

Dealing With Young Offenders

by
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This book is the first ever comprehensive analysis of Australian responses to youthful offending. The book contains a mixture of factual information, critical analysis, presentation of differing points of view, and the author's own opinion where appropriate.

Extensive and in-depth research is evident throughout the book. The bibliography alone occupies thirteen pages, the Table of Cases three pages, and the Table of Statistics nine pages. As a lawyer who has been practising in the area of which he writes for nine years, I welcome the publication of Dr Seymour's book as an invaluable reference work for all persons who are concerned about the seemingly growing number of homeless children and young offenders in our society. For this book places the current situation in its historical context, describes the responses now in force, discusses the complexities in a rational and informed manner, and suggests possible future directions. It also highlights the wide gap between the rhetoric and the reality which has been a feature of our juvenile justice system since its inception. While it is definitely challenging, it is a very interesting and easy book to read.

The title of *Part I* is *Historical Background* and it is divided into three categories: *Nineteenth Century Origins of the System for Dealing with Young Offenders*; *The Early Children's Courts: Rhetoric and Reality*; and *Consolidation and the Emergence of Doubts* which brings us to the present time.

The title of *Part II* is *Current Law & Practice*, and in Dr Seymour's words, "The purpose of Part II is to outline and discuss current laws and practices relating to young offenders in Australia". The majority of lawyers have no knowledge of the Children's Court jurisdiction, but this book would provide them with a foundation from which to build should they ever be engaged to defend a child charged with a criminal offence. For example, Chapter 5 summarises the law relating to police investigation of juvenile suspects and includes judicial statements about the circumstances in which admissions made by children to police should not be admitted as evidence in their trial.

But *Dealing With Young Offenders* is far more than just a practical text book. If it is an invaluable reference for practising lawyers, it should be mandatory reading for all our policy makers and politicians. In *Part III* entitled *Patterns & Problems*, Dr Seymour writes:

It is not surprising that the 200-year development of the procedures described in this book has been marked by recurrent doubts and reassessments. Either of the perspectives which have been identified — that of the criminal lawyer or of the child-saver — may be adopted by any observer and hence the problem posed by youthful offending can be regularly re-defined. Predictably, the style of analysis has, over the years, reflected the current political climate. In times of religious zeal, the emphasis was on moral reformation. Later, the advent of the social sciences produced different solutions, but the fundamental assumption — that young offenders should be helped and improved — remained unaltered. More recently, the language has changed and the talk has been of the "justice model".

The way that such changes have occurred deserves special comment. In general, decisions affecting the treatment of young offenders in Australia have been based on personal and political ideologies and untested assumptions, rather than on information about how the various systems actually work.

And further:

The influence of ideological factors is also apparent in the differing interpretations placed on the limited amount of factual information available. As two American commentators, after noting the absence of valid and reliable data on the operation of the juvenile system, have observed: "Even the few 'facts' that are available are interpreted differently by the police, prosecutors, corrections officials, criminologists and the general public."

And later on, in a section sub-titled *The Problems of Effectiveness*, the author writes:

Although the identification of the importance of ideological considerations helps to explain the development and current operation of methods for dealing with young offenders, the resulting insights produce an inescapable feeling of dissatisfaction, almost of chagrin. Ideally, a study of the kind undertaken in this book would reveal rationally planned procedures carefully adapted to the control of juvenile crime. Instead, what emerges is a heterogeneous collection of agencies and services which are the product of a process of accretion. Society continues to build on and adapt police, welfare, court and correctional practices. The resulting systems are marked by uncertainty and conflicting goals. More important, the impact of these systems cannot be measured and assessed. The researcher looks in vain for proof of a direct and observable link between the pursuit of the policies which have been described and the subsequent behaviour of children who have been the subjects of these policies. Even more elusive is the search for confirmation that the activities of police, welfare officers, panels, courts and institutions directly affect the juvenile crime rate.

Dr Seymour states that:

... continued reliance is placed on assumptions and prejudice. It is assumed that what ought to work does work. A somewhat exaggerated but nevertheless useful analogy is to regard those responsible for the formulation and implementation of juvenile justice policies as playwrights writing and re-writing a script. They do so with little regard to the play's impact on the lives of the audience (offenders and potential offenders) for whom it is intended. Their primary purpose is to produce a script which satisfies them.

Sometimes one theme has predominated in this script and sometimes another. Because questions of principle have so much influence on the selection of the themes, practical questions tend to be overlooked. It is not known, for example, whether the introduction of panels and attendance centres or the development of cautioning programmes have made any difference to re-offending rates or to juvenile crime in general. Providing rigorous answers to questions about such outcomes is extremely difficult and, as a result, the tendency is to pursue a strategy of activity rather than of search. One type of activity ensues when one theory is dominant, another when this theory is displaced. Reforms have frequently reflected no more than a desire to try something different. Often the impetus has been disenchantment with the old, rather than carefully researched findings that the new will be more effective. Unless all innovations are carefully evaluated, the haphazard patterns of the past will be repeated and the tendency to assume that good intentions have expressed themselves in significant progress will persist.

It is important that research pay particular attention to the perceptions of the juveniles involved. The ideological conflicts which have been described, and which reveal the differing assumptions and values held by police, social workers, magistrates, institutional staff and policy-makers, are not fought out in a remote arena. They involve juveniles who will place their own interpretations on their experiences in the

system. These interpretations are as much a part of the reality of that system as are the goals embodied in the legislation.

Finally, when considering the need for more precise information on the way the system actually works, it is important to stress that the necessary research should be based on a thorough understanding of the distinctive features of Australian methods. In the past this has not always been evident and today it is particularly important to be aware of the great influence which the literature on the juvenile courts in the United States is having in this country.

Too often in recent writings on children's courts in Australia it has been assumed that the problems which have been diagnosed in the United States also exist in Australia. Similarly, it has been assumed that the American solutions to those problems will work in this country. Both of these assumptions may be justified, but too little attention has been paid to testing them. There is a need for careful research describing and evaluating the various elements in Australian systems for dealing with young offenders. This indispensable foundation must be laid before imported speculations about such matters as diversion, net-widening, de-institutionalisation and high failure rates become so accepted it is impossible to see the Australian system for what it is — an amalgam of English and American systems which have been adapted to Australian conditions.

While acknowledging that "there are no simple answers to juvenile offending", Dr Seymour also maintains that "there is reason to challenge the 'nothing works' view". In his words, "The fear that 'nothing works' must not be allowed to lead to the conclusion that nothing can work." In a Foreword to the book Norval Morris, Professor of Law & Criminology at the University of Chicago writes:

With clarity and precision, Dr. John Seymour has charted the history and structure of the laws dealing with young offenders in Australia, and the realities of their implementation. His book is a necessary basis both for the understanding of law and practice in these matters and, as would seem desirable, for refashioning them to meet the serious and continuing challenges of youth crime, juvenile delinquency and child neglect.

..... the story he has to tell is not one to cheer the heart.

The picture that emerges is of States ... parsimonious of resources to meet the needs both of society ... and of many of those children (who come before the courts).

I repeat — Mandatory Reading for our policy makers and politicians. Dr Seymour identifies important issues in this book, issues which seem to be no nearer resolution now than they were at the beginning of this century.

For example, in the 19th Century, children were being charged with vagrancy and imprisoned because there was often no suitable accommodation. In the 1980's, the wording has changed but the response remains the same. Children are now taken before the court for being "uncontrollable" and locked up in a juvenile detention centre because there is no suitable accommodation for them. As Dr Seymour says, "Underlying the emerging pattern (in the 19th Century) was that awkward combination of benevolent concern and preoccupation with social control which was to characterize the provision of child welfare services" (page 25). That awkward combination remains, although in 1988 the preoccupation with social control appears to be the dominant element.

Another issue identified in the book is the fact that ever since Children's Courts were first established, there has been a regular call for presiding magistrates to be given special training. That call has still not been heeded. On page 288 Dr Seymour writes:

It seems likely that a person who combines legal qualifications with other specialist skills will be better equipped to meet the demands of a children's court than will a magistrate whose general training equips her or him to fulfil a range of functions in the lower court system. The fact that a person has the qualities necessary for appointment to the magistracy does not necessarily make that person suitable for work in a children's court. Further, a magistrate accustomed to presiding in a court for adults is likely to be imprisoned in a certain role...

What is being suggested is, if it is sought to retain and further develop distinctive courts for young offenders, that attempt is more likely to succeed if specialist appointments are made, at least in the main centres. The persons appointed should also have additional qualifications such as experience in working with young people, social work skills or a close knowledge of the child welfare system. The appointment of persons of this kind is necessary if the importance of children's courts is to be fully recognised.

The author notes as a further issue that "there is evidence that many children who appear in court do not fully understand the proceedings" (page 227). A book to be published later this year is likely to support this perception. The book is called *Children in Justice* by I. O'Connor, and P. Sweetapple, and is to be published by Melbourne Longman Cheshire. *Children in Justice* is an analysis of children's accounts of the court process and should go some way towards meeting the need for wider Australian research referred to by Dr Seymour on page 315. It seems fairly obvious that a process which is not understood will have very little impact on the child concerned.

In the words of Norval Morris, "Dr Seymour presents these important matters in historical and contemporary details: *Dealing with Young Offenders* is a model of careful, well-presented scholarship. It will be the foundation of knowledge on which future efforts to deal rationally in Australia with delinquent and neglected children will be based."

Let us hope that Professor Morris is correct.

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