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100

A Century of Juvenile Justice

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One hundred years ago – in 1899 – the first youth court in Chicago, Illinois, was opened. With this special issue, the *European Journal on Criminal Policy and Research* is celebrating a century of juvenile justice, underlining the viability and analysing the current and future position of juvenile justice.
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The acknowledgement of ‘childhood’ as a separate phase of human development is not a self-evident fact. According to the sociologist Norbert Elias the child was ‘discovered’ as a consequence of the civilisation process in Europe. Children were no longer seen as ‘small adults’, but as entities who differed from grown ups principally in their mental maturity and their needs for care. The idea grew that children had to be nurtured, educated and treated in a special way, in order to prepare them for the state of adulthood.

Of course, this development, which took place over several hundred years, had serious consequences regarding society’s attitude towards evil behaviour of children and towards child raising practices. In the nineteenth century the two were linked by several social and psychological theories. The United States was the first to institutionalise the judicial ‘treatment’ of children. One hundred years ago – in 1899 – the first youth court in Chicago was opened. With this special issue the European Journal on Criminal Policy and Research is celebrating a century of juvenile justice, underlining the viability, and analysing the current and future position of juvenile justice.

In the introductory article Jean Trépanier relates the history of the youth courts. He stresses that their establishment was not so much the start, but rather the consequence of a history of institutionalisation. Reform schools, for example, ceased to be viewed as a panacea for the treatment of criminal minors. A new institution was needed to sustain the legitimacy of the parens patriae approach. This institution was to be the juvenile court. The Chicago court (in Illinois) was the first of its kind and provided a model that was replicated during the following years by the juvenile court movement. The American model of a children’s court exerted a major influence over the orientation of juvenile courts not only in North America but also in Europe. It was introduced gradually, and differed in some respects from one country to another.

Juvenile justice remained relatively unchallenged until the 1960s. During these years and in the 1970s a much clearer distinction emerged between young offenders and neglected children, with each group subjected to increasingly different policies: treatment for children in need of care, and a juvenile justice that introduced some of the characteristics of adult criminal justice for young offenders. At the same time, diversion procedures would remove a significant number of
minor offenders from that formal court process. Such diversion procedures and due process have become part of juvenile justice daily practice and de-institutionalisation is a reality for some juveniles. The author cautions against the trend in North America to direct more minors into adult courts and institutions and the tendency in that country to have youth courts that differ little from adult courts.

Ido Weijers also refers to a long, and cyclical, history of juvenile justice. Three periods are discerned here: quarantine, a psychological approach and a juridical approach. At the turn of the nineteenth century a psychological approach became dominant; the 'neglected child' was invented in tandem with the establishment of the juvenile court. Since the 1970s, the cycle has been returning to a period of 'toughening up', which implies that the juvenile delinquent is seen as a serious criminal who needs swift, certain, and severe punishment. The author establishes a recurring illusion that juvenile delinquency can be solved. If this illusion could be abandoned, the cycle would be broken and a new, more realistic policy made possible. Juvenile justice cannot escape, however, from solving two ethical or philosophical questions at the same time: the justification of punishment as such and the justification of punishment for non-adults. The article presents a new conceptual framework for analysing the development of juvenile justice. It concentrates on the history of juvenile justice in central Western Europe, typified by a 'corporate' welfare tradition.

In the third article Horst Schuler-Springorum deals with a specific observation, the 'shift to the left' in the justice systems. What is meant in this instance is not a shift in the political sense but in a chronological sense. The criminal justice system inclines to earlier interventions at every stage of process. The author focuses on whether this change is also apparent in the juvenile justice system and what consequences can be drawn. The next article, by Justice Lucien Beaulieu and Carla Cesaroni, is in one way a comment on the observations of Schuler-Springorum. Adults have a tendency to look to the justice system for answers and are increasingly less likely to look at other social institutions when seeking solutions. Unfortunately the courts face exceptional challenges today and cannot be a catholicon for all social problems. Youth courts ought to confine themselves to cases of youthful lawbreakers and perfect their functioning in this field before seeking to enforce more general standards of child behaviour or to function as general social agencies for children. If the youth is apparently at risk, and appears to require protection and treatment, the solution must be found elsewhere. In the final analysis the youth and
family court system and its specialised judge can ‘make a difference’. Perhaps the degree to which an effective youth and family court system can influence our social world can best be ascertained in the future – in the general administration of justice in the adult courts and precisely who and how many will pass through its doors.

The legislative recognition of the juvenile court by the 1908 Children Act in England and Wales was contextually somewhat different from that of its continental/European and North American contemporaries – according to Henri Giller. Whereas the juvenile courts in Europe and North America were established at the outset as strongly welfare-orientated tribunals, down-playing their overt association with the formal criminal justice system, in England and Wales the juvenile court was primarily a court with modified procedural arrangements which, in part, recognised the immaturity of youth. As a variant of the magistrates’ court its powers were only marginally different from those exercised in the adult court, most notably in its ability to commit juveniles to reformatory school, a development which had been ongoing since the last half of the nineteenth century.

In the Current Issues section, attention is paid to the development of Halt (Het ALTerнатief, the alternative). This Dutch organisation provides light alternative sanctions to juvenile misconduct following police contact (instead of prosecution).

J.C.J.B.

The next issue will be on Communities and Crime. Suggestions for topics and authors are welcome at the editorial address (see inside cover). The following topics are in preparation:

- Crime Trends in Europe
- Football Violence
- Sexual Delinquency
ABSTRACT. Juvenile institutions were developed in the nineteenth century. In the United States, they prompted an extension of the parens patriae doctrine, which provided a basis for the creation of the juvenile court a century ago. The protective orientation of the court was intended both for juvenile delinquents and children in danger. Important changes have occurred since the 1960s. Procedural guarantees for delinquents and de-institutionalisation of children in danger have created a clear distinction between the two groups. Diversion has introduced an alternative to the court process. Policies aimed at young offenders have moved gradually in the direction of the adult criminal court model. The article presents an overview of this evolution, essentially for North America.

KEY WORDS: juvenile court, juvenile justice, juvenile delinquents, youth court

The tendency to assume that what exists has probably existed for quite some time may lead some to forget that the special legal status of minors is of relatively recent advent in criminal justice. “The concept of the young offender, with all that it implies for penal policy, is a Victorian creation” as Radzinowicz and Hood (1986, p. 133) remind us. The establishment of juvenile courts is often viewed as the most significant step in that direction: taking children out of adult criminal courts and treating them with a welfare-orientated approach seems to have marked a breaking point with the punitive philosophy of criminal justice. Still, juvenile courts did not emerge out of nowhere. Instead, one should see their emergence within the wider context of an evolution that started with the creation of juvenile institutions in the nineteenth century.

The centennial of the Chicago Juvenile Court – considered by many as the first such tribunal – offers an appropriate moment to look at the origins of the juvenile court, to see how it evolved throughout the years and to evoke current debates that its future raises. These are the issues that are addressed in this paper. However, the diversity that characterises the history and evolution of juvenile courts in Western societies makes it compelling to focus on specific geographical areas in order to stay within the limits of an article. Specific emphasis is therefore placed on the emergence and evolution of juvenile courts in North America (namely the United States and Canada), with occasional references made to various European countries.
A SPECIAL STATUS FOR YOUNG OFFENDERS

The creation of juvenile institutions in the last century was important in more than one respect for the juvenile model court to come. It introduced and legitimised a special status for children and, in the United States, it was the origin of the use of the *parens patriae* doctrine, which would later provide the juvenile court with its ideology.

One of the most significant events in nineteenth century penology was the advent of prisons and penitentiaries as key instruments in reacting to crime. Imprisonment became so central that its duration became the legal standard of seriousness ascribed to offences by legislators. It was by no means limited to adults. In Britain, for example, it is estimated that about 10,000 children and young people aged 16 or less, including 1,400 girls, were sent to prison in 1840. By 1857, this number had increased to 12,500, with 1,900 of them being under 12 years of age. Altogether, young people made up 10% of all persons committed to prison, a proportion that fell to 4% over the subsequent two decades. In 1903, only 10 prison sentences were imposed on children under 12, whereas 1,000 were imposed on youths aged between 12 and 16 (Radzinowicz and Hood 1986, pp. 624, 627). Over the century, special institutions had gradually taken over the role of prisons for the incarceration of juvenile offenders.

This phenomenon was by no means limited to a few countries. In France, for instance, initial attempts to separate youths from adults involved special quarters in prisons as early as the 1820s (see for example Petit 1990, p. 283; Dupont-Bouchat et al. 1995, pp. 62–65; Dupont-Bouchat 1996, p. 33). However, the most important trend led to the creation of institutions designed specifically for children and young people. Under titles as divergent as youth prisons, youth penitentiaries, reform prisons, reform schools, industrial schools, penal colonies (*colonies pénitentiaires*), agricultural colonies and houses of refuge, such institutions were established in several countries. To quote only a few examples, one may refer to cases in England (Parkhurst, Kingswood, Redlodge, reform and industrial schools), Germany (Raue Haus), France (Mettray and Petite Roquette), Belgium (St. Hubert), the Netherlands (Nederlandsch Mettray), Canada (L'Île-aux-Noix, St. Vincent-de-Paul, Institut St. Antoine and Penetanguishene) or the United States (houses of refuge, particularly in New York, Boston and Philadelphia; various reform schools).

While these institutions at first appeared only minimally different from adult prisons, their sponsors changed their approach. As has been
shown for the context in England (see e.g. May 1973; Pinchbeck and Hewitt 1973, chap. 16, pp. 431-495; Radzinowicz and Hood 1986, pp. 133-227), studies and reports on delinquent youth, as well as public interventions by such social reformers as Mary Carpenter and others, contributed to the diffusion of new ways of perceiving delinquent children and how to react to their behaviour. After experimenting – and rejecting – a boys' prison (at Parkhurst), emphasis was placed on setting up reform schools, whose official goals were no longer to punish but to reform youths. Breaking away from the principles of criminal law that provided for a punishment proportional to the seriousness of the offence, courts came to order the custody of youths for periods of time deemed sufficient to ensure the required moral treatment. Furthermore, placements were not to be delayed until children were seriously involved in delinquency, but rather to be used in a preventive manner at the first signs of delinquent behaviour.

In the United States, houses of refuge were established from a similar approach. The history of juvenile institutions in nineteenth century America is well documented (see Pickett 1969; Rothman 1971; Mennel 1973, 1983; Schlossman 1977; Laberge 1997). In colonial America, the role of public authorities had been to sustain the family-based system of discipline. However, the growth of population as well as industrialisation and urbanisation introduced drastic changes in American society. Shops and factories had replaced the home as a major workplace. Youths – especially from poorer families – could not be placed in families as servants or apprentices as they had been before. Special institutions were viewed as alternatives in order to take charge of some of these vagrant, neglected and delinquent children. In fact, no real distinction was made at the time between delinquent and neglected children. The expression juvenile delinquency:

was increasingly used to single out the suspicious activities of groups of lower class (often immigrant) children who occupied a netherworld in the bowels of the nation's growing cities and who were perceived to be either living entirely free of adult supervision or serving as pawns of depraved parents. (Schlossman 1995, p. 365)

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1As Empey and Stafford (1991, p. 52) indicate, when George Washington became president, most people lived in towns having less than 2,500 inhabitants; by the time Andrew Jackson was inaugurated in 1829, more than one million people resided in towns larger than that. Between 1750 and 1850, the population of the United States grew from 1.25 million to 23 million people.
The Refuge movement would focus on those ‘salvageable’ neglected children, possibly guilty of minor offences, whereas children guilty of serious crimes were maintained in the adult system (Ventrell 1998, p. 22).

The first houses of refuge were opened in major East Coast cities: New York (1825), Boston (1826) and Philadelphia (1828). It was not long before constitutional issues were raised: were not such placements subject to the due process requirements of the Bill of Rights, which is part of the American Constitution? In 1839, a seminal decision (Ex Parte Crouse) provided the Refuge movement with the legal justification it needed. Mary Ann Crouse had been committed to the Philadelphia House of Refuge upon her mother’s complaint, but without her father’s knowledge, on the grounds that such a placement was in her own interests for she was beyond her parents’ control. After he became aware of the fact, her father filed a habeas corpus petition, alleging that his daughter’s incarceration without a jury trial was unconstitutional. The court invoked the doctrine of parens patriae to reject the father’s argument. It was the court’s view that the House of Refuge was not a prison (even though Mary Ann was not free to leave), and the child was there for her own reformation, not punishment (even though Mary Ann was probably treated very harshly, a fact the court did not review. (Ventrell 1998, p. 23)

The parens patriae doctrine served as a basis to justify the intervention of the state for the good of the child:

[... ] may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the parens patriae, or common guardian of the community? [... ] The right of parental control is a natural, but not unalienable one. (Ex Parte Crouse, 4 Whart. 9 (Pa.) at 9; quoted by Ventrell 1998, p. 23)

This decision legitimised the right of the state both to intervene and remove children from family situations which might lead them towards criminality, and to do so without meeting due process requirements applicable in criminal procedures. A series of similar decisions followed

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2This case has been summarised by a number of authors. See for example, Ventrell (1998, p. 23); Schlossman (1977, pp. 8–10; 1995, p. 366); Laberge (1997, pp. 137–139); Fox (1970, pp. 1205–1207).

3The Sixth Amendment to the US Constitution requires that: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury [...].”
in other cases during the next decades, thus consolidating the basis upon which the juvenile court would eventually rest.

Houses of refuge spread to various cities, so that by 1860 16 such institutions were opened in the United States. However, they did not live up to their original principles and became "little more than prisons for juveniles, placing more emphasis on discipline than efforts to reform the characters of their inmates" (Clapp 1998, p. 15). After dominating the first half of the century, they were gradually replaced by a second generation of institutions, the reform schools. But over time

the overwhelming majority of reform school administrators were unable to turn the institution into something more than a mini-prison for children – despite the fact that liberal commitment laws sent a relatively young and criminally inexperienced cohort to the schools. (Schlossman 1995, p. 373)

By the end of the nineteenth century, the parens patriae doctrine still provided the legal basis for state intervention, but growing criticisms were raised on the way such interventions were carried out in reform schools. In a way, this opened the door to a new institution that would use the same legal basis, but would not confine itself to reform schools and would rather develop alternative methods of intervention. This new institution would be the juvenile court and the alternative intervention would be probation.

Similarly in Canada, nineteenth century developments were characterised first and foremost by the establishment of special institutions for minors. In 1843, resolutions were passed by the Legislative Assembly "to draw the vagrant juvenile portion of the population from their bad influences, and to provide a receptacle for the punishment and reformation for those who come under the eye of the police as guilty of petty crimes" (Débats de l'Assemblée législative du Canada-Uni, 1843, p. 341). However, debates took time and the first Reform Prison opened only in 1858, in Quebec, at the Île-aux-Noix near Montreal. Its failure soon became obvious and it was moved to another location (St. Vincent-de-Paul), whereas another such institution was opened at Penetanguishene, in Ontario. As early as 1869, Quebec moved to a dual regime of reform schools for delinquent children and industrial schools for neglected children.\(^4\) Ontario followed in the same path by legislating on industrial schools in 1874. Still the distinction

\(^4\)For an account of the debates in Canada and Quebec up to 1873, see Fecteau et al. (1998).
between neglected and delinquent children was not that clear-cut in the eyes of Canadians at the time; an example of this can be seen in the fact that the target population of industrial schools, as defined in the Quebec Act of 1869, included, for a large part, children who could be grouped under the heading of 'pre-delinquents'.

Juvenile institutions were important in the creation of a special status for children in nineteenth century Canada. However, like their European counterparts, they did not require the kind of landmark court decisions that had been necessary to establish a strong legal basis for American institutions. In the United States, the invocation of the parens patriae doctrine had been required to set aside the application of the due process provisions of the Constitution. No such requirement existed at the time in the Canadian Constitution, so that legislators could act quite freely, without worrying about the legal foundations of their laws in the way Americans did.\(^5\)

Thus, at the end of the century, the establishment of special institutions had contributed significantly to the creation of a special status for minors. The view was then widely shared that children were to be treated differently and separately from adults. The legal basis for interventions aimed at preventing future delinquency was ascertained and endorsed by the courts. Although these courts were not 'juvenile courts' in a twentieth century sense, it was evident that a special justice for juveniles had already taken root. Reform schools, however, were no longer viewed as a panacea. A new institution would be welcomed to sustain the legitimacy of the parens patriae approach. This would be the juvenile court.

**THE CREATION OF THE JUVENILE COURT**

If this evolution is crucial to understanding the advent of the juvenile court, other factors must be considered as well. As the century passed, new conceptions of childhood emerged, influenced by thinkers such as Johann Pestalozzi, Friedrich Froebel and G. Stanley Hall. A new emphasis was placed on childhood and on proper rearing by parents – particularly mothers. As middle-class children did not have to contribute to the family economy, it was felt that they were to mature in the family setting. Mothers were to play the key role in this complex

\(^5\)On the lack of relevance of the parens patriae doctrine in Canadian law, see Môrin (1990).
and important educational task. A new ideal of motherhood emerged, in which the home and the responsibility for child rearing became a woman's domain. Yet some middle-class women who were well educated and part of a social, political and economic elite through kinship or marriage felt frustrated with such limitation to the private home sphere. Child saving could be viewed as an extension of their maternal responsibilities and consequently, provide them with an acceptable public role. Platt (1977) and Clapp (1998) have described how this led prominent women from Chicago to play a key role in the creation of the Chicago Juvenile Court.

In the latter part of the nineteenth century, the emergence of the positivist school of criminology challenged the assumptions of the classical school which presented criminal behaviour as the result of free rational choices. Offending behaviour was increasingly considered the product of biological, psychological and social forces that were beyond the offender's control. It was hoped that scientific research would help to better understand and control these factors and thus prevent crime. Based on scientific findings, the reform of some criminals was deemed possible. This belief brought support to the parens patriae approach, which assumed that children could be prevented from leading a life of crime if they were removed from the evil influences of their milieu and reformed while they were still malleable. Eventually, interventions would come to be entrusted to professionals trained with a scientific approach.

As the value of commitments to institutions was being questioned, the establishment of children's aid societies in some cities prompted the practice of home placements and intervention with parents. The latter were largely considered as responsible for their children's problems and were therefore viewed as targets for interventions. In Canada, a good example may be found in the province of Ontario, where an 1893 Provincial Act provided for the establishment of children's aid societies with a view to encouraging the use of community-based measures for children in danger. These societies developed approaches that emphasised leaving children in their families. Help and supervision was to be provided to families if this

6Contrary to the situation in most countries, the Canadian Constitution divides legislative powers over delinquent children and children in danger between the Federal Parliament and provincial legislatures. Jurisdiction over criminal law and criminal procedure (applicable to either adult or minor offenders) is vested with the Federal Parliament. Provincial legislatures are granted jurisdiction over children in need of care and protection.
were to prevent placing children in institutions. For those involved in this children's aid movement, these policies and practices were perceived as so highly effective for children in danger that, through the institution of probation, it was suggested that they be further extended to delinquent children as well. Probation was viewed as nothing more than what was already being done by children's aid societies for neglected and dependent children. Probation officers had been hired, notably in Ottawa, but they could not act legally without the implementation of a new law, which had to be federal in view of the federal jurisdiction over criminal law. Hence, children's aid societies had been paving the way for probation, but legislative action was required.

It is sometimes assumed that, except for laws that created juvenile institutions in the nineteenth century, no legislation provided juvenile offenders with a special status, particularly in relation to the court process and decisions. That assumption is not correct. In France, for example, the 1791 and 1810 Penal Codes included a special regime for children under 16 (Robert 1969, pp. 70–76). In the United States, in Massachusetts in 1874 and New York in 1892, laws were passed separating minors' trials from adults' (Ventrell 1998, p. 26). In Canada, an 1857 law provided for more expeditious trials and reduced detention for minors; the 1892 Criminal Code provided for the possibility of private trials for children, a disposition which was reinforced in 1894. Thus, even though they may not have existed in every country or state and may have been of rather narrow scope, certain dispositions existed in some places, which allowed for the introduction of some characteristics of the juvenile court.

The existence of such legislation is not foreign to the claim by some that juvenile courts were instituted before the Chicago court. For instance, separate court hearings for children led the first Ontario Superintendent of Neglected Children, J.J. Kelso, to assert that the juvenile court "had a Toronto origin and was therefore a 'Canadian enterprise' that had been appropriated by 'American social workers' " (Hagan and Leon 1977, p. 592). The question has also been raised as to whether a South Australian experiment as early as 1889–1890 as well as over most of the judicial system, court services, police, prisons and institutions for juveniles. The Canadian Constitution therefore compels legislators to make legal distinctions that do not correspond to the way people regarded delinquent children at the turn of the century.
did not constitute the first juvenile court, and whether the Norwegian Child Welfare Boards, instituted by a 1896 Act, were not the equivalent of juvenile courts in a country that had opted for administrative rather than judicial bodies (Nyquist 1960, p. 139; Seymour 1988, pp. 68-87). In the United States, the renowned judge and reformer, Ben Lindsey, claimed that the first juvenile court had been the light of the day in Colorado, where a juvenile court was indeed established through an educational law in 1899 (Platt 1977, p. 9). Still, there seems to be a wide consensus that the Chicago court (in Illinois) was the first of its kind to be created by a specific act with the characteristics then attributed to juvenile courts. In any case, it provided a model that was largely replicated in the following years by the juvenile court movement.

Like those that followed, the Illinois Juvenile Court Act of 1899 upheld the parens patriae doctrine. Its last section provided that

This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents [...].

Both the court process and the measures imposed on the child were to be designed so as to reflect this benevolent and paternal (or maternal) approach.

Contrary to the Classical School and liberal ideology of the nineteenth century, children's offences were not viewed as the deliberate result of free and rational decisions. As mentioned above, delinquent behaviour seemed to be associated with factors external to the offender (such as genetic factors, family environment and social surroundings), over which he had no control. If then, as the positivist school argued, the offence is the result of causes over which the offender has no control, punishment therefore becomes irrelevant. The offender should not be punished for what his environment made him. Instead, he should be protected from those factors that contributed to his becoming a delinquent. Child protection was by no means viewed as conflicting with the aim of protecting society, but rather as the best means to achieve this goal, thus blurring the distinction between delinquent children, on the one hand, and neglected or dependent children on the other. A protective approach would be appropriate for both groups.

This extension of a child protection model to delinquency cases was particularly obvious in Canada. According to its Constitution, jurisdiction over criminal law and criminal procedure (applicable to
either adult or minor offenders) is vested with the federal parliament, whereas provincial legislatures are granted jurisdiction over children in need of care and protection. The Canadian Constitution, therefore, created obstacles against any homogenisation of policies concerning dependent and delinquent children. In the 1890s, Ontario provincial policies prompted the development of children's aid societies to help dependent and neglected children. As mentioned above, those involved in this movement viewed its results as so positive that they felt that similar interventions should be extended to delinquent children. In the eyes of William L. Scott, the President of the Ottawa Children's Aid Society who was a major actor in the adoption of the federal Juvenile Delinquents Act of 1908,

There should be no hard and fast distinction between neglected and delinquent children, but [...] all should be recognised as of the same class, and should be dealt with a view to serving the best interests of the child. (W.L. Scott Papers, 27 October 1906, Public Archives of Canada, cited by Leon 1977, p. 154).

This conception was woven into the Canadian Act of 1908 that allowed the creation of juvenile courts. One of its most striking expressions could be found in a transfer provision that allowed a province to treat under provincial law (that is, the law on the protection of neglected children) any youngster who, having been found guilty of an offence, had been sent to an industrial school or handed over to certain organisations. As soon as this provision was invoked, the delinquency case was changed by law to a protection case and dealt with accordingly. The Canadian Constitution could be perceived as an obstacle to the extension of the protective model to delinquency cases. The fact that legislators did not allow themselves to be stopped by this obstacle as well as the nature of their solution, clearly showed their intentions.

Of course such clauses were not necessary in most states where a unique legislative body had jurisdiction over delinquency and child protection. It is interesting to note, however, that, in the case of Belgium, the Child Protection Act of 1912 – a law formally intended for the protection of children – was adopted to a very large extent to implement a similar protective approach regarding delinquency (Trépanier and Tulkens 1993, 1995).

The presence of this protective model can be seen from a number of dispositions that were included in the juvenile court legislation of most states. Pre-adjudication detention separate from adults was one of these dispositions. Contamination by adult criminals was a potential seed of delinquency against which children had to be protected, hence,
the requirement that juveniles were to be detained in special quarters.

The rejection of the principle of proportionality and determinate dispositions was another consequence of the protection model. Aiming at punishment, classical criminal law demands that the nature and duration of the penal sanction be in proportion to the gravity of the offence. This is decided at the time of sentencing, prior to its execution. If, however, the aim is no longer to punish but to protect the child in order to prevent future delinquency, this requirement loses its relevancy. The choice of measure should address the individual needs of the child. The measure should be applied (and prolonged or changed) as long as these needs exist. The law should therefore invest the judge with vast discretionary powers, enabling him to choose the nature and duration of the measure in terms of these needs, as well as to adapt the measure from time to time in accordance with their evolution. Proportionality of the punishment to the offence and the obligation to determine the duration of the sanction in advance were perceived as constraints that should be eliminated. Thus, juvenile court laws left the judge full latitude in his choice of measure and allowed him to order its termination midway or whenever he felt it had made the desired effect. Once found guilty of an offence (whatever it might be), the youth would often become a ward of the court until the age of majority. Some laws enabled the judge to take new measures at any time during this period, even in the absence of any new offence. The need to adapt the initial measure or to adopt new measures would be dictated by the evolution of the child’s need for protection.

Not any court, nor any judge, were felt appropriate to adequately implement such a philosophy: a special court was needed, with a setting that would enable the judge to address children and parents in a personal manner. Ben Lindsey, the first Denver Juvenile Court judge, promoted the image of the judge who would become personally involved with the children, their parents and teachers and with other significant adults. He did so to the extent that little room was left for other actors, such as the probation officer. Other judges did not go that far, remaining satisfied with sharing responsibilities and relying on the skills of other agents.\(^7\) An interesting representation of what some reformers intended to achieve can be found overseas, in the British parliamentary debates, when the Under Secretary of State for

\(^7\)On this debate between Judge Lindsey and other judges, such as Judge Mack, see Fox (1998, pp. 10–11)
the Home Office, Mr. Herbert Samuel, spoke in favour of the Children’s Bill in 1908 and referred to juvenile courts as they were developing in some countries.

It was the very essence of the idea of juvenile courts that they should have as much privacy as possible. A juvenile court was a place in which magistrates, as a rule specially chosen for their qualifications in this regard, [. . .] wanted to get away from the whole character and surroundings of the ordinary police Courts, from the criminal atmosphere and the somewhat unsavoury public that attached to and frequented the ordinary Court of Summary Jurisdiction. They wanted to get away from the procedure in which the terrified child was placed high up in a dock, surrounded by numbers of police and with a crowd of persons in the background, too frightened to tell the truth or to understand what was being said, and completely uninfluenced by the proceedings. What was desired was that in a sort of parental way the magistrate should come into close personal relations with the child and speak to him in a more human fashion than was possible in the ordinary surroundings of a police Court. (British Parliamentary Debates, 19 October 1908, vol. 194, pp. 803–804)

It was, in fact, the very functions of the court and trial that were at stake here. In the accusatory system of common law countries, the role of the prosecution is to present proof of the guilt of the accused and demand an appropriate punishment, while that of the defence is to see that the rights of the accused are protected. It is up to the judge to decide between the two points of view and punish if necessary, remaining neutral and keeping his distance from both parties. One may wonder to what extent American courts operated strictly on that basis when hearing children’s cases in the nineteenth century, especially in view of the influence of the parens patriae doctrine. In any case, the juvenile court judge would not adhere to that model. The judge’s function would be to establish whether the child convicted of an offence considered symptomatic of his needs was actually in need of assistance, and how in particular the factors deemed to be at the root of his delinquent behaviour could be neutralised. This was a protective model, where the fatherly and kindly judge was not one against whom the child had to protect himself. The normal guarantees offered by the due process of law appeared irrelevant. Since the emphasis was on the child’s needs and on the benevolent attitude of those taking charge of him, there no longer seemed to be a need to safeguard all his procedural rights. The judicial role became somewhat akin to that former image of the judge which some British Members of Parliament had invoked until 1836 to counter an increase in the role of the defence attorney in trials by jury. Their view of the judge’s role was to see that his protective and compassionate approach to the accused would not be
abdicated and entrusted to the lawyer. It is this image, rejected three-quarters of a century earlier from British law, that the juvenile courts would endorse in various common law and other countries.

The juvenile court judge could not act alone. A protective approach required that he be assisted by someone who would visit and supervise children in their own families or in foster homes, make the necessary assessments and recommendations, see that the judges' decisions be implemented and so on. For some who had been involved in the work of children's aid societies, probation was a mere extension to delinquent children of the protective work they had been doing for other children in danger. In Canada, William Scott presented the issue as follows: "What are the agents of the Children's Aid Societies but probation officers under another name? Let us enlarge their powers [to deal with delinquent children] and let us have enough of them to permit of the work being thoroughly done" (Scott 1938, p. 50). Thus, delinquent children could be protected in the same manner as dependent and neglected children and possibly by the staff of the same children's aid societies. In contrast to the nineteenth century, when child saving had been done first and foremost through confinement in institutions, probation was presented as an alternative to these institutions that had lost much of their credibility.

So, to summarise, may we conclude that the creation of the juvenile court established a new status for children? The answer is not likely to be the same for all countries, even though the establishment of juvenile institutions seems to have been common in many Western Europe and North American countries. In the United States, the parens patriae doctrine brought nineteenth century courts to act in a manner that was far from foreign to the juvenile court model to come. The latter was in continuity with Anglo-American common law. Its advent was also prepared by some local laws providing for separate trials as well as by the establishment of children's aid societies and probation in some places. This was so much so that some critics of the American juvenile court movement have considerably downplayed its significance (see e.g. Fox 1970, 1998; Sutton 1988). Nevertheless, one should not lose sight of the fact that, in the United States, it gave a new impetus to the parens patriae approach that had lost much of its lustre due to its association with institutions: with the juvenile

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8For a discussion of this question, see McGowen (1983).
court and probation, *parens patriae* could somehow hope for a renewed life. Furthermore, by “expressing a preference for diagnosis and probation, the court implicitly downgraded incarceration, yet retained it as a judicial option” (Mennel 1983, p. 208).

Viewed from another angle, one could suggest that the very continuity observed between the situation in nineteenth century America and the juvenile court may have contributed to the fact that the latter emerged precisely in the United States. Many indications suggest that several countries later borrowed the American court model. One is left to wonder how courts for children in Western countries would have been like had it not been for the movement that came from the United States?

That movement spread quickly throughout North America and Western Europe. By 1912, 22 American states had passed juvenile court legislation, and all but two had done so by 1932 (Mennel 1983, p. 207). Court decisions quickly ratified the constitutionality of the informal parental character of the court.9 Other countries followed: one may quote, for instance, Great Britain and Canada in 1908, Portugal in 1911, Belgium, France and Switzerland in 1912, the Netherlands in 1922, Germany in 1923 (for a brief account of the first European juvenile court laws, see Herz 1996). Not all countries imported the American juvenile court judge model: France is an example where specialised juvenile court magistrates were established only after the Second World War. During the first six decades of the twentieth century, juvenile courts spread and developed. Obviously, events occurred before the 1960s, but lack of space compels us to skip to the most significant changes of the last four decades of the twentieth century. They were the target of some critics, but the most shaking questions and challenges would take form in the 1960s.

**Juvenile Justice Policies: Some Decades of Debates and Changes**

Major debates and changes touched juvenile justice policies throughout the 1960s. This was the case for some European countries as

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9See e.g. *Commonwealth v. Fisher* (213 Pennsylvania 48 [1905]), where the court held that “the legislature surely may provide for the salvation of a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state’s guardianship and protection. [. . .] The act simply provides how children who ought to be saved may reach the court to be saved.” (Quoted in Bremner 1971, vol. 2, p. 525.)
much as it was for North America. For instance, Belgium passed a new Youth Protection Act in 1965, according to which children in danger and delinquent children were grouped in a single category and dealt with a child welfare orientation that decriminalised the delinquent behaviour of minors (on the 1965 Belgian Act, see e.g Somerhausen 1976). Similarly, following a decade of debates and government reports, the British Parliament passed, in 1969, a Children and Young Persons Act that involved a move towards a more explicit welfare orientation for both groups (children in need and delinquent children), a greater reliance on civil rather than criminal proceedings, and a reduction of court interventions in favour of more informal treatment decisions by professional social workers (on the origins and orientation of the 1969 British (England and Wales) Act, see Bottoms 1974). At the same time, “strong social work influences in the Civil Service” (Morris and McIsaac 1978, p. 47) led to the adoption, in 1968, of the replacement of juvenile courts in Scotland by welfare orientated non-judicial bodies, the children’s panels. Thus, the welfare model impersonated by juvenile courts since the beginning of the century was still well and alive in Europe, but it was finding its way in avenues outside of the judicial system.

In the United States, key decisions by the Supreme Court would put juvenile courts on a different path, at least partly. The constitutionality of the lack of due process was successfully challenged for delinquency cases. In Kent, the US Supreme Court decided, in 1966, that a minor was entitled to due process guarantees in a hearing on a petition to waive him to an adult criminal court. Delivering the opinion of the Court, Mr. Justice Fortas expressed the view that

[w]hile there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults. [. . . ] There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children. (Kent v. United States, 383 US 541 (1966), at p. 556)

The following year, in Gault, the same court held that the Fourteenth Amendment to the Constitution required application “of the essentials of due process and fair treatment” during the adjudicatory hearing of a delinquency case (In Re Gault, 387 US 1 1967). In 1970, the Court held in Winship that the requirement to establish the guilt of a young
offender by proof beyond a reasonable doubt (as in adult criminal trials) was part of these “essentials of due process and fair treatment” (*In Re Winship*, 397 US 358 1970). Those decisions as well as others created a shock wave: the procedural informality that had been justified for 130 years through the *parens patriae* doctrine could not characterise the juvenile court any more. The states had to review their legislation and the courts had to change their practice to meet the due process standards set by the Supreme Court. More than a legal change, this required a change in mentalities.

As mentioned, these court decisions applied only to delinquency cases. Due process standards did not apply to dependency and neglect cases. The result was the introduction of a distinction between delinquency and dependency cases, a distinction that had remained foreign to juvenile court philosophy until then. This distinction was made even more present in 1974 with the adoption of the federal Juvenile Justice and Delinquency Prevention Act. One of the aims of this act was to provide the states with financial incentives to remove status offenders and neglected children (not criminal offenders) from institutions and treat them in the community. By 1982, 46 states had redefined delinquency to exclude ‘non-criminal’ offenders and 34 had established different detention standards for criminal and non-criminal juveniles. Thus, as Sutton (1988, p. 221) concluded, court decisions and the 1974 Act “had complex, but generally additive, impacts on the emergence of the status offender as a separate statutory category”.

The removal of non-criminal juveniles from institutions should be seen in a context where growing disenchantment with rehabilitation undermined the belief that institutions could be successful either in treating neglected children or in preventing recidivism amongst young offenders. The image of Martinson’s ‘Nothing Works’ had struck the minds of many. The neo-classical ideas put forward by criminologists such as James Q. Wilson and Ernest van den Haag (see particularly Van den Haag 1975; Wilson 1975) converged with those who thought that justice should punish and deter rather than rehabilitate. Young offenders ought to be treated more like adults. Some proposed to abolish the juvenile court altogether. In the political arena, these ideas found an audience amongst conservatives who wanted more punitive sanctions for offenders and liberals who felt that rehabilitative purposes could lead to abuses. For instance, Senator Edward Kennedy, considered to be a liberal, declared:
There has been a notorious lack of rehabilitation and an equally notorious increase in arbitrariness and injustice. [...] We know that the ability of such courts to rehabilitate the violent juvenile or predict future criminal behavior must be viewed with increasing suspicion. (Quoted by Schichor 1983, p. 64)

As a consequence, some people with liberal persuasion joined with more conservative critics to move away from the parens patriae ideology: the former wanted the legal protections afforded by criminal law, whereas the latter wanted its punitive philosophy. This further contributed to the distinction between delinquent and neglected juveniles. A very good illustration of that result is the Juvenile Code of the State of Washington, adopted in 1977, which clearly introduced a criminal law approach for offenders (Trépanier 1988). To use Sutton's words, "as juveniles were once distinguished from adults, so now the non criminal offender [or neglected or dependent child] is reserved for treatment, and the delinquent is consigned to punishment" (Sutton 1988, p. 230).

As the ability of the juvenile court to achieve its goals was questioned, diversion became a popular idea. In the 1960s, labelling theory gained considerable popularity. It could easily be vulgarised and became part of the common wisdom of the time. Books such as Schur's Radical Nonintervention (1973) helped to disseminate the idea that the stigma attached to the dramatisation of judicial intervention could lead the offender to internalise the delinquent role in which he was being castigated, thus increasing the likelihood of further offending. In any case, referring all cases to the judge appeared both unnecessary and inefficient. Reducing the official processing of offenders to its minimum appeared desirable. The President's Commission on Law Enforcement and Administration of Justice (1967, pp. 81-89) had endorsed the idea with the creation of Youth Service Bureaus, where children – delinquent and non-delinquent – could be referred to instead of court and be provided with various community services. Diversion programmes developed considerably and were encouraged through the incentives of the 1974 Juvenile Justice and Delinquency Prevention Act.

Hence, the 1960s and 1970s were marked by major policy shifts. Similar changes occurred in other countries, Canada amongst them with the adoption of its 1982 Young Offenders Act (following a review process that lasted over 20 years; see Trépanier 1986). This Act is characterised by the introduction of diversion, the acknowledgement of some degree of accountability for young offenders, the uniformisation of the age of penal majority at 18 throughout the country.
(whereas previously it varied from one province to another) and a formal recognition of the legal rights of young people. It marked a departure from the philosophy that prevailed at the turn of the century. The assimilation of delinquency cases to neglect and dependency cases disappeared. At the same time, it aimed at taking into account both the offence and the special needs of the young offender, thus "reflecting a remarkable equilibrium between concerns that cannot be easily reconciled" (Jasmin Report 1995, p. 4). It borrowed from foreign experience (including the United States) as well as from pre-existing practices and ideas. Diversion was already widely practised by police forces, and diversion programmes had been set up for several years, particularly in Quebec. The adoption of two Charters of Rights by the Quebec legislature in 1974 and the Federal Parliament in 1982 showed a growing concern for the protection of individual rights in Canadian society, a concern that found its way in other legislation, including the Young Offenders Act. Similar trends could be observed in debates and legislation occurring in European countries during the same period.

One may wonder how much change is introduced by official policy shifts, and if undesired results are not produced. As far as diversion is concerned, extension of social control is often reported as a problem: diversion programmes are not simply used as an alternative for youths who would otherwise have been referred to court, but also for some who would have been subjected to no action. This issue has been raised by a considerable number of authors (e.g. Langelier-Biron and Trépanier 1994). Serious questions have also been raised about the extent to which due process requirements have been met in the United States (for a brief review of some relevant research, see Empey and Stafford 1991, pp. 347–348). The question is particularly crucial in view of the development of diversion programmes where, unlike court procedures, youths are mostly left to themselves to ensure the protection of their rights, without the assistance of counsels who might be present in a court hearing. Could it be that the emphasis placed on procedural guarantees in court procedures might be partly defeated by diverting a significant number of cases? It remains that, following the 1960s and 1970s, juvenile justice underwent quite significant changes. A much clearer distinction emerged between young offenders and neglected children, with each group subjected to increasingly different policies: treatment for children in need of care, and a juvenile justice that introduced some of the characteristics of adult criminal justice
for young offenders. Diversion and due process are part of juvenile justice daily practices. De-institutionalisation is a reality for some juveniles. Has that trend lasted?

**A Glimpse at Present Trends**

A brief summary of current trends in juvenile justice policies suggests that, at least in the North American context, the dominant mood seems to be in the direction of a sharp distinction between young offenders and children in need of protection. For the former group, juvenile justice is increasingly closer to adult criminal justice, both in adopting some of its philosophy and practices and in waiving more juveniles to adult courts and corrections. At the same time, there seems to be a growing concern for victims as well as for community involvement. The distinction between young offenders and children in danger now seems well established and accepted in many countries. This is the case, for instance, in the United States, Canada, England, Belgium (which is reviewing its legislation following its transformation into a federal state). This involves protective measures for children in danger and policies of a more or less penal nature for young offenders.

The United States appears as a striking example of a country where policies aimed at young offenders mark a clear shift towards a criminal justice model. A review of legislation in the various states of that country between 1992 and 1995 shows an important legislative activity, which has produced revisions of the laws concerning juvenile crime in more than 90% of the states. In many states, legislative activity followed a period of intense political rhetoric that compelled action in order to ‘curb juvenile violence’. In many instances, individual vignettes portraying a single incident served as the focus for legislative motivation. These laws involve increased transfers to adult criminal courts and a greater use of adult sentences. The underlying intent is to punish, hold accountable and incarcerate for longer periods offenders who have gone beyond a threshold of tolerated ‘juvenile’ criminal behaviour, particularly those convicted of violent offences. In many instances, accountability is defined as punishment, or a period of incarceration, with less attention paid to the activities to be accomplished during that incarceration. Mandatory minimum sentences, sentencing guidelines, and extended jurisdiction are intended not only to hold an offender accountable but also to incapacitate an offender for an extended period of time. Emphasis is placed on residential (often
secure) placement of offenders convicted of serious and violent offences, without comparable attention aimed at community corrections. Information concerning some juvenile offenders has become less confidential than before. The use of juvenile records for criminal prosecution, information sharing with schools, and public awareness of juvenile criminal behaviour and its consequences are all intended to ‘tighten the web’ of information around some offenders. Judicial waivers, the primary mechanism for transferring jurisdiction of a violent or other serious juvenile case to the criminal courts in the past, has been weakened and is now shared more broadly by the prosecutor and the direct action of the legislature.

This shift in authority goes with the sentiment (particularly in an ill-informed public) that juvenile court judges are too ‘soft’ on juvenile crime and that non-judicial decisions are more likely to achieve the goal of holding serious offenders accountable. In brief, the trend is to transfer more youths to adult courts and, for those who are not waived, to make juvenile justice more like adult criminal justice. Much of the change has resulted from public perceptions of an escalation of violent juvenile crime and the accompanying political reaction to that perception. The necessity was to ‘do something’, and in most instances the changes were not based on evidence that clearly demonstrated the efficacy of the intervention (Torbet et al. 1996, pp. 59–61). The assumption is that juvenile justice is not efficient in dealing with serious juvenile crime, whereas the efficiency of adult criminal justice is taken for granted.

In this trend, the preferred method to hold offenders accountable is punishment. A renewal of concern for victims in recent years has led to the practice of reparation and restitution, which, in turn, is not foreign to the birth of the restorative justice concept that has gained momentum lately, due in part to the legitimacy crisis of rehabilitation (Walgrave 1994, 1998; Bazemore and Walgrave 1999). Reparation and restorative justice have been a reminder that court processes can often and successfully give way to mediation. This has also led to an increased use of community service as an alternative to reparation to the actual victim when such reparation is not possible. With reparation and restorative justice, more promising scenarios are offered than with the trend towards more punishment. Yet, these avenues remain little used, and the idea of restorative justice is too recent to be translated into practice on any significant scale.

The trend observed in the United States is not limited to that country. Canada does not seem to be immune from it. During the election campaign of 1993, a staunch right-wing regional party gained
considerable popularity in the Western part of Canada, denouncing amongst other things the Young Offenders Act for being too soft, and making it responsible for violent crimes by young people. Fearing a loss of votes in the hands of that party, the two principle national parties promised reviewing the act should they be elected. Jean Chrétien’s Liberal Party was elected. In 1995, a series of amendments were enacted, including dispositions to increase sentences in murder cases and the introduction of presumptive transfers to adult courts in cases of very serious offences. A global review of the Act was later carried out and a bill was introduced in Parliament in March, 1999, much along similar lines of those observed in the United States. More emphasis is placed on the offence and less on the offender. Accountability has become the catchword. Violent offences should be punished more severely, with an increased use of adult sentences. Diversion and community measures should be used for the less serious offences. Until the 1980s, politics had remained relatively absent in the planning of juvenile justice policies. The issues have now become politicised, to suit the mood and attract the votes of a predominantly conservative electorate in some of Canada’s English speaking provinces. Of course, North America has no monopoly over the politicisation of juvenile justice issues. Recent events in France have illustrated how a government itself can be divided on these issues, particularly when highly mediatised events involving youths attract public attention.

Debates and reviews are taking place in Europe. The French government is expected to move ahead with some changes in its policies. The British Government is implementing new policies in England and Wales, after a report of the Audit Commission (entitled Misspent Youth) concluded that the juvenile justice system was expensive and did not produce the expected results. Other countries, including Belgium and Portugal, are currently reviewing their laws. The American juvenile court served as a model that inspired many legislators at the beginning of the century. Hopefully, European countries will feel less attracted by what comes from North America nearly a century later.

CONCLUSION

The nineteenth century saw the emergence of institutions for children, which contributed to the creation of a special status for minors – both before the courts and in institutions – as well as to provide the basis
for the juvenile court ideology through the *parens patriae* doctrine. The American model of a children's court had a major influence over the orientation of juvenile courts not only in North America but also in Europe. It was implemented gradually, with differences from one country to another. It remained relatively unchallenged until the 1960s. Then major changes occurred. The two groups of youths that had been treated similarly – juvenile delinquents and children in need of protection – became viewed as different. Whereas the latter would still be treated under the welfare model that had dominated the juvenile court until then, the former would be dealt with more formally, in juvenile courts that would gradually move closer to the adult criminal court model, without really questioning its value. At the same time, diversion would remove a significant number of minor offenders from that formal court process. As the North American trend sways towards moving more minors into adult courts and institutions and towards having youth courts that differ less from adult courts, one is left to meditate on Churchill's words, pronounced in 1910, when he was Home Secretary: "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country" (quoted by Radzinowicz and Hood 1986, p. 774). These words are no less relevant today than they were nearly a century ago. Hopefully, they will not be forgotten, at least in European countries, whose civilisation would not progress by imitating current North American trends.

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ABSTRACT. This article considers the history of a century of juvenile justice. Illinois 'invented' the separate 'children's court' in 1899 and this concept was spearheaded in Northern America, Great Britain and continental Europe in the first decades of the new century. However, a century after its foundation the future of the juvenile court is in doubt everywhere in the Western world. Some conclude that there is a cyclical pattern in juvenile justice policies. That proposition is rejected in this article. The proposition of a cyclical pattern also presupposes that there is no real problem at stake in treating juvenile offenders. The main point of this article, however, is that juvenile justice cannot escape trying to solve a very complicated foundational issue. This issue is a double paradox, that is, juvenile justice has to solve two philosophical questions: the justification of punishment and the justification of punishment for non-adults. This diagnosis presents a new conceptual framework for an analysis of the history of juvenile justice.

KEY WORDS: history, juvenile justice, juvenile offenders, legal philosophy, youth court

The concept of a separate 'children's court' evolved in the latter half of the nineteenth century. The passing of the Illinois Juvenile Court Act in 1899 was in response to a widely popular view of the criminal and problem child, of family and State responsibility for troublesome youths, and of an adequate and useful State response to undesirable behaviour in children. All over the Western world, the view was emerging at that time that children in trouble ought to be 'saved' and not punished. At the Second International Penitentiary Congress held in Stockholm in 1878, for example, it was resolved that delinquent children should not be punished but educated so as to enable them to "gain an honest livelihood and to become of use to society instead of an injury to it" (Platt 1977, p. 50). The concept of a special juvenile court with its characteristic mixture of welfare and criminal justice was spearheaded in Northern America, Great Britain and continental Europe in the first decades of the new century.

In the last decades of this century, however, this celebrated institution has been subjected to a lot of criticism. A century after its foundation the future of the juvenile court is very much in doubt; firstly and most radically in the country which 'invented' it, but also in England and Canada, and to a lesser extent in continental Europe. Some direct their criticism against its traditional emphasis on rehabilitation, some even
argue that this separate court should be abolished (Cornell 1984; Hirschi and Gottfredson 1991; Feld 1993). Others, responding to this criticism, plead for major reforms and a fundamental reconsideration of the philosophy of rehabilitation (Shireman and Reamer 1986) or for 'restorative justice' (Braithwaite and Mugford 1994; Walgrave 1994; Bazemore 1998). It is striking that the question of whether the 'children's court' has outlived its usefulness is being posed from completely different quarters: both liberals and conservatives, left and right-wing critics have questioned its function, its effectiveness and its basic assumptions. Upsurges in violent juvenile crime and shocking incidents have only increased the pressure to reorganise and critically reconsider the role of the 'children's court'.

In the United States a gradual shift in attitudes toward the juvenile began in the mid-1960s, soon to be followed by a shift in attitudes toward youth in trouble with the law in particular. The US Gallup poll in May 1965 gave an indication of this shift, when it reported for the first time that 'crime' was listed as the nation's most important problem. This can be interpreted as a lowering of the nation's threshold of tolerance. Juvenile offences in particular seemed to provoke an increase in public concern. American citizens were becoming less willing to treat kindly "the poor child who has been through so much" (Shireman and Reamer 1986, p. 10). A significant turning point which echoed this shifting public attitude was reached in the 1967 report of the President's Commission on Law Enforcement and Administration of Justice. This stated:

The juvenile court is a court of law, charged like other agencies of criminal justice with protecting the community against threatening conduct. Rehabilitating offenders through individualized handling is one way of providing protection and appropriately the primary way of dealing with children. But the guiding consideration for a court of law that deals with threatening conduct is nonetheless protection of the community. The juvenile court, like other courts, is therefore obliged to employ all the means at hand, not excluding incapacitation, for achieving that protection. (quoted in Shireman and Reamer 1986, p. 12)

The publication of this report signalled the start of a fundamental change to the juvenile justice system in the US. In response to a decline in the belief that the juvenile court and correctional institutions were capable of treating youthful offenders humanely, efficaciously, and with proper regard for public safety and the youths' legal rights, a series of goals (known as the 4 D's) emerged that have shaped the juvenile landscape since then: decriminalisation, diversion, due process and
de-institutionalisation. The main motives behind this complex shift can be summarised as lack of effectiveness and lack of legality (see Doek 1994, p. 46). However, political debate on youth crime in the United States seems to have been dominated since the 1980s by the advocates of a ‘get tough’ approach, urging increased use of confinement and returning serious juvenile offenders to adult prisons. Consequently, many American and foreign commentators conclude that the US juvenile justice system has, in fact, returned to the classical retributive thinking of the period before the rise of the first juvenile reform movement of nearly two centuries ago.

**A CYCLE OF JUVENILE JUSTICE?**

Taking this observation as a starting point, some historians and criminologists conclude that there is a cyclical pattern in juvenile justice policies in which a fixed sequence of policies has been repeated several times over the last two hundred years (Schultz 1973; Finkenauer 1981; Gilbert 1986; Sutton 1988; Ferdinand 1989; Bernard 1992). Crucial to this view is the official and public conviction that juvenile crime is at an exceptionally high level and that there are many harsh punishments but few lenient treatments for juvenile offenders. In this situation, justice officials are often forced to choose between punishing juvenile offenders harshly and doing nothing at all. As a consequence, many minor offenders are let off scot-free because lenient treatments are not available and because justice officials believe that the harsh punishments will make the minor offenders worse. Eventually, justice officials and the general public have come to believe that harsh punishment actually increases juvenile crime, and that doing nothing at all increases it too. The solution is to introduce lenient treatments for juvenile offenders. However, since justice officials and the general public remain convinced that juvenile crime is at an exceptionally high level, after a while they begin to blame these same lenient treatments for the high crime rates. Initially, responses to serious juvenile offenders are ‘toughened up’, followed by a general ‘toughening up’ of all responses. This process continues until there are many harsh punishments available for responding to juvenile offenders but few lenient treatments. At that point, the cycle has virtually returned to where it started.

The concept of ‘juvenile delinquency’ first appeared in the United States around the year 1800 in the context of urbanisation, industrialisation and
the breakdown of traditional controls. At roughly the same period a new way of understanding and interpreting offensive behaviour by young people originated, being the idea that these youngsters were ‘potential paupers’. This ‘idea of juvenile delinquency’ formed the basis for a new ‘idea of juvenile justice’: the special juvenile institution, established in 1825 in New York. Thus, the cycle begins in the first decades of the nineteenth century, starting again at the turn of that century with the invention of a new idea of juvenile delinquency – the ‘neglected child’ – and the concomitant new idea of juvenile justice: the juvenile court, established in Chicago in 1899. Since the 1970s, the cycle has been returning to a period of ‘toughening up’, which implies that the juvenile delinquent is seen as a serious criminal who needs swift, certain, and severe punishments. The underlying idea of this analysis is that there seems to be a recurring illusion that juvenile delinquency can be solved. If this illusion were abandoned, the cycle could be broken and a new, more realistic policy made possible. Notwithstanding this attractive supposition, there are severe problems with this interpretation, with respect to both its historical accuracy and its conceptual framework. I will first concentrate on the historical acceptability of this proposition. Looking at a century of the ‘children’s court’ the picture seems to be more ambivalent. On the one hand, the ‘just deserts’ discourse has clearly gained strength over the past decades. On the other hand, however, one could wonder whether the juvenile court has not become more institutionalised recently, as a ‘juvenile and family court’. Powerful commissions and councils like the National Advisory Committee on Criminal Justice Standards and Goals and the National Council of Juvenile and Family Court Judges have repeatedly defined the clientele of the juvenile court as ‘families with service needs’. They emphasise rehabilitation as the basic function of the ‘unified family court’, which “must retain the important delinquency functions of the traditional juvenile court” (Howell 1994, p. 2). Thus, the original concept of the juvenile court seems to have been reaffirmed by these institutions. That means that, far from presenting a univocal return to a new cycle, the picture is more complex and confusing. Maybe the current status of the reform of the American juvenile justice system could be characterised more to the point as a ‘schizoid revolution’ (Empey and Stafford, quoted in Howell 1997, p. 22).

There is more, however. When we look at recent developments in a rather similar juvenile justice system, that of England, a similarly disturbing picture emerges. The publication of the White Paper No
More Excuses in 1997 appears to continue the recent bitter fight against juvenile criminality, sharpened by the media reaction to the Bulger Case in 1993 and firmly expressed in the Criminal Justice and Public Order Act 1994. As such it could be interpreted straightforwardly as indicating a new repressive phase preparing the return to a new cycle of juvenile justice. This line does indeed form a clear break with the former policy established in the Children and Young Persons Act 1969. Retrospectively, the 1969 Act can be seen as the culminating point of the welfare approach in England. Its core idea was that young offenders were not very different from juveniles in other kinds of trouble and that they should not experience the full force of the prosecution system unless all other available avenues had been exhausted (Cavadino and Dignan 1992, p. 204). Youths were essentially to be handled by civil care proceedings; the incarceration of young offenders was to be officially discouraged and offenders under the age of 17 were not to be sent to borstals or detention centres. This welfare approach was to disappear in the following decades (Gelsthorpe and Morris 1993). In 1980, after the Conservative Party had gained political power in England the year before, a White Paper called Young Offenders was published, which advocated the return to a ‘custodial care’ system. Norman Tutt pointed in 1981 to the change in language since the 1960s, concluding that “in the earlier documents, the youngsters were children first and offenders second; now the order has been reversed” (Tutt 1981, p. 249). This line of ‘toughening up’ the juvenile justice system was reaffirmed by later acts (Criminal Justice Act of 1982, 1988 and 1991). The No More Excuses approach of the 1990s, with its militant language of ‘nipping offending in the bud’, its demagogic statement that “many of today’s juvenile offenders may graduate into tomorrow’s adult criminals unless action is taken now”, and its explicit suggestion that up to now juvenile offences had just met with excuses instead of firmness, can be seen as the continuation of this line, completely breaking with the welfare orientation.

On closer inspection, however, while there are a lot of welfare intentions in the 1969 Act, there is also a lot of rhetoric in the 1997 paper. This means that in both cases a rather one-sided image of the actual juvenile justice policy is presented. Firstly, despite the welfare rhetoric of the 1969 Act, this approach was never fully integrated into the juvenile justice system. It was never fully implemented, partly because of a change of government in the following year, partly because the discretion it allowed seems to have been used in a far more conservative way than intended by the Act (Cavadino and
Dignan 1992, p. 206). Contrary to its intentions, therefore, the 1969 Act might actually have increased the punitive character of the British juvenile justice system. Secondly, there seems to be a (relatively small) counter-dimension both in the 1997 document and in earlier legislation (the Children Act of 1989 in particular), which makes the image a little bit more complex and confusing. As most commentators in this Journal have stressed, the No More Excuses Paper is a mixture of martial rhetoric and disgraceful ideas, and some quite interesting and innovative proposals. On the 'negative' side, there are proposals to demand prison sentences for 10-year-old children, to increase minimum sentences, and the doli incapax principle is questioned. On the 'positive side' there are proposals to speed up proceedings, to strengthen the position of the juvenile magistrate and to give magistrates special training.

**Traditions of Juvenile Justice**

Looking back over a century of the juvenile court in the Anglo-American world the picture is less clear and unequivocal than the proposition of a cyclical pattern would have it. In fact, the embarrassing conclusion is that the picture cannot be anything but rather ambivalent. The overall assessment of a century of the juvenile court becomes even more ambiguous if one switches the focus from the Anglo-American world to continental Europe. There are two relevant dimensions: the relationship between welfare and justice within the juvenile justice system itself, and the socio-political – that is the welfare – structure within which the juvenile court operates. Each has its peculiar implication for the social significance and role of the juvenile court. Different traditions in juvenile justice come to the fore along both dimensions and these differences lead to different conclusions in relation to the history and the future of the juvenile court.

First, the idea that children ought to be ‘saved’ and not punished for their misconduct involved a shift of attention to the poor child everywhere in the industrialised and urbanised Western world. The child savers began to address the problems of the children in the slums, the children who were in danger of becoming paupers and criminals; they invented the ‘neglected child’. As the prominent child saver, Julia Lathrop, later Chief of the US Federal Children’s Bureau wrote in 1898, “if the child is the material out of which men and women are made, the neglected child is the material out of which
paupers and criminals are made” (quoted in Mennel 1973, p. 129). The legal problem which motivated the child savers’ movement was not the response to serious juvenile offenders; they could already be sent to reform school. The problem was their inability to deal with the neglected child. The solution was the use of the principle of *parens patriae*, which meant the (re)introduction of the old English principle that a special court, called the Chancery Court, would manage the estate of children whose parents had died until it could be turned over to the child at the age of 21. The solution to the problem of the neglected child therefore was to define the new juvenile court as a chancery court, not as a criminal court: neglected children lacked proper parental care, not because their parents had died, but because their parents were weak and criminal.

To establish a juvenile court along the lines of a chancery court required two separate steps: jurisdiction over juveniles had to be removed firstly from the criminal court, and secondly established in a new juvenile court (Bernard 1992, p. 89). The first step was accomplished in several countries by the same method, by raising the age of criminal liability. In America, for instance, the age was raised to 16 in 1899, in France it was raised from 16 to 18 in 1906, in Belgium to 16 in 1912 and in Germany to 14 (17) years in 1923. Raising the age of criminal liability implied that children younger than this age could not be charged with a crime in a criminal court.

The second step gave the new juvenile court jurisdiction over all youths in trouble, criminal offenders and neglected children. However, striking differences emerge at this point. With the passage of the Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children, Illinois’ juvenile court was established to control the care of the State’s many dependent children. The Act was meant for all children in trouble, ranging from

any child who for any reason is destitute or homeless or abandoned or dependent on the public for support; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable person” to “any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the street or giving any public entertainment. (quoted in Mennel 1973, p. 131)

It is clear that any poor child would fit under one or other of these provisions. The authors of the law wanted the court to have jurisdiction ‘when the child’s best interests would be served’. This implied that the court was provided with virtually unlimited power over poor children. Acting in its role as *parens patriae*, the US juvenile court
could take children out of their homes and place them in a reform school, without their parents having any say in the matter. At last, a secure legal basis had been found for this old practice that had been carried out under the Poor Laws and implemented through the Houses of Refuge.

In continental Europe the advocates of child welfare were also convinced that a child who committed a crime was not essentially different from a child who was merely neglected or dependent. The European child savers held the same idea that the ‘child in danger’ was a potentially ‘dangerous child’. Just as in Illinois, pregnant and abused girls, runaways and vagrants, little buskers and vendors, all these categories had to be saved by the new welfare interventions, backed by effective law. However, European law with its stronger legal tradition passed different acts for the two main categories: the neglected child/child in danger and the dangerous child/juvenile offender. In continental Europe two different alternatives were created: a moderate juvenile justice system and a radical welfare system. Throughout most of industrialised North-Western Europe the juvenile justice system ranged from a more hybrid penal/welfare system – the Netherlands 1901, France 1912 – to a stricter bipartite system – Germany 1922/23. Belgium in 1912 was an exception with a purer ‘welfare’ form. This meant that the problem that became known as the question of the ‘status offences’ did not ‘pollute’ the functioning of the juvenile justice system in these countries, at least not directly, and consequently the juvenile court had less discretionary power. In Scandinavia an alternative route was taken with the creation of a welfare system for all youths in trouble. Whereas the establishment of the juvenile court in America did not prevent serious juvenile offences being brought before the adult criminal court, regardless of the age of the offender, in Denmark, Sweden, Norway and Finland children could not be sent to the criminal court before the age of 15 (Klein 1984; Dünkel and Meyer 1985; Shoemaker 1996; Mehlbye and Walgrave 1998).

Secondly, the focus on continental Europe includes a switch of socio-political context. The development of both alternative juvenile justice systems in continental Europe fits with the development of two alternative socio-political European patterns. Whereas the US juvenile court emerged in the context of the foundation of a residual or ‘liberal’ welfare state tradition, its European counterpart was created within the context of the establishment of a strong welfare tradition. In fact, a variety of strong welfare traditions emerged. Starting from T.H. Marshall’s proposition that social citizenship constitutes the core idea of a welfare state, different types of welfare states can be discerned.
Esping-Andersen (1990) has found three main types of welfare regimes. Apart from the 'liberal' welfare state, with its archetypal examples in the United States, Canada, and Australia, he discerns two European continental regime-types: a large cluster of strongly 'corporatist' welfare states such as France, Germany, Austria, Italy, Belgium, and to a lesser degree the Netherlands, and a small cluster of 'social democratic' welfare regimes in Scandinavia. In the 'liberal' welfare tradition the progress of social reform was severely circumscribed by traditional, liberal work-ethic norms, which implied that entitlement rules were strict and often associated with stigma and benefits were typically modest. This welfare state encouraged the market, either passively, by guaranteeing only a minimum, or actively, by subsidising private welfare schemes.

In the 'corporatist' welfare tradition the liberal obsession with market efficiency and commodification was never pre-eminent and the granting of social rights was hardly ever a seriously contested issue. What predominated was the preservation of status differentials; rights, therefore, were attached to class and status. This corporatism was subsumed under a State edifice perfectly ready to displace the market as a provider of welfare, while at the same time strongly committed to the preservation of traditional familyhood. In the Scandinavian 'social democratic' welfare tradition, at last, the principles of universalism and decommodification of social rights were extended also to the new middle classes. Rather than tolerate a dualism between State and market, between working class and middle class, the dominant social democratic discourse in these countries pursued a welfare state that would promote an equality of the highest standards, not an equality of minimal needs as was pursued elsewhere (Esping-Andersen 1990).

Let me give just one example which may illustrate this contextual difference: the situation in Illinois in the period of the introduction of the juvenile court. In spite of its famous progressive era, which saw the creation of the first juvenile court in the Western world, its equally infamous patronage system undercut child welfare policy from the beginning (Golden 1997, p. 131). A critical observer of the vicissitudes of American child welfare concludes that the history of Illinois' treatment of children can be summarised in three terms: "underfunded, underbuilt, and undertaxed" (Gittens 1994, p. 1).

Moving to continental Europe, one thing becomes immediately clear: the 'natural' welfare context of the juvenile court seems to play a decisive role in its fate in this century. Of course, there has been a lot of discussion on the future of the juvenile court in continental
Europe. However, since the continental European countries are restructuring and integrating their welfare states piecemeal, instead of breaking down their social policies, the European 'children's court' is far less fundamentally contested than its American model. In a way, the juvenile court has always remained an outsider in American social policy. While the child-saving movement was pivotal in the creation of the modern US social intervention State at the beginning of the new century, it never gained the political acknowledgement and support of its European counterpart in the same period and later.

A crucial factor, which again connects this contextual difference with the first, 'intrinsic difference', appears to have been the social and cultural status of the social elites who formed the pioneers of this movement. The American movement was first and foremost a philanthropic movement, made up for a great part of middle-class women (Lindemeyer 1997). The settlement movement, in particular, which played an important role in inspiring federal child welfare policy, was established in the shadow of leading American universities, such as Chicago and Columbia, and Lathrop and Adams drew sustenance from links with scholars engaged in ambitious programmes of social and public policy research. Many of this first generation of social scientists were aggressive academic entrepreneurs who hoped to advise and staff new government agencies with disinterested expertise (Sutton 1996).

In contrast, their European counterpart was a highly influential professional, academic and political elite of jurists, who did not aspire to advise and staff the government with disinterested knowledge, but to lead national policy with their moral ideas about modern social politics. The European pioneers were directly engaged in the discussions about the establishment of their new intervention states, they participated actively in party politics and in parliamentary debate. These pioneers mixed in a variety of national circles and some of them joined the influential European legal circle of the Internationale Kriminalistische Vereinigung (IKV), founded by the German criminal law scholar Franz von Liszt, his Belgian colleague Adolphe Prins and their Dutch colleague Gerard Anton van Hamel (Groenhuijsen and Van der Landen 1990). The IKV demanded the active intervention of the State in social relationships, where classical law took a back seat. For these men, classical principles and the basic assumption of the legal security of the individual against State power were no longer the main guiding principles. They were not producers of disinterested social-scientific expertise, but their modern professional identity implied that alliance was being sought with new insights from the social sciences.
into human behaviour and society. Delinquency was seen as a symptom of inadequate social functioning, caused by biological and/or social factors (Weijers 1999a).

Notwithstanding its advocacy of active State interventionism, this modern jurists' discourse remained framed within the continental European legal tradition. Some leading men like Van Hamel looked rather jealously to the US juvenile court with its great discretionary power to act in the best interest of the child, no matter whether a 'child in danger' or a 'dangerous child'. Apart from the question how far the circle was really aiming for a fundamental change in the European legal tradition, this was an important opening for a welfare orientation with respect for the difference between civil and criminal law. Viewed from the dominant European legal tradition, the establishment of the juvenile court, with its relativisation of the principles of proportionality and due process, of notions of personal responsibility and of guilt, and with its exceptional discretionary power of the judge and its diffuse mixture of institutional welfare and punishment, represents an important infringement of classical legal thinking and a clear victory of an interventionist use of criminal law.

Compared with its American example, however, it is a rather modest adaptation which remains largely within the continental European legal discourse, thanks to its formal distinction between procedures and institutions responding to the neglected child and procedures and institutions for the juvenile offender. Both the legal formula of the European 'children's court' and its embedding in a strong welfare tradition have ensured this institution a more stable role than it has had in the country of its 'invention'. Despite serious and alarming 'toughening up' policies, there are no signs in continental Europe that we are returning to an eighteenth or a nineteenth century discourse of juvenile delinquency and juvenile justice (see e.g. Recommendation no. R (87)20 of the Committee of Ministers to Member States on Social Reactions to Juvenile Delinquency, adopted on 17 September 1987). This suggests that the proposition of a cyclical pattern, which may have some truth in the Anglo-American context, is useless in the continental European context.

**THE DOUBLE PARADOX**

Apart from this comparative, historical criticism of the idea of a cycle, which in some ways is self-evident, there is a more fundamental
criticism. The proposition of a cyclical pattern presupposes that there is no real problem at stake in treating juvenile offenders. The underlying idea is that the cycle moves on and on driven along by an illusion that juvenile delinquency can be solved. The cycle might be broken and a more realistic policy could be made possible, if this illusion were abandoned. Without denying that the idea that juvenile delinquency can be solved has played and still plays an important role in moral panics about juvenile delinquency, in periods of ‘firm responses’ and ‘no more excuses’, the supposition that juvenile justice could be a rather unproblematic business is unacceptable. Juvenile justice cannot escape trying to solve a very complicated, philosophical and ethical issue. This issue is a double paradox. In fact, juvenile justice has to solve two philosophical questions: the justification of punishment and the justification of punishment for non-adults.

It has often been said that educational and legal principles are incompatible and that the tension between the two creates a fundamental and unsolvable problem for any juvenile justice system. However, this diagnosis is too simple, mainly because it leaves both principles indeterminate. What exactly is the fundamental educational principle and what is the relevant legal principle? There is no one straightforward, generally accepted answer, neither on the educational dimension nor on the legal dimension. On the contrary, there have been endless and radical discussions of both issues. In the philosophy of law there is an essential tension, which has substantial consequences for the justification and use of punishment within law. In the philosophy of education one is faced with another problem. It is not so much that there is a debate about the goals of education – which of course there is – but the dominant guiding idea itself appears to be complex and difficult to interpret.

Punishment requires justification because of the problem of doing things to people that would be morally wrong if not classed as ‘punishment’. Various moral theories have generated different accounts as to why punishment is morally problematic and of the kind of justification it requires. There is a tension between ‘effective prevention’ and ‘proportionate retribution’ (see Hart 1959; Acton 1969; Honderich 1969; Kleinig 1973; Primoratz 1989; Duff and Garland 1994). Classical utilitarians, on the one hand, for whom happiness or pleasure is the intrinsic good and unhappiness or pain the only intrinsic evil, find punishment morally problematic because it involves the infliction of suffering or pain. For them, punishment can be justified only by showing that a certain amount of pain produces sufficient
pleasure or prevents a greater amount of pain to outweigh this evil. What matters to them is that crime is harmful: we may cause harm by punishment in order to prevent the greater harm that would otherwise be caused by crime. They take the prevention of crime to be the main aim of punishment. Classical Kantian thinkers, on the other hand, taking autonomy and freedom as central values, see punishment as problematic because it is coercive, being inflicted on offenders against their manifest will. For them, punishment can be justified only by showing that such coercion is consistent with a proper respect for the rationality and autonomy of the offender. What matters to them is that punishment must be an intrinsically appropriate response to crime. They take retribution for crime to be the main aim of punishment.

The opposition between these two groups of thinkers is clear and well known: effective prevention does not know where to draw the line. As a principle it only sees the social consequences and has a problem with respecting individual rights and personal integrity. This ‘greedy’ principle is primarily motivated by policy considerations. The wider underlying philosophy is known as ‘consequentialism’: the intended social effect settles the question. It is exclusively future-orientated. Punishment is right if its consequences are good and wrong if its consequences are bad, that is, worse than those of some available alternative. Radically opposed to the consequentialist principle of effective prevention is the idea of the legal protection of the individual, which presupposes classical notions of retribution, ‘reasonable standards’ and personal guilt. Its underlying philosophy is known as ‘deontology’. The starting point here is the priority of individual legal protection above considerations of future maximum social benefit. This line of reasoning is exclusively directed at (what was done wrong in) the past. Punishment must be right by virtue of its intrinsic character, strictly related to the particular action and independent of its consequences. It is justified only, if it inflicts on the guilty person the suffering that a person deserves, that is a punishment that is proportionate to his delinquent action.

The most relevant point in this context seems to be that effective prevention and proportionate retribution do not only stand opposite to each other, but that both have to be held in a certain balance in our modern democratic culture of legal punishment. It is the task of modern criminal justice to balance these two principles. Modern criminal law has to apply legal punishment that can be grounded in a balance of both justifications. As Hart says, “any morally tolerable account of punishment must exhibit it as a compromise between distinct and partly
conflicting principles” (Hart 1968, p. 1). However, since any ‘effective’ consequentialist approach cannot care about proportionality, and since any clear retributivist approach cannot care about social effectiveness, it remains unclear whether a stable compromise can ever be possible and meaningful. Paradoxical terms such as ‘proportionate prevention’ or ‘effective retribution’ will lead us nowhere. The solution appears to require an ethical point of view that transcends both philosophical positions.¹

As well as this fundamental balancing problem, juvenile justice also has to solve a second paradox. Any justification for punishing children, by a juvenile court or by a criminal court, within or without a special juvenile justice system, has to answer the complex question of the criminal responsibility and autonomy of children. Retributivists of course have to confront this question, because in their view respect for personal responsibility and autonomy are the necessary conditions for a proper justification of punishment. That means, that retributivists have to answer the question of whether children (and at what age) have to be held (partly or) fully responsible for their actions and treated (and to what extent) as autonomous individuals. Consequentialists, have to answer a different question. Since personal responsibility and autonomy are not their starting points, they do not have to bother about these questions in the first place, but they have to say to what purpose young offenders have to be punished. They have to make clear which educational consequences are good and which are bad, that is, worse than those of some available alternative. Both for the retributivists who are concerned about the necessary conditions, and for the consequentialists concerned about the pursued aims, the justification for punishing children is paradoxical. The issue of punishing children, like all educational action, cannot skirt around the paradox that upbringing is a process of developing towards autonomy which at the same time presupposes the child’s dependence.

The crux of modern liberal education is the notion of independence both as an educational aim and as a condition, but in actual upbringing this presupposes counterfactual (contrafactische) autonomy: the educator continuously presupposes and aims at some kind of independence, which seems adequate and appropriate for the

¹I will not go into this discussion in any more depth here, but just indicate that different versions of communitarian and communicative theories are trying to find this transcending point of view to solve or get around this paradox.
developmental stage of the child. The notion of development itself presupposes a certain degree of immaturity, implying that 'juvenile autonomy' can never be complete. It has to be 'awarded' or 'conditional' autonomy that must be 'fulfilled': independence in dependence. That is the paradox which characterises all modern educational action and which is also inescapable in the punishment of young offenders.

THE DOUBLE PARADOX IN HISTORY

This diagnosis presents a new conceptual framework for an analysis of the development of juvenile justice. I will concentrate in the remaining part of this article on the history of juvenile justice in central Western Europe, typified by a 'corporate' welfare tradition. Three periods can be discerned here, each articulating a different solution to the double paradox. The first period, the quarantine phase, begins around 1900. Then the phase of the psychological approach emerges in the 1920s and 1930s. Finally, a period in which the emphasis shifts to a juridical approach can be discerned since the 1970s.

Quarantine

Special juvenile institutions have a history that goes back into the nineteenth century. In Europe they have spread since the 1820s, founded by various societies, with the educational atmosphere in 'das Raue Haus' in Hamburg (1833) and Mettray in Tours (1840) as exemplary. Social, moral and religious arguments were decisive in the foundation of homes in England, France, Germany, Belgium and the Netherlands. By the end of the nineteenth century a new issue had arisen. In the last decades of that century the question of juvenile delinquency had become a central theme among jurists, reformist politicians and philanthropists. A series of dissertations, articles, pamphlets and drafts for bills on juvenile offenders were published, meetings were organised everywhere and new societies for the protection and correction of young offenders and abandoned children were founded. By the turn of the century juvenile delinquency had become a prominent item on the political agendas in Western democracies.

What was this great anxiety all about? First of all it was about urban property crime: petty larceny and burglary. The concern was about lower-class juveniles who stole property from middle- and upper-class
adults in modern, anonymous urban settings. Just as in the US, the major emphasis in this concern was not on actual offences, but on children who might commit these crimes one day. Crucially the moral panic concerning juvenile delinquency around 1900 was not concerned with whether the children had actually committed these offences yet. The most important question for all participants in this debate was how to prevent these boys from committing these offences in the future. The emphasis came to be on getting the children and especially the adolescents off the streets and shaping and moulding them into law-abiding adults.

This shift in orientation from retribution for committed offences to prevention of possible offences took place against the background of a shift in political thinking from classical liberalism and the ‘laissez-faire’ doctrine to social liberalism and state-interventionism. The idea of prevention itself and the very idea that the State had a task to fulfil here with respect to youth was pivotal for the newly emerging social policy. State care for children was the pivot in the rise of the modern interventionist State: compulsory education and juvenile crime prevention were crucial questions for outlining the role of the State in the new century. The school system implied State responsibility for the ‘normal’ child, whereas the juvenile justice and welfare system was first of all concerned with the ‘endangered’ child. Enlightened ideas on penal law, humanitarian and Christian concern about the misery in prisons, and bourgeois fear of the poor masses in the growing cities which were seen as hotbeds of crime, all these ideas were mixed together and fixed onto the notion of the ‘endangered’ child, which left to its own devices would become a public danger.

By the end of the century there was consensus among all child savers that abandonment had to be actively counteracted and controlled to prevent crime. This radical idea of stamping out the evil of criminality by stopping abandonment became the leitmotif for law-making in juvenile justice from the beginning of this century until well into the 1960s. Juvenile delinquency was viewed as a symptom, a symptom of the child’s inadequate social functioning, which was regarded as a disease caused by social and/or biological factors. The medicine was education, that is compulsory education in a new environment. The abandoned child had to be removed from the wrong home environment, taken away from his family and re-educated in an institution or another ‘healthy’ family under the supervision of the State. It would be in the interests of both society and of the child to keep the juvenile offender and the endangered child out of his
contaminating environment as long as possible.

The enthusiasm of the child savers in the first decades of the new century, encouraging the State to act as *parens patriae* and taking the child away from his natural parents, sprang from a deterministic view of humanity: the endangered child was the product of heredity and environment. The more drastically one intervened to protect society, thereby liberating the child from those influences, the more one was acting in the interests of the child. The child savers were not interested in responsibility and personal guilt. Problematic behaviour and misconduct were purely matters of biological and social contamination (Weijers 1998). The consequence of this approach was that the education and upbringing of young offenders and neglected children was seen solely in terms of a kind of social quarantine. Take the child out of his environment, keep him apart from any new sources of contamination (older criminals) in the new pure environment, and keep the child in that isolation as long as possible.

The movement that inspired the establishment of a special juvenile justice system lacked any notion of education and upbringing. In fact, the child savers no longer had any clear excuse for education. The notion which could have served as a starting point was, of course, nothing other than the notion of the child’s responsibility – the key issue of classical doctrine. However, it was precisely that idea of the child’s personal responsibility that had been outlawed from the outset! As soon as the issue of the reform of the child – or the interests of the child – was put first, the search for a specific childlike meaning for wrong behaviour became irrelevant. The dominating concern to ‘save’, ‘protect’ and ‘reform’ the child operated at the expense of interest in a child’s awareness of what is morally wrong about a particular act (Weijers 1999a).

Characteristic of the first decades of child reform in the new century was a move towards both long-term dependence and effective prevention. Any notion of educating the child towards autonomy was absent. Prevention meant deterrence first and foremost, as the child savers realised (Oberwittler 1996). That meant that the double paradox of juvenile justice was denied in this period. There was no balance between retribution and consequentialism. Proportionality, guilt and responsibility did not play any role in the new legal discourse, nor in reform and re-educational practice. Nor was there any idea that there was an educational problem in keeping the child in trouble dependent till maturity.
The Psychological Approach

In the 1920s and 1930s a cautious start to a new approach can be detected. This is the period of new pioneering work in child care, prompted by various expressions of dissatisfaction from people working in the field of re-education (Weijers 1999b). Heavy criticisms were launched which always came down to pointing to the lack of an educational basis to the emerging juvenile justice system. At the same time, the first interesting experiments, which promised a new look at and approach to the juvenile offender, were being conducted in these decades in the margins of the system. The local experiments with ‘self-government’, inspired by the work of William George in his Junior Republic in Freeville, New York are well-known. A certain orientation towards psychology and psychoanalysis (Aichhorn) can also be seen, an approach which got the wind in its sails after World War II, when it was mixed with developmental psychology, phenomenology and case work.

The ‘endangered child’ was conceptualised now as a victim of wrong psychological treatment and educational neglect instead of a product of social and biological factors. The quarantine idea was criticised, more and more attention was paid to the relationship of the ‘child-in-danger’ with its parents. The notion of protecting the community, which had been the starting point of the child savers at the end of the last century and the motivation for the heavy emphasis on prevention, was pushed into the background and the notion of protection of the child against the brutality of society came to the fore. Re-education meant instilling trust and giving the child new chances, listening to his story, entering into his emotions and his world.

In the 1950s penal discourse was predominantly consequentialist. The rise of new professional groups, such as social workers, psychologists and criminologists, gradually transformed the overall character of criminal justice and ideas of punishment. The same programmes and attitudes which fostered the welfare state sought to make the penal system an instrument of social engineering through which crime could be prevented (Duff and Garland 1994, p. 8). This changing political and penal context meant that the consequentialist emphasis could still be seen and became even more prominent in the juvenile justice reforms in Western Europe in the 1950s and 1960s (Germany 1953, the Netherlands 1961, Austria 1961, Belgium 1965, France 1970). The question of the guilt of the child remained marginal and re-education became the obvious purpose of the juvenile justice system. The whole set of penalties and measures for young offenders
was said to have an educational purpose first and foremost. On the one hand, this confirmation meant a potential solution of the educational paradox, in so far as a cautious movement towards moral autonomy was now being taken in many institutions. On the other hand, the legal paradox remained unsolved, because the notion of proportionality still played a marginal role as did the notion of guilt. There was no balance between the principles of retribution and consequentialism, the only change being that the (implicit) notion of general prevention was dropped. Since the 1960s prevention has meant strictly special prevention.

The Juridical Approach

Around this time a new counter-movement was also emerging. Since the famous Gault case in the US in 1967, which had demonstrated to what violation of rights the informal juvenile court procedures in the United States had degenerated, an international counter-movement had begun to emerge. A wave of criticism arose from all sides. The popularity of the device of supervision was decreasing and judges were reassessing the situation. The Bar became critical of the lack of rights for young defendants, and parents and public opinion began to resist what was now called ‘paternalism’. Two trends began to emerge: one towards sociological interpretations and one towards a more juridical approach. While in America the second movement soon seemed to dominate, silencing the first, in continental Western Europe both appear to keep each other in balance.

First, attention now started to shift from the family and the home as respectively contaminating, and psychologically and educationally inadequate environments, to modern society as a decisive context. Modern capitalist, commercial and bureaucratic society was denying chances and frustrating poor people, especially the younger generation. Strain theory hypothesised that delinquency was a function of the great disparity between what the members of the lower class wanted and what they could actually obtain. Labelling theory pointed to the bias in recorded delinquency and relativised its importance. Critical sociological research pointed to the existence of different youth cultures which claimed their own space for deviant behaviour. Cultural studies coined the notion of ‘moral panic’ which again pointed to the class and race bias in the detection, recording and treatment of juvenile offenders and even suggested the ‘construction’ of juvenile delinquency as an important social and political phenomenon.
In the 1980s the counter-movement began step by step to criticise the hybridisation of criminal law and civil law and the discretionary powers of the police, prosecution service and judges. The process of seeking sociological justifications for the educational mission of juvenile justice was extended now into the sphere of law itself. The educational foundation of the juvenile justice system was brought up for discussion. The very idea of measures responding to far more than the offence committed was rejected now and the concept of compulsory training in juvenile justice institutions was dismissed as contrary to the principles of the constitutional State. At last, the views of the youths involved were also heard and recognised, in particular on the educational measures, which had always meant much longer periods of intervention, hard discipline and social exclusion. Little by little it became clear that these measures which had been intended as educational had been regarded purely as punishment and injustice by the youths involved right from the beginning of the century.

Secondly, in the changing political climate of the 1980s all this criticism was joined by a new kind of criticism. While explaining the educational mission of juvenile justice in sociological terms can be interpreted as taking the pretensions of penal consequentialism seriously, the new criticism simply dismissed this orientation. By the late 1970s, penal consequentialism had come under attack as part of a broader reaction against the rehabilitative mentality and the kind of scientistic social engineering which accompanied it. This, in turn, was part of a larger critical reaction to the institutions of the welfare state which some had begun to regard as interfering bureaucracies which were themselves a source of problems and oppression. Rising neo-liberalists started to criticise 'big government' as a big spender and a threat to individual freedom. Two new criticisms were launched against the juvenile justice system: ineffectiveness and paternalism. Inspired by concerns coming again from the US, there were rising doubts about the effectiveness of special juvenile justice systems in changing the behaviour of young offenders. Moreover, special juvenile systems seemed to promote paternalism, circumventing legal protections to be afforded to young people.

CONCLUSION

Diversion was the overall motive for the introduction of a special juvenile justice system. Apart from the intention of keeping 'children
in danger’ out of court, the other main idea in the nineteenth-century debates had been to keep them out of the prison system, bringing them together in special juvenile institutions. Nowadays, as a result of the critical reflections of recent decades, most child savers make great efforts to keep young offenders out of these traditional systems of justice and welfare specially created to receive them. However, this does not necessarily mean that our European juvenile justice systems are returning to nineteenth century approaches.

Clearly, our systems of juvenile justice are now in a process of shifting towards a more juridical approach, in which notions like the accountability and responsibility of young persons are emphasised. This implies a fundamental break with the traditional interest in the educational context of the young offender and the consequentialist discourse which has dominated this field since the introduction of the legislation around 1900. The picture of the ‘endangered child’ is rapidly fading away; young offenders are held far more responsible now for what they have done. On the one side, this new direction appears to suggest a clear recognition of the penal paradox. In continental Western Europe a new balance seems to be in the making between a consequentialist and a retributivist orientation. In my opinion, the most promising developments in the next decades would imply a balance of restorative justice, with its consequentialist approach, and subtle ‘communicative’ retributivism.

However, on the other side, the new juridical approach does not necessarily imply a solution or even a clearer view of the educational paradox. More conformity with adult criminal proceedings, more emphasis on proportionality, on responsibility, on guilt and repentance does not necessarily lead to a better answer to the problem of how to properly justify punishing children. On the contrary, there seems to be a danger here that the new juridical approach could actually trivialise this problem. In my opinion, here lies the great challenge for the future of juvenile justice in the next century: will we be able to solve the double paradox? Will we succeed in recognising that youthful offenders cannot be held fully responsible for their actions and that they will have to be helped in dependence towards full independence? In other words, the balance between restorative justice and communicative retributivism needs a fundamental acknowledgement of the educational paradox.
THE DOUBLE PARADOX OF JUVENILE JUSTICE


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JUVENILE JUSTICE AND THE ‘SHIFT TO THE LEFT’

ABSTRACT. The notion of ‘shift’ is used as a symbol for procedure in criminal cases, understood as a sequence of legal interferences by the police, the prosecution and by proceedings in court. If this sequence is symbolised by a horizontal line, the procedural stages move from left to right. But the distribution of competences has recently lost its prior balance, due to ‘modern’ crime and society: The functions of the judge appear reduced, whereas the range of action of the prosecution has widened; also the police have gained more influence. On the symbolic line of procedural stages this all makes for a ‘shift to the left’. This paper deals with the question as to whether juvenile justice is undergoing the same changes. The first answer is ‘yes’, based on the enlarged diversionary competence of prosecutors and the police. From a different perspective, however, juvenile offending is a ‘natural’ phenomenon connected with young age, which a priori places juvenile justice on a ‘left’ position of the imagined line. A plea is made for juvenile justice to stick to its inherent concern for young offenders individually and not to sacrifice this to collective interests in public order and safety.

KEY WORDS: criminal justice system, criminal procedure, diversion, juvenile justice system, police, prosecution

In 1995 the Council of Europe held one of its quinquennial conferences on crime policy in Strasbourg. On this occasion I presented a report on The Evolution of Criminal Justice Systems (Schüler-Springorum 1995). In the report a plea was made, among others, “in favour of maintaining juvenile justice systems” as a specialised if not independent part of criminal justice. This may appear to be a rather modest objective as compared to the well-known claim for juvenile justice to differ fundamentally from adult criminal justice, which in the end would result in a more or less completely separate form of organisation such as that of the famous ‘children’s’ hearings’ in Scotland. On the other hand, such caution seemed – and seems – to be justified in view of apparent tendencies in current criminal policy to align juvenile justice with the basic orientations of adult criminal law and procedure (e.g. England and Wales, Hakkert 1998; Germany, Heinz 1997; The Netherlands, Van der Laan 1996; Spain, De la Cuesta and Giménez-Salinas 1997).

Later on in the aforementioned report, and dealing with criminal justice systems and modern society more generally again, I made the point of a ‘shift to the left’ taking place within the working mechanisms of those systems, which was considered a more recent phenomenon.
having nothing to do, of course, with the political meaning usually associated with a ‘leftist’ or ‘rightist’ orientation. It is the purpose of this paper to transfer the ‘shift’ perspective to juvenile justice and to discuss possible ‘shift’ phenomena within juvenile justice proceedings. For this purpose it has to be briefly explained what is meant by that observation itself.

**The Shift to the Left**

The working of the criminal justice system is often described as a linear process of which the segments, if symbolised on a blackboard, pass from the left to the right just as our writing does: from investigation by the police via the activities of prosecution to the culminating stage of a criminal court’s decision, followed by the execution of sanctions. If the line on the blackboard representing this sequence of events were an arrow, this one would fly from left to right as well, its next target always being the competence of the following authority foreseen in the criminal justice system. By ‘shift to the left’ it is suggested that in recent times there has been a growing importance of the earlier stages of the procedural activities of the system and a corresponding decrease of importance on the part of the later stages. This is easily demonstrated, if you take the judge, the prosecutor and the police as the main agents involved.

The shift to the left makes the judges appear as losers. They have to deal with what the previous stages of the process leave them to deal with. On the one hand, judges are busy with every-day ‘classical crime’ (from theft to rape, including ‘street crimes’ such as assault, robbery and the like), including a large portion of petty delinquency yet requiring all the formalities of a due process of law. On the other hand they have to deal with complicated cases of ‘new crime’ (organised crime, economic crime, corruption and the like), that beyond their legal difficulties require expert information from various fields. All this adds up to excessive workloads, which are reported from most European countries and which in the end, may jeopardise the essentials of criminal justice.

On the side of the prosecutors a gradual increase of their role in terms of competence and function has become a common feature of many criminal justice systems. Concerning ‘classical crime’, it is the diversionary role of the prosecutor in matters of trivial or not so serious criminality that makes him so important. It is his own idea to divert a
case that comes first in any event, whether needing the approval of a judge or not. But also in the field of ‘new crime’ the prosecutor has the essential say more often than not. Although the use of modern technical devices of investigation such as wire-tapping, overhearing private conversations, monitoring of things and persons etcetera, regularly requires a judge’s permission, de facto the prosecutor is the first one to decide, the judge opining later. This competence of prosecutors to (first) decide upon such issues does not only serve prosecutorial interests in swift action or counter-action, but also the interest of not leaving this kind of decision to the discretion of the police alone. One might even make the point that the prosecutorial power, profiting as it is from the shift to the left, also has to watch over citizens’ rights in order to make up for the reduced chances of judges doing so in the field of modern crime.

Probably still more than the prosecution, the police have been profiting from the shift to the left. Here too the evolution of criminal justice systems has produced a Janus-faced situation. On the one hand the phenomena of ‘new crime’ account for considerable enlargements of the investigating branch of police forces by men and means nearly everywhere, so as to enable the police to keep step with the advantages which, for instance, organised crime enjoys regarding technology and time in the pursuit of its own ‘business’. In this field the police no longer react to crime that becomes known to it but try ‘pro-actively’ to find out where such crime is about to develop. On the other hand this very philosophy of pro-activity also governs modern schemes of preventive action by the police in the fields of ‘classical crime’. Here the idea and practice of “community policing” (Dölling and Feltes 1993) stands for the manifold efforts, undertaken so to speak ‘within’ a given societal setting, to save society the experience of having to deal with crime and victimisation by preventing them both from happening at all.

Needless to say the ‘shift to the left’ represents an adaptation of criminal justice systems to the main characteristics of societies in the process of modernisation. All too well-known are the features of this process – or at least their names: new technologies particularly in the fields of electronic mass communication and information (not to mention arms and other means of mass destruction), together with the dominance of economics over politics after the breakdown of the socialist world and the ‘global’ extension of both with its ensuing over-complexity of all ‘social contexts’. Confronted with all this, a rather traditional system such as criminal justice organised according to our familiar structures
of police investigation, prosecution and adjudication will produce a ‘shift to the left’ almost inevitably. In this perspective our observation appears as a façon de parler about modern criminal proceedings. It may be worth remembering, however, that this shift, strictly speaking, describes a change in procedure – not more (as for instance a change in sentencing itself would be) and not less.

**DOES JUVENILE JUSTICE PARTAKE IN THE SHIFT?**

The question as to whether juvenile justice partakes in the shift to the left, must be asked in view of the relationship between judges and prosecutors as well as between the police and the ensuing stages of procedure. The first part of the question can be answered positively right away. At least the large majority of juvenile justice systems has developed or is developing ways of ending juvenile cases without formal adjudication by the juvenile judge, court or other competent authority (Beijing Rules 14.1). The well-known common word for this is diversion (Beijing Rules 11). But in practice the simple notion of diversion covers a broad field of alternative ways to spare the young offenders having to ‘go to court’ and ‘stand up’ to the accusation. This variety may include the informal closing of minor cases with or without a more or less informal warning, the temporary use of supervision and guidance schemes, the referral to an educational setting within the community or – last but not least – mediation programmes between victim and offender. Concerning terminology, we have got accustomed to speaking of ‘alternative measures’ or ‘informal sanctions’ in this context. In fact, such diversionary settlement of juvenile cases in the prosecution stage has, in some countries, come to outnumber the decision of a judge for quite some years now (e.g. Austria, Germany).

If we address the question with regard to the police, the answer appears less uniform. This is due to the fact that the answer to the rather fundamental question of whether the police should function as a diversionary authority, is answered differently in different places, depending on the traditional understanding of how strictly the judicial power and the executive power ought to be kept separate. A well-known example is the English tradition where the police are disposing of minor cases by a more or less formal cautioning practice applied to all age groups of offenders (Home Office 1997). In Germany, all proposals to allow the police to do the same, at least with juvenile offenders, have been turned down until recently, because this would mean bridging the separation of powers. Other continental states are less
rigid in this regard, as for instance the Netherlands where we find alternative sanctions “at all levels of the judicial procedure”, differing from each other “mainly in intensity and length” which means, for instance, that imposition of up to 20 hours community service are at the disposal of the police (Van der Laan 1998, p. 147), whereas in Germany even the prosecutor could not impose community service upon a juvenile as a diversionary device without the consent of the judge.

All in all it can be stated that juvenile justice does indeed partake in the shift to the left. Although found in diverse shapes and to varying degrees in the respective juvenile justice systems, this shift appears to be even more pronounced than in adult criminal justice or – speaking in terms of our linear model – going beyond its extension there. However, two comments seem appropriate.

Firstly, the shift within juvenile justice only applies to ‘classical crime’ in the sense given to it above. In contrast to adult criminal justice, ‘new crime’ (by its given definition) does not contribute to the shift here, which is easily explained due to the age group of juvenile justice being too young for these modern criminal activities. This allows an interpretation of the shift to the left, which is typical for juvenile justice in the context of its stages of procedure. Where the judge ‘loses’ competence, the most influential factor for this ‘loss’ is the (criminological) assumption that regular proceedings in court could have a negative influence upon the young defendant’s future behaviour; other possible reasonings (for instance, that the full display of all procedural guarantees would be out of proportion to the case) are certainly ranging behind. And the corresponding increase of competences in favour of the earlier stages of procedure – prosecution and the police – rests on basically the same assumption. Where the police may not handle diversion, strictly speaking, there is still room for sundry strategies of community policing addressing themselves to young persons in particular (the city of Munich for instance is proud of the preventive fantasy exhibited by its specialised ‘juvenile police’ force).

Secondly, to the extent to which the shift to the left in juvenile justice goes beyond its parallel in adult law, the (relative) number of cases which are ‘taken away’ from the regular methods of dealing with criminal offences will exceed that of corresponding cases in adult criminal justice. Just as in a Dutch polder, there is a steady accrual of ‘new land’ to the authorities handling the informal disposition of cases. And like polder land being won below ground level, there will be many cases of ‘low’ offences that might not even be worthy of being sanctioned informally by alternative measures. This has led to the well-
known argument against a widening, intentional or unintentional, of the net of social control: an argument that is used almost exclusively against the shift to the left in juvenile, not adult criminal justice. Most probably this has to do with some peculiarity of juvenile crime and delinquency which we will now turn to.

**A Different View of the 'Shift' in Relation to Juvenile Justice**

Juvenile crime and delinquency, in comparison to its adult counterpart, is high in numbers but low in gravity. You may feel irritated if not alarmed by its steadily rising figures and feel relieved again when learning that its trivial segment becomes larger as the offenders' age goes down, and yet both sentiments are inappropriate in a way, for deviant behaviour by young people is by necessity shaped the way it is, having its roots in young age itself. It does not matter too much, therefore, at which age criminal responsibility is fixed as starting from a given legal system. Lower ages (Beijing Rules 4.1) will add an even larger input of petty offences, and higher ages will leave smaller spans of life before adult criminal responsibility takes over. But the whole context is clearly determined not by the phenomena of deviant behaviour of the young as such but by the legal assessment of the phenomena expressed in a general (lower) age limit. Whoever has attained it, from now on 'deserves' to be held responsible, notwithstanding the fact that juvenile crime and delinquency itself would appear as 'young' as are its 'authors'. Wherever that age limit may be fixed, the relevant behaviour will occur below it as well.

From all this it would logically follow that the dark number of juvenile and adult offences would mirror the same relationship, and our knowledge of dark numbers supports this logic. For the purpose of illustration one would only have to fancy for a moment that behind the age group of offenders older than 50 years there would lie a more extensive dark number of crime than behind lower age groups: an assumption against the facts of life indeed, at least as far as 'classical crime' is concerned. Moreover, if we consider the reporting of a victimisation to the police as the most important juncture point between dark number and official statistics on crime, reporting practices themselves will be influenced strongly by the age of the (young) person who in this way enters the (juvenile) justice system. From here it is only one step to see the extended role of diversion in juvenile justice following the same logic again. Sooner or later but inevitably diversion
had to develop in order to avoid exaggerated responses by the criminal justice system to the not so serious offences.

Returning to the notion of a 'shift to the left', the shift itself is now questioned. For if juvenile offending is interpreted in this way, juvenile justice would not have 'shifted' so much — more or less as quickly or more or less as far — to the left, but it would have always 'been there', in the same way that juvenile crime and delinquency have always 'been there' before, providing the very factual matter to be processed through the system. Juvenile justice then, if compared to the modern developments in adult criminal justice, 'is' constantly left at any given starting point.

The approach taken here is, of course, not new. It has been unfolded and modulated in many theoretical ways and has influenced criminal policy in different directions. Concerning its political impact, it must be added that the 'leftish' character of juvenile justice does not exclude an orientation of juvenile crime policy that looks 'rightist' because of its esteem for law and order. The recent trend towards making young offenders more expressively accountable for what they did is most illustrative in this regard. Seemingly originating from France ('responsabilisation', see Mérigeau 1994, pp. 97f.; Verin 1994, pp. 123f.), this trend clearly influenced recent legislation (among others) in the Netherlands 1995 (Van Kalmthout and Vlaardingerbroek 1997) and in England and Wales (Crime and Disorder Act 1998, see Graham 1998). Asking for more responsibility of young offenders — who could be against it?

Yet it is a double-edged sword. Certainly there is a strong ingredient of individual justice in 'responsabilisation'. If a 15-year-old boy extorts a valuable leather-jacket from his class-mate, we may draw some explanation of this act by exploring the socio-economic situation of the offender, his past life experiences, his motives and the circumstances of the moment when it happened. Despite and beyond all this, making him responsible means to take him seriously as the person he is. This will be an important element of dealing with his case: an element that deserves to be heeded at all stages of the proceedings and which would manifest itself by the way the police, the prosecutor etcetera, communicate with the young culprit (Beijing Rules 10.3, 14.2). His responsibility may finally lead to an appropriate sanction that he accepts as an equivalent, so far, so good. But legislation based on 'responsabilisation' may also simply aim at making the procedure against juveniles look more like that against adults, including harsher sanctions, and the fallacies of such a policy are all too clear. For as good a thing as it may be to endow a young offender
with many procedural rights and duties that are typical for adult criminal justice, this very fact might well keep a young offender from developing a sentiment of personal responsibility if the proceeding itself is not governed by the kind of communication mentioned before. And if in the end a sanction is imposed that only reflects public thinking about the offence, the gap between imposing and taking responsibility becomes more obvious.

At this point another line of thinking about criminal policy should be mentioned, though of US, not European origin, because it strictly combats all points about juvenile justice made in this paper so far: the 'actuarial' approach advocated by Feely and Simon (1992 and 1994). The word 'actuarial' alone indicates that the authors' starting point contradicts traditional concepts of criminal procedure on this and the other side of the Atlantic. This tradition, which need not be unfolded here, has always focused on an individual person who is suspected, tried, convicted and sanctioned according to the national law relating to criminal offences and criminal procedure. Actuarial thinking emphasises the notion of danger to society represented by categories of persons - "risk groups" and "risk classes" (Feely and Simon 1992, pp. 460–470; 1994, p. 192) – ascertained and defined by "actuarial prediction" (1994, pp. 184–185). The public interest in them is not geared towards finding them guilty and, if so, letting their punishment fit their crime individually, but is based on the danger they represent because of belonging to a sub-group of citizens who, because of certain characteristics "couched in terms of collectives" (1994, p. 192), should not be allowed to move around freely. Preventive detention, mass surveillance and seclusion from society are the answers in a war on crime that cannot be won any longer by the traditional arsenal.

This approach, however briefly ever introduced here, touches upon our subject for two reasons. Firstly, young people more or less a priori belong to the target group of collective prevention, in particular if they are part of the 'underclass' which "is a permanently dysfunctional population, without literacy, without skills and without hope; a self-perpetuating and pathological segment of society that is not integratable into the larger whole, and whose culture fosters violence" (Feely and Simon 1994, p. 192). It should be clear beyond doubt that this is incompatible with any insight gained by the 'shift to the left', above all that young deviants, even under a collective aspect, deserve to be cared for by the larger society and not for society to turn its back on them. 'Whoever is poor in life must be rich in rights', an old saying runs. In this perspective the best that society can do for its members is
to give them rights, because it is the most organised form of valuing them as human beings.

Secondly, the actuarial approach, by calling itself 'actuarial justice', reduces the notion of 'justice' to the mere utilitarian meaning of the term – to the extent that an 'actuarial juvenile justice' would be a contradiction in itself. Wherever juvenile justice systems emerged from a given criminal justice system that had been undifferentiated before, they did so by a sort of historical 'shift to the left'. Only if juvenile justice, celebrating its 100th anniversary these days, keeps and intensifies its specialisation and independence within criminal justice, will it profit from the continuous interplay between juvenile and adult criminal policy.

CONCLUSION

On an imaginary line representing the sequence of criminal proceedings, 'shifts' of competencies have turned out to be a mere symbol which stands for some recent changes within (criminal and juvenile) justice systems brought about or even necessitated by society's move towards 'modernisation', notably by the 'global' economic constraints that go along with it. New forms of criminality ('modern crime') in particular have enlarged the competencies of the police and prosecution to act or react on the spot to events and be less delayed by the (once) regular course of procedure. On the other hand, the same process of modernisation is likely to impair the life prospects of younger generations.

In this situation, more than ever before, juvenile justice must live up more than ever before to the protective aspects of dealing with young offenders. It therefore holds the furthest 'left' position on the symbolic line of criminal proceedings mentioned before. An ever growing knowledge and awareness of the intrinsic interests of the young, their deviants included, may be considered as one of the most impressive achievements of this ending century. Juvenile justice must not withdraw behind this line, if young age has any universal meaning at all.

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ABSTRACT. The last century has witnessed the creation of a number of strategies regarding youth justice and the young offender. With each change in policy has come a redefinition of the role of the youth court judge. This article discusses the traditional role of the judge, the unique role of the youth court judge, and how history has and is likely to continue to define and influence this role.

KEY WORDS: judges, juvenile justice, legislation, young offenders, youth court

There is universal concern and recognition of the importance of youth in the future of our communities. This concern is directly related to society’s steadfast belief that youth represent our greatest asset for the future welfare of the community and it coexists with a belief that society has a legitimate interest in protecting other citizens, including other youths, from youthful anti-social, deviant and criminal conduct. This is manifested in our concern for proper education, health and welfare, employment opportunities for youth and concerns regarding drugs, theft and youth violence.

Perhaps because of the focus of our concerns regarding youth in crisis, the youth court remains one of the most significant elements in our judicial system. It also provides the judiciary with its most difficult challenges. Criminologist Anthony Doob (1989) suggests that youth justice legislation and institutions can be seen as the ‘Emergency Room of the Children’s Services System’. He argues that the youth court is:

Where society takes some of its most serious and pressing matters, where sometimes problems are brought that nobody wants to deal with and where, like the emergency room in most hospitals, problems are dealt with that shouldn’t be there at all. (Doob 1989, p. 194)
Within this context the youth court judge occupies a unique role, one which provides substantial power to affect the composition of the social landscape and which includes many non-traditional functions. The role of the youth court judge combines judicial, administrative, collaborative and advocacy functions (Edwards 1992). Youth court judges play a very important role in the youth justice system, both in terms of the formal decisions they make and "through the procedures, expectations and atmosphere they create for juvenile justice personnel" (Bala and Corrado 1995, pp. 37–38). Sadly, the juvenile courtroom is often the scene of the most basic human tragedies — parents whose access rights are being terminated, young offenders who are committed to custody, and the mentally disturbed child in need of treatment (NCJCJ 1967).

Youth courts and the youth court judge do not operate in a vacuum, but instead operate against a backdrop of social change and public pressures. Many youth court judges are currently dealing with a volatile political and public climate regarding the treatment of youth who come into conflict with the law. Though Statistics Canada indicates that most youth crime is decreasing or holding steady, a number of national polls in Canada have revealed a high degree of public concern about the perceived deterioration of youth behaviour (Corrado and Markwart 1994).

A 1993 poll found that 64% of Canadians believed that young people had 'become worse' in the past few years (Corrado and Markwart 1994). In a survey of Ontario residents' views of crime and the criminal justice system Doob et al. (1998) found that 56% of respondents overestimated the proportion of youth crimes involving violence which ended up in court. In addition more respondents thought that youth involvement in homicide had increased than thought homicides, overall, had increased. According to Corrado and Markwart (1994, p. 346) "the Canadian public are worried about their young people, and are fearful of violent youth crime”.

Arguably public anger in Canada about perceived increases in youth violence since the Young Offenders Act (1984) took effect, has been a key factor in fuelling legislative reform, leading to implementation of the new YCJA on 11 March 1999. In the United States the legislative and judicial reaction to public concern about violent teens has been substantial with 47 States making changes to their laws governing juvenile offenders, most notably in regard to transfers to adult court and rescinding confidentiality clauses (Morse 1997). Youth court judges are expected to react quickly to these new
legislative imperatives. This may include reinterpreting subtle, or not so subtle, philosophical changes to how juvenile justice should best be dispensed.

The coming decades will undoubtedly provide a plethora of new challenges for the courts. Already we have witnessed the effects of globalisation and advancing technologies which erase borders, simultaneously rousing a mixture of populations and cultures (Gonthier 1997). The UN Convention on the Rights of the Child, and the Model Law on Juvenile Justice has set the stage for a host of proposed international initiatives which will impact on youth and their families. These new realities coupled with the continued weakening of traditional references of values and norms, will create new demands on the youth court judge.

Perhaps there is no better time to reflect on how current trends are reshaping the role of the youth court judge and how they may influence future trajectories. By examining the traditional role of the judge, the unique demands made of youth court judges and current global trends, we hope to illuminate what may lie before us in the coming millennium.

THE JUDGE'S ROLE AND SOCIETAL EXPECTATIONS

The art of judging is not simple but quite complex. It is in the courts that the quality of the administration of justice is most clearly manifested to the public and where it is frequently tested (Lamer 1997). Therefore a judge is not only 'the judge' when sitting alone, but he or she is also the court, presenting that face to the public (Laskin 1975). This may include philosophical, political and ethical ideas regarding what end the law is attempting to meet. It also includes certain expectations regarding integrity, independence, impartiality and responsibility.

A judge's role is often defined by traditional values. It encompasses a range of personal qualities including flexibility, patience, objectivity, fairness, an endless capacity to listen, and most importantly a great deal of common sense. It involves not only an element of knowledge and personal and intellectual integrity but also a full awareness and understanding of the facts out of which controversies arise. The primary function of a judge is adjudication, a creative art which requires both self-discipline and the ability to be self-critical.

Data show that highly-regarded judges tend to be supportive and sympathetic, rather than punitive, in their relationships with other
people; with respect to motivational strategies they tend to emphasise rewards rather than punishments; when dealing with aggressive behaviour from others they are more likely to try and conciliate or win rather than counterattack (NCJCJ 1967).

In addition to ideal personal qualities specific tools such as professional qualifications, training and experience are required for the judicial profession. It should be noted however that judges are as much controlled by, as controlling, the legal system within which they operate (Laskin 1975). Issues to be decided are often influenced by rules of the court – legislation, substantive and procedural policy.

This includes the jurisprudence regarding the liberty of subjects, the presumption of innocence and principles of sentencing. Traynor (1975) notes that the judge is confined by the record in case, confined by the legally relevant material and limited by evidentiary rules. As Justice Cardozo (1921) notes, adjudication is not a chaotic process, nor emotionally informed, but is dictated by precedent and social necessity, the admonition to the judge is that:

He is not to innovate at pleasure [. . .] He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. (Cardozo 1921, p. 141)

This does not mean that judges are not actively involved in the attempt to provide an appropriate framework for judicial decisions – the role of the judiciary in justice issues need not be that of a social eunuch (Beaulieu 1989). However the proper adjudication of a case must be predicated upon all relevant and admissible evidence.

This in turn means that the police, prosecution and the defence have presented their evidence and argued their respective positions responsibly. The court determines guilt or innocence on the basis of an analysis of the totality of the evidence before the court. The trier of fact in criminal cases must be satisfied beyond a reasonable doubt. The finding of guilt therefore must be founded on proven facts that make out the charge, not hearsay or impressions that the accused may need the intervention of a court disposition regardless of the State’s failure to make its case.

A judge may also be confined by the amount of community resources at his or her disposal. All decisions to be truly fair and objective require similar resources to put them into effect. Sentencing disparity and inadequate dispositions are often a function of the lack of
appropriate community resources. A lack of resources can profoundly affect a judge's ability to live up to the public's expectations. Certainly even if near perfection in legislation were feasible, expressed goals become meaningless without instrumental means to accomplish desired tasks (Beaulieu 1993). Indeed realistic judges are mindful of the fact that they can virtually guarantee punishment, but cannot guarantee treatment.

Though judges exercise discretion within the confines of a particular paradigm, they are not isolated from the world around them. The administration of justice is a social problem which the community as a whole must meet (Yankwich 1975). Consciously or unconsciously judges reflect the philosophy of the time in which they live and their decisions reflect their view as to social needs sought to be reached by law (Yankwich 1975). It has even been suggested that the function of law and the courts is to "keep the conscience of the people, to lay the cornerstones of our successive civilisations, and chart the courses our society must follow" (Laub 1975, p. 70). The influence that the judiciary may have on future generations, and society's expectations regarding that fact become most clear when one considers the work of the youth court judge.

**The Youth Court Judge**

As H. Ted Rubin (1985) notes in his book *Behind the Black Robes*, youth court judges daily face up to the problems of children and young people across the country, in courtrooms and judicial chambers. Judge Leonard P. Edwards (1992) argues that the court provides leadership to the community and to all participants in the juvenile court system. The youth court, therefore, has the responsibility of setting the standard by which the juvenile system will be governed (Edwards 1992).

The youth court deals with an age specific cohort who is not yet considered adult. In Canada the *Criminal Code* specifies youth to be persons 12-17 years of age. Therefore young offender statutes require the youth court judge to cope with a wide range of developmental maturity. Unlike judges who deal with adult offenders, youth court judges have to look at much more than the offence when sentencing individual young offenders (Kulig 1996).

Judges who work in youth courts tend to be more sensitive to the uncertainties experienced by young people growing up, notes Judge Kent Kirkland (former chair of the family and youth court committee.
of the Canadian Association of Provincial Judges) (Kulig 1996). Ontario youth court Judge Lynn King surmises that this is because they tend to deal with 13-, 14-, 15-year-olds who are obviously in a transition period in their lives, who are trying to discover who they are but are severely influenced by peers and by the media (Kulig 1996). As Sussman and Baum (1968) suggest the success or failure of the court's work with children depends largely on the youth court judge, his personality and competence in dealing with children and their problems.

The daily challenges that the youth court judge must face often necessitate that a judge be chosen because of his or her special qualifications for youth court work. In addition to his or her legal training, an ideal candidate should possess an understanding of child psychology and children's welfare issues as well as be acquainted with various sociological phenomena (Sussman and Baum 1968).

He or she should have a comprehensive knowledge of how cases which do not reach the youth court are being resolved; what types of alternative dispute resolutions are being employed and by whom, what standards do police, probation and prosecution utilise and under what authority (Edwards 1992). As US Attorney General Janet Reno (1998) notes, the difficulty of the youth court judge's job requires a certain type of stamina and determination:

Juvenile Court judges, as far as I'm concerned, have one of the toughest jobs I know. I think being a juvenile court judge, day in and day out, given totally inadequate resources — never giving up, always taking the next child you see as that child and not as the child that came before him, being positive and trying to design something that can make a difference for that child — you judges are little lower than angels. (Reno 1998, p. 81)

Despite a judge's best intentions however, it is clear that the public holds the juvenile court judge accountable for the failings in a system over which he or she presides (Edwards 1992).

THE UNIQUE CHALLENGES OF THE YOUTH COURT

The family as a social unit plays a crucial role in the youth court. Depositions must consider charges in light of an individual family's abilities and vulnerabilities. Youth and family courts deal principally with children and families in a state of disruption and tension and the consequences to society are enormous if these families are left simmering (Kfoury 1987). For many children and their families the court represents a safe haven from governmental or private mis-
behaviour. In his *Handbook for New Juvenile Court Judges*, Judge Regnal W. Garff Jr. maintains that the court is treating the family unit, not just the child. He suggests that “the hearing should be a serious and significant event in the youth’s life. It is serious enough to demand the parents’ attention, and, therefore, they should both be present” (Rubin 1985, p. 59).

Given the importance of the family, a youth and family court judge’s determinations have profound implications for the manner in which families will survive (Edwards 1992). In essence their decisions provide a measure of our society’s confidence in the viability of the family. Certainly the attitude of the juvenile court judge will significantly influence the manner in which others view children before the court (Edwards 1992). In recent years it appears that there is growing support for a unified family and youth court where all matters relating to family would be adjudicated. This would include divorce, custody and access, child protection and young offender proceedings.

Unfortunately children’s dependency makes them vulnerable to becoming invisible casualties of institutions and systems, such as the courts, who sometimes feel that simply responding to adult needs will automatically respond to the needs of their dependants. The ‘best interests of the child’ do not automatically subsume parental desires. This is particularly salient when one considers that parents frequently exaggerate the significance of a child’s acting-out behaviours or unwillingness to conform to parental expectations (Redding 1993). More than a trivial number of youth come into care or into the criminal justice system because their parents claim they ‘can no longer handle them’.

Youth court judges often deal with the reality that young offenders and wards of the court often draw from the same population of youth. In *A Strategy for the Renewal of Youth Justice*, Canada’s Department of Justice (1998) noted that the most serious and repetitive young offenders have been dealt with by provincial child welfare and mental health systems. In Thompson’s sample of young offenders in the province of Alberta he found that 47% had previously been involved with the child welfare system and 18% with the mental health system (Doob et al. 1996). The fact that there is significant overlap between youth who are being apprehended and brought to court for offending, and those being involved in other kinds of social, psychological, educational, or developmental problems (Doob et al. 1996) means that judges often have a complex blend of ethical and social problems to consider in dispositions. It has often been suggested that youth are sometimes apprehended by the criminal justice system in an attempt
to provide them with care and assistance since it is easier to make Criminal Code violations stick than to prove abuse or neglect.

Adjunctive services and reports, which play a close and necessary adjunct in adult courts, (such as probation and psychiatric assessments) are much more traditional in the youth and family court. This requires that the youth court judge be even more of a ‘team player,’ and that he or she recognizes the roles of the legislator, police, prosecutor, defence, corrections, probation and community services. He or she must work in concert with a number of individuals to formulate the most appropriate and feasible sentence for the young person. Ultimately, however, he or she has the last word, and this is a role that cannot be abdicated.

Young people who have come into conflict with the law represent a true test of our commitment to children and youth (Department of Justice 1998). The youth court exists because of, and is guided by, very specific legislation. While young offenders have enjoyed a special status under the criminal law for most of the twentieth century, in many countries others have still not achieved it (IAYFCJM 1998). It is encouraging to note, however, that an increasing number of countries are expressing their willingness to enact new national legislation in the field of youth justice (IAYFCJM 1998).

Most jurisdictions which have a history of youth justice do not differ dramatically in the principles which guide them. Practices and procedures may differ, however, due to different legal approaches. The common-law countries of Canada, England, Wales, Ireland and New Zealand are governed by a criminal law system which relies heavily on a due process/justice model, while most of Europe is guided by an inquisitorial system. This means that youth court judges in Europe tend to be much more involved in the investigation and analysis of cases. Common-law youth court judges are more likely to fulfil the role of a passive adjudicator, relying on the police and prosecutor to do the investigative and preparatory pre-trial work.

In Canada youth justice legislation has moved from a child welfare orientation to a criminal justice/due process model. Under either model the differences in youth court versus adult court and a judge’s role in that difference were clear.

A BRIEF HISTORY OF YOUTH JUSTICE LEGISLATION

Various reform movements have given rise to and shaped youth justice systems as we now know them (Howell 1997). These have included:
establishment of institutions for juveniles thereby removing them from confinement in prison with adults, the creation of separate youth courts and youth justice legislation and, most recently, the development of alternatives to both institutions and youth courts (Howell 1997).

Before the early 1800s there is little evidence that law differentiated among offenders on the basis of age and therefore many young offenders were not only housed in correctional facilities with adults, but were also subjected to all manner of corporal and capital punishment (Hylton 1994). There was, however, recognition of the reduced capacity of children to make moral and legal judgements (Griffiths and Verdun-Jones 1994).

Accordingly, under English common law persons below the age of seven years could not be convicted of committing an offence as they were deemed incapable of forming the requisite intent, and youth between seven and 14 were subject to the doctrine of doli incapax which involved a presumption of incapacity (Griffiths and Verdun-Jones 1994). This presumption could be overcome by evidence showing that the child was sufficiently intelligent to understand the consequences of his misconduct (Sussman and Baum 1968).

The nineteenth century marked the beginning of a child-saving era to ensure the health and welfare of children. State, private and religious agencies began to actively intervene in family life to protect children (Hart 1991). The mid-1800s saw the first laws passed that would guarantee children and youth to be confined in separate custodial facilities known as 'reformatories.'

It was not until the turn of the twentieth century, however, that child welfare began to play a central role in how society viewed children. By the early 1900s the idea of treating delinquent youth separately from adults was well entrenched in both the United States and Canada (Griffiths and Verdun-Jones 1994). An expanding network of professional children's aid societies adopted delinquent youth as their responsibility, resulting in an overlap between the child welfare concerns and 'delinquent' youth. This would have ramifications on later legislation (Griffiths and Verdun-Jones 1994).

Children began to be valued as potential persons, a child-orientated family life emerged and forces external to the family, such as developmental psychology and other social sciences, began to influence the care of children (Hart 1991). A slow evolution had taken place over previous centuries which saw children move from being considered 'property' or 'chattel', valued only for what they could contribute to family work, to a special class — one in which parents
were increasingly expected to maintain, educate and protect (Hart 1991). As James C. Howell (1997) notes, rights to life, food, clothing and shelter were bestowed on children and formal education replaced the apprenticeship system.

Youth justice was still in its infancy. But progressive reformers envisioned a youth court that would serve broader purposes than the criminal court (Howell 1997). The origins of the juvenile court can probably be traced from the humanitarian impulses and initiatives of lawyers, social workers and clergymen who were troubled by the treatment that children were receiving under the criminal law system. In addition there was the growing influence of scientific positivism which proscribed that delinquents were radically different from non-delinquents, genetically, socially, culturally and in those differences one could find the causes of criminal behaviour.

The new progressive movement included a belief that there must be assurances that children were not exploited or maltreated, and that the main institutions charged with rearing children, the family and schools, were closely monitored (Howell 1997). If these institutions failed it was thought that the juvenile court should assume the parental role, and apply scientific knowledge to cure the emotional ills of children which contribute to delinquency (Howell 1997). He remarks that the juvenile court would foster a new era: “The juvenile court was expected to advance the emerging conception of childhood by enforcing new laws pertaining to child care and the behaviour of children embodied in the new concept of childhood” (Howell 1997, p. 12). This new concept in childhood included the idea that ‘childhood’ and ‘adolescence’ were now conceived as a separate and distinct age, set apart from adulthood.

The first juvenile court in the world was the ‘Juvenile Court of Cook County’ established in Chicago in 1899 (Sussman and Baum 1968). While this court did not differ dramatically from some youth courts today as it featured a juvenile court judge, a separate court room, separate records and informal procedure, nonetheless there is an increasing recognition of the need for due process in respect to the rights of the youth.

In Canada the Juvenile Delinquents Act (JDA) passed in 1908 was based on the doctrine of parens patriae as was similar legislation in most countries at the time. Its ‘expressive character’ was clearly focused on such values as the protection, guidance, education, supervision and treatment of ‘misguided children’. There was virtually no distinction between the ‘neglected’ and ‘delinquent child’. It
established a separate youth system including a separate youth court and the requirement that they be incarcerated separately.

The focus of the JDA was primarily on treatment with a minimum of attention paid to accountability. Therefore traditional juvenile court philosophy held that the focus of delinquency was not whether a specific provision of criminal law had been violated, but rather whether the child was in a 'condition' of delinquency and thus requiring help and assistance. Inquiries were geared toward identifying the source of personal and behavioural abnormality which led to anti-social behaviour. Often the source was thought to be parental failure. Adults in fact could be held responsible for bringing about delinquency in children. Therefore if discipline was lacking, the State could provide it. If the problem was 'evil' surroundings, such as vice or drunkenness a child could be placed in new surroundings. The new Act clearly ascribed to a child welfare model as well as a medical model with an emphasis on rehabilitation and reform.

The legislation's blending of juvenile justice and child welfare sentiments had many repercussions. The blurring of the concepts of neglect and delinquency also reflected the degree to which the State could intervene. It meant that children could qualify as juvenile delinquents without having committed a criminal offence, and children who did not violate the law could be brought into the child welfare system upon adjudication (Griffiths and Verdun-Jones 1994). Thus acts which were not criminal offences could result in state intervention with consequences which did not reflect the difference between criminal and non-criminal conduct.

As Raymond Corrado (1992) notes, within a span of five years beginning in 1977, major juvenile justice reforms were enacted in England and Wales, in several States in the US and in Canada. Many of the reforms could be characterised as moving from a welfare model of juvenile justice toward a justice model (Corrado 1992). This movement was characterised by abandoning a system which focused on informal processes and rehabilitation, to one which envisioned due process and the offence and prior record of the offender as more important in determining the severity of a sentence (Corrado 1992). In Canada, a series of proposed drafts for a new statute were advanced as early as 1965, though the new Young Offenders Act (YOA) would not be passed until 1984 (Griffiths and Verdun-Jones 1994). The impetus for reform in Canada were the many criticisms which lay at the feet of the JDA. Recorded levels of juvenile crime were rising dramatically as the post-war baby boom generation moved into ad-
olescence, the peak years for crime (Tanner 1996). The Act did not seem to be able to lower rates of delinquent behaviour through rehabilitation, and was increasingly considered too 'soft' on youth crime (Tanner 1996).

Graver concerns also emerged, including the fact that there were no uniform upper age limits (the provinces and territories adopted anything from 16 to 19 years old), the informality of the court procedures lead to widespread sentencing disparity, widespread use of indeterminate sentences meant it was often easier to get into a correctional facility than it was to get out, status offences criminalised youth for behaviour that was legal for adults and there was a significant absence of due process rights.

The advent of the Canadian Charter of Rights of Freedoms in 1982 made changes to the JDA inevitable. The YOA became law on 2 April 1984. Among some of the more significant changes to the statutes were dispositional alternatives and diversions, a standardised age from 12-17 inclusive, the right to counsel, and the elimination of status offences. The YOA effectively changed the primary focus of dispositional hearings from the 'condition' of the offender to that of an attempted balance between the commission of the offence, the needs of the youth and the interests of society.

The JDA was expressively and instrumentally legislation primarily orientated toward treatment and guidance. Through a mixture of criminal and protection philosophy the YOA seemed to be weighted toward the criminal law. The paternalistic character of the JDA was replaced with the concept of accountability of the individual young offender and the need to ensure that individual rights would be protected by proper procedure.

The 'expressive' character of the new YOA suggested a focus on criminal activities, clearly distinguished from neglect and protection. This is due in part to the fact that there was little if any child protection legislation, which existed in 1908 at the time that the JDA was implemented. The YOA signalled a recognition that the current child welfare legislation should be sufficient to deal with neglect and protection cases. Thus there was an attempt to separate two different philosophies and jurisdictions.

\[\text{For the purpose of comparing different eras of youth justice legislation we have borrowed the 'expressive' and 'instrumental' analytical approach to the character of legislation of Charles Reason (see Goff and Reason 1978).}\]
The Act codified and extended case law in a number of areas to youth including, admissibility of statements, notice to parents, transfers to adult courts and requirements of predisposition reports. Important concepts such as right to counsel, public hearings, expanded appeal process, court ordered assessments and determinate sentences were included. No longer were youth subject to be charged for acts not considered criminal conduct for an adult, such as sexual immorality and truancy.

The Act introduced duties, either directly or indirectly, for everyone dealing with the young person whether it was peace officers, prosecutors or the youth courts. The youth court judge no longer was the 'paternal super-supervisor' of all 'child savers' in the community. Instead his or her focus was on the criminal law. The youth court judge now had the responsibility to protect an accused youth's rights as afforded by proper procedure.

There was still a recognition in the YOA, as outlined in its 'Declaration of Principles' (IAYFCJM 1998) that youth were at a particular stage of human development and therefore were not as accountable as adults. This was coupled with a belief that they therefore should not suffer the same consequences as an adult. The Act recognised the special role of parents by allowing them to participate in dispositions, reviews and transfer hearings, to be provided copies of assessments, pre-dispositions reports and probation orders. Unlike the JDA, parents under the YOA have no vicarious liability and no obligation to pay for support of the young offender.

The language underscored the importance of the protection of society and the youth's responsibility to community and to the victim. The new statutes declared that young offenders, while having special needs because of their state of development, were nonetheless accountable for their behaviour and that society has a right to be protected from their criminal conduct (Beaulieu 1989).

There was a marked increase in professionalism in this period of youth justice reform. During the JDA many judges did not have legal training, but were concerned citizens, social workers, counsellors, appointed with a view to helping youth (Bala and Corrado 1995). However, with the YOA came a recognition of the need for legally trained judges and most provinces enacted statutory requirements that judges be practising lawyers before appointment to the youth court (Bala and Corrado 1995).

Due process does not perceive the youth's interests and that of the State as identical. Therefore the YOA signalled an historic change in the role of both the prosecutor and defence counsel. Previously the
prosecutor was not considered part of the youth system. It was thought that the court personnel and the youth court judge would ensure rehabilitation of the youth and the presence of counsel was seen as a possible obstacle to the rehabilitation process. Generally, prosecutors were not legally trained, and their role was often taken by the police, probation officer or the youth court judge. The structure and content of proceedings under the JDA were more compatible with the social work objectives of assessing a youth’s behaviour rather than with legal considerations.

The rise in the prominence of the right to counsel is a specific example of how the youth justice system moved toward a due process model. The presence of defence counsel has become an influential factor in the direction and outcome of proceedings. This is particularly true as more defence lawyers approach their role as advocates, who must represent their client’s position with zeal rather than as ‘helping’ surrogate parents.

The significant role of defence counsel has meant an increased recognition that the State requires representation by a legally trained lawyer, one who is a local agent of the Ministry of Justice. The prosecutor is expected to advocate to his or her best ability for the State, yet be impartial and ensure the accused receives a fair trial. They can greatly affect everything from charging, to alternative measures, adjudication, dispositions, probations, even the philosophy of the youth court itself.

Much of the youth justice reform that touched Canada, the Commonwealth and the United States in the 1970s and 1980s was fairly ambitious. Many critics suggested that it could never live up to its promise. No doubt it is this sentiment which has fuelled the past 15 years of debate. Unfortunately many child advocates suggest that instead of appearing forward thinking many current ‘reforms’ look more like ‘traditional’, turn-of-the-century juvenile justice. At the very least perhaps the current stage of reform is a third stage of youth justice which “seeks to make the severity of determinate penalties for adolescents more like those for adults” (Grisso 1996, p. 231).

**CURRENT TRENDS AND REALITIES**

We would like to believe that youth justice is similar to adult criminal justice in that the main objective of a fair and appropriate disposition will help to rehabilitate the offender and ensure that he or she becomes
more productive, stable and law abiding, reflect the least restrictive alternative, and ensure society's interest in justice, peace and safety. However, the nature, purpose and effectiveness of the youth justice system has continued to form the subject matter of debate for over two decades (Beaulieu 1993). Current trends, which surround this debate, have profoundly impacted both the youth court and the working framework of the youth court judge.

Howell (1997) asserts that current juvenile justice reforms in the United States can be characterised as 'schizoid revolution' because of the dominance of competing themes of just deserts and family court philosophies. He poses the question:

Are they immature children who, consistent with 19th century view of childhood, deserve the benefit of a developmental perspective and a second-chance opportunity to mature or should they be seen as part of the criminal element of society, deserving of punishment in a system that views them as adults? (Howell 1997, p. 22)

Since its inception in Canada, the YOA has appeared to struggle with these questions. Some of the concerns that have been raised suggest insufficient attention has been paid to the needs of the youth, too much or too little emphasis placed on rehabilitation and too much or too little emphasis has been placed on the protection of society (Beaulieu 1989). The YOA does seem to encapsulate competing philosophies including the rehabilitation of the young offender, notions of crime prevention, public safety and accountability. To its critics the YOA was bound to fail given these seemingly contradictory objectives (Tanner 1996).

In the battle of competing philosophies it would seem that public safety and social pressure regarding the accountability and control of offenders has won the upper hand over rehabilitative concerns. ‘Getting tough’ on youth crime has become successful fodder for political pundits. Certainly amendments that were made to the YOA in 1986, 1992 and 1995 would seem to support this argument as they largely dealt with increases in the maximum sentence for murder and provisions regarding transfer to the adult court. Some of the most virulent criticisms have come from police organisations or victims’ rights groups and have included: lowering the minimum criminal age of responsibility, lifting the publication ban on the names of young offenders and more frequent and automatic transfers to the adult court (Tanner 1996).

The idea that there are violent, demonic, under-aged children who are above the law has become a recurring theme in the public discourse on youth violence. This debate has been fuelled in recent years by
events such as the 1993 Bulger case in England in which two 10-year-old boys murdered two-year-old James Bulger, and in Canada by a case involving the gang rape of a 13-year-old, whose leader was a 11-year-old boy.

As horrific as these events are, two things need to be understood about them. The first is that these are isolated events. For example, in Canada, previous to 1984 when the age of criminal responsibility was seven, only 3.4% of delinquencies involving 10- and 11-year-olds involved violence (Doob et al. 1996). Though the current YOA prohibits children under 12 from being charged, there is a small amount of data that describes events by children which have come to police attention, but in which charges have not been laid. In 1992 the Canadian Centre for Justice Statistics released a report describing criminal occurrences involving those under 12 (Doob et al. 1996). Though the data is problematic it does indicate that for 971,00 incidences in 27 jurisdictions only 1.2% were for children under 12; 0.06% (n = 3) of these were described by the police as involving serious violence (Doob et al. 1996).

It is also important to bear in mind that violent children who are not at the age of criminal responsibility may not be charged, but often come under the control of other social agents and for an indefinite period of time. For example, though they may escape criminal conviction, they often come under immediate control of child welfare. In fact, though there was much furore over the fact that the 11-year old leader of the previously mentioned gang rape could not be charged, what was often missed in news coverage is the fact that he was taken into the custody of the Children’s Aid Society for psychiatric testing (Krivel 1996). In such cases, children do not enjoy the same due process rights as that of the young offender.

Statistics would seem to indicate that the police and schools have incorporated the Government’s ‘get tough’ attitude into charging practices in Canada. This is best demonstrated by a ‘Zero Tolerance’ protocol which has proliferated in schools. In a review of youth court data from 1991–1996 Doob and Sprott (1998) found that the total number of youth court cases had decreased. However, the number of cases involving violence had increased 16.4% (Doob and Sprott 1998). Rather than suggesting that youth crime is getting more violent, the authors suggest that policies such as ‘Zero Tolerance’ toward violence in schools has increased the numbers of violence cases brought to court. As evidence they note the 31.3% increase in minor assault cases brought to court in a five-year period. School yard scuffles which
formerly would have been handled more informally, perhaps involving
the parents, are now handled much more formally and seriously. Given
that a crackdown on minor offences could actually contribute to youth-
crime hysteria (Onstad 1997), one wonders at the wisdom of these types
of policies.

Some courts have used the more punitive environment as an impetus
to interpret current statutes in a much harsher light. Under the YOA
the court is allowed to disclose the identity of a young offender to a
school to ensure compliance of a court order or to ensure the safety
of students or other persons. One Canadian jurisdiction interpreted this
statute as justification to fax to local school boards the daily list of
youth court dockets. The legality of this action is currently being
challenged. Provinces, which feel the YOA is lacking, are using old
provincal statutes to charge youth with ‘status’ offences such as
truancy.

The ‘mixed’ message of the YOA has had a significant impact on
the youth justice system, for it has also more directly affected the
decision making of youth court judges (Griffiths and Verdun-Jones
1994). In a study by Doob and Beaulieu (1992) 43 judges given the
same detailed young offender cases, showed enormous variation in
what they were attempting to accomplish with identical cases, though
‘rehabilitation’ and ‘individual deterrence’ were most often mentioned
by all judges. Doob and Sprott’s (1998) study of interprovincial
variation in the use of the youth court found that one youth court case
in Quebec resulted in a youth being put in custody for every 91 persons,
compared to 58 and 71 young persons in Saskatchewan and Ontario,
respectively. They found that interprovincial variation in the use of
custody could be explained by looking at the rates at which provinces
brought cases to court and also found young people guilty of offences.

As Doob (1989) notes, we have been unselective in the way in
which we have attempted to ‘protect’ society by putting young people
in custodial facilities. The Canadian Government has conceded that
custody is in fact overused, and that Canada has an incarceration rate
for youth four times that of adult offenders, higher than many
countries in the world (Department of Justice 1998).

The most common youth court cases in 1995–1996 were theft under
$5000.00, breaking and entering, and a group of Criminal Code ad-
ministrative offences such as failure to appear/comply with a youth
court disposition (Hendrick 1997). Of all youth court convictions 33%
resulted in secure and open custody, the majority for property offences
(Hendrick 1997). It seems that many young people sentenced to
custody are being subjected to a ‘short sharp shock’ approach, that is a short stay in custody of 30–60 days meant to act as a deterrent. Unfortunately rather than deterring criminal behaviour, the practice of ‘shock’ may only be contributing to youth crime as incarceration is extremely disruptive to many aspects of a young persons’ life (John Howard Society 1995). Given that adult offenders would be likely only to get a fine or probation for similar activities, it is difficult to concede that this retributive response is prudent.

Some would say that the media has played a fundamental role in the creation of the current ‘anti-youth’ campaign. As Reuven Kahane argues we are bombarded with images of idle anti-authoritarian subversive and, inevitably, criminal teenagers as opposed to the majority of compliant youth (Kahane 1997). Though there is little evidence to suggest that kids are any worse than kids 25 years ago, and while any increases in the youth-crime rate have been small, this decade appears to have had an even greater vigilance in reporting youth crime, coupled with a greater eagerness to punish it (Onstad 1997). The reporting of youth crime, though vigilant, is at best distorted and at worst highly inaccurate.

An excellent illustration of this precept is found in Sprott’s comparison of youth court cases and Toronto newspaper’s coverage of youth crime. Most (94%) of the stories about youth crime over a two month period involved cases of violence (Sprott 1996). Youth court statistics for the same period, in contrast, showed that fewer than a quarter of youth court cases in Ontario involved violence (Sprott 1996). A brief review of the Toronto Star by Corrado and Markwart in December 1990 found that on each day of the week one story managed to link youth with crime (Tanner 1996). What is noteworthy is that these stories did not deal with trivial offences; instead they focused on spectacular but atypical crimes of violence, such as ‘drive by shootings’ (Tanner 1996). Surveys conducted for the Canadian Sentencing Commission found that 95% of respondents revealed that they derived their knowledge about crime in Canada predominantly from the mass media (Tanner 1996). Given the lack of information regarding sentencing dispositions reported in the media, it is not hard to see why the public believe youth court judges are ‘too soft’ on youth crime.

Coupled with the media’s presentation of youth as violent and dangerous has been the perpetuation of the idea that youth have a certain amount of expertise regarding the law, that they know how to manipulate it and use it to their advantage. Interestingly enough
Peterson-Badali and Koegl’s (1998) study of 730 10–17-year-olds and young adults from six Canadian cities, demonstrated that students’ knowledge of the YOA and the youth justice system is variable depending on the issues addressed. For example, though overall they showed a good knowledge of the difference between the youth and adult system, who has access to the record, and the role of the police, judge and crown, they had poor knowledge of what happens to the youth court record at 18, were confused about the role of defence counsel and few had a conceptual understanding of the YOA. Their findings also held for young offenders, though young offenders did demonstrate slightly better knowledge regarding aspects of the law for which they had direct experience. Their findings seem to challenge our notions of the savvy and knowledgeable young offender.

Dramatic changes in the structure and the function of the family including the advent of single parent households, households with two working parents and same sex households have meant a readjustment and greater demands on all social institutions including the youth court. In the past, children received their primary socialisation from their family. Today’s child needs non-family socialisation to compensate for the fact that their family is often smaller, less static and more vulnerable. The reduced influence of the traditional reinforcers of values such as grandparents, the church and school has meant a different orientation for the individual in terms of his or her relationships with the family and the community. The Government and society are now expected to perform functions previously belonging to the family whether they be economic, educational or recreational. Outside forces of an economic and sociological nature continue to influence the family, but the intensity and rapidity at which they do so has increased enormously. Much like the turn of the last century, the youth and family court are forced, indeed expected, to step in when a family becomes apparently incapable of fulfilling its primary functions.

Again, not unlike the JDA era, there have been demands for parents to be liable for the indiscretions of their children. This is based in part on a belief that parents have become irresponsible in bringing up their children (Task Force on Vandalism 1981). The province of Manitoba already has a Parental Responsibility Act which allows victims to launch an action in the small claims court against parents whose children “have been involved in deliberately taking, damaging or destroying property”. Several provinces, including Ontario, are pushing for parents to be made criminally liable.
In considering this alternative there are a number of salient points to make. The view that parents generally have adequate knowledge of their child’s criminal activity and the resources to stop them but have chosen not to, is contradicted by evidence (Task Force on Vandalism 1981). Instead studies show that parents are generally quite disturbed by the deviance of their offspring but are as unsure as the school or the courts on how to manage them (Task Force on Vandalism 1981). In addition, it is essential to consider the effect this type of legislation may have on an already disturbed family relationship: the parent may respond to legal sanctions by increasing hostility or rejection of the child, the child may in turn react to the parent’s anger by getting into further trouble and, more importantly, such a law may place a tremendous weapon in the hands of an angry child (Task Force on Vandalism 1981). Lastly, one must question whether it is feasible that this sanction is affordable for a single parent home.

As increasing demands and social pressure have affected the youth court a new phenomena has touched the youth court judge resulting in an increased amount of personal stress. As the National Council of Juvenile Court Judges already recognised in 1967:

"Most youth court cases represent failures – of families communities and individuals. Working with these cases is emotionally draining, particularly for the judge who has to make the ultimate decision as to disposition. The normal emotional reaction is aggravated by the fact that resources are seldom available for carrying out an effective therapeutic programme. (NCJCI 1967, pp. 112–113)"

In 1997 the National Judicial Institute found in a survey of Canadian judges that approximately half of the respondents feel that they have too little control over their judicial agenda and priorities, too little time to do the assigned caseload and that their colleagues do not tolerate mistakes that result from risk taking. In addition between 25 and 50% expressed concern over issues such as deteriorating health and child rearing and 35–45% indicated that the judiciary does not encourage balancing family and work life.

There are hopeful signs in Australia, New Zealand and now Canada from new multi-faceted and multi-disciplinary community-based strategies which are being experimented with to ease the logistical pressure on the courts. As the majority of youth are low-risk, a new emphasis is being placed on pre/post diversion programmes, youth mentoring programmes, and family group and community conferencing at the local level.
Family group conferencing and other restorative justice initiatives teach the importance of condemning delinquent behaviour without condemning the offender. They also demonstrate how providing young offenders active and participatory roles in the ‘shaming’ which the community may require, allows an empowering experience which clearly reintegrates the youth into his or her social group. In this fashion youth are not only held accountable, but are also given significant participation in the legal process. The small community of Sparwood, British Columbia is just one example where the RCMP in conjunction with the Aboriginal Justice Initiative have successfully used community justice forums to seriously reduce youth crime.

For youths at high risk of reoffending, new therapeutic programmes have been instigated such as Multisystemic Therapy (MST) first developed by Scott Henggeler and his associates in South Carolina (Jaffe and Baker 1998). This approach involves intensive intervention with young persons in their home, school and community that targets risk factors and increases protective factors (Jaffe and Baker 1998) Leschied and Cunningham have embarked on a four-year study of MST in five Ontario communities to examine the benefits of this approach with Canadian young offenders.

On 11 March 1999 the new Youth Criminal Justice Act (YCJA) was introduced in the Canadian House of Commons. Anne McLellan, the Minister of Justice and Attorney General of Canada suggested that the new legislation would better distinguish between violent and non-violent crime and provide appropriate measures to deal with both, strengthen efforts to rehabilitate young people who commit crimes, and encourage the use of effective, meaningful alternatives to custody for non-violent youth.

Though the new YCJA may contain a lot of good news, the Department of Justice chose to focus on the more punitive aspects of the Act in its initial press releases. This is presumably to make it more palatable to the public. Ironically, many of the provisions which they have highlighted including the use of adult sentences, transfers to adult court and publication of names for those with adults sentences, already existed in the YOA. It will be interesting to see how ‘presenting old wine in new skins’ and focusing on the hard-line aspects of the YCJA will be interpreted by the judiciary, and ultimately affect service delivery.

The substance of the YCJA however, does appear to reaffirm Canada’s commitment to the justice model of the youth court which in turn evokes the concept of due process within adversarial proceedings. It also appears to reaffirm the Government’s commitment
to youth. These ideals are easily identified both in the legislation’s principles of sentencing and in its strong appeal to reducing the use of court.

The YCJA's sentencing principles clearly state that sentences must be proportionate to the seriousness of the offence and the youth’s degree of responsibility. They also state that they must be the least restrictive option capable of achieving the sentencing purpose. As in the YOA the YCJA acknowledges the greater dependency of young persons and their reduced maturity, outlines enhanced procedural protections and ensures specific rights and freedoms including the right to be heard in the course of and participate in the process.

Extrajudicial measures are a major component of the YCJA and its major tool to reducing the use of court. Many jurisdictions now insist that extra judicial measures are often the most appropriate and effective way to address youth crime because they allow effective and timely intervention, are presumed adequate to hold youth accountable in appropriate cases, they encourage the young person to acknowledge and repair harm caused to the victim and the community. These may include, but are not confined to, warnings, cautions, and referrals to local pre-trial diversion programmes by police officers.

**Future Forecasts**

The twentieth century has seen the evolution of the notion of ‘children as property’ to ‘children as persons’, ‘child protection rights’ to the ‘right to due process’ (Hart 1991). As this century draws to a close we have witnessed the beginnings of self-determination rights for children (Hart 1991). Nowhere is this clearer than in the United Nations Convention on the Rights of the Child (UN General Assembly 1989).

The UN Convention on the Rights of the Child has the status of a legally binding international treaty for all nations that ratify it, and 20 nations have already done so (Hart 1991) It covers a broad range of categories including health, family, education, maltreatment and freedom, and is a strong indicator of the increased, formal, societal emphasis being given to participation and autonomy of self-determination rights in balance with protection and nurturance rights (Hart 1991) Canada’s new YCJA in fact makes specific reference to the Convention in its preamble.

As globalisation begins to create a criminal justice neighbourhood, so too will it begin to create a criminal justice brotherhood to serve
and protect citizens (Correctional Service Canada 1998). As our ‘global village’ continues to grow, undoubtedly many more attempts will be made to universalise children’s rights. Already the UN Centre for International Crime Prevention in Vienna has drafted a Model Law on Juvenile Justice which will allow global principles to be applied to local situations. The purpose of the Model Law is to ensure and guarantee the promotion of the rights of minors. It emphasises the separate nature of youth criminal law and the need to ensure educational assistance to minors in danger and protection for youth victims.

The new millennium will likely witness the use of international legislation in local youth courts by child advocacy groups as a new lever to procedural fairness. In light of a host of new self-determination rights, new decisions may need to be made regarding youth and their ability to consent to treatment, their right to counsel and what they themselves conceive as ‘the best interests of the child.’ As globalisation continues to affect the international community, so shall concerns regarding international trafficking in children, child prostitution rings, and the use of children as drug couriers. Immigration from a number of war-torn countries will continue to have a direct and lasting effect on the justice system. How will deportation hearings affect a child and the family unit? Some children are fleeing countries without their parents but with their extended family. Often this means that if they get into trouble with the law they become wards of the court. The criminal justice system and the youth and family courts will need to be prepared for these new realities.

As Brooke (1993) notes, it will be essential that all judges are equipped with a basic amount of knowledge and understanding of all individuals if they are to be seen to be administering justice fairly to people with whom they have little in common in terms of upbringing, culture and experience. This will be critical if the judiciary do not wish to risk offending people, but more importantly to ensure that a miscarriage of justice does not occur because of cultural ignorance. With the increased mobility and multi-cultural mosaic of society will also come a requirement that youth must be provided with a qualified interpreter if he/she does not understand the language in which their legal proceedings are taking place.

Things that judges should be sensitive to may include the way that a people prefer to be described, the way their names are pronounced, culturally appropriate demeanour or things that are very important in the context of their culture or religion (Brooke 1993). Oaths are just one example of something that is taken very seriously in most cultures
and where mistakes are often made through ignorance (Brooke 1993). This may include something as simple as not possessing a copy of the individual’s holy book.

Television and the media will likely continue to be a focal point of youth culture. Though the literature on the direct effect of television and media violence appears mixed, there does seem to be a bidirectional effect. Television may not cause youth to imitate what they see, but it may affect and reflect what is considered acceptable. Certainly an argument can be made that the most insidious and pervasive impact of television violence is its impact on fostering norms, values and attitudes which favour violence (Beaulieu 1978).

It seems difficult to fully accept the media’s denial of consequential influence on behaviour, however, when one considers the millions of dollars spent advertising to the youth market, whether it be a brand of jeans or a particular soft drink. If the media can influence the purchase mindset of youth, it surely must have some effect on its behavioural mindset. The media is a vehicle by which, with a little creativity and a lot of social will, we could reach, rather than alienate youth, with a medium they understand.

As new technologies including the Internet continue to mushroom, youth court judges must familiarise themselves with a whole new list of criminal activities, many of which will be particularly attractive to youth. This could include the pirating of artistic and intellectual properties such as musical compositions and computer software, the spreading of serious computer viruses and ‘hackers’ who infiltrate systems which may directly affect public safety.

Warren Bennis, an eminent American sociologist, suggests that we are moving “into an era of temporary systems, non-permanent relationships, turbulence, uprootedness, unconnectedness, mobility and, above all, social change” (Hahlo 1983, p. 292). No doubt the new millennium will continue to see increased demands on service providers and shrinking resources. Within this context it is important to realise that the effectiveness of the youth court judge may be affected by the legislation, but it is more likely to be affected by the availability of human and material resources, which are the sine qua non of fulfilling the legislation. ‘Penthouse policies’ and promises are meaningless if all we have at our disposal are ‘bargain basement resources’ (Beaulieu 1993).

As Judge Regnal W. Garff Jr. notes, it is the youth court’s role to motivate and energise the community to develop the resources that are perceived to be necessary (Rubin 1985). As the Government and
other external forces have increased their influence, functions previously belonging to the family have passed on to other hands creating a diminished sense of responsibility for all concerned (Task Force on Vandalism 1981). Parents, teachers and their respective substitutes must be re-empowered as value-setters for young persons. Anti-social behaviour and conduct have much to do with a person’s system of values. The law and the courts cannot be regarded as the one solution to crime.

The old institutional forms of community participation need to be reinstated and other possibilities such as local arbitration systems need to be considered (Arthurs 1979). In fact some governments are considering the very constructive and positive use of community youth committees to arbitrate less serious crimes. As Judge Leonard Edwards (1992, p. 44) maintains, “partnerships and co-operative relationships will have to be developed among all who have responsibilities towards children”. Community based organisations will need to be persuaded that they are part of the solution and they must be prepared to co-operate with agencies to work with children and their families (Edwards 1992). This will necessitate an identification of each community’s strengths. Funding human resources to compliment the law and the court is not a luxury that should take second place to such projects as public highways. New programmes and therefore new budgets should have an evaluative research component built in from inception to ensure that funds exist to probe the validity of the project. Ineffective programmes and poor, untimely evaluations only swallow up badly needed resource dollars.

Perhaps the new millennium will usher in an end to simplistic and generalised remedies which profess to be the solution of crime. Neither the ‘law’ nor the ‘court’ can provide ‘quick fixes’ for complex social problems. As Jaffe and Baker (1998, p. 24) argue, “community safety is not assured by just locking young offenders up, but rather by preventing crime in the first place and having effective early intervention programs for youth at risk”.

Social institutions, particularly schools, will need the resources to identify persons at risk so that they may intervene at an early stage (Beaulieu 1993). Inter-agency collaboration is desperately needed to ensure that intervention is coupled with, and not separate from, treatment resources. Preventive strategies require a long-term commitment, though they do not have the public impact of 100 new police officers. However, in the current economic climate it is important to note that, dollar for dollar, preventative measures have been shown to be more cost effective (Leschied 1998).
As Alan Leschied of Ontario’s London Family Group Court Clinic notes, pre-school interventions, such as those offered by his children’s mental health centre, can save $16,000 per child because they lower the number of youth offenders and the services they will need (Correctional Service Canada 1998). Preventative programmes such as the ‘Healthy Start’ programme first pioneered in Hawaii, where support is given to high-risk mothers over a five-year period, have already made a difference in lowering the crime rate in local jurisdictions (Steed 1998). Perhaps it is Government’s recognition of these realities which has recently seen the advocacy of such programmes slowly begin to creep into youth justice policy.

**CONCLUSION**

Recent international developments which have affected youth justice have included: a post-war Europe with more prosperity and with more youth in conflict with the law, an increase in the participation of young people in international organised crime in Latin America, Africa and Asia, and the adoption in the United States of a ‘three strikes and you are out’ philosophy.

The problem of youth crime has been with us for centuries. However, each generation seems to rediscover youth crime and deviant behaviour while forgetting the nature of its own youth. Regardless of our age, as adults we have a tendency to look to the justice system for answers and are increasingly less likely to look at other social institutions. When we look at the ‘problem’ of youth crime we must examine it in the context of today’s values, attitudes and general social climate.

Unfortunately the courts face exceptional challenges today and cannot be a catholicon for all social problems. Instead there is a need for informed collaboration in the prevention, prosecution and resolution of anti-social and criminal conduct. Funding difficulties, professional jealousies, duplication of services and resources and lack of co-operation must be challenged, reduced and eventually eradicated. The sound principles and goals expressed in legislation will otherwise be at risk of becoming shallow shibboleths.

There is a need for pluralism in the youth justice system and an acceptance of its limits. The youth court and the youth court judge need to let other people try to get on with the job of solving basic social problems. As Sussman and Baum (1968) maintain the youth courts
ought to confine themselves to cases of youthful lawbreakers and perfect their functioning in this field before seeking to enforce more general standards of child behaviour or to function as general social agencies for children. If the youth is apparently at risk, and appears to require protection and treatment, the solution must be found elsewhere.

Most jurisdictions now have separate child welfare, protection and health legislation to deal with cases of neglect, abuse, truancy, emotional and psychological disturbance. Where no such legislation exists it must be encouraged. The criminal process cannot and must not be used and abused as a door of entry for treatment of personal and family dysfunction unless related to a legitimately proven criminal offence.

There are encouraging signs of growing recognition that society needs to focus on more creative approaches that are not necessarily within the justice system per se. For example, it is slowly being recognised that health, education and protection services must become more effective in the prevention and early identification of marginalised children who are at risk before they become the subjects of a youth criminal justice process, even if we must constantly ensure its and the law’s own effectiveness.

It should be remembered that young offenders are potential resources and therefore any action we take should enhance that potential if we are to further the long-term interests of the community (IAYCJM 1998). Therefore our aim should be to develop this resource and not to discard it – to help the individual become a contributing member of society (IAYCJM 1998). Along with this investment in a young person comes a conference of certain rights and responsibilities.

There should be an education in the law, so that they are truly aware of their rights, but also the concomitant responsibilities and legal consequences of those rights. We must help them understand the reciprocity which exists between rights and responsibilities. The youth court judge will continue to have the responsibility to ensure procedural fairness for youth, even if current trends would seek to encroach on those rights. As Chief Justice Holt suggests “it is a vain thing to imagine a right without a remedy” (see Ashby v. White et al. (1709), 3 Ld. Raym. 938 at p. 953, 92, E.R. 126 at p. 136). Education of the law, like music appreciation should begin at an early age. Just as primary students are not expected to be concert pianists, neither would they be expected to be aficionados of the law. However, an appreciation of the law would help reinforce their innate sense of justice and fairness.
As Crozier suggests in his book *The Stalled Society*, imagination is not enough, we must summon up other virtues whose intellectual qualities have long been forgotten – the most important of which are patience and courage. We need courage to not only be the voices of change, to be ‘doers’, but more importantly to be ‘doers’ most committed to the value of the human person. This includes recognition that youth are more likely to be victims of crime than any other age group.

Perhaps the challenge facing youth courts can best be summarised with the wise words of Judge Glenda Hatchett (1998):

> We must take ‘direct action’ for our children. The challenge before us is to move from the rhetoric to the reality of what we are going to do to save their lives and our collective futures. We only get one chance to get it right for this generation of children while they are still children, and surely we can’t wait. (Hatchett 1998, p. 85)

In the final analysis the youth and family court system and its specialised judge can ‘make a difference’. Perhaps the degree to which an effective youth and family court system can influence our social world can best be ascertained in the future – in the general administration of justice in the adult courts and who and how many will pass through its doors.

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FROM CENTRE STAGE TO SPEAR CARRIER:
THE REPOSITIONING OF THE ENGLISH JUVENILE COURT

ABSTRACT. The approach of the new millennium poses significant challenges for the way in which the youth justice system in general, and the juvenile (now youth) court in particular, develops in the future. The past one hundred years of the juvenile court in England and Wales have seen its role both flow and ebb. It currently faces further significant repositioning. The author distinguishes four themes which have influenced the marginalisation of the juvenile court: bifurcation, diversion, managerialism and legislation of the court.

KEY WORDS: juvenile justice system, legislation, youth court

The purpose of this article is to provide an overview of the repositioning of the juvenile court in England and Wales since its inception. Given the limitations of space it is not possible to dwell in detail at each significant historical moment of the court’s career. Numerous commentaries on this history are available (see Morris and Giller 1987; Rutherford 1992; Gelsthorpe and Morris 1994; Newburn 1997; Brown 1998; Muncie 1999) and these, in turn, refer readers to further sources of literature on policy developments and debates. This article examines the changing power-base of the juvenile court and the context for its immediate future operation in the next millennium under the Crime and Disorder legislation currently being implemented in England and Wales and due for full operationalisation in April 2000.

THE RISE OF THE JUVENILE COURT

The legislative recognition of the juvenile court by the 1908 Children Act in England and Wales was contextually somewhat different from that of its Continental/European and North American contemporaries. Whereas the latter were established at the outset as strongly welfare-orientated tribunals, down-playing their overt association with the formal criminal justice system, in England and Wales the juvenile court was primarily a court with modified procedural arrangements which, in part, recognised the immaturity of youth. As a variant of the magistrates’ court its powers were only marginally different from its adult counterpart, most notably in its ability to commit juveniles to
reformatory school, a development which had been ongoing since the last half of the nineteenth century.

The rise of the juvenile court in its first 30 years of operation can be clearly traced to a number of inter-related factors. First, as the rate of juvenile crime continued to rise, increased focus was placed upon the pivotal role of the court to combat crime and reform the offender. Secondly, there was a growing recognition that the tribunal should have a remit beyond that of the formal adjudication of guilt. Hence its procedures were expanded beyond that which treated juvenile delinquents as adult offenders 'writ small'. Thirdly, there was a perceived need to broaden the knowledge base of the courts so as to diagnose or enquire into the nature and extent of the impact of social and psychological disadvantages consequent upon poor parenting or restricted life opportunities, and to differentiate the court's response to the deserving (reform) and undeserving (punishment) offender.

Such factors both heightened the significance of the court's role and complicated its decision-making. As the Molony Committee of 1927 forcefully commented:

> It is often a mere accident whether [the offender] is brought before the court because he (sic) is wandering or beyond control or because he (sic) has committed some offence. Neglect leads to delinquency and delinquency is often the direct outcome of neglect (1927, pp. 71–72).

The Children and Young Person Acts of 1932 and 1933 enshrined this broader remit of the court's role, making the welfare of the child a particular (although not overriding) consideration when determining what was an appropriate disposition for an offence. Hence within the first 25 years of its establishment Parliament had elevated the requirement for the court to do good alongside its original requirement to do justice.

Initially these expanded requirements produced no discernible inconsistency. Indeed changes to the criminal justice services for children in the 1940s often reflected a willingness to recognise their specific welfare needs. Borstal training (established in 1908) moved from its penal origins to be more akin to a public school regime, alternatives to prison custody increased with the development of detention centres, and community sentences expanded often focusing upon the development of the constructive use of leisure (e.g. attendance centres). However, the escalating rate of juvenile crime and prosecution coupled with the continued evidence of child deprivation and neglect, particularly highlighted in the inter-war years of 1939–1945, questioned
the efficiency of the juvenile court and the adequacy of the then current criminal justice processes to meet the needs of juveniles and society.

CHALLENGES TO THE JUVENILE COURT

The juvenile courts had original jurisdiction over welfare cases as well as offenders, the former governed by civil – as opposed to criminal – law and procedures. The courts traditionally had made considerable recourse to their civil powers, most notably to industrial schools which provided training for a good and useful life to neglected and abused children. Three times as many children were under the control of industrial schools at the start of the juvenile court’s operations than were in reformatories for offending.

Hence initially the absence of a developed welfare state infrastructure facilitated juvenile courts championing the determination of the eligibility criteria for access to welfare services. However, the courts did not become involved in overseeing the delivery of such services, which were increasingly exposed as inconsistent and of variable quality. Despite attempts by central government to consolidate services and impose greater regulation throughout the 1920s and 1930s, by the period of World War II significant questions were being raised as to the standards of children’s health and development and the adequacy of child care provision. The Curtis Committee (1946), which was set up to review such services, proposed an integrated network of Children’s Departments based upon the local government infrastructure throughout England and Wales and this was given legislative effect by the 1948 Children Act. Thereafter local authorities could assume parental powers and duties where children were in need of care and protection, often in the very circumstances that may have otherwise led to their appearance in the juvenile court for a welfare measure.

The role and remit of Children’s Departments grew considerably from the 1950s onwards, both with respect to their child protection role but also with their intervention with offenders. Powers to place juvenile offenders with a fit person were available prior to the 1948 Children Act. However, with the establishment of the local authority

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¹For example the reformatories and industrial schools were amalgamated into Approved Schools under Home Office regulation by the Children and Young Persons Act 1933.
Children's Departments they were increasingly pro-actively sought by such authorities, rather than being used at the magistrates' discretion as a residual remedy for the deserving delinquent. Gradually Children's Departments, and the child care experts within them, became a growing power-base to challenge the discretionary judgements of juvenile magistrates and the exercise of their criminal justice jurisdiction. From the mid-1950s onwards, several attempts were made in Parliament to reposition the criminal jurisdiction of the court alongside its welfare jurisdiction. Debates surrounding the Ingleby Committee's (1960) recommendations and subsequent legislation sought to align the respective jurisdictions by age; younger children who offended to come under the civil welfare system, older children to follow the criminal justice route.

In the 1960s the White Paper *The Child, the Family and the Young Offender* (Home Office 1965) sought to subsume the criminal jurisdiction of the court to that of a welfare tribunal, while the subsequent White Paper *Children in Trouble* (Home Office 1968) subordinated the criminal jurisdiction to that of the civil. These debates ultimately led to the compromise embodied in the Children and Young Persons Act of 1969. This enabled the twin-tracks of the civil and criminal jurisdiction of the court to co-exist, with the magistrates choosing the priority of application in delinquency cases. That magistrates increasingly chose the criminal justice option to the welfare route throughout the 1970s, was more a reflection of their determination to control the balance of power over their social worker colleagues than the demands arising from the changing nature of juvenile crime or of the juveniles that were committing it.

**Marginalisation of the Juvenile Court**

The intercine machinations of the appropriate jurisdiction (and philosophy) to apply to juvenile offenders within the court in the 1970s and onwards, tended to mask the significant changes taking place in the context of dealing with delinquency. That changing context has been well documented by commentators (see Rutter et al. 1998) and can be summarised by reference to the following themes.

**Bifurcation**

Since the 1960s both policy and practice has polarised the response to offenders whereby for the majority minor interventions can be
routinely and effectively employed, while for the minority increasingly incursive measures are justified (Bottoms 1977). Demarcation of the groupings is largely determined by rhetoric rather than empirically verifiable criteria. Lee (1998) has recently described the phenomenon as “demonise the hard core, normalise the rest”.

**Diversion**

With the demise of the rehabilitative ethic in the early 1970s, and the ascent of sociological theory within criminological literature (most notably labelling), serious questioning of the efficiency of applying the full rigours of the criminal process to young people took place. The belief was that early intervention to divert children from courts by providing a non-stigmatising normalising response to their behaviour might avoid the self-fulfilling prophecy of a full-blown career of crime. Diversion, in the English context of police cautioning, significantly (albeit inconsistently, see Richardson 1990), altered the profile of the juvenile court population from the 1970s onwards. From the position of the majority of apprehended offenders being placed before courts at the start of this period, the reverse was the case by the beginning of the 1990s. From a routine intervention into the lives of young people who were apprehended for offending, courts were moved to the margins to deal with those for whom diversion did not work.

**Managerialism**

Again influenced by the demise of the rehabilitative ethic, many of those who provided services for courts, particularly those with a social work background began to change their practice in the 1970s. Increasingly reactions to offending adopted a graduated or tariff based approach, delaying the most incursive interventions where possible, thereby providing the opportunity for young people to grow out of crime. In the context of England and Wales this strategy increasingly took on a multi-agency corporate approach (Pratt 1989) involving structured diversion programmes, down-tariffing strategies with courts, the development of alternatives to custody which directly impacted on incarceration rates and the systematic monitoring of local processes and outcomes. The results of these approaches radically altered the pattern of decision-making and sentencing which emerged in the early 1970s and served to develop corporate goals and targets for the performance of local criminal justice systems.
Legalisation of the Court

From the 1980s onwards consistent attempts were made by the Government to decouple the welfare procedures of the juvenile court from the criminal and increase the requirements of procedural regulation of the latter. In the early 1980s this entailed introducing tighter criteria for the imposition of community-based and custodial sentences via a series of Criminal Justice Acts. This was intended to ensure greater proportionality and commensurability between the seriousness of the offender’s crime and the deserved intervention. In the 1990s a tougher law and order approach has emerged from a politically driven populist punitivism (Bottoms 1995) and has co-opted the legalisation process giving wider powers to magistrates (in the newly named youth court) to intervene in the lives of offenders, their parents and the social environment in which they reside. Until recently the application of the three previously identified themes has held in check the potential for an explosion of intervention that may be made possible by the last theme.

Crime, Disorder and Beyond

Most commentators on the English and Welsh criminal justice scene identify that at the end of the 1990s there has been a marked return to a political consensus on youth crime, a consensus based on “punishment and responsibility” as the core concerns (Gelsthorpe and Morris 1994). The persistent demonisation of youth, characterised most noticeably in the response to the two 10-year-old boys found guilty of the murder of James Bulger in 1993, means that as we enter the new millennium:

The prevailing mood is one in which there is little political dissent from proposals to incarcerate even younger children, to introduce ‘curfews’, to introduce legislation to outlaw ‘raves’, to close clubs where drug taking might occur, to institute raw and harsh measures against squatters, new age travellers, the young homeless, the young unemployed and actively to promote a ‘zero tolerance’ model of policy which is likely to target marginalized youths on the streets. (Newburn 1997, p. 653)

The recently passed Crime and Disorder Act 1998 introduces further powers for an expanded range of community penalties and custodial sentences to be available to courts when fully implemented in April 2000. Yet despite the political rhetoric of populist punitivism and the significant attack on diversionary strategies and managerialism, there
remain significant doubts as to whether the youth court will inevitably gain the ascendency it had in earlier times. In several respects the power base for dealing with youthful offenders has become more diffuse and with it the opportunities for the youth court to take a significant lead more difficult.

- The Crime and Disorder legislation has established a Youth Justice Board at a national level to advise Ministers on setting standards for the performance of local criminal justice systems. The Board will monitor their performance to these standards. It is likely to have a significant role both in identifying the requirements of local justice systems and the services they should provide, along with a developing strategy of 'naming and shaming' through a programme of annual audits and performance reviews.

- Although managerialism has been seriously questioned with respect to its impact on crime prevention and crime reduction (Adult Commission 1996), the requirement of the Crime and Disorder legislation to have in place Youth Offending Teams (YOTs) at local authority level, provides a statutory infrastructure for the development of corporate goals and a managed response to local delinquency. YOTs, which must be in place by April 2000, will consist of a multi-agency team of seconded officers from Police, Social Services, Probation, Education and the Health Service (along with other local agencies and voluntary organisations). They will be instrumental in servicing youth courts (including writing reports on offenders and providing community sentence programmes) but also, significantly, in providing pre-court services and diversion programmes.

- The Crime and Disorder legislation now, for the first time, puts diversion decision-making on a statutory footing. This effectively restricts the opportunity for diversion to one informal police reprimand and one final warning given by the police. The Government's expectation is that in the majority of cases the final warning will be accompanied by a scheme or programme of community-based intervention to address the juvenile's offending behaviour. Linked to the statutory aim of the legislation to prevent offending, these intervention programmes are intended to be carefully evaluated and successful programmes will be exemplified and replicated.
Within the provisions of the legislation relating to the powers of the youth court there are a number of measures which emphasise reparation, mediation and the involvement of victims in the resolution of the offence and changing the offender's behaviour. While in embryonic form these measures contain elements of restorative justice (Walgrave 1995), further provisions are contained in the Youth Justice and Criminal Evidence Bill, currently before Parliament, which will make restorative approaches compulsory on first time court appearance and discretionary in subsequent appearances. While accessed through a court process, the key decision-making body that will determine the ambit of a restorative justice programme will be a new local 'Youth Panel'. This is to be a quasi-judicial body that will be empowered to order the offender to:

- make financial or other reparation to the victim;
- attend mediation sessions with the victim;
- carry out unpaid work in, or for, the community;
- be home at specified times;
- attend school, place of education or place of work;
- participate in specified activities (such as programmes addressing criminal behaviour or drug misuse);
- present to specified persons at specified times;
- stay away from specified persons or places.

As the White Paper which preceded the Crime and Disorder legislation put it:

The Government's reforms of the youth court in England and Wales will help to shape a more effective youth justice system for the next century. The approach combines the principles of restorative justice with more traditional punitive measures which must be available to the courts in order to protect the public. (Home Office 1997, p. 34)

How the youth court will relocate itself alongside the Youth Justice Board, Youth Offending Teams and Youth Panels remains to be seen. What is clear, however, is that the youth court is now only one of a number of levers of power and influence and by no means the primary one.

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CURRENT ISSUES
ALMA VAN HEES

HALT: EARLY PREVENTION AND REPRESSION; RECENT DEVELOPMENTS AND RESEARCH

ABSTRACT. In this article an account is given of the Halt working method in the Netherlands, which is used by 63 Halt Bureaus and is directed at combating and preventing juvenile delinquency. This working method has been successful. Recent developments and experiments directed at further extending the effects of the Halt approach and executing an even earlier reaction to criminal behaviour are considered, and the results of recent research are discussed. Finally, the pros and cons of this method of early reaction are revealed, the conclusion being that the advantages and positive effects are great, and any possible disadvantages can be further offset.

KEY WORDS: early intervention, halt scheme, juvenile delinquency, prevention

THE ORIGIN OF HALT

In 1981, the first Halt Bureau (HALT from the Dutch Het ALTernatief, the alternative) was launched in Rotterdam with the objective of combating vandalism. The major task for Halt is to organise the so-called ‘Halt scheme’, an extra-judicial response to acts of vandalism by young people regarded as minors under criminal law. Young people between the ages of 12 and 18 arrested by the police for vandalism are referred directly to the Halt Bureau. Here they are offered the chance to make amends by ‘working’ and/or paying: by cleaning their graffiti off the walls again, repairing and/or paying for the damage caused by vandalism, or doing work as a form of compensation to those affected by the offence. If the young person carries out the agreed sanction satisfactorily, no further prosecution takes place and no entry is made in the criminal records.

The background to the creation of Halt was the steady increase in vandalism and the lack of any viable response to this kind of undesirable behaviour. A police warning was seen as ‘too mild’ a response, and was also insufficient in cases where damage had been caused. On the other hand, prosecution by the judicial authorities was ‘too serious’ for these relatively minor offences, and in any case the possible responses open to the judicial authorities were limited (reprimand, out-of-court fine). In addition there was often a long time to wait for the prosecution, and doubts were raised regarding the educational value of this manner of proceeding. Hence the Halt scheme, which provides for a quick, educational sanction with the aim of putting a stop to the increase in vandalism.

Alongside the Halt scheme, the Halt Bureau also has a preventive role. It focuses on the background of delinquency and develops various preventative activities, including an information service to schools. The Halt Bureau is a co-operative venture between the local authority, the police and the Public Prosecutions Department.

HALT THROUGHOUT THE NETHERLANDS

The positive experiences with Halt in Rotterdam led other local authorities to set up their own Halt Bureaus. Gradually the number of Halt Bureaus increased. Central government policy directed towards reducing common (juvenile) delinquency also resulted in a central government subsidy scheme being set up for Halt Bureaus, under which 50% of the costs of Halt were financed by central government. This financial impulse increased the number of Halt Bureaus.

The objective of Halt has broadened from the prevention of vandalism to the prevention of common juvenile delinquency. In practice, this broadening of Halt’s area of operations means that property offences such as theft, and in particular shoplifting, are dealt with under the Halt scheme. In these cases too, the Halt principle of ‘sorting out what you’ve done wrong’ is applied; the stolen goods have to be returned or paid for, and a number of hours have to be worked in a shop, preferably in the shop where the theft took place.

In the last few years, all of the 548 municipalities in the Netherlands have moved to set up a Halt Bureau or have associated themselves with one and have proved willing as far as the financing of the bureaus is concerned. There are now 63 Halt Bureaus. Recently the financial structure has changed: the Ministry of Justice finances the Halt scheme, and the municipalities pay for the preventive activities.

The Halt scheme commands wide social support as an option for dealing with delinquency by young people. Whereas in 1988 around 2,000 young people were referred, by 1992 the number had risen to 11,000 (amounting to 13.32 Halt referrals per 1000 young people between the ages of 12 and 18). By 1998 referrals had increased to over 21,000 (or 19.75 Halt referrals per 1000 young people between the ages of 12 and 18).

The enormous growth in the number of Halt Bureaus and Halt schemes led to the call for regulation to keep the proliferation of the (locally organised) Halt Bureaus under control. It was thought that regulation would also ensure greater uniformity as regards the extent and application of the Halt scheme, with the aim of promoting equality before the law for young people. This resulted in the introduction of a statutory basis for the Halt
scheme, which came into force at the end of 1995. In connection with this statutory basis it was determined at a national level what offences could be dealt with by the Halt scheme, and other criteria and procedures were established for the scheme itself. The formal position of the Halt scheme was set at the level of a police decision not to prosecute, which would result in two alternative consequences: the warning (for really minor offences) and the Halt scheme.

RESULTS

Research has demonstrated the positive results of the Halt scheme. After being dealt with by the Halt scheme, the unlawful conduct of over 60% of the young people involved was reduced or ceased completely, whereas in a comparable group of young people and offences outside the Halt scheme, not one had given up unlawful conduct completely, and only 25% reported a reduction in such conduct (Kruissink 1989).

Recent research has again focused on recidivism among Halt clients; but because the Halt scheme is now available throughout the Netherlands it is no longer possible to conduct a research project of the kind mentioned, in which young people dealt with under the Halt scheme are compared with those outside Halt. Partly for this reason, this second research project on recidivism examined the extent of recidivism in relation to the quality of the Halt scheme (Dijkman and Gunther Moor 1998a). In this context quality referred to such matters as whether one or two discussions were held with the young person during the Halt scheme and whether or not Halt personnel themselves supervised the ‘work’. The hypothesis was that if the quality of the Halt scheme were raised, the rate of recidivism would be lowered. The research confirmed this hypothesis in part, although in fact the relationship between scheme and effect proved to be more complex than had been expected. Recidivism was determined on the basis of data from Halt files and police records; every contact with the police was notified, regardless of the type of offence, the way it was dealt with or how it was recorded. Recidivism among Halt clients was shown to vary between 6% and 13% six months after the contact with Halt; after 18 months the range was from 11% to 20%. All in all, these are modest levels of recidivism; however, as previously mentioned, no statement can be made on the effect of Halt compared with other procedures or sanctions because there is no comparative group of ‘non-Halt young people’.

In recent years there has also been research into other components of the Halt procedure and Halt activities. In this context it is relevant to
mention a research project on reparations as arranged and implemented by the Halt Bureaus under the Halt scheme. Halt’s basic position is that damage done must be made good or the injured party must be recompensed. A notable result from this research was that the injured parties co-operated with the assessment of reparations not so much for financial reasons, but primarily because they had confidence in the educational effect of the Halt scheme. They were also very satisfied with the agreed compensation (Schouten and Jaarsma 1995).

**EARLY REPRESSION**

The Halt scheme is intended to provide a response to ‘minor’ or incipient unlawful conduct by young people, such as common juvenile delinquency. The Halt concept dictates that, particularly with minor or incipient unlawful conduct, it is important that there should be an immediate sanction or corrective measure to show young people that they have overstepped a limit, the aim being to restrain or stop this unlawful conduct at the earliest possible stage.

‘Early response, quickly and consistently’ has also been declared to be the principle underlying Dutch national policy in the area of youth criminality in the broader sense (see e.g. the Montfrans Committee report 1994). This has also led to firmer action being taken by police and the judicial authorities. “There has got to be a stop to infinite patience”, representatives of the Public Prosecutor’s Office argued in a newspaper interview on the subject of new regulations. “In the past, there was one soft response after another. Young people test for limits, that’s quite normal. But if there is no limit set, they go further and further. And we were allowing that to happen.” (Het Parool, 27 April 1996) Now a police warning for minor delinquency is given only once; following just one warning, young people are referred directly to Halt.

This national policy, and the positive experiences with Halt, has led to the Halt scheme being deployed more and more often. Over the years the number of juveniles dealt with by Halt schemes has risen almost each year. To what extent is this a desirable development?

**Does Halt Have a Net-Widening Effect?**

Since the time when the first Halt Bureau was set up, critics have pointed to the net-widening effect of Halt, saying that more and more young people will end up in the judicial system although the offences concerned are
minor. It cannot be denied that since the introduction of the Halt scheme, delinquent behaviour by young people which would previously have been dealt with by a warning or by turning a blind eye has resulted in a referral to Halt. However, the question is to what extent this referral to Halt is to be deprecated. It is indisputably important on educational grounds to react quickly to unlawful conduct and to hold young people responsible for such conduct. In addition, under the Halt scheme young people do not end up in the judicial system. The Halt scheme is an extra-judicial or pre-judicial procedure, and while the public prosecutor does have ultimate responsibility for it (since it deals with a punishable offence) the young person is not entered in the records of the public prosecutor. Of course, if the Halt scheme is turned down or is unsuccessful, the police report is sent to the prosecutor for further action, and so this group does end up in the judicial system. However, research shows that only a small number of young people come into this group: 5–9% (Schouten and Jaarsma 1995; Dijkman and Gunther Moor 1998a; Halt Nederland 1998). Further, the referral to Halt has not only replaced a proportion of the police warnings; the Halt scheme is also applied in cases where previously a police report would have been prepared for further prosecution. In these cases, Halt is actually withdrawing cases from the judicial system.

Analyses carried out on national data by the Netherlands Central Bureau of Statistics indicate that the Halt scheme is increasingly replacing the traditional treatment by the Public Prosecutor’s Office and the judge (Wang 1994). Therefore in general it cannot be said that (increased) use of the Halt scheme has negative consequences for young people, in the sense that they end up in the judicial system (too soon). If anything, the opposite is true.

A Discussion on 'Lower Limits' for Halt Offences

Undoubtedly, any effects resulting from the stricter procedures imposed on young offenders should be kept under critical observation. For instance, how desirable is it that a young person who steals a Mars bar to the value of NLG 1 should be referred directly to Halt?

One aspect to be considered here is that young people are only offered the Halt scheme a limited number of times. A young person can be put on a Halt scheme only twice, and at least one year must have passed between the first and second occasion. The officer can depart from these criteria in individual cases, but nevertheless these are fairly strict criteria, especially considering that if young offenders persist in their unlawful conduct they tend to reoffend within one year (Dijkman and Gunther Moor 1998a,
Therefore the young person who steals a Mars bar and then does so again within a year is already eligible for prosecution under the rules. This strict criterion on reoffending, which has been in force since late 1995, together with the development of dealing more firmly with unlawful conduct, did stimulate the discussion on the desirability of 'lower limits'. The regulations do not set any lower limit for Halt offences. Every theft, no matter how small the value of the stolen object, can lead to a referral to Halt.

Discussions with the 63 Halt Bureaus on the subject of 'lower limits' showed widespread unanimity against lower limits. This was partly justified by previous experience with 'lower limits' which had been set here and there before the introduction of the new regulations, mainly to limit workload. Experience had shown that young people soon got to know the lower limits, and therefore took care to keep their thefts just under this limit to avoid a referral to Halt.

But reasoned arguments against an introduction of lower limits predominated. One Halt staff member argued as follows:

For instance, a boy steals a key ring worth NLG 2.50. In an interview at the Halt Bureau he says he has stolen maybe 50 times before in the last six months. Or a group of girls are picked up for shoplifting. It turns out that during the school breaks they have regularly gone into the supermarket and put two sandwiches that are separately packed and priced into one bag, so that they are only charged for one sandwich. It's so easy. Should such cases escape referral to Halt just because the sums involved are small? Corrective action is needed. And there is often more to it. A trifling little theft may actually be a sign of some major problem. And then you can deal with that.

**EARLY DETECTION**

This last comment focuses attention on a second task for the Halt Bureaus – to look into the possible causes of delinquency and to do something about them. After all, the Halt scheme is not just a repressive (educational) instrument but also offers the opportunity for the underlying problems of a child to be scrutinised, and if necessary for action to be taken with the involvement of both the child and the parents.

The Halt Bureaus have gradually reached a stage where more attention can be paid to this second task. Whereas in the first years the accent was placed very much on organising the Halt scheme and everything involved with it, now increased professionalism and quality promotion are high on the agenda. This includes the development and definition of a method of operation to map out what lies behind delinquency and to take action where indicated.
In the Halt Bureau in The Hague, a three-year experiment focused on this part of Halt's area of operation ended recently (Van der Bijl 1998). In this 'early detection project' the central issue was how the Halt Bureau could enable future reoffenders (young people at risk) to be 'detected' at their very first contact with Halt, and what follow-up actions could be conceived and implemented to reduce the likelihood of recidivism. After all, most criminals 'start small', and so they often come to Halt. It would be an enormous benefit if the young people at risk could be detected at the point when they come to Halt, while the problems are still minor. That early stage offers far greater possibilities for halting the development of a criminal career than when the young person in question is much older, has become accustomed to a criminal lifestyle and already has a long list of battle honours on his record.

The project had two focal areas: achieving early detection of young people at risk, and subsequently taking action (Halt's 'offer'). These areas are closely connected with each other, since the early detection does not make much sense if it is not clear what Halt can then offer. There is no point in subjecting a young person to a barrage of questions for the sake of an 'early detection' if it then turns out that Halt has no idea what to do about it. After all, talking about a particular problem already gives the impression that there is some reason for doing so, namely to resolve it. Therefore early detection and the development of an offer were needed simultaneously, although in the initial stage the accent was more on early detection.

How Are Risk Factors to Be Weighted?

A great deal is known from research about the factors that contribute to unlawful conduct. Accordingly, taking these factors into consideration, a questionnaire was previously developed for Halt clients. This questionnaire takes various aspects of life and draws up a balance sheet on them: how are things at school, at home, leisure activities, friends, and so on. Questions are also asked on the reasons for and circumstances surrounding the offence for which the young person has been referred to Halt. So even with the standard method a great deal is known about a Halt client. But the question is whether this information is adequate, and how it should be interpreted and weighted. For instance, it is clear that having a delinquent group of friends increases the chance of future delinquent behaviour, as does an educational environment in which no limits are set. But how should the risk of recidivism be assessed if one of these factors is present but everything else is going well for the young person, and he or she claims to
be absolutely determined never to commit another offence? It is also evident that Halt staff attaches great importance to all kinds of non-recorded matters in estimating the risk of recidivism, such as the impression made by the young person and a variety of verbal and non-verbal signals. For that reason, the supervisor appointed for this project was initially thinking along the lines of developing a fairly extensive question and scoring form to include these aspects which had not previously been recorded. Then at a later stage these were to have ‘weighting factors’ attached to them, to enable the methodology and the assessment of the risk of recidivism to be standardised. The theoretical basis was taken to be the ‘balance sheet model’, in which both negative (risk) and positive (protective) factors would be entered, resulting in a final balance sheet being drawn up.

The idea of extensive questionnaires and scoring forms was abandoned at an early stage, as it soon emerged that in the context of the Halt procedure it is neither possible nor desirable to expose the young people to a volley of fairly far-reaching questions. Halt’s approach is practical rather than help-oriented, and the accent is on agreeing and doing various things rather than on extensive interviews. Also the – relatively minor – offence which has resulted in the Halt contact does not justify an intensive questioning of the young person on such matters as relationships with parents, teachers etcetera. Finally, the desire to assess more or less objective factors in order to estimate the risk of recidivism proved to be illusory. For example, what is to be made of a young person who ends up with Halt for painting graffiti on walls if it turns out that everything at home, at school, in his leisure activities etcetera is ‘just perfect’ and the only striking feature is that he’s really into graffiti? The experience at Halt is that graffiti artists like this almost always reoffend, because they are ‘addicted’ to graffiti – and this kind of addiction is extremely difficult to change (see Van Hees 1995). The development of a weighting model covering all imaginable risk factors, which would automatically and objectively come up with the probability of recidivism on the basis of recorded data, did not prove to be a viable option. Accordingly, the conclusion was that, although a great deal is known about factors that increase the probability of future unlawful conduct, it is another matter entirely to apply this scientific information to Halt’s practice in a usable way.

**Improvement of Early Detection**

It was evident that there was still a great deal of room for improvement in
the Halt staff’s ‘early detection’ of young people at risk. A base measurement was taken at the start of the project, in which the Halt staff had to make an assessment of the risk of recidivism in a group of recent clients.

After some months there was a check on police records to see to what extent the relevant clients had come into contact with the police again. It proved that this was the case for 27% of that group (n = 163). However only seven of the 163 clients (4.3%) had been considered to be ‘at risk’, and of these seven, only three had reoffended. So the Halt staff had considerably underestimated the probability of recidivism, and had estimated it wrongly in some cases (Dijkman and Gunther Moor 1998b).

Partly as a result of the recording problems encountered, the supervisor gradually moved towards the practice of having a detailed discussion with individual Halt staff about possible risk factors affecting individual Halt clients. A short assessment list was also drawn up, wherein the possibility of recidivism had to be noted and justified. One consequence of this was to tighten up the Halt staff’s interviewing techniques and operating methods; it was necessary to give ever more specific reasons for thinking that a young person would or would not reoffend, and if insufficient information was available, what possibilities there were for finding out. Also, these questions were discussed more and more explicitly with the young people themselves and their parents. The Halt staff member put forward his or her impression of the young person on this point, and if it was considered that there was a risk of recidivism the young person was asked whether or not he or she shared that impression, and if it would be a good idea to do something about it. If the young person was in favour of taking action then further plans were made, with the accent on things to be changed, preferably in the short term. In this, the angle taken was only partly to deal with possible ‘causes’ of delinquency (to the extent that this is at all possible). It was more important to consider motivating actions for the young person which could provide a positive counterweight to any risk factors present, thus influencing the ‘balance’ favourably. At the same time, as support for the Halt staff and as an introduction to an assistance system that might become necessary, collaboration was initiated with an institution providing assistance to young people, which took on a consultative role for Halt.

As regards early detection, further use was made of data provided by the base measurement; in this, extra attention was paid to factors which proved to be linked to future delinquency. Here the most important factor was whether or not there had been previous contact with the police. Various
circumstances connected to the offence, the attitude shown to the police and to Halt, the absence of rule-setting discipline at home, various school factors and the attitude to gambling also emerged as demonstrable risk factors.

A final measurement of this experiment showed that the 'early detection' of young people at risk by Halt staff has improved considerably: over 16% of the youngsters were considered to be 'at risk'. These youngsters also proved to have more frequent contacts with the police than the 'non-risk' youngsters: 46% versus 15%. This proves that the Halt staff often identifies the risk group correctly. On the other hand, they missed the group of 15%, so early detection can be further improved. Further, the interventions taken by the Halt staff in the risk group would appear to have reduced recidivism. Recidivism decreased during the experimental period from 26% to 18%, although it is difficult to prove scientifically that this result is completely due to the experiment. It is, however, clear that the experiment improved the quality of the activities of the Halt staff. It is intended to define and introduce a national Halt methodology on the basis of the results from this early detection experiment.

**Young People under 12 Years of Age**

As a result of the general principle of reacting early, quickly and consistently to juvenile delinquency, attention has also been directed at criminal behaviour perpetrated by young people under the age of 12. This age category cannot be prosecuted in the Netherlands, and reduction of the age limit is not under consideration. Nevertheless, partly as a result of various newspaper reports, there has been increasing concern about criminal behaviour by these so-called 'under-twelves'. One thing and another has led to the Halt Bureaus shaping a policy of reaction to criminal behaviour by under-twelves with effect from May 1999, the so-called Stop response. Halt has some experience with this age group, as 11-year-olds in particular regularly form part of an older group of offenders, and the parents of the 11-year-olds often insist that for educative reasons their child should also go through the Halt scheme. Halt offered a modified Halt scheme for these particular cases. The details of the Stop response will be experimented with for a year. The intention is to scrutinise each child under 12 who commits an offence, in order to determine whether the offence concerned an isolated instance of criminal behaviour that would be corrected by the parents themselves, whether the parents would appreciate a reaction from Halt, or whether there is cause for concern
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and youth guidance should be enlisted. Halt’s Stop response consists mostly of a restricted educative programme and is intended as support for parents in raising their children. Halt’s Stop response does not have the status of a Halt scheme, since the big stick, judicial prosecution, is not available. Although it is still too early to determine the extent to which the Stop response will achieve its aims, it is quite clear that this new policy offers opportunities for stopping criminal behaviour at a very early stage.

CONCLUSION

Does ‘early response’, that is a response even to minor delinquency, involve the risk that the response comes too early and that the young people in question are thus stigmatised too soon by involvement with the police and the judicial system?

The experiences with Halt suggest that the answer is ‘no’. The Halt scheme, with its repressive and preventative elements, provides the opportunity to take action to correct delinquent behaviour while paying attention to its causes, with the aim of preventing the recurrence of that delinquent behaviour. And it is very successful in that last aim, which is one reason why there is growing international interest in Halt. The challenge for the Halt Bureaus is to further increase the quality of Halt’s activities in order to be able to reduce recidivism even further.

One problematic point is the fact that as a result of early response to delinquent behaviour the young people in question may quickly use up their (limited) chances under the Halt scheme, whereupon they do end up in the judicial system early, too early. This particular point is also relevant in the light of the ‘under-twelve’ policy. Even though this response does not count as a Halt-process, the contacts will be registered. Care must be taken that this registration does not have a negative effect. Also the present strict recidivism criteria need to be eased to ensure that the desired early intervention using the Halt scheme does not have undesired negative side effects.

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SELECTED ARTICLES AND REPORTS

This section contains a selection of abstracts of reports and articles on the central topic of this issue. The aim of publishing these short summaries is to generate and disseminate additional information. Most of the articles have been published in other journals in the English language, although we aim to incorporate French or German literature on the subject. General information on criminal policy and research in Europe can be supplied by the WODC Documentation Service (infodesk@wodc.minjust.nl). Single copies of the articles can (when used for individual study or education) be provided by the WODC Documentation Service.


In this thesis the central question “How did the Dutch juvenile court judge in delinquency proceedings evolve, and how can this evolution be evaluated?” is discussed. After discussing the way the juvenile court evolved in America, the Dutch situation is examined. Described are: the position of the juvenile court judge in the past, present and future; the powers he has enjoyed over the past 75 years, and the legal position of the juvenile delinquent.


As juvenile courts have undergone dramatic structural and procedural transformation in the past two decades, the primary rationale for court intervention has changed from treatment in the “best interests of the child” to desert-based punishment. This article uses data from a survey of Florida juvenile court judges to examine support for punitive sanctioning ideologies. Descriptive findings indicate strong support for both incapacitation and specific deterrence ideologies, and somewhat weaker commitment to retributive motivations for punishing juvenile offenders.


This article presents logical, theoretical and empirical arguments for a new rehabilitative agenda for juvenile justice, based on positive principles of youth development. It offers a critical examination of the dominant intervention paradigms within the juvenile justice system, compares the underlying theoretical and philosophical assumptions of a competency-based rehabilitative model with the deficit-based individual treatment approach, and highlights the practices and programmes that will most fully support the positive development of young people in the juvenile justice system.


How do juvenile offenders, their parents, judges, and juries perform their roles and interact in peer court? The author evaluates judges’ and jurors’ questions and offenders’ and parents’
responses, explains how offender performance in peer court may provide indicators of potential for reoffending, and discusses what probation programmes are needed to respond to the issues raised in peer courts.


The public concern about young violent offenders causes a growing concern for the judicial reaction to juvenile crime. The quality and effectiveness of these reactions has given rise to questions. In the Netherlands, a lot of information is available about the effectiveness of crime prevention and alternative sanctions for young offenders. However, very little is known about the execution of prison sentences and penal or civil measures for 'judicial residential care centres'. The prison sentences are served in remand centres, the penal or civil measures in treatment centres. In the remand as well as in the treatment centres, the approach is focused on the special task of reducing or curing, disorders that influence the development to adulthood in a negative way. Because of this special task, this dissertation exclusively examines the treatment centres.


This book provides a comprehensive and critical introduction to the 'youth and crime' debate. The author discusses in depth the social construction of childhood and youth, the marginalisation of young people, the creation of 'moral panics' about their perceived criminality, and the twists and turns of youth justice policy. Focusing upon Britain, she argues that the 1990s have not just seen a series of moral panics, but a 'total panic' about youth crime, its flames fanned by the media, which has drawn ever more punitive and exclusionary responses from Conservative and Labour governments alike. She also examines two issues which have received little close attention, but which are vital to a full understanding of the complex phenomenon of youth crime: the role played by gender and the extent to which young people become victims rather than offenders. Her parting message is that young people should be 'listened to' rather than 'silenced and scapegoated'.


Despite 30 years of expanding procedural rights for juveniles, young offenders have not been provided with a constitutional right to a speedy trial. Yet concerns about timeliness are often equally pressing in the juvenile court. This study examines the timing of juvenile justice by analysing delinquency case processing in nearly 400 jurisdictions in the US. One fourth of all cases required 90 days or more to reach disposition — the maximum recommended by national standards. Processing time varied according to jurisdiction size, the rate of formal adjudications, and other characteristics of juvenile court caseloads.

After the restoration of state independence Lithuania had to reform the existing Soviet legal system and draft new laws of the Republic of Lithuania, which would meet the requirements of a democratic state. The protection of children’s rights in Lithuania improved after the enactment of the Law on Protection of the Rights of the Child, which has been harmonised with the UN convention on the rights of the child. In this way general juvenile justice which in its broad sense embraces protection of children’s rights and prevention of juvenile delinquency has undergone certain changes for the better. However, quite a number of unsolved problems remain in the area of special juvenile justice. The purpose of this study is not merely to define the current situation, but to make a comprehensive evaluation as well as a forecast and characterisation of the juvenile justice system in Lithuania.


The dramatisation of the increase in juvenile delinquency registered by the police is not based on the available data. The increase is based on offences dependent on intensified control and minor offences. Even the increase in violent crimes, which are only a fraction of the registered crimes, seems to be based on the fact that more and more often minor crimes are reported to the police. Still valid is the criminological understanding, for which stand the key words such as ubiquity, petty offences, spontaneous remission and contact with criminal justice that are but episodes in life. There is no reason for tightening the juvenile criminal law or making an about-turn in juvenile criminal policy. What is necessary, however, is an increase in prevention.


Contrary to popular misconceptions about juvenile violence and the juvenile justice system, it is apparent that the system is quite capable of managing serious, violent and chronic juvenile delinquency. Its level of success, however, depends on the use of available management tools, graduated sanctions and effective programmes in a comprehensive framework. Risk and needs assessments can be used to achieve a match between offender problems and rehabilitation programmes, at the necessary level of sanctions to protect the public.


This article examines current concerns with youth crime in England and Wales and offers an innovative approach to the prevailing options being proposed. It encourages the use of family group conferences, an internationally developing model applied both to child welfare
and youth justice. This article outlines the origins and principles of the model and addresses the issues for implementation in the youth justice system in England and Wales. It concludes with a warning about hasty introductions without due consideration of the relevant issues.


This study examines changes in Dutch judicial child welfare between 1960 and 1995. Judicial child welfare handles cases of juvenile delinquency, child neglect, sexual abuse and battery of children. Over the years, the families concerned have had one thing in common: they are predominantly from a lower social class and face a wealth of serious problems.


Variables related to court decision making and recidivism over a two-year follow-up were studied in a group of 475 first-time referrals to a juvenile court. Recidivism was associated with extralegal factors more consistently than were court actions except on the age variable. Court actions were more strongly related to legally relevant factors and, like the variable referral offence, failed to predict recidivism. The court’s extensive and repeated reliance on diversion (versus formal petitioning of cases) did not generate high recidivism, implying a need to reconsider the recent ‘get tough’ orientation of juvenile justice policy.


The question for this essay is whether a new, widely supported mandate for the juvenile court and juvenile justice system can be generated, and if so, for what purposes? The method will be first to clear away some preliminary matters having to do with defining the body of law that is to be administered through the juvenile court, the institutions that lie within the domain of the juvenile justice system, and the important social problems the juvenile court and juvenile justice system are supposed to solve. Then, the authors examine the mandate for the juvenile justice system as it has developed both historically and cross-sectionally across the states and consider the contemporary and future problems that the juvenile justice system must face if it is to be valuable to society.


This article describes the system of youth justice adopted in New Zealand in 1989, which introduced a number of radical and innovative features including the involvement of young people, families, and victims in deciding how best to deal with the offending. The principle
mechanism for achieving this is the family group conference, which replaces or supplements the Youth Court as the principle decision-making forum in most of the more serious cases. Research data are presented that indicate that, to a large extent, this new process is working well and may be having an impact on reconviction figures.


This project deals with a specific topic: the juvenile justice system and its application with respect to children belonging to a minority group, namely, the Rromani children. This volume presents an analysis of the situation in three selected geographical areas: the metropolitan areas of Budapest in Hungary, Paris in France and Florence in Italy. It does not intend, therefore, to provide an overall picture of the situation in the countries covered by the study or in Europe. Although this analysis is limited to three restricted geographic areas, it nevertheless deals with a wide range of issues: human rights, the rights of minorities, the rights of the child, the administration of juvenile justice and an analysis of international standards of juvenile justice, their adoption in national legislation and an evaluation of their effectiveness.


This report by NACRO’s Young Offender Committee tackles the pressing problem of youth crime. In Chapter 2, the committee examines the evidence as to the scale of offending by young people and what is known about which young people offend and why. It goes on, in Chapter 3, to consider the objectives, which ought to be served by policies relating to young people and reducing offending. In Chapter 4, the committee considers practical ways of promoting responsible attitudes among young people in general outside the criminal justice system, thus reducing the likelihood that they will offend. Chapter 5 looks at the inadequacies of the present system of responding to offending by young people, whether by the criminal justice system or the civil child welfare system, and also considers the benefits of the existing Scottish system of children’s hearings. Chapter 5 brings into consideration the family group conference approach, developed in New Zealand and Australia. It shows how this is intended to restore damaged relationships between offenders and victims, and in doing so helps offenders to accept responsibility for their actions and to reintegrate themselves into society as acceptable members.


This study examined the frequently reported finding that the public believes that youth court sentences are too lenient and that young offenders should be processed in the adult justice system. These beliefs, along with the view that sentences for specific cases should be harsher, were all related to one another in an Ontario, Canada, survey.

The author studies the main changes that have occurred in the administration and management of juvenile delinquency since 1820. Attention is focused on the roles played by the different actors (magistrates, philanthropists, those engaged in public administration and psychiatrists) involved in the changes and on the forms of discourse which are used to legitimate their actions. These discourses and the accompanying representations of the child find concrete form in the legislation and in policy. Finally, examination of the global nature of these changes allows one to categorise and describe the growing importance of the idea of the child as the subject of rights, which is being imposed through the Convention on the Rights of the Child.

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One hundred years ago – in 1899 – the first youth court in Chicago, Illinois, was opened. With this special issue, the *European Journal on Criminal Policy and Research* is celebrating a century of juvenile justice, underlining the viability and analysing the current and future position of juvenile justice.