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VISIBLY INVISIBLE: POLICING QUEER YOUNG PEOPLE AS A RESEARCH GAP

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ABSTRACT

This paper argues that queer young people occupy an ironic position in public space that requires further empirical attention in relation to policing. The paper suggests that queer young people are *visibly invisible*: they are visible in their youthfulness, a characteristic that research shows is generally over-policed in wider public space; and they are invisible in their queerness, a characteristic that renders these communities invisible not only in wider legal discourse but also in policing practices more specifically. Interestingly, to this point the question of how sexual orientation mediates policing relationships is yet to be addressed in criminological research. There has been some international research examining queer young peoples' experiences in the criminal justice system more broadly but these issues have yet to be made the subject of research in Australia. Given their position as visibly invisible, and the wealth of research indicating that diverse groups of young people are over-policed, this paper represents a 'call-for-research' on these issues in an Australian context.

1 INTRODUCTION

The uneasy relationship between young people and police ("the gatekeepers of the criminal justice system" (White & Perrone, 2005, p. 10)) is well documented in the literature. Considerable attention has been focused on how young people are subject to over-policing due to their visibility in public spaces. In recent times, this research has moved to how particular diverse groups of young people (for example ethnic groups) are more visible in public places and are, according to research, more frequently subject to police attention and intervention (Collins et al., 2000). Despite the academic interest in these issues, to this point there has been limited, if any attention given to how sexuality may mediate policing (that is, the maintenance of social order by police officers in the community) practices. Research conducted in the United Kingdom (Williams & Robinson, 2004) and the United States (Estrada & Marksamer, 2006) has identified that sexual orientation can inform the provision of criminal justice services, but as yet the literature has not examined the extent to which this mediates policing relationships.

This paper stands as a 'call-for-research' on how young queer people experience policing in Australian contexts. The impetus for this is embedded in the ironic position that queer young people appear to occupy in contemporary Western culture, as the discussion of the literature below will show: they are *visibly invisible*. They are visible in their youthfulness, as will be demonstrated in the examination of the literature on policing young people, and they are invisible in their queerness, as will be demonstrated in the discussion of the literature on queerness in legal discourse. In occupying such a position, this paper contends that the extent to which sexuality mediates policing is an issue that warrants further investigation. It points up the notion that it would be erroneous to assume that queer young people are policed in the same way that other young people are given that police, policies and legislation lack the most basic terminology with which to describe these young people. It concludes by proposing that it may be useful for

future research of policing youthful queer sexualities to consider a new conceptual framework that acknowledges the ironic position of these young people as visibly invisible in law and order discourses.

2 OVER-POLICING VISIBILITY: RESEARCH ABOUT YOUNG PEOPLE AND POLICING

Reflecting on the literature examining the relationship between young people and police, it is easy to draw the conclusion that this relationship is, at best, tense (Cunneen & White, 2007). It is a relationship informed by a very specific understanding of what characteristics an 'ideal' (White, 1990) young person ought to embody, including "respect for authority, good manners, restrained sexuality, polite behaviour and appropriate dress" (White, 1993, p. 209). Those young people that fail to measure up to the above standards are lumped into the category of disorderly and deviant young people who constitute a 'problem' for society – they are the 'dangerous other' (Hudson, 2000) that threatens good social order and require regulation and control (Malone & Hasluck, 1998).

The key concept that informs the relationship between young people and the police is the notion of *visibility*. According to researchers, police interactions with young people are most commonly shaped by the extent to which young people are more visible than others in public space (Alder et al., 1992), something undoubtedly compounded by the lack of recreational spaces tailored to young people. Their visibleness in public space is particularly highlighted in their involvement in subcultural groups that employ spectacular modes of appearance and dress, with research indicating that certain forms of clothing such as hooded jackets and baseball caps (Quinton, Bland & Miller 2000) make young people "more suspect than others" (McAra & McVie, 2005, p. 28). Young people combine these highly visible forms of adornment with other behaviours that are generally considered by police to be visibly demonstrative of "unchecked disorder and incivility" (Grabosky, 1999, p. 1) and contrary to 'good order' in public space: obscene language, noisiness, loitering, and graffiti.

Researchers suggest that behaviours like those enacted by young people in public spaces (for example, obscene language, roudiness, and loitering) have become *criminalised* (McAra & McVie, 2005) and have come to be targeted by law enforcement agencies as needing surveillance. Some argue that this leads to 'over-policing' (Blagg & Wilkie, 1995) and 'differential treatment' (White & Perrone, 2005) by police in the form of higher levels of name-checks and repetitive questioning (White & Adler, 1994; White 1994), move-ons (White, 1998a), frisks (Antrum, 1998), property searches for prohibited implements (Crane, 2000) and youth curfews (Jeffs & Smith, 1996). Zero tolerance strategies (Grabosky, 1999) may also be included, such as playing classical music to deter young people from hanging around in shopping centres. This situation is further compounded by police stopping young people for appearing suspicious and visibly threatening in public space. Young people do not necessarily need to be caught-in-the-act; the police can "single out", "stop", and "move on" certain young people based on the idea that they appear to be "more likely" than other young people to be "up to something" (Blagg & Wilkie, 1997, para. 54).

On 'the street' (White, 1994), the visibility of young people is even more heightened by their congregation in groups on which, in turn, makes them more likely to encounter police intervention (Sutton, 1994). Police powers are frequently deployed for the purpose of 'social cleansing' (Blagg & Wilkie, 1997; Sandercock 1997) to maintain the consumer orientation of these public spaces and expunge the "unproductive leisure" (Loader, 1996, p. 79) activities of young people recreating in places like shopping centres. Coupled with the consistent media reinforcement of 'youth crime problems' (Muncie, 2004), police are called upon to 'clean up the streets' and render young people invisible so that fear of crime is alleviated and safety restored to the community (Omaji, 2003). Young people are made invisible by strategies such as curfews, like that instituted in Northbridge in

Perth, Western Australia, where young people under the age of 18 were removed from the city area after dark if they were not accompanied by a parent/guardian (Rayner, 2003). Such crime control responses are often instituted despite crimes of young people being relatively minor involving property crime, petty offending, vandalism, and public order offences (White & Wyn, 2004; Loader, 1996).

Visibility appears to be an even more important element for some groups of young people that are subject to higher levels of marginalisation and exclusion. These are the more diverse groups of young people who are arguably more visible than other young people hanging out in public spaces. Indeed, in some cases, it is the appearance of these young people alone which distinguish them as more likely to be involved in "incivilities in the public domain" (Cunneen and White, 2007, p. 224). Collins et al. (2001) demonstrate that young people of 'middle-eastern appearance' are particularly subject to over-policing. Fuelled by moral panic about terrorism in the media, being of 'Arabic background' can lead to being perceived as necessarily criminal. Groups of 'middle-eastern appearing' young people are often assumed to be 'gangs' involved with organised crime simply because they are visible in public space. This and other research (Chan, 1994) shows how young people in minority groups can come to be the focus of police attention, as their visibleness is heightened by their diverse status.

3 QUEER YOUNG PEOPLE: POLICING YOUTHFUL VISIBILITY BUT...

The preceding discussion suggests that policing young people is primarily about policing visibleness: making spectacular youthful activities subject to intensive surveillance and intervention in order to render them invisible in public space (Crane, 2000). There is little doubt that queer young people may also be over-policed due to their visible youthfulness in public spaces. Research in the United Kingdom indicates that queer young people are over-policed by police officers, with queer young people (in comparison with other young people) being "four times more likely to feel harassed by police" (Williams & Robinson, 2004, p. 225). These statistics are higher for queer young people that experience physical abuse and harassment who are "seven times more likely to report experiencing discrimination or harassment by the police" (ibid).

These statistics may in part reflect historical understandings of queerness by police. Members of queer communities have been over-policed at certain points in Australian history, as is indicated in incidents such as the police raid of the Tasty nightclub in 1994 (Groves, 1995). People who identified as queer, and that frequented spaces like the Tasty nightclub, were constituted as a moral threat to the sanctity of marriage and the family, with some researchers arguing that this has led to queerness being identified as a "condition to be policed, controlled and regulated" (White, 1993, p. 215; Burke, 1994, 1992). This historical understanding has also been informed by the criminalisation of homosexuality in legal discourse (Cherney, 1999; Dalton, 2006). In much the same way that youthful behaviour has been criminalised, so too have the behaviours of members of queer communities (Leslie, 2000), with certain behaviours (such as men using public toilets for sex with other men) defined as criminal and, hence, in need of regulation. Although homosexuality has recently been decriminalised in Australia (Bull, Pinto & Wilson, 1991), writers argue that "institutional heterosexism" continues to inform "the entire criminal justice system and criminological discourse" (Tomsen, 1996, para. 11) and that this results in queer communities being considered "targets of police violence and persecution". As a result, the everyday sexual behaviours of queer communities are "successfully defined as deviant, subject to intense surveillance and recorded and processed by criminal justice agencies" (Tomsen, 1996, para. 4). This notion is supported by a body of literature indicating that homophobic and heterosexist attitudes are rehearsed and reinforced by both police (Bernstein & Kostelac, 2002; Pratt & Tuffin, 1996) and tertiary students who are being trained as police and criminal justice workers (Cannon, 2005; Ventura et al., 2004).

There is some evidence that suggests that queer young people may be over-policed because they comport themselves in ways that are visibly queer. Even those young people that do not identify as queer may be defined as such by lawyers, social workers and other juvenile justice workers by way of “their appearance or mannerisms” (Feinstein et al., 2001, p. 27). According to Feinstein et al. (2001), “gay, bisexual or transgendered boys are much more visible” (p. 27) in the system than lesbian, bisexual or transgendered girls. Angelique Pratt and Keith Tuffin (1996) found evidence of a common stereotype in police officers discussions of homosexual men in particular, this being ‘effeminism’. Homosexual men were described as visibly homosexual based on “an effeminate way of speaking, an effeminate way of walking and standing (swinging the hips and bending the wrist), and, in the extreme, cross-dressing” (p. 61). The question of how these attitudes and understandings inform policing practices, and whether or not they contribute to over-policing queer young people, remains to be addressed.

The irony is, however, that the literature discussing queerness and policing issues indicates that these communities are also made the subject of *under-policing*; that is, reports of victimisation are subject to police inaction in situations where assistance has been sought. There appears to be a “perceived disinterest” (Williams and Robinson, 2004, p. 215) in complaints made by members of the queer community. These types of responses are reiterated in the recent *Private Lives* report, where nearly half of all participants in all age groups stated that they disagreed with the statement that police officers treated them “with courtesy and respect” (Pitts et al., 2006, p. 52). This would indicate that queer young people are not only over-policed but also under-policed, a position that emerges as unusual in light of other literature about policing young people and visibility. However, before any conclusion may be made about this situation, it is important to note that there does not appear to be any research that focuses specifically on the issue of how police relate with queer young people in contemporary Western culture. It is the argument of the current paper that this ironic position of being over-policed and under-policed is informed by an understanding of queer young people as invisible in law and order discourse.

4 POLICING QUEER YOUNG PEOPLE: THE VISIBLY INVISIBLE?

When considering the conception of queerness that informs legal and justice discourses, the lack of research investigation into queer young people and policing emerges as hardly surprising. Queer young people are certainly *invisible* (Kendall, 1996; Burke, 1994; Hillier & Rosenthal, 2001; Jones & Newtown, 2001) in law and order discourses: they are quite literally ‘non-persons’. Teemu Ruskola (1996) examines this in the context of law in the United States. Ruskola suggests that the law is complicit in the “production of the cultural fantasy that gay and lesbian youth do not exist” (p. 273). According to lawyers, court workers, judges and other legal advocates, as well as parents, teachers, and psychologists, there is no such thing as “authentically gay kids” (Ruskola, 1996, p. 272). There are only ‘adolescents’ that are experiencing a crisis in sexuality, an adolescent phase that all ‘youth’ pass through before they reach normal, fully-developed heterosexuality (Curtin, 2002). As the law does not appear to recognise difference according to sexual orientation, policing queer young people is rendered a non-issue at least for law enforcement agencies in international contexts. As yet, queer young people are only mentioned in research that examines the broader queer community (Williams & Robinson, 2004) and research that examines queer young people’s experiences with criminal justice processes and institutions more broadly (Curtin, 2002; Estrada & Marksamer, 2006; Feinstein et al., 2001).

More importantly, no apparent terminology or language exists in the Australian criminal justice system with which to describe and engage with queer young people. This situation is well evidenced in the recent report by the Human Rights and Equal Opportunity

Commission in Australia (2007) that found 58 laws that blatantly discriminate against same-sex couples simply because the wording of these laws did not include an understanding of same-sex attraction. In addition to this, sexual orientation is non-existent in publicly available police statistics in Australia (Dyson et al., 2003). This emerges as problematic considering that the homophobic harassment and abuse experienced by queer young people (Ellis & High, 2004; Hillier, Turner & Mitchell, 2005; Phoenix, Frosh & Pattman, 2003; Saltmarsh, 2007) can make them more likely to enter the juvenile justice system (Feinstein et al., 2001; Sullivan, 1996). It may be difficult to respond in socially just ways if the police lack a language with which to engage queer young people in criminal justice processes.

Evidence suggests that queer young people are also invisible in broader criminal justice practices. Rudy Estrada and Jody Marksamer (2006) concluded that queer young people have been subject to questionable practices in the criminal justice system in the United States, as they are commonly overlooked and "left unprotected to violence and harassment, subjected to differential treatment, or denied appropriate services" (p. 173). Mary Curtin's (2002) research demonstrates that discriminatory treatment against young lesbian and bisexual girls has become institutionalised to the point where it is invisible in the American criminal justice system. Policies in six institutions demonstrate the taken for granted character of discriminatory treatment, with lesbian and bisexual girls

being forced to room, shower and dress alone, prohibited from certain duties or activities in custody, subjected to additional criteria for 'appropriate' conversation in common space, and receiving less time out of their rooms,...[being] pressured to be gender-conforming in their appearance and...encouraged to wear make-up, and prohibited from shaving their heads (p. 291).

All of these practices are supported by policies in these institutions to the point that discriminatory treatment is invisible. The invisibility of queer young people and the discrimination they are subject to, in these institutions would certainly suggest the need to further explore these issues as well as how queer young people are policed in Australian context.

Given their status as visible young people in public space, and invisible queer young people in law and order discourses, it emerges as odd that these issues have not yet attracted research attention. It would appear that queer young people occupy an ironic space of being *visibly invisible* in relation to policing practices. In contrast with other groups of young people, queer young people appear to inhabit a space between the over-policing of youthful visibility and the under-policing of invisible queerness. This space blurs the boundaries between notions of visibility and invisibility, and over-policing and under-policing, and requires new ways of thinking about policing and queerness that neither demonise nor glorify police or queer young people.

5 VISIBLY INVISIBLE: POLICING NEW SPACES

Despite researchers highlighting the need to consult with marginalised groups of young people to inform policing and crime prevention practices, the assumption remains that policing young people is about policing heterosexual people. Even with extended discussion on the need for regulatory authorities to 'protect' young people defined as being 'at-risk' (Kelly, 2000), sexual orientation appears to be an area, to this point, neglected as an area of concern. It works through the idea that the assumption that queer young people are policed in the same way as other young people is an erroneous one. Surely these issues demand further investigation in an Australian context if policing practices are to avoid being 'blind to the broader social and cultural contexts within which policing takes place, and which exert powerful influences upon policing policies and practices' (James & Polk 1996, p. 200). Given that queer young people experience harassment and violence which makes them more likely to enter the criminal justice

system in international contexts, research needs to examine these issues in an Australian context, including their experiences with policing as well as the broader juvenile justice system.

This paper has argued that queer young people are oddly positioned as visibly invisible in law and order discourses, and that this position ought to be considered in future research that examines queer young peoples' experiences of policing. This ironic position, in combination with a general lack of terminology to describe queer young people, may require a shift in conceptual approach. Indeed, new conceptual tools may be useful in generating a better understanding of the intersecting issues described in this paper, and how they may or may not impact upon the lives of queer young people for better and worse. While all research about policing and young people will necessarily be bound up in competing definitions of what it means to be harassed and victimised, as well as being steeped in the viewpoints of protagonists (James & Polk, 1996), this paper suggests that a useful framework would acknowledge the visibility of queer young people as 'young people' and as 'queer', and the invisibility of 'queerness' in legal discourse and criminal justice practices.

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