
NAMING AND SHAMING YOUTH OFFENDERS:

BONFIRE OF THE VANITIES

by Gregory Shadbolt

INTRODUCTION

Imagine if you would, an immature, Aboriginal teenage girl sitting in the Brisbane Murri Court,¹ about to be sentenced for a range of drug related property offences—a repeat offender and an all too familiar story to many working at the coalface of the criminal justice system. Further to that, imagine that this ‘child’ has lived on the streets for the last five years to escape a highly dysfunctional family environment—one which has included being repeatedly raped by an intoxicated uncle since the age of eight. Imagine that the only real family this child now has is a group of street-living peers, some with similar tales of extreme disadvantage. The child turns to drugs (and thus to offending) in order to deaden the pain of her past and suppress the feelings of utter hopelessness in terms of any belief in a meaningful future. Imagine that despite being a tragic victim whom society has failed, she carries deep within her core a sense of extreme shame, a shame which is almost palpable to her defence lawyer. Her legal representative, a thick-skinned, somewhat cynical defence lawyer and one used to remaining objective and dispassionate, is much to his embarrassment and despite his best endeavours, moved to tears during the sentencing process. In reality, the defendant is an emotionally fragile child in desperate need of help.

Wind the clock forward a number of years and not only has the Murri Court been disbanded by the government of the day², but under the mantra of being ‘tough on crime’, repeat offenders as the child in question are to be quite deliberately publicly named and (hopefully) shamed. That is—further shamed. Hard to imagine, yet the Queensland Government has declared its intention through numerous media statements to introduce ‘tough new laws’ aimed at, amongst other things, the naming and shaming of repeat juvenile offenders.³

In addition to naming repeat youth offenders, by allowing their names to be published, the Government states that the new laws will:

- add a new offence for breaching bail which will carry a maximum of one year’s detention;
- make all juvenile criminal histories available in adult courts to give a Magistrate or Judge a complete understanding of a defendant’s history;
- remove detention as a last resort to give the court ‘more discretion’ during sentencing and;
- transfer juvenile offenders to adult correctional centres when they reach 17 years of age if they have six or more months of their sentence remaining.⁴

Given the current over-incarceration rates of Aboriginal and Torres Strait Islander youth,⁵ such changes will seemingly make an already appalling situation worse.

A ‘GENERATION’ OF YOUTH OFFENDERS?

The proposed legislation is predicated upon the government’s view that Queensland needs tough measures to come to grips with a ‘generation’ of young offenders—a problem which has allegedly arisen due to the former government’s ‘slap-on-the-wrist’ mentality. What then do the actual statistics reveal in terms of this purported generational wave of offenders in Queensland?

In the 2011-12 financial year the combined number of youth offenders that appeared before the Children’s Court of Queensland and the Children’s (Magistrates) Courts actually fell by 6.9 per cent compared to the previous year.⁶ This followed on from an 8.6 per cent decrease in 2010-11 (as compared to 2009-10).⁷ This was despite the fact that during the same two time periods, we saw a 9.1 per cent and an 11 per cent drop in the administration of police cautions (ie a greater propensity to lay charges). A sentence of actual detention is of course associated with more serious offending behaviour and yet according to the Children’s Court of Queensland’s Annual Report 2011-12, there was a staggering 38.3 per cent drop in sentences of detention as compared to the previous year.⁸ However, the raw numbers of actual charges rose in 2011-12, which surely leads us to a conclusion that far from a ‘generation’

of offenders, a relatively small cohort of repeat offenders commit a significant number of the overall offences. It is thus difficult to imagine that the proposed legislation, which will affect all repeat offenders, has been based upon any form of scholarly research or empirical evidence. This is an important issue given that the proposed changes are likely to have the opposite effect to the objective intended. That the proposed legislation is likely to be popular with the 'average' voter is unquestionable. Widespread, almost knee-jerk support for such populous law reform is to be expected and is the stuff upon which political aspirations are often based. It is certainly no coincidence that when each election rolls around, tough law and order proposals are wheeled out to the smorgasbord of voter consumption from all sides of the political spectrum. Public enthusiasm, irrespective of any claims as to a professed 'mandate' should not, of course, be the yardstick. Indeed, it is trite to suggest that politicians should where appropriate *lead* public opinion rather than *follow* it. Edmund Burke, that great Irish-born politician of the 18th century commented that 'your representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion'.⁹

Few would suggest that the current government, with its philosophy of 'restoring the balance of justice' is not well intentioned. Indeed, certain other recent law reform initiatives developed under this same mantra have in part been both bold and innovative, and they have certainly been true to their stated aim of 'getting on with the job'. That said, the author has lost count of the number of times when in his youth he was clipped over the head¹⁰ by his father and admonished with the words 'more haste, less speed'.

TREATING CHILDREN AS ADULTS

Queensland, as many would appreciate, is already out of step with the rest of the country (not to mention international conventions) by treating seventeen year old offenders as adults.¹¹ On this very subject, Justice Shanahan stated that 'exposing seventeen year olds to the dangers of an adult prison is, in my view, unacceptable. Prospects of rehabilitation must also be diminished because of contact with adult offenders'.¹²

It is of course only natural for people to be concerned for their personal safety or for that of their property. Indeed, no one in their right mind would be against addressing recidivism, be it in the adult or juvenile jurisdiction. Many people are sick and tired of the 'revolving door' which is so often associated with repeat youth offenders. The question remains however: What is the best way to address this?

There is the additional consideration of not only addressing rates of recidivism, but in ensuring that policies or practices that are put in place do not actively exacerbate the situation. Even if there were a total dearth of research on the subject, which of course there is not, some might think that common sense alone would suggest that such 'naming and shaming' proposals are ill-advised.

YOUTH SUICIDES – A POTENTIAL UNINTENDED CONSEQUENCE

It has long been accepted that some highly misguided youth offenders regard a sentence of detention as a rite of passage, that is, as something to be borne as a badge of honour. As sad and deplorable as such a mindset might be, any suggestion that naming such offenders will lead to them being 'shamed' is naive. Indeed, there can be no doubt that certain recidivist offenders will not think twice about committing offences for no other reason than seeing their names 'up in lights' on the front pages of various newspapers. In effect, the proposed laws could stimulate defiant mindsets to actively increase their offending behaviour.

For those offenders who will *not* wear such notoriety as a badge of honour, there is the clear potential for them to be harassed or bullied in public or whilst at school, thus acting as an impediment to them re-engaging with society in a positive manner. It is clear that naming youth offenders will have a negative impact upon their prospects of rehabilitation and in some cases could even lead to youth suicides. There is no doubt that peer cruelty can have devastating repercussions. Indeed, given the ever-increasing role of social networking in young people's lives and a correlation between cyber bullying and youth suicide, naming and shaming legislation could potentially have tragic unintended consequences. Of 21 youth suicides in Queensland in 2010-11, six were known victims of bullying.¹³

ADDRESSING RECIDIVISM – WHAT ACTUALLY WORKS?

In order to feel 'shamed' one needs a sense of shame. Youths who have grown up in highly dysfunctional environments can have little insight into feelings of remorse or guilt. Such is a sad indictment upon society, but it is none-the-less a fact of life and a backdrop against which the utility of such proposed changes need to be viewed and measured.

To his credit the Queensland Attorney-General, Jarrod Bleijie, has openly acknowledged that naming and shaming will adversely affect future employment prospects of these

individuals—but relies upon such as thus being an added deterrent to offending. It is the author's view however, that impulsivity amongst juveniles and their reduced capacity to foresee the consequences of their actions markedly reduces the deterrent effect of such initiatives. The key to reducing recidivism lies squarely in addressing the socio-economic aspects of offending behaviour. It is no coincidence that the world over, prisons and detention centres are invariably filled with any given society's poor and most disadvantaged citizens. The appalling over-representation of Aboriginal and Torres Strait Islander peoples in prisons and detention centres is directly linked to disadvantage.

Recidivist offenders are typically characterised by low socio-economic status, low educational attainment, mental health problems, substance abuse problems, and not infrequently, are the subject of physical abuse and neglect, to name but a few. Aboriginal and Torres Strait Islander peoples are grossly over-represented in populations with these characteristics and therefore, not surprisingly, also within the criminal justice system.

Early intervention and prevention strategies are the keys to not just targeting recidivism, but in preventing offending behaviour altogether. Of all intervention and prevention strategies, education must be a paramount consideration. It is not a question of throwing tax-payer dollars at the problem, but rather one of utilising resources more wisely, which brings the concept of 'justice reinvestment' squarely into the frame. Overhauling the child protection legislative regime (and related policies and practices) is another component to this equation. The number of child offenders on dual orders (that is, on court orders whilst concurrently being under the care of the department) is alarming.¹⁴ It is also important for governments to recognise that the least effective means of addressing youth recidivism is by placing children in detention centres or military style boot camps.¹⁵

It is an unfortunate irony that both the Murri Court and police referred Youth Justice Conferencing ('YJC')—two vehicles which provided a reality check for young Aboriginal and Torres Strait Islander offenders in this regard¹⁶—have since been abandoned by the current government. The Murri Court and YJC program provided youth offenders with an opportunity to actually appreciate the ramifications of their actions upon the victims and in doing so, perhaps for the first time in their short lives, allowed them to feel genuine embarrassment and remorse for their conduct. In my experience, many Aboriginal and Torres Strait Islander offenders felt great shame having to

appear in front of their respected Elders in a Murri Court setting. It was without question a highly confronting experience for them and provided an opportunity for meaningful introspection and ownership of offending behaviour. Similarly, police-referred YJC (a diversionary option away from the justice system) has seen many hard-bitten repeat offenders, seemingly without the capacity to have even a minor blip of feelings of remorse or guilt show up on their personal radars, realise for the first time the impact of their offending behaviour upon their victims.¹⁷ Coming face-to-face with their victim, personalising the effects of their offending behaviour was often highly confronting and life-changing. Further, the research showed that victim satisfaction with the conferencing process was exceptionally high.¹⁸ These vehicles were actually effective in the war on recidivism and thus stand in stark contrast with naming and shaming initiatives.

CONCLUSION

Leaving aside for the moment such considerations as whether or not the current path embarked upon by the Queensland Government is paved with good intentions or smacks of political opportunism, the fact remains that not only will the proposed initiatives fail miserably in their intended objective, but in some instances, will be entirely counter-productive.

From an Aboriginal and Torres Strait Islander perspective, it is particularly disappointing that in a State where there is already an appallingly disproportionate over-incarceration rate of Indigenous youth, that we should be contemplating legislative reforms that will undoubtedly make an already deplorable situation worse. There has been much discussion in recent years in relation to 'closing the gap' initiatives in terms of addressing Aboriginal and Torres Strait Islander disadvantage—although in truth such could be more accurately described as requiring 'closing the chasm' initiatives. Populous and 'band-aid' reforms being preferred to meaningful and substantive initiatives aimed at addressing socio-economic disadvantage, is not only highly regrettable, but will eventually lead to increased offending rates and less safe communities. What must never be lost sight of however, in what on occasions can become something of a philosophical debate, is that ultimately 'we' as a society are dealing with the lives of young, emotionally immature children, who are often victims of violence and extreme abuse, in need of help.

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law section within Queensland ATSILS in 2005. During his 17 years with ATSILS, he has primarily specialised in the criminal law area. The views expressed in this article are his own personal views and do not necessarily reflect those of ATSILS.

- 1 The Murri Court was a sentencing court designed specifically for Aboriginal and Torres Strait Island offenders with greater cultural sensitivity due in part to the participation of respected Elders, with the objectives of reducing recidivism; reducing non-compliance with court orders; and reducing failures to attend court.
- 2 Queensland Law Society, 'The vulnerable vetoed in court cuts' (Media Release, 14 September 2012) < http://www.qls.com.au/About_QLS/News_media/Media_releases/The_vulnerable_vetoed_in_court_cuts>.
- 3 Queensland Government, 'Reforms get tough on youth crime' (Media Release, 26 September 2013) < <http://statements.qld.gov.au/Statement/2013/9/26/reforms-get-tough-on-youth-crime>>.
- 4 Ibid.
- 5 Australian Institute of Health and Welfare, *Indigenous young people in the juvenile justice system: 2010-11* (2012) < <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542362>>.
- 6 Children's Court of Queensland, *Annual Report 2011-12* (2012) < http://www.courts.qld.gov.au/_data/assets/pdf_file/0019/168202/cc-ar-2011-2012.pdf>.
- 7 Ibid.
- 8 Ibid.
- 9 Edmund Burke, *Mr. Edmund Burke's Speeches at His Arrival at Bristol: And at the Conclusion of the Poll* (J. Dodsley, 1775).
- 10 Not conduct to be condoned of course given that in today's more enlightened age such would in many jurisdictions constitute an assault.
- 11 *Youth Justice Act 1992* (Qld) s 6.
- 12 Children's Court of Queensland, *Annual Report 2011-12* (2012) < http://www.courts.qld.gov.au/_data/assets/pdf_file/0019/168202/cc-ar-2011-2012.pdf>.
- 13 Commission for Children and Young People and Child Guardian, 'Child deaths – cyber bullying as a risk factor for youth suicide' (Trends and Issues paper No 5, March 2012).
- 14 Queensland Child Protection Commission of Inquiry, State of Queensland, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013) 349.
- 15 Queensland Government, Youth boot camps < <http://www.justice.qld.gov.au/youth-justice/youth-boot-camps-general-information>>.
- 16 Steering Committee for the Review of Government Service Provision, Parliament of Australia, *Overcoming Indigenous Disadvantage Key Indicators* (2011) 24 [4.12].
- 17 Queensland Government, *Youth justice conferencing benefits* < www.justice.qld.gov.au/youth-justice/youth-justice-conferencing/benefits>.
- 18 Queensland Government, *Youth Justice Conferencing - Restorative Justice in Practice manual* < <http://www.justice.qld.gov.au/youth-justice/youth-justice-conferencing>>.

Dugong, 2012

Gunybi Ganambarr

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