

Contemporary Comment

Ethnic Minority Youth and Juvenile Justice: Beyond the Stereotype of Ethnic Gangs

Introduction

The question of ethnic minority youth and their relationship with juvenile justice agencies has received varying attention over the years. Until recently most of the focus has been on minority youth as a *problem* for agencies such as the police because of their assumed propensity to commit offences and their public behaviour in "ethnic gangs". Much of the academic work also reflected this type of focus by concentrating research on the question of whether ethnic youth or migrant youth committed a disproportionate level of recorded offences.

Over the last few years however there has been a discernible shift towards a greater questioning of the role of juvenile justice agencies and their treatment of young people from ethnic minority backgrounds. Part of this change has occurred because of concern expressed by community organisations. The Ethnic Communities' Council of New South Wales has identified police harassment and attitudes as an important point for any consideration of ethnic minority young people and juvenile justice. In July 1994 the Youth Justice Coalition released a report critical of police treatment of young people from particular non-English speaking communities. In addition other organisations such as state ombudsman's offices and ethnic affairs commissions have reported on police relations with ethnic communities. Much of the more recent focus has centred on questions of harassment, discrimination and racism towards young people from ethnic minority backgrounds by authorities.

In the light of these growing complaints concerning the treatment of young people, the Federal Race Discrimination Commissioner released a discussion paper in late 1994 on juvenile justice and young people from non-English speaking backgrounds¹. The discussion paper is concerned with three specific issues. First it analyses the social, economic and demographic data which is likely to impact on the relationship between ethnic minority youth and juvenile justice agencies. Second it reviews the available research and other literature on minority youth and the law. Thirdly it considers the available information from juvenile justice agencies on the extent to which ethnic minority youth are involved with the system and the extent to which this information has been utilised in policy development. It is with these three issues that the rest of this comment is concerned.

1 Federal Race Discrimination Commissioner, *Juvenile Justice and Young People of Non-English Speaking Background* (1994).

Ethnicity, Youth and the Underclass

There are at least two ways in which the question of socio-economic disadvantage is relevant to a discussion of contact with the juvenile justice system. First, if young people from ethnic minority backgrounds are significantly disadvantaged in terms of employment, income, job security, participation in higher education and other social and economic indicators, we might expect a higher participation rate or over-representation in figures relating to criminalisation given the association of juvenile crime with poverty and marginalisation. Poverty and marginalisation are related to the creation of an underclass which may contain significant numbers of young people from particular cultural backgrounds. The relationship between marginalisation and over-representation in criminal statistics is also complex. The over-representation might be indicative of both offending patterns and/or particular policing practices.

Second there may be questions of access and equity in terms of how juvenile justice agencies deal with young people from ethnic minority backgrounds. Considerations here include problems with the availability and use of interpreters which has been identified in numerous state and federal reports over the last decade. Other issues include the appropriateness or otherwise of police responses to young people, and questions relating to appropriate sentencing options and their utilisation.

The general socio-demographic characteristics are clear-cut. There are about one million young people in the 12–25 year old age bracket who are classified as of non-English speaking background. Unemployment rates are higher than the general rates of youth unemployment. Particular communities like the Vietnamese and Lebanese have even higher levels of youth unemployment than the average rate for young people from non-English speaking backgrounds. Migrant and refugee youth also face many problems in relation to schooling which has been identified in a number of reports. There has also been acknowledgment of the specific problems faced by refugee youth who arrived in Australia as unattached or detached minors.

The issue of refugee youth and in particular, unattached or detached minors shows some of the complexities and dangers of stereotyping young people from ethnic minority backgrounds. There has been considerable speculation as to the extent to which this group of young people has been involved in crime. There have been allegations that “some refugee minors have been sponsored to Australia by criminals who use the children for illegal activities, or by people who simply pocket the maintenance payments”.²

Other journalistic reports on Vietnamese and/or Indo-Chinese unattached minors have been more lurid as the following extract from a *Time* article indicates.

Some 12 per cent of Indo-Chinese children came to Australia without their parents. According to a Victorian Ethnic Affairs Commission study, many of them are bucking the “nice quiet Asian” stereotype. They live in transient, shared households, stay up late, smoke, drink and watch hours of cheap “chop socky” videos. They roam in packs, drifting from pool halls to petty crime to drug-taking.³

The single empirical study on Vietnamese young people and juvenile crime has shown quite different results. According to Eastaerl, the unaccompanied Vietnamese minors were

2 Zubrzycki, J, “Leading Richmond’s Youths From Crime”, *The Age*, 13 February 1987.

3 Mellor, B, and Ricketson, M, “Suburbanasia!”, *Time*, 8 April 1991.

found in fact to have a significantly lower rate of offending. Although making up 12 per cent of the Vietnamese population aged 10 to 17 years, they made up only 4.1 per cent of offending minors: "The mean offence rate for the unaccompanied Vietnamese minors was 257.7 per 100 000, significantly below the accompanied offenders' rate of 823.4".⁴

Burley has noted in relation to unaccompanied Vietnamese minors that:

[L]eaving school for work was a solution for some, joining with other Vietnamese in shared housing helped others. Where these options were not available, however, where lack of language and skills spelled long-term unemployment, these young Vietnamese were vulnerable to existing street cultures, where there was every likelihood that they could be introduced to drugs and petty crime.⁵

Importantly Burley noted that participation in street cultures was not necessarily any different from other young Australians in similar circumstances. In these cases the processes of poverty and marginalisation are obviously important rather than ethnicity per se.

Braithwaite has outlined the strongest known variables which relate to crime. Crime (with the exception of white collar crime) is disproportionately committed by males aged between 15–25 years; who are unmarried; who live in cities; who have experienced high residential mobility; and who are disadvantaged by socio-economic status, unemployed, and/or the member of an oppressed racial minority group. Conversely young people are less likely to commit offences if they are strongly attached to school; have high educational and occupational aspirations; and are strongly attached to their parents.⁶ On the face of it, some of the above variables would place groups such as refugee youth and unattached minors clearly in a high risk category for committing offences. Yet as already indicated, the Easteal study⁷ apparently shows the opposite conclusion.

Reports on Ethnic Minority Youth and Juvenile Justice

Despite the fact that migration to Australia, especially since the 1940s, has been the basis of Australia's development and cultural diversity, there has been little interest until recently in the issue of people from ethnic minority backgrounds and the law. Much of the early academic work showed, in common with international evidence, that the crime rate for those born overseas who migrated to Australia was lower than for the Australian born. The crime rate for second generation people of immigrant background was between the rates of the overseas born and the native born groups.

The only ethno-specific study on young people and offending was that conducted by Easteal and referred to above. She concluded that;

The study of Vietnamese youth crime rates further refuted both the media portrayal of rampant migrant youth violence and the expected high rates for adults within that ethnic group. The findings clearly indicated that Vietnamese young people (ages 10–24) living in New South Wales had a significantly lower crime rate than their non-Vietnamese counterparts: about one-half the rate of proven offences for minors; about one-half the

4 Easteal, P, *Vietnamese Refugees: Crime Rates of Minors and Youths in NSW* (1989) Australian Institute of Criminology at 7.

5 Burley, J, "Multiculturalism in the Law: Ethnicity Overlooked?", (1993) 18/4 *Alt LJ* 169.

6 See Braithwaite, J, *Crime, Shame and Reintegration*, 1989 at 44–49.

7 Above n4.

general offence rate for 18–24 year olds; one-fourth the non-Vietnamese drink-driving rate; and about one-tenth the level of drug offences.⁸

There has however been a shift, particularly because of the involvement of ethnic community-based organisations, in the way the treatment of minority youth has become an issue of public importance. There is now considerable concern about the treatment of minority youth both in relation to policing and sentencing by the juvenile courts. In 1991 the Federation of Ethnic Community Councils of Australia (FECCA) identified a number of issues relating to young people and justice, law and the police, including the following:

- The inadequacy of appropriate targeted information concerning law, procedures, rights and obligations for NESB young people;
- the problem of legal and correctional institutions inadequately dealing with the specific issues and problems facing NESB young people;
- problematic relations between police and NESB young people;
- the failure of research and evaluation in the juvenile justice area which was useful for understanding issues relating to NESB young people.

Over the last couple of years there have been various reports from community-based organisations across Australia outlining many of the same types of issues relating to ethnic minority youth and the law.⁹ We consider two of these reports below.

In 1994 the Youth Justice Coalition conducted research on the nature of young people's contact with police. The report found that 61 per cent of the 141 respondents identified themselves as from an "Australian cultural background" followed by 12 per cent from an Asian background and eight per cent each from a Pacific Islander background and indigenous background.¹⁰ In 18 per cent of cases a language other than English was identified as the first language of the respondent. The report had a number of key findings which are of direct relevance to young people from ethnic minority backgrounds:

- NESB young people were more likely to be searched by police;
- NESB young people were more likely to be arrested by police;
- NESB young people were more likely to be injured in the contact with police;

Overall the Youth Justice Coalition report concluded that;

our survey found that the rates at which young people from Asian, Aboriginal and Pacific Islander backgrounds are contacted, searched, questioned, fingerprinted and racism both institutional and individual... our survey shows that young people from Asian backgrounds are nearly twice as likely to be searched, four times more likely to be arrested and three times more likely to be injured during their contact with police than young people describing themselves as from an Australian background.¹¹

In Victoria the Ecumenical Migration Centre (EMC) has been involved in a project to identify the over-representation of ethnic minority young people in contact with the juvenile

8 Above n4 at 91.

9 See above n7 for a summary.

10 Youth Justice Coalition of NSW, *Nobody Listens: The Experience of Contact Between Young People and Police* (1994) Youth Justice Coalition of NSW, Western Sydney Juvenile Justice Interest Group and the Youth Action and Policy Association (NSW) at 17.

11 Id at 1.

justice agencies and the police. The main communities identified by the EMC were Lebanese young people in the northern suburbs of Melbourne, Vietnamese young people in the western suburbs and young people from the Pacific Islands in the Frankston area.

Various government and statutory bodies have also raised serious issues relating to ethnic minority young people and their relationship to the police. The Australian Law Reform Commission has noted that:

There is concern about a perceived tendency to cast young people of particular ethnic backgrounds as delinquent. This may result in a young person being at a disadvantage in dealings with the police and at court. Young people who gather together because they are related, are family friends, go to school together or live near each other, may be assumed by the police to be involved in illegal gang activities simply due to their appearance. On the other hand, submissions from police deny that this kind of stereotyping influences police behaviour.¹²

In July 1994 the NSW Office of the Ombudsman released a discussion paper *Race Relations and Our Police*. One of the specific incidents which sparked the inquiry involved police treatment of NESB young people. The Ombudsman reported the incident as follows.

On 18 October 1991 a confrontation occurred at Turrumurra Railway Station between a group of Asian and a group of non-Asian students. The Asian students, who were the victims, were arrested. No action was taken against the non-Asians.

The police internal investigation into the complaint cleared the police actions and procedures. An Ombudsman's inquiry, however, revealed the police investigation did not attempt to discover the truth, rather it was designed to justify police action.¹³

Both the Australian Law Reform Commission and the NSW Ombudsman's Office are raising very serious questions concerning the extent to which the stereotyping of young people from ethnic minority groups influences the type of treatment they receive from agencies involved in the administration of justice.

There is no doubt that strong associations have been built up which stereotypically cast youth, ethnicity and crime together. Part of this connection has been built around notions of ethnic youth gangs. For instance in 1986 the Ethnic Affairs Commission of NSW (EAC) produced a report as a result of a disturbance involving 30 to 40 school age Vietnamese and Lebanese boys in Bankstown. The EAC considered a number of issues. However it is noteworthy that it found that there was no racial tension between the Lebanese and Vietnamese communities as such. "However superficial and selective media reporting... has led to a public opinion that the causes behind such brawls are racial when in reality they are of a 'territorial' nature."¹⁴

The EAC noted further that some aspects of the media reporting "were often sensational, misleading and hysterical".¹⁵ Similarly the Eastaer study referred to above arose out of media-driven concern about alleged Vietnamese youth gangs.

12 Australian Law Reform, *Commission, Multiculturalism and the Law* (No 57), 1992 at 201.

13 Office of the NSW Ombudsman, *Race Relations and our Police* (1994) 3.

14 Ethnic Affairs Commission of NSW, *Not a Single Problem: Not a Single Solution* (1986) report to the Premier and Minister for Ethnic Affairs on the recent clashes between youth in Bankstown and Marickville 3.

15 *Ibid.*

There appears to be considerable evidence that these views of ethnic minority youth permeate reactions to young people by juvenile justice authorities in particular the police. Chan has provided a useful summary:

In spite of the paucity of Australian research specifically on police-ethnic youth relations, a negative portrait, based predominantly on accounts by community youth workers and solicitors, is already emerging. It is a portrait replete with many of the images already familiar to students of police-youth relations: unfair or unwarranted targeting of certain youth by the police; police abuse or harassment of young people; as well as their lack of concern for young people's legal rights. The picture is, however, more complicated in the case of ethnic youth, when issues of police stereotyping and prejudice are raised, along with language and cultural barriers.¹⁶

There has been increasing recognition of the issue of ethnic minority youth within inquiries related to juvenile justice. The NSW Parliamentary Standing Committee on Social Issues addressed issues relating to NESB young people in its recent report on juvenile justice. The Committee recognised that some NESB young people such as Lebanese, Vietnamese and Pacific Islander were particularly at risk to police attention because of high unemployment and social visibility. However most of its recommendations are aimed at offending and crime prevention rather than the question of discrimination by authorities. Similarly the recent the NSW Juvenile Justice Advisory Council Green Paper *Future Directions for Juvenile Justice in New South Wales* deals relatively well with issues relating to NESB young people in its recommendations in terms of services and crime prevention but is considerably less forthright on questions of potential discrimination.

Available Information on Ethnic Minority Youth in Juvenile Justice

A recurring theme in the literature is the problem of access to accurate information which describes the extent and nature of the relationship between ethnic minority young people and the juvenile justice system. It is difficult to get information particularly at the level of policing which might give a handle on questions such as the over-representation of specific groups or possible discriminatory behaviour by authorities. Except for relatively localised studies and surveys such as those conducted by the Youth Justice Coalition it is difficult to know whether discretionary decisions taken by police are discriminatory. Police have a wideranging discretion in how they will proceed against a particular young person whether by way of warning, by summons or arrest, by a formal caution, or referral to a panel or conference. The inadequacy of information in relation to police contact with ethnic minority youth means that a range of basic questions cannot be answered. In particular it is impossible to determine questions of procedural equity. Are young people from ethnic minorities as likely to receive the benefits of diversionary decisions such as a police caution as young people from English speaking backgrounds? Are there substantial differences in treatment between different ethnic minority groups?

South Australia has been the only state which could provide some information on court outcomes for young people from non-English speaking backgrounds compared to young people who are Aboriginal or from an English speaking background. The Juvenile Offenders Statistical System, which was in place until 1992, recorded place of birth. Although

¹⁶ Chan, J, "Policing Youth in 'Ethnic' Communities: Is Community Policing the Answer"(1994) in White, R and Alder, C (eds), *The Police and Young People in Australia* 176.

information on place of birth is more restrictive than a definition of an ethnic minority group it did at least provide some information on young people born outside Australia. The new South Australian database the Justice Information System apparently does not record ethnicity. In New South Wales the Juvenile Justice Advisory Council (1992) recommended in the *Green Paper* that children's courts collect ethnicity information. To date this recommendation has not been implemented. It appears that no other state or territory is currently contemplating the collection of information at the court level concerning ethnicity and young people.

At present it is not possible to routinely consider the operation of children's courts in terms of how they deal with young people from ethnic minorities. Questions raised by community-based organisations as to whether Indo-Chinese young people receive stiffer sentences than other offenders for the same offence, or whether disproportionate numbers of Pacific Islander young people are appearing before the children's courts, cannot be answered by the authorities whose responsibility it is to ensure equity of treatment.

Several states are now keeping information on ethnicity in relation to young offenders who come under the supervision of the relevant department (NSW Department of Juvenile Justice, Victorian Department of Health and Community Services, and so on). However it is important to remember that this includes only young people who are given more serious sentencing options detention, community service order, probation, et cetera or have been remanded in custody prior to court. In general the majority of young people who go before the children's court and are found guilty of an offence *do not* come under any form of supervision.

The NSW Department of Juvenile Justice is now at the stage of routinely and publicly releasing data which covers ethnicity. There has been particular interest in Indo-Chinese young people in detention because of their apparently increasing numbers as noted below.

The number of Indo-Chinese young offenders entering juvenile justice centres has steadily increased since 1991. In 1991, a total of 87 Indo-Chinese juveniles were admitted to juvenile justice centres. In 1992, the number of Indo-Chinese admissions had risen to 148. In 1993, a total of 267 Indo-Chinese young offenders were admitted to juvenile justice centres. This represents an increase of over 200 per cent in the number of Indo-Chinese juvenile detainees over the past two years. Graham reported that 30 per cent of Indo-Chinese young offenders placed in custody were guilty of drug offences. The seriousness of such crimes is a major reason why Indo-Chinese detainees are spending on average three times longer (16.3 months) in juvenile justice centres than the average term (5.5 months) in custody.¹⁷

One of the central problems however with the official data which does exist is that it is basically limited to the end point of the system. It may tell us something about young people who are locked up but it is far more limited in telling us why and how they actually got there. It cannot tell us whether police practices were equitably applied or whether there was equity in sentencing. The assumption is that from the point of detection and arrest through to incarceration all things were equal there were no biases in the processes or procedures which were followed. Such an assumption is highly doubtful given the range of experiences which suggest discrimination.

17 Cain, M. *Juveniles in Detention: Special Needs Groups* (No 5), (1994) Information and Evaluation Series, Research and Evaluation Units, Department of Juvenile Justice at 5.

Conclusion

Clearly there are substantial problems in the relationship between ethnic minority youth and juvenile justice agencies. The fact that in the last year the Federal Race Discrimination Commissioner has released a discussion paper precisely on this issue and the NSW Ombudsman has released a paper on race relations and the police indicate the gravity of the situation.

Meanwhile community-based organisations with limited resources such as the Youth Justice Coalition have documented the types of problems which occur in the interaction between police and young people, particularly those of non-English speaking background. These organisations and other researchers in their interviews with young people, solicitors and youth workers suggest that discrimination, harassment and racism are problems encountered on a regular basis.

To the extent that information is available from juvenile justice agencies themselves, it would appear that particular groups of young people are especially vulnerable including young people of Pacific Island, Indo-chinese and Lebanese background. It is these groups, particularly Indo-chinese young people, who are significantly over-represented in detention centres. The reasons for this over-representation are less clear. The extent to which marginalisation and the commission of serious offences has contributed to incarceration compared to particular policing practices and possible sentencing disparities is yet to be clarified.

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