

Governing through ‘neutrality’: A Poststructural Analysis of Risk Assessment in the NSW Juvenile Justice System

**Submitted by
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Author's declaration

This is to certify that:

- I. this thesis comprises only my original work towards the degree of Doctor of Philosophy.
- II. due acknowledgement has been made in the text to all other material used.
- III. this thesis does not exceed the word length for this degree.
- IV. no part of this work has been used for the award of another degree.
- V. this thesis meets the University of Sydney's Human Research Ethics Committee (HREC) requirements for the conduct of this research.
- VI. Professional editor, Floriana Badalotti, provided copyediting and proofreading services, according to the guidelines laid out in the universities 'Thesis and Examination of Higher Degrees by Research Procedures 2015' document.

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Abstract

Internationally, the assessment of risk via the application of standardised assessment tools has become routine practice across criminal justice and penal systems. Ostensibly, risk assessment tools enable the prediction, and thereby prevention, of reoffending and recidivism. The use of risk assessment tools in the juvenile justice system in NSW, Australia is less than 20 years old, yet since 2001 one specific tool, the *Youth Level of Service Case Management Inventory Australian Adaptation (YLS/CMI-AA)*, has become a key technology in interventions with young people. Young offenders who come into contact with the justice system are guaranteed two things: to be assessed for their risk of reoffending, and then to be treated for their offending behaviour, based on their predicted risk.

Poststructural analyses of risk assessments have highlighted the way that the concept of 'risk' has become central in modern day systems of discipline and punishment and is implicated in both the governing of juvenile offenders and the population more broadly. This thesis builds upon existing work on risk to closely interrogate how juvenile justice risk assessment tools constitute, or *make*, the 'problem' of juvenile offending. The study applies Carol Bacchi's 'What's the problem represented to be?' (WPR) policy analysis approach to the YLS/CMI-AA 2.0 risk assessment tool and to a corpus of related texts to illuminate how risk assessments regulate, and actively shape who is defined, marked and classified as 'risky'. In this sense, they are understood to do more than simply 'predict' and 'prevent'.

The WPR analysis enables the interrogation of the problem representations, or problematisations, that are lodged within texts such as the assessment tool, user guides and so on. This study demonstrates how the risk assessment tool administered to young people in NSW problematises crime as fixed, static, and something that has always existed, thereby making the imagined standards of behaviour appear to be real and wholly ahistorical. It also produces offenders as having a set of specific and common characteristics that include deviancy, immorality, and various forms of failure. The concept of 'criminogenic pathways' is integral to these representations and the risk assessment tool also firms up and naturalises taken-for-granted ideas about how somebody *becomes* an offender.

This thesis contributes to international scholarship on the uptake up of risk discourses in juvenile penalty by demonstrating how risk assessment tools have introduced a new form of

governing, one that is backed by the 'neutrality' of science, and by extension the 'neutrality' of the state. The supposed assurance of 'neutrality' is used to defend, explain and justify the overrepresentation of certain people in penal systems, and, in Australia, Indigenous young people in particular. In addition, it appears that risk assessment tools function to regulate and discipline both juvenile offenders and 'non-offending' people more generally. The thesis also underlines the importance and usefulness of poststructuralist analytic strategies such as the WPR approach to defamiliarise fields concerned with the juvenile offender problem.

Dedication

Bismillah al Rahman al Rahim

This thesis is dedicated to my late mother Bareha Yassine (*Allah yerhama*) and also to my father Omar Yassine who is my number one supporter. They both left their families and their lives behind in Lebanon to give their children the chance of building their own lives here in Australia. In between raising six children and building a business together, they also taught us to pave the way for others. My siblings and I witnessed them build, from the ground up, a community and a life not only for our family, but also for future generations. Today, there are thousands of people whose prosperity and accomplishments are a direct result of the contributions of my parents. From literally helping people escape and survive war-torn countries, to volunteering in refugee camps, to housing people who would otherwise be homeless, to actively employing and promoting young people, women and immigrants in their humble family business, their lives have been dedicated to others, and so it seems only fitting that my greatest achievement is dedicated to them. Mum and Dad, this is not solely my achievement, but it is also *your* achievement.

My love and gratitude for you is eternal.

I love you.

*We who have met in the world of the souls / Are now two butterflies / In a sea of flowers,
Forever we will be as one / Divine Love*

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What is definable is knowable
and what is knowable can be possessed
and what can be possessed can be violated,
consumed, and will perish
—Mahmoud Darwish

ما يُعَرَّفُ يُعَرَّفُ
و ما يُعَرَّفُ يُمْتَلِكُ
وما يُمْتَلِكُ يُنْتَهَكُ و يُسْتَهْلَكُ و يَهْلِكُ
محمود درويش

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Chapter I

Introduction

Internationally, the assessment of risk via the application of standardised assessment tools has become routine practice across criminal justice and penal systems. Risk assessment tools seemingly enable the prediction, and thereby prevention, of reoffending and recidivism. The use of risk assessment tools in the juvenile justice system in NSW, Australia is relatively new in the overall history of juvenile justice, however they have been used consistently since less 2001. One specific tool, the *Youth Level of Service Case Management Inventory Australian Adaptation* (YLS/CMI-AA) has become a key technology in interventions with young people. Young offenders who come into contact with the justice system are guaranteed two things: to be assessed for their risk of reoffending, and then to be treated for their offending behaviour, based on their predicted risk.

This thesis draws on poststructural analyses of risk assessments to highlight the way that the concept of ‘risk’¹ has become both a central and dominant practice in modern day systems of discipline and punishment, and also calls attention to how risk assessment tools are implicated in both the governing of juvenile offenders and the population more broadly. The thesis builds upon existing work to analyse how juvenile justice risk assessment tools

¹ Since this thesis is about ‘problems’ or ‘problematizations’, this thesis uses single scare quotes to “signal contingency” (Bacchi & Goodwin, 2016, p. 12) and indicates scepticism of ‘knowledge’. Bacchi and Goodwin (2016) explain:

“Knowledge” in this context is not truth; rather, it refers to what is “in the true”- what is accepted as truth – and is understood to be a cultural product. Indeed, there is scepticism about the whole idea of producing “knowledge” in research, signalled by the use of scare quotes around the term and by references to knowledges in the plural. (p. 35).

The scare quotes will be used to highlight the categories and concepts that require problematising such as ‘juvenile offender’, ‘juvenile offender problem’ and ‘risk’.

constitute, or *make*, the ‘problem’ of juvenile offending. As a Foucault-inspired analysis, knowledge is used specifically in relation to power and subjects such as juvenile offenders are understood to be an effect of knowledge/power relations (Newman, 2001). What this approach allows is the disruption of accepted truths, as well as an interrogation of how certain ways of thinking and practicing come to be privileged over others. In addition, a central concept for this thesis, governmentality, will be defined and discussed in terms of its usefulness to understanding penalty. Since Foucault’s use of the concept in 1978, a field of governmentality studies has emerged and been applied in a number of policy areas; what governmentality offers this thesis specifically, however, is a shift in focus from the juvenile offender as a subject that simply exists, to *how* the juvenile offender has been made possible to exist. The study then applies Carol Bacchi’s ‘What’s the problem represented to be?’ (WPR) policy analysis approach to the YLS/CMI-AA 2.0 risk assessment tool and to a corpus of related policy texts to illuminate how this particular risk assessment tool regulates, and actively shapes who is defined, marked and classified as ‘risky’. In this sense, risk assessment tools are understood to do more than simply predict and prevent.

Juvenile Justice

Juvenile justice systems were created to *respond* to the ‘problem’ of juvenile offending, and current day systems are often viewed by governments as progressive, as best practice, and as efficient ways to respond to the juvenile offending ‘problem’. Current juvenile justice systems in Australia, and in most Western nations, would consider contemporary processes and knowledges as being distinctly different, and superior, to historical ways of addressing the juvenile offending ‘problem’. However, writing on youth crime, sociologist John Muncie (2009) distinguishes between two histories of juvenile justice: idealist and revisionist. He describes an idealist history as one that views the changes within juvenile penalty as progressive, evolutionary and as a saviour from the cruel punishments of previous approaches to youth justice (p. 46). The challenging of this type of history is described as a revisionist history and was especially popular during the 1970s, when “revisionist history was more intent on recalling the story of crime and reform in the context of changing socio-historical circumstances economic interests, power relations and a strengthening of state power” (p. 46). In a similar vein, Cunneen and White (2002, p. 27) critique the concept of ‘progress’ in juvenile penalty. They state:

An implicit assumption is that because the present is the outcome of progressive steps in the past, then the present system is the best and most advanced. This view of history sees the main source of change as deriving from enlightened and humane individuals who care about the plight and welfare of working-class children. The state is seen as a neutral institution towards which reform activity can be directed.

This thesis continues in these critical traditions. If current understandings are considered 'progressive', then it is important to unpack and reflect on how juvenile justice systems, in particular, have historically responded to the juvenile offender 'problem', and how historical understandings shape and inform current day institutional responses and practices.

Context and Scope of Issues

In the Australian state of NSW, juvenile offenders come under jurisdiction of the Young Offenders Act 1997, which outlines the *legal* processes for dealing with offenders. This central piece of legislation defines a child as an individual who is over ten and under 18 years of age. In other words, all juveniles are legally recognised as children or as child offenders. A vast majority of the literature that is cited within this thesis uses terms such as adolescents, youth, teenagers, and young people, often used interchangeably to describe individuals between the ages of 13-18. For convenience's sake, this thesis will employ the legal understanding when referring to children (10-18 years of age) or 'young people' when referring to those aged between 13-18 years of age more specifically. Juvenile offender will be used when referring to children who have legally come in contact with juvenile justice agencies.

In NSW, once a child is charged with an offence by the police, they must face the Children's Court, with three or four possible scenarios: 1) the charges are dismissed and no further action is taken, 2) a diversionary option is put in place for less serious offences (Youth Justice Conferencing), 3) the offender serves their sentence in the community, or 4) they are sentenced to custody/imprisonment. Juvenile Justice NSW steps in to manage this process from being charged right through to being released after having served time. Juvenile justice systems in Australia are state-operated and managed, each one involving a constellation of laws, policies, research, professionals, processes, and physical spaces such as

courts and detention centres. In NSW, a young person first comes into contact with Juvenile Justice via the police, and from then onwards, Juvenile Justice becomes the primary agency that is responsible for every process through the system.

Due to the limited statistical information on juvenile offending in NSW specifically, this thesis draws on the available information from both state and national data collection agencies to paint a picture of the juvenile 'problem' in NSW. The Australian Institute of Health and Welfare (AIHW) has reported that between 2015-2016 approximately 5,500 young people in Australia were under juvenile justice supervision (Australian Institute of Health and Welfare, 2017). This number may potentially be higher because it does not reflect the number of young people who may have had contact with the juvenile justice system, only those who were legislatively supervised under juvenile justice institutions. The Australian Institute of Health and Welfare recorded that during 2016-2017, a total of 2,747 young people was reported to be under the supervision (community and custody) of Juvenile Justice NSW, the highest number in the country (Australian Institute of Health and Welfare, 2018, p. 5). Although Juvenile Justice NSW has not released specific information about the socioeconomic status of juvenile offenders, the last detailed report on the health of young people in custody stated that poverty and low-socioeconomic status is typically associated with reoffenders (Justice Health NSW, 2015). On a national level, the Australian Institute of Health and Welfare reported that young people from the lowest socioeconomic areas in Australia were seven times more likely to come under the supervision of juvenile justice agencies (Australian Institute of Health and Welfare, 2018, p. 11).

Justice NSW reported that during 2017-2018, a total of 1616 young people were supervised in the community (Justice NSW, 2018b); that is, young people who received a community-based order to serve their sentence in the community. The agency also reported that during 2017-2018, there was an average of 286 young people in custody per day. Of these young people, 26 were identified as young women² (9%), and 134 (47%) were identified as

² Justice NSW specifically reported the total number of young women, but not the number of young men in custody.

Indigenous. Justice NSW reported that in 2014-2015, 58.6% of children reoffended within 24 months of their first appearance in the Children's Court³ (Justice NSW, 2018b).

The Australian Institute of Health and Welfare recorded that in 2016-2017 in NSW Indigenous children were 17 times as likely to be under supervision as non-Indigenous children (154 per 10,000 compared with 9 per 10,000), and the rate of Indigenous people in detention was 21 times higher than non-Indigenous people. This rate of overrepresentation was also recorded as an increase since 2012-13 (Australian Institute of Health and Welfare, 2018).

My Place in the Thesis

This thesis was inspired by my experiences as a social worker at Juvenile Justice NSW, the state government department that oversees juvenile offenders. This separate department to deal with the juvenile offender 'problem' was officially established in 1990, and as such, is relatively new. When I was first employed by the department, staff were titled 'Juvenile Justice Officers' or 'Juvenile Justice Counsellors' according to their level of qualification. The 'counselling' title was reserved for accredited social workers and psychologists, however there was some discretion around this. My role at the time was primarily to assess and then intervene in the lives of juvenile offenders with one key goal: to predict and reduce the 'risks' associated with reoffending.

During the course of my employment, juvenile justice processes, practices and policies seemed messy. Upon reflection, the department was finding its feet as a separate and specialist body to manage the juvenile offending 'problem'. A number of changes occurred while I was employed in the department: from a preoccupation with and dominant use of therapeutic approaches, right through to the removal of all organisational positions that depended on therapeutic specialist (i.e. counsellors). The varying and rapid changes to the approaches implemented by Juvenile Justice reflected the varying and changing understandings of juvenile offending. For example, when the juvenile offending 'problem' was deemed an individual 'problem', individualised programs were implemented, such as one-on-one counselling. When juvenile offending was understood as a family 'problem', an intensive

³ This is the most updated recoded statistics released by Justice NSW. Data for 2017-2018 has not been released.

family program was enforced (underpinned by multi-systemic therapy). At one stage, the criminal mind was deemed to be the 'problem', and a group program based in psychological theories, named the 'Cognitive Self-Change Program', was enforced. When culture⁴ (or indeed lack of connection to culture) was deemed the 'problem', cultural programs were implemented, such as the 'Our Journey to Respect' and 'Dthina Yuwali' programs which focused on the Indigenous offending 'problem' (Juvenile Justice, Attorney General and Justice, 2011-13) and the 'Pacific Youth Reconnection Project's aimed at at-risk Pacific Islander children.

Despite the changes in approaches and responses to juvenile offending, a consistent, stable feature of the agency was the use of a statistical, standardised procedure and instrument for the assessment of risk of reoffending (or recidivism). The significance of the risk assessment tool is that it is one of the very first administrative processes that officially establishes a child as 'risky', and every child coming into contact with the juvenile justice system in NSW must be subjected to the risk assessment tool. The risk assessment tool informs every aspect of a child's transition through the juvenile justice system, from sentencing, to post-sentencing, to treatment and management, to post-release. The specific risk assessment tool used in NSW is named *Youth Level of Service/Case Management Inventory Australian Adaptation* (YLS/CMI-AA). In my five years in the Department, I administered this risk assessment tool, the YLS/CMI-AA (version 1.0 and version 2.0), to hundreds of children. Towards the end of my employment, I was promoted to 'Assistant Manager', overseeing and approving court reports that were directly informed by the risk assessment tool. In fact, the reliance on the risk assessment tool only expanded and widened while I was an employee.

Upon being employed by Juvenile Justice NSW, the first and immediate training I received was on how to administer the risk assessment tool. Administering the tool was considered core practice. Any intervention had to be directly related to the results of the risk assessment tool. For example, if the risk assessment tool determines that a child is at risk of reoffending due to homelessness or family dysfunction, then intervention strategies had to include responses, such as finding alternative housing or family therapy. The risk assessment

⁴ In Australia, the term 'culture' usually refers to cultural heritage or descent, ethnicity and/or race.

⁵ Empirical research on this program were released in 2015 concluding that the program did not reduce 'risk of reoffending'. See Blake, Liddell and Singh (2015).

tool was also administered at key moments, such as upon entry to Juvenile Justice NSW, six months into intervention, upon any significant changes such as reoffending, and upon exit from the Juvenile Justice system. Ideally, all children would exit 'less riskier' than they were upon entry to the system, and it was my role as a Juvenile Justice employee to specifically ensure that this would happen.

The role of risk assessment tool in the juvenile justice system has remained relatively unchanged since its inception into the agency. Its centrality in the system was communicated via the agency's insistence on constant refresher training on the administration of the risk assessment tool. While other processes and practices were tested and readily replaced, the risk assessment tool was generally excluded from critique. However, in my roles I found myself constantly asking "who is the subject population of the risk assessment tool?" and "who is the risky child offender?" and used the risk assessment tool to reflect on this. For example, on a day-to-day basis, the tool was mostly administered on boys, who were more likely to be categorised as 'risky' not because of their gender per se, but because they were considered more likely to engage in violent offences *because* they were boys. Over the five years of my employment, I could not recollect a single child that was not marked as being from a low socioeconomic background. In other words, most of the children I administered the tool on lived in poorer suburbs, lived in public housing, and they and/or their parents were receiving welfare benefits. Every time I administered the risk assessment tool on an Indigenous child, a 'high risk score' would be determined and acted upon. In fact, over the term of my employment, it was almost inevitable that where a child was Indigenous, I would work with them over an extended period of time, and then usually with one or more of their siblings or relatives who also came in contact with Juvenile Justice NSW.

My experiences confirmed two things: Firstly, that risk assessment tools make it possible to constitute *all* assessed juveniles as immediately and automatically 'risky' and that the 'non-risky' juvenile is made impossible and inconceivable with the use of risk assessment tools. Secondly, that although risk assessment tools constitute all assessed juveniles as 'risky', some individuals are deemed 'riskier' than others and therefore justify more intensive intervention, confirming to me that "not all citizens are governed equally" (Van Cleve & Mayes, 2015, p. 410). My direct experience is hardly surprising, and as expected, simply

reflects the recorded statistics on juvenile offending in NSW: that is, juvenile offenders are most likely to be boys, Indigenous, and poor; yet these patterns were often explained away using legal and criminological jargon. I often worried that I was always working with the *same* populations, and that the risk assessment tool was, and remains, rarely implicated or interrogated. Despite my concerns, the risk assessment tool remains untouchable, demonstrating the agency's absolute faith in it. It was this unquestioned standardisation of practice that provoked what Foucault calls "a cause to question" (Bacchi, 2009, p. 267). It is my hope that this thesis troubles the current perspectives on the use of risk assessments in juvenile penalty.

Despite risk assessment being a key and central practice in Juvenile Justice NSW, there is a lack of available research and localised information on the risk assessment tool. As such, this thesis draws on some of my direct insider experiences of administering the YLS/CMI-AA 2.0. as well as from published literature. Most of the existing literature on YLS/CMI-AA 2.0 is evaluative in nature. That is, most studies flow out of positivist traditions, draw on the language of scientific evidence and involve an explicit distancing from professional discretion (Stewart, Allard, and Dennison, 2011). Indeed, the evaluations of the tool have been positioned as 'developments' because they are seen to incorporate and contain scientific knowledges: the more positivist the risk assessments, the more they are considered accurate and scientifically sound. There have been a handful of mainstream studies on the use of the YLS-CMI/AA in Australia (Upperton & Thompson, 2007; Thompson & Putnins, 2003; Thompson & Pope, 2005), all which provide support for the tool. For example, in one study, the tool is used as an example of the superiority of structured risk assessments over unstructured risk assessments (Upperton & Thompson, 2007). In another study, the tool is supported as a partial response to juvenile crime (Thompson & Putnins, 2003). In another study, Thompson and Pope (2005, p. 207) present the tool as being: "...consistent with a growing professional psychology emphasis on using forensically relevant tests to address criminal justice and psycho-legal issues", citing a long list of professional psychologists concerned with forensically relevant tests: Borum (1996), Lally (2003), Martin, Allan and Allan (2001), and Tolman and Mullendore (2003).

The most extensive research on the effectiveness of the YLS/CMI comes predominantly from overseas studies, yet despite the fact that there is limited research of the tool in the

Australian context, the tool is still positioned as accurate and effective. Stewart et al. (2011, p. 126) for example, stated:

The limited research examining the YLS/CMI-AA supports the reliability and validity of the tool (Thompson & Pope, 2005; Thompson & Putnin, 2003; Upperton & Thompson, 2007), including the predictive validity across Indigenous status (McGrath & Thompson, 2009).

The “limitations” of risk assessment tools usually pertain to the idea that they may not apply across demographics such as “gender”, “age” and “ethnicity” (Stewart et al., 2011, p. 124), nevertheless support is still given to risk assessments and in their ability to be gender and race neutral. The mismatch between these kinds of evaluations and my experience, however, prompted my interest in established and emerging critical work on ‘risk’ and governmentality and in discursive analyses of risk assessment tools or technologies (such as those by Hannah-Moffat, 2016 and O’Malley, 2012, 1998). However, the current literature does not share the precise scope and focus of this thesis, nor does it involve a comprehensive and systematic implementation of the WPR methodology, and none combines a poststructural analysis with the YLS/CMI-AA 2.0. So, in order to achieve this task, this thesis begins by interrogating the construction of juvenile offenders and juvenile justice systems, then turns specifically to the role of risk assessments in penal systems. This thesis focusses on the interrogation of risk assessments and of the YLS/CMI-AA 2.0 specifically, describing the tool as a technology of government and as the technocratisation of social control.

The obsession with where crime resides, and how the criminal is made, has been the preoccupation of criminologists for centuries, always seeking answers to *why* people engage in crime; however, this thesis is concerned with the role of criminological discourse in shaping and (re)producing the very categories, and the specific thinking, that risk assessment tools claim to address. The analytic strategy that is deployed, the ‘What’s the Problem represented to be?’ (WPR) approach, will be outlined and its usefulness highlighted with a number of examples. The WPR will be applied to the YLS/CMI-AA 2.0 risk assessment tool and will demonstrate the way in which crime and offenders are represented, and how these representations operate in the diagnosis of criminality. The WPR analysis highlights the way

in which concepts like ‘criminogenic risk and need’ extend the ambit of juvenile justice systems beyond crime to people’s lives and biographies. This is done through the idea of the ‘criminogenic pathway’. The thesis then explores how the YLS/CMI-AA 2.0 constructs the conditions of possibility for the criminalisation and domination of specific groups of young people and the disciplining effects of ‘neutrality’, positioning it as an essential instrument in the governing of populations that are produced as ‘risky’.

Throughout this thesis, how knowledges actively shapes the juvenile offending ‘problem’ will be highlighted. As demonstrated above, the ‘problem’ of juvenile offending in the NSW Juvenile Justice agency was repositioned a number of times over a relatively short timespan. Juvenile offending has been represented as a welfare ‘problem’, a psychological ‘problem’, a family ‘problem’, a cultural ‘problem’ and so on. Even though these positionings certainly overlap and necessarily depend on each other (for example, offenders who are court mandated to attend cognitive self-change programs while also receiving intensive family intervention), this thesis nevertheless troubles the specific knowledges that these processes and programs stem from, rendering them unstable and contentious.

Overview of the thesis

Chapter Two takes on the task of tracing the political and institutional responses to the juvenile offender ‘problem’. This involves genealogical work that focusses specifically on the institutions and knowledges that work together to justify certain interventions to the juvenile offender ‘problem’. Given Australia’s colonial history, most of the developments are mainly influenced by English policies. This chapter ends by offering an alternative history specifically in relation to Indigenous Australians.

Chapter Three turns to risk assessments as a specific technology of government or technique in juvenile penalty, and begins with a detailed description of the text, the YLS/CMI-AA 2.0 risk assessment tool. The risk assessment tool itself is described as a set of diagnostic questions. The development of risk technologies in the area of crime more broadly are discussed, highlighting the key knowledges such as the scientific faith of risk assessments as ‘neutral’, ‘objective’ and ‘value-free’ tools. Key criminological models and approaches are outlined, such as the Risk-Needs-Responsivity model, and the criminogenic ‘pathways’ understanding to risk assessments, as they underpin the YLS/CMI-AA 2.0 risk

assessment tool. This chapter demonstrates that although risk assessment tools have received wide criticism (mainly theoretical), they have continued to gain momentum in penal systems internationally.

Chapter Four describes the theoretical approach of this thesis, namely a poststructuralist approach to penalty which aims to de-naturalise, and politicise, the existence of penal systems, and of the juvenile offender. A poststructuralist perspective proposes that social reality is not fixed, or stable, but rather is fluid, unstable and contestable (Bacchi, 2009). Drawing on Foucault's text *Discipline and Punish*, this chapter draws attention to the changing nature and forms of punishment and discipline, as well as to the notion that penal systems 'treat crime'. An explanation is also offered for the focus on micro-practices, such as risk assessment tools, to bring attention to how certain practices are made possible, or logical, via the deployment of power and knowledge. Chapter Four begins the analysis of the risk assessment tool through a discussion of various governmentality scholars, who position risk assessment tools as practices of social control over larger groups of people (populations).

Chapter Five discusses the analytical method that will be used to interrogate the YLS/CMI-AA 2.0 risk assessment tool, that is, the 'What's the problem represented to be?' (WPR) policy analysis approach. The WPR analytical strategy is articulated as a focus on *problem questioning* as opposed to the traditional approach of *problem solving* and involves a number of guiding questions to prompt analysis of text, in the Foucauldian sense. The potential of the WPR approach is demonstrated via the inclusion of a number of examples from various fields to highlight how problems are shaped, and how subjects are produced, through policies.

Chapter Six provides the findings from the WPR analysis and draws attention specifically to *how* juvenile offenders are represented in the risk assessment tool. The deep-seated presuppositions and assumptions underlying the questions in the risk assessment are identified, interrogated and unpacked to illuminate how the tool diagnoses the criminal. By isolating each question of the tool, the knowledges that underpin them are brought to the forefront and made unfamiliar and contestable. This chapter, as well as the final two chapters, are grounded in the idea that risk assessments do not simply influence penal

practices; they “*constitute and structure* the realm in which they operate and the targets (penal subjects) upon which they report. That is, assessments not only describe the social world, they help create it” (Werth, 2018, p. 2). In particular, Chapter Six discusses how the tool produces and creates the discourse of dangerousness and ‘risk’, and how these simultaneously work together to produce the juvenile offender.

Chapter Seven is a further excavation of the deep-seated assumptions underpinning the YLS/CMI-AA 2.0 risk assessment tool, exploring the implications of the criminogenic notion of ‘pathways’. This chapter contends that the risk assessment tool adopts the notion of criminogenic pathways to (re) produce factors that are common to juvenile offenders. Using a further analysis of the questions in the tool, this chapter articulates how it justifies inequality and punishes various forms of failure. This chapter explains how the risk assessment tool shores up the ‘failed juvenile’, it is complicit in also shoring up the non-criminal populations. A key observation in this chapter is that the tool is presented as neutral and apolitical, and by extension, positions the state as a neutral entity outside of the policy-making process.

Chapter Eight proposes that the risk assessment tool creates the conditions for the rigorous governing of specific young people in NSW, and explores how it legitimises current racialised penal practices, and how it reproduces (and reflects) racialising logics and practices. This chapter is also concerned with Hil and Brennan’s question of “...how social order is constructed and maintained, who benefits and who misses out, and why it is that some sections of society are actively governed far more than others” (2004, p. 29). By firstly pointing out the subjects of the juvenile justice system in NSW, that is, boys and Indigenous children, it highlights the entrenchment of racialising discourses in the risk assessment tool, and in the wider penal realm. This chapter demonstrates how overrepresentation of these groups has been justified and rationalised, through the apparent neutrality of the risk assessment tool. Thus the chapter explores how a logic of difference is used to explain racism, and then challenges the assumption that penal systems provide a viable solution for the ‘problem’ of crime. The Indigenous ‘problem’ in particular will be expanded on to demonstrate how the risk assessment tool escapes scrutiny and interrogation by policy-makers and governments.

This thesis concludes by proposing that the risk assessment tool has both discursive and material effects for both offending and non-offending populations, and in particular justifies inequality and racism. The final chapter concludes with possibilities for being governed differently (Bacchi, 2009, p. 46).

Chapter 2

The Juvenile Justice System

Introduction

The concept of the juvenile offender has been recorded as a matter of public concern for more than two centuries. What has changed over time is the way in which the juvenile offender is understood, and how this has shaped and influenced the creation and implementation of institutions, laws and policies. This chapter provides an overview of the development of responses to the juvenile offender in Australia and demonstrates the ways that changing understandings and definitions of what childhood is, what and who the juvenile is, what is considered a crime, and knowledges about why and how children can become juveniles have emerged. Although literature reviews on this subject typically begin with a flat re-telling of the emergence of juvenile offending and responses to it, the concept of a single history of juvenile justice is troubled in this chapter. Critical criminologist John Muncie (2009) encourages us to question the whole notion of 'history' in and of itself and as such this chapter does not conclude with a 'correct' version of history, but rather uses scholarly writers to draw attention to the instability of concepts such as crime, juvenile and child in order to explain the formation of the juvenile subject that we have today.

Although dates and historical events are included in this chapter, they are discussed in relation to how understandings of the juvenile 'problem' became institutionalised, legislated and politicised into existence. This fits with the overarching approach of this thesis, to bring attention to how policies give shape to 'problems', and how these are embodied 'in the real'. A key premise of this thesis is that both the philosophical and ideological understandings taken by policy-makers will determine how children, and by extension how juveniles, are measured, assessed and treated and that risk assessments reflect historical ideas of both children and of juveniles. As such, the focus of this chapter is on the 'development' of juvenile penalty, and the institutional responses and 'solutions' to juvenile offending more specifically. For the sake of precision, in this chapter the term 'penalty' and not juvenile justice is used: that is, juvenile justice is about 'punishment'. The term juvenile penalty functions to keep the focus on 'punishment', whereas deploying terms such as

juvenile justice and criminal justice system deters us from thinking about ‘punishment’. By activating the term ‘penalty’, it reminds us that systems are not orientated around ‘justice’, but rather ‘punishment’⁶.

Juvenile Penalty in the United Kingdom

There are multiple historical accounts, mostly UK-based, that suggest that prior to the 17th century childhood was not identified as specifically ‘problematic’ or as in need of management. Muncie (2009) recalls that children at this time were not considered completely separate from adults, did not have specific societal roles and that children past the age of seven were not punished all that differently from adults if they committed a crime. Although there are some debates about the extent of the ‘punishment’ of children, and some accounts of a recognition of childhood status in sentencing (Muncie, 2009), most social historians believe that penalty, including physical punishments by way of whipping and hanging, were applied universally. ‘Punishment’ as a response to crime was thought to be the most effective in deterring and reducing crime. It appears that juvenile penalty per se was not yet established; rather, penalty as a broad concept did exist. Perhaps the closest thing to juvenile penalty was the response to delinquents; orphan schools and reformatories, which were originally developed for depraved (morally wicked) and destitute (poor) children. Nevertheless, penalty was applied specifically for the purposes of ‘punishment’ of a crime, not the person who committed the crime.

Between 1788 and 1810, a handful of reformatories were recorded in the UK. These institutions were under the management of philanthropic organisations and churches (see Muncie, 2009, p. 56 for more details). The establishment of reformatories reflected new understandings of children as different to adults, furthermore, it reflected that ‘problem children (delinquents) required systematic intervention. In a relatively short time, children, and particularly ‘problem children’, became the targets of intervention. A key figure in accounts of these times is Hannah More, a writer, counter-revolutionist and the Evangelical founder of the Sunday school movement. She is connected to a new view of childhood based in the notion that childhood is innately ‘sinful’, and that religion and education could

⁶ The significance of this conceptual distinction is related to Chapter Four in that Foucault’s focus was on punishment and modes of punishment.

rectify this 'problem' (Zhao, 2011, Hannabuss, 2000, Morrison, 2016). Hendrick (1990) posits that she pushed for compulsory education and stricter child rearing as the cure to an immoral society. She perpetuated the concept that 'children are our future', or the idea that childhood is worth investing in for a 'better future', a concept that remains intact today. More viewed childhood as a stepping stone to adulthood and brought a different type of emphasis to the difference between childhood and 'adulthood' (Hendrick, p. 49). Hendrick (p. 39) believes that these ideas were received well:

This found a ready audience among Evangelicals and the upper classes who were unsettled by the French revolution, the Napoleonic wars, and by domestic political and social unrest. More was popular because she articulated their desire for a settled society, characterized by order, obedience and authority.

Hendrick's (1990) retelling highlights the role of religion, as well as class, in understanding, and reconstructing, the child. Muncie (2009) describes the early nineteenth century as a period of

...rapid growth of industrial capitalism, factory production and high density urban populations, the condition of the labouring classes became the object of considerable middle-class concern – whether this was fear of their revolutionary potential, disgust at their morality or alarm at their impoverishment and criminal tendencies (p. 51).

The (re)construction of children was well under way by the 19th century, with an emphasis on the common characteristics of children. This was to have immediate consequences for children who were deemed to be stepping outside of the acceptable boundaries of childhood, such as delinquents and juveniles. The term juvenile delinquency was first recorded as a social 'problem' in a formal report produced in London, titled *The Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis*, in 1815. As the title suggests, it was written in response to what was described as an "alarming increase" of juvenile delinquency and was reflective of ideas about causes of juvenile delinquency as well as the 'solutions' to this 'problem', although the ideas deployed in that report would not formally be implemented for a few more decades. The recommendations

of the report centred on addressing poor parenting practices, lack of morals, lack of discipline and unemployment/education (Muncie, 2009, p. 52), noting that poor parenting was the first in line to be criticised. Thus, the report drew on environmental or social explanations for the juvenile delinquency problem and introduced a new way of thinking and speaking about juvenile delinquency. It was also this report that recommended the separation of adults and children in prison, although this recommendation was not immediately implemented. It appears that although at this stage in history there were no specific institutional or legislative responses to juvenile delinquency, there was new and heightened concern about the 'problem' more generally from the late 18th to the early 19th century.

In effect, a number of reformist initiatives were established and directed at juvenile delinquency as a specific social 'problem' that required separate but immediate attention (Muncie, 2009, p. 51). For example, penal reform also influenced the juvenile offending field in the early 19th century and established a need to separate children from adults in prison. The separation of children from adults was justified on the understanding that the 'contamination' of children by adults was occurring and that there were physical and mental differences between children and adults (Muncie, 2009, p. 55). This reiterated the idea that children were different to adults and required different types of penal responses. By the 1840s, the reformatory movement became the dominant and popular approach to the management of deprived and destitute children. This was considered a 'new' way of managing children, viewed as a different response to the traditional physical punishments that delinquents were receiving. This was considered an alternative way to respond to the juvenile delinquent 'problem' and was largely shaped by the idea that all children, including deviant children, could be referred to as 'reformed'. For example, adults who offended did not have the alternative of reformatories in sentencing, because children were understood to be malleable, changeable and reformable. Due to the debates surrounding the 'nature' of childhood, children were viewed as adults-in-the-making, so they still had a chance for redeeming themselves and being 'rescued' from an immoral life. The idea that children were inherently different to adults was shored up by concepts such as 'reform' and 'rescue'. juvenile delinquency however, was not the only 'problem' that required reform. Poverty and destitution were also 'problems' that required reform. Further, it was not only delinquent behaviour that needed to be reformed: the 'will' and 'soul' of the child also required reform.

The discourses shaping juvenile penalty included religious discourses along with the emerging discourses of criminology, which shifted the aim of penalty from 'punishment' to 'reform'.

Mary Carpenter was one of the key English reformers who encouraged the concept of 'discipline' rather than 'punishment' in responding to the depraved (Cunneen & White, 2002). Carpenter is often quoted as saying that reformation is successful "only when the child's soul is touched, when he yields from the heart" (cited in Cunneen & White, 2002, p. 13). Carpenter, who was critical of what she understood as repressive penal reforms, argued for institutions that implemented 'care', 'support' and 'discipline'. According to her, such discipline and reform could only be effective via employment and education, both of which could reform the child from the depths of their soul. Carpenter was described as aiming for 'effectiveness' as opposed to 'benevolence' via institutions such as reformatories and industrial schools. Nevertheless, institutional interventions for children were also aimed at replacing and emphasizing the necessary 'moral' training their families lacked. The 'problem' of juvenile delinquency was therefore also attributed to immoral families, who, as historians and sociologists observe, were mostly working-class families (Muncie, 2009; Garland, 1985; Hendrick, 2006). This shift in understanding and reconstructing the child also meant that juvenile delinquency in particular was understood and responded to in new ways. Who and what was attributed responsibility for juvenile delinquency shifted, and as a result, 'solutions' to the 'problem' also changed. Neglectful and immoral families became the focal point of juvenile delinquency discussions, emphasising the role of family in social life. Juvenile delinquents did not actually have to engage in a crime to justify removing them from their families. Muncie (2009) explains the justification for child removal: "In doing so it was believed that the chain that links the deprived child of today to the criminal of tomorrow would be broken" (p. 59). In this sense, the idea of the pre-criminal, and intervening in the life of somebody who *may* commit a crime, was institutionally brought into existence via reformatories and also legislated into reality. Previously, an individual did not come under scrutiny from the law, or the state, until they engaged in a crime; only then was state-sanctioned action taken. Although individuals could be judged on their 'morals', it was not enough to justify state and legal intervention until a crime was committed. The new focus on family also meant that juvenile delinquents were not seen to be held fully responsible for their actions, but rather that family and juvenile delinquency were understood as tightly

linked. These discursive formations of 'healthy' and 'unhealthy childhood', and the relationship between family and delinquency is perhaps epitomized by Carpenter's 1853 statement (cited in Muncie, 2009, p. 57):

The child must be placed where the prevailing principle will be, as far as practicable, carried out – where he will be gradually restored to the true position of childhood...He must perceive by manifestations which he cannot mistake that this power, while controlling him, is guided by interest and love; he must have his own affections called forth by the obvious personal interest felt in his own individual well being by those around him, he must, in short, be placed in a family.

There are many keywords in this excerpt that reflect the range of underlying assumptions that were prevalent at the time, and one key idea represented is that a "true position of childhood" did in fact exist. A key statement, however, is the final one: that a child, in order to be 'helped', must be placed in a family. 'Family' at this point could be replaced by reformatories or the state, *in loco parentis*, if the family was seen to fail their child. Muncie (2009) explains the impacts of relocating the blame for the 'juvenile problem'. He said, "A view of childhood as an essentially innocent and dependent state requiring nurture and discipline on the part of parents led to a certain definition of delinquency in particular, *but also* of youthful behaviour in general" (p. 58, my emphasis). As ideas of 'normal childhood' transpired, they contributed to understandings of the juvenile 'problem'. In the same way that the destitute were positioned as subjects of public concern, children who were regarded as depraved were similarly managed: a relationship between poverty, family and crime was established. In contemporary juvenile penal systems, those considered to be from socio-economic disadvantaged backgrounds continue to be overrepresented, suggesting the continued significance of this relationship.

It is important to note that even with shifts in understandings around childhood and juvenile delinquency, sending children to prison and implementing sometimes severe corporal punishments remained legally and morally acceptable. As Muncie (2009, p. 60) notes, "The reformatory system was thus grafted on to the existing institutions of punishment and justice and did not replace them". This reflects, perhaps, the tension and contradictions in ideas surrounding childhood and juvenile delinquency, where children were positioned not

simply as innocent bodies in need of 'care' and 'protection' but also as 'dangerous' and could therefore justifiably be sent to prison just as adults were. Additionally, even with the popularity of reformatories, the idea remained that some children could still be as dangerous as adult criminals, and beyond reformation and repair. For example, Muncie (2009) points out that in 1838, the first separate prison for juveniles was established in the UK but that "its regime was hardly less repressive than that afforded to adults" and that "...this severity was viewed as philanthropic..." (p. 55). So, although there may have been physically separate prisons for juveniles, they continued to receive similarly harsh punishments to adults in prison. Hartley (1986) makes a similar argument in that alternatives to severe punishments, such as reformatories, were not as popular as first thought, but were pushed by powerful players such as Mary Carpenter. Hartley (1986) argued that

Although sending children to prison became, for some, 'a monstrous act which can only tend to increase the immoral pestilence which reigns and which all deplore', the majority of young offenders continued to receive only prison sentences and were not sent on to reformatories (p. 54).

Hartley (1986) points out that despite the efforts of reformers, genuine legislative changes did not occur until the late 19th century and that

Contrary to some of the traditional views about the early years of the reformatory movement in England, changes in the laws relating to juvenile offenders appear not to have been guided by strongly felt humanitarian or benevolent motives. The public may have warmed to the image of the child innocent but the treatment of the guilty child was guided more than ever in the 1840s by the need to control and discipline him more effectively (p. 64).

In other words, 'punishment' remained at the heart of institutional and legislative changes in the 19th century, disguised in the language and practices of reform and salvation.

The legislation created for the function of reformatory and industrial schools (1854 and 1857) is described as a move that clarified and solidified juvenile offending as a specific social 'problem'. The legislation included in its net children or delinquents who had not committed a crime but were deemed *potentially* criminal. The 'solution' to this distinct social 'problem'

were reformatories and industrial schools, alongside mass compulsory education. These developments coincided with the introduction of UK legislation in 1908 that allowed for specific detention centres for juveniles, and then specialist juvenile courts that soon followed, where 'juvenile' was used as a legal term to specifically describe a child who came before the law. Muncie (2009) believed that "such legislation...can be read as not simply humanitarian in intent. While separating juvenile from adult justice, it further cemented the notion that the troublesome young (once again) constituted an entirely new and unprecedented problem for the nation's future" (p. 65).

As children were increasingly managed via reformatories and compulsory education, they became relatively easier to access, study and 'treat'. This was especially important for the rise of psychological understandings of both children and juvenile delinquents that occurred in the late 19th/early 20th centuries. juveniles, as a category of people, were represented as both troublesome and psychologically troubled, justifying the intervention of probation officers, social workers, educators and so on (Muncie, 2009, p. 78). It is important to note however, that punitive corporal practices continued throughout the twentieth century: flogging of children was still legal in the Australian state of NSW. Nevertheless, delinquency was "redefined as subnormality" (Muncie, 2009, p. 80) and criminological and psychological influences bolstered the category of the delinquent and the juvenile as a separate subcategory of people, as well as a 'new' approach to crime: that of 'treatment'. However, what was to be 'treated' was, and still is, shifting.

The modern notion of Juvenile Penalty in Australia

Australia was first and foremost established as a prison, and as a location to 'punish' and 'reform' people. The first fleet arrived from England onto Australian shores in 1788 in Sydney, New South Wales, where the major convict colony was deployed (Finnane & McGuire, 2001; Curthoys, 1999). A number of colonies were expanded and established across Australia; each colony represented a different state and had its own separate laws, army, governance and leaders (Cunneen & White, 2006). It was not until 1901 that Australia became a federation under the Commonwealth. Although a national identity was established, states continued to hold jurisdiction over their own state's laws and territories. Currently, in Australia every state has similar but different legislative regulations that oversee and manage juvenile offenders (Cunneen & White, 2006; Curthoys, 1999).

Australia's convict period is recorded as the period between 1788 and 1868, during which 132,308 men and 24,690 women were transported from Britain (Evans & Thorpe, 1998), and these numbers included children. Muncie (2009) stated that young convicts were particularly likely to be transported to Australia from the UK with the idealistic purpose of making a new start (p. 55) and as an alternative to a prison sentence. In the UK, transportation was a new, state-sanctioned punishment, proposed an alternative to more severe forms of punishment. Feeley (2002, p. 328) draws attention to the relationship between entrepreneurs and the earlier penal systems of England. He argues that transportation was an immediate alternative to capital punishment that revolutionised the English criminal justice system. Prior to the option of transportation, there had never been a more efficient way to deploy punishment on such a large scale. He also argues that transportation expanded the criminal justice system exponentially. He states:

Transportation was a significant feature of English penal policy for over two centuries, and constituted its most significant form of serious sanctioning for half this period. It operated as the dominant form of severe sanctioning for a period longer than the modern prison has existed. Moreover, transportation unleashed expectations to expand the capacities of other criminal justice institutions, and thus set in motion the movement to reform the entire criminal process. And it was, I emphasize, a policy that for a good portion of the time cost the state very little or nothing at all (p. 329).

In 1828, 63 per cent of the recorded population in NSW were convicts or ex-convicts (Evans & Thorpe, 1998). It is estimated that 25,000 of these convicts were under the age of 18 (Nunn, 2017). Young men are often cited in statistics because young women were not officially recorded, but rather counted with adult women convicts; a separate institution for young female convicts did not yet exist, but rather, they were assigned to free settlers and used for domestic labour (Watkins, 2018, Nunn, 2017).

As a response to the increasing number of convict boys arriving to Australia, the first boys-only prison in the world is recorded as the Carters' Barracks, established in 1820 in Sydney, for boys 14-16 years of age, which contained 500 boys (Nunn, 2017). Nunn (2017, p. 158) states that Carters' Barracks represents "...the earliest attempts at establishing institutions, specifically for the purposes of the punishment and reformation of convict boys" (p. 158). In

1834, Carters' Barracks closed down, and another institution for convict boys was opened in Van Diemen's Land, or what we now know as Tasmania. This second institution at Point Puer is estimated to have processed 3000 boys, and shut down in 1849 (Nunn, 2017). In discussing the ideology surrounding these two institutions, Nunn (2017, p. 331) argues:

To understand the ideological formation of the juvenile convict, we need to consider three stages in which the juvenile was imagined: the perishing child in need of rescue; the reimagined child who might, with intervention, become a 'useful member of society'; and the re-formed child, trained as a colonial worker.

Both juvenile facilities were age-based, highlighting the cogency of the idea of a need to separate criminal children from criminal adults (Cunneen & White, 2002). Newly established prison classification systems also reflect a newfound sensitivity towards the distinction between children and adults. For example, there are other records of some attempt in Australia to separate children from adults extending beyond the penal system. In the 1800s, orphan schools such as the Female Orphan School (1801) and the Male Orphan School (1819) were established. Both adopted the policy of apprenticing children out to work (Cunneen & White, 2002). Cunneen and White (2002) describe this period as the "origins of the child welfare system" in Australia (p. 12) due to the overlapping of children who were poor and children who were deemed delinquent.

Fishwick (2014, p. 116) describes how during the 18th and early 19th century law and order had different goals and tasks in Australia than in Britain. For example, the role of police was military in style, focused on expanding the colony and removing Indigenous people from their lands and from their families (Fishwick, 2014, p. 116). The colony police, in its early years, were responsible for various tasks that were not only related to crime, but also any tasks that were related to government administration and regulation. As a result, the police held extensive powers to deal with crime according to their own discretion so that they could directly maintain some form of order. In the 19th century, police had the power to shape and influence legislation and had a strong say in policy reform (Fishwick, 2014, p. 116). The Victorian view that certain children lacked 'discipline', 'morals' and employment is implicated in the legislative changes introduced in NSW between 1828 and 1834. NSW

began to allow magistrates the power to apprentice out orphans held in institutions, such as orphan schools. The legislation expanded up until the late 1850s, allowing the courts more power over a larger category of children.

Cunneen and White (2002) identify the mid 19th century as the period that was fundamental to the institutionalisation of juvenile delinquency in the UK and as a result, also in Australia. Between 1821 and 1837 in the UK, parliamentary bills to alter legal processes for juveniles were debated three times, because – as discussed above – there was not a general consensus that juvenile delinquents should be treated any differently to adult criminals. In 1847, the Juvenile Offenders Act⁷ in the UK was introduced to allow magistrates to sentence children under 14 years of age for non-summary offences, that is, for offences that were considered ‘not serious’. Following in the footsteps of the UK, Australia introduced legislation that dealt with juvenile offenders under the age of 19, with legislative powers to apprentice them out; then introduced an Act in 1850 for offenders under 14 years of age to be dealt with by a magistrate for ‘less serious offenders’, who were to receive a lesser punishment than adults for the same crime (Cunneen & White, 2002, p. 13). Cunneen and White (2002) believe that this latter Juvenile Offenders Act “began the process of development of children’s courts in Australia” (p. 13). This allowed separate institutions for juveniles, and ‘punishment’ started to be seen to require a separate specialist process to that of adults. Between 1895 and 1918, every Australian state had established legislation for separate children’s courts (Cunneen & White, 2002, p. 19).

In England, in 1854, statutory recognition was given to reformatory schools and industrial schools with the introduction of the Youthful Offenders Act (1854) and the Industrial Schools Act (1857). These changes – along with developments in the US – influenced the implementation of similar Acts in Australia so that most states passed similar legislation between 1863-1874. In both England and Australia, further legislation was introduced that allowed courts to send neglected children into institutions. In Australia, the Neglected and Criminal Children’s Act 1864 caused further blurring of neglected/misbehaved children and ‘juvenile offenders’, because neglected children could be legally placed within institutions as

⁷ Note the change in language to reflect the law, from ‘juvenile delinquent’ to ‘juvenile offender’.

directed by the courts. There was a fundamental shift away from deterrence as a rationale for 'punishment' (Cunneen & White, 2002) as there was a

...new focus on the offender rather than the offence... the normal sentencing consideration that a punishment should be proportional to the seriousness of the crime was not seen as part of the law governing juveniles...legitimated by an ideology that assumed the state was acting in the best interests of the child (Cunneen & White, 2002, pp. 14-15).

In the US, similar developments were occurring where children were being 'punished' for the *potential* that they would become criminal. In 1870, what is referred to as the O'Connell Case argued for the release of a child from a reformatory because it was argued that he had not actually committed an offence, but instead was being detained because his parents were deemed 'unfit' to care for him. This case led to the establishment of the first juvenile court in the USA in Chicago in 1899, and the process of redefining 'delinquency' as well as crime started to take hold (Cunneen & White, 2002, pp. 15-16). Similarly, legislation to create children's courts was established throughout Australian jurisdictions between 1895 (South Australia was the first of the states) and 1918 (Tasmania the last). In NSW in 1905, the Neglected Children and Juvenile Offenders Act (NSW) was introduced, resulting in a separate children's court (Cunneen & White, 2002, p. 14).

Ideas of 'punishment' were shifting alongside these Acts in the 19th and early 20th century, and the shift to 'treatment' was emerging as the 'best way' to approach the juvenile offender 'problem'. Crime and 'punishment' expanded beyond the idea that a sentence should be given in direct relation to the crime, but rather that the criminal is 'treated' not just for the crime but for their entire being. Not only would the crime be worked upon, but so would the offender (Cunneen & White, 2002, p. 16). Responding only to the offence was no longer seen as the most effective way to 'solve' the problem of juvenile offending. The 'needs' of the offender were introduced into the penal system; another key development in the area of juvenile penalty (Cunneen & White, 2002, p. 16).

The child-saving movements that originated in the US also influenced Australian juvenile penalty (Muncie, 2009, p. 73; Cunneen & White, 2002, p. 19). Since adolescents were thought to be inevitably flawed and uncontrollable, the child-saving movement rationalised further state intervention and surveillance. Platt (1977) argues that the child-saving

movement went beyond simple good intentions. In fact, Platt suggested that the movement gave way to the introduction of a whole range of professionals, from psychologists, to social workers to prison officers, who were (and continue to be) complicit in the carceral system. Muncie (2009) similarly stated that the movement

...used such rhetoric to justify a vastly increased level of intervention which denied working-class youth any initiative, responsibility and autonomy. At root, the state's intention was to implement more and more extensive networks to enforce industrious habits and discipline (p. 74).

Garland (1985, p. 262) refers to the *penal-welfare complex* to describe the shift in approaches to 'punishment' more generally. Ideas of 'punishment' were influenced by positivist criminology, which focussed on an individual's circumstances and characteristics (Muncie, 2009, p. 75). Cunneen and White (2002) describe what this looked like on the ground:

The courts were to be parental and informal, with correction administered in a 'fatherly manner'. Magistrates were to be specifically selected, trained, and qualified to deal with young people; probation officers were to play a special role in supervising young people and preparing background reports (p. 20).

Special professionals were seen as necessary to work with children's courts, and 'background reports' that matched 'needs' and 'treatment' became a central process of the children's courts. At this stage, entire industries, both criminal and welfare, became major stakeholders not only in juvenile penalty, but in the lives of children and youth more generally.

What was emerging was an expansion of powers and interventions in children's lives by the state. Cunneen and White (2002) argue that the police "were involved as welfare agents, truant officers, and moral guardians. In NSW in the 1890s, the police took on the role of regulating truants" (p. 25). In Australia, laws were introduced specifically to target the behaviours of juveniles (Cunneen & White, 2002, p. 26). For example, Tasmania introduced the Juvenile Offenders Act 1875 which considered certain behaviours as 'immoral', such as throwing stones or indecent exposure, and could be dealt with by a court (Cunneen &

White, 2002, p. 26). Interestingly, police powers are described as simultaneously decreased and increased. Police could no longer resolve or respond to juvenile offenders themselves and/or directly; they would instead have to refer them to the children's court for 'punishment'. The consequence of this was that more children and youth came into contact with the children's court (Cunneen & White, 2002, p. 26). In addition, there was an increase in the number of girls who were brought before the children's court, often referred by their parents or social workers for 'inappropriate' behaviour. Girls were treated as a different type of offender, one who had behaved in opposition to solidified gendered roles and expectations (see Carrington, 1993, 1996; Carrington & Pereira, 2009; Gamble, 1985) and thus the changes are implicated in the expansion of governing gender.

The establishment of children's courts can be understood as reinforcing state powers, and increasingly prosecuting youth for relatively minor offences ('status offences'). Cunneen and White (2002, p. 26), for example, highlighted that in 1911 about a third of offences processed through the Sydney Children's Court were for trivial behaviours such as playing games (Cunneen & White, 2002, p. 26). It has also been argued that the establishment of children's courts also gave way to professionals who were formally incorporated into the juvenile penal system. Children's courts processes reflected ideas of juvenile offenders and of children, with the creation of probation officers who had the role of producing background reports. These 'background reports' were used by the children's court to assess the offender's character and social background. These reports became and continue to be the primary apparatuses used in the management of juveniles (Fishwick, 2014, p. 117). This development also has implications for the family, who could now also be an active, legislative site for intervention, surveillance and monitoring. Donzelot (1979, p92) suggests there was a shift from "government of the family, to government through the family" whereby 'government' is taken to mean both social and legal processes and regulations (Cunneen & White, 2002). Alongside these changes, the development of disciplines throughout the late 19th and early 20th centuries facilitated and justified further interventions in the lives of juveniles and began to reflect constructions of juvenile offending, dominated by psychology and psychiatry.

In New South Wales specifically, the Child Welfare Act 1939 allowed the courts to detain children for welfare related issues such as family neglect and truancy from school

(Carrington, 1993). No further legislative changes were made in New South Wales in relation to juveniles until 1977, when the legal age of criminal responsibility was raised from eight to ten years of age (The Children's Court of New South Wales, 2015).

The rhetoric of 'children's rights' had not yet entered the discourse of the juvenile penal system. Juveniles sentenced to custody could not appeal in the children's court and any decisions about release were administrative – that is, the institution itself made a decision about when a juvenile could be released, not the courts. It is important to note that these same institutions have been scrutinised for their history of cruelty to children and youth, including physical and sexual abuse (Fishwick, 2014, p. 118). Nevertheless, the approach that took into consideration the offender and their psychology and social background began to be described as the 'welfare approach' to juvenile penalty. Cunneen and White (2002, p. 27) stated that it was during the 1960s and early 1970s that these views of 'progress' were criticized and questioned. What emerged with what was deemed as the increase of surveillance, control and regulation of the working-class, were social control understandings of penalty that criticised these approaches as the rigorous regulation of the working-class. Cunneen and White (2002, p. 29-30) situate these changes in the political climate of the time:

...broader economic and social reforms were occurring that were opposed to laissez-faire capitalism, and there was an increased role for state institutions in economic regulation...conceptual changes related to scientific management in industry, intelligence testing in education, and classifications and treatment in criminal justice.

Theorists argue that the increased focus on the state, and its agenda, led to new debates surrounding the need to separate children's welfare matters from criminal matters (Fishwick, 2014, p. 119). Children as bearers of human rights began to emerge in debates of the welfare approach to juvenile offending by child rights activists, who demanded that children had a right to legal representation and highlighted the mistreatment of children within the institutions of the penal system.

It is common in retellings of juvenile justice in Australia to distinguish between the 'welfare approach' and the 'justice approach' (Fishwick, 2014; O'Connell & O'Connell, 2014; Muncie,

2009; Cunneen & White, 2002). This retelling describes the influence of child advocates who argued that the 'welfare' approach to juvenile penalty was more preoccupied with 'immoral' or 'offensive behaviour' as opposed to crime (O'Connell & O'Connell, 2014, p. 58), and in order to rectify this, a 'justice approach' was developed. O'Connell and O'Connell (2014, p. 59) suggested that the 'justice approach' was shaped by "Classical and neoclassical criminological thinking" that were "ingrained in the justice approach that emerged". As a result of the justice approach, the rhetoric shifted to include criminological concepts such as 'anti-social', 'deterrence', and 'responsibility'. This meant that any behaviours considered delinquent or anti-social, and therefore not criminal, were legally removed from legislation (p. 59). O'Connell and O'Connell (2014) pointed out that the welfare approach was not completely replaced by the justice approach, and that some elements of the welfare approach remained. According to O'Connell and O'Connell (2014), this was reflected in programs such as the Juvenile Aid Panels in South Australia that were established to divert delinquents away from the justice system, and to provide support using formal agreements and undertakings (p. 59).

By the 1980s, the justice approach began to draw criticism for heavily valuing lawyers and their influence on law reform, as well the failings of the justice system to adequately address the needs of young people (O'Connell & O'Connell, 2014, p. 60). By the end of the 1980s, *The UN Convention of the Rights of the Child* was incorporated into juvenile penalty processes, which applied a key principle of detention as a last resort. In 1985, the United Nations released the *UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)* which provided guidelines for the juvenile penal systems, including a suggested age for criminal culpability. The *Beijing Rules* sets the minimum age of criminal responsibility at 12 and states:

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

John Muncie observes that the Beijing Rules "...may be the most ratified of all international human rights directives but it is also the most violated" (2005, p. 46). Nevertheless, the idea

that children can be offenders or ‘violators’ of the law is now integrated into law on an international scale.

In the Australian state of NSW specifically, The Children (Detention Centres) Act NSW 1987 implemented the formal recognition and development of juvenile detention centres. This meant that juveniles could be placed in what we now refer to as ‘correctional centres’ (Fishwick, 2014, p. 120). Despite the clear separation of ‘welfare kids’ from juveniles, both correctional centres and residential homes were managed under the ‘Director General of Family and Community Services’, the government agency that works with neglected and abused children. The Children’s Court Act 1987 established the processes and guidelines for the now separate children’s jurisdiction. The Children (Criminal Proceedings) Act 1987 (NSW) reinforced the idea that children are different to adults and should be dealt with differently. This Act outlined and gave guidance to criminal matters involving children from the age of ten (NSW Law Reform Commission, 2005). The New South Wales government ascertained that this Act would be used to guide any juvenile justice matters above all other Acts (Fishwick, 2014, p. 120).

To counteract the justice approach, the emergence of what is referred to as the ‘restorative approach’ gained popularity in the 1990s and is described by O’Connell and O’Connell (2014) in terms of “greater attention being paid to diversion underpinned by the principles of restorative justice” (p. 60). The restorative justice approach is centred on the diversion of young people from the justice system, specifically, the court system (p. 60). This is reflected in programs such as Youth Justice Conferencing in NSW that involves all parties (victim, offender, and family and community member) to formally meet and agree on a set of activities that the juvenile offender must enact in order to ‘restore justice’. In NSW, policy and practice swings between approaches focussing on caring and on punishing young offenders for their ‘crimes’.

In 1990, Australia became a signatory to the UN Convention on the Rights of the Child. These factors led to a number of ‘reforms’ that sought to make distinct and separate legal and institutional changes to juvenile penalty in Australia (Fishwick, 2014, p. 119). Yet the 1990s also saw a dramatic upsurge of legislation that extended police powers and further restricted and governed juveniles in New South Wales. For example, the Children (Parental

Responsibility) Acts of 1994 and 1997 made it possible for parents to be legally liable for illegal behaviours enacted by their children. Perhaps reflecting the contested tightening of juvenile laws, the Young Offenders Act (YOA) was introduced in 1997, pushing alternative punishments for youth offenders, such as Youth Justice Conferencing. In 2002, the Young Offenders Act was tightened, limiting the number of cautions that a young person could receive to three before they are referred to the Children's Court.

Following the *UN Convention on the Rights of the Child*, youth advocates focussed on legislation related specifically to juvenile institutions in NSW. A key report titled *The Kids in Justice: a blueprint for the 90s* recommended that a separate Office of Juvenile Justice be created. This recommendation was implemented in 1991. Although youth advocates may have intended to tilt the juvenile justice system towards fairer outcomes, their advocacy led to an opening for further intervention in the lives of young people. In 1991, youth crime was officially established bureaucratically as a separate problem in its own right, seen to require separate processes and practices, and separate specialist industries, experts and research to curb the youth offending 'problem'. As mentioned above, the key *Kids in Justice* report also led to a dramatic and almost immediate creation of legislation related to juvenile offending. In 1993, the office overseeing juvenile offending became a department, named the 'Department of Juvenile Justice', and was made responsible for policies and processes related to juvenile penalty. Since the establishment of a separate department for juvenile justice, the system has also become increasingly technocratic, from first contact with police, right through to the supervising and gaoling of youth, to assessing their levels of 'risk', to implementing case plans directed at 'reducing risk'. During the 1990s, juvenile justice relied on the 'clinical expertise' of social workers and psychologists to 'assess risk of reoffending'. However, in the early 2000's, this process was replaced with actuarial risk assessments, sidelining the clinical expertise of the agencies employees. These are the focus of this thesis.

By 2019, there were six juvenile justice correctional centres in NSW, all managed by the Director General of Justice, alongside probation and parole and policing, while children's 'welfare' operates under the Director General of Community Services alongside child protection and housing. From a critical perspective, it is important to consider why they are managed by different departments. Departments/offices overseeing juveniles have historically been managed by 'Family and Community Services', not by the 'Justice'

department. Currently there are 16 laws directly related to juveniles in New South Wales, not including the laws that impact on children's welfare, such as 'Care and Protection' orders (Children's Court of NSW, 2015). There are currently 28 legislative Acts related overall to the Children's Court in NSW (Children Court of NSW, 2015). This has increased by 27 since the creation of Children's Court in NSW in 1905. Additionally, the reach of the juvenile offending 'problem' has been extended to external services such as non-government organisations (NGO's) to "support" the aims of Juvenile Justice in New South Wales (Justice NSW, 2018a). Non-government agencies are financially funded by the NSW government to deliver services as directed by Juvenile Justice NSW. In other words, NGOs have become a core part of the ensemble of governing.

Although every state in Australia has an established juvenile justice system, each state has a different age at which children can officially be identified as offenders. Within the span of 12 months, a child can go from being framed as automatically innocent to becoming an offender. 'Juvenile offending', the official legislative term used in Australia, presupposes an identifiable age of sophisticated cognition, and an ability to pinpoint an age-related marker of when a child is responsible and culpable. Across Australia, the criminal age of criminal responsibility or cognitive sophistication is 10, and the legal principle of '*doli incapax*' is applied to children between the ages of 10-14 across all Australian jurisdictions. This principle is part and parcel of the juvenile justice laws, and presumes incapability of intentionally, consciously, and knowingly committing a crime. If a child pleads 'not guilty' to a crime, the burden of proof falls on the prosecution to prove that a child understood that their behaviour was 'wrong' and 'illegal'. In reality though, this is more complex. Stewart et al. (2011, p. 12) state that "this process rarely happens in practice, as the majority of children plead guilty and thereby accept criminal responsibility". In effect, children who are between 10 and 14 years old can be legally and institutionally recognised as offenders, and as individuals who are culpable and responsible for crime.

Internationally, the age of criminality also varies. For example, in Scotland, children aged eight years and over can become subject to the juvenile justice system. In Finland and Denmark, the minimum age of criminal responsibility starts at 15. Comparative studies suggest that ideas of childhood and where children belong in the social hierarchy influence and support the conceptual logics that make it possible for the age at which one can be

thought of as an offender (Winterdyk 2014; Goldson & Hughes, 2010; Arnull & Fox, 2016). Disentangling age from crime renders visible the discourses that penal systems rely on to justify the practices and knowledges embedded in them.

In summary, Australia was first and foremost established as a penal colony, and as an alternative type of 'punishment'. Ideas of 'difference' that were age-based were reflected in the creation of separate institutions, or barracks for young male convicts. The 19th century in Australia saw the conflation of crime with welfare, and as such, established state-directed policies and laws that managed children under the guise of 'salvation' and 'reform'. By the beginning of the 20th century, children's courts were established, emphasising the difference between child and adult offenders in Australia. The 20th century saw an expansion in understandings of juvenile offending, and the surveillance, monitoring, and managing of children increased. This expansion is demonstrated by the sheer number of laws, policies and programs that relate specifically to children and young people in New South Wales alone.

Decolonising Juvenile Penalty in Australia

Most histories on juvenile justice in Australia often describe developments that were in actuality selectively applied to populations who were white. Australia is a country founded first and foremost on crime: the crimes of the convicts that were used to expand the colony, and the crime of genocide that accompanied colonisation. As such, Australia's penal system cannot be separated from a history of colonisation (Fishwick, 2014; Cunneen & White, 2002). This section of the thesis positions the account of juvenile offending in Australia specifically and explicitly in the history of colonisation, and in colonial and Western knowledges that problematised the very existence of Indigenous Australians. The section serves as a reminder of the existence of alternative accounts and encourages a critical stance to dominant retellings of history.

When the first fleet invaded Australian shores in 1788, the English 'back home' were developing ideas about the 'nature' of childhood, and the beginning of a recognition of the 'vulnerability' of children. However, the idea of the 'innocence' of childhood was not carried over to Australia in relation to Aboriginal populations. Open colonial warfare disregarded age completely, and it is recorded that Aboriginal children were murdered alongside

Aboriginal adults, with the sole purpose of expanding the colony. As Cunneen and White (2002, p. 157) state,

Aboriginal people were murdered because they were Aboriginal: that is, because they were the Indigenous people in possession of the land and because they resisted colonial expansion... the killing was indiscriminate...conflict involving the killing of Aboriginal adults and children by punitive parties of Europeans went on at least until the late 1920s in the Northern Territory and Western Australia.

Aboriginal resistance was considered a crime, punishable by death, regardless of the age of the offender. Yet, as part of the colonisation project, an adult-child divide existed in other ways. For example, Aboriginal children were forcibly removed from their families and their kinship groups and placed in institutions specifically for 'natives' such as the Parramatta Native Institution, established in 1814 (Cunneen & White, 2002, p. 157). In 1909, NSW established the NSW Aboriginal Protection Act, allowing the 'Aboriginal Protection Board' the ability "to assume full control and custody of the child of any aborigine" (Australian Human Rights and Equal Opportunity Commission, 2007, p. 34). In 1915, the Aborigines Protection Amendment Act allowed the board to remove children from families without due process, i.e. without having to provide evidence to the court that a child was neglected. It was not until 1969 that the Board was disbanded and its powers over children's removal were instead amalgamated into the 1939 Child Welfare Act (NSW) (Carrington & Pereira, 2009, p. 102). This meant that Aboriginal children could now be placed in the same institutions as non-Aboriginal children, albeit in far greater numbers due to the perceptions about lack of parenting and poverty in Aboriginal families (Carrington & Pereira, 2009; Fishwick, 2014).

In the late 19th and early 20th centuries in Australia, child removal was the dominant form of colonial intervention. Haebich (2015) describes how separations of Aboriginal children from their parents and families was strategic and purposeful, with the aim of eradicating Aboriginal culture. Policies directly targeted the systematic removal of Aboriginal children from their families (Van Krieken, 2004). Yet, this process took place alongside many of the child 'developments' occurring in Australia described previously, such as the outcry over the treatment of children working in factories and mills, the establishment of children's courts,

and the overall recognition that family was central to a child's life, and central to the ability to grow into 'well-adjusted adults'.

Although both non-Aboriginal and Aboriginal children were removed for the sake of their 'protection', Aboriginal children were not afforded the same due legal processes (Moses, 2004), and indeed, Aboriginal children would not be afforded the same rights as non-Aboriginal children until 1940 (Moses, 2004). Policies directed at Aboriginal children were not purely based on crime, but rather the underlying assumptions that Aboriginal parents were inherently 'neglectful' because of their Aboriginality (McCallum, 2014). Even when Aboriginal children were admitted under the same legislation in 1940 under the 'Child Welfare Act', they were, and still are, overrepresented in the juvenile justice system. Haebich (2015) argues that the juvenile justice system simply provided another avenue by which assimilation was possible. Moses (2004) argues that Aboriginal people generally were considered unruly bodies to be either killed, used for work (without pay), or removed and assimilated.

It is important to note how science, research and theory were applied, or not applied, to people based on race. The childhood debate occurring in Europe did not apply to Aboriginal children. Even when science overtook religion in terms of theorising juvenile offending, this was only applied to non-Aboriginal children. For example, 'attachment theory', a popular theory developed from psychoanalysis, puts forward the idea that children require a primary carer, usually the mother, to grow into 'healthy' adults. The theory also suggests that children with 'unhealthy' attachments will have 'dysfunctional' relationships in the future. This theory became popular across Europe and Australia at the height of Aboriginal removals in Australia. Thus, it is clear that ideas of 'attachment to a primary care giver', 'family' and 'relationship dynamics' *did not* apply to Aboriginal people. This also meant that the popular welfare/justice approach, and the debates around this, did not apply to Aboriginal people (McCallum, 2017). Meiners (2015) suggests that "...it desperately matters who is viewed (or not) as innocent or disposable" (p. 136) and that

Charting racial disproportionality at every level of the juvenile justice system – surveillance, arrest, removal from home, conviction, and sentencing – clearly shows that youth of colour do not have the same

access to innocence and are not understood as sensible in the same way that white youth are (p. 131).

This account of developments in Aboriginal juvenile penalty in Australia is highly relevant for understandings of Australia's contemporary juvenile justice system where Indigenous youth are vastly overrepresented. It is important to note that 19th and 20th century recollections and constructions of childhood and juvenile justice systems have tended to exclude non-white populations.

Conclusion

This chapter has located the underpinning logics of risk assessment tools in history and in politics. Tracing the concepts that shape the juvenile offending 'problem' has drawn attention to the instability of the knowledges that risk assessment tools rely on to appear logical. In order to cause disruption to the static concepts and categories that dominate risk assessment tools, this chapter brought the juvenile to the forefront by tracing the history of the juvenile justice system. This has brought attention to the way that key historical concepts remain almost intact in contemporary penal practices.

The next chapter will explore how risk assessment tools undo the context that was presented in this chapter, exploring how risk assessments have come to be presented as 'scientific', 'neutral', 'objective', 'value-free', and as wholly ahistorical.

Chapter 3

Risk Assessment in Juvenile Justice

Introduction

Risk assessment tools have direct and immediate impacts on young people who come in contact with the juvenile justice system. They affect court outcomes, the concentration and types of interventions that a young person may receive, and drive specific interventions (Stewart et al., 2011, p. 116). Risk assessments are also recognised as organisational and administrative tools, and are often associated with economic costs and losses, to ensure 'efficient' use of resources. Risk assessments became a key part of administrative state practices in the 1970s and 1980s, and their place in justice (and other welfare) systems is today so taken for granted that it is difficult to imagine that systems could ever function without processes for assessing, measuring and capturing 'risk'. Risk assessment tools in juvenile justice propose to 'predict' and 'minimise' 'risks', and risk assessments are now additionally used to statistically calculate the likelihood of 'reoffending' (or what is commonly referred to as 'recidivism'). This chapter first provides a description of the risk assessment tool, before turning to the practicality of its use in the NSW juvenile justice system. This chapter then articulates the core concepts that are central to risk assessment tools by outlining their development and their history in the field of crime. This will be followed by a discussion of how core concepts are made 'logical' in the field of crime. This chapter ends with some of the key criticisms of risk assessment tools.

In this chapter, two terms – 'risk assessments' and 'actuarial risk assessments' – are used, and there are important distinctions between them. Actuarial risk assessments are deployed to capture the numerical measurement and prediction of human behaviour. Silver (2000, p. 130) defines actuarial risk assessments as "the application of statistical methods to the task of categorizing individuals by locating them within population subgroups differentiated according to shared characteristics". What differentiates actuarial risk assessments from a traditional risk assessment is that "the locus of decision-making is shifted from judgements

based on professional training and experience to judgements derived from the risk model” (Silver, 2000, p. 130). Although not all the relevant literature on contemporary risk assessments deploy the term ‘actuarial’ it is the case that *most* contemporary risk assessment tools can be considered actuarial due to their reliance on statistical methods. Thus, the YLS/CMI-AA 2.0 risk assessment tool that will be analysed in this thesis is an ‘actuarial’ risk assessment tool, however in mainstream literature the term ‘actuarial’ may not always be used alongside it.

NSW Juvenile Justice: the YLS/CMI-AA 2.0 Risk Assessment Tool

Risk assessment tools have come to be at the core of Western juvenile justice systems, including Australia. In 2016, criminology scholar Hannah-Moffat described the scientisation of risk assessments as “rapidly advancing” and “penetrating multiple criminal justice decision-making points...” (Hannah-Moffat, 2016, p. 33). Between 2013-2018, a juvenile justice risk assessment tool was administered to approximately 22, 507 young people in the Australian state of NSW⁸ alone (Justice NSW, 2018b).

In NSW Juvenile Justice, the risk assessment tool in use that is based on the internationally recognised and most widely used tool in the world in the field of juvenile penalty, the *Youth Level of Service/Case Management Inventory* (YLS/CMI) (Stewart et al., 2011, p. 126). Introduced in NSW in 2001, it has now been applied to thousands of young people who have come in contact with the juvenile justice system. The YLS/CMI was developed in North America by psychologists Don Andrews, James Bonta and Paul Gendreau and was originally adapted from an adult risk assessment tool named *Level of Service Inventory-Revised (LSI-R)* (Stewart et al., 2011, p. 125-126). The YLS/CMI was adapted to the Australian context, and thereafter named the *Youth Level of Service Inventory/Case Management Inventory – Australian Adapted* (version 1 and version 2). According to Thomas and Putnins (2003), the Australian version made the following adaptations:

changes in language to reflect the Australian context, (b) writing several new items that were conceptually or empirically related to relevant risk

⁸ This number is based on the NSW Justice website, “Young people under community supervision” webpage, using the table titled “Key service measures for 2017-2018 – community supervision”, to add the yearly number of assessments since 2013.

domains, (c) tightening the operational definition of various items, (d) minor reorganisation of items in some domains to improve the logical flow, (e) the addition of three items to identify major strengths that may operate as protective factors, and (f) printing operational definitions of all items on the inventory rather than in a separate manual (Thompson & Putnins, 2003, p. 329).

The NSW government purchased the risk assessment tool from North American company Multi-Health Systems and is under a licensing agreement with it (Thompson & Putnins, 2003, p. 329). Multi-Health Systems legally owns the risk assessment tool and advertises itself as a “superior science for critical decisions” (Multi-health Systems Inc., YLS/CMI 2.0 Brochure, 2018, p1). Multi-Health Systems is a private company that sells psychological assessments specifically, including the YLS/CMI 2.0. Its brochure can be downloaded from the company’s website, under the “product overview” section. In 2016, the website advertised the cost of one YLS/CMI 2.0 tool kit as US \$245.00, and in 2018 this had increased to US \$270.00. It is also important to note that only one kit can be administered to one individual. The brochure states that the tool was recently “updated” from version 1 to version 2, and that version 2:

- Includes new assessment items that address gender-informed responsivity factors...
- Contains new assessment items that address culturally-informed responsivity factors and includes minority representation in the sample...
- Deployment of the YLS/CMI 2.0 has the potential to increase system equity and reduce inappropriate decision making. (Multi-health Systems Inc., YLS/CMI 2.0 Brochure, 2018, p2).

The brochure states the purpose of the tool is “Determining risk of reoffending in juvenile offenders...” (Multi-health Systems Inc., YLS/CMI 2.0 Brochure, 2018, p2). It also describes the age group for which the tool is appropriate as 12-18 years of age, a categorisation that

does not quite match the current specification of juveniles in NSW's criminal age of responsibility legislation, which is 10-17 years.

The brochure states that the tool is:

Relevant to all phases of the judicial decision making process: pre-trial detention, pre-adjudication diversion, disposition/ sentencing, and case planning.

The brochure then suggests who might buy and implement the tool:

The instrument is used by probation officers, corrections officers, youth workers, psychologists, and social workers all around the world (Multi-health Systems Inc., YLS/CMI 2.0 Brochure, 2018, p2).

The brochure sells the "product", or the tool, as being appropriate to administer "within male and female youth populations" (Multi-health Systems Inc., YLS/CMI 2.0 Brochure, 2018, p2). In other words, the tool is sold as 'gender-neutral'.

The assessment process hinges on a face-to-face verbal interview between a specialist worker and a young person. NSW Juvenile Justice has produced a document in the format of a guide that staff can write into during interviews with a juvenile, as they are administering the tool. The YLS-CMI/AA 2.0 is not shown to the person being assessed at any stage, nor is the guide or the written notes. The results of the verbal assessment are then tabulated into a computer using specialist software, and a final 'score' (a number between 1 and 48) is derived, indicating the level of 'risk' a juvenile offender presents with, from low risk to medium risk to high risk. The final 'score', and 'risk category', is not shared with the juvenile offender.

The YLS-CMI/AA 2.0 risk assessment tool assesses eight domains that the developers of the tool deem to be associated with 'recidivism' (Stewart et al., 2011, p. 126):

- 1) Prior and current offences;
- 2) Family and living circumstances;
- 3) Education/employment;
- 4) Peer associations;

- 5) Substance abuse;
- 6) Leisure/recreation;
- 7) Personality/behaviour;
- 8) Attitudes/orientation.

These domains or 'risk factors' are based on 'factors' that have been correlated to 'reoffending' in specific bodies of theoretical and empirical work. They are often referred to as the "Central Eight" (Andrews et al., 2012), with Domains Seven and Eight considered the 'Big Two' of risk assessments, indicating the value they are given⁹. Given the YLS/CMI-AA 2.0 is the focus of this thesis it is worthwhile including a concrete description of the tool and explaining the process of applying the risk assessment tool in some detail.

In Juvenile Justice NSW, the process is as follows: a young person is arrested by police and directed to attend the Children's Court. If the court requires more information about the offender to better inform sentencing, a court report is requested; this is to be undertaken by Juvenile Justice NSW, the government department that holds responsibility for the management of juvenile offenders. In order to provide a court report, otherwise known as an 'assessment', a member of staff administers the YLS-CMI/AA 2.0. Staff who administer the tool are generally required to have specific formal qualifications such as in psychology or social work. Administering the tool is considered a specialist role, reserved for those individuals who have the required 'knowledge' about human behaviour and society. The risk assessment tool itself is a set of 'diagnostic questions'. The YLSI/CMI-AA 2.0 risk assessment tool has been developed into a written format, acting as a guide for the tool's administrators, with space to manually write, prompts, and notes to record information. This is the document that is used when the tool is administered to an offender during an interview. The term 'tool' will be used to describe the tool in its entirety: this includes the diagnostic questions of the tool, as well as the guiding questions and prompts aimed at the administrator.

⁹ As mentioned in the introduction chapter, this is based on my own experience of working in Juvenile Justice NSW. The concept of the 'Big Two' is not from the literature, but as a staff member I was trained to understand the last two domains as the 'Big Two' risk factors. This understanding however may have been derived and adapted from the 'Big Four' risk factors as developed by Andrews and Bonta (2010). The Big Four are recorded as: history of antisocial behaviour, antisocial personality pattern, antisocial cognition, and antisocial associates.

Once the risk assessment is completed, the process requires the administrator of the tool to slot the responses (tick or no tick) into the assessment software. Each diagnostic question in the tool aligns with the questions on the software database. After inputting all of the responses, a numerical total is calculated, indicating the level of 'risk'. The administrator is then required to write a court report addressed to the Court to assist in making 'recommendations' in sentencing the offender. These court reports summarise, and expand on, the results from the risk assessment tool. The final 'risk score' also guides the interventions that follow once the offender is sentenced. The scores can be: Low (0-7), Medium (8-17), Medium High (18-30) and High (31+) (Australian Adaptation of Youth Level of Service/ Case Management Inventory, Australian Adaptation, 2002).

The tool is structured as follows: The first page of the tool has the relevant logos and names of the legal owners of the tool: the 'NSW Government, Police & Justice'. The tool is titled 'Assessment Guide' and is preceded with a cautionary box directly under this heading regarding confidentiality and consent. Two questions are asked before the administrator can proceed with the assessment. Question One is "have the limits of confidentiality been explained?" and Question Two is "has the young person completed the consent form?" A yes/no response is required. Basic details are then required, such as the offender's name, and a unique number that is received upon coming in contact with the NSW juvenile justice system. There is writing space for 'additional information' and then for 'sources of information'.

The second page of the tool is technically the beginning of the risk assessment, and the beginning of the diagnostic questioning. There are eight domains, and each domain is numbered and titled, and each diagnostic question under each domain is numbered. There is writing space for the administrator to manually note the responses to each diagnostic question. Each domain also has 'consider...' type questions addressed to the administrator, intended as a prompt to gather as much information as possible about the offender. Some areas of the tool prompt the administrator, whereas in some sections, the administrator is prompted to consider a course of action, or intervention. The administrator works methodologically through each domain, until all of the diagnostic questions have been asked. The eight domains each address a specific 'risk factor'. Each diagnostic question attracts a

'score', reflecting the 'level of risk' attributed to each domain. For example, the domain that carries most weight in terms of 'risk', is Domain One 'Prior and Current Offences'.

The First Domain that is assessed is 'Prior and Current Offences' and asks legal questions related to past contact with the juvenile justice system. In the Second Domain, 'Family and living circumstances', an empty space is left for the administrator to manually draw the offender's family tree. At the end of some sections, the administrator is prompted to "highlight any strengths or protective behaviours..." (Australian Adaptation of Youth Level of Service/ Case Management Inventory, Australian Adaptation, 2002, p5). The only two sections that do not prompt such reflection are Domain One, 'Prior and Current Offences', and Domain Seven, 'Personality/Behaviour'.

Most of the diagnostic questions are open questions; however, it is important to note that the only information that is inputted into the software tool to calculate the 'risk score' is either a tick to indicate "yes", or the absence of a tick to indicate "no". In other words, any information outside of a yes/no response is purely for the administrator to assist in writing a court report, and to inform intervention and case planning. The tool only recognises "yes" or "no" as 'data' to determine a 'score'. Certain domains ask more direct yes/no responses than others, such as Domain Three, 'Education/Employment', where 'cognitive function' is questioned. Domain Five, 'Substance Use', contains a graph prompting the administrator to visually represent 'substance use', and also includes a list of yes/no diagnostic questions about 'substance use'. Domain Seven, 'Personality/Behaviour', also mostly contains yes/no answers (14 to be exact). This domain also contains a note at the beginning, and at the end, of the diagnostic questions. The first note to the administrator is to obtain any/all "psychological and psychiatric reports" (Australian Adaptation of Youth Level of Service/ Case Management Inventory, Australian Adaptation, 2002, p13) about the offender. The section ends with a prompt to refer the offender to a psychologist for "further assessment" (Australian Adaptation of Youth Level of Service/ Case Management Inventory, Australian Adaptation, 2002, p14).

There are a number of questions about the 'strengths' of the juvenile offender however, these are not included in the calculation of the 'risk score'. The guide notes that although points are not given for 'strengths', these are to be used for case planning purposes

(Australian Adaptation of Youth Level of Service/ Case Management Inventory, Australian Adaptation, Guide¹⁰). The guide notes that “The absence of risk does not necessarily mean it is an area of strength for the client” (Australian Adaptation of Youth Level of Service/ Case Management Inventory, Australian Adaptation, Guide, p4).

The risk assessment tool thus is both a computerised and manual document that is used by an administrator. The risk assessment tool consists of a set of diagnostic questions that are manually written into the document and consists of prompts for the administrator of the tool. The software is used to input the responses and to calculate and produce a final ‘score’ that indicates the ‘level of risk of reoffending’.

Risk Assessments and ‘Actuarial’ Risk Assessments

Researchers interested in risk assessment tools are traditionally interested in their ‘accuracy’, with an emphasis on *better predicting* risk (legal concern) and on predicting *more* people in a time-efficient manner (administrative concern). For example, in Stewart et al.’s (2011, p. 128-130) discussion of the “limitations” of risk assessments they suggest that to capture *more* individuals, another “short” and additional version, of risk assessment tools, referred to as “screening tools” be introduced. Screening tools:

...can be used to screen large numbers of people for their risk of reoffending in relatively short periods of time, whereby the higher-risk offenders can be referred for more comprehensive assessments.

The ideal of risk assessments is clear: to predict human behaviour at scale. It is in this context that discussions of the “limitations” of the tool extend only to administrative concerns that potentially undermine this intent such as “staff resistance” and “lack of staff training” (Stewart et al., 2011, pp. 124-125).

Risk assessments are represented as ultimately leading to one thing: predicting the risk of reoffending (Stewart et al., 2011, p. 130). For example, some researchers have highlighted how ‘prediction’ has been applied in other fields:

¹⁰ Date not provided.

A risk estimate is like a weather forecast. The forecast may indicate a 60% or higher probability of rain the next day. That forecast may prove to be wrong but since it rained 60% of the time on similar days in the past, it may be a good idea to carry an umbrella (Gottfredson & Gottfredson, 1985, as cited in Shlonsky & Wagner, 2005, p. 420).

However, the logic of administering risk assessments in penal systems relies on the idea that prediction and prevention are possible. This logic is derived from a risk model developed in the field of criminology. The model is known as the 'Risk-Need-Responsivity' model' (RNR) which is widely recognised as the 'what works' approach to 'reducing reoffending'. Risk assessments are considered "best practice" in proximity to the RNR "principles" (Stewart et al., 2011, p. 119).

Canadian psychologists Don Andrews and Jim Bonta (Hannah-Moffat, 2016, pp. 35-36) introduced the 'Risk-Need-Responsivity' Model (RNR) as consisting of three principles, articulated as:

- the 'Risks' principle,
- the 'Needs' principle and
- the 'Responsivity' principle.

The first, the 'Risk' Principle, proposes that interventions should be cognisant of any "risk factors", or factors that have been "associated" with "recidivism", and that the type and dose of interventions should reflect the level of "risk" involved (Stewart et al., 2011, p. 119). Andrews et al. (1990, p. 374) add that:

Risk factors may be static or dynamic in nature, and psychology is particularly interested in those dynamic risk factors that, when changed, are associated with subsequent variation in the chances of criminal conduct.

It is in this way that 'risk' is put into in 'risk assessments', whereby 'risk' is central to the 'measuring' process. Stewart et al. (2011, p. 116) explain that "...an individual's risk of reoffending is *estimated by assessing* a constellation of factors relating to the individual and their situation..." (my emphasis).

The 'Needs' Principle proposes that in order for an intervention to be effective, the criminogenic needs of the offender also need to be taken into consideration (Stewart et al., 2011, p. 120). 'Criminogenic needs' are also referred to as 'dynamic risk factors', highlighting the slipperiness of the 'risks/needs' concepts that risk assessments heavily rely on. Hannah-Moffat (2016, p. 33) explains that 'dynamic risk factors' are usually the target of intervention as they are deemed to be changeable, unlike 'static risk factors' that are usually historical (and therefore deemed unchangeable).

The 'Responsivity' Principle posits that for treatment to be effective, any factors that may impinge on an offender's level of 'engagement' must also be considered (Stewart, 2011, p. 120). Andrews et al. (1990, p. 375) stated that this principle:

...has to do with the selection of styles and modes of service that are (a) capable of influencing the specific types of intermediate targets that are set with offenders and (b) appropriately matched to the learning styles of offenders.

More recently, a new principle has been added. The 'Professional Discretion' Principle is presented as a recognition of the need for 'professional override' for 'variables' that may not be included in the traditional list of 'risk' factors (Stewart et al., 2011, p. 120). Stewart et al. (2011) argue:

Risk assessment tools should contain a set of variables that assess criminogenic risks, criminogenic needs and responsivity factors and include the provision for clinical overrides. (p. 122).

For example, an offender may be scored as low 'risk', but an administrator of the tool may believe that the score does not consider other 'risk' factors; therefore, they would have the ability to override the official score and push it up, making the offender 'riskier' than the tool itself deems them to be.

The RNR model is internationally currently recognised as the pinnacle of effective risk assessments of offenders. This is reflected in the study by Andrews et al. (1990), who concluded:

Positively, we predict that appropriate treatment – treatment that is delivered to higher risk cases, that targets criminogenic needs, and that is matched with the learning styles of offenders – will reduce recidivism (Andrews et al., 1990, p. 377).

Risk assessments that are deemed to be addressing these three principles are presented, at the very least, as tools that are capable of effectively *identifying* the common characteristics of people who come into contact with penal systems. For example, even criminologists who dismiss bold claims that risk assessments will reduce re-offending maintain the utility of risk assessment tools:

Risk assessments do not reduce recidivism. However, risk assessments identify offenders' levels of risk, criminogenic needs and responsivity factors... (Stewart et al., 2011, p. 121)

Others have been more vocal about risk assessments as tools to reduce incarceration and as a way to help individuals avoid 'offending' in the first place (Bonta & Andrews, 2007; Milgram, 2013).

Making Risk Logical

At the very heart of all risk assessment tools is a 'risk factor' paradigm. By 'paradigm', I mean a specific way of thinking about human beings and their actions that has emerged historically. The 'risk factor' paradigm has been described as the "jewel in the actuarialist crown" due to the centrality that it plays in risk assessments (Case, 2007, p. 92). For this reason, it is important to carefully unpack the notion of 'risk factors'.

In contemporary criminological literature, 'risk factors' are considered to be those factors that increase the likelihood of 'reoffending'. 'Risk factors' are contrasted with what are known as 'protective factors', factors that reduce an individual's 'risk of reoffending'. 'Protective factors' are presented as just as important as 'risk factors'. According to Rogers

(2000, pp. 596-597) accurate, balanced and comprehensive risk assessments are ones that consider both 'risk' and 'protective' factors:

Any comprehensive examination of risk factors must also consider protective factors as well as moderator and mediator effects.... In both mental health and legal contexts, a balanced evaluation of risk assessment must take into account both risk and protective factors (Laub & Lauritsen, 1994).

Interestingly, despite this kind of encouragement to account for 'protective factors' in risk assessments, little research has focussed on the use and benefits of 'protective factors' in the construction of risk assessments (Rennie & Dolan, 2010). Accordingly, then, the YLS/CMI-AA 2.0 does not numerically count 'protective factors'. In other words, 'protective factors' do not affect 'risk level'.

Contemporary research on offenders appears to be preoccupied with making assessments 'more accurate', and this is reflected in the way that assessments have evolved over time. Stewart et al. (2011, p. 117) give a brief outline of "the four generations of risk assessment" and draw on the history of assessments as a way of making sense of risk assessments tools. Risk assessment 'developments' are often related to scientific evidence and involve an explicit distancing from "professional discretion" (Stewart et al., 2011). Indeed, the developments are positioned as such because they are seen to incorporate and contain scientific knowledges: the more positivist the risk assessments, the more they are considered accurate and good quality. Thus, the power of risk assessments flows out of a connection to scientific knowledge that is deemed to be 'objective' and capable of reducing subjectivity from clinicians or administrators of risk assessments. In other words, the larger the gap between people/professionals and the assessment tool, the more accurate and 'unbiased' the risk assessment is presented to be. As Silver (2000, p. 126) explains in her article 'Actuarial risk assessment: Reflections on an emerging social-scientific tool':

The notion of value-neutrality, as it is used in the social sciences, is meant to establish the 'scientificity' of social science activities by distancing those activities from particular points of view or interests...Value-neutrality reflects the scientist's desire to empower his own discourses by

disempowering and de-legitimizing the discourses of lay competitors. In addition, value-neutrality reflects the scientist's desire to align himself with the achievements and legitimacy of the natural sciences (Ross, 1991).

The 'scientisation' of risk assessments is visible in accounts that emphasise risk assessment tools as having been developed over time. As such, developments are often recounted in relation to how scientific – or not scientific – they were. For example, 'first generation' (1G) risk assessments are defined as having "consisted mainly of unstructured professional judgements of the probability of offending behaviour" (Andrews, Bonta & Wormith, 2006, p. 7). These risk assessments were conducted by individual practitioners, with an absence of a structured process and based on a "practitioners clinical judgement" (Stewart, 2011, p. 117). The category 'first generation' risk assessment is used to characterise the kinds of practices used in the Children's Courts in NSW in the late 19th and early 20th centuries¹¹. The key point here is that it was possible for a practitioner to assess an offender as being of 'no risk' to the community.

The category referred to as 'second generation' (2G) risk assessments is characterised by an introduction of the ideal of 'objectivity' and 'neutrality', with the use of standardised tools "which are comprised of empirically derived risk factors that are weighted based on empirically derived numerical scoring systems" (Stewart, 2001, p. 118). A numerical score is derived based on the number of 'static' risk factors associated with 'offending behaviour'. These types of assessments are described as "standardised", "facilitat[ing] greater consistency", "transparent", contain[ing] "accuracy" and "equitability" and "superior" to the first generation of assessments (Stewart, 2011, p. 118). 'Second generation' risk assessment tools can also be referred to as 'actuarial' because of their reliance on a statistical algorithm. Hannah-Moffatt (2006, p. 441) stated that actuarial risk assessments "r[ose] to prominence in the 1970s because they are easily aligned with the dominant political and administrative priorities of the time". Around this time in NSW specifically, juvenile justice systems were considered punitive in their approaches and were under scrutiny for the criminalisation of the poor and girls. The introduction of this new type of risk assessment promised a way to

¹¹ These were referred to as 'court reports' (Muncie, 2009).

reduce incarceration rates with the de-valuing of clinical judgement implying that the biases of clinicians were behind the increased incarceration of young people.

The 'third generation' (3G) of risk assessments then entered the field. 'Third generation' approaches are characterised by the introduction of 'dynamic risk factors' or what is also referred to as 'criminogenic needs', as explained above (Andrews et al., 2006). These types of risk assessments are located in the mid-1980s (Hannah-Moffat, 2006) and are considered to be superior over second generation risk assessments. These risk assessments are presented as empirically based and are presented to be theoretically sound, even more so than second generation ones (Andrews, Bonta & Wormith, 2006, p. 8). 'Third generation' risk assessments are also considered superior because they further remove clinical judgement (i.e., racial and gendered bias).

Most recently, a 'fourth generation' (4G) category has been established. All previous risk assessment tools aimed to identify 'risks' and 'needs', but 'fourth generation' (4G) risk assessment tools are characterised as having extended the reach of the tools to also shape decision-making beyond just identifying 'risk'. 'Fourth Generation' risk assessment tools impact intervention and "guid[e] and follo[w] service and supervision from intake through case closure" (Andrews, Bonta & Wormith, 2006, p. 8). These risk assessment tools were developed by the mid-1990s (Hannah-Moffat, 2006) and are presented as coming full circle because they:

...include all of the elements of third generation risk assessments, with the addition of clear 'guidelines' for case management and supplementary factors which inform case management, including responsivity factors and strengths (Stewart et al., 2011, p. 119).

These tools are also recognised as the most efficient in terms of information gathering and management. Andrews, Bonta and Wormith (2006, p. 8) stated:

The point is not only the development of management information systems but also the development of human service assessment and treatment systems. A major goal of the 4G instruments is to strengthen adherence

with the principles of effective treatment and to facilitate clinical supervision devoted to enhance public protection from recidivism crime.

The best 'fourth generation' risk assessments are those believed to contain a number of elements. First and foremost, 'good' risk assessments are constructed around the 'risk factors' that have been empirically supported to correlate with 'offending'. Stewart et al., (2011, p. 121) list these 'risk factors' (sometimes referred to as 'social antecedents' and 'criminogenic pathways') as:

- early onset of criminality,
- criminal/antisocial history,
- criminal/antisocial peer associations,
- substance abuse,
- male offender,
- antisocial attitudes,
- family factors (for example, out-of-home placements, history of abuse or neglect, not living with both natural parents, one or both parents deceased, parental incarceration/criminality, poor supervision/rearing practices),
- negative attitude towards school/poor school performance,
- minority race,
- Aboriginal or Torres Strait Islander descent,
- poor use of leisure time,
- current offence type and

- antisocial personality variables

Most of the listed 'risk factors' are presented as having 'empirical' grounding, as well as 'theoretical' grounding from the criminology literature (Stewart et al., 2011, p. 122).

Reliability is a common and almost central concern with risk assessment tools. The concept of 'reliability' is meant in the traditional positivist sense. Stewart et al. (2011, p. 123) stated:

Reliability refers to the consistency or stability of the risk assessment. A reliable instrument produces the same results on repeated measures, both temporally and across different raters (Stewart, 2011, p. 123).

The concept of 'validity' also plays a central role in the research surrounding risk assessment tools. Stewart et al. (2011, p. 123) stated:

Validity refers to whether the assessment measures or predicts the criterion it was designed to measure or predict. Arguably the most important assessment of 'validity' for risk tools is 'predictive validity' - the degree of accuracy to which the assessment predict recidivism.

In addition, the real test of risk assessments is seen to be their 'predictive validity' across demographic groups (Stewart et al., 2011, p. 124), or in other words, to be seen as race and gender 'neutral'. The pinnacle of risk assessments is the ability to predict human behaviour according to their 'risk'. The (in)ability of risk assessments to predict 'risk' is almost always mentioned as one of their 'limitation' in mainstream literature, leading to thousands of studies testing the predictive validity of risk assessment tools in the attempt to create 'sameness' and homogeneity (van den Berg et al., 2018; Hay et al., 2018; Cartwright et al., 2018; Stephens, Newman, Cantor & Seto, 2018; McLachlan et al., 2018; Papp, Campbell & Anderson, 2018). To fulfil this kind of predictive purpose, a great deal of work has gone into developing statistical algorithms.

Over time, risk assessments have gathered substantial discursive force, well beyond shoring up the concept 'risk' and techniques for simply predicting 'risks'. Risk assessments have troubled the legitimacy of professional discretion and risk 'talk' has expanded to include new concepts such as 'static risk factors', 'dynamic risk factors' and 'criminogenic needs' through

to the 'responsivity factors' that currently underpin fourth generation assessments, and the statistical algorithms (actuarial risk assessments) that measure 'risk of reoffending' (Stewart et al., 2011). Drawing on the concept of 'governmentality' discussed in Chapter Four, the dominance of risk assessment tools can perhaps be described as a 'governing through scientisation'.

Despite the increased reliance on actuarial risk assessments in Australia, there has also been a robust critique of actuarial risk assessments. Theorists critical of actuarial risk assessments have expressed a great deal of concern about how this type of method has come to be used in the social sciences to predict human behaviour (Silver & Miller, 2002). For example, some scholars have posited that the emergence of actuarial risk assessments is linked to neo-liberalism and the contemporary dominance of evidence-based practice (EBP). Pollack (2010, p. 1271) argued that risk assessments are "typical of neo-liberal regulatory strategies that individualize social context and valorize notions of individual responsibility".

Evidence-based practice is often the justification for the deployment of risk assessments. Neo-liberal agendas require empirical or positivist 'evidence' to demonstrate 'effectiveness'. Gray and McDonald (2006, p. 13) stated "evidence-based practice becomes the modal form of practice in neoliberal welfare states". 'Evidence' is often presented as 'fact' in most of the criminological literature, including in Stewart et al. (2011, p. 170) who described evidence-based practice as "science-verified practices and empirically supported practices...the evidence base is scientific conformation of what works, what does not work and what is still disputed". Hannah-Moffat (2016, pp36-37) is especially critical of actuarial risk assessments and brings attention to the slippage between 'risks' and 'needs'. She states:

...it is important to consider how the term 'dynamic risk' is used as a euphemism for criminogenic need. This is more than a linguistic shift: the term criminogenic need, or dynamic risk, was deliberately coined to identify 'needs' that are statistically related to recidivism.

Mostly, risk assessments such as the YLS-CMI/AA 2.0 are considered 'science-verified practices' and are presented as examples of 'what works'. Goddard and Myers (2016) highlight that these forms of technology legitimize increased social control and surveillance,

and question what risk assessments *do not* address. They describe an ‘evidence-based oppression’, arguing:

Risk logics structure what programs should not address, which ultimately may be more important than dictating which factors programs should. Addressing community-level factors or criminogenic economic conditions – much less engaging at-risk youth in doing this work – does not fit well with the dominant “what works” approach. (p. 4)

Other scholars have brought attention to how social control strategies take on different forms over time and understand risk technologies as transformative. For example, Maurutto and Hannah-Moffat (2006) are critical of the common practice that places actuarial risk assessments in opposition to clinical expertise, clinical judgement and welfare approaches. They instead argue that risk assessments are usually used *in combination* with what might be considered ‘welfare’ approaches and ‘clinical assessments’. They caution that “we underscore how new penal technologies combine, merge and continually reassemble risk with other logics in response to various institutional agendas” (Maurutto & Hannah-Moffat, 2006, p. 439).

Conclusion

In this chapter, the development of risk technologies in the area of crime more broadly was outlined, highlighting the key knowledges such as the scientific faith in risk assessments as ‘neutral’, ‘objective’ and ‘value-free’ tools. Key criminological models and approaches were also outlined, such as the Risk-Needs-Responsivity model, and the criminogenic ‘pathways’ understanding to risk assessments, as they underpin the YLS/CMI-AA 2.0 risk assessment tool. This chapter demonstrated that although risk assessment tools have received wide criticism (mainly theoretical), their use has continued to gain momentum in penal systems internationally.

Chapter 4

Analysing the Risk Assessment Tool: Epistemological Approach

Introduction

This chapter articulates the key poststructural themes and concepts that are integral to the poststructural framework used to analyse the risk assessment tool. The chapter will draw, in particular, on the work of Michel Foucault, a French social historian whose main works were written in the 1970s. An account of Foucault's text, *Discipline and Punish*, in particular highlights the usefulness of Foucauldian tools and concepts for the analysis of contemporary juvenile justice practices. Some of the Foucauldian analytic strategies and concepts that are significant for the analysis are genealogy, knowledge, power, discourse, and governmentality. This chapter will explain how each of these may be useful in analysing juvenile penalty, and in Foucault's tradition, the project of de-familiarising juvenile justice policies and practices in contemporary Australia.

Using Foucault: Discipline and Punish

Foucault's (1977) work on *Discipline and Punish* de-familiarised prisons as a modern form of 'punishment'. How the modern prison has emerged, as though it has always been there, is Foucault's target. Foucault takes up this somewhat novel idea or practice, that of locking people into cages, or 'prisons', and subjects it to scrutiny. Foucault's *Discipline and Punish* is popularly understood, first and foremost, as a genealogy of 'punishment', analysing the changing punishment-type techniques, from 'punishment' as torture of the body, through to 'punishment' as imprisonment, and to present day forms of 'punishment' as treatment or rehabilitation.

In the opening chapter of Foucault's text (p. 3-5), he brings attention to the sudden change in 'punishment' in a relatively short time span. The chapter opens with a descriptive and

distressing event, situated in Paris in the year 1757, of a public execution and physical torture of a prisoner.

He uses this imagery to highlight the naivety of thinking that modern day versions of 'punishment' are better or more humane than those in the past (p. 9-11). Foucault then goes on to draw attention to dramatic changes in penality, pointing out that the most significant change over the past few centuries in terms of penality was the disappearance of the physical torture of prisoners as well as the publicity of punishment. This form of punishment ended (generally speaking) by the end of the 18th century/beginning of the nineteenth century, and became regarded mostly as an inhumane way to punish prisoners (p. 16). In other words, prior to the mid-eighteenth century, locking people in cages for a specified period of time as a form of 'punishment' was rare, even though this has become the most common way to respond to crime.

At the heart of Foucault's *Discipline and Punish* is the challenge that current day penality may be worse than what it was prior to the elimination of public punishments, perhaps because the contemporary penal system is out of sight, out of mind. Foucault observes that "Punishment ha[s] gradually ceased to be a spectacle" (p. 9). He describes the effects of this development:

Punishment, then, will tend to become the most hidden part of the penal process. This has several consequences: it leaves the domain more or less everyday perception and enters that of abstract consciousness; its effectiveness is seen as resulting from its inevitability, not from its visible intensity; it is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage crime; the exemplary mechanics of punishment changes its mechanisms. As a result, justice no longer takes public responsibility for the violence that is bound up with its practice (p. 9).

This example demonstrates the way in which Foucauldian genealogical thinking enables researchers to step back from taken-for-granted ways of thinking about contemporary penality. According to Halperin (2006), "The elusive but seductive goal of this

intellectual *ascesis* is to turn us into anthropologists of our own culture and historians of our own present” (emphasis in original).

Foucault’s *Discipline and Punish* does not argue for *better* or more effective ways to ‘punish’, but instead points out the effects of varying forms of punishment, and questions how current systems may be more oppressive than we may think. In fact, Foucault is critical about emphasising penal reform. As Kelly (2014) points out,

Foucault is scathing about this discourse of prison reform. He points out that prison reform discourse has been around as long as prisons themselves. That is, as long as there have been prisons, there have been people with schemes for making them (sic)work properly. This leads Foucault to conclude that the discourse of prison reform is not opposed to, but part of, the failed ‘carceral’ system. That is, schemes for the perfect operation of the prison have always been the basis for the perfect operation of actual prisons. The initial impetus for mass imprisonment involved ideas of the moral perfectibility of humans through institutional interventions. All modern imprisonment is thus a consequence of the urge to reform. The way the ideal scheme of prison operation works is an excuse for the real prison which never lives up to that scheme in practice (p. 75).

Taking on this line of thinking raises new questions, how has ‘punishment’ come to be accepted in its present-day form? How have prisons come to be accepted as central features of modern-day society? How have prisons become representative of liberation, an “access to ‘humanity’” (Burchell, Gordon & Miller, 1991, p. 231), and a world away from the savagery of public executions? And if ‘punishment’ is no longer targeted at the human body, as Foucault observes, where has it been redirected? What and who do current systems aim to punish? How has ‘time’ become a central marker of punishment? And, how have prisons become able to “function openly as treatment...”? (Burchell, Gordon & Miller, 1991, p. 256). Rather than provide answers to the above, Foucault asks more questions.

Foucault positions all forms of punishment as something other than a logical response to a logical ‘problem’. Foucault’s *Discipline and Punish* encourages us to question how we have come to know “what we know” about ‘punishment’, and in a sense, urges us to be outraged anew about the caging (physically and metaphorically) of bodies. Foucault’s challenge is to consider how the absence of the whip and the torturer makes it possible to believe that

'punishment' is now more humanitarian. His work shows how 'punishment' has extended beyond the prison, and that the removal of corporal punishments has in fact led to a society that is *more* policed and regulated than ever before. In other words, when prisoner's bodies were physically punished, the punishment ended with the body, and did not extend beyond it, or beyond the 'punishment' itself.

Current penal systems convince us to obey, even when we are not in prison. Foucault argues that the soul has become the prison of the body, ensuring that we self-regulate, and self-govern; a form of self-subjugation. Regulation and disciplinary practices are discussed in more detail in the following sections, as they are central to the governing practices at the heart of this thesis.

In *Discipline and Punish*, Foucault also revisits the modern idea of freedom. If 'punishment' is the removal of someone's liberty, it assumes that there is in fact liberty to begin with. Foucault argues that prisons are based on a false sense of freedom, and that they have been established around the idea that the state removes or restricts this freedom. Foucault believes that humanism in particular has produced more 'unfreedom', because as liberty grows or increases, so does the discipline of bodies. One of his key points is that prisons produce crime, and that they allow more acts or behaviours to be considered crime, all in the name of *increasing* our 'freedoms' and 'liberty'. What Foucault confronts us with, is that the existence of prisons is *required* in a liberal society as proof of freedom and liberty; for if the State can be the 'giver' of freedoms, it can also act as a suppressor of them. In addition to demonstrating *what prisons do* in the broad sense of legitimating punishment and shoring up the role of the state, *Discipline and Punish* also draws attention to the specific *practices* that make up penal systems. For Foucault, power is represented in micro-practices or everyday mundane practices. It is through Foucault's interrogation of the detailed everyday exploration of mundane practices that he establishes the ways in which subjects are produced and (re)produced. Foucault explains why 'practices' and not just institutions, theories or ideologies are important:

In this piece of research on the prisons, as in my other earlier work, the target of analysis wasn't 'institutions', 'theories' or 'ideology', but practices – with the aim of grasping the conditions which make these acceptable at a

given moment; the hypothesis being that these types of practice are not just governed by institutions, prescribed by ideologies, guided by pragmatic circumstances – whatever role these elements may actually play – but possess up to a point their own specific regularities, logic, strategy, self-evidence and 'reason'. It is a question of analyzing a 'regime of practices' – practices being understood here as places where what is said and what is done, rules imposed and reasons given, the planned and the taken for granted meet and interconnect. (Burchell, Gordon & Miller, 1991, p. 75).

At the beginning of *Discipline and Punish*, following the initial description of the tortured prisoner, Foucault includes the everyday timetable of a prisoner, demonstrating how docility is used to achieve the disciplined body, every part of the day broken day into minutes, each with instructions the prisoner must follow. What is key is that Foucault's arguments are located in the ordinary – prisoners' timetables, small gestures and every day requirements – to achieve the disciplined body. According to Foucault, it is in these invisible practices that an ultimate form of power is achieved. Foucault's argues for the interrogation of the detailed everyday exploration of the mundane provides an alternative way of thinking about penalty. In *Discipline and Punish*, Foucault outlines a general order that moves from the punished body, to the disciplined body, to the imprisoned body, arguing that the imprisoned body is a disciplined one. Foucault describes how 'docile bodies' are formed into disciplined bodies. The strategies used to produce docile bodies, Foucault argues, are to confine them, arrange them spatially, make them visible at all times, and regulate them. In other words, order is at the heart of penal practices. Foucault argues that docility is produced in much the same way in prisons, schools, factories and mental asylums. This idea is important for this thesis, where risk assessment tools are considered 'practices' that discursively produce subjects.

Knowledge, Power, Discourse

Central to a Foucauldian approach is the concept of knowledge and its correlative relationship to power. Foucault argues that knowledge is political and cannot be 'objective' or 'neutral'. Knowledge is tied with power, because, he argues, power produces knowledge, and knowledge is an embodiment of that power. Explaining Foucault's work, contemporary

philosopher Saul Newman (2001) states “...power works through and produces knowledge, and knowledge in turn perpetuates power” (p. 81).

A Foucauldian approach to knowledge questions how knowledge is used in the production of subjects and allows for an exploration of the conditions that makes specific circumstances possible. This provides the opportunity to disrupt specific knowledges that have been formed about populations of people, such as the juvenile offender. How we have come to see certain knowledges as ‘fact’ and ‘true’ (also referred to as ‘truth status’) becomes open for investigation, for, as Newman (2001) argues:

There is not one Truth, but many truths, as many as there are individual perspectives. Truth is a weapon in a power game. It can be used against power but it can at the same time perpetuate the very power it professes to oppose (p. 82).

Exploring why and how some truths are more privileged than others, as well as who they benefit, is also important. Kelly (2014) explains the usefulness of this type of analysis:

...what Foucault is doing disturbs, not by showing all pre-existing views to be false, but by pointing out that what was presented as a final answer was actually only one possible way of looking at things (pp. 55-56).

Foucault’s use of the concept power is also deployed in this thesis. Foucault proposed that power is permeated *through* knowledge to subjectify populations. Foucault rejected the idea that power is centralised, or simply repressive. Instead, he understood power as being productive and dispersed (Gallagher, 2008). He understood power not as something institutions simply possess, but rather that the institution itself is an effect of power:

Power must be analysed as something which circulates, or rather as something which only functions in the form of a chain. It is never localised here or there, never in anybody’s hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organisation (Foucault, 1980b, p. 98, cited in Gallagher, 2008, p. 399).

Importantly, Foucault did not represent the power-knowledge nexus as an oppressive one or suggest that knowledge should be completely discarded because of its power implications. Instead, he encouraged societies to be wary, cautious, and aware of the dynamics between knowledge and power, and to be conscious of their dangers and impacts. Newman (2001) explains that “this perhaps exemplifies the poststructuralist stance on these discourses: not a rejection, but rather a questioning, a certain incredulity” (p. 82). This encapsulates the position of this thesis, because it makes it possible to question how the juvenile offender has been constituted as a subject of control, the techniques that have been used to produce and maintain control, and how possibilities of resistance within these constraints may be recognised. Employing this approach, this thesis explores how juvenile offenders have become *subjects* through discursive practices and through power relations:

Subjectification refers to the production, or *making*, of provisional “subjects” of particular kinds through policy practices...It includes the characteristics, behaviours and dispositions that political “subjects” are encouraged to adopt and how they may develop in relation to those “repertoires of conduct”... The “subject” in this view is an effect of politics, always in process, and a product of power-knowledge relations... (Bacchi & Goodwin, 2016, p. 49).

Foucault’s definition of power also allows an investigation of how power is used to manage, regulate, and classify bodies according to categories or sub-groups, such as the ‘juvenile’, the ‘child’, the ‘anti-social’, ‘girls’ etc. According to Foucault, this type of power limits what people are able to think about themselves, and therefore what they can do materially, which further subjects them to tactics of power. Foucault argued that power is “aimed at producing them as objects of knowledge, and subjects of power” (Newman, 2001, p. 86).

In *Discipline and Punish*, power is understood to operate around the body, with an intentional use of the term ‘bodies’ as opposed to ‘people’. Foucault reminds us that ‘prisoners’ are spatially organised, in relation to society (physically separated from society), as well as in relation to one another (classifying ‘prisoners’ within prisons). So even though the body is no longer the target of ‘punishment’, it is a means by which to ‘punish’. Foucault argues that modern day prisons have come to focus on the mind and the soul, not only

removing liberty of movement, but also of thought. He argues that public executions were a naked form of power, a way to see power, whereas prisons have the effect of invisibilising power. Foucault believed that if people can no longer see the executioner, or the 'prisoner', this in itself is a more dangerous form of power.

Foucault used Jeremy Bentham's *Panopticon* as a metaphor to explain this form of power. Jeremy Bentham was an English philosopher who proposed a design of prisons that purposely positioned the guards tower in the centre of the prison, able to view 'prisoners' in their cage, or what we contemporarily refer to as a 'prison cell'. Bentham designed the prison so that the only thing in view of the 'prisoners' is the guards' tower; however, the prison guards would be invisible to the 'prisoners'. The 'prisoners' would know that they would be in full view of the prison guards, but would be unable to know when they were being watched, meaning that they would have to behave *as though* they were being watched. According to Foucault, power, in this way, functions automatically, as the 'prisoners' police themselves, and produce what Foucault refers to as a form of self-regulation. Although we may no longer have the guards tower, other forms of surveillance within and beyond the prison remain relevant. In this way, according to Foucault, power becomes internalised and the responsibility to behave becomes that of the 'prisoner'. In other words, the soul becomes the prison of the body.

Foucault argues that power not only becomes invisible but is also dispersed. According to Foucault, power has had the effects of producing the soul, and the body, since prisons were produced in relation to these. In other words, if the logics of 'punishment' are to contain bodies and to 'correct' souls, prisons are built to respond to this. Prisons are considered reflections of how society in general operates.

A central concept used by Foucault is discourse, and discourse as an effect of power. The relevance of discourse for this thesis is that the juvenile penalty field is a constellation of specific discourses. As Bacchi and Goodwin (2016, p. 35) explain, "discourses are understood as *socially produced forms of knowledge* that set limits upon what it possible to think, write or speak about a 'given social object or practice'" (emphasis in original). The tracing of discourses regrounds practices and knowledges in history and in politics, putting under scrutiny the truth regimes that justify and legitimise penal practices.

Genealogy, as used and applied by Foucault, is described as a methodology with an emphasis on *power*, used to trace knowledges in relation to social and political forces, including concrete structures, like institutions (prisons, schools, factories). According to Foucault, if we can understand what knowledges produce, we can also understand how knowledges produce subjects. As Chapter Two demonstrated, the way we speak, think and respond to the 'juvenile offending problem' has changed overtime, and although the language has changed from 'punishment' to 'treatment' to 'rehabilitation' and to 'risk', there are certain ways we are also *restricted* from speaking, thinking and responding to the 'juvenile offending problem'. For example, a genealogy of the juvenile offender highlighted how they have been produced as a particular type of subject: one that is 'abnormal' in comparison to the 'non-offending' population, and as immoral and different to the rest of society. A genealogy also brought attention to how the concept of a human essence creates the conditions for the production of subjects. Foucault argues that once there is an established code or standard of what it means to be human, it becomes easier to measure and calculate individuals and societies up against these standards, often with normalising effects. In *Discipline and Punish* Foucault stated:

In short, the art of punishing, in the régime of disciplinary power, is aimed neither at expiation, nor even precisely at repression...it refers individual actions to a whole that is at once a field of comparison...It measures in quantitative terms and hierarchizes in terms of value the abilities, the level, the 'nature' of individuals. It introduces, through this 'value-giving' measure, the constraint of a conformity that must be achieved...it traces the limit that will define difference in relation to all other differences, the external frontier of the abnormal...The perpetual penalty that traverses all points and supervises every instant in the disciplinary institutions compares, differentiates, hierarchizes, homogenizes, excludes. In short, it *normalizes*. (p183, emphasis in original).

Foucault demonstrated how ideas of what it means to be human, moral, non-criminal, sane and heterosexual provide a rationale for the treatment of people who are considered non-conforming. Newman (2001) adds:

human essence...is found by Foucault to be the standard of “normalization” by which individuals are judged and condemned...man and humanity are discursive constructs, standards according to which individuals are judged and judge themselves-a standard which rationalizes in the name of what is “truly human”, the persecution of those who do not fit in (p. 84).

Foucault brings attention to the norm- what is normative, and to how to become a model citizen in relation to the norm. However, Foucault believed that “norms ... are held to be culturally contingent” (Kelly, 2014, p. 109). The instability of categories will be further discussed in this thesis, which demonstrates how ideas of ‘normal childhoods’ produced ‘abnormal childhoods’ and sub-groups, such as the juvenile offender. For example, at one point in history it was ‘normal’ for a child to be employed in a factory, something that would currently be completely unacceptable in most Western countries. The reality of the ‘factory child’ was made acceptable at the time due to the socio-historical factors at play.

Governmentality

At the heart of this thesis is the Foucauldian concept of governmentality, a theme that Foucault focused on between 1978 and 1984 (Garland, 1997). Although, as described above, *Discipline and Punish* focussed on a form of rule centred around the body and micro-practices, governmentality marks a shift in Foucault’s work. In his work on governmentality, Foucault was interested in the processes that encompass the shaping, regulation, and conduct of *populations*. Bacchi and Goodwin (2016) explain:

The term *governmentality*, coined by Foucault (1991c), conjoins the words “govern” and “mentality”. It is used in the general sense to refer to different ways of thinking about governing (*govern-mentalities*) (p. 41, emphasis in original).

In his essay on governmentality Foucault defines this concept as follows:

By this word I mean three things:

1. The ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this

very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security.

2. The tendency which, over a long period and throughout the West, has steadily led towards the pre-eminence over all other forms (sovereignty, discipline, etc.) of this type of power which may be termed government, resulting, on the one hand, in the formation of a whole series of specific governmental apparatuses, and, on the other, in the development of a whole complex of *savoirs*.
3. The process, or rather the result of the process, through which the state of justice of the Middle Ages, transformed into the administrative state during the fifteenth and sixteenth centuries, gradually becoming 'governmentalized' (Foucault in Burchell, Gordon & Miller, 1991, pp. 102-103)

In reference to Foucault's last point on governmentalisation, Bacchi and Goodwin (2016) argue that 'problems', and people, are being increasingly governmentalised:

Using here the restricted meaning of the word "government", one could say that power relations have been progressively governmentalized, that is to say, elaborated, rationalized and centralized in the form of, or under the auspices of, state institutions. (p. 98)

The tactics or apparatuses and the ensembles of government are of central interest to this thesis, because it allows the unpacking of *how* particular populations are governed, through power relations that produce sub-populations and particular kinds of subjects: in this case, juvenile offenders. This thesis is about both the technologies of government (juvenile justice risk assessment tools) and the production of subjects (juvenile offenders). Governmentality is concerned with practices that constitute "subjects" as "governable", and with "*The role of authoritative knowledges in delineating how 'subjects' ought to be, through the production of norms*" as well as "*The place of dividing practices in producing 'subjects'*" (Bacchi & Goodwin, 2016, p. 50-5. Italics in original source).

The concept of governmentality has led to a vast amount of literature deploying the concept in various fields. Bacchi and Goodwin (2016, p. 9) explain that governmentality scholars:

...are interested in what makes modern government possible, including how the governmental schemes and programs put in place make sense to those who govern, as well as to those who are governed.

In the field of crime, governmentality concepts have been widely applied and developed. For example, Jacques Donzelot (1979, in Garland, 1997) argues that governmentality is an exercise not confined to the state, but rather dispersed via the human services, such as juvenile courts. These governmental networks deploy expert knowledges about the individual as well as the population. This idea is referred to as 'the social', a form of government that does not rely on coercive or explicit power, but rather on the willingness of people to govern themselves.

The use of statistics has been understood in terms of governmentality. Ian Hacking (1986) introduced the notion in *Making Up People*, arguing that the use of statistics produces "the normal" or "aggregates". He argued that the effects of the increased use of statistics is control of people on a larger scale. Specifically, he drew attention to how bodies are governed through the use of crime statistics, and to how statistical enumerations produce populations, or people. Garland (1997) reiterated these ideas:

Statistical processes classify and regroup the population, moving people into categories that had no significance prior to the act of counting and sorting. (High-rate offenders, career criminals, or repeat victims are criminological examples of this kind of process). In doing so, they link individual self-governance to large-scale processes of rule (p. 181).

Other influential governmentality scholars include Nikolas Rose and Peter Miller (1990), who introduced the concept of 'government-at-a-distance'. They argue that power is dispersed beyond the state, to individuals and networks, through 'expert' knowledge, and other forms of indirect rule, to regulate and manage populations. Miller and Rose (1990, p. 28) argue:

Political authorities no longer seek to govern by instructing individuals in all spheres of their existence, from the most intimate to the most public. Individuals themselves, as workers, managers and members of families can be mobilized in alliance with political objectives, in order to deliver economic growth, successful enterprise and optimum personal happiness.

This means that rather than explicitly stating how populations should be conducting themselves, modern forms of power instead rely on a web of technologies so that people begin to self-govern. Indeed, technologies of government “encompass the mechanisms through which governing takes place” (Bacchi & Goodwin, 2016, p. 44). Technologies of government can include a number of micro-practices that shape people’s conduct, such as risk assessment tools. Technologies of government go hand-in-hand with governmental rationalities described as “...the rationales produced to justify particular modes of rule”, to make “some form of that activity thinkable and practicable both to its practitioners and to those upon whom it was practices...” (Bacchi & Goodwin, 2016, p. 42). Analysing technologies of government can bring into view the rationalities that make certain practices ‘natural’.

Rose and Abi-Rached (2013) have also contributed to the field, arguing that people are increasingly being governed ‘through the neuro’, and that we are defining ‘the human’ through neuroscientific understandings – that is, how the brain is playing a role in producing subjects and understanding people as ‘neuro’ beings as opposed to ‘psychological’ beings. In terms of the ‘anti-social brain’, crime and ‘deviancy’, they argue that preventative policies are an attempt to “govern the future” by “screening” and “intervening” in the name of “security”; they warn that “we can certainly anticipate future strategies to govern antisocial citizens by acting upon their developing brains” (Rose & Abi-Rached, 2013, p. 198).

Another influential scholar in the crime and governmentality field is David Garland (1997), who has highlighted both the usefulness and limitations of governmentality applications. For example, he discusses how the criminal justice system itself has been understood over time:

What was previously viewed as a loosely coupled series of independent agencies – police, prosecution, courts, prisons, probation, each with its own objectives and working ideologies, each with its own sphere of autonomous

action – came to be seen instead as a ‘system’. This ‘system’ is an entity which can be known and governed. It has become a practicable object of government, with the Home Office increasingly constituting itself as a centre of calculation and management, orientated to that government task... The system is rendered more homogenous, more knowable and more governable. (p. 189-190).

Governmentality concepts have also been applied in discussions on power and resistance, and to the idea that it is possible to be ungovernable. For example, drawing on Foucault, Brossat (2015, p. 138) explored those who are deemed ungovernable, or those who step outside “acceptable” conduct:

...instead of consenting and assenting, they balk; instead of ‘understanding’ what is ‘explained’ to them, they reason by themselves; instead of walking as a herd, they go wander off; and, even if they do not resist openly, they become, simply by doing this, ungovernable.

Similarly, Kelly (2000b) is interested in how ‘youth’ are deemed unruly and prompt policy-makers and academic institutions to find new and diverse ways of surveilling and managing the unruly youth. In this sense, there are Foucault-influenced scholars who understand some populations as potentially ungovernable.

In contrast to these understandings of ungovernable populations, this thesis works on the premise that nobody is outside of governing practices. Hofmeyr (2008) reflects on Foucault’s 1978 lecture to explain this further:

In this lecture, Foucault precisely situates it in terms of government: ‘how not to be governed’... Herewith he is not proposing the transcendence of all imposed limits, i.e. opting for anarchy or asking how to become wholly ungovernable. He is not therefore simply returning to his earlier notion of ‘tactical reversal’, of resistance understood as negation or opposition. It is a specific question that emerges in relation to a specific form of government: ‘how not to be governed like that, by that, in the name of those principles, with such and such an objective in mind and by means of such procedure, not like that, not for that, not by them’. (p. 111).

Similarly, Bacchi and Goodwin (2016) explain: "... because there is no outside to power, resistance is necessarily implicated in methods of governing and 'networks of governmentality'- 'the process implemented for conducting others'" (p. 31).

Using Foucault for analysing Juvenile Penalty

There have been numerous studies on juvenile penalty that have drawn on Foucauldian ideas to highlight important gaps and contradictions in knowledge. For example, in a study about late 19th century developments in children's institutions in Victoria, Australia, McCallum (2015) analysed historical government documents that highlight the instability and blurriness of the welfare/justice categories that are usually relied upon when referring to juvenile justice history in Australia. The study draws on ideas from Foucault, to demonstrate and explain that although institutions were created to separate the 'neglected children' from the 'criminal children', in practice this did not often occur. The study argues that the system that was set up in the early 20th century to protect children was the same system that caused them harm. McCallum (2015) stated:

These materials capture the mundane administrative workings of institutions and the kind of expertise deployed in them to assess, categorise and place children... It summarises developments in the early twentieth century where children, initially appearing in institutional settings as either 'perfectly innocent' or 'reformatory', over a period of three decades then became objects of criminal inquiry. It provides an opportunity to test out the tools of inquiry and how the 'cross-talk' of administrative and scientific understandings came to bear on the disposal of children in the name of welfare. (p. 183)

In a study that problematizes youth work, Lohmeyer (2017) interrogates the power-knowledge relationship in the youth work field and in the restorative practices (RP) policies in South Australia, which have recently been used in combination as an approach to working with youth. In this study, Restorative Practices are understood to be a development from the Restorative Justice (RJ) literature, which focuses on restoring harm as opposed to 'punishment' approaches. The study discusses how Restorative Practices have been extended to a broader set of areas such as youth work, education and social work (p. 3-4).

Drawing on poststructuralism and governmentality concepts, Lohmeyer (2017) unpacks the theoretical differences of both of the fields, and questions popular perceptions of Restorative Practices as an “empowering” (p. 8) practice. He states:

Dean suggests that empowerment initiatives represent a knowledge and discourse through which typically marginalized groups are shaped, and shape themselves, into knowable and governable citizens... In this way, the discourse of empowerment constructs social groups containing individuals who are deemed to be personally deficient...whilst obscuring the operations of social structures and power-knowledge relationships... This critique of empowerment is largely overlooked in RP literature and represents a veiled apparatus of social control. (p. 8-9)

Lohmeyer (2017) argues that Restorative Practices have the potential to be a theoretically sound approach in the youth work field in terms of their epistemological and ontological orientations, but cautions that a lack of poststructural critique could lead to further oppression of young people:

The concern here is that RP diverge from youth work in that they draw on theoretical foundations which are exclusive of young people’s ontological and epistemological perspectives. This is a key difference between youth work and RP. Uncritical adoption without consideration of the difference will result in complicity in the enactment of dominant realities... At present, RP overlook the epistemology and ontology of young people. (p. 12)

Foucauldian concepts have also been drawn on to analyse ideas around prevention of ‘youth crime’. For example, Swirak (2016) undertook an analysis of crime prevention and diversion projects in Ireland, through the analysis of the *Agenda of Change*. Swirak (2016) describes the usefulness of this type of analysis:

In contrast to more conventional approaches to policy analysis, this type of analysis shifts the emphasis from evaluative ‘what works’ perspectives to detailed investigations as to how ‘problematizations’ (Bacchi, 2009) are embedded in policy texts and also, how they are ‘translated’ (Miller and

Rose, 2008) through concrete technologies of government. (Swirak, 2016, p. 3)

Swirak's (2016) analysis of a crime prevention policy enables her to make the underlying and dominant rationalities explicit: New Public Management, deficit-based explanations of young people's behaviour and the prioritising of behaviourist types of interventions with young people are on the increase. Swirak (2016) uses Foucauldian concepts to trace the histories of these rationalities and demonstrates how they are deployed through technologies of government. Her analysis concludes that:

The three dominant rationalities underpinning the Agenda of Change were bound together into a coherent 'truth regime', where their underlying assumptions reinforced each other. Thus, the reductive descriptions of young people's offending behaviour and the focus on providing 'models' of behavioural sequences, ties in with supporting young people as active and decontextualised agents in their own 'ethical reconstruction'... and as 'active entrepreneurs of the self'... Working with individual young people on pre-designed programmatic interventions satisfies the demands of accountability and effectiveness as expenditures of financial and human nature can be documented. (Swirak, 2016, p. 16)

Foucauldian concepts have been widely applied, and as the examples above demonstrate, are relevant today as they were when they first emerged. This thesis aims to not only apply Foucauldian concepts to juvenile penalty, but also to interrogate, extend and produce knowledge, centering Foucault's statement that "knowledge is not made for understanding; it is made for cutting" (Foucault, 1984, p. 88, in Revel, 2015).

Using Foucault for analysing Risk Assessments

A range of scholars has drawn on governmentality to make sense of risk assessment technologies and of risk discourses more generally. Governmentality scholar O'Malley (1998) has discussed risk technologies as the new way to govern populations:

This redistribution and reshaping of technologies of risk, it seems to me, is of greater significance than whether 'more' of our lives, or whether the

lives of 'more' people, are governed through risk than was formerly the case. The converse of this is that it cannot be said that government through technologies of uncertainty has been diminishing in significance in the past 50 years...we should recognise that risk and uncertainty are both being valorised in new ways and forms (O'Malley, 1998, p71).

For Kelly (2000a, p. 472), his interest has been in how risk technologies translate to further targeting and increased surveillance. He argues:

The modern ideologies of prevention are overarched by a grandiose technocratic rationalizing dream of absolute control of the accidental, understood as the irruption of the unpredictable. In the name of this myth of absolute eradication of risk, they construct a mass of new risks which constitute so many new targets for preventative intervention...This hyper-rationalism is at the same time a thoroughgoing pragmatism, in that it pretends to eradicate risk as though one were pulling up weeds.

Referring to young people specifically, Kelly (2000b, p. 312) centres on a 'governing through knowledge' approach, arguing that:

These processes are dangerous in the sense that the construction of these truths emerge from increasingly sophisticated processes of surveillance, identification and intervention. These processes target particular populations of young people in various attempts by experts and centres of expertise to know and manage the uncertain in the name of certainty.

Actuarial risk assessments have also been critiqued as technologies that produce knowledge and deploying power in a particular way. Lewis (2014, p. 123) argued:

Assessment tools that act as a mechanism for considering risk become a vehicle by which practitioners are able to respond to and manage risky behaviour. Risk becomes known through embedded technologies of power and knowledge, are mobilised through overarching systems of risk management, designed to control and regulate offending behaviour.

Numerous others have documented the rise of risk technologies in the field of penalty (Cohen, 1985; Carlen, 2013; Castel, 1991; Ericson & Haggerty, 1997; Feeley & Simon, 1992, 1994; Garland, 2001; Hannah-Moffat, 1999; Simon, 1993; Rose, 1998, 2002; Robinson, 2002). From a governmentality perspective, risk assessment tools are understood as a technology of government, used to manage, regulate and control populations. Feeley and Simon (1994) were among the first in the field of penalty to focus on the use of actuarial risk assessment tools. They argued that actuarial risk assessment tools are not concerned with individual risks (as they are in other fields, such as insurance), but rather with the risks that *populations* pose. Feeley and Simon (1992) describe a 'new penology' arguing that people are increasingly being managed through 'risk', made possible by constantly comparing the individual to the 'general population'. Feeley and Simon's (1992) concept of a 'new penology' was 'new' in the sense that:

...the new penology is markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender. Rather, it is concerned with techniques to identify, classify, and manage groupings sorted by dangerousness. The task is managerial, not transformative...It seeks to regulate levels of deviance, not intervene or respond to individual deviants or social malformations. (p. 452).

Applying Feeley and Simon's (1992) logic, the risk assessment tools used in the juvenile penalty field can be understood as a form of governing young people based on 'risk factors', or factors gathered from populations that are categorised as criminal. The 'risk' concept relies on 'non-risky', 'non-criminal' general populations from which to deviate from, in order to produce the concepts of 'risk' and 'risky populations'. The ordering and categorising of populations has been a key feature of technologies of government and will be discussed further in the final four chapters.

In line with Foucault's insights in *Discipline and Punish*, Silver (2000) argues that actuarial risk assessments are a technology of government, which governs through prediction, avoidance of recidivism, and provides new forms of surveillance. He stated:

Whereas Foucault mapped the trajectory of punishment from the body to the soul, actuarial risk assessment moves us away from efforts to reform

the soul toward efforts to anticipate and manage a plurality of bodies (Silver, 2000, pp. 132-133).

Similarly, Hannah-Moffatt (1999, p. 72) stated that one of the characteristics of a risk-orientated society is the application and increased use of technocratic and calculated approaches to governing. Foucault-influenced researchers also position actuarial risk assessment tools as a form of social control, often disguised as being 'neutral', 'objective' and 'value-free'. For example, Silver argues that modern technologies such as actuarial risk assessments are not 'objective' or 'neutral' but instead reinforce values of the Enlightenment period, which is

...the period in which mechanical and social scientific technologies have made their greatest strides – give primacy to efficiency, rationality, and control. Modern technologies embody these values and therefore, when used, cannot help but perpetuate them. This process is apparent as we consider the application of actuarial technologies to the categorization and management of human populations (Silver, 2000, p. 124).

Thus, the categorisation and management of populations is central to actuarial risk assessments.

Conclusion

Poststructural theorising of discipline, punishment, and of risk assessments has highlighted that risk technologies allow the governing of a plurality of bodies (populations) over more areas of life; it has also emphasised the ways that risk technologies involve the technocratisation of social control and depend on the ordering and categorising of populations. This chapter also outlined how risk assessments have been critiqued as technologies of government by various governmentality scholars, who position risk assessment tools as practices of social control over larger groups of people ('populations'). These critical views of risk assessment tools raise an important contention: if a key technology used in the governing of juveniles in modern day systems of disciplining and punishing can be so contested, then it is worthwhile interrogating in detail the technology that is at the heart of the Juvenile Justice system in NSW, the YLS/CMI-AA 2.0 risk

assessment tool. The next chapter describes the analytical strategy deployed in this endeavour.

Chapter 5

Analysing the YLS/CMI-AA 2.0 Risk Assessment Tool: What's the Problem Represented to be?

Introduction

This chapter turns attention to the analytical method deployed in this thesis, the 'What's the Problem Represented to be?' (WPR) policy analysis tool, to carry out the task of studying the risk assessment tool discussed in Chapter Three, the YLS/CMI-AA 2.0. My research has set out to analyse how juvenile justice risk assessment tools contribute to the constitution or *making* of the 'problem' of juvenile offending in Australia, drawing on insights from poststructural theory and analysis. In relation to analysing policy from this perspective, Bacchi and Goodwin (2016, p. 39) explain that by applying a poststructural approach to policy analysis,

...the focus is not on how *people* shape problematizations, but on how issues are problematized – constituted as “problems”- *within policies*. That is, policies and policy proposals are seen to *create* or produce “problems” as problems of particular types. (Bacchi & Goodwin, 2016, p. 39, emphasis in original).

This chapter describes the method deployed in this thesis, the What's the Problem Represented to be? (WPR) approach, and the epistemological tenets embedded within it. The potential of this method is discussed by presenting examples of how it has been applied to other areas of policy, with a particular focus on risk technologies. This chapter ends with a description of the steps that were taken to analyse the risk assessment tool.

Policy Analysis

Chapter Three outlined how risk assessments are based on ‘knowledges’ of the ‘risks’ that juvenile offenders have in common. These ‘knowledges’ are a result of vast amounts of quantitative studies, typical of a positivist paradigm. Positivism emphasises ‘objectively’ identifying, describing and observing natural phenomena and social ‘problems’ that exist ‘out there’, with the aim of seeking an ‘ultimate truth’ (Iwama, 2003). This type of approach usually deploys quantitative methods that involve statistical calculations and formulas to test various ‘hypotheses’ (Pereira & Stagnitti, 2008). A ‘cause-and-effect’ type of ‘outcome’ is typical of these types of studies, and these are considered ‘generalisable’ across populations (Carlson & Clark, 1991). Likewise, from a positivist paradigm, policy and policy-makers are rendered ‘objective’ actors who are ‘outside’ of policy, and who simply ‘address’ social ‘problems’ (Bacchi, 2009, p. 251). In effect, positivist approaches to policy analysis presuppose that ‘truth’ exists, that reality is objective and that reality exists independent of the researchers or the research context (Fossey, Harvey, McDermott & Davidson, 2002). For example, in the criminology field, ‘risk factors’ are considered independent of the researchers who ‘discovered’ the list of ‘risk factors’, independent of the researchers who sold this ‘data’ to the companies that sell risk assessment tools, and independent of the government agencies that purchase these risk assessment tools. The ‘scientisation of risk’ and the ‘developments’ in risk technologies, as described earlier, indicates that political, economic, social and historical context is not only excluded from the research process, but that its exclusion is also considered a ‘superior’ form of research and of policy-making.

In contrast, in this thesis, methodology is conceptualised as “a theory or analysis of the research process (rather than the mechanisms of the process itself)” (Pereira, 2014, p390). Taking this approach means rendering problematic research methodologies and methods and holding them to account by exploring the effects of using one method over another. This is directly relevant in a field like criminology, and juvenile penalty specifically, due to the dominance of a positivist approach to policy analysis and to policy-making. Instead, the overarching methodology applied in this thesis is a social constructionist one. Social constructionist approaches challenge the seemingly simple and direct relationship between knowledge and reality and do not accept that ‘objective’, ‘neutral’, or unbiased understandings of reality are possible (Burr, 1995). Hastings (1998, p. 193) notes that

This challenge arises out of the proposition that the categories which we use to divide up, describe and give meaning to the world are socially, culturally and historically contingent.

The social constructionist epistemological approach is relevant for this thesis. Firstly, 'problems' are conceptualised as being socially constructed, produced within and across history and culture. Societal 'problems' are not accepted as 'givens' waiting to be identified and 'addressed' by policy makers (Edelman, 1988; Rochefort & Cobb, 1993). Secondly, and in terms of policy analysis specifically, policy-making is rendered political, in the sense that "particular constructions of social problems are used for particular (political) purposes" (Hastings, 1998, p. 194). This thesis is interested in the processes involved in the construction of 'problem making' as well as an interest in the "sustaining system of beliefs about the nature of social reality" (Hastings, 1998, p. 194). An example of this was outlined in Chapter Two which demonstrated that the Indigenous 'problem' was considered a 'problem' prior to the official act of policy-making: the child removal policies dominant in Australia were a reflection of broader beliefs surrounding 'race' (and the concept of a 'superior race') at that point in Australian history. As such, scholars who call for the decolonising of methodologies, such as Smith (2012), have highlighted how specific forms of 'knowledge' are reflected in policy:

...some indigenous peoples were ranked above others in terms of such things as the belief that they were 'nearly human', 'almost human' or 'sub-human'. This often depended on whether it was thought that the peoples concerned possessed a 'soul' and could therefore be 'offered' salvation and whether or not they were educable and could be offered schooling. (Smith, 2012, pp. 119-120)

Smith relates knowledge practices directly with imperialism, arguing that:

These systems for organizing, classifying and storing new knowledge, and for theorizing the meanings of such discoveries, constituted research. In a colonial context, however, this research was undeniably also about power and domination. The instruments or technologies of research were also

instruments of knowledge and instruments for legitimating various colonial practices (2012, p. 119).

In summary, this thesis employs a critical stance of the 'natural' and of the 'common sense' knowledges offered by criminology in particular, and holds that policies are connected to the (re)production and the construction of knowledges.

The positivist approach that is currently dominating the field of penalty is, by and large, apolitical, because a positivist paradigm does not 'make space' for the 'values' that inform the knowledges that are produced through policy, or for the idea that knowledge is in its very nature, political. This is how the 'policy as discourse' approach is useful. Its starting point is that 'facts', values, knowledge and politics are "indivisible" (Goodwin, 2011, p. 168). Goodwin (2011) refers to social constructionist approaches as 'policy as discourse' approaches because of the emphasis on the role of policy in 'making' social 'problems' (Goodwin, 2011; Hastings, 1998). This research tradition is concerned with how problems are represented within policy, as opposed to finding the 'solution' to a 'problem', as well as the processes and contexts that lead to certain understandings or representations of social problems (Bacchi, 1999, 2009; Phillips, 1995).

Researchers who deploy a social constructionist approach focus on how meaning is created, on 'shifts in understanding' (Fawcett et al., 2010) and on the ways of thinking, or conceptual logics, that give shape to how 'problems' are understood and responded to, as opposed to the discovering the 'truth' about a particular 'problem' (Bacchi, 2009). Understanding policy as discourse is mostly related to Michel Foucault's discourse theory (Bacchi, 2005; 2009; Eveline & Bacchi, 2010). As discussed in the previous chapter, Foucault is often associated with poststructuralism rather than with social constructionism (often described as a response to structuralism) (Schwandt, 2001). Although they share a common challenge to positivism and emphasise the power of language in 'making' problems, as well as problematising 'knowledge' as both historically and socially contingent (Burr, 1995; Schwandt, 2001), poststructuralism is more specifically concerned with the exercise of power (Burr, 1995; Bacchi, 2009). Crucially, poststructuralist approaches are interested in the power of 'discourse' to "regulate knowledge of the world and our shared understandings of events" (Goodwin, 2011, p. 170). As such, Foucault-influenced researchers, and poststructural policy analysis more generally, are described as 'policy as

discourse' (Bacchi, 1999, 2000, 2005, 2009; Ball, 1990, 2006; Martson, 2004; Shaw, 2010). Goodwin (2011, p. 170) explains that this approach starts

...from the assumptions that all actions, objects, and practices are socially meaningful and that the interpretation of these meanings is shaped by the social and political struggles in specific socio-historical contexts.

As discussed in Chapter Four, discourse in the Foucauldian sense encompass "relatively well-bounded areas of social knowledge that both constrain and enable what can be written, spoken or thought within specific historical limits" (Eveline & Bacchi, 2010, p. 142). As Goodwin (2011) notes, this conceptualisation of discourse is highly relevant and useful in a climate that shapes 'problems' through various government 'solutions'. Applying this understanding to discourse, the policy analysts' task is to

uncover the normative nature of statements that appear obvious, inevitable, or natural, to test judgements about truth claims, and to consider or imagine alternative ways of developing policy and practice (Goodwin, 2011, p. 170).

Re-articulating the discussion from the previous chapter, this form of analysis works with the idea that knowledge cannot gain 'truth status' without power, and power cannot be exercised without the production of 'truth' (Foucault, 1980; McHoul & Grace, 1993). From this perspective, a whole range of processes, institutions, and practices play a role in establishing what is 'true', including research conducted by universities and government departments (Mills, 2003). Willig (2008, p. 113) explains:

Dominant discourses privilege those versions of social reality that legitimate existing power relations and social structures. Some discourses are so entrenched that it is very difficult to see how we may challenge them. They have become 'common sense'.

Bacchi (2009) argues that identifying and analysing problem representations in government policies indicates and is representative of the "forms of rule" and the relations of power in

society (Bacchi, 2009, p. 31). This chapter now turns attention to Bacchi's WPR approach to policy analysis.

The WPR Approach

Bacchi's (2009) WPR approach involves the application of six questions and a final step:

Question 1: What's the problem (e.g., of "gender inequality", "drug use/abuse", "economic development", "global warming", "childhood obesity", "irregular migration", etc.) represented to be in a specific policy or policies?

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the "problem" (problem representation)?

Question 3: How has this representation of the "problem" come about?

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the "problem" be conceptualized differently?

Question 5: What effects (discursive, subjectification, lived) are produced by this representation of the "problem"?

Question 6: How and where has this representation of the "problem" been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?

Step 7: Apply this list of questions to your own problem representations.

(Bacchi & Goodwin, 2016, p. 20).

The WPR approach posits that policies do not 'solve' problems, but rather, they "produce problems as particular sorts of problems" (Bacchi & Goodwin, 2016, p. 16, emphasis in original), and that "...we are governed through these constituted "problems", meaning that governing takes place through problematizations" (p. 17, emphasis in original). Interrogating 'problem representations' within the risk assessment tool thus becomes a starting point to

interrogate how the ‘problem’ of juvenile offending is produced, or constituted, as a particular kind of problem. The task of identifying ‘problem representations’ may not always involve searching for *explicit* statements about ‘problems’ and ‘solutions’. For example,

...a government report may refer simply to the desirability of some condition such as “social cohesion”, signaling thereby that lack of social cohesion is represented or constituted to be a problem of sorts. (Bacchi & Goodwin, 2016, p. 21).

Tracing the histories or the lineage of problem representations, and the discourses embedded within them, is a political activity involving (re)imagining other possibilities. As Newman (2001) argues,

A questioning of the historical, political and cultural aspects of these concepts and categories, shed light on how social problems *could have* been framed differently with the use of *alternative discourses*, and thereby creating opportunities for change and the reinvention of identities (p. 91, my emphasis).

The WPR approach involves going beyond a simple questioning of concepts and categories and entails a genealogical approach to bring to light the conditions that have made certain practices thinkable and possible (see Chapter Two). The process of tracing the history of categories also provides the opportunity to uncover some of the ‘conceptual logics’ that underpin specific problem representations. This means drawing out the meanings that are in place for a particular problem representation to make sense and requires a deeper form of analysis. For example, Bacchi and Goodwin (2016, p. 21) explain the process that Question Two requires:

First, we consider how this particular problem representation was possible by identifying the meanings (presuppositions, assumptions, “unexamined ways of thinking”, knowledges/discourse) that needed to be in place for it to make sense or be intelligible...Second, we identify how the problem representation is constructed – which concepts and binaries, such as public/private, man/woman and citizen/migrant, does it rely upon? Finally, we identify and reflect upon possible patterns in problematizations that

might signal the operation of a particular political or governmental rationality.

This involves a questioning of what appears evident or obvious and involves working backwards, starting with the 'solutions', and with their underlying or implicit problematisations. The aim of this question is to unpack how, and which, problem representations we are governed by, supported by Bacchi and Goodwin's (2016) argument that we are governed *through* problematizations. WPR is a policy analysis tool that shifts the focus of policy analysis from problem solving to problem questioning (Bacchi, 2012, p. 23).

The WPR approach can be used to demonstrate how problems are represented, as well as how subjects of policies are produced, and the effects of problem representations. WPR has been used across numerous fields to demonstrate the effects of problem representations. The following exemplars of applications of WPR analyses in related policy areas illustrate the potential of this approach for analysis of the YLS/CMI-AA 2.0 risk assessment tool used in the NSW juvenile justice system.

WPR in Related Fields

As demonstrated in the previous chapter, although a significant number of studies incorporate poststructural theory to penalty, there is a general absence of studies that marry a poststructural theoretical approach with a specific and concrete penal process or practice. This is what this thesis intends to do, to extend the theoretical literature by conducting a detailed WPR analysis of a specific practice in juvenile justice: the risk assessment tool. This is how WPR is useful. It provides a process for interrogating policy (or practice) to illuminate the problem representations and the discourses and knowledges that the representations rely upon. This type of analysis invites 'alternative proposals' to 'problems', or as Hofmeyr (2008) says:

how not to be governed like that, by that, in the name of those principles, with such and such an objective in mind and by means of such procedure, not like that, not for that, not by them (p. 111).

Examples of WPR applications from a number of policy areas – infant health, parenting programs, prison drug policy, drugs legislation and educational policies – can be drawn on to demonstrate how the WPR approach can provide new insights into how ‘problems’ are represented and further, to demonstrate concrete examples of the usefulness of a poststructural questioning of ‘problems’. This work enables analysts to interrogate knowledge practices, ways of thinking and forms of governing, which are all central concerns in my thesis.

As discussed in Chapter Three, notions of ‘risk’ have become widespread, despite the fact that they were introduced into the human services fields only as recently as the twentieth century. Notions of ‘risk’ have been criticised for assigning responsibility onto individuals, in line with neoliberal ideologies (Pollack, 2010; Kelly, 2001). Kemshall (2008, p. 23) articulates the effects of risk technologies as follows:

‘Active’ rather than ‘passive’ citizens are seen as the desirable norm, and the essence of the active citizen is the ability to self-manage risk from an early age. This has resulted in proactive and preventative risk policies, focused on the early identification of those ‘at risk’ or ‘posing a risk.’

The WPR approach has been used to draw attention to the way that discourses of ‘risk’ are permeating contemporary lives and justifying judgement and intervention (Begley & Coveney, 2010; Kelly, 2001; Lawless, Coveney & MacDougall, 2014). For example, an analysis of media and academic discourse on the topic of infant neural tube defects (NTD) in Australia and New Zealand found a number of problem representations were repeated in newspaper and journal articles, including representing mothers as ‘responsible’ for their child’s health outcomes (Begley & Coveney, 2010). This analysis found that this particular problem representation invokes women to be vigilant about ‘risk’ during pregnancy and, at the same time, silences social determinants of health. Begley and Coveney (2010, p. 470) state:

To achieve a high-folate diet in childbearing years to prevent NTDs requires women to develop a notion of risk and be reflexive and attentive to this risk. It would appear that women certainly are reflective to risks for a successful pregnancy outcome.

The WPR analysis undertaken by Begley and Coveney (2010) suggests that this is perhaps just one of the effects of risk technologies, that is, the responsibilising of individuals who may not exercise power over the 'risks' that they are asked to manage, and to "bring their motivations and actions fully into line with the neo-liberal project of governing" (Phoenix & Kelly, 2013, p. 421). Similarly, applying the WPR approach to infant mental health promotion materials in Australia, Lawless et al. (2014) found that problematisations heavily relied on a discourse that implied mothering is a 'risk', and mobilised knowledge from the brain sciences to bolster discourses of 'risk'. Consequently, these particular problem representations of infant mental health provide a rationale to intervene in the lives of mothers, from pre-birth onwards, and place greater responsibility on them to self-govern. Lawless et al. (2014) argue that:

...risk acts to define both mother and expert. Given that brain science tells us that we have a small and critical window of opportunity to ensure healthy development, intervention in the lives of these families becomes urgent. (p. 424-425)

The notion of 'risk' often carries with it an automatic justification for intervention, and as discussed in the previous chapter, 'risk' has become especially prevalent in youth-related fields (Kelly, 2001; Kemshall, 2008; Swadner & Lubeck, 1995; Tait, 1995; Muncie, 2005). In a recent Canadian WPR analysis of anti-bullying policies addressing lesbian, gay, bisexual, queer, transgender, and Two Spirit 'youth', Loutzenheiser (2015) observed that when discussing 'youth', 'risk' is automatically implied. Discussing the implications of the problem representations that were found, the researcher argued: "When thinking through risk, it is easier to see the child as the thing in need of fixing or saving, rather than schools" (Loutzenheiser, 2015, p. 108). Loutzenheiser's (2015, p. 111) analysis of school policy also brought attention to "colour-blind" policies that have had hurtful and material impacts on people of colour. Using a WPR approach made it possible to identify the silences that exist within the school's policies, and the role that these policies play in further silencing the intersectionalities that may exist for young people. For example, Loutzenheiser (2015) concluded:

There are many ramifications of a color-blind policy when working with LGBTQ and TT Indigenous and of color students, as they do not see themselves reflected – even in policies that are created to protect them. That is, the policies may protect the dominant White body, but there remains a question as to whether the erased body is equally protected. (p. 111).

This idea of 'colour-blind' policies will be returned to in the final chapter of this thesis. The WPR approach has also been applied to the analysis of other social programs to bring attention to problematisations that rely on racist and/or sexist ideas and concepts. For example, Widding (2011) analysed a Swedish parenting program, named 'Community Parent Education' (COPE), which was based on an education manual and complementary DVD imported from Canada and translated into Swedish. The 'COPE' program is a prominent global parenting program aimed at parents who are assessed to be struggling with their children's behavioural difficulties. The explicit purpose of this voluntary program was to reduce the numbers of children who were experiencing poor mental health. Applying a WPR analysis to the parenting program was useful in bringing attention to the intersection of social categories, such as gender, ethnicity and social class, and demonstrates how these are deployed to produce the 'ideal' parent – that is, Swedish and middle class. The analysis found that immigrant parents are in particular painted as the 'other' whose parenting styles are seen as archaic in nature, and in need of 'improvement'. This type of analysis also highlights the silences of the parenting education program, such as gender inequality and taken-for-granted traditional gender roles, an absence of structural analysis, and the absence of the rationale for a particular focus on immigrant families in the face of limited evidence. Widding (2011) concluded:

From my analysis, it seems problematic to identify immigrant parents and parents from lower classes as being in need of change without any arguments and structural analysis to support these representations. It also seems problematic to leave out the question of gender equality in parent education. (p. 35)

In other words, the WPR approach enabled problem representations and silences to become visible in ways that traditional policy analyses would not and also brings attention to the effects of problematisations.

The WPR approach proposes that policies can have a myriad of effects, including the production of subjects. As discussed in the previous chapter, by 'subjects' I mean

...the production, or *making*, of provisional “subjects” of particular kinds through policy practices.... It includes the characteristics, behaviours and dispositions that political “subjects” are encouraged to adopt and how they may develop in relation to those “repertoires of conduct” ... The “subject” in this view is an effect of politics, always in process, and a product of power-knowledge relations. (Bacchi & Goodwin, 2016, p. 49, emphasis in original).

There are a number of examples of the application of the WPR approach that have interrogated the way policies produce specific types of subjects in the context of neoliberalism. For example, Southgate and Bennett (2014) applied the WPR approach higher education (HE) and the unquestioned popularity of ‘Widening Participation’ (WP) policies in Australia. They demonstrate the two subject positions that emerge from the Widening Participation policies, one that positions people as ‘the capable individual’ who can, but lacks the motivation to participate in Higher Education, and the other as ‘the proper aspirant’ that positions people as capable but as ‘lacking’ aspiration. Their use of the WPR approach demonstrated the effects of the problem representations underlying the education inequity ‘problem’: “Under neo-liberal logic, if WP doesn’t work the individual, not the policy or policy-maker, is entirely to blame” (Southgate & Bennet, 2014, p. 40). As discussed in Chapter Three, risk assessments are seen to be similarly shaped by neo-liberal logics, producing responsibilised and self-regulated individuals. In this way, the WPR approach can be used to draw a direct relationship between policy and politics, to dislodge ideas about the neutrality of ‘problems’ and of policies.

Analysing the YLS/CMI-AA 2.0

The analysis of the YLS/CMI-AA 2.0 tool undertaken for this thesis, included the analysis of both the diagnostic questions that administrators of the tool are directed to ask, as well as the questions/prompts/notes suggested in the assessment guide. A range of other texts related to the risk assessment tool were also drawn upon.

There is no definitive model for applying the WPR questions in the analysis of a text. Rather, the WPR approach to policy analysis provides a 'conceptual checklist' that can be used to guide the analysis of a policy (Goodwin, 2011, p. 171). In the analysis of the YLS/CMI-AA 2.0 risk assessment tool, the following steps were implemented. Step One of the analysis stage involved identifying the problem "as it is expressed" (Goodwin, 2011, p173) in the risk assessment tool. Step Two involved identifying binaries, key concepts and key categories deployed in the tool. Step Three involved a consideration of the material impact of the problem representations on young people's lives. However, once the analysis of the risk assessment tool was underway, the WPR questions often overlapped, and naturally flowed from one to the other.

More specifically, my analysis firstly involved looking for problem representations (WPR Question One) related to juvenile offending across and within the diagnostic questions of the risk assessment tool. This was a repetitive process, as I was also searching for the deep-seated values and assumptions reflected in the risk assessment tool (WPR Question Two). By examining each diagnostic question, I was able to work backwards to trace the implied problem representations behind each diagnostic question. For example, if a diagnostic question asked about an offenders' efforts to find stable employment, the underlying 'problem' is the 'lack' of effort of an offender to be employable. Further examination of the diagnostic questions helped me to trace and identify the knowledges that have shaped each diagnostic question, for example, the social, psychological, health, economic and religious discourses enable the representation of the juvenile offender in a specific way (WPR Question Three). As a result of engaging in the first three WPR questions, I was inclined to notice the omissions and silences that each diagnostic question contributed to the overall problem representation of juvenile offending (WPR Question Four).

Engaging with this material highlighted the significant discursive and material effects of the diagnostic questions (WPR Question Five), especially in relation to marginalised young people. This involved tracing the impact of the risk assessment tool in its entirety, as well as the policies and research studies that contributed to the production, dissemination and defending of specific problem representations in the risk assessment tool (WPR Question Six).

Conclusion

The methodological approach underpinning this thesis was outlined and explained, drawing on social constructionist epistemologies, poststructuralism, Foucault's concepts of discourse, knowledge and power, and a 'policy as discourse' approach to this thesis. The potential of the WPR approach for policy analysis has also been presented in this chapter using examples from various fields to bring attention to how the WPR approach has been used to highlight the effects of risk technologies, how risk technologies produce self-governing and responsabilised subjects, how policies justify 'intervention' and the silences (such as race and gender constructs) that would go unnoticed without the application of a WPR analysis. The WPR was described as a poststructural analysis tool that provides a way to interrogate policy, firstly by positioning policies as *making* problems as opposed to *problem solving*. This type of approach to policy analysis troubles taken-for-granted 'problems', and opens them up for interrogation, disruption and scrutiny. The WPR approach can be used to 1. trouble taken-for-granted 'problems', 2. understand how 'problems' have come to be seen as particular types of 'problems', and 3. consider the effects on people.

The following chapters will apply Questions One and Two of the WPR approach, that is, "What's the problem represented to be in a specific policy or policies?" and "What deep-seated presuppositions or assumptions underlie this representation of the 'problem' (*problem representation*)?". However, the other WPR questions will be drawn on as well due to the necessity of providing context to the problem representations identified in the risk assessment tool. The final chapter of this thesis will focus on the effects of the problem representations imbedded in the risk assessment tool and will discuss the implications for minority and marginalised people in particular.

Chapter 6

The YLSI/CMI-AA 2.0 Tool: Diagnosing Criminality

Introduction

This chapter draws attention to the problem representations embedded within the risk assessment tool and interrogates the underlying assumptions and presuppositions across the three domains. This chapter also explores how concepts of ‘risk’ both shape, and are shaped by social, criminological and psychological concepts of juvenile offenders. More specifically, Foucault’s concepts of docility and of the confessional are drawn on to articulate the potential impacts and effects of the risk assessment tool.

This chapter focuses on three of the Domains in the risk assessment tool¹²: Domain One – ‘Prior and Current Offences’, Domain Seven – ‘Personality/Behaviour’ and Domain Eight – ‘Attitudes/Beliefs’. The analytical process involved two steps: isolating each diagnostic question in the tool, and then subjecting it to the WPR Questions to explore where the diagnostic questions came from, and how it has become possible to ask those specific questions. The way I have laid out the domains for analysis is for heuristic purposes, to demonstrate what the YLS/CMI-AA 2.0 ‘does’; however, in reality they are all connected, and the underpinning logics are repeated within and across the tools domains.

Domain One: Prior and Current Offences

The very first domain in the tool establishes two things: the child as offender, and the ‘child offender’ as automatically and immediately ‘risky’. From the outset, crime is established

¹² For simplicity’s sake the YLS/CMI-AA 2.0 will hereon be referred to as the ‘risk assessment tool’.

through legal discourse: the interest is in legal violations. The first question of the tool therefore asks, “*what are your current charge(s)/offence(s)?*” (p. 2). However, all of the other diagnostic questions in this domain represent crime as much more than a legal violation. They represent crime as having legal, social and psychological dimensions. Further, these diagnostic questions are presented as relevant questions to assess ‘risk’ outside and beyond the legal violation. For example, the first question “*when was it?*” establishes the importance of time in relation to crime and questions the physical location, as well as about the other people who may have been involved place emphasis on the social aspects of crime. Similarly, the diagnostic questions about planning and minimising the crime are asked in order to ascertain the ‘risky-ness’ of the ‘offender’ and introduce psychology as important to crime.

Thus, the risk assessment tool represents the ‘problem’ of crime as something that occurs in time and space, as something that has a hierarchy of ‘seriousness’, as something that can be more or less ‘risky’ due to planning/lack of planning, and as something that can be either rational or irrational. For example, in relation to the crime, the diagnostic questions include:

Was it planned? (p. 2)

Consider impulsivity (p. 2)

Whether or not things went to plan (p. 2)

Consider patterns of offending...e.g...planning (p. 3)

As such, the ‘offender’ is represented as rational and purposeful in relation to the crime, *and* as impulsive and therefore unpredictable.

This domain also poses questions about the offender’s ability to feel empathy:

who was harmed as a result of your offence(s)? (Note whether the young person feels that they are the only person affected).

These diagnostic questions reflect criminological understandings that represent the offender as someone lacking 'normal' human attributes, reinforcing the offender as Other or different to the 'non-offender'.

Using the WPR questions enable interrogation of the deep-seated assumptions and presuppositions within the tool and also to consider how representations of crime and juvenile offenders have come about. The deep-seated assumptions or pre-suppositions lodged in this problem representation, at its most basic, is that crime is a 'problem', that crime is unnatural, that the concept of crime is static, and that crime holds a singular meaning of a legal and moral violation. This leaves no space to see crime as fluid and contingent. Crime is represented as an uncontested violation of rules, and as an 'unnatural' way for somebody to behave. Within this domain, acts of disobedience are represented as a resistance to, or a transgression of, social order, and individuals who choose a life of crime are considered 'unusual' in this sense. To disobey, or ignore, rules or authority is considered outside of 'normal' behaviour, implying that people ought to follow and obey rules (assuming that 'rules' benefit everybody equally). Crime is also represented as an individual and a social pathology, implying an agreed consensus in society about what is 'good/bad' or 'moral/immoral' behaviour. Crime is represented as a departure from what is good, moral, and righteous.

How it has become possible to think of crime as an ahistorical, naturalised concept requires examination. During the 19th century juvenile delinquency "...was viewed as having as much moral as a criminal character" (Muncie, 2009, p. 52). As discussed in Chapter Two, juvenile delinquents received attention not just for crime but also more generally for 'delinquency' and for lacking 'discipline', and so the purpose of reformatories and industrial schools was to 'reform' juvenile delinquents from being 'anti-social' rule-breakers into rule-following citizens. Although children may have been previously and privately judged to be 'immoral', legislative and policy changes cemented these ideas. In this way, 'immorality' (including poverty) was made a matter of the law. The existence of social rules around what is and is not acceptable, supported by policies and laws, produced a new type of crime, and a juvenile penal system to respond to 'juvenile crime'. This functioned to do two things: it established a new type of crime ('juvenile crime') and produced a new category of people ('juvenile delinquents').

While the representation of crime as *problematic* or as a *problem* may seem axiomatic, as Muncie explains (2009, p. 112), “Actions only become crime when they are defined as such by legal and other institutions”. To illustrate this point further, the example of the ‘problem’ of migration and borders can be borrowed to highlight how the production of ‘problems’ can be used to justify entire systems to then respond to ‘problems’. As Tazzioli (2015, p. 159) suggests that “...there would not be migration without borders, only mobility”. In this example, Tazzioli problematizes the existence of borders as opposed to migration. In a similar sense, criminology is concerned with crime and criminals as opposed to the rules and institutions that have been created to respond to crime.

The questions in this domain also bind children with ‘offending’, producing the ‘child offender’. In order to understand the logics, or the ways of thinking, that have made it possible to think of children as offenders, James and Prout (1990, p. 26) situate “...the notion of childhood as a discursive formation (or formations) within which different types of children and childhood have been constituted”. As demonstrated in Chapter Two, the more that childhood was shored up, the easier it became to reinforce the category of juveniles and children who did not follow the ‘correct’ version of childhood. These new population categories were supported by not only academic knowledges but also by social practices such as removing children from workplaces, and through the creation of institutions, such as reformatories and mass education. As such, the juvenile offender has been produced within discourses of childhood. Put simply, contemporary ways of thinking about childhood make it possible for the ‘child offender’ to be thinkable. The questions in the tool presuppose a particular type of childhood that the ‘child offender’ has violated. For example, the violation of childhood justifies intervention where developmental psychology ties age with criminal responsibility and culpability.

The questions in this Domain also reflect competing constructions of childhood. For example, the questions attempt to discern the knowingly disobedient ‘child offender’ from the naïve innocent ‘child offender’:

was it planned?

consider impulsivity

consider motives

and whether or not things went to plan (p. 2)

Immediately following those questions, a discourse of the 'at risk' child is drawn on:

What was happening for you around the time of the offence?

e.g. at school/work, with family, friends, partner, finances.

Explore the build-up to the offence and possible triggers (p. 2)

These sets of diagnostic questions bring the 'vulnerabilities' of the child offender to life. In this sense, it is possible to then think of the 'child offender' as associated with a failed childhood. Since a particular version of childhood is fiercely protected, so is the response to those who fail to meet universal understandings of childhood, such as the 'child offender'. James and Jenks (1996, p. 318) state

Constrained by dominant paediatric and psychological theories of child development (Jenks, 1982), contemporary childhood remains an essentially protectionist experience...ideal behavioural traits have been identified, none the less, as pertinent for all children. And, in doing so, simultaneous images of otherness are produced: those parents who fail to promulgate or accommodate this vision of childhood within the family are effectively seen to fail as parents and those children who fail to conform to the image of 'the child' are seen as some of childhood's failures.

'Failed childhoods' are especially highlighted in instances of children who engage in violent offending, considered a 'riskier' type of offending. From their study on public perceptions of childhood crime, James and Jenks (1996, p. 316) believe that the 'violent child offender' receives a lot more attention because of the "radical disruption" of notions of childhood. 'Healthy childhood' presupposes an inherent morality and capability, and these exact two concepts are examined via the diagnostic questions in the risk assessment tool.

If, as argued, childhood should be put under scrutiny to better understand how ways of thinking have allowed the 'child offender' to be produced, this then implicates 'adulthood'. 'Youth' is commonly referred to as a stepping stone to adulthood, and although it is beyond the scope of this thesis, it is just important to question what kinds of 'adulthoods' are being constituted, especially since adulthood is considered the final destination. Perhaps a useful question would be: Which adult-related discourses are children expected to take up, and also to give up, once they are considered adults? This must be scrutinised against the backdrop of capitalist neoliberal societies that demand lives are centred around employment, economic productivity and economic participation.

The Big Two Domains: Domain Seven (Personality/Behaviour) and Domain Eight (Attitudes/Beliefs)

These two domains of the tool, referred to by practitioners as the 'Big Two' domains – on the basis of their supposed fidelity in the assessment of 'risk' – are the 'Personality/Behaviour' (p. 13) and 'Attitudes/Beliefs' Domain (p. 15). Together, they serve the function of making it possible to *think* of the juvenile offender as 'dangerous'. The two domains achieve this by making it possible to think of offenders as having innate criminogenic traits and constitute the juvenile offender as psychologically and socially different to the non-offending population. They also render challenges to authority and are positioned as 'anti-social' and as 'dangerous'. These questions (re)produce the sub-category juvenile offender whose 'risky-ness' extends beyond their crime.

The nature of the offender: psychology

The diagnostic questions in these two domains are couched in ideas from criminology and criminal psychology, particularly about the signs of psychopathy (Hare, 1980), that hold that it is possible to identify the existence of a dangerous 'nature' via assessments of people's attitudes and feelings. This kind of logic at work is reflected in the diagnostic questions "*How do you usually feel when you do something wrong? How do you feel when you hurt someone?*" (p. 13) and "*How do you feel about what you did? How do you feel about the victim(s)?*" (p. 15). These questions are asked to ascertain the 'normal' from the 'abnormal' psychology of individuals, and in particular, to identify the most threatening diagnosis: 'the psychopath'.

Psychopathy refers to a psychological deficiency and is often related to the most heinous of crimes. The *Psychopathy Checklist* is the official assessment tool to detect psychopathy, originally developed by Hare in 1980, and revised in 2003 (this assessment is also sold by Multi Health Systems, the same seller as the YLS/CMI discussed in Chapter Three). The checklist refers to empathy or a lack of empathy as one of the ‘signs’ of psychopathy. Yet, these questions also highlight the normativity of feelings and attitudes: they are based on normative ideas of how someone should feel about doing “something wrong” and about “hurting someone”.

The tool also represents the ‘problem’ as psychological instability. For example,

Note – Obtain psychological and psychiatric reports that have been completed and note any diagnoses and/or medications previously and/or currently taken (p. 13).

and

Note – if the young person answered yes to any of the above questions related to trauma, depression, suicide ideation or thought disturbance, discuss with your Assistant Manager. Refer to a psychologist for further assessment if directed by the Assistant Manager (p. 14).

These ‘notes’ represent the offender in psychiatric or psychological terms. The offender can either be a psychiatric patient, or a *potential* psychiatric/psychology patient in cases where they have not yet received psychiatric treatment for the mental health ‘problems’ diagnosed by the administrator. Similarly, questions about the offenders ability to self-regulate forms part of the representation of psychological instability and produces the risk of unpredictability:

Do you sometimes act first, think later? Would you say you plan things or do you tend to do things on the spur of the moment? Yes/No (p. 13)

Do you lose your temper easily? Yes/No (p. 13)

Do you have thoughts you can't control about something that has happened to you? Yes/No (p. 14)

Have you ever had bad moods you can't seem to do anything about? Yes/No (p. 14)

The focus of the risk assessment tool on the offenders' psychological state and resources compounds the idea that the offender is different to the non-offender. In line with psychological and psychiatric approaches, the risk assessment tool produces offenders as 'patients' that require a diagnoses and/or medication to be 'treated'. The tool thus produces offenders as unwell, framed as a problem through discourses of health and medicine, such as the psychological discourse of the 'criminal mind'.

Again, drawing on psychological understandings of offenders, the diagnostic questions also elicit the offender's subjective opinions about themselves and others. For example:

are you confident? Are you sometimes disappointed in yourself? (p. 13)

and

Do you think people who don't break the law are better than people who break the law? Why? (p. 15).

Both of these questions are intended to provide information about sense of self. Both the offender who *lacks* confidence in themselves (“*are you confident? Are you sometimes disappointed in yourself?*”) and the offender who thinks their law breaking makes them superior (“*Do you think people who don't break the law are better than people who break the law? Why?*”) is considered 'risky'. There appears to be a contradiction, where the offender who is not confident enough is understood to be just as 'risky' as the offender who is *too* confident. This type of analysis has therefore brought attention to the existence of acceptable and non-acceptable types of 'confidence' in contemporary society. Answering “yes” to the latter, “*Are you sometimes disappointed in yourself?*”, attracts a higher risk score.

These two domains ask questions lodged in criminological knowledges of the offending personality such as the inability for self-control, anger and impulsivity, and blur the distinction between 'risk' and 'dangerousness'. The offender who cannot control their anger is represented just as 'dangerous' as the offender who is impulsive, unpredictable and 'risky'.

Anger:

Do you lose your temper easily? Yes/No

*Have you ever thought about getting back at someone you were angry with?
Yes/No (p. 13)*

Impulsivity:

*Do you have trouble concentrating or have you ever been told that you have a
problem with concentration or paying attention? Yes/No*

*Do you sometimes act first, think later? Would you say you plan things or do you
tend to do things on the spur of the moment? Yes/No*

If yes, can you give me any examples? (p. 13)

These questions produce the offender that is immediately 'risky' based on their level of 'dangerousness', in this sense, the two concepts become merged. These particular questions can be traced back to both psychological and structural understandings of 'adolescents' and of 'at-risk youth'. In the twentieth century, children, 'delinquents', and 'juveniles' began to be sub-categorised as 'adolescents', a psychological term that emphasised the existence of a sub-group, to describe an additional 'natural' stage of life development, and that related to the behaviours, thoughts, and identities of young people in particular (13-18 years of age). The concept of 'youth' was also deployed to imply an age category that was understood and defined sociologically, as well as psychologically or developmentally.

By 1918 there was a modern way of talking about children and 'youth' (Hendrick, 1990, p. 51). More children came to be defined more universally, and through the lens of medicine, psychology and welfare. The newly formed construction of childhood was becoming institutionalized, mainly by professionals from the psychological and psychiatry fields. They influenced a number of practice areas such as education and the 'treatment' and management of juvenile delinquents (Hendrick, 1990, p. 51). After 1945, however, the concept of childhood was increasingly constituted by its social mapping in the community,

with the problems located *around* the child, who was now represented as battered, deprived, neglected, and abused (Hendrick, 1990).

Right up until the early 1920s, explanations of 'delinquency' continued to include reasons such as moral imbecility or genetically defective classes of people. Cyril Burt, a psychologist, instead argued that delinquents could be helped and reformed through individual psychology. Due to this newly formed knowledge of 'delinquents', he came to be much respected in the psychology field and contributed to a more clinical form of psychology. Hendrick (1990) described how Burt went on to establish a research and treatment centre for delinquents in the 1930s and 1940s named the 'Child Guidance Clinics'. This was just one of the ways that this version of childhood was institutionalized (Hendrick, 1990, p. 52). These developments opened the door not just to the psychologising of 'delinquents', but also of their families. In this sense, the construction of 'delinquency' contributed to a reconstruction of the family.

This was a period of influential commentators, such as Anna Freud and John Bowlby, who continue to influence contemporary understandings of children and 'youth'. Hendrick (1990, p. 51) highlighted that "these were the towering figures in the enormously successful popularization of three inseparable themes: the mind of the child, the child in the family, and child management". Explanations about why these concepts and ideas were popular at the time are the burgeoning of the psycho-medical discourses in the realm of social problems and the high tide of welfare state developments post-World War Two (Hendrick, 1990).

Erikson (1950), a popular psychologist and psychoanalyst, also developed a theory on 'youth' and 'adolescence' that remains intact today. Erikson theorised that during the 'adolescence' stage a lot of important work goes into finding one's identity, an 'identity' that will ultimately produce a particular type of adult. Erikson theorised the stage of 'youth' as the location where 'youth' develop and mature sexually, physically and emotionally. Muncie (2009, p. 64) explains the concept 'adolescence' as a term that is used "to describe a period of life between childhood and adulthood which had its own particular problems of emotional adjustment and physical development". He related the concepts popularity to ongoing concerns of the working class as well as evolving ideas of stages of human development within the psychology field. The concept of 'adolescence' brought attention to the idea that

'delinquency' was a stage of 'natural' development, due to an identity crisis. Children and 'youths' 'problematic' behaviour began to be considered 'problematic' due to 'natural' developmental processes.

These developmental discourses remain powerful in contemporary discourses. Wyn and Harris (2004, p. 275) stated: "While many contemporary youth researchers would not necessarily agree with the deterministic model of development that Erikson's theory of identity implied, nonetheless there is widespread, if implicit, agreement that youth is the most important period of identity construction". The conceptual establishment of 'youth' identity inspired some major empirical studies. For example, drawing on Erikson's theory of development, the 1975 Australian study named *12 to 20: Studies of City Youth* (Connell et al. 1975) attempted to track the psychosocial developments of young people until they reached adulthood. Wyn and Harris (2004) argue that Erikson's theory was an influential move to frame 'troublesome youth' not as something pathological, but rather, as a 'natural' progression of life, thereby essentialising social action.

As previously noted, a 'desirable childhood' also implies a 'desirable adulthood'. For example, the term 'youth', and in particular 'at-risk youth', was increasingly used after the Second World War to describe a category of people. But unlike the term 'adolescent', a psychological term, 'youth' was used to describe a category of people positioned in relation to the social structures of education and the labour market. Kelly (2006, p. 27) states:

...Youth emerges as a transitional 'stage of life' in the context of post-Second World War changes in the patterns of teenage participation in education and the labour market. For the 'vast majority' of young people who were becoming adult in the 1950s and 1960s, the 'transition to adult independence occurred after the completion of ten years of schooling and with a trouble free entry to the labour market' (Freeland, 1996, p. 7).

Not reaching these adult 'markers' would attract the 'at-risk' label. The normative child, as Kelly (2006) highlights, implies a normative adult or 'personhood', stating that "Youth is thus a process of simultaneously 'un-becoming' a child and becoming an adult" (p. 26). 'Youth', as a type of 'adolescence', became popular throughout the '70s, '80s and '90s, and is reflected in the large amounts of research and policy documents that emerged related to 'youth' and

'youth-at-risk'. This genealogy demonstrates that the concepts that the risk assessment tool relies on in these domains, that of 'adolescence' and 'youth', are socio-political terms that were/are contingent on prevailing ideas of the ordering of society, as well as imagined and idealistic life course developments for people.

What are the effects of these kinds of representations? The concept of 'adolescence' brings an unquestioned and unchallenged 'naturalness' to 'delinquency', psychologises the 'offender', and further distinguishes the child from the adult. 'Adolescents' continue to be represented as psychologically and biologically different from adults, and as being less capable of controlling themselves, and therefore 'risky' simply due to their age. Eurocentric ideas of 'normal' human development can only be understood according to distinct age parameters. Although comparative studies suggest that childhood is not universal, a comparison disentangles age from crime and renders visible the discourses that penal systems rely on to justify the practices and knowledges embedded in them, whatever they may be.

Since the child and the offender are constructed as opposing categories, the questions in these domains reflect a clash between how offenders are constructed and how the child is constructed. crime in and of itself is not considered an innocent or naïve act. Instead, it is represented as a purposeful, conscious violation of societal norms and expectations. crime is an adult-like violation. Children on the other hand are generally represented as naïve, lacking understanding and reasoning, and at an irrational stage of development, according to developmental psychology. This is often used to justify their exclusion from voting, employment and income. Yet, the two concepts merge in these domains to produce the 'child offender'. James and Jenks (1996) question this clash and conclude:

Regarding children as being in possession of a special and distinctive nature, which is both untainted and vulnerably dependent, is what makes any link between children and violent crime particularly problematic, for the imagery of childhood and that of violent criminality are iconologically irreconcilable (p. 320).

In other words, the construction of the child has had a different genealogy to the construction of the criminal. crime does not fit neatly with constructions of the child. Nevertheless, the questions in these domains sit side by side. The concept of 'risk' overrides these constructions.

The nature of the offender: morality

In addition to assessing the psychology of the offender, the administrator of the risk assessment tool is prompted to assess the offender's morals. For example, one prompt states:

Explore the young person's attitudes towards their own offending behaviour and offending in general; and their motivation to change.

The diagnostic questions that follow the prompt, require the administrator to probe the as young person's views on what and who is 'fair':

Do you feel you were treated fairly by the police and the court? Are most people treated fairly by the police and the courts?

Do you think people who don't break the law are better than people who break the law? Why?

Do you think you are treated fairly by your parents? Do you think you should obey their rules? Why do you say that?

What about school? Do you think students are treated fairly by teachers and other staff? Why do you say that?

What about work? Would you say that employees are treated fairly by bosses?

(p. 15)

The diagnostic questions produce 'fairness' as a stable, de-politicised fact, and understand the offender as somebody, who simply by *thinking* in a particular way, is 'dangerous'. These diagnostic questions, based on *thought*, and the subjectivity of both the offender and the administrator of the tool, heavily influence the risk score. As mentioned previously, using

the WPR questions enable interrogation of deep-seated assumptions and presuppositions and also consideration of how representations of crime and juvenile offenders have come about.

There is a presupposition lodged within the risk assessment tool is that offenders possess 'criminal beliefs'. In the Attitudes/Beliefs Domain of the tool (p. 15) multiple diagnostic questions are asked about the individual's beliefs around authority, 'fairness' and rules. The deep-seated assumption is that resistance to authority, or rules, is immoral. There is no room in this set of questions for a 'moral' disrespect or 'moral' disobedience, even in the context of other knowledges – outside the juvenile justice system - that suggest that police, courts, parents, teachers and employers do *not* treat people fairly. Thus, we see the necessity of tracing the introduction of moral imperatives such as, for example, respect (for institutions, for hierarchies) and obedience (to parents).

The nature of the offender: docility

There is an underlying assumption in the tool that it is 'natural' and expected for people to follow rules and to not question, challenge or resist authority. In this sense, personhood is questioned and unnaturalness implied, with the aim of producing docile bodies ready for intervention – or, as Foucault puts it, “a body is docile that may be subjected, used, transformed and improved” (1977, p. 136). The ability to 'control' one's aggression (minimising resistance) functions to discipline the mind and the body (Henriksen, 2018).

The concept of 'docility' has been used to demonstrate how penal responses are ultimately about order and control, and that institutions such as reformatories and schools aimed to encourage and produce docility. For example, Hendrick (1990) states that up until the mid-19th century, education was reserved for the middle class, so much so that by the 1840s most children never participated in any type of formal education; even if they did, they would stop attending after the ages of 10 or 11 (Hendrick, 1990, p. 46). The construction of the 'juvenile delinquent' and the introduction of compulsory education, according to Hendrick, “were certainly ideologically related” (Hendrick, 1990, p. 45), because if children could be returned to their 'natural state' (in other words: submissive to adults) they could become more easily passive recipients of knowledge, and therefore prepare them for education.

Hendrick (1990, p. 47) went a little further and stated that compulsory education “...demanded a state of ignorance”. It’s also important to note that compulsory education was applied universally, not just to juveniles, and so state intervention expanded into the lives of all children and all families. Hendrick (1990) described this move as “intended to be inescapable” (p. 46) and remained cautious that the school was initially intended to moralise the working class. While Hendrick (1990) acknowledged all the positive aspects to compulsory education, particularly for children who were denied access to education because of their class, he nevertheless argued: “Whatever the compensations, the school put these children into the servitude of a repressive innocence and ignorance” (Hendrick, 1990, p 47). As discussed in Chapter Four, Foucault views penal systems as technologies that aim to produce docility, and to produce disciplined bodies. Disciplined bodies are less likely challenge or question authority, and less likely to oppose the social order assigned to them. Kelly (2014) explains that “We must be reduced to bodies that are pliable, tame” (p. 77). The questions in these domains certainly suggest that docility is preferred: they valorise docility by connecting the undisciplined ‘nature’ of offenders within the ‘criminal mind’, or the psychology of the individual. This move allows the mind of the offender to be problematised as in need of discipline.

The confessional

The physical process of gathering ‘knowledge’ (assessing or examining; that is, an administrator asking multiple questions of the young person) is an example of Foucault’s use of the concept of technologies of the confessional, which functions to have the young person expose their deviancy and sin to authorities. This confessional mode is rationalised on the basis that increased ‘self-knowledge’ means an increased chance of ‘success’, and ‘success’ at integrating into society becomes the responsibility of the ‘offender’. Eisler (2007) explains:

Foucault saw the confession as a central component of bodies, populations, and society itself. From this perspective, the individual equals a body of knowledge, both to him or herself, and to others. (p. 111).

The gathering of 'knowledge' becomes the site of the knowledge-power nexus. If the anomaly can be known, then power can be deployed, or as Sawicki (1991) explains:

Foucault claims that deviance is controlled and norms are established through the very process of identifying the deviant as such, then observing it, further classifying it, monitoring, and treating it (p. 31).

In this way then, the risk assessment tool can be described as an example of a technology of normalisation because of its regulatory effects (Eisler, 2007). Hil and Brennan (2004) argue that challenging the assumption of a collective conscious, for example, invites different types of questions:

Meanwhile, in the remote domains of 'background' or 'environmental' factors associated with these studies, there lurks those enduring and awkward questions about how social order is constructed and maintained, who benefits and who misses out, and why it is that some sections of society are actively governed far more rigorously than others? In such explanatory accounts, the reader is unlikely to come across any reference to poverty and the possibility of redistributive justice, or for that matter, any allusion to social justice and human rights. (Hil & Brennan, 2004, p. 29-30).

Moral norms presuppose the questions about feelings and attitudes in the YLS/CMI-AA 2.0 risk assessment domains and reflect ideas that are similar to the Evangelical understandings of children discussed in Chapter Two. For example, the concept of the 'soul' is deployed in a similar way to the psychological concept of 'personality' in the sense that both are understood as inherent to people, in need of reform and treatment. This type of analysis has brought to the surface the possibility that the Evangelical concept of the immoral soul has not entirely disappeared but is constituted in new ways in risk assessments. The concept of the soul was supported and shaped by the most dominant discourse of the time: religion. The concept of personality is backed by what is contemporarily the most dominant form of penal discourse, that is, psychology. Although the diagnostic questions in these domains appear to be shaped (mostly) by social and psychological constructs of juvenile offending, it appears there are remnants of religious concepts and ideas about inherent immorality. It can

be asserted that perhaps the examination and treatment of the soul has been replaced with the examination and treatment of the mind. This locates crime and 'risk' in and within the body, as well as outside the individual body of the offender. Muncie (2009, p. 113) refers to the role of science in producing these truths and knowledges of offenders. He quotes McCaghy:

Since there are several theories concerning the fundamental nature of man, it should not be surprising that since the advent of positivism every human appendage has been measured, every emotion plumbed, every social influence probed and every bodily fluid scrutinized. As a further result of such theories, social environments have been engineered, parts of the brain removed, families counselled, organs lopped off and many sorts of chemicals injected into the human system. All this has been done in the apparently limitless search for answers to the question of why some ignore or disobey others' concepts of righteous behaviour. (McCaghy, 1976, p. 9)

As Chapter Four outlined in reference to Foucault's *Discipline and Punish*, how social order is constructed and maintained was Foucault's interest. I assert that the risk assessment tool maintains order via the construction of the child offender and by categorising people by levels of 'risky-ness'. Thus, the risk assessment tool is also an ordering tool.

Conclusion

The three domains analysed in this chapter demonstrated how they produce crime as a set of specific and common characteristics of offenders that include abnormal psychology and immorality. The diagnostic questions produce crime as fixed, static, something that has always existed, thereby making the imagined standards of behaviour appear to be real and wholly ahistorical. The risk assessment tool also produces 'criminality' as changeable through intervention.

The offender is represented to be 'other' and a sub-set of people that share common attributes mostly around the violation of social norms of resisting authority and challenging an imagined and agreed standard of rules. The offender is in opposition to the imagined 'non-offender', presupposing that the goal of the penal system is to produce docility and

submission to authority. Through assessment and examination, the offender is rendered a subject that is knowable, predictable, and therefore controllable.

The next chapter will explore the remaining domains of the risk assessment tool and continue the WPR analysis by identifying the problem representations, as well as the assumptions and presuppositions within the domains. The effects of the criminogenic pathways concept, as well as how 'risk' frames the domains in the tool, will be unpacked and critiqued.

Chapter 7

The YLSI/CMI-AA Tool: Confirming the Criminal Pathway

Introduction

This chapter focuses on analysing the diagnostic questions that directly apply to those 'factors' considered common attributes amongst offenders that have been associated (in empirical studies) *positively* with re-offending. In other words, the administrator is required ask questions to assess the 'offenders' past in order to predict their future. As is suggested by the questions in Domain One, crime is understood as a "build-up" of undesirable individual and family circumstances: "*Explore the build-up to the offence and possible triggers*" (p. 3) and "*What was happening for you around the time of the offence?*". But the risk assessment tool explicitly uses the term 'pattern' in relation to 'offending', prompting the administrator of the tool to "*consider patterns of offending*" (p. 3) and "*understanding of offending pathways*" (p. 3). 'Patterns' in the most basic sense imply a recognisable and identifiable past, present, and a future, and the deployment of the 'pathways' concept constitutes 'offending' as a 'problem' in the present, but also as an historical and a future 'problem'.

Once again, this chapter lays out domains individually and in isolation to assist with the analysis. However, the domains in the risk assessment tool overlap and rely on another to produce the 'risky offender'. The domains that seek to map the 'risks' of recidivism (and likewise the 'needs' of the 'offender' to protect them from continuing a life of crime) are the following:

- Family and living circumstances,
- Education/employment,
- Peer relations,
- Substance use,
- Leisure/recreation.

Domain Two: Family and Living Circumstances

Due to the 'predictive strength' of this particular risk factor, it is positioned in second place in the risk assessment tool, directly following the Domain that establishes criminality: "Prior and current offences". The diagnostic questions aim to explain *how* someone becomes an offender, and the tool centralises the family in this process of 'becoming'. The diagnostic questions therefore include:

Tell me about your family? How does everyone get along? What are the issues?
(p. 4).

Just below this diagnostic question is a list of 'problems' that represent the type of family that is capable of producing the 'offender':

Explore family history including cultural attachments; significant events (positive and negative); unemployment/financial concerns; possible Community Services involvement; health, mental health or intellectual disability; substance abuse; problem gambling or offending behaviour (including involvement with the criminal justice system) (p. 4)

The reference to 'cultural attachments' in the statement "*Explore family history including cultural attachments*" implicitly refers to familial ethnic and racial background. References to "culture" in Australian policy contexts are always in reference to non-dominant cultures, and 'culture' often equates with race and ethnicity (Abu-Lughod, 1991; Boggs, 2004; Said, 1995; Hage, 2012). Thus, White cultural attachments are invisibilised in this question, as 'white' is considered 'neutral' or universal. In this way, non-white families are implicated in crime and crime becomes related to 'culture'. The reference to "*Community Services involvement*" connects the 'offender pathway' to having been involved in the child protection system linking neglectful/abusive parents to the 'pathway', rather than, for example, linking highly surveilled family lives to the criminalisation of some young people. The reference to "*involvement with the criminal justice system*" associates the 'pathway' with having other family members who are deemed criminal.

Another specific way in which families are positioned as central to the criminogenic 'pathway' is through questions about relationships, rules, 'fairness' and 'discipline'.

The following questions relate to the person/people you live with:

How do you get along with your mother/father/guardian/caregiver?

How would you describe your relationship with her/him/them?

Are there a lot of rules at home?

Do you think they are fair?

What happens when you break the rules?

How are you disciplined? (p. 5)

The diagnostic questions relating to 'discipline' and rules in the tool are attempting to garner quite specific 'good parenting' norms at work. The assumption or presuppositions behind the questions appear to be that families of 'offenders' either *lack* discipline (not enough rules) or *over-discipline* (too many harsh rules) their 'offending' child. Both are diagnosed as contributing to the production of 'offenders'. These diagnostic questions contribute to the understanding that 'offending' is about 'discipline', not just the lack of discipline of the 'offending' child, but also the lack of discipline of 'those types' of families. The risk assessment tool becomes an assessment not only of the 'offender' but also of the family, which has 'failed' in their parenting role. It needs to be emphasised that having 'good' family relationships, or a lot of rules, for example does not reduce the risk score; rather, it remains stable, with only the possibility of increasing.

The risk assessment tool has a number of diagnostic questions related to socio-economic status, and in doing so also provide a proxy for 'poverty' which is considered a 'pathway'. 'Poverty' is represented as homelessness, indebtedness, attachment to employment, and employability through attachment to education.

To assess homelessness on page 4, under the “Family/Living Circumstances” Domain, the questions are:

Where are you living now?

Who are you living with?

How long have you been there?

Have you ever slept in a refuge, at someone's else's house or outside because you had nowhere else to sleep?

Have you ever considered yourself to be homeless?

If yes – from what age?

Were you by yourself or were you homeless with your family?

How long have you been homeless?

As discussed in Chapter Two, the ‘delinquency problem’ has historically been directed at families from poorer classes since the late 18th and early 19th century. This sub-set of juveniles, referred to as ‘destitute’, were responded to similarly to ‘juveniles’ that were deemed ‘depraved’. These diagnostic questions continue the tradition of targeting and punishing poorer families, while at the same time representing them as ‘vulnerable’ and in need of welfare support.

It is worth noting that ‘morals’ were considered so important as to justify the removal of children from their families and placed in institutions. The purpose of these interventions was to re-moralise children when their parents were deemed to have ‘failed’ at fulfilling this themselves. These ‘new approaches’ were mostly targeted at working class families (Muncie, 2009, Garland, 1985, Hendrick, 2006).

The types of families or parenting standards that provide criminogenic ‘pathways’ are made clear in the risk assessment: the presupposition is that families reflect Eurocentric ideals,

that is, living arrangements and families as stable and nuclear. This ideal is assumed in at least two questions: “*Where are you living now?*” and “*Who are you living with?*” (page 4). A stable domiciliary pattern is interpreted as living in one place, living with the same person, having a single rather than multiple or shifting guardians or parental figures, and living with a normative number of others (i.e., not ‘overcrowded’ and not alone). Thus who, and what makes a ‘family’ is restricted, and being outside these normative ideals can be represented as dysfunctional and as ‘criminogenic’.

Foucault’s use of the term ‘carceral system’ is useful here because it extends beyond the prison to describe other systems that are part of the ordering, regulating and controlling of society. In contemporary times, the child ‘protection’ system is deemed central to the carceral system. This is reflected in the risk assessment tool’s inclusion of child protection-orientated questions, to ascertain if a child is ‘at risk’ of harm specifically by their caregivers, implying that biological or other caregivers can harm children. This makes it easy to establish specific individuals as ‘harmers of children’ and makes it less possible to see other harms imposed on children, such as forced removals by the state. ‘Juvenile offending’ then is represented as a child protection matter (protection from parents and/or care givers, but not of institutions) *and* a criminal justice one.

The questions in this Domain also align with Mary Carpenter’s views discussed in Chapter Two, where ‘immoral families’ were often blamed for their ‘juvenile delinquent’ child, and this justified the removal of children into institutions to re-moralise the child and replace the parents. The diagnostic questions also relate to Donzelot’s argument, mentioned in Chapter Two, that since the 19th century, there has been a shift from “government of the family, to government through the family” (Cunneen & White, 2002, p. 21). The blame attributed to ‘poor parenting practices’ does not seem to have lost importance, urgency or priority in the contemporary ‘youth offending’ field.

The first official report on juvenile delinquency, the *Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis* report in London in 1815, mentioned first and foremost that poor parenting practices were a ‘cause’ of ‘juvenile delinquency’. More than 200 years later, ‘poor parenting’ and families are still represented as one of the biggest symptoms or ‘risk factors’ of the ‘juvenile offending problem’. As

discussed in the previous chapter, a number of diagnostic questions in the Attitudes/Beliefs Domain establish that the 'offender' is inherently a 'rule-breaker' and is disrespectful of all forms of authority. In a similar way, the questions on Family and Living Circumstances position the families of 'offenders' as also failing to understand how 'rules' and 'fairness' works. The family of the 'offender' is understood to be oppositional to the state, establishing the 'state' as a 'neutral', 'objective' entity that creates and makes the 'rules', and as an entity that is unquestionably 'fair'. 'Rules' and 'fairness' are assumed common knowledge, and there is not a question of which 'rules' and by which standards 'fairness' is measured by. Additionally, these diagnostic questions represent the 'problem' to be a refusal to submit to authority, and the (un)willingness to submit to the social order.

Domain Three: Education/Employment

In this domain, the 'offender' is asked:

Do you have any outstanding fines and/or debt? (p. 6)

And then,

Are you working? (p. 6)

If not in school or working:

What efforts have you made to find work? What's stopping you getting a job?

Post Assessment Review: highlight any strengths or future protective factors (for example, stable employment) and anything leading to offending that needs to be addressed.

Being in school or at work does not reduce the risk score. Rather the risk score remains stable, with only the possibility of increasing. In other words, if "strengths or future protective factors" are identified they are not counted when determining the risk score.

The risk assessment tool represents the 'problem' of the 'offender' as an economic burden, via their 'disengagement' and 'lack of participation' in employment. For example, on page 6

of the “Education/Employment” Domain, questions are asked specifically about ‘attitude’, ‘abilities’ and ‘goals’. The diagnostic questions can be understood to be reflecting a capitalist understanding of what ‘good citizenship’ entails. According to the diagnostic questions, ‘good’ citizens are productive, and have ‘goals’ that are related to economic contribution and the failure to be employed is understood to be solely an individual failure.

The emphasis on the individual child (“you”) disregards the state of the economy, as well as the responsibility of the state to provide a basic income for children. The prompt for the administrator of the tool represents stable employment to be a ‘protective factor’ (or a ‘solution’ to crime). The expectation therefore is not only will a child be employed, but that they will have ‘stable’ employment. The workplace has become a final destination for children, an indicator of ‘progress’ through life, and an indicator of adulthood. The effort of the ‘offender’ is represented as a barrier to employment rather than for example the economy or the labour market.

Similarly, the ‘problem’ of ‘offending’ is represented as the failure of the individual child to take advantage of educational opportunities, due to their own negative ‘attitude’ towards school, and through their own incorrect choices. The diagnostic questions represent the ‘problem’ as a failure of the ‘offender’ to ‘get along’ with teachers and their peers, and as a ‘failure’ based on relationships with educational institutions, or more specifically, the ‘offenders’ inability to create a ‘good’ relationship with the school. The responsibility to also have a ‘good relationship’ with an employer is questioned, representing unemployment as a failure to ‘get on’ with an employer *and* a failure to ‘like your job’.

How well do you get on with your teachers and other students? (p. 6)

Do you like your job? How do you get on with your supervisor/managers? (p. 8)

It appears that engaging in activities that benefit the state, like active participation in education and employment, are understood to be ideal citizenship behaviours. Failure to work or study is therefore also considered a ‘pathway’ to crime, and a symptom of ‘criminality’ and ‘anti-social’ behaviours. Thus, ‘juvenile offending’ is represented to be a lacking in responsibility of individuals to make themselves un-poor by using their good

efforts and their ability to 'get along' with others. These types of problem representations can be considered technologies of the self, discussed in Chapter Four in relation to Foucault's concept of 'government through freedom', whereby 'freedom' ensures that individuals are held responsible for both their 'success' and 'failures' in free market societies.

The Diagnostic Questions related to 'Employment/Education' all imply that the 'offender' is an 'offender' due to their inactivity and attitude to employment and education. However, immediately after this set of questions, the domain focuses on questions of 'cognitive capacities', presumably to determine the capacity for an 'offender' to be an ideal educable/employable citizen. The 'Diagnostic Questions' on page 7 relate to the 'offenders' "cognitive function":

These questions should not be asked directly of the young person. This information should instead be sought from the young person's parent/carer, their school, and/or any other relevant stakeholders.

Does the young person have difficulty reading or writing? Yes/No

Has the young person ever been diagnosed with an intellectual disability? Yes/No

Has the young person ever been to a service for people with a disability? Yes/No

Has the young person ever been to a specific purpose school?

Has the young person ever been to a special class at school for learning difficulties? Yes/No

Note – if the response is 'yes' to any of the above questions, further information should be sought regarding the young person's cognitive functioning. This could be obtained from their parents or guardian, Community Services, a previous or current school, Justice Health and/or any other relevant services. If no further information can be obtained, refer for further assessment.

The problem representation is the 'offender' who may *also* have a disability, despite the previous domain representing 'offending' as a matter of 'attitude'. Even though disability is

not considered to be within an individual's control, it remains that it is *still* considered a 'pathway' to crime. Thus, the domain that assesses 'cognitive function' establishes the idea that an 'offender' may not in fact be fully responsible, or culpable, for their 'offending' due to their low cognitive functioning. Furthermore, the inclusion of 'Diagnostic Questions' on cognitive disability frame crime as a health 'problem', or more specifically, a neurological problem. Yet this diagnosis does not reduce the risk score, it simply enables the administrator to 'know' the criminal subject and assess the criminal patterns in more detail.

In Chapter Four, a discussion about the increasing popularity of neuroscientific understandings of people was included as an example of a more contemporary type of governmentality (Rose & Abi-Rached, 2013). Along similar lines, the 'anti-social brain' enables the 'offender' to be thought of as inherently criminal. Even though theories of biological determinism are generally rejected by contemporary criminologists, they generally agree that 'cognition' and 'low intellect', both considered brain deficits, are 'predictive' of 'criminality' ('risk factors'). Further, the criminological literature has also established that 'brain deficits' are 'problems' that poor people have. For example, Farrington and Welsh (2006) state:

The key explanatory factor underlying the link between intelligence and delinquency may be the ability to manipulate abstract concepts. People who are poor at this tend to do badly in intelligence tests such as Raven's Progressive Matrices and in school achievement, and they also tend to commit offenses, probably because of their poor ability to foresee the consequences of their offending and to appreciate the feelings of victims (i.e., their low empathy). (pp. 5-6).

And further that:

Certain family backgrounds are less conducive than others to the development of abstract reasoning. For example, lower class, economically deprived parents tend to talk in terms of the concrete rather than the abstract and tend to live for the present, with little thought for the future, as the sociologist Albert Cohen (1955, p. 96) pointed out many years ago. (pp. 5-6).

The implications of this type of 'knowledge' are that poorer people, and people of lower classes, are shored up as inherently criminal, building the case for neurobiological interventions. The use of neurological technology is being encouraged in the criminology field as a way to control 'risk'. For example, Bootsman (2018) suggests:

...the application of neuroscience in the criminal justice system could aid in reducing antisocial behavior and (juvenile) delinquency. Here, neuroscience may provide standalone neurobiological interventions targeting deficient neuropsychological function and behavior but could also be used to predict treatment response. (p. 8).

Indeed, the problem representation of the 'offender' that is capable of crime but cognitively incapable of processing thought and making good decisions produces an 'offender' that is even more dangerous and even more 'vulnerable', and in need of reform and intervention.

How then has it become possible to think in this way? Or, to apply in Bacchi's question, "How has this representation of the 'problem' come about?" (Bacchi, 2009, p. 10). The practice of tying employment and education with 'offending' has emerged historically. The popular attitude of the 18th century was that moral guidance could be developed via hard work and labour because it could teach children economic, social and moral principles (Hendrick, 1990). On the basis of this view, in the closing decades of the 18th century, there were few arguments against child labour, as employment was used as a technique to 'discipline' the child, and not simply for economic purposes.

Although children were part of working life, the industrial revolution saw children take on different forms of labour that were viewed as brutal and unhealthy forms of work. Hendrick (1990) refers to this period as the period of the 'factory child'. He suggests that it was at this moment that the child labour 'problem' came to be seen as extensive and expansive, and that the brutality of children working in textile mills and mines symbolised a threat to "an imagined natural order" (p. 40). Hendrick (1990) described a backlash to child labour and stated that

The campaign to reclaim the factory child for civilization was one of the first steps in what might be described as the construction of a universal childhood...In campaigning to restrain this form of child labour, reformers were in effect arguing about the direction of industrialization, the meaning of progress, and the kind of childhood necessary for a civilized and Christian community (p. 40-41).

The preoccupation with children and employment also reflected other political agendas. For example, Muncie (2009) stated that

...the first attempts to restrain child labour came from land owners hostile to manufacturing, adult trade unionists seeking limitations of adult hours of work, or from middle-class intellectuals and humanitarians who were appalled at the exploitation and brutalization of 'young' workers and the violence thereby done to the 'nature' of childhood itself (Muncie, 2009, p. 51).

As a result of the politicisation of these issues, a 'universal child' was legislated into existence. For example, legislation was successfully implemented in the UK in 1833 under the Factory Act 1833, which made it illegal for children under the age of nine to be employed and reduced the number of hours that nine and thirteen-year-old children could work. The child as a 'bearer of rights', or the concept of a 'universal childhood', did not receive general consensus and was contested. For example, Hendrick (1990) reminds us that although the child labour 'problem' was fought with ferociousness, child labour per se was not. What followed were laws that restricted rather than stopped child labour. As noted above, even with the introduction of the Factory Act 1833, a nine-year-old child could still potentially be working in factories. Although the vision of childhood was changing, it is argued that employment remained an important aspect of the child's life in the 19th century, despite the emergence of the 'rights-bearing child'.

The concept of a child labour 'problem' brought children front and centre as subjects that belonged to something or someone (whether that be the factory, the family, or the school) all sharing the same purpose: that of 'discipline' and by extension, control.

Similarly, the advent of mass education in the late 19th century is described as yet another form of 'discipline' by Muncie (2009, p. 49), who stated that

By the eighteenth century a vision of the ideal child had been developed and widely projected – a child who was dependent, submissive to authority, obedient, modest, hard-working and chaste. If children did not meet such standards, then the fault lay primarily with parents and, second, with schools which had failed to exercise an appropriate measure of discipline.

Muncie (2009) attempted to explain why 'juvenile offending' became increasingly important in the 19th century. He argued that the new legislation to restrict child labour impacted family incomes, and pressured parents to pursue more work, consequently leaving children unattended and without parental guidance. Muncie (2009, p. 51) believes that "A growing number of children, therefore, were fundamentally displaced and, within such adverse social and economic conditions, gravitated towards delinquent activities and/or acquisitive forms of petty crime in order to survive" (p. 51). With more children out of work, Hendrick (1990, p. 42) argues that the 'factory child' was replaced by the delinquent quite rapidly. He posits that children and 'youth' began to attract more attention by the bourgeoisie as well as by the media, who became concerned not just by crime, but by the 'immoral behaviours' of children and 'youth'. Following the official report on the 'juvenile delinquency problem' in 1816, official statistics on 'juvenile delinquency' also began to be measured and collected (Cunneen & White, 2002, p. 8). Hartley (1986, pp. 29-30) highlights the relationship between religion, liberalism and positivism and the use of statistics to produce a 'problem'. He argued:

In common with the evangelical movement however, the positivistic approach of liberalism helped to identify and refine the image of social deviance... Statistical information was the essential weapon in the positivist attack upon social deviance, especially upon crime.

Positivist criminology, and its focus on environmental explanations of crime, worked alongside the Evangelical concept of 'saving' children from a life of crime. The 'child-saving movement' was thus related to the church and the Evangelical movement. The significance of the combination of science and religion was that it made the universal subject come to

life materially and institutionally. The 'delinquent child' was described as a particular type of child, one that was ahead of his or her time, adult-like and 'troublesome', all of which contradict the image of the 'innocent child'. The 'problem' was represented as children being too independent, and this made them seem less 'innocent' and less 'child-like'. Hendrick (1990, p. 43) argues that

In order to understand the significance of developments in the concept of juvenile delinquency, it has to be remembered that the movement to create the beginnings of a separate code of juvenile justice emerged from the debate on child labour, the economic and political upheavals of the 1830s and 1840s, and from the increasing popularity of the school as a means of class control.

Reformers of the time were essentially arguing that the coming together of innocence and experience was 'dangerous', and that the cure to this social 'problem' was to ensure dependence of children on adults (Hendrick, 1990, p. 43). This dependence and submission was achieved mainly via mass education that "...demanded a state of ignorance" (Hendrick, 1990, p. 47), and while noting all of the positive aspects to compulsory education, particularly for children who were denied access to education because of their class, Hendrick (1990) argued: "Whatever the compensations, the school put these children into the servitude of a repressive innocence and ignorance" (Hendrick, 1990, p 47).

These kinds of ideas are expressed in the risk assessment tool that includes a specifically designated domain attributed to employment and education, as well as in the specific questions themselves. 'Offending' is represented as a problem of 'discipline', one that manifests itself through a failure to meet employment and educational standards. It is interesting to note that over three hundred years or so, children have been pushed into employment (child labour), legislatively forced out of employment (child savers), legislatively forced back into employment (industrial schools), and then almost completely and legislatively forced out of employment (mass education). Although working conditions in the Western world have changed drastically, so too has the relationship between children in relation to employment. Despite this contested history, however, this domain represents 'education/employment' as activities that are *natural* to *all* children, leaving limited room to see how they have been *assigned* these roles mostly for economic, political and cultural

reasons. The risk assessment tool silences the economic, political and cultural factors that impinge on this 'risk factor', rendering it 'neutral' and apolitical, and more importantly, as sitting outside of the state.

Domain Four: Peer Relations

Contemporary criminology literature has produced the 'problem' of 'peers' in relation to 'risk' and 'anti-social' behaviour. For example, there is literature that suggests 'youth' who spend time together is in and of itself 'anti-social', 'risky' and threatening, regardless of whether or not 'youth' are engaging in crime (Osgood et al., 1996; Short, 1958; Warr, 2002; Weerman, Bernasco, Bruinsma & Pauwels, 2015). The 'problem' of 'peers' has also been more directly related to 'offending' (Agnew, 1991; Elliot, Huizinga & Ageton, 1985; Warr, 2002; Weerman, Bernasco, Bruinsma & Pauwels, 2015; Weatherburn, 2001). As such, the risk assessment tool confirms crime as a 'problem' that is beyond the individual 'offender'. For example, in this domain, the 'problem' of crime is represented as a relational one. That is, the problem of crime is shared amongst others and is a result and a consequence of 'peers'. Having 'good peers' does not reduce the risk score; rather, the risk score remains stable, with only the possibility of increasing. This Domain contains the following list of questions:

Explore the structure and significance of the young person's peer networks, including cultural identity, his/her level of attachment to peers, group dynamics (e.g. is the young person a leader or a follower?), peer pressure, age differences, offending history/substance abuse/anti-social attitudes of peers, the impact of the young person's offending in his/her peer group etc.

A few questions about your friends – the people you hang out with:

Who are your closest friends at present? Why?

Are you in a relationship at the moment? Tell me a bit about him/her.

Who else do you consider friends? Why?

What do you like doing together (e.g. going to the movies, watching or playing sport)?

What do your friends think/say about your offence/offending?

*Without giving me names, have any of your friends been involved with the police?
Have any been arrested? For what?*

Do your friends use drugs?

Are there any young people that you currently have issues or problems with? (p. 9)

The inclusion of ‘peers’ in the risk assessment tool is used to map the criminogenic ‘lifestyle’ of ‘offenders’. It represents the ‘offender’ as an effect of their relational ‘environment’, an ‘environment’ that is assessed as criminal. Backed by criminological knowledges that continue to produce ‘crime-prone communities’ or neighbourhoods that are ‘criminogenic’ (Weatherburn & Lind, 2000; Weatherburn, 2011), the diagnostic questions give validity to normative ideas of ‘normal childhood’ and those that sit outside of it. The inclusion of ‘routine activities’ such as “*watching sport*” functions as a reminder of what is normative for children and ‘youth’, how they ought to be spending their time. The concept of children and ‘youth’ as inherently ‘troublesome’ unless guided, together with the psychological understandings of ‘adolescence’, come together to produce the ‘offender’ who is part of, and forms, a “*cultural identity*”— that is, a criminal identity.

The above Diagnostic Questions about ‘peers’ also recognise a specific type of violence – youth on youth violence as a ‘problem’:

Are there any young people that you currently have issues or problems with? (p. 9)

In Australia, the rates of ‘juvenile offending’ (children as *causing* harm) are stark in comparison to rates of children who are *victims* of harm. Yet, the diagnostic questions silence the violence that young people might be victims of from those in authority, such as

adults, carers, police, governments and institutions. Violence towards children from adults and those in power is disregarded as a type of violence and remains unrecognised within a juvenile justice system that is itself inherently violent.

How did it become possible to think of crime as a social phenomenon that goes beyond the individual criminal? This thesis has drawn on the London report of 1815 a number of times to draw attention to how 'juvenile delinquency' was constituted in the past. According to the first official report on the 'juvenile delinquency problem', the causes of 'juvenile delinquency' were believed to be poor parenting, a lack of morals and discipline, a problem associated with those who are unemployed and poor, and of those who are uneducated (Muncie, 2009, p. 52). This indicates that the 'problem' of 'juvenile delinquency' was represented as a 'social' problem, outside of the individual 'juvenile delinquent', mostly implicating families. The concept of 'peers' or 'peer influence' had not yet entered the field of what we now describe as 'the social'.

However, what this report also represented is an interest in the lives of children that were not behaving the ways they should have, according to the standards of that particular time in history. With a stronger and more concentrated gaze on children, and in particular on 'deviant' children, came the avalanche of psychological studies and reports on children and 'juveniles', especially in the 20th century (discussed in the previous chapter). One of the first scientists to establish a relationship between 'adolescents' and 'peers' was G. Stanley Hall in 1904 in his book titled *Adolescence: Its Psychology and Its Relations to Physiology, Anthropology, Sociology, Sex, Crime, Religion, and Education*. As indicated by the title, he was attempting to understand and 'know' the 'adolescent' across these different intellectual disciplines (Dahl & Hariri, 2005). Describing the 'adolescent life stage' as a period of 'storm and stress', the construction of the 'adolescent' and of 'peer talk' was well underway by the 20th century (Dahl & Hariri, 2005). It is generally claimed that understandings of 'peers' in relation to crime more specifically emerged between 1947 and 1969, whereby crime was presented as being a social phenomenon that was influenced by relationships, and criminal behaviour could be encouraged by those around us (Farrington, David, Welsh & Brandon, 2012). In the 1970s, the concept of a 'youth sub-culture' emerged, leading to what has been described as the "sociologizing youth" discourse (Besley, 2010) where the term 'youth-at-risk' became

popular. In 1973, Stanley Cohen challenged the fact that young people became objects of moral panics in a context of more punitive responses to 'juveniles' (Bessant, 2004).

Nevertheless, the danger of 'anti-social' young people in groups with other 'anti-social' young people was constituted as a 'risk factor' in the early 1990s and has since gained momentum in the 'youth crime' field (Farrington & Welsh, 2006; Reiss & Farrington, 1991). The micro-management of young people, how they spend their time, and who they spend it with, has become increasingly possible and accessible through risk technologies. Kelly (2000a) has related these types of risk technologies to the maintenance and regulation of the social order and to technologies of government. Kelly (2000a, p. 473) explains that

At the close of the 20th century, the liberal democracies are characterized by profound social, economic and cultural transformations. In these settings, adult anxieties about the public and private behaviours and dispositions of young people mean that youth looms large and threateningly in community perceptions and in various policy areas and academic disciplines.

Similarly, governmentality scholar Nikolas Rose (1999, p. 134) relates the increase of 'knowledge' of 'troubled' young people functions to establish what 'normal' and 'healthy' behaviours are for young people. He states: "The soul of the young person has become the object of government through expertise" and argues that the 20th century concerns about 'youth' symbolised broader social anxieties about the disruption to the social order. The framing of 'peers' as a 'risk factor' disguises societies anxieties in science. In relation to this, Armstrong (2004, p. 104) states

These processes of governmentality, it is argued, are embedded in the valuation of academic and professional judgements that masquerade as expertise. It is a masquerade because their science is decontextualised from the contested beliefs and values which give meaning and relevance to particular representations of normality and social order.

Despite the relatively recent invention of the concepts of 'adolescence', 'peers' and 'peers as criminogenic' in the 20th and 21st century, the risk assessment tool inserts "Peers" as

deserving of its own Domain, somehow naturally related to crime. This discussion has highlighted the usefulness of tracing the history of concepts and categories and demonstrates the instability and dangerousness of decontextualising and depoliticising those 'factors' that appear 'natural' and 'neutral' in discussions on crime.

Although it is beyond the scope of this thesis, it is important to note that the inclusion of 'peers' in the risk assessment tool signifies historical and current anxieties of groups of young people. However, the contemporary incarnation of these anxieties is a concern with 'gangs', which are increasingly associated with race in Australia. 'Youth gangs' have received more attention in the media, by politicians and in scholarly research, usually representing this 'problem' as one that is related to 'belonging' and 'identity' in an Anglo-Saxon majority country, and in the context of colonialism. In the 1990s, the 'problem' was represented to be Aboriginal 'gangs' (see Mickler & McHoul, 1998); during the 2000s, the 'problem' was represented to be Muslim 'gangs' (see Grewal, 2007), and more recently, African 'gangs' are represented as the 'problem' (see Majavu, 2018). Additionally, race- and class-related 'riots' have been common in Sydney, NSW over the past 20 years. Shaw (2009) describes the Redfern riots in 2004, where Aboriginal 'youths' 'rioted' in the suburb of Redfern after a 17-year-old Aboriginal boy was killed while fleeing from police. Redfern is known for its high population of poor Aboriginal residents. In 2015, in the suburb of Macquarie Fields, renowned for its economic disadvantage and public housing estates, 'youths' 'rioted' after two young (white) men were killed following a car police chase. This was described as a rebellion of white working-class 'youth' against the police, and by extension, the state¹³. In each of these scenarios, the young people who were officially charged with an offence, and had the risk assessment tool administered, would have scored 'high' in this domain due to the collective act of a 'riot', and their 'peers' would have been considered 'criminogenic' and 'anti-social', regardless of the contexts that led to the confrontation with authorities – that is, anger and frustration about racism and poverty.

¹³ In 2005, there were the events of the so-called 'Cronulla Race Riots' that took place between white youths and Arab youths. I have intentionally left this out of the discussion because it has been described in the literature, as a distinction is made between a 'riot' and 'mob violence' (see Shaw, 2009).

As can be seen from this discussion, 'youth' who engage in crime in a collective manner are usually resisting inequality and marginalisation. Further to the point above, the 'neutral' 'risk factors' that are included in the risk assessment tool appear to be anything but 'neutral' once a critical analysis is deployed.

Domain Five: Substance Use

This domain differs from the other domains because its focus is on a 'risk factor' that is already criminalised (drugs and underage consumption of alcohol). Firstly, a direct relationship between crime and alcohol and drugs is established:

Is your alcohol/drug use related to your breaking the law? How? Yes/No (p. 10)

The Diagnostic Questions that follow seek to determine if the 'offender' has a drug and alcohol 'problem'. Like other 'social problems', drug and alcohol 'problems' cannot be taken for granted but are produced as *problems* through specific disciplines and knowledges. Ways of assessing drug and alcohol use as 'problematic' have been developed in the health sciences, and these knowledges are reflected in the risk assessment tool. For example, this domain makes alcohol and drug use problematic by identifying the type of drug used, frequency of use, method of use and quantity, followed by these Diagnostic Questions:

1. Have other people thought you drink too much? If so, who? Yes/No

2. Have you ever done anything you wish you hadn't when drunk or high? Yes/No

3. Have you ever been so drunk or high that you can't remember what happened?

Yes/No

4. Have you ever used alcohol or other drugs to make you feel better? Yes/No

5. Have you ever overdosed? If yes, when? What happened? Yes/No

6. Is your alcohol/drug use related to your breaking the law? How? Yes/No

7. Do you think your drinking or drug use is a problem? If yes, in what way(s)?

Yes/No

Note – if the young person answers yes to one or more of the above, it may be appropriate for them to participate in an AOD intervention program (this could be with JJ or an external service). If the young person answered yes to questions 4,5,6 or 7 refer for further assessment of their AOD related needs.

Again, *not* using substances does not bring down the risk score. Rather, there is only the possibility of moving up and higher on the risk scale.

Like crime, alcohol and drug use is represented as a ‘wicked problem’, and problematised as an individual ‘problem’. In this Domain the ‘offender’ is understood to be ‘undisciplined’ in their use of substances, but responsible and in control of their substance use. The ‘problem’ of addiction or substance misuse is understood as a ‘choice’ that an individual makes and is emphasised in the Diagnostic Questions that centre around the term “you”.

Have you ever tried to cut down or stop? If yes, what was helpful?

Who has previously helped you?

Would you like to get some help to stop drinking and/or using drugs?

Post Assessment Review: Highlight any strengths or future protective factors (for example, harm minimisation strategies and/or motivation to change) and anything leading to offending that needs to be addressed. (p. 11)

“Motivation to change” also represents the ‘problem’ of substance abuse as one of ‘motivation’ or lack thereof. So far in the risk assessment tool, at least two problem representations are repeated, one of the ‘offender’ as in control (of crime, of employment, of substance abuse etc) and out of control (cognitive functioning and psychological problems). Bessant provides a detailed account of how the drug ‘problem’ in Australia has been understood, demonstrating how “the generative role of language and particular frameworks are used in policy making communities to persuade various audiences to see ‘the drug problem’ in a particular way and to encourage support for a particular course of action” (Bessant, 2008, p. 212). Thus this ‘problem’ that the risk assessment tool includes, ‘substance use’, is not a straightforward relationship with crime, but rather has been

constituted as criminogenic (see for example the Australian Attorney General's Department report *The relationship between drugs and crime* released in 2004, and the Australian Centre for Policing Research report on *The relationship between illicit drug use and crime* released in 2001; Hammersley, 2008; Seddon, 2000; Stevens, 2007). In their account of how policies make the 'problem' of crime and substance use, Lancaster, Seear, and Treloar (2015) argue that "illicit drug use" is constituted as an "inherently criminal activity" (p. 1201). Similarly, Seear and Fraser (2014, p. 833) observe an uncontested framing of the addiction 'problem' in policies: "addiction is performed as a social problem that coheres within an individual body and manifests as a seemingly private phenomenon (albeit with broader social effects, including subsequent criminal activity)".

Again, it is beyond the scope of this thesis to fully explore the construction and representation of the substance use/crime 'problem' and the types of responses this has invited; however, it is important to note that aside from 'bad families', 'substance use' is perhaps the most developed link to crime in Australia, and yet this relationship appears 'natural' and 'logical', crime has not always been represented as a 'symptom' of substance abuse and the way that this linking has come about requires careful consideration. It is also important to note that drug and alcohol abuse has been largely associated with Aboriginal communities, relying "on a conception of Aboriginal weakness" (Lovell, 2012, p206). In Australia, this type of discourse has led to swift and intrusive 'interventions' by the Australian government, such as the Northern Territory Intervention that has placed restrictions on the purchase and consumption of alcohol (see Lovell, 2012)¹⁴.

¹⁴ The Northern Territory Intervention in Australia was in response to the "*Little Children are Sacred*" report (2007) which highlighted the extent of child sexual abuse in the North of Australia. The Northern Territory is unanimous with Aboriginal and Torres Strait Islander people due to its high Indigenous population. Following the release of this report, an "Emergency Response" was implemented in 2007, and stricter policies were enforced in the name of 'protecting' Indigenous children from child sexual abuse. To justify this discriminatory targeting, the Australian government openly accepted that they would need to breach the Racial Discrimination Act (1975). The "Emergency Response" included the deployment of the Australian Army, unrestricted access to Aboriginal communities, medical inspections of Aboriginal children, quarantining of welfare payments, and more relevant for

Domain Six: Leisure/Recreation

Along similar lines to the previous Domain on 'Peers', Domain Six of the risk assessment tool, 'Leisure/Recreation', reflects a preoccupation with how the 'offender' uses their *time* and whether or not their time is used 'productively'. This Domain is used to ascertain participation and connection to community through leisure activities such as sports. The Diagnostic Questions ask:

Are you a member of any clubs, organisations or teams at school or in the community?

If so, what do you get out of these activities?

Would you like to be more involved in stuff like this? How could you become more involved?

What are the kind of things that really interest you (sport, hobbies etc) ?

Are there new things you'd like to learn? What are they?

If so, how can you find out more?

Post Assessment Review: Highlight any strengths or future protective factors (for example, participation in an organised sporting or recreation group) and anything leading to offending that needs to be addressed. (p12).

Responding "yes" to any of the above does not reduce the risk score. The risk score remains the same unless there are more risk factors to be added.

this discussion, the enforcement of alcohol bans. Child abuse was directly associated with alcohol misuse via the implementation of this policy. Alcohol misuse in Australia more generally is considered a "major health issue" (AIHW, 2019), however is not so explicitly related to child sexual abuse for white Australians.

The underlying presupposition in this domain is that ‘participation’ in some way reduces ‘risk’ of reoffending, and implies a positive effect; that is, using one’s time productively and in a socially acceptable manner reduces the risk of crime. In relation to ‘youth’, leisure/recreation and crime more directly, one of the first Australian studies that made this connection was in a study by Mason and Wilson’s (1988) at the peak of the ‘at risk’ conceptualisation of young people. Since then, there continues to be a preoccupation with research focussed on recreational activities such as sport in preventing ‘youth crime’ (Colthart, 1996; Morris, Sallybanks, Willis, and Makkai, 2003; Cameron & MacDougall, 2000; Nichols, 2010).

However, the Diagnostic Questions in this domain produce structured activities (“*clubs, organisations*”, “*teams*”), as normative, and suggest that a lack of participation in recreational activities is ‘anti-social’ and a ‘criminal attribute’. Yet, these questions also reflect a classist ideal, and once again emphasises the relationship between class, poverty and crime. As in the ‘Education/Employment’ Domain of the risk assessment tool, an ideal citizen is implied; in this case, a good citizen is a “*member*” in some capacity. Here, the criminal ‘pathway’ is represented as being related to the activities that people *ought* to be involved in. A lack of ‘participation’ in activities that are deemed ‘normal activities’ is considered a ‘pathway’ to crime.

Ideas of citizenship, ‘youth’ and participation have been previously explored to highlight “citizenship, not in terms of rights and universal categories, but in terms of relational, situated and dividing practices” (Mcleod, 2012, p. 23). Mcleod for example situates her analysis in policy discourses of ‘vulnerability’ and ‘social inclusion’, concluding:

citizenship is conceived as an historical and contingent identity, and not the embodiment of universal, abstract principles and rights, or a political and social identity that is constant across time and place (p. 23).

She further argues that these types of policy discourse have the effect of redefining citizenship and that

these agendas are accompanied by policy interventions that spell out who is not included and whose participation is problematic, which serve to fine-

tune the classifications of exclusion and render individuals – and their immediate local communities – responsible for their own marginalisation and vulnerability. (p. 23).

Thus, answering “no” to the questions in this domain rearticulate what is already ‘known’ about the ‘juvenile offender’: that they exclude themselves from community activities and from society and are therefore responsible for their circumstances. These questions also rearticulate what ‘normal’ citizenship looks like.

Fergusson (2016, p. 199) refers to the governing of *non-participation* whereby a “proposed connection” is made between “criminalisation and non-participation” of young people, a process which criminalises that which is not technically criminal (non-participation). Drawing on governmentality literature, he argues:

this mode is likely to invoke governmentalist interventions. Distributed powers of governance may bring agents to act upon ostensibly criminally inclined and potentially criminal conducts, however determined. This mode relies primarily on diffuse processes of governmentalisation by means of pre-emptive targeting of putatively high-risk groups, as much as by the close monitoring of vulnerable or dangerous individuals. (p. 199).

Furthermore, the Diagnostic Questions represent the ‘problem’ as a lack of desire to learn and establish an idea that ‘normal people’, or ‘non-offenders’, *want* to learn new activities. If an ‘offender’ does not express interest in learning “*new things*”, this is considered a ‘problem’. The ‘problem’ is that the ‘offender’ lacks interest “*in stuff like this*”. Access to this “*stuff*”, or to clubs, sports and hobbies, is not questioned, nor are other types of informal learning recognised. This Domain, like the others in the risk assessment tool, presents the ‘offender’ as *lacking* either an understanding of middle class social norms and expectations, or as self-excluding due to the ‘wrong attitude’ and ‘motivation’. It can be argued that the ‘offender’ is represented as failing to be middle class, and to behave the way that ‘respectable’ middle class people behave.

As discussed in Chapter Two, middle class ideals have been actively enforced on the poor since the early 19th century, as people of the lower classes were deemed a threat to the

social order through their *inactivity*. The governing of people's time is perhaps a protection of middle-class ideals and values from the 'immoral' and 'undisciplined' families referred to in Chapter Two.

Neutralising Pathways

The notion of 'pathways', like the language of 'social disadvantage' and 'social environment' in the social welfare field, renders 'risk factors' 'neutral', and shifts blame and responsibility onto individuals, muting any other 'factors' that may be relevant. Halsey (2008) argues that the concept of 'pathways' justifies punishment for failure to meet certain standards:

In other words, the pathways into custody might be littered with all manner of adverse experiences but they are also characterised by choices freely made – of decisions which, by default, could have been other than they were. I think there is a particular kind of violence – not in the holding of people to account or trying to change their lives – but in punishing people for events which share complex and collective genealogies.

Halsey (2008) goes on to argue that:

In effect, what the individual is punished for is their incapacity (and perhaps learned unwillingness) to recalibrate their lives toward situations where the need or desire to repeatedly offend is minimal (and preferably non-existent). (Halsey, 2008, p. 100).

Deploying the 'pathways' rhetoric allows the risk assessment tool to appear welfare-orientated because it includes 'structural risks' such as 'employment/education'. As Russell and Carlton assert (2013, p479), "the pathways paradigm is an individualizing analytical frame, reducing social and structural issues to individual problems". In their analysis of developmental criminology, the methodology that supports the 'pathways' theory, Hil and Brennan (2004) make a similar argument and explain the effects of 'criminogenic needs/risks'. They state:

Precisely what nexus of factors, and how these might combine to trigger aberrant behaviour, is never made fully explicit. Additionally, the 'bigger

picture' – those splintered and decontextualised factors in the background like poverty, socio-economic inequality, disadvantage, marginalisation, alienation, social exclusion, etc. – is reduced to an oblique and imprecise collage associated with something called 'the environment'. (p. 28)

The risk factors laid out in the risk assessment tool claim to not only identify 'risk', but also to correct any identified 'risks' and 'needs', which is the ultimate goal of any penal system more generally. Penal systems by extension then are assumed to be 'correcting' the 'problem' of crime.

However, this presupposition can be challenged on the basis that the risk assessment tool examines 'factors' outside of the crime. A relevant question then would be: what do penal systems strive to 'correct'? Halsey (2008) believes that penal systems seek to correct and punish those who are deemed 'off-course' and is therefore similarly critical of the 'pathways' concept (also referred to as 'social antecedents'), arguing that 'criminogenic factors' seek to justify punishment. He observes that the contemporary criminal justice system:

...runs a manic course between trying to locate the social antecedents to crime only to then declare that such antecedents, if/when found, exist outside the acceptable range of reasons why people do in fact turn to crime. Prisoners can have a social background, but they cannot invoke their trials and tribulations – their stories of neglect and violence – as contributing to their offending. To do so would be to violate the central canon on which punishment is based. (Halsey, 2008, pp. 108-109)

Hil and Brennan (2004, p. 29) are similarly critical of the effects of the 'pathways' in this sense. They argue:

Inevitably, the families at the centre of attention are drawn from the ranks of the urban and rural poor, made up disproportionately of single parent households, black people and 'ethnic' families. Such studies, although grounded in the mystique of science (that is manifested in the attempted correlation of causative factors or 'triggers'), reveal a preoccupation with what the 'respectable classes' have historically viewed as potentially disruptive and troublesome populations (p. 29).

Indeed, it can be argued that the concept of 'pathways' is both gendered and racialised. For example, Indigenous 'offenders' have different 'pathways' to non-Indigenous 'offenders' (Weatherburn, 2014). Recently, the 'problem' of African 'gangs' has been made a 'problem' in the Australian city of Melbourne, bolstered by racist media outlets with headlines such as "Melbourne's African gang crime hot spots are revealed – so is your suburb safe?" (Johnson, 2018). In line with these unfounded fears, knowledge production has already begun on the topic of the unique 'pathways' of Sudanese 'offenders' (Shepherd, Newton & Farquharson, 2017). The 'pathways' rhetoric allows some groups to be represented as 'more dangerous' than others, which functions as a 'verification' of their management, surveillance and governance. Examining which subjects dominate the space of juvenile penalty gives an indication of who is represented as 'riskier', because although Werth (2018) highlights that risk assessments allow the dispersion of risk to *all* juveniles, risk assessment tools also constitute grades of risky-ness, or more precisely they "quantify, relativise and hierarchize risk" (Werth, 2018, p. 15). This will be discussed further in the next chapter.

This chapter has highlighted the cross-talk between institutions, or the carceral system, to produce the 'juvenile offender'. A simple look at the tools domains reflects the institutions complicit in the carceral system, such as health, child protection agencies, educational and employment agencies and institutions. This is an example of David Garland's definition of the 'conduct of conduct' described in Chapter Four, in that:

...it dissolves any rigid line of demarcation between the private and the public, or between "state" and "civil society"... Governmental activities also encompass the continually shifting power found in social relationships between individuals and agencies of social control and private and public interests for social security and well-being (Eisler, 2007, p. 114).

This interconnectedness of agencies and organisations of social control expands the disciplinary apparatus, as well as the panoptic gaze.

Analysing the risk assessment tool has also highlighted how knowledge is deployed in the social control of populations. The implications are that both 'juvenile offenders' *and* the

general 'non-offending' population are increasingly regulated and controlled through the identification of the 'normal' and the 'abnormal'. In line with Foucault, this chapter argues that by deploying knowledges of the abnormal/normal, everybody is implicated and that nobody is outside of governing practices; or, as Foucault stated, "power operates to control the actions of both the individual and the collective political body" (cited in Eisler, 2007, p. 104). The risk assessment tool relies on the deep-seated assumption that the 'offender' can be *known* and is therefore *predictable* via the 'pathways' concept. In this way, the risk assessment tool produces the 'offender' as identifiable, knowable and predictable. The 'pathways' concept implies a *becoming*, and the risk assessment tool tells us how somebody *becomes* an 'offender'. Therefore, the risk assessment tool, by asking the diagnostic questions that it does, represents crime not as a single event that somebody *does*, but as something that they *are*. The implication is that 'offenders' have been 'offenders' all along, they simply have not been formally labelled as such until the law is applied. Foucault describes this 'social mapping' as 'biography'. He states:

The introduction of the 'biographical' is important in the history of penality [b]ecause it establishes the criminal as existing before the crime and even outside it. And, for this reason, a psychological causality, duplicating the juridical attribution of responsibility, confuses its effects. (Foucault, 1977, p252).

Foucault implicates the role of knowledge in producing the 'dangerous' subject and argues that it is the 'biographical' that validates the penal system in its entirety:

...one sees penal discourse and psychiatric discourse crossing each other's frontiers; and there, at their point of junction, is formed the notion of the 'dangerous' individual, which makes it possible to draw up a network of causality in terms of an entire biography and to present a verdict of punishment-correction (Foucault, 1977, p. 252).

Through the production of a 'criminogenic biography', the risk assessment tool presupposes a logic of 'sameness'; that is, offenders are a homogenous group, void of individual differences, *but also* as a sub-group that is 'different' to the general population.

Conclusion

This chapter has shown how the 'pathway' that is outlined in the risk assessment tool represents the 'offender' as existing before and outside of the crime. In other words, the risk assessment tool presents 'offenders' as if they were 'offenders-in-the-making' through the 'pathways' rhetoric. In this way, crime is understood to be preventable and predictable based on the idea that 'offenders' have common 'backgrounds. Additionally, the problem representation in 'pathways' is that an 'offenders' life circumstances are a symptom of 'criminality', and that these 'symptoms' include poverty and homelessness, exclusion from education and employment, disability, addiction, and criminal attitudes such as a questioning of authority and rules. The criminogenic 'pathway' is understood to be activated once these 'symptoms' appear in an 'offenders' life. The entry point into this 'pathway' does not have to be crime but rather a number of other 'factors' that are used to *explain* how the 'offender' became an 'offender'.

The risk assessment tool therefore represents all 'juvenile offenders' as inherently risky based on their criminogenic 'pathway'. In this way, risk assessments do not simply predict, but rather produce and re-produce the 'risky juvenile'. The criminogenic 'pathway' acts as a rearticulation and verification of what is already known about the 'juvenile' subject: that they are 'risky' and in need of state intervention (Werth, 2018). The risk assessment tool is also represented as 'objective' and 'neutral', even though the interrogation of the diagnostic questions provided here suggests otherwise. By extension, the underlying presupposition is that the state is outside of penal systems and is represented as 'neutral'.

The next chapter will explore the idea that risk assessments apply 'risk' unequally; that the penal system is where 'justice' can be found, presupposing the state, and its affiliated institutions and programs, as innocent and as 'neutral'; to demonstrate that the risk assessment tool creates the conditions for certain populations or sub-groups to become the targets of penal intervention by relying on a 'logic of difference'.

Chapter 8

The YLSI/CMI-AA tool: Governing through Neutrality

Introduction

This chapter argues that the YLSI-CMI/AA 2.0 risk assessment tool constructs the conditions of possibility for the criminalisation and domination of *specific* young people. The chapter highlights how risk assessment tools employ ‘risk’ as a proxy for race, class and gender, a move that is enabled by the logic of ‘criminological difference’ and via the mobilisation of ‘risk’ as a ‘neutral’, ‘objective’ concept. In saying that, the aim of this chapter is not to prove/disprove the validity or the reliability of the tool, but rather to use the tool as a site to demonstrate how contemporary penal practices actively produce gendered and racialised subjects. Additionally, this chapter brings attention to the kind of political rationalities that risk assessments depend on to position the state as a ‘neutral’ arbiter of justice. As such, this chapter will explore the disciplining effects of ‘neutrality’.

Actuarial risk assessments, as discussed in Chapter Three, propose to make certain that which is not certain. ‘Certainty’, and by extension ‘predictability’, relies on stable, fixed, categories. The risk assessment tool is presented as ‘neutral’, ‘objective’, and legitimised by science. Logically then, the deployers of the tool, the state, is also assumed to be ‘neutral’, ‘objective’ and therefore free of prejudice. For example, the ‘problem’ of crime is represented as one that is equally prevalent across class, race and gender. The Diagnostic Questions do not ever ask about the ‘offenders’ race or sex. The (economic) class of the ‘offender’ is usually established by Domain Two, ‘Family and Living Circumstances’, however the Diagnostic Questions do not directly ask about class either¹⁵. This is especially crucial in the Australian context due to the overrepresentation of Indigenous Australians in both the juvenile and adult justice systems, who are represented as the most disadvantaged in terms

¹⁵ Although this information is not asked in the risk assessment tool, government agencies collect information of offenders gender, race and socioeconomic status (i.e., class).

of the social 'problems' they encounter. Since they *happen* to be disadvantaged by the exact 'factors' in the risk assessment tool, they are most often represented as 'risky'.

The interest of this chapter is the particular kinds of subjects that are (re)formed through the use of risk assessment tools. Subjects are constructed and re-constructed through policies; they are contingent and complex, and based on the socio-political happenings of the time. All that has shifted is the mode through which categories of people are punished and disciplined. Bringing 'neutrality' to difference, and making difference 'logical', means that governing practices are further embedded. Bacchi (2017, p. 26) explains the theoretical basis of such thought:

In poststructuralism, therefore, "differences" among people and groups of people are considered to be attributions, rather than acquired characteristics, shifting the focus of analysis from those called "different" to the practices involved in assigning or claiming "difference"...This shift in perspective is captured in the proposal to study gendering, racializing, and other "differencing practices" of oppression and subordination.

The intention of this chapter is not to separate categories marked by age/race/gender, but rather to illuminate the presuppositions required in the formation of subjects. For example, the gendering of 'risk' has been well established in the literature. In delving into the topic of 'gendered risks', and how it intersects with class and race, Hannah-Moffat and O'Malley (2007) are well aware of these intersections and state:

Postmodern feminist critiques of the analytic category of 'woman' (and 'man') emphasize that these are fluid categories that are multiply organized across variable axes of difference...we wish to reinforce a critical contribution of this work – that gender is integrally linked to race, class and other inequalities. Conceptually, the notion of simultaneous and interconnected inequalities is important to understandings of risk gender nexuses. Risk is shaped by, interacts with and (re)produces various configurations of inequality (p. 8).

This thesis holds this same point – that the categories I have chosen to include are not taken for granted or presented as pre-existing truths, but as ‘factors’ that have been attributed to ‘juveniles’. Consistent with a poststructuralist approach, ‘risk’ itself also does not go unchallenged. Discussing how society is responding to ‘risk’ presupposes that ‘risk’ exists and has always existed as an ‘objective’ reality. Poststructuralist thought insists that we instead ask how technologies of government are ‘risking’ as well as racialising, gendering, classing and so on.

On Categories

In thinking about the formation of categories of people, perhaps a starting point is to consider who the subjects of juvenile penalty are. In NSW, based on the most recent statistics, there are two obvious groups, or categories of people, that are recorded as being overrepresented in the juvenile justice system: Indigenous young people, and poor boys. The rigorous governing of these two groups has become part and parcel of the juvenile penal system and inform the backdrop to a risk assessment tool that is presented as ‘neutral’. How particular categories of young people are governed through ‘neutrality’, and what this makes possible and thinkable, will be discussed below. However, as a researcher deploying the WPR approach, I am concerned about the role of this research itself in the formation of knowledges about peoples and practices. In focusing on specific kinds of subjects and categories, the analysis of the juvenile justice system in NSW may inadvertently be reproducing and reinforcing those very same social categories and subjectivities it seeks to disrupt or dislodge (e.g. the repetition of ‘youth offenders’, children, but also ‘Indigenous offenders’, ‘low SES young people’ and so on may produce these as ‘real’). On the other hand, I am conscious of seeking to avoid a position of critiquing of categories that may come across as dismissive of oppression.

Bacchi’s (2017, p. 34) engagement with Crenshaw’s work on intersectionality is useful here. She explains:

As Crenshaw (1991) identifies, “to say that a category such as race or gender is socially constructed is not to say that that category has no significance in the world” (1, 296-97). Rather, because of the way power clusters around certain categories and is exercised against others, claiming

an identity is one “differencing practice” that may at times be necessary... Placing the focus on practices of subordination – as is accomplished through the languages of gendering, racializing, etc.- clarifies what is at stake politically in claiming an identity (p. 34).

This holds relevance for the study of the YLSI/CMI-AA 2.0 risk assessment tool because of how difference is constructed through risk assessments, for it is through difference that the governing, managing, and disciplining of people is made possible. Bacchi (2017, p. 34) argues that a useful analysis “directs attention away from the categories of people to processes of categorization. As a result, it offers an alternative answer to the question: what is seen to be intersecting?” Thus, the focus on the *processes* of categorization allows the active recognition of policies as being constitutive of gender, race, class, sex, ability, etc. Using the YLSI-CMI/AA tool 2.0 as a “key site” my analysis here shifts the focus to the “constitutive effects” of the tool (Bacchi, 2017, p. 27).

Neutralising Gender

Since the YLS/CMI-AA 2.0 risk assessment tool is used with both girls and boys (in line with the gender-neutral rhetoric of risk assessments), it is a useful site to explore the gendered rationalities that underpin and shape how young people are governed through it (Henriksen, 2017). Although risk assessment tools are hailed as ‘gender-neutral’, other practices outside of risk assessment tools, such as responses, interventions and treatments, are gender-specific. The impacts of this contradiction are briefly outlined below.

In Australia, the majority of ‘offenders’ are recorded to be boys and men (Australian Institute of Health and Welfare, 2018). ‘Gender’ is considered the one consistent ‘criminogenic risk factor’ (Messerschmidt, 2007; Lanctot & LeBlanc, 2002; Farrington & Painter, 2004), and in the criminology field, gender and crime (including feminist criminology) is usually studied as an offshoot of mainstream literature. Yet, risk assessment tools overall are mostly positioned as ‘gender-neutral’ (Yesberg et al., 2015) despite the significant domination and overrepresentation of boys and men in crime statistics. As such, ‘gender’ in relation to crime urgently needs to be examined.

The empirical and theoretical scholarship on gender in criminology highlights the reliance on fixed categories, as do government reports which continue to measure ‘sex’ or ‘gender’, in

both the initial engagement in crime and then in data measuring recidivism. These types of categories are assumed to assist policy makers to predict crime. As a result, there are a plethora of studies conducted in relation to girls and 'offending', the causes of 'girl crimes', the impacts of criminal justice processes and policies on girls, more effective and 'gender-sensitive' ways of working with girls, and the measuring of crime occurrence based on the binary distinction 'male' and 'female'. Thus, most studies rely on the fixed categories of 'girl' and 'boy' as 'things' that 'naturally' exist, ready to be taken up as objects of study (Larkin & Dwyer, 2016; Mathews, 2018, Gilmore & Manning, 2015; Carrington & Pereira, 2009). Bacchi (2017) asserts that policies are 'gendering practices' and believes that treating 'gender' as a verb is useful to:

...capture the active, ongoing, and always incomplete processes that constitute (make come into existence)...“women” and “men” as specific kinds of unequal political subjects....when we develop or analyze a policy, we ought to ask specifically how it is potentially gendering and how it may encourage the production with those called “women” and “men”, making them come to be (p. 20).

Similarly, deploying a poststructuralist feminist perspective to the study of gendered logics in juvenile institutions, Henriksen (2018) states:

From this perspective, gender and identity can be explored as procedural becoming, rather than as essential being (Staunaes, 2003), which enables the analysis of gendered subjectivity viewed as fluid and situational (p. 430).

In step with this, rather than discussing the effects of the YLS/CMI-AA 2.0 risk assessment tool on boys and girls (as to do so presupposes a pre-existing definitions of 'boy' and 'girl'), this section of the chapter offers a brief discussion of how risk assessment tools constitute 'boys' and 'girls' (Bacchi, 2017), in order to question how the YLSI/CMI-AA 2.0 is “potentially gendering” (Bacchi, 2017, p. 20). This chapter asserts that risk assessment tools are represented as gender-less, and this has the effect of producing both 'boys' and 'girls' as 'risky' subjects. However, de-stabilising categories provides a direct challenge to actuarial risk assessments that are used to predict the future. Actuarial risk assessments could not function without sub-groups and categories, and their dependability on common attributes

of populations has had consequences for how people and societies are conceptualised. Silver and Miller (2002, p. 152) explain how actuarial risk assessments have “reconceptualised the individual”. They explain:

Actuarial risk assessment tools classify a heterogeneous population into more or less homogenous subgroups, transforming the unit of analysis from the individual to the aggregate. Individuality is reduced to a combination of risk factors that based on their associations with other factors in the population aggregate, reflect various levels of risk. Thus, to be suspected of possessing a potential for undesirable behavior, it is not necessary to manifest actual symptoms of that behavior. Membership in a particular population subgroup is as important or more so than individual acts of deviance. To be placed in a particular risk category, it is enough to display the appropriate combination of characteristics identified as risk markers.

In risk assessment tools, ‘risk markers’ are presented as ‘neutral’, and ‘risk’ is presented as something that is dispersed, despite the statistics. The gender-neutral approach to actuarial risk assessments can be seen as a form of de-gendering, *in spite* of the differences between the ‘criminality’ of ‘girls’ and ‘boys’ continuing to be a source of interest for criminology. Actuarial risk assessments must be considered gender-less to be considered scientific and therefore ‘valid’. The YLSI-CMI/AA 2.0 tool becomes a tool which, by the absence of ‘gender’, genders ‘boys’ and ‘men’. The overrepresentation of ‘boys’ and ‘men’ in the penal system can remain out of focus, and so nothing is done to dislodge the naturalising of ‘boys’ as ‘offenders’. In turn, risk assessment tools are not gender-blind, but rather, allow ‘girls’ to be represented as being ‘just as risky’ as ‘boys’. This can be demonstrated more generally in the fears and anxieties of the supposed increase in ‘girls offending’ in the last two decades. Chan and Rigakos (2002, p. 757) aptly argue that:

Gender is an expression of risk because, at its core, it represents the opposition of ‘women’ and ‘men’ both as analytic categories and social constructs as well as actors in a universe of potential harms.

The ‘neutrality’ of ‘risk’ makes it possible to inflate fears of ‘girls’ becoming ‘just as bad’ as ‘boys’, even in the face of the overrepresentation of those that have been marked ‘boys’ in

the juvenile justice system. Studies like the one by Dixon, Howie and Starling (2004) attempt to 'risk' 'girls' and 'boys' differently, however risk assessment tools work to 'risk' 'girls' and 'boys' *equally* and attempt to limit difference. Risk assessment tools depend on a 'logic of sameness' to produce 'girls' and 'boys' as being equally 'risky'. However, Henriksen (2018) cautions that:

Similar logics could operate in other institutional contexts catering to troubling/troubled young people, especially where the endorsement of gender-neutral treatment obscures gendered practices and inequalities.
(440)

Therefore, it is important to consider the contemporary gendered practices that lock the categories 'boys' 'men' and criminal so tightly together, and similarly, the gendered practices that lock 'girls', 'women' and alternatives to criminality, such as 'psychological unwellness', together in the public imaginary.

Rationalising Racism

As discussed in Chapter Three, only a handful of Australian-based studies have studied the 'validity' of the YLSI-CMI-AA 2.0 risk assessment tool for use in the Australian context, and support for the YLS/CMI has been accepted as one of the best reinforced internationally on the basis of its applicability across demographics (i.e., gender, and race). In fact, the YLS/CMI is widely popular *because* of its supposed ability to be race and gender 'neutral'. In light of this, the interest of this section is that of Alexander (2012, p. 103), who asks "...how exactly does a formally colourblind criminal justice system achieve such racially discriminatory results?"

In responding to Alexander's question, it is first important to theorise 'race', not simply as a social construction, but as *constitutive*. Obasogie (2010) explains:

a constitutive approach to race is less interested in the top-down, seemingly deterministic influences of institutions and historical trends and is more interested in the social practices that make certain approaches to race thinkable, coherent, and commonsensical on an individual level (p. 589).

This allows a different type of recognition, one that centres ‘race’ not only as shaping criminal justice systems but also as *being shaped* by criminal justice systems, or, as Van Cleve and Mayes (2015) describe, as a “mutual constitution”:

we advance the idea that the apparatuses and policies of criminal justice are a set of social practices that constitute race and thereby impact racial identities, racial perceptions, and the myriad of complex meanings attached to racial categories. The concept of mutual constitution reflects the idea that the criminal justice system and racial categories both form and impact each other (p. 409).

The overrepresentation of Indigenous offenders in the Australian context, described in the Introduction and in Chapter Two, will be drawn on to explore these mutually constitutive processes further. Agid (cited in Samuels and Stein, 2008, p 11) asserts that “race is not at all disappearing, except into the idea of crime and criminality, so that prisons and processes of criminalization function as an articulation of racism that is, more or less, treated as inevitable or understandable.” This is reflected in the literature and in government policy where there is general agreement that the Indigenous offender is a ‘riskier offender’ (Chen, Matruglio, Weatherburn & Hua, 2005; Snowball & Weatherburn, 2006; Weatherburn, Snowball & Hunter, 2006; Shepherd, Adams, McEntyre & Walker, 2014), and where this construction has been rationalised and ‘proven’ through the ‘science’ of empirical studies on risk assessments (Friz, Kenny & Lennings, 2008; Thompson & McGrath, 2012).

Criminogenic scholarship, by and large, has relied on a discourse of dysfunction to explain Indigenous ‘offending’. Explanations of the ‘Indigenous overrepresentation problem’ are often understood and framed as issues associated with the ‘Risk Needs Responsivity’ model, described in Chapter Three as the model currently regarded as ‘best practice’. In other words, reactions and responses to the ‘Indigenous overrepresentation problem’ are firmly focused on juvenile justice system responses such as ‘offender’ programs, ‘treatment’ programs, community interventions, and in-prison program modifications, and they are not at all focused on the forms of assessment that bring Indigenous ‘offenders’ into the juvenile penal system. Crete (2017, p. 980) argues that these ways of thinking, and approaching, the ‘Indigenous crime problem’ “...bind both the criminogenic and ‘Aboriginality’ into a singular

meaning – a meaning attached to a *specific* criminality that requires *specific* intervention” (my emphasis).

The Australian government and the criminal justice system have a deeply shared history, and racial subjugation has been a part of Australia’s legacy since 1788. For the Indigenous people of Australia, the criminal justice system serves as the most oppressive tool. ‘The Indigenous problem’ continues to be a major concern for governments. Literature, research, and government reports discussing crime in Australia will often have a separate section to discuss ‘the Indigenous problem’, and even separate the categories ‘Indigenous’ and ‘non-indigenous’ ‘offenders’ within graphs and tables to demonstrate (or emphasise) the disparity between the *different* types of offender (Stewart et al., 2011; Australian Institute of Health and Welfare, 2018; Justice NSW, 2017-2018; Justice Health NSW, 2015; NSW Bureau of Crime Statistics and Research, 2018; Australian Institute of Criminology, 2013) . The separation of ‘the Indigenous offender’ and the ‘non-Indigenous offender’ across criminology thereby reasserts the necessity of more intrusive measures for this sub-population of ‘offenders’.

In the Canadian context, Crete (2017, p. 981) highlights how a ‘logic of difference’ has always been the rationale for the management of Indigenous people. He states:

Historically, one can observe the persistence of the pathologizing gaze and a governing rationality of difference in the treatment of indigenous prisoners beginning with a logic of difference-through-pastoralism to a logic of difference-through-science. This rationality is notably anchored through racist and colonial truth-producing gazes evaluating the ethnicity of indigenous prisoners, which in turn legitimizes different cures and theories of intervention.

The insistence on the existence of ‘the Indigenous offender’ is (re)produced in knowledges and research that are used to make risk assessments.

Smith (2012, p. 30) argues that “The word itself, ‘research’, is probably one of the dirtiest words in the indigenous world’s vocabulary”. To illustrate why this might be the case, and the style of representation in empirical research on risk assessment tools, a number of

examples are provided. For example, Friz, Kenny and Lennings (2008) concluded that Aboriginal young people tend to have higher rates of intellectual disability (ID), which 'naturally' and 'logically' makes them 'riskier' types of 'offenders'. Their study of the YLS/CMI-AA 2.0 risk assessment tool specifically stated that:

...with such a high percentage of juveniles with an ID being Indigenous, services providing support to juvenile offenders with an ID must address criminogenic needs with respect to learning styles and motivational factors specific to Indigenous people (Fritz, Kenny & Lennings, 2008, p. 516).

According to this logic, the 'problem' is represented to be "supports" (or lack of), rather than the risk assessment tool, and re-inscribes Indigenous young people as *particular* kinds of 'offenders', with specific and different learning styles and motivational factors.

Similarly, other research on the risk assessment tool can be understood as implicated in the making of 'the Indigenous over-representation problem'. Thompson and McGrath's (2012) study of the YLSI-CMI-AA 2.0 risk assessment tool provides an analysis of the 'riskier Indigenous offender' as formed by "health, social and economic inequalities" (p. 351), and draw the following conclusions from their quantitative data analysis:

Indigenous subgroup was higher than the other two groups on five domains (prior and current offenses, family and living circumstances, education/employment, leisure/recreation, attitudes/beliefs). The health, social, and economic inequities of Indigenous Australians are well documented...as is their alarming overrepresentation in the criminal justice system...Thus, it is not surprising that the Indigenous youth in this study scored higher on items related to previous and current offending. This was the largest effect size at the domain level (Thompson & McGrath, 2012, p. 351).

After mentioning the "alarming" inequities, they nevertheless conclude that the risk assessment tool is "fair": "We believe that inventories such as the YLS/CMI-AA can be used fairly with a diverse offender population" (Thompson & McGrath, 2012, p. 352).

Again highlighting the difference of 'the Indigenous offender', researchers Shepherd, Adams, McEntyre and Walker (2014) conducted a review of a risk assessment tool used to assess violent 'offending'. They concluded that:

For several studies in the review, total scores for Aboriginal offenders were consistently higher than for non-Aboriginal offenders. A potential implication of such findings is the labeling of Aboriginal people as a "higher risk" group which may prompt overclassification and punitive penalties (p. 286).

After establishing that the risk assessment may lead to "overclassification" and "punitive penalties" for Aboriginal people in particular, they nevertheless support the risk assessment tool and state:

...it is important that risk is not associated with race or ethnicity, rather that risk factors are viewed as treatment targets and that offenders presenting with a myriad of problems receive the necessary treatment to address each particular need (Shepherd et al., 2014, pp. 286-287).

The 'problem' of 'the Indigenous offender' is consistently produced as different. One of their 'findings' is the importance of 'cultural competency' when conducting risk assessments with 'the Indigenous offenders'. In the closing of Shepherd et al. (2014) study, they state: "it is important that violence risk instruments generalize to diverse cultural groups with different traditions and experiences so that assessment remains accurate and unprejudiced" (p. 288). There appears to be some circulatory and contradictory logics at work here. The 'riskier Indigenous offender' is made sensible, and logical, via risk assessment tools; however, responses and recommendations often centre 'culturally competent' risk assessments. What remains unacknowledged is the question that, if risk assessments are not 'raced', then why would risk assessors need to be 'culturally competent'?

Given the value placed on 'objectivity' and by extension 'unprejudiced' risk assessments, is an 'unprejudiced culturally competent' risk assessment possible? Can 'offenders' be 'cultured offenders' in the face of an 'un-raced' science? If criminal justice processes and knowledges are 'neutral', and based on 'logic', "What, then, does explain the extraordinary racial

disparities in our criminal justice system? “(Alexander, 2012, p. 100). More relevant for this section is that if Indigenous people are exiting risk assessments as ‘riskier’ subjects, then the ‘neutrality’ of ‘risk’ must be re-thought.

In Ruge’s 2006 literature review on risk assessments and male Aboriginal ‘offenders’ in the Canadian context, she reminds readers that

It is important for non-Aboriginal people to recognize the injustices that have been committed against many Aboriginal people. While these injustices have resulted in disadvantage and is apparent in many forms, these disadvantages may not play a role in risk prediction. The goal of risk prediction is to predict, not explain. (p. iv).

Although risk assessments are not intended to “explain” causes of crime, but rather to “predict” it (Ruge, 2006, p. iv), this is questionable in the face of the sheer number of studies dedicated to explaining ‘the Indigenous crime problem’ in Australia. For example, Allard (2011) puts forward two possible explanations for Indigenous over-representation in the Australian criminal justice system: 1) that “the system is racially biased” and 2) that “Indigenous youth have different offending profiles” (Allard, 2011, p. 30). After highlighting the statistics on the over-representation of Indigenous people in the criminal justice system, the possibility that *the system* is racialised, and perhaps racist, is very quickly shut down. Allard (2011, p. 30-31) shuts down this possibility by first discussing why it might seem like the system is racially biased, but then dedicates the rest of the discussion to research that proves that the system *is not* racially biased. Allard (2011, p. 31) confidently concludes: “Therefore, there is little evidence to support the contention that systemic bias contributes to Indigenous over-representation in youth justice systems.”

Seen in this way, the continual defending of risk assessments as ‘fair’, and the types of explanations for racial overrepresentation, is remarkable. What is also common to scholarship around ‘race’ and crime is the location of ‘solutions’ outside of the criminal justice system, as opposed to the criminal justice system itself being the ‘problem’. For example, criminologists will often argue that to fix the overrepresentation ‘problem’ other welfare-related areas need improvement, such as education, access to employment, drug

and alcohol counselling and community-based approaches to reduce violence. These structural explanations all ultimately fall outside of the criminal justice system itself as being inherently racist, and imply that if structures were improved, then racism might disappear. Applying Question Two of the WPR approach, “What deep-seated presuppositions or assumptions underlie this representation of the ‘problem’ (*problem representation*)?”, the assumptions underpinning the research studies outlined above are readily apparent: that Indigenous people can be unequivocally categorised as a sub-population of the broader population of ‘offenders’, and that they present as ‘riskier’ and as a ‘different type of risk’ to the non-Indigenous ‘offender’. This is often made explicit with statements such as “Aboriginal offenders are different from non-Aboriginal offenders in a number of ways” (Rugge, 2006, p.i.).

Likewise, prominent Australian criminologists such as Weatherburn, Fitzgerald and Hua (2003, p. 71) have constructed Indigenous ‘difference’ through the reference to Aboriginal ‘social norms’: policy solutions promoted include strengthening “...Aboriginal social norms against physical and sexual violence”. The implication here is that Aboriginal ‘social norms’ around physical and sexual violence are different to those of non-Indigenous people. Such an understanding almost completely shifts the focus to ‘causes’ of crime and to discussions around ‘prevention’. The introduction to the paper by Weatherburn et al. (2003) titled “Reducing Aboriginal over-representation in prison” is particularly telling in terms of responding to, and addressing, the ‘wicked problem’ of Indigenous overrepresentation in the criminal justice system. The authors open with a quote from the Pitjantjatara submission (Indigenous community) from the Royal Commission into Aboriginal Deaths in Custody (Commonwealth of Australia, 1991, p. 109), that states: “There are many instances where offenders create so much disturbance and disruption and instil such fear within communities that from time to time communities actually seek the imprisonment of those people...” This quote is used to justify penal intervention in a community where incarceration is used at unprecedented rates, not as a one-off event and certainly not used from “time to time”, but rather as the most overused tool for the governing of Indigenous Australians. However, decontextualizing and neutralising the criminal justice system, and by extension the state, makes the overrepresentation of Indigenous Australians sensible and logical. This logic is deployed seamlessly. For example, Weatherburn and his colleagues assert:

If the primary cause of Aboriginal over-representation in prison is Aboriginal over-representation in crime, the primary focus of policy attention should be on reducing Aboriginal crime, not on changing the response of police or the criminal justice system to Aboriginal offending (2003, p. 69).

Similarly, Allard (2011, p. 32) concludes:

Available evidence indicates that indigenous over-representation is the result of Indigenous youth being more likely to offend, having more serious offences and being more frequent offenders. These findings highlight the need to address the causes of offending by adopting effective crime prevention programs.

Offering an alternative explanation, Fitzgerald (2009, p. 6) presents ‘empirical evidence’ that “the substantial increase in the number of Indigenous people in prison is due mainly to changes in the criminal justice system’s response to offending rather than changes in offending itself”. If one were to follow this kind of ‘evidence’ it would produce an interest in investigating how the introduction of risk assessment tools as a ‘response’ to crime may “give rise to racialized expansion” (Russell and Carlton, 2013, p489).

How penal system practices and processes are studied, and the object of study, matters. Racial bias is not regarded as a valid explanation for the overrepresentation of Indigenous people in the criminal justice system. In other words, what has been offered is ‘evidence’ of why it is necessary to subject Indigenous people to the penal system, at much higher rates than others. Risk assessment tools provide further evidence of why some populations need to be more governed than others. Alexander (2012) in *The new Jim Crow: Mass incarceration in the age of colorblindness* outlines the complexity and difficulty of proving racial bias in a supposed post-racial era. What Alexander (2012) calls for is long overdue common-sense discussions about racial biases that exist in criminal justice systems. She argues,

Nonracial explanations and excuses for the systematic mass incarceration of people of colour are plentiful. It is the genius of the new system of control that it can always be defended on non-racial grounds, given the rarity of a

noose or a racial slur in connections with any particular criminal case.
(Alexander, 2012, p. 103)

Alexander's (2012) arguments remain heavily relevant for discussion about the overrepresentation of Indigenous people in Australia, because here simplistic arguments are similarly mounted for why Indigenous people are overrepresented in the justice system, and furthermore, evidence is constantly produced for why they are managed more vigorously than others.

How 'race' comes to function as a proxy for 'risk' (Hannah-Moffat, 2016, p. 40) is reflected in the 'solutions' to the 'problem' of the overrepresentation of Aboriginal people in the criminal justice system, and in how 'race' is used and applied inconsistently. Moraga and Anzaldua (1985, p153) assert that "Racism is used both to create false differences among us and to mask the very significant ones- cultural, economic, political". Martel, Brassard and Jaccoud's (2011, p. 252) Canadian study shows how risk assessments perpetuate racism through the notion of 'neutrality' and of difference based on 'culture'. They argue that "contrary to arguments about objectivity and race neutrality, actuarially based risk assessments of Aboriginal offenders bring aboriginality centre stage". They assert that risk assessments are resulting in the Indigenization of the Canadian penal system and highlight how 'culture' can be deployed as both a 'risk' and as a 'protective factor'. They point out that:

Risk-assessment instruments are, thus, presumably uniform across offending populations (Quinsey et al. 2006) and have universal applicability. This contention of neutrality-legitimized by science-is consistent in light of the fact that the original impetus towards introducing actuarial risk-assessment tools in criminal justice was said to be the minimization of race and gender-based discrimination as well as other forms of biases induced by discretionary decision making (p. 238-239).

Furthermore, Martel et al. (2006) highlight that 'criminogenic needs' is itself an unstable concept. For example, Aboriginal 'offenders' are marked with 'cultural needs' that require addressing. Lack of cultural connection, or group membership, is often discussed in the

context of Indigenous young people and crime in Australia. For example, Allard (2011, p. 35) states:

...there is some evidence to suggest that lacking a positive sense of ethnic identity or having a 'compromised culture' may increase the risk of offending for minority groups...Therefore, ethnic identity and culture may serve as a potential protective factor for reducing Indigenous offending.

As a result of these types of understandings, Martel et al. (2011) argue that 'risk' becomes situated in 'culture'; a culture that can be 'improved'. At least two deep-seated presuppositions are at play when 'culture' is applied to criminal justice processes and systems: one, that 'culture' is hegemonic and (Martel et al., 2011, p. 246) and two, that cultural connectedness can fix crime (Martel et al., 2011, p. 241). In discussing this contradiction in actuarial risk assessment processes, Martel et al. (2011, p. 243) state:

At the onset of risk assessment, being aboriginal is essentially a status taken to be a risk-enhancing 'factor'. However, at the outset of the assessment process, being aboriginal is now, in essence, being an aboriginal subject taken to be a risk-reducing 'factor'. The aboriginal offender, therefore, becomes a transformative risk subject (Hannah-Moffat 2005) 'subjectable' to a unidirectional revision of her previous aboriginality (the acculturated high-risk Indian) towards a closer fit with a hegemonic aboriginality (the culturally revitalized low-risk Indian)... The 'imagined authenticity' (Brady 1995: 1487) of this hegemonic aboriginality fashions a legitimately inclusive aboriginal identity said to hold the key to rehabilitation from a life of crime. It becomes a conditional 'switch point' to be crossed in order to be granted the right to access circuits of freedom.

As mentioned in the previous chapter, notions of 'culture' only apply to, and become relevant, for the 'other' – the non-white 'offender'. Consequently, cultural communities hold individual and collective responsibility for crime. This is reflected in the presence of Indigenous programs and 'community partnerships', currently being facilitated in Juvenile Justice prisons in NSW. For example, in the Reiby Juvenile Justice Centre, the 'Aboriginal Learning Circle' program:

...teaches young people the importance of their culture and how they use it in everyday life and decision making (Department of Justice NSW, 2016, p. 96).

In the Acmena Juvenile Justice Centre, the 'Aunties Group' is made up of local Aboriginal Elders who:

...spend quality time with the young men and yarn about life, family, culture, spirituality, country, choices and consequences, future aspirations, connection with family and support now and for the future (Department of Justice NSW, 2016, p. 96).

The active involvement of a 'cultural community' has become a popular approach in Juvenile Justice NSW and remains unquestioned and an indisputable 'response' to the 'Indigenous youth crime problem'. The recruitment of people from the Aboriginal community to self-govern is also reflected in the creation of the Juvenile Justice NSW 'Aboriginal Staff Advisory Committee (ASAC)', which uses Aboriginal staff to have input about the design and creation of policies and programs (Department of Justice NSW, 2016, p. 98). However, Martel et al. (2011, p. 249) caution that:

...the use of aboriginal designers, instructors and facilitators of aboriginal programming engenders a situation in which community-based aboriginal agents participate directly in the risk-management logic – a logic that aboriginal community leaders have critiqued for several decades in Canada. Paradoxically, they contribute to the perpetuation of a punitive system that historically has excluded, omitted and denied difference.

This is applicable in Australia's penal system, which is implicated in the historical, ongoing and current day colonisation of Indigenous people, specifically through the criminal justice system. Baldry and Cunneen (2014, p. 292) argue that Aboriginal women in Australia are bearing the brunt of a penal system that "...is founded in and continues to be shaped by a pervasive and adaptable patriarchal colonialism", couched in a history and a country where "...modalities of punishment may have changed but the targets have remained remarkably consistent".

There has been some recent work that acknowledges how government interventions have depended on problematising Aboriginal peoples, histories and communities rather than problematizing governments, its institutions and wider society. The process of representing Indigenous people as ‘scientifically deficient’ in multiple ways has been a highly successful vehicle for exerting government control over Aboriginal and Torres Strait Islander peoples. Spivakovsky (2013, p151) explains how these effects are made possible by critiquing the ‘Risk-Needs-Responsivity’ model. She argues that this type of ‘scientisation’:

disqualifies the lived experiences of racialized peoples...; *conflates* the socio-economic markers associated with racialized peoples’ experiences of colonization, disadvantage and marginalization, with those of ‘risk’; and *criminalizes* the experiences of racialized people—processing them through the same register of operationality as used for anti-social offending behaviour. (Emphasis in original).

This type of critical analysis, and work that inverts conventional problem representations, are also emerging in studies of the criminal justice system and more broadly (Buxton, 2017, Di Giorgio & Habibis, 2018, Fforde, 2013, Maxwell, Lowe & Salter, 2018, Patrick & Moodie, 2016). For example, in studying sentencing disparities in the South Australian criminal justice system, Jeffries and Bond (2011) discuss the impacts on Indigenous people:

Discourses of dysfunction and pathology present Indigenous people as the ‘problem’, and in doing so arguably contribute to maintain deeply embedded stereotypes, which are often used to draw attention away from responsibilities of the coloniser, shift blame to the colonised and further aggravate the colonisation process (Jeffries & Bond, 2011, p. 6).

Since young Indigenous people are overrepresented in the juvenile justice system in NSW, it becomes imperative to question the role of the YLSI/CMI-AA 2.0 risk assessment tool, and how it justifies more intrusive and harsher sentencing. Cunneen (2016, p. 36) observes that

Too often, then, being Indigenous is reduced to a potential risk factor for involvement with the criminal justice system, akin to alcohol and drug

abuse, offending history, and so on. Thus, Indigeneity is actively defined by and correlated with dysfunction.

The (re)production of Indigenous ‘dysfunction’ allows a false sense of neutrality of the YLSI/CMI-AA 2.0 risk assessment tool. A false sense of ‘neutrality’ can also be found in representations of the state. Macoun and Strakosch (2013, p. 428) highlight this in their analysis of the Northern Territory Intervention through a settler colonial theory lens: “The intervention policy framework depends for its coherence on framings of the settler state as innocent, benign and neutral, with Indigenous peoples’ perspectives constructed as overtly politicized and illegitimate.”

Similarly, the overrepresentation of Indigenous people in the justice system is framed as ‘neutral’ and disconnected from the state. If the state can be thought of as ‘neutral’ and free from prejudice, then so can ‘punishment’. For example, a deep-seated presupposition is that juvenile prisons, places built specifically for the purpose of ‘punishment’, can also be appropriate places for ‘cultural healing’ to take place. This is especially relevant against the backdrop of Australia’s violent colonial history, and a penal apparatus that was used specifically to discipline, manage, and sanitize Indigenous Australians.

There are vast amounts of literature focussing solely on crime and Indigeneity with “a curiosity to seek out different crimes and pathologies to explain indigenous lawbreaking” (Crete, 2017, p. 981), and a focus on “improving” youth justice systems. However, Dhillon (2015) notes:

If, as numerous scholars and activists have pointed out, the state is the chief perpetrator of violence in Indigenous nations, its institutions, agencies, and programs cannot be the place where justice is found, nor can strategies for eradicating colonial gender violence be rooted in these power structures.

If ‘justice’ cannot be found in juvenile justice, then juvenile justice institutions, their practices, policies and processes, are not capable of improving or eradicating the inequality against Indigenous young people in Australia in and of themselves, because the youth justice system is inherently connected to colonialism. According to post-colonial theorists, youth justice structures and forms of practices are “minutely interwoven into the fabric of

postcolonial relations that uphold and maintain white privilege and normalize white possession” (Blagg, Tulich, Bush, 2017, p. 346).

If the overrepresentation of Indigenous people in the criminal justice system is a form of sustaining and continuing the colonial project (Blagg et al., 2017), then decolonizing the justice system, as opposed to ‘reforming’, should become the aim, and analyses that bring into view the inextricable link between the over-governing of Indigenous people through the penal system become more useful. As Nichols (2014) argues, the overrepresentation ‘problem’ should itself be critiqued:

When the critique of incarceration rests upon the over-representation of racialized bodies within penal institutions, this tactically renders carcerality as a dehistoricized tool of state power – even if distorted by the pathological effects of a racist society – displacing an account of the continuity and linkages between carcerality, state formation, and territorialized sovereignty (p. 444).

As critical race theorist Patrick Wolfe (2006) attests, “invasion is a structure, rather than an isolated event” (p. 388), and from this perspective it becomes imperative to frame, understand and analyse the youth justice system as central to settler colonialism, assimilation and whiteness. As such, knowledges outside of criminology such as critical race theory and post-colonialism theory are useful to reframe and understand the racialised nature of actuarial risk assessments, and the effects they have on marginalised populations. Understood in this way, it is not difficult to see the direct material effects of risk assessments. For example, risk assessment tools are increasingly being deployed in NSW, and continue to target Indigenous children and young people under the guise of the neutrality of ‘risk’: In November 2017, the Youth Justice Coalition (YJC) in NSW, who are made up of a group of youth advocates, academics and children’s lawyers, released a report detailing the impacts of a police risk assessment tool, referred to as the Suspect Targeting Management Plan (STMP). It reported that there was “Disproportionate use against young people and Aboriginal people” (Sentas & Pandolfini, 2017, p. 1) and that Indigenous young people were “significantly over represented as STMP targets across five LACs” (Sentas & Pandolfini, 2017, p. 14). The notion of ‘crime-prone communities’, as discussed in the previous chapter, has become code for ‘Indigenous neighbourhoods’ categorized by poverty,

homelessness and crime. Razack (2015) theorises the relationship between over-policing in colonial settler states in the following way:

...to mark and maintain their own emplacement on stolen land, settlers must repeatedly enact the most enduring colonial truth: the land belongs to the settler, and indigenous people who are in the city are not of the city (p. 24).

The racialised profiling of the police force is not a new phenomenon; however, what is new is the use of risk assessment tools to de-racialize racial profiling, and justify the “regulatory functioning” that Dhillon (2015, p. 12) describes in the Canadian context: “violent policing practices serve a profoundly regulatory function in settler states like Canada, a way to attach colonial power to the flesh and bones of Indigenous bodies”.

In the US context, Van Cleve and Mayes (2015) discuss the implications of ‘race neutral’ risk assessments:

The new penology's concern for risk prediction and risk management allows implicit biases to flourish, impacting how we define risk and who we define as risky. In addition, the actuarial tools that characterize the new penology transform race - embedded variables into seemingly race - neutral assessments. In turn, these tools have generated even more focus on nonwhite people and neighborhoods ... in what becomes a perpetual cycle of scrutinizing, appraising, and confirming the socially constructed link between dangerousness and people of color. (p. 411).

This thesis has been preoccupied with techniques of government, and technologies of government that serve to regulate ‘offending’ and ‘non-offending’ citizens; however, the analysis of the YLS/CMI-AA in relation to governing Indigenous populations illuminates the ways that “not all citizens are governed equally” (Van Cleve & Mayes, 2015, p. 410).

Conclusion

This chapter discussed the implications of accepting penal practices and policies, such as risk assessment tools, as ‘neutral’ and ‘objective’. Giving risk assessments this type of legitimacy takes for granted the neutrality and innocence of the state that purchases and deploys the

risk assessment tools. Neutralising risk assessment tools allows 'risk' to be represented as a naturally occurring phenomena that exists everywhere ('girls' and 'boys'), and at the same time as specific to Indigenous populations. This chapter demonstrated how racialised subjects are constructed, organised and understood within the risk assessment tool as well as within the wider penal realm and drew attention to how academic research and 'knowledge' and policies make the overrepresentation of black and brown bodies in the penal system thinkable and (perhaps more alarmingly) acceptable, logical and sensible. As criminal justice systems 'progress', 'develop' and 'improve', Indigenous people are increasingly suffering the consequences of 'progress'. The so called 'progress' of 'accurate' risk assessment tools is eradicating Indigenous populations.

Chapter 9 Conclusion

Introduction

This thesis has explored a central and routine practice in the NSW Juvenile Justice system, the YLS/CMI-AA 2.0 risk assessment tool. The impetus for focussing on the risk assessment tool specifically was because of its reach, in that it is enforced on every single juvenile offender who comes in contact with Juvenile Justice NSW. Underpinned by a poststructural theoretical orientation, this thesis disrupted and disputed the use of risk assessment tools to 'predict', 'prevent' and 'treat' juvenile offenders. The analysis has shown the ways that risk assessments do more than just 'predict' risk, rather they *make* risk. As such, it demonstrated how the YLS/CMI-AA 2.0 has become a key technology in 'treatment' of juvenile offenders in NSW. A poststructural analysis was useful in highlighting the grip of risk technologies on contemporary penal systems, and in how they are used to maintain and establish order, to punish, discipline, and treat juvenile offenders as well as to govern the 'non-offending' population more generally. This concluding chapter begins with a summary of the key findings across the chapters and also discusses the significance of the findings for a range of fields of scholarship and professional practice. The chapter contains a distinctive component that aligns with the theoretical approach and the political commitments of the thesis: in a section on self-problematisation where I address the final question in the WPR approach and emphasise the way the findings can be and should be re-problematised. The final section describes some of the lines of inquiry the thesis opens up for further research.

Summary of Findings

A central concern for this thesis was interrogating how the risk assessment tool constitutes, or makes, the 'problem' of juvenile offending. When I was attempting to narrow in on the focus of this thesis, I was determined that it would effectively engage with the day-to-day practices of the NSW juvenile justice system, in order to establish both other *ways of thinking* as well as other *ways of doing*. My direct experience with using the tool and witnessing its impacts on certain populations propels my dissatisfaction with literature that ended with theoretical discussions of policy. I was concerned to demonstrate how policy functions as a technology of government *in the real* (Bacchi and Goodwin, 2016, p37). Thus,

this thesis deployed a method ('What's the problem represented to be?') that could assist in demonstrating *how* the practice of risk assessment tools regulates conduct of the administrators of the tool ('juvenile justice 'workers'), the conduct of the juvenile justice system, and the conduct of the state.

The WPR approach illuminated how the risk assessment tool produces the subjects as 'risky'. Such an observation was enabled by Question One of the WPR approach, which involved the identification of problem representations lodged within the risk assessment tool, as well as interrogating the knowledges and logics underpinning the problem representations. The WPR approach highlighted how the risk assessment tool heavily depends on crime as a fixed, stable entity, absent of any political or historical influences. Isolating each of the questions in the risk assessment tool also brought attention to how the offender is constituted as 'different', and a sub-group with common attributes and characteristics. A key criminological concept, the criminogenic 'pathway' was also unpacked and problematised. This led to narrowing in on the subjects that the risk assessment tool produces, to strongly contest and challenge its 'neutrality'. By recognising the populations who are overrepresented in the juvenile justice system in NSW precisely *how* the risk assessment tool rationalises and justifies the governing of certain populations, all the while rejecting arguments that the 'justice' system is 'unjust' can be demonstrated.

Due to the English roots of the knowledges, policies and processes of juvenile penalty in Australia, Chapter Two directed attention to how the 'juvenile problem' was historically responded to and to current day institutions and systems, and provided a genealogical approach of the juvenile offender with the "precise intention of understanding the system of thought in which we are situated" (Revel, 2015, p. 17). What this chapter demonstrated was how understandings of childhood and juveniles sat uncomfortably with understandings of crime and 'criminality'. Childhood has been constructed and (re)constructed as a stage of 'innocence', whereas crime has been constructed as 'deviant' and 'dangerous'. This explained the back-and-forth of responses to juvenile offending such as the establishment of reformatories co-existing with harsh corporal punishments for juveniles. Although humans (both young and old) have always 'done crime', what this chapter underlined was the emergence in the 18th century of various policies, laws, institutional spaces, physical spaces,

administrative processes, and 'expert' knowledges about the juvenile, with one target: that of maintaining order through the exercise of power.

Although the historical account of juvenile justice provided in this chapter included key dates and turning points often cited in mainstream literature, it differed in that the focus was on how those turning points 'came about' at those particular points in time. The attention of this chapter was not to explain or simply retell juvenile justice but rather demonstrated how an entire system dedicated to the juvenile depended on the active production of various constructions of the 'juvenile problem'. It is these constructions (even the contradictions within them) that dominate and make the YLS/CMI-AA 2.0 'logical'. What this chapter also highlighted was how the overriding debate during the 1970s and 1980s between welfare vs punitive approach to the 'juvenile problem', although they appeared opposing, actually led to a barrage of policies and laws, including an official juvenile justice department, all of which contributed to the making of the juvenile offender.

The chapter also grounded the thesis in a settler-colonial state and presented the context of the NSW Juvenile Justice system as sitting within settler colonialism, whereby the concepts and practices came from the colonisers (England) to the colony (Australia) with specific impacts on the colonised (Indigenous Australians). This Chapter concluded by offering a racialised retelling of juvenile penalty in Australia and argued that any discussions about juvenile penalty cannot be separated from Australia's colonial history. The governing and regulating of Indigenous children were starkly different from non-Indigenous children in that they were not afforded a childhood, further evidence that not all children are marked as children, and that knowledge is a cultural product. Although there is currently a lot of focus and concern with the 'Indigenous offending problem', rarely is it brought into the space of racism, settler-colonialism and white supremacy. This was discussed further in Chapter Eight.

Chapter Three aimed to defamiliarise the expanding use of a routine administrative tool: the use risk assessment tools in juvenile penalty, or what Horn (2005) refers to as the emergence of "the new anthropology" and a "new kind of scientific 'common sense'" (p. 144). The centrality of the 'risk' concept in penalty was discussed and its 'developments' outlined, as well as highlighting how risk assessments have been constructed through

notions of 'neutrality' and 'objectivity'. The YLS/CMI-AA in particular was highlighted as a 'product', re-grounding the risk assessment tool in the free market. The reach and influence of the risk assessment tool is such that it justified interrogation. A poststructural theorising of risk assessment tools specifically in relation to penal systems directed attention to their governing effects, such as the management of a plurality of bodies, regulation and surveillance over more areas of life, and a technocratisation of social control. Risk technologies were argued as value-laden and political, and as a new and contemporary way of justifying and explaining inequalities in penal systems.

Chapter Four introduced the poststructural framework that was used to analyse the risk assessment tool and defined the key terms that were drawn on throughout the study. A central tenet of poststructural theory is that realities are not fixed or static but are rather understood as "combinations or patterned networks of diverse elements and relations that are coordinated, arranged, combined or patterned to *appear* as a convergence" (Bacchi & Goodwin, 2016, p. 14, emphasis in original). This chapter drew in particular on the works of Foucault, namely his text *Discipline and Punish*, and other Foucauldian practices and concepts such as governmentality and genealogy. These concepts and their significance to this thesis were discussed, specifically in relation to de-familiarising the taken-for-granted policies and practices in contemporary penal systems. The key findings from this chapter were that prisons, usually associated with liberal societies and with 'freedom', have impacted both 'offending' and 'non-offending' populations. That is, as prisons reinforce the criminal, or the 'abnormal', they also work to affirm the 'normal'. In this way, prisons produce both 'normality' and 'abnormality' and set imagined standards of acceptable and unacceptable behaviour. This chapter provided the rationale for subjecting approaches to crime to interrogation, and for examining juvenile penalty in Australia. Chapter Four also introduced Foucault's use of genealogy to direct attention to other ways of thinking, and as a way of de-familiarising the familiar, by tracing the history of concepts and categories. The concept of 'governmentality' was also articulated, and its possibilities explored, specifically in relation to penalty. This chapter understood risk assessment tools as technologies of government that are complicit in the shaping and production of subjects.

The analytical strategy deployed in this thesis was the focus of Chapter Five. The WPR approach was articulated as a study of how 'problems' are made or constituted within

policies. This chapter endeavoured to analyse how the YLS/CMI-AA 2.0 makes the 'juvenile offending problem' a specific type of problem in the WPR approach, using various examples of how it has been previously used to study problematisations. The key points in this chapter were that the WPR approach understands policy-making as an endogenous activity, or as producing 'problems'. The WPR approach was described as working backwards by starting with the proposed 'solutions' to 'problems'. This Foucault-influenced approach argues that problem representations produce, shape and control the 'problems' they set out to 'solve'. This chapter drew attention to the idea that policy-making is not objective nor neutral. The potential of the WPR approach to the study of the YLS/CMI-AA 2.0 was articulated, and the WPR questions, and the analytical steps, were outlined.

Interrogating *how* children are governed through the YLS/CMI-AA 2.0 tool was the task of Chapter Six. Drawing on Questions One and Two of the WPR approach, "what's the problem represented to be?" and "what deep-seated presuppositions or assumptions underlie this representation of the 'problem' (*problem representation*)?" a number of problem representations were drawn from the diagnostic questions. This chapter undertook an analysis on Domains One, Seven and Eight of the risk assessment tool, which involved tracing the histories or the lineage of problem representations and the discourses embedded within them. The process of a genealogy was again applied to uncover some of the conceptual logics that underpin specific problem representations reflected within the YLS/CMI-AA 2.0 risk assessment tool. The 'text' that was analysed included the diagnostic questions that administrators of the tool are directed to ask, and the questions/ prompts/ notes suggested in the 'Assessment Guide'.

This chapter concluded with some key points: that the risk assessment tool produces crime as a set of specific and common characteristics such as 'deviancy', 'immorality', and various forms of 'failure', and that the risk assessment tool produces crime as fixed, static, and a phenomena that has always existed, making the imagined standards of behaviour appear to be real and wholly ahistorical. The overarching finding was that the risk assessment tool produces crime as fixed and inevitable, and as decontextualized and de-politicised and as changeable through intervention. This chapter also highlighted that the juvenile offender is represented to be 'other' and a sub-set of people that share common attributes mostly around the violation of social norms via their resistance to authority and challenging an

imagined and agreed standard of 'rules'. The YLS/CMI-AA 2.0 represents the juvenile offender in relation and opposite to the imagined 'non-offender', presupposing that the goal of the penal system is to produce docility and submission to authority. Through examination, the juvenile offender is rendered a subject that is 'knowable', 'predictable', and therefore controllable. Applying the WPR approach demonstrated how the YLS/CMI-AA 2.0 does not simply 'predict' the juvenile offender, but rather it produces the juvenile offender that requires intervention through a specific set of diagnostic questions.

Chapter Seven centred on the criminogenic 'pathways' or 'risk factors' that were outlined in Chapter Four on 'Assessments', and how they are deployed in the risk assessment tool. What emerged was that the 'pathway' that is outlined in the risk assessment tool represents the juvenile offender as existing before and outside of the crime. In other words, the risk assessment tool constructs juvenile offenders as if they were 'offenders-in-the-making' through the 'pathways' concept. Crime is represented as a 'build-up' of factors, or 'failures' that 'trigger' the offender that has been dormant up until the crime. Importantly, and perhaps more dangerously, the 'pathways' concept reflected in the risk assessment tool constructs the juvenile offender not only as a 'problem' of the past, but also a future 'problem', in line with risk technologies that seek to 'predict' *future* behaviour. The expansion of the panoptic gaze (discussed in Chapter Four) is reflected through the various 'domains' of the risk assessment tool that represent the cross-talk of institutions such as health, child protection, education, welfare organisations and law.

This chapter concluded with the following key point: that the risk assessment tool presupposes a logic of 'sameness', that is, offenders are homogenous group, void of individual differences, *but also* a sub-group that is 'different' to the general population. A largely overlooked assumption of the risk assessment tool is that the penal system is where 'justice' can be found, presupposing the state, and its affiliated institutions and programs, as 'innocent' and as 'neutral', and not as directly complicit in social and racial inequalities. This point is especially crucial in the Australian context due to the overrepresentation of Indigenous Australians in both the juvenile and adult justice systems, who are represented as the most disadvantaged in terms of the social 'problems' they encounter. Since they *happen* to be disadvantaged by the *exact* 'factors' in the risk assessment tool, further examination of

the risk assessment tool is justified. A 'logic of difference' is employed to explain how a 'neutral' tool can have such discriminatory results.

Chapter Eight sought to focus on the power of the notion of 'neutrality', and how the YLS/CMI-AA 2.0 risk assessment tool constructs the conditions of possibility for the criminalisation and domination of *specific* children. The repetition of non-Indigenous standards of material wealth, lifestyle, attitudes/beliefs, education/employment, substance abuse, and so on render the Indigenous offender 'riskier'. The chapter highlighted how risk assessment tools employ 'risk' as a proxy for 'race' and 'gender', a strategy that is enabled by the logic of 'criminological difference' and via the mobilisation of 'risk' as a 'neutral', 'objective' concept.

Additionally, this chapter brought attention to the kind of political rationalities that underpin risk assessments, and that position the state as a 'neutral' arbiter of 'justice'. The disciplining effects of 'neutrality' were explored and positioned as an essential instrument in the governing of populations that are produced as 'risky'. What was highlighted was the differing effects of the risk assessment tool on different populations. For example, the YLS/CMI-AA 2.0 represents girls and boys as equally 'risky', while the Indigenous offender is constructed as 'different' mainly based on notions of 'race'. I argued that the risk assessment tool is a gendering tool, and a normative, colonising tool.

The implications of 'neutrality' were outlined. Neutralising risk assessment tools allows 'risk' to be represented as a naturally occurring phenomena that exists *everywhere* (girls and boys), and at the same time as *specific* to Indigenous populations. The processes of categorisation were highlighted to draw attention to how academic research and 'knowledge' and policies make the overrepresentation of black and brown bodies in the penal system thinkable and (perhaps more alarmingly) acceptable, logical and sensible. Some sub-populations are overrepresented in the juvenile justice system because they are more likely to be offenders and more likely to be biographically, psychologically and morally predisposed to crime. We know this because the assessment tool tells us so. Thus, the chapter concluded by arguing the point made in Foucault's *Discipline and Punish*: we should not be complacent or accepting 'developments' in penality as 'progress', because this so

called 'progress' in risk assessment tools is eradicating Indigenous populations in Australia directly through penal systems.

Self-problematisation

Since this thesis was a study of problematisations, it is necessary that I attend to the final step in the WPR approach, which calls on policy researchers/analysts to reflect on self-problematisations. These are defined by Bacchi and Goodwin (2016) as "one's own proposals and problem representations...given one's location within historically and culturally entrenched forms of knowledge, we need ways to subject our own thinking to critical scrutiny" (p. 24, emphasis in original). As a researcher, I have brought my own sets of beliefs, values, biases and assumptions that have influenced this thesis. Subjecting one's own problematisations to scrutiny moves beyond "easy-to-make *declarations*" and instead endorses "a precise and demanding *activity*" (Bacchi & Goodwin, 2016, p. 24, emphasis in original). In this vein, I am aware of at least four aspects of my own particular ways of thinking that shaped and were transformed by the analysis undertaken for this thesis.

Firstly, as a student of social work, I had been encouraged to view 'problems' from a critical stance, and approach 'problems' holistically. As such, my construction of crime and juveniles aligned with the notion that the social, psychological and political context mattered, and that if these were to be taken into consideration, then 'equality' or 'justice' would be more of a possibility. The analysis however drew attention to the way the focus on biographies produces not just criminals but 'criminals in the making' - or people whose social circumstances lead them to 'criminality'. This disrupted my beliefs about the sociological and social work analyses I was trained to value: these too can in fact be unjust and contribute to inequality.

Secondly, as a previous employee of the juvenile justice system, I was heavily shaped by criminological discourse. For example, I was shaped by a discourse of 'responsibility' for crime, and often connected 'better outcomes' for young people with the assignment of less/more 'criminal responsibility'. My recommendations for 'better outcomes' were immersed in concepts that have been produced within the field of criminology. I took the

concept 'criminal responsibility' for granted and to some extent took the idea of fixed age categories as axiomatic. Thus, I engaged in debates about what 'age' criminal responsibility should kick in, but I did not question the arbitrariness of either 'age' or 'criminal responsibility'.

Thirdly, I have become aware of the extent to which neo-liberal rationalities have formed my perspectives. The neo-liberal context within which I work, live and study *makes* concepts such as 'responsibility' and 'participation' important: as a 'student' subject, in an institution (university) that encourages participation in knowledge production, and, as a social worker in a field that values 'outcomes'. As a responsibilised subject, these all appeared as important for the 'progress' of society: for example, I started this thesis with the belief that increased 'participation' of young people in knowledge production would 'fix' their subjugation. My ideas of 'progress' were therefore lodged in neo-liberal values.

Fourthly, I have developed a perspective on my position as a settler living on Indigenous lands. 'Race' has been made important to crime. Although I may be able to remain critical of the social construction of 'race' itself, I am not outside of power, or of discourse (Bacchi, 2009). This means that I am shaped by settler-colonial assumptions and biases. For example, 'parenting' in a settler-colonial sense involves a maximum of two people and I am also limited to thinking of children in relation to, and dependant on, adults. For example, it would not be possible to conceive of a child or young person living alone or completely independently from their parents or from the state ('state wards'). This would be described as 'child neglect'. This was a major concern when I endeavoured to analyse the 'problem' of Indigenous 'offending' in that I am implicated through the knowledge that this thesis produces, as it shuts down alternative, and perhaps less oppressive, problem representations.

As demonstrated above, this type of critical reflection makes space to think about alternative problem representations, with the aim of "promoting less harmful alternatives" (Bacchi & Goodwin, 2016, p. 25), or as Foucault (1987, p. 129) proposes, to engage in "a work of problematisation and of perpetual reproblematisation" (cited in Bacchi & Goodwin, 2016, p. 25). Therefore, I expect and hope that the findings presented in this thesis also become the subject of reproblematisation.

Significance of findings

Risk assessment tools are shaping people's lives in significant ways, and this has implications in the way that practices of juvenile penalty produce gender and race divisions in society. The methodological significance of the WPR approach is its usefulness in providing a way to specifically show how policies and practices are rationalised, who benefits and who loses, but also prompts a consideration of how policies may be disrupted and replaced. By providing an account of 21st century penal and carceral practices, this thesis has led to a reconsideration of the theoretical distinction between the sociological and psychological knowledges that treat biography in the same way, both relying on the very same discourses that render children and juveniles a 'unique' kind of 'problem'. Both share negative understandings of children as 'vulnerable', thereby maintaining the social hierarchy that places children right at the bottom.

As the first study of the YLS/CMI-AA 2.0 to take this approach, this thesis provides a new perspective on the risk assessment tool. Rather than seeking to evaluate its 'effectiveness' or 'accuracy', this thesis instead considers the risk assessment tool as an example of a technology of government that constructs and maintains the social order and one that governs some sections of society more rigorously than others. Unlike some other more conventional approaches to risk assessment tools, this thesis did not begin with the assumption that the task was to evaluate whether the YLS/CMI-AA 2.0 is an 'effective' 'predicting' tool, or a practice that 'solves' the 'problem' of juvenile offending. Rather, the task was to provide a poststructural analysis of the ways in which the YLS/CMI-AA 2.0 *constitutes* 'risk'. The use of a poststructural Foucauldian approach helped to expose the political nature of policies and practices by providing a genealogy of crime, juvenile offender and juvenile justice systems. In this respect this thesis complements existing poststructural analyses of risk assessments and builds on these by focussing specifically on problematisations and their effects. Drawing on this approach, this thesis demonstrated that while the YLS/CMI-AA 2.0 functions as the most central and influential process in Juvenile Justice NSW, it is instead recognised as a tool that

...provides ideological support for incarcerating, supervising, regulating, and criminalizing a massive number of people...ultimately contributes to

reaffirming the very notion of an inherently risky subject – who serves as a focus and warrant of the contemporary penal state (Werth, 2018, p. 17).

This study offers the application of the WPR approach to a contemporary penal practice, which contributes to the development of policy analysis theory and methodology. It further contributes to the emerging fields of research that highlight the usefulness of the approach to various policy fields. This is the first application of the WPR approach to juvenile penalty in Australia. Therefore, it offers a useful and valuable new way of understanding the complex and intersectional area of juvenile penalty.

The use of a specific practice in Juvenile Justice encourages those that apply it to consider the dominant representations of ‘problems’ and makes it possible to think about a ‘problem’ differently, and how they themselves play a part in reproducing or challenging problem representations. This thesis demonstrated that questioning problem representations is an effective means of achieving this. In this case, it situates the YLS/CMI-AA 2.0 in a broader context and enables the representations to be considered in relation to social inequality and settler colonialism. By drawing on each diagnostic question in the YLS/CMI-AA 2.0, I was able to insert contesting and alternative representations directly into the tool, with the specific purpose of disrupting ‘truth’ claims. This is one form of resistance to the problem representations that are implicit in the risk assessment tool.

If notions of ‘neutrality’ result in unequal kinds and intensities of governing, then notions of ‘neutrality’ must be dislodged to illuminate how ideas of neutrality are not reflected in the ‘real world’, but in fact, suggest the opposite of ‘neutral’. This is important for the field of criminology which privileges actuarial approaches to ‘risk’, for poststructural literature in terms of tying theoretical concepts and ideas with specific policies and practices, for juvenile justice institutions that apply risk assessments without question, and for social justice in Australia more generally in relation to inequality and oppressive policy-making.

This research also has implications for the professions and ‘experts’ that give validation to the neutrality of inequality, such as social workers and psychologists. Although it is beyond the scope of this thesis, it is important to point out that in the making of the ‘juvenile

offender problem', professionals are 'made' to respond to the 'problem', including risk assessors, risk administrators, risk managers, case managers, case workers, youth advocates, youth workers etc. It is imperative that the professions that are called upon to address these 'problems' avoid complicity in the making of the very 'problems' they propose to address.

Implications for further research

This thesis provides at least four possible avenues for future research. First, it raises a demand for research on how technologies of governing such as assessment tools are 'met' by those assessed. What subjugated and marginalised knowledges are present? What counter-conducts and resistances are in action? Second, the regime of 'neutrality' that has been shown to have such a powerful impact on Indigenous Australians is clearly relevant to other population groups. For example, research could explore how risk assessment tools produce other racialized subjects as 'risky' and contribute to the criminalisation of populations. Third, the thesis brings attention to the gendering of criminality through distinctly gendered discourses and interventions that are masked by risk assessment tools. More research could further explore how contemporary technologies interact with gendered knowledges and practices. Fourth, risk assessment tools are also championed by powerful interests, beyond positivist social scientists and juvenile justice advocates seeking 'better' evidence for practice. Risk assessment tools are commercial products, sold globally in the free market and have been monetised for profit. 'Following the money' may be another fruitful avenue for research. Each of these are avenues are discussed in turn:

This thesis opens up policy for scrutiny and opens the door for subject populations to have a right to the problems that impact them so significantly, for, as Deleuze argues, "we remain slaves so long as we do not control the problems themselves, so long as we do not possess a right to the problems, to a participation in and management of the problems" (cited in Bacchi, 2009, p. xvi). There is potential for the subjects of the YLS/CMI-AA 2.0 to define and shape problem representations and for young people themselves to contribute to the disruption of risk discourse and to bring alternative discourses into view. The young people I directly worked with initially inspired this project by displaying counter-conduct and resistances to dominant discourses.

I vividly recall a day when I assessed two young people, a young eleven-year-old Indigenous boy and a seventeen-year-old Lebanese Muslim boy. Even though I was carrying out the YLS/CMI-AA 2.0 risk assessment tool with each of them, they gave vastly different responses. The younger boy accepted the 'risk' discourse, accepting himself as 'risky', 'dangerous' and 'bad', and even made his 'criminal family' complicit in his 'offending'. As an Indigenous offender, his fate was sealed prior to the risk assessment tool, and the tool simply verified and rearticulated his 'criminality'. The older boy completely rejected and challenged the 'risk' discourse and refused to accept his criminal identity, questioning each of the domains in the risk assessment tool, questioning why they were relevant to the offence he was being charged with.

What stood out to me firstly was how young people can accept, resist or challenge the dominant discourses that they are shaped by. Secondly, even though the two boys had completely different reactions to the assessment interview, they were *both* scored as 'high-risk offenders', the younger boy because he admitted to his level of 'riskiness' and 'confessed' all of his 'vulnerabilities' and 'risks', and the older boy because his resistance was deemed to be an indicator of 'not taking responsibility' for the offence, and therefore scored 'high' in the 'personality/attitude' domains of the risk assessment tool. It became apparent to me that the risk assessment tool I was applying to all the young people I worked with was *designed* to constitute all offenders as 'risky' subjects, and that there was no 'outside' to 'risk'. In this sense, whether or not they accepted/rejected the 'risk' discourse, they would both be impacted in the same way, both justifying intrusive intervention and surveillance.

This example not only points to the constitutive powers of the risk assessment tool, it also points to the possibility of opposition, resistance and counter-conduct for subject populations to define for themselves the shape of the 'problems' that impact their lives so significantly and directly. Further research could include subjugated knowledges, or marginalised knowledges (Bacchi, 2009, p. 139), to highlight the possibility of re-problematization and to contest the 'truth status' embedded in the risk assessment tool, and to argue for the right to influence or control the process of problem representation. More specifically, seeking ways of "how not to be governed like that, by that, in the name of those

principles, with such and such an objective in mind and by means of such procedure, not like that, not for that, not by them” (Hofmeyr, 2008, p. 111).

Second, because risk assessments are produced as ‘neutral’, and by extension the ‘state’ is represented as ‘neutral’, it becomes possible for ‘risk’ discourse to make other populations ‘dangerous’ too. The threat of ‘home grown terrorism’ is currently under the spot light in Australia, and risk assessment tools are increasingly being used for ‘national security’ purposes. Muslim young men in particular are the newer targets of the state and of ‘anti-terror measures’ and are represented as ‘vulnerable to radicalisation’. In particular, ‘risk of radicalisation’ has become a governmental priority, and although formal policies and laws do not state that Muslims are the targets, it is clear that Muslims are bearing the brunt of the ‘terrorism problem’, in the same way that although laws and policies do not name Indigenous Australians as the targets, they are overrepresented in penal systems. However, because ‘risk’ is defended as ‘race neutral’, arguing that national security policies are racist is rendered invalid. Deploying ‘risk’ in this way means that it can be dispersed, transformed and adapted subjectively. For example, *all* Muslims in Australia, regardless of whether or not they have committed a crime, are constituted as ‘risky’ or as ‘at risk’ of becoming ‘radicalised’, implying a natural propensity for ‘extremism’ unless the state intervenes. This is made possible and thinkable by preventative community initiatives such as Countering Violent Extremism (CVE) programs, deployed in Muslim communities in an attempt to ‘prevent radicalisation’. As with Indigenous communities, Muslim communities are collectively made ‘risky’. Cherney and Murphy (2015) have discussed how anti-terrorism policies have produced ‘suspicious communities’. They draw on the research of Breen-Smyth who extends the theoretical discussion of ‘suspect communities’, which are understood as being constructed through “mechanisms deployed by the state to ensure national or state ‘security’ and reinforced by societal responses and social practices” (Cherney & Murphy, 2015, p. 231). Cherney and Murphy (2015) argue that this not only reinforces Muslims as ‘suspect’ in the minds of the public; it also influences how Muslims perceive themselves as a ‘suspect community’. This dispersion of ‘risk’ promotes Muslims to become self-regulating and self-surveilling, for example by participating in programs that position them as inherently violent as a starting point.

According to current anti-terror laws in Australia, an individual does not need to engage in crime for their liberties to be removed. 'Risky thinking' has been legislated into existence. For example, individuals (including young people) who are *suspected* of engaging in 'terrorism-related' activities can be detained for up to 14 days without charge. Suspicion can be based on 'evidence' that demonstrates somebody is 'thinking' or planning 'violence'. The implications of these types of 'preparatory offences' have already impacted Australian Muslims. Cherney and Murphy (2015, p. 482) explain:

...while such laws on the surface appear neutral, their practical application by police and security agencies in Australia often conflates Islam with the risk of terrorism in ways that make it difficult for many Muslims to avoid police suspicion...part of a broad assemblage of tactics that widen the extent to which Muslims are subject to state regulation and surveillance.

Unlike structured risk assessments, such as the YLSI/CMI-AA 2.0, there are no clear parameters about 'indicators' or 'criminogenic risk factors' of 'terrorism'. In fact, *it is because* there are no parameters or specific 'risk factors' that it is possible to see every Muslim as 'potentially terrorist'. As Coppock and McGovern (2014) point out:

Such open-ended vagueness may not, however, be entirely unintentional, allowing as it does for the re-construction, re-interpretation and re-articulation of what constitutes 'radicalisation' and the potential widening of a net of applicability to various individuals, groups, attitudes and actions (p. 245).

The (lack) of 'evidence' and transparency on how the 'risky Muslim' is identified highlights how 'evidence' is political, and how the valuing (or de-valuing) of 'evidence-based' processes shifts and is used or dispensed with depending on subjective opinions. In reality, this means that if a Muslim is suspected of a 'terrorist act', an official 'risk score' does not determine whether or not state intervention takes place. A 'low score' does not protect the 'risky Muslim' from legal intervention. The 'risky Muslim' subject is made potentially 'dangerous' regardless of the presence or absence of any of the 'risk factors' discussed throughout this thesis. Applying 'risk' as a neutral objective reality makes it possible produce different types of 'risky' subjects, producing some as 'riskier' than others. Underpinned by racialised

constructions of the 'risky Muslim', legitimacy is given to the regulation and control of Muslim communities in Australia.

Thirdly, the YLSI/CMI-AA 2.0 risk assessment tool is an example of how 'risk' is de-gendered, as it dedicates an entire domain to examining the 'offenders psychology' ('Personality/Behaviour', p. 13), questioning the 'problems' that have been predominantly associated with 'girls' and crime, such as "*trauma*", "*anxiety*", "*depression*" and "*suicidal ideation*". Western criminology has traditionally focussed on 'girls' and crime as a '*psychological problem*' caused by 'trauma', whereas 'boys' and crime has predominantly been presented as a 'given', a taken-for-granted *social* and *legal* phenomena. For example, the Juvenile Justice Department in NSW has only ever commissioned two research projects specifically in relation to 'girls', and both of these studies make their focus the 'psychology' of 'girls'. Dixon, Howie and Starling (2004) conducted a study on 'girls' in a NSW Juvenile Justice Centre to 'investigate' the 'psychological health' of 'female offenders'. This study was concerned with the 'psychological instability' and trauma experiences of 'young female offenders'. They concluded:

These findings support efforts at broad screening and specific assessment of all female juvenile offenders. Comprehensive assessment and treatment of all symptoms should be a critical consideration to intervention efforts for this group (p. 1157).

In her study of Danish juvenile institutions, Henriksen (2018) draws attention to how 'offending girls' are made 'different':

The disciplinary machinery works through gendered practices that construct girls as different from the 'normal troublemakers' in secure care, due to their pathologies and gendered vulnerability. (p. 437)

Criminological literature has legitimised gendered logics. Since the 'causes' and 'treatment' of 'offending girls' and 'offending boys' rely on traditional notions of 'gender', the very asking of both 'boys' and 'girls' about their 'psychological wellbeing' in the risk assessment tool interferes in fixed assumptions of 'boys' and 'girls'. In other words, the asking of these types of questions suggests that 'psychological problems' and crime are related to both 'girls' and

'boys'. The psychologically vulnerable offender can be of any 'gender'. In addition, the very asking of psychological questions destabilises traditional notions of 'masculinity' (indeed ones that are reinforced in most of the criminological literature on crime) distancing 'boys' and 'men' from 'emotional and psychological damage'. In this way, risk assessments work to de-gender the 'boy' and 'girl' offender. Perhaps more needs to be done on how contemporary technologies shape and reproduce gender.

Fourthly, this thesis has demonstrated that the construction of risk assessment tools is indeed an *industry* that has produced an *industry* preoccupied with 'risk'. Monetary value is placed on risk assessment tools, profits are made, and there are wealthy individuals as a result of the 'risk' industry. For example, in early 2018, Juvenile Justice NSW created a Countering Violent Extremism 'team' to respond to the 'radicalisation problem' and introduced the Radicalisation Extremism Awareness Program (REAP), a risk assessment tool that "assists staff to identify relevant indicators of extremism to enable referral of 'at-risk' young offenders to appropriate interventions and support" (Department of Justice NSW, 2018, p. 30). In 2018, the Inspector of Custodial Services department released a report on *The management of radicalised inmates in NSW* (Justice NSW, 2018c). This report stated: "many staff expressed a desire for more training and knowledge around prison radicalisation as well as general cultural training to assist staff to distinguish between conversion, radicalisation and violent extremism" (p. 9). What is meant by 'cultural' is made more transparent further into the document: "in NSW the majority of violent extremists in custody are Islamist extremists" and "the current major threat to Australia to be violent extremism perpetrated or inspired by groups and individuals that claim to act in the name of Islam" (p. 24). In fact, there is an entire section in the report dedicated to "Understanding Muslim culture" (p. 34, section 3.2.2). Since the object of tension is presented as 'diversity' or 'difference' of 'cultures', the 'solution' then becomes one of "inclusion...At no time is the justice system examined for the ways in which it is organised to the advantage of the dominant group" (Razak, 1994, p918). Russell and Carlton (2013, p484) argue that the term 'culturally and linguistically diverse', a term often employed in Australian social policy, is appealing to policy makers because it "appears inclusive, yet it subtly reproduces the normalization of white 'belonging' and entitlement".

As discussed in this thesis, 'risk' continues to be a proxy for 'race', however is disguised in the notion of 'neutral' risk assessments. This indicates that risk assessments are becoming increasingly relied on in penal systems and are newer forms of governing the undesirables in society. In this sense, it can be argued that risk assessment tools have produced the 'Muslim problem'. Perhaps criminologists and sociologists could shift the focus of their research to make those in the market of juvenile penalty the object of analysis.

Concluding Remarks

My initial questions while I was an employee of Juvenile Justice, "who is the subject population of the risk assessment tool?" and "who is the risky child offender?" were the incorrect questions to pose. Instead, what should be asked is "which subject population is *made* risky through the YLS/CMI-AA 2.0 and "how does the YLS/CMI-AA 2.0 *make* the risky child offender?". The inverse of my initial questions was perhaps the greatest finding of this thesis. The latter questions imply a 'problem' with the tool, rather than with the juvenile offender. This re-problematisation opened up the risk assessment tool for examination in a way that would not have been possible if I had committed to my initial questions.

This is also perhaps a time to reflect on how this thesis, and the majority of the literature, research and policies on the 'juvenile problem' all exclude children and young people's own representations of the 'problems' that form their lived experience, and to consider how spaces can be made for children and young people to participate in the problematising process. However, a promising start to the above aspirations is to question the risk assessment tool rather than the subjects it produces, and to subject it to the same vigorous interrogation, examination and scrutiny as it does its subjects, for there is only one certainty of risk assessment tools: the certainty of being constituted as 'risky'.

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