
and juveniles. Whilst there seems to be little enthusiasm for the abandonment of a separate juvenile court, there is no clear articulation of how such a system should differ from that which operates for adults. Despair with treatment-based models, which had themselves constituted reforms in reaction to the deficiencies of classical approaches to dealing with young offenders, has resulted in experimentation with a range of mixed models of juvenile justice.

Reforms such as the *YOA* and the United States and United Kingdom legislation mentioned above, differ in detail but share the attempt to limit the number of juveniles being brought into the formal system, to give young offenders greater procedural safeguards, to limit the use of custodial options and to meet the needs of individuals.

Research in each of these jurisdictions points to concerns about the extent to which the recent reforms have lived up to their promise. In general terms the experience in all three countries has been disappointing. A lack of precise and unambiguous principles to govern practice within juvenile courts has been cited in each case as a factor contributing to the unintended consequences of the legislation, such as an increased reliance upon incarceration. The absence of clear principles, as Reid¹⁰⁴ has argued, leaves the way open for the exercise of considerable discretion at the implementation stage and for ideology (which is often not made explicit) to determine the resultant practice.

It is important of course not to have unrealistic expectations about what might be achieved through legislative reform. Bala is right to acknowledge that the exercise of juvenile justice is a complex and fraught endeavour and that no single guiding philosophy can prevail.¹⁰⁵ Reforms are mediated too by the implementation process and the many professional and bureaucratic influences which shape that process. Decisions taken at court must also be seen in the context of the broad discretion exercised concerning young offenders at other points in the legal process. However, whilst these factors are important considerations, the key difficulty with reform efforts to date lies in the failure to provide unambiguous, meaningful and structured guidance to the judiciary and other agents of the criminal justice system about the principles which should govern the practice of juvenile justice.

104 Above n21.

105 Above n4.

what is the justification of the law which prohibits this behaviour? What are the politics of public policy and law enforcement in these environments? What does the beat generally mean for our sexuality? How does criminology deal with the beat?

For the pragmatic world of public policy the beat poses a peculiar dilemma not dissimilar to questions like distribution of needles to heroin users or condoms to people in prison. The central fact of the debate is: beats exist. Indeed it is arguable that they are necessary social institutions, given the sexuality of our culture. Like heroin use and sex in gaol, the tradition of the beat is not about to disappear, despite the law, the police, or homophobic violence. The recent murders and bashings are no accident and not likely to cease of their own accord. Yet, the men who are endangered are themselves breaking the law which places beat users in an especially vulnerable position.

Despite improved relations between police and the Sydney gay community, beats are being closed down and some police continue to be actively hostile. Yet beats are not only an issue for the criminal law but are a matter of people's health as they create the potential for the transmission of HIV. Further complications arise from the gay community's ambivalence towards this manifestation of sex between men. Beats are probably located at the opposite end of the spectrum to the Mardi Gras as a source of gay pride.

Despite the perception of the beat as a "threat to society", it would appear that it is the men in the beat themselves who are most under threat. The walls of most beats carry graffitied warnings of bashers, and threats of violence such as "kill all poofs" are all too common. People remain largely ignorant of the character of this sub-culture and decisions affecting the lives of beat-users are made without debate and coherence. This essay seeks to demystify this world and offer some ideas which may stimulate debate on policies towards the beat.

HUMANISING THE BEAT

I

The images of the beat generated in the media are generally negative, influenced by the homophobic characterisation of gays as perverted or the sufferers of a disease. An expression of such imagery is provided by Gold Coast Alderman (sic), Kerry Smith who became distressed by the "immoral goings-on" and "undesirable practices" in toilet blocks in her ward and resolved to personally install metal plates over the holes in the cubicle walls which beat users use to make contact. "I think they're sick" she crowed to the local press who accompanied the story with photographs of the Alderman crouched down in a cubicle, screwdriver in hand, looking very serious indeed. Curiously, the paper printed her side of the story without a hint of journalistic criticism or evaluation of her position.

In other instances, police have referred to beat users as "funny folk".⁴ And the Festival of Light⁵, not to be denied, has described the suggestion that any attempt to offer beat users education, condoms or lubricant for their protection as "disgraceful".⁶ In extreme

4 Penrith Press 20/11/90.

5 A fundamental Christian organisation with parliamentary representation in New South Wales.

cases the beat is presented as a haven for paedophiles, as one gay man from Newcastle put it, "a lot of people still regard homosexuals as raving queens who molest young boys in public toilets".⁷

Articles which demonstrate a sympathetic consideration of the problems of beat-users are very rare and when they do appear remain tainted by homophobia, for example a more "positive" story on bashings in Adelaide was titled, "The Shadowy World of Gay Beats" and featured graphics which emphasised the darkness and loneliness of these environments.⁸

These expressions might tell us something about the continuing intolerance of homosexuality but little about beats themselves. Mature public policy derives from a serious consideration of the subject not moralistic myth making. So, what do we need to know about the beat?

Although they remain "invisible" to most of the population, beats are everywhere, especially in the suburbs. Reflecting this, the Beats Outreach AIDS education program is focussed in the western suburbs of Sydney.⁹ While beats tend to evolve in secluded areas, they also appear in more "obvious", densely populated locations throughout the city, for example, shopping malls and the toilets at Central, Wynyard and North Sydney railway stations in the Sydney metropolitan area. Beats are also located in other New South Wales areas like Newcastle, Wollongong, Goulburn and the Blue Mountains.

Though men obviously go to beats for a variety of personal reasons, to generalise, the attraction is the promise of readily available, casual, free and usually anonymous sex. The danger involved in beat sex also creates an element of excitement and the anonymity allows people to fantasise about their partners. Anonymity can be an important feature of beat sex, particularly for men who do not want to identify as gay or who are married or attached and fear "exposure", but also for gay men who wish to avoid emotional attachment or have sex beyond the gaze of their boyfriend or friends. However, Beats Outreach workers report that in the suburbs and away from established gay areas some beats can also be points of social contact. I was told by one Beats Outreach worker of one beat in Sydney's outer west which had a Christmas party last year!

The most misleading feature of negative myths of the beat is the character of beat behaviour itself. Beat etiquette varies among people and places but contact with a partner can be made through eye contact or showing your penis, depending, perhaps, on which is your "stronger suit". Rarely, it seems is contact made through speech. The golden rule, however, is discretion and caution. Moreover, the process of identifying a partner is so influenced by fear of detection that the potential for non-consensual sex is nullified. As Humphreys concludes, "no man need fear being molested in such facilities".¹⁰ Further, the image of beats as a paedophile's ambush seems quite wrong. The men interviewed in

6 *Sunday Sun* (Brisbane), 2 December 1990.

7 *Newcastle Herald*, 15 February 1991.

8 *Adelaide Advertiser*, 27 April 1991, p4.

9 van Reyk, Paul, *On the Beat: A Report On An Outreach Program Of AIDS Preventative Education For Men Who Have Sex With Men*, Aids Council of New South Wales, Darlinghurst (1990).

10 Humphreys, above n2 at 160.

Tearoom Trade were uniformly terrified of “chicken” (minors) and would not consider sex with them.¹¹

Another curious feature of beats is the wide range of men who use them; they are “of all ages and from all areas of the social structure”.¹² Joe Orton’s (in)famous diary showed the “beat population” to be diverse, comprised not only of playwrights like himself but “dwarves”, “stupid, smiling bank-clerkish gents” as well as labourers.¹³ The population also includes “men with wives and girlfriends”, perhaps the majority, as well as others who are “strongly gay identified”.¹⁴ In the experience of Beat Outreach workers, this sexual “contradiction” is not necessarily a “recipe for unhappiness”, “many guys can cope with that very successfully and don’t get too hassled”.¹⁵

But it is not for everyone and beats are not enjoyed or supported by all gay men. Dennis Altman in one of gay literature’s “seminal texts”, speaks of beats’ dirty and clinical atmosphere¹⁶ and scarcely hides his contempt for this “instant sex”.

The type of sex that happens in beats might also surprise. Although anal sex does occur, the climate appears to dictate that the predominant form of sex is oral sex and mutual masturbation. As one academic put it “you can’t afford to have your pants down and be fucking madly ... in case someone spots you. It is a lot easier to have a quick suck, whip up your fly and go”.¹⁷

And alas, beats cannot be characterised as a product of the “permissive society” — in Sydney, they have been around for decades. Garry Wotherspoon’s history of the Sydney gay scene, *City of the Plain*,¹⁸ refers to the “famous” toilets in Petersham Park, Hyde Park, Lang Park and St Leonards which confirm the presence of the beat in our society since at least the 1920s.

II

Criminology has itself contributed to the negative imagery attached to the beat scene. Laud Humphreys’ *Tearoom Trade*, which remains after twenty years the only thorough study of the beat, is most interesting for its documentation of the personal expressions of the tearoom men. In this it is an important archive of oral history and his recommendations for public policy are surprisingly enlightened as will be discussed later. However, Humphreys fails to leave his normative morality and sociologist’s glasses at the tearoom door which produces an alienated vision of the beat.

Humphreys’ alienation of the subject is most evident in his assumption that beat sex is impersonal.¹⁹ It is described as “distinctly less personal than any other form of sex other

11 Id at 98.

12 *Adelaide Advertiser*, 27 April 1991, p4.

13 Orton, Joe, *Orton: The Complete Plays*, p 8.

14 Nicholas, Simon, “Men, Sex and Public Places”, (July 1991) 184 *Campaign* 39.

15 *Ibid.*

16 Altman, Dennis, *Homosexuality* (1970), p27.

17 Gary Dowsett in Nicholas, above n14 at 38.

18 Wotherspoon, Gary, *City of the Plain* (1990).

19 The book is in fact sub-titled, “Impersonal Sex in Public Places”.

than masturbation".²⁰ The implication being "personal" sex can only happen when safely at home in bed between people who have "gotten to know each other". But sex, however fleeting or anonymous, is not necessarily impersonal because it occurs in a toilet. Just as sex in a library or any other public environment can be satisfying or exciting, so it can be in a railway station toilet. The assumption also forgets the thousand careless, frozen acts of intercourse that happen in suburbia every night. The absurdity of this view is reinforced by Humphreys' view of masturbation. What more personal form could there be than having sex with "the one person you know you love"?

Humphreys also often contradicts himself by admitting the existence of relationships which involve more than one contact and that "participants develop strong attachments to the settings of their adventures".²¹ Experience in Australia also shows that some beats have a social dimension which Humphreys either failed to observe or ignored.²²

It is difficult to explain the lack of work done on the beat scene for it is such rich soil for political and social theory. Humphreys' work though shedding some light on the subject never escapes the shadow of narrow 1960s sociology. He constructs elaborate models of games and role-playing to describe the beat scene. Whilst this is interesting to a point it leaves the reader with a feeling that Humphreys is indulging in "intellectual voyeurism" as Dennis Altman put it²³ and it scarcely exhausts the possibilities of inquiry. The humanisation of the beat might be assisted through future research which locates the beat within other discourses. Anthropology, for example, may be useful for contrasting the beat with ritualised expressions of sex between men in other cultures.

The beat could also be theorised within the growing tradition of work concerned with the political dynamics of competition for and definition of social space. The beat presents an interesting case for the work of Canetti and others on "the crowd". This "crowd" is unique in its dislocation and fragmentation: its "invisibility". The beat population may be characterised as a "shadowy rabble"; a series of subversive cells distributed throughout time and space unable to articulate their character (political meaning) to the dominant culture.

The work of Foucault and Donzelot which explores the continuity between the state and the family²⁴ might also help give the beat some academic and social "respectability". In their discourse beat-users could be considered a purulent discontinuity for "social truth" as their invisibility, elusiveness and dissemblance threatens the ideology of the home and family.

III

More mystification of the beat is produced by depictions of these environments as predominantly the domain of bisexual men.²⁵ While many married or bisexual men use beats,

20 Humphreys, above n2 at 13.

21 Id at 14.

22 Nicholas, above n14.

23 Altman, above n16 at 25.

24 For example, Foucault, Michel, *History of Sexuality* (1985); Danzelot, Jacques, *The Policing of the Family* (1979).

such images obfuscate the exclusively homosexual character of beat sex. A man may well "endanger" his wife or female lover by using beats and contracting any number of diseases readily available in other sex environments, as the tabloids screech. However, the emphasis on bisexual or "married" men neglects the fact that this is a problem for other men such people may have sex with as well. More importantly, this distracts attention from the fact that beats are above all a manifestation of homosexuality in our culture and need to be acknowledged as such.

This element of the beat scene also contributes to the gay community's ambivalence towards beats. Dennis Altman is plainly resentful, if not contemptuous, of some men's refusal to identify as gay.²⁶ Clearly, the problem sections of the gay community have with beats is that they represent a concealment or evasion of gay identification. The use of a beat is seen by some as an anti-social act distanced from the community which so many, like Altman, have fought so hard to establish. Yet this negative perception may unwittingly reinforce the vulnerability and social isolation of beat users.

Beats are about sex between men and lots of it. In their ranting, the moralists do not stop to ask simple questions. If a man is married, why is he at a beat? Why do people do such things anyway? How do they feel about it? Do they like it? Am I right in assuming that they are bad, bad, bad? Are they any more naughty than Johnnie who likes his mud-wrestling down at the Leagues Club?

The beat can be desperate and lonely but it can be joyous or just good fun as well as sometimes being more social than often thought. The image of beats as an underworld of perversion helps create and reinforce the antagonism in the law to this sexual sub-culture and contributes to making beat users not exactly the civil dead but certainly the civil dumb. Lifting the veil on this mythology is important in order to humanise beats and allow the consideration of serious questions of public policy and law enforcement with a more balanced, informed view of the subject.

BEATS, CRIME AND MORALITY

I

In New South Wales, consensual sex acts between men in beats constitute various common law offences which are now generally codified in the *Crimes Act* and more notoriously the *Summary Offences Act* (1988).²⁷ Section 782 of the *Crimes Act* creates the crime of Gross Indecency with a possible sentence of two years. The breadth of this section is quite frightening in that it appears that even mere gestures or conversation are acts which fall within the definition of the crime. One wonders then if a simple kiss could amount to criminal behaviour. Section 576 makes Indecent Exposure criminal. It confirms the of-

25 For example, "Bisexuals Put Wives in Danger", *Perth Sunday Times* 1 July 1990, p9. It is also a feature probably over-emphasized in *Tearoom Trade*.

26 Altman, above n16 at 27.

27 There is, however, no explicit reference to the beat in our statutes. This contrasts with the UK *Sexual Offences Act 1967*, Section 1 expressly refers to the public "lavatory" as an environment in which the decriminalisation of "buggery" does not apply.

fence as defined at common law, except it clarifies that the offensive act may be apprehended by only one person — this, of course may be a policeman. And, alarmingly, it is not necessary for actual offence to be taken by anyone for the crime to be committed. No one need be disgusted or annoyed by the act per *R v Mayling* [1963] 2 QB 717.

The *Summary Offences Act*, Part 2, outlines Offences in Public Places. Section 4(a) makes criminal offensive conduct in or near or within view or hearing of a public place or school, with a maximum gaol sentence of three months. Some cases imply that it is necessary for their to be intention to offend, as in *Prezelj v Manison* (1987) 88 FLR 346. But because of the curious facts of this case it is unclear as to whether the defence of innocent purpose would be available in the context of public toilet sex.

The definition of these acts as criminal is itself crimogenic. Crimes due to police presence in beats would include abusive language, resisting arrest, obstructing an officer in the course of his duty and assault by the beat users or by the police. More seriously, there have also been cases of extortion reported, the alleged culprits being members of the public and the police force.²⁸

II

A deeper question is what is the foundation for the criminality of beat sex? It is clearly not enough to say, that beat sex is repulsive, dirty, immoral. The same rhetoric can be used to disapprove of gambling, drinking, drug use, pornography or prostitution. As homosexuality is now legal what is the basis of the imposition of legal sanction in this context? Legal moralism has disappeared, at least to allow hom(e)osexuality. Also, anyone in the privacy of their own home can do whatever they like with consenting adults: dildoes, etc, are legal instruments of sexual pleasure. But sexual acts performed by men in beats, "out in the open", remain criminal.

Of course, we are not dealing with an ordinary victimless crime here. The traditional liberal objections defending private consensual acts must be qualified as the acts are in public. The criminality of public sex could conceivably be justified on two grounds: offence and the minimisation of the risk of harm (protection of minors). Superficially, it seems reasonable enough for someone to be protected from the sight of two men having sex when they might not enjoy what they see. But is it?

There seems to be a colossal irony or double standard operating here as the law depends on what is socially defined as offensive. The police do not have the power or the inclination to charge into pubs and clubs where people watch others strip, simulate or have sex.

Scene: Every Wednesday night a crowd of men sit in a circle, drinking beer, letting go after toiling day-long in their office towers. They are in a mid-city tavern. The men get drunk and amuse themselves by ogling half a dozen women as they strip their lingerie and simulate sex. The men, with no threat of police interference, cheer and chant and drink more beer. If they are lucky some might even get to go on stage and

28 See also Humphreys, above n2 at 89-90.

simulate right along with the women. The men are as happy as such men ever are and go home, unharassed, dreaming of the girls.

Down the road, two men at a toilet in Martin Place, one suited, one in a council uniform, check each other out and step into the privacy of their own cubicle. They do this in fear. Will anyone come in? Do cops patrol this beat? They hear a cleaner enter, slopping a mop. One man crouches up on the toilet bowl so that the cleaner can not see there are two bodies where there should be one. The cleaner leaves, hurrying to finish his work so he can catch the end of the show at the tavern. The danger averted, the two men are relieved but one feels their intimacy has gone. They split and go home separately.

Obviously, the tavern punters have paid good money and consent to what they see but to some it is more offensive than the spectacle of beat sex. One has to ask what harm would really have been done by the two men in their cubicle? Is it not enough for people offended by this behaviour to avert their eyes as Laud Humphreys recommends, just as others choose not to be offended by exploitative strip-shows by not going to them?²⁹ Do beat users deserve to be punished for their tastes?

The character of beat sex also militates against the actual apprehension of offence. Its emphasis on anonymous and hidden sex makes it unlikely for people to have the chance to take offence. This touches on the traditional importance of entrapment employed to enforce the law, another problem which is considered later. It is submitted that if the law is to be retained it should be modified to define offensive behaviour as only existing where there is a proved intention to offend and offence taken. Otherwise the law retains the potential to be exploited by police who may wish to contrive offences.

But what of the fear of paedophilia? The strongest basis for the policing of beats must be the protection of minors. Yet, as discussed above, the character of the beat appears inconsistent with the popular myth as a factory for child abuse. The timidity of the scene and the outright fear that gay and other men have of the paedophilic slur operates to mitigate this potential. Humphreys' study confirmed the lack of evidence to support the belief that beats are havens of paedophilia and encourage the "recruitment into homosexual activity".³⁰

Moreover, the practice of paedophilia is primarily located in the home, the bosom of the family, through incest. In myth, the family is the place for natural sexuality, but in reality it is also the forum for prohibited sex.³¹ Awareness of this, we must remember, is a relatively recent thing. This is another aspect of the beat discourse which illuminates the myth-matrix of our society. It is arguable that beats are actually cast as unnatural in our consciousness to bolster the family unit myth. And, if it should be considered in terms of forms of sexual identification at all, paedophilia is hardly practiced exclusively by gay identifying men.

29 Id at 101-103.

30 Id at 102.

31 See Scutt, Jocelyn, *Even In The Best Homes* (1983).

The protection of minors argument then, while more satisfactory in theory, has to be of dubious validity in reality. To argue that beats are objectionable on this ground is to ignore or misrepresent the character of the beat *and* the nuclear family.

Finally, in pondering the moral foundation of the law it is worth noting that the very fact the acts are prohibited in conformist culture in private means they end up occurring in these public places. Though the prohibition is not legal but customary and practical, it has the same effect. For example, the married men using beats can hardly take men home to the master bedroom to explore their homosexuality. Beats can therefore be seen as "socially logical". Ultimately, the morality which underpins the law and creates the myths of paedophilia only entrenches the problems and obscures the real issues arising from the beat culture.

A REFUGE UNDER SIEGE

I

The beat has always been a refuge under siege. As documented in *City of the Plain*, the traditional foes have been police officers who have a long history of acting as *agents provocateurs* to entrap beat users.³² From anecdotal evidence it is difficult to conclude on the role police now play in beats but the AIDS Council of New South Wales still receives complaints that the law is being enforced this way. However, it also appears that much police activity is stimulated by public complaints. Research needs to be done on the exact nature of police behaviour in relation to the controlling of beats.

Entrapment, of course, engages one of the classic civil liberties debates, the question of to what extent should the state break the law to enforce it? The practice is arguably dubious if not immoral because it allows the contrivance of offences which may not otherwise have occurred. However, as the case histories reveal, the primary problem in beats has been its encouragement of a capricious and arbitrary personal justice where the police have set themselves up as moral vigilantes.³³ The law, if it has any democratic basis, should be enforced at the request of people actually offended by the apprehension of public sex acts.

In further research on police behaviour an interesting comparison might also be made between police attitudes toward gay public sex and "parking": the phenomenon of "straight" couples having sex in parked cars.

II

Traditional police hostility is now complemented by an apparently more organised and determined approach from public authorities. In Sydney, there has for some time now been an intensified "campaign" to end the use of public toilets as a venue for sex between men.

32 Wotherspoon, above n18 at 69.

33 Ibid.

Towards the end of the 1980s someone declared war on the New South Wales beat scene. The first warning shots came in the form of red stencilled warnings at toilet beats, particularly those controlled by public transport authorities, that sexual activity of any kind was criminal and subject to a fine of up to \$500. Then, as part of the overall increase in surveillance of State Rail Authority property, especially since the election of the conservative Greiner government, signs went up in known beats, signalling that "plain clothes and uniformed police patrol this station". Another strategy saw the holes which have been traditionally drilled in cubicle walls filled, blocked or covered with metal plates.

The battle is most intense in beats such as Wynyard Station in the Sydney Central Business District, whose toilet block has been completely redesigned. The Wynyard beat during the early 80s, I remember as a schoolboy, was basically a turkish bath without quite so much steam and where no money changed hands. It was a notorious beat with large cubicles similar to change rooms found in old beach pavilions.

As part of a State Rail Authority (SRA) refurbishment program, the Wynyard Station toilets were radically altered but this did not deter the trade. Since then, there have been further renovations. The cubicle doors at Wynyard and Central (as well as other beats in Sydney) had semi-circles cut from the top and bottom creating a rather fetching one-piece swimsuit effect which made beat contact more difficult (and dangerous). On some cubicles the doors have now been removed altogether.

This illustrates not only the explicit definition by the state itself of these environments as beats but reflects the confusion of purpose in its indifference to the interests of "regular" patrons as these tactics ironically show a disregard for the modesty of others by reducing privacy.

The SRA's new concern for cleanliness, being next to godliness, is another front on which this war is fought. Signs now appear at all inner-urban stations declaring the time when the toilet was last left "smelling clean and fresh". Cleaners have become more present in these environments and the blocks are also more frequently locked up, so much so that it is rare to see a suburban station with an open toilet after dusk. You now have to ask the attendant for keys if you need to "go".

Similar action has been taken in city and suburban shopping malls and in universities! For example, a busy, famous beat at Sydney University, at the bottom of the original Student Union Building, was closed in the mid 1980s and converted into an office for maintenance staff. Another beat on the University Campus is now also locked up on the weekend, apparently to deter the beat trade. A beat which used to operate in the University Library has also been refurbished and repainted for the same reason.

There are of course arguments to support the activities of organisations such as the SRA. Where they have been most active, the inner urban beats, there is a high turnover of users and the proportion of straight or conventional users of the toilets is also relatively high compared to other beats. It is, after all, their property. Their concern for cleanliness is hardly in itself objectionable and may well, in the actual decision-making consciousness of the SRA, have been entirely innocent of the implications for beat trade. But this of course is contradicted by the willingness to reduce privacy; the fact that the campaign is not limited to these densely populated environments and that it all seems so deliberate.

Undoubtedly a feature of this campaign has been the advent of AIDS and its influence on the behaviour of the State. It is questionable, however, that the State is guided by compassion, that is a genuine concern for the health of beat users. The approach also reflects a certain ignorance of the facts of beat behaviour. Although, the transmission of HIV and AIDS is potentially encouraged by beats, the predominance of oral sex and mutual masturbation means that there is probably "a lot less unsafe-sex than originally thought".³⁴ Perhaps the action is motivated by a disguised homophobia and the opportunity has been taken to resolve a long-standing "problem".

W(H)ITHER THE BEAT

Despite the anti-beats offensive, beats show no sign of disappearing. No sooner do councils or other authorities paint over walls to remove beat graffiti than it starts to appear again. As *Campaign* reports, large numbers of men still seek out other men for casual, anonymous sex.³⁵ Consequently, the persistence of beats suggests that the offensive, whatever its basis, is not working and needs reassessment.

Like heroin users and people in gaol, beat users pose a problem for which moralism is poor counsel. The men on the beat have needs. Primarily these are sexual ones, many having been forced into these environments by the sexuality of our society. These needs are not understood or respected which has aggravated associated health hazards and encouraged police harassment and homophobic violence. This violence then creates the further need for protection, the satisfaction of which is frustrated by the civil dumbness of beat culture: the illegality of beat behaviour compromises beat users' ability to appeal for help or agitate for change. Consequently, the fate of the beat scene is in the hands of those who make and implement public policy.

At the most basic level the law and its enforcement requires examination. The determination to prosecute and punish beat users must be seriously questioned for its utility alone, that is on the grounds of administrative efficiency. The fining and imprisonment of gay men throughout history has not eradicated the sanctioned behaviour. And as Humphreys' study found, "the only harmful effects of (beat sex) result from police activity. Blackmail pay offs, the destruction of reputations and families all result from police intervention in the tearoom scene".³⁶ Humphreys' compassionate conclusion is that police should "ease up" on beats, particularly considering the greater demand for police resources elsewhere.³⁷ The sex itself poses no real "danger to society" as beats do not encourage either paedophilia or non-consensual sex. In fact they may have a positive effect as Humphreys somewhat coyly puts it in helping men "think better of themselves and ... relate to others in the homosexual sub-culture".³⁸

34 Nicholas, above n14.

35 Ibid.

36 Humphreys, above n2 at 163 .

37 Id at 166.

38 Ibid.

The real problems posed by the beat are the potential for the transmission of HIV and AIDS and the incidence of homophobic violence. To deal with these our public policy should be pragmatic, sympathetic and free from value judgements. The work of the Aids Council Of New South Wales' Beats Outreach provides a fine example in its approach to the beat. The program seeks not to deter men from participating in beat sex but to provide education to prevent the transmission of disease among themselves and others with whom they may be involved.

A major problem in policing policy is the lack of a coherent strategy. In Sydney, with the improvement in police-gay relations, continued police hostility actually exposes an internal contradiction. The mobile police station at Taylor Square, liaisons established with groups like "Dykes on Bikes", and the support for Beats Outreach reflect a new co-operation between police and the gay community. *On The Beat* openly acknowledges the support police have given the project. For example, in areas such as Newcastle, Outreach workers have direct lines to police stations, a move prompted by the need to protect the workers themselves from the threat of violence. Even more positively, the police now have a Gay and Lesbian Liaison officer on staff and have set up a "special task force" to investigate the recent expressions of homophobic violence.³⁹

The police-gay liaison has been slow in coming and was achieved only after the establishment of organisations which the police/state can recognise as interest groups. Principle alone is an unheeded counsel in matters of police behaviour. Sheer political clout has been responsible for whatever success the gay community has had in their attainment of a "fair cop". Such changes are welcome but need to be reinforced by the development of policies which influence the activity of all police. In non-gay areas, where the dangers to beat users primarily exist, homophobia still seems to exercise an influence on the policing of beats.

Additional measures to improve the situation might include the establishment of an independent body, for example a "Gay and Lesbian Ombudsperson" to scrutinise and receive complaints concerning police activity. Another, possibly more effective option would be to encourage and extend the type of self-policing within the gay community practiced by "Dykes On Bikes" who have already received some government financial assistance for their surveillance work within established gay areas.

Police intervention in beats also obstructs attempts to educate and protect beat users through health awareness by fostering suspicion and creating the fear of entrapment. This creates a climate of distrust which makes it more difficult for Beats Outreach Workers to establish the contacts necessary to realise the potential of their work which has an undeniably positive public policy purpose.⁴⁰

Another manifestation of confused public policy is that the Beats Outreach project does not cover the inner-urban or eastern suburbs. This is so in spite of AIDS Council lobbying to extend the service to these areas. The problem appears to be the perception of these areas as part of the gay community where because of the acceptance and "visibility" of

39 Birmingham, John, "Murder City Nights" (June 1991) 458 *Rolling Stone* 41.

40 See *On The Beat*, p8 for a description of typical interactions.

homosexuality, beats are assumed not to be a "problem". This is obviously false as the eastern suburbs, away from Darlington and Paddington, are full of beats populated by men who could benefit from the extension of this program.

An enduring problem which requires attention is the negative depiction of the beat in the media. Their tolerance of the gay community may not stretch this far, but without recognition and more serious discussion of the beat, responses and solutions will probably never be successful. For example, the *Rolling Stone* story⁴¹ remains silent about the public toilet scene. The silence on the legitimacy of the beat is deafening and deadly for, as the papers show, this is where the most disturbing violence against gays is happening.

Ultimately by remaining silent or tolerating the continued aggression towards beats our society denies a larger cancer. Beats embody the dilemma of sexual identification in our society and despite their popularity are essentially testimony to our entrenched homophobia. To the extent that men who do not identify as gay use beats to have sex with men without making the political/personal decision to "come out", we can see how limited is the victory of gay liberation and how strong is the demand for singular sexual identification. An ironic implication of a sympathetic approach may be the diminution or disappearance of beats. The removal of the taboo which excites many users may reduce the appeal and more generally, may be part of a new, broader acceptance of homosexuality which may lead some men out of the beats into the more mainstream avenues of gay contact. But the beat, if it is to wither away, must do so on its own terms and its durability suggests that this is unlikely. It is more important for us to encourage the withering away of the negative myths which obscure the reality of the beat. Only with then can the formulation of a co-ordinated public policy which accommodates the interest and needs of the men who use beats evolve.

41 Birmingham, above n39 at 58.