Juvenile Justice System

"We must not be content with a concept of punishment whose only objectives are retribution, deterrence and selective incapacitation. The conviction that punishment and resocialization are inextricably linked is deeply rooted in our value system. After all, without a minimum level of participation in, and integration into society, a non-criminal lifestyle is impossible."

ARCHIEF EXEMPLAAR

NIET MEENEMEN !!!!

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Juvenile Justice System
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The European Journal on Criminal Policy and Research is a platform for discussion and information exchange on the crime problem in Europe. Every issue concentrates on one central topic in the criminal field, incorporating different angles and perspectives. The editorial policy is on an invitational basis. The journal is at the same time policy-based and scientific, it is both informative and plural in its approach. The journal is of interest to researchers, policymakers and other parties that are involved in the crime problem in Europe.

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Today there is reason for serious concern about juvenile justice. Experts all over the world, but especially in Western countries, seem to agree that the juvenile justice system is in danger. On the one hand, it is losing credibility because it lacks effectiveness. On the other hand, however, this does not exert much influence on the use of the system. Although juvenile crime in general is not really on the increase, juvenile justice systems in many countries are processing more and more young people. Capacity of secure accommodation for juveniles is being expanded everywhere, in response to increased public and political pressure for tougher measures to deal with juvenile delinquency. A shift from rehabilitation to retribution is no longer to be feared; it has already taken place. This is the more remarkable, because the United Nations’ Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) as well as the Council of Europe’s Recommendation on Social Reactions to Juvenile Delinquency, both of which were adopted in the mid-1980s, gave grounds for some degree of optimism. For the first time, a combination of rehabilitation and recognition of the need of legal safeguards for children had been formally accepted. But within a few years the climate changed; and now not only some juveniles, but the juvenile justice system itself is at risk.

In this issue of the European Journal a number of authors discuss the precarious situation of the juvenile justice system in various ways. M. Klein (USA), in discussing juvenile justice in his country, is very critical. The approach to juveniles is based mainly on either deterrence or treatment, or both. But whichever approach is pursued most strongly, it lacks effectiveness and there is no indication whatsoever that things will soon change for the better. A far more promising approach based on the concept of normalization, is not expected to emerge in the near future. Klein’s message to other countries is clear and simple: do not copy (any part of) the American juvenile justice system.

N. Tutt (England) draws attention to the many opportunities crime prevention offers to deal more effectively with juvenile crime than traditional youth justice does with its policy of prosecution and
incarceration. He discusses primary, secondary, and tertiary prevention strategies. With respect to tertiary prevention he shows that the way in which the system processes juveniles has a strong impact on re-offending. The more prosecution and incarceration, the worse results can be expected. His request for early diversion from the justice system by the use of police cautioning is perhaps not new, but is nonetheless as topical as it was twenty years ago.

L. Walgrave (Belgium) points out that the combined welfare and rehabilitative approach to juvenile delinquency, not being discussed for many decades, has not really fulfilled its promise. Unlike Klein, Walgrave does not seek the solution in the concept of normalization, but rather in the concept of restorative justice. Since mediation and community service form the core of restorative justice, this approach finds its legitimation in both the needs of the victim and society, and the emphasis it puts on the offender's own responsibility. According to Walgrave, it is clear that, more than from any other approach, all parties involved can benefit from restorative justice.

J. Doek (The Netherlands) deals with a different aspect of juvenile justice. Given the failure of the juvenile justice system and the strong link between this system and the juvenile court, he raises the question whether the juvenile court should be abolished. He shares the criticism expressed by many, that the juvenile court has not served juveniles in the best possible ways. However he is not inclined to recommend elimination of the juvenile court. On the contrary, the changing attitude toward juvenile delinquency itself underlines the need for a juvenile court. In this respect he, too, refers to the Convention on the Rights of the Child, which provides strong support for the availability of a specialized juvenile court.

J. Junger-Tas (The Netherlands) points to some trends that have led to the current crisis in juvenile justice, including the transfer of juveniles to the adult system, the use of incarceration, and age limits. She raises a question of the same kind as that asked by Doek: will our juvenile justice system survive? Although she cannot answer this question either affirmatively or negatively, she is convinced that the system should be maintained. She puts it this way: ‘(...) we must keep what is valuable: the concern for children and their welfare, the faith in their potential to grow into responsible human beings and the persistent efforts of so many, working in that system, to help to achieve this aim.’

Going through the articles, the reader will understand that this issue is not an ordinary one. The articles were not written at the request of the editorial committee. On the contrary, at least one member of the editorial committee, notably the editor-in-chief, did not even know
that the second issue of this year's volume was going to be devoted to juveniles and justice. All of the papers were presented at an invitational conference, that took place on June 15 in The Hague to mark the occasion of the retirement of dr. Josine Junger-Tas from the RDC of the Dutch Ministry of Justice.

The conference addressed the topic of *Juveniles and Justice*, thus reflecting one of the most important parts of Josine Junger-Tas' work during the past twenty years. An area in which she has had, and still has, great influence, both nationally and internationally. This special issue of the European Journal is meant to honour her work.

And for your reassurance, dr. Josine Junger-Tas, though retired from the RDC, will remain editor-in-chief of the journal, so you will continue to hear from her.
Youth justice – crisis or opportunity?

Norman Tutt

The past twenty years of research into youth justice has shown enormous change and development. Many of these changes have been initiated and led by Josine Junger-Tas and her colleague researchers at the Dutch Ministry of Justice. I first met Josine nearly twenty years ago when the major focus of research was on institutional programmes for detained youth. The research was concerned with how institutional programmes could be evaluated and their effectiveness improved. Both Josine and I, through our research and direct experience, began to be sceptical of such research since it failed to ask the fundamental question, namely was the youth being sent into institutional custody the appropriate youth? This led us to concentrate more on the youth justice system and how it both processed young people and could be influenced to direct young people more to alternatives to custody than towards institutional custody.

Josine Junger-Tas was instrumental in encouraging the work on systems approaches, my colleagues and I were conducting, initially at the University of Lancaster and later through Social Information Systems, an independent research consultancy. We often exchanged ideas and visits, and in the later 1980s I had the privilege of serving on a Council of Europe Committee of Experts on Juvenile Delinquency chaired by Josine who, with consummate skill and diplomacy ensured that the Council of Ministers finally agreed a document which accepted and actively promoted the development of alternative sanctions for youth offenders.

Perhaps that time (1987) was the pinnacle of reformist influence in juvenile criminology. Since then, at least in the United Kingdom, there has been some reversal on policy, if not in actual outcomes. The reversal in the 1990s has been very sharp, culminating in the government’s response to the murder in Liverpool of James Bulger, a young child, by two ten-year-old boys who were no more than children themselves. Both the nation and, to some extent, the world

1 Executive director Social Information Systems Ltd., 19 King Street, Knutsford, Cheshire WA16 6DW, England.
were at a loss to comprehend how two young children could commit such an appalling act.

The government, at this time of ignorance, instead of calling for more research chose to ‘crack down on youth crime’ and to call for a policy of more custody and longer custody for young children. A Criminal Justice Bill currently in Parliament introduces the provision of secure training centres provided by the private sector for young people between the ages of 12-14 years, found guilty on their third or more offence. Sentences can be up to a year in custody with a further year of supervision. It has been pointed out by many observers and researchers that just to lock up 200 young people will do nothing to reduce overall levels of crime and may well exacerbate the position by breeding a new generation of much more hardened and alienated young adult criminals.

In order to try to demonstrate a more positive way forward, in this paper I wish to propose that research has taught us, and politicians, much over the past two decades, and that instead of reverting to failed policies of incarceration, we need to implement systematic policies of prevention for the sake of the victim, the community and the offender.

Generally little definite action has been taken to prevent young peoples’ involvement in crime, despite the high rewards to be gained. In 1991-1992 the criminal justice system in England and Wales cost the taxpayer £ 8770 million, in the same year the Home Office spent £ 15.6 million or 0.18 percent of this budget on crime prevention. In addition to these direct costs, there are enormous personal, social and financial costs borne by the individual victims of crime. In an attempt to develop action on crime prevention, the initial section of this paper is devoted to that topic and attempts to describe a coherent, conceptual and practical approach which can be implemented by local and central government.

Crime prevention amongst young people

Whenever young people are discussed in terms of delinquency prevention, there is a danger of generalising and creating a stigmatising stereotype that all young people are delinquent. It is important to remember that only a small proportion of young people are ever involved with the formal youth justice system, and that the vast majority of young people has a vested interest in crime and delinquency prevention since they are the victims of much of that crime, both directly and indirectly. Moreover, it should be remembered that the best people to communicate with young people are young people. In the light of these statements, it is important to
ensure that young people are a resource who can assist in the planning, development, communication and implementation of delinquency prevention programmes. To do this, the programmes must be voluntary and responsive to the needs of young people, as defined by them.

Programmes to prevent delinquency should be planned and developed on the basis of reliable research findings and periodically monitored, evaluated and adjusted accordingly. The available research falls into three broad categories and leads to specific crime prevention programmes and methods of monitoring and evaluation.

1. Macro-environment studies: in which crime figures are related to area or neighbourhood differences. For example, studies of crime differences between rural and urban areas or privately owned and state housing schemes. The correlations that emerge from these studies do not determine causal factors but do suggest that the macro-environment has some impact on individuals' and families' behaviour. Crime prevention programmes aimed at improving housing, community cohesion, target-hardening, and employment opportunities would arise from these research studies and are capable of implementation and evaluation.

2. Micro-environment studies: in which young people's behaviour is related to the institutions, micro-environments, in which they spend their lives. For example, studies of differing schools' 'ethos' and its impact on young people, or participant observation studies of gang membership, youth cultures and peer groups. Different programmes of crime prevention emerge from these studies aimed at: changing school regimes, providing youth and leisure facilities, promoting positive group work programmes. Again, all are capable of implementation and evaluation.

3. Immediate situational studies: studies in which variables within the immediate situation can be related to specific behaviour of young people. For example, studies of the modelling behaviour of young people or *post facto* behaviourial analysis. Crime prevention programmes aimed at promoting positive role models, or informing children of the consequences of their actions, or changing the situation by increased surveillance, all arise from this research approach.

A useful framework in which to plan and implement crime prevention strategies which impinge directly on the lives of children and their families is to separate the general crime prevention approaches which fall under the heading of 'target-hardening' from those which could be called 'child-centred'.

The 'target-hardening' has an obvious utility and impact on juvenile crime by reducing the opportunity for spontaneous or
opportunistic offending which characterises much of juvenile delinquency. For example, improved car locks, car alarms, supervised car parking, improved garaging and security in homes will go some way to reducing theft and illegal driving of cars by young people. Similarly, improved window and door locks, burglar alarms, defensible space and neighbourhood watch will reduce burglaries. Electronic tagging of goods, design of shops, improved cash desk procedures and staff supervision will reduce shop-lifting. All of these and many other 'target-hardening' approaches to crime should be adopted to improve security for the citizen. However, this paper is aimed specifically at processes which are child-centred.

The first essential is to ensure that central and local government accept the need for a family policy. All aspects of social policy should be aimed at supporting parents, families and children. Government has a responsibility for crime prevention amongst children; it is not a responsibility to be borne solely by parents and families.

Generally, legislation in this area should be aimed at ensuring central and local government accept the following premises.
- They have a responsibility to encourage children within their area not to commit criminal offences.
- They have a responsibility to ensure that, where state intervention is necessary, it is limited to the minimum required to protect the child and the community.
- They must ensure that children's individual rights are protected at all times. This may mean financial assistance to ensure legal representation for the child.
- Wherever possible the child should be maintained within his or her own home with state or voluntary support. Removal from home should be a last resort.
- All departments of central and local government should act corporately to provide services for children. There should not be contradictory policies adopted by Education, Housing, Social Services, Health Services, Leisure Services or Environmental Services and Employment Services. For example, children should not be exposed to adverse living conditions which are known to be detrimental merely because their parents have been evicted for non-payment of rent.
- There should be a presumption at all times in favour of meeting the welfare needs of the child rather than incarcerating the child to protect the public. When children are responsible for criminal behaviour, whenever possible they should be dealt with outside the formal criminal justice system.
- Central and local government have a responsibility to ensure that
all staff working with children and young people and parents are supported by clear policies and procedures on factors important to the welfare of children, e.g., access to health care, education, special needs assessment, protection from corporal punishment and dangerous drugs, including tobacco and alcohol.

- There should be a clear commitment by central and local government to monitor, evaluate and report on the services to children to ensure policy objectives are being achieved and children are not being discriminated against on the basis of age, gender, race, sexuality or disability or any other aspect not of the individual’s making.

In order to translate these legislative principles into clear social policies, it is useful to adopt the following three-level model for the prevention of juvenile delinquency:

- primary prevention – ‘universal’ strategies relevant to all children;
- secondary prevention – ‘specific’ strategies focused on ‘high-risk’ groups;
- tertiary prevention – ‘targeted’ on individual offenders to reduce recidivism.

**Primary prevention – ‘universal’ strategies relevant to all children**

Primary strategies will be the coordinated responsibility of a number of government departments and will need to cover the following issues: income, employment, housing, health, leisure and social services.

**Income**

Families will need a minimum income to meet the basic needs of the whole family. Where sufficient income cannot be generated by the members of the family by employment or other legal and legitimate means, the state will need to provide income support. This may be by means of a child benefit scheme in which the payment and its level relates to the individual child, and his or her age, or by other means. What is essential in any income support is that the children should not be penalised because of the behaviour of their parents, i.e., children should still receive benefit even if the parent is in gaol, or if the parents separate, or refuse to divulge the identity of the father. Moreover, any such benefit scheme should be administered in a ‘non-stigmatising’ way. The child should not be forced to disclose in any public setting that he or she is in receipt of welfare, as can occur with clothing voucher schemes, or free meals schemes in schools. Such stigmatising procedures can lead to the child being marginalised both by its peer group and adults.
Income support schemes should be aimed at supporting and reinforcing parental responsibilities, and whilst their level relates directly to the child, the parent should have responsibility for spending it for the child's benefit.

**Employment**

Employment practices which allow parents both to gain income and to offer time and supervision to their children are essential. This may mean changes in employment practices to allow for maternity and paternity leave, job sharing, flexible hours in the working week, work-based nurseries or child-minding arrangements, supervision arrangements before and after school where working days and holidays are not compatible with school hours and holidays. Employment opportunities for school leavers are an essential aspect of social policy, which has a direct effect on crime prevention. Research indicates that high levels of youth unemployment correlate with high levels of youth crime. If young people are not offered job and training opportunities which will integrate them into the workforce, they quickly become alienated and delinquent. Local policies and practices between schools and local industry and commerce, which offer work experience and job opportunities, have been successfully developed in many areas.

**Housing**

Housing policy needs to address two issues involving young people. These are homeless families and homeless young people. These are quite different and specific issues requiring different policies. Family homelessness can arise through natural disasters or evictions. In these circumstances, the policy should be to keep the family intact and together as a unit. However, in some areas the response is to accept responsibility for the children and take them into state care and to expect the parents to solve their own survival problem. Such policies are short-sighted since research indicates that families disrupted in this way rarely reform successfully and that children in state care are most prone to become delinquent. The problem of homeless young people is even more directly linked to crime prevention. Many homeless young people, of which there are now numbers in all urbanised areas, have to commit petty delinquency to survive. Begging, street robbery, shop-lifting, illegal trespassing and prostitution become the sole means of income and survival since such young people fall through the 'welfare net'. They do not receive state benefits because they are often too young to claim or too frightened to claim, believing they will be forced to return to rejecting or abusing families.
A policy of providing both emergency accommodation, either in 'host families' or in short-term residential units, and longer-term continuing accommodation for young homeless people, will have an impact on delinquency rates.

**Health**

Whilst health services for young children have generally been given priority, mental health services for adolescents have been sadly neglected. There is a reluctance to accept that adolescents suffer real mental health problems, above and beyond normal adolescent adjustment. Yet, there is clear and growing evidence that, so-called, adolescent behaviour disorders have their roots in mental health problems amenable to counselling. For example, there is increasing evidence that many teenage prostitutes, both male and female, have experienced severe forms of sexual abuse when children. Through those experiences, they have learned behaviours which they can use to generate income. Very often a cycle is established whereby the young person runs away from home to escape from sexual abuse, is homeless in the city, and turns to prostitution to survive, thereby experiencing even greater abuse. To break this cycle, in-part, counselling is essential to enable the young person to develop a different self-image. Similarly, substance abuse, particularly involving solvents and alcohol, is a problem experienced by young people which, if not resolved, will create long-term health and mental health problems.

**Leisure**

Policies adopted by the leisure services division of the local authority can both promote integration of families and provide diversionary activities for youth. The integration of families can be assisted by ensuring that sports and leisure centres are not solely devoted to the pursuit of excellence but also provide opportunities for parents and children to have fun together. For example, swimming pools can have family sessions separated from sports training sessions. Centres can have activity weekends when parents with their children can experience a range of shared leisure and sports activities. Football clubs can have designated areas of the stadium designed for families, so that parents with young children can watch the game safely. Some clubs – for example, Leeds United – even have a crèche for young children so that parents and older children can watch together.

Leisure activities aimed particularly at diverting youth from crime will have to acknowledge some key features of adolescents; the importance of the peer group and the need for stimulation and
excitement. These schemes, which build on the positive aspects of a peer group as a team, and open up exciting activities which may in other circumstances be illegal, can prove very successful.

Examples of young people’s teams developing stock cars to race or motorcycle scrambling teams which allow young people, not of legal age, to drive and gain status, have proved effective in reducing illegal driving of motor vehicles.

Social services
Social Services should develop a child care policy which promotes positive parenthood by providing information, education and role modelling of successful parenting. Part of this process should be to ensure the reduction of corporal punishment in families. Research shows quite clearly that there is a correlation between the use of corporal punishment, particularly if randomly administered, and the development of delinquent behaviour. Some states have already introduced legislation outlawing corporal punishment within the family. The United Nations Convention on the Rights of the Child would support such moves, as would research on delinquency prevention.

Social Services should develop family nursery centres focused on children from high-risk delinquency areas. Recent research suggests that a structured programme of pre-school child care for deprived children can not only lead to increased academic success of such children entering school, but also to lower than predicted rates of delinquency. Such a programme can relieve stress amongst isolated single parent groups and thereby enhance the parent/child relationship, promote parenting skills, develop the child’s inter-personal and inter-racial relationships, and enhance educational opportunity. Few, if any, governments have implemented a widespread policy based on the models of good practice that have been developed, and it would be an act of political courage to invest substantially in services for pre-school children in the belief that it would relieve spending on services for delinquency later in life. However, the research findings from model programmes would predict this to be so.

Secondary prevention – specific strategies for high-risk groups

Secondary prevention programmes must start from information about crimes and crime patterns. Such programmes will have six stages.

1. Identify the problem: regular contact between police, youth workers, teachers and social workers in conjunction with parents will identify new crime patterns long before the courts and official
criminal statistics, e.g., an increase in solvent abuse, or theft of particular fashion clothing or cars can be identified within the youth culture at an early stage.

2. Locate the problem: since much youth crime is highly localised, centred on one shopping centre or housing estate, from information gained it would be possible to locate the problem specifically to a local area or facility.

3. Identify the target group: much local youth crime is in fact the result of a relatively small proportion of the local youth, and it is important that the effort to prevent crime is focused on them.

4. Implement action: a programme involving police, youth workers, education and social workers which is agreed, targeted and coordinated needs to be implemented.

5. Set a time limit: the programme should have clear time limits so that once the current problem is solved resource can be focused on another problem.

6. Monitor: a procedure for monitoring changes in the targeted problem should be established and continued beyond the programme to ensure the problem does not re-emerge.

Two local small-scale examples are given to illustrate the approach to secondary crime prevention. The first concerns an identified increase in solvent abuse located in two schools serving one housing estate. The estate contained a small shopping complex and from informal contacts with young people it became clear that two of the shops were illegally selling household goods to young people which could be used for solvent abuse. A three-month programme was established under which the police would pay regular weekly calls at the shops and remind the shopkeepers of the law and the danger of prosecution. The two local schools, with assistance from the health authorities, presented an information lesson on the health effects of solvent abuse to all classes. All parents with pupils at the school were given a fact sheet on how to identify solvent abuse. A number of young people with severe solvent abuse problems were offered counselling by youth workers and social workers. Monitoring arrangements included weekly surveys of local play areas to pick up and count discharged equipment used in solvent abuse.

The second illustration concerns the driving of motorcycles when underage. The problem arose where young people were driving motorbikes (legally) on an area of private ground but, in driving their motorbikes to the ground, were driving illegally. The problem and its location was clear. The police and social workers formed a motorcycle club which had its own premises to store the bikes and its own transport. This eliminated the problem, the programme ran until the youths were of legal driving age.
These small-scale examples demonstrate that secondary crime prevention is concerned with local problem solving between the statutory agencies and parents, but based on a good information base and monitoring.

*Tertiary prevention - targeted on individual offenders to reduce recidivism*

Young people who are identified as having committed an offence are best helped by the principle of minimum intervention. This has led to the establishment and acceptance of programmes of diversion: from the youth justice system, from court and from custody.

Young people who offend can be diverted from the youth justice system by introducing programmes of offence resolution. At its simplest, this is demonstrated by a parent, on realising their child has stolen goods from a shop, taking the child back to the shop to return them. This not only resolves the offence, but is also a significant and salutary experience for the child, the embarrassment and discomfort can have a positive powerful influence on future behaviour. State agencies should be encouraged to develop systems of mediation in which the victim and offender are brought together by an objective individual and the offender can make a direct apology. Other schemes of reparation should be developed whereby the offender pays back, either financially or by work, the loss to the victim. Such schemes can be operated outside the youth justice system and can divert the young person from that system. They are most widely used in schools and youth centres and are successful particularly in incidents of vandalism and graffiti where reparation is simple and direct.

Diversion from a formal court process for young people is now widely accepted and in most instances involves either a warning by the juvenile bureau of the police or in some instances action by the crown prosecutor. The adoption of such practice is based on research findings which demonstrate that young people are not deterred by a court appearance. In fact, in follow-up studies of matched groups of those diverted by a caution and those prosecuted, those prosecuted were more likely to re-offend. However, such pre-court diversion must meet certain standards. Firstly, the child’s rights must be protected. Cautioning should only take place when certain criteria are met:

- the evidence available is sufficient to support a prosecution in normal circumstances;
- the juvenile admits the offence;
- the juvenile and parent or guardian agrees to a caution being administered.
The second major concern about cautioning has been 'net-widening'. It is argued that cautioning has inflated the crime figures, and 'widened the net' of the youth justice system, by catching young people whose cases would not have been pursued by the police through the courts, either because they were too trivial, or proof difficult to establish. Recent research suggests, however, that whilst some 'net-widening' has occurred, the overall effect has been diversionary (see on). Re-offending rates of cautioned juveniles are low, and therefore, it is a successful means of reducing recidivism.

Diversion from custody is an important means of reducing recidivism since all research indicates that young people placed in custody have high rates of recidivism due, in part, to the secondary problems created by custody. These include the 'contamination' effect of living with a highly delinquent peer group, rejection from family, housing and employment problems on release. By diverting people from custody and maintaining them in community-based services, young people can retain any positive links which will enhance opportunities for rehabilitation.

There are now a number of models of successful community-based alternatives to custody which have been accepted by governments as being successful in reducing recidivism. (See, for example, the Council of Europe Report to Ministers on Juvenile Crime, 1987.)

National and local developments in the youth justice system – an integrated policy

The youth justice system can be represented diagrammatically as a map illustrating three levels of operation:
— the policies laid down in legislation or guidance which allow for local interpretation;
— the process through which the young offender passes;
— the agencies which are involved in the processes and, therefore, need to be involved in the agreement of the joint local policies.

The 'map' also illustrates that different agencies are involved at different stages but, obviously, it is essential that the policies agreed at each stage are compatible with the overall objectives and workings of the total system.

A significant development during the 1980s was the introduction of the Crown Prosecution Service (CPS) and the evolution of specialist 'Youth Justice Co-ordinators'. The objectives of the Crown Prosecution Service were publicly stated at an early stage: 'The objective should be to divert juveniles from court wherever possible.
Table 1: Percentage of males under 17 cautioned by the police by force area for 1981 and 1991

<table>
<thead>
<tr>
<th>Year</th>
<th>Force Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981*</td>
<td>South Wales</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>Humberside, Greater Manchester</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>Merseyside, Cleveland</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>Cheshire, Metropolitan Police District</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Gwent, Durham</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>West Yorkshire, Avon &amp; Somerset</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>Derbyshire, Leicestershire</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>Kent, North Yorkshire, South Yorkshire</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>Lancashire</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Wiltshire, Cumbria, Warwickshire</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Gloucestershire, West Midlands</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>North Wales</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Northamptonshire, Hertfordshire</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Northumbria, Dorset</td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>Thames Valley</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>Sussex, Staffordshire</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Bedfordshire, Cambridgeshire</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>Nottinghamshire, Norfolk, Dyfed-Powys</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>Surrey</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>Suffolk</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Hampshire, Devon &amp; Cornwall</td>
<td>62</td>
</tr>
<tr>
<td></td>
<td>West Mercia, Essex</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td>Lincolnshire</td>
<td>64</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Force Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991**</td>
<td>Avon &amp; Somerset</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Durham</td>
<td>64</td>
</tr>
<tr>
<td></td>
<td>Merseyside</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>South Yorkshire, South Wales</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>Greater Manchester</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>Cheshire, Nottinghamshire</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>Metropolitan Police District</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>Dorset, Northumbria, West Yorkshire</td>
<td>74</td>
</tr>
<tr>
<td></td>
<td>Humberside</td>
<td>76</td>
</tr>
<tr>
<td></td>
<td>Gloucestershire, Staffordshire, West Midlands</td>
<td>77</td>
</tr>
<tr>
<td></td>
<td>Cleveland, Lancashire, Northamptonshire, West Mercia</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>Hertfordshire, Lincolnshire, Norfolk, Surrey, Gwent, North Wales</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>Derbyshire, North Yorkshire</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>Cumbria</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td>Cambridgeshire, Sussex, Thames Valley</td>
<td>82</td>
</tr>
<tr>
<td></td>
<td>Essex, Hampshire</td>
<td>83</td>
</tr>
<tr>
<td></td>
<td>Devon &amp; Cornwall, Warwickshire, Wiltshire</td>
<td>84</td>
</tr>
<tr>
<td></td>
<td>Leicestershire, Suffolk, Dyfed-Powys</td>
<td>85</td>
</tr>
<tr>
<td></td>
<td>Bedfordshire</td>
<td>88</td>
</tr>
<tr>
<td></td>
<td>Kent</td>
<td>90</td>
</tr>
</tbody>
</table>

* National average = 47%
** National average = 76%

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Crown Prosecutors must satisfy themselves that the spirit of the Cautioning Guidelines has been applied before continuing a prosecution instituted by the police against a juvenile. The Crown Prosecution should, taking account of the views of all the agencies concerned of which he (sic) is aware and having regard to the Cautioning Guidelines, refer back to the police any case where he considers that a lesser disposal, e.g., a caution would be an adequate response and, in the final analysis, will not hesitate to exercise his power to discontinue proceedings where he is satisfied that a prosecution is not required in the public interest’ (Crown Prosecution Service, 1986).

In some areas, the shared aspiration of police, Crown Prosecution Service, social services and the probation service to make the youth justice system more efficient has led to differing forms of inter-agency teams. For example, in the Cardiff area a pilot youth bureau run jointly by the police, crown prosecutor and social services department has, within six months, reduced by half the average length between apprehension for an offence and that offence being dealt with by the courts. This has led to a 69 percent reduction in the number of offences with which youngsters have been charged whilst on bail or on remand over the same period (C. Perry, personal communication, 1993).

The impact of policy change

Nationally, the impact of the initiatives described above, government guidance and the commitment of practitioners has had a huge effect on the overall cautioning rates of young offenders. Table 1 shows a substantial overall increase in the proportion of male offenders under 17 years of age cautioned by all police forces. The proportion of girls cautioned has always been considerably higher than boys. In 1991, of those girls aged 10-13 years charged with an offence, 97 percent were cautioned. For those aged 14-16 years, 87 percent of those charged were cautioned.

It is important, because of the past concerns of the possible ‘net-widening’ effect of cautioning, i.e., the formal cautioning of juveniles who previously would have been informally warned who are thus drawn into the ‘net’ of the criminal justice system, to repudiate this effect. This is shown in table 2 which illustrates that not only has the overall number of findings of guilt dropped significantly in the decade (-74.7 percent), as a result of increased use of cautions, but also that the overall number of cautions has dropped (-5.1 percent). Therefore, ‘net-widening’ does not appear to have operated, since the total number of young offenders has dropped significantly (-39.8
Table 2: Number of children and young people entering the criminal justice system

<table>
<thead>
<tr>
<th></th>
<th>1981</th>
<th>1991</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>findings of guilt</td>
<td>86,700</td>
<td>21,900</td>
<td>-74.7</td>
</tr>
<tr>
<td>cautions</td>
<td>87,600</td>
<td>83,100</td>
<td>-5.1</td>
</tr>
<tr>
<td>total</td>
<td>174,300</td>
<td>105,000</td>
<td>-39.8</td>
</tr>
</tbody>
</table>

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Table 3: Number of children and young people found guilty or cautioned per 100,000

<table>
<thead>
<tr>
<th></th>
<th>1981</th>
<th>1991</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>males 10-13</td>
<td>2,993</td>
<td>1,817</td>
<td>-39.3</td>
</tr>
<tr>
<td>14-16</td>
<td>7,473</td>
<td>6,378</td>
<td>-14.7</td>
</tr>
<tr>
<td>females 10-13</td>
<td>887</td>
<td>535</td>
<td>-39.7</td>
</tr>
<tr>
<td>14-16</td>
<td>1,566</td>
<td>1,973</td>
<td>+26.0</td>
</tr>
</tbody>
</table>

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percent), and substantially more than the demographic changes for this age group.

The decline in offending above the demographic decline is shown in table 3 which illustrates the proportion of young people (i.e., the number per 100,000 of the population of that age and sex) found guilty or cautioned for offences. With the exception of older girls, all groups have shown a decline in formally recorded offences, suggesting that the use of cautioning has not encouraged an increased rate of offending amongst young people.

Conclusion

Throughout the 1980s, major developments took place in the way in which agencies, which constituted the juvenile justice system, worked together. The 1990s have seen an increase in public and political attention on 'law and order'. As yet, neither this concern, nor the introduction of the Criminal Justice Act 1991, has reversed the general trend of diverting young offenders from court and custody. Moreover, in the first three years of the decade, there have been no indications that concern about crime has generated an upturn in prosecution of youthful offenders.

New proposals to expand secure accommodation within both the local authority and the independent sector, put forward by the Department of Health, and the proposed introduction of secure training centres in the new Criminal Justice Bill, indicate political responses to perceived public concern, rather than planned responses
to identified need. In the light of these developments, it is important that local youth justice agencies operate a process of inter-agency strategic management based on sound, valid and agreed data. It is important that in the rush to assuage public concern, sound management of the youth justice system, as well as sound management of individual youth offenders, is not jettisoned.

This is the message and legacy of the career of Josine Junger-Tas who has taught many of us that youth crime is open to rational analysis and policy making. Her intellectual analysis, tempered with her effervescent personality, is an example to us all.

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American juvenile justice: method and madness

Malcolm Klein

Being asked to write a paper in recognition of Josine Junger-Tas' achievements simply caps what I consider to be a most enjoyable series of professional engagements with her that have become increasingly personal as well. It started in the German city of Wuppertal in 1981, where we shared strong interest in the diversion of juveniles from the justice system, and therefore an interest in juvenile justice systems generally.

Many of you will be aware of Josine's writings on diversion, such as her 1986 chapter in the massive volume edited by Kerner, Galaway, and Janssen (Junger-Tas, 1986). In that work, Josine describes two hallmark juvenile diversion programmes in Holland, Margo Andriessen's RBS 38 programme in Groningen and the Halt programme in Rotterdam. Her comments on these and similar ventures echo those of many American diversion evaluators, that such attempts are often complicated and diluted by processes of police selection and/or coercion, creaming off the easiest clients and net-widening to 'clients' whose behaviour as yet does not require any intervention. In this same work, Josine offers a clear statement about community responsibility for sanctioning and absorbing its own youth, a theme of increasing visibility in the US, as well.

And, of course, it was the Wuppertal connection that led to the production of the book Western Systems of Juvenile Justice and its chapter on the Dutch juvenile justice system written by Josine. The significance of this event is not only in the value of that chapter alone, but also in what followed. I asked a number of those chapter writers and a few other colleagues how we should follow up on that work. The consensus, strongly endorsed by Josine, was that we should work towards some form of collaboration on self-report delinquency. Her 1988 work, edited with Richard Block (1988), expresses much of

1 Social Science Research Institute, University of Southern California, University Park, Denney Research Building 101, Los Angeles, California 90089-1111, USA. Some components of this paper were originally developed for audiences in Spain while the author was Visiting Professor at the University of Castilla-La Mancha in 1993.

2 Chapter 2, Patterns in delinquent behaviour, in particular.
the thinking relevant to that decision.

More importantly, Josine kindly offered to help host a meeting of scholars, and this became the well-known NATO conference on self-report methods of delinquency measurement (Klein, 1989). It was her initiative at the NATO meeting in Noordwijkerhout that led to further collaboration and meetings with university and government researchers to develop the ISRD, an instrument for measuring self-reported crime that could be applicable across national boundaries. Pilot studies, modifications, and coordinated surveys in 13 countries resulted and will soon be reported in a new book, a breakthrough publication in comparative criminology (Junger-Tas et al., forthcoming). A second volume in this series is already planned.

Given such heavy and continuous involvement over a wide range of research endeavours, it is not clear to me what is meant by Josine’s ‘retirement’.

For the remainder of the paper, I want to go a bit back in time in my relationship with Josine. It really started with our common interest in comparative juvenile justice systems as social structures, as she patiently attempted to explain the Dutch system to me. In the remainder of this paper, I want to return the favour.

Why discuss the American juvenile justice system

A few years ago, a delegation of US and Canadian criminologists and justice officials visited the (then) Soviet Union to trade experiences with their Soviet counterparts. It was the period when glasnost and perestroika were first flowering, and the Soviets were preparing major overhauls in their approach to criminal justice. In one of the most memorable meetings during the visit, the Soviet experts expressed great interest in adopting various aspects of the American juvenile justice system – its juvenile court, the probation system, various approaches to juvenile corrections, indeed perhaps the whole organizational package we call our juvenile court system.

The most interesting aspect of the meeting was the spontaneous and near unanimous response of the US and Canadian visitors – ‘No, for heaven’s sake, no. Don’t try our system. Why add another giant bureaucracy, especially one that can’t demonstrate its value?’ My remarks today are aimed at those in the audience who think the American system might stand as a positive model for the

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3 For example, for a pilot study that demonstrated the utility of the ISRD in a seriously delinquent, institutionalized population, see Junger-Tas et al. (1992).
Netherlands or any other country. Think again; there is madness in our methods.

Basic assumptions

In order to understand the form and the problems in the US juvenile justice system, it helps to review some components of dominant American values. First and foremost is the enormous weight we put on the individual. We stress individual responsibility, individual blame, and the individual locus of reform and rehabilitation. And along with these, we stress the individual's civil rights and liberties, often at the clear expense of the larger society's rights.

We live in John Wayne's frontier world. The individual person is the basic unit of society. Just as I am responsible for my actions, good and bad, so am I individually to be rewarded for the good and blamed for the bad. Justice is individualized, and so is my rehabilitation. Faults lie within me, so change too must take place within me. We have a hard time blaming society for my depredations, so why ask society to involve itself in my reform? American rehabilitation in the juvenile justice system thus stresses individual change, mostly through counselling, but also through punishment, through learning new skills, and through teaching the individual to adjust to his groups – family, community, and state.

The contrast with many less developed and industrialized societies is striking. In China, for instance, the individual is given comparatively little power. The group is the basic unit of society – the family, the school, the neighbourhood, the work group, and the state. Individual rights are very limited; conformity to group expectations is the norm. Counselling is not designed so much to changing the individual's psyche as to requiring conforming behaviour and 'correct' attitudes. John Wayne could not have survived in China.

In addition to this stress on individual accountability and reform is the US system's assumption of innocence until guilt is proven. Thus, while in Holland one tends not to be arrested and sent on to the juvenile judge without a high probability of conviction, in the US we spread the justice net widely to draw in many young people who will eventually be kicked right out again. We do not wait for the gathering of all relevant evidence, but draw large numbers of young people into the system on the assumption that further investigation and the adversarial system – the tug of war between prosecution and defence – will determine who should remain. Eventually, we release most of those contacted or arrested by the police, release many of those
investigated at court intake, and even return to their homes most of those convicted of delinquency. In effect, we flood the system while keeping the floodgates well open, an inefficient system at best, and possibly a criminogenic system in addition.

Violence

Another important aspect of the American background, again reflecting our John Wayne heritage, is the willingness of the American citizenry to resort to violence to settle disputes. This is regionally imbalanced, being more true in southern and western states than elsewhere. This violence predisposition is seen not only in our individual behaviours, but also in our willingness to respond to crime with repressive measures – detention, incarceration, and capital punishment.

Official justice data, victimization surveys, and self-reported delinquency surveys all point in the same direction: Americans are more criminally violent than just about any other industrialized nation. Our youth is no exception to this. I am perhaps especially sensitive to juvenile violence because for some thirty years I have been doing research on street gangs, and I live in the most gang-ridden area of the country. But gang violence is merely the extreme example of the tendency for Americans to resort to individual violence to protect honour, to portray manhood, or to force compliance to our demands.

A nation that legitimates or endorses behavioural violence also finds itself forced to respond with forms of violence of its own. Thus, my own police chiefs have talked of hanging hijackers at the airport right after they land, and of ‘obliterating’ youth gangs. Our youth and adult incarceration rates are among the highest in the West. A vast number of our jails and prisons are overcrowded to the point of inhumanity, and we are building more as rapidly as resources will allow.

Further, in the face of badly over-crowded juvenile facilities we are learning to apply alternative sanctions in the community; electronic surveillance, community service programmes, non-secure or ‘staff-secure’ community facilities. We have moved towards what one criminologist calls ‘community incarceration’. In an era of increasing deinstitutionalization and diversion, we are actually increasing the number of juveniles under justice system control by placing the restrictions in the community itself. This is not Chinese informal social control, nor Dutch community treatment, but American formal social control within the community.
Competing models

If we look comparatively at juvenile justice systems in different countries, it appears that there is a continuum that runs between a welfare model at one end and a justice model at the other. The history of the American system over the years has been a journey along this continuum, starting at the welfare end and moving towards the justice end. Nineteenth century refuges and reform schools, developed in the presumed best interests of miscreant and neglected children, were the forerunners of the recourse to a separate juvenile court system.

With the advent of the first juvenile court in Illinois in 1899 and the rapid spread of juvenile courts to other states, reformers were ascendant. Children were no longer to be treated like adults. The court would stand in as their parent and, in its wisdom, look after their interests as it defined those interests. Probation officers, counsellors, friendly correctional personnel, and other helpers would join the judge in protecting the defenceless and rehabilitating the offender. For this purpose, normal adult legal protection would be unnecessary or even harmful.

The defence lawyer was out of place; the issue, after all was not so much guilt as individual need. In fact, guilt could be assumed in order to respond to need. The court knew best what was good for the child. The child’s right was to help, not necessarily to justice. This paternalistic approach was characteristic of the American juvenile courts until very recently, when a series of frustrations and events occasioned a dramatic shift towards the justice model (Feld, 1993; and for comparison see Schwartz, 1989).

Bifurcating the system

Starting in the 1960s, liberals and conservatives in the justice system increasingly became disenchanted with the system, but not in the same way nor with the same purposes.

Several matters became increasingly clear. One was that the same system was being applied to too broad a population of young people. It was responsible for dependent and neglected children who were more victim than offender. It was also responsible for ‘status offenders’, young people whose offences were not criminal in the adult sense; runaways, truants, users of alcoholic beverages, children defiant of parental authority, and so on. And, of course, it was responsible for those who committed adult-like crimes. The court’s response to all three forms of juvenile situations necessarily made
its structure and function unwieldy, inconsistent, and probably counterproductive.

A second problem was that the vast bulk of scientific evidence revealed that most forms of treatment, rehabilitation, and incarceration failed to yield individual improvement. Post-treatment juvenile recidivism rates seldom declined, or appeared better than recidivism rates when no treatment was applied. Indeed, some notable juvenile programmes seemed to yield higher rates of recidivism. The system as a whole seemed to be failing.

A third problem was that juveniles in the 20th century were maturing at a more rapid rate, engaging in adult-like behaviour at increasingly earlier ages. Thus, the juvenile court increasingly looked inappropriate for many of its clients. States began to lower the age at which serious juvenile offenders could be sent to adult criminal court – from 18 years of age to 16 or 17, or in one case even to 13. A new federal crime bill proposes reduction to the age of 13 in many federal cases, while a new bill in California proposes the age of 12 for gang members.

In addition, the absence of legal safeguards for juveniles, who could be put away in some pretty terrible places, became more clear. The most famous case was that of Gerald Gault who was sent to long-term secure incarceration without the benefit of a defence, or confronting his accuser, or in fact any evidence of his purported offence of making obscene phone calls to a neighbouring woman. The Gault case reached the US Supreme Court and led to major reforms of juvenile court law to conform to most of those of adult courts.

Finally, the failures of rehabilitation, the inefficiency of the court system, and the decreasing distinctions between juvenile and adult offenders, led many to abandon the child-saving paternalistic goal of the court in favour of a strict justice model. Punishments would be based proportionately on the severity of the offence, regardless of individual mitigating circumstances. A judge was, in effect, to be a dispenser of formal, rule-based justice rather than clinically-based judgements about the offender or his situation.

A major sub-text of all this was the approach to status offenders, a topic to which I will return a little later. Just let me suggest at this point that status offenders, the non-criminal misbehavers best exemplified by runaways, really provide the supreme test of a juvenile court system. They are neither innocent nor guilty, neither harmless nor harmful. They are not criminal, but are thought to be on the road to crime. The US has been one of the few nations to apply court sanctions to their behaviour, and never with much certainty as to the appropriateness of doing so.
A principal mark of the juvenile reforms since the Gault case has been the implicit bargain between liberals and conservatives. To put it baldly, the liberals got the status offenders, and the conservatives got the delinquents. In most of our 50 states, status offenders can no longer be held in secure detention while waiting for court dates, nor placed in secure facilities following adjudication. In many states, various status offences are no longer considered to be delinquent acts, being judged more appropriate to the welfare or mental health systems than to the justice system.

And the conservatives have gotten their piece of the pie. Age of adult court handling has been lowered; prosecutors are more involved at court intake and in juvenile trials, and determinate sentences for serious offenders are more common. It has become more difficult for serious or repeat juvenile offenders to be considered amenable to treatment – more are incarcerated, and for longer periods of time.

Politics and theories

I suggested that these changes were a socio-political compromise, and so they were. I suggested also that the swing from a welfare model towards the justice model was occasioned by system over-reaching and failure, and so it was. But in addition, juvenile justice is one of those rare instances in which social science theory has also been a major factor. Perhaps, in all candour, I should refer to this as fads in social science theory.

Prior to the 1960s, the American juvenile court system was loosely based on a medical model. Delinquent behaviour was a symptom of underlying mental or emotional difficulty, and could be ‘cured’ by application of appropriate therapies, delivered by professional counsellors of various kinds, with the court system providing the necessary structure.

But with the advent of the Kennedy and Johnson presidencies, delinquency theory was radically affected by the thinking of the social strain theorists and in particular by the opportunity structure theory of Lloyd Ohlin and Richard Cloward. This approach placed far more emphasis on the failure of the American social system to accommodate lower class and minority youth. It posited various social strains – in education, in welfare, in leisure activities, in employment – that almost forced lower class youth toward delinquent solutions to achieving status and material goods. The fault lay not within the individual, as suggested by the medical model, but outside, in the inequities of the social system. Thus, it was the system which required therapy.
Whereas the medical model could be accommodated by both liberals and conservatives, and fit well with the implicit power of the juvenile court judge, the strain model was clearly only liberal in its orientation and explicitly threatened the court. It suggested, in fact, that the court might be more of the problem than the solution. This would thus be true as well of probation and parole, of corrections generally, and of the police. Youngsters integrated into a more accommodating and absorbing community structure would have less need of a justice system structure.

Here was an idea system that conceptually threatened the place of the justice system. Interestingly, it was followed in the late 1960s and the 1970s by a narrower and more pointedly liberal viewpoint, labelling theory. Here, the notion was that the very act of processing a young person in the justice system could be actively destructive, could initiate a self-fulfilling prophecy that being labelled delinquent might propel a youngster towards greater involvement in delinquency. Police, court, and corrections alike were in danger of creating the monster they were designed to contain.

The programmatic implications were clear: decriminalize status offences, deinstitutionalize status and other minor offenders, divert as many offenders as possible from the juvenile justice system. The only remaining question was whether to provide offenders with alternatives in the community or simply to release them and let maturity solve the problems. Either choice threatened the presumed capacities of the court, and raised serious questions of the capacity of the community to exert effective social control.

Since the pendulum swings both ways, it is not surprising that this seeming abandonment of formal controls would help to strengthen a counter-ideology. And so it did during the Reagan-Bush era. Deterrence theory slowly emerged not only as a counter-argument to labelling theory, but also as almost a dominant paradigm. The labels that so concerned labelling theorists for their stigmatizing value are seen by deterrence theorists as having therapeutic value. They have deterrent capacity. The more severe the sanction, the more swiftly it is applied, and the more certainly or predictively it can be expected by actual and potential offenders, the better. The label of ‘delinquent’ is punishing itself, and facilitates the application of further punishments by the justice system. All these are seen as deterrent to future offending.

This last and basically conservative philosophy is applied to both serious and repeat offenders, as well as to minor and status offenders. For the former, it dictates a fully functioning justice system more adult-like than traditionally juvenile. For minor and status offenders, it decries the loss of control occasioned by decriminalization,
deinstitutionalization, and diversion and seeks to reassert justice system control. Once again, minor and status offenders become the point of contention, the acid test of how the system might best be shaped in the continuing ideological debates that feature the American approach. I would have you note one particular point: Seldom, in these ideological debates, is there any serious consideration of social science data, of issues of system effectiveness.

The structural model

At this point, I would like to step back and give you a better visual sense of what the US system looks like. Figure 1 provides a simplified view of the US system as it might be seen in most of our states. Missing might be another 'diversion' box coming out of court intake.

Let us contrast this with the Dutch system which is far closer to the welfare model in which most young people are screened out of the justice system and handled by the local welfare system. If, looking at figure 2, you find any errors, please take them up with Josine – it is her chart (Junger-Tas, 1989).

Then let us contrast it with a schematic diagram of the Chinese system (figure 3), where most of the control remains in the community (family, neighbourhood, work groups) and young people are placed outside the community only as a very last resort, but with little attention to court-based protection. A Chinese juvenile offender is persistently given the chance to adjust to his local environment, but there is little middle ground between local control and repressive state control after community failure.

Clearly, the variety in available system models is great, and anyone comfortable with one system can be amazed and amused by another. I was struck by the community prisons in Sweden in which each person had a private cell with radio, TV, and bath, and the lock was on the inside of the cell door. Scandinavian visitors to Los Angeles were dumbfounded when I took them to an 800-bed detention centre for juveniles, in which 1300 detainees were held. The goal was control, not treatment, and my Scandinavian criminologists had never even seen a treatment-oriented detention centre for juveniles. And any Western visitor to China can only come to understand the Chinese system by completely, if temporarily, suspending his commitment to individual rights and protection.

Coming back now to the US system, perhaps its most striking feature is its complexity, the result of the many checks and balances
Figure 1: US juvenile justice system

- observed event or complaint
- law enforcement
- diversion
- detention
- adjudication hearing
- dispositional hearing
- suspended disposition
- unfounded
- institution
- probation
- community resources
- unofficial supervision
- out
- dismissed
- recidivism

Source: National Council for Juvenile Justice
Figure 2: Dutch juvenile justice system

System entry
- Schools
  - Residential care
- Psycho-social/medical authorities
- Welfare authorities
  - Ambulatory services
- Child protection council
  - Juvenile judge

< 12 years
- Welfare authorities
  - Traditional alternative
  - Police
    - Council release
    - Prosecutor
      - Dismissal
      - Reprimand
      - Dismissal
      - Juvenile judge
      - 16-18 years
        - Adult court
        - Institutionalization
          - Sanctions
            - Reprimand
            - Fine
            - Supervision
            - Treatment
            - Penal measure

≥ 12 years
- Welfare authorities
  - Ambulatory services
  - Reprimand
  - Dismissal
  - Alternative sanction
  - Institutionalization
    - Treatment
    - Penal measure

No institutionalization
- Fine
- Probation
- Prison
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Figure 3: Chinese juvenile justice system

LIFE GROUPS

FAMILY

NEIGHBOURHOOD

WORK UNIT

REFORM MECHANISMS

HELP/TUTOR GROUP

WORK/STUDY SCHOOL

REFORMATORY

REFORM THROUGH EDUCATION

REFORM THROUGH LABOR

PRISON

DETERMINED BY

neighbourhood

schools and public security bureau (up to two years)

public security bureau
court

public security bureau (up to three years)

public security bureau
court

built in by our adversarial approach between defence and prosecution, and by our commitment to professional organizations. Let us look again at the figure 1. It is a simplified version. Let us flesh it out now by looking at the various possible decision points in a typical setting, in this case the city of Denver, Colorado. See how complex it is simply to consider all the decisions that could affect the passage of one juvenile offender through the system. How a youngster could

4 A chart with 61 possible decision points is shown to the audience.
respond positively to being processed through such a maze is not an unfair question.

But it gets worse. I am now going to show you the juvenile justice system of the State of California, and – mind you – this is the picture following our major juvenile justice reform act initiated in 1977.5

Finally, let us see how complicated one component of this system can get. The next chart was prepared some years ago by one of our former graduate students. He was assigned the task by the Los Angeles County Probation Department – the world’s largest, I believe – of describing all the person and paper decision points in probation.6

Mind you, again, this was just the probation function within the larger justice system. It is no wonder, then, that academics and practitioners in the US have become discouraged by the capacity of our system to provide any semblance of individual reform or rehabilitation. Let us consider three fundamental philosophies or rationales for the processing of juvenile offenders.

— Deterrence: status offences are offences, will accelerate to serious delinquencies if not sanctioned, and belong in the juvenile justice system. Runaways, in particular, require control.

— Treatment: status offences are a form of behaviour signalling underlying emotional problems, will develop into serious maladjustment problems if not treated, belong in the community mental health system. Runaways, in particular, require treatment.

— Normalization: status offences constitute normal youth behaviour, are generally not precursors to serious delinquency or maladjustment patterns, and require little or no professional response. Runaways, in particular, require shelter and tolerance.

I am not going to spend time on the deterrence approach today, other than to point out that there is scant evidence of its effectiveness, and more evidence of its capacity to make offenders worse.7 The treatment rationale helps to remove offenders from our complex bureaucracy of justice, but at the same time tends to immerse offenders in an alternative system. We use the processes of deinstitutionalization and diversion to remove from the justice system juveniles who appear amenable to community treatment. We place them in group homes and other residential treatment centres; or we provide counselling, restitution, and community service programmes for them; or we put them on probation at home with certain

5 Here, a chart measuring 8.5 feet is displayed to the audience.

6 Another chart, measuring 7 feet is rolled out before the audience.

7 The most recent review, a comprehensive meta-analysis, is to be found in Lipsey, 1992.
behavioural restrictions and monitoring by an overloaded probation officer. The effect, to judge from the best data available, is to have no appreciable effect on their delinquent behaviour, but this ineffectiveness comes at a lower cost than the ineffectiveness provided by the justice system.

The alternative normalization approach, with its suggestion that no ‘help’ may be equal to or better than treatment and punishment, is generally found to be unpalatable and therefore largely untried. The public hates the idea of turning kids loose on their own, and the professionals cannot stand the notion that no attention could be as useful as their attention. It is only with status offenders that normalization has been seriously attempted. The absence of demonstrable harm attributable to this ‘do-little’ practice has largely been ignored by a system that demands a clientele to serve. But it is instructive, I think, to review the way normalization contrasts with the treatment and deterrence assumptions in figure 4.

It is of course unfair to summarize very briefly many decades of research on the effectiveness of various alternatives to processing young offenders through our justice system. For now, let me simply list a few highlights, keeping in mind that recidivism rates for our secure correctional institutions for juveniles often climb to the 60 and 80 percent levels – failure in anyone’s terms.

— Many community programmes can provide evidence of good client adjustment and reduced delinquent behaviour during the youngsters’ tenure in the programme, but this effect disappears as soon as the youngsters leave the programme and return to ‘normal’ life routines.

— Deinstitutionalization, taking offenders out of secure detention, leads to non-secure or ‘staff-secure’ control programmes in the community, what Spergel has called community incarceration, as I noted earlier. We do not give up control, we merely relocate it (to no visible positive effect).

— Diversion is seldom ‘true diversion’ to non-control, but rather diversion to alternative treatment or welfare-controlled programmes and systems. We remove the label ‘delinquent’, and substitute for it the label ‘disturbed’. Think about it; when you were a teenager, would you rather have been thought of as a ‘bad kid’ or as a ‘sick kid’?

— With an expanded number of community alternatives available through diversion from the justice system, our American police now release not more but fewer minor offenders than before. We capture more to release them further up in the system; control is increased rather than relaxed.

— Probation and parole officers are rapidly abandoning the traditional
Figure 4: Brief characterizations of three contrasting rationales

Normalization
1. Deviance is defined and 'created' by societal response.
2. The societal response (e.g., arrest or referral) initiates the labelling.
3. Institutional control can itself constitute a stigmatizing process.
4. Labels such as incorrigible, delinquent, disturbed are disproportionately applied to minorities, the poor, the disadvantaged.
5. Negative labels should be avoided, along with their spread to significant others.
6. Normalization of minor offending behaviour is the goal.

Treatment
1. Deviance is a learned response to social and familial problems.
2. Referral for treatment permits the altering of deviant responses and perceptions of problem causing factors.
3. Institutional controls increase agencies' access to the client to assure service delivery.
4. Anti-social behaviours are more common responses in problem-laden context - lower-class areas, broken families, etc.
5. Negative labels can be used to initiate treatment, to confront the reactions of significant others.
6. Normalization of minor offending ignores its symptomatic significance for problems that would benefit from therapeutic response. At its extreme, this could result in abuse and exploitation.

Deterrence
1. Deviance is the result of free will choices, the responsibility of the offender.
2. Insertion into the juvenile justice system permits application of appropriate sanctions to deter further deviant acts.
3. Institutional controls have sanctioning value and increase the chances for teaching personal accountability.
4. Anti-social behaviour is the consequence of failures in discipline, loss of tradition values, disrespect for the rights of others.
5. Negative labels have deterrent value of both specific and general forms: broadcasting the consequences of anti-social acts increases general deterrence.
6. Normalization of minor offending behaviour effectively rewards that behaviour, gives implicit permission to continue. Escalation to serious or repeat delinquency may follow along with exposure to exploitation.
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rehabilitation components of their roles – finding educational, employment, and counselling help for their clients – and turning more to client surveillance. Thus, more clients are returned to court and detention for violating their probationary status. The principal source of post-adjudicatory help is being transformed into an alternative police function.

The results of all these trends and more has been to increase, rather than decrease, the number of American youngsters under some form of formal control. Despite all the rhetoric of community treatment and community corrections, we have been turning to an expanded justice system to do our job for us. The community, in the guise of expanding its absorptive capacities, actually abrogates more of its control functions to the justice amoeba which is invited to intrude like a pseudopod into our schools and agencies.

Let us look then, finally, at this ‘community’ to which Americans so readily pledge their allegiance. In the arena of juvenile justice, the community has several functions, and as I list these, the listener will clearly hear echoes of the writings of Josine Junger-Tas.

— The community absorbs juvenile misconduct by handling it informally. Here, the Chinese system provides an obvious model.

— It feeds the system with its fodder. It is far less often the police than the parents, witnesses, and victims who send juveniles towards the court. The Dutch and other welfare-oriented systems provide evidence that this process can be dramatically limited.

— The community shapes the structure and function of its juvenile justice system, in part by deciding how involved in prevention and treatment it wishes to be. The American communities are themselves responsible, by abdicating responsibility, for the monster they have created.

— Finally, the community reabsorbs the offenders released by the system. It can do so effectively, as in China, or ineffectively, as in the US. It is in part a matter of community structure, of course. A highly urbanized nation is hard put to maintain a sense of local community. But it is also a function of national spirit and values. In China, the group unit is fundamental, while repression is the last resort (but a severe one). In the Netherlands, community responsibility, as revealed by Josine’s research with Marianne Junger, is still, and should be, the norm in a nation which has maintained identifiable communities in the face of industrialization and urbanization (Junger-Tas and Junger, 1985). The welfare systems for juveniles are local systems.

In the US, John Wayne still thrives. The individual tends to sink or swim on his own. If he goes down for the first time, we throw
him back unattended into the community pond. If he goes down for the second time, we pull him out and send him into our ineffectual system, happy to be rid of responsibility for him. If he goes down for the third time, we let him sink and put bars on our doors and windows.

Is it too late for the American juvenile justice system to reform itself by reawakening the community in which it is imbedded? I suspect it is. And that is why the American visitors to Russia responded as they did to the Russian interest in our approach - 'No, for heaven's sake, no.' And that is why I say to you today, study us carefully. If we have failed, try to understand why, and do not follow in our footsteps.

One of our principal problems, of course, has been the severe disjuncture between our social policies and our policy-relevant research. I wish we were in a position to take such pride, as Josine does in her chapter for the Western Systems book, in the use of research and experimentation prior to undertaking new justice legislation.

For years I have been urging the 'bootlegging' of basic research in applied and policy-driven research. I cannot think of a better example, or proof of my point, than Josine's continuing use and testing of theory in work at the RDC - whether it is labelling theory or control theory, as in the work with Marianne Junger, she has continually helped to demonstrate in her own performance just how useful theory can be in framing both policy and policy-oriented research, and how useful policy-oriented research can be in testing and modifying our theoretical knowledge and practical policies. In the US, we do not honour such people by retiring them, but by forcing them to work yet harder and longer. Maybe this is what Jan van Dijk has in mind at Leiden as well as Martin Killias in Lausanne - getting the most out of Josine in her coming prime years. Clever fellows, but if Josine is interested in travel, I too have an institute waiting to take advantage of her availability.

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The juvenile court: an endangered species?

Jaap Doek

Juvenile courts: a hopeful beginning to the 'century of the child'

Almost a century ago 'An Act to Regulate the Treatment and Control of Dependent and Delinquent Children' created the first juvenile court in Cook County (Illinois) in 1899. This statute (Illinois Juvenile Court Act, 1899) provided for a specialized court with chancery powers (see note 2 about the Chancery Court in the UK) and mandated this court 'to secure for each minor such case and guidance, as will serve the emotional, mental and physical welfare of the minor and the best interest of the child; to preserve and strengthen the minor's family ties whenever possible'. 'When removed from his family the court could also provide for the child's custody care and discipline as early as possible equivalent to that which should be given by his parents' (Bensinger 1991).

The creation of the juvenile court was not an isolated event but - on the contrary - the result of the 'child-saving movement' of the second half of the nineteenth century in the USA, also known as the progressive era. This child-saving movement has been critically analyzed by Platt (1972, 2nd edition). Although the rank-and-file reformers in this movement worked closely with, and were (financially) supported by, the corporate liberals, it would be inaccurate simply to characterize them as lackeys of big business. As Platt (1972) stated (in his introduction to the 2nd edition): 'Many

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2 Van Verschuer (1912) argues that before 1899 laws existed, for example, in Australia and Canada containing special provisions for dealing with crimes committed by children (court hearings separate from those for adults, in separate locations, at separate hours). Moreover, 'Chancery Courts' in the UK were already dealing with 'the protection of infants, qua infants, by virtue of the prerogatives which belong to the crown as parens patriae (emphasis added), and the exercise of which is delegated to the Great Seal (...). It was a paternal jurisdiction, a judicially administrative jurisdiction, in virtue of which the Chancery Court was put to act on behalf of the Crown, as being the guardian of all infants, in the place of a parent, and as if it were the parent of the child, thus superseding the natural guardianship of the father'.
were principled and genuinely concerned about alleviating human misery and improving the lives of the poor.' At about the same time, various countries in Europe (e.g., France, United Kingdom, Belgium, Germany and the Netherlands) started their rather effective 'child saving movement', resulting in a number of laws on juvenile justice and/or child protection. Within the frame of this development, juvenile courts were introduced in most countries in Western Europe in the first quarter of this century (Van Verschuer, 1912).

In this regard, it should be mentioned that one of the leading judges in the USA in the first decades of this century, Ben Lindsey (Colorado), visited Europe in 1917 (as a member of a peace mission of Henry Ford). During this visit he promoted specialized juvenile courts in many European countries, including the Netherlands (De Bie, 1930).

In the Netherlands, the juvenile judge was introduced in 1922, as a specialized member of the district court. The cases dealt with by the first juvenile court (Cook County) did not solely concern delinquent children; the court also dealt with pre-delinquent young people. This meant that the court brought a set of youthful activities such as begging, roaming the streets, fighting, staying out late at night, incorrigibility, etcetera, within the ambit of governmental control. The critical philosophical position of the reform movement was that no formal legal distinctions should be made between the delinquent and the dependent or neglected. Statutes in the USA defined 'delinquency' as acts:

— that would be criminal if committed by adults;
— that violated county, town or municipal ordinances;
— that would violate vaguely described catch-alls such as 'vicious or immoral behavior', 'growing up in idleness'.

The juvenile court judges, the judicial therapists as Platt (1972) called them, were expected to establish a one-to-one relationship with the juvenile 'delinquents' in the same way that a country doctor might

3 E.g., in the United Kingdom after the Juvenile Offenders Act of 1847 and the Youthful Offender Act of 1901, finally the Children Act of 1980; in France Loi sur la protection des enfants maltraités ou moralement abandonnés (1889); in Germany parts of the new civil code (1900); in Belgium, after partial change of the law dealing with juvenile delinquents (Loi sur la répression du vagabondage et de la mendicité, 1891), the Law on child protection was finally enacted in 1912; in the Netherlands the so-called Kinderwetten 1901 (Laws on juvenile justice / child protection) were enacted in 1905; see Van Verschuer (1912) and Van Toorenburg (1918).

4 On the history of the introduction of the juvenile judge in the Dutch child protection system, apart from Van Verschuer (1912), see also Doek (1972).
give his time and attention to a favourite patient. The idea that justice could be 'personalized' was a significant feature of the child-saving movement. For that reason, much attention was given to the physical setting of the court room in order to make it more personal and private. The hearings were held in the nature of a family conference at which it was endeavoured to impress the child with the fact that his own good was sought alone (Platt, 1972).

Descriptions similar to those concerning the first decades in the USA can be found in the Netherlands. When introduced, the juvenile judge was described as 'the supple, smoothly and speedily operating and easy accessible instrument' of juvenile justice and child protection.

One of the famous Dutch juvenile judges, Overwater (1948), gave a very illustrating description of the way in which a hearing in a juvenile court should be conducted. He stressed the informal character of the hearing, the need for personalized communication between the judge and the child and/or parents, in order to establish a personal contact. The black robe, pair of bands and cap, symbols of a depersonalized justice, should be abolished in the juvenile court. In short: the ideal juvenile judge was a rather paternalistic, legal therapist. He was trying to penetrate the wall of mistrust, of silent or open resistance; 'he must reach into the soule-life of the child' said Judge Julian Mack in 1925.

The juvenile court was indeed introduced as the substitute parent that, on behalf of the State, tried to help the child and his parents who were in trouble. This judge-centred paternalistic model (Garapon, 1991) was, even up to the end of the 1980s, very much alive in Europe. When describing French juvenile justice practice, Humphris (1991) states: 'I was struck by the fact that the juvenile judge tends to treat a child’s behavioral problems and first time offences as a call for help, rather than as a pretext for the application of legal rules and disciplinary measures. In particular the minor is given the opportunity to cooperate with the judge in his educational program as opposed to merely succumbing to the judge’s decision. This suggests that he manages to convert the minor’s antagonism with regard to parental and legal authority into a request for judicial intervention.'

Juvenile courts have been in force since the beginning of this century – called by Ellen Key: the century of the child – not only in the USA and other industrialized countries (e.g., in Europe), but also in many countries in the developing parts of the world. It could be said that juvenile courts became one of the institutions created by the child protection movement, an institution supported in many countries by national associations of juvenile judges and by the International Association of Juvenile and Family Court Magistrates. These
organizations and their members meet regularly at national and/or international congresses (Alberoni, 1984).5

Although the institution has various forms and performs different roles, depending on the national legal system and culture, in many countries it became an important legal instrument in the field of juvenile justice and child protection, a symbol of the level of care for children within the legal system and the judiciary.

Acknowledging these national and cultural differences, I think it can be said that the juvenile courts have (or should we say: had? see next section) the following characteristics in common.

— Legal proceedings with emphasis on the informal and direct communication between the judge and the parents and/or the child.
— This informal character was further stressed by the setting in which the communication (‘hearings’) took place; the lack of the symbols of legal decision makers (no black robe, cap, etcetera), no meetings in courtrooms (or only in exceptional circumstances) but in chambers or judge’s rooms.
— The decision-making process was/is much more judge-centred than law-centred, in other words, the judge (and his/her personality) played/plays a crucial role which is decisive for the outcome; this characteristic is strengthened by the fact that in many cases the judge has much room for discretion.
— As a result of all this, the juvenile courts are rather paternalistic (or: maternalistic) in their decision-making.

The juvenile court: almost 100 and dying?

The introduction of the juvenile court in 1899 in Illinois prompted a flood of optimism from child protection organizations. Notwithstanding some critical notes, the juvenile courts were seen as the ideal legal instrument to provide children with proper care and protection, as the ‘legal clinic’ for the rehabilitation of juvenile

5 The International Association of Juvenile and Family Court Magistrates (IAJFM) was founded in 1930 in Brussels as the International Association of Children’s Judges. Its present-day title has been used since 1978. The Association organizes international congresses (every four years) and regional conferences. For further information see, e.g., booklets on the history of the IAJFM by Henryka Veillard-Cybulska, period 1930-1970 and 1970-1980. This organisation and other, national, organisations have played and are playing an important role in advocating the needs of children, but the interests of the institution as such sometimes creates the risk of becoming too ‘governmental’. For critical comments on the National Council of Juvenile and Family Court Judges, see Schwartz (1989).
delinquents and the welfare of children in need of care or protection. Satisfaction was running high and the conviction was strong that the juvenile courts could provide a specialized and socialized justice that was in the interests of children and of society as a whole. This rather optimistic picture of the juvenile court more or less predominated during the first 50 years of its existence.

But major changes took place after World War II, first in the USA, the cradle of the juvenile courts, and recently also in Europe. I will deal with these changes in more detail in the next section. Here, I would like to make some general remarks.

Although the overall picture of the activities of juvenile courts was positive, there has always been criticism. This criticism has grown considerably over the last couple of decades and voices in favour of the abolition of juvenile courts were becoming louder and more numerous. Barry C. Feld (USA) states: ‘After more than two decades of constitutional and legislative reforms, juvenile courts continue to deflect, coopt, ignore, and absorb ameliorative procedural reform with minimal institutional change. Despite its transformation from a welfare agency to a criminal court, the juvenile court remains essentially unreformed (....) is there any reason to believe that the contemporary juvenile court can be rehabilitated?’ (Feld, 1992).

Rutten-Roos recently argued that there is no reason to maintain the juvenile judge as a specialized judge in the Dutch legal system. The changes in the juvenile justice area (formalization/legalization see next section) and in the area of child protection (no longer a specific role for the juvenile judge in the execution of child protective measures) brought her to the conclusion that the juvenile judge as a specialism could be abolished.

The increasingly critical approach of juvenile courts would seem to stem from two sources, which I would like to call the lack of effectiveness and the lack of legality.

a. Lack of effectiveness. Personalized justice as provided by juvenile courts was not really effective in rehabilitating juvenile delinquents or protecting troubled youngsters. According to the legal moralists, juvenile courts were too permissive, too soft on juvenile crime (Platt, 1977). As US Supreme Court Justice William O. Douglas said in 1969: ‘the love and tenderness alone, possessed by the white coated judge and attendants, were not sufficient to untangle the web of subconscious influences that possessed the troubled youngster’.

Another reason the dreams of juvenile courts did not become widespread reality, was the lack of involvement of such experts as psychiatrists and psychologists (due to lack of money). He also observed that ‘the secrecy of the juvenile proceedings led
to some overreacting and arbitrary actions' (cited by Bensinger, 1991). In the Netherlands the discretionary power of juvenile judges has given and still gives rise to criticism. He is seen as a powerful person: he can take the reports of experts in a case seriously or he can throw them out of the window. On the basis of his personal opinions, his values or biases (Kagie, 1979), he can decide what is in the best interest of a child. He can use this criterium as a magic formula to produce all kinds of (surprising) decisions. Or, as Carl Schneider (1991) said: 'And where as in custody decisions, numerous and uncertain facts must be applied to broadly written rules, the scope for discretion in law application is obviously substantial.' It appears that the famous words of US Supreme Court Justice Jackson apply to many juvenile court decisions: 'We are not final because we are infallible, but we are infallible because we are final.' But for many parents and children, the decisions of juvenile courts, which they consider to be arbitrary, will most likely lack effectiveness, even if they are final.

b. Lack of legality. As long ago as 1914, concern was being expressed in the USA on the invasion of personal rights (of parents and children) under the pretext of welfare or rehabilitation. These critics – called the constitutionalists by Platt (1972) – found (based on social science studies) that the informal procedures and confidentiality of the juvenile courts do not necessarily guard juveniles against 'degradation ceremonies'. These concerns were confirmed by the well-known Gault case (1967). During the Kent case (1966) the US Supreme Court had already expressed the view that the administration to function in a 'parental' capacity is not an invitation for procedural arbitrariness and that, furthermore, the child receives the worst of both worlds: he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.6 In the Gault case, the US Supreme Court concluded that juvenile court procedures were lacking the basic rights/guarantees provided for adult criminals (meaning that these were not being applied). The court therefore explicitly stated that juveniles were entitled to the right to counsel, the right to be notified in time of the specific charges against them, the right to confront and cross-examine the witnesses, and adequate warning of the privilege against self-incrimination and the right to remain silent.7

As Justice Abe Fortas stated: 'Under the Constitution the condition of being a boy does not justify a Kangaroo court.'

6 Kent vs United States, 383 US 54.
7 In Re Gault 387 US 1.
In Europe, the European Convention on Human Rights (ECHR) is being used more and more often also to scrutinize the legal qualities (and shortcomings) of juvenile court procedures. In particular, articles 5 and 6 ECHR including, among other things, everyone's right not to be deprived of his liberty except in specific cases, the right promptly to be brought before a judge (or other judicial authority) in case of pre-trial arrest/detention (art. 5), the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal (art. 6). Minimum rights for anyone who is charged with a criminal offence are, e.g., prompt information, time and facilities for the preparation of the case, legal counsel and the assistance of an interpreter (when needed).

In the Netherlands these rules have already had an impact on juvenile justice practice (limiting the role of the juvenile judge in pre-trial decisions) and will have a further impact when the bill proposing important changes in the juvenile justice system is enacted.\(^8\)

The lack of legality has not only been a major source of criticism of the juvenile court, but also over the past two decades changes have been made either in practice and/or in the law to make sure that juvenile delinquents can enjoy (almost) the same legal rights as those accorded adult criminals. This applies in particular to the criminal procedure. Feld (1992) notes that there is a procedural convergence between juvenile and criminal courts, although he is very critical that most States (in the USA) have not changed their laws so that juveniles still receive the worst of both worlds (see the Kent case).

However, it can be said that developments in the area of juvenile justice, certainly in the USA and perhaps also, at least in part, in some countries of Europe, have led to legalization of the juvenile courts. To quote Sanford J. Fox (1977): 'It would appear therefore that juvenile courts have simply become criminal courts for under-age criminals and have acquired the ponderous jurisprudence of responsibility, deterrence, rehabilitation, incapacitation and the like which applies to the criminal process.' But Fox objects to this conclusion because the legalization is more apparent than real and because the evolution into a mini-criminal court is for the bulk of children entirely wrong. These objections may have been true in 1977 but whether they are still valid in 1994 remains to be seen. At least it can be said that further legalization took place (e.g., in Europe) and that at the same time the rehabilitative ideals of the juvenile courts have lost much ground to the political and public pressure for tougher sentencing of juvenile delinquents (see next section).

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8 This bill (Parliamentary document no. 21 327) is now pending with the Dutch Senate (Eerste Kamer). The bill may be enacted in the course of 1995.
Similar developments are not found in the role of the juvenile court in its dealing with those children in need of care or protection. However, there are indications that the role of the juvenile judge is becoming less and less that of a social worker or substitute parent. His welfare role has tended to become more limited; e.g., in the Netherlands he is no longer the supervisor in charge of the implementation of the measure of child protection he has ordered.

His legal role, guaranteeing the rights of the parents and children, is being emphasized more and more. In this way, he is becoming more like any other judge and the reasons for maintaining a separate specialism are (slowly?) disappearing (Rutten-Roos, 1992).

It is very likely that the juvenile court (in its modern version) will 'celebrate' its 100th anniversary. But there could be little reason for celebration. The health of this old institute seems to be very fragile and the 'patient' is suffering from all kinds of disease. He/she may be dying, but it may not be too late for a successful cure. The rest of this contribution is an effort to try to explain why such a cure is necessary, and what could/should be done to prevent juvenile courts from indeed becoming an endangered species. And to avoid any misunderstanding: by 'juvenile courts', I mean the court of a judge who is specialized in dealing with juvenile delinquents and children in need of care and/or protection.

Why do we – still and even more – need juvenile courts and judges?

Convention on the Rights of the Child

More than 150 States have ratified or signed the Convention on the Rights of the Child (hereafter: CRC). The consequences of this for children in this world are overwhelming, although it is not realistic to expect short-term or concrete changes. But that changes will take place for children in many countries is very likely. The monitoring of the implementation of the Convention by the Committee requires, for example, that States Parties regularly report on the progress made in that regard. 9 This monitoring might not be perfect, but at least it forces States regularly to scrutinize existing practices,

9 The first report has to be submitted by a State Party two years after the ratification by that State and thereafter every five years. These reports should present the measures adopted by that State Party which give effect to the rights recognized in the Convention and the progress made in the enjoyment of these rights (art. 44 CRC).
policies and legislation. This reporting may result in the gradual improvement of the implementation of the rights of children and in strengthening the remedies for parents and children when their rights are violated.

It is very likely – to say the least – that respect for and implementation of the rights of children are or will very soon be a permanent topic on international and national political agendas.

For the legal practice at a national level, it will most likely result – perhaps slowly but certainly steadily – in more emphasis on the rights of children. The ratification of the Convention does not impose the obligation to establish juvenile courts nor does it necessarily entail an increase in court procedures on the rights of children. One of the weak aspects of the CRC is that States Parties are not explicitly obliged to provide the child with effective remedies, e.g., independent access to a court/judge in cases of violations of her/his rights.

But it is nevertheless likely that the CRC will have an impact in terms of the kind of cases submitted to courts and the way in which they should be dealt with, substantially and procedurally. It goes beyond the scope of this article to list all the possibilities of the CRC in terms of court procedures and what these may imply. But, to illustrate my point, let me mention some articles of the CRC.

— In all actions concerning children, the best interests of the child shall be a primary consideration (art. 5).
— Respect for the responsibilities, rights and duties of parents to provide appropriate direction and guidance to their children in the exercise of their rights recognized in the Convention in a manner consistent with the evolving capacities of those children (art. 5).
— The right of the child, who is capable of forming her or his own views, to express these views freely in all matters affecting the child, views which should be given due weight in accordance with the age and maturity of the child. In any judicial and administrative proceedings affecting the child he or she shall be given the opportunity to be heard either directly or through a representative or an appropriate body (art. 12).
— The right of the child – in cases of separation from one or both parents – to maintain personal relationship and direct contact with both parents on a regular basis except if it is contrary to the child's best interests (art. 9); this right also exists when parents reside in different States (art. 10).
— Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of her or his age (art. 37).
It can be argued that the CRC strengthens the ‘legalization’ of child protection procedures and the juvenile justice system. In other words: the implementation of the CRC may lead to a move away from the existing paternalist model to a (more) legalist model. The judge may become more a silent referee than (as is now the case in many countries) the principal actor and instigator, the substitute parent (Garapon, 1991). But even if this is true, it does not mean that cases involving children’s rights can or should be dealt with by any non-specialized court or judge.

The short list of provisions cited from the CRC illustrates that such a judge or court has to deal with concepts such as: the evolving capacities of the child, her or his maturity in weighing up the views expressed, his/her personal relationship with his/her parents, the needs of children deprived of their liberty, and, above all, the best interests of the child in a wide variety of circumstances.

My conclusion therefore is that the implementation of the CRC makes a specialized juvenile court or judge even more necessary than before. But I think the CRC also means that the way juvenile courts operate in many countries should be reconsidered.

Towards a more punitive juvenile justice?

Particularly in the USA, as already explained, the role (and quality) of juvenile courts has been sharply criticized. In this regard some authors have argued in favour of the abolition of juvenile courts both because of the convergence of procedures between juvenile and criminal courts and because of the more punitive approach that is taken by emphasizing the accountability and responsibility of delinquent juveniles and the application, as much as possible, of the principles of substantive criminal law for adults (Doek, 1991).

However, the developments in the area of juvenile delinquency and juvenile justice are, in my opinion, rather confusing. Let me mention briefly the most important ones.

Firstly, in many countries there has been a decline in juvenile delinquency which cannot only be explained by the decrease in the relevant age group (about 12-18 years). Kyvsgaard (1991) and Junger-Tas (1991) assume that enhanced social control and better discipline may be relevant factors here.

Secondly, notwithstanding the decline in juvenile delinquency, there is a trend towards a more punitive approach to juvenile delinquents (Doek, 1991; Junger-Tas, 1991). That applies for, e.g., Canada (Young Offenders Act, 1984), the Netherlands (a pending bill on juvenile justice) and, most recently and once more, the USA. In that country, a Crime Bill was passed by Congress, confirming the
trend towards a more punitive juvenile justice, for example, by making it possible that juveniles aged 13 or older are prosecuted in adult criminal courts for certain serious crimes, by permitting placement of adjudicated juveniles in the same facilities as adult prisoners, and by pouring billions of dollars into the construction of secure training facilities while, at the same time, very little money is being made available for community-based, small-scale prevention and intervention programmes (National Association of Counsel for Children, 1994).

Thirdly, the trend towards a more punitive juvenile justice does not mean the end of the rehabilitation/re-education philosophy that has always been an integral part; on the contrary. In the Netherlands, alternative sentencing of juvenile delinquents has become very popular over the last 6 or 7 years (Van der Laan, 1991). In the USA, enhanced surveillance (e.g., intensive supervision) and traditional treatment are still important modalities of the community supervision of juvenile delinquents. Bazemore (1991) proposes a new mission for US juvenile justice, changing the role of the juvenile offender from passive recipient of services and sanctions to one actively engaged in valued activities, including victim restoration. In other countries as well, authorities are trying to deal with juvenile offenders in an alternative way, using supervision, mediation, victim restoration, etcetera.

Fourthly, international standards on juvenile justice (e.g., Beying Rules, CRC) are trying to strengthen and support a rehabilitative approach. See, for example, article 37 CRC: no child shall be subjected to inhuman or degrading treatment of punishment; detention shall be used only as a measure of last resort and for the shortest appropriate period of time. And article 40 CRC: a variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

On the basis of these developments, can we conclude that juvenile courts can be abolished? I doubt it very much. It is clear that there is tension between the trend towards a more punitive approach on the one side (due to public and political pressure), and the efforts to keep the rehabilitative ideals of juvenile justice alive on the other.

Courts dealing with juvenile delinquents have to be capable of handling this tension in a wise manner, striking the balance between the interests of society to be protected from juvenile crime and the rights of juveniles to be treated in a manner appropriate to their well-
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being. This is not an easy task and requires specialized well-trained judges/courts. It is not a task which should be left to the regular adult criminal court.

In conclusion: there are some very good reasons for not abolishing juvenile courts. But in my opinion it is also clear that juvenile courts are facing new challenges which require careful rethinking of the role of the juvenile courts and the way in which they operate. In the final section, I will try to give some impulse for this process of rethinking and I hope that others such as the International Association of Juvenile and Family Court Magistrates will take over and continue the discussion on this process.

What kind of juvenile court do we need?

Although the concept of 'juvenile courts', as it has developed since 1899, has been implemented in many countries, the differences are numerous. In some countries the courts deal mainly or only with juvenile delinquents. In other countries they are also – sometimes in a limited way – the competent authorities in matters of child protection. Juvenile courts are sometimes separate entities, sometimes part of a district or other court. In some countries juvenile courts have a large staff of non-legal employees (probation officers, social workers), in other countries the courts are composed solely of a few judges and a (small) administrative staff.

The answer to the question of what kind of juvenile court we need, should therefore be given to a large extent at a national level. But I think it is possible to formulate some preliminary guidelines for the creation of or, for that matter, the rehabilitation/reorganization of juvenile courts.

1. Juvenile courts should be competent in all the rights of children (and their parents) covered by the Convention on the Rights of the Child. To quote from article 12 CRC: all judicial and administrative proceedings affecting the child should be concentrated in juvenile courts. This applies, for example, to proceedings concerning the civil rights and freedom of children (e.g., right to life, nationality; right to freedom of expression, thought, conscience, religion and association; right to privacy), concerning the right to a family environment (e.g., non-separation from parents, maintaining personal relationships, respect for the responsibilities of parents), the right to special protection (e.g., against (sexual) abuse and economic or military exploitation; against unlawful deprivation of liberty), the right to the fair and appropriate administration of juvenile
justice in cases of delinquency, the right to health, education and welfare, etcetera.

In short: juvenile courts should be competent in civil, criminal and administrative procedures concerning the position of children and their parents. This implies that juvenile court judges should have a broad and in-depth knowledge of the meaning of the Convention within the context of their national legislation.

II. Juvenile court judges should complete the regular legal education required for professional judges in their country. However, before being admitted to the juvenile court, they should take a minimum number of courses, specially developed for juvenile judges, covering areas such as child development (child psychology, child psychiatry), parent-child relationship, juvenile criminology, child protective services. This is not intended to make the judge a (pseudo) psychologist, social worker or psychiatrist, but he/she also has to have a high level of understanding of child development, not only because he/she is using such concepts as 'evolving capacities of a child', 'maturity of a child' and 'the best interests of the child' in relation to certain activities/decisions, but also because he/she regularly uses expert testimonies for his/her decisions.

An appropriate psychological test should be part of the admission process. In this regard, it is important to try to list the personal qualities of a juvenile judge. I am aware that this might be difficult and could cause much disagreement. But to be concrete: I am thinking of a person with empathy, understanding, patience, flexibility, is a good listener and communicator, has a deep respect for the rights and autonomy of the child and his/her family, is not afraid to make decisions, and is willing to motivate them. A unique and rare individual. Hard to find? I do not think so. But I think the bottom-line of all this is: we have to strive for the best quality when it comes to the crucial role of the judge in ensuring the rights of children. Decisions in this regard can affect deeply and over a long period of time not only the child, but also his/her parents and family.

III. As often as possible, juvenile courts should be provided with clear and specific guidelines in order to reduce the negative effects of too much discretion. In this regard legislators should, in consultation with relevant experts, do the best they can without trying to rule out every discretion (that would be an illusion). Schneider (1991) convincingly argues that the contrast between rules and discretion is not a black and white question. For example, rules are important because they contribute to the legitimacy of decisions, they institutionalize experience, they help decision makers and litigants to
distinguish those arguments and facts that will be relevant. But
discretion, on the other hand, can have many constraints and does not
necessarily equal arbitrariness or allow for whimsical decisions. To
control the use of discretion, which is unavoidable when applying
standards such as 'the best interests' and 'evolving capacities', it is
important:
— carefully to select the people who will exercise it;
— to give the decision makers a good legal and social training;
— to guarantee that specific procedural rules are followed;
— to oblige judges to justify their decisions in writing;
— to provide judges with substantive guidelines whereever possible.
In conclusion: juvenile courts should operate as much as possible on
the basis of specific substantive and procedural rules, leaving them
with enough (controlled) discretion to allow for flexibility where
necessary.

IV. Juvenile courts should be provided with, or have easy and speedy
access to, child development experts in order to give them the
necessary background information on the case they are deciding.

V. Finally (last but not least): juvenile courts should be easily
accessible to children and parents. They should try as much as
possible to use mediation and consensus when reaching a solution.
Decisions of a juvenile court are not infallible and should therefore
not be final. It should always be possible to review a decision, and
appeal over decisions should be allowed as generously as possible.

The juvenile court should not become an endangered species. Even at
the age of 100, the court should be kept very much alive. A rigorous
juvenile court is what children need to make the rights that they have
been given by the Convention on the Rights of the Child a reality in
their daily lives.

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Beyond rehabilitation

In search of a constructive alternative in the judicial response to juvenile crime

Lode Walgrave

Until about the 1970s, there had only been limited discussion on the welfare or rehabilitative approach to juvenile delinquency. But the criticisms of the late 1960s and the 1970s confronted rehabilitative justice for juveniles with insoluble contradictions. Nevertheless, trying to avoid the return to traditional penal law only yielded some verbal accomplishments, but no satisfying renewal of the judicial approach towards youthful offenders. In this text, we will outline the fundamental criticism on rehabilitative justice and tackle the deadlock in the present discussions. Thereafter, we will present our arguments for what we believe could be a way out of the deadlock: experimenting with restorative justice as a fully-fledged alternative to both retributive and rehabilitative justice systems.

Irreconcilable contradictions in rehabilitative law for young offenders

All industrialized countries have developed a special penal or protective law for juvenile offenders, subordinating penalty to rehabilitative (or educative, or welfare) concerns. Some countries (Belgium, Portugal and Spain are cases in point) have even made it completely impossible to impose any legal penalty on young persons under the age of 16.

In all these systems, an offence is not taken at its face value, but as a sign of a malfunctioning socialization. Social intervention is trying to rectify the social deviance by a reaction suited to the personal problems and needs of the young offender. It even aims at preventing delinquency in the strict sense of the word by the early screening and treatment of ‘danger’ and ‘risk’ situations. Therefore, the retributive

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2 A comprehensive review of the systems can be found in Dünkel and Meyer (1986). A more recent review of European countries only can be found in Borricand (1992).
principle seems to have been shelved and has been completely replaced by the instrumentalist approach.

In the last decades, more and more criticism has been directed to that system, inspired by a more critical attitude towards the use of the state's coercive power 'in the best interests of the child', by a changing view on youth and its capacity to bear responsibilities and by the misleading results in the rehabilitative programmes. Two broad areas of criticism, one treating matters of principle, the other pragmatical issues, can be distinguished.

_Education and law are based on incompatible principles_³

In a democratic society, guaranteed rights are needed whenever the justice system intervenes. Coercive power is restricted by precise rules on clearly delimited matters and procedures. Those rules are bound to an offence, duly evidenced and verified, against which guarantees such as the legality of the action taken and the proportionality of the sanction can be gauged. The frame of reference for the intervention lies in the past (the offence already committed), wherein lies the rationale and measure of intervention. It is this which renders judicial control itself controllable.

In contrast, the starting point of clinico- or socio-educative intervention is the client's subjective perceptions, respecting his experience, needs and life goals. Diagnosis, treatment and (re-)education methods offer no precise guide to the intensity or duration of a given intervention. The action no longer centres on the offence, but on the person of the offender. The rationale of the intervention no longer lies in the past but pursues aims which lie in the future: an offender '(re-)educated as an integrated citizen' in conformaty with society (Van Sloun, 1988). There is no external control. The quality of the intervention is gauged by the 'client's' consent. The legal guarantees are in the client's opportunity to withdraw his cooperation whenever he wants to do so.

The synthesis, constructed in the specialized, so-called 'educative' penal law each time becomes snarled up in ambiguity (Walgrave, 1985; Van de Kerchove, 1986), dressed up as 'mystifications of language' (Van de Kerchove, 1976-77).

Contrary to what is sometimes pretended, judicial punishment cannot be compared to punishment in an educative situation (e.g., in family). The effectiveness of an educative punishment is connected to specific intrinsic and contextual conditions which are far from being realized in the (juvenile) court systems (Van Doosselaere, 1988).

³ I developed this theme in _De bescherming voorbij_ (1980).
The abandonment of the strict link between the offence and the sanction, in favour of a link between the person of the offender and the measure, causes a loss of legal safeguards. The legality fades, the proportionality cannot be measured anymore, due process has become a misty procedure. The parens patriae principle imbued the subjective and speculative approaches of the welfare worker and the clinical practitioner with the coercive power of justice. Consequently, the scope of judicial and societal control has been considerably extended, i.e., earlier, more intensive and longer-lasting interventions in areas which normally fall outside the jurisdiction of the courts, and selectively applied controls detrimental to disadvantaged subgroups of society.

Rehabilitative judicial systems for juveniles are of questionable effectiveness

Social work, education and other forms of psychosocial assistance use as a key instrument the relation of trust between the client and the social worker/counsellor. This ‘empathizing’ and trust facilitate mutual understanding and communication. Placing trust in someone depends on the certainty that confidential information will not be used against the confider. This poses a handicap for social workers and educators working within a legal system. They will find it hard to convince their clients that sensitive information will not be disclosed to the court (Walgrave, 1972-73).

It is hardly surprising, then, that evaluation studies do not paint a very encouraging picture. Results have generally proved poor, regardless of the type of problem or offence concerned, context or method employed. On the contrary, a number of commentators

4 See, e.g., the decisive In Re Gault, US Supreme Court (1967).
5 There is a huge amount of literature on this subject. See, e.g., Schur (1973) and Lascoumes (1977).
6 This kind of selectivity is a basic fact in criminological literature, not only critical criminology. Empirical evidence is provided by many research results.
7 That is why Hoefnagels called the children’s protection ‘georganiseerde ontrouw’ (organized disloyalty).
8 Evaluative research into intervention programmes is among the most difficult from the methodological viewpoint (Cornejo, 1981; Mair, 1990). If properly done, however, the demonstrable results are generally disappointing. See, e.g., Cornejo (1981) and Junger-Tas et al. (1985). An excellent review of evaluation studies in the United States can also be found in Quay (1987). Of course, this is statistical research. The results do not indicate that all forms of educative treatment or other educative approach are doomed to failure when applied by the courts. What they do show is that the educative approach is far from a passport to offending and even that it must remain a marginal option.
contend that it would be over-optimistic even to claim that it was without effect. In many cases, adverse effects occur, caused particularly by phenomena of labelling and exclusion (Newton, 1978). Only a few programmes, inspired either by behaviour therapy or by different kinds of adventure-seeking activities, seem to escape this adverse trend, provided they are applied for very specific reasons and in clearly defined and delimited circumstances (see, e.g.: Bartels, 1986; Vander Zande and Van Garsse, 1990).

Therefore, the instrumentalism advocated in the societal reaction to juvenile offenders is not borne out by the facts.

It seems very difficult, therefore, to maintain a system based on the optimistic instrumentalist view that characterized the positivist period in applied human sciences. The 'synthesis' of penal law and educative principles has compounded the drawbacks of both systems. The legal guarantees are reduced and the educative quality is diminished. These criticisms have, over the past decade, given rise to a variety of ideas for correction and adaptation.

Various international organizations have laid down minimum rules and recommendations as to the legal guarantees to be ensured for minors. The so-called Beijing rules are considered a very important instrument for improving the intrinsic quality of jurisdiction towards juveniles all over the world. They indeed provide a series of clear statements about the minimum rules to be respected by all judicial interventions against juveniles (Doek, 1991). Nevertheless, ambivalence persists. It is easy to state that the judicial reaction 'should be in proportion to both the offender and the offence' (5.1), but it is very difficult to combine both proportionality in the field. How is it possible to 'allow appropriate scope for discretion at all stages of proceedings' (6.1) and to ensure at the same time 'the principles of fair and just trial' (14.1)? In fact, the declaration of basic principles for the special jurisdiction for juveniles cannot avoid the basic problem, i.e., the impossible combination, hidden by the 'mystification of language', mentioned above.

Other comments plead for the return to a more explicitly penal approach. Apparently, young people are more capable of making decisions and of bearing responsibility than has been assumed. As a consequence, young people should be treated as responsible

9 These inherent contradictions in juvenile justice are mentioned in all countries.
individuals if they commit offences. In the United States, the growing concern about juvenile violence and the legal problems which have arisen after several Supreme Courts decisions, has led several authors to propose abolition of the juvenile court and the referral of youthful offenders to the adult court (see, e.g., Hirschi and Gottfredson, 1991).

Return to penal justice is no solution (Walgrave, 1985). The retributivist justifications of penal justice are based upon a naive classicist view of mankind and society and canalize revenge within the procedures of a constitutional state. This cannot be sufficient to govern society. Instrumentalist arguments should at least, be added to this. However, empirical research has clearly shown that the instrumentalist ambitions of penal law are not met.

Punitive prevention (or deterrence) is far less general than is presumed. It is only effective in certain conditions, for certain offences and certain types of offenders.\textsuperscript{11} Especially in the case of juveniles, deterrence hardly seems to have any effect (see, e.g., Schneider, 1990; Hirschi and Gottfredson, 1991). It would appear to be more the exception than the rule for an offender to be reformed by the application of the conventional penalties of criminal law. On the contrary, in fact: various studies suggest that they have a marginalizing and labelling effect.\textsuperscript{12} Preservation of the victim's rights is certainly not central in existing penal justice procedures. Other existing systems are far more effective in addressing the rights and needs of the victim (Wright, 1991). Therefore, many arguments in favour of the instrumentality of penal law would seem to be more cosmetic than based on established facts.\textsuperscript{13}

\textit{Diversion} has been proposed as a means of avoiding labelling and other negative risks of the complete judicial procedure (Lemert, 1971; Heinz, 1984; Van Hees, 1991). In fact, diversion is an empty concept. It only indicates what should be avoided, but not what should be done instead.

Many different types of intervention are presented to replace the judicial procedure: simple non-intervention, original or traditional types of treatment or assistance, victim/offender mediation, various kinds of community service. The procedure can be diverted at a police level or at the level of the public prosecutor, possibly in cooperation

\textsuperscript{11} A review of the literature in Beyleveld (1979).
\textsuperscript{12} See, e.g., Lipton et al. (1975). Exaggerated though the well-known 'nothing works' claim may be, it is clear that reform of the offender cannot be the primary purpose of criminal law. With regard to juveniles, some research results show this too, see, e.g., Schneider (1990), Gazeau (1991) and Heinz (1991).
\textsuperscript{13} Clearly, criminal law has other functions to fulfil, but these cannot all be considered here. See, e.g., Trepanier (1989).
with extra-judicial instances. All these different forms of diversion are not better per se, just because they avoid the complete judicial procedure. Very often they are problematic themselves, as they can be as stigmatizing as judgment by the court, including a manifest risk of net-widening and, especially, as they do not respect all legal safeguards that should be respected in a procedure against a person suspected of having committed an offence. The quality of diversion depends on the quality of the replacing model, not on the diversion mechanism itself.

Experiments with the so-called ‘alternative sanctions’, sometimes as a form of diversion, illustrate the quest for new strategies for dealing with juvenile offenders.

The expression ‘alternative sanctions’ embraces a miscellany of practices, innovative rehabilitation programmes, novel educative and therapeutic programmes, pure compensation, community service and much more besides (for a review, see Verhellen et al., 1987). All these programmes differ markedly in their objectives, basic philosophies, legal status and scope. It seems as if this term has become a kind of asylum where creative experimenting within the existing system remained possible. But this free experimenting has led to these ‘alternative sanctions’ being lumped together as a variegated collection with all other existing sanctions and measures, thus depriving them of their truly innovative aspect. It is time to abolish the catch-all term of ‘alternative sanctions’ and to indicate clearly what we are doing, certainly when the sanctions are formally included into the judicial system (as in the Netherlands).

The learning of social skills, sports, outward-bound activities, and other transformational programmes may be worthwhile alternatives in the (re-)education process, but they are no more than alternative forms of treatment whose aim, as with others, is to rehabilitate the juvenile offender. As such, they are part of rehabilitative justice, including all juridical problems and questions about their effectiveness.

Victim/offender mediation and community service can be placed within the rehabilitative approach or even within the retributive approach, but they can also serve as basic models for a restorative approach to crime and delinquency, separate from the rehabilitative or punitive approaches.

In search of a restorative model of justice

Any judicial intervention directed at offences committed by minors or adults, must serve three types of interest:
— those of the community, which needs a clearly defined and controlled means of regulating community life, the infringement of which will give rise to a sanction which is effective for community life;
— those of the victim, who is entitled to recognition and respect for his status as a victim, and reasonable compensation or reparation for the inconvenience suffered;
— those of the offender, who is entitled to non-arbitrary action, limiting the restriction of his freedom to what is necessary in the interests of the community and the victim.

Neither retributive nor rehabilitative justice can guarantee this combination.

There is growing confidence in the social reactions to offences, typified as 'restorative justice' interventions. From a series of techniques (mediation, reconciliation, reparation, community service and others) intended to confirm the rights of the victims or to unburden the criminal justice system, the idea of restorative justice has become a movement aiming at the replacement of traditional penal justice (see, e.g.: Barnett, 1977; Galaway and Hudson, 1990b, pp. 1-3; Wright, 1991; Messmer and Otto, 1992; Tulkens, 1993; Walgrave, 1981 and 1992a). According to that movement, the main objective of judicial intervention against an offence should not be to punish, not even to (re-)educate, but to repair or to compensate for the harm caused by the offence.

Mediation and community service: two basic schemes from the same restorative justice

For the remainder of this paper, I shall refer to 'mediation' and 'community service', using the two as generic concepts.

Mediation covers all models of intervention that place the emphasis on guided communication between victim and offender, implemented before, during and after judgment. This, therefore, includes forgiveness, compensation and reconciliation. In many cases, these are variations on a single theme.

Community service means all tasks accomplished for the benefit of a public or private social institution, as compensation for transgression of a rule, imposed on an offender by a judicial institution.

The origins of the concept restorative justice can be found in the experiments with victim/offender mediation. That can be understood. The harm caused by the offence to the individual victim is visible and can (to some extent) be measured. The way of repairing or compensating for the harm can be negotiated. Agreement between the
victim and the offender about the size and kind of compensation or reparation can be observed. Implementation of the agreement can be monitored.

However, there are reasons for rejecting the idea that societal reaction can be restricted to reparation on its own. The pragmatic reason is that pure reparation of the injuries as the sole reaction to a crime, would reduce committing crime into some kind of gamble: 'I steal a car. If I am not caught by the police, I have a car. If I am caught, I'll give the car back to the owner and I can try again. I'll be luckier next time.'

From the point of view of principles, pure mediation would reduce the official response to delinquency to regulation according to civil law. Civil law is reactive, i.e., active only after the lodging of a complaint. But criminalized behaviour is more than a problem between two parties. It has been referred to penal law, because penal law is proactive, i.e., it has the possibility to prosecute on its own initiative. This referral proves the presence of other interests, besides the victim's and the offender's. In an offence, three parties are concerned: the victim, the offender and 'the community'. Society or the State sets itself up as the defender of the 'fundamental values, necessary to preserve social life' and, therefore, a system of penal law has been introduced. Even if no specific victims make a complaint, society can intervene in order to preserve respect for these 'fundamental values' and for 'social life' (Van Ness, 1990).

If 'social order and legality', being the 'safeguards of the fundamental values', are harmed by crime, two questions arise for the restorative approach. What kind of harm do we have to take into account? How can it be repaired? The definition of 'public loss' is still difficult and vague. Van Ness points to 'loss of public safety, damage to community values and the disruption, caused by crime'. Sometimes, these are very direct and concrete, when public goods have been stolen or vandalized. Very often, the public loss is indirect. Delinquency affects solidarity and mutual respect, both necessary for harmonious community life. It causes feelings of insecurity, worsening the quality of life. Delinquency necessitates the existence of very expensive systems of prevention and social reaction. In any event, it cannot be denied that collectivity suffers damage from delinquency and the offence.

14 We know that, in practice, the police acts mostly after a complaint, but we are dealing with principles here.
15 We can discuss the rightness of the so-called 'fundamental values' that are at the moment defined by penal law, but that is not the subject of this text.
Beyond rehabilitation

Tabel 1: Three basic models of reacting to juvenile crime

<table>
<thead>
<tr>
<th></th>
<th>retributive</th>
<th>rehabilitative</th>
<th>restorative</th>
</tr>
</thead>
<tbody>
<tr>
<td>reference means</td>
<td>offence</td>
<td>criminal person</td>
<td>losses</td>
</tr>
<tr>
<td>objectives</td>
<td>inflicting harm</td>
<td>treating the person</td>
<td>obligation to repair</td>
</tr>
<tr>
<td>victim's position</td>
<td>juridico-moral balance</td>
<td>conformism</td>
<td>elimination of loss</td>
</tr>
<tr>
<td>criteria of evaluation</td>
<td>secondary</td>
<td>secondary conforming behaviour</td>
<td>central satisfaction of parties</td>
</tr>
<tr>
<td>societal context</td>
<td>state of power</td>
<td>welfare state</td>
<td>'responsibilizing' state</td>
</tr>
</tbody>
</table>

The ways of restoration are somewhat clearer. This is where community service comes to the fore. The community has been 'victimized' by the disruption of public order and by the threat to public values, and it can demand compensation for this by imposing a (compensatory) service to the community. From the one who caused this deterioration of community life, the community can demand an effort in favour of the community. This compensation will only have a symbolic effect, but it is no less important for this.

Both mediation and community service are complementary parts of an ethico-juridical tendency expressed as restorative justice. They have in common (1) a definition of crime as injury to victims (concrete and societal), (2) the orientation towards restoration, (3) the active and direct implication of the offender in the restoration, and (4) the judicial framework, making it possible to use coercive power and legal moderation as well.

Three models of judicial intervention

The appearance of a restorative approach to justice makes it clear that we are confronted with three distinct models of reacting against crime: retributive, rehabilitative and restorative justice. Their essentials are presented in table 1. In practice, the differences are less clear-cut and more nuanced than the table might suggest.

In conventional penal law, retribution is the primary means: the wilful infliction of harm on an offender is an attempt to right the upset balance in the juridico-moral order. Recent doctrine also ascribes a resocializing function to penal law, although this is not demonstrated clearly by the empirical research. It is also presumed that the sanction affords a degree of satisfaction to the victim, which

16 Retribution does not repair anything at all. As Martin Wright puts it: 'Balancing the harm done by the offender with further harm inflicted on the offender only adds to the total amount of harm in the world' (1991, p. 525).
in itself would constitute a sort of compensation.

In penal law, the democratic state is at odds with itself: while claiming that it functions to preserve citizens' rights and freedoms, it establishes a penal law system which restricts those very liberties. It reduces the state/citizen relations to one of simple duress in a power structure.

In rehabilitative justice, the emphasis is placed on treatment of the offending person: attempts are made through personalized measures, to inhibit the offender from reoffending in the future. The treatment is not proposed, but imposed. Restrictions on liberty allied to the measure imposed also conceal a distasteful element of added hardship. This is not intentional, but is an inevitable side effect. To many victims, the rehabilitative reaction appears unfair: wrongdoers are not punished but helped, while they themselves have difficulty in securing recognition of their status as a victim and of being awarded compensation.

The rehabilitative approach is central to the welfare state, which operates for the well-being of its members, but only subject to the disciplinary conditions of conformity.

The restorative justice paradigm places the emphasis on restitution of wrongs and losses — losses being understood as encompassing material damage, mental suffering and social injury alike. The victim may be an individual citizen or the community. The obligation to make good is restrictive for freedom, which may be acutely disagreeable. Unlike penal law, the added hardship is not an end as such, but a side effect.

The obligation to make reparation also entails a confrontation, and may also entail a personal undertaking from the offender, which may 'teach him a lesson'. This educative effect is not the primary aim, however, but may be an added bonus. Community service is first and foremost a reaction to behaviour.

In the Netherlands, the principles of restorative justice were very well defined on the occasion of the introduction of the so-called work projects as alternative sanctions, which are in fact a form of community service. The Slagter working group defines the 'work projects' as 'carefully delimited activities, meant as a reaction to a punishable act'. Only in a secondary order, 'these activities should have as much as possible a significant social and educative orientation' (quoted in Van der Laan, 1991, p. 68). Josine Junger-Tas describes the characteristics of a new system of penal law for juveniles as follows: 'A reinforcement of the juridical position of minors according to the 'due process' model; less emphasis on protection and care, but more on the responsibility of the young; less attention to the personality of the offender and more to the victims of
the offence; more emphasis on demanding compensation and reparation of the harm to the victim, be it the private person or the community' (Junger-Tas, 1988, p. 25). Unfortunately, these basic principles are not accepted as the basic rules for the judicial reaction as a whole, but only for one specific type of sanction.

The advantage over the rehabilitative approach is clear: the reference to the loss again provides a more measurable yardstick than the 'needs of the individual', from which the legal guarantees can be concluded. Compared to the retributive approach, the restorative reaction is more constructive and less exclusive. The type of state which makes it feasible is empowering and willing to negotiate. According to Braithwaite's theory (1989), it could be said that this is a communitarianist state, allowing the reintegrative shaming of the offender.

The growing confidence in the restorative approach

The growing confidence in the restorative justice could point the way to the necessary alternative (see also, Walgrave, 1993).

As the amount of empirical evidence increases, the positive expectations are also being augmented. The willingness of victims to participate in mediation programmes and their satisfaction after participation are surprisingly high, taking into account the unconventional proposition they are confronted with and the novelty of the mediation technique itself (Umbreit and Coates, 1992; Messmer and Otto, 1992).

Scientific assessment of the effects on offenders is extremely difficult, due to several methodological problems. Up until now, some evaluation studies conclude that there is a lowering of recidivism in offenders who have participated in mediation or who accomplished a community service. Other studies, however, did not find significant differences. No research shows a significant increase of recidivism (see, e.g.: Junger-Tas, 1981; Elvin and Schneider, 1990; Rowley, 1990; Schneider, 1990; Van der Laan, 1991; Umbreit and Coates, 1992; and many others). The differences in effects are probably due to the differences in implementation strategies. If measured, all programmes seem to result in a greater satisfaction and more feelings of equity than traditional intervention schemes do.

Some programmes have examined the attitude of the public towards the restorative responses to crime. It is quite clear that the public is in general more willing to accept such an approach than most of the political and juridical authorities would like us to believe. If the restitutive opportunity is presented in a realistic way, the majority of the population responds in favour of that type of social reaction.
(Galaway, 1984; Wright, 1989). The seriousness and kind of offence do not play a decisive role in that choice.

Moreover, this growing confidence is leading to the extension of restorative responses to more serious offenders (as illustrated in De Martelaere and Peeters, 1985; Weitekamp, 1992).

In the meantime, theoretical ethical and juridical reflection about restorative justice is developing further. The principles guiding restorative justice are being explored and compared with those of the retributive or rehabilitative approaches. The idea of restorative justice fits very well into the 'reintegrative shaming' theory, proposed by Braithwaite (1989). According to Braithwaite, labelling can be the most powerful strategy to achieve low crime rates, in prevention as well as in social reaction against committed offences. The condition therefore is that labelling leads to reintegrative shaming and not to stigmatization and exclusion. 'Reintegrative shaming means that expressions of community disapproval (...) are followed by gestures of reacceptance into the community of law-abiding citizens' (p. 55). This happens in a 'communitarian' society, i.e., by combining 'dense networks of individual interdependencies with strong cultural commitments to mutual obligation' (p. 85).

The ethical bases of restorative justice are considered to be superior (Wright, 1991). Aiming at the solution of a conflict and at the reparation of the loss seems to be more constructive for social life than balancing an abstract juridico-moral order (Christie, 1977; Zehr, 1985; Steinert, 1988). Instead of the ruling class norms such as civic duty, conventional moralism or right to property, deeper social values such as solidarity, peaceful social relations, social justice and equity come to the fore.17

Restorative justice: simply a technique or a fully valid alternative?

Up until now, the examination of empirical evidence and of principles is still consistent with the hypothesis that restorative justice is a fully valid alternative to the retributive and rehabilitative models of justice. Of course, many problems persist. These can only be resolved through experimenting and research. Several questions still have to be answered (Walgrave, 1992b).

— Is the practice really carried out as it is theoretically conceived? Too often, good ideas lose their credibility through bad implementation.

17 The discussion about norms and morality at stake in the criminological field is extensively dealt with in the special issue of the *Tijdschrift voor Criminologie*, 1993.
— Are all legal guarantees safeguarded, for the victim as well as for
the offender?
— Is the material and psychosocial position of the victim really better
than with the retributive and/or the rehabilitative approach?
— Do restorative interventions have educative effects on offenders?
  What are the conditions and for what type of offender?
— Do these restorative interventions replace the other models or are
  they simply added to them?
The most important question for further experimentation and research
is of course that on the limits of the restorative approach. Is the
restorative approach just a technique, to be inserted as a complement
into the existing retributive or rehabilitative systems, or can it be
developed as a fully valid alternative on its own for both the other
systems?

What could be the limits of restorative justice?

The seriousness of the offence
In practice, restorative techniques have usually been applied to less
serious offences and offenders. We accept that simple victim/offender
mediation cannot be sufficient as a unique societal answer against
serious offences. The seriousness of the offence also includes the
gravity of the disturbance to social life, so that the community as a
victim can also demand compensation.

However, it is difficult to find a good reason to exclude serious
offenders from community service (Walgrave, 1993).
— The idea that serious offenders have to undergo a really punitive
  reaction goes back to the purely retributive interpretation of penal
  justice. I do not believe that revenge, even when it is canalized
  within the legal framework, is a good basis for a civilized social
  reaction. It should at least be complemented by more social and
  efficiency-related considerations.
— The statement that 'the public' would not accept the imposition of
  community service on serious offenders relies on a stereotype. As
  mentioned above, existing research shows that the public does not
  react in such a punitive way as is suggested by some authorities.
  Even most of the direct victims of offences prefer a restorative
  response to a purely punitive one. There is even a case for saying
  that the victims of serious offences have more to gain from victim/
  offender mediation if they wish to take part in it.
— The assumption that serious offenders cannot be influenced
  positively by community service rests upon a naive etiological
  supposition that is not confirmed by empirical research. Up until
now, there has been a lack of experience with serious offenders, but the existing data suggest that they are also capable to fulfil the community service order and to benefit from it, without an increase of the risk of recidivism.¹⁸

The cooperation of those concerned
The limit of restorative justice could be indicated by the willingness of those concerned to cooperate.

Of course, if the victim refuses to cooperate in a mediation programme, this has to be accepted. In that case, mediation is impossible. However, the refusal of the victim is not a stable or purely objective element. It is a response to a proposition to mediate. In many cases, the way in which that proposition is made is decisive for acceptance.¹⁹ But even if the victim still refuses, the restorative possibilities are not exhausted. There is still community service.

What if the offender refuses mediation and/or community service? Obviously, the refusal or acceptance is very relative here. The manner of proposing and controlling is important. Moreover, theoretically the welfare approach needs the cooperation of the offender too, and in practice this is also very limited. But could we accept the pure imposition of community service? Why not? After all, the retributive approach is not dependent on the permission of the offender either. Even if a non-custodial community service was excluded, the possibility of imposing such a service in a residential environment could be considered.

Security reasons
Security reasons are often quoted as the reason for restricting the implementation of restorative techniques. They have to be executed in free contact with society, and in some cases, the risks for serious recidivism are too high. Just two observations here.

Firstly, imprisonment is not absolutely safe either. There is great diversity in models and regimes in the implementation of imprisonment. Many of them hold periods of unsupervised contact with society. The fact that relatively few incidents happen proves for the moment that many offenders who are locked up could perfectly well undertake reparation or community service in open society, without serious risk to security.

¹⁸ As can be seen in the earlier mentioned texts by De Martelaere and Peeters (1985) and Weitekamp (1992).
Secondly, detention itself does not exclude the restorative objectives. Several authors proposed limiting the duration of incarceration until a given goal of reparation or compensation had been achieved (Spencer, 1975, and Smith, 1975, quoted in Weitekamp, 1992).

**The need for rehabilitation**

Priority of the need for rehabilitation could hamper the introduction of a fully restorative justice approach. Rehabilitation of the offender is an objective of high moral standing and, thus, a worthy objective. But it does not limit the use of restoration. In many cases, restorative techniques are used in a rehabilitative way. Then mediation or community service are not used, in view of repairing or compensating the loss, but in order to (re-)educate the offender. There are two kinds of objection against such a practice.

The victim's right to compensation is not recognized as such, but serves only as an 'educative demonstrative factor' in the treatment of the offender.

Rehabilitative interventions are oriented towards the personality of the offender, which makes it more difficult to safeguard the legal guarantees, such as legality of the intervention, proportionality of the sanction.

But the restorative intervention within the justice system does not exclude a rehabilitative offer outside the justice process. It could be imagined that the judicial obligation to restore could run parallel to the offer of help by a welfare agency. The restorative ethics and techniques are not contradictory to the rehabilitative ones.

Finally, as the evidence shows, the rehabilitative effects of the restorative approaches are no less than those of the approaches aimed explicitly at rehabilitation. The very fact of being obliged to make good the harm which has been done often seems to have a rehabilitative effect that goes beyond the traditional models of treatment. But, let there be no misunderstanding: this is not the prior objective of restorative justice. It is only a positive side effect.

**Conclusion**

We must conclude that the limits of restorative justice are not yet known. Up until now, the restorative justice model is still a broad and relatively vague paradigm, orienting reflection on the judicial response to crime and delinquency. Elaboration and experimentation still has to be done. Until now, experiments have mostly been overcautious, handling only cases with small risk to the community (but taking the risk of net-widening). As they are extended, the
possibilities of the restorative justice approach are also being augmented and the need to appeal to the traditional system is decreasing. We do not know yet how far this evolution is going to lead us.

However, we should not be too naive. The restorative justice model will never be the only one in reacting against delinquency. It could eventually become dominant.

At present, the retributive model is clearly dominant, but it has its limitations too. Society accepts that the negativity and cruelty of retribution cannot be applied to everyone and, therefore, it creates separate judicial systems for juveniles and for the insane. Moreover, a huge part of recorded offenders is deliberately not prosecuted. Finally, the negative effects on the offenders and the absence of positive effects for the victims (to put it mildly) are generally accepted, and these socio-ethical limitations are not considered to be reasons for abolishing the retributive system.

The rehabilitative model is dominant in the judicial approach to juveniles, but this system is limited by the demands for correct legal safeguards (which are often neglected), by the need for cooperation from the ‘rehabilitated’ juvenile (which is often hidden behind the illusions of ‘coercive assistance’ and ‘educative penal interventions’) and by security reasons.

The idea that restorative justice as the dominant approach could replace the retributive and rehabilitative models is not just an academic hypothesis, it is also a socio-ethical objective. It is a challenge to extend the limits of restorative justice as far as possible. For beyond these limits lies retribution. It has had centuries to develop and to experiment, supported by a huge state’s apparatus, and look what the results are: ‘a succession of evils’ (Bentham, quoted in Tulkens, 1993, p. 482). ‘The best reform of penal law consists of its replacement, not by a better penal law, but by something better’ (Radbruch, quoted in idem, p. 493). That ‘something better’ has to be looked for in the restorative direction.

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The juvenile justice system is in trouble. It is threatened by increasing disenchantment with the still existing educative and welfare approach towards juvenile offenders, together with a growing predilection for a punitive approach. Age limits are questioned: many juveniles are transferred to the adult court and there is a tendency to interfere at ever younger ages. Finally, there is a growing belief in and reliance on more severe punishments.

The juvenile justice system in its various forms – a juvenile court, a specialized juvenile judge or a children’s board – originated around 1900. In fact, we should celebrate its nearly hundred years’ existence. However, in reality there is considerable concern over the question of whether the system will survive: some even question whether this is a desirable option, while others deplore the possible disappearance of a separate system for juveniles. Those with an optimistic disposition might say that the system is in transition. But those with a more pessimistic outlook point to a number of developments that threaten both the concept of juvenile justice and the juvenile justice system as it exists today in most western countries.

In the following pages, I will first look at juvenile justice as it has been conceived by progressive reformers and as it has developed. Then, I will examine the changes that have been introduced during the last decades and the results of those changes for the juveniles who are involved in the system. Finally, I will review some options that might be considered if we wish to maintain a separate justice system for children and adolescents.

The concept of juvenile justice

At the end of the 19th century the social and behavioral sciences had great influence on general ideas about delinquency, its causes, and
the nature of childhood (Rothman, 1980). One of the underlying assumptions of the social sciences was that social problems could be solved by rational and scientific insight and methods. In addition, psychology and psychiatry were based on the idea that human nature is malleable so that human behaviour can be influenced and changed. This confidence in what the social sciences could offer society caused considerable optimism and modified the classical ideas about child-rearing and delinquency. Instead of considering the delinquent as a free actor who makes a conscious choice for evil and sin and, thus, should be punished for his actions, the new philosophy saw the main causes of delinquency in the child’s environment: in poverty and disease, in bad homes, in deficient maternal care. Not surprisingly, psychiatrists and psychologists saw the solution for delinquency and problem behaviour in individualized treatment for families and children. I do not want to belittle the sincere intentions and efforts of reformers at that time to humanize judicial intervention with respect to children. We should not forget the appalling detention conditions of that time, when adults and children were put together, or the tendency to treat children as if they were adult criminals.

The main ideas were generous ones. The court would consider the personality of the child and his needs, and not focus on the crime or on his guilt in committing the act. In fact, the child was not considered to be responsible for his actions in the way an adult was responsible. Court hearings were informal, and because of the principle of ‘parens patriae’ -- the state acting as a father -- and the benevolence of the juvenile judge, no procedural safeguards, such as those accorded to adults, were considered necessary. In the words of the US Supreme Court: ‘the apparent rigidities, technicalities, and harshness (...) observed in both substantive and procedural criminal law were (...) discarded’ (in re Gault, 1976). The emphasis was placed on treatment and rehabilitation, not on punishment.

One factor that had a great influence on the enthusiasm and rapid adoption of the new system all over the world was the progressive reformers’ conviction that the system would be both helpful and effective, serving the needs of the child as well as the welfare of society. If delinquent children (as well as adult criminals) were given the right treatment, based on discipline, order, hard work, prayer and complete isolation from other delinquents, crime could be surmounted and social peace restored. Humanitarian and social considerations would come together beautifully in the juvenile justice system (Rothman, 1980).

These considerations explain the great willingness to intervene in the lives of families and children. In fact the honourable and sincere
moral intentions to 'save' children (Platt, 1969) were seen as justifying interventionist actions, such as to draw families apart and take children away to faraway places where their 'undignified' families could not reach them. As Rothman (1980, p. 212) observes: 'That such a policy would enlarge the state's discretionary authority seemed altogether appropriate to reformers.' The authority of the juvenile judge was such that for treatment purposes he could confine a child indefinitely to an institution, until the juvenile's majority.

In short, this is how, in most of the western countries at the turn of the century, the juvenile court came into being. It was essentially conceived as a welfare agency with one overriding concern: taking decisions 'in the best interest of the child'.

The welfare model in practice

Unfortunately, the reality of the juvenile courts' practice in roughly the first half of the 20th century did not fulfil the high expectations that so many had with respect to the welfare of children. Until the 1960s, the big institutions for delinquents and children in care were more like warehouses than educational schools or homes. They produced more crime, misery and bitterness than rehabilitation. Moreover, unchecked discretionary power at all levels of the juvenile justice system, but most of all of the juvenile judge, met with growing criticism. Of course, the principle of 'the best interests of the child' always reflects the norms and values of a given society in a given period of time. Sometimes it even reflects the norms and prejudices of a given social class. Indeed, in some cases the principle was interpreted as necessitating lengthy placements for minor offences, without any possibility for the minor or his parents to object to or to introduce appeal to this type of sentence.

It is of course no surprise that criticism and opposition exploded in the 1960s and 1970s. This was the era of emancipation of many social groups, such as women, young people, (mental) hospital patients and prison inmates. It led to massive protests against what was perceived as intolerable infringements of their human and civil rights. As for the operation of the juvenile court, it was felt that children got the worst of two worlds: not only were they deprived of their fundamental rights, but neither did they receive the care and treatment that was promised to them. A number of things then changed (Orlando and Crippen, 1992). There were some important and widely publicized decisions by the US Supreme Court, of which the Gault case - where a 15-year-old boy was sent to an institution until his majority for having made obscene phone calls to a neighbour - is perhaps the best
known. The Court announced that children were entitled to the right to counsel (in re Gault, 1967) and to a fair hearing (in re Kent, 1966; Gault, 1967). There were also efforts to deinstitutionalize children as well as to avoid too early an involvement in the justice system by way of diversion mechanisms. I would like to emphasize that, although these reforms were initiated in the United States, there was widespread discontent in many western countries and the reform movement was certainly not limited to the United States. A number of countries in Europe changed their legislation in a piecemeal way. Altogether, deinstitutionalization and diversion were widely accepted in the 1960s and 1970s and led to a reduction of children in residential care and in reformatories and training schools.

The justice model

In the 1980s the social, economic and political conditions in western society underwent considerable change. The most important of these changes were probably the end of the post-war economic boom, the increase in youth crime and the enormous migration movements in Europe. These had great influence on the entire criminal justice system, the adult system as well as the juvenile system. It is important to bear in mind that both systems have always been interrelated: general ideas and attitudes towards crime and delinquents which are characteristic for a given society in a given historic era, have an impact both on the approach to adult criminals and to juvenile delinquents. For example, the development and popularity of the welfare model for juveniles was rather similar to the rehabilitation ideal combined with the indeterminate sentences for adults. In that same period, new forms of crime appeared – such as drugs-related crime and large-scale organized crime. In addition, crime became an important political issue in many western states. Fear of crime increased and tolerance with respect to juvenile misconduct and deviance diminished. The consequence of all this was that both the criminal justice system and juvenile justice were modified in important ways.

Limiting myself to the juvenile justice system, the particular emphasis on more procedural rights for young people goes together with an increased emphasis on the responsibility of the minor for the acts he has committed. He is held accountable for his delinquent behaviour and for the consequences that behaviour had for the victim. As a consequence, it is made clear to him that he has to repay or repair the damage or loss he has caused to the victim. The idea of the juvenile also being a victim of the community and family influences
over which he has little control, and needing education and treatment, is gradually being abandoned for concerns about the safety of the community. Prosecutors seemed especially to feel that the system had gone out of balance, protecting the needs of juveniles to the detriment of the needs of society. They indicate the increasing number of violent offences and the many group or gang activities among juveniles and claim that the juvenile justice system is unable to deal with this kind of delinquent behaviour (Shine and Price, 1992). As a consequence, the emphasis in dealing with juveniles has shifted from protection and treatment to punishment. Just as is the case with adults, there is a tendency to apply the principle of ‘just deserts’ to juveniles as well, and to mete out punishment that is proportional to the seriousness of the committed offence and the offenders’ delinquent history.

However, let me introduce some qualifications. The changes I report here are most pronounced in the United States. Although other western countries, confronted with comparable problems to the US, have adopted some of the neoclassical principles and changed their systems accordingly, most countries continue to have a dual approach, combining different elements of both the welfare and the justice model. In this respect, there are two important basic declarations that illustrate the effort to conciliate the benefits of the welfare system with the ‘due process’ model, one of which is established by the United Nations, the other by the Council of Europe.

In my opinion, one of the most important standards, adopted in November 1985 by the UN General Assembly, is the Standard Minimum Rules for the Administration of Juvenile Justice (the so-called Beijing rules). The general principles of the rules reflect the basic changes in thinking about the administration of justice, while at the same time introducing a dual model of both ‘due process’ and welfare. Thus, the rules state as aims of juvenile justice: ‘The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense.’ Stressing the rights of juveniles, the rules then add: ‘Basic procedural safeguards, such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority, shall be guaranteed at all stages of proceedings.’

A similar approach was taken by the Council of Europe in its Recommendation No. R (87) 20 on ‘Social Reactions to Juvenile Delinquency’, which was adopted by the Committee of Ministers of
member states in September 1987. The Recommendation is based on the consideration that the juvenile justice system should continue to be characterized by its objective of education and social integration and that it should as far as possible abolish imprisonment for juveniles. The Recommendation also states that minors must be afforded the same procedural rights as adults and takes over those that have been formulated by the UN standard rules. Moreover, the accompanying report of the European Committee on Crime Problems adds that ‘(...) the penal system for minors, while avoiding paternalism and trying to develop in young people a feeling of responsibility, ought not to move along the same lines as the repressive tendencies now being shown by certain countries in the field of criminal law for adults, but should continue to incline towards educating young delinquents and helping them to integrate into society’ (p. 40).

Unfortunately, what started out as a generous movement to improve the position of children within the existing juvenile justice system and to humanize that system, has turned out to be a rather questionable blessing, as we will see in the next section.

The reality of the justice model

'Due process' provisions

Indeed, the fact that the juvenile justice system has been reformed into a ‘due process’ model does not automatically ensure that these formal rights are now being used effectively. In the United States, according to a study of Barry Feld in six states, representation by counsel occurred in only half the cases, although there are large discrepancies among states (Feld, 1988). The reason for the lack of representation in juvenile cases is that juveniles waive their right to counsel, either because they do not see the importance of being represented, or because they think that waiving that right might result in a milder disposition. In fact, a number of American studies (see Feld, 1993, p. 226) have indicated that juveniles who are represented by counsel receive more severe sentences than juveniles who are not represented. Moreover, such juveniles are more likely to be incarcerated than juveniles without counsel. Clarke and Koch (1980) composed matched groups and used court files to construct a sensitive offence seriousness scale. Comparing dispositions for different seriousness categories, they found that children without counsel were less likely to be placed in an institution, especially those in the intermediate risk groups. Exactly
what causes this difference is not altogether clear. There may be different reasons: perhaps counsel is reserved for more serious cases, perhaps lawyers who take on juvenile cases are not very effective.

Due process provisions do not seem to be upheld any better in other countries. For example, legal safeguards for juveniles in Germany are still seriously limited. Adults sentenced to a one-month unconditional prison term for simple theft can appeal. Only 6.1 percent of these convicted adults were sentenced to such punishment in 1989. Moreover, they can also ask for revision of the sentence. A young person – which in Germany is anyone under the age of 21 – cannot appeal and if he is sentenced to a longer term of custody (Jugendstraf) he can only either appeal or ask for revision (Pfeiffer, 1992). Another consequence of the lack of legal rights is the fact that only a minority of young people who are punished by a short term of custody (Jugendarrest) is permitted to be represented by legal counsel.

In New Zealand, where a new Children, Young Persons and their Families Act was enacted in 1989, evaluation of the Act showed that breaches of statutory safeguards by police officers, and continuing resistance to these safeguards, were frequent. The evaluators also expressed concern about the failure of a number of youth advocates adequately to advise their clients and about pressures that were exerted on juveniles to admit their guilt (this was also noted in South Australia). This was done by making it clear that not admitting guilt would produce long delays, which causes considerable anxiety to the juvenile (Morris and Maxwell, 1993). Even in countries where legal representation of juveniles is guaranteed by law – such as in the Netherlands – the experience is that juvenile cases are not prestigious for legal advisors, nor do they help to promote a successful law career. So lawyers tend to give them low priority and do not always prepare these cases with sufficient care. Therefore, it remains to be seen whether representation by counsel really does help juveniles.

The transfer of juveniles to the adult system

In most Western countries, a juvenile case can be transferred to the adult court within certain age limits. The criteria for transfer are generally: the danger or threat that the juvenile presents to public safety, as demonstrated by the offence committed, and his amenability to treatment. In this respect, Feld (1993) draws attention to the fact that we have no treatment programs of serious, violent offenders available that have proved their effectiveness, nor can we accurately
diagnose or predict future dangerousness. This makes the transfer of juveniles to the adult court a rather subjective, discretionary decision. As a consequence, this circumstance often results in biased decisions, based on such factors as race and urbanization: non-white and rural juveniles are more often waived than white and urban juveniles who have committed similar offences. Another consequence of inconsistency is that there is considerable variation in the rates of waiver among states: they vary from 13.5 per 10,000 young people at risk to 0.07 per 10,000 (Hamparian et al., 1982). This same study showed that in only one-third of transferred juvenile cases the juveniles were charged with a serious violent offence. The largest proportion were charged with a property crime, such as burglary. A study of waiver petitions in four large cities concluded that there were no consistent criteria guiding waiver decisions and that there was no relationship between transfer and offence-related variables, such as the nature of the offence, the number of co-offenders and the number of victims (Fagan and Deschenes, 1990).

However, this does not mean that juveniles transferred to the adult penal system are more severely punished. Hamparian and his colleagues (1982) found that most of these juveniles were subsequently fined or placed on probation. The reason for this appeared to be the small proportion of violent offences against the person. Property offences were usually disposed of with community sanctions. Moreover, those juveniles who were incarcerated received only short prison sentences. Feld's (1993, p. 238) conclusions on sentencing policy towards young people in the adult court are as follows: 'The lack of congruence between the juvenile courts' maximum sanctions, waiver, and adult criminal courts' sentencing practices occurs because the typical youth who is waived is an older juvenile charged with burglary rather than violence, because of qualitative differences in the nature of juveniles' offenses relative to adults', because of differences in sentencing philosophies between the two systems when youth make the transition from the one to the other, and because of the failure to integrate juvenile and adult criminal records for sentencing purposes'. In European countries, too, juveniles are sometimes punished more severely than adults for the same type of offence. For example, a careful study in Germany of all cases of theft/embezzlement, including adults and juveniles, and controlling for the number of previous convictions (Pfeiffer, 1992), showed that juveniles run a higher risk than adults of being sentenced to custody (Jugendstraf, Freiheitsstraf ohne Bewährung) and to youth arrest (Jugendarrest). Moreover, twice as many juveniles as adults were placed in pre-trial detention. Another difference is that
the average length of time spent in custody or pre-trial detention was longer for juveniles than for adults. The conclusion must be that, despite educational and resocializing intentions, juveniles indeed appear to get the worst of two worlds: they often get heavier sentences than adults and their legal rights are still not observed as they should be. Feld (1993) considers that treatment as a juvenile or punishment as an adult is based on arbitrarily chosen age limits without criminological significance. Moreover, according to him, treating juveniles does not seem to be very different from punishing adults. Therefore, he draws the conclusion that we should abolish the juvenile justice system.

Custody for young people

Nowhere is the discrepancy between humanitarian rhetoric and juvenile justice practice clearer than in the number of young people being sent to an institution and the length of time they are institutionalized.

Krisberg and Austin (1993) distinguish three official reasons for detaining juveniles: first, detention is justified when the risk is high that the juvenile would commit additional crimes, thereby posing a threat to the community; second, the juvenile should be detained for his own protection in situations where his home environment puts him in danger; and third, he should be detained to guarantee that he will appear at the court hearing. A fourth reason that is more and more acknowledged nowadays is simply punishment.

In all of the United States there was a 30 percent increase in admissions to juvenile detention centres during the 1980s. In 1989 alone there were nearly 500,000 admissions. Thirty-five states reported increases in rates of admission, of which four had admission increases of over 100 percent, and only nine reported decreases (Schwartz and Van Vleet, 1992). The authors mention the fact that we are living in 'get tough' times: many people think that detention centres and training schools are very important for keeping dangerous and violent juveniles off the streets. They continue firmly to believe this despite the fact that studies conducted in different states indicated that a large proportion of incarcerated young people are not chronic or serious offenders.²

² The same is probably true of the prison population: studying the composition of the Dutch prison population in 1990, I found that violent crime accounted for 20 percent of the total population, property crime for 50 percent, wilful damage for 6 percent, traffic offences for 11 percent and others (including drug-trafficking) for 13 percent. Only 37 percent of violent offenders were incarcerated, versus 33.5 percent of property offenders.
Much the same developments can be found in other countries. For example, Canada’s Young Offenders Act, implemented in 1984 and 1985, is based on the ‘just deserts’ model with a heavy reliance on incarceration. It replaced the Juvenile Delinquents Act, based on the treatment philosophy. Under the new Act, orders for custody have soared while orders for treatment have nearly disappeared (Clark and O’Reilly Fleming, 1993). Although the principles of the Act clearly stated the availability of alternatives to custody and the possibility of diversion from formal proceedings, there is a dramatic increase in custody: in 1985 the incarceration rate had already tripled and the length of sentences had doubled for 16 and 17-year-olds, while there was an increase in custody orders for 12 to 15-year-olds of 120 percent. Moreover, of all young people who were incarcerated between 1985 and 1989, half were placed in secure custody. The authors note that the most disturbing fact is that, during this period, there has been no upward trend in youth crime. The increase in the rates and length of custody sentences is widespread and manifest in nine out of ten Canadian provinces. Some attribute the increase in custody to the increase in charges of violent offences. In that respect, the authors refer to social structural problems, such as the breakdown of the family and mass unemployment, in particular among young persons. The question is, however, whether custody is an adequate response to violence. It would seem that treatment would be more appropriate, but unfortunately both treatment possibilities and alternatives to custody are limited in Canada.

The United Kingdom enacted a rather progressive Criminal Justice Act in 1991, making a large array of alternatives to incarceration available and restricting custody to juveniles older than 15 years. However, in 1994 a new Bill was introduced in Parliament extending the maximum length of detention in a young offender institution for juveniles of 15 to 17 years old, from one to two years. The Bill also proposes the introduction of long-term detention, and even custody for life, for children of 10 to 17 years who have committed a serious crime. Finally, detention by the police after arrest, remand in custody, and placement in secure accommodation, which were not allowed under the old Act for those under the age of 15, will now be possible for those aged 12 to 15 years.

In the Netherlands, a law proposal that has already been adopted by the Tweede Kamer (house of representatives) and is now pending in the Eerste Kamer (senate), has increased the length of secure custody from 6 to 12 months for those aged 12 to 15 years, and from 12 to 24 months for those of 16 to 18 years of age.

Admissions to pre-trial detention have increased by 20 percent
Table 1: Offences committed by juveniles placed in secure detention in 1992 (n=1575)

<table>
<thead>
<tr>
<th>Type of Offence</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent Offences</td>
<td>42%</td>
</tr>
<tr>
<td>Property Offences</td>
<td>47%</td>
</tr>
<tr>
<td>Sexual Offences</td>
<td>5%</td>
</tr>
<tr>
<td>Others (incl. arson, damage, drugs)</td>
<td>6%</td>
</tr>
</tbody>
</table>

since 1984. Table 1 gives an indication of the offences leading to juveniles being placed in secure detention. Included are both those who are sentenced and those who are placed in pre-trial detention.3

Most of the violent offences consisted of theft with violence (bag-snatching, robbery – 34 percent), while most of the property offences consisted of group theft and burglary (44.5 percent). What is apparent from table 1 is that almost half of those detained did not commit a serious violent offence. This raises the question of whether there are not more meaningful and effective punishment options for these boys (there are nearly no girls in these institutions), such as, for example, intensive intermediate treatment or intensive supervision combined with job training and alcohol/drug therapy.

However, juvenile judges continue to complain about the increase in serious delinquency and the lack of secure places. These complaints, as well as the impact of media publications on the so-called 'law and order crisis', the increased fear of crime and a considerably more punitive penal climate have led to a building program which will increase the number of secure detention places by at least 70 percent in the coming years.

Even in Scandinavian countries, reputed for their tolerance and humanitarian approach, the situation is changing. In Norway, for example, the Attorney General has claimed that longer prison sentences are needed, especially for violent and sexual crimes (Allen, 1993). The Norwegian parliament has also decided that community service, first intended as an alternative for unconditional imprisonment, should be used as an alternative for conditional imprisonment. As might be expected, there have been similar changes in the Youth Justice system. This system, dealing with juveniles of 15 to 18 years of age, still relies heavily on social and welfare authorities. There is, however, growing disillusionment with the welfare approach which seems lax and ineffectual to those for whom

3 Pre-trial detention is very often used as a 'short sharp shock' punishment, which can be administered immediately. At the later formal court hearing, it is frequently transformed into a sentence to custody, which the juvenile has already served by that time. The large majority of those placed in secure detention are placed on remand but have not yet been sentenced.
the seriousness of the offence and the delinquent history are the focal points of concern. It was felt that the social welfare authorities did not take offending behaviour seriously. Although there were closed residential assessment centres, youth homes and institutions for drug users, where offenders and non-offenders were placed together, in 1993 a special secure institution for offenders under 15 years of age was built in Kristiansand. This institution is supposed to provide treatment for up to three years’ duration (Allen, 1993). Many Norwegians consider this development as an effort to extend jurisdiction over what has been called ‘a dangerous generation of juvenile criminals’. However, they have two major concerns: first, the Norwegian system, which is still a welfare system dominated by social workers, has large discretionary powers and very little legal safeguards for juveniles; and second, the (over)reliance on institutions, which have never and nowhere proved to be very successful in educating children, would seem to be an illusion.

Age limits

As has already been observed, there is a clear tendency in a number of countries to lower penal majority. One way of doing this is to introduce legislation that allows for more severe punishment for older juveniles. For example, the United Kingdom and the Netherlands have doubled the maximum length of incarceration for this age category. Another way is to make the transfer of juveniles to the adult penal system easier. In practice, however, this does not guarantee more severe punishment. Research has shown that the young person is frequently punished more severely in the juvenile justice system than in the adult system.

A second method to extend the grip of the justice system on children with problem, deviant, and delinquent behaviour is to lower the age of criminal responsibility. Although there is, in this respect, considerable variation among countries (from 8 years in Scotland and 10 years in England and Wales, to 15 years in Sweden4), concern has been expressed by the police and the media about delinquent behaviour in ever younger children. This has in particular been the case in the United Kingdom following the murder of a two-year-old child by two ten-year-old boys. In most cases, this concern has led to views on early intervention in the framework of a general prevention

4 Spain and Belgium have a juvenile protection law, based on intervention by social agencies, and criminal responsibility starts at 18 years. However, both countries are now reviewing their legislation in the direction of a more punitive ‘just deserts’ model.
policy, although it is not at all clear how it would be possible to diagnose and predict in any accurate way future delinquency amongst very young children. Most predictions result in considerable numbers of false positives, a situation that cannot justify systematic interference in the lives of families and children, not even on a voluntary basis. However, some go even further than that. An officially appointed advisory Commission to the Minister of Justice, when asked to recommend 'effective and efficient measures' to reduce juvenile delinquency, recommended that the police specifies all police contacts with children under 12 years of age to the Council for Child Protection (an information-gathering agency that makes social inquiry reports on behalf of the juvenile judge as well as summary reports for the prosecutor). The Council would have to register these police contacts, in order to be able to examine the trends (extent and nature) in the delinquent behaviour of young children and formulate policy measures. In addition, it would allow the Council to examine potential problems as well as the risk of further delinquent behaviour (Commissie Jeugdcriminaliteit, 1994).

My personal view is that these are worrying tendencies, because they extend the net of possible judicial intervention to include practically all children and juveniles and risk undue interference in the lives of numerous families. Although social prevention may be useful for some families whose children give them many problems, my view is that unless there are signs of abuse and neglect, judicial authorities should not take the lead in assisting them. To my knowledge, early intervention by judicial authorities has never been very effective in preventing later delinquent behaviour.

Some concluding remarks

As Gatti (1993) remarks, the juvenile justice system presents a Janus figure (after the Roman god who had two faces): one benevolent face turned to minor delinquents, for whom all kinds of diversion measures are available, and one authoritarian face turned to more serious delinquents imposing on them ever more repressive measures.

That is why some claim that we should abolish the juvenile justice system. For example, Feld (1993) has no faith in yet another reform of the system. He feels that the adult system is better because the procedural rights for the defendant are much better guaranteed and the punishment does not seem to be much harsher.

Hirschi and Gottfredson (1991) do not agree with this view. They favour the idea of abolishing the two separate systems, because they state that criminal behaviour is independent of age and so there is no
need for a separate juvenile justice system. However, referring to the more punitive character of the adult system and to the much greater number of imprisoned persons in the adult system than in the juvenile one, their solution would be to keep the better of the two. According to them, that would be the juvenile system. A Dutch researcher who looked at the relationship between maturity and responsibility for one's (delinquent) behaviour and age from a psychological and developmental point of view, found no good reason to maintain a separate juvenile justice system and she wanted to abolish any lower limit on the age of criminal responsibility (Bol, 1991). So the question then arises: are there any good reasons for maintaining a separate juvenile justice system?

Sagel-Grande (1991) enumerates some of them. First, she states that the law does not necessarily have to follow the insights of the behavioural sciences: the law has its own function and that is 'to provide for a just and rational social order'. The law can set its own limits and does not need any psychological justification to set specific age limits. Age is not strictly related to developmental states, but it offers a practical measure to mark certain transitions, such as, for example, the age of going to school, getting married, voting ...

Moreover, according to the law, there can be no punishment without guilt. Guilt requires a certain maturity and young children cannot be held guilty in the same way as older persons. Finally, Sagel-Grande observes that if the police are required to pay more attention to the behaviour of young children, these children would necessarily undergo the negative, secondary effects of criminal proceedings.

There are other justifications as well for continuing to separate juveniles and adults in justice proceedings. By far the most important to my mind is the principle of resocialization (Heinz, 1992). This principle has been under heavy attack, in particular in the adult system, where it is replaced by the 'just deserts' philosophy, the proportionality of punishment to the seriousness of the offence, and equality before the law. However, evaluation research of specific sanction options has shown three things: first, punishment without assistance and treatment is not effective in reducing recidivism; second, treatment without the threat of more severe intervention (incarceration in most cases) is not effective either; third, the most effective intervention is a combination of punishment and treatment (Junger-Tas, 1993). It seems to me that this combination could far more easily be realized in the juvenile justice system than in the adult system, in view of the greater malleability and potential for growth of juveniles. A further advantage of a separate juvenile system is the greater possibility for those working in the system of introducing and experimenting with new sanctions. Due to the
informal character of some of the proceedings, prosecutors and juvenile judges can try out innovative sanctions, as a substitute to simply locking children up. In this way, they can renovate the system and improve its functioning.

It is clear, however, that renovation of the system is dependent on a number of conditions. Thus 'due process' must not be abandoned for new forms of discretion and arbitrariness. This also means that diversion procedures, whether imposed by the police or by the prosecutor, have to be controlled: judicial authorities must also be accountable for their actions and their policy. A practical consequence of this view is, for example, that court hearings of minors should be open to the public. I would also like to plead for a specialization in juvenile justice for prosecutors and judges. This would make it easier to open up a specialized career path for them because, at this time, their status is not as high as that of other specialized judges.

Abolishing the juvenile justice system would be to throw the baby out with the water. We must certainly improve the system because it has many flaws. But we must keep what is valuable: the concern for children and their welfare, the faith in their potential to grow into responsible human beings and the persistent efforts of so many, working in that system, to help in achieving this aim.

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Organized crime in Poland: how to combat it?

The incidence of organized crime
Organized crime occurs in Poland, the Czech Republic, Slovakia, Hungary and in other Central European countries which are remodelling their economies in the direction of a free market economy. The scale of this occurrence is difficult to define. Political liberalization, contacts with western economies and, finally, the opening of boundaries resulting in free relocation of people and of goods have all contributed to a new situation. The countries in question are becoming, to a great extent, the area of penetration for organized criminal networks – both from the East and from the West. Internationalization of organized crime, which is the basic prerequisite for its development in European countries, has spread into Poland and the neighbouring countries. It is a specific ‘by-product’ of social and political liberalization and of the development of free economic activity (Marek, 1992, p. 22).

These new conditions, on the one hand, set prospects for a successful societal development in our region, but, on the other hand, pose new threats as well. Those call for identification and elaboration of effective prevention strategies as soon as possible.

Concerning the incidence of organized crime in Poland, motor vehicle theft is the one most often reported in the mass media. These are mostly vehicles stolen in Western European countries, especially from Germany. With altered licence plates and counterfeited documents they are transferred to Poland and often further to Russia and other countries of the (former) USSR. This trade is practised by organized groups of international membership. Customs officials and Polish police are able to detect and dispose of only a small number of organized thefts, in spite of close cooperation with German police and the police of other neighbouring countries (Plywaczewski, 1993, pp. 59-62 and 103-109).

Another form of organized crime is smuggling drugs across the Polish border – by land, sea, and air. It is a long-standing tradition and includes both the drugs illegally produced in Poland (amphetamines, heroin) and the transit of drugs (cannabis, hashish) through Poland to Western Europe from the Middle East and Far East countries. Also in this regard we lack statistical data or even reliable estimation as to the range of the practice in question (cf. Holyst, 1993, pp. 151-152; Saberschinsky, 1991, pp. 179-196).
A particularly noticeable, although not always organized, form of criminal activity is illicit production and trafficking in alcoholic products, cigarettes, and other nicotine products, especially in the frontier areas. In order to control this, the Polish government, on September 1, 1993, introduced an excise duty on alcohol and nicotine products which are labelled. It facilitates combatting this criminal activity and helps to differentiate illicit from legal goods and, moreover, it makes 'wild trade' less profitable. Other incidents of organized crime include theft of whole truckloads from TIRs, transit of luxury goods across the boundaries, so-called merchandise piracy, and, finally, illicit trafficking in arms. In the latter activity organized criminal groups of ex-Soviet army soldiers were also involved (the settling of bloody accounts between these groups shocked the public). It is very difficult to control this phenomenon. In spite of the difficulties, the authorities were successful in disclosing a few of such groups, against whom criminal prosecution is pending (Dyda, 1992, pp. 157-160).

In the face of growing anxiety that Polish financial institutions might be exploited by local and foreign criminal organizations for laundering criminal proceeds, the president of the Polish National Bank, on October 16, 1992, edited a regulation. This obliged all banks to report immediately to financial control agencies and the police, all suspicious transactions, especially those in excess of amount of 200 million zlotys (approximately 10,000 US dollars). In suspicious cases the legality of the source of money is checked (cf. Badzio, 1992, pp. 14-19). This move should serve as a measure against exploitation by criminal organizations of Polish banks as well as other financial institutions for the purpose of money-laundering.

The factors contributing to organized crime development

In professional literature it is often stressed that counteracting organized crime is extremely difficult because its forms are constantly improving and changing. Furthermore, the activities of criminal organizations are based on wide-scale use of modern technologies, organizational forms and structural adjustments to current political and economic conditions. On the basis of substantial knowledge about this phenomenon, one may feel tempted to claim that organized crime occurs in two basic forms. The first one is a mafia-type structure, constituting a system alternative to that of the existing structure of the state, the former trying to force out, supersede or complement the latter. The other form is the criminal organization aiming at maximum profit, and operating by taking advantage of existing opportunities, making the most of them through cooperative connections and international expansion (cf. Schneider, 1993, pp. 822-823; Fijnaut, 1990, pp. 58-70).

Whereas the first of the two basic forms of organized crime is represented by classic mafia-type organizations, founded and operating in Sicily, and later in the USA, organized crime of the other type is found on European ground. It appears that mafia-type
organizations occur in the (former) USSR territory, whereas the other type of criminal organization is found in Poland, the Czech Republic, Slovakia, Hungary and other countries introducing market economy and integrating into the EU. Therefore, the statements that describe the current condition of organized crime in Poland as corresponding to that of the USA in the 1920s and 1930s should be regarded as unsubstantiated.

According to some American experts, the so-called ‘prohibition syndrome’ is an underlying genetic factor of organized crime, because it occurs and develops wherever there is a demand for specific products and services unavailable in the legally functioning system – alcohol, drugs, prostitution etcetera (cf. Lejins, 1979, pp. 76-77). This conception is undoubtedly adequate in accounting for the source of organized crime on American soil. It calls, however, for being supplemented with the ‘black market mechanism’ – emerging as a problem in connection with rationing and distribution of definite goods, for which there is a social demand. Such a situation promotes the phenomenon of corruption and of ‘secondary circulation’ of goods and services, effected by offenders who organize themselves in order to ensure profits.

It is a well-known phenomenon in the countries of so-called ‘real socialism’, based on the centralized system of rationing and distribution. It has occurred in Poland on a large scale, and at present in Russia and other countries of the former USSR. Therefore, when analyzing the problem, I have supplemented the ‘prohibition syndrome’ notion with the concept of ‘speculation syndrome’ because those two syndromes create the black market and the conditions for organized crime development (Marek, 1986, pp. 167-168).

These syndromes are undoubtedly basic genetic factors of organized crime, but they do not fully account for the etiology of this phenomenon. I believe that it is possible and advisable to introduce a third factor, the ‘gain maximization syndrome’, in the conditions of developed, free-market economy. This factor occurs in countries with highly developed economies, as well as in countries where a quick and impetuous development of market economy is taking place, such as Poland, Hungary, Czech Republic, and Slovakia (Marek, 1992, p. 27).

**Legal remedies in combating organized crime**

Combatting organized crime is extremely difficult because of the conspiratorial, planned, and discipline-based character of the criminal organization, and because of the internal control mechanisms and the external ‘tightening’. Even if some members of the organization are successfully caught and their criminal liability is established, they usually turn out to be lower-ranking performers unaware of the overall structure, and the ruling structure in the first place. In spite of this, police agencies use carefully planned and well-deliberated tactics and thus manage to get to the core of some criminal groups (cf. Schwind, 1988, pp. 338-340; Fijnaut, 1990, pp. 88-89).
Legal solutions in the field of criminal procedure are often very limited in regard to primacy of the criminal justice principles and procedural rules. In Germany, for example, it was not until 1992 that an Act was passed which concluded the debates on the possibility of waiving (in the course of a trial) disclosure of of a witness’s personal data and, in particular, of the requirement of § 68 of the Penal Procedure Code to give the witness’s address. (It is possible, however with limitations, to disclose at a trial only his office address or the address of the firm employing him.) The regulations regarding methods of witness interrogation truly enable him to conceal information from the defendant and from other persons involved in the trial, which is supposed to protect him from vengeance or blackmail (cf. Rebmann and Schnarr, 1989, p. 1187).

In Poland, a 1993 draft statute on combating organized crime, currently a subject open to debate by the legislative commission of the Polish parliament, set forth a proposed regulation on crown witnesses. The draft provides impunity for those who, showing active repentance, disclose the criminal plot in which they participated, its members and criminal objects. This proposal, however, met with strong opposition in legal and professional circles that fear such a regulation could easily be abused, opening the possibility of blackmail and manipulations in the course of criminal investigation (Owczarski, 1993, pp. 99-107).

Other objections refer to a vague notion of serious crimes being committed in an organized form, and, finally, to possible inequality in treating criminal offenders. There is also fear that in Poland’s difficult economic situation it may be virtually impossible to provide the crown witnesses with necessary protection and help, including the change of a work place, housing, physical protection, etcetera (Owczarski, 1993, pp. 104-105). Nevertheless, it has been argued that a carefully elaborated regulation concerning crown witnesses, and the use of undercover agents as well, is necessary and inevitable in combating organized crime whose growth seriously threatens society’s development and the reforms of the social and economic system as well (Waltos, 1993, pp. 25-26).

The issues of legal qualification of acts connected with the involvement in organized crime are even more complicated. In the USA, the construction of ‘complicity with conspiracy’ is applied. The condition of liability is (1) criminal intent, including the knowledge that the conspiracy aims at committing an offence, and (2) the intent of participation in a conspiracy of which the entire scope in terms of objectives or of the parties involved, is not known (cf. Hermann, 1979, pp. 159-161).

While the construction of ‘conspiracy’ shows its practicability, the legal solutions accepted in European jurisdictions, including the Polish legislation, prove impractical when applied to perpetrators because it is, in principle, not possible to prove their agreement in terms of the conditions stipulated by law, in particular, the knowledge of its scope and contents. The construction of complicity with a criminal association
often encounters evidential difficulties. These result in a frequent breakdown of the primary legal qualification presumed in the investigation. The particular defendants – if sufficient evidence is gathered in this respect – are then convicted of fragmentary, proved, particular criminal acts.

The example of Germany is very instructive. The regulations of § 129 of the Penal Code on the formation of criminal groups and on complicity with such groups (extended in 1976 to terrorist groups: § 129a) are extremely rarely applicable. In practice, most often the Penal Code is applied to regulations concerning specific crimes, and in particular the regulations of the act on trafficking in stupefacients (July 28, 1981, § 29-30) and Penal Code provisions pertaining to professional forms of robbery, theft, concealment of property, of prostitution exploitation etcetera (§§ 180-181, 243-244, 260, 293 and 302).

The same can be said in regard to Poland, where practical application of the existing statutes on the complicity with a criminal group (see article 276 of the Polish Penal Code of 1969) encounters serious difficulties in proving legal features. Thus, assuming as input the fact that the majority – or at least the most dangerous perpetrators – are persons whose criminal activity displays the features of professionalism, a proposal has been set forth postulating the inclusion of all perpetrators who have made criminal activity their permanent source of income. This proposal would fit within the scope of a general clause of aggravated punishment in a planned new Penal Code of Poland (Marek, 1992, p. 35).

In the light of a recent tendency to restrict the penal application of deprivation of liberty, of the minimal effectiveness of the latter with respect to organized criminals (even in prison they are subjected to the control of the organization and are usually incorrigible), and of the ineffectiveness of imposing fines with regard to such criminals, other measures are being contemplated. Confiscation of property, forfeiture of implements and proceeds of crime, deprivation of certain citizen’s rights (or to carry out some kind of activity) are of primary importance in the penal measures arsenal in relation to the cases in question.

The penalty of confiscation of property, of which the effectiveness is predicated upon the presumption of the criminal source of property owned by the offender and his family, was criticized, and not without reason. It was dismissed in the course of novelization of the Polish law (article 2 of the Statute of February 23, 1990). However, while rejecting that penalty as a measure of ‘general’ application, we must observe that in many countries it is provided for by specific regulations pertaining to combatting the most dangerous forms of organized crime, e.g., the British Act on Combatting Drug Trafficking of 1986, or the German Statute of July 15, 1992 on the Prevention of Trafficking in Drugs and Other Forms of Organized Crime – so-called extended forfeiture of property or other items in the possession of the persons convicted of complicity with organized crime. The forfeiture includes all the assets owned
by the offender and his family, with respect to which there exists a justified presumption that they have been acquired as a result of an organized offence (cf. Kaiser, 1993, pp. 606-680). An introduction of parallel legal solutions into the Polish penal law within the framework of planned reform seems necessary.

The vital issue in fighting organized criminality is recognition of the phenomenon and carrying out an effective, carefully planned and well-organized action involving specialized police and financial control agencies. Also the ‘tightening’ of the legal system is of key significance here, as all ‘leaks’ and ambiguities therein are immediately abused by organized criminals. When executing this complex task, it is advisable and necessary to participate in international cooperation and take advantage of the experiences other countries have gained in the course of a long-standing battle against the dangerous phenomenon of organized crime.

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Sentencing and disparity – a comparative study

The purpose of the research reported here was to study uniformity and disparity in sentencing as well as the impact of the legal framework of sentencing on sentencing variation. One of the most prominent research topics linked to decision making within the criminal justice system still centres around the sentencing issue. Although debates on sentencing and finding the appropriate penalty may be traced back to the 19th century (see, e.g., Kraepelin, 1880) it seems obvious that the most intriguing questions have not yet been resolved. Since the 1980s, disparity in sentencing and the search for feasible ways to reduce disparity are in particular considered to represent conceptual as well as policy challenges for both legal sciences and criminology (Pfeiffer and Oswald, 1989). During the last 15 years the focus in international sentencing research has been placed on equity and disparity in sentencing as well as on accountability in sentencing. However, sentencing decisions are but a (small) part of decision making within criminal justice systems which might be associated with disparity and discriminate treatment of offenders. The growing importance of diversionary practices points to the relevance of
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adopting a systems' view when studying sentencing (Albrecht, 1987). The core problem in research on sentencing is still embedded in the question of which variables determine decision making within criminal courts and which criteria actually account for variation in sentencing decision outcomes. As any concept of justice demands a distinction between offenders and offences, the identification of those parts of sentencing variation which are justified and those parts which are not justified by legitimate criteria, become extremely important. Thus, disparity and equity in sentencing cannot be observed without making reference to a normative theoretical framework which allows for separation of justified and unjustified variation.

With respect to disparity in sentencing, several levels of analysis must be characterized. On the one hand, justified and unjustified variation has to be differentiated. This refers to the need for normative theories describing those criteria of criminal cases which should be linked to differences in sentencing outcomes. On the other hand, systematic and unsystematic differences in sentencing must be addressed as parts of the variation might be explained by 'white noise'. Furthermore, the question could be put forward as to whether the differences observed are intended or unintended. Then, variation on the aggregate level of court districts as well as on the level of individual judges' decision making could be studied. Finally, inconsistency in sentencing could be observed on a cross-sectional basis, as well as from a longitudinal perspective.

For the purpose of criminological research on sentencing, priority should be assigned to the question of whether variation in sentencing, which undoubtedly exists with respect to the type of penalties and the magnitude of penalties, can be explained exclusively by such variables which are consistent with sentencing statutes and legal sentencing theory.

In sentencing research, two approaches to data collection have essentially been used. Firstly, the study of files and court documents, 'real' decisions on the one hand, and questionnaires as well as interviews on the basis of simulated criminal cases on the other, have to be mentioned. The use of one of these methods in the collection of data in sentencing research has not only methodological, but also theoretical consequences. With respect to methodology, the problem of the validity of the data which can be produced by making use of one of these methods of data collection should be discussed. In case of an experimental approach on the basis of simulated criminal cases, decision making refers to an identical set of offence and offender characteristics, but the problem then arises of whether the results of decision making can be taken to represent real-life decision making. This is questionable. The validity of sentencing outcomes which are the response to simulated cases, is surely dependent on whether both the simulated cases and the interview situation may actually be regarded as providing the same type of stimulus as a criminal trial does. In case of an approach using court files and court documents, valid information on
sentencing outcomes is undoubtedly available. But here, the validity of information on the case (offence and offender characteristics) which can be produced, might be questionable. In terms of theory, the different approaches to data collection are associated with different sets of theoretical variables. While questionnaires and interviews allow collection of data on the attitudes, perceptions and preferences of individual judges, the study of documents and files must treat these variables as a 'black box' (Hogarth, 1971). While studying sentencing on the basis of documents and files, other sets of variables referring to procedure and those information on the case, which are used by criminal justice agencies to reconstruct the criminal offence, are highlighted.

The method of simulated cases should be assessed to be appropriate for studying the sentencing of petty offences or those types of crimes for which routines and summary procedures have developed. In this field, decision making is generally dependent on written information. The German summary procedure (Strafbefehlsverfahren) may be taken as an example here. The sentencing decision is made on the basis of written information which is available from police reports and other sources. But if sentencing and sentencing variation in the field of serious crime are to be explained, then only the study of real-life decisions as well as of court documents seems to be appropriate. By relying on the study of documents and court files, the problem that artificial variation is produced and explained, may be avoided. On the other hand, the method demands that those criteria which actually determine sentencing are part of the content of court documents and that other variables not represented in the documents, such as perceptions, attitudes and case characteristics, which have not been entered into the official documents, do not play a decisive role.

In order to study the question of disparity and uniformity in sentencing, a comparative design was developed for Germany and Austria. The focus was on sentencing the serious offender and serious offences. Therefore, cases of robbery, rape and burglary were chosen as units of analysis. Using a comparative design, it was possible to test hypotheses on the potential of the normative framework of sentencing in guiding sentencing decisions. The offence descriptions (with respect to robbery, rape and burglary) are similar in both countries. In both countries, the criminal code statutory techniques with respect to criminal penalties are the same in so far as each offence carries its own range of penalties. On the other hand, analysis of the national sentencing statutes reveals considerable differences. The range of penalties available in Austrian criminal law is rather narrow, while German criminal law is characterized by a much wider range of penalties (i.e., penalties in the case of burglary may range from six months to five years in Austria but from three months to ten years in Germany). Furthermore, Austrian sentencing statutes are more precise with regard to stipulating aggravating and mitigating circumstances (§§ 33, 34 Austrian Criminal Code). In this respect, German criminal law (§ 46
German Criminal Code) restricts guidance to those dimensions of offence and offenders which should be used in sentencing (without deciding upon their mitigating or aggravating nature). (For a complete review of Austrian sentencing laws, see Pallin et al., 1990; for a review of German sentencing law, see Albrecht, 1994.)

The comparative design of the study therefore allows an extension of assumptions on sentencing. Assumptions on the effect of statutory ranges of penalties as well as on the effect of statutory guidance of sentencing in terms of precise sentencing criteria may be tested.

The samples include final convictions and their sentencing outcomes in cases of robbery, rape and burglary in five court districts in Baden-Württemberg as well as in two court districts in Austria. In total, 1283 German and 909 Austrian court documents (covering the years 1979 to 1981) have been studied. The samples are representative for both countries (Albrecht, 1994). Data collection was based on the same questionnaire which covered characteristics of the offences, victim, offender, procedure, as well as the sentencing decision and its written justification.

The first question to be addressed concerns the impact of differential statutory ranges of penalties. Analysis of the data reveals that the statutory ranges of sentencing do not play any role in the types of offences studied. Obviously, informal maximum penalties are established in court practice and these are rather consistent in both countries, despite the considerable differences in statutory minimum and maximum penalties. In the case of ordinary robbery (without aggravating circumstances) and rape, these informal limits are set at five years’ imprisonment; in cases of aggravated robbery at ten years’. For burglary offences, the data reveal that those informal limits are set at approximately two years’ imprisonment. Furthermore, the amount of variance in sentencing is the same for both countries from which, in turn, can be concluded that sentencing variation is not dependent on the statutory sentencing ranges. From these data, it can therefore be concluded that statutory determination of the maximum punishment has no impact at all on sentencing. For both systems, it can be observed that minimum penalties are also disregarded by criminal courts. Different systems enable sentencing below the minimum penalty provided by the law for ordinary offences of rape and robbery. In Austria, a general sentencing regulation (§ 41 Austrian Criminal Code, ‘extraordinary mitigation’) permits deviation from minimum penalties if there are mitigating factors. This provision is regularly used to circumvent the rather high minimum penalty in the case of aggravated robbery (five years’ imprisonment). In the German system, in the case of rape or aggravated robbery (for which the minimum term of imprisonment is set at two and five years, respectively), the offence statutes allow for a minimum term of six months or one year, respectively, in ‘less serious’ cases.

Apart from the informal restriction of maximum penalties, the amount of variation is further reduced in both countries by a pragmatic mechanism...
which leads to concentrating sentences on only a few penalty options out of the complete range of sentencing decisions permitted within the statutory limits of penalties. For all types of offence in both countries, data reveal that between 50 and 80 percent of all sentences fall under seven sentencing options in terms of a certain length of imprisonment (e.g., 12 months, 18 months, etcetera). This phenomenon has been described in several other sentencing studies (Rolinski, 1969).

Regression analysis was used separately for the single types of crime included in this study, in order to examine the impact of various factors which indicate the seriousness of the offence, characterize the offender and the victim as well as the offender-victim relationship. In the case of robbery offences, the degree of violence involved, degree of injuries suffered by the victim, and type of weapon used, were considered. In the case of rape, the same variables were introduced. Furthermore, a measure was developed to cover the seriousness of the sexual aggression (in terms of type, duration and number of sexual acts inflicted). In addition, the victim’s contribution to the offence was considered (in terms of inviting the offender to the victim’s apartment, hitchhiking, etcetera). For robbery and burglary, a variable representing material damage and loss was also introduced. In order to cover the individual characteristics of the offender, three variables were constructed: history of personal problems (i.e., broken family, addiction, periods of detention in children’s homes, etcetera); degree of actual personal problems (unemployment, addiction, homelessness, etcetera); and finally history of prior convictions (i.e., number, type and seriousness of prior penalties).

The results of regression analysis suggest that substantial proportions of variation in sentencing may be explained by a limited number of factors which represent the seriousness of the offence; in the case of burglary, a prior record contributes significantly to the explanation of variation. In cases of robbery, approximately 50 percent of sentencing variation was explained by the degree of violence involved, the losses suffered by the victim and whether or not a weapon was used. One third of variance observed in rape sentences could be explained by the degree of injury suffered by the victim, the degree of sexual aggression, as well as the victim’s contribution to the crime. Approximately 40 percent of variance in burglary sentences was explained by the number of burglaries adjudicated and the number of prior convictions. Thus, a substantial proportion of variation in sentencing can be explained by variation in only a few sentencing criteria. This in turn rules out that differences in attitudes or perceptions may account for significant proportions of sentencing variation. These results also rule out that regional variation, which may be the product of different styles of sentencing developing in different court districts, occurs to any great degree. In fact, regional variation which can be observed when comparing sentencing outcomes in the various court districts studied in this report, can be explained
by differences in offence and offender characteristics. The same holds true for the explanation of variation in sentencing in single court districts over the three-years study period. Similar explanatory power of the same set of variables could be observed for the Austrian sample. Regression analysis was then used for the integrated set of German and Austrian data. Here, in addition to those variables mentioned above, a country variable (German/Austrian) was introduced. The results of regression analysis demonstrate here, that, in the case of rape and burglary, the country variable does not contribute in any way to an explanation of sentencing variation. The variables measuring seriousness of offence are sufficient to explain sentencing variation. Other results were obtained with regression analysis for robbery offences. It could be observed that Austrian robbery cases were systematically associated with severer penalties, although Austrian and German robbery offences did not deviate from each other with respect to their seriousness or to offender characteristics.

The study of sentencing was then extended to the question of whether variables representing extra-legal criteria influence the outcome of decision making. Assumptions on the effects of gender, ethnic minority status as well as social class were tested. These variables were introduced in regression analysis in order to obtain estimates on their relative power in the explanation of sentencing variation. None of these variables (gender, ethnic minority status, social class) amounted to anything more than insignificant correlations in either country.

Sentencing disparity, which on the surface can be observed with respect to gender, ethnic minority status and social class, is accounted for by differences in prior convictions and, especially, differences in seriousness variables.

It may be concluded, therefore, that both German and Austrian sentencing practices are characterized by a considerable uniformity. Existing variation in sentencing can essentially be explained by seriousness variables as well as prior convictions. The statutory range of sentencing options has no impact on the degree of variation in sentencing. Reduction of variation is apparently achieved by a system of informal sentencing guidelines which essentially reflect criteria of proportionality. The criminal courts in both systems obviously do not follow the mainstream sentencing theories and guidelines arguing for individualized treatment of offences and offenders, but rather favour theories of proportionality.

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Crime institute profile

School of Forensic Science and Criminology

*Martin Killias*¹

The University of Lausanne has a rather unique research and teaching unit, with its combination of forensic science and criminology. The *Institut de police scientifique et de criminologie* (IPSC) is an autonomous school (within the Law Faculty) as well as a research centre. Founded in 1909 by R.A. Reiss, one of Europe's leading figures in forensic science (then commonly known by the French term, *police scientifique*) of that period, the IPSC has since developed into a centre of some 100 full-time students, about 20 researchers, two full and three associate or assistant professors and a number of lecturers. Subdivided into two units, one for forensic science and one for criminology, the IPSC will soon be located in a new building within the university campus on the shores of Lake Geneva. The new space will facilitate its future development.

The Forensic Science Unit, headed by Pierre A. Margot, who also acts as the director of the School, deals with 'criminalistics'. Its fields of research are documents, fingerprints, fire and arson, chemical criminalistics, and 'genetic fingerprints'. It also prepares many expert reports on criminal cases. Several of its former students are heads of forensic science units of police departments, including the internationally known forensic science department of the Zurich police.

The criminology unit, headed by Martin Killias, who also acts as dean of the Law Faculty, specializes in survey research and evaluation of correctional and penal policies. Its activities will be explained more in detail below.

The School

Together these units form a school which offers the only university level programmes (up to the PhD level) in forensic science and

¹ *Institut de police scientifique et de criminologie*, University of Lausanne, CH-1015 Lausanne, Switzerland. Tel.: (41 21) 692 46 00; fax: (41 21) 692 46 05 (from October 1994)
criminology in Switzerland. A four-year programme leads to a licence (equivalent to a master's degree) of forensic science. This includes criminological training and is open to all students who are eligible for university studies (currently about 15 percent of the Swiss youth). Three postgraduate programmes lead to a diplôme, which includes a two-year programme in criminology. This includes training in forensic science, criminal law, social sciences and puts special emphasis on quantitative research techniques. It is open to graduates in sociology, political science, psychology, economics, and law. The School also offers special programmes for police technicians and scientists, senior police officers, and magistrates.

The close links between criminology, forensic science and criminal law offer a number of favourable interaction effects. Many students who began with forensic science later discover their interest in criminology, or the other way around. There are also obvious links between criminology and forensic science since 'security' is both a technical and a social concept. But above all, the fusion of the two fields has promoted their development and the concentration of resources at the University of Lausanne. The IPSC is larger than any other department specializing in related fields at any Swiss university.

Lausanne as a fertile environment

Although one of Switzerland's oldest universities, founded in 1537, Lausanne is a favourable location for new fields. Pareto, Walras, and Piaget taught there long before similar chairs were awarded at German Swiss universities. The foundation of the IPSC in 1909 reflects this tradition. It explains why Lausanne (and other French Swiss universities) always attracted many students from other parts of Switzerland. While French Switzerland makes up a fifth of the country's total population, its universities together share more than 50 percent of the Swiss student population. This denotes a significant success in a country where, not unlike what Derek Phillips (1993) observed about the Netherlands, most students prefer a university nearby their parents' home. The French-speaking universities also attract considerably more foreign students.

This international and polyglot orientation is well reflected among students and teachers at both units of the IPSC. Forensic scientists and criminologists from Britain, Australia, the USA, Germany, Israel and Italy (Uberto Gatti, Genoa) have taught there in the recent past. During the next academic year, Dr. Josine Junger-Tas will be teaching as a visiting professor in criminology.
Research in criminology

Victim surveys

When the criminology unit stabilized after 1982, priority was given to projects with great potential for future research, including doctoral dissertations, and policymaking. In this connection, the Swiss National Science Foundation offered to fund the first major victimization survey in Switzerland, conducted in 1984 in the country’s French-speaking areas. After this pilot study, a second survey covering the remaining parts of Switzerland was conducted early in 1987. Together, some 6,500 households were interviewed by telephone on some 600 variables. At that time, it was the first major CATI survey in this field in Europe. A high telephone penetration rate, combined with leading technology, helped to make this survey technique available in Switzerland some years before other countries. Despite many doubts expressed at that time in the literature, CATI produced reasonably valid data on victimization and attitudes (Killias, 1989) at a remarkably low cost: the total external costs amounted to some SF 250,000. Due to its experience with this new technique, the IPSC was invited to join in the first international crime survey, conducted in 14 countries early in 1989 through CATI and using a questionnaire which in some ways resembled the Swiss model (Van Dijk et al., 1990).

The database of the Swiss crime survey led to several dissertations and additional studies, e.g., on victimization of foreign citizens and reporting to the police according to offender characteristics, including nationality (Kuhn et al., 1993), on sexual victimization and reporting (Kuhn, 1991), on fear of crime in relation to vulnerability (Alimam, 1990 and 1993) including self-defense training (Plancherel-Spicher, 1993), on punitive attitudes (Kuhn, 1993) and on attitudes towards the police (Kuhn-Roux and Kuhn, forthcoming), on spatial distribution of crime (Riva, 1988; Killias and Kuhn, 1993), etcetera. An overview of several of these studies can be found in Killias (1991). The Swiss crime survey has also influenced, together with significant amounts of British and Dutch research, the Swiss Law on Victim’s Rights and Assistance. This law has reshaped victim assistance schemes, but even more so the criminal procedure by conferring on the victim the role of a party during the investigation and in court (Derisbourg-Boy, 1992; Killias, 1993a).

As a side-product of the international crime survey, some attention has been devoted to correlations between gun ownership in several countries and fatal events (see, e.g., Killias, 1993b). The IPSC is currently part of a government committee which has the mandate to...
prepare a law on the sale, possession, and carrying of guns.

Currently the IPSC is involved in the design of the Swiss contribution to an international survey on crime against retailers and restaurants, bars, etcetera, which is being coordinated by the Crime Prevention Directorate of the Dutch Ministry of Justice. No commercial crime survey has been conducted so far in Switzerland, with the exception of a survey among 400 banks on hold-ups (Grandjean, 1988). One of the main findings was that robberies against other sectors handling cash, such as post offices and railway stations, did not increase after security standards had increased among banks.

Self-reported delinquency studies

Together with other units throughout the Western world, the IPSC has participated in the international survey on self-reported juvenile delinquency, initiated by the Research and Documentation Centre of the Dutch Ministry of Justice, with a national random sample of 970 juveniles aged 14 to 21 years. Since no large-scale self-reported delinquency (SRD) research had ever been conducted in Switzerland, the model questionnaire was extended to cover additional topics (some 1000 variables overall). A few methodological tests were included, e.g., on the effects of 'dramatizing' versus 'de-dramatizing' formulas of SRD items (Villettaz, 1993), the implications of prevalence versus incidence rates (Rabasa, 1994), and differences in SRD between respondents and non-respondents (Killias et al., forthcoming). Among the preliminary findings of this project funded by the Swiss National Science Foundation, the equal (if not higher) prevalence rates of soft and hard drug use among the French Swiss youth (Killias et al., 1994) was given some attention in the media. Given the apparent contrast between the more 'tolerant' German-speaking cantons, with Zurich's and other cities' 'needle parks' (Eisner, published in this journal, 1993), and the more 'repressive' French-speaking cantons with no open drug scenes, this finding seems to challenge the common view that no open drug scenes means less drug use.

Penal attitudes, penal policies, and evaluation studies

This conflict between the two major parts of Switzerland may indicate a difference in political culture ('Weltanschauung'). What Phillips (1993) observes as Dutch 'tolerance' towards deviants and criminals and the 'intolerance' among individualistic Americans, seems, though more moderately, also to distinguish the more individualistic and,
thus, more punitive 'Latinas' from the German Swiss who are more concerned about the 'common good' and who, therefore, tend more easily to blame social factors for individual misbehaviour (Killias, 1991; Kuhn, 1993).

Several IPSC research projects have dealt with punishment, including historical studies on European incarceration, unemployment and execution rates (Killias and Grandjean, 1986; Killias, 1994). Using time-series analyses, Kuhn (1993 and 1994) found that the abolition of short prison sentences and the possibility of suspending longer sentences often resulted, abroad and in Switzerland in the past, in a shift from short to longer sentences and, therefore, to higher incarceration rates. A better way to reduce prison crowding might be to repeal the 1975 amendment of the Narcotics Act. The much longer sentences it provided produced a sensational increase in the prison population (Kuhn, 1987 and 1993).

Two studies benefitted from recent computer-based data files of convictions. Among Swiss citizens born in 1955, 24 percent had by 1987 been convicted at least once and for whatever law, and 6.5 percent had been incarcerated at least once (Killias and Aeschbacher, 1988). A study on recidivism in the canton of Jura did not find, contrary to current wisdom among criminal law teachers, any lower reconviction rates among those who received suspended or other non-custodial sentences once criminal record, sex, and age had been considered (Stemmer, 1992). A projection on long-term incapacitation of sex offenders noted a potentially low preventive effect on sexual assault against children (Villé, 1991).

Responding to an increasing demand, several treatment programmes on corrections have been evaluated. Currently, the IPSC is evaluating a randomized experiment with community service in the canton of Vaud. Convicts sentenced to short custodial sentences, who are eligible for community service and who volunteer, are randomly assigned to community service or imprisonment (Fichter, 1994). The first findings can be expected in about two years.

Future perspectives

This presentation about the IPSC and its orientations should not be viewed as a well-balanced overview of Swiss criminology. (Readers interested in that should consult the last volumes of the French/German Bulletin de criminologie, whose current secretariat is located at the IPSC, or the series criminologie, published by Rüegger, Chur.) However, the résumé given here reflects, to some extent, the concentration of criminological resources at Lausanne University, and
the absence of research centres outside the academic sector. This position also explains the relatively wide range of subjects studied at the IPSC. In fact, the choices of themes and approaches are often determined by the needs of policymaking.

The pragmatism which results from these constraints is not necessarily a-theoretical. In a small country, there may be little room for rigorous theoretical preferences or specialization in narrowly defined subfields – in the same way as, in a rural village, a generalist may be more in demand than a medical specialist. In any case, students may benefit most from a teaching environment which offers many opportunities for involvement in manageable projects, based on available databases.

It is likely that the IPSC will continue to develop along these lines, combining teaching and policy-relevant research. Both the criminology and the forensic science units are committed to strong international cooperation. Apart from the international projects already mentioned, the IPSC is currently involved in the preparatory work, within the Council of Europe, for a future European sourcebook of criminal justice statistics. Despite recent budget cuts in the university sector, the IPSC is developing an active programme to answer the growing concern about crime among the Swiss public and policymakers.

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Bern/Stuttgart, Haupt, 1993

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Villé, R.

Villettaz, P.
Le libellé des items de délinquance: son effet sur les réponses *
*Bulletin de criminologie*, vol. 19, no. 1, 1993, pp. 100-132
This section gives a selection of abstracts of reports or articles on criminal policy and research in Europe. The aim of publishing these short summaries is to generate and disseminate information on the crime problem in Europe.

The selected articles are all oriented towards the European crime problem. Articles that generate comparative knowledge are seen as of special interest. Most of the articles are published in other journals in the English language. It is hoped for that the section will cover all interesting and relevant developments and results in criminal policy and research in Europe.

More information can be supplied by the RDC-Europe Documentation Network. This network was initiated in 1992 and coordinated by the RDC documentation office. This office has begun developing a European documentation network on the problems concerning international crime. The purpose is to coordinate the flow of information on this topic within Europe and make it accessible for European researchers, policymakers and other interested people. In addition to the main topic of international crime other issues concerning criminal policy and research will be covered.

Single copies of the articles mentioned in this section can – when used for individual study or education – be delivered by the RDC documentation service at your request. A service charge is made.

Burrows, J.
The function of information systems in identifying fraud in retail businesses
*Journal of Asset Protection and Financial Crime*, vol. 1, no. 1, 1993, pp. 11-19

The aim of this article is to emphasize the pivotal role that information systems, of various kinds, play in both identifying fraud committed against the medium to larger retail concern and in investigating who has been responsible. Reliable statistics on retail fraud are difficult to come by, but the article summarizes some of the information available from Government, police and retail sources (England and Wales) and the arguments for exercising rigorous control. It then goes on to examine some of the prerequisites if information systems are to combat fraud effectively. Attention is focused on the sales audit, stock audit and security incidents, and examples of applications in each of these fields are provided.

Clark, A.
The welfare economics of law reform: an economist weighs up the welfare pros and cons of legalisation
*Druglink*, vol. 8, no. 4, 1993, pp. 10-13

Economics provides a systematic way of weighing up the social welfare pros and cons of legalization of the supply/possession/use of drugs currently prohibited and helps highlight some of the policy issues involved. The total social welfare impact of legalization would be a combination of the impact of legalization on five components of social welfare: the enjoyment of drug use, harm from drugs and from the illegal market, drug-related crime, and tax revenues. Economic methods can be
used to integrate these effects into a single measure of welfare impact. One such model is presented which consistently suggests that legalization would improve welfare, though this depends on the relative values society assigns to each of the above elements. Whatever drug policy is adopted, sacrifices will have to be made. To concentrate on only one aspect of prohibition or legalization, and to hold that up as the sole criterion for policy decision, is neither honest nor conducive to the serious discussion which the issue warrants.

Croall, H.
Business offenders in the criminal justice process

Focusing on a range of 'crimes against consumers' under food, trading standards, and weights and measures laws, this article concludes that a variety of interrelated factors affect criminal justice agencies' enforcement tactics and the disposition of cases. The nature of the offences concerned, the form of law involved and its pattern of enforcement, as well as the identities and types of offenders all affect the course and outcome of the investigation, prosecution, court proceedings and sentencing of business offenders. Few neat generalizations can be made about such factors, and simple allegations of agency bias are difficult to sustain. Significant 'structural advantages' do, however, work to the benefit of some classes of offenders, such as large and established businesses, and these advantages are compounded as cases move from stage to stage. There are no simple remedies available for such contrasts in treatment, but the analysis does point to the need to consider basic concepts of crime and law enforcement within their ideological contexts.

Doig, A.
'Someone else's money': learning from economic crime in the public sector

A case study of public sector fraud. In 1982, the Property Services Agency (PSA) was a semi-detached part of the Department of the Environment (Britain). The PSA supervised all new construction, 80 percent of the maintenance and 47 percent of the project design of government buildings carried out by the private sector. Small projects and maintenance at that time came under the United Kingdom Territorial Organization (UKTO). A number of corruption, fraud, collusion, and patronage cases in UKTO came to light through police investigations that triggered not only inquiries by the PSA but also, at the PSA's request, an independent inquiry (Wardale Report) and continuous scrutiny by the National Audit Office (NAO). The PSA's reaction at the time - that the levels of fraud were no higher or more extensive than elsewhere - was pounced on by the Public Accounts Committee (PAC) who warned the PSA of the need for effective management supervision, and system controls and checks. Fraud and corruption persisted in the face of these highly visible scrutinies. The combination of the NAO's audit-led thoroughness, the PAC's capacity to attract media attention and the realization by senior PSA managers that they had to confront the issues of corruption and fraud, ensured that the will and intention were present at those levels in the organization to push for widespread reforms to deal with the existing evidence of fraud and corruption but also to build into the organization's routines and procedures the necessary information-availability, staff-awareness and effective checks that would be the prerequisites for detection and prevention. The case study underlines the need to tackle fraud and corruption earlier rather than later and that it is management's responsibility to deal with it.
Evans, R.C., G.D. Copus et al.
Self-concept comparisons of English and American delinquents
*International Journal of Offender Therapy and Comparative Criminology*, vol. 37, no. 4, 1993, pp. 297-313

The Tennessee Self-Concept Scale (TSCS) was administered to 223 United States and 180 English institutionalized juvenile offenders. In a cross-cultural comparison of the subjects on the six TSCS empirical scales, both groups present indications of significantly more psychopathology on five of the six scales than non-delinquents. When the two groups are contrasted, the US group is found to score significantly higher, overall, in psychopathology than the English delinquents. Discriminant function analysis identified two of the six empirical psychopathology scales, Personal Integration and Personality Disorder, capable of distinguishing the subjects by country. Analyses of the data suggest that recent-past and current conservative policies governing official responses to youth crime fail because they tend to address delinquency as if the underlying causes are constitutional. The findings in the present study suggest that the differences found between the English and US groups are cultural in nature.

Gibson, J.L., G.A. Caldeira
The European court of justice: a question of legitimacy
*Zeitschrift für Rechtssoziologie*, vol. 14, no. 2, 1993, pp. 204-222

The findings are reported of a September-October 1992 survey of public attitudes toward the European Court of Justice, the high court of the European Community (EC), in the member states of the EC. The questions were included in the Eurobarometer survey of the Commission of the European Communities. Initial analysis of the responses indicates that the Court is fairly visible to the general public, but that its level of legitimacy is rather low. The general unwillingness to accept as definitive an unpopular decision by the Court points to a major consequence of low institutional legitimacy – the inability to gain compliance with decisions that citizens oppose. Should the Court become intertwined in a conspicuous political controversy, it may well face substantial challenges to its authority.

Grapendaal, M., E. Leuw et al.
Drugs and crime in an accommodating social context: the situation in Amsterdam
*Contemporary Drug Problems*, vol. 19, no. 2, 1992, pp. 303-326

A brief outline of drug policy in the Netherlands in general and drug policy of the Amsterdam local government in particular opens the article. Normalization and risk reduction characterize Dutch drug policy. Policy aims to restrict the criminalization and marginalization of hard drug users as much as possible. The use of illicit hard drugs is considered to be primarily a public health problem. Methadone programs are of central importance. Seven interviews with 148 hard drug users over a period of about 13 months and field observation of the (street) junkie scene in Amsterdam provide information about the patterns and levels of drug use and the amount and sources of income (including involvement in crime) of hard drug users, both methadone program clients and non-clients. The data suggest major differences in economic behaviour and lifestyle between the clients of the high-threshold programs (client obligations), the low-threshold programs (no client obligations), and the users who do not participate in a methadone program. Three junkie types emerged according to the dominant source of income: (1) junkies with an income mainly from dealing (15 percent) who do not participate in a methadone program; (2) junkies with an income mainly from property crime (22 percent) who participate in a low-threshold methadone program; and (3) users with an income mainly from legal sources (63 percent) who participate in a high-threshold methadone program and who neither recover nor perish from the addict lifestyle.
Groos, W.F.
Squeeze 'em: from legislation to confiscation
*Journal of Asset Protection and Financial Crime*, vol. 1, no. 2, 1993, pp. 128-136

This article outlines significant recent amendments to the Dutch Criminal Code and Code of Criminal Procedure which extend the scope for confiscation of substantial profits of crime. The legislation, referred to as the Squeeze 'em legislation, entered into force on March 1, 1993. It aims to extend the existing range of statutory instruments to make tracing and investigation of profits obtained through crime more effective, to make it possible to determine the amount of such profits, to secure and ultimately confiscate these profits by means of a court judgment. In addition to expanding the existing deprivation order and extending the scope for seizure, the legislation also introduces the criminal financial investigation which aims to determine the extent of the advantage illegally obtained by the suspect with a view to depriving him of it. Until the Netherlands ratifies the UN Convention against illicit traffic in narcotic drugs and psychotropic substances (1988) and the Strasbourg Convention on the laundering, search, seizure and confiscation of the proceeds of crime (1990), these international instruments can not be implemented. Dutch Parliament is currently considering a bill for the ratification and implementation of these Conventions.

Henham, R.
The European context of sentencing violent offenders

Revised and updated version of a paper originally presented at the British Criminology Conference in York, 1991. The author examines certain concepts which are fundamental to penal policy formulation on the subject of sentencing violent offenders in England and looks at how some other European countries (Sweden, Finland, Italy, Greece and Germany) have dealt with these issues. These comparisons are made to reflect European legal and cultural diversity and focus on offence definition, sentencing objectives, sentencing practices and the links which exist between substantive law and sentencing policy and practice. It is argued that there are weaknesses in the present English system of sentencing violent offenders which require urgent attention: no specific sentencing policy for violent offenders based upon agreed aims or objectives exists; no rational and clear statement in substantive law of violent offence categories exists; no useful link between substantive law and sentencing policy exists; undue reliance is placed on judicial sentencing policy and subjective assessment.

Hulbert, J.
Carrefour of fraud in Europe
*Journal of Asset Protection and Financial Crime*, vol. 1, no. 2, 1993, pp. 122-127

As a result of increasing liberalization of trade and the subsequent trend toward internationalization of the insurance industry, insurance fraud is on the increase in Europe. Accurate assessment of the extent of insurance fraud is difficult due to the very large black figure, however estimates indicate that the losses due to fraud are considerable and growing. The international environment will make it much easier to commit fraud against insurance companies. Companies are unlikely to have the breadth of experience they had in the home market. Minor anomalies in transactions can more easily pass unnoticed in alien cultures and traditions. And, the offender has a much wider range of companies to choose from when claiming for multiple insurance on single losses. The author sketches the current situation, stressing that anti-fraud cooperation and new technological low cost, non-intrusive background screening measures are essential to protect companies from fraudulent loss.
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Jackson, P.
Cooperation between prosecuting authorities in cross-border prosecutions within the EC
Journal of Asset Protection and Financial Crime, vol. 1, no. 1, 1993, pp. 73-76
The cross-border investigation and cooperation between the District State Prosecutor's Office in Bielefeld (Germany) and the Serious Fraud Office in London (England) in a recent case involving cross-border fraud illustrate the importance of cooperation between prosecuting authorities and the difficulties inherent in cross-border investigations. The author suggests a series of measures which might reduce problems in future cross-border prosecutions: employment of in-house lawyers/linguists familiar with the law, practice and language of another European Community (EC) country or countries; organization of seminars explaining law and practice in EC member countries; establishment of exchange programs to acquaint colleagues with law and business practices in member countries.

Kamiski, M.M., D.C. Gibbons
Prison subculture in Poland
This article draws on the prison experiences as a political prisoner in Poland of the senior author to identify some of the major ingredients of the prison subculture in Poland: the patterns of behaviour and the informal norms and rules of the prisoner subculture, the inmate code. A central thesis of this article is that much inmate behaviour is related to specific aims of action often unknown to outside observers and to other inmates and that this is often the result of very specific calculations. The protection of information leads to misinterpretations of internal processes within the prison subculture, in turn leading to false or overly simplistic explanations of that subculture. The picture of prison subculture presented here attempts to provide some understanding of the impact of knowledge constraints on inmates.

Comparisons are also drawn with the subculture of American prisons. In particular, the relative richness of symbolic themes and the effective enforcement of norms dependent on different levels of control in Polish prisons are discussed.

King, R.D.
Russian prisons after perestroika: end of the Gulag
British Journal of Criminology, vol. 34, special issue, 1994, pp. 62-82
As the meaning of 'glasnost' and 'perestroika' filtered down to the prisons context, officials began to open up the system. For the first time it became possible for journalists, human rights campaigners, and penal reformers to enter the Gulag (GULag is an acronym for Glavnoye Upravlenie Lagerei, the Central Administration of Camps), to ask questions, even to make video films. During six weeks in November and December 1992 the author visited 14 Russian corrective labour colonies and prisons (including 13 adult facilities) and talked with numerous authorities, staff and prisoners. Visits varied considerably, both in duration - from one to four days - and in the degree of freedom of movement permitted to the researcher. The present description of the Russian prison system after perestroika is based on information gathered on this occasion. The account provides insight into the use of custody, the system of and conditions in prisons and corrective labour colonies. The author emphasizes that in a system seeking to re-legitimate itself, where the same authorities and staff remain in post, the onus is upon them to demonstrate that the abuses of the past are not now possible rather than simply to assert it. Given the history it is vitally important that credible structures are erected to ensure that well-intentioned reforms are carried through and not subverted by political or private corruption. If international standards are to be realistically approached, imprisonment will become a much more expensive commodity than it has been in the past.
Russia is unlikely to be able to afford a system on its present scale.

Langás, A.
The sharing of responsibility in the rehabilitation of prisoners – The import model
In 1977, the Norwegian Government appointed the Council of Prison and Probation Administration, an interministerial council, to ensure that inmates are offered the same educational, health, cultural, and sport/recreational programs as other citizens. Members of the Council are senior officials in their respective ministries who work together with authorities at the municipal and county government levels within their fields of responsibility and expertise. The country is in the process of integrating prison educational, health, sport/recreational and cultural services into the non-prison services of the same type instead of developing and maintaining separate services for the prison system. The central government and the local authorities share responsibility, the central government for funding and the municipalities and counties for administering the programs. Volunteer and community involvement, prisoners’ rights and the preparation of prisoners for release are enhanced by importing public services.

MacDonald, D.C.
Public imprisonment by private means: the re-emergence of private prisons and jails in the United States, the United Kingdom, and Australia
British Journal of Criminology, vol. 34, special issue, 1994, pp. 29-48
This essay surveys developments in the United States, Britain and Australia, the only countries that have so far moved to delegate operations of imprisonment facilities to private entities. The first section provides a thumbnail sketch of developments in these countries since the early 1980s, followed with a discussion of why private imprisonment emerged during this period. A number of issues, both normative and empirical, are raised by contracting with private, for-profit firms to operate penal facilities. Resolution of the normative questions, posed as either legal or policy issues, turns on choosing values and principles that are to govern practice. Other questions, empirical in nature, can be resolved by observation and, if needed, systematic research. The main issues and research questions are: Is contracting proper? What are the consequences of contracting? Is private imprisonment less costly? Do profit-seeking firms provide poorer services? Are prisoners’ rights diminished or jeopardized? Has a ‘penal industrial complex’ captured policymaking? The challenges to public administration include the need to devise procedures to assure that prisoners’ rights and welfare are protected; to take steps to prevent governments’ dependence upon private firms, and especially upon entrenched suppliers; and to protect the integrity of government procurement processes.

Maguire, K.
Fraud, extortion and racketeering: the black economy in Northern Ireland
One of the central reasons for the longevity of the terrorist conflict in Northern Ireland is that the main terrorist groups generate support from their ethnic constituencies through their powers of patronage in the informal economy. The terrorist groups have evolved into formalized structures which have been able to amass a sizable amount of ‘dirty money’ which has been used in part to create an informal welfare network. The article explains the inadequacies of some explanations of the longevity of the terrorist groups, examines the links between those groups and the informal economy, and examines the government’s recent attempts to combat racketeering.
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Morgan, R., M. Evans
Inspecting prisons: the view from Strasbourg
British Journal of Criminology, vol. 34, special issue, 1994, pp. 141-159

The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), established in 1987, promotes respect for human rights by conducting periodic and ad hoc visits to places of detention to inspect conditions of detention. This article (1) provides an overview of the international mechanisms and agencies engaged in norm-setting or monitoring custodial conditions which provide the context within which the CPT functions: the UN; regional intergovernmental organizations; International Committee of the Red Cross; Amnesty International; human rights watch organizations; other non-governmental organizations; (2) describes the constitution of the CPT, its powers and modus operandi; and (3) explains why the CPT is being listened to (the CPT operates within a political context offering unparalleled associational attractions; the generosity of the CPT budget and the quality of the Committee's membership exert a powerful influence on the nature and effectiveness of the work of the CPT; the employment of a relatively coherent and precise methodology).

Pavarini, M.
The new penology and politics in crisis: the Italian case
British Journal of Criminology, vol. 34, special issue, 1994, pp. 49-61

In spite of the growing number of new penal regulations and unusually severe sanctions, Italy had one of the lowest prison populations in Europe in the 1970s and 1980s. This state of affairs changed radically in the early nineties when the imprisonment rate rose sharply. The author attempts to root out the underlying causes for this. The explanation does not lie simply in the judicial leniency in application of the law on the books. Weak social demand for punishment due largely to the strong and widely held social perception of crime as a political question explains the relative lack of influence of the severe criminal policy on the effective level of repression in the seventies and eighties. The author examines some explanations for the long-standing resistance to the system of penal repression as well as the decarceration and social control strategies in this period. A diffident culture, prone to suspicion, was more concerned about the perils of repressive agencies than the perils of criminality. A low imprisonment rate was one of the numerous effects of this climate. Recent widespread support for repressing the activities of the mafia and corrupt politicians has rendered legitimate a much wider repression. The consensus gained in the struggle against political corruption and organized crime has justified an indiscriminate rise in the level of punishment. In 1991-1992 the number of drug abusers and persons originating from outside the EEC in Italian prisons swelled.

Pearson, G.
Drug problems and criminal justice policy in Britain

Heroin misuse exploded in Britain amid the early 1980s economic downturn and rapidly escalating unemployment. The heroin epidemic came to be concentrated in neighbourhoods already suffering from high levels of unemployment, housing decay and other aspects of urban deprivation. There is evidence that problems of drug-related crime have increased as a consequence of the heroin explosion. Even so, the underlying emphasis of British drug control policy remains one that is health oriented. The criminological approach to drug problems is not well developed in Britain, although the 1980s heroin epidemic has stimulated renewed interest in the drug-crime connection. Where policing and penal policy is concerned, little sustained attention has been given to questions of drug enforcement by researchers in
Britain. Serious consideration is being given to the extension of non-custodial programs for offenders with drug-related problems. Emphasis is on reducing harm rather than viewing abstinence from drugs as the only legitimate goal. The vast bulk of arrests for drug offences in Britain, concentrated among the black minority, involve the unlawful possession of cannabis.

Reuband, K.-H.
Drug addiction and crime in West Germany: a review of the empirical evidence
*Contemporary Drug Problems,* vol. 19, no. 2, 1992, pp. 327-349

The article begins with a short review of the possible relevant dimensions (legal, treatment and social welfare) along which societies may differ that impact on the drug-crime relationship. The discussion then turns to some of the characteristics of drug use and drug policy in West Germany. The article focuses on the situation with respect to hard drugs. Possession and acquisition of hard drugs are illegal and the laws are enforced. The fragmented data available on drug-generated crime in Germany (police statistics, in-depth studies on the basis of police records and surveys among addicts in 1972, 1978/79 and 1988/89) indicate that those addicts who engaged in crime were most likely to engage in drug-selling, followed by shoplifting.

Solivetti, L.M.
Drug diffusion and social change: the illusion about a formal social control
*Howard Journal of Criminal Justice,* vol. 33, no. 1, 1994, pp. 41-61

After outlining the evolution of the Italian penal legislation on illicit drugs 1923-1990, the author shows how the evolution of the drug phenomenon has followed an autonomous course on which the repeated changes of the legal framework has had rather limited impact. The number of deaths due to drug abuse 1970-1991, addicts treated 1979-1991, people charged with criminal offences related to drug-trafficking 1967-1991, and people holding drugs for personal use identified by police 1982-1991 all indicate increased drug use in spite of the increasingly repressive criminal legislation (1954, 1975 and 1990 Drug Acts). This leads the author to conclude that the increasingly repressive approach has had only a limited effect on drug abuse. He argues instead that social and economic changes in the country radically affecting the dynamics of the process of socialization and vocational and social integration of the youth seem to have exerted a significant influence on the spread of drug use since the mid-1970s.

Wilson, C.R.M.
‘Going to Europe’: prisoners’ rights and the effectiveness of European standards
*International Journal of the Sociology of Law,* vol. 21, no. 3, 1993, pp. 245-264

This article evaluates the implications for prison conditions and prisoners’ rights of the three principal components of the developing European-wide system of human rights protection: (1) the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (better known as the European Convention on Human Rights); (2) the European Standard Minimum Rules for the Treatment of Prisoners (which became the European Prison Rules in 1987); and (3) the European Committee for the Prevention of Torture (1987). These are all initiatives of the Strasbourg-based Council of Europe. While individually these measures are flawed in various ways, together they could develop into a unique framework with tremendous potential for the establishment of a genuinely European standard for the treatment of prisoners. This article also draws attention to the limitations inherent in the existing, predominantly legal framework which currently dominates study in this whole area of international regulation of prisoners’ rights, suggesting that such a framework seriously limits the kinds of questions that are asked and the knowledge that results. The author suggests the possible value of an alternative sociological approach to
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correct the defects and limitations identified in existing knowledge. Such an approach would be oriented around an assessment of the actual impact of attempts at international regulation on the key groups involved in the penal process. It would be both empirical and comparative: empirical in that it would collect information directly from the individuals involved, both prisoners and officials, and comparative in that it would examine these issues in more than one country to assess possible differences in impact and importance.