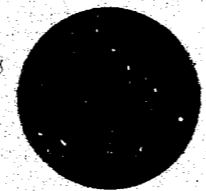


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*Juvenile Delinquency
and the Law*

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JUVENILE DELINQUENCY AND THE LAW

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ACQUISITIONS

Dr. J. Junger-Tas

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ACQUISITIONS

I. INTRODUCTION

"In 1874 a Malay boy ran wild and did a lot of mischief, but this was regarded as a proper exhibition of spirit. About the same time in history, a British 9-year old boy was sentenced to death for pushing a stick through a broken window and pulling out some printer's colours, the value of which was two pence!"

Thus reads a passage in the Malaysian report, illustrating vividly the differences in conceptions and consequently in procedures that did exist among nations and continents, and that continue to exist.

Juvenile delinquency is a very general term covering all kinds of behavior. It means something different in different societies at different points in time. And the methods of social control urging youth to conform to the norms of society have also varied from society to society, according to prevailing social, cultural and economic conditions. Thus some countries are confronted with growing youth crime rates, which are related to rapid industrialization and urbanization, whereas in other countries, with a more stable social setting, juvenile delinquency seems hardly a problem.

In some countries efforts are made to revise a long-standing, tried-out child protection system, and to experiment with entirely new forms of intervention, whereas in other countries there is a process going on of constructing an extended judicial and social protection network.

We have to keep these differences in mind and it may therefore be better to compare continents or groups of countries, showing a certain cultural relationship, with each other, than to look at individual countries.

However it should be stressed that not all countries that received the questionnaire have responded.

We received replies from 57 countries distributed as follows:

Europe: 24 (including New-Zealand, Israel, Hungary, Cyprus, Tsechoslovakia)
United States of America: 1
South-America: 11
Asia: 8
Arab countries: 6
Africa: 7.

The continent that is best represented is without doubt Europe, although most of the respondents are Western European countries. From Eastern Europe only the Sowjet-Union, Rumania, Hungary and Tsechoslovakia and Poland replied to the questionnaire.

All the other continents are heavily underrepresented and so no firm conclusions can be based on the answers that came in. Furthermore it is regretful that we did not get responses from particular states of the United States of America, but only a general reaction for the whole of the U.S. (National Council of Juvenile and Family judges) Another point that should be noted is that in some cases different instances answered the questionnaire.

In many cases this was a functionary of the Ministry of Justice. But in some countries the answers came from the National Association of Juvenile Court Magistrates, in others from experts in the field, while in a few countries several instances answered the questions and sent us all the copies. Finally it should be stressed that responses differ considerably in scope and quality. Some respondents went deeply into each question or sent us a number of related documents; others gave such short or unclear answers that in a few cases the replies could not be used any further. In addition, reviewing the replies, it becomes clear that the phrasing of some of the questions was lacking clarity and precision, so that differences in interpretation occurred which resulted in considerable variation in the replies given.

This was especially the case for question A(i), B(ii), and D.

All in all this inquiry into the functioning and the philosophy of the many juvenile justice systems in the world should not be viewed as a research project respecting scientific requirements of method and design, but more as a loosely organized poll presenting a set of open ended questions to participating countries. When considered in this way, the results offer many interesting viewpoints and promising perspectives with respect to the future of the different systems.

II. SOME PROCEDURAL QUESTIONS

In this section I will review the answers to three questions concerning certain procedures with respect to children. The first ones (Ai and Aii) examine the ages at which minors may be brought before a criminal court, or may be imprisoned. The third (Bii) treats the possibilities a juvenile has in court to speak up to the judge and make proposals on his own behalf.

1. A(i) From what age may a minor be brought before a criminal court? Is this fixed entirely chronologically or is there room for the exercise of discretion?

First of all it must be mentioned that this question led to different interpretations: some countries meant that the question referred to the age of penal responsibility, whereas others interpreted the question as an inquiry to the age at which a minor may be brought before an adult criminal court. But on the whole we have discovered a fairly gradual transition from penal responsibility of minors to complete adult criminal responsibility.

A first age limit is determined by the question whether an act committed by a child may be considered a crime.

In all responding countries children under 7 years cannot commit a crime. The age limit varies from 7 years to 12 years (with the exception of Poland Greece and Algeria: 13 years*) with an emphasis on 10-12 years in Europe and an emphasis on 7-10 years in the Arab and Asian responding countries.

Then we have a category of children for whom - when they have committed an offense - there is a presumption that they did not know they were doing wrong. This is stated by the German report in the following way: "a juvenile can be held responsible for a crime he has committed only when, at the moment of the criminal act, his degree of maturity with respect to his moral and mental development allows him to appreciate the wrongfulness of his act and to act accordingly" (Sect. 3. J.G.G.). To this we should add the remark in the English report that the presumption of not knowing that one is doing wrong grows weaker as the child grows older.

*) and Hungary 14 years

It is interesting to note that almost all responding countries mentioned this presumption as a basis for their jurisdiction for juveniles. Only three countries specified the absence of this basic principle: France, Brazil and the Netherlands.

The age groups of children composing the second category spread from 10 to 12 years till 13 to 16 years. In some cases the upper age limit is 18 years or, even higher, 20 years, as in Japan.

These are the groups of children for whom special jurisdiction are created. The special jurisdiction can take many different forms: there may be a juvenile court or a juvenile judge integrated in the court; a family-court, or just the same court for adults and children but with special consideration for the fact that the offender is but a child. The first form of organization is found more often in the Western countries, the last form more often in the third world.

But of course there are other ways of dealing with delinquent children than in court, and some countries prefer non-judicial agencies.

Examples of this kind of procedure are the Scandinavian Child Welfare boards. These boards are composed by lay people from the community. Offending children are turned by the police to the Boards in stead of to the Court. Another example is the Scottish system of Childrens hearings by panels also composed by members of the community. During these Hearings the child as well as the parents have all opportunities to express themselves in an informal atmosphere. A third example worth mentioning are the committees of members of the working-community or school-community that operate to discipline delinquent behavior and supervise the juvenile, cited by the Rumanian and Russian report.

A third category of children consists of adolescents who sometimes are considered as irresponsible children, and at other times may be considered as adults. Two criteria determine whether a minor will be transferred to the adult penal system: the seriousness of the offense, and the fact that the minor committed the offense knowingly, and thus should be considered responsible for his actions. In the latter case the presumption of irresponsibility has been refuted.

The age limits of this category are very variable: in many of the countries transfer to an adult court is only possible for a rather limited age group of 16 to 18 years old youths. But others mention 13 to 18 years, or start even younger. In a few cases special courts for young persons or adolescents have been created, such as in New Zealand. However in all countries where juveniles can be transferred to the adult court, or where there is only one court for adults and juveniles, the age of the offender is taken into account. This may result in special measures for the juvenile, or in reduced sentences.

Finally penal majority may start at different ages, although variation is not so great in this respect: most countries fix penal majority at an age ranging from 15 to 18 years. An exception is Japan with 20 years, and India which has fixed penal majority at 16 years for boys and 18 years for girls.

Summarizing this section, one may conclude that irrespective of variations in age -which are in fact sometimes considerable- three groups of children are distinguished by almost all responding countries.

- the very young who cannot commit an offense by definition (under 7 to 12 years)
- those for whom special jurisdictions are created (+ 10 to 16 years) under the presumption of irresponsibility.
- those who are still minors but may be brought before an adult court (+ 15 to 18 years).

As far as discretion is concerned not all respondents did develop this topic. One might however maintain that juvenile jurisdictions, by their nature have great discretionary powers. The vagueness of the criteria on which they operate, the presumption of irresponsibility which may be refuted, all this gives their work a fluid and unclearly defined character wherein the personality and attitudes of the youth magistrates may play a large role.

2. A(ii) Under what circumstances may a minor be imprisoned?

Five of the 57 responding countries have simply mentioned that under no condition minors can be held in pre-trial detention or put into prison: these are Spain, Rumania, Greece, Costa-Rica and Guyana.

On the other hand a considerable number of countries allow pre-trial detention as well as imprisonment -sometimes from the age of penal responsibility on, sometimes at an older age determined by law. The criteria on which the decision of the judge in these cases are based are in general:

- the refutation of the presumption of irresponsibility
- the seriousness of the crime
- the dangerousness of the offender to the community
- the fact that the offender has recidivated.

Among these countries are 10 from Europe, 3 Arab countries and almost all responding countries from Africa and Asia. However a great many countries -most of which are European- have developed special facilities for the transition group of adolescents between childhood and adulthood, that we described in the first section. This development may be related to the fact that the age of penal majority has been raised up to + 18 years which leaves a welfare oriented juvenile court system with a difficult rest group for whom it is felt that special provisions must be found. Faced with this problem many of these countries set up special detention centres and special institutions for young offenders, and in some cases youth prisons. It may be the case that the development of such specific correctional institutions for juveniles is also related to the availability of ample financial resources, for they are mentioned less often by countries from the third world, especially Africa and Asia. They were mentioned however by Saudi-Arabia, Kuwait, the Philippines, India, and by four Latin American countries.

[IRAQ,

Besides having special institutions, most countries indicated that a minor -whether imprisoned or institutionalized- benefits from special measures, such as reduced sentences or a more extensive use of probation.

Russia reports that minors can be put on probation after having served one third of their prison term, whereas in the case of adults this can be done only after having served one half of their term. Finally it should be stressed that five countries, all of which Western, have developed a special jurisdiction for young adults.

These countries are Sweden, Denmark, Scotland, Switzerland and New-Zealand. The jurisdiction generally covers the age-group of + 17 to 21 years. Young adults from these age-categories can be sent to special institutions and they enjoy special measures such as shorter prison terms and more probation.

Summarizing this section we have seen that in almost all countries it is possible to send minors to prison, the decision of which is left to the discretion of the judge. But juveniles are subject to greater leniency in terms of length of prison sentence and the use of probation. Parallel to this a certain number of (the richer) countries developed a separate institutional network for prisoners including detention centres and closed correctional institutions.

3. B(iii) Will the delinquent have the opportunity to make proposals on his own behalf and will the Court take them into account?

In a great number of countries minors are permitted to make requests on their own behalf in any case. This is true for 11 European countries. Finland and Belgium report that there is no requirement by law to admit this procedure, but in fact the judge allows the minor to speak up for himself. New Zealand and Spain specify that a minor may plead for himself only when there is no legal representative present. In all these countries the Court takes the minors proposals into account and considers the conditions surrounding the act and the welfare of the juvenile. But a considerable number of countries all over the world indicate that a minor is assisted in court by his legal representatives, a lawyer or counsel and a social worker, probation officer or juvenile court assistant. Generally a social background report in which the juvenile has been able to give his opinion on the case and make proposals, is presented to the judge. This means that proposals about the minors future and on his behalf will be made in general by the lawyer or by the social worker. This does not say that the minor is not allowed to plead for himself: indeed he may do so but very often this will take the form of apologizing, promising not to offend again, and asking for another chance. It may be said that practically in all European and Asian countries minors have the right to plead for themselves and/or to make proposals to the judge. But this is by no means the case for all responding countries. Three Latin-american countries, two African and three Arab countries have responded that this opportunity did not exist in their juvenile justice system.

But we may conclude that roughly in three fourths of all responding countries procedures had a certain informality and permitted the minor to present his own contribution to the proceedings.

III. RECENT PROPOSALS OR CHANGES IN THE LAW

B(i) Have there been any changes or are there any proposed in the law relating to juvenile delinquents?

To review this section I will distinguish two kinds of changes and/or proposals for change. The first type of change is concerned with the way the law operates with respect to juveniles: what age-categories are covered by the law, how the juvenile protection system is organized and what procedural changes have been taken place.

The second type of change is more fundamental. It is concerned with new measures, the setting up of a juvenile protection system, or a rethinking of that system.

Let us first examine the more procedural changes realized since the seventies.

1. A certain number of countries mentioned changes in the age-groups of juveniles reached by the juvenile court. Sometimes this was done in order to enlarge the competency of juvenile penal law so as to include age groups that were treated in adults court before. This is the case for Kuwait, Chili, Paraguay, Malaysia and the Philippines. Often the change is accompanied by raising the age of the presumption of irresponsibility. The objective here is clearly to extend the child care and protection system to larger groups of children and to humanize juvenile penal law. This is also shown by a bill introduced in Marocco specifying that minors associating in crime with adults will be judged by the juvenile court, in stead of adult court; or by a Malaysian law revision stating that juvenile drug dependents will be dealt with more leniently in the future. Another exemple is the Philippines where the suspended sentence, provision for bail, and more probation were introduced for minors. In Europe also some countries raised or proposed to raise the age of penal responsibility and penal majority. This was the case for Switzerland, Israël, Western Germany and Norway. In Norway however it is felt that this reform should be preceded by the building of closed institutions for minors which are actually inexistent.

Other changes to improve the proceedings in juvenile court were proposed. Belgium wants to make obligatory the rapid intervention of a lawyer in children's cases; Germany proposes to enlarge and strengthen the position of juvenile court assistants; Spain wants to change the special courts for minors into juvenile courts being integrated in the normal court system.

Sweden abolished imprisonment for juveniles, and Finland proposes to do so.

Italy wishes to improve the organization of the juvenile court and to create a wider range of penal sanctions for minors, such as parole and probation.

Finally several countries mention coming major revisions of juvenile penal law, including the extension of provisions for young adults (+ 16-21 years).

2. Next to these improvements in the functioning of the juvenile court, or in the youth-population reached by that institution, there are some major innovations in the penal measures applied to juveniles which are introduced by a number of European countries.

Although it has been mentioned before, it seems relevant to cite once more the Scottish Childrens Hearing system introduced in 1971. Its main objective is to correct children without the stigma of a criminal conviction, and the whole system is based on welfare principles instead of judicial rules. In Hungary an important review of criminal law in 1978-79 has created a separate system of penal law for juveniles. Also in Rumania there has been an important revision of juvenile penal law in 1977. Here too judgement takes place by a body of lay people: workers of the company where the minor is employed, or from his school, although the president is a professional juvenile judge. These boards or committees decide on measures of discipline and do also supervise the juvenile.

But the most interesting innovation seems to me the experiments that are introduced in 8 Western countries, with what has been called the Community Service Order.

I think most of those countries -and this is certainly true for the Netherlands- have been inspired by the Community Service as it has been developed by the English. Originally a measure designed for adults to replace a prison sentence, it has many appealing features. The idea of rendering services ^{as volunteers} to the community instead of serving time in an institution is of course very attractive both to judicial authorities and to offenders. The measure may even become more popular as well as more productive for juveniles than for adults.

At this moment experiments and pilot-projects, trying out the new measure are taking place in Norway, Denmark, Switzerland, the Netherlands, Israël, the Sowjet-Union, New Zealand and Germany.

In England and Wales the step from adults to minors has been taken by the Governments White Paper "Young Offenders" of October 1980, proposing to give magistrates a new power to impose community service orders on offenders aged 16.

I would like to stress the fact that similar changes seem to have taken place in the Sowjet-Union as in the Western European countries.

In the Sowjet-Union the new measure of community service has been made possible by a revision of the law in 1977. The objective was to rehabilitate a juvenile without isolating him from the community. The court may oblige a juvenile to enter work or a special educational programme, to repair the damage done, or to fulfil other activities eventually under supervision of a labour-committee. If the measure is successful, the court releases the juvenile from punishment (which otherwise would have been custody).

It is a little early to evaluate the use of the community service order for juveniles. Let us say only that it enlarges the juvenile judge's sanctioning possibilities in a meaningful way.

Another innovative measure, which -as far as I know- was also developed in England and Wales, is Intermediate treatment. This is a measure standing somewhat between a supervision order and a residential care order, presenting a structured programme of educational and leisure activities in a controlled setting. Its major value lies in the flexibility of the programming, permitting different gradations of education and training, combined with different levels of control. The juvenile does not leave his environment and one of the objectives is to reintegrate him as soon as possible in his community.

The Netherlands will experiment with this type of measure in the near future, whereas the Sowjet law of 1977 seems to offer similar possibilities to delinquent youths.

Reviewing the reports on the issue of change it appears to me that the countries outside Europe are most of all trying to build a juvenile justice system, or to enlarge and to improve it with the objective to achieve more humane justice for juveniles.

In Europe and the U.S. on the other hand there seems to be a certain disillusion with what has and can be achieved within the existing system; consequently ways are sought to modify and innovate that system. One of the significant trends that appears in the English White Paper and which may show more clearly in other countries in the years to come,

is a reintroduction of new forms of control in the existing system, such as different forms of youth custody, more powers to the magistrates, and the tendency to change the new measures into sanctions ordered by the judge and placed in a more controlled setting.

Another tendency -most apparent in the U.S.- is to move away from the "welfare" system towards a "due-process" model.

The U.S.-report notes that for the child who comes into contact with the Juvenile System several basic rights adapted from the Criminal Justice system are now afforded. This includes the right of notice of the charges, right to counsel, right to the 5th and 14th Amendment protection, and the right to cross-examine witnesses.

III. ATTITUDES TO JUVENILE DELINQUENCY

B(ii) What are the attitudes to juvenile delinquency and have there been recent changes in those attitudes of

- the public
- the police
- other authorities
- the courts.

1. Apparently this has been a difficult question to answer. Some countries refused to answer, stating that no studies of public opinion were available. A great number of countries mentioned that public opinion seems indifferent to the problem: this is specially the case in those third world countries where juvenile delinquency is not perceived as really problematic, such as Marocco, Peru, Brazil.

Others indicated that juvenile delinquency is developing and starts to cause some trouble: in that case public opinion does get a little more concerned. We found these remarks in the reports from Nigeria, and Algeria, where they might reflect the massive economic development taking place in these countries. In some of the countries outside Europe, such as Peru, Brazil and Algeria, there is an acute awareness of the very difficult problems that are faced by juveniles. For instance the Peruvian report states that many adolescents commit small thefts stay alive; the same statements are made in the report from Brazil which insists on the fact that most of the delinquents live in the "favelas" under miserable conditions.

Algeria adds that many of the problems of juvenile delinquents are related to lack of sufficient schooling and vocational training opportunities. Some countries suggest that the public -being better informed about the problems- supports the efforts of the authorities to control and reeducate delinquents. Others indicate the indifference and even the general hostility of the public.

But a considerable number of countries state that public attitudes vary according to actuality, sensational information by the mass-media and pressures by special groups from the public or the police.

England and Wales, Scotland and Sweden indicate the growth of a "law and order" opinion, notwithstanding the fact that in the last 5 years

there has been no rise in juvenile delinquency but a stabilization or even decrease.

The Spanish report rightly states that one cannot speak of one public opinion. There are always different public opinions: those who consider the seriousness or nuisance value of delinquency and want to lock all offenders up, and those who want to take social conditions into account and have more liberal attitudes.

This corresponds with the remarks of countries like Malaysia, the Philippines, Scotland and the Sowjet-union where some sections of the public take a very active part in designing measures, or assisting and supervising juveniles, and thus develop more positive and more liberal attitudes with respect to juvenile delinquency, while other sections of the public are ignorant of the problem or remain indifferent to it. The only report mentioning research results of this question is the German one. It was found in Germany that the general public has rather punitive attitudes. But there are some important differences related to social class and education. Middle-class persons were less sanction-minded and more assistance or welfare minded than lower class persons. Punitive attitudes increase with age. Persons with little school education have more punitive and authoritarian attitudes than persons with higher school education.

Finally the English report states that the public debate on the "welfare" or "justice" approach of delinquency underlying the Governments White Paper is based on the belief that a "hard core" minority of juvenile delinquency cannot be dealt with under existing legislation.

This might have some foundation in fact, as research suggests a distinction between a majority of trivial offenders and a small number of recidivists with repeated and escalating offending.

In the U.S. there is still a debate going on whether or not the court may intervene in a child's life for offenses that would not be offenses if committed by an adult. These include drinking alcohol, engaging in sexual behavior, truanting from school, running away from home, or frequenting prohibited establishments.

Some believe that children should not be subject to court imposed restraints for behaviors of this nature. Others believe that these "status" offenses are the precursors of more serious behavior and should be brought under control.

2. As far as police attitudes are concerned one has to distinguish between the general police force and particular police sections specialized in the handling of juvenile matters. Several countries mention special police sections for juveniles: France, the Netherlands, Belgium, Poland Northern Ireland, England and Wales, and there are probably many more. The special police sections generally develop far more tolerant attitudes towards juvenile delinquency than their other colleagues. This seems to be due to better training and better information, but it might also be caused by the working conditions of these police officers, who come into contact with a lot of social problems rather than crime. Several reports state the generally negative and punitive attitudes of the police force, while -at the same time- indicating quite a different orientation among juvenile police-officers.

3. With respect to the courts similar remarks have been made in the Italian report. A law reform of 1971 has created a permanent staff of juvenile magistrates which has improved the attitudes towards juvenile delinquents in the sense of a milder and more protective climate.

Several countries stress the growing reluctance of the courts to put juveniles and young people in prison, and an increasing tendency to favour treatment in the community, and other alternatives to prison.

Let us recall the emphasis put in many countries on the informality of court proceedings and the kind of dialogue established between the juvenile judge and the minor and his parents.

Ending this section I want to emphasize again the enormous differences between different continents.

Although there is not much documentation on the attitudes of the courts in countries outside Europe, the report from Thailand states that there is growing recognition that the state has a responsibility and must exercise guardianship over children in such adverse conditions as to produce crime.

We should not forget that many countries find themselves growing out of some form of agricultural society with stable communities where both the extended family and the community are adequate agents of control.

The Philippines report mentions for instance how -by presidential decree- the barangay, the smallest political unit in the country, prevents the entry of young offenders into the formal criminal justice system by allowing the amicable settlement of disputes involving offenses liable to be punished by a fine or by short term imprisonment.

This method of settling delinquency cases is probably still prevalent in many developing countries.

It is in sharp contrast with the much more formal handling of delinquency cases in Europe.

However if many countries outside Europe are setting up more formal juvenile systems, a number of European countries try to develop new programmes where the community gets back its controlling function that it more and more has lost.

IV SUCCESSFUL DELINQUENCY PROGRAMMES

C. Is there in your country any programme relative to juvenile delinquents which is thought or proved to be particularly successful?

First of all I would like to emphasize that a certain number of countries stated clearly that there does not exist any programme that is much more successful than any other. There appears to be a certain scepticism about the possible results of new programmes. This was perhaps best expressed by the Finnish report stating that Finnish experts are very sceptical about the possibilities of creating any programme which could be successful in terms of producing a more substantial decrease in the frequency of offending and in recidivism.

But there are a number of countries that stress the favourable results of some form of probation or supervision, leaving the juvenile in his own environment.

Most of the countries citing probation declare it is more effective than internment (France, Chili, Greece). Japan mentions a new short term of probationary supervision for traffic offender lasting from 4 to 6 months and showing excellent results. But Mauritius indicated, for instance, that educative action in the community was so successful because the population still has strong traditional family structures and is very religious. Malaysia tested traditional probation and found it had several shortcomings, the main one being a lack of cooperation between the family and child and the probation officer.

So it founded Juvenile Welfare Committees, composed by lay members, to assist the probation service.

These committees had a great number of tasks: they assisted the probation service in finding guardians or foster parents for minors, in getting them training and employment, in supervising them, in promoting community participation in the prevention of crime, and in advising the Minister of the need for policy changes or legislative changes.

The effectiveness of the committees according to the report depends on the imagination and enthusiasm of their members. Their activities include counselling families and children, obtaining employment for them and even, -in some instances- organizing parties at festive occasions.

Then there are countries that use various forms of diversion. The Netherlands mention a programme where juveniles having had several police contacts and even convictions are offered help. The objective is to present alternatives to a judicial handling of the case. The programme enjoys the confidence of the police, the Child protection council and the juvenile judge.

Switzerland notes the existence of parent- and adolescent groups which form a kind of self-help groups discussing their mutual problems and trying to find solutions: in some cases they have avoided institutional placement. ^{*)}(page 25)

Scotland and New Zealand both insist on the importance of special boards, which are non-judicial bodies, to divert as many children as possible from the more formal court system, and offer help to children and families at an early stage. The Scottish report adds that due to their new system some residential schools have closed for lack of demand.

New Zealand, Switzerland and Germany have mentioned experiments with Community Service ordered by the judge. Under the conditions that the measure is adapted to the personality of the juvenile, and that there is good guidance by a social worker, results seem to show this is an excellent educative sanction. In München where one of the experiment has been conducted there has been a clear decline in the number of juvenile detentions, fines and juvenile imprisonment.

Finally England and Wales as well as Scotland indicate that the Intermediate treatment programmes have been proved extremely successful. This measure forms a real alternative to care and custody for young offenders as it may imply supervised activities in the community under a Court order. The activities (leisure, special education, vocational training, sports, group-therapy) may include evenings, week-ends or longer periods. The scheme proved so successful that it is increasingly used with pre-delinquent children to keep them out of court.

Reviewing the replies to the questionnaire on this issue, it has struck me that most successful programmes appear to be those that rely heavily on community resources, be it parents, volunteers, existing youth-clubs and youth-workers, or social agencies making community service possible. It could very well be that given a supporting network, a structured setting, and friendly but firm guidance we have found here a significant improvement of our techniques of rehabilitation and reintegration of delinquent juveniles into society.

V REACTIONS OF JUVENILE DELINQUENTS TO MEASURES AND SANCTIONS

D. What is the reaction of juvenile delinquents to the measures taken against them or in their interest?

Not all countries did reply to this question and only on few mentioned any research done in this field.

Most countries indicated a great difference in appreciation depending on whether the juvenile was to be placed in an institution, or was put on probation or supervision. Very negative reactions were essentially related to institutionalization. This was mentioned by Spain, Northern-
Cyprus, Ireland, Egypt, Algeria, Mexico, Mauritius, Nigeria and Japan. Egypt mentions some quite apparent negative reactions, such as assaults within the institution and considerable absconding both from open and semi-open institutions. Mexico describes as reactions: depressions, feelings of powerlessness and continuous rebellion against the deprivation of their liberty.

Institutionalization is better accepted by sedentary juveniles than by nomads, said the Nigerian report. But according to the Algerian report, sometimes juveniles welcome placement in a training school because of the opportunity for vocational training.

However reactions may be neutral or even indifferent. Thus Northern Ireland reports that the 10% "hard-core" delinquents -that is the frequent offenders- accept punishment as a businessman accepts a bad balance sheet.

Still, some countries indicate positive reactions. For instance Switzerland notes that a juveniles reactions will be the more favourable if he has been consulted, and if the court has taken his propositions into account. The Swiss, Italian and Hungarian report indicate that minors often prefer a sanction than an educative measure: a sanction is clearly defined and well determined in time, whereas a measure of child protection most often is of indeterminate length, and may go on till 21 years in many countries. The Dutch report states that finally the reactions of a juvenile will depend on: his personality, his environment (parents: peer-group; drugs scene) the nature of his offense, and the approach by the authorities.

In New Zealand there is an interesting proposal to hold a meeting in 1982 of children and young persons placed in substitute care, so that they can share their thoughts and feelings about being in substitute care and to promote greater awareness and understanding of their views and reactions. This seems a worthwhile initiative.

But let us end this review by mentioning some research results on this question.

In Belgium two studies have been conducted, in 1969 and in 1977, both studies showing the same results. Before the court hearing, the minors are very nervous and fear the severity and power of the judge. About half of them think that the judge might help them, whereas the other half has negative views in this respect. After the court hearing two thirds are relieved and have positive feelings: they found the judge more understanding than they had expected.

In England a study among mostly first offenders showed that children expected dispositions to be based on offense and tariff-criteria. They also thought this to be as it should be: the court to them is an agency which punishes the child for what he has done wrong.

Furthermore communication between the child and the magistrates was in the main routine and the children felt that they has no influence on the outcome of the case. One negative feature was certainly that half the children in the sample could not correctly identify the magistrates. And the authors (A Morris and H. Giller, 1978) conclude that the children saw the juvenile court as a confusing, remote and primarily punitive agency.

A German study found also that most of the juveniles in court saw the sanctions or measures exclusively as punitive. They thought that the judge did not have enough information about their personality, way of living and social surroundings to get a realistic view of the situation. Therefore they did not think that the juvenile judge would be able to help them. It has to be stressed that multiple offenders and recidivists had more negative views of the juvenile judge and his sanctioning policy than first-offenders.

Another English study by the same authors (Morris and Giller, 1978), on the meaning of supervision to minors, showed that the majority of children in their sample, viewed their own supervision order as fair.

The main impact of the supervision order lay in the requirement to report to the supervisor.

A number of children said the order could be ended earlier than the time specified if they "behaved themselves", that is if they reported regularly, did not commit any further offenses, got on well with their parents, and attended regularly their school or place of work. The supervision order was essentially seen as interfering with their liberty, and as such as having a deterrent value: it was their last chance to avoid to be removed from home.

A Scottish study (Martin, Fox and Murray, 1981) tested the new Childrens Hearing System. The children perceived a positive sense of fairness in the process: 69% of the subjects saw the panel-members either as helping them or as neutral. Nearly three quarters of the children received a "better" outcome than expected, and most thought the decision was fair in their case.

All children (but especially the younger) were apt to accept they were in need of help when a sympathetic or understanding style had been in evidence. One important finding was that some positive input in reference to the child during the hearing appeared to counter the self perception as "criminal". The important but hitherto untested assumption that the setting and interactions that occur in the course of delinquency proceedings can affect the juvenile's response, for better or for worse, receives support from this study.

In view of the great variations in functioning and organization of juvenile justice systems all over the world, it is difficult to arrive at any definite conclusion.

I think it is fair to say that in most countries juveniles probably see the juvenile court as a real court that punishes them for what wrong they have done. They are most negative when they are placed in an institution for an indeterminate period. They are most positive when they will not be placed and receive a supervision order or some other measure. Whenever there is a real communication between the judge and the juvenile, that is whenever the minor may speak up for himself and gets the idea that the judge takes this into account, reactions become definitely more positive. This type of communication is perhaps more easily realized in a more informal setting such as Children's boards or Children's Hearings, but it can be realized also in a juvenile court setting.

VI SOME CONCLUDING REMARKS

First of all I would like to repeat my initial remark that no general conclusions can be stated based on this restricted survey. Only one continent was fairly well represented, Europe, although only four Eastern European countries did reply.

Moreover the countries all over the world that did reply show great variations in economic, cultural and social background, which of course must have an impact on their vision and on their construction of a juvenile justice system.

However, reviewing the main results that came out of the replies we may be able to discover some trends and developments that characterize certain groups of countries or certain regions in the world, and in some cases even all the responding countries.

Thus we found that the population of minors liable to come into contact with the judicial system was generally broken down into three categories:

- the very young who -by definition- cannot commit a crime (+ 7 - 12 years)
- those for whom special jurisdiction are created (+ 10 - 16 years)
- those who -still minors- may be brought before an adult court (+ 15 - 18 years).

Although nearly all countries accept a presumption of irresponsibility under a certain age, they differ considerably on its age limits. These differences probably reflect differing philosophies about childhood and responsibility, and thus differing conceptions in the role and function of a juvenile justice system.

In most of the countries a minor may be imprisoned, but this is based on the following criteria:

- the refutation of the presumption of irresponsibility
- the seriousness of the crime
- the dangerousness of the offender to the community
- the recidivism of the offender.

Again we have here a fairly general basic principle admitted everywhere.

But the application of the principle may vary considerably over different countries. Another apparent trend, which may be related to financial resources, is the fact that only in Western countries created

a rather wide-spread network of special institutions for young adults, in order to keep them apart from adult criminals and to offer them more to their age adapted programmes.

One of the more general conclusions that could be made, refers to the discretionary power of the juvenile judge. The vagueness of many of the criteria on which the juvenile judge must operate, the presumption of irresponsibility which may be refuted, the informality of the proceedings, where the judge may or may not take into account the remarks and proposals of the juvenile, have as a major result that the judge's work cannot be tightly regulated nor clearly defined: his wisdom, tolerance and sense of justice must play a great role in his work. In this respect let us recall the Scottish research finding of the impact of the type of interactions -during the proceedings- on the self-perception and feelings of the child.

With respect to changes or proposals for change we discovered two distinct trends.

In countries where there is a transition going on from the more traditional, often agricultural type of society to a more industrialized and urbanized society, most of the changes imply the development and improvement of the juvenile justice system. Responsibilities and social control functions that belonged to the extended family and local community are more and more transferred to higher authorities and the state. This survey testified of numerous efforts in third-world countries to extend the child protection network in terms of more educational and vocational training possibilities, or the introduction of probation and supervision by trained social workers.

In the Western world there is a quite different trend. In many of the Western countries there are highly formalized and bureaucratic systems which -until the 1960's- took in a considerable number of kids.

The first change was the eruption of a number of diversion mechanisms and special diversion-projects to keep juveniles out of the system, and look for extrajudicial solutions. We have seen spectacular declines in the number of children entering the juvenile justice system in all Western countries since the sixties.

Actually new efforts are undertaken to change the system itself. Examples are Rumania, Scotland, New Zealand where, either to replace the juvenile court, or parallel to it, special Children's boards are created which are composed of lay members.

Another important change is the search for new methods of social control, or one could perhaps say of giving back to the community some of its original social control functions.

In many countries new measures such as the Community service order, intermediate treatment designs, and other forms of repair of damage done, are tried out and evaluated on their effectiveness.

Although it is too early to demonstrate their success, the first results give rise to some optimism if only in terms of its appreciation by all participants, among whom of course the juveniles themselves.

Perhaps it is in this general search for renewed community control as well as for a better reintegration of the juvenile delinquent in his community that we all, coming from so many different parts of the world may find each other.

x) (note from page 17)

Cyprus has a system where in all cases of offences committed by minors the District Welfare Officer is consulted. This officer carries out a social investigation and decides:

- whether a child will be put in the care of the welfare services;
- whether the child will be brought before a juvenile court;
- whether a child will be placed under supervision.

END