

# ISSUES AND TRENDS IN JUVENILE JUSTICE

JUVENILE crime in America and Australia is decreasing, but it causes more fear, more dismay, and more anger than ever before. In America, this phenomenon has been recognised for a number of years; in Australia, it is not yet so well-defined. But in both countries it should be cause of concern, because it causes people to live in an unnecessary fear of being victimised, because it unfairly stigmatises young people who are innocent or who commit minor offences, because it causes us to forget that juveniles are disproportionately the victims of crime and because it interferes with our ability to handle those young people who do inflict major harm on others and who have the potential of becoming serious criminals. For all of these reasons, it is important to come to a better understanding of the dimensions of youth crime, of its nature, and of the measures that can be taken to deal with it.

As Allan Borowski of La Trobe University in Victoria has pointed out, the majority of proscribed juvenile behaviour — truancy, experimentation with alcohol, schoolroom fights and petty thefts — cause relatively little community concern. "However, within the population of identified juvenile offenders there is a group whose activities periodically result in media hype. The lurid pictures painted by the media — the major source of public knowledge of the prevalence and character of crime — of assault, rape, and other vicious crimes perpetrated by juveniles have created an impression of a problem of growing magnitude and a juvenile justice system incapable of stemming the tide of serious juvenile crime."

As is perhaps to be expected, American media early led the way in alerting the public to the perils produced by violent youths. *Time* magazine (11th July, 1977: p. 18) commented: "Many youngsters appear to be robbing and murdering as casually as they go to a movie or join a pickup baseball game. A new remorseless, mutant juvenile seems to have been born, and there is no more terrifying figure in America today."

Arrests of juveniles in the United States levelled off after 1974 and have been on the decline since the early 1980s. This is true both in absolute numbers (probably due in part to the decline in the number of youths age 10-17 in the US population after 1974) but also in the rate. Although there were some increases in arrests for serious crimes between 1972 and 1981, they were small in comparison to those for people aged 18 and older — 31% versus 66% for violent crimes and 22% versus 112% for serious property crimes.

The situation seems similar although not identical in Australia. Mukherjee<sup>2</sup>, analysing arrest data from 1964 through 1981, showed that the rates for juveniles were still growing, but not nearly as fast as those for young and older adults. For offences of pure violence, such as homicide and serious assault, adults and young adults are arrested at a rate several times that of juveniles; the same is true of robbery. Only in burglary and motor vehicle theft are arrest rates for juveniles disproportionately high.

Borowski's interpretation of 1972-1982 data for Victoria suggest a similar situation. Again, the decade from 1973 to 1982 saw a steady increase in both the size and rate of juveniles coming to the attention of the police for both status and criminal offences. Again, most of the offences were property offences. For homicide, serious assault, robbery and rape, juvenile offenders represented, on average, just under 14 per cent. The proportion of juveniles in the State's population declined from 16.8 per cent in 1972 to 15.9 per cent in 1981. Between 1973 and 1977, the number of juveniles prosecuted or cautioned for the offences



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listed above declined with each successive year and declined again between 1981 and 1982. Again, a similar picture emerges from a cursory examination of South Australian data. While the total number of offenders under 18 coming to the attention of the police increased from 6,950 in 1984-85 to 7,257 in 1985-86, almost the entire difference can be accounted for by an increase in motor vehicle theft. Rates for personal crimes remained virtually the same. And for both years, the percentage of juveniles arrested for personal crimes was considerably below their percentage of the population.

1. Borowski, Allan "The Serious Juvenile Offender", in *Juvenile Delinquency in Australia* (North Ryde NSW: Methuen Australia) 1985.

2. Mukherjee, S. K. *Age and Crime*. (Canberra: Australian Institute of Criminology) 1983.

One piece is still missing from this picture and that is the fact that for serious crimes many apprehensions are repeat apprehensions and others involve youth who have committed more than one offence. Thus, a relatively small percentage of juveniles are committing a relatively large proportion of offences.

This is not the occasion to go into the comparison of arrest rates and crime rates, except to offer a general caution that one may have little to do with another. Arrest rates depend heavily on the practices of law enforcement and other criminal justice agencies, as well as upon the willingness of the population to report crime and assist the police in investigating it. Victim surveys do not always tell us very much about offenders. Self-report data on delinquency have suggested that the number of juvenile offences is higher and more evenly distributed across socio-economic classes than arrest data would suggest although, since there are no comparable surveys for adults, it is possible that the same could be said for crime in general. Self-report studies have also been criticised for their methodology and doubts have been raised about the ability and willingness of youngsters to identify and report their offences, with some uncertainty as to whether they are under- or over-reported. The desire to seem macho and daring may inflate self-reports, just as there have always been some suspicions that surveys of sexual behaviour may be as affected by boasting as by guilt and shame. We can only go forward with the rebuttable presumption that for trends and directions, if not for absolute extent, apprehension data give a reasonable portrayal of juvenile crime.

While juveniles may commit relatively few personal crimes in comparison to their proportion of the population, they are disproportionately the victims of both personal and property crimes. From 1982 through 1984, Americans aged 12 to 19 were twice as likely to be victimised as were those 20 and over. Since 1973, teenagers have experienced a decline in theft victimisation rates, but victimisation rates for violent crimes have remained stable. Crimes against teenagers were less likely to be reported to the police than were crimes against older people. Much of the crime against juveniles is committed by other juveniles and much of it is committed by people whom they know. In recent years it has become clear that both teenagers and youngsters who have not yet reached their teens have been victimised for sexual purposes — for purposes of incest, sexual abuse, pornography, and prostitution both male and female. Data for Australian juveniles is not as detailed or contemporary, but the picture is much the same. The 1983 Australian Bureau of Statistics study *Victims of Crime*, indicates that persons 15-19 were second only to persons 20-24 in the rate of victimisation. For thefts other than robbery and for assaults, the two groups were equal. Teenagers and young adults were also most likely to be victims of more than one offence, victims of more than one incident and had the highest rate for four or more incidents of victimisation victims aged between 15 and 19 are least likely to report crimes to the police, with only one-third of all last incidents being reported. Although this study did not concern itself with male victims of sex crimes or with female victims of sex crimes below the age of 18, I probably do not have to convince you that such incidents are common enough to be a matter of concern to Australians as well as to Americans.

Finally, it may not be totally irrelevant that contemporary youth are being disproportionately afflicted by another type of crime — this time a self-inflicted one. Youth suicide in Australia rose 13.6 per cent from 1980 to 1985 and, as in America, is now the second largest cause of death for young people.

If most juvenile offences are not very serious and if the amount of serious delinquency is either stable or actually decreasing, why is public concern still rising? The role of the media has been mentioned earlier; violent assault is naturally more newsworthy than shopstealing. Much youth crime is gang crime and gangs provide a form of drama (remember *West Side Story*?) that is particularly suited to the attentions of newspapers, television, fiction and film. Gangs are also particularly frightening to adults who rarely travel with such impressive

cohorts of companions and who therefore are uneasily aware of how vulnerable they would be to gang activity. Law-abiding youngsters also often seem to follow the herd principle, however, and it is not always easy to know if the blue-jean-and-leather-jacket clad crowd on the corner are discussing the latest thing in heavy metal or planning their next raid. It is a phenomenon that raises the adult perception of vulnerability and the level of adult fear.

THE aging of the population may be another factor. In both our countries the percentage of people over 65 is growing rapidly. The elderly have an understandable fear of crime and in recent years they have also had the voice to make that fear known and the votes to direct attention to it. But the elderly may also interpret the risk-taking and rebellion common to western youth as being more threatening than it really is. Rudeness, loudness, outlandish clothing, lack of consideration, displays of territoriality, and general boisterousness — all become more intimidating as we become more frail. And it is unfortunately true that signs of fear and distaste on the part of their elders may simply inspire young people to even worse behaviour.

It is also, of course, important not to underestimate the effects of property crime on the victim, especially since the victims themselves are so often young. Having one's home invaded by burglars — even if they take little or nothing — is a trauma that may last for years. It is the crimes of opportunity that seem to be the speciality of young people and these are the very crimes that may do the most to convince us that we must equip our homes as if they were fortresses. And although the value of the property involved is often relatively small, it is vandalism-ravaged gardens, graffiti, broken windows, damaged park benches — that give us the feeling that society is out of control, that every individual is vulnerable and unprotected and vandalism is a juvenile speciality.

What does all this tell us about the directions that juvenile justice should take as we approach the 21st Century? First of all, we must continue to recognise that juvenile crime is a problem but we must not allow ourselves to become stampeded by fear and panic. We must remember that there is no precipitous increase in juvenile crime, that most of it is minor, that most law-abiding adults (as well, admittedly, as the other kind) committed offences when they were juveniles, and that the first requirement of the juvenile justice system — like the medical system — is that it do no harm.

It seems to me that the main concerns at the moment are focused around the most and least severe offenders. Long-term studies in Philadelphia indicate that only a small group of any criminal sub-group are repeat offenders. For males born in 1958, this study found that 23% of those with one or more arrests could be defined as chronic offenders, i.e. they had five or more non-traffic arrests by age 18. This 7% of the male sample studied contrasts sharply with the 67% of males who had never been arrested. 14% arrested only once, and 11% arrested 2-4 times. The study also indicated that the likelihood of further arrest increases with each subsequent arrest. This is particularly true for crimes of violence — the more injuries the youths committed, the more likely they were to commit further injury offences. And a RAND study found that adult career criminals often begin their criminal activity as juveniles, often by age 14, although there is still no agreement upon whether the adult criminal career takes place in spite of the best efforts of the system or because of the system's premature processing and labelling of the youth as a delinquent. In any case, it is this relatively small group of youths who cause the most concern and who are responsible for a growth of sentiment in favour of "getting tough" with delinquent juveniles.

Our methods of doing justice are, of course, founded on our concept of the human decision-making process, on our belief in determinism or in free will. Are our actions the products of our environments, in which case society owes those from emotionally or economically impoverished environments support nurturance rather than blame? Or do we rationally calculate the

effects of our actions in terms of personal pain and pleasure, so that society owes to itself a process that increases the pain for lawless acts and the pleasure for lawful ones? Or are we moral creatures who are capable of making decisions based on good and evil, in which case we deserve punishment for doing evil and reward for doing good? In the past century or so, both America and Australia have wavered among these philosophies as they pertain to adults, but we have been more consistent, since the 1890s, in seeing children as moldable, as beings who need and deserve care and guidance if they are to become respectable adults. It is only after some rather arbitrarily determined age of responsibility that we sometimes applied one of the other philosophies to them. The "get tough" attitude translates into pushing back that age of responsibility, into saying that at least some children lose their moldability at an early age or may even be the inevitable product of a "bad seed". If our citizens are really ready to adopt this viewpoint, we must be sure that we are applying it in the fairest, narrowest, and most humane manner we can devise. Care and support must be tried before they can be said to have failed. The assumption must always be that highly intrusive techniques are appropriate for only a tiny proportion of juvenile offenders. Those offenders cannot be identified on the basis of race, gender, class, ethnicity or any basis other than that which says that in spite of its best efforts, a caring society cannot find any gentler method of keeping this person from committing acts that a tolerant society finds intolerant; that is not a judgement to which we can rush. We can withhold blame even as we incapacitate. And we can do everything within our power to be sure that a child subjected to the sternest measures of the juvenile justice system is, at the very least, not less able to cope with society's pressures and demands when he leaves than when he enters.

The first item on the juvenile justice agenda as we approach the end of this century may, therefore, be a sad one. It is to learn how to identify and deal with such youngsters without confusing them with the majority of young offenders who, evidence seems to show, will outgrow their delinquency without any help from us.

This is the second item for us to consider. Most young offenders do not grow up into adult offenders. I think of this as the "acne theory" of delinquency — there is no known cure except time. Indeed, some of the evidence in the studies mentioned above indicate that the less contact a youngster has with the justice system, the less likely he is to continue offending. Members of the system may have come to the same conclusion. I remember being in a room full of youth officers who were asked to which of two young offenders would be most likely to continue offending — the one who had contact with the system or the one who didn't. To my amazement the opinion was unanimous — the youth who avoided contact with the juvenile justice system was predicted to have a better chance of becoming a law-abiding adult. It is important, then, not to let our worry about those youngsters who cause serious and repeated damage to person and property stampede us into placing at risk young people who would not be there if we had not interfered.

This leads naturally to a third agenda item — allowing nothing, including our most humanitarian instincts, to cause us to spread the net of juvenile justice system wider than it needs to be spread. Our distrust of incarceration has led us to develop an ever-widening toolchest of less intrusive measures, complete with a philosophy that tells us to use the least intrusive measure possible. But will a worker with a well-filled tool chest not wish to use it? There is a saying that tells us that if it ain't broke, don't fix it. The more elegant our tools, the harder it becomes to resist the desire to tinker a bit with a mechanism that shows even a slight flaw. Are community service orders, community youth centres, intensive neighbourhood care, youth project centres, attendance centres, and community work programmes being used instead of incarceration, or are they being used for young offenders who, were it not for the existence of such

programmes, would not be under the control of the State at all? The question is even more pertinent when it comes to diversion, which aims to keep juveniles out of court, thus eliminating or minimising the stigmatising and traumatising effects that often accompany formal proceedings. As has often been pointed out, diversion can be considered effective only if there is something to divert the person from. The original diversion programme was carried out by the lone police officer who would give the casual young offender a sharp word (or occasionally something sharper than a word) and send him on his way. Do juvenile community service orders, revised police cautioning procedures, Children's Aid Panels and Screening Panels actually divert young offenders who would otherwise be headed for the courts or do they provide a rationale for processing children who, without them, would not have been processed at all? The question is brought into focus by the fact that the success of these programmes is so often measured by the recidivism rate of clients, which are often gratifyingly low. But are they low because these measures provide effective intervention or are they low because of the type of youngsters they process would not have repeated their offences anyway? Would the rate be lower still if these juveniles had had even less contact with the juvenile justice system? We don't know. In spite of a proliferation of measures for dealing with juveniles, evaluation has been close to non-existent. Given the costs of solid evaluations, this is not surprising. But we have a desperate need to know what really works and we need measures that do more than simply encourage programmes to reject the youngsters who present the most difficult problems.

**A** **N**OTHER agenda item has to do with the relationship between juvenile justice measures and legal rights. I certainly break no new ground when I remind you that although Australia never embraced the "child-saving" philosophy in the way that America did, its juvenile justice system also reflects a tension between the desire to help the child whose offences are symptoms of his needs and the desire to adjudicate guilt in a particular offence. When a child is indeed found guilty, should the disposition be a response to his social, emotional, educational, and economic needs, or should it reflect the gravity of the offence. Empirical evidence suggests that minor offences are treated by the former philosophy, while more serious offences provoke the latter. I suppose that this is not necessarily objectionable in itself, but does it reflect any coherent philosophy of justice or view of human nature?

Does a desire to help and to avoid the stigmatisation of the formal children's courts put pressure on children to plead guilty? Given the choice between the court procedure that follows a plea of not guilty and the informality, less accessible record, and often less obnoxious dispositions of alternative procedures, do the wise child, family and lawyer opt for the guilty plea regardless of innocence? Is the choice between such procedures really close to non-existent, forcing a child to choose that which is more convenient in the short term, although it may have unfortunate long-term consequences?

What is the proper way of responding to children who have been involved in so-called victimless crimes such as prostitution, pornography, and the use of drugs and alcohol? Adults involved in such acts receive relatively minor penalties, largely, I believe, on the philosophy that the State has little right to interfere in the decisions of adults if those decisions are only self-destructive and not destructive to others. But we are reluctant to take the same approach to youngsters, feeling, perhaps, that they are not mature enough to appreciate the consequences of their acts and that the State has both the right and the duty to intervene. In Australia perhaps more than in America the abuses inherent in the concept of status offences are well-recognised. But to treat such children as victims is not always appropriate either; victims must recognise themselves as such in order to take advantage of the help offered them. Juveniles involved in the offences listed above often do not see themselves as victims and they perceive proffered help as undue and unwelcome interference. Should the

State accept their definition of the situation or does it owe them protection, howevermuch unwanted it may be?

What on earth should we do with that tiny but intriguing group of young offenders who are a product of modern technology and their own high level of intelligence — the computer hackers and their mates? Bright, well educated, usually from families that are emotionally close and economically comfortable, these whiz-kids show none of the usual signs and symptoms of delinquency, but they can do tremendous damage when they allow their pride in their skills and their desire for ever-greater challenges to dull their moral perceptions. How are they to be taught that not everything that is technically feasible is ethically permissible and that white-collar crime is no more acceptable in a child than it is in an adult?

Australia has become aware of itself — sometimes joyously, sometimes reluctantly — as a multi-cultural society. To what extent may and should the juvenile justice system recognise that fact? How much respect does it owe to customs that are not those of the mainstream culture? How much cognisance should it give to the stresses of being a child immigrant or the child of immigrants, especially when those stresses vary from culture to culture and perhaps from family to family within a culture? How do you apply family and community based measures to a juvenile whose community was left behind in another country or whose family structure may be unrecognisable to mainstream juvenile justice professionals?

Both America and Australia have long thought of themselves as frontier countries and the frontier has shaped our cultures and our national characters. America has only slowly come to terms with the fact that the frontier is now a part of its past. For Australians, in spite of the fact that their country is one of the most highly urbanised on earth, the frontier is closer in both time and space. The existence of a frontier has historically provided an alternative for young people who cannot meet the demands of settled society — it has given them a place where physical strength and courage, the willingness to use and be the target of violence, a fierce desire for independence and autonomy, and a desire to take risks could often be channelled into a way of life that was emotionally satisfying, occasionally economically rewarding, did little if any harm to others, and might actually prove to be socially and culturally productive. The deaths in the outback a few months ago of two would-be jackeroos may have signalled the fact that the frontier is an escape is dead both in actuality and in fantasy. That is one more fact that affects the work of those who deal with the problem of young people.

I have had a career-long interest in the criminal justice system of China and on my most recent visit I paid particular attention to the ways in which the Chinese deal with juvenile delinquency. Many of their techniques are an integral part of contemporary Chinese culture and would not be easy to import into cultures such as ours. Others are incompatible with intensive protection of individual liberties and freedom of expression. There are, nevertheless, a number of ideas that may be worth considering. Perhaps the most basic of these is the belief that children do not naturally know good from bad and, even when they do know the difference in the abstract, it is not inevitable that they will choose the good in each concrete instance. Thus, one of the rights that juveniles have is the right to moral education. There is no doubt that moral education is a relatively simple matter in a uni-cultural society with a high level of agreement on values, on what constitutes proper behaviour, and on the proper relationship between the individual and the community. In such societies children receive a rather consistent message about right and wrong from all of the community's institutions. Like many of my countrymen — and many of yours also — I have long had a reluctance to foster moral education in any institutions other than familial and religious ones. In a multi-cultural society, the teaching of values immediately presents us with the question "Whose values?" I wonder, however, if it is not possible to find a consensus on a set of

commonalties that we can present to all of our young people. To teach that rights are always accompanied by responsibilities, that there are things that are more important than immediate individual pleasure, and that certain decisions can be made only on the basis of a level of experience and maturity that juveniles do not have, would not, I think contradict the morality conveyed by the families and spiritual institutions of our nations.

However, even as I speak these words, I am aware of a slightly sanctimonious sound to them. I have a difficult time imagining myself discussing them with young people without feeling uncomfortable and ill-at-ease. I am impressed by the way in which my Chinese acquaintances talk about the "need for each individual to contribute to the building of the socialist motherland", about the role of the justice system in "fostering lofty sentiments and new morality", and the importance of "all segments of society earnestly joining hands to struggle sincerely against corrosive influences"; they say things like this without embarrassment or self-consciousness because they are not cynical about the role of morality in fostering good behaviour. Well aware that deeply held moral beliefs can easily develop into intolerance and fanaticism, I wonder if we can at least make the attempt to develop a way of talking about right and wrong that is neither naive nor simplistic on the one hand, nor amoral and selfish on the other, and which at the same time, permits individual differences and promotes sub-cultural integrity, a way of talking about morality that we can use on weekdays as well as on the sabbath.

We have slowly come to the conclusion that the police by themselves cannot prevent crime — no more can the juvenile justice system by itself prevent delinquency. It cannot abolish poverty, create intact families, demand that children be born only to parents that really want them, invent a societal climate of caring rather than self-interest, or honestly persuade all juveniles that they have a stake in preserving rather than destroying the social order. Its members can, of course, advocate measures that will bring about all of these situations. But the problems I have outlined above — and many others — belong to those whose profession it is, in one way or another, to mediate and reconcile the rights and obligations of the community with the rights and obligations of all other members of the community and the nation. As we head toward the 21st Century, time will not hang heavily on their hands.

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