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Aboriginal Youth, Police and the Juvenile Justice System in Western Australia

Lynn Atkinson

The first section of the paper makes some observations about young people, crime and the police, and the particular vulnerability of Aboriginal youth coming to the attention of the police. Two issues, the maintenance of public order and juvenile offending, provide the framework for the discussion here. The second section looks at the nexus between the pre-trial conference – a recent innovation in the Children's Court in Perth – police prosecutors, and Aboriginal youth.

Policing Youth

The current high profile concerns about the criminality of today's youth are to some extent recycled concerns. They are more the product of the generation gap than of a particularly delinquent era. In his book *Sydney in Ferment* Peter Grabosky (1977) notes how the nineteenth century so-called larrikin youth of Sydney enjoyed undermining symbols of privilege by walking around knocking the hats off the heads of members of the upper class. Mercedes and Rolls Royce owners who no longer sport emblems on their motor car bonnets, can probably empathise with their top-hat wearing ancestors.

The media too plays a powerful role in driving the law and order agenda and focussing public concerns on particular groups in the community, rather than others. As Richard Eckersley (1992, p. 19) says, the mass media create 'public images of issues that bear little resemblance to the private reality of those issues'. In Western Australia in 1991 the coverage of the Royal Commission looking at the business activities of Government – the 'WA Inc.' Royal Commission – did not produce the same public demands for law and order and accountability as did issues of juvenile car theft and high speed police pursuits, particularly those involving Aboriginal juveniles. This is despite clear links between the business activities of the 1980s and the State's reduced financial circumstances, manifested in part by reductions in spending on social services and education, and despite the links between economic adversity and some types of offending. Law and order agenda tend to be driven by the powerful: politicians, newspaper proprietors and others. So to some extent, perceptions of a juvenile crime wave in the 1990s are produced by forces peripheral to juvenile offending.

While playing down the 1990s perceived criminality of youth, it is nevertheless clear that the policing of youth is becoming increasingly pervasive and omnipresent, particularly over the issue of young people's rights to frequent public space. Public space is not deemed to be the legitimate province of the young, yet it is often the context for young people's leisure and entertainment. Young people are moved on by police in the interests of the adult community, which perceives youth as threatening their access to and enjoyment of public space.

In a submission to the Western Australian Select Committee on Youth Affairs, Step One Incorporated described how a group of young people in the inner city restaurant area of Perth, was approached by 'at least ten different police officers' over a two hour period (Select Committee 1992, p. 30). Although the young people were not being antisocial or disruptive they were repeatedly questioned by the police and asked for their names. Researchers such as Alder (1992) and White (1992) indicate that all young people are vulnerable to this type of contact with police. Privilege no longer necessarily protects young people from this type of involvement with police, nor, it seems, from police heavy handedness which sometimes ensues from such incidents.

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While all youth in public spaces are vulnerable to the omnipresent social control role of the police, the circumstances of some groups make them more vulnerable than others. By virtue of their dispossession, amongst other factors, and their greater use of public space, Aboriginal and street youth are particularly exposed to this sort of police intervention in their lives. If young people feel harassed by police name-checking, the situation has the potential to escalate into one where charges are laid. Aboriginal youth, like their adult counterparts, are over-represented in good order offences. Crime Research Centre figures for 1990 show that 20 per cent of juveniles arrested for good order

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offences in Western Australia in 1990, and whose race was known, were Aboriginal (Broadhurst et al. 1991). Aboriginal youth comprise roughly 4 per cent of the youth population in Western Australia.

The numbers of Aboriginal youth arrested for good order offences give some indication of the exposure Aboriginal youth have to police intervention for the purpose of controlling public space. The picture does not change significantly if we look at other offence categories. Aboriginal youth in Western Australia are over-represented in offences against the person and in all property offences except fraud (Broadhurst et al. 1991). Aboriginal youth over-involvement in the juvenile justice system is predicated to some extent on their initial over-involvement with police. How do the actors concerned describe these interventions?

There has been a number of exposés in recent times of police violence towards Aboriginal people, young people included (Cunneen 1990; Equal Opportunity Commission 1990; Royal Commission into Aboriginal Deaths in Custody 1991). Alder et al. (1992) have pointed out that the more interactions with police, the more negative the perceptions. Aboriginal youth are over-represented in interactions with police, particularly those with negative consequences. Their attitudes to police were found by Alder et al to be correspondingly negative.

Official police definitions of youth/police relations often differ from that of the client group. The Legislative Assembly Select Committee on Youth Affairs in Perth was told repeated stories of inappropriate, neglectful or abusive treatment of young people by police. The police version of the current state of relations, however, was, in the words of the Commissioner of Police, that 'police-youth relations are good and improving all the time' (Select Committee 1992, p. 35). Police Unions traditionally reject accusations of police maltreatment of particular groups, citing the lack of hard evidence, the relatively few formal complaints which are made, and the rare official investigation which finds in favour of the complainant.

However, individual police officers will often admit to the existence of unorthodox or improper police behaviour, but attribute it, not surprisingly, to other officers, in other locations (Roberts et al. 1986). In his study of police perceptions of youth, White (1992) found that while most police surveyed did not recognise youth as a whole as presenting a particular policing problem, street kids, gangs and Aboriginal youth were singled out - in that order - as being difficult groups to deal with. Thus at some level, there is an acceptance by police that their relations with Aboriginal youth are indeed problematic.

As well as disempowerment as youth, however, Aboriginal youth, like their elders and like colonised people everywhere, also suffer cultural disempowerment.

There is much concern in Western Australia about Aboriginal youth involvement in motor vehicle theft; traffic accidents and fatalities which sometimes ensue, and high speed police pursuits of offenders. The number of young people involved is comparatively small, compared with the more typical youth offences, mainly minor theft. Nevertheless aboriginal over-involvement in apprehensions for car theft is extreme (Broadhurst et al. 1991). On the face of it, given the negative consequences for Aboriginal youth of their involvement with police, and their negative perceptions of police, it is ironical that many of these youths seek out an interaction with police in the form of a high speed game of chase. This raises the question, why?

White (1990) and others see motor vehicle theft as an act engaged in by some young males who are denied participation in legitimate processes of establishing their masculinity. Many Aboriginal young men, particularly those living urban lifestyles, suffer disempowerment as youth, and like their non-Aboriginal peers, seek to transform this powerlessness in their adolescence.

As well as disempowerment as youth, however, Aboriginal youth, like their elders and like colonised people everywhere, also suffer cultural disempowerment (see, for example, Fanon 1970, on Algeria). One response to oppressive colonial systems is to subvert them. Aboriginal people, so omnipresently involved with the criminal justice system, know how to subvert that system; to derive different meanings for, and experiences of the system from those originally intended. Our criminal justice system is intended to create fear, shame and conformity to mainstream norms in transgressors, via a system which punishes and deters. Aboriginal people have learnt how to shift the moral burden instead to those who police, try, and imprison them and to reinterpret their experiences of the criminal justice system to subvert them and hence make them tolerable. By these means they gain some fleeting sense of power - however illusory and transitory this might be - over a system which is overwhelmingly stacked against them.

A few have written about how this manifests in practice. Marcia Langton (1988) has written about the provocative use by Aborigines of English swear words in the criminal justice context. Atkinson's (1990) study of Aboriginal women's imprisonment recounts how some Aboriginal women make choices as to the nature of their involvement with the criminal justice system, a system which, ironically, is posited on the notion of removing individual choice. Choosing to go to prison rather than pay a fine, as some of the women in the study did, can have an emasculating effect on the criminal justice system response as punitive and salutary. It can turn defeat for Aborigines by the system into some sort of victory.

But what of Aboriginal youth and their over-representation in motor vehicle theft by juveniles? Their apparently high participation in motor vehicle theft can be seen in part as a means of overcoming powerlessness. Provoking the police into high speed car chases has the air of being an empowering act in itself, never mind whether the police are eventually outsmarted or not. If apprehended,

there are ways of tolerating, and hence subverting, a system that is not intended to be tolerable. It is disturbing that these defacto means of achieving empowerment are inevitably and increasingly destructive, to self and others.

In his submission to the Select Committee on Youth Affairs, the Executive Officer of the Aboriginal Legal Service in Western Australia, Rob Riley, said that the youth involved in car theft and high speed chases with police might' want to make society pay for what it has done to Aboriginal people or for the powerlessness of their own parents' (Select Committee 1992, p. 9). He also suggested that an offending lifestyle represented the norm for this group of young people: it is simply part of surviving in today's society.

Aboriginal youth, like their parents before them, have been barred from effective and articulate protest by colonialism and all that concept implies: lack of education, racism, structural disadvantage. What better way then, to get back at one's oppressors than by subverting the values of an ethnocentric juvenile justice system which the dominant society holds dear? Whose shame is it that Aboriginal youth fill our detention centres? Who is afraid of whom in the potentially lethal rituals played out in fast cars by young Aboriginal people and police? How omnipotent is a juvenile justice system which apparently fails to stem the tide of Aboriginal youth flowing through it?

These questions resist categorical answers. However, it is difficult to produce answers which give us confidence in the impartiality of the juvenile justice system or its responsiveness to complex contemporary problems. It is clear that policy makers and practitioners in the juvenile justice area must find a different perspective when trying to understand and deal with offending Aboriginal youth. Not only police, but police in particular, are strategically placed to make some ameliorative contribution to reducing the numbers of Aboriginal youth passing through our juvenile justice system. The following section looks at one way in which the justice process is mediated by issues of race. The role of the police is highlighted.

The Pre-trial Conference and Questions of Race

In 1991, a research project into some aspects of the Children's Court in Western Australia was undertaken. It was part of a larger study, based in Adelaide, on the extent, costs and benefits of pre-trial negotiations in juvenile jurisdictions[1]. The Western Australian component looked at a particular aspect of the Children's Court in Western Australia, the pre-trial conference[2]. One of the areas of interest was the interrelationship between the pre-trial conference and Aboriginal defendants.

Overt deal-making involving concessions in return for guilty pleas is something most Australians associate with the American legal system. However, negotiations between the prosecution and defence also take place in Australian criminal jurisdictions (Douglas 1983, 1988; Bishop 1989; Wundersitz & Naffine 1990). These tend to be covert and generally involve charge bargaining.

The Perth Children's Court has introduced a procedure, the pre-trial conference, which is designed to encourage this sort of negotiation between the defence and the prosecution. If the young defendant has pleaded not guilty to any charges against him or her, s/he is remanded to appear at a pre-trial conference before a hearing date is set.

The idea of the pre-trial conference is to encourage efficient justice, mainly by minimising delays in court and in the lead time to trial, and reducing the number of trials collapsing at the last minute. The main purpose of the pre-trial conference is to confirm the plea and then set a trial date. While not encouraging guilty pleas per se, the pre-trial conference endeavours to have the opposing parties make realistic assessments of the case, to exchange whatever information is appropriate to forming such an assessment and to create the conditions for a firm plea to be entered. On this basis, even if a plea of not guilty is maintained, it should minimise the chances of an eleventh hour change of plea and the last minute collapse of the trial. Much cost and inconvenience is thereby avoided.

The pre-trial conference operates similarly to the remand court, despite its slightly misleading name. The actors in the pre-trial conference are the magistrate, the police prosecutor, the defendant and his or her legal representative, and the court official who lists trials. Sometimes members of the defendant's family are also present.

Pre-trial conferences are scheduled for 9.00 am, that is, an hour before the usual court sitting time. If a defendant changes his or her plea to guilty at the pre-trial conference and the charges are minor, the matter might be proceeded with then and there. Otherwise the case will be remanded, perhaps to the remand court sitting later the same day.

Because the pre-trial conference is convened before the regular morning court, the few defendants appearing do not have long to wait. If on bail, as most defendants are, they will have been bailed to appear at the pre-trial conference at 9.00 am. If a defendant fails to appear s/he is given a few hours grace before a bench warrant is

issued. Often the defendant will make an appearance at the remand court later in the day, and the matter of setting a trial date will be dealt with in that forum. The procedure is more cumbersome in the remand court, and delays for defendants and their families are inevitable. Further, the remand court is not designed to encourage information exchange so guilty pleas in this context might tend to be more strategic than firm.

When surveyed, police prosecutors in the Children's Court were negative about the pre-trial conference, their major criticism being that defendants frequently failed to appear. The prosecutors estimated very low appearance rates for the pre-trial conference. Three out of the four prosecutors believed appearances at the pre-trial conferences were as low as 25 per cent of the listed defendants. Police were dissatisfied in any case with the Children's Court and with what they saw as its slap-on-the-wrist response to juvenile crime, so the pre-trial conference and its apparent failure merely exacerbated their frustration and anger.

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The police believed non-appearances by bailed defendants at the pre-trial conference should be met with the immediate issuing of a bench warrant to inculcate respect for the law. Instead, young defendants were allowed to turn up later at the remand court, despite having been bailed only to 9.00 am. For this technical breach the only penalty was a longer wait for their case to be dealt with.

Our observations at the pre-trial conference contrasted with police perceptions of appearance rates. The authors found that 59 per cent of the defendants in fact made their scheduled appearance - more than double the number estimated by police. The appearance rate rose to 94 per cent when later appearances at the remand court the same day were considered. The police had seriously underestimated the appearance rates of defendants and had painted a much more negative scenario of young people's compliance with legal requirements than was warranted. Further, they seemed to have judged the pre-trial conference on its capacity to enforce obedience before the law, rather than on whether it achieved its stated aims of efficiency. On this basis it was found to be sorely wanting.

In the author's observations of the pre-trial conference, it becomes clear that Aboriginal clients and lawyers from the Aboriginal Legal Service (ALS) made fewer appearances than one might expect. Not surprisingly, the prosecutors had also detected this. They sometimes expressed their frustration about the non-appearances in off-the-record comments.

The author's observations of the pre-trial conference over three months included four weeks when all pre-trial conferences convened in the Perth Children's Court were observed. In this period of intensive observations, sixty-six defendants were listed to appear. Ten were Aboriginal. Only one Aboriginal defendant made an appearance at the pre-trial conference compared with thirty-six of the fifty-six non-Aboriginal defendants. However, a further eight Aboriginal defendants took advantage of the 'second-chance' provisions in the system and made an appearance at the remand court later in the morning. Only one Aboriginal defendant failed to appear at all. Of those listed to appear 90 per cent of Aboriginal defendants and 95 per cent of non-Aboriginal defendants made an appearance on the due day. However, only 30 per cent of non-Aboriginal defendants, compared with 80 per cent of Aboriginal defendants, appeared at the remand court, rather than the earlier pre-trial conference.

Police prosecutors believed the pre-trial conference was a failure because of their misconception that a majority of young defendants were failing to appear. It was true, however, that a majority of Aboriginal youth did not appear at the pre-trial conference, at least in the time we observed its operations. The Aboriginal youths provided the vehicle for police censure, not only towards them as a group, but to youth in general. Non-attending or late, and hence often technically in breach of bail, Aboriginal youth provided a ready and traditional focus for police anger and dissatisfaction with the whole system.

The study also found that the Aboriginal Legal Service placed little store on attending the pre-trial conference. This was partly for logistical reasons and partly because they found the pre-trial conference ineffective as a vehicle for pre-trial negotiations. If the ALS gives scant priority to attending the pre-trial conference, it follows that its clients are unlikely to either. However, there are probably other variables influencing Aboriginal attendance. The efficiency of the pre-trial conference appeals to certain groups of people. School students and employed youth would benefit from its streamlined operations. Aboriginal youth offenders are seldom employed or attending school regularly. One Western Australian study found that 86 per cent of the detained Aboriginal youth population had been unemployed and not attending school before their incarceration (Walsh 1991). Small wonder then, that Aboriginal youth are not drawn to this efficient early morning procedure.

Reforms which are equitable for different groups are as necessary to fair justice as they are difficult to design and implement. The second

chance arrangement built into the pre-trial conference, a procedure vilified by the police prosecutors, in fact has an important defacto role in redressing some of the problems of systemic imbalance.

Conclusion

What are some of the issues arising from the pre-trial conference study in relation to the policing of Aboriginal youth? Because of practical, cultural, political or lifestyle considerations, Aboriginal clients of the juvenile justice system might fail to fulfil some of their obligations to the system. Failing to imbue the pre-trial conference with a useful purpose and hence neglecting to appear before it is an example of this. In their apparent lack of respect for the letter of the law, Aboriginal youth provide a ready vehicle for reinforcing police stereotypes and condemnation of them.

With the exception of the senior prosecuting sergeant, the police prosecutors at the Children's Court were mostly there for the short term and under sufferance. Police prosecutors undergo training on the job. As part of this training they are rotated through a variety of courts, including the Children's Court, every few months. No special expertise or knowledge of the juvenile justice system is required for prosecuting in the juvenile jurisdiction. In fact, time served in the Children's Court is viewed as helpful work experience in preparation for the important task of prosecuting in the adult jurisdiction.

The juvenile justice system is underpinned by the idea that most youth mature out of crime, and that, while still being held responsible for their actions, as minors their responsibility under the law is mitigated by age. Accordingly, more lenient penalties apply for juvenile offenders. Because police prosecutors have no particular understanding of, or allegiance to, the Children's Court, it is not surprising that they are disaffected with the system. Currently, police prosecutors compare the juvenile scale of penalties with those applicable in the adult court and find them to be grossly inadequate. Hence the Children's Court becomes a fertile ground for complaints and the perpetuation of negative and racist stereotypes. A special juvenile prosecuting unit, with prosecutors trained in youth and Aboriginal affairs and the philosophy and practice of the juvenile justice system, might act as a countervailing force to the present law and order focus of the police in the Children's Court.

The pre-trial conference, as a court-based procedure, is situated in the second half of a young person's journey through the system. Having been dealt with by police, been found unsuitable for pre-court diversion and made at least one appearance in court on the matter at hand, only arbitration and sentencing remain. The over-representation of Aboriginal youth in the juvenile justice system increases as their penetration into the system deepens. Because of this, the pre-trial conference could be poised unwittingly to entrench further the over-representation of Aboriginal youth. However, in practice, its lack of appeal to Aboriginal youth is offset by the flexibility which creates second chances for Aboriginal youth. A change in police attitudes, structures and practices could further reduce the conflict between police and youth, particularly Aboriginal youth, and move a step closer to equity.

The pre-trial conference is a recent and relatively minor innovation in the Children's Court. It serves, however, to distil and reflect some of the on-going conflicts which exist between the juvenile justice system, the police and Aboriginal youth. It also demonstrates how difficult it is to graft equitable reforms onto an inequitable system. Changes of perspective, an appreciation of the issues, and changes to entrenched practices and structures are primary ingredients to long term reform and fairer justice. ♦

Notes

1. The research was funded by an ARC grant awarded to Professor Fay Gale. The research team for the Western Australian project consisted of Fay Gale, Joy Wundersitz and Lynn Atkinson.

2. The research was presented as a paper at the 7th Annual Conference of the Australian and New Zealand Society of Criminology, Melbourne, 1991: 'Juvenile Justice and the Pre-trial Conference'.

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KOORI

Janina Harding

Great confusion and sometimes offence has been caused as the result of not knowing what term to use for the Aboriginal peoples of Australia. Let me define these terms.

There are general terms used in the major cities of Australia. I tend to say major cities on the basis that this is where they are usually expressed. Rural and traditional communities across Australia generally maintain their original term, ie Arantu (Central Australia). The term 'Koori' is probably the most renowned term as it is widely expressed in the South East region of Australia (New South Wales, Victoria, Tasmania and Southern Queensland) Koori derives from the Awabakal people from the NSW Coast, now known as Lake Macquarie - Koori meaning people or man.

Over the past decade Australia has become slightly more aware of Aboriginal issues and there seems to be an appreciation of our culture. However to understand the terms I must first explain the history.

The 1967 Referendum granted full citizenship rights to Aboriginal people. This gave rise to a new sense of dignity, identity and pride. Then came the 70s and our sense of self esteem was further heightened, we had a voice and for the first time the Government was listening to us.

A ten embassy was erected on the lawns of parliament in Canberra, where our flag flew high. The whole world was watching Australia and was shocked by the way they were treating 'their aborigines'.

Proud of ourselves and with this new self respect we united as a people, asking to be recognised as culturally different, with an agenda that urgently needed to be addressed. No longer did we want to be called Aboriginal or Aborigine, for that was white man's terminology and of course it had connotations of that derogatory term 'Abo'.

The word, 'Koori' was bantered around and it stuck. It is a term not found in the Oxford dictionary. 'Koori was our word, something we could relate to and identify with immediately. Other common terms all with similar meanings are 'Nunga' (Adelaide), 'Nyungar (Perth) and 'Murri' (Brisbane).

As part of a cultural repatriation, Aboriginal people have formed an even stronger sense of identity through their culture, today traditional terms are more commonplace.

(Note: some 260 languages were practiced pre-colonisation.) Many Aboriginal communities throughout Australia are going back to, or have always retained their original term. Various terms are appropriate to the region, to provide us with a sense of belonging and unity.

Arising from this is whether we identify as a Koori, Nunga, Nyungar, Murri, etc. Aboriginal people have had their land stolen, their children taken away, their pride and identity stripped through assimilation. As an oral culture, language is very important, in that, in most cases it is the only piece of thread that ties us with the land.

Suffice to say that Aboriginal people do not appreciate the burden that accompanies white Australia's confusion as to what term to use. Generally, Aboriginal people do not mind explaining their background, it is whether the listener is judgemental, patronising or not listening that may cause offence. Traditional language might have all but disappeared in urban areas around Australia, therefore it is imperative that something, however so slight, reinforce a sense of identity and pride.