

Psy-knowledges and the sociology of law: the case of juvenile justice

Abstract

This article examines the application of the psy-sciences to the conduct of juvenile justice in Victoria in the period from 1940-1980, in order to reassess assumptions in contemporary sociology of law concerning psy-knowledge and judicial administration, welfare and justice, and their relations to liberal or conservative political mandates. It seeks to understand the implications of shifts in the production of knowledge of the child in the justice system, by reporting on analysis of both clinical and administrative files of the Children's Court Clinic in this period. The study documents how particular kinds of offenders became know in order to be properly managed, and questions the extent of separations between science and juvenile justice administration.

Key words: sociology of law, juvenile justice, psy-sciences, history

Introduction

The aim of this study is to investigate systems of knowledge that have been applied to understanding the child in the context of judicial administration. Such an inquiry allows us to question common assumptions in the sociology of law, understandings which would tie the shifting role of the psy-sciences in justice administration to, for example,

arguments about progressive reform or historical failure, abandonment of science to economic rationalism, or historical pendulum-swings between essential categories of welfare and justice. This paper reports on an examination of Victorian Children's Court Clinic case files as well as Court administrative files, which show the Clinic as a nexus in the cross-talk of judicial, educational, correctional and health discourse. It concentrates on the time span from the 1940s to the 1980s. We review a number of themes in the sociology of law concerning the relations between psy-knowledge and justice administration; document historical changes in the shaping of knowledge of the child in this period; sketch out elements of the functioning of the psy-sciences in knowing the child as 'sex offender' and 'habitual thief'; and finally, conclude with some remarks about the historical meshing of the psy-sciences and justice administration, and its implications for analysis of juvenile justice.

History, psy-knowledges, justice

The study addresses a number of broad and intersecting themes in the sociology of law that depend on particular historical understandings of change in the relations between psy-knowledge and the administration of juvenile justice. First, there are a broad set of perspectives that generically might be described as apologist in their historical understandings. Positivism sought to understand biological, psychological and social factors that predisposed individuals to committing crime, rendering the individual susceptible to reform (White and Haines, 2003). Shifts in techniques for knowing the child were motivated by a spirit of reform, in which the child is discovered as the subject of due process and the embodiment of a set of 'rights'. Extrapolating from this, the focus

of our present study—a children’s court clinic—could be understood as an extension of the principle of *parens patriae* or, conversely, as part of a paternalistic and patriarchal ideology. As we will show, from the early 1970s lawyers and welfare workers challenged presumptions about what is best for the child at the same time as reaffirming the child as a bearer of legal rights. The earlier claims of the psy-worker to best know the child would be met with counter-claims from other professionals who wished to occupy this mantle, such as the social worker, the welfare worker, and lawyers acting for the child (Jaggs, 1986).

A further perspective, recent and influential, is that the psy-sciences – the techniques of a positivist, individualist, interventionist criminal justice system—have experienced a loss of faith in their ability to know the criminal mind, and more specifically the child-as-offender. The location of knowledge of the offending child has shifted from the psy-sciences because of their failure in terms of truth-value: science got it wrong, has been naïve, or has failed to deliver on its promise to scientifically know the child. There has been a ‘collapse of faith in the rehabilitative ideal’ (Hughes 1998: 59), or alternatively, penal and correctional policies have cultivated a misplaced attachment to individual causes of crime (Borowski, 2003). Some would argue that longer-term experience has shown that reforms such as sex-offender programs simply do not work (Wilson, quoted in Alcorn, 1999). More critical accounts identify ‘criminologies of the other’ which dispatch young offenders into anti-scientific categories such as evil or wicked (Garland 1996: 461); this theme is strongly affirmed in key sociology of law texts

(Smandych, 1999, White and Haines, 2003), while its more radical implications for juvenile justice institutions have also been explored (Ainsworth, 1991).

Related to the above perspective is the theme that the administration of justice is tied to broader political mandates insofar as a perceived swing of the pendulum from 'welfare' to 'justice' is tied to swings from a more 'liberal' model, which seeks to understand, to a more conservative 'just deserts' model which seeks to punish (Naffine et al, 1990; Naffine and Wundersitz 1994; O'Malley, 1994; 1999). Historical periodising of the shift from welfarism to conservatism is punctuated with evidence like mandatory sentencing, non-discretionary 'truth-in-sentencing' legislation, antisocial behaviour orders, or curfews. Changes in broad political law-and-order mandates map directly onto the functioning of the courts (Tame, 1991; Hogg and Brown, 1998). Here, the role of the social and psychological sciences is seen as ignored rather than discredited. The theme is captured in the UK with the Home Secretary's pronouncement, at the time of the Venables and Thompson trial, that it was time to 'condemn a little more' and 'understand a little less' (Haydon and Scraton, 2001). In the US it is evident in, for example, psychologists' alarm over the increasing inclusion of juvenile sex offenders in registration and notification under Megan's Law, contrary to the doctrine of *parens patriae* and counter to the reasoning of contemporary psychology (Pithers and Gray, 1998; Trivits and Reppucci, 2002). This perceived shift from welfare to justice might be accounted for as a move to economic rationalism, wherein the science of penetrating the psycho-social reasons behind crime is displaced by actuarial calculations in which the subject of judicial administration is refigured as a bundle of 'risk factors'—the bearer of a set of

probabilities rather than a set of psycho-social pathologies (Simon, 1988; Feeley and Simon, 1994; Ericson and Haggerty, 1999; Day, Howells and Rickwood, 2004).

Alternatively, investments in opportunities for therapy and reform are replaced by investments in institutions for ‘warehousing’ populations, with little pretence of either punishment or rehabilitation (Pratt, 1989).

Our approach carries certain theoretical presumptions about historical change. We have some discontent with understandings which situate change in centralized mandates of power ‘from above’. We believe such understandings are unsuited to the context of modern liberal democracies, which are marked by dispersed, decentralised and often contradictory agencies of administration, and which produce knowledge of their subjects in often quite localised ways and according to their own specific administrative concerns (Foucault, 1988; 1991). Modern liberal democracies are further marked by aspirations to produce self-governing individuals who will be amenable to the advice of experts (Rose, 1990; 1999). On both accounts liberal agencies of government cannot be characterized as apparatuses of a negative, repressive State power; nor alternatively, within a teleological spirit of reform in which the reformer is understood as freeing up the constraints of the repressive, conservative impositions of old. Borrowing a phrase from Foucault (1977), we seek understanding in more ‘ignoble archives’ where the operations of a generative power might be identified in those ‘capillary’ moments of exchange, where, for example, clinician might come up against patient, and petty bureaucrat against clinician. But we also argue that those moments of exchange are also moments of transmutation, in which the actions of the doctor become the actions of the lawyer, those of the ‘social’ worker

become those of the psychologist, and so on. The question under investigation is not so much the effects of psy-expertise *on* justice administration, or the relations of science *to* government—questions which take for granted the presence of a body of knowledge that is brought to bear (or not) on a set of administrative proceedings. Rather, we ask: what shifts take place in the shaping of a space created for the production of knowledge of the child, specifically, as the subject of judicial administration?

Knowing the child: psy-science and the doctor

We proceed from the premise that in order to effectively administer a population, a governing agency needs to know that population. In terms of the administration of justice, a justice system needs to know a child in order to effectively administer justice. A Children's Court Clinic was formally established in Melbourne in 1945 to provide the possibility of knowing the child as the subject of better judicial administration of children.

When it is considered by the Magistrates of a Court that further information would be desirable to enable them to form an opinion as to the best method of dealing with any child, they are now able to refer such case to the Clinic to have an examination and an investigation made and a comprehensive report submitted to them (Victoria, 1946).

Each child appearing before the court would have a summary report written by a psychiatrist that would also have included in it a psychological report, a form showing

the results of a physical examination (again usually performed by the psychiatrist) as well as a 'social report' which in earlier days had been performed by a psychologist, but by the mid-40s was carried out by the newly-appointed Clinic social worker. In most cases the Clinic would receive, via the Court, and after an adjournment, the police statements about the child's alleged offence. These in turn would initiate a series of separate forms, detailing the statement by the child, by the arresting officer, and by a probation officer if the child was already under probation. By the early 1940s it was the Clinic that received all the available information on the child. The court then typically adjourned the case for two weeks for a special investigation by the Clinic. Depending on the charge, or if the child lived in the country, the child could be remanded to the Royal Park (Melbourne) children's home. Prior to the establishment of the Clinic, the Court sought another kind of expertise, principally that of the probation officer. If particular knowledge was required of a subject before sentencing or a decision about disposition, it was formally sought through an adjournment and a request to the probation officer for a social background report. A probation officer's report was tended to the court, and the probation officer's claim to know the child was respected (Victoria, 1940, 1941). By 1945, the kind of knowledge sought in similar circumstances would now be provided by a psychiatrist. The authoritative voice within that space became that of a doctor. We might pause here to ask: why the doctor? Why this assumption that a doctor's knowledge would provide the kind of knowledge that could best be brought to bear on the successful administration of this population?

The psychiatrist was not alone in the Clinic. From its full-time establishment it was also staffed by a psychologist, a social worker and a trained nurse who were all officers of the Public Health Department. These personnel did not furnish the Court directly with knowledge of the child; rather, their knowledge was mediated through the psychiatrist under a single 'Medical Report'. His duties were:

to supervise the activities of the Clinic, medically examine juvenile delinquents, and furnish reports to the Children's Court ... Qualifications: To be a legally qualified medical practitioner' (*Victorian Government Gazette*, March 15, 1944).

There is no doubt the doctor was in charge. The duties of the psychologist were 'the psychological examination of juvenile delinquents under the direction of the medical officer' (*Victorian Government Gazette*, Nov. 1, 1944). In July 1945, the Government Medical Officer noted that psychologist was to be 'definitely instructed that he is under the direction of Dr Bailey' (Department of Human Services Victoria [DHSV] Archives, FN X82. General Administrative Files [GAF]: Children's Court Clinic, Correspondence [CCCC]: Feb. 1944-Sept. 1948). In February 1944, the Victorian Council of Mental Hygiene elaborated on their roles: the psychologist was 'to be able to cooperate in treatment, particularly as regards educational aspects, under the direction of the psychiatrist'. The social worker '... should work directly under the psychiatrist who will require the following:

(a) investigations and social histories to assist him in diagnosis and prognosis (b) attempts at family or individual readjustment under his guidance (c) organisation of and participation in case conferences with magistrates, probation officers, teachers, and institutional staffs (d) liaison between the probation officers and the clinic (DHSV Archives, FN X82. GAF, CCCC: Feb. 1944-Sept. 1948).

Dr Bailey was Assistant Government Medical Officer, spending most of his time ‘... occupied with psychiatric examinations and reports on prisoners in Pentridge [Gaol]’, and the establishment of the clinic had to be delayed until he could be formally relieved of these duties (DHSV Archives, FN X82. GAF, CCCC: Feb. 1944-Sept. 1948, Correspondence to Govt. Medical Officer, July 1944.) The chain of authority was unquestioned.

Yet we know that this space for judicial knowledge changes. Three decades after its establishment, the hierarchy under which the psychologist and the social worker speak to the doctor, who then speaks to the Courts, was displaced. In 1979, the Psychiatrist-Superintendent of the Children's Court Clinic objected strongly to what was understood to be a challenge to the authority and expertise of the psychiatrist by a welfare bureaucracy, which pitted the authority of the welfare (including social) worker over and against that of the psy-clinician. The psychiatrist's objections stemmed from legislative changes ushering in the new Community Welfare Services bureaucracy that replaced the Social Welfare Department in the late 1970s. The new Department of Community Welfare Services (DCWS) was accompanied by an amended *Act* making the psychiatrist

largely beholden to the Department and the social worker. The contentious part of the Bill (as amended in July 1979) was in Section 31 (2):

A child or young person shall not be admitted to the care of the Department under the provisions of this section unless the court is first satisfied that *all reasonable steps have been taken by the Director-General or an authorised children's protection agency to provide such services as are necessary to enable the child or young person to remain in the care of his family* and that admission to the care of the Department is in the best interests of the child or young person in the circumstances (Victoria, 1979. Emphasis added).

DCWS explained the procedures under the new *Act* for providing reports to the Children's Court preparing what were called 'pre-sentence' reports. Quoting a section of the Victorian *Children's Court Act* (1973), it explained that on receipt of a request, a field worker of a regional Centre would prepare a comprehensive report

... which sets out an account of the results of an investigation into the antecedents, home environment (including parental control), companions, education, school attendance, employment, habits, recreation, character, reputation, disposition, medical history and physical or mental defects (if any) of the child, and any other relevant matters (Public Records Office of Victoria [PROV] VPRS 6344 Children's Court General Correspondence Files [CCC GCF], August 1979.)

It was described as a 'social history'. It detailed the circumstances in which the family was living and any previous contact with the Department and other organisations. It would also include a recommendation to the court on the possible disposition of a case. If an option other than wardship was to be recommended, this report alone would be forwarded to the Court. The Department advised that a report under Section 31 (2) of the Community Welfare Services Act would not be completed because 'the Director-General was able to provide services to enable the child to remain in the care of his family' (PROV VPRS 6344 CCC GCF, August 1979).

Both the Clinic and the Court objected to the changed reporting responsibilities. The psychiatrist wrote to the Director of Mental Health:

I refer you to Point 6.0, in which psychiatric services are to 'work through' DCWS, and to 6.1 where reports are to be forwarded automatically to the Department. Reports will not be made available routinely to anyone in DCWS unless signed authorisations from parent/guardian and child are provided ... I refer you also to Sec. 25 (1) and Sec. 49 of the Children's Court Act which clearly states our reports are 'for the information of the Court' ... I have received no verbal or written communication ... as to the reasons we have not been authorised. Informally I have heard it is because DCWS has to pay for Wards of the State and feel that only they should be able to make such a recommendation ... I do hope that on my return from leave that there has been a satisfactory resolution to the crisis, and that

psychiatry is recognised as being a professional discipline of at least equal status to that of social work (PROV VPRS 6344 CCC GCF, August 1979).

There were additional objections. The new *Act* had created difficulties in attracting consultant psychiatric staff to the Clinic, a position made unpopular ‘... mainly because the doctors do not have final case planning responsibility—a problem of which you will be well aware at the present time in relation to the new Community Welfare Services Act’. The psychiatrist asserted that Magistrates had also changed their practices because of uncertainty about who has the authority to make a recommendation of wardship to the Court:

... as a flow on from the new Act we are finding that many of the young people are now being committed to the institutions on medium to long-term sentences. Where previously they may have been made wards of the State. This necessitates continued treatment and case management by the psychiatric personnel as the social workers at the Regional Office have minimal case planning responsibility for youngsters on sentences. It is therefore an ever increasing component of our work and certainly many of the adolescents are very disturbed and in some cases aggressive, requiring intensive investigations and follow-up treatment (PROV VPRS 6344 CCC GCF, October 1979.)

The Children's Court Stipendiary Magistrate confirmed the confusion and delays. He too implied that the changes represented a challenge to a body of psy- expertise by lesser experts. He wrote to the Chief Stipendiary Magistrate:

A number of children are now in custody awaiting the Director-General's replies to requests for reports. In some of these cases, there has already been a thorough pre-sentence investigation with a recommendation of Wardship yet, a separate report under 31 (2) is now required before a Court can admit ... There seems to be a point of view held by some Community Welfare Services Officers that the Sub-Section is complied with, if the Department approves a recommendation of Wardship. This view is not held by the magistrates here. In the case in point last week the Children's Clinic recommended to me (after a long history of involvement) that a child be admitted to care. An officer of the Community Welfare Services Department ... had the impertinence to seek to obtain from the Clerk of Courts, the Clinic report, before it had reached me, and to 'Countersign' it. An attempt by a Social Worker to 'vet' a Clinic report, coming as it does from highly trained and experienced people is outrageous (PROV VPRS 6344 CCC GCF, August 1979).

The Psychiatrist Superintendent of the Clinic indicated that she was not opposed to social workers *per se* but very opposed to them working independently of a psychiatric overseer. To gain clear psychological perspectives of family dynamics, a social worker report was inadequate unless the writer had specific clinical training in child psychotherapy or family therapy, a situation which rarely exists in social workers outside psychiatric facilities:

... the standard and attention to detail of our clinical work and reports is extremely high, and it seems meaningless, if not professionally impertinent, for a DCWS Social Worker who has not interviewed either the child or family in question to countersign and approve one of the Clinic's reports (PROV VPRS 6344 CCC GCF, August 1979).

It is clear that by the 1980s formal court knowledge of the child is no longer mediated through the voice of the psy-doctor. The authority of psychiatry could no longer be taken for granted, within and beyond the Clinic, in the way that it was taken for granted in earlier days. Now, the know-how of the Clinic is but one of a new multiplicity of voices, from a multiplicity of locales, who often speak at cross-purposes.

Knowing the child: a multiplicity of voices

The psychologist at the Children's Court Clinic provided a first hand portrayal of these multiple voices when she described shifts in expertise following the changes of reporting arrangements to the Court. In the early 1980s, in approximately 10 percent of cases passing through the Children's Court, and almost invariably in cases of an uncontrolled application, a referral was made by the magistrates for a clinic assessment to the Children's Court Clinic. The magistrates might also call on DCWS agencies for a pre-sentence report when they wanted more data to help them make a disposition. But when a comprehensive clinical work-up was required, according to the Clinic Psychologist, Court Clinic referral is most often needed. Court Clinic personnel were routinely given access to the young person's statement to police and to all written submissions and reports to the magistrates when they were asked to assess.

...This issue of when reports are tended to the Clinic is important because it means that *the government psychologists and those of other professional disciplines working at this clinic are rarely involved in the process of proving guilt; they are merely to offer an assessment after that event, by request of the court, and to give advice about a disposition in the light of their assessment.*

Further, except under exceptional circumstances, there is no cross-examination of the author of that report by barristers, since it was especially commissioned for the magistrate alone... (Brown, 1981, emphasis added).

But now all this changes. The psychologist reported that probably as a result of changes in the *Act* and the role of the Children's Protection Society in the Courts, psychologists and psychiatrists from hospital settings and from private practice were appearing in the Children's court, although not yet in great numbers. These 'outside' psychologists, almost exclusively in cases where there was alleged child abuse, were being called by barristers acting on behalf of the parents or by the Children's Protection Society. Often such cases had been initiated by the Children's Hospital, through police or the Children's Protection Society. They were called to give evidence about the child's emotional adjustment so that magistrates could decide about Care Applications.

However, the Clinic Psychologist pointed out that the evidence of the psychologists called as expert witnesses were now almost exclusively in relation to matters of proof:

In this potentially adversary situation, counter expert witnesses can be called, they can be cross-examined and, until the legal point of proof is reached, it is usual for such cross-examination to take place before child and parents (Brown, 1981).

So now the presumption to know what is best for the child is challenged by other professionals, and by other ways of knowing the child—for instance, as the bearer of legal rights. The Clinic Psychologist acknowledges an anxiety that the singularity of the Clinic psy-worker's claim to best know the child was under threat—a threat that would usher in an adversarialism counter to the foundational principles of the Children's Court. According to this account, the psy-sciences had little prior involvement in establishing questions of legal proof.

The challenges from the early 1970s led by both lawyers and welfare workers were seen as 'about time': in the spirit of a progressive reform that sought to more truly know the child's 'best interests' (Scutt, 1977; Ainsworth, 1992). Indeed, the welfare worker was a major protagonist in this kind of narrative of challenge and enlightenment, against medical social control. Jaggs's (1986) account of this period put the penultimate moment of psy-dominance as the Juvenile Delinquency Advisory Committee, chaired by Justice Barry (Victoria, 1956), whose membership included prominent psychiatrist in the Mental Health Authority, Alan Stoller. According to Jaggs, the Barry Report '... endorsed the contemporary psychiatric view that delinquency was, in effect, a recognizable syndrome which called for massive preventive measures as well as early diagnosis and treatment of individual cases' (Jaggs, 1986: 163). This finding located the population administered by

the Court into a conceptual framework of 'deviancy' and locked its attendant institutions and personnel into a conceptual 'specialist' framework of 'diagnosis' and 'treatment'. For Jaggs, this would only be broken by a lobby characterized as 'avant-garde welfare thinking', as inscribed in the later Norgard Committee report (Victoria, 1976). The aspirations of welfare were seen to be brought to fruition by as much as possible diverting away from the Court a juvenile population that all too frequently had been placed under legal sanction by a socially controlling psy-science of deviancy.

How the Clinic knows the 'sex offender'

From evidence in the case files in the 1940s, clinicians dealing with male sex offenders generally exhibit an air of dispassionate confidence. Clinicians generally understood that this kind of offending was an aberration due to a lack of sex education combined with the influence of surrounding 'sex talk', or of 'seeing things'. There was little digging for pathologies, and where, for instance, 'perversions' or organic causes are cited as reasons behind the offence, these reasons are usually coupled with evidence of some degree of 'mental dullness' [sic] if not mental defect.

An example: A fifteen-year old boy was charged in 1945 with unlawful assault of a girl, aged 18, who he attempted to kiss in a railway carriage. Examined in the Clinic in 1945, his statement to the police is as follows: '...I had the idea in mind that I would like to kiss the girl but if she said "No" it would not matter to me.... The Probation Officer reported to the Court that he had been 'here more than a year ago for Indecent Assault on a young girl, and his case was adjourned'. After this appearance, the boy's case was

adjourned for two weeks and he was referred to the Clinic. The Clinic Social Worker, on her report of her home visit during this adjournment, noted that the 'present offence does not appear to have been of a strictly sexual character...he kissed many girls without any objections...on "V.P" day. He has read a book entitled "Plain Words" but does not entirely understand it.' The psychologist noted in his report that the boy was 'of normal intelligence but retarded educationally ... Intellectually he is sluggish'. The boy's Physical Examination form would describe him as 'Physically a somewhat sluggish type with a tendency to adiposity...Probably a case of mild endocrine imbalance.' In his preliminary notes, the Clinic Psychiatrist noted: 'On VP night saw an airman having coitus with a girl up a lane...Saw an American doing it to a woman right under a light in the Alexander Gardens about 2 months ago'(DHSV Archives, AN 93/293/1-8 Children's Court Clinic Case Files [CCCCF]), 1945).

In his final Report to the Court the Psychiatrist concluded that the child's 'previous offence (indecent assault) was apparently impulsive in nature and prompted by curiosity'; that his present offence was 'the result of lack of sex education, but that there may be several contributory factors...Physical and mental lethargy due to glandular dysfunction may also be an underlying cause'. He further suggested that a 'course of appropriate medical treatment with a glandular extract would be beneficial'. This kind of treatment was not carried out at the Clinic, where 'treatment' was largely confined to sex instruction. The psychiatrist recommended that 'attendance at the Clinic for sex instruction will probably solve his sex difficulties' and that, indeed, 'absenteeism [from work] presents a greater problem' (DHSV Archives AN 93/293/1-8 CCCCCF 1945).

Our second example is of a boy, first seen in the clinic in late 1945, after appearing before the Court on a charge of being a 'Rogue and vagabond for that he did wilfully and obscenely expose himself in a public place'. The Psychiatrist noted that the 'psychiatric examination of this boy revealed that his offences were due to the presence of the following contributory factors: Marked intellectual dullness (I.Q. – 78); Precocious sexuality at the age of 10; Excessive masturbation; Undescended left testicle giving rise to mental conflict and feeling of organ inferiority; Habitual exhibitionism during the past three years; Lack of adequate sex knowledge. The psychiatrist advises that 'physical maldevelopment should first be corrected' through referral to the Royal Melbourne Hospital, and that the case should be adjourned for a further six months for this medical treatment and for sex instruction at the Clinic. The psychologist notes in a progress report in March of the following year that the boy visited for sex instruction:

2/2/46. Visit. Introductory talk

9/2/46. Visit Second talk. Differentiation in living things.

16/2/46. Visit. Third talk. Differences – Grades – Reduction – Civilization

23/2/46. Visit. Fourth talk. Origins

2/3/46. Visit. Fifth talk. (DHSV Archives AN 93/293/1-8 CCCCCF, 1946).

The above examples are representative of ongoing casework on child sex offenders. What are we to make of contemporary claims about the 'failure' of the social and

psychological sciences in the past, and the need to give up on 'social problems'? A senior criminologist claims there was enormous optimism after World War 2 that, by rectifying the ills of society, we could eliminate a lot of what we now call 'evil':

We've suddenly realised that evil is beyond social problems ... We're not, to give an example, good at sex offender programs ... They don't work. We're not very good at changing deep-seated psychological problems, contrary to the rhetoric we had 20 years ago. Our optimism is not matched by empirical facts (Wilson, quoted in Alcorn, 1999).

The themes about the past can be countered with the claim that programmes for knowing and dealing with the sex offender have worked perfectly at different historical moments, in as much as they deliver a subject who can be known, and acted upon, with confidence. The mood is captured in 1944 in the Annual Report of the Children's Court by its Stipendiary Magistrate L R Ripper:

With the progress of the medical and psychological sciences we have come to understand and to treat problems that at one time were considered enigmatic and unintelligible. From the psychological or medical viewpoint the sex offender no longer presents a mystery ... the attitude taken up is that they will be required to respect society, and endeavour to comply with its demands, as well as seeking its help in reform ... Juvenile sex offenders are taken to be sociological and not merely psychological cases (Victoria, 1945).

How the Clinic knows the ‘habitual thief’

Investigations of the foundations in Australia of the doctor’s role in establishing soundness of mind, and advising on how best to administer that individual’s affairs, suggest that the doctor’s position as judge has less to do with his credentials as man-of-science. His main credentials are those of juror, and it is as a member of a jury that he enters the field of what would later be called mental health (McCallum, 2001: 38-40) Here then, we return to the question with which we began: Why the doctor? Why the assumption that a doctor’s knowledge would provide the kind of knowledge that could best be brought to bear on the successful administration of a population under legal sanction? A study of the entry of the psychiatrist into the Clinic suggests that he comes equipped, first and foremost, with a set of juridical credentials.

Consider the following evidence from the Children’s Court case files in 1946. A boy, approaching 16 is examined at Melbourne’s Pentridge prison at request of Chief Probation Officer ‘as he is to appear before the Children’s Court...on a charge of escaping from legal custody’. The psychiatrist notes:

When asked what offences he was charged with at present he stated that he didn’t know. ‘They tell you nothing here.’ *On further interrogation* however, he said that he believed he was being charged with stealing a motor car and some petrol three weeks ago. He later escaped from custody and was at large for about 14 days before recapture. He has been in the metropolitan Gaol for about a week.

When asked about his personal history he became extremely evasive. He adopted various *subterfuges*, to avoid giving the necessary information. *He frequently pleaded that he could not remember*, and this applied to events that happened as recently as last year. At other times he would say 'Ask my grandparents they will know,' or 'ask ... [his Probation Officer] etc. *Further questioning often revealed* that he was well able to remember events which he at first said he could not recall. He appeared *so evasive and untruthful* and his replies were so contradictory in many instances that it was quite impossible to get a coherent history from him either in relation to his home life, education or unemployment. It was therefore found necessary to fall back upon the Social Report and Probation Officer's Report and discuss the relevant parts of these reports with him.

Boy's attitude during examination: The above history was *elicited in disjointed fashion and after considerable difficulty*. D was extremely unco-operative. He was insolent throughout, not only in his speech but in his general bearing. During physical examination he stood in a slovenly fashion with a cheeky grin on his face and carried out instructions in a reluctant manner. This insolent attitude persisted throughout the examination though he was repeatedly advised to alter it. He appeared very cunning and was *clever at evading direct questions* and in giving non committal replies. Thus when an attempt was made to ascertain his attitude to his delinquency *he stated that he was unable to understand my questions*. On several times I found it necessary to tell him that he was deliberately wasting my time.

Conclusion: The main factor apparent is an emotional conflict regarding his father.

The cause of this could not be definitely ascertained. D is an undisciplined type, due apparently to lax parental control during his formative years. An endeavour to correct this later may be the cause of present friction between father and son. The boy's present mood is one of insolent defiance *instead of repentance*...The unfavourable impression created by him at present is distinctly at variance with the account rendered by his probation officer. This discrepancy is hard to explain but I feel that he has been deceiving her. He is quite clever and cunning enough for that ...

Copy of ... [probationary officer's] letter perused. This tends to confirm my previous opinion as set out above (DHSV Archives AN 93/293/1-8 CCCCCF, 1946, emphasis added).

In his final Report to the Court the Psychiatrist states:

This boy's delinquency is the manifestation of a serious character defect, due to lack of adequate supervision and moral training in his formative years. He is lacking in self discipline. He is self centred, unstable, and unreliable, though it appears that he can temporarily assume a good front when it suits him. He could be classified as a psychopathic personality. Though he has been in gaol for several days *he shows no sign of repentance*. His present mood appears to be one of sullen defiance.

The prognosis is unfavourable. He may temporarily respond to probation but is almost certain to lapse again He requires moral re-education and discipline, and I cannot see how this can be achieved other than by committing him to an institution (DHSV Archives AN 93/293/1-8 CCCCCF, 1946, emphasis added).

A further example is of a boy charged with breaking and entering. The psychiatrists report reads:

There is a past history of wandering away from home in early childhood. *When a small boy he would steal coins from his mother's purse.* At the age of eight he began stealing small articles from chain stores. At the age of ten he first got into trouble over stealing. Other similar offences have followed culminating in his present crimes...*He admits* that he finds it hard to resist the temptation to steal whenever a suitable opportunity presents itself...

Conclusions: this boy is a habitual truant and an habitual thief. He is morally defective and is not amenable to control at home.

Recommendation: Placement in a suitable institution and moral reeducation are indicated (DHSV Archives AN 93/293/1-8 CCCCCF, 1946, emphasis added.)

The evidence suggests that the psychiatrist was thoroughly enmeshed in judicial practice. To argue this, it is necessary to engage with the question of the judicial nature of the psychiatrist's role, and his authority. He determined whether any psychopathic history may be elicited, say an alcoholic uncle, a grandmother in a mental institution, or a

sibling who is mentally defective. Next, he determined whether the child exhibits dishonesty—is at all evasive in his/her answers, or has a history of dishonesty beyond the formal history (police report, probation officer's report) provided in the brief accompanying the Court referral. He went about this in two ways. He used the information on the social worker's report of her home visit, and/or the probation officer's report, to see if that information, and the information provided by the child, matched. Then he interrogated the child and/or parents to see if he could elicit any 'evidence' of stealing beyond that provided in formal charges. Very frequently there was an 'admission' to stealing from the mother's purse at an early age. If there was enough to suggest a 'habit'—that the child has become a 'habitual thief' – then he generally recommended institutional placement.

In his eliciting 'confessions' and his manner of using other sources to (cross)examine the child, the psychiatrist's mode of operating—his means of arriving at a 'diagnosis' of 'habitual thief—was distinctly prosecutorial. It might be argued that he serves, from the beginning, less as 'scientific' expert than as an extension of the judicial apparatus.

Summary and conclusion

We suggested that this investigation allows us to question the certainty of understandings which pivot on political shifts, such as from welfarism to conservatism. The analyses of contemporary criminologists in their critique of economic rationalism are important, especially in their attention to actuarial technologies (Pratt, 1989; Feeley and Simon;

O'Malley, 1992?). But the notion that a body of expertise has been thwarted by a bureaucracy fails to recognize the thorough enmeshment of those activities we commonly think of as 'science', and those we think of as 'bureaucratic'. As Latour points out, the bureau of the scientist in the laboratory and the bureau of a bureaucracy have more in common than we might like to think (Latour and Woolgar, 1986). And the Clinic, we argue, was a laboratory for the production of subjects amenable to a set of administrative aspirations. In seeking a greater understanding of the relations between judicial administration and the psy-sciences, we consider it necessary to test, rather than to assume, the givenness of a separation of psy-scientific activities and administrative activities, and the attendant historical understandings that *one causes changes in the other*.

These close interrelations were evident at the Clinic's establishment. The Stipendiary Probation Officer, an officer of the Court, actually *became* the first Clinic Psychologist (Children's Court Annual Report, 1945). Further, the principal technology used by the psychologist (the IQ test) was developed less as a diagnostic tool for the well-being of the individual but rather, quite overtly, to serve the administrative needs of an education bureaucracy bogged down in attempts to sort a newly massed population (Binet and Simon, 1948). In the case of the psychiatrist, the evidence presented here might temper claims that the Clinic was as an institution founded on the principles of scientific objectivity—'rarely involved in the process of proving guilt' (Brown 1982)- and was only later besieged by outsiders who would distort the traditional role of scientific objectivity.

The crossings over of administrative and scientific activities—their ongoing enmeshment—is not a one-way affair. If, in its foundational moment we see the psychologist acting as something of judge-and-juror, we know too that there will be calls, in the 1980s, for the judge to become something of a scientist:

Decision makers in the Children's Court should have all the requirements for magistrates in the adult courts, together with training in a social or behavioural science... (Victoria, 1984: 404).

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