

ROUNDING UP THE HOMOSEXUALS:

The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth

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“Tell her the world is beautiful. It’s different now.” Those are the words that were passed through me from a formerly incarcerated 17-year-old queer youth to his 16-year-old trans friend still confined in a youth prison in Louisiana. His friend, a young transwoman, was still incarcerated in a “secure care” facility—a “boys” prison for kids.

Working with queer and trans/gender-non-conforming youth in the Deep South, I hear stories of state and personal violence from a wide range of people. There was the 16-year-old, black self-identified “stud” in detention after her mom referred her to family court for bringing girls to the house. Then there was the incarcerated white 16-year-old trans youth from a rural town of 642, whose access to transgender healthcare resided in the hands of one juvenile judge. I was told of a black trans-feminine

youth in New Orleans who was threatened with contempt for wearing feminine clothing to her court hearing. There was also the 12-year-old boy, perceived to be gay by his mother, who was brought into judge's chambers without his attorney and questioned about being gay before he was sentenced for contempt after being found "ungovernable." There was the public defender who refused to represent his gay client because the lawyer believed him to be "sick" and in need of the "services" offered by prison. And there was the black lesbian arrested over and over again for any crime where witnesses described the perpetrator as an African American "boyish-looking" girl. Nowhere is the literal regulation and policing of gender and sexuality, particularly of low-income queer and trans youth of color, so apparent than in juvenile courts and in the juvenile justice system in the South.

Understanding how the juvenile justice system operates and impacts queer and trans/gender-non-conforming youth requires a critical look at the history of youth rights and the inception of juvenile court. During the Industrial Revolution (1800–1840s), poor youth worked in factories, received no public education and were often arrested for the crime of poverty.¹ These youth, some as young as 7 years old, were incarcerated with adults and placed in prisons until they were 21.² Inspired by the belief that young people who committed crimes could be rehabilitated and shocked by the horrific treatment of white children in adult prisons, the juvenile justice system was developed. This new system was based on *parens patriae*, the idea that the role of the system was to place youth in the state's custody when their parents were unable to care for them. Later, in 1899, the first juvenile court was established, designed to "cure" children and provide treatments for them rather than sentences. Still rooted in a Puritan ideology, white young women were often sent to institutions "to protect them from sexual immorality."³

Black children, however, who were viewed as incapable of rehabilitation, continued to be sent to adult prisons or were sent to racially segregated institutions. In Louisiana, black youth were sent to work the fields at Angola State Penitentiary, a former slave plantation, until 1948 when the State Industrial School for Colored Youth opened.⁴ The facilities were not desegregated until the United States District Court ordered desegregation of juvenile facilities in 1969.⁵ More recently, the goal of juvenile justice reform has been to keep youth in their homes and in their communities whenever possible while providing appropriate treatment services to youth and their families.

However, with the juvenile justice system's intent to provide "treatment" to young people, many queer/trans youth inherit the ideology that they are "wrong" or in need of "curing," as evidenced by their stories. As sexual and gender transgressions have been deemed both illegal and pathological, queer and trans youth, who are some of the most vulnerable to "treatments," are not only subjected to incarceration but also to harassment by staff, conversion therapy, and physical violence.⁶ Moreover, with the juvenile justice system often housed under the direct authority of state correctional systems and composed of youth referred directly from state police departments, it should not be surprising that young people locked up in the state juvenile system, 80 percent of whom are black in Louisiana,⁷ are often actually destroyed by the very system that was created to intervene.

Worse than just providing damaging outcomes for youth once they are incarcerated, this rehabilitative system funnels queer and trans/gender-non-conforming youth into the front doors of the system. Non-accepting parents and guardians can refer their children to family court for arbitrary and subjective behaviors, such as being "ungovernable."⁸ Police can bring youth in for status offenses, offenses for which adults cannot be charged, which often become contributing factors to the criminalization of youth. Charges can range from truancy to curfew violations to running away from home. Like in the adult criminal justice system, queer and trans youth can be profiled by the police and brought in for survival crimes like prostitution or theft. Youth may be referred for self-defense arising from conflict with hostile family members or public displays of affection in schools that selectively enforce policies only against queer and trans youth.

Although youths' rights were greatly expanded in 1967 when the Supreme Court decided that the juvenile system was not operating according to its original intent,⁹ youth continue to struggle in the courts with fewer protections than adults. Defense lawyers for youth, who are sometimes the only advocates young people have in court, have at times confused their role, advocating for what they believe to be the "best interest" of the youth rather than defending their client's "expressed interest." Juvenile court judges with little accountability have similarly expanded their role with the intent to provide services, through incarceration, to every youth that comes through their courtrooms. In this effort to rehabilitate "deviant" children and without the right to a jury trial for delinquent offenses, the issue of guilt versus innocence can fall to the wayside. Further aggravated by the public's fear of youth sexuality and our desire to control

young people and their bodies, juvenile court presents a unique opportunity to destroy the lives of queer and trans/gender-non-conforming youth. The agenda of juvenile court then, for queer and trans youth at least, often becomes to “rehabilitate” youth into fitting heteronormative and gender-typical molds. Guised under the “best interest of the child,” the goal often becomes to “protect” the child—or perhaps society—from gender-variant or non-heterosexual behavior.

While not as explicit as the sumptuary laws (laws requiring people to wear at least three items of gender-appropriate clothing) or sodomy laws of the past that led to the Compton’s Riots and Stonewall Rebellion, the policing of sexuality and state regulation of gender has continued to exist in practice—perhaps nowhere more than in juvenile courts. In many ways, the system still mirrors the adult criminal justice system, whose roots can be traced to slavery, the commodification of bodies as free labor, institutionalized racism, and state regulation of low-income people of color, immigrants, and anyone deemed otherwise “deviant” or a threat to the political norm. Combined with the Puritan beliefs that helped spark the creation of juvenile courts, it becomes clear that, borrowing the words of Audre Lorde, queer and trans youth of color “were never meant to survive.”

In fact, one youth in a Louisiana youth prison responded to the number of queer and trans youth incarcerated by stating, “I’m afraid they’re rounding up the homosexuals.”

Once locked up, queer and trans youth experience the same horrors that their adult counterparts in the system do, but magnified by a system designed to control, regulate, and pathologize their very existence. In Louisiana’s youth prisons, queer and trans youth have been subjected to “sexual-identity confusion counseling,” accused of using “gender identity issues” to detract from their rehabilitation, and disciplined for expressing any gender-non-conforming behaviors or actions. Youth are put on lockdown for having hair that is too long or wearing state-issued clothing that is too tight. They are instructed how to walk, talk, and act in their dorms and are prohibited from communicating with other queer youth lest they become too “flamboyant” and cause a disturbance. They are excessively punished for consensual same-sex behavior and spend much of their time in protective custody or in isolation cells. In meetings with representatives from the Juvenile Justice Project of Louisiana, directors of youth jails have referred to non-heterosexual identities as “symptoms” and have conflated youth adjudicated for sex offenses with youth who are queer. In addition,

when advocates asked what the biggest problem was at a youth prison in Baker, Louisiana, guards replied, “the lesbians.”

Even more troubling, unlike the adult criminal justice system where individuals either “ride out their time” or work toward “good time” or parole, youths’ privileges in prison and eventual release dates are often determined by their successful completion of their rehabilitative programming, including relationships with peers and staff. Thus, youth who are seen as “deviant” or “mentally ill,” or who otherwise do not conform to the rules set forth by the prison, often spend longer amounts of time incarcerated and are denied their opportunity for early release. For queer and trans/gender-non-conforming youth, this means longer prison terms. In fact, in the last four years of advocacy on behalf of queer and trans youth in prison in Louisiana at the Juvenile Justice Project of Louisiana, not one openly queer or trans youth has been recommended for an early release by the Office of Juvenile Justice.

While protections afforded to youth in the juvenile justice system like a greater right to confidentiality are extremely important for youth, they can also be another strike against queer and trans youth seeking to access resources or support networks while inside. Like queer and trans adults in the criminal justice system who have difficulty receiving information that “promotes homosexuality,” youth are unable to access affirming information during a particularly formative time in their lives, which can already be plagued with confusion and questioning. The right to confidentiality for youth in prison can result in their being prohibited from communicating with pen pals or seeking services from community organizations. Other rights are afforded to adults but not to minors, such as accessing legal counsel to challenge the conditions of their confinement. Youth under 18 must rely on their guardians to assist with filing a civil complaint, despite the fact that many queer and trans youth have had difficulty with their families prior to their incarceration—and that those family members may have contributed to their entering into the system in the first place. This barrier also holds true for transgender youth who are minors and seeking healthcare or hormones. These youth may need the approval from a guardian or judge in order to access these services—or approval from a guardian in order to file a civil complaint to request them.

Meanwhile, as state institutions are placing queer and trans/gender-non-conforming youth behind bars and effectively silencing their voices, prominent gay activists are fighting for inclusion in the very systems that criminalize youth of color (such as increased sentencing for hate crimes)

under the banner of “we’re just like everybody else.” A far stray from the radicalism of the early gay rights movement, mainstream “gay issues” have become focused on the right to marry and “don’t ask, don’t tell” policies in the military, despite the fact that queer youth of color have consistently ranked these at the bottom of their list of priorities of issues that impact their lives.¹⁰ Likewise, the public “face of gay” as white, middle-class men has become a further detriment to queer and trans youth in prison, particularly in the South where queer youth of color are often not “out,” and individuals, like in all areas of the country, have difficulty discussing the two issues at the center: race and sexuality.¹¹ As a result of the invisibility of so many incarcerated queer and trans youth, especially youth of color, juvenile justice stakeholders in the South often mistake queer and trans youth to be white, vulnerable youth usually charged with a sex offense, if they acknowledge them at all. As a result, they assume that any concern for these youth to be coming from white advocates who believe that queer and trans youth have been funneled into a system made for “poor black children;” in other words, into a system that is “OK for some children, but not for others.” We must be clear about why we do this work—it is not because *some* children belong locked away at night and others do not—it is because *no* child should be behind bars.

Further, the data tells us that queer and trans youth in detention are equally distributed across race and ethnicity, and comprise 15 percent of youth in detention centers. So far, the data has been consistent among youth in different regions in the United States, including the rural South.¹² Since queer and trans youth are overrepresented in nearly all popular feeders into the juvenile justice system—homelessness, difficulty in school, substance abuse, and difficulty with mental health¹³—the same societal ills, which disproportionately affect youth of color—it should not be surprising that they may be overrepresented in youth prisons and jails as well.

Since incarcerated youth have so few opportunities to speak out, it is critically important for individuals and organizations doing this work to keep a political analysis of the failings of the system at the forefront of the work—particularly the inherent racial disparities in the system—while highlighting the voices of those youth who are most affected and providing vehicles through which they can share their stories.

Despite the targeting and subsequent silencing of queer and trans/gender-non-conforming youth in youth prisons and jails across Louisiana, young people have developed creative acts of resistance and mechanisms

for self-preservation and survival. By failing to recognize the ways that young people demonstrate their own agency and affirm each other, we risk perpetuating the idea of vulnerable youth with little agency; victims rather than survivors and active resisters of a brutal system.

Perhaps the most resilient of all youth in prison in Louisiana, incarcerated queer and trans youth have documented their grievances, over and over again, keeping impeccable paper trails of abuse and discrimination for their lawyers and advocates. When confronted by the guards who waged wars against them, one self-identified gay youth let it be known, “You messin’ with the wrong punk.”

Although prohibited from even speaking publicly with other queer youth in prison, queer and trans youth have formed community across three youth prisons in the state, whispered through fences, and passed messages through sympathetic staff. They have made matching bracelets and necklaces for one another, gotten each other’s initials tattooed on their bodies, and written letters to each other’s mothers. They have supported each other by alerting advocates when one of them was on lockdown or in trouble and unable to call.

Trans-feminine youth have gone to lockdown instead of cutting their hair and used their bed sheets to design curtains for their cells once they got there. They have smuggled in Kool-Aid to dye their hair, secretly shaved their legs, colored their fingernails with markers, and used crayons for eye shadow. When a lawyer asked her trans-masculine client to dress more “feminine” for court, knowing that the judge was increasingly hostile toward gender-non-conforming youth, her client drew the line at the skirt, fearlessly and proudly demanding that she receive her sentence in baggy pants instead.

Queer and trans/gender-non-conforming youth have made us question the very purpose of the juvenile justice system and holding them behind bars in jails and prisons made for kids. By listening to their voices it becomes apparent that until we dismantle state systems designed to criminalize and police young people and variant expressions of gender and sexuality, none of us will be free. And to my younger client recently released from a youth prison, yes, the world is more beautiful now. Welcome home.

NOTES

1. M. Larrabee-Garza, *Youth and the US Justice System* (W. Haywood Burns Institute, 2009).

2. Ibid.
3. Ibid.
4. P. Adams, "The History of Louisiana's Juvenile Justice System: Juvenile Justice Policy from 1968 to Present," University of Louisiana at Lafayette, September 21, 2010. <http://www.burkfoster.com/juvenile.html>.
5. Office of Juvenile Justice. "History of Juvenile Justice in Louisiana," September 21, 2010. <http://www.ojj.la.gov>.
6. W. Ware, "Locked Up and Out: Lesbian, Gay, Bisexual, and Transgender Youth in Louisiana's Juvenile Justice System," Juvenile Justice Project of Louisiana, 2010.
7. Office of Juvenile Justice. "Demographic Profiles of the Secure Youth Population," September 1, 2010. <http://www.ojj.la.gov>.
8. The Louisiana Children's Code Article 728(5) defines "ungovernable" as "the child's habitual disregard of the lawful and reasonable demands of his caretakers and that the child is beyond their control."
9. *In Re Gault*, 387 US 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).
10. FIERCE! "Coming Out, Stepping Up: Organizing to Build the Power of LG-BTQ Youth," 2010, p. 11.
11. E. Bridges, "The Impact of Homophobia and Racism on GLBTQ Youth of Color," *Advocates for Youth*, 2007.
12. Angela Irvine, "'We've Had Three of Them': Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Non-Conforming Youth in the Juvenile Justice System," *Columbia Journal of Gender and Law*, Vol. 19, 2010 (forthcoming).
13. K. Majd, J. Marksamer, and C. Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts," *The Equity Project*, 2009.