

# Has welfarist criminology failed? Juvenile justice and the human sciences in Victoria ®

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## **Abstract**

In the present context of 'get tough on crime' and 'back to criminal justice' campaigns that continue to dominate political agendas throughout Australia, critics point to the inadequacy of 'welfarist' or reformist criminological and sociological theories that have informed interventions in the past, and reinforce the need for 'retributive justice' models of penal policy. This paper examines historical evidence on the role of the human sciences in juvenile justice administration during the 1940s, a formative time when psychiatric, psychological and social work expertise came together in the form of the Children's Court Clinic in Victoria. It suggests that contemporary critiques about the failure of the welfare model of juvenile justice inadequately captures the historical functioning of expertise in justice administration and the real extent to which the welfare model as 'actual rehabilitative intervention' was ever implemented.

**Keywords:** juvenile justice, expertise, social work history, social theory

The past decades of an 'uncivil politics of law and order' (Hogg & Brown, 1998) have seen the return of evil as a causal explanation of crime. Besides the commentary from

politicians and radio talk-back hosts, some criminologists also claim that 'welfarist' rehabilitation programs in the past, and the sociological theories underpinning them, have failed and, in turn, given rise to stricter so-called 'justice' approaches (Wilson, 1999). Causal explanations for crime which, according to a welfarist model tend to implicate social disadvantage and poor socialisation, are increasingly framed in terms of bio-social categories, such as personality, 'attention' and other disorders that return agency for criminal behaviour to the individual rather than social milieu (Laurence & McCallum, 2003; McCallum, 2001). Borowski (2003) claims that penal and correctional developments have become overly attached to causal explanation itself at the expense of targeted programs to prevent recidivism among existing offenders.

But is a *disenchantment of causality* leading to more profound questioning of the social scientific model for reducing crime and of whether knowledge in the human sciences – psychiatry, psychology, social work and related fields – remains a reliable way of knowing the criminological mind or the offending child? Has science failed to deliver on its promise to properly know the child, especially in relation to the potential for rehabilitation? In Australia, one answer is provided by criminologist Paul Wilson (in Alcorn, 1999; see also White and Haines 2003). Commenting on the return of the concept of evil in criminological understandings, he notes

There was enormous optimism [after World War 11] by social scientists that, by rectifying the ills of society, we could somehow eliminate a lot of what we're now calling evil. We've suddenly realised that evil is beyond social problems ... We're not, to give an example, good at sex offender programs ... They don't work. We're not very good at

changing deep-seated psychological problems, contrary to the rhetoric we had 20 years ago. Our optimism is not matched by empirical facts (Wilson, in Acorn, 1999, p. 1).

In the UK many criminologists have directly mapped the ‘collapse of faith in the rehabilitative ideal’ (Hughes, 1998:59) onto increasingly punitive penal strategies in public policy and the courts (Bottoms, 1995; Feeley & Simon, 1994; Garland, 1996). Garland (1996), for example, has argued that shifts towards punitive policies show a particular nation state’s inability to keep crime at acceptable levels. ‘Criminologies of the self’ have emerged in the UK with the attitude being that offenders are rational opportunists ‘just like us’, or alternatively ‘criminologies of the other’, wherein offenders are deemed to be evil, wicked, members of an underclass. Abandoned is the once dominant ‘welfarist criminology’ wherein offenders are disadvantaged and poorly socialised (Garland, 1996). Commenting on the decision to release the children convicted of the 1993 murder of toddler James Bulger, a UK radio host said ‘I am fully and utterly in favour of doing anything to keep those lunatics, those evil, wicked, vile people, Thompson and Venables, in prison ... I don’t think they’ve been punished in any shape or form’ (cited by Mann, 2001, page 1).

In Australia, such tendencies are evident in non-discretionary ‘three strikes’ or ‘truth in sentencing’ legislation, such as the mandatory sentencing of juveniles by governments in Western Australia and the Northern Territory. The Howard Government has given this direction through its policies relating to the mandatory detention of asylum seekers. Law and order mandates are also mapped onto the functioning of courts, producing longer average prison sentences and a decline in the proportion of successful appeals (Hogg &

Brown, 1998). In the past decade, political parties in all Australian states and territories have made policing and law and order their key policies for re-election. While there are signs of expanding prison populations longer sentences and stricter bail conditions in the adult justice system, in the juvenile population rates of incarceration have been steadily decreasing since the 1980s, with the notable exception of Aboriginal youth, and there have been positive outcomes in several states and territories with court diversion and other reforms aimed to curb the criminalization of young people (Australian Institute of Criminology, 2005). Nevertheless, political and popular debates seem to affirm Garland's (1996) claims about a weakening of the welfarist approach to justice.

The aim of this paper is to investigate the role of human science expertise in relation to justice administration during a period of reform and restructuring of juvenile justice in the 1940s in Victoria. The significance of the inquiry is to question some of the assumptions about the past contained in recent critiques of juvenile justice. For example, is it possible to make clear historical distinctions between welfarist and justice approaches in the field of juvenile justice administration? From what kind of evidence are welfare and justice models of juvenile justice constructed in Australia? Have human science led interventions in juvenile justice failed in the past? Administrative and clinical records of the Victorian Children's Court are examined in terms of these questions. The study uses the 'court clinic' as a nodal point to examine what we call the 'cross-talk' of both legal and extra-legal expertise at this time. The clinic opened in 1943 as a socio-psychological adjunct of the Children's Court, and provided knowledge about children and families in the form of written testimonies. We suggest that court evidence can be

viewed as an historical artifact, a consequence of knowledge production in the space occupied by judicial administration. But before moving to review the state of that evidence, it is necessary to examine some of the explanations for recent shifts in crime and justice policies as a way of understanding both the intellectual and political underpinnings of change in justice policy.

### **Justice policy: Historical understandings**

Penal policies need to be set in the broader context of a historical break with the 'classical tradition' of criminology and the rise of positivist criminology in the early part of the 20<sup>th</sup> century, a positivism that sought to understand biological, psychological and social factors that predisposed individuals to committing crime, and conversely made individuals susceptible to reform (White & Haines, 2001). Shifts in techniques and processes for knowing the child were understood to be motivated by a spirit of reform, in which the child was discovered as the subject of due process and later as the embodiment of a set of rights. The Children's Court was an early instance of the growth of 'informal power' as a means to achieve a moderation of behaviour and overall wellbeing, as against formal legal process (Harrington, 1992; van Krieken, 2001). As an expression of the principle of *parens patriae*, the court clinic itself might be understood as protecting a child's right to his or her childhood. But against this has been criticism that under the guise of protecting children's rights, a paternalistic and patriarchal ideology has sustained long periods of incarceration, neglect of due legal process and permanent removal of children from their families (McCallum, 2004). The large scale segregation of children

from their families throughout the 20<sup>th</sup> century was later criticised as an abuse of children's rights.

What was needed ... was a more traditional form of justice in which the state was once again limited in its powers in relation to young offenders and less euphemistic about its purpose. Punishment should be seen as just that, not treatment. Accordingly, children should be afforded full due process of law and if found guilty of a crime, should be punished neither more or less than was warranted (Naffine, 1993, p. 70).

More recent policy shifts have entailed investments in reforms focusing on risk management in prison populations to prevent recidivism (Borowski, 2003; Day, Howells & Rickwood, 2004) or, alternatively, in institutions for simply warehousing populations with little pretence of either therapeutic or punitive aspirations (Pratt, 1989). The 'science' of explaining the social causes of crime may have been displaced by actuarial calculations in which a potential offender was refigured as a cluster of risk factors, that is, as the bearer of a set of probabilities rather than the bearer of a set of psychosocial pathologies (Castel, 1991; Erikson & Haggerty, 1999; Feeley & Simon, 1994). The human sciences may be understood here as having been enrolled in the science of risk assessment, establishing categories of risk within populations of potential or actual offenders, and allocating individuals into these categories in order that they might receive appropriate programs of risk management. Simon (1988:773) argues that actuarial, risk-based penal administration increases the efficiency of power because 'changing people is difficult and expensive'. However, there is evidence that risk management, involving programs addressing the so-called criminogenic needs of prisoners has led to the removal

of more generalist education programs and therapeutic interventions in prisons designed to change the life-course of prisoners, rather than simply addressing their perceived dangerousness (Australian Broadcasting Commission, 2005).

Most commonly, however, change in justice policies has been understood as a pendulum swing between the welfare and justice models (Naffine & Wundersitz, 1994; O'Malley, 1994, 1999a & b). Here, the role of the human - social and psychological - sciences is seen as not so much discredited as ignored, that is, as a wilful ignorance that was early captured in the United Kingdom with Michael Howard's pronouncement at the time of the Venables and Thompson trial, while he was Home Secretary, that it was time to 'condemn a little more' and 'understand a little less' (in Haydon & Scraton, 2001). However, some theorists argue that shifts in penal policies are more complex than the simple dichotomy suggests, and that the large repertory of available approaches has led to diversity, volatility and incoherence in the conduct of governing crime (Garland 1996; O'Malley, 1992, 1999a). For example, O'Malley argues that justice policy reflects an uneasy alliance between neo-liberalism on the one hand, and neo-conservatism with its strong authoritarian strands signaled in such practices as retribution, restitution and incapacitation on the other. In this view, models of penal policy reflect the nature and fortunes of the particular mix of political programs with which they are aligned at the time.

As Garland's (1985) major study reported in *Punishment and Welfare* shows, we cannot take for granted the historical presence and effectiveness of those bodies of human

science knowledge, like psychology and social work, that are supposedly brought to bear on legal and administrative proceedings under the rubric of ‘welfarist criminology’. The following sketch of the operation of the court clinic, when it was first established in Victoria, focuses on that very space for the production of knowledge of the child. We seek evidence of the existence of a dichotomy between such categories as justice or welfare approaches that may be held to account for changes in policy over time, and of the particular kinds of intervention by the human sciences in the administration of children.

### **Distinguishing bureaucracy and laboratory in the Children’s Court Clinic**

Administrative and correspondence files of the Children’s Court Clinic for the period from February 1944-1948 and Clinic Case Files for the period 1945-1948, held in the Victorian Department of Human Services Archives, were examined in order to test assumptions in the current literature on the historical role of the human sciences in juvenile justice. We investigated the parameters of intervention by agencies that deploy human sciences perspectives and techniques, and the kinds of intervention that were initiated. Over 500 cases were reviewed for the study, and the cases were codified so that patterns in the conduct of court cases and investigation could be drawn out, from the initial police report, preliminary hearing of the charges, compilation of a court clinic report, disposal and sentencing, to follow-up remarks about the child sometimes months later. We use some representative instances of administrative and clinical processes to demonstrate a pattern of interventions.

Study of the archives of the Children's Court Clinic gives access to both the clinical files as well as the administrative records of juvenile justice. Indeed, the clinic is the space *par excellence* in which to view the cross-talk of judicial, educational, correctional, and health discourses that produced knowledge of the child in judicial administration. The theory and methodology of our approach is furnished by the researches of Michel Foucault and Bruno Latour. The files of a children's court - these rather 'mundane archives', to borrow a phrase from Foucault (1977) - provide a perspective on the relations between the activities commonly thought of as 'human science' and those thought to be 'bureaucratic' or 'administrative'. Through this perspective it is possible to test, rather than simply assume, the notion of the *a priori* separation of the human sciences and administration. If it was thought that the human sciences *influenced* the administration of justice, this would assume that science and administration exist as separate entities in this judicial space. But the bureau of the scientist in the laboratory and the bureau of the administrator in a bureaucracy might have more in common than we think (Latour, 1986; Latour & Woolgar, 1979).

## **The Summary Report**

In the 1940s in Victoria, each child appearing before the court would have a summary report written by a psychiatrist that would also have included a psychological report, a form showing the results of a physical examination, again usually performed by the psychiatrist, as well as a 'social report' which in earlier days had been performed by a psychologist but by the mid-1940s was carried out by the newly-appointed clinic social worker. In most cases the clinic would receive, via the Children's Court, and after an adjournment, the police statements about the child's alleged offence which would initiate a series of separate forms, detailing the statement by the child, by the arresting officer and by a probation officer if the child were already under probation. Prior to the formation of the clinic, a similar adjournment could be made for an investigation by a Stipendiary Probation Officer. But by the early 1940s it was the clinic that received all the available information on the child. The court then adjourned the case for two weeks for a special investigation by the clinic. Depending on the charge, or if the child lived in the country, the case could be remanded in the interim and the child placed in the Royal Park Children's Home.

In its constitution of a strict hierarchy headed by a psychiatrist, the establishment of the clinic marked a point of arrival of the psychological colonizing of professional social work as it disentangled itself from its roots in philanthropy and later from probation work and psychology (McCallum, 1998). In the 1940s, the social worker's investigation usually involved a home visit and an interview with the mother and, if present, the child.

It was standard practice for the psychiatrist to have a copy of the social worker's report before he saw the client, often shaping his own interview on the basis of the contents of this report. Then came a full day of testing with a psychiatric interview and psychological tests at the clinic, and the parents were often re-interviewed by the psychiatrist on this day. The psychiatrist was entirely responsible for compiling the final report back to the Children's Court based on reports from the social worker and psychologist as well as his own examination of the child. He would typically end his formal report with a recommendation either for probation or institutional treatment. Often the last entry in the file, inserted by the probation officer or social worker, was a follow-up social report by a social worker or probation officer on the progress of the child as the adjournment or probation drew to a close.

### **Impact of the Report**

From the records it is possible to identify a strong consistency in the way the probation officer, the social worker, the psychologist and the psychiatrist reported on the child despite variations between individuals in the tone and detail of the reports. All of the experts seemed concerned with reporting on the character and truthfulness of the child. The psychiatrist dealing with a case of theft and offences of larceny was concerned to try to make sense of a sub-textual or underlying problem in the child that was revealed in questioning. This was usually spoken of as a 'character defect' that would emerge in questioning of the child by the psychiatrist. Once the history showed that the 'constitution' of the child had been indelibly altered and the child had become 'habitual',

the conclusion swiftly drawn was that no amount of alteration of the social environment was going to help and that institutional placement was likely the only alternative. The identification of the 'habitual juvenile criminal' would continue a version of 19<sup>th</sup> century criminological theory that drew from notions of a 'criminal class' and endemic criminality.

The records also reveal a contrast to how different forms of offending were perceived. The clinic workers including the social worker seemed to bristle with fury and indignation at the evasiveness and dishonesty of the child thief. The response by psychiatrist and psychologist to thieving was in sharp contrast to that towards the child sex offender, who was much more likely to be received sympathetically as a subject for reform through a little education, and ignorance being the problem, Saturday morning sex education classes were typically recommended. Thieving was more likely to be read as a symptom of 'psychopathy'. Generally the term 'psychopathic' was associated with 'psychopathic heredity' and it was standard practice for the psychiatrist to investigate whether this could be traced in the family's history. Proof might be an uncle who was an alcoholic, a grandmother in a mental institution or perhaps a sibling who was mentally defective. After he had determined this, the psychiatrist's next task was to determine whether the child exhibited dishonesty, was evasive in his answers or had a record of dishonesty beyond the formal history provided in the case briefing notes. To make this determination, the psychiatrist commonly used the information in the social worker's and probation officer's reports to see if that information matched with what the child was telling him. Also, he probed the child or the parents to see if he could elicit any evidence

of stealing beyond that in the official charges. Very frequently there was reference to stealing from the mother's purse at an early age. If there were enough evidence to suggest a 'habitual behaviour' then the psychiatrist was generally uncompromising in his recommendations for institutional reform regardless of the dreadful circumstances in which the child lived.

In the manner of eliciting confessions and cross-examination using sources such as the social worker's report, the psychiatrist and his 'team' acted as part of the prosecution. He served not as an independent expert but as an extension of the prosecuting apparatus. The child would often go to court with one offence of stealing and return after visiting the clinic with a whole host of offences. Again, the social worker's report was used as a basis for the psychiatrist's questioning of the truthfulness and 'character' of the child. A typical case reproduced below indicates the kind of contribution made by the psychiatrist following the social worker's investigations.

W\_\_\_\_\_ has now reached the stage of habitual dishonesty. His conduct is unlikely to improve in the present unsettled home environment, where he is a bad example to his brother ... There is a past history of wandering away from home in early childhood. When a small boy he would steal coins from his mother's purse. At the age of eight he began stealing small articles from chain stores. At the age of ten he first got into trouble over stealing ... Conclusions: this boy is an habitual truant and an habitual thief. He is morally defective and is not amenable to control at home. Recommendation: Placement in a suitable institution and moral re-education are indicated [Note on file] Committed to the Child Welfare Department (Victoria, 1945-1948).

### **The 'cross-talk' of science and administration**

The problematic relations of human science and bureaucratic administration were signposted in the establishment of the Children's Court Clinic in Victoria. There was a clear administrative separation between the court magistrates and the clinic staff, comprising the psychiatrist, psychologist, social worker, and nurse, all of whom were employed by the Department of Public Health. But the separation was not always clearcut even in formal terms. For example, the leading stipendiary probation officer became the first psychologist appointment to the clinic. There were no clear demarcations to be drawn between human science and bureaucratic administration in practical terms, despite their formal organisational separation. The psychologist, for example, was primarily involved in an administrative task of separating the child population into manageable groups for the purposes of vocational placement; his principal piece of technology, the intelligence test, had been developed specifically for this task rather than as a diagnostic tool or for therapeutic intervention (Binet & Simon, 1948). Psychological testing had been used in Australia to assist an educational administration bogged down in its attempts to sort a newly massed population and to more speedily sift that population through a series of graded stages (Laurence & McCallum, 2003; McCallum, 1990). Testing played the same role in the court, providing an administrative device to sort between children. As a technology or practice, then, psychology was more a part of the bureaucratic administrative complex than a human science led activity. The social worker collected information for the social report which formed the basis of an interrogation of the child and the family by the doctor, which assisted the latter in making a recommendation to the court on the disposal of the child. The main task, we suggest, was to weed out those

fitting the category of 'habitual' behavioural deviations. Other than a handful of recommendations for half a dozen Saturday morning sex education classes by the psychologist, there was no suggestion at all in the records of the Children's Court that the role of the psychologist or social worker, as human science practitioners, would involve 'treatment' for criminality or anything else.

The evidence gives us reason to ask how it came to be assumed that a doctor would provide the kind of knowledge that could best be brought to bear on the successful administration of a population under legal sanction. In the early 20<sup>th</sup> century, the study of the entry of the psychiatrist into the children's court system suggests that he came equipped, first and foremost, with a set of juridical rather than scientific credentials, not unlike his membership of the jury that determined the committal of the insane in Australia at the beginning of the 19<sup>th</sup> century, he came rather as an authoritative professional male figure than specifically as a human scientist (McCallum, 2001).

Critical sociological inquiry has attempted to lay bare the techniques of intervention used in a penal system in the grip of 'welfare'. Garland (1985) distinguished between the discursive arrangements of the reformist criminological project on the one hand, and what was actually implemented and practiced in the UK penal and welfare systems in the 20<sup>th</sup> century. Garland questions an assumption in much of the history of the penal system that the so-called welfarist approach involved individual interventions – curative, therapeutic, educative, and economic - in the lives of children and families, as distinct from merely 'discourses of reform'. Similar claims have been made in the Australian

context. In New South Wales, van Krieken (1991) saw the changes in penal policy as ‘primarily at the level of language and terminology’ (p. 113) and concluded that ‘despite the lip service being paid to modernity and science, a major feature of the role of science, psychological or social, in child welfare was in fact its minimal impact’ (p. 124). Expert inquiries later in the 20<sup>th</sup> century reaffirmed the lack of direct intervention. In the mid-1950s, a major inquiry into juvenile delinquency in Victoria had, as one of its key recommendations, the expansion of the Children’s Court Clinic ‘to enable it to carry out treatment in conjunction with the Children’s Welfare Department’ (Victoria, 1956, p. 93). Later, in the 1970s, the Norgard Report (1976) in Victoria described the provision of real interventions as follows.

We cannot see that either welfare or justice is served if the lack of resources results in children being placed on Probation or Supervision Orders or being admitted to State care, only to receive little or none of the individual treatment for which the action was initiated. We do not approve of ‘benign infringement of human rights and liberties ... under the guise of non-existent therapy (p. 25).

Finally, a recent survey in Victoria estimates that on average the young adult category prisoner has access to therapeutic services while in prison for two hours hour monthly ‘if the prisoner is lucky’ (Catholic Commission for Justice, 2000, p. 6).

## **Summary and conclusion**

The Children's Court Clinic in Victoria supplied key services within the broader judicial administration of child welfare services but, despite the involvement of expertise from the human sciences did not effectively sustain 'therapeutic intervention' in the lives of young offenders. As such, welfare was not an effective counterpoint to the punitive model of criminal justice. The clinic itself provided little direct intervention in the family, and the social worker collected information required by the psychiatrist in compiling a report on family and child for the court. A specific role for the social worker was defined by his/her place in a strict hierarchy headed by a psychiatrist, signaling the further psychological colonizing of professional social work. Evidence drawn from these records suggests that claims about a 'once dominant welfarist criminology' (Garland, 1996) on the one hand, or a failure of the human sciences to curb crime (Alcorn, 1999) on the other, over-emphasise the distinction between the welfare and justice models. They also tend to understate the close relationship between the human sciences and the bureaucratic administration of the juvenile justice system dealing with children with social and behavioural difficulties. We suggest that drawing distinctions between human science and bureaucratic administration provides a limited foundation on which to understand the change in penal policies from a punitive judicial to a reformist welfare model. In the case of Victoria, criticisms of juvenile justice that presuppose the implementation of 'welfarist or social reformist criminology' in the past, or which draw support for the need for more punitive approaches on the basis of the failure of a 'welfare model of justice', are not sustained by historical evidence.

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