

The ebbtide of responsibility

Andrew Hamilton 28 July 2021

The frustration with recurrent lockdowns in Australia is not unique. It is experienced also by people who advocate for social change. Underlying the frustration occasioned by COVID is the fragility of assumptions previously taken for granted. We had come to see the trajectory of our lives and society as an uninterrupted journey that would lead smoothly to a better future. We were the drivers who could moderate its speed and map its path around obstacles. Our experience of living with coronavirus, however, has not been progressive but tidal.

The tide comes in with energy and carries us forward, but then recedes leaving exposed the sand previously watered, only later to return. Like King Canute, we



are not masters of the tides but on them are carried in and out.

This experience is painful but familiar to those who come close to people who are seen as different and who seek more humane and rational treatment of them. Those pressing for a more just response to people who seek protection in Australia, for example, have seen small

incremental improvements based in compassion followed by a receding tide of absurdity and naked indecency.

This pattern is also found in attitudes to children. Once depicted as small adults from whom was expected responsible adult behaviour and whose failures were punished in the belief that punishment would promote change, children are now seen as persons at various stages of development. Corporal punishment in schools is regarded and sanctioned as barbaric, the stages of brain development and its consequence for children's responsibility for their actions are recognised, and children's dependence for their development in a nurturing home is widely accepted. The media images of children are attractive and usually in the company of caring adults. They project innocence. This is the highwater mark.

Some children, however are seen as different, and attitudes to them are regulated by the old proverb: 'Spare the rod and spoil the child'. To be spoiled is to be rotten and to be put out with the rubbish. For these different children psychological science and the lessons of experience are forgotten and the logic of punishment rules. This bifurcated attitude to children means that in social policies to deal with children's antisocial behaviour any tide of reform can quickly and destructively ebb.

The most notable recent example of this turning of the tide can be seen in the Northern Territory. Photographs of large and menacing guards standing over traumatised, hooded children in the Don Dale detention centre cell shocked people by its dissonance with how children ought to be treated. The public reaction led to a Royal Commission that recommended closing the Centre as unfit for children.

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It also sketched a policy that gave priority to prevention and rehabilitation in response to antisocial behaviour by children. More recently, however, after media focus on misbehaviour by young people in the Northern Territory, the Government has introduced electronic monitoring systems and detention for breaches of bail. To cater for the expected increase in the number of incarcerated children it will refurbish Don Dale.

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criminals worthy only of punishment is both irrational and injurious of society as well as of the children themselves. Yet it is deeply rooted in the mindset of all Australian Governments. It enshrines the division between good and bad children.

The litmus test of such an attitude is the age of criminal responsibility that governs the age at which children can be tried and held criminally at-fault for their decisions and actions. Scientific studies judge that the human brain does not grow to full maturity until we are in our twenties. This implies that people under that age are more malleable and so can be more easily encouraged to take responsibility for their actions. It implies also that they are more impulsive, more influenced by peer group pressure and less able to appreciate the consequences of their actions. These factors mean that they are less responsible for their actions. Both concern for their future and respect for the human reality of childhood demand that when they misbehave they should be regarded and treated as children, not as adults.

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The costs to society of a punitive approach to the antisocial behaviour of children are heavy. It puts detention at the centre. Imprisonment has been shown to increase the likelihood that adults will reoffend and again be imprisoned. Children who have been in detention are also much more likely to graduate to adult jails than those on diversionary programs. This is not surprising. If they are taken away from family and friends into an environment in which their daily priority is to survive, in the company of peers who may suffer disproportionately from mental illness, may lack control over their impulses, are without mentors in positive living, and denied freedom, they are unlikely to return to grow in the skills, the self-knowledge and the motivation needed to live constructively in the community.

Despite all this, Australian Governments continue to balk at a decision to raise the age of criminal responsibility even to fourteen years old. Across all Australian states and territories, it remains at 10. And they continue to build detention centres for children at a heavy financial and personal cost. If children are indeed the future of society, it is a large thing to deprive them of a life connected with society in order to feed and then placate the anxiety of the crowd.

The alternative is an effective, humane youth justice system that addresses the root causes of anti-social behaviour and supports children to take responsibility for their actions, and to

connect or reconnect with family, education and culture within the community. It also develops culturally specific approaches to engage effectively with Aboriginal children, who regularly comprise 100 per cent of children in the Northern Territory's detention system.

In this framework, detention will be used only as a last resort, and children under the age of 14 who engage in anti-social behaviour are supported in the community with a focus on their wellbeing. These are the cornerstones of responsible policy.

As the National Justice Symposium co-presented by Jesuit Social Services and NAAJA to be held in Alice Springs and online this week on youth justice shows, such programs have greatly reduced recidivism in jurisdictions where it has been implemented. It is based on respect for the humanity of the children involved and on the study of their neurological development. If it is to be borne on the incoming tide, the turning point will be raising the age of criminal responsibility.

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Main image: Barbed wire at sunset (Getty images)