

WHERE'S THE JUSTICE?: YOUNG PEOPLE, MENTAL HEALTH, AND THE LAW

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THIS PAPER IS BASED ON THE INTERIM FINDINGS OF "THE YOUNG PEOPLE, Mental Health and Criminal Justice System Project" (YPMHCJS), a one-year study currently being conducted in Victoria.

The primary focus of this paper is on young people with mental health problems who have been unable to access services that adequately meet their needs. In order to highlight current service gaps, it has been useful to look specifically at a particular group in society that has always had trouble getting services—young people who have broken the law. This paper therefore has a particular focus on young people with mental health problems who have had some sort of contact with the criminal justice system. First, however, it will be necessary to look at existing mental health services for all young people. The gaps in services that result in some of these people being caught up in the criminal justice system will then be examined.

The conclusions raised provide us with a useful critique of the deficiencies in our existing mental health services. Some of these are related to a lack of resources. Young people are seen as a low priority when it comes to the provision of services. The process of deinstitutionalisation has meant fewer inpatient services and a greater reliance on community based support services. For young people, however, these services have not been forthcoming.

The location of existing mental health services is usually within institutionalised settings and based on a medical model. The institutionalised nature of psychiatric services has often resulted in an inflexible response to some young people, and a series of gate-keeping measures that can prevent access. Those affected by this include the homeless, young people from lower socioeconomic areas, and substance abusers. Many psychiatric services also have a narrow, medicalised view of mental health. While some young people have significant mental health problems, they are often not able to access adolescent psychiatric services because they are deemed not to have a "diagnosed illness".

The existing gaps in services for young people can have three major implications. First, young people can be caught up within the adult psychiatric system, a system that is ill-equipped to deal with their needs. Second, young people without access to adequate services are driven increasingly to a crisis point that can result in suicide. Finally, many of these young people, denied support through the mental health system, can find themselves in contact with the criminal justice system. This system is not equipped to deal adequately with these young people. The ignorance of mental health problems prevalent in the general community is reflected in all levels of the criminal justice system. Current legal process does not provide a context for young people's mental health problems to be explored adequately. This can result in young people with mental health problems being caught up in the criminal justice system. This places further barriers to young people accessing appropriate mental health services.

Services for Young People With Mental Health Problems

Mental health services traditionally have been offered in specialist, state-run psychiatric facilities. With the moves towards deinstitutionalisation, however, there has been a reduction in inpatient public adolescent psychiatric services. Whilst deinstitutionalisation has led to fewer places in psychiatric units, this process has not been followed up adequately with community based support services.

It should be noted that the community, when well resourced, is the most appropriate place to provide services for young people suffering from a range of mental health problems. Few young people require specialist psychiatric services with inpatient care. However, mental health budgets in the State of Victoria continue to reflect an emphasis on inpatient care. Currently, around 80 per cent of funding is still geared toward the large state-run institutions. Only 2.6 per cent of the mental health budget goes to the community managed support services, with only a few of these services offering any programs for young people. This means that support services for young people often are not available, or are inadequately resourced. Moves toward deinstitutionalisation are to be applauded, but only when the process is accompanied with a genuine shift in resource allocation.

Young people with mental health problems and psychiatric services: the gate-keeping strategies

Some young people are at an extreme disadvantage when it comes to locating mental health services that meet their needs. Many of Victoria's decreasing public adolescent psychiatric facilities appear to be inaccessible to young people who are homeless, who come from lower socioeconomic backgrounds, who are from broken families, or for a range of other reasons. This is disturbing, given that research has suggested that the young people who are traditionally excluded from services have a higher incidence of mental health problems (Elliot et al. 1989).

Socioeconomic factors and mental health service provision were highlighted in "The National Youth Survey", a longitudinal study of American youth. The study found that lower class young people have a higher identifiable incidence of mental health problems than middle-class young people. However, it found that the middle-class youth utilised mental health services more often than lower class youth (Elliot et al. 1989). These findings were supported by a Western Australian study (Cook 1988), which discussed improvements in child and adolescent psychiatric services, but highlighted young people who were socially disadvantaged as not utilising these services.

Institutional settings—a major deterrent for young people

The traditional setting of the majority of the State's adolescent psychiatric services is medical and institutional. Many of the institutions are large, or they are placed within general hospitals. As a consequence this places restrictions on some young people, who can find it difficult to access services so located. The medicalised nature of many of the adolescent psychiatric services provides a major deterrent for some young people. These include formalised admission procedures and lengthy waiting periods. Many adolescent psychiatric units consulted in the study had waiting periods of two to three months. Homeless young people who may have difficulty when it comes to making appointments in the long term, or who are put off by formalities, are at a particular disadvantage.

Finally, access to the larger hospital-based services seems to be geared more to adults, either parents or service providers. This is based on the location of the services and the procedures for entry. It would take a very motivated young person to access these services without the support of a well informed adult.

The family in treatment

Adolescent psychiatric services have traditionally required that a patient's family is involved in therapy. Although said to be changing, this still appeared to be the preference of most of the adolescent psychiatric services consulted during the study. This is based on the assumption that treatment is only really effective when the family is involved. This reliance on family poses a number of problems that can prohibit access to services for some young people. A commitment from a family to be involved in treatment implies a time and money component. For people from low income groups these costs could be a significant prohibitive factor.

Another problem with a reliance on families in treatment occurs if you do not have a family, or if your family is just not interested in being involved. A young person may also have good reasons for not wanting his or her family to take part in treatment. For example, homeless young people forced to leave the family home because of physical or sexual assault may have grave concerns about involving an abusive parent in treatment. Such a requirement restricts the choice of service available to young people. It could also be argued that for many young people the family has ceased to be the most

significant influencing factor in their lives once a certain age has been reached. Often a young person's peer group has a far greater impact upon him or her.

The secure and stable home environment

The requirement by most of the adolescent services that a young person have secure housing before treatment is offered is another measure that can keep some young people away from services. The importance of secure housing cannot be underestimated when it comes to a person's mental health. Generally, it would be desirable for a young person to have a stable home before treatment commences. However, sometimes this is not possible. For some young people a mental health problem might need to be addressed before they are able to access a housing service; for example, in cases where a person has extremely challenging behaviours. Overall, this factor has the tendency to encourage Community Services Victoria (CSV) and psychiatric services to avoid taking responsibility, placing the young people concerned in a "Catch 22" situation. This effectively excludes them from any service.

The issue of guardianship

For the adolescent services which are (reluctantly) prepared to admit young people where there is no family involvement, the issue of guardianship is another prohibitive factor. There is a requirement that a young person has a guardian who can take responsibility where necessary. CSV has the power to take on this role, particularly in cases where there are protective issues involved, but is often reluctant to do so.

Some organisations consulted during the YPMHCJS study discussed CSV's reluctance to deal with protective issues after a young person had turned fifteen years of age. The reluctance was amplified when a young person had been caught breaking the law. Current Victorian legislation means that seventeen-year-olds are not eligible to have guardianship vested by any department. For young people who do not have the active involvement of a parent, this can pose significant problems. There is a reluctance by adolescent services to admit people on an involuntary basis (which is what is required if a parent is unwilling or unavailable to provide consent), hence there is a tendency for this group of young people to be denied services at these facilities.

Mental health services for young people awaiting legal proceedings

Another major concern identified during this study was the reluctance by adolescent psychiatric units to accept young people awaiting legal proceedings. As will be discussed later, this can result in some young people being unnecessarily detained within the criminal justice system. What was particularly disturbing was that this practice can also extend to young people who have been victims of crime (for example, survivors of incest). This was on the basis that a young person may be removed from the family environment if CSV were to become involved. It was also felt that allegations needed to be addressed in court before treatment could be offered.

Inexcusably long waiting periods for psychiatric services also had the effect of streaming some young people with mental health problems into the criminal justice system. In one instance, a fifteen-year-old male was involved in a serious shooting. He was identified as having a serious mental health problem and being a potential danger to both himself and the community. The magistrate deferred sentencing for three months until he had sought psychiatric assistance. However, when he was referred to the local psychiatric unit he was placed on a three-month waiting list.

To exclude young people in these situations goes against the United Nations Charter on the Rights of the Child, of which Australia is a signatory. It also contradicts the Victorian Government's social justice strategy in relation to providing equal access to services.

Other deterrents to adolescent psychiatric services

Other barriers also exist for young people with "dual disabilities". Young people who have an intellectual disability coupled with a mental health problem, are often excluded from services at adolescent psychiatric services. The situation is often worse for young people with borderline intellectual disabilities. These young people can find themselves trapped between two systems and receive help from neither.

Age can be another barrier to access. Many adolescent services do not see young people in the seventeen to eighteen-year-old bracket.

Similar problems also exist for young people who are substance abusers and who have a mental health problem. Given the close link between substance abuse and crime, this service gap increases the likelihood that a young person's needs in this area are met inappropriately through the criminal justice system. The nature of the state's adolescent psychiatric units usually means that they are unable to provide a service for young people exhibiting aggressive behaviours. As will be described later, this can result in young people entering the adult psychiatric system.

A fifteen-year-old male who, at the time of contact, was being discharged from an adult psychiatric facility was deemed unsuitable for an adolescent psychiatric service because he was "too young". The young person was on probation and facing other charges. He had no stable home environment to return to. It is easy to see how this young person could find himself within the juvenile justice system. He was suffering from a severe mental health problem that had in the past contributed to his offending behaviour. Without support and a home, it was unlikely that he would last long before coming to the attention of police.

Personality disorders

During the study, a number of youth supervision units reported that in some cases the label "personality disorder" was being placed on their clients. This often had disastrous results for the labelled young person. In one case, a young person had previously been hospitalised in an adult psychiatric unit and assessed as "schizophrenic". After a stint of law-breaking he was given a sentence in a youth training centre. A referral was made to the psychiatric

unit he had previously attended. However, the young person was now assessed as a "sociopath" by this unit and therefore was not seen as suitable for treatment. Whilst it is not possible to determine the appropriateness of these assessments, it seems possible that a person's mental illness could be cast as a personality disorder as soon as that person offends.

The Garry David case has also begun a debate that has seen a further withdrawal by mental health professionals from "treating" people with personality disorders. No longer defined as "mad" by the 1986 Victorian Mental Health Act, the response of psychiatrists to people with the sometimes dubious title of "personality disorders", has been to refuse treatment. These people are now seen to fit into the domain of the criminal justice system. The Victorian Law Reform Commission's (1990) report on this subject discussed the importance of not refusing hospitalisation to a person suffering a personality disorder, where other criteria are met.

Private mental health services

It is disturbing to note that more inpatient services are provided for young people in the private sector than in the public sector. This has a number of implications relating to the services received by young people. Private services exclude young homeless people and most families on low incomes because of the financial outlays required. For example, the average cost per day for Pathways, a Melbourne clinic, is over \$500. It seems possible that the provision of private psychiatric services could result in different outcomes for the children of higher income earners who are caught "acting out". They may have a greater chance of being "treated" in a private facility rather than "punished" in the criminal justice system.

These deficiencies in service provision can have three major consequences, a young person will end up in an inappropriate adult psychiatric system; within the criminal justice system; or finally they may take their own lives.

The Adult Psychiatric System as a Catchment Area

A significant number of young people is ineligible for adolescent psychiatric services because of the gate-keeping measures highlighted earlier. For these young people the long-term prognosis appears bleak. In an address to the Federal Human Rights Commission Inquiry into Mental Illness, Professor David Leonard (1991) outlined the dangers for adolescents placed into adult services. These included assault by chronic patients, and the development of inappropriate behaviours including self-mutilation or violence. Treatment in such a setting could actually do more harm than good. Post traumatic stress syndrome is the name given to a condition that follows a "harmful" stay in a psychiatric hospital. The recent audit of Victoria's psychiatric services painted an even grimmer picture of the abuse faced by residents in the State's psychiatric hospitals (Health Department of Victoria 1992).

Young People and Suicide

One implication of not having a range of mental health services for young people experiencing mental health problems is that they might take their own lives. This might result from a severe mental illness. However, during the study, many youth services talked of the frustration of trying to refer a young person who was suicidal, but not seen as "mentally ill", to psychiatric services. In a number of cases young people were refused services only to attempt a suicide soon afterwards. The Australian Bureau of Statistics figures show the rate of suicide for young people aged between fifteen and nineteen, has increased 100 per cent since 1965. Suicide is second to motor car accidents as the most common form of death for young people. The suicide rate for fifteen to nineteen-year-old urban males increased by almost 100 per cent between the periods 1968 and 1988. The increase for rural youth was 500 per cent in the same period (Dudley 1992, p. 83).

The Criminal Justice System as a Catchment Area

Kosky et al. (1990) found that young people in an Adelaide youth training centre had emotional and behavioural disorders at a comparable level to young people attending adolescent psychiatric services. They found that most of the young people remanded in custody came from a "chaotic social background and were without education and family support" (Kosky et al. 1990, p. 24). Studies in the USA showed distinctions on the basis of race. Lewis et al. (1980), in a comparison between adolescents in a State psychiatric hospital and a correctional facility, found that both groups had essentially the same characteristics with regard to psychotic symptoms and offending behaviours. The study found that white adolescents were more likely to be hospitalised in the psychiatric hospital, while black adolescents were more likely to be incarcerated in the correctional facility. It would be interesting to compare these results with the situation for Aboriginal people, given their over-representation in the criminal justice system.

Some factors responsible for apprehension

Acting out resulting from a "psychotic episode" Young people who are experiencing episodes of a serious mental illness may commit offences that are entirely related to their illness. As Anne Deveson (1989, p. 169) recalls in her account of her son Jonathan's schizophrenia:

their crimes are usually petty ones—failing to pay a bus fare, petty theft, vagrancy—the kind of crimes that Jonathan kept committing. A young man picks up a brick and smashes the plate glass window of a retail store because he sees a dinosaur jumping out at him. A young woman is repeatedly arrested for walking out of restaurants without paying because she believes she does not need to pay. She says she is the reincarnation of Jesus Christ.

Depression, aggression and crime During the YPMHCJS study, some young people linked their criminal activity with factors such as depression or substance abuse. Studies have identified young people as more likely than the general community to suffer from depression (Howard 1987). These studies also link depression with substance abuse. Depressed young people would actively seek exciting activities that were often illegal or dangerous. These activities could often be exacerbated by substance abuse. Depression can also lead to young people, especially young males, displaying aggression towards others. Young people also cited boredom as a contributing factor in substance abuse and crime.

Homelessness Young people with mental health problems make up an increasing number of the homeless population, both in Australia and overseas (for an Australian example, see Herrman et al. 1990).

The report by the Human Rights and Equal Opportunity Commission (HREOC) (1989) *Our Homeless Children*, found that young homeless people had a greater likelihood of being involved in the criminal justice system. This was related to the greater visibility of homeless people and hence their increased likelihood of being detected by police. Young homeless people are also forced into crime because they lack an adequate income, or because of a need for shelter, which might result in an apprehension for trespass. For a variety of reasons, these problems are exacerbated for homeless young people with mental health problems (who have a higher rate of apprehension and detention).

The HREOC report (1989) also found that young offenders, after being placed in correctional institutions, were generally at a higher risk of homelessness because of the lack of special programs on release. It also appeared to be the case for young people leaving wardship. This displays quite clearly how the state, through neglect, can aggravate a young person's mental health problems, by releasing them into homelessness. It also stamps an inevitability on a young person re-offending because of his or her lack of secure housing.

The Police as the first Point of Contact

In attempting to determine why some young people with mental health problems might be inappropriately streamed into the criminal justice system, it is useful to look at police involvement with this group.

As already discussed, mental illness can increase the risk of arrest, particularly if a person has the added disadvantage of being homeless. Several studies have displayed the difficulties faced by police in determining the incidence of mental illness when dealing with the public (see, for example, Teplin 1984). By not being able to identify when someone has a serious mental illness, police may have a tendency only to act on an offending behaviour.

The YPMHCJS Project is currently undertaking research to determine the level of understanding of mental illness by police in Victoria. Early

indications suggest a major need for training about mental illness. Training would need to promote skills that enable a greater understanding and awareness. However, there is also a significant need for police to have a clearly defined set of procedures in relation to dealing with this group. Where these are not available, a lack of uniformity in police responses can result. Often, however, no amount of training for police will provide alternatives to detention. At present, because of the service gap in generic youth housing and specialised mental health services, very few options exist. In particular, young people with extreme behavioural or emotional problems, but not suffering from a "diagnosable" mental illness, provide police with few alternatives. Dr David Wells, the Chief Police Surgeon, consulted during the YPMHCJS project, described attempts by police to access psychiatric services as a "nightmare", particularly adolescent services. He viewed many of the existing services as "inflexible" when it came to admitting people.

During the YPMHCJS study, police described the hours spent driving from hospital to hospital, trying to find a place for someone in an acute condition. This also included travelling to country areas when city hospitals could not be accessed. The trauma in these instances could only exacerbate existing conditions.

The Children's Court

Magistrates appear to have the same difficulty as police in dealing with this group of young people, particularly those with extreme behavioural problems. The high number of young people with mental health problems in correctional facilities suggests that magistrates have, in the past, lacked specific skills in identifying mental health problems and/or lacked suitable options regarding alternatives to incarceration within a youth training facility or prison. The lack of alternative options for magistrates was raised during the YPMHCJS study and reflected the concerns raised in other studies (for example, the Social Development Committee, 1991). In particular, young people who were described as "seriously disturbed" and who could pose a risk to society, posed significant problems.

Observations conducted during the study have shown major difficulties for young people to receive a fair court hearing. Young people had limited opportunities to speak with duty lawyers. Often young people stated that they were encouraged to plead guilty to charges they did not commit, in order to get a lighter sentence. It seems unlikely that young people's mental health problems would receive much attention in a system that allows little examination of the young person's life situation.

After the Institutions³⁴ Young People in the Community

Young people face a gamut of problems when they re-enter the community after a stay in a youth training centre or a psychiatric facility. These include a lack of housing, vocational and financial options. Being labelled "young offender" or "mentally disordered" excludes these young people from a range of opportunities and services available in the community. Any additional

problem or disability the young person might have places further restrictions on the community resources that are available to this group. An amazing array of official and unofficial restrictions can face a young person trying to gain access to services. These include restrictions for substance abusers, people with psychiatric problems, behavioural problems, and dual disabilities. Age is also a restriction. All too often these restrictions force the young person back in contact with the criminal justice system. The increased pressure of living in unsupported and unstable environments can also exacerbate mental health problems.

Strategies to Deal With Mental Health Problems

Society has a number of choices in the way it deals with mental health problems. Problems can be responded to when a crisis point is reached, in a residual or "band-aid" manner. Alternatively, a problem can be viewed in a more comprehensive manner that takes into account the variety of contributing factors related to mental health problems.

Structural factors can contribute to less than optimum levels of mental health for society as a whole. For example, unemployment is a situation that can contribute to or result in mental health problems. However, given the current high levels of unemployment, there is little that young people can do on an individual level to address this. The issue of homelessness is another crucial variable that can have a detrimental effect on mental health. Power imbalances based on gender also have a negative impact for some. Structural factors therefore need to be placed foremost on the policy agenda regarding how our community deals with mental health problems.

The variety of systems that interact with children and young people need to be examined and healthy outcomes encouraged; for example, relevant educational opportunities and family support needs to be available. Where intervention is necessary, different systems (like mental health and welfare systems) need to be able to interact in a positive and beneficial manner. It is also necessary to improve the relationship between the various systems to ensure that young people receive the most appropriate services. High risk areas, low income areas, for example, need to be highlighted. Finally, individuals need mental health services that are relevant to their life situation, not just for the best possible outcomes for psychiatric services. Services need to be accessible to individuals, alone or with their families or with relevant peers.

Financial cost cannot be used as a justification for a shortfall in services. The cost of keeping a young person in a youth training centre is high. Some of these young offenders go on to serve time in adult prisons. Therefore, the long-term expense that can result from not providing services that prevent people with mental health problems from entering the criminal justice system, or by not addressing young offenders' health needs once they are within the system, can be astronomical. Most importantly, the human costs can be devastating.

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