JUVENILE COURT STRUCTURES

PROBLEMS and DILEMMA

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Report organized for the Council of Europe's
Seminar for Juvenile Court Judges
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C O N T E N T S

JUVENILE COURTS STRUCTURES: PROBLEMS AND DILEMMAS

Josine Junger-Tas

I *Introduction*

When the juvenile court came into existence at the turn of this century in most of the Western countries, it was on the basis of several considerations that did not form a really consistent philosophy.
The most important starting point was the feeling that children could not be held accountable for their actions in the same way as adults. Together with a strong belief in education, this logically led to a specialized institution dedicated to the reformation and rehabilitation of children that had gone astray, either by committing criminal offenses or by other behavior considered undesirable by adult society. Other factors also intervened, such as the general feeling that the mixing of children with adults within penal institutions could only be harmful to their moral development.
Finally the juvenile court was expected to have a special mission of protection towards dependent, neglected, and abused children, introducing thereby the notion of children's special needs within a court system.
One might say that from the beginning the juvenile court has been confronted with conflicting demands rooted in the inconsistencies that led to its existence. Was the court to emphasize the interests of society at large, protecting it against harmful behavior of its children, or should the court respond in the first place to the needs of children, irrespective of the nature of their behavior?
The first option has been summarized as the "justice model". It is based on the proportionality between measure and behavior, on a certain conception of individual responsability implying sanctions to protect society, and on guarantees of legal rights and due process. The second option may be labelled as the "welfare model" and is based on the needs of the child independent of its behavior. It emphasizes treatment by professionals and implies great discretionary decision powers of administrative agencies (1).

It seems hardly exaggerated to state that the bridging of the gulf between these two models has presented to the juvenile court an

apparently unsolvable dilemma.
As the dilemma is the consequence of the very considerations that led to the institutions' existence it has of course always existed. However, the fundamental problems related to this dilemma seem to be felt more acutely now than they did during the first half of this century. One might distinguish at least four essential reasons for the problems that actually face the juvenile court.

One of the reasons appears to be the growing awareness of the fact that juvenile misbehavior in general & juvenile delinquency in particular is not an exceptional form of behavior, but is much more widespread than we have thought before. Studies of hidden delinquency show that most adolescents do commit one or more offenses, but indeed most of them are never caught.
Gold, conducting a study among a representative sample of 13-16 years old boys and girls in the city of Flint (U.S.), found that only 3% of the offenses and 15% of the offenders were detected by the police. The probability of being detected was related to the frequency of delinquent behavior. This meant that boys were more often caught than girls, older boys more often than younger ones, and lower class kids more often than middle class youngsters. However
detected juveniles had committed less offenses than two thirds of those who had never been apprehended. (2)
In a comparable study in a Belgian city among boys and girls aged 15-18 years two thirds of the respondents admitted having committed at least one offense during the three years preceeding the study; 12% had run away from home and 40% had played truant (3).
Other interesting studies in this field are Christie's et al. research among a very large sample of army recruits (4) and Buikhuisen's et al. one among students of Groningen University (5).
What these -and other- studies overwhelmingly show is that:

- delinquent behavior is widespread among adolescents
- girls do commit more offenses than is apparent in official statistics
- no relation has been established between frequency or seriousness of delinquent behavior and social class
- most delinquent behavior is abandoned after adolescence

The realization that the juvenile court handles only a minor selection of all misbehaving youngsters, as well as the fact that most of this misbehavior is just a passing phase in a person's life, has made many judges, prosecutors and police-officers more reluctant to intervene in the lives of juveniles.

A second reason adding to the discomfort of many court officials is the general disenchantment with effects of official intervention, and more specifically with the effects of institutional treatment.
A carefully designed study was conducted in the Netherlands on the treatment effects of a psychiatric centre for emotionally disturbed delinquents (6). Treatment consisted of orthopedagogic influencing, individual-, group- and family therapy. The major results of the study were:

- demonstrable effects of treatment could be shown in terms of improvement in work and study orientation and in developing social relations in the environment of the boys
- however, these treatment results failed to have any effect on delinquent behavior
- both boys from the Centre and a control-group of comparable delinquents showed a reconviction rate of 80-85% within a period of two years.

Studies in other countries confirm this result. Researchers from the Home Office Research Unit, comparing two regimes, found the same proportion of recidivism in both cases, i.e. 80%, after a two year follow-op period (7).
A study of Jesness, subdividing delinquents into different types hypothesized as having clear-cut implications for treatment, showed improvement in psychological and behavioral measures of experimental subjects. However, parole data indicated there were no significant differences in violation rates of experimental and control subjects: after 2 years on parole, 62% had been returned to an institution (8).
Similar results came from an English study on institutional care for young disturbed boys (9). A "family-type" institution, based -according to the author- on "kindness, sympathy, love, mutual respect and a reasonable degree of firmness" produced no difference in reconviction rates between boys coming from this institution and boys from other schools.
Cornish and Clarke -in the Home Office study- take a rather pessimistic

view on eventual changes produced in the individual by different treatment methods. They claim:

- there is little evidence that they occur
- if they occur they are difficult to measure directly by means of existing intermediate criteria
- if occurring, and measurable by intermediate criteria, they are not usually correlated with reconviction
- if occurring, whether measurable or not, and if associated with reconviction , their effects dissipate so rapidly.

As we will show later these research results have had far reaching effects on the policies of many juvenile courts.

But not only did the courts become desillusioned with the results of institutional treatment, even the courts itself have been under attack by new theoretical concepts as "stigmatization" and "secondary deviance" (10). This approach, known as "labelling theory" may be summarized by the following three points (11):

1. Selective definiton as delinquent behavior of acts that are injurious to powerful groups and are committed more frequently by less influential persons
2. Selective application of the law due to differences in risks of apprehension and official reaction. Apprehended youngsters are not any different from non-apprehended ones as far as behavior is concerned, but they differ in resourcefulness or sheer luck
3. Official labelling as a delinquent by the authorities may have harmful effects on the person and on his later behavior. If authorities and the direct environment label a boy as a delinquent he will tend to become as others see him and persevere in his delinquent behavior. This may generate a delinquent self-concept and a delinquent career.

Although to this date there is very little empirical foundation for the labelling approach, the theory enjoys great popularity, not in the least among court authorities. Again, as I will show later on, it looks as if on every level of the judicial process, officials appear to consider that "anything" is better than court intervention. The supposed negative effects of court intervention often make court authorities unsure about what course of action to take.

Finally I would add one more complicating factor to our confusing picture and that is the rise in juvenile delinquency since the end of

the fifties. In almost all western countries delinquency rates have increased. In Germany the proportion of children below age 14 in the total population registered by the police rose from 3,2% in 1959 to 6,8% in 1977, and the proportion of youth -aged 14 to 21- increased from 19% to 27% during that same period (12).
In the Netherlands crime rates of the 12-17 years old and the 18-20 years old started to rise since 1955, the year that has been characterized as the starting point of our prosperity. Since 1955 the percentage of convicted juveniles on the total youth population has doubled: ± 0,3% in 1955 to ± 0,6% in 1970 for age category 12-17 years and 0,7% to 1.6% for age group 18-20 years. As far as type of delinquency is concerned, it should be stressed that the bulk of the increase is accounted for by property offenses and vandalism. However, there is also an increase in aggressive acts against the person, though of a minor nature (13).
In France and in England aggressive behavior has been shown to be an increasingly important factor in juvenile delinquency. Most of the acts are committed in public places (streets and café's) and consist essentially of destruction of property and theft of motor vehicles (14).

What may we conclude?
I think it is only fair to admit that the juvenile court has come under increasing pressures by conflicting demands. On the one hand there are those who claim that the court is not the right institution to intervene in the lives of children: other instances should take its place. On the other hand there are those who expect the court -if not to solve- then at least to make a substantive contribution to the solving of society's problems with its unruly children.
How have the different juvenile court systems reacted to this dilemma? If one can say that the dilemma is a general one touching most of our countries in very similar ways, the solutions sought do indeed differ.
In this report I will review four broad devices that have been introduced by the different juvenile court structures. These devices include either changes in policies and practice of court intervention, or more structural changes by the introduction of new legislation.
The four types of solutions are:

1. a reduction of the input in the juvenile justice system
2. changes in the nature of judicial intervention

3. a rejection of certain categories of juveniles out of the juvenile court system
4. a separation between "justice" and "welfare" into different institutions.

Reviewing these points we will see how countries differ in the way they try to solve their juvenile problems. In the last section of the report some alternatives and suggestions on new approaches will be presented.

II *Reducing the systems input*

As the juvenile court system operates at different levels, constituting a system of sieves , one of the devices used to reduce the input in the system is to give the police more leeway to dismiss cases or to handle them unofficially.

This practice has been most formalized in England and Wales, which is perhaps related to the fact that the English police functions both as investigator and prosecutor (exept for the more serious offenses).

Although police cautionning has existed in England ever since the creation of organized police forces, the practice has now been formalized as an official alternative to prosecutions.

Preparing the legal changes in 1969, the White Paper "Children in Trouble" of 1968 suggested that, where possible, children should not have to undergo formal procedures unless these were in the interests of the child or society. The Children and Young Persons Act 1969 made cautionning an official alternative to court proceedings by stating: "A qualified informant shall not lay an information in respect of an offense if the alleged offender is a young person unless ... it would not be adequate for the case to be dealt with by a parent, teacher or other person or by means of a caution from a constable" [(section 5(2)](15).

Cautioning is possible only when:

- the offender admits his guilt
- the case is proven
- the complainant does not insist on prosecution.

The caution almost always takes the form of an oral warning.

The introduction of the 1969 law caused a large increase in the proportion of juvenile cautioning on the total number of cautions*): in 1960 the percentage of juvenile cautioning was 49%, in 1974 it had increased unto 74% of all cautions.

Cautioning is strongly related with age. The following table from the Home Office study shows that, today, two thirds of children under age 14 known to the police, are cautioned. For the 14-16 age group this percentage drops to a little more than one third. But once the offender is 17 years or over cautioning becomes negligeable (16).

Table 1. Cautioning percentages of known offenders by age group (indictable and non-indictable offenses)

Age	1960	1970	1974
10 - 13	33.0	51.7	66.2
14 - 16	21.2	25.5	36.1
17 - 20	9.4	5.6	5.0

It is clear that cautioning diverts large numbers of juveniles from court proceedings. In 1968, ± 30.000 juveniles aged 10-13 were found guilty at court; this number dropped to ± 24.000 in 1973. This is the case despite the "inflationary" effect of cautioning, as the practice has encouraged people to more often report offenders to the police. But on the whole since 1968 there has been a smaller proportion of minor offenders going to court and there is evidence to suggest this is true both for the age group 10-13 and the older one 14-16.

As far as type of offen e is concerned 50% of all cautions refer to shoplifting and minor thefts. In general the larger the proportions of these two offenses, the higher the cautioning rate (17).

Extremely relevant to our discussion is the finding of the study that court disposal patterns show a very strong relationship with the proportions

*) with the exception of motoring offenses

of offenders cautioned: the larger the proportion of offenders cautioned, the smaller the proportion of offenders discharged. On the other hand when the police are reluctant to caution (there exist large variations in cautioning rates between police forces) the court assumes this function and discharges larger proportions of offenders.
One might conclude that the English 1969 law has sanctioned unofficial discretionary police powers and made them official policy. This is perhaps not very surprising in a system where the police has always enjoyed a larger autonomy than in many other European countries.

Therefore let us turn to France, where traditionally police powers have been more limited.
In France, as in most of the other Western countries the police have the legal obligation to send all reports, recording offenses, to the prosecutor (procureur de la République), who then decides to dismiss or to prosecute the case.
However, it is a well known fact that the police proceed to a great number of unofficial dismissals. Thus in the Paris area and in full collaboration with the prosecutor, the police may handle (18):

- all small cases where the juvenile is a first offender, where the victim has been repaid and where there is no official complaint
- all thefts (inclusive shoplifting) of little money value
- "on the spot" warnings of juveniles in public places.

The practice gives the police the discretionary power to appréciate the seriousness and circumstances of an offense, as well as the usual behavior of the minor and his family.
Interestingly enough, with respect to the English, figures several police units in the Paris area indicated that two thirds of this type of cases were dismissed. But, also like in England, there is wide variation in dismissal policy between police forces.
What specific criteria do the police handle in their decision to dismiss a case?

The offense
- Traffic infractions and administrative rule breaking (licences, permits): 76.6% of these cases are dismissed
- Thefts of bycicles, shoplifting, other small thefts: 30% of these cases are dismissed

The juvenile
- The juveniles age: 55% of dismissals refer to minors under 16 whereas the general dismissal percentage is 40
- The fact whether he is a first offender
- Information on the juvenile and his family
- Circumstances of the offense (did he commit it alone)
- No official complaint; victim has received compensation

The court
- The childrens judge would loose his authority if he had to treat all minor matters
- The absorption capacity of the court is limited
- This unofficial intervention is supposed to be as effective as official court intervention.

However, the French study indicates some dysfunction of this combined police/prosecutor dismissal policy. An important proportion of minors enter the court system only after age 15 when they have committed numerous delinquencies. The question is whether rehabilitative action at that moment can still be effective. Social workers and educators do wonder whether this practice, taking into account essentially the nature of the offense and the age of the offender, does not conflict with one of the sacred principles of child protection by which it is not the juveniles (mis)behavior that determines intervention but the personality and his needs.

Let us add that the same practice of unofficial handling by the police is prevalent in countries like Belgium and the Netherlands.

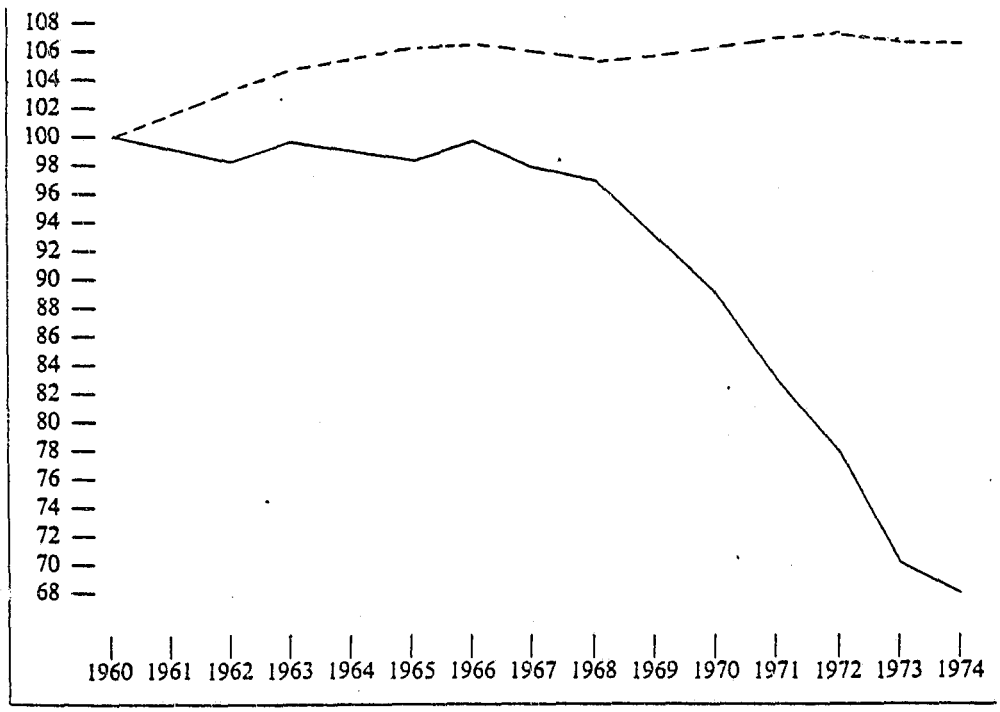
In my Belgian sample I found that of those cases detected and recorded by the police only two thirds were sent to the prosecutor (procureur du Roi) and one third was just registered in the police files (19). In the Netherlands police policy varies, but a large police force of one of the major cities uses as a rule of thumb: two unofficial handlings by the police; only the third time an official report is sent to the prosecutor.

As we have seen the cautioning practice in England and Wales did reduce the number of children entering the court system. The same is true in other European countries though we will have then to add police dismissals to prosecutor dismissals to get a clearer picture. Thus in France in 1974, the prosecutor added another 30% of dismissals to the number

of police dismissals (± one third of all cases)

Let us end this section by presenting some statistics of Sweden and the Netherlands illustrating the widespread policy of reduced court intervention.
In the sixties a total of about 45.000 minors were handled by the Dutch Child Care and Protection system, which is next to 1% of our juvenile population under age 18. Since the sixties the juvenile population has remained relatively stable but the population under care and protection has dropped dramatically: the number of children within the Child Protection system has decreased from ± 42.000 in 1960 to ± 24.000 in 1976 (20).

Figure 1. Index of population of minors and children under Care and Protection, 1960 - 1974



--------- total population of minors 1960 = 100 = ± 4.558.467
———— minors under child care and protection
1960 = 100 = 42.181

As figure 1 shows considerably less children enter the official child protection system now, than some twenty years ago, despite the fact that deviant and delinquent behavior have increased.

Concerning the Swedish situations Janson writes: "If anything, the ideology and practice of individual prevention in juvenile delinquency cases has been further strengthened since the end of the sixties by the adoption of a labelling perspective, from which one tends to conclude that generally the wisest decision is not to expose young people at all to law enforcement, if this can be avoided".
This is clearly shown by table 2 (21)

Table 2. The court's disposition of felony cases of delinquents under 18, 1967

Disposition	Number of cases	%
Not prosecuted, transmitted to the Child Welfare Board*)	5.117	77
Prosecuted, sentence: placement by Child Welfare Board	773	11
Prosecuted, sentence: supervision or probation	788	12
Prosecuted, sentence: unconditioned emprisonment	4	--
	6.682	100

III *Changing court intervention*

But the juvenile court does not concern itself exclusively with offenders. For practical purposes one might distinguish three categories that fall under the jurisdiction of the court:

1) Juveniles who commit offenses
2) Juveniles who show behavior that is considered as seriously improper or predelinquent (habitual truancy, running away, out of control)
3) Maltreated or neglected children

In fact only the first category is composed by delinquents and in most of the countries they form only a minor part of all court interventions.

*) This is done according to the Young Offenders Bill of 1964, referring to the 15-18 years group

Not all countries make a clear distinction between the three categories. In England and Sweden state agencies can intervene on the basis of behavior that -if committed by an adult- would not be punishable. But France, Belgium, West-Germany and the Netherlands do not know special juvenile offenses such as truancy or running away. They know only two categories: offenders, and children "in danger" (22).
In France and Belgium court intervention is justified if "a minor's health, security or morality are endangered, or if his chances of receiving a proper upbringing are seriously jeopardized" (Art. 375 f.f. C.V.).
In Holland this may be the case "if a child is threatened by moral or physical ruin" (Art. 254 B.W.).
The country distinguishes two measures that can be imposed. The first one is a "supervision"-order which aims at limiting parents' rights by appointing a family guardian who counsels and sustains the parents. The second one terminates parental authority by voluntary 'release' or by 'forfeiture'. France also applies these two types of order. Similar to the Dutch supervision is the "assistance in upbringing". In both cases the child stays at his mome, but placement in an institution is possible. In the case of voluntary "delegation" of parental authority or "forfeiture" the child is generally placed in an institution.

In West-Germany the guardianship court may order an great number of orders against parents if the mental or physical welfare of the child is threatened by parents neglect, abusive behavior or immoral behavior (Art. 1666, 1 C.C.). In the absence of fault of parents an order of "assistance in upbringing" (Erziehungsbeistand) may appoint a special assistant to the family. Then there is the measure of "remedial upbringing" which results in most cases in placement away from the family. England and Sweden do distinguish between juveniles who misbehave themselves and those who are ill-treated by their parents and need help.
Both countries tend to treat offending and misbehaving children alike where definition of misbehavior remains vague.

How are these measures implemented and what changes in procedures can we establish?
In the first place the already mentioned tendency to intervene less:
in West-Germany the total number of child protection measures ahs decreased by 26.7% between 1967 and 1971. Furthermore there is a clear shift from

"remedial upbringing" towards alternative protective measures (23).
From 1967 to 1972 assistance in upbringing increased relatively to all measures from 15.5% to 18%, voluntary help in upbringing rose from 45% to 52% and remedial upbringing decreased from 39.5% to 30%.
Although both voluntary help and remedial upbringing imply a considerable number of placements away from the family, the number of institutionalized children has decreased during the last decade. In Sweden the law insists on preventive actions rather than placing away from home. In the latter case preference is given to private homes.
Even so, maltreated and neglected children are more often placed in private homes than delinquents or misbehaving juveniles (24). But in recent years the tendency to non-intervention has become more pronounced. In 1968 about one third of all actions taken by the Swedish Child Welfare Boards implied placement away from the family.
But Janson's cohort study in the Stockholm area showed that in the period of 1966-1969 the Stockholm Child Welfare Board did place delinquent children in only 15% of the cases; supervision was imposed in 22% of the cases and to 64.5% of juvenile offenders coming to the attention of the board no treatment was given.

In France the "danger" concept together with the possibility of the assistance in upbringing measure, were established by the 'ordonnance' of 1958. Immediately the number of these cases rose sharply, whereas the number of forfeitures went down. In 1969 the number of juveniles enjoying a civil measure of protection was nearly 70.000, the number of delinquent juveniles being about 64.000. Assistance in upbringing has come to occupy most of the work and time of juvenile judges, who -as one French author suggests- "seem to turn away slowly from delinquency to devote themselves preferentially to prevention and pre-delinquency" (25).
In England after the implementation of the 1969 Children and Young Persons Act according to statistics of the Department of Health and Social Security, some local authorities did place fewer children in approved schools in 1971, and others placed more. But the number of children in care living with parents or relatives has increased from 6% to 17% in 1973 (26).
In the Netherlands similar shifts have been observed. First of all it should be noticed that the total number of children found guilty of an offense and sentenced has remained constant since 1965 and is about 6.000 minors. In fact this means a reduction considering the rising crime rates

in the 12-17 age bracket. As we have seen before this can be explained mainly by the limitation of the input in the juvenile justice system. As far as civil cases are concerned, that is the children who are object of a Child Care and Protection measure, table 3 shows a clear change in policy (27).

Table 3. Placement of minors under a Child Care and Protection measure in %

	1967 N = 41.454	1970 N = 37.905	1973 N = 30.155	1976 N = 24.241
Institutions	36.6	35.1	30.9	28.8
Foster Families	25.4	27.4	29.2	30
Own home	34.1	33.9	35.7	36
Elsewhere*)	3.9	3.6	4.2	5.2
	100	100	100	100

Placement in institutions (including private institutions and children's homes) is becoming less frequent. Judicial authorities seem to prefer to place a child in a foster family or to let him stay in his own family. The trend is a clear one and it still goes on. At the same time length of stay in the institution has been reduced: from 1972 to 1976 average length of stay in institutions for normal children has been reduced from 16.5 to 14.4 months, and in treatment institutions from 20 months to 16.1, both significant reductions.

But this change in policy does not apply to all categories of juveniles that go through the juvenile justice system.

It is interesting to note -especially in view of Janson's findings in Stockholm- that as far as adjudicated delinquents are concerned, 18% were placed in a juvenile prison or correctional institution in 1965 and 17.2% in 1975, so this percentage does practically not vary**). The proportions of those placed away from home remained 28.5%.

The great reduction of institutional placements refer to children under guardianship. Here also the absolute number of this category of children

*) This category includes very small homes and experimental set-ups of more or less independent living arrangements.

**) The majority of adjudicated delinquents is sentenced to fines: in 1972 this was 66.3%.

declined from ± 19.000 in 1967 to ± 12.000 in 1976. But more significant still is the fact that the proportion of institutional placements has decreased during that period from 42% to 28%.

Concluding this section it may be said - first - that in most of the West-European countries considerably less children enter the juvenile justice system now than some ten to twenty years ago, and - second - that there is a change in treatment policy emphasizing less intrusive interventions in the lives of children. This shows most of all in a reduction of institutional placements and in a search for alternative measures.

IV Rejecting specific categories of offenders from the juvenile justice system.

If, as has been shown, the general tendency of the juvenile court has been a slow evolution towards restricted intervention and less intrusive measures, there is another trend towards greater punitiveness with respect to specific types of offenders.

The conflict between the conception of the court as an agency of child care and protection and the conception of juvenile court as a court of justice, is solved here by eliminating older hard-core offenders from the juvenile justice system into the adult court system.

In England there has been an increase in 15 year-olds being sent to borstal and detention centres: in 1969 1383 juveniles were sent to detention centres, but in 1973 the number was 2315, a rise of 67%. Sentences to Borstals increased by 50% over the same period. Also it seems that remands to penal institutions are increasing and used as punitive measures. The number of 14-16 year-olds on remand increased from 2947 in 1971 to 4645 in 1974, a rise of 57% (28).

A study in London -reported by Morris- found, that of 176 juveniles remanded to prison, 43% received non-custodial sentences. Although the exact reasons of emprisonment are not known, these results seem to suggest a certain preference for the short sharp shock of real punishment.

In a review of the 1969 Children and Young Persons Act, Priestly, Fears and Fuller state that the major decisions in court are made primarily on the basis of the age of the children and the nature of the act committed. The older the children, the more often they were prosecuted and the fewer treatment sentences they received (29).

In France there are similar trends.
Comparing 1959 with 1969 Vérin notes that in 1969 5 times as many juveniles received prison sentences on a total of twice as many minors. This means that the number of prison sentences has doubled in ten years. Parallel with this evolution the number of placements in correctional institutions for juveniles has been reduced by half. A growing proportion of juvenile offenders is sent to the "juge d'instruction" instead of the juvenile judge. Vérin comments bitterly that the juvenile judge is taken too much by the protection of 'endangered' juveniles, to give serious attention to the real delinquents: "The most seriously maladapted youngsters are rejected everywhere" (30).
Comparable results have been found in the Vaucresson study of the prosecutors decisions (18).
The transmission of cases to the 'juge d'instruction' rather than to the juvenile judge is related to:

- circumstances of the offense: in 64% of the cases there were minors and adults present; in 16.4% of the cases there were several minors present
- age of minors: 29.2% of them were 16 years old, 47.4% were 17 (76.6% were over 16)
- criminal history: 44.2% of minors were known by the court
- complexity of the case (difficulty of establishing the facts; presence of several offenders).

What is clear is that the orientation of the cases depends on the circumstances of the offense and not on the minors personality (31).
Discussions with prosecutors revealed that the only criteria referring to the juvenile are age and criminal past. The prosecutors considered that minors aged 16-18 had to be punished, because it was too late to start or continue educative action. They also stated that recidivating juveniles presented a real danger to society and so it would be useless to start or continue an educative measure.
Girault ends his study by pointing to the consequences of this practice: if the juvenile judge is in charge he conducts the investigation, requires a personality report and then orders some educative measure; on the contrary the 'juge d'instruction' has only two concerns: to prove the facts and to take provisional repressive measures. Even if afterwards the minor is judged by the juvenile court the latter functions as a correctional court (32). Still worse is the situation with respect to juveniles having committed

a crime[x]. Crimes committed by juveniles aged 16-18 years must be handled by the juvenile "Cour d'Assises". But in practice many crimes -that is mainly property crimes, not serious aggressive crimes- are by subtle redefinition "correctionalized", and can thus be handled by the juvenile judge instead of the juvenile "Cour d'Assises". The main criteria for correctionalizing a crime are again the nature of the act and the age of the offender.

In their study on "Les adolescents criminels et la justice" Henry and Laurent review the enormous differences in proceedings between the juvenile court and the juvenile "Cour d'Assises" in handling crimes (33).

One difference is that the period between the moment of the crime and the moment of sentencing is twice as long in the case of "Cour d"Assises" - proceedings as when the juvenile court handles the case. This means that at the moment of sentencing 93.5% of these minors are aged 17 and 58.4% are aged 18: accordingly judges are reluctant to order educative measures for these young adults. Another important difference is that in the case of minors handled by the juvenile court, personality reports are more frequent than in the case of juveniles judged by the "Cour d'Assises". Nearly all of the latter are remanded in custody (94%) against 62% of the juvenile court cases, and when remanded the length of stay is nearly three times as long. With respect to the sentence not only did nearly 60% of juvenile court cases receive an educative measure, against only about 7% of the "assises" cases, but the latter were also convicted to much longer prison terms. The authors state that in general the nature of the sanction depends heavily on age: with respect to simple offenses the repressive tendency of the juvenile court increases with the age of the offender. In 1967 the proportion of minors condemmed to a prison sentence was. (34):

- 1.26% for those aged 14 - 15
- 2.81% " " " 15 - 16
- 5.66% " " " 16 - 17
- 9.10% " " " 17 - 18

This tendency is stronger still where juvenile criminal behavior is concerned.

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[x] A crime is an offense punished by death, life emprisonment or long-term emprisonment.

Of those sentenced in 1967 and 1968 the following proportions were convicted to prison (35):

- under age 14½ : 0 %
- 14½ - 15 : 37.5%
- 15 - 16 : 55 %
- 16 - 17 : 85 %
- 17 - 18 : 100 %

Finally the Netherlands present a slightly different picture in that sentences to prison have not increased from 1965 to 1972. They formed 7% in 1965 and 5% in 1972 of the total number of penal and educative measures imposed on juvenile offenders aged 12-17. But the number of remands increased considerably: only 1% of the total offender population was remanded in custody in 1965, but this proportion rose to about 8% in 1972, and 13.4% in 1977. There is evidence to suggest that both age and nature of the offense invervene in the decision to remand juveniles in custody. For instance repeated property offenses, serious aggressive delinquency and repeated police contacts are related to this variable (36).

The reasons for the eliminations of hard core offenders from the juvenile court system are at least two. On the one hand juvenile court officials are so much concentrated on their role as "protectors" and so much influenced by the "welfare model", that they prefer either intervention by civil measures (as less stigmatizing) or no intervention at all.
But unfortunately some youngsters do not spontaneously abandon their delinquent behavior; some go on repeating property crimes or attacking others. When they have reached the age of 16, the juvenile judge seems to feel there is nothing more he can do in the field of education or treatment. Having practically abolished repression from the juvenile justice system, the juvenile judge turns to the adult system when he wants to punish.

V *Separating justice and welfare*

Although -as mentioned before- the main problems that confront the juvenile justice system in Western society are very similar, there are some striking differences in organization of that system.

and some of the newer orientations represent conscious efforts to find new solutions to old and persisting problems. We will review here the Scandinavian system, the English 1969 Children and Young Persons Act, and the Scottish Hearing system.
They all have in common the search for alternatives to judicial court intervention and a deep concern for treatment based on the needs of the child in a welfare setting.
How succesful are they in realizing their objectives?

Turning first to the Scandinavian system it is perhaps useful to recall that the first country to create a modern system of childwelfare is not Illinois, as is often thought, but Norway. The Norwegian Neglected Children Treatment Act was established in 1896, three years before Illinois Juvenile Court Act. The basis of the system, both in Norway and in Sweden is the Child Welfare Board, a body not composed by court officials, but by laymen, making it into an administrative decision agency.
In Norway the Board is composed by laymen, professionals and representatives of state authorities. Each municipality had it's own board and members included the doctor, the vicar, the local judge and one or two women (37). The present board is composed by five laymen, men and women, among which a member of the local social board. The Norwegian Child Welfare Board is a kind of mixture of a court and a welfare agency. The Board investigates facts and makes decisions. In serious cases a judge takes the chair. Children and parents have the right to be heard and to be assisted by an attorney, although this seldom happens. But the work of the Board is very informal, there is a minimum of written rules and the public is not admitted to the proceedings (38).
The Swedish Welfare Boards are more of an administrative agency than the Norwegian ones. Presence of a law-trained professional is not required. At their foundation each board was composed of 5 members: a member of the municipality's Poor Law Board, a clergyman, a schoolteacher and a physician; at least one member had to be a woman. As the communities grew larger, the boards became huge administrative organizations.
The boards deal essentially with children under age 15, for whom the criminal law does not apply. In the case of delinquent behavior police proceedings must be reduced and the police report must be sent to the Board. The Board makes its own investigation: a caseworker talks to the child and its parents; he may contact the school or order a psychological examination.

The child and the parents may get economic support; the child may be transferred to another school, receive counselling or medical treatment. As far as delinquent behavior is concerned the Board might decide: not to take any action to give an admonition or to order supervision. When these fail, the child may be placed under social care (placement in a foster home or institution) or he may be referred to a reformatory school. As Janson notes (39) the efforts of the Board to protect children from harmful living conditions and make them abandon delinquent behavior are intertwined. Delinquent acts as well as truancy, running away and incorrigeability are seen as indications that help is necessary.
Juveniles aged 15-18 must pass through court, where the prosecutor decides what action to take. However, the prosecutor closely collaborates with the Child Welfare Board and as the general philosophy stresses social and psychological problems in the juveniles life, and the need for individual assistance, there is no room for repressive sentences imposed for the sake of public morality.
Emphasis in Sweden is on the needs of clients, on individual help and on welfare. Though the boards deal with all children under 15, a great number of those aged 15-18 are diverted to the boards by the prosecutor. As the proceedings are not open to the public, little is known about the ways in which the board comes to its decisions and on what criteria the decisions are based.
Moreover Nyquist makes the following comments (40):

- the welfare boards are well adapted to handle younger children whose (delinquent) behavior problems are defined and treated as welfare problems, but they seem less well prepared to handle older and more serious offenders
- the boards have extensive discretionary powers: they may arrive at a decision even without the child being heard. The question arises whether legal rules, due process and a court decision are not a better guarantee of the individuals rights.

The English 1969 Childrens and Young Persons Act has gone only half way on the road to separating welfare and justice. The juvenile court has been retained but criminal responsability was raised to 14 years: under that age children are eligible for care and protection proceedings only. Unfortunately this part of the law has not been implemented.
The children depend on the local authorities Children's Department who decides what disposition to take. Although the police or the National Society for Prevention of Cruelty to Children can bring a child before court, they must first consult the Childrens Department of the local

authorities. The court must then assure itself that needed care and control will not be received unless a court order is made. In any case the local authority provides care, supervision and treatment, and takes the decision with respect to kind of treatment, including the approved school.
Juveniles aged 14-17 can be prosecuted in juvenile court. However, in these cases too social enquiries must be made by social workers of the local authority before disposition. The Children's and Young Persons Act represents a serious effort to keep younger children, presenting a variety of problems out of juvenile court, and to look for alternative measures. On the other hand if situations grow out of control, then authorities can channel cases to the court.
At this moment two main problems do present itself with regard to the application of the law:

- many local authorities do not have sufficient staff and social workers available; neither do they have sufficient homes and institutions to fulfill their function as expected. Clearly there is seems to be a lack of resources
- partly as a result of this situation and partly because juvenile judges seem to feel that local authorities have a too permissive policy, there has been an increase in 15-years old juveniles sent to borstal and detention centres. Implicit is a kind of conflict -or at least opposing attitudes- between juvenile judges and social workers. Social workers are perceived as keeping children out of court and institutions no matter what they do. Judges are perceived as unable to understand the real needs of children (41).

Without doubt the most interesting reform has taken place in Scotland. The reform is materialized in the Social Work (Scotland) Act 1968.
In Scotland a complete separation has been operated between the judicial function and the disposition taken. The juvenile courts have been abolished and replaced by welfare committees composed by lay people. These childrens' hearings are concerned only with the measures to take.The procurator fiscal[x)] has been replaced by a special functionary, the reporter. The reporter decides whether a child is in need of "compulsory measures of care". Cases are referred by the police, social worker or educations department to the reporter. The system applies to juveniles under age 16.
The Childrens' hearing does not have the power to fine, to send a child to borstal or to a detention centre. But the hearing can discharge the

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x) that is the prosecutor in other court systems

referral or impose a supervision order, which may include residence in a List D school (a former approved school).
In 1973 more children were reported by the police to the reporter than formerly to the procurator fiscal. The reporter referred half of them to the children's hearing whereas the procurator fiscal in the old system referred about 95%. This is related to their different tasks. The fiscal was a real prosecutor interested in establishing the facts and prosecuting in the public's interest. The reporter refers only when he feels that a child is in need of compulsory measures of care. If voluntary care can be provided for, there will be no referral. An important result of the new law is thus that fewer children enter in the juvenile control system than before.
As can be expected even this system is not without its critics.
Some critics doubt whether it is realistic to reject the crime punishment concept and to separate the proof of guilt from decisions about treatment of offenders. They argue that the discretionary power given to the lay panels is considerable in that they can send children away from home for an indifinite period.
Campbell sees essentially three problems (42):

- the difficulty of separating punishment from treatment "in the best interest of the child"
- the lack of standard legal safeguards in this administrative procedure
- the disappearance of the principle that no "penalty" imposed should be out of proportion to the seriousness of the offense.

Another critic point to the fact that where there is no consistent body of knowlegde on "treatment" or "needs", the lay approach to delinquency control will in fact reflect traditional ideas on retribution, deterrence and equality. This will in turn affect the decisions reached by the panel, so that disposals will have a more or less punitive character according to seriousness of the offense (43).

Although in 1973 there are 40% more children in List D schools than in the former approved schools in 1970, only 12% of the hearings disposals concern placements in an institution. Compulsary supervision orders have increased from $\pm$ 3500 to $\pm$ 7000 in 1973. So the intervention level is high. However, 34% of the children referred in 1973 had their referrals discharged, and in 1972 jurisdiction was terminated for 32% of cases indicating that these children were no longer in need of compulsory treatment (44).

To conclude, I would argue that all things considered, the systems here described form interesting experiences that we should follow closely and evaluate on their strong and weak points.
They illustrate vividly the desire to solve the dilemma between "help" and "punishment".
However, many people are still debating on the viability of this type of solutions. In the last section of the report I will review some alternative experiences and approaches to the problem.

VI Can we solve the dilemma?

One of the main problems in the discussion on "welfare" or "justice", "punishment" or "treatment" are the many 'unknowns' in the equation. Talking about treatment, based on the needs of the young delinquent supposes that we have available a body of knowlegde of what constitutes delinquency and the juveniles needs; it also supposes that we will be able to make a diagnosis of the needs present in an exact manner, and finally it supposes that we know how to treat adequately the diagnosed condition. All this, of course, is hardly the case.

In a report on 100 evaluation studies on correctional treatment, Baily notes 'that there were few attempts to either make explicit the behavioral theory underpinning the treatment approach or the procedural connections between the theory and treatment goals' (45). This does not mean there is no causation theory at all, but it is mostly implicit in the treatment. Baily distinguishes two major theoretical orientations, often in conjuction with two minor theories. The major orientation in most institutions is the idea that delinquent behavior is only a symptom of some underlying psychopathology. Delinquency is a kind of disease that can be altered only by attacking the underlying pathological condition. The second important orientation assures that behavior is primarily a function of the juveniles group relations. Sickness is seen as unrelated to delinquency. Treatment tries to manipulate and modify the nature of the child's group relations, social roles, identification. It is expected that law abiding attitudes and values will replace delinquent attitudes and values.
Connected to these two major orientations are two other assumptions. The first claims that delinquents lack a number of skills, such as vocational,

occupational and social skills, and this is said to impair their functioning in society. Treatment should teach the skills as well as the attitudes and values that go with them. The second assumption is that delinquent behavior occurs because the boys had nothing better to do, and so treatment would consist of supplying them with constructive leisure time activities and recreational programs.

Most institutions just mix different approaches without clearly spelling them out. Baily found that two thirds of the 100 treatment programs used, among others, the 'disease' theory. But when problems grow, for example because of lack of manpower, or the extreme difficulty of the population, or lack of differentiation, the treatment boils down to "keeping quiet and order" and avoiding trouble, thus getting strong overtones of punishment. But the main conclusion based on studies of treatment outcomes must be 'that there are only a very small number of institutions that give real treatment, in the sense of specific intervention techniques based on a solid theoretical framework on causation and treatment goals".

Maybe non-institutional treatment, and more specifically intervention by social workers has more to offer in this respect. Unfortunately traditional styles of professional social work do not seem to produce very encouraging results. Up until now social workers have not been too eager to evaluate their methods and treatment outcomes. They tend to feel that their work, consisting mostly of individual casework, is difficult if not impossible to evaluate as far as behavioral results are concerned. Another problem is that basic social work theory as well as specific social work goals are very general, vague and non-specific.

The few evaluation studies that have been undertaken on the efficacy of social work intervention in reducing delinquency are not very optimistic. The famous Cambridge Summerville study where a case work method was used, showed little difference in delinquency rates between experimentals and controls(46). Lemert reports a study on social work techniques to improve the behavior of problem girls (47). The girls were selected on the basis of criteria indicating a strong probability that they would become court problems. It was believed that early treatment of problems would prevent delinquency. The outcomes were negative. Moreover the selection of the girls and the case work interviews caused much anxiety and resistance among them. But, quoting Lemert "Even more significant than the poverty of results from the project was its revelation of the lack of insightfulness.

of social workers into the sociological implication of their activities and their apparent willingness to impose treatment in a way that invaded privacy and was implicitly degrading to the client" (48).
Lemert adds that giving more power to social workers to decide on treatment could easily generate more problems instead of reduce them. Social workers sometimes have views on problem situations or problem families that are more restrictive than the views of judges. Also their preference for long-term treatment may make the problems worse instead of solving them.
The question now becomes crucial: if we do not want to punish, but do not know how to treat, then what can we do?
It looks as if the conflict between the punitive correctional approach and the welfare-treatment approach cannot really be solved.

But human beings and human groups do not easily surrender to such gloomy fatalism and they keep on striving for new avenues in the field of juvenile protection. Most of the new solutions have been developed on the basis of the non-intervention model presented by Lemert in 'Instead of Court'. He suggested that children should be referred to court only when everything else had failed. The courts should be the last resort "to enforce the ethical minimum of youth conduct necessary to maintain social life in a pluralistic society". The court can be effective as a control agency because it has means available denied to other agencies, namely force, coercion and authoritative orders (49). But most of juvenile misbehavior should be 'normalized' and most of youth's problems should be solved by other agencies than the court.
As I have tried to show, this conception has been adopted widely in our society, not only among welfare agencies but also among court officials

To end this report I will present some of the newer developments in the field, in which these views has been operationalized.

One of the newer developments is <u>diversion</u>.
Diversion means that cases which otherwise would have entered the court system are now diverted to other agencies. It does <u>not</u> mean that cases which should otherwise have been released, are now sent to other agencies. Klein e.a. studying police diversion programs found to their dismay that many police departments use referral to diversion programs as an

alternative to simple release (50). Of course this is not what diversion is all about and it raises the question whether the decision to refer cases to diversion programs should rest with the police. It seems to me that this type of decisions should be taken by the prosecutor in cases that would otherwise go to court.

Describing some programs of diversion from court at pretrial intake, Nejelski indicates the commom elements of most diversion projects (51):

1) The use of paraprofessionals drawn from the same social or ethnic community as the juveniles being served by the program.
2) The use of crisis-intervention techniques as immediate short-range aid instead of the long cumbersome procedures of the judicial system.
3) A reliance on administrators or arbitrators rather than judges, aiming at conflict resolution rather than determination of guilt.
4) The attempt to avoid the stigma of the juvenile court process by not keeping records or by restricting their availability.
5) A policy of limiting the populations served to status offenders and minor delinquents.
6) A lack of evaluation by persons outside the programm.

One such program is the New Jersey Conference Committees consisting of committees of representative citizens to hear minor complaints against children and work out solutions on the basis of voluntary agreement between complainant and child and parents. About 10% of the cases statewide are diverted by the juvenile judge to the committees. Dispositions often require youths to make repairs and/or to apologize to complainant. In 1966 a report from the Supreme Court concluded that closer control was needed on the committees, because some of them had become courts in practice, dealing with serious offenders and making dispositions of probation and fines. Moreover the committees are much more effective in diverting middle-class white youths from court intervention than juveniles from the urban ghettos.

The Sacramento County 601 Diversion project is directed to status-offenders (habitual truancy, out of control, running away) through the administration of immediate, intensive short-term family therapy. Preliminary results indicated that project cases were much less frequently referred to court than control cases (2.2% vs 21.3%). Recidivism rates were lower (35% vs 45.5%). Overnight detention was considerably reduced (10% vs 60%).

Certainly one of the main advantages of diversion programs is the rapidity of their intervention: they are quicker to reach a decision and briefer in duration of contact. However, the main weak point is the lack of evaluation. There are of course methodological problems that render the measurement of results difficult. But the reliability and justification of diversion programs will ultimately depend on adequate testing and verifying of its assumptions.

Another interesting development is the creation in many countries of so-called "alternative" social agencies. In the Netherlands these agencies came into existence at the end of the sixties: information centres for young people, as well as agencies that provided social and legal assistance and presented practical solutions to pressing problems. Born out of definite dissatisfaction with official social work agencies, these new centres attracted a young clientele that could not find help anywhere else: children who had run away from home or from an institution, youngsters with alcohol or drug problems, girls wanting an abortion, young men who objected to military service, young people who did want to live on their own and did not know how to organize this. Many essential differences in the way they work distinguish them from official social work organizations (52):

a) initiative for help seeking is always originated by the client himself and not by any authorities (parents, school, police)

b) asking for help does not imply one has to give his name: anonymity is guaranteed and some agencies do not even keep as to prevent any official control of their helping activities. As a result many youngsters who have a deep mistrust of official social agencies turn to them when they are in a mess.

c) related to this is the fact that the problem is examined as it is defined by the client and not by some abstract social standard. It is the client's problem as he sees it.

d) this in turn implies that steps towards a solution of the problem are only taken with the client's full consent and after consultation. The client is considered as an autonomous and responsible person. There is no room for paternalistic attitudes and the problem solving process takes place in an atmosphere of complete equality.

e) Another characteristic is a value-free and non-moralizing attitude. The social workers do no want to maintain society's value-system, but recognize the juveniles searching for new values. The point of departure is: "this is the society in which you are living, with its rules and norms; these are the risks you take if you do not want to obey some of the rules and live your own life; so what shall we

It is an undeniable fact that this cool, realistic and non-moralizing approach meets with a massive response among adolescents.

The following is an example of alternative intervention in the case of run-away children, a frequently returning problem. The example is based on the experience of a crisis-intervention unit in Amsterdam (53). The population of such a unit ranges in age from 14 to 24 years; about 65% of them have had some high school education; 45% had run away from their family, 30% from a home or child care institution. Clients were referred to the unit by juvenile information centres, the police or the guardianship societies.

A major characteristic of the run-away juveniles was that they were living in most cases in a very autocratic educational setting. Norms and rules are established by the parents (or home) without consultation with the juvenile. To enforce these norms and rules, parents use every means in their power, even violence. They allow few initiatives of independance in their children. Parental control extends to include the entire behavior within as well as outside the home, and limits interactions and experience with peers. Though the children seem openly compliant they are often rebellious and impulsive, and are not able to make decisions and then bear the consequences of their actions. The same situation prevails in the generally large institutions from which the run-away juveniles come.

This situation causes several problems for the crisis intervention unit. Their intervention is often seen by the parents as an infringement of parental authority, and thus rejected. The parents frequently resolve the problem by calling the police or by breaking up the relationship with son or daughter. On the other hand the capacity of the run-away youngster to make choices in an independant manner and take responsible decisions is seriously impaired. The unit has to take this into consideration. The objective of the agency is to help the juvenile (in a limited time of about 10 days) to find a provisional and experimental solution to the most pressing problems. In practice this may mean to restore the communication between juvenile and parents or home, and to promote the juveniles participation in decisions about his future. If the situation cannot be redressed this way, a new situation has to be created: this may imply a new place to live, a new school or job, and new communication or leisure possibilities. If necessary, contacts are established with long-term social assistance agencies, to ensure guidance for a longer period.

The following guidelines are viewed as essential for this kind of intervention:

1) The unit must look for a practical solution to pressing problems. The solutions should be the basis for a new evolution, but being experimental by nature allowance should be made for failure.
2) The environment should be agreable and tolerant, but also activating and stimulating.
3) The juvenile should be self-determining, but given his shortcomings in this respect, the unit should help him to find out what it is he really wants to do.
4) The juveniles stay should enable him to try out other forms of communication with adults and peers.
5) Considering most juveniles educational background, the unit should be able to give guidance to parents and educators.
6) The unit should be able to supply for long-term guidance for the juvenile (and his parents).

It may be in order now to make some comments on the helping professions. It is perfectly clear that if we want to change our juvenile justice system in the ways that have been discussed, we are very much dependent on the helping services: where the court restricts its intervention, social work intervention inevitably will grow. The problem is then what one can do to optimalize the effectiveness of the helping professions, and more specifically social work methods. In general the helping professions handle the same model as most of the "treatment" institutions, that is the view of deviant behavior as essentially pathological in nature and the individual tratment approach.
In general they tend to what Rosenheim calls "problemization" of behavior instead of "normalization" (54). Rosenheim states that most of the juveniles with whom the welfare agencies have to cope with are not serious offenders or seriously disturbed children. They are just "juvenile nuisances" that have problems to be solved. Considering the relatively mild forms of misconduct and the typical growing-up problems of the juveniles that are diverted from the court system, what should be offered to them?
It is questionable whether traditional forms of counseling, treatment or casework are very effective in helping these youngsters. They need "things, ranging from job preparation and placement, to recreational opportunities, from learning household and child care routines to getting started in rewarding hobbies (55).
Rosenheim pleads for normalizing juvenile misconduct that, although annoying and troubling, is rarely persistent or deeply alarming. This of course entails a quite different approach to helping policy, based on rapid and flexible services.

Enumerating some criteria of this type of helping agency she notes the importance of:

- immediate response, as for instance apparent in crisis-intervention units. This would mean a form of first help possibly followed by more expert assistance;
- authentic response, including a substantively helpful referral, whatever the type of request;
- respect for the help-seeker's problem formulation: problems are a normal aspect of life and the help-seeker is capable of defining his problem himself;
- proximity of the helping-agency; people must be able to locate the agency in their neighbourhood;
- telephone assistance by a number of experts (lawyers, training and employment experts, psychologists);
- transportation to specializing agencies (hospitals, clinics ...)

The emphasis is on the solution of "normal" problems related to growing-up and on practical assistance in the solving of these problems, instead of individual counseling or therapy.

Although the efforts and experiments in discovering new ways to solving these eternal problems are promising and encouraging, they need to be assessed. Therefore in ending this report we want to stress the need of "basic research into the specifics and parameters of problematical youth behavior, as well as the evaluating of programs and projects undertaken experimentally to discover alternative or less costly means to ends. Not least of all is the need to monitor courts, correction and child welfare agencies with a view to installing methods of quality control comparable to those found in industry and bussiness corporations" (56).
If we hope ever to achieve more justice as well as more well-being for children, then the evaluating of what we are doing to them, how we are dealing with them and what effects we produce, is an absolute necessity.

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