"BOYS WILL BE BOYS...BUT WHAT ABOUT THE GIRLS:
A GENDER PERSPECTIVE ON JUVENILE JUSTICE"

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and

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The juvenile justice system operates on sexist assumptions and practices. Young women are treated in ways that reinforce their subordination and maintain their invisibility. In this paper we are particularly concerned with the ways in which the juvenile justice system perpetuates male dominance through the denial and control of young women.

Two particular points are of interest in an examination of gender issues in the juvenile justice system. Firstly, the juvenile justice system (and the criminal justice system generally) operates as another form of control on young women. Young women who deviate from the socially defined norms of behaviour are punished and their conformity and adherence to traditional pictures of femininity is demanded.

Secondly, in relation to criminal matters, the nature of young women's offending is significantly different to young men's. Programs, policies and legislation directed toward addressing issues of juvenile offending are largely based on the experiences of young men. The nature of the juvenile justice system is such that the underlying issues that contribute to young women's presence in this system are denied. Young women's issues are not acknowledged and do not inform the strategies designed to address issues of juvenile justice.

The result of this situation is that we have very little understanding about the reasons why young women offend or become involved in the juvenile justice system generally and our responses are indicative of this. We do not explore the reasons for young women's involvement because we assume them to be the same as for young men.

Yet, what we do know clearly is that young women and young men in this society have different experiences based on their gender. It would seem naive to think that this situation was not also indicative of young people's experiences in the juvenile justice system.

It is important to note that young people have different experiences not only based on their gender but also including other crucial social dimensions, most notably race and class. In relation to gender and juvenile justice, the issues facing Aboriginal and Islander young women are massive and demand urgent attention.

"Evidence of the over-representation of Aboriginal girls, youth and adults more generally, in the juvenile justice and adult criminal justice systems in all Australian states, is overwhelming." (Carrington, 1990:10)

A detailed examination of the different experiences of young women in the juvenile justice system based on race and other social dimensions, is unfortunately outside the scope of this paper. However, these issues require equal consideration if our efforts to instil a sense of justice into the juvenile justice system are to be realised.

**YOUNG WOMEN IN SOCIETY**

Any examination of the place of young women in the juvenile justice system must locate itself in the wider women's movement with a recognition that the nature of our social system is such that women generally, suffer from patriarchal processes and structures that permeate our lives at all levels.

The women's movement has continued to highlight the interlocking network of forces that both construct and constrain the lives of women in this society. Chesney-Lind & Sheldon (1992) suggest that the low number of young women entering the juvenile justice system for criminal offences is due to the myriad of other forms of social control that impact on their

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lives. The criminal justice system has proved to be a central force in the control of women as both victims and as offenders.

In attempting to understand the situation of young women in the criminal justice system the issue of the sexual assault of young women cannot be underestimated. Feminist researchers have highlighted that the abuse of young women is an important causal factor leading to offending behaviour.

Hudson (1988) outlines that whilst young men's offending behaviour is seen in the context of being dissident or streetwise, (and in fact reinforcing his masculinity), young women's behaviour usually results from a need to escape the family.

The intervention of the criminal justice system into the lives of young women as they seek to escape the home environment is well documented. Alder & Polk (1982) suggest that the state, not only tends to intervene more often in the lives of women rather than young men, but also that this intervention is much more severe.

Another important issue in considering young women's involvement in the criminal justice system is that the structure is largely operated and enforced by white, male authority figures. In the majority of cases, young women continue to have to deal with men when they come into contact with any aspect of the criminal justice system. These male figures may often represent the adults who perpetrated physical and sexual abuse under the guise of 'protection'. These issues ensure that the criminal justice system remain difficult for young women to negotiate.

"The women in our jails are long time survivors of sexual abuse. Over 70% to 80% of the women in our jails have had their trust in close family and men decimated.... In escaping this situation young women are often criminalised, institutionalised or left on the streets." (George, 1991:9)

It is simply not possible to separate out the daily experiences of young women from their involvement in the juvenile justice system. There will be an undeniable relationship between one young woman's experience of sexual abuse and her subsequent homelessness and this may lead to her potential involvement with the court system. Whilst we recognise the need to seek out the underlying factors contributing to all young people's offending -both females and males - it is suggested that the experiences of young women are largely ignored in this system in favour of a male defined view of delinquency. This results in social ignorance of the experiences of young women who become involved in the juvenile justice system.

**JUVENILE DELINQUENCY OR MALE DELINQUENCY?**

"Girls and boys do not inhabit the same world, and they do not have the same choices. This is not to say that girls do not share some problems with boys (notably the burdens of class and race), but even the manner in which these attributes affect the daily lives of young people is heavily mediated by gender." (Chesney-Lind & Sheldon, 1992:4)

One of the clearest and most persistent themes in the literature on gender and juvenile justice is that our understandings of juvenile delinquency are not based on young people's experiences. It appears quite clear that young men's experiences define the nature of juvenile delinquency and hence the legislation, policies and programs developed. Young women's different and unique experiences are ignored and are bundled into programs allegedly for all young people. On closer reflection these strategies are in reality for young (anglo-saxon) men. Young men's experiences have been universalised to become young people's experiences.

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"The male views ... takes the activities of men to set the standard from which all human behaviour is judged." (Naffine, 1987:8)

Established theories of delinquency are based on male views and in this sense are not necessarily applicable to the lives of young women. In fact, some authors have argued that traditional theories consider delinquency as a form of masculinity, hence the notion that young women who offend are transgressing the socially defined lines of demarcation between the sexes. (Chesney-Lind & Sheldon, 1992)

The lack of recognition that young women's experiences may differ from young men's has resulted in little research or literature generally. Despite a recent increase in attention, still very little is known about the experiences of young women in the juvenile justice system in Australia.

"Often female offenders are either ignored or implicitly included in studies of male offenders and females are considered in terms of numbers and importance in explanations of delinquency. In general, female delinquency has been seen as less threatening, less dramatic and 'criminologically less interesting'" (Hancock, 1980:4)

YOUNG WOMEN AND STATUS OFFENCES

The nature of discrimination toward young women in the juvenile justice system is based on the combination of sex and status. Young women have been subjected to severe controls and infringements of their basic rights because of the paternalism of a legal system that has taken on the role of enforcer of the social stereotypes about the appropriate (sexual) behaviour of young women.

It is well known that the cost of these practices has been that young women have been brought before the courts, punished, and even incarcerated, for behaviour that, were they to be adults or were they to be male, would not be considered worthy of formal attention. This notion that boys are 'naturally' sexually promiscuous and yet girls who experiment sexually are 'uncontrollable' or in 'moral danger' is simply indicative of the double standards that plague gender relations in our society.

The efforts of many concerned workers have forced greater attention to these issues in recent times and this has resulted in changes to what was a common practice of incarcerating status offenders. (The overwhelming major of young people incarcerated for status offences were/are female.)

Whilst these changes are certainly welcome, there may still not be cause for complacency when it comes to the control of young women through the juvenile justice system. If we recognise that lying behind the regulation of female status offenders is an attitude that clearly says that young women require greater control through the legal system (and other social structures), then we must ask if these recent changes are indicative of a change in attitude or if they are simply reflective of a shift in the expression of this same patriarchal attitude.

The latter notion is certainly consistent with recent claims in popular feminist literature generally suggesting that we are experiencing a 'backlash' against the achievements of the women's movement. (Faludi, 1992; French 1992) According to this view, what has changed is the way in which the subordination of women is expressed. For example, with the introduction of anti-discrimination legislation it is no longer permissible to exclude women from education or employment opportunities on the basis of their sex. However, dramatic increases in the incidence of violence against women throughout the world could suggest
that what has changed is simply the ways in which these attitudes are manifested in our daily lives.

If we view the incarceration of female status offenders as one way in which young women's lives are intruded upon by the state for the purpose of demanding conformity to traditional gender roles, then we must ask if, and where, these attitudes are presently being manifested.

YOUNG WOMEN AND CRIMINAL OFFENCES

In relation to criminal matters, it is clear that young women are represented in far fewer numbers in the juvenile justice system. (Carrington, 1990; Hancock, 1980; Wundersitz, Naffine & Gale, 1988) Yet, it is a myth that women generally are treated more leniently or that women receive chivalrous treatment by police and judiciary. (Naffine, 1987)

Both in the area of women's criminology generally, and specifically in relation to young women, it appears that both sexes are treated in similar ways when the seriousness of the crime and the person's criminal record are accounted for. (Naffine, 1987; Wundersitz, Naffine & Gale, 1988)

"In other words when the legal response to girls is tailored to the gravity of their offending, their treatment is appropriate, not preferential." (Wundersitz, Naffine & Gale, 1988:374)

In quoting Hancock's (1980) study on rates of juvenile offending for young women and young men, Wundersitz, Naffine & Gale, state that:

"...their (young women's) recorded offences are less serious, they commit fewer crimes at any one time, and they are less likely that boys to possess criminal records. In short, punitive paternalism is thought not to pose such a problem when girls are charged with the crimes of adults. It is when they breach the sexual standards expected of young women, and are deemed to be status offenders, that the law is more clearly discriminatory in its response to girls." (1988:360)

Therefore notions that young women are under-represented by virtue of more lenient treatment in all aspects of the system - police, judiciary, etc.- are clearly unsupported. And yet, this whole notion that young women are actually more harshly dealt with in some instances, in comparison with young men, seems equally clear.

"... even if women are beneficiaries of 'chivalry' in relation to less serious offences (and this is now open to question), as soon as the offending becomes more serious or places their morality in question, they are likely to be dealt with more retributively than males who commit similar offences." (Edwards, 1984 cited in Naffine, 1987:2)

The suggestion that the state is primarily concerned with controlling and punishing young women for what are perceived to be moral indiscretions, blurs the distinction between the criminal and status issues facing young women. The process of separating out concerns with criminal behaviour and the moral welfare of female offenders becomes much more difficult. (Wundersitz, Naffine & Gale, 1988)

THE JUVENILE JUSTICE ACT IN QUEENSLAND AND YOUNG WOMEN

There are many concerns about the new Juvenile Justice Act in Queensland.

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One of the most significant aspects of the new Juvenile Justice Act in Queensland is that this legislation formalises the shift from a welfare model to a justice model in the treatment of young offenders.

The benefits of the adoption of a justice model are clear when we recognise the necessity for young people to be afforded the same rights of due process before the law as adults. However, there are two concerns that seem to stand out in relation to this new legislation.

One concern is that the adoption of a pure justice model has the potential to ignore the underlying social and structural factors that contribute to all young people's offending behaviour. Whilst this is certainly applicable to all young people, our concern is with the ways in which this process my adversely impact on young women's treatment in the juvenile justice system. This is particularly relevant for young women given that the reasons that young women offend seem to be very much related to their position in society generally, and specifically as this is expressed through family relationships.

Another central concern in this legislation is that the discretionary powers of the system, particularly the police, have not been limited.

"The Juvenile Justice Act and the Children's Court Act provides many mechanisms to hold children accountable but few mechanisms by which others may be held accountable for their actions towards children." (O'Connor, 1993:9)

Critiques of the new legislation have pinpointed this as a severe deficit in the Act. (O'Connor, 1993; Youth Advocacy Centre, 1993) Specific attention must be focused on the implications of this for young women.

Given that the distinctions between young women's criminal and status offending are not clear and also that there is such a long and damaging history of misuse of discretionary powers in dealing with young women within the juvenile justice system, this issue would seem critical.

The concern is certainly that young women's experiences in the juvenile justice system will still be open to the same paternalistic attitudes that have characterised our justice system in the past. Whilst young women may not continue to be openly charged with status offences in relation to their moral well-being / danger, there is an increasing risk that decisions to arrest young women and punish them for essentially moral crimes, such as prostitution, will continue at even greater rates.

CONCLUSION

The juvenile justice system has historically treated young women in ways that either dismiss their presence or that insist on their conformity. It would seem that the new Juvenile Justice Act in Queensland has made no attempt to rid itself of the gender bias that has been so characteristic of our legal system in the past. Nor has this new piece of legislation provided any safeguards against the continuing control of young women through paternalistic attitudes regarding issues of sexual morality.

When considering the role of the criminal justice system in the lives of young women it is imperative that we address the central issue of sexual violence and its relationship to young women's offending. Our priority must be to more actively target prevention and the punishment of perpetrators, rather than the further persecution of victims of sexual abuse. As Bargen (1993) highlights, we must stop the criminalisation of young women's survival strategies as she tries to escape violence in the home. Instead we must challenge the structural and social beliefs that perpetrate and condone patriarchal values.

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Until the importance of directing attention towards the issues facing young women is recognised, there is likely to be little change. The tragedy of this situation is that in the meantime, young women will continue to be subjected to a system that has little understanding of who they are and even less recognition of their value and strength and their right to be themselves.

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