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Out of sight, out of crime: The regulation of youth space

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Out of sight, out of crime

The regulation of youth space

Move along now

Beamish Street, the main street of the shopping center in Campsie NSW, is sporting some brand new signs stating, 'Loitering Prohibited In This Area'.

Similar signs have also been erected in other suburbs such as Belmore, Punchbowl and Wiley Park which come under the jurisdiction of Canterbury City Council.

The definition of 'loiter', according to the Oxford dictionary, is to; "hang about, linger idly, or travel about indolently with long pauses".

According to this definition, shoppers would be in direct contravention of the Council sign if they stood around in its vicinity talking to their next door neighbour or other friends, family, or acquaintances they had run into.

They would also contravene the sign if they meandered along window shopping, as this could satisfy the part of the definition, 'travelling about indolently with long pauses'.

Also, a mothers' and children's group meeting up at the front of McDonald's before going in for a child's birthday party, would be in contravention of the sign erected there.

Similarly, a group of old age pensioners meeting outside the railway station in Belmore, Punchbowl or Wiley Park as their rendezvous before going to their weekly game of bingo would be in contravention of the sign erected there.

Furthermore, the Belmore Open Cricket team waiting on a corner of Canterbury Road, Belmore, for their club minibus to pick them up to go to their match, would be in contravention of the signs posted along Canterbury Road.

Discussion Question

What other scenarios can you think of where different groups of people could contravene the Council signs while out and about in Beamish Street Campsie, Canterbury Road Belmore, or in the vicinity of the railway stations at the suburbs mentioned?

What the law says

There is no law at present which says that it is an offence to 'loiter'. However, under the Local Government Act NSW 1993 s632, 'A person cannot act contrary to an erected notice of Council'. The police have the power to enforce this Act.

Discussion Questions

1. Consider s632 of the Local Government Act NSW. Does this give a local council the right to erect any sign it wishes?
2. List a range of signs that a local council could, if it saw fit, erect under the above Act.
3. What do you think would be the parameters of the types of sign a local council could erect?
4. What does the term 'ultra vires' mean and what would be an example of how it operates with regard to local councils and their signs?

The legal reality

To date, there is no record of shoppers stopping to chat in Beamish Street being cautioned or fined by the police.

Nor is there a record of window shoppers, mothers' and children's groups, bingo-playing old age pensioners or sporting teams being cautioned or fined by the police.

In reality, the signs were erected as a direct response to complaints made to Canterbury City Council by shop owners and residents about two groups of the public specifically.

The first group, (for whom the signs along Canterbury Road, particularly along the Belmore stretch, were erected), is that of prostitutes, (which is not the focus of this article).

The other group they were erected specifically for is the 'youth' of the area.

Shopkeepers had complained that groups of young people hanging around in the main street were bad for business. Residents had complained that they felt threatened by the presence of youths hanging around in the streets and congregating outside railway stations.

The signs which have been erected in Beamish Street are not simply outside shops normally frequented by the general public, but have also been put outside places that young people in particular would normally gather, such as 'Time Zone', other amusement centres and McDonalds.

Young people congregating in the vicinity of the signs, are told by police to 'Move Along Now'.

Research Exercise

1. Consider the legal definition of discrimination.
2. Consider the Commonwealth Acts and NSW Act on discrimination and determine whether the enforcement of the Council signs by targeting young people can be described as illegal discrimination.
3. If you have decided that an illegal discrimination exists, is it direct or indirect discrimination? What is the difference between the two? Can you give examples of the difference?
4. Although not the focus of this article, consider also the legal situation of the prostitute who was recently fined and then arrested for continued breach of the no loitering sign while working on Canterbury Road, Belmore. This person's appeal was listed for hearing by the Court on 28/2/98. What was the result of her appeal?

The Public, Public Spaces and Public Nuisance

The Oxford dictionary definition of 'the public' is "people in the community as a whole".

The definition of 'public spaces' is "places people, as a part of the community, have a right of access to".

Young people are often perceived as a separate group to the rest of the community rather than as a part of it.

Those who view things this way do not consider young people as a part of the public and do not recognise that they have the same rights as other members of the public to access public spaces.

Therefore, public spaces in many instances are seen as places for members of the community generally, but not as places for young people to be hanging around.

The very existence of groups of young people gathering in public spaces, has somehow in the minds of many people, become synonymous with 'public nuisance', the definition of which is "an illegal act against the public generally".

Assignment

1. For some years now the media has constantly reported that there is a rising 'youth crime wave'.

Outline what youth crimes the media report as being on the rise.

2. Outline the extent to which you think the media are responsible for young people being perceived as a separate group to the rest of the community?

3. Consider the extent to which you think the media have been a manufacturer of panic about young people in the minds of the 'public'.

3. State what purpose you think it would serve for the media to create such panic?

Essay Question

Does the reporting of crime affect the way in which we think about crime and law and order issues generally?

Evaluate the following two arguments in light of the question and provide examples relevant to your evaluation.

1. People are led by the media to hold the opinions being promoted by the media. Therefore, the media manipulate people and dictates to them what they should think;

2. Individuals are not easily swayed by the media but rather, seek out material from many sources and come to their own conclusions.

Keep on moving

Another legislative attempt to regulate young people's use of public spaces was the enactment of the *Children (Parental Responsibility) Act 1994 (NSW)* (the Act) which has been piloted in the towns of Gosford and Orange.

This could be seen as a direct response to two things:

1. an article published on 17th November 1994 in the *Daily Telegraph Mirror* with the title of 'City of Fear'. This article was based on a survey on community fear of crime conducted by the NSW Police Service. What it did was sensationalise, and by doing so, perpetrate, the prevailing myth held by the community of a 'juvenile crime wave';

2. this article was published in a climate of political vying for votes in the coming State election in March 1995, much of which was based on law and order 'get tough' rhetoric.

The Government and the Opposition at the time, both promised voters that, if elected, it would stamp out juvenile crime by introducing increased police powers against young people.

Thirty five days after the newspaper article, the Act was passed by the Government as a part of its 'get tough' vote catching platform.

What the law says

Part III of the Act allows for the removal by police of chil-

dren under 15 from public places at certain times if:

the child is not under the direct supervision of a responsible adult;

and

police consider that removal of the child is necessary to reduce the risk of a crime being committed or of the person being exposed to some risk.

The child is removed by police to their home, or if a parent/carer is not home, then to a prescribed 'place of refuge', which does not include a police station but could include a juvenile justice detention centre if necessary.

Under the Act the young persons may be held at the place of refuge for up to 24 hours and no provision is made for them to access legal advice and/or a court. Furthermore, it is an offence, punishable with detention and a \$500 fine for them to attempt to leave, or leave, the place of refuge.

The legal reality

This Act leaves it up to police to determine whether a young person under 15 is at risk or poses a risk.

It is important to note that as a means to protect young people at risk in public places, this Act was not necessary. Police already had sufficient power under sections 60 and 61 of the *Child (Care and Protection) Act 1987* to take action in circumstances where a young person under 16 is at risk.

Therefore, the reality is that this Act is aimed at regulating the presence of young people in public spaces.

Young people often hang out together in groups in public spaces for free entertainment and social interaction. The Act makes this behaviour the legitimate subject of police surveillance and intervention.

It allows the police to decide whether young people's behaviour is appropriate in a public space. This means that a youth engaging in behaviour, which is not illegal but is contrary to what police think is appropriate, could be apprehended nevertheless.

This also means that a young person doesn't actually have to do something illegal, to find themselves confronted and removed by police to their home or place of refuge where they will be detained. It need only be that the police believe that a crime might be about to be committed. In fact, young people congregating in a group may be sufficient grounds for a police officer to act under this law.



Discussion Questions

1. 'Nobody Listens', a report produced by the Youth Justice Coalition (NSW) and the Youth Action and Policy Association in 1994, was based on the findings of a survey of 141 young people aged 12 to 18, from urban and rural areas in NSW.

It describes police contact with young people as 'vigorous to the point of harassment' which is seen by the young people as unfair and intrusive.

Do you think that the Children (Parental Responsibility) Act does anything to alleviate this situation?

2. Do you think it does anything to change the perception of many young people that they are not accepted as a part of the community?

3. Do you think this Act leaves itself open to 'differential policing', i.e. the law being applied to groups of young people with particular ethnic, cultural economic or social backgrounds in different ways?

Give reasons and examples for your answer.

4. Do you think that the Act takes into account the fact that for some young people their home is not a safe place for them to be?

5. Part of the thrust of the Act is to make parents 'more responsible' for the behaviour and actions of their children.

In what ways does the Act try to do this?

Do you think this is realistic?

What are the major problems with this initiative?

What would have been a more realistic approach?

Research Question

In December 1997 a new Act on the subject was passed.

1. What is its title?

2. It doesn't change the situation very much, but it does make some changes. What are they?

3. Why have these changes been made?

4. What are the problems with these changes?

5. What is the process that has to be followed if an area wants to invoke the Act?

The Right to Rights

There are no rights of children specifically entrenched in the Australian Constitution, nor are there any Bills of Children's rights in any Australian jurisdiction.

However, young people are entitled to the same freedom of movement and association as other members of the community. This should only be restricted at the point where illegal behaviour is occurring.

In effect, the Children (Parental Responsibility) Act breaches numerous articles of the UN Convention on the Rights of the Child, these include:

- the right to freedom of association and freedom of assembly;
- the right not to be subjected to arbitrary interference with privacy;
- the right not to be subjected to arbitrary apprehension; and
- the right to be treated with dignity.

Furthermore, to punish people because they 'might' commit crimes, rather than for crimes they are proved to have committed, is a breach of fundamental human rights and contravenes the following International Conventions: *Universal Declaration of Human Rights 1948 (Art 9)*,

International Covenant on Civil and Political Rights 1966 (Arts 9 and 17), *Convention on the Rights of the Child (Art 37B)* *UN Standard Minimum Rules for the Administration of Juvenile Justice 1986 (Rule 13)* *UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (Rule 17)*.

Over 30 years ago the United Nations endorsed the Declaration of the Rights of the Child. Its Convention on the Rights of the Child is seen as a significant landmark in the appreciation of children's rights. Australia actually played a leading role during the ten years it took to draft the Convention.

Also, Australia is a signatory to the other international declarations, conventions, rules and so forth mentioned in this article.

It is curious then, that given Australia's commitment to the international instruments of rights, at the national level the rights of young people are increasingly being denied.

Clearly, an unenforceable right is a useless right.

Essay Question

Following High Court decisions such as in the *Tasmanian Dams Case (Commonwealth v Tasmania (1983) 46 ALR 625; 158 CLR 1)*, it is clear that Australia's ratification of international conventions enables the Federal Government to make laws in areas which have traditionally been regarded as State matters.

The Federal Government has been called upon to make laws where it believes the pressure and expediency of local politics has blinded legislators to their greater responsibilities.

Consider the above and formulate an argument either for or against the Federal Government overriding the State legislation discussed.

Supply and Demand

High density living, an acute shortage of specific places for young people to gather, and a number of other factors continue to force young people to seek public spaces to spend time. The demand of young people for access to public spaces is therefore increasing.

At the same time, the supply of public spaces for young people is constantly diminishing with the introduction of no loitering signs and the use of the legislation discussed.

Another important factor causing diminishing supply however, is the decrease in publicly owned community space as privately owned space increases.

A recent example of this was the demolition of the public basketball and other sport courts at Darling Harbour in Sydney to make way for the privately owned Sega World Complex.

This was a place constantly frequented by large numbers of young people playing various sports both on a competitive and ad hoc basis. However, it was not just a public space for sports playing, but also provided a much needed space for young people to find some free entertainment, hang around and socialise.

Increasingly, privately owned shopping centers, malls and amusement centers are being constructed in places which were once public spaces.

As a result, the regulation of youth space has fallen increasingly into the hands of private security guards who have been employed to monitor and manage the use of space at these venues.

Many young people have gone to their local shopping mall to shop and/or socialise only to find that they have been told to 'either buy something or leave' by security guards. At the same time, it was apparent to them, that other groups of people standing around chatting, or just looking in shop windows, or sitting down on communal seats, were not approached by the security guards at all.

Consequently, these young people have felt that rather than be accepted as members of the local community with a right to frequent such places, they are not seen as a part of the community and not entitled to the same rights.

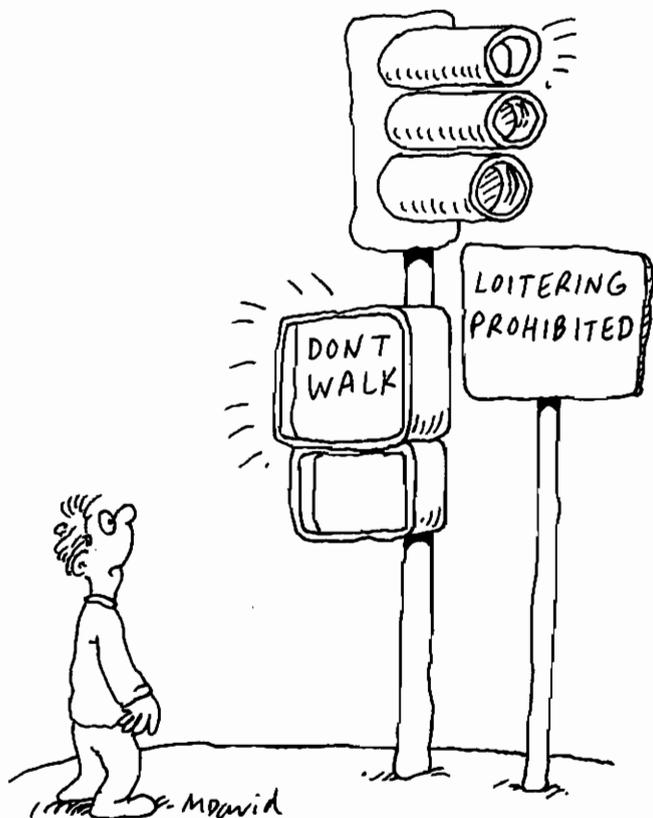
Class Assignment

Make a list of places that you are aware of that were once public spaces in your own area, or otherwise, and are now venues which are privately owned.

Essay Question

"The greatest crime of young people today is visibility".

Evaluate this statement with reference to examples to support your argument.



Prevention of Crime

Since the 1990's 'law and order' discourses have predominated in the NSW political sector and have taken precedence in media headlines.

Within this scenario, claims of 'youth anarchy', 'youth gangs threatening the public', 'juvenile crime waves' and various moral panics over the state of young people, have featured regularly.

This has gone hand in hand with concerted campaigns to restrict young people's presence in both public and private spaces and to make many young people feel unwelcome where the rest of the members of the community are welcomed.

The regulation of youth space has become the 'catch-cry' to quell the troubles of youth that the politicians and the media seem determined to convince us that we have.

In reality, close consideration of crime statistics does not reveal anything like a 'juvenile crime wave'. Statistics do indicate an increase in crime, however, adult crimes are far more numerous than juvenile crimes.

The statistical increase in juvenile crime is perhaps more reflective of an increase in the rate of apprehension of juvenile offenders, due to changes to legislation, tougher law and order policies and a greater willingness to report young people for crime, than an actual increase in crimes being committed.

Having noted the above, however, that is not to say that prevention of crimes committed by juveniles is not a legitimate goal of governments.

What governments need to do is consider what economic, social, educational and other factors contribute to the occurrence of juvenile crime. They then need to formulate policies and programs with the aim of addressing these factors.

Juvenile crime can not be solved by simply allocating funds implementing legislation addressing offending behaviour by young people and in doing so alienating them from the rest of the community.

What needs to occur is the promotion of the harmonious development of adolescents as innate and responsible members of the community at large. By such an approach, successful socialisation and integration of all children and young people will hopefully be attained and as a result, juvenile crime will decrease.

Discussion Questions

1. What factors do you consider contribute to the incidence of juvenile crime?
2. How should these factors be dealt with by the governments?



Law Week will be held this year from 10 May to 17 May. Get your school involved in Law Week by having:

A lawyer as a guest speaker for your class; A Mock Trial in your school or a School Parliament to debate the "New South Wales Nationhood Bill 1998".

For further information about Law Week contact:

The Law Week Co-ordinator,
The Law Society of New South Wales,
170 Phillip Street, Sydney, 2000
Telephone: 9926 0287 or Fax: 9231 5809