

TAKING CUSTODY TO THE COMMUNITY

THE DYNAMICS OF SOCIAL CONTROL AND SOCIAL INTEGRATION

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What is to be done about juvenile crime and young offenders? This issue has certainly been at the forefront of the "law and order" debate in Western Australia over the last few years. Its continuing significance as a major social issue has been fuelled by regular "moral panics" in the media over such issues as high speed car chases and "breakouts" from juvenile detention centres.

In recent months, however, the hype and sensationalism which has tended to characterise the media treatment of juvenile justice issues has been somewhat mediated by the appearance of more considered analyses and more thoughtful proposals regarding the nature of and responses to the "youth crime" problem. Much of the credit for this goes to the work of a newly formed State Advisory Committee on Young Offenders which has attempted to inject more thorough, balanced and reasoned arguments into the public debates over juvenile crime.

This paper provides a brief overview of recent policy developments relating to juvenile justice in Western Australia. In particular, the paper examines the current shift away from "custody" as a significant sentencing option and solution to the "youth crime" problem, toward one that is based upon the idea of "community" prevention schemes and pro-active intervention measures. The aims of the paper are to discuss the broad policy initiatives being mooted by various influential bodies and government departments at the present time; to highlight the potential sources of conflict and resistance to the introduction of new philosophical and structural changes in the juvenile justice area as a whole; and to raise a number of political and theoretical issues associated with the apparent redirection of policy away from a "social control" to that of a "social integration" model.

THE JUVENILE JUSTICE DEBATE

The transitions occurring in Western Australia have to be seen within the context of developments in the juvenile justice area which are taking place in other states (for example, South Australia) as well as in other countries (for example, United Kingdom).¹ Specifically, although much public attention has been directed at the issue of juvenile offending, and calls for a "big stick" approach are endemic to the debates over youth

1 Blagg, H, "Responding to Juvenile Crime: Some International Developments" and Wundersitz, J, "The South Australian Juvenile System", papers prepared for a Juvenile Justice Public Forum organised by the WA State Advisory Committee on Young Offenders, May 1991.

crime, many jurisdictions are, in practice, steadily moving away from a reliance upon institution-based “custody” as an important means to deal with young offenders.

The reasons for this shift vary. Certainly one of the most important relates to the social and economic costs of incarceration as a “solution” to the problem. Put simply, prisons and detention centres are massively expensive to build, maintain and operate on a recurrent basis. In a period of general recession and restricted budgets, governments are being forced, on financial grounds, to re-evaluate the efficacy and efficiency of custody options.

Furthermore, even the most ardent supporters of the punitive approach to juvenile offending have been forced to acknowledge that custody measures often serve to reinforce criminal behaviour and recidivism rates. The detention centre or prison can, in effect, be a “school” for the advancement (rather than the stifling) of “criminal careers”.

The enhanced awareness of “costs” and “careers”, however, is not enough to explain fully why certain arguments are striking a persuasive chord at the present moment among policy-makers in each of the mainstream political parties. Nor should we ignore the fact that there remains a vigorous debate between those advocating a “social integration” perspective and those focussing on “social control” as a key concept. The latter perspective is indicated by demands for harsher penalties and greater police powers as a means to deal with certain types of offences and particular categories of offenders. The logic of this approach is to “put the lid” on youth crime by establishing better control mechanisms at all levels in the system — from local neighbourhood “crime watch” committees through to tighter regulations relating to sentencing options and custody conditions. If someone has committed an offensive act, then they should be held fully responsible for their actions. Each offender should experience the full weight of the law, and law enforcement should be carried out without fear or favour toward any particular social group.

The “social integration” perspective, on the other hand, tends to emphasise the sociological dimensions and patterns of crime. The main idea here is to use proactive measures which will reduce the situational possibilities of crime before such an offence is committed. For example, issues such as poverty, racism and unemployment are seen as significant contributing factors in criminal “choices” and as such need to be taken into account in any juvenile justice policy package. In a similar vein, it is recognised that much of the “crime” committed by young people is of a transient or trivial nature and this too should likewise be recognised in any crime prevention strategy. In broad terms, this approach adopts a “restorative”, rather than “punitive”, orientation to dealing with juvenile offending, with great stress being placed upon mediation, reparation and rehabilitation.

Cutting across both of these perspectives are the issues of funding and the negative social impacts of custody. Each perspective, in its own way, makes reference to the concept of “community” involvement in the reduction of youth crime. In addition, the proponents of each perspective would by and large be in favour of the shift in emphasis from a “welfare” approach to a “justice” approach in the juvenile justice area, although

interpretations of what this actually means would differ considerably.² That is, in one instance the question of individual "rights" (due process) would be paramount; in the other, the issue of individual "responsibility" (criminal justice penalties).

While it would appear that in this State and indeed in many other states and countries there is a defined movement away from "custody" as the "be all and end all" of juvenile justice programs, real questions remain regarding the actual meaning and content of policies ostensibly oriented toward the "community". This is an especially pertinent question to ask at the present time, given that, for example, even much of the language of the "punitive" school is now couched in terms of community-based initiatives. Put differently, in what ways have the politics underlining the debate over the abolition or retention of "custody" as a favoured response been transferred to another site or sphere due to the financial exigencies of the moment?

The answer to this question will not be insignificant at the level of real processes, real procedures and real human beings interacting on a day-to-day basis. With the focus on "community" programs and community-based interventions, the juvenile justice system could be portrayed as potentially more benign than a system organised around detention and custody. But, from the perspectives of more far-reaching questions concerning the structures and inequalities of society as a whole, one can well ask whether or not maintenance of the existing social order is better assured with a community-based approach, than with the old fashioned and expensive "bricks and mortar" approach. More to the point, will either a "punitive" or a "restorative" perspective, as translated into community-based programs, actually do much to overcome the problems associated with juvenile justice? Before attempting to respond to these questions it is first useful to provide an overview of concrete developments in the juvenile justice area in Western Australia.

THE WESTERN AUSTRALIA CRIME PREVENTION STRATEGY

The trend toward "community prevention" measures (whether these be of a "soft option" or "hard option" variety) is part of a longer period of transition going back to the early 1980s.³ Since 1982, a series of government reports have examined the workings of the Department for Community Services (DCS) in relation to the juvenile justice system. Previously the DCS had based its interventions on a "treatment" model which focussed on expert opinion regarding what young people needed rather than what they had done. This was replaced by a "justice" model which clearly distinguished offenders from non-offenders and which placed more emphasis on court decisions in determining the final disposition of cases.

2 See Naffin, N, Wundersitz, J and Gale, F, "Back to Justice for Juveniles: The Rhetoric and Reality of Law Reform", 23(3) *ANZJCrIm* 192-205.

3 See Boyle, S, "Juvenile Justice: A Critical Appraisal of the Governments Policies and Programs", paper prepared by the Youth Legal Service, Perth, 1989; and Legislative Review Committee, *Laws for People* (1991).

The Legal Framework

The precise nature of the changes that were occurring was encapsulated to some degree in the *Children's Court of Western Australia Act (No 2) 1988* and the *Acts Amendment (Children's Court) Act 1988* which dealt with issues such as the administration of the Children's Court, appeal procedures, the raising of the age for the commencement of criminal responsibility, the introduction of determinate sentencing, and so on. A recent 1991 Report of the Legislative Review titled *Laws For People* has continued the reform process. In the area of juvenile justice, the report comments that the system should have effective provisions which are adequate for their intended purposes:

... this means a system that clearly holds young people accountable for their criminal actions and is credible in the eyes of the community. In the area of child protection it means a system that is capable of effective intervention, where necessary, to protect children from serious harm. These interventions should be within a context of open and just process which full respects the rights of those involved. To ensure accountability, scope for administrative decision making should be carefully restricted, with important decisions affecting individual autonomy and freedom subject to judicial process. Furthermore, the fact that legal intervention has been necessary does not reduce the requirement to an ongoing commitment to support growth towards full autonomy and independence.⁴

In more specific terms, the report calls for community based strategies to prevent and reduce juvenile offending through responding to the needs of young people; the provision of services to young offenders and their families which will contribute to their "social adjustment"; adapting the criminal justice system so that it takes into account the level of maturity and responsibility of young people as well as their developmental needs; and providing programs for sentenced young offenders which both reinforce their accountability before the law and support their personal and social development.

The Program Framework

Recent proposed changes in the legal framework for responding to juvenile justice issues are as much as anything a reflection of actual program developments at various departmental levels. In the case of the Department for Community Services, for example, a range of post-offence measures and options are currently available. In summary form these include:

- the Children's Suspended Proceedings Panel, which provides a diversion from the formal court system for less serious first offenders: involving the young person and family in addressing issues surrounding offences in an informal way.
- the diverse options provided by the Children's Court, which provides more formal remedies and responses to offending activity:
 - (a) options such as dismissal, "good behaviour" parental bond, and adjournment being conditional on parents/child carrying out terms of undertaking given to the Court;

4 Legislative Review Committee, above n3 at 16.

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- b) more formal sanctions and tightly regulated measures such as probation, good behaviour bonds, fines;
 - c) activity oriented measures such as community service orders (based upon notions of restitution) and conditional release orders (based upon notions of self-development);
 - d) punitive or public safety measures such as detention in a juvenile institution or imprisonment in an adult prison;
 - e) new pilot programs such as a reparation scheme whereby some victims of crime may wish to participate in and benefit from a process whereby the offender can make amends to them directly.⁵

The *Laws For People* report reaffirmed the basic direction of these programs and the desirability of having more alternatives to custody and the use of prevention programs. It further suggested that the Children's (Suspended Proceedings) Panel be replaced by a formal police cautioning system.

The provision of a broader range of sanctions in response to juvenile offending, however, is only one side of recent state interventions in this area. In 1987 the Kids in Crime package was announced by the government. This was aimed at reducing further offending by those young people brought before the courts and at developing "preventative" crime measures in the "community". The programs included in this package targeted three broad areas:

- (1) primary community prevention: local offender program, school support program, and parent skills training program;
- (2) improved sentencing options: alcohol and drug abuse program, law education program, community service orders, challenge for youth; and
- (3) post-institution prevention: employment and skills support.

In 1988, however, this package was overshadowed by the introduction of the State government's Beat Crime strategy. The emphasis at this time was on tougher penalties and expanding the number of police. In essence, it was the police, rather than DCS officials, who were seen as the key players in "preventing crime". As the former Co-ordinator of the Youth Legal Service commented: "The police have a narrow concept of crime prevention. Crime prevention to them essentially means 'better crime detection'. Thus we see an emphasis on Neighbourhood Watch, Business Watch, School Watch and security systems for property".⁶ At a programs level, the Police Department was to be involved in such areas as truancy patrols, placements in schools, Police and Citizen Youth Clubs, and Blue Light Discos.

⁵ Semple, D [Director General, Department for Community Services] "Young Offenders in Western Australia", paper prepared for a Juvenile Justice Forum organised by the State Advisory Committee on Young Offenders, May 1991.

⁶ Boyle, above n3.

The Political Framework

There have been clear political divisions within government circles and within and between government departments regarding the best way to address issues pertaining to juvenile justice. The media has had a significant influence in shaping the "flavour" of any government pronouncement or the adoption of any new policy initiatives in this area. So too, the police union and various senior police officers have managed to persuade some government ministers of the need to view policing as the best frontline response to crime, and to allow the police to exert their considerable powers in "crime prevention" strategies.

The crux of the current debate has been summarised by the State Government Advisory Committee on Young Offenders, which sees crime prevention strategies as falling within two frameworks: one which wants to achieve social change within communities to reduce crime, and the other which wants to apply measures of social control to regulate juvenile behaviour. The Advisory Committee, although only in operation for less than a year, has already had a marked impact on the nature and direction of the juvenile justice debate in Western Australia within both the media and political spheres. This is particularly significant given that the Committee clearly favours the first of the frameworks mentioned above.

It is useful, therefore, to briefly review the general orientation of the Advisory Committee in its work to date. Comprised of well-known media personalities, sports-people, judges, and DCS and Police Department heads, the Advisory Committee is "strongly opposed to increased incarceration" as a response to community concern about levels of crime amongst young people. Instead, it wishes to see "the further expansion of preventive, diversionary and court referred schemes which focus upon the underlying factors causing delinquency and which encourage community ownership and participation in its resolution".⁷

In its first preliminary report to the Premier, the Advisory Committee reviewed a series of developments in the areas of "Crime Reduction Programs" (from Neighbourhood Watch through to social and leisure programs), "Diversion from Prosecution Programs" (those which attempt to keep young people out of the criminal justice system), and "Court Referred Programs" (initiatives designed to change offending and anti-social behaviour through a range of "treatment" options). In the case of crime reduction programs, the Committee acknowledged the limitations of a traditional conservative approach to crime prevention and stressed the importance of having the full participation of "communities" themselves in dealing with community problems and needs.

Underpinning this approach is the further recognition that "many of the communities from which offenders are drawn, lack the material and human resources to adequately provide necessary levels of support".⁸ This is especially the case with respect to many Aboriginal families and communities. Thus, the Advisory Committee points out that "This is why several proposed new initiatives in this field are founded on the principle that

7 State Advisory Committee on Young Offenders, "Juvenile Justice: Committee Response for the Premier, Initiatives in Program Provision" (1991), p4 of Summary and Introduction.

8 Ibid.

criminality must be situated within a broader framework of community integration and development and can only be reduced through empowerment, increased self-esteem and autonomy of communities themselves".⁹ In specific terms, the initiatives cited by the Advisory Committee as being exemplars of the "social approach to crime prevention" were those which tended to offer a wider range of education, training, employment, leisure and social support network options.

In the area of diversion from prosecution the Advisory Committee makes it clear that "the interests of children and community are best served in the long term by support which is independent of the criminal justice system and relies, where possible, on minimum intervention by state bodies".¹⁰ The introduction of a formal cautioning system in Western Australia is therefore applauded as a key means of reducing the number of police prosecutions of young people. So too is a DCS "Out of Hours and Weekend Welfare and Justice Service for Young Offenders and Their Families", which is presently being instituted as a means to provide assistance to young people before they become involved in the formal court system. This initiative is based upon the notion that:

the processes of arrest and remand of children constitute a time of crisis for them and their families and that appropriate intervention at this moment, which seeks to address the welfare needs of these families, can do much to prevent further offending.¹¹

In the final area of concern, that of court referred programs, the Advisory Committee advocates alternative program options to traditional custody. For instance, station programs, especially for Aboriginal young people, were seen as a constructive means of raising self-esteem and offering a positive work experience. The use of bush camps and wilderness programs for young offenders was also considered, although it was argued that these must be linked to broader strategies which encourage educational and employment skills and re-integrate young people with their families and communities. Reparation and mediation programs which expose young offenders to the consequences of their behaviour through contact with their victim were also endorsed, although it was felt that questions of financial restitution were best handled through existing court dispositions.

The Advisory Committee on Young Offenders has had a significant impact on the nature of the debates over youth crime, injecting a much more thorough and thoughtful dynamic to the discussions of appropriate responses to young offenders. In part, the close attention being given to the recommendations of the Advisory Committee is due to the highly publicised fact that Western Australia deals more harshly with its young people than most other jurisdictions in Australia or Europe.

For example, with a population of 1.3 million, 8,000 young people were prosecuted in Western Australia in 1989. By way of contrast, in 1987 in England and Wales, with a population of 45 million, only 48,000 young people were prosecuted.¹² Significantly,

9 Ibid.

10 Id at 9.

11 Id at 10.

12 Riseborough, H [Assistant Commissioner-Operations] "Police Response to Juvenile Crime", paper prepared for a Juvenile Justice Forum organised by the State Advisory Committee on Young Offenders, May 1991 at 3.

“Western Australia continues to have the highest incarceration rate of all States of Australia, and is second only to the Northern Territory, on a per capita basis”.¹³ Furthermore, while the number of offenders appearing before the Children’s Panel and Children’s Court has slightly decreased in the three years from 1988 to 1990, the number of offences being heard in the Children’s Court is rising. It has been pointed out that “Approximately half of this increase has been from the introduction of the *Bail Act* with a resultant increase of 1228 Breach of Bail Act charges in 1989/1990”.¹⁴ The new Act made it easier for young people to get bail. However, given the social and offending background of the young people involved, it was also the case that many ended up breaching the bail conditions (for example, through failure to attend court, breaking curfew restrictions, or re-offending while on bail). As a result, they were subject to additional charges beyond those associated with their initial offence(s).

Aboriginal over-representation in the juvenile justice system is also a major political issue — especially in the light of the Report of the Royal Commission into Aboriginal Deaths in Custody and the Reports of the Human Rights and Equal Opportunity Commission’s National Inquiry into Racist Violence in Australia, which expose major instances of discrimination, racism and inequality in police-Aboriginal relations in this country. Statistically, the data show that while Aborigines comprise about 4 per cent of the population aged 10 to 17 years, Aboriginal young people constituted 17 per cent of all individual offenders appearing before the Children’s Court or Panel in 1989/90, and that they had committed 35 per cent of all offences heard by these bodies in the same year. While only 13 per cent of offenders standing before the Panel were Aborigines, over 66 per cent of those young people in detention were Aboriginal.¹⁵

The crucial issues raised by these figures from the point of view of mainstream politicians are the costs associated with such a high incarceration rate, the effectiveness of custody as a crime response mechanism, and the national and international image of Western Australia in relation to both its treatment of young offenders in general, and with regard to the charges of Western Australia being a “racist State”. To a certain extent these trends are perceived mainly as political problems to be managed, rather than as structural issues that need to be tackled at their foundations. There certainly is an impetus to better manage the overall operation and public performance of juvenile justice system. Both liberal reformers and conservative spokespeople on juvenile justice issues recognise the importance of reducing the visibility of the more extreme “distortions” in the system. At the same time, however, any shifts in policy and general attitudes toward juvenile justice issues are subject to ongoing contestation.

ARGUMENTS ABOUT LAW AND ORDER

The high profile of youth crime issues in the media, coupled with the persistent coverage granted to those advocating more authoritarian methods of dealing with young offenders,

13 Sample, above n5 at 2.

14 Id at 4.

15 Id at 6.

has meant that the liberal reform ideals espoused by the Advisory Committee have been subject to counter-attack or modification by the conservative forces within parliament, the police force and the community itself. The compromise position which more or less sits between the small 'l' liberal approach and the small 'c' conservative perspective is one which has been built upon the distinction made between non-serious and serious offenders.

Thus, for instance, the idea of providing welfare services at the community level with rehabilitative intentions, rests alongside the notion of having a greater and more aggressive police presence in neighbourhoods as a means to preempt the commission of criminal offences. Or, rhetoric about the need for mandatory penalties and harsher measures against hardcore offenders and/or for serious offences such as car theft is not necessarily seen as being inconsistent with rhetoric concerning diversion programs and the provision of varying sentencing options depending upon the background of each case. In essence, a dual-track policy is being adopted here, one which can accommodate elements of both the "social integration" model and the "social control" model of juvenile justice.

If the media reportage is anything to go by, then it would certainly appear that the "get tough" approach has a considerable degree of public support in this State. An emphasis on "retribution" is also reflected in the pronouncements of groups such as the Juvenile Justice Association (the head of which, Deanne Koppmann, stood as a Liberal Party candidate in the last State election), which calls for tougher measures against juvenile offenders.

A recent event organised with these ideas in mind was particularly disturbing. On 20 August 1991 a "Rally for Justice" saw some 20,000 people congregate outside Parliament House in Perth. Vigorously promoted by local personalities such as radio announcer Howard Sattler (who has consistently attacked the "leniency" of the present juvenile justice system), the angry crowd demanded a number of punitive reforms, including harsher sentences. The mood of the gathering was illustrated by a man brandishing a noose; he was only one of many protesters who called for extreme punishments, and references to bringing back the birch and putting offenders in stocks were rife among the rally-goers. The "Rally for Justice" was in many respects media-driven. In the lead-up to the event, in reportage on the day and in follow-up television, radio and press discussions there was a decided bias in favour of stronger punishment and discipline provisions. The important issue of the support needed for and distress faced by victims of crime, which was one of the concerns also expressed at the rally, tended to be eclipsed by the more ardent harangues against "do-gooders" and "out-of-touch" judges. The rally certainly exacerbated the climate of anger and panic surrounding juvenile offending in Western Australia.

The realities of police work, and fear or apprehension about being seen as endorsing a "soft" option approach to offenders, means that many officers are themselves reluctant to actively support progressive policy changes being made further up the line within the Police Department itself. This is recognised by Senior Police staff:

Members of the Police Department are frequently the first to come in contact with victims of assault and theft. Many of the victims are youngsters themselves, others are elderly and

vulnerable, and the cowardly and horrendous nature of offences committed by juveniles can leave a lasting impression on our Officers ... Like people in the work force everywhere, Police wish to see a clear and unambiguous result for their efforts which to many of them, means conviction and penalty that fits the crime.

We must change the attitude of our younger members towards juvenile crime. We have many enthusiastic types within our ranks who want to get the job done no matter what, and their success in meeting juvenile crime head on as measured by detection rates, is clearly evident. With a population of 1.3 million, 8,000 juveniles were prosecuted in 1989.¹⁶

The experiences of some police officers in the performance of their general duties, plus the sensationalisation of particular crime cases by the media, also reaffirms the notion that young people are dangerous and that they do indeed constitute a real threat to personal safety and public order.

Concepts such as “dangerousness”, “serious offences”, “justice” and “responsibility” have traditionally been used to justify punishment, retribution and the use of incarceration. In the present climate of apparent reform, one also characterised by fiscal calamity, we need to ask how the “law and order” debate is being constructed with respect to the specific idea of “community” involvement in the juvenile justice area.

As mentioned earlier, crime prevention from a conservative perspective generally means crime detection and quick response actions. The focus is on “security” and pre-emptive action designed to nip in the bud any potential “trouble”. The setting up of “spy” cameras in Perth’s inner city Shopping Malls, programs such as Neighbourhood Watch and Business Watch, and school truancy patrols all represent pro-active strategies which extend the role and powers of the police and private security guards in the lives of young people. The extension of police and “community” intervention has been accompanied by a sustained ideological campaign — the most notable example being the use of cartoon character “Constable Care” — which is an attempt to win the hearts and minds, and the political support, of the young and their parents for police-centred responses to the “crime problem”.¹⁷

In the end, major questions need to be asked regarding the appropriateness of the police playing a role in “educational” and “welfare” institutions, settings and activities. Furthermore, it needs to be borne in mind that there is an emphasis here on curtailing rule-breaking behaviour and potentially illegal activity, and as part of this focussing on individuals and personal acts of transgression. This type of approach appears likely to cut across any more widely defined “community development” agenda, and to create problems for those who wish to replace coercion (based upon police law enforcement measures) with consent (based upon “community” solidarity, group assistance and mutual cooperation) as the preferred means of crime control.

16 Riseborough, above n12 at 2 and 3.

17 See White, R, “Reading, Writing and Repression: Police in the Schools” (1989) 14 *Legal Service Bulletin* 58-62.

Another area of major concern is that relating to the role of parents. Increasingly parents have been targeted as a prime locus of responsibility in relation to the actions of their offspring. The implications of this are twofold. First, the extent to which parents are blamed for youth offending has an impact upon whether or not youth crime in general will be seen as stemming from or linked to structural issues such as poverty, unemployment, sexism, racism, etc. or whether they will be simply tied to varying degrees of parental "irresponsibility". What has been called the "criminalisation of inadequate parenting" can also serve to displace attention away from changes in social policies which affect family situations.¹⁸ This approach certainly does little more than provide simplistic answers to the very complex issues surrounding the nature of youth offending.

Secondly, another worrying implication relates to the role that parents may be called upon to play with respect to detention alternatives. In Western Australia, for instance, there has been no suggestion that remand and detention centres as a whole will be shut down — only that the "clients" for these centres will no longer be the less serious offenders. Given that decarceration strategies have only really been successful where custodial and care institutions have been closed down,¹⁹ the building of a new high security juvenile detention centre in the suburb of Murdoch, for example, will ensure that the "hard" options continue as at present and that custody itself will not be subject to abolition. But is detention in such a total institution the only "hard" option available?

To assess this we need to recognise the implications of experimentation by the present State government with programs such as the "home-detention" scheme. Claims that such programs are a success and a viable option in terms of future sentencing has opened the door for the government to move toward "community" detention as well as "community" crime prevention. And in this particular instance, one could well envisage parents playing the de facto role of prison warden, gatekeeper and home custodian.

The dual track nature of current policy developments (that is, based upon the distinction between serious and non-serious offenders) does not in practice mean that a uniform or consistent distinction may be drawn between programs, regardless of the fact that they may be based upon varying definitions of "appropriateness" depending upon the offender/offence. The political debates over law and order are precisely about which broad perspective — "social integration" or "social control" — is to have a hegemonic reign over the system as a whole. It is generally accepted by the key players in the field today that some forms of "rehabilitation" and some forms of "punishment" are warranted. How these are situated in relation to each other, and the relative weight of each in terms of the overall thrust of the juvenile justice system, are issues of crucial importance with respect to policy implementation, public perceptions and actual system outcomes.

The importance of this ideological struggle cannot be underestimated. For as we have seen, the language of reform has been appropriated by both liberals and conservatives, especially in the area of "community prevention" models. The tensions and compromises generated by the struggle over different program focuses and objectives could well mean

18 Allen, R, "Punishing the Parents" (1990) 31 *Youth and Policy* 17-20.

19 See Muncie, J and Coventry, G, "Punishment in the Community and the Victorian Youth Attendance Order: A look into the future" (1989) 22 *ANZJCrim* 179-190.

that neither perspective will be “successful” in adequately achieving its ends due to the undertow created by the other. For example, the “friendly face” of “community policing” suffers every time the “law enforcer” engages in “police violence” against sections of that community. Similarly, an aggressive crime control campaign will be undercut by sentencing options which appear to offer a quick route back to “easy street” for the young offender.

COMMUNITY, CUSTODY AND CONTROL

In this paper I have attempted to provide a broad overview of developments and debates over juvenile justice in Western Australia. I want to conclude the discussion by raising a series of questions relating to the theoretical and political framework within which these discussions have generally taken place.

Some inkling of the central problem with this framework is provided in the following:

What is the ‘factory’ that is producing the ‘offenders’ in growing numbers? We may sausage-machine the delinquents through rehabilitative wonderlands or incarcerate them forever but there are more coming behind. Claims that a ‘small group’ of ‘recidivist’ young persons are mainly responsible keep the focus on individuals and appear to deny or avoid the big issues.²⁰

In essence, it could be said that the juvenile justice debate has largely been concerned with presenting technical solutions to what are in effect political and social problems. This has implications both for the measures being promoted to deal with juvenile offenders, and for the ways in which “custody” itself is being transferred to the “community”.

The underlying premise of both the “social control” and “social integration” approaches to juvenile justice is that the key issue is to reduce the incidence of youth crime. The solutions which are advanced in each case still essentially see the level and degree of crime activity as being mainly a function of the crime response, rather than being linked to wider generative causes. This is so even where, as in the liberal reform framework, a variety of social problems are seen as contributors to the incidence of crime among certain population groups. It is useful to explain why this is the case in order to clarify the specific limitations of this approach.

The “social control” perspective is clearly oriented toward a “just desserts” type of approach which focuses on the offence and on punishing the particular offender in question. The “social integration” approach, however, argues that there is a social dimension to criminal activity, and to crime prevention, which goes beyond the particular offence or offender in question. Thus, for example, the WA Advisory Committee on Young Offenders argues that there are a number of factors contributing to youth crime — structural poverty, unemployment, family and community disintegration, racism, lack of

20 Davies, G [State Consultant, Uniting Church Community Youth Services] “Car Theft and Chases” (June 1991) *Western Impact*.

access for minority groups to relevant educational opportunities, and child offenders themselves being victims of serious adult crimes.²¹

These “social factors” are, however, taken as givens, rather than as something that need to be explained. They are part of the backdrop of juvenile crime; they are not seen as central to any explanation regarding the nature, type, and extent of youth crime. To put it differently, these social trends express deep class, gender and ethnic divisions associated with capitalism, patriarchy and imperialism as these have historically evolved in the Australian context. Any response to youth crime which fails to acknowledge this or which does not develop a political strategy which begins to address structural inequality, oppression and exploitation will and must be limited in nature.

The limitations of the liberal reform approach become evident once we consider the general focus of its crime prevention model. First, it tends to be oriented toward individuals, groups and programs rather than to wider institutions and social structures. “Disadvantage” is seen as an important concept in relation to Aboriginal young offenders and others; and the solution to this is to provide special programs for these people and to call for further community development. Less appealing is the idea of fighting against systemic discrimination and the oppression of whole communities; or of endorsing in practice the fundamental changes that need to occur on questions such as self-determination, anti-racist strategies directed at the wider society, and power being vested in the hands of oppressed peoples in this country.

Secondly, the “social integration” project is one which attempts to re-integrate young offenders back into the mainstream of society. In reality “re-integration” as an ideal means returning the legal subject back into the existing system of formal rights and obligations. But it also means re-integrating the most disenfranchised and disempowered layers of the working class back into a society that is intrinsically divided on the basis of class, sex and ethnicity (as well as ability, age, sexual preference, etc.), and which is fundamentally structured around the ideals and practices of inequality, oppression and exploitation (as manifested in racism, sexism and class differences). The young offender is thus being “returned” to the very conditions of existence that give rise to particular kinds of offending in the first place.

Thirdly, even within its own terms of reference the liberal reform model is faced with a set of potential internal contradictions. For instance, if the “social integration” model is successful in reducing youth crime in a particular area does this mean that the causes of this crime have been adequately dealt with? The answer to this very much depends upon the explanations one provides regarding the causes and nature of youth crime. It could well be that a “community” approach involving police, young people and members of a local neighbourhood may be able to reduce the incidence of offending in a particular local area. But it could also simply be displacing such activity to another geographical area. Or it may be found that the alienation and marginalisation of young people could thereafter express itself in ways other than offending, such as in the case of suicide.

21 State Advisory Committee, above n7.

These kinds of issues are especially important in the context of major economic recession where state monies, household incomes and workers' wages are not sufficient to develop fully the resources needed at the local neighbourhood level in many different types of communities. This point also leads to another possible contradiction at the level of practice for the new juvenile justice reforms. Namely, if young offenders are to be given "special treatment" in areas such as job training, education and work experience, and if "success" in programs is to partly be measured in terms of job placement, then a conservative backlash can certainly be expected.

For example, the introduction of the NewStart program this year, which further tightens the benefit system for the unemployed and subjects the unemployed to greater levels of surveillance and restriction, and the rise in unemployment figures to alarming proportions, means that it will be difficult to build political support for juvenile justice schemes which appear to favour the "offending unemployed" over the "unoffending unemployed".

Yet the logic of the liberal reform model basically sets up this kind of situation. This is because intervention in this area tends to be centred on "juvenile justice" (rather than social justice), "young offenders" (rather than depressed or oppressed communities) and "restorative programs" (rather than structural inequalities). The logic thus establishes a narrow framework of analysis and response to what are in effect wider social issues. The terms of reference of the liberal reform agenda means that conservatives can exploit the public perception that, rather than punishment, the young offender will in fact be better off than the unemployed person who has not committed an offence.

And so we come full circle back to a compromised system that attempts to both punish the young person and provide a means for him/her to re-integrate into mainstream society. Without a punitive dimension to the juvenile justice system, then the legitimacy of the system as a whole may be called into question. On the other hand, the punishment ethic has a way of permeating throughout the system and of undercutting all those initiatives which may be introduced as a means to genuinely assist young people from the point of view of welfare and rehabilitation.

The conflict between the "social control" and "social integration" approaches basically takes place within the constraints of an overall system of formalised control and intervention into the lives of young people. The debate is over "how", not about whether or not to do something. It is useful here to remind ourselves of Cohen's comment that: "Only traditional diversion is true diversion in the sense of diverting from. The new diversion diverts — for better or worse — into the system".²² In a similar vein, we might likewise ask ourselves whether an expansion of "soft cop" roles in the community, and a widening of the sites of intervention, accompanied by an extension of police powers, constitutes little more at a structural level than an effort to make repression appear more humane, and to disguise the burgeoning scope of state regulation in our lives.

22 Cohen, S, *Visions of Social Control* (1985), p52.