

BENDING THE BOUNDARIES - ADVOCACY WITHOUT LIMITS FOR YOUNG PEOPLE

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*Paper presented at the 3rd National Outlook Symposium on Crime in Australia,
Mapping the Boundaries of Australia's Criminal Justice System
convened by the Australian Institute of Criminology
and held in Canberra, 22-23 March 1999*

Introduction

Accepting that the law is not always an objective standard by which to measure young people's circumstances and needs, and being prepared to push to the boundaries of the law is the first step in providing advocacy for young people.

Listening to children and acting on their instructions is the key to pushing those boundaries.

This Paper maps some of the boundaries of the juvenile justice system that restrict resolutions to young people's needs such as the political ideologies that determine youth policy and the mythologies in circulation about juvenile offending. Within this context it describes the advocacy provided by the Youth Advocacy Centre that pushes the boundaries of the legal system. The advocacy is by way of service delivery to individual young people through a dual approach to case management. Solicitors and youth workers work together in recognition that young people's legal problems do not exist in isolation. Advocating within the legal system for better outcomes for young people such as meaningful sentences is an example of this work and is demonstrated in two case studies.

Pressing government for policy and legislative reform is another important function of the Youth Advocacy Centre, in an attempt to seek systemic change for young people. Centre staff also provide legal education and training for young people and workers with young people.

Finally, the concluding comments recommend processes other than through the criminal justice system that might break through the boundaries and respond to young people in a more humane and meaningful way.

The concept of childhood and the development of the criminal legal system

Today we accept that childhood is a *unique and crucial period of human life* (Clarke-Stewart et al, 1985) and that the development of the child is a gradual physical and mental process. In seventeenth century England, children were simply treated as 'mini-adults'. Children were expected to work as hard and for the same hours as adults. Aberrant behaviour was therefore treated no differently and punishments were often as severe.

In keeping with the accepted societal norms of how children were regarded, when Australia was first settled by the English in 1788, the law treated child offenders no differently to adult offenders. They went to the same courts and received the same sentences. Between 1812 and 1817, three hundred and forty nine convicts under 17 were transported to Australia. On one day in 1815, five children between 8 and 12 were hanged for petty larceny in London (Morris & Giller 1987). Similar scenarios were repeated in Australia.

The only concession made under English law, and therefore Australian colonial law, was the *doli incapax* rule. Children under the age of seven were deemed to be incapable of committing an offence. For children of seven but not yet fourteen years, there was a presumption that they were incapable of breaking the law but this could be rebutted by prosecution evidence showing that they knew the act to be wrong. How well this limited protection worked in practice is unclear. Accurate information about birth dates was not readily available in the nineteenth century and it would seem that at times the rules were not followed (Youth Advocacy Centre, 1999).

The establishment of a separate and specialist children's court first occurred in South Australia in 1890 and in 1907 in Queensland. Since these times the courts have changed and evolved in recognition of the special position of children in society. Initially the role of the children's court and the reason for setting up a distinctive court system for children, was to allow minor offences by young people to be dealt with speedily and simply. Children tried under these laws were not removed to special courts, they were brought within the jurisdiction of adult courts which employed summary procedure (Seymour, 1997). In the 1880s, in some States, statutes were enacted to allow children charged with very serious offences to be tried summarily. In Queensland, it was possible for young children to be tried summarily in respect of any offence other than homicide.

Some time later special courts for children were established. The foundations of these courts were based on the summary jurisdiction of existing courts which law-makers had already identified as being appropriate for young offenders. These procedures were somewhat modified due to a number of philosophies. There was a desire to ensure that young people would be tried separately from adults and to eliminate procedures that treated young offenders as criminals. For some involved in the design of the courts, the aim was to have juveniles treated less harshly than adult offenders and to 'reclaim erring children'. Some described this as the State's assumption of a paternal role (Seymour, 1997).

The changing role of the children's court reflects the way in which childhood is socially constructed and the way in which the concept of childhood has been expanded to embrace adolescence. By the turn of the century, adolescents were considered to be vulnerable and in need of adult guidance, training and control. They also became targets for paternal intervention (Ainsworth, 1991). Two themes can be identified at the time the children's court was established: a particular social construction of childhood that was changing and evolving with the participation of young people in society, and the extension of 'childhood' to an age-group (teenagers) who were likely to come into conflict with the criminal law.

MAPPING THE BOUNDARIES

Political boundaries

Throughout the history of juvenile justice and child welfare systems in this country the various models of responses demonstrate the shift in thinking and philosophies. Some commentators such as Seymour (1993) describe the shifts in thinking as a pendulum that swings between a justice and a welfare model and emphasises the development of policy and legislation in response to the deeds and needs of young people. Child advocates have expressed concern over the years about the failure of both systems to give proper protection to children's rights. In the 1980's Australia saw the beginnings of the debate where "rights" were only discussed with "responsibility". Some discourse abrogated young people's "rights" if they had not demonstrated that they were "responsible".

Unfortunately, it has been the experience of the Youth Advocacy Centre (which is described further on) over its 18 years of operation that it is the call from the community, the Government or the media for more or less "justice" or "welfare" that determines how policy is formulated. Seymour (1993) states that invariably these calls are ideologically based not empirically based.

Governments (particularly in election mode) send messages through legislation formulation that something must be “done with” young people, particularly those seen as troublemakers. The new move on powers in Queensland under the *Police Powers and Responsibilities Act 1997* is evidence that the Government does not trust certain groups in the community to associate as others do. Although these provisions are not restricted to young people, it would appear that these powers will particularly effect young people due to their use of public space. The provisions of the Act send a message to young people and the wider community that young people are only on the street to commit crime and should be removed to reduce the opportunity to commit offences. In essence, penalising them for a crime that they **might** commit.

The most blatant recent example of this in Queensland was a massive so-called anti-youth crime campaign titled “No More Kid Gloves” run by the former Attorney-General and the Justice Department in late 1997 (Murray 1998). A series of ads were created by an advertising agency in Brisbane which were displayed on Brisbane City Council buses, billboards, television and in the print media. The campaign targeted and effectively labelled all young people as criminals. Slogans such as *New bars for teenagers* over a picture of a young person and *No more kid gloves* over a young person wearing handcuffs. The campaign ads were in the “visual language” of young people with deconstructed typography and a certain tone that was designed to “appeal” to 14 to 17 year olds.

It is arguable that the campaign did little but alienate young people and create a climate of fear of young people within the community. If any retail store advertised their product in the same way as this campaign they could be brought before the Trade Practices Commission for misleading advertising. The campaign came at a great cost, hundreds of thousands of dollars and the dignity of young people. Possibly the cost of education, suicide prevention or drug rehabilitation programs.

The issue of juvenile offending becomes a political one when it is reflected in the ‘law and order’ debates which proceed most State elections, with promises of tough new laws. Commentators such as Seymour (1988) have found that these debates are not founded on empirical data but a mythology which has developed around juvenile offending and young people in general. In the end, therefore, community response is based on a *fear* of crime and risk of crime, rather than reality.

The boundaries in mythologising young people as criminals

Young people are amongst those most vulnerable in our society due to their age, immaturity and relative powerlessness. This has been highlighted in the development of judges rules and in case law. Legislation in Queensland for example, states that police officers must have an independent person present while interviewing young people (S.9E *Juvenile Justice Act 1992*). However, there is no legislation in this country that contains a statement about the rights of children, except for the *Child Protection Bill* currently being considered by Queensland Cabinet.

The police are the gatekeepers of the criminal justice system and provide the major interaction between young people and the law and have the most influence over a range of decisions which result in outcomes within the broader juvenile justice system. A great deal of research has been conducted around the country about the interaction between young people and the police. Findings indicate that young people are subject to an inordinate amount of surveillance from

police, security officers and through technology. Alder et al (1992) found in their national study that 80% of the young people interviewed stated that they had been stopped by police while hanging out with friends, walking down the street or told to move on while talking with friends outside shops. White (1990) highlights this issue and states that young people seemingly do not have a legitimate right to public space as do adults and that “police and much of the general public are suspicious of young people’s presence, possibly due to their lack of economic status, their immaturity and the assumption that young people are potential criminals.”

The research findings of Alder et al (1992) and White (1990 and 1998) are highlighted in the experiences of the young people represented by the Youth Advocacy Centre in railway matters for example. The statistics concerning the number of young people charged with railway offences have escalated ten fold between July 1995-June 1996 and July 1997-June 1998 (Dpt Families, Youth and Community Care, Statistical Services Branch, Oct 1998) in Queensland, most of these being evade fares or crossing over the tracks. In defending these charges, the Centre’s solicitors have obtained copies of the video tapes from the surveillance cameras. It is interesting to observe that in most of the tapes it is the young people who are targeted by the railway police. The officers walk past every adult in the carriage or on the station but question the young people, asking only them for their ticket and searching their bags. Altercations often occur as a result of what young people see as harassment.

We read in the media and there is talk on the street that juvenile crime is out of control. In fact, data in Queensland indicates that less than 1% of all young people between 10 and 16 years appear in the children’s court in any given year. The rate of young people’s offending was about 9 in every 1,000 young people in 1992/93 and is about 11 in every 1,000 young people in the 1996/97 year. This is a small increase. Data also reflect an average of 12% increase in the number of **charges** brought before the Children’s Court. However, the number of **proven** offences increased by 8% (Juvenile Justice Branch, Qld Justice Dpt 1998). So there may have been more offences before the courts but they are not necessarily proven by police. There are many factors underlying in these figures. For example -

- there has been a shift to a more punitive approach in dealing with young people in Qld over the past few years. Diversionary processes have been used less such as cautioning where there has been a decrease in its use by 14% over the past 12 months.
- there is also a greater presence of police now than in previous years and young people in public places are visible to police. Research findings indicate that young people are frequently stopped by police, asked of for identification or moved on. The street is the site for conflict with police where they may be arrested on good behaviour matters.

Retired Judge and President of the Children’s Court His Honour Fred McGuire has long expressed his concern for the “breakdown of the moral sense in present day society” and has attributed this to the roots of juvenile crime (Maguire 1998). Further, His Honour has expressed his view that juvenile crime is out of control with a “high level of public concern over the failure of the established system to eliminate juvenile crime”. The experiences of the staff of the Youth Advocacy Centre have given cause to be more concerned about the foundations of moral panic being located in Parliament House and on the pages of the daily newspapers.

There is no doubt that a small number of young people do commit serious offences, and the statistics indicate that approximately 7% of juvenile offenders were responsible for almost one-quarter of all crimes found to have been committed by juveniles. However, one of the Youth Advocacy Centre's solicitors is the duty lawyer in the Brisbane Children's Court each Monday. Many of her matters concern unlawful take away goods such as chocolate bars and inexpensive jewellery. Twelve percent of her matters result in a S.18 of the *Juvenile Justice Act 1992*. That is the court has decided that the young person should have been cautioned by the police and not brought before the court. The court then dismisses the charge and cautions the young person.

Most of the matters dealt with by the Youth Advocacy Centre involve the breakdown in family relationships, poverty, domestic violence, drug abuse or an intellectual disability or mental illness. Some of the young people have no link to their family, to school or to their community. These are the issues that should concern us, and questions should be raised about the barriers that separate young people from their communities and social institutions.

PUSHING THE BOUNDARIES

Listening to children

Accepting that the law is not an objective standard by which to measure young people's circumstances and needs and being prepared to push to the boundaries of the law is the first step in providing advocacy for young people. Listening to children and acting on their needs is the key to pushing those boundaries.

The case of *Gillick v West Norfolk and Wisbech Area Health Authority (1985) 3AllER 402* is a leading decision and an example of the importance of listening to children and allowing them to be involved in making decisions about their lives. This case has been accepted by policy and law-makers in Australia and by the High Court in *Marion's case* (Secretary, Department of Health and Community Services v JWB and SMB CLR 218).

The Gillick decision is a recognition of children's rights, a concept with which many adults constantly struggle. Such as the right of a child with full information of consequences to be involved in decision-making about their life. This concept is embraced within the Youth Advocacy Centre's advocacy practice and discussed further on.

The Gillick decision was an important reference point for the examination of children in the legal process by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission. The Commissions' report **Seen and Heard: Priority for children in the legal process** (1997) is a comprehensive examination of children and the legal system. The methodology of the research was oriented to listening to young people and recording their experiences. The report contains 286 recommendations and is the result of work conducted over two years. The Youth Advocacy Centre's model of practice and the importance of specialist children's legal services were highlighted within those recommendations.

Advocacy for young people – the Youth Advocacy Centre model

The Youth Advocacy Centre is a specialist community legal and social welfare agency for young people aged 10 to 16 years living in and around Brisbane, although it also provides a range of advice and information to young people and workers with young people around

Australia. It has been operating since 1981 and receives funding from the Commonwealth Attorney-General/Legal Aid funding program and the Qld Dept of Families Youth and Community Care.

The Centre provides an wholistic service to young people and their families in acknowledgement that legal problems do not exist in isolation. One of the important elements of the Centre's work that sets it apart from other youth services is the dual approach of the solicitors and social welfare workers, working together in case management. Staff therefore provide a range of legal and social welfare services such as legal advice, education and representation in the children's court and higher courts where necessary. Coupled with the legal services, staff also provide counselling, mediation and accommodation referral and support, as well as policy and law reform activities.

Centre staff fully inform young people of their options and allow them to make decisions for themselves. Workers take instructions from the young person and never do anything without their consent. This philosophy underlines the Centre's work and is also embraced within the Articles of the United Nations Convention on the Rights of the Child.

The needs of young people as the client are paramount and in order to adequately assist them the Youth Advocacy Centre undertakes a team approach in addressing their needs. If the matter is of a criminal nature then we work with the young person in representing them in court and to help them to address the problems in their lives that have led to the offence. The difference in this approach and a young person being represented by legal aid or a private firm, is that Centre staff give them the time that is necessary to ensure that they fully understand the legal process and assist them throughout the length of their legal matter. At the beginning of the matter a case plan is developed with the young person, the solicitor and the youth or social worker, so that everyone is clear about what the young person expects, and what can realistically be provided and for how long.

Sentencing that is meaningful and relevant

Research findings of Warner (1997) indicate that the demands for children's rights and due process have resulted in legislative reforms around the country and have improved the sentencing framework for young offenders. Unfortunately it has not produced effective participation in the sentencing process by offenders. Some young people have stated to the Centre that they felt that they were sentenced for their past offending, not for the matter before the Court on that day. Further, some repeat offenders have stated that they felt that their sentence reflected the Court's view that they did not have the capacity to change their behaviour. For others their sentence was so meaningless and inappropriate they did not complete their order and were breached.

The recommendations of the **Seen and Heard** (1997) report seek to make sentencing options and procedures more consistent with the basic rights of young people set out in UNCROC. In particular the report highlighted issues concerning the sentencing of recidivist and persistent offenders as well as vulnerable children. "The Inquiry into Children and the Legal Process" found that the effectiveness of sentencing options as deterrents to re-offending depends on the participation of the young person and whether they understood the sentence and whether it was a meaningful one to the young person. The Commissions found that where a sentence had resulted in the young person being treated with dignity, had been able to enter into a trust relationship with an adult and where follow-up was available, there was a high likelihood that

deterrence was achieved. Conversely, meaningless work, a dehumanising or a violent experience will promote bitterness and mitigate against deterrence (19.24 pp543).

The experiences of some young people who have sought the services of Youth Advocacy Centre also reflect these findings. Many of these young people are not 'career-criminals' but commit offences as a result of a family breakdown and their behaviour will continue until their family situation is resolved. A sentence that seeks to build self-esteem rather than simply focussing on their punishment, has a higher chance of changing their behaviour and reintegrating the young person back into society.

At the Youth Advocacy Centre, we ask the young person what led to them offending and help them to identify the issues and problems in their life. For example they may identify a problem with drugs and their relationship with their family. From their first appearance through to the completion of their matter the social worker is able to support them to attend a drug rehabilitation program, work with their family or find some safe alternative accommodation. When they appear at their hearing for example, the Youth Advocacy Centre solicitor can tell the judge that the young person has identified and sought assistance for their drug problem etc. We are able to present to the Court through a court report the positive steps the young person has taken to address their problems. This mitigates towards the outcome of the matter in that the judge will take this into consideration in sentencing the young person.

We will push the boundaries for a better outcome for our clients and for a sentence that is meaningful to the young person. Most importantly, the young person can hopefully see an improvement in their life or at least be working towards one at the end of their court case, rather than having to wait and be ordered by the court to attend a program (if there is one available) through their Probation Order for example.

Bending the boundaries for young women in Queensland

Data obtained for the evaluation of the *Juvenile Justice Act* in Queensland indicate that young women tend to receive a higher proportion of the unsupervised, lower tariff orders however they tend to receive longer sentences than those received by males (Juvenile Justice Branch, Justice Dpt 1998). Young women are also twice as likely to be placed on a probation order than a community service order.

As the Youth Advocacy Centre has a concern for young people's rehabilitation and it has a proven record in communicating with and assisting young people, staff were invited to work collaboratively with the Department of Families Youth & Community Care (Juvenile Justice Program) on a research project that sought to ascertain the meaningfulness and effectiveness of court orders and programs for young women.

What about the girls? project involved interviewing young women in the south-east corner of the State who had recently completed an order. Of the 148 young women who were identified as meeting the criteria of the target population, despite great efforts, only 30 could be located and participated in the research. The fact that a small proportion of these young women could be located told us something in itself about the lives of the young women. Most of them are quite transient and unsettled, some have moved on to the adult system and one young woman had died. The women involved in the study were determined to push the boundaries of traditional methodologies and develop feminist frameworks that incorporated peer research and were appropriate to find out what young women thought about their orders.

It provided the young women with an opportunity to push to boundaries of the sentencing system for young women in the future and to suggest ways to improve programs and service delivery. The project provided the young women who had trained and were employed as peer researchers with new skills and experiences. It was also a chance for some young women to affirm the improvements and changes in their life now, since their contact with the juvenile justice system.

Case studies–pushing the boundaries for individual young people

The benefits of diverting young people from becoming further entrenched in the juvenile justice system are difficult to measure. However the short to medium term effects of getting young people “back on track” through intensive support rather than criminal justice processes are evident on a daily basis to workers at the Youth Advocacy Centre. The solicitors work with the welfare workers, they listen to the child and nurture them through the legal processes in an attempt to make the experience more meaningful to them. Young people say that they see the Centre as a safe place with workers who are non-judgemental and are prepared to listen to them and “hang in with them for the long haul”, during the times when their life is stable, but especially during the difficult times.

The welfare worker can prepare a court report to assist in mitigation, and they ensure that the child fully understands everything that is happening to them. They give them full information so that the child can make decisions and enter into processes and programs under their own volition.

The following case studies are examples of the advocacy for young people that the Centre undertakes on a daily basis. It demonstrates the way in which workers question and push the boundaries of the law, the courts and the Departmental systems with and on behalf of young people.

➤ **KATE**

Kate was charged with robbery with violence, she was 16 years old at the time and it was her first offence. She was drug dependent, in very poor health, she had no money and was living in an unsafe and unstable environment. Kate had no contact with her family and had recently discovered that she was adopted. She held up a neighbourhood Seven-Eleven store with 2 kitchen knives. Kate was well known to the staff, and her “disguise” was a beanie with a doily over her face. She ran off with \$20 and the police arrested her at home, two blocks away, 30 minutes after the robbery. She made full admissions to the police.

The legal process was very lengthy and drawn out despite her intention to enter a plea of guilty. The offence occurred in May 1998, the first mention was remanded in order for her to get some legal advice. One month later she was at court for the second mention and the matter was set down for a committal mention in a months time. Her third court appearance was for a committal mention at which her committal was set down for the next month with the cross-examination of five witnesses. The main prosecution witness was overseas at the committal so it was only part heard on this day and set down for completion five weeks later. On completion the matter was sent up to be arraigned at the District Court two months after that. At the arraignment a pre-sentence report was ordered for the return date one month later. On the return date, eight months and seven court appearances after the offence occurred, she was sentenced to 2 years Probation and

100 hours of community service. Kate was satisfied at the outcome given it was a serious offence.

During these eight months Kate was assisted by the youth worker with accommodation, and income security and supported her with her medical condition and in her attendance at a drug rehabilitation program. Kate also underwent counselling with the youth worker about her adoption and feelings of abandonment by her family. The court did not order any program attendance with her probation order as it was satisfied that over the eight months working with Youth Advocacy Centre she had demonstrated that she had made genuine attempts to change her circumstances and address her problems. Kate's voluntary attendance at the drug rehabilitation program was far more effective than a compulsory attendance order by the court. She felt that she was doing something positive for herself and by the date of her final appearance she was doing well and feeling more confident about her life.

➤ **SAM**

Sam attended a private boys school in Brisbane and was in year 9. He has been subjected to bullying by some other students for the past 4 years. He had an operation on his testicles and one of his teachers told his class that this was why he was absent from school. The boys have continued to harass and physically attack Sam over the years, despite his parents complaining to the school and the Principal promising to address the problem. Despite the bullying Sam believed the school had a good reputation and he should stay at the school because it would be good for him in the long term. Eventually the harassment escalated to the point that Sam had written to the principal about the bullying and told him he often thought of suicide. The parents found the note and a friend referred them to the Youth Advocacy Centre.

In his letter to the Principal he said that he had considered it to be an honour to attend that school ...*I was one of the luckiest boys, but it's not like that anymore. Boys in and out of school time harass me (sexually) everyday. I'm so mad that I want to kill myself, my heart is crushed each time someone calls me names. I pray to God every day and night and wish this will go away. I've been to counselling which is no good and some even blame me for starting this whole thing.* He said that he had talked to teachers about the matter ...*but nothing happens to those kids. One more thing this school is not worth it for me anymore.*

The Youth Advocacy Centre solicitor wrote to the Principal and requested a meeting. In attendance at the meeting were Brett and his parents, the Principal, the Guidance Officer, and the Youth Advocacy Centre solicitor and social worker. The situation was discussed in detail and the Principal apologised for the hurt caused to Sam and the school's inability to prevent it from happening. Avenues for Sam to report the bullying were established.

The social worker provided the principal with information about bullying and sexual harassment initiatives being undertaken at other schools in Australia and overseas and the solicitor strongly urged the Principal to develop school policy around this issue. The Principal consequently appointed a Sexual Harassment and Anti-Discrimination Officer, and began discussions with students about bullying.

The social worker's case plan concentrated on raising Sam's self esteem, discussing coping strategies to use in the school yard and supporting him and his family through the ordeal. This support occurred weekly for a period of three months.

Unfortunately the matter for Sam continued and he felt that the school had once again let him down. The solicitor referred the family to legal aid for assistance in taking the matter to the Anti-Discrimination Commission. The social worker continued his support for Sam until he finally decided to leave the school.

Although the situation was not resolved with the school, and did not provide a good outcome for Sam, he felt that he dealt with his thoughts about suicide in a constructive way, and developed the confidence to be assertive to the students bullying him. He also felt supported in his decision to finally leave the school. He was pleased that the school accepted that he had been harassed and that Youth Advocacy Centre had pushed the Principal sufficiently enough that he developed some policy and strategies to deal with future matters.

Conclusion

One young person every day in Australia loses their life through suicide. Poverty, unemployment, violence and poor health face many other young people. These are some of the systemic boundaries with which these young people struggle.

We read in the media and there is talk on the street that juvenile crime is out of control when in fact only 1% of all young people in Queensland between 10 and 16 years appear in the children's court during any given year. Given this, we must push Governments to formulate legislation and youth policy on the **needs** of young people, not their **deeds**. Rigorous research should influence law and policy, not ideology. Further current and correct information should be accessible to the public, not mythology of young people as criminals which tends to saturate the community during election campaigns. These are the political boundaries that face young people.

The Youth Advocacy Centre model has not been presented as the answer or the "recipe" to solve these problems, but it is a model that has been operating successfully for 18 years, assisting over 1,000 young people in a significant way each year. It is an option that has been developed through listening to young people, showing them respect and it views them a rights-holding citizens.

Being prepared to push these boundaries and not be confined by their limitations is an important part of advocacy for young people. Listening to them, giving them some options and allowing them to participate in decisions about their lives is the key to pushing those boundaries.

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