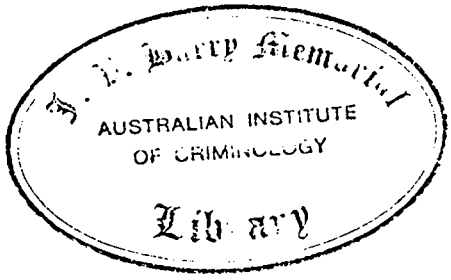
Report



to the

Criminology Research Council

on the Project

"Children's construction of their involvement in the Children's Court process"

Ian O'Connor
Department of Social Work
University of Queensland
St. Lucia.

February 18, 1988

CRC Grant 11/86

1. The project was funded by a Special Project Grant from the University of Queensland ($6,000) and a grant from the Criminology Research Council ($5,748).

2. Field work for the research was undertaken from mid 1986 to mid 1987. A report was prepared in the form of a manuscript for a book, titled Children in Justice, prepared by myself and Ms. Pamela Sweetapple. The manuscript has been submitted for publication. A copy of the manuscript has been forwarded to the Criminology Research Council.

3. This report is constituted by a summary of the findings reported in the book, and a copy of the final chapter, which includes "recommendations relevant to the improvement of current practices relating to the prevention and correction of criminal behaviour".

4. In relation to the dissemination of the findings of this research, I have already commenced discussing it in seminars and training workshops for lawyers and social workers. I believe that the research has relevance for all persons involved in working with juvenile offenders and developing responses to juvenile crime. Dissemination will be facilitated by the publication of the manuscript as I believe that the major contribution of research is that rather than segmenting the court experience it deals with the court in a holistic manner.

5. I wish to express my appreciation to the Council for its assistance with this research.

SUMMARY OF RESEARCH AND MAIN FINDINGS

1. Research purpose and strategy

The project sought to explore the experience of the court from the perspective of the child. Such an endeavour generated three problems: which courts, which children to ask about their perspectives (i.e. the sample group) and how to access the children's perspectives.

Clearly there is no one children's court, no one child and therefore no one perspective. There is not one collective experience into which all the others may be merged. The research was premised upon the assumption that all children sought to make sense of their world in different ways, so we assumed and valued diversity.

To ensure diversity, we took two deliberate steps. Children were interviewed at two different courts. The first was a specialist children's court located in purpose built accommodation. The magistrate, the prosecutor and the child welfare officer were all engaged full-time in the children's court jurisdiction. The second court was an outer suburban magistrate's court, constituted as a children's court three times in every two month period. Specialist children's courts exist in all the states. However many children appear before magistrate's courts constituted as children's courts. It was possible that were substantial differences in practice between the two categories of court. We therefore sought to ensure that both ends of the continuum were represented.

At each court approximately 30 children were interviewed. Herein lay our second direct intervention. At each court half the interviewees had no previous court appearance for a criminal offence. We engaged in no other process of selection[1]. We interviewed only those children who had pleaded guilty to a criminal offence and had been dealt with and sentenced by the court. This of course means that children who had pleaded not guilty were not approached to take part in the research. In Queensland 98 percent of children are found guilty by a children's court. The incidence of not guilty pleas is significantly lower than in the adult jurisdiction - so low in fact as to make a not guilty plea extraordinary. Our concern was the ordinary, not the extraordinary.

---

[1]. Participants in the research were obtained in the following manner: Officers from the Department of Children's Services approached children and/or their parents, briefly explained the research, and asked them if they would be prepared to be interviewed immediately after their court appearance. Those who agreed (as most did) were approached by the researcher and again consent was sought from the child and the parent. To minimise the inconvenience to child and family, they were asked not to wait after their court appearance if the researcher was not immediately available, unless they wanted to. This was important as going to court often involved much waiting. We did not wish to create an interview environment where the child, so frustrated by the delay, wished to get the interview over with as quickly as possible. Children were interviewed alone immediately after their court appearance. Names and addresses were not required partly because of the confidentiality provisions of the Children's Services Act and partly because it was considered the guarantee of anonymity would encourage frankness.

The children's perception of their court experience was accessed through a semi-structured interview. The children were directed towards the 'taken for granted' areas of their court appearance -the people who were present, the things they did, what the children thought and felt about that, their feelings during the hearing, and the extent and manner of their participation. Care was taken to ensure that the questions asked were invitational in character to facilitate the process whereby the child focused on what was meaningful or important to them. The interviews were taped and transcribed verbatim on to computer files. They were then coded according to a schedule developed from a close reading of the files[2].

It is not our intention to argue that our choice of courts or children was statistically representative. That was not the nature of this research. We would argue however that the courts chosen were not atypical of their type. The legislation governing children's courts varies from state to state as do the policies and practices of the child welfare departments. Our concern was the pattern of ideas that the young people held and the variation between jurisdictions are of only minor import in light of that focus. To give but one example: Queensland has a very low rate of institutionalization of children in corrective institutions (Australian Bureau of Statistics, 1985). Yet the children in our research repeatedly expressed fears about being institutionalized as a result of their court appearance. Our concern is with the pattern of ideas and what these ideas reflect. It is the ideas that are typical, not the children or the courts (Watson,1985).

Additionally, there is no evidence to suggest that the young people interviewed differed substantially from the population who generally appear before the court. We interviewed 63 children, and analyzed 58 of those interviews. The transcripts of five interviews were rendered useless through technical failure. The children were aged between 12 and 17 years. Their offences included street offences, property offences, motor vehicle related offences and minor personal injury offences - those anti-social acts typically committed by children.

The analysis of the interviews was aimed at making explicit the underlying theoretical assumptions implicit in the interviews. The analysis focused on reading the interviews as texts - as sources of meaning. Sue Lees aptly described this process in her analysis of interviews with young women about their sexuality:

> In focusing on the meanings/explanations as presented, in order to make sense of what the girls said we looked at what the accounts had in common in terms of explanations, contradictions, oppositions, gaps and taken for granted assumptions. The aim was always to make explicit the hidden or unexpressed assumptions behind the explanations given.
> (Lees 1986:158)

In essence we have examined the manner in which children have discussed, described and explained their court experience. We have taken the young people's descriptions and raised questions about the way they described their experiences. In the chapters 2 to 6 of Children in Justice different aspects of these

---

[2] The text was analyzed utilizing TEXTCODE (Reeders,1986). This allowed us to code or multiple code paragraphs of text. The text is indexed and the coded text could be retrieved across all interviews by a searching of the text files.

accounts - the experience of being policed, the expectations the children have of court, their accounts and perceptions of lawyers, child welfare officers and prosecutors, the description of the court hearing and the role of the magistrate therein and finally their discussions of the sentencing process and the sentence itself were explored. Particular attention was paid to how the ideas of young people hinder their participation in the court process and how these same ideas are functional in reinforcing a structural position of powerlessness and dependency in young people. We noted also the manner in which the actual offence - the precipitating incident - disappears in the court process.

The young people's accounts, and the analysis of the accounts make, at times, uncomfortable reading. We do not claim an espistemological superiority for either the accounts or our analysis of them. We do however assert that the perspective and experience of each child must be acknowledged before any rational transformation of the juvenile justice system can begin.

2. Children's perceptions of policing

The children reported three different types of relationships with arresting police officers. The first occurred when police acted as "friends". Children who co-operated fully with police invariably described their arrest as fair and thought the police were "nice". This is common, routine policing. A second group of children also reported pleasantness by police, but in diminished quantities. Here, the degree of `niceness' shown by police was related to the degree of co-operation shown by the child. If a child foolishly tried to assert their common law rights, for instance, sometimes the encounters became very unpleasant indeed. A third group of children reported open hostility and violence by police. This typically occurred during interaction between police and young people in the streets.

Whatever the young person's actual experience of policing, the underlying threat of physical violence and the process of abuse was omnipresent. The arrest often culminated in the experience of a locked cell. For many children this locked cell was a frightening reminder of the "home for wayward children" - the image most children carried with them to the court and the thing they most feared as a result of the impending court appearance.

The children's accounts of being policed varied considerably. They did however share a major commonality: - the interaction was either premised upon the child's submission or submission was sought in a variety of ways. The language of threat was the means of reinforcing the child's lowly location in the power matrix. When the child submitted meekly from the moment of initial contact with the police, it was reinforced through the process of arrest and fingerprinting. These activities are symbolic rather than purposeful in process of policing youth. They render the child passive, an object, a criminal to be dealt with and disposed of by the court.

The physical and psychological intimidation of those who did not immediately acquiesce to the police served two purposes. It literally ensured submission. Confessions and compliance were extracted. It paved the way for the non problematic processing of the offender by the court, a processing wherein the events surrounding the arrest rarely surfaced. More importantly the actual occurrences of intimidation provided the context within which all exchanges between police and young people occurred. The gross power discrepancy between child and police and the belief that the exercise of police power was

unreviewable, regardless of any excesses in its exercise, formed part of the child's taken for granted world. In this context children were accepting of all but the grossest abuse of power. Given these conditions, consent and submission flows naturally from most children and there is no need to exercise physical force.

3. Children's expectations of court

Children's expectations of court centred on the sentencing process. Children expectations of sentence were out of all proportion to the crime committed. For example, many first offenders imagined that they would be sent to the proverbial "home". Even when children did not expect to be locked up, their expectations of court were still tied to notions of sentencing. Court was a place to which they were brought to be dealt with, rather than a place of inquiry into the allegation against them, or a place in which the alleged wrong could be put right. They approached court from a relatively powerless position. They had few expectations that they could have any impact upon the court proceedings or the outcome. Court was merely a place where they would be acted upon by others, regardless of their feelings or beliefs.

Expectations of sentence out of all proportion to the crime committed result in the child entering the court precinct awed by the power of the court. The expected sentence rather than their misdeed(s) and the events surrounding their misdeed(s) is focal. Similarly their expectations of the actual process of court provide a script in which they play but a marginal part. They expect to participate in the most limited and peripheral of ways. Children, it seems to them, should be seen but not heard. The child seeks to mitigate the penalty and essentially throws themselves on the mercy of the court.

The way children think and feel about the court and the depowering effect such thoughts have upon them and their potential for participation in the process which determines their fate are detrimental to the success of any juvenile crime control programme. Where do the images children cherish about court come from? Queensland has low rates of institutionalization of juvenile offenders so the expectations are not reflective of empirical knowledge of the practices of the court. Juveniles ideas about police behaviour can be sourced partly to the public domain, partly to lived experience and partly to the beliefs circulated and maintained by police and youth. Similarly with courts, with the addition to the list of parents and other agents of socialization, who seemingly believe that threatening children with court and the dire consequences of court will pull them back into line.

The ideas that children bring to court serve both as frames and cages. They act as the frame within which the child understands and responds to court. They also act as cages for they limit what is currently "thinkable" and "doable" by the child. The cage imprisons children within a view of themselves in the world which severely circumscribes their ability to actively participate in the court process.

Theoretically - given the advent of legal representation of children in the children's court - a child's inability to participate or impinge upon the court process should not hinder the child's chances of a fair and complete court hearing, since the child does not enter the court alone. The child's legal representative brings knowledge of the system, the power and ability to participate and legal expertise to court on the child's behalf. Theoretically, the fact of representation puts the child in a position of equality with other

court participants such as the police prosecutor and child welfare officer. In practice, however, this does not occur. The child, even with legal representation, is still disadvantaged in the children's court and unable to fully put his or her case before the magistrate. The reasons for this may be found, once again, in the child's expectations of court and his attitudes towards the other participants.

4. Children's perceptions of lawyers, prosecutors and child welfare officers

(a) Lawyers

Lack of legal representation in children's courts is now the exception rather than the rule. The children in our research were nearly all represented by duty lawyers. The initial legal interview was consistently described as a questioning by the solicitor about the events surrounding the charge. It was nearly always a rushed encounter which normally did not exceed ten minutes in length. Most considered this adequate as the lawyer controlled the interview, determined what he or she needed to know and frequently reassured the child that he or she would handle the situation for them and that they wouldn't end up in a "home". They emerged from the interview somewhat reassured, satisfied and surprised to find an adult who appeared to be on their side.

On the whole the children interviewed saw the duty solicitor as a well meaning, helpful figure who interceded on their behalf with the `judge' and helped them to escape the dreaded fate of committal to a `home' or other dire punishment. Their perceptions were usually based on their frightening expectations of the outcome of their court appearance. Consequently they were pleased with the person whom they believed had been instrumental in reducing the severity of their sentence. It should be noted, however, that most of the children consistently overestimated the sentencing tariff of the court. The children's expectations created a standard for legal assistance that in most cases could easily be met, simply by the lawyer presenting the case for mitigation to the magistrate. Their expectations failed to create a realistic standard against which they could assess the adequacy of the lawyer's services.

Generally, children are pleased with the assistance offered by the duty lawyers they find in the children's courts. They believe, more often than not, that they are on their side, that they are competent spokespeople who get them a better deal from the magistrate. They are happy because the lawyers focus, like the children they represent, on the outcome of the child's court appearance. They are satisfied if their lawyers can arrange somehow for them to be "let off" instead of being severely punished. But while the lawyers keep the children happy, they do so at a cost to the child. The process whereby another determines what is to be said to the court on the child's behalf reinforces the dependency of the child and discourages participation in a process which is vital and has serious ramifications for children.

(b) Police prosecutor

Despite children's concern about the outcome of their court appearance, most do not regard the prosecutor as having a significant influence on their punishment. Unlike the duty solicitor, the prosecutor speaks only to the magistrate and has no direct contact with the child, so children tend to relegate him to a lesser role in the drama of the court process. It is the magistrate on whom most children focus as the purveyor of the sentence. The prosecutor has a secondary role.

(c) Child welfare officer

Children do not, on the whole, complain about the performance of the welfare specialists they encounter in court since they talk, like the lawyer, for and about the child to the magistrate. Most children perceive this to be helpful and are grateful. They are most often unaware of the significant statutory power and control over social resources exercised by child welfare officers.

The few children who were completely unaware of the real identity and nature of the child welfare officers were, even so, prepared to answer their questions and to allow the officers to comment on their behaviour and lifestyle and even what may constitute their `best interests' in court. In this respect they did not differ from those other children who were slightly better informed about the role of the welfare officer. Most did not seem to realise that they had any choice about co-operating with the welfare officer and simply complied with a person who they perceived to be yet another adult authority figure.

For most children this interaction with lawyers and welfare officers before their court appearance was not perceived to be crucial. Such interviews were approached in a matter-of-fact manner since rarely did children believe that what transpired during the course of these question and answer sessions would have a serious bearing on the outcome of their court appearance. For the children about the enter the courtroom, be it for the first, second or even the tenth time, the real decision-making power was perceived to be with the man they would encounter therein - the magistrate. It was he who was seen to preside over the court, which was a place conceived as completely separate from the sometimes unfair environment of the police stations and the street.

5. Children's perceptions of Magistrates and the court experience

Children portray themselves as passive participants in the court; not just standing and sitting on command but being "talked about" and "talked at", talked down to and threatened. Although they are physically present while they and their futures are being discussed, the children are rarely involved in this dialogue either by direct communication, or indirectly, by instructing their lawyer during their court appearance. At no stage do their accounts reveal any meaningful dialogue between themselves and the other court participants either. If children speak at all in the court they do so at the behest of the magistrate - that is, they speak only when they are spoken to, they answer questions but they never initiate dialogue. Children therefore consider themselves to be mere objects in the proceedings; not even the subject of them and certainly not participants.

So it is not surprising when a court appearance is described by children as an event - primarily as an outcome - rather than a process. (It is a process for children only to the extent that children perceive themselves to be an object in the court's production of them as juvenile offenders.) Their accounts embody scant recognition that their case has been subject to detailed consideration or inquiry by the court and there is little mention either of detailed explanations by their advocate of the background to the offence.

Even when they recognise their own passivity in the face of the court, the children do not bemoan the fact that they have been "dealt with", "handled" and processed quickly. The unexpected `leniency' of the sentence appeared to be one reason for this. Although the brevity of the court appearance frequently contrasted with the child's initial expectations of a detailed consideration of the case, any resultant dissatisfaction with the length of the hearing was far

outweighed by the relief engendered by the perceived leniency of the sentence.

Perhaps the most concerning finding of the research was the extent to which children felt restricted from participating in the court process. For these children and most others the extent of direct participation in the court process was limited to a few phrases, primarily 'yes' or 'no'. The questions addressed to the child frequently only allowed such answers. This was the case whether they desired to say more or not, or whether or not they were legally represented. The ramifications of this approach by magistrates and other court participants would not be so dire if every child was adequately and sympathetically represented by a lawyer. But this is often not the case. Undoubtedly some children's advocates did take adequate instructions from their clients, and did put the child's perspective before the court. In most cases however lawyers took inadequate instructions, constrained as they were by the overwhelming workload and their lack of familiarity with children. The seeming impossibility of acquainting the magistrate with the full facts surrounding the commission of the offences made Tom, 16 years, very frustrated. He had pleaded guilty to stealing food worth $14. He was homeless, had no form of income and was hungry. He was angry that this didn't come out in court:

> Tom: He should have known I only took it for food.
> Q: Why didn't anyone say anything do you think?
> Tom: I don't know, they're probably too stupid.
> Int. Why didn't you say anything?
> Tom: Because I had to sit there and listen because I'm not allowed to speak unless I'm told.
> Q: Would you have liked to have told the magistrate?
> Tom: Yeah. If I had a chance.
> Q: And you didn't get a chance.
> Tom: No ... It would be better if you were allowed to speak in court instead of sitting there and listening.

Tom's anger and frustration marked him as rare amongst the children who were interviewed. We have seen that most children, even when they recognised the desirability of being able to address the court themselves, felt no such negative emotion when this ability was effectively denied them. Most children were passive in the face of the court process; satisfied with the representations of their lawyers. Their lack of familiarity with the legal process had left them without a full appreciation the ambit of the lawyer's role, however, so they believed themselves well served by the lawyer's plea for mercy, and the mitigation of the sentence they had expected.

The dynamics of power from the point of apprehension to disposal in court systematically strip from the child any capacity to assert themselves in the court room context. The court processes are structured so that participation by children is effectively, if not intentionally, precluded. Ironically many of these processes - such as legal representation by rostered duty solicitors - were developed to prevent injustice, to address the structural imbalance between defendant and prosecution. In many cases, however, legal representation simply reinforces the child's disadvantaged and dependent position and at the same time, allows the court to proceed under the fiction that the child's wishes and interests are represented. In the end, the child is made compliant by the court and its officers:

> Q: Did you feel that people wanted you to keep quiet in court?
> Brett: Yes.

Q: Why?
Brett: Well I was told by solicitors and several other people to make a good impression on the judge, which we were trying to do.
Q: And being quiet would help with this impression?
Brett: Yes.

6. Sentencing

For all children, regardless of their perspective, the central function of the court was the determination and delivery of sentence. Children expected rough, or at least, tough justice. There was little sense of proportion between the crime committed and the expected outcome. The task of the court was, in the eyes of the children it sentenced, simply to decide who "goes in" and who "goes out". (This view prevailed amongst children despite the fact that the legal power to make such a decision resided officially not with the court but with officers from the Children's Services Department.) Yet while sentencing was central to the feelings of fearful anticipation many children experienced about court, only in a small number of cases were the first thoughts and worst fears of these children validated in court. In the manuscript we consider in detail the children's understanding of the full sentencing range of the court. In this report the implications of the sentencing process are discussed.

Most of the children - regardless of whether they were admonished, placed under supervision, or committed to care and control considered that they were "let off". This raises the question "let off what?". Did they consider that they escaped the more serious punishment of being sent to a home or escaped punishment altogether for the offence? The concept of being let off makes sense only when it is contexted within the child's expectations. Many young people considered they were "let off" when their worst fears of sentence failed to materialise. But their fears frequently reflected a significant overestimation of the severity of their offence and of the tariff or going rate in the Children's Court. It is not, as is underlined in the manuscript, that the tariff is lenient, but that the children's sense of proportion between offence and punishment is severely distorted. The reasons for this lack of proportion are discussed later.

When the various sentences of the children are compared, it is clear that some who considered themselves to have been "let off" were not. There was considerable variation in sentence. This variation resulted in certain children penetrating the juvenile justice system far earlier than others with similar histories of offending. Still the fact remains that most of the children, regardless of their actual sentence or punishment, considered themselves lightly dealt with by the magistrate. Such a perception on its own could undermine the apparent function of court in ensuring and enforcing compliance, and instead encourage recidivism. Such a perception also undermines the court's role of reasserting the authority and power of the adult world. This is a vital point since it is the relations of power between adult world and the world of children that is at stake in the children's court. In no other way is it possible to explain the reliance on threat prior to court, as a means of enforcing certain codes of behaviour for juveniles. Threats loom large in the language of control; threats made by adult authority figures of police intervention in the life of a child, of courts and of homes for misconduct. Threats which in a sense equate all forms of misconduct - petty theft, more serious theft, personal violence - by suggesting that any or all will result in the child being severely punished by the courts. The language of threat, which embodies homes, courts etc., is not a language which simply seeks to represent the reality of the world, rather it is a technique of power enforcement. The "reality" of the external world is that children are not

generally sent to a home on the commission of their first offence. The adult world knows this, the police know this, but the images of the threat are reproduced and amplified, supposedly to control children.

While the court exercises mercy in sentencing, it is still concerned not to undermine the language of power, and at the same time to bolster the authority of the adult world. This, of course, the court does in exactly the same manner as police and the other figures encountered by children prior to their court appearances. The bolstering of the authority of the adult world is achieved by the language of threat and of warning. So whilst children report that they've been let off in court (that is, let off what they've been threatened with and expected), they also report they've been warned of much worse to come. While in one sense it is not surprising or inappropriate that children who appear before court are warned of the consequences of re-offending, it is interesting and concerning that the warning is simply the threat of the home reiterated. The warning is seemingly delivered without regard to the severity of the offence or the impending reality of sentence, since children charged with street offences (e.g. disorderly behaviour) were warned that they would face internment at their next appearance just as children charged with far more serious crimes were similarly threatened. Children who appeared in court for the first time were warned in relation to their next appearance in the same way as children with lengthy criminal histories. It should be noted that the threat of institutionalization delivered early in an offending career creates difficulties for the court if it is to be consistent in the manner in which it deals with a particular child.

Juvenile offenders rarely see the personal distress and inconvenienced caused by their crime(s). They may be berated (and more) by their parents and police, but their attention is not effectively directed at the consequence of their behaviour for others. Instead the process of threatening, and intimidating children to expect the worst in court, necessarily results in the young person concentrating their attention on the court outcome - what's going to happen to him or her - and how can they mitigate the likely penalty. It is inevitable, faced with the prospect of incarceration for a petty offence, that the child's attention is directed at the injustice that is about to be done to them rather than the injustice that may be done to others. The process of court from the point of apprehension to the point of disposal serves to shift attention from the offence, the context in which it emerged and the consequences for the victim to the determination of the child's fate. It is ironic that in many cases this concern is misplaced since few children are at risk of being institutionalized at their initial appearances. Rather than the court attending to what the child can realistically do to right the wrong that has been done, a superficial, and pre-decided charade is acted out when the child's fate is considered.

So the victim rarely sees the offender and the offender rarely sees the victim. Both remain ignorant of the other, of the other's potential suffering. The child does not encounter the hurt of the victim, nor have to grapple with making recompense in a meaningful way. The victim never sees the offender, never has to enter the offender's world, never has the comfort of knowing that the offender who violated their privacy - far from being a violent thug - is most likely a somewhat pathetic young person from their own neighborhood.

7. Conclusions and recommendations

See attached final chapter of Children in Justice.

CHAPTER SEVEN

CHILDREN, LAW AND SOCIETY

Many people, especially those who work in the children's courts, will find what has gone before concerning and disturbing. Some will cope with their concern by dismissing the allegations made in this book, labelling them erroneous. They will discount or deny the import of the children's stories. Others will be offended, both by the children's statements and our analyses of them. But if those who have devoted time and energy to working with juvenile offenders consider this work to be an attack on their motives or their personal integrity, it is they who will be mistaken. Let us be clear: to attribute the flaws identified in our research to individual malevolence is to seriously misread the meaning of children's accounts and the structural imperatives which provide the precondition for injustice. It is to deny our own responsibility - as members of society - for the processes of court.

Our purpose in this final chapter is to sieve through the preceding material, to locate the deeper structure in the children's accounts and, in conclusion, to suggest some implications for juvenile justice practice and policy. If the reader is seeking specific answers to practice dilemmas in this book, it is likely they will be disappointed since the provision of direct answers was never the purpose or intent of this book.

CHILDREN IN JUSTICE had its origins in a research proposal - "Children's construction of their children's court experience". Like any research, the impetus to undertake it was personal as well as academic. In this case, the author O'Connor had been involved in the juvenile justice system for ten years: as a social worker in the courts, later as an academic and through an ongoing association with an advocacy centre for children who found themselves in conflict with the juvenile justice system. Originally the outcome of the research was to have been a series of academic papers for reputable journals. As the research proceeded and the children's accounts of their court experiences were analyzed, however, it became apparent that the children were saying something too important to be relegated to the academic journals. The accounts were evocative and compelling. They were also confused, despairing and at times, frustrating. Above all, they were honest, frank accounts of human experience. The children, in their frankness, displayed considerable trust. Having just emerged from a court full of adult authority figures, they were asked by other adults to relive that experience in detail. Few refused to do so. One way of repaying that trust is to seek to reopen and recast the debate on juvenile justice.

Our system of criminal law has inbuilt mechanisms designed to

safeguard the rights of suspects in criminal investigations and defendants in criminal proceedings. These include the right of suspects to remain silent in the face of police questioning, the assumption that persons charged with a crime are innocent until they are found to be guilty by a properly convened court of law and the requirement that guilt be proven beyond reasonable doubt in accordance with complex rules relating to the admissability of evidence. Superficially therefore, it seems that the criminal justice system bends over backwards to protect the rights of accused persons. Paradoxically the great majority of defendants in criminal proceedings are found to be guilty as charged. The Australian Law Reform Commission reports that less than 10 per cent of defendants in all criminal cases are acquitted (Australian Law Reform Commission, 1987:9). In summary courts the dismissal of charges occurs even less frequently and in children's courts, hardly at all.[1]

While the high conviction rate might reflect the efficiency of the criminal justice apparatus in our society, it is just as likely to be attributable to a range of other important factors. One, we suggest, is the structural imbalance inherent in modern society. Behind the rhetoric of equality for all before the law is the reality of social inequality, evidenced both by the relative positions of power of the participants in the criminal justice system and the type of children they dealt with. It is not by chance that no children of professional parents were interviewed in our research. Nor was a sampling error responsible for the fact that only one child attending a private school was interviewed.

In observational studies of courts and in critical analyses of the contents of law, sociologists and criminologists have attended to the manner in which pleas of guilty are routinely entered in courts. (See Hutton, 1987, for a review.) We have attended instead to children's accounts of court. These accounts are particularly illuminating. They show that a range of structural and interactional processes contribute to the high rate of guilty pleas, and of findings of guilt in court. It would be however altogether too narrow an analysis to argue that the purpose of these factors is simply to achieve a guilty plea. Many children are prepared to acknowledge guilt and to plead guilty in court. The concept of a not guilty plea and of legal guilt is, for them, outside the manner in which the court is construed.

Our analysis of the children's accounts indicates that only rarely is guilt an issue for children in the children's court. Seldom is the offence of concern in the court. Indeed, the

---

[1] For example Queensland court statistics for the period 1983/1984 show that in the Magistrates Courts 8.3% of all charges were discharged or withdrawn. For the same period in Children's Courts only 2.5% of charges were discharged or withdrawn. (Australian Bureau of Statistics, Law and Order, Queensland, 1983-84. Cat. no. 4502.3)

process of dealing with juvenile offenders ensures that the nature and content of the offence is of little significance. Rather it is what the offence signifies that is important. In so arguing we do not wish to simply restate the critique of the supposedly rehabilitative sentencing philosophy of the children's court (eg. Morris, Giller, Szwed & Geach,1980). Proponents of the critiques of that rehabilitative ethos are guilty of exactly the same flaws as those they criticized. They argued correctly that advocates of the rehabilitative ideal failed to attend to the actual practice of the court, preferring instead to focus on its ideology. Yet in isolating the rehabilitative ideal as the primary cause of injustice, and in seeking to substitute a "just desserts" approach to sentencing, they fail to identify the primary purpose of the practice of children's courts.

Children's courts are not so much about offending, as about power. The commission of an offence represents in part a breach of the structures of power in our society. Offences by children are interpreted and dealt with as challenges to the patterns and processes of authority and domination in our society. The processing of juvenile offenders, including sentencing, seeks to reinstate or reinforce the normal relations of power.

This is not to idealize or romanticize the behaviour of juvenile offenders. It is however to suggest that whilst offending children may not see themselves as the Che Guevera's or Rosa Luxembourg's of the suburbs, the state, by virtue of its response, deals with them as if they were engaged in a "primitive" political rebellion.

This overreaction by the state may be traced from the moment of the apprehension of a juvenile suspect by police. The process of policing acts explicitly as the starting point for the re-establishment of the social power equilibrium. Whether or not the child is eventually arrested, the language of threat and warning dominates the interaction, whatever its length or ultimate character. The threats by police, while frequently out of all proportion to the behavioral breach, conform with the warnings and intimidatory tactics to be employed by other court participants yet to be encountered by the child. In effect the police, like other adult authority figures, respond to the child's breach of the structures of social power implicit in the misbehaviour rather than the misdemeanour or crime itself. The police react to reestablish appropriate boundaries of behaviour for children within the established power structures of society. The result is found in the ideas held by young people about police-youth relations. Young people both fear and resent police. Whilst not all police-youth interactions involve physical violence, young people's lived experience suggest that police violence against them is not uncommon (O'Connor & Tilbury, 1986). Though it may be argued that such fearful, antagonistic and disrespectful attitudes on the part of young people undermine the image of the police and consequently their ability to work effectively within society, such attitudes are in fact functional. They provide the precondition for compliance by young

people in their interactions with police. Given such fear and distrust by the young, no threat need be uttered, no violence expressed for the fear of such violence to form a backdrop to every interaction between child and police. Thus any interaction between police and juveniles has come to be a method by which the power relations in our society are re-established and reinforced. This has occurred because of the frequency with which a refusal by a child to comply with police requests, even if such a refusal accords with basic common law rights, results in physical or psychological violence to the child. The process of policing ensures compliance and submission - by force if necessary. Arrest, interviewing and finger-printing are manifestations of this process.

Such processes, which take different forms, are repeated continually as the child moves to the point of disposition by the children's court. Lawyers and welfare workers play a dual role. Through their interactions with children they narrow the range of matters which may appropriately be put before the court. They define what is relevant and what isn't. Compliance is nearly always assured by the frightening nature of the child's prior encounters with other adults authority figures. Thus pleas of mitigation to the court rarely contain children's accounts of their treatment, or anything other than a brief description of the events surrounding the child's offence. An expansion of the factors brought to the court's attention would challenge the very structure of authority that court process seeks to reinforce. Lawyers and child welfare officers alike ensure that the child stands in a position of deference to authority.

The fact of legal representation provides a fiction of fairness instead of adequate advocacy for children before the court. Yet this fiction too is functional for society and the courts as it allows courts to proceed on the basis that children's rights are protected and their perspectives considered. Inadequate legal representation also allows the considerable power wielded by the child welfare bureaucracy to dominate the court proceedings and the determination of the eventual outcome for the child. Child welfare officers come to court with an expertise in the functioning of court and a detailed knowledge of the child unrivalled by lawyers. Additionally they exercise firm control over the social resources available to children. Together the lawyer and the child welfare officer speak (literally) for the child. Through their actions they emphasise several debilitating facts to the child; they reiterate the child's inability and incapacity to be heard, and most importantly, the fact that no one in court will take the time or make the effort to listen to their version of events. These messages are delivered outside the court, before the child takes the final step and surrenders himself up to the "judge" for the judging.

And so to court where the child's misbehaviour is ritualistically examined and dealt with by an impressive magistrate. The child's ability to participate in the court process is in practice strictly circumscribed. The child's understanding of the operation of the court and of sentencing is frequently not

congruent with that of the other participant parties. In the final analysis, however, it is not participation in court or an understanding of the formal processes and outcome of the court appearance which is the object of the exercise.

That, of course, is a much more basic goal. The object of the court, finally, is to ensure compliance by the child with authority and to reinstate and reinforce the relations of power in our society. Most children leave court with an understanding of this matter. Their understanding is achieved through the language of threat, of warning, and by the very process of the court. The child's inability to participate is of considerable utility in achieving the court's purpose. It ensures the child, passive and mute, will face the court in the right frame of mind to submit to the court's authority and accept their location in court and by extension, in society.

The essence of real power or real authority is the ability to exercise it without regard for the consent of others. The power of the court is based on threats and on warnings. Thus a power spiral is created, for if the child re-offends and again challenges the power of the court, the court is caught its own logical trap. The warnings and sanctions must escalate.
Yet it is the reliance on intimidation that undermines the courts' utility in responding to crime, in creating a socially equitable environment. If the process of dealing with juvenile offending can be conceptualized in terms of re-establishing power dynamics, than the use of threat and force creates another stage for struggle. Consent may be extracted in court, but never secured for any length of time. Many of the skirmishes between young people and police on the street may be understood in this light. Such skirmishes often escalate into "wars", with each group launching attacks upon the other. The police, of course, may utilize the force of the court to win the battle if not the war.

CHILDREN AND POWER

The processing of juvenile offenders is underpinned by the dynamics of depowering children. It is only in this context that the language and practice of threat is explainable. It is only in this context that the maintenance of images of excessive punishments, of homes, etc. are functional. If the focus was on the offending behaviour, the language of juvenile justice practice would relate to the breach of social harmony, of social relationships, of putting right the wrong, of reparation, rather than punishment.

We have interpreted these accounts of everyday interactions between the participants in the juvenile justice system as indicative of fundamental injustice. In a sense our analysis contrasts with the tone of many of the children's accounts. On the whole they did not feel hardly done by, they did not feel oppressed. The children's accounts need however to be seen within the context of their assumptions and beliefs about the

world in which they live. It is a world populated largely by hostile adults. In the context of this taken-for-granted world, reflecting as it does children's lived experience, the dynamics of the children's court are not aberrant. The logic of control and the language of threat permeate the daily life of children.

Consent by children to domination by adults, if not freely given, is forcibly extracted in many spheres in our society. This is just as true for the main socializing institutions - the family and the school - as it is for the juvenile justice system. This violence and the use of force against children, whether it occurs through intimidation, or threat, is explicitly condoned by society. A McNair Anderson poll in May 1987 found that 62 percent of people believed that teachers should be able to cane pupils. Only 29 percent were opposed to the use of corporal punishment. In September 1987 the Sydney Morning Herald published a series of articles on discipline in schools. The articles were sparked by revelations of disciplinary techniques "which belonged more to the pages of Dickens Novel, than to a 1987 newspaper" (Sydney Morning Herald, 12/9/87, p. 41). These included stories of two boarders being forced to eat excessive amounts of bread and milk as punishment for leaving school one afternoon without permission. The accounts of teachers and principals are illuminatory of societal attitudes to children. (There are of course no accounts of children's perceptions or beliefs about the "discipline" to which they are subject.)

Father Anthony Smith, the principal of the Jesuit College, St Aloysious, said he personally was "against the cane, but I'm very happy with the strap". The reasons for this personal preference in the instrument of punishment was not revealed in the article and are no doubt lost on his victims. Father Smith noted that the strap was "administered" up to seven times a week for serious offences such as "vandalism, bullying, or when boys are disrespectful to a teacher". The use of a beating as a response to "bullying" and "disrespect" is ironic at least. For generations children have been intentionally and unintentionally subject to disrespect and humiliation in the classroom. The administration of corporal punishment is far more than a mere technical correction, regardless of the pseudo-scientific justifications in which it is cloaked. It is the intentional infliction of pain by a stronger person on a weaker person. It is an abuse of the power of adults over their young.

Yet the use of force to ensure children's compliance is condoned and reflects society's fundamental lack of respect for its young. The use of force to solve the difficulties of student-student, student-teacher and student-school relationships provides a powerful model for children as to how problems of living should be resolved. It is not surprising that children internalize the implicit and explicit violence that surrounds them, and resort to force and power in resolving their own difficulties. Yet when they do, they are punished for it. When a child is old enough to seek to resolve family conflicts by running away or acting out in some other non-passive way, it is the child who is brought before the court, charged with a criminal offence and punished accordingly.

Indeed, our efforts to protect children have too often resulted in the child being punished. This is especially the case as children age. While there is much sympathy for the "battered" young child - this is congruent with the belief that children should be and are naturally passive - society's compassion seems to run out as a child attains an age where he or she may act upon individual convictions and feelings and address injustice for themselves. Thus runaway children are punished, "cheeky" children are punished, aggressive children are punished.

It is only recently that we have begun, as a society, to accept the reality of physical and sexual abuse of young people and award credence to the stories young people tell us about such abuse. A leaflet issued by the Queensland Department of Family and Youth Services has stated that 1 in 4 girls and 1 in 8 boys are sexually abused before they reach 18 years of age. Despite these horrific statistics our response to the physical and sexual abuse of children leaves much to be desired. We continue to decontextualize and individualize incidence of abuse. We project our hostility onto the "other" - the offender; we reaffirm our "normality", our lack of involvement and responsibility for the abuse of children, by highlighting the deviance of the abuser. We characterise them as monsters, etc. and most importantly as <u>not us</u>.

There is a refusal to consider the implications of the extent of abuse: if one in four girls are sexually abused before they reach 18 years of age then there must be an awful lot of monsters out there. Rather than continuing to individualize and decontextualize the behaviour we must look to the social preconditions that give rise to such exploitation. The origins of abuse reside not in the individual character of the abuser, but in the relations of power which the abuse reflects. While the concern with abuse is welcomed, the pattern of response is not liberating for children. Rather it reasserts the normality and acceptability of "normal family life" (in spite of the reality of "normal family life") and all that it encompasses, including the dependence and submission of children.

Similarly the current policy response to the labour market difficulties for young people also serves to reinforce dependence and submission. Young people's access to (a limited) independence has been traditionally by way of income generated by participation in the labour market. For those unable to participate in employment, social security benefits provided some financial support. However inadequate, it provided for some young people an escape from conflict in the family and in schools. Now, though, the payment of unemployment benefits to persons under 18 years has ceased as part of the government's strategy to improve post compulsory educational participation rates. Our education system has failed many early school leavers, yet the current policy thrust is keep these young people in school. Children are being forced back into school without any fundamental change in the logic and language of the education system. In the aforementioned Sydney Morning Herald article Mr. Robert Miller, a secondary school teacher, was reported as saying

that whilst caning didn't benefit anyone, banning the cane meant a ban on the only real deterrent against misbehaviour (Sydney Morning Herald, 12/9/87, pg. 46). Mr. Miller may well have got it right. For many young people schooling is not about education and about the development of socially equitable relationships. It is not in the end concerned with teaching respect for people, but rather with enforcing submission. In the end when all threads of legitimacy have been stripped from institutions of repression, submission can only be obtained through the use of brute force.

CHILDREN'S COURTS AND CRIME - WHAT IS TO BE DONE?

There are many indications in the children's stories as to how we should respond to children's involvement in crime. None of these may satisfy the law and order lobby, but that need not concern us unduly. The law and order lobby's prescription of tougher policing and harsher penalties as deterrents to crime has demonstratably failed. The children in this research were clearly not deterred from committing misdemeanors by their images of rough policing and excessive punishment. Instead of the introduction of harsher penalties, changes need to be made to the way in which society treats its children. These changes would involve a transformation of our attitudes about many controversial subjects. They include:

(i) Respect for children

The starting point must be a reassessment of the manner in which we relate to children and young people. It has never been appropriate to be fundamentally disrespectful of children. It is not now. The dynamics of power and domination which underpin adult relations with children must be reconstructed. The logic and language of threat have no place in the development of socially equitable relationships.

A respect for children necessarily embodies a recognition of them as citizens with rights and responsibilities. We have failed to accord young people rights. Their treatment by the participants in the criminal justice system is clear evidence of that. Elsewhere one of the authors has noted:

> It is frequently argued that rights entail responsibilities. The converse is frequently neglected: responsibilities should entail rights. Young people are aware of their responsibilities. They are aware of the criminal law, and the broad consequences of its breach. They are aware of the laws regulating their sexual relationships and school attendance. In a very real sense, they are aware of those laws which control or regulate their behaviour - their responsibilities. They are frequently unaware of the laws that regulate the behaviour of others in relation to them, for example the protection offered to them by laws relating to the family, tenancy and employment. Some youth are aware of some of their legal rights, but they frequently perceive them to be farcical because they lack

> access to structures to enforce them. For example, the daily experience of street kids is frequently in direct contrast to their (often known) right to silence in police questioning. Similarly, the victims of sexual abuse frequently become the victims of the child welfare system. They are doubly punished for another's crime. In essence, the rights of young people are frequently neglected, whilst the enforcement of their responsibilities is not..... Citizenship implies rights and responsibilities. It is time that this equation was balanced for youth.
> (O'Connor & Tilbury, 1986: 84-85)

The mere fact that a person is a child should not serve to abrogate their basic legal rights. Our criminal justice system assumes certain protections and safeguards for suspects and defendants. These protections should be made available to children in practice and not just in theory. The abuse of the legal rights of children hardly engenders in them a respect for the law or the society it protects.

(ii) Nature of juvenile crime

Children should not be scapegoats in any crack-down on crime. They are easy targets when police departments feel the need or political imperative to improve clear-up rates. Charging the same children with more petty offences, may improve the statistics in the annual report, but does little about the real level of crime in the community. It is both socially just and economically appropriate that responses to juvenile crime are built upon a recognition of the nature of juvenile crime. All crimes are not of equal severity. As we have seen, Sat Mukherjee has repeatedly demonstrated that children's crimes rarely involve personal violence or significant amounts of property. We also know that offending behaviour as a child does not inevitably lead to an adult criminal career. Most children age out of crime (Seymour, cited in O'Connor, 1985). On the other hand the deeper a child penetrates the child welfare and juvenile justice system the more likely they are to end up in corrective institutions as adults: our prisons are full of the products of the child welfare homes. Based on the recognition of the self defeating effects of the juvenile justice system Rutherford has made an eloquent plea for persons involved with youth in trouble to hold onto such children:

> If a young person becomes involved in crime or other troublesome behaviour, it is tempting for parents or teachers to believe that the responsibility and the solution lies elsewhere. By creating a network of criminal justice, welfare and mental health arrangements, public policy holds out the seductive offer of an institutional offer of an institutional fix; although the offer may be appealing it is not the answer. If young people are to grow out of troublesome behaviour, the home the school and other developmental institutions must be encouraged and equipped to hold on during difficult and sometimes volatile phases. Formal intervention carries the threat of exile from a

normal environment, and consequently inevitable waste of a chance for normal growth and development. Existing policy trends must be reversed so as to direct attention to the everyday and intuitive practices which hold the most promise. (1986:9)

(iii) Responses to crime, and not the breach of power relations

Radical critiques of the operation of the criminal justice system have themselves been criticized for focusing on offenders and ignoring victim(s). This has left the domain of crime open to occupation by the law and order advocates of the right. The 'law and order' lobby superficially appears to take crime seriously, and hence to take seriously the concerns and lived experience of the community.

It is our contention that there is a necessity to take crime seriously. We must base our response on the nature of the crime and the context in which it emerges.

The response to juvenile crime should emerge from a focus on the crime, rather than the current practice of responding to the breach of the dominant relations of power.

(iv) Reconciliation, not denunciation and intimidation

In moving from a response generated by the dynamics of power to one generated by a focus on the crime, the language of threat and intimidation must be abandoned. Threats are both dishonest and ineffective. They remove the focus of the justice system from the experience of victim and offender. The response to juvenile crime should be oriented by a concern to reconcile victim and offender, to put right the harm that has been done.

The necessity of reconciliation is especially important for juveniles because their crimes are primarily committed in their local community. Crime is prevented not by threat and intimidation, but by the fabric of social connectedness between people, their community and their physical environment. Alienation or disconnectedness provides the basis for breach of social norms.

These sentiments were clearly expressed in a gardening column in the Times on Sunday.

> Sow the seed of anti-vandalism
>
> The biggest, single headache when planting trees and shrubs on nature-strips or other places where there is pedestrian traffic is vandalism. Trees are either ripped out of the ground or, if they are too big for this, branches are broken off. I've seen shrubs which have been jumped upon or torn up and thrown into the road for no apparent reason.
>
> To come across this meaningless devastation fills me with a bewildered rage for hours afterwards and, if the planting

which had been destroyed was my own work, I actually feel a terrible physical pain.

I remember talking to a landscaper in Britain a few years ago. He told me how six people had worked for three weeks planting 500 trees in a new park extension. The day after the planting had been completed, a 12-year-old boy ripped the lot out in about three hours. Not content with dragging the trees out of the ground, the boy gave each rootball a couple of good kicks. Without soil, most of the trees were too dried-out the next day to be of any value. When asked why he did it, the boy just shrugged and gave no explanation.

A year or so ago, I planted about 1,000 trees in heavy clay soil not far from a high school. Every day about six or seven plants were pulled out and tossed into an adjoining roadway. One day more than 100 were destroyed, so I decided to do something. I came back during the evening and sat in my ute, watching.

The first night was enough. I saw a group of 14-year-old boys strolling through the newly planted trees. They were pushing and shoving, in the way quite normal for boys of that age group; but one of them was pulling out my lovely trees in order to throw them at his mates. He didn't see me as I made my way across and walked up behind him but his mates did. They stopped to watch.

He was about to throw another tree when I asked him, without anger, why he was destroying my work. He looked at the tree in his hand with amazement. He said he didn't know why he was doing it. He seemed genuinely puzzled. I pointed out that I had been planting these trees over the previous week or so in order to create a wind-break which would benefit most of the people who used that area and he was, in effect, sabotaging the project. He replied that he didn't realise that what he was doing was wrong. He was obviously telling the truth; he didn't know any better.

It was dark but I suggested that he help me to replant some of the trees. When he tried to do so, a major reason for his actions became clear - he had never planted anything in his life. So, by the light from my headlights, I showed him and the others how to plant trees.

The next day he turned up after school and I think he enjoyed planting with me. He was a nice kid and I raised the question of vandalism again. He repeated that he didn't know why he did it; the trees could have been weeds or sticks of no value.

I have come to understand that a great deal of so-called vandalism of this type is either accidental or inflicted through ignorance. It is unthinkable for a child who has learnt to plant a tree to wantonly destroy newly planted

trees.

> Children can be extraordinarily creative. A child who is taught to create never destroys and the most creative thing one can do is to plant a tree or a shrub.
>
> **Peter Cundall**

("Times on Sunday", 26 July, 1987, Gardening, page 35.)

(v) Informality not Formality

Our concern with the need for reconciliation is in part a plea for informal rather than formal processing of juvenile offenders. We believe that the accounts recorded herein bring into question the utility of formally charging young people and bringing them before the court. It achieves little for the child offender, victim or the community. The language and logic of a criminal justice model as it currently exists separates offender, victim and crime.

This is not primarily a call for increased reliance on formal cautioning, rather than the charging of juveniles by police. Cautioning, as it currently stands, is also based on the language of threat, rather than reconciliation. Intervention should focus on rebuilding the fabric of social relations between the child and his community. In this context the making of peace between the child and victim is important. This process could occur through the child putting right the harm caused, where feasible or possible. We are not calling for a community service program in disguise. Community service programs are by their nature impersonal, and do not repair ruptured social relationships. Additionally our aim in responding to juvenile crime is not to extract "just desserts", the appropriate pound of flesh from the child, but to mediate, to reconcile, rather than necessarily providing reparations.

(vi) Taking the life conditions of youth seriously

If we take seriously the pain experienced by the victim, we also must take seriously the life conditions of young people. The societal concern with controlling and depowering young people has been discussed above. The manifestation of this power imbalance in physical, sexual, social and psychological abuse has also been noted. The increasing level of emmisseration of youth also needs to be considered.

The level of child poverty in our community has increased dramatically. In 1972-73, it was estimated that 231,800 children (7-2 per cent) lived in poverty after incomes were adjusted for housing costs. The corresponding figure in 1985-86 was 684,800 children or 17.5 per cent of Australian children (Whiteford, 1987).[2]

---

[2] Despite the myth of affluence, a higher proportion of Australian children lived in poverty in other developed western economies. Only the United States of America has higher levels of

The level of child poverty is but another indicator of the level of misery experienced by young people. The most salutary indicator is the increasing rate of suicide amongst young people. A recent estimate in the United States suggested that one child every six minutes attempts suicide. In Australia suicide is the second most frequent cause of death amongst persons between 15 and 24 years of age. The number of suicides is but the tip of the iceberg of misery and unhappiness which threatens to sink our youth into perpetual alienation from the rest of society.

The level of poverty, suffering, abuse etc. must not be ignored in responding to juvenile crime. For a considerable number of the children interviewed for this research, offending was a direct or indirect result of misery, oppression in the home, and the lack of the legitimate source of income or accommodation outside of the home. Offending is an inevitable consequence of being forced to live on the street.

It must always be remembered that one reaps what one sows. Unfortunately more and more children are forced to live in poverty, are subject to violence in the home and are denied access to meaningful participation in the labour market. The cost of this structural violence towards youth will one day have to be repaid.

(vii) A meaningful court system

The construction of a meaningful court system must be premised upon the considerations detailed above: respect for children, taking rights seriously, abandonment of the logic and language of threat and intimidation, informal processing, a recognition of the social conditions of youth and reconciliation not punishment. We have already stated that it would be far more appropriate for children to be dealt with informally through reconciliation with offender than through formal processing by the court.

Regardless of whether this occurs or not children will still have an initial contact with police officers. It goes without saying that police interviews with young people should be underpinned by a recognition of the legal rights of the child. Children should be informed of their legal rights and provided with access to legal representatives who are skilled in dealing with child clients.

Where children are to be brought before the court for offences wherever possible the matter should proceed by way of summons rather than arrest. Fingerprinting of children, arrest and processing of them through the watchhouse is on most occasions an overreaction to their misdemeanour.

If children are to be brought before the court, than the process

---

child poverty.

of a children's court appearance must be taken seriously. This necessarily involves ensuring that children's legal rights are safeguarded, that the proceedings are conducted in a manner which is understandable to the child and that the child has the real ability to participate meaningfully in the court process and finally that sentences are proportionate to the crime and are reconciliatory rather than punitive in function and orientation.

No longer should children who offend against the rules of our society be subjected to threats, intimidation and mindless punishments which in no way address the damage done by the children to their victims or to the society in which we all must co-exist. Instead of being humiliated and stripped of all human dignity for their crimes, children must be clearly confronted with the consequences of their destructive actions and helped to put their wrongs right. Instead of being depowered, children must be given more power. They must be included in the decision-making processes which impinge upon them, so that in the end society becomes not a just a punching bag for their frustrations, anger and impotence, but a thing of their own creation and a thing not to be destroyed. We exclude children from adult society at our own, as well as the children's, detriment. Germaine Greer has explained why:

> Children learn to treat adults, all of whom stand in paternal authoritarian relationship to them, with a sort of hypocritical deference. All their spontaneous contacts are with their peer group, with whom they are quite likely to share anti-social ritual behaviour. The child world is further alienated from the adult world by the creation of the buffer state, "teenage", while old age is absurd, isolated, disgusting, so alien that it serves as a bait for juvenile thugs to bash, rape and rob. (Greer, 1984:3)

We in the industrialised West are, according to Greer, a population of `child haters'.

> If the truth is, we of the industrialised West do not like children, the corollary is equally true, our children do not like us. It is blasphemy to deny that parents like their children (whatever that my mean) but it is nevertheless true that adults do not like children. People of different generations do not consort together as a matter of preference: where a child and an old person develop any closeness, we are apt to suspect the motives of the older person. Most social groupings tend to be formed of individuals in the same age set and social circumstances and even within the family, parents and children pend very little time in each other's company.(Greer,1984:4)

Before our children will stop behaving in an anti-social manner, so must we. Our young must be included in our lives and in the life of our community. This path towards the fair and humane treatment of children both in society at large and within the justice system is far from clear. It is littered with the carcasses of old ideas and attitudes about the treatment of

children which outlived their usefulness and now have no place in a world hurtling towards the twenty first century. They must be buried beside the outdated and obnoxious notions about children as second-class citizens which found expression during the Victorian era and have resulted in more than a century of abuse of our young. Only then can we progress towards a more equitable treatment of juvenile offenders.

REFERENCES

Allison, M. (1984) Rules for police. Legal Service Bulletin. 9, 113-118.

Ashworth, A. (1987) Criminal justice, rights and sentencing: a review of sentencing policy and problems. in I. Potas (ed.) Sentencing in Australia. Canberra: Australian Institute of Criminology.

Asquith, S. (1983) Children and justice. Edinburgh: Edinburgh University Press.

Australian Bureau of Statistics (1985) Australia's youth population 1984: a statistical profile. Catalogue no. 4111.0.

Australian Law Reform Commission (1981) Child welfare (Report no.18). Canberra: Australian Government Publishing Service.

Australian Law Reform Commission (1987) Sentencing: procedure (Discussion Paper no. 29). Canberra: Australian Government Publishing Service.

Bannister, D., Fransella, S. (1981) Inquiring man: the psychology of personal constructs (2nd ed.). Penguin.

Child Welfare Practice and Legislation Review Committee (1984) Equity and social justice for children, families and communities. Melbourne: Victorian Government Publishing Service.

Clarke, S.H., Koch, G.H. (1980) Juvenile court: therapy or crime control and do lawyers make a difference. Law and Society Review, 14.

Cohen, S. (1985) Visions of social control, Cambridge: Polity Press.

Committee of Inquiry into the Enforcement of the Criminal Law in Queensland (1977) Report of the inquiry into criminal law enforcement in Queensland. Brisbane: Queensland Government Printer.

Ewen, J. (1983) Youth in Australia: A new role and a new deal for the 80s. Bundoora: PIT Press.

Greer, G. (1984) Sex and destiny. London:Secker & Warburg.

Grisso, T. (1981) Juveniles waiver of rights: Legal and psychological confidence.

Hancock, L., Chesney-Lind, M. (1985) Juvenile justice legislation and gender discrimination, in A. Borrowski and J.M. Murray (Eds.). Juvenile delinquency in Australia, Sydney: Methuen.

Havemann, P. (1986) From child saving to child blaming: The political economy of the Young Offenders Act, in S. Brickey & E. Comack (eds) The social basis of law: Critical readings in the sociology of law. Toronto: Garamond Press.

Hutton, N. (1987) Sociological analysis of courtroom interaction, Australian and New Zealand Journal of Criminology, ,110-112.

Lawrence, R.A. (1983-84) The role of legal counsel in juveniles understanding of their rights. Juvenile and Family Court Journal. 34, 4, 49-58.

Less, S. (1986) Losing out: sexuality and adolescent girls. Hutchinson: London.

Mukherjee, S. (1983) Age and crime, Canberra: Australian Institute of Criminology.

Mukherjee, S. (1985) Juvenile delinquency: dimensions of the problem, in A. Borrowski and J.M. Murray (Eds.). Juvenile Delinquency in Australia, Sydney: Methuen.

O'Connor, I. (1985) New Queensland Legislation, Legal Service Bulletin, 10,2, 76-79.

O'Connor, I. & Tilbury, C. (1986) Legal Aid Needs of Youth, Canberra: A.G.P.S.

Platt, A. (1969) The Child Savers : The invention of delinquency. Chicago: The University of Chicago Press.

Rafkey, D. & Sealey, R. (1975) The adolescent and the law: A survey. Crime and Delinquency, 21, 138.

Reeders, E. (1986) Textcode. 4 Warburton Road, Camberwell 3124.

Rutherford, A. (1986) Growing out of crime: society and young people in trouble. Penguin.

Sackville, R. (1975) Law and poverty in Australia, Canberra: Australian Government Publishing Service.

Seymour, J.S. (1985) Children's courts in Australia, in A.Borrowski and J.M. Murray (Eds.). Juvenile delinquency in Australia, Sydney: Methuen.

Watson, I.(1985) Double depression: schooling, unemployment and family life in the eighties. Sydney: Allen & Unwin.

Whiteford, P (1987) Child poverty and the reform of Family Assistance. Paper presented to the Social Welfare Research Centre and University of Queensland seminar, Community Services in a changing economic and social environment, Brisbane, October 16,1987.