

An ASBO for violent gangsters or just continuing criminalisation of young people? Thinking about the value of “Gangbo”

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Abstract

This paper offers a consideration of the origins and rise of the civil ‘gang injunction’ (CGI) in England and Wales (often dubbed the ‘Gangbo’ in the news media). In contrast with other disposals which blur civil and criminal process (such as the Antisocial Behaviour Order) the Gangbo has received very little scrutiny. In examining recent cases of gang related violence, this paper raises questions about the purpose and efficacy of such disposals as currently used. Specifically, it asks: if the CGI is targeted at criminal activity, then why is a civil order being used, and how useful and purposeful will it be as one element of a wider anti-gang strategy? Additionally, it questions the potential negative consequences associated with the expansion in use of CGIs, especially given that ‘youth’, ‘crime’ and ‘gangs’ are increasingly being connected in official political narrative and the burdens of evidence for a CGI are not made under the higher threshold of the criminal standard.

Keywords: Gang; Gangbo; Violence; Youth

Introduction

In the wake of the August 2011 urban English riots the Home Office launched its *Ending Gangs and Youth Violence* (EGYV) strategy as part of an ‘all-out war on gangs’ (Cameron, 2011). The characteristics and motivations of those involved in the riots has now been subject to some criminological discussion which has variously suggested that the ‘youthfulness’ of participants is unlikely to be a core defining feature of the disorder (See Ministry of Justice 2011; Treadwell et al., 2013). However, in the political realm such cautionary comment has not been heeded, and quickly the riots became inexorably connected with young people and gangs. After the riots Prime Minister David Cameron contended that ‘Stamping out gangs is a national priority’, and suggested specifically on the disorder of the riots that:

At the heart of all the violence sits the issue of the street gangs. Territorial, hierarchical and incredibly violent, they are mostly composed of young boys, mainly from dysfunctional homes. They earn money through crime, particularly drugs and are bound together by an imposed loyalty to an authoritarian gang leader. (Cameron cited in Hallsworth, 2013: 1).

It can certainly be argued that against a general backdrop of declining youth crime and falling rates of youth custody¹, there has been a growing concern about youth violence and the role and place of the urban street gang in it (e.g. see, Alderidge et al., 2010; Centre for Social Justice, 2009; Densley, 2011; 2013; Hallsworth, 2013). Perhaps in some ways this is understandable. During the last decade a number of serious, high profile, violent crimes across England have involved young people. One in particular - the 2007 murder of 11-year old schoolboy Rhys Jones in Liverpool - perhaps proved pivotal in shifting attention from antisocial behaviour to a more specific concern with violent youth gang crime, constituting Innes and Fielding's threshold for a 'signal crime' (Innes and Fielding, 2002).

Yet while disposals such as ASBOs have received considerable attention from academics, in contrast, there have been few academic studies that have sought to consider new powers granted to authorities to tackle gangs. This is undoubtedly true when it comes to the civil gang injunction (CGI) in England and Wales (a disposal that has often been dubbed the 'Gangbo' in the news media). While some works such as the previously mentioned Densley book 'How Gangs Work' (2013) and Cottrell-Boyce's article (2013), 'Ending Gang and Youth Violence: A Critique' have mentioned these new disposals, there is little work that provides a detailed examination of the application or use of such disposals. This paper then is an attempt to provide an early overview of the use of CGIs in England and Wales. We have been undertaking empirical work cases of gang injunction applications and have undertaken interviews with practitioners (including police officers and criminal advocates) and have had access to court documentation relating to the applications for CGIs, for several individuals. Here we have been required to draw largely on media reports of cases which are

¹ In December 2014 the Youth Justice Board announced unofficial figures revealing the number of under 18s in custody had fallen below 1,000 for the first time and fewer young First Time Entrance (FTEs) into the youth justice system (in 2014 the number was 20% lower than the previous year, and that is part of an ongoing trend) and there is much to be positive about when it comes to contemporary youth justice and youth crime.

in the public arena and therefore are not currently subject to restrictions or sub judice. In this article we used only empirical evidence that we have gathered which is publically available. At a future juncture, we intend to draw on empirical evidence to provide more detail of the CGI in praxis, however here we focus our concern on the background to the development of the CGI.

The Rhys Jones Murder and the Criminological Gang Explosion

The Jones case was in many ways exceptional in establishing an ongoing mood of political concern with regard to the violent, youthful street gangs. While violent gangs have been regarded as a concern in several large English metropolitan centres outside London (such as the Burger Bar Boys and the Johnson Crew in Birmingham who came to prominence after the New Year Eve murder of Charlene Ellis and Latisha Shakespeare in 2003), it was the murder of 11 year old Jones in Liverpool that proved a significant crime event which created the political imperative and drive to deal with gang involved young people by government, and saw serious youth violence and gangs superseding concern with antisocial behaviour generally.

Jones was killed as he made his way home from a football practice in daylight, crossing the car park of the Fir Tree pub on the Croxteth Park estate, Liverpool. A hooded youth (later identified as 15 year old Sean Mercer), approached the scene riding a silver mountain bike. He produced a handgun at arm's length from his jacket and fired three shots across the car park at another intended target. A stray bullet hit Jones in his back, just above his left shoulder blade, and exited his body from the front right side of his neck, fatally injuring him. In the aftermath of the shooting, residents in the Croxteth locality claimed that the estate had been plagued by antisocial behaviour committed by a small group of young men. In response, Merseyside Police used powers under the Antisocial Behaviour Act 2003 to declare the scene of the shooting a 'designated area', meaning that officers could disperse groups and move people away from that location.

Initially, while the police vehemently stressed in the early phases of their investigation that the murder was not 'gang-related', it became apparent that Sean Mercer was clearly an established member of a local gang. He and the others later convicted of

involvement in Jones' murder alongside him, were known to be members of the Croxteth Crew, a local criminal youth gang. In addition, Jones' murder occurred the day before the first anniversary of the killing of another young man, Liam Smith, an alleged member of a rival gang, (the Norris Green Strand Crew), who was thought to have been killed by members of Mercer's Croxteth Crew as he walked out of HMP Altcourse on 23 August 2006 (BBC, 2007).

What seems more certain is that the discussion of the Jones case brought into the public view the problems of territorial street allegiances and violent criminality in small cohorts of gang involved young people outside of London. While there was a growing concern about youth violence in the capital during the same period (see Pitts 2008), the Jones murder provided clear evidence that such problems were not restricted to London. Whilst there are no more than an estimated 100 people in Croxteth and Norris Green's population of 300,000 who are involved in youth gangs (Kelly, 2008), in the wake of the conviction of Mercer and associates, press reports were filled with headlines describing postcode tribalism and territorialism in Liverpool that had previously largely been the preserve of London gangs. In particular, national news media were quick to condemn these 'feral' youths, and readily highlighted that a traditionally little known working class area of Liverpool was now beholden to unpredictable, firearm possessing, young gang members (Kelly, 2008). It is doubtlessly significant then that the murder of Rhys Jones was the drive for the then Prime Minister, Tony Blair, to hold the first 'gang summit meeting' at Downing Street in February 2007. Since this (as we show here) there have been a raft of new policy measures and guidance aimed at addressing violent youth gangs in England and Wales (see Huff and Barrow, 2015). By the end of 2014 the Home Office had produced 38 gang and youth violence focused reports and guidance (Holland, 2014). Thus, in official discourse, there has been a steady amalgamation of youth crime and gang crime so that these once separate categories have increasingly become synonymous with one another in the political mind.

It is perhaps also unsurprising therefore that it was after this crime in 2007 that England and Wales witnessed a growth in empirical studies that sought to explore the notion of the 'youth street gang' and its connections with violence (see Aldridge and Medina, 2008; Alleyne and Wood, 2010; Densley, 2011; 2013; Hallsworth, 2011; 2013; Hallsworth and Young, 2008; Harding, 2014; Fraser and Atkinson, 2014; Pitts, 2008, 2011; 2012; Smithson

et al., 2013). We are not suggesting that the murder of Jones alone was the sole driver for this, but it is clear that very few academic British criminological accounts concerning gangs published predate the murder of Jones (those of Alexander, 2000; Bennett and Holloway, 2004; and Sharp et al., 2006 stand as notable exceptions). That said, it is important to stress at this juncture that the same period witnessed a quite real and alarming rise in serious inter-youth violence in several large urban inner city areas in England and Wales, and real rising anxiety about the nature and levels of violent crime involving young people.

From the Antisocial Behaviour Order (ASBO) to the Civil Gang Injunction (Gangbo)

The criminological research on gangs in England and Wales has been, and remains something of a controversial and divided research community. Some academic accounts suggest that gangs really do constitute a serious and significant part of the youth and violent crime problem (Pitts, 2008). Principle and foremost amongst those who take such a line (and doubtlessly the most significant academic contribution in terms of influencing national policy direction) has been John Pitts (2008) supplemented and supported by more recent ethnographic research from James Densley (2011; 2013) and Simon Harding (2012a; 2012b; 2014). The prominence afforded to Pitts' findings by the Home Office is salient, as atypically, his research presents a picture of highly structured gangs whose primary function coalesces around entrepreneurial drug dealing and not infrequent violence, particularly in and around London.

However, more broadly, the body of UK gang literature (including work from Scotland and Northern Ireland) paints a much more complex, nuanced and occasionally contradictory picture. There are a number of potential explanations for this, as the field of scholarship has both employed quite different methodological techniques and variously shunned the term 'gangs' in preferences for phrases such as 'delinquent youth groups', 'young teens' and 'troublesome youth groups' (see Bannister et al., 2010; Sharp et al., 2006; YJB, 2007). The result is that UK studies present a rather confusing, often polarised and contested picture as to the nature of the contemporary gang phenomena. Indeed, that perhaps explains why even during the mid-2000s, the Home Office seemed unwilling to overtly talk of 'gangs', preferring terms such as 'delinquent youth groups'.

As Shute et al., (2012) note, the Home Office recognised that defining youth group identity and violence is a complex task, leading to a historical political reluctance to employ gang terminology. Consequently, attempts to clampdown on problematic youth became focused on the use of Antisocial Behaviour Orders (Millie, 2006; 2007; Squires, 2008; Squires et al., 2005). The murder of Rhys Jones was a critical turning point with the term 'gang' increasingly forming part of the national media attention and political crime related lexicon, finally emerging in official government discourse (see Huff and Barrow, 2015). In the wake of the murder, came the launch of the Tackling Gangs Action Plan (TGAP). The Youth Justice Board called for the government to replace the term gang with 'troublesome youth groups' (Youth Justice Board, 2007), this appeal has not been well heeded in England and Wales.

The Rise of the Civil Gang Injunction

The introduction of the CGI in England and Wales is part of an increasing trend towards the importation of a civil burden into the criminal justice arena which commenced under New Labour (Ashworth, 2011). As already suggested, an interesting feature of New Labour's approach to youth crime from their coming to power in 1997 was the centrality of the Antisocial Behaviour Order or ASBO (Ashworth, 2011; Millie, 2006; 2007; Squires, 2008; Squires and Stephen, 2005). The ASBO proved a controversial disposal. Introduced by the Labour Government under Prime Minister Tony Blair in 1998, they were initially mooted and designed to prevent the minor incidents of public nuisance that would not ordinarily warrant criminal prosecution but which it was claimed nevertheless blighted communities. In actuality, in the coming years the ASBO (disproportionately) became inexorably connected with a crusade to deal with youthful delinquency and problematic youth crime (Squires, 2008; Squires and Stephen, 2005).

While the ASBO was intended to challenge those minor and everyday incivilities that blighted communities, the motivations underpinning the CGI in England and Wales are seemingly quite different. Also, unlike the ASBO which was quickly targeted by the coalition Government in 2010, the CGI has continued to be championed by (firstly the coalition government, and subsequently the Conservative majority), who seemingly have arrived at the conclusion that:

the gang is a serious and growing problem, that the rise in lethal violence, as seen recently in inner cities such as London, Birmingham, Manchester and Liverpool, is connected to the proliferation of the gang, and that the solution to the problem of urban gang violence lies in its suppression. (Hallsworth and Young, 2008: 175)

While the ASBO was to become the most prominent in the public mind, the New Labour administrations blurring of the criminal and civil law was present in “around a dozen other civil preventive orders, including sexual offence prevention orders, drinking banning orders, serious crime prevention orders and others” (Ashworth, 2011: 22). Furthermore, this trend formed part of the underpinning ideological aim of rebalancing the criminal justice system in favour of the victim and the community (Criminal Justice System, 2002).

CGIs give police and local authorities new powers to deal with gang-related violence. They are court-issued orders prohibiting gang members from participating in certain activities such as being in a particular place or associating with particular people. The Policing and Crime Act 2009 (specifically s.34) allows a court to grant an ‘Injunction to Prevent Gang Violence’ (IPGV) where it is satisfied on the balance of probabilities that the respondent has engaged in, or encouraged or assisted, ‘gang-related violence’ and the court thinks the injunction is necessary to prevent the respondent from engaging in gang related violence, (or to protect the respondent therefrom). Provisions for gang injunctions for young people aged 14-17 were contained within the Crime and Security Act 2010 after the previously mentioned August riots.

Yet the arrival of the CGI into England and Wales is perhaps in no small part due to a long tradition of trans-Atlantic criminal justice policy transfer (Jones and Newburn, 2007) and arguably, it is the US model and experience which has provided the inspiration and template for the use of civil injunctions to address perceived gang violence in the UK. Yet one apparent difference is that the development of civil gang injunctions in the United States (US) was not driven by an underpinning concern with ‘violence’ per se, but with broader problematic and troublesome public and nuisance behaviour that could become associated with gangs. The first application for a CGI in the US was made in 1980 in Santa Ana, California, resulting in a temporary restraining order prohibiting named gang members from drinking and gathering at a known ‘gang hangout’ (Allan, 2004). This proved effective and appeared to eliminate the problem. Subsequently, the Los Angeles District Attorney’s Office obtained

three separate injunctions in the period between 1981 and 1986, preventing named gang members from drinking, hosting boisterous parties, creating graffiti and vandalising property (ibid). In 1987 the first US CGI court order was made against 300 members of the Playboy Gangster Crips and covering a twenty-six block neighbourhood (Yoo, 1994). The preliminary injunction prohibited a range of behaviours, including trespassing, vandalism, urinating and defecating in public, littering, harassment and intimidation (ibid: 218). Interestingly, on appeal, the injunction proved controversial and the restrictions were limited to acts that violated criminal law (Allan, 2004; Yoo, 1994).

From the outset, the American CGIs are largely restraining orders designed to address public nuisance rather than federal criminal offences. The focus of the US injunctions is, ostensibly at least, to prevent criminal activity (Hennigan and Sloane, 2013). CGIs in the U.S. are typically used to prohibit legal and illegal activities within a specific 'safety zone' rather than named individuals, and this is one reason that some criticisms have been made of them (Crawford, 2004; Maxson et al., 2005; Yoo, 1994). The number of gang members named in the CGI can vary, as can the size of the area and the nature of the prohibited activities (Maxson et al., 2005: 504). CGIs in the U.S. typically prohibit gang members associating, stipulate curfew restrictions and include restrictions such as the possession of firearms or the misuse or handling of drugs. However, what is clear is that CGIs were not conceived in the U.S. as a means of dealing with serious criminality and are not promoted as a means of challenging or preventing gang related violence. Thus, the use of CGIs to address public nuisance in the U.S. make them closer to the concern in England and Wales with 'antisocial behaviour' orders.

In contrast, one of the distinctive features of English and Welsh CGIs is that they are designed to address what would ordinarily be regarded as criminal behaviour. A CGI in England and Wales can only be granted if the court is satisfied that the respondent has, on the balance of probabilities, encouraged or engaged in gang-related violence or drug dealing activity. However, engaging in, or attempting, (non-fatal) violent or threatening behaviour can be prosecuted either under the common law or the Offences against the Person Act 1861, with fatal violence being prosecuted either as murder or manslaughter. The question, then, is whether civil measures are necessary if the criminal law is perfectly well equipped to deal with gang-related violence? Home Office guidance (2010) suggests that the purpose of CGIs

is to prevent gang-related violence and protect those seeking to leave a gang, but seemingly in the majority of cases what CGIs really do is enable local authorities to impose restrictions on the liberty of gang members still in the community without the rigours of the criminal process.

The Devil is in the Detail

Section 34 of the Police and Crime Act 2009 sets up the definition of gang for the purposes of granting an injunction. To fall within this definition a group must: (a) consists of at least 3 people; (b) uses a name, emblem or colour or have any other characteristic that enables its members to be identified by others as a group; and (c) be associated with a particular area. This has now been amended by the Serious Crime Act, (2015) and as such the relatively static and territorial view of the gang is increasingly giving way to a more nuanced understanding of the complexity of organised criminality including that of organised street gangs (Pitts, 2008). Furthermore, such a narrow and stereotypical definition was perhaps always problematic in that it failed to capture the complex realities of the UK's organised crime gangs, the now broader definition and changes in the way in which gang violence is conceived at least means that there is the potential for the injunctions to increasingly be used against young people.

On 17 July 2014, Greater Manchester Police (GMP) submitted an application for a CGI against 22-year-old Scott Calder. Part of that application noted that after an attack Calder had been stopped by the police and found to be in possession of a Lucozade bottle containing 'industrial strength' ammonia, and he was arrested for possession of an offensive weapon, and was further arrested after a knife was found concealed in the vehicle (Spillet, 2014). Calder and associates clearly had strong links to criminality, a point stressed by the circuit judge in response to the GMP's application. Ultimately, the application was refused in the County Court on the basis that the familial group to which Calder was said to belong could not be identified by 'others' as a 'gang' within the meaning of s.34(5) of the legislation. At

least in part, the County Court's reluctance to make him subject to CGI conditions related to the fact that while he was clearly linked to organised crime groups, the courts were not convinced that this could be adequately understood via the prism of the street gang (Hamilton, 2015; Spillett, 2014).

Calder, a 22-year-old bodybuilder and grime rapper from East Manchester who posted self-produced videos on the website You Tube under the street name 'Demon', came to be at the centre of media and political discussions about the CGIs in England and Wales after he first sought anonymity when the authorities pursued an application against him. While Calder is not a youth in strict legal terms, he was certainly involved in youthful gang culture that immerses many younger people (Pitts, 2008). Furthermore, in pursuing him the police drew on a range of material, including lyrics in the aforementioned videos and intelligence information, which they referred to the courts that stated that Calder was involved in 'gang culture'. He was, they suggested, "a member of a group of people, centred on other members of his close family, which it is suspected take part in serious criminal activity" after Calder had been shot in the hand when picking up his mother from a bingo hall (his mother was also injured in the shooting) (Britton, 2014). The police, through their intelligence linked Calder to 'shootings, kidnappings' and 'inter-gang rivalry concerned with drugs'. Calder first sought, but failed to secure, anonymity for himself and his family (Gallagher, 2014) on the grounds that disclosure would breach their right to respect for privacy and family life under Article 8 of the European Convention on Human Rights.

In October 2014, Calder and several other associates were imprisoned for between two and four years for conspiracy to burgle. The group had been using tracking devices fitted to rival commercial cannabis cultivator's vehicles to follow them to their growing operations and subsequently target and steal drugs from their factories (Spillett, 2014). This appears to be the likely context for much of the action surrounding the previous application for a civil injunction. The question, then, that ought to be asked is: if previously Calder was so much involved in organised criminality, would not pursuit of this, rather than a bureaucratised attempt to manage him through injunction have been a more appropriate strategy? The Governmental response of course has been to seek to make the definitional contours less specific, but there may yet be value in questioning why it was that 'The Demon', Scott Calder, was ever being policed by civil injunction? Was it simply a short term mechanism for

preventing retaliatory violence? Was it part of a genuine concern to be able to protect him from violence? Or is it a mechanism to prosecute organised criminal behaviour more effectively?

The introduction of the CGI makes an implicit assumption that linked forms of criminal violence are foreseeable and predictable, and therefore might be preventable through procedural, legislative intervention and a notional deterrence. Indeed, when one considers recent cases involving extreme violence tied to gangs and organised crime, such as the violent offence committed by Dale Cregan, it becomes self-evident that those involved in serious gang violence may be little deterred by the threat of a civil injunction.

Within a relatively short space of time, Cregan shot dead Mark Short, in the Cotton Tree pub in Droylsden, Manchester on the 25th May 2012, and then, in August 2012, killed his father David Short at his home in Clayton by shooting him and throwing a hand grenade. Cregan then went into hiding. At the culmination of a large manhunt for him, Cregan made a phone call summoning two female police officers to a property in Manchester where he murdered them with a gun and grenades, before handing himself over to the authorities. It is highly doubtful that a CGI would have prevented any of those murders, and the fact that Cregan would have been well on the police radar after the initial killing clearly did little to curtail his violence. It does not seem that in the period of these incidents of extreme violence that the authorities sought to utilise gang injunction powers, but it does suggest at the complexity of serious gang and organised crime violence, and the questionable extent to which pre-planned manifestations of it can actually be deterred or eradicated by injunction based prohibitions. What more aptly it shows though is the difficulty of preventing criminal violence, the very logic and premise on which the CGI is justified.

The question then that perhaps arises is: if gang members are involved in serious violence or the likelihood of it, why are they being pursued through civil means? Do we really need an ASBO for violent gangsters? Or is it the case that, given the connections now being made between youth crime and gangs (as if the two are synonymous with one another), the real potential is that a new form of ASBO has been created that could ultimately be used to heavily target urban inner city (crime involved) youth?

Conclusion

Since their inception, the scope of the CGI in England and Wales have been gradually extended both in age, (to youths aged 14-17 years old), in jurisdiction, (to the youth courts) and in scope, (to include 'gang related' drug activity). However, to date, the use of such measures has remained relatively small scale and focused within a few local authorities. Yet the drive toward their greater use may have already commenced. The House of Commons Home Affairs Committee recently concluded that this level of use was 'shocking', and recommended a 'league table of gang injunctions on a six monthly basis' (House of Commons, 2015:13).

Evidence to the same committee claimed that the use of CGIs had 'destroyed' gangs in Merseyside. Similarly, claims have also been made that the use of CGIs in the Birmingham area have significantly contributed to the reduction of gang related activity (Birmingham City Council, 2014). Such assertions are not easily substantiated, and potentially the recommendations of the Home Affairs Committee betray an alarming zeal for the use of CGIs without any real pause for thought.

We have argued that, rather perplexingly given current headline falls in youth crime, concern with young people's criminality is increasingly being narrowly (re)framed as gang-related activity. The 'Gangbo' has received relatively little attention from the criminological community. Its passage, adoption and usage has resulted in very little critical comment. Yet as it is extended, rather than being a mechanism for violence prevention, the Gangbo seemingly has the potential to mutate into a means of targeting perceived problematic young people. As the Crime and Security Act 2010 extended the scope to the courts to grant CGI to all those aged over 14 years, the accompanying government guidance noted:

The teenage years are often the critical point for intervention to prevent the young person becoming further involved in gangs and gang violence. Crisis points in a young person's life such as arrest, school exclusion, or A&E admission can provide vital opportunities to persuade the young person to leave the gang lifestyle. Gang injunctions offer local partners a way to intervene and to engage the young person with positive activities, with the aim of preventing further involvement in gangs and violence. (Home Office, 2011: para 3.1).

Of course, a slightly more cynical reading is that on a lower burden of proof and freed of the burdensome demands of compiling evidence that would meet a criminal standard, the

Police and Local Authorities have been handed an extremely restrictive and suppressive crime management tool. The use of the CGI risks a return to British policing more akin to 'sus laws' and the statutory mandated and harassment of largely young (often Black and ethnic minority) inner city men from the lower socio-economic strata (Goffman, 2014; Rios, 2011; Smithson et al., 2013). Indeed, in England and Wales, it is that group who are most frequently targeted by the police, and often it is this group who are implicitly central to a racialized discourse and talk of gangs (Smithson et al., 2013). Moreover, as recent academic contributions in the US have noted (Goffman, 2014; Rios, 2011), young Black and Latino men with high levels of social exclusion can find themselves in a vicious cycle of punishment and incarceration after being harassed, profiled, watched, and disciplined at a young age. This process eventually leads many of them to fulfil the destiny expected of them, or to find themselves trapped in an almost inescapable cycle of exclusion. We perhaps ought to ask, is this simply another case of where America leads, England and Wales will inevitably follow?

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