to the adaptations of inmates in Goffman's total institution).

The methodological and conceptual starting point for our synthesis of the top-down and bottom-up approaches was that taxonomy lies at the heart of cognition. As we have suggested, individuals read the social world as a series of rule-based orders and social action requires recognition, understanding and engagement with a range of potentially conflicting imperatives. That there exists a mutually constitutive relationship between identity and regulatory practice and that individuals play a key role in reproducing the very ties which bind them, underscores the paradox of regulatory orders and the challenges which such orders face in dealing effectively and inclusively with those young people who seriously offend.

Conclusion

In this paper we have set out the groundwork for a theory of negotiated order. The epistemological underpinnings of this theory lie at the intersection between two powerful paradigms within the discipline of criminology – the aetiology of crime, and the sociology of punishment. The process of theory building, we have argued, requires engagement with the ways in which orders, both formal and informal, ascribe identities to the young people that they encounter and the ways in which such identities are absorbed or resisted by the young people who are the object of their

disciplinary practices. In other words neither the top-down or bottom-up approach in the absence of the other is sufficient.

Importantly the evidence suggests that identities are never fixed. Young people operate with a series of reciprocally sustained versions of self. However the process of repeated exclusion and secondary labelling, by either formal or informal orders, can create a degree of path dependency. For those subject to the weight of exclusion by formal orders, choices are narrowed and more conventional routes are cut off. For those subject to the sanctioning of informal orders, the costs can be devastating in respect of increased marginalisation and social isolation. All of this reinforces the powerful, but sometimes tragic, quality of regulatory orders (both formal and informal) – they serve to reproduce the conditions of their own existence.

INSERT ANNEX 1 ABOUT HERE.

REFERENCES

Armstrong, S., and McAra, L., (2006), "Audience, Borders, Architecture: The Contours of Control", in Armstrong, S., and McAra, L., (eds.) *Perspectives on Punishment: The Contours of Control*, (ch. 1), Oxford University Press, Oxford , pp 1-47

Barker, E., Arseneault, L., Brendgen, M., Fontaine, N. and Maughan, B. (2008), "Joint Development of Bullying and Victimization in Adolescence: Relations to Delinquency and Self-Harm", *Journal of the American Academy of Child and Adolescent Psychiatry,* 47(9): 1030-1038.

Becker, H. (1997), *Outsiders: Studies in the Sociology of Deviance*, New York : Free Press

Cloward, R. and Ohlin L. (1960), *Delinquency and Opportunity: A Theory of Delinquent Gangs*. New York: Free Press

Cohen, A. (1955), *Delinquent Boys: The Culture of the Gang*. New York: Free Press

Garland, D. (1996), The Limits of the Sovereign State in *British Journal of Criminology* Vol. 36 No. 4

Garland, D. (2001), *The Culture of Control*, Oxford: Oxford University Press.

Goffman, E (1961), *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates,* Garden City, N.Y. : Doubleday

Goffman, E. (1969), *The Presentation of Self in Everyday Life*, London : Allen Lane

Lemert, E. (1970) *Social Action & Legal Change : Revolution within the Juvenile Court* Chicago : Aldine

Matza, D. (1964), *Delinquency and Drift*, London: Wiley.

McAra, L. (2004) *Truancy, School Exclusion and Substance Misuse*, Edinburgh Study of Youth Transitions and Crime, Research Digest No. 4

http://www.law.ed.ac.uk/cls/esytc/findings/digest4.pdf

McAra, L. (2010) "Models of Youth Justice", in D.J. Smith (Ed.) *A New Response to Youth Crime*, Cullompton, Devon: Willan.

McAra, L., and McVie, S., (2005,) "The Usual Suspects? Street-life, Young Offenders and the Police", *Criminal Justice,* Vol. 5 (1) pp 5 – 36

McAra, L. and McVie, S (2007) "Youth Justice? The Impact of Agency Contact on Desistance from Offending", *European Journal of Criminology*, Vol. 4, No. 3 pp 315-345

McAra, L., and McVie, S., (2010a) "Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime", Criminology and Criminal Justice 10: 211-230

McAra, L., and McVie, S., (2010b) "Youth Crime and Justice in Scotland", in Croall, H., Mooney, G. and Munro, M. (Eds) *Criminal Justice in Contemporary Scotland*. Oxon: Willan.

McAra, L., and McVie, S., (2012) "Critical debates in developmental and life-course criminology", in Maguire, M., Morgan, R. and Reiner, R. (Eds) *Oxford Handbook of Criminology*, Fifth Edition, Oxford: Oxford University Press.

McVie, S. (2003a) *Technical Report: Sweeps 1 and 2*
http://www.law.ed.ac.uk/cls/esytc/findings/technicalreport1and2.pdf

McVie, S. (2003b) *Technical Report: Sweeps 3 and 4*
http://www.law.ed.ac.uk/cls/esytc/findings/technicalreport3and4.pdf

McVie, S. (2010) *Gang Membership and Knife Carrying: Findings from the Edinburgh Study of Youth Transitions and Crime*. Edinburgh: Scottish Government Social Research.

Rose, N. (2000) Government and Control in *British Journal of Criminology* Vol. 40 No. 2

Smith, D.J. and McVie, S. (2003), "Theory and method in the Edinburgh Study of Youth Transitions and Crime", *British Journal of Criminology*, 43(1):169-195.

Smith, D.J. and Bradshaw, P. (2005) [Gang Membership and Teenage Offending](http://www.law.ed.ac.uk/cls/esytc/findings/digest8.pdf), Edinburgh Study of Youth Transitions and Crime Research Digest No. 8. http://www.law.ed.ac.uk/cls/esytc/findings/digest8.pdf

Whyte, W.F. (1943) *Streetcorner Society*. Chicago: University of Chicago Press.

Willis, P. (1977) *Learning to Labour*. London: Saxon House

Table 1: Logistic regression model with serious offending at age 15 as the dependent variable

Domain	Variable At age 14	Involved in serious offending at age 15 (Yes=1037, No=1761)	
		Odds ratio (95% CI)	P value
Gender	Male	12.0 (1.6-2.4)	.000
Deprivation	Family socio-economic status (manual/unemployed)	1.4 (1.2-1.8)	.001
Family factors	Scale of family crises	1.1 (1.0-1.3)	.045
Personality/ identity	Moral attitude: accepting of violence	3.3 (1.6-6.6)	.001
	Scale of risk-taking	1.3 (1.2-1.4)	.000
Formal and informal exclusionary practices	Warned or charged by police	2.1 (1.5-3.0)	.000
	Excluded from school by age 14	1.5 (1.1-2.3)	.023
	Excluded by peers in previous year	1.6 (1.2-2.1)	.001
Exposure to risk	Scale of victimisation	1.2 (1.1-1.4)	.007
State dependence	Scale of serious offending	15.3 (11.7-20.2)	.000

Note: Variables not significant within the model were: free school meal entitlement; living in to 25% most deprived neighbourhoods; single parent family or non-parental carer; importance of wearing labels/names; think peers/friends view them as troublemaker; pressured a lot by peers about dress, interests and behaviour; scale of impulsivity

Table 2: Logistic regression model with school exclusion at age 15 as the dependent variable

Domain	Variable	Excluded from school at age 15 (Yes=177, No=2888)	
		Odds ratio (95% CI)	P value
Gender	Male	2.4 (1.7-3.5)	.000
Family structure	Single parent family or non-parental carer	1.6 (1.1-2.2)	.012
Deprivation	Family socio-economic status (manual/unemployed)	1.5 (1.0-2.1)	.050
	Living in top 25% most deprived neighbourhood	2.3 (1.6-3.3)	.000
Current bad behaviour	Bad behaviour in current school year (self-report)	1.6 (1.4-1.9)	.000
Previous form	Excluded in first year of secondary education	2.8 (1.6-4.7)	.000
	Bad behaviour at school at age 13 (teacher report)	3.2 (2.2-4.6)	.000

Note: Variables not independently significant within the model were: scale of parental involvement in school, drug use, engagement in serious offending and truancy from school

Table 3: Logistic regression model with police warnings/charges at age 15 as the dependent variable

Domain	Variable	Warned/charged at age 15 (Yes=541, No=2929)	
		Odds ratio (95% CI)	P value
Family structure	Single parent family or non-parental carer	1.3 (1.0 – 1.7)	.030
Deprivation	Living in top 25% most deprived neighbourhood	1.4 (1.1 – 1.9)	.004
Previous form	Peers in trouble with police in previous wave of the study	2.0 (1.4 – 2.9)	.000
	Warned or charged by the police in previous wave of the study	2.1 (1.6 – 2.8)	.000
Current behaviour and recent institutional encounters	Scale of serious offending	2.1 (1.6 – 2.7)	.000
	Scale of adversarial police contact	2.8 (2.5 – 3.2)	.000
Interaction effect	Hanging around most evenings * Family socio-economic status (manual/unemployed)	1.9 (1.5 – 2.4)	.000

Note: Variables not independently significant within the model were: gender, family socio-economic status and hanging around the streets.

Table 4: **Logistic regression model with peer exclusion at age 15 as the dependent variable**

Domain	Variable	Excluded by peers at age 15 (Yes=1120, No=2423)	
		Odds ratio (95% CI)	P value
Gender	Male	1.6 (1.4-1.9)	.000
Family factors	Scale of conflict with parents	1.4 (1.3-1.5)	.000
	Scale of parental supervision	0.9 (0.8-0.9)	.036
	Scale of family crises in previous year	1.1 (1.0-1.2)	.023
Personality/ identity	Moral attitude – accepting of violence	2.4 (1.4-3.9)	.001
	Scale of impulsivity	1.1 (1.0-1.2)	.008
Previous form	Excluded by peers at age 13	1.8 (1.5-2.3)	.000
School factors	Scale of punishments given out at school	1.3 (1.2-1.4)	.000
	Scale of attachment to school	0.8 (0.7-0.9)	.000
Exposure to risk	Scale of victimisation	1.2 (1.1-1.3)	.000
	Scale of serious offending	1.2 (1.1-1.3)	.003

Note: Variables not significant within the model were: family socio-economic status; living in to 25% most deprived neighbourhood; living in single parent or 'other carer' household; free school meal entitlement; thinking friends see you as a troublemaker; warned or charged by the police, importance of wearing labels/names; pressured a lot by peers about dress, interests and behaviour

Annex 1: Variables significant in the analysis

DOMAIN	VARIABLE	VARIABLE DESCRIPTION
GENDER	GENDER	Male=1, Female=0.
SOCIAL DEPRIVATION	FAMILY SOCIO-ECONOMIC STATUS	*Head of household socio-economic status [a]* Manual/unemployed=1, non-manual=0.
	NEIGHBOURHOOD DEPRIVATION	*Living in top 25% most deprived neighbourhoods in City of Edinburgh based on deprivation scale constructed fromn 6 census-defined indicators of social or economic stress [a]* Yes=1, No=0.
FAMILY	FAMILY STRUCTURE	*Whether living with two birth parents, or living with single parent family or non-parental carer:* Single parent family/non-parental carer=1, 2 birth parents=0.
	PARENTAL /CAREGIVER SUPERVISION	*Scale based on 3 indicators of lack of parental supervision (knowing where child is, who with and what time will be home) measured at sweep 4.* Unstandardised scale 0-9
	CONFLICT WITH CAREGIVERS /PARENTS	*How often do you argue with your parents/child about: how tidy your room is; what you do when you go out; what time you come home; who you hang about with; your clothes and appearance, other things.* Unstandardised scale 0-18
	FAMILY CRISES/ SIGNIFICANT EVENTS	*Scale based on a close member of my family was seriously ill; a close member of my family died; My parents split up or divorced; my mum stopped living with me; my dad stopped living with me; I went to live with someone else; my family moved house.* Unstandardised scale 0-7
OFFENDING BEHAVIOUR	SERIOUS OFFENDING (PREVALENCE)	*Involvement in any one of the following 'serious' offences r: theft from a motor vehicle, riding in a stolen motor vehicle, carrying an offensive weapon, housebreaking or attempted housebreaking, fire raising, robbery and involvement in 6 or more incidents of violence.* Yes=1, No=0.
	SERIOUS OFFENDING (FREQUENCY)	*Total number of serious incidents committed at sweep 4 (assuming a maximum of 11 for each type).* Unstandardised scale 0-77.
VICTIMISATION	VICTIMISATION (FREQUENCY)	*Number of times in past year someone: threatened to hurt you; actually hurt you by hitting, kicking or punching you; actually hurt you with a weapon; stole something of yours; used threat or force to steal or try to steal something from you.* Unstandardised scale 0-35
LEISURE	HANGING ABOUT	*Frequency of hanging about the streets at sweep 4.* Most evenings=1, Less often/not at all=0.
POLICE CONTACT	ADVERSARIAL POLICE CONTACT	*Measure of number of times in trouble with the police in last year at sweep 4(>10 times capped at 11)* Unstandardised scale 0-11.
	POLICE WARNING OR CHARGES	*Whether self-reported being charged by police.* Yes=1, No=0.
	EXCLUSION	*Whether excluded from school* Yes=1, No=0
	ATTACHMENT TO SCHOOL	*Scale based on how much agree/disagree with the following school is a waste of time; school teaches me things will help me in later life; working hard at school is important; school*

SCHOOL		*will help me get a good job.* Unstandardized scale 0-16
	BAD BEHAVIOUR AT SCHOOL – SELF REPORT	*Derived from how often in the past year did you: arrive late for classes; fight in or outside the class; refuse to do homework or class-work; were cheeky to a teacher; used bad or offensive language; wandered around school during class time; threatened a teacher; hit or kicked a teacher.* Unstandardized scale 0-24
	BAD BEHAVIOUR AT SCHOOL – TEACHER RATING	*Based on two items from Goodman's Strengths and Difficulties Scale which asked whether child was: 'generally obedient, usually does what adults request' (reversed) and 'often has temper tantrums or hot tempers'. Items were combined into 'yes to either' and 'no to both'.* Yes=1, no=0.
	PUNISHMENTS AT SCHOOL	*Derived from a set of questions about how often things happened to them because of bad behaviour at school including: parents had to sign punishment exercise, school contacted parents by letter/phone, given detention, sent to head of department/head teacher, put on conduct/behaviour sheet or given extra homework to do.* Unstandardized scale 0-24
PERSONALITY /IDENTITY	IMPULSIVITY	*Modified version of Eysenck Impulsivity Scale (Eysenck & Eysenck, 1984)[b].* Unstandardized scale 0-24
	RISK TAKING	*Derived from how much agree/disagree with the following: I like to test myself every now and then by doing something a bit risky; sometimes I will take a risk just for the fun of it; I sometimes find it exciting to do things that might get me into trouble; excitement and adventure are more important to me than feeling safe.* Unstandardized scale 0-24
	MORAL ATTITUDE	*Derived from four moral attitude questions about whether it is OK to hurt or fight with somebody (yes/no) if: you didn't mean to/it was an accident; someone hit you first; someone insulted your friends/family; and because everyone my age does it. Items are added together and those scoring 4 are those who are the most accepting of violence.* *Most accepting of violence=1, less accepting of violence=0.*
PEERS	PEERS IN TROUBLE WITH THE POLICE	*How many of your friends got in trouble with the police during the last year?* *Some, most or al=1l, none=0.*
	EXCLUDED BY PEERS	*Whether you were bullied at least once a week in past year in any of these ways: hitting, punching, spitting or throwing stones at you; saying nasty things, slagging you or calling you names; threatening to hurt you; ignoring you on purpose or leaving you out of things.* Yes=1, No=0.

[a] For full description of these variables see McAra and McVie (2005)

[b] For full description see Smith and McVie(2003)