Welfare, Punishment or Something Else? Sentencing Minor Offences Committed by Young People in Tasmania and Victoria

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Abstract

There is a continuing debate within juvenile justice between the approaches of welfare and justice. Those advancing these arguments often present young people as a deviant group who should be punished by tough measures such as detention, or as victims who require social support rather than criminal sanctions. This, however, may exaggerate the seriousness of offending and the severity of the response in the majority of cases that come before children's courts. Drawing on observational research in Tasmania and Victoria, this article describes the minor cases that come before magistrates, and the considerations employed in sentencing. The article argues that what takes place in children's courts can equally well be understood as culture contact, in which adults spend considerable effort trying to socialise the young, often with limited success. This ethnographic approach has implications for those advocating greater intervention in the lives of young offenders, even if this is targeted at those most at risk. This is because many offences that are brought before children's courts are revealed to be quite trivial.

Introduction

Although it is sometimes challenged as outdated or simplistic, the debate between welfare and punishment responses, or what are more usually described in the policy literatures as 'models of welfare and justice', remains central to policy debates on juvenile justice.[1] Many liberal commentators, like the 'child-savers' of the past, see young offenders as belonging to the larger category of disadvantaged youth in need of care and protection. They would like to close down detention centres, or even redescribe children's courts as dispute centres

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1 The term welfare–punishment debate seems justified as a means of getting to the root assumptions of what divides those arguing over the legal and procedural arrangements constituting children's courts. Central elements of the justice model that has been introduced in many countries since the 1960s are that young people should be responsible for their crimes, and that the courts, rather than social workers, should make decisions about young offenders. For general introductions and discussion, see Cunneen and White (2007) and Muncie, Hughes and McLaughlin (2002).

(Youth Justice Coalition 1990; United Nations Committee on the Rights of the Child 2007). Many police officers and members of the public, concerned about rising levels of offending, would probably like more young people to experience detention, to combat what they perceive as rising levels of youth crime (Budd 2009; Barrett and Kaye 2009).[2]

There have been many books and articles published since the 1980s questioning the terms of this debate. These are, however, usually advanced by those committed to the welfare approach as criticisms of the punitive nature of the welfare and punishment measures employed in juvenile justice (for example, Bottoms 1974 and Asquith 1983). This article seeks to go further by questioning the assumptions employed by those on each side of the debate. It will be suggested that the professionals and academics debating these issues tend either to view young people either as imperfect adults suffering from some kind of social or psychological deficit, or to project onto them adult characteristics such as a concern with obtaining human rights. Instead, it will be suggested that young people themselves do not necessarily see their behaviour as problematic. This was often reported by practitioners interviewed for this study (see Travers 2007), and also apparent from observing hearings and the waiting areas in children's courts. Many, although not all, defendants seemed relaxed and outwardly unconcerned that they had been brought before the court (cf O'Connor and Sweetapple 1988). Despite many hours of conversations with well-meaning adults seeking to rehabilitate them, many continue to offend through their teenage years and into adult life. Given this social reality, it may be worth viewing the juvenile justice system sociologically as a place in which children and adults meet, without necessarily understanding each other (Waksler 1991), rather than as an effective way of changing behaviour.

To advance this case, the article will firstly review the welfare–punishment or welfare–justice debate (the terms are used interchangeably), suggesting the two positions draw on a set of popular images in our culture of the young person either as deviant threat to society or as a victim mistreated by social control agencies such as the police and children's courts. The central part of the article will draw on empirical research based on observing the sentencing of minor offences by children's courts in Tasmania and Victoria. The article will conclude by considering the policy implications, given that quantitative research in Australia indicates that there are large numbers of repeat offenders, suggesting the need for targeted intensive interventions (Chen et al 2005; Weatherburn, Cush and Saunders 2007; Livingston et al 2008).

The welfare–punishment debate

There are some commentators in the field of juvenile justice who suggest that the welfare–punishment or welfare–justice debate has become a pseudo-debate that no longer reflects the concerns of practitioners, or that masks the fact that welfare and punishment measures are equally punitive (Smith 2005). On the other hand, it is hard discussing any practical issue, or the wider political issue of how we respond to youth crime, without employing this framework. The aim of this section is to show how this debate remains important for Australian juvenile justice, and to contrast the images of offenders used by the two traditions.

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[2] The use of the word 'probably' seems justified when attempting to convey public attitudes about youth crime, since one never usually hears calls in the media or by politicians to lock up more young people, or bring back corporal punishment. Instead, the need for tough policy measures is implied through dramatic and selective reporting.

The continuing relevance of the debate

The latest edition of John Muncie's *Youth and Crime* (2009:303) argues that 'the argument of welfare versus justice may ... be seriously misplaced given that both have produced highly oppressive outcomes in the past'. The last part of this sentence is true, but it does not mean that there have been great changes in how practitioners think about juvenile justice. Far from being 'moribund' (Muncie 2009:301), the welfare–justice debate seems omnirelevant whenever there are debates about juvenile justice, and this can easily be demonstrated in Australia.

The tension, if never outright debate, between the two models, informs policy and practice at different levels. State governments may, for example, have to choose between directing resources to the police or youth justice workers, or within youth justice to rehabilitative programs in the community or detention centres. Similarly, although proponents of restorative justice seek to transcend welfare and justice approaches (Braithwaite 1989), this movement must position itself as aligned with each side of the debate in order to obtain political and institutional support.

Images of offending

At the root of debates about welfare and justice, lie different images or assumptions about the young offender, held by those with liberal or right-wing views (Travers 1997). These are widespread in politics and public life, and in the entertainment industry. In the media, there are those who adopt a sympathetic approach to the problems of young people. One can sometimes watch this kind of item on ABC Television's *Lateline*, or in documentaries on SBS. There are also commentators who would like a considerably more punitive approach (shock jocks or the editorials of *The Daily Telegraph* in New South Wales). These debates draw on and reproduce stereotypical images. Young offenders are commonly portrayed either as out-of-control delinquents or even thugs who will only respond to punishment, or as victims with sad histories of homelessness or drug addiction who require help from social workers.

Although criminologists and sociologists often present a more complex view of juvenile offending, they also draw on these general images.[3] There is a political divide — which mirrors the welfare–punishment debate among practitioners — between those who see young people as deviants or victims. A variety of strain or control theory that has become increasingly influential in Australia, as well as internationally (for example, Farrington 2002), often sees young offenders as imperfectly socialised.[4] From this perspective, punishment and welfare measures are understood as complementary. In recent decades, great efforts have been made to identify the causes of offending, using quantitative methods, and develop effective programs that rehabilitate offenders, but also protect the social order. By contrast, the critical or conflict tradition portrays the mainly working class youths who commit offences as forced into crime through poverty and deprivation (for example, Cohen 1999; Brown 2005). The criminal justice system unfairly targets them, so they are viewed as victims of social control agencies, such as the police and courts.[5]

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3 An interesting example is the sociologically-informed American television drama series *The Wire*. This sets out to challenge stereotypes, so young drug dealers are portrayed as complex individuals struggling with their social circumstances.

4 This long-standing tradition in criminology has been repackaged as 'pathways' or 'risk factor' research (see, for example, France and Homel 2007).

5 Sheila Brown (2005:34) complains that identifying 'risk factors' amounts to 'victim-blaming'.

These images are employed, admittedly in complex ways, within the welfare–punishment debate. Arguments for detention are based partly on the view that many offenders cannot be reformed: they will only respond to punishment. Those supporting welfare initiatives often see the young person as a victim, and offending as caused by social and psychological deficits. Like all stereotypes, these have their uses in political debates. Nevertheless, they are stereotypes, and each exaggerates the seriousness of youth crime. This can be demonstrated by examining how the children's courts in two Australian states respond to minor offenders. It will be suggested that young offenders cannot easily be viewed as either deviants or victims. It is also difficult to see the courts as responding with either welfare or punishment.

Methods and data

This study draws on fieldwork in Tasmania during 2005 and Victoria during 2007, following procedures approved by the relevant ethics committees.[6] The objective was to observe a range of sentencing hearings after guilty pleas, and to speak to practitioners from different agencies involved in the sentencing process. In Tasmania, 40 hearings were observed in 15 days of fieldwork. Observations were conducted in each of the state's four magistrates courts (Youth Justice Division) in Hobart, Launceston, Burnie and Devonport. In Victoria, 16 hearings were observed in seven days of fieldwork. Sentencing was observed in the central children's court, and three metropolitan and one country magistrates courts. In Tasmania, 15 interviews with practitioners were conducted, including Youth Justice workers, magistrates, prosecutors, and court administrators. In Victoria, a smaller number of interviews were conducted. There was, however, the opportunity to 'shadow' Legal Aid lawyers, which proved helpful in understanding their work and the background of cases (including being given access to documents not available from observing court proceedings). In addition, in Tasmania, audio-recordings were obtained for some hearings, which made it possible to appreciate in more detail the collaborative, professional work involved in sentencing (Travers 2007).

Ethnography as a research methodology seeks to address the meaningful nature of human activities, through direct observation (Prus 1997; Pogrebin 2003). Although there are qualitative traditions of analysis that emphasise sampling (for example, Strauss and Corbin 1990) or seek to produce formal generalisations, the method of presenting and analysing data in this article draws on older traditions of case study research going back to the Chicago School (Feagin, Orum and Sjoberg 1991). More specifically, it builds on a tradition of naturalistic research, that complements quantitative studies, by examining different aspects of the criminal justice process (for example, Cicourel 1968; Frohmann 1991).[7] The objective is to identify some common features of offences that resulted in minor sentences, through looking at actual sentencing hearings. No statistical claims about representativeness are made about the examples presented, which all come from hearings observed in Tasmania. Nor is the article concerned with identifying variations between the states (except in relation to the procedures described in the next section).

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[6] This article was written during the second stage of a research project based on observing sentencing hearings in Tasmania, Victoria and New South Wales. Most of the data supplied comes from the Tasmanian fieldwork, although the nature of minor offences observed in Victoria was similar. Comparison of the legal cultures and procedures in the three states is the subject of an article that is yet to be published.

[7] For a recent ethnography comparing how young offenders are sentenced in a children's court and adult court in the USA, see Kupchik (2006).

This is because the article is concerned with what could be observed in any children's court, since magistrates respond to both minor and more serious offences. It seeks to identify what is minor about these offences, and what ethnomethodologists call the 'practical reasoning' (Garfinkel 1984) employed both by magistrates, but also by anyone asked to determine the moral or criminal seriousness of the offences. In the case of minor offences, we know that many offenders do return to court, but also that many do not (Weatherburn, Cush and Saunders 2007). This is an unknown in this article, but it does not affect the analytic objective of identifying the characteristics or typical features of minor offences. Moreover, whereas the approach in some criminological traditions might be to conduct scientific tests to determine seriousness (for example, O'Connor 1984), for this article the only assessment that matters is that of the magistrate. The main data has, however, been put in the Appendix to this article, so that readers can decide for themselves whether they agree with this official response.

Diversionary procedures in Tasmania and Victoria

Before presenting the data, some background information is needed on how diversion takes place in the two states. In Tasmania, the *Youth Justice Act 1997* (Tas) introduced a two-tier system, in which offenders who plead guilty first attend a minimum of one conference organised by the police, and then a minimum of one conference arranged through Youth Justice Services (within the Department of Health and Human Services). According to a police youth officer, in one area of Tasmania it had been common practice to give offenders the chance of attending six conferences in total, before being referred to the court. Since he had been appointed as coordinator, offenders had been given three chances, demonstrating how the implementation of an administrative policy can depend on the views of particular people, levels of resources and other contingencies. In most Australian states there is a policy of sending all offenders who plead guilty, and have an appropriate attitude, to conferences. A prominent exception is, however, Victoria, in which offenders who commit minor offences are diverted to what is known as the 'Ropes' program. This involves spending a day with police officers in a climbing centre, and receiving a group lecture about responsible behaviour. Offenders appear in the children's court briefly, but if they complete the program, they do not return to court or receive a criminal record.[8]

There are various institutional reasons why diversion does not always take place. In some areas of Tasmania, the police do not always have the resources to arrange conferences. In Victoria, a police officer can refuse to sign a Ropes notice without giving a reason, or the magistrate can feel the offence is too serious for the Ropes program. For whatever reason, many minor offences come before children's courts in the two states. In responding, magistrates have a number of options that involve finding guilt in a criminal offence, but without making the defendant subject to supervision by Youth Justice or punishing them for their actions by, for example, requiring them to do custodial service. Instead, they can require an undertaking or a good behaviour bond. Another common response is to dismiss the case or to impose a small fine.

Given that there are criminologists who place more emphasis on repeat or serious offenders (for example, Livingston et al 2008), it is important to make clear that the majority

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[8] The Ropes program was introduced in 2003 and is currently being evaluated (Grant 2009). It is a good example of how one can introduce significant changes to procedures without requiring new legislation.

of sentences made by children's courts are for these minor offences.[9] One rationale for doing qualitative research, for spending time observing cases, and talking to practitioners on the ground, is to convey a better sense — than is available from quantitative data or acknowledged in policy reports — of the type of offences that come before children's courts and of what happens in sentencing.[10]

The situational character of offences

David Sudnow (1965), when writing about plea-bargaining in the California criminal courts, made a distinction between legally-defined offences and 'situational' crimes. The circumstances in which a crime was committed influenced the response of the court and, in particular, whether a plea-bargain was permissible. To give an example, an opportunistic burglary was treated differently, by the Public Defenders and District Attorneys, to a burglary that had been planned and where valuable items were taken. The defendants were each charged with burglary, but only the first case was suitable for the charge being reduced in return for a guilty plea.

The concept of a 'situational' offence is especially relevant to sentencing, since magistrates have to take into account the circumstances in which the offence was committed. In the children's court, the circumstances are often related to the age of the offender, or to put this differently, the offences are the kind that are committed by young people rather than adults. Magistrates are not required to give detailed reasons in court and, given there might be a number of mitigating factors, it is not usually possible to be certain what most influenced a decision. It is, however, instructive to look at common features of offences that receive lower sentences. Ten cases (Cases A–J) are summarised in the Appendix. Some have situational features such as the fact that violence takes place between juveniles (Cases A–B) or during encounters with the police (Cases C–D), or because they are 'status' offences in the sense that the legislation is used to protect young people from harming themselves (Cases E–G). Others seem less serious because they involve youthful characteristics such as opportunism, or susceptibility to peer pressure (Cases H–J).

Crimes of violence between juveniles

In a study about homicide trials in the American 'Deep South' during the 1940s, the ethnomethodologist Harold Garfinkel (1948) made some interesting observations about the distinction between inter- and intra-racial homicides for legal practitioners. Black-on-black killings were taken less seriously than those within the white community or where black offenders had killed a white victim. This was evident in the amount of time spent by the court, the attention given by the media, and the relatively lenient sentences received by black offenders in intra-racial homicides. There are obviously many differences between adult homicide in a racially-segregated society and juvenile crime. However, it is striking that most offences by young people are committed against other young people. If the same

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9 The annual report for the Children's Court of Victoria in 2006–07 indicates that 16.4% of offenders received a good behaviour bond (one of five sentencing options for minor offences), whereas only 1.2% were sentenced to detention. This should not be taken to mean that there are no repeat offenders, and a study employing similar methods to that conducted by Chen et al (2005) in New South Wales would probably find that many offenders go on to receive sentences of imprisonment in adult courts. It does suggest that the criminologist can exaggerate the problem of youth crime by focusing on repeat offenders, and serious offences.

10 For different views on whether qualitative and quantitative data are complementary, see Travers (2008) and Jeffries and Bond (2009:67–8).

offences were committed by adults against adults, or by children against adults, they would be seen as deserving serious penalties.

There may be other factors relating to the cases listed under this heading that explain the lenient sentences in Cases A and B. In Case A, it may be that the victim was viewed as partially responsible through having abused the defendant's girlfriend. Nevertheless, the fact that only young people were situationally involved, and also that the injuries are not usually serious, seem relevant. One would not expect intervention by police and the courts to prevent teenagers fighting amongst themselves. One could even argue that it is not really criminal behaviour, but just a normal part of growing up.

Assaulting or disobeying the police

A common offence committed by young people is assaulting the police. This is also true in the case of adults around clubs and pubs, and is associated with heavy drinking. For young people, alcohol is also a factor, but the problems tend to happen on the street or in public places, where they are allowed to congregate. Many minor offences are committed simply when a young person abuses officers while they are arresting someone else, but they often do more than this.

Young people also often appear in court charged with assaulting their parents, and on some occasions restraining orders are sought, although at least one magistrate observed believed that these were an inappropriate remedy for a problem that should be addressed by a parent, school or local police officers.[11] It is perhaps not surprising that police officers have greater protection under the law from being abused or disobeyed than parents. As one prosecutor observed, when an officer has lost patience, he or she can charge the youth and pass on the problem to Youth Justice or the court. This may, however, be unfair to police officers who deal with disobedience and abuse on a daily basis, and need to maintain their authority to manage public places.

'Status' offences

A criticism of juvenile justice systems prior to the introduction of the justice model was that young people could be taken into care for long periods, without having committed a criminal offence, simply for being children who had come to the attention of welfare agencies (Bernard 1992). There are only a few true status offences (an example is under-age drinking). However, there are other offences that, while they can be committed by adults, are either directed at, or mainly used against, young people. These are designed to protect them from harm, but also have the unintended consequence of bringing young people into contact with the criminal justice system from an early age.

One offence of this kind is driving without a licence. Although adults are charged with this offence, many offenders are 17 year olds who are learning to drive. In Case E, an unlicensed, uninsured driver crashed into a parked car, which might not have happened if she had been accompanied by an adult. In Case F, the defendant committed other offences while driving without a licence, including carrying an under-age pillion passenger and speeding. In other cases observed, defendants appeared in court simply for driving without a licence and being uninsured. There were also youths charged with the offence of 'hooning' (for example, excessive revving, or doing 'wheelies' on a motorbike).

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[11] The complainant in these cases was often a single-mother looking for help in controlling a difficult child. One magistrate observed was reluctant to impose a restraining order since a breach could lead to imprisonment, without a criminal offence necessarily having been committed.

Another 'status' offence is riding a bicycle without a helmet (Case G). Adults can also commit this offence, but the objective behind the statute is to protect young people from injury. Some interviewees reported that many youths are regularly charged after disobeying police warnings, and one defendant in Tasmania may even have ended up in Ashley Youth Detention Centre after disobeying warnings 20 times. This is another example of how enforcing the law, and even attempts at 'zero-tolerance', are not necessarily effective and can have unintended consequences. All of these offences (Cases E–G) involve a lack of thought, as well as having caused or risked causing serious harm, and this may explain the lenient sentences.

Opportunism

One distinction between young people and adults is that adults are expected to think about, and be responsible for, their actions. It is possible to commit an offence recklessly, which means not considering the consequences of an act that a reasonable adult person would expect to cause harm. Young people, on the other hand, often commit offences spontaneously without thinking about the consequences for victims or themselves (Cases H–J). This means that the various practitioners concerned with offenders are concerned with education and socialisation as much as punishment. They assume and count on the fact that offenders will acquire a sense of responsibility as they grow up, so there is no need for punishment.

Sentencing minor offenders

An important observation made by Sudnow (1965) in respect of plea-bargaining, was that defence lawyers assumed guilt. Interviews with clients had a matter-of-fact quality in that the lawyers were looking to identify normal crimes that could be disposed of through a plea bargain. In the case of children's courts, what strikes one about sentencing minor offences is that magistrates are well aware that these offences are trivial and that they only have a limited ability to influence young people. Nevertheless, they do their best at getting defendants to acknowledge they have committed an offence and, within the constraints of the hearing, try to tutor the young person in adult values and behaviour.

This communicative work can be illustrated by looking at two sentencing hearings. In the first case (Case F), the young person was charged with driving while under-age, although there were other typical aggravating factors. In the second case (Case G), the offence committed was riding a bicycle without a helmet.

A road traffic offence

Magistrates have some discretion in how they conduct sentencing hearings. Some of those observed asked questions in an attempt to discover more about the defendant or involve them in the proceedings. Others used the hearing to give a short lecture, which it was hoped would 'get through' to a young person by explaining why he or she had committed an offence. The following extract from the audio-file of a hearing shows how this was done in the case of a 17 year old (Case F) who had gone out riding on a motorcycle after having an argument with his parents:

Audio-file

M: Now it seems to me that on this night you did everything wrong. You start off with an argument with your parents. There are some times when people cannot see eye to eye. Jumping on a bike to clear your head is not the way to do it. Driving is one of those interesting aspects of our lives that requires total concentration not the time to be driving when you are trying to clear your head from some argument you've had with your parents. By the way as you get older you might start to realise that you shouldn't argue with your parents. They might actually be right. You should listen to them. And then things went from bad to worse, didn't they? First of all, you didn't have a tail light. Then you picked up a pillion passenger. When you get your learner's permit even then you can't carry a pillion passenger. Then you start speeding and heading up the street on a vehicle that's not registered, therefore uninsured. You can thank your lucky stars you have come before me today in my role as magistrate and not come before me in my other role as the coroner here. You are carrying a pillion passenger, are unregistered, uninsured, speeding. Thank goodness there wasn't an accident with someone being potentially killed. You start to see the seriousness of what you've been doing? I bet you didn't give any thought to any of that when you started.

D: [nods head]

M: I want people to learn to think first before they act rather than the thinking coming after they've acted. Now I've noted the reference from your employers. That's good. I think the appropriate way to deal with you is to look at these five matters now as one overall incident and I will just give you one penalty. I'm going to give you a financial penalty as a reminder of what will happen if you continue to break the road laws.

Although not explicitly stated by the magistrate, the main reason for the lenient sentence is that, at the time, this youth was not thinking about the possible consequences of his actions, whereas there was evidence in court that he was remorseful and had matured since the incident. The fact that his father was in court and there was a good employer's reference may also have been significant. Viewed in this way, it becomes difficult not to see this defendant as a basically responsible young man who has gone off the rails after leaving school, but has now got back on track through obtaining a job.

This is an example of how magistrates (or anyone observing the hearing) use what Garfinkel (1984) terms 'the documentary method of interpretation'. The particular of

speeding is interpreted in the light of an underlying pattern of a responsible young man who has gone astray, rather than a delinquent. Cicourel (1968) and Emerson (1969) show, respectively, how this method of reasoning was employed by police officers making charge decisions, and by judges in a children's court.

Driving a bicycle without a helmet

While observing sentencing hearings in Tasmania, there was an advertisement being shown on television stations trying to raise awareness about the serious head injuries one can receive through riding a bicycle without a protective helmet. Many young people in Tasmania are cautioned by the police for this offence and some end up in the courts. According to one informant, one youth had eventually been sentenced to Ashley Youth Detention Centre for repeatedly refusing to wear a helmet. This may be an apocryphal or exaggerated story, but it raises the issue as to how the legal system should respond to persistent violations of a minor offence that does not result in direct harm to other people. Here is an example of how a magistrate addressed this offence:

Fieldnotes

M: Why having been spotted by the police, and cautioned, did you ride by without a helmet?

D: I was in a hurry to get an ice cream.

M: Did you think this is a good reason for not wearing a helmet?

D: No.

M: Do you know why you are wearing a helmet?

D: So you don't get hurt.

M: It's there to protect you from a serious head injury or get killed. [...] So you want to pay a big fine?

D: Not really.

M: Where was your helmet? Did you have one at the time?

D: No.

M: Have you got one now?

D: Yes.

M: Wear it all the time?

D: No.

M: Were you wearing it when you came here?

D: Yes.

M: This is your first matter. I accept that you're not going to do it again. If you do it again, I will impose a big fine. On this occasion I will give a reprimand and discharge you. You are free to go.

This is another example of youthful behaviour in that the magistrate accepted that this 14-year-old defendant did not think. The short answers may suggest that he is going along with the Court, rather than taking the matter to heart. The magistrate also indicates in line 19 that paying a fine in the future may be an acceptable outcome. It is unclear whether the defendant had taken to wearing a helmet since the time of the offence, although the magistrate lets this pass and gives him the opportunity to give a positive answer (lines 14–17). From the Court's perspective, it made sense to give this young person the opportunity to learn that riding without a helmet will not be tolerated without imposing a penalty.[12]

In each of these hearings (Case F and Case G), the magistrate was not simply administering legal penalties, but also attempting to educate a young person as someone representing the responsible, adult community. The defendant in Case G was asked some questions designed to test that he was a responsible person. He accepted that being in a hurry does not justify not wearing a helmet, or disobeying the instructions of a police officer. The defendant in Case F, pleading guilty to driving offences, was given some advice on listening to one's parents, and not behaving foolishly after an argument. In other cases, defendants who had committed assaults (often over insults to girlfriends) were given a lecture about not losing one's temper when hearing something that offends you. Young offenders have probably received similar advice from many other sources: their parents, school teachers, police officers and Youth Justice workers.

Juvenile justice as culture contact?

This data gives an indication of the minor offences that come before children's courts. Although no statistics on repeat offending are available for either Tasmania or Victoria, the magistrates and other practitioners told me that the majority of first-time offenders only appear once or twice after committing these minor offences. There was an obvious reason for this, as illustrated in Case B: they grew up and became responsible adults. On the other hand, even this limited data indicates that many young people continue offending and go on to commit more serious offences. Case C shows how it is possible to commit burglaries and receive more serious sentences such as probation orders and community service, and then on returning to court receive a good behaviour bond for a minor offence. It should also be remembered that, because of the diversion process, those appearing in the children's court for the first time have already committed multiple offences. The 14-year-old defendant in Case I had admitted to many acts of shoplifting, although he had only taken chocolate bars.

There are, of course, more serious and repeat offenders who appear before children's courts (Chan 2005; Livingston et al 2008). Many receive considerable help from youth justice workers, social workers and other professionals. Others are given sentences intended to punish rather than rehabilitate. In making these choices, the welfare–punishment debate seems highly relevant. By contrast, if one considers the cases of minor offenders summarised in this article, it is hard to see that they need supervision by social workers or deserve punishment. Nor does it appear that magistrates are intervening to any marked degree in their lives. Whatever is happening when these young people appear in court is not welfare or punishment, but something else.

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[12] It would be interesting to know if the police would have preferred a heavier penalty. It seems likely that directions to wear helmets are disobeyed on a regular basis.

How, though, to conceptualise what happens in children's courts differently? One possibility is to return to the ideas advanced by interactionist sociologists during the 1960s, such as David Matza (1964). He argued that most young people commit very minor transgressions, hardly crimes at all, and recommended that the juvenile justice system should bend over backwards to avoid creating deviant subcultures. There is much of value in this perspective that already informs the work of children's courts. The purpose of diversion, and other measures such as deferred sentences or making a distinction between findings of guilt and convictions, is to avoid labelling and to keep offenders away from contact with more criminally-experienced — or as one magistrate put it, 'unpleasant' — young people.

This attractive, liberal philosophy seems to exaggerate the ability of the court to influence behaviour. The objective of sentencing is for young offenders to recognise that they have done something wrong, and to change their behaviour; but this rarely happens immediately. Here it seems worth considering the alternative way of understanding the relationship between adults and children offered by the sociology of childhood. Frances Waksler's (1991) criticisms of the concept of socialisation seem relevant to our reliance on adult categories and concepts when writing about the juvenile justice system:

> [The concept of socialization can never] encompass the entirety of children's experiences, for children do more than 'get socialized'.... In particular it leaves out both what children are doing when others are socializing them, and when others are not. It neglects the worlds that children design by themselves for themselves. It fails to examine children's ideas and activities as their ways of being in the world. Furthermore, these omissions are not shortcomings of the concept itself and cannot be rectified by modifying the concept: they are a necessary consequence of the fact that socialization is only one way of looking at children (Waksler 1991:22).

To go further in examining what else is happening in juvenile justice outside welfare and punishment will be difficult. There is both a methodological and certainly an ethical problem, in that it would be quite difficult to gain access to the social worlds of offenders without getting offenders to wear radio microphones and, perhaps, commit criminal activities. On the hand, perhaps all that is required is the imaginative ability to consider how the hearing is experienced by the young person, rather than constantly seeking to advance our policy or political agendas as adults. To do so, requires moving beyond the familiar terms of the welfare–punishment debate.

Conclusion: Some implications for criminological research and juvenile justice policy

Most Australian criminologists writing on juvenile justice in recent years have argued for more and greater interventions into the lives of young people. During the 1990s, they were enthusiastic proponents of juvenile conferencing (Daly and Hayes 1997). More recently, the increasingly influential pathways or risk-factor analysis tradition (France and Homel 2007; Weatherburn, Cush and Saunders 2007) has attempted to persuade state governments to target preventative programs on those most at risk of re-offending. Other criminologists have favoured similar initiatives (for example, Chan 2005), even though they understand the causes of offending differently and do not believe that it is easy to predict repeat offending. It is noticeable that those wanting more resources to be given to social workers or psychologists in identifying youths most likely to offend are not, at the same time, calling for more diversion or less intervention for those assessed as low risk.

Although the main objective of this research project has been to contribute to our understanding of routine professional work in children's courts, observing what happens in courts has implications both for criminological research on youth offending and juvenile justice policy. This article has sought to demonstrate that the common stereotypes used in policy and political debate, and which underpin academic studies in criminology, bear little relationship to the actual minor offenders one can observe in children's courts. At the same time, the suggestion by some sociologists that young people may understand their lives differently to adults, has implications for critical researchers who propose that we 'listen to youth' (for example, Brown 2005). Clearly, adults exercise power over young people, even when they are trying to protect them, as in the case of laws requiring cyclists to wear helmets. It is also possible that other factors are involved in sentencing, such as assumptions or prejudices concerning class, gender and ethnicity, which are concealed through focusing on the category of youth. We should still, however, resist the temptation to read our own politically-motivated concerns into interviews with young people who may not see themselves as victims or accept that they have committed offences.

The main implication in terms of juvenile justice policy is whether it makes sense for professionals to spend time on such trivial cases. Admittedly, one could argue that most could have been addressed through diversion. Even so, one might ask whether these young people should have been charged with a criminal offence. The reforms introduced into Australian juvenile justice since the 1990s have arguably led to considerable net-widening and net-deepening (Austin and Krisberg 1981), as more and more young people have been brought into contact with the courts.

Finally, although this has not been the focus of the article, there are policy implications for how we understand diversion to restorative conferences. These are still treated almost as beyond criticism by practitioners in many states, and by criminologists on both sides of the welfare–punishment debate (although see Cunneen and Hoyle, forthcoming). One learns, however, from observing hearings that conferencing is not used in Victoria, the state with the lowest detention rate, and instead minor offenders are sent to climb ropes with the police. There are perhaps lessons here for other states and territories — namely, that it might be possible to save resources by being more tolerant and by giving even more chances to young offenders than happens at present. Debates about welfare and punishment should only be relevant to young people who repeatedly commit serious offences.

Appendix: Some minor offences

Case A

The 17-year-old defendant got into an argument with another youth in a park who had insulted his girlfriend. This youth went on ahead and the defendant called him to come back and headbutted him. The victim had blood on his face and his teeth were knocked out. There was no history of violence. The charge of common assault was dismissed and he was fined A$100 and required to compensate the complainant if there was dental work.

Case B

A 16-year-old female defendant was charged with having taken part in a group assault. The complainant was walking with a friend through a shopping mall when six girls started yelling at them, wanting to know what they had been saying about their boyfriends. The defendant punched the complainant on the head. Initially she said in a police interview that this was self-defence, although a witness said she had not been provoked. She was now 18 years old and expecting a baby. She received a reprimand.

Case C

The 17-year-old defendant abused and lashed out with his fists at police while they were arresting another young person. There was a plea-bargain in court, in which the defendant pleaded guilty in return for the prosecution amending the charge. The charge had originally stated that he had kicked an officer in the stomach twice. He had been drinking and was charged with disorderly conduct. He had completed periods of community service for previous offences. The magistrate gave him a fine and asked him to keep in touch with Youth Justice.

Case D

A 16-year-old defendant was with a group of youths drinking in a car park. A police officer asked him to leave, but he returned within 15 minutes. He had already appeared before the Court and had received cautions (no details were given about these offences). The magistrate imposed a fine of A$50, commenting that he had appeared to have learnt nothing from his previous experience.

Case E

A 16-year-old girl drove in her mother's car to the local shop without having a licence and damaged a parked vehicle. Her mother reported this later that day. She received a reprimand. The magistrate told her that an adult could receive a fine of A$2,000 and disqualification for two years.

Case F

The 16-year-old defendant was speeding on an unregistered motorcycle with a 14-year-old pillion passenger, without a rear tail light and driving licence. According to his lawyer, he had gone out riding 'aimlessly' after having a 'heated argument' with his parents, but was driving competently. He had been riding the motorcycle on their farm for a few years and supplied a reference from his employers. He was fined A$100 and was not disqualified from driving (so that he could obtain his licence).

Case G

A 14-year-old defendant was warned by a police officer not to ride a bicycle without a helmet, but continued to do so. He was in a hurry to buy an ice cream. He received a reprimand.

Case H

A 16-year-old defendant entered a garden and took two garden lights. He had no prior convictions. The magistrate viewed this as an 'opportunistic' offence and dismissed the charge. The defendant was told that if he returned to court, he would not be treated as leniently.

Case I

A 14-year-old defendant removed a chocolate bar from a supermarket without paying. He admitted that he had done this 12 times in the last year and that he knew that this was wrong. He had one formal caution. The charge was dismissed and the defendant was told that, if he returned to court, he would not be treated so lightly.

Case J

A 13-year-old defendant had found a mobile phone outside his school and made two phone calls to his parents. He did not take the phone, but was charged with stealing the credits. The magistrate gave him a reprimand.

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