BRITISH RESPONSES TO JUVENILE DELINQUENCY

INCORPORATING EXPERIENCES IN ENGLAND AND WALES AND WHERE RELEVANT, SCOTLAND

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INTRODUCTORY OBSERVATIONS

"Once upon a time . . . violence and disorder were unknown in Britain. The hallowed traditions of the 'British way of life' were founded upon civility, reasonableness and an unquestioning respect for law and authority . . ." (Pearson).[1]

Whatever the truth about the actual extent of juvenile crime, it is clear that many countries today are concerned about juvenile delinquency and are trying to devise rational and effective strategies to prevent, contain and reduce its incidence.[2] However, discussions about how to deal with juvenile offenders are often obstructed by emotive and exaggerated claims by politicians, administrators, academics and sensational media reporting. This in turn stimulates public anxieties and invariably leads to a distorted perception of the nature and scope of the crime problem together with uninformed calls for instant action. The slow realisation by those involved in the juvenile justice system that "nothing seems to work" has tended to foster an atmosphere of gloom and despondency about what can be done to stem the tide of juvenile crime.

Debates about appropriate responses to juvenile delinquency in Britain focus on two opposing methods of approach which broadly correspond with the so-called "law an order lobby" of the political right and the desire for a "tender loving care approach" on the part of the political left. Advocates of the former favour a "justice" approach and maintain that punishment should be the main aim of the criminal justice system emphasising that offenders deserve to be punished according to the gravity of the offence committed. Conversely, the treatment or welfare-oriented approach contends that the aim of the criminal justice system should be to reform and rehabilitate offenders taking into account their individual needs. There has also been renewed interest in children's rights and the extent to which the juvenile justice system protects children and/or their rights. These conflicting approaches have important practical implications. The history of the juvenile justice system in Britain is largely an account of attempts to reconcile these widely divergent philosophies. Legislation through the years has largely failed to resolve the tensions arising from these opposing viewpoints.

Society's perception of juvenile delinquency inevitably shapes its responses. If the methods selected to deal with delinquency are to be effective, the problem needs to be clearly defined along with the objectives that the system is aiming to achieve. A number of difficulties are encountered in attempting to realise these goals. Firstly, it is impossible to estimate with any accuracy the extent of juvenile offending, and hence the size of the so-called "problem". Secondly, in spite of repeated inquiries into the causes of delinquent behaviour, conclusive theories explaining its occurrence have still to be discovered. Thirdly, there is confusion regarding the scope and objectives of the juvenile justice system and sentencing practice reflects these uncertainties. Finally, it might be assumed that in the absence of clarity surrounding the above, official policy will provide the necessary direction and impetus for development of a rational response to juvenile delinquency supported by sound empirical research. However, as this paper will seek to show, in England and Wales this does not appear to be the case in many instances, which may partly explain why the present system of juvenile justice is currently criticised on many levels.[3]

Some critics allege that the present system is muddled in its objectives and even where these can be identified, responses tend to be contradictory, for example the implementation of "short, sharp, shocks," while simultaneously stressing intermediate treatment and community developments. Others suggest that recent developments indicate a clear shift towards punishment.[4] There is also concern that the system fails to fulfill the basic requirements of justice because it ignores the rights of children whilst professing to adhere to a welfare orientation which nevertheless does not avoid the stigma of delinquency.[5] Perhaps a more serious charge levelled against the system is that it is ineffective since the present arrangements have manifestly failed to deter or reduce delinquency. Indeed, the high levels of teenage crime and reconviction rates suggest that sending youngsters to institutions in the vast majority of cases is counter-productive.

In this paper it is proposed to provide a brief overview of the various responses to delinquency which have developed in England and Wales with reference to Scotland where relevant. In particular an attempt will be made to highlight major trends in juvenile offending and methods of dealing with delinquents together with an assessment of the effectiveness or otherwise of these measures and, finally, in the light of some of the problem areas identified in the introduction to reach conclusions about the various British responses to delinquency and to recommend a strategy for change.

MAJOR TRENDS IN JUVENILE OFFENDING

The official criminal statistics for England and Wales 1983 show that there has been a sharp rise over the last two decades in the rate of recorded crime among young people.[6] The highest rate of known offending during the period 1973-1983 was amongst males aged 14 and 17 years for whom in 1983 the rate was about 7,500 per 100.000 population, followed by those aged 17 and under 21 years of age for whom the rate in 1983 was about 6,900 per 100,000. Of the total number of offenders found guilty or cautioned for indictable offences (576,000) in 1983, 83 percent were males and nearly 16 per cent were females and for both sexes, about a third of the total were juveniles (aged 10 and under 17 years of age).

Although the crime rate for females remains considerably lower than for males (for indictable offences in 1983, about 1 in 7 offenders was female), recently there has been a much sharper rise in the rate of female offending in all age groups, especially those aged between 14 and under 17 years. Over the last two decades this has risen more than fourfold.

In 1983 the peak age for those found guilty or cautioned is 15 years for boys and 14 for girls, thereafter declining consistently reflecting the transient nature of youthful law breaking. "Most, however, do not persist in crime . . . only a minority of juveniles who are prosecuted persist beyond a first or second offence. The indications are that many juvenile offenders, detected and undetected, mature out

of delinquency."[7] This aspect of juvenile offending supports greater reliance by the authorities on diversionary measures of various kinds.[8]

It is interesting to note that the age of maximum delinquent activity corresponds to the last year of compulsory school attendance, and this appears to have always been the case.[9] One study suggests that youngsters who do not mature out of delinquency may possess special characteristics, for example, of background or personality.[10] According to West, persistence in offending can be predicted from a troublesome school career and living in a family one or more of whose members (especially one or both parents) have a criminal record. Much work has also been done linking vandalism with poor school performance, low achievement, truancy and a general dislike of school.[11] Even though general forecasts about future behaviour often prove to be inaccurate in individual cases, the need for more preventive work in an around schools and closer examination of school regimes and teaching methods is clearly indicated.[12]

It is generally accepted that the official figures do not reveal the full extent of criminality in society.[13] But it is also true that those who engage in more serious forms of criminality or are persistent offenders tend to be detected, prosecuted and dealt with by the system. The British Crime Survey 1982 of 11,000 households confirms that delinquent behaviour is extremely widespread, so much so that characterising it as abnormal behaviour and adopting a system of juvenile justice which solely emphasises "treatment" implying inherent abnormality in the offender runs the risk of missing the point altogether[14] Furthermore many studies have stressed the selective way in which the system works.[15] It has been pointed out that youngsters living in inadequate overcrowded conditions with poor leisure facilities and little or no adult supervision, congregate in public places and because of their high visibility are more likely to be processed by the system. Thus the preponderance of juvenile offenders in the official statistics may in large part be due to the fact that they present an easier target for the police – easier to catch, easier to obtain admissions from and easier to convict being less experienced than adults.

Another interesting feature of juvenile offending is that most crime committed by young people does not involve violence and homicide by juveniles is not common nor is deliberate murder. Nevertheless, offenders udnder 21 account for 45 per cent of all violent crime.[16] Whilst a small proportion of juveniles have committed offences involving sex or robbery, juvenile involvement in robbery shows a marked increase in recent years. The offence of robbery has prompted much media coverage often of a sensational nature in recent years and is more commonly referred to as "mugging" when it takes the form of a street attack to obtain money and personal objects like jewellery from commutes and shoppers, usually in an urban setting.

The vast majority of young offenders who are convicted and cautioned have committed crimes of theft and handling stolen goods, indictable offences of criminal damage and the more serious offence of burglary. About 70 per cent of those convicted or cautioned for the latter were under the age of 21. The official figures for convictions and cautions of stealing and handling stolen goods indicate that 21 per cent of offenders are aged between 17 and under 21 years; 22 per cent between 14 and 17 and 13 per cent under 14 years of age. Offences range from petty random thefts committed by lone individuals to well co-ordinated thefts carried out by groups or gangs of youngsters often involving large amounts of money. Shoplifting is apparently a common youthful pastime especially in places with few or inadequate security precautions.[17]

Criminal damage or "vandalism" as it is popularly known remains predominantly an offence of the young. Thirty-eight per cent of those cautioned or found guilty in England and Wales are aged between 17 and 21, 20 per cent are aged between 14 and 17 and 15 per cent are under 14. Whilst the results of criminal damage are clearly visible (taking the form of a wide range of activities from ugly graffiti to broken windows, defacement of buildings, immobilisation of public telephones, damage to railway property and schools) the culprit is rarely found, so this offence is usually unrecorded. A great deal of research has been undertaken to find ways of tackling the problem, especially by the Home Office Research and Planning Unit[18] Recommendations include reducing opportunities for offending by a variety of preventative means, for example, target hardening, improving design features of housing estates, enhanced supervision for schools and public housing, reducing the numbers of children on housing estates and improving housing allocation policies.[19]

The majority of offences involving motor vehicles are not indictable but increasing numbers of youngsters appear to be turning to joyriding (taking vehicles without the owner's consent) and are charged with under-age driving, driving without motor insurance and driving with no licence. The risks these advantures pose to those involved and the public are only too obvious.

Very few juveniles participate in offences of fraud or forgery and the participation of youngsters under 17 years of age amounts to 6 per cent of the total numbers involved.

The growing problems of alcohol, drug and solvent abuse by youngsters are also causing concern. The former are worrying especially since both have been associated with other more serious forms of criminality over the years for example,

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crimes of violence and hooliganism. Heroin addiction amongst youngsters appears to be increasing, accompanied by stealing to sustain the habit. Solvent abuse is posing particularly acute problems owing to the fact that there are several hundred ordinary household products such as gas lighter fuels, felt pens and glue freely on sale which if inhaled can cause injury and even death. It is currently estimated that 1 in 3 secondary school pupils is affected at some stage by drugs or glue sniffing. And at least 60 children a year die from glue sniffing while others suffer from brain damage. On 13th July 1983 special legislation was passed for Scotland which tries to control the activity. (Solvent Abuse (Scotland Act) 1983). It is still too soon to evaluate its effectiveness. The Government is now considering whether to make the sale of glue-sniffing kits a crime in England and Wales. There is always the danger of official overreaction to behaviour which may simply be a transient phase in a youngster's development. The role of parents in dealing with this is clearly important. It may be more appropriate for policy to aim at prevention and the provision of expert help instead of creation of new offences which will be difficult to frame and enforce.

In this brief survey of significant trends of juvenile offending in Britain, reference still needs to be made to a few related mtters. A close relationship between delinquency and urban life can be discerned in the increase in street fighting and particularly in the disturbances in most British cities in the early 1980's.[20] Football hooliganism is currently creating problems for public order. A second issue closely allied with the first is the decline in respect for be authority, whether this involves parents, teachers or police. Thirdly, whilst no direct links between present high levels of unemployent and delinquency have been established, there is no doubt that poverty and unemployment, apart from causing immeasurable discomfort and affecting a youngster's self-esteem, have a significant influence on the types of sentences the courts can impose, for example, imposition of a fine on parents of a delinquent child who may be in receipt of supplementary benefit is hardly likely to be helpful, or realistic. (Of relevance here is the fact that more than a quarter of British children are living in low-income families.) Fourthly, the influence of the media and television in particular cannot be underestimated.[21] Fifthly, juvenile criminality with racial foundations also appears to be part of the current trend.

FACTORS ASSOCIATED WITH DELINQUENCY

"Juvenile delinquency has no single cause, manifestation or cure. Its origins are many and the range of behaviour which it covers is equally wide . . ."[22]

To date inquiries into the causes of delinquency have tended in the main to be inconclusive and at worst misleading. A detailed recitation of the various theoretical and empirical studies into aetiology, would in the writer's view, not be particularly productive. Suffice it to say that theoretical explanations have usually fallen into two main perspectives – sociological (stressing social, economic and political factors[23]) and individual (emphasising personality variables, mechanisms for effective conditioning and so on.[24]) And a number of factors related to delinquency have been identified, some of which have already been mentioned, for example, family and home circumstances, economic status, school regimes, a range of opportunities for offending. In view of the lack of consensus about the causes of offending behaviour it is rather surprising that such high expectations were held out for the "treatment" approach to delinquency which is founded on assumptions about "curing" delinquency when the symptoms of the disease have yet to be found. Set in this context. renewed official interest in strategies of prevention rather than reform appears to be a logical development.

The role of the family in promoting and/or preventing delinquency has also received increased attention in the past few years by researchers. A recent Home Office Research and planning Unit Report inquired into the nature of supervision exercised by parents over their children and investigated the preventive implications. The findings indicate that "parents are still able to make an effective contribution to their children's conduct outside the home".[25] Furthermore, parents still exercise supervision over their young teenagers and this is accepted by the teenagers but there were differences in the supervision exercised over boys and girls. Teenagers living in one-parent households were no more likely to be delinquent. It was found that delinquency was strongly associated with a lack of close feelings or of understanding between fathers and their teenage children. Those who included delinquents among their friends were more likely to be delinquent themselves than those who did not. Poor performance at school was clearly associated with juvenile delinquency. The study concludes with a number of guidelines for parents, for example, taking a closer interest in the activities of their teenagers and expressing disapproval of antisocial and criminal behaviour. Nevertheless the researchers do refer to the wider social and economic context, inter alia, the fact that parents whose daily existence is stressed by poverty, poor living conditions, lack of employment opportunities which may disincline parents to encourage their children to have much respect for the existing social order and accordingly limit parent's effectiveness in dealing with their children.[26]

THE JUVENILE JUSTICE SYSTEM

Juvenile courts in Britain date back to the Childrens Act 1908 which gave statutory recognition to the separation of juveniles from adult criminal procedures. In England today, the age of criminal responsibility is 10 years although children under 14 years of age may not be prosecuted unless they can be proved to have had a "mischevious discretion", that is, they knew what they were doing was wrong (a negligible bar in practice). The criminal jurisdiction of the juvenile courts therefore applies to youngsters aged between 10 and 17 years.

The modern foundations of the juvenile justice system were laid down by the Children and Young Persons Act 1933 which provided for children in need of care and protection to be brought before the juvenile court. Section 44 explained the aim of the system (still applicable today) in the following terms: "Every court in dealing with a child or young person who is brought before it either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in proper cases take steps for removing him from undesirable surroundings and for securing that proper provision is made for his education and training."

From their inception, juvenile courts in their rhetoric, if not their actual operation, were committed to rehabilitation rather than punishment and the link between criminal behaviour and social deprivation became firmly established over time. One consequence is that non-delinquent youngsters in care, share the same facilities as their delinquent counterparts. Despite the therapeutic stress, the juvenile court in England and Wales nevertheless remains a criminal court. In Scotland different arrangements were made.

There is widespread support for the view that wherever possible, prosecution of young offenders should be avoided and diversion should play a major role in society's response to young offenders. The present Government endorsed this in its White Paper, Young Offenders, published in 1980 and referred to the fact that there is considerable evidence indicating that "juvenile offenders who can be diverted from the criminal justice system at an early stage in their offending are less likely to reoffend than those who become involved in judicial proceedings."[27]

The police play a leading role as gatekeepers to the criminal justice system. They have a wide discretion whether or not to prosecute in the vast majority of cases except for a small number of serious or controversial cases. Thus youngster's first encounter with the criminal justice process will invariably arise when their delinquency brings them to the attention of a police officer. The response of the police at the critical moment is likely to be decisive in determining the youngsters' future prospect, for example, the individual police officer may decide to ignore the incident or to issue an informal caution or warning. Conversely the offence may be reported to the juvenile bureau of the local force and the bureau will then enter into

consultation with the local social services agency, education authority and parents and decide whether or not to recommend prosecution or that a formal caution be administered to the youngster instead. The final decision rests with the senior operational officers in the various divisions. In general, the following criteria must be satisfied if a formal caution is to be administered:

(1) The child must admit the offence.
(2) It is usually a first offence, although sometimes a child might be cautioned on more than one occasion.
(3) The parent, the child and usually the victim must agree.
(4) The bureau, the social workers and school must all agree that it is in the best interests of the child for a formal caution to take place. This is then administered by a senior police officer in uniform at the police station with the parents present. It is recorded and may be cited as part of a child's criminal record in subsequent proceedings. In Scotland there is a system of police warnings.

There are considerable variations in police cautioning practices throughout the country and this lack of consistency has been criticised.[28] The Black Committee commented that the cautioning of young offenders should not be seen as a soft option but rather as a positive response to delinquency which aims to help and encourage children to channel their energy and desires into legitimate activities. Several studies have also demonstrated that cautioning has a high success rate when measured in terms of reconviction.[29] However, research carried out by the Home Office in 1976 pointed to possible inflationary as well as diversionary consequences. It was suggested that increasing the use of cautioning could result in a net-widening effect, that is, that children are sometimes being cautioned for offences so trivial that they would have been dealt with informally and unofficially if the formal caution procedure did not exist. The danger here is that children are in fact being introduced into the criminal justice system (albeit at the shallow end) when the whole purpose of the exercise is to keep more children out.[30] In spite of these reservations, in 1981, the Parliamentary All-Party Affairs Group called for the use of cautions to be extended. The present Government has recently indicated its support for this.[31]

Other influential gate-keepers to the criminal system include the education authorities, probation officers and social workers. Their decisions and reports may to a great extent determine whether or not a youngster is brought to court or dealt with in some alternative manner and during the trial written reports may be very pursuasive. The 1982 Criminal Justice Act requires that magistrates, in deciding how to treat an offender must consider a social inquiry report prepared by a local authority social worker or a probation officer whenever a custodial sentence is likely. The role of social workers and probation officers in ensuring good quality reports which set out the available alternative sentencing options has thus assumed even greater importance in recent times.

Turning to juvenile courts and their operation, it would appear that the court exercises two main functions. The first is to adjudicate fairly on the issue of guilt or innocence and the second is to pass some kind of sentence or order upon those found guilty. Once the former function has been discharged, it appears that the second task will follow with relative ease. However it seems that quite the contrary is the case in practice.

In Britain during the 1960's there was much activity and debate about juvenile justice. There was general optimism and faith in the treatment model. The Children and Young Persons Act 1969 represented an uneasy compromise between the justice and the treatment model although it laid stress on needs rather than rights and treatment rather than punishment. However, many important welfare provisions of the 1969 Act have never been implemented.[32] The contradictory objectives in the Act are amply demonstrated in section one where there is reference to the need to look after the best interests of the child while at the same time protecting society against the social consequence of delinquency – the dichotomy of care and control which still pervades the present system of juvenile justice.

In the main, proceedings in magistrates courts are conducted by benches of lay magistrates drawn from a cross-section of the community who give their time to this work completely voluntarily. For a variety of reasons, most commonly socio-economic, it is difficult to recruit magistrates who are truly representative of the clientele they are expected to judge.[33]

Most magistrates do not have any special knowledge of the law. They do attend short training courses, but it is not expected that magistrates should have advanced knowledge of the law. The primary role of the magistrate is to adjudicate on the facts of the case. They are assisted in their task by court clerks who are legally trained. Nevertheless, it is the magistrate who has to determine the sentence in each instance. Usually juvenile courts are constituted by a bench of three justices appointed from the adult court to the juvenile bench because of some additional experience or qualification for dealing with children and young people. Both sexes must be represented on the bench. The courts have to be held in a different building from an adult magistrate court, or, if the same building is used, there must be a break of an hour between adult proceedings and the constitution of the juvenile court. Juveniles may be represented by lawyers and this is the norm in complex cases (usually legal aid is provided by the state). The courts are closed to all but those directly involved in the proceedings and publicity by the press is severely restricted. Arrangements tend to be less formal than for adult proceedings. The procedure is adversarial as is the case in all courts in England.

Law justices in juvenile courts deal with a wide range of offences. As in the adult courts most are offences against property of one type or another. There may also be some quite serious burglaries, robberies and attacks against the person together with a large number of crimes connected with motor vehicles. Most young offenders like adults plead guilty. Some offences are those which only a juvenile can commit as they are concerned with certain forms of conduct under-age, for example: drinking, driving, sex (status offences) and truancy.

The issue of children's rights is relevant here. Michael Freeman adopts two main orientations of rights: nurturance and self-determination.[34] The former embrace the provision by society of the child's basic needs, services experience an activities of a beneficial kind. The latter cover potential rights which would allow children to exercise control over their environments and decide what they may need and want. Freeman criticises the juvenile court and its implications for juveniles' rights: "One of the most unsatisfactory features of juvenile justice is that in reality there is very little justice. Neither pre-trial procedures nor the court processes themselves observe the sort of elementary natural justice requirements that are taken for granted in a court dealing with adult offenders. In part the problem is the product of a confusion of purposes: welfare versus control; assessment of needs or adversary trial."

According to Freeman, the welfare model fails to fulfil the basic requirements of justice. In his view: "Children have the right to claim that they should be treated like adult offenders. Concessions made to protect them have been revealed for what they are: measures which undermine their rights . . . Those who do wrong have the right to expect punishment; the right not to be treated. Children expect dispositions to be based on the offence committed and tariff criteria."

It can be questioned whether a pure "rights" approach or a solely welfare-oriented system would in fact be to the advantage of juvenile offenders. Would either approach in its pure form serve the best interests of the children? Indeed, one writer argues that the time has come to transcend the sterile justice VERSUS welfare debate and move instead "in the direction of just welfare."[35]

DEVELOPMENTS IN SCOTLAND

A variety of alternative forms of adjudication have been tried as a means of curbing delinquency whilst avoiding the stigma of a trial. For example, in Scotland, following the recommendations of the Kilbrandon Committee, the Social Work (Scotland) Act 1968 replaced juvenile courts with childrens' hearings which take place before a panel respresentative of

the local community. The hearings cannot determine the facts of a case. They only decide the most appropriate measures of care where the facts are admitted. Children are brought who are in need of compulsory measures of care. There are other filters of importance too. Trivial matters may be dealt with by police warning in a way not so dissimilar to cautioning in England. Cases which are thought by the police to be serious are referred to the Sheriff while the more serious cases are brought to the attention of the procurator fiscal for trial in the High Court. The remainder of the cases which fall outside the categories deemed appropriate for judicial trial and sentence are dealt with by a reporter who is normally appointed from amongst those with a legal or social work background. The reporter can decide the following: that no further action is required; that the local authority be asked to advise, guide and assist the child and his family on a voluntary basis or that the child is in need of compulsory care and that he or she should be brought to a childrens' hearing. About half the cases brought to a reporter are passed on to a hearing. An important feature of these hearings is that they do not have criminal jurisdiction nor do they have punitive powers. They only have the power to order compulsory measures of care. Appeal against their decisions can be made to the sheriff. Appearances before a panel may not be cited in a later appearance before the sheriff court.

There is no unanimity on the efficacy or desirability of the Scottish system. Freeman says that "In that it is keeping a certain number of children out of the formal control system, the Scots have reduced the ambiguities, dilemmas and inconsistencies inherent in the English system, but they remain."[36] Morris concludes, "Although more children were referred to the reporter than to the former juvenile courts, fewer were in turn referred by him to the children's hearings. The reporter acted as a major sifting mechanism. But, once the children reached the hearingcs, the level of interventions was greater than in the juvenile courts – more children were removed from the parents homes in 1973 than in 1969 and more were placed under the supervision of a social worker. In other words, children are controlled and punished in the guise of care or "treatment"; and because action is disguised as "treatment" the number of children subjected to such measures increases."[37]

The Association of Chief Police Officers has made several critical comments – that no benefits have accrued in regard to the treatment of offenders and childrens' panels are less effective than the former juvenile courts in securing treatment which will serve the best interests of child offenders. Moreover, there is a hard core of juvenile offenders who have little or no respect for childrens' hearings. However, it has been stated that the children's hearing system does effect a "real and continuing relationship between the community represented by panel members and children who are at risk of neglect and abuse, children who are apparently uncontrollable by their parents and their school and children who break the law."[38]

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SENTENCING JUVENILE OFFENDERS

Juvenile courts in England and Wales have a wide range of custodial and non-custodial options available to them when sentencing juvenile offenders. Recently, the Government commented on changes it had introduced: "The 1982 Act provided the flexible and rational sentencing framework . . . necessary for dealing with young offenders. Our aim is to achieve a balanced response which keeps custody for those cases where no other response is adequate; focuses first on the length of sentence where custody cannot be avoided and matches the regimes in our institutions to the sentence on which the court has decided."[39]

Current sentencing practices need to be reviewed in the context of general pessimism regarding the effectiveness of sentencing disposals either to reform or deter offenders in general and juvenile offenders in particular following several negative research findings. One important study carried out by the Home Office Research Unit in 1976 suggested that "this apparent failure of research to demonstrate the corrective value of rehabilitation as a sentencing aim has had one refreshing consequence. It has seen the rejection of reconviction as the sole criteria of success, and a growing concern for evaluation according to other standards. A noticeable trend has been a readiness to justify non-custodial or semi-custodial sentences in preference to imprisonment or incarceration, on the grounds that they cost very much less to implement and decrease at the same time the risk of psychological and practical harm to the offender. As "softer sentences have apparently no worse effect on recidivism and still offer the chance of less tangible, if as yet unknown advantage, they are seen as preferable by all schools of thought except perhaps the retributivist."[40]

There is recent evidence that the general public is less punitive towards offenders than had been thought. The British Crime Survey showed that only half the respondents wanted their offenders to be brought to court at all and only 10 per cent favoured a sentence of prison or borstal. About a quarter of the victims preferred a fine, 20 per cent wanted a formal caution or some other reprimand from the police and 15 per cent favoured some sort of reparation, compensation or community service.[41] The impact of these kinds of attitudes, if any, on the courts' sentencing policy is difficult to assess.

Along with the growing disenchantment with the formative ethos has been the realisation that penal institutions, whatever else they might offer, have damaging effects on youngsters' personalities. And the absurdity of attempting to train an individual in an institution to lead a law abiding life in the community has long been recognised. Moreover, the high costs of incarceration compared with community disposals is now being accepted. It costs between 156 and 215

Pounds per week to lock up a young person. These factors have undoubtedly influenced the search for alternatives to custody in Britain. In 1980 the Home Secretary stated that "The Government is committed to seeing all offenders, of whatever age, dealt with in the community wherever possible . . . because we believe that no-one should be deprived of his liberty unless that is absolutely unavoidable".[42] To what extent has this preference become a reality at least where juvenile offenders are concerned? Recent trends appear to show that increasing numbers of youngsters are being given custodial sentences than ever before.

NON-CUSTODIAL AND SEMI-CUSTODIAL SENTENCES

Fines remain the most commonly imposed sentence for offenders aged 14-17 years. Relatively fewer youngsters of both sexes under the age of 14 receive fines as more use is made of conditional discharges. Since 1972, the courts in England and Wales have had the power to order compensation and restitution as part of the criminal trial itself without obliging the victim to go to the inconvenience of separate civil proceedings to recover for the loss or damage. The Criminal Justice Act 1982 gives power to the courts to pass an order for compensation as a sentence in its own right without having to make it additional to some other penalty as was formerly the case. Another change relating to fines as far as juveniles are concerned was also made in the same statute and became effective in May 1983. By virtue of section 26, Criminal Justice Act 1982, the court is now obliged to order the fine or compensaiton order to be paid by the offender's parents or guardians unless it would be unreasonable to do so (courts have for a long time had the power to order parents to pay where it seemed reasonable). The Government's intention in introducing this provision is to try to strengthen parental responsibility. This may however assist the young offender to avoid his or her individual responsibility for acting contrary to law in the knowledge that parents will step in and meet their children's obligations. It might also be questioned whether this is practicable.[43] The latest Home Office figures show that in 1982 parents were ordered to pay fines in respect of 700 juvenile offenders and to pay compensation in respect of 850. The corresponding figures for 1983 were about 4,000 and 4,500 respectively.[44] In 1983/84 about a quarter of fines and compensation orders imposed on persons aged 14-16 were recorded as 'parents to pay', lower proportions than those aged 10-13 years.

In England and Wales, courts have power to release youngsters without further penalty conditional on their good behaviour in the future. The conditional discharge can be made for a period up to 3 years. About a third of boys and girls under the age of 14 years sentenced for indictable crime are dealt with in that way.

The power to defer sentence is another useful power which came into effect through the Criminal Justice Act 1972. It is an order made by the court after a finding of guilt, but without making any further decision at that time as to sentence. The sentence may be deferred for any period not longer than 6 months. The aim is to see whether the offender can keep out of crime without the need for further more serious action.

Community Service Orders were introduced into England and Wales by the Criminal Justice Act 1972. Section 15 provides that the courts could order an offender to give up between 40 and 240 hours of his time to undertake unpaid work in the community so long as the probation service deemed the individual to be suitable and that appropriate arrangements could be made. The measure was initially applicable only to those aged 17 and over but because of its success and popularity, it has been extended by the Criminal Justice Act 1982 to 16 year olds, although the maximum number of hours they may receive is 120. Although Community Service Orders have not been an unqualified success, with the emphasis on reparation to the community they are more constructive than custody and are relatively cheap to administer. Such a sentence also has the versatility to appeal to a variety of penal objectives: it allows the punishment to fit the crime; it enhances an offender's self-image and places him in the position of helper rather than helped and it also ensures certain tasks are done for the local community which would otherwise fail to be undertaken. However, when measured in terms of preventing recidivism, it is no more effective than any other sentence in general terms. Nevertheless the Director of the Prison Reform Trust stated that the CSO "has provided the courts with a positive and cost-effective sentence which allows offenders to contribute to the public good. By successfully diverting many offenders from prison, community service has also demonstrated its potential as an alternative to custody". This measure also fits in with the present Government's wish "to increase the involvement of juveniles in their communities."[45]

In England the use of supervision has been declining slightly. The maximum length of an order is three years and such orders are most commonly imposed for a period of 2 years. In England the supervision of younger children is undertaken by social workers appointed by the local authority; offenders in the upper teen years are looked after by probation officers. Social workers and probation officers are responsible for operating the various new alternatives to custody. Often resources do not match their added responsibilities. The importance of collaborative effort across professional frontiers cannot be too strongly stressed. Because of lack of resources in some cases there are delays in putting supervision orders into effect. Courts should be more aware of the difficulties before making the order.

The 1969 Children and Young Persons Act provided the courts with the power to insert conditions into supervision orders with which the juvenile must comply. This has become known as Intermediate Treatment. The aim of Intermediate Treatment was to reduce the use of care and custody for juveniles. As the name suggests, it implies an intervention mid-way between doing nothing and completely taking over the rights of parents and also mid-way between leaving the child at home and placing him in an institution. It also reflects that some delinquents need motivation and special skills development and training in some areas. Supervision with a condition of IT is intended to fulfill these needs. Over the years a great variety of such schemes have been devised. In England the best known schemes form part of a nation-wide network of intermediate treatment project approved and co-ordinated by regional planning committees throughout the country. Examples of IT schemes – Ilderton Motor Project enables youngsters to drive, repair, maintain cars. Offenders work alongside non-delinquent youths; Hammersmith Teenage Project – with emphasis on group co-operation in crafts, drama, cookery, recreation under supervision, the programme is tailored to the offender's individual needs, (a principle underlying a number of IT schemes),

A new power which was introduced by section 20 of the Criminal Justice Act 1982, allows a court after consultation with the supervisor, to require a child or young person to remain at home for up to 10 hours between 6 pm and 6 am for up to 30 nights during the first three months of the order. Since consent to the order is vital, the Government took the view that such an order should cause no undue tension between the supervisor and the young offender. However the need for consent only applies to youngsters aged 14 and over. Younger children might not consent but can still be made subject to such restriction. One can question the realism of confining children indoors with parents who are irresponsible, violent or drunk.

In England until recently the limits of the powers of the juvenile court were reached when it made a care order.[46] Five per cent of boys and of girls under age 14 are dealt with in this way together with 2 per cent of boys and 4 per cent of girls aged 14-17. The effect of this order is to place the powers of the parents in the hands of the local authority which might then place the child in a community home or otherwise away from its parent. This order strengthens the hand of the social services with regard to any action they might have had in mind. Much potential is seen in special fostering schemes which since being introduced appear to have met with considerable success. Families, often where one of the parents has some

training in social work or a similar profession take in one or more of these difficult youngsters and are paid weekly fees and allowances. The Kent Family project is one of the best known. It began in 1975 and takes youngsters aged 14 to 17 who are in care and must have severe problems. The project claims a 75 per cent success rate in terms of the children's overall improvement.

Another sentence which merits attention is the attendance centre order which involves deprivation of liberty for short spells (usually 2 hours) at the weekend. The total number of hours which can be ordered is 24. It is one of the only disposals in the English system where the police are directly involved in corrections. The orders, first introduced in 1948, are favoured by the present government which has recently increased to total number of hours which may be served and generally encouraged use of the penalty.[47] Few girls go to attendance centres as few centres exist for them but 19 per cent of boys under 14 and 17 per cent of those aged 14-17 received such a sentence in 1983. The emphasis is on physical training and some socially useful activity. Reservations have been expressed that such a close relationship between the police and the execution of the orders of a criminal court cannot promote the good relationship between police officers and children that community liaison departments in a number of police forces have been aiming to achieve.[48]

A far more revolutionary development is currently taking place in parts of England with the introduction of reparation schemes. In Exeter the provision of opportunities for reparation to the victim is one of the ways in which juveniles are handled in a youth support scheme run by a team from police, social work and probation. A similar scheme has been introduced in Cumbria on an experimental basis. It aims to develop existing arrangements for keeping juveniles out of the courts by exploring whether the victim and offender can reach an agreement which is satisfactory from the victim's point of view. If so, prosecution may be avoided and the juvenile will not be drawn into the criminal justice system while the victim will also benefit. The scope of reparation has not yet been fully explored but there is little doubt that it offers a useful alternative sentencing option to the courts in appropriate cases.

CUSTODIAL SENTENCES FOR JUVENILES

The gravity or persistence of offending or the particular needs of the delinquent and his failure to respond satisfactorily to other sentencing alternatives may necessitate resort to a custodial sentence.

In England, although the Juvenile Court has jurisdiction to deal with all cases except homicide, it is possible where a defendant is over the age of 14 and he is charged with an offence which (if committed by an adult) could be dealt with by imprisonment, for the trial to be moved to the Crown Court to be dealt with by judge and jury under section 53 of the Children and Young Persons Act 1933. He may be placed in custody for as long as the court pleases, even for life (which has the effect of being an indeterminate sentence). Very few cases are dealt with pursuant to section 53 but the number is rising sharply. The fear remains that procedures designed to deal with wholly exceptional cases can be abused by being over-used for cases of lesser gravity. Section 53 is usually reserved for offenders who are deemed to be dangerous and whose incarceration is considered desirable for the protection of the public. In those cases the sentence will be primarily preventive. There is however much difficulty in defining dangerousness and even more problems arise in trying to identify and predict which individuals may properly be regarded as dangerous or not. Courts are also prepared to use section 53 in cases where deterrence or punishment of greater weight than that otherwise available is required because of the gravity of the crime.

Usually, the first residential institution a child encounters is an assessment or observation centre. Its function is to analyse a child's needs to ascertain the most appropriate custodial placement. England has 6 regional facilities involved with the reception and assessment of the most severely disordered and delinquent children in the country. The poor quality of home and family life experienced by these delinquents is worthy of mention.

The assessment which is undertaken on the children involves not only observation and reporting by those closest to them but also very careful psychological, educational, social and psychiatric evaluation, medical examination, skills testing and so on. Many have poor educational records, relationships with peers and teachers are bad. Other features include truancy, low achievement, low average intelligence with attainments way below their potential. In addition, the children are insecure, emotionally unstable, impulsive, anxious, anti-authority and have delinquent self-images. Information like this usually comes to the attention of the court in the form of a series of reports. Where courts need more information about an offender prior to sentence, the option is to get it by a remand to an institution for assessment or else to allow the defendant to be out on bail and to have assessments done from home. Remands in institutions may also be used where bail is refused. In England, bail for this purpose is almost always granted but if custody is necessary, remands will usually be into the care of the local authority who will place the child in a children's home but where a "certificate of unruliness" is granted, the child might be remanded in custody and in a small number of cases that remand in custody could be remand in a prison for a teenager where no vacancy exists in an appropriate remand centre, (the latter is very rare in England).

Care orders have already been briefly alluded to. The recent introduction of a residential care order has had the effect of restoring power to the courts in respect of children in care. This measure is designed to prevent a child already in care and who commits an imprisonable offence and being placed by social services departments with his parents. This new order lends some weight to the view that juvenile justice is becoming more punitive. Fears have been expressed that children will be sent into residential homes when it might be considered better for them to be boarded out with a family. Children in care can be sent to community homes. They need not have committed offences. They will probably go out to school from the home each day and perhaps home for weekends. If truancy and bad behaviour create more concern the children may be placed in a community home with education on the premises. Their freedom to go home at weekends may then be restricted. Hostility towards residential care has accelerated to the extent that in many areas establishments are being closed before other alternative arrangements have been either tested or in some cases, provided. This kind of intervention can escalate, resulting in a youngster graduating from one disposal/institutate to another in relatively rapid succession.

Where increased security is considered essential, a child can be sent to a secure unit. Sometimes it appears that this type of facility is used for some who do not require it. Recent research has shown that secure units are being used for more and for younger children with less delinquency. Millham and others showed that of 587 boys released from the secure units and followed up for two years, 76 per cent re-offended. They concluded "For the majority of boys the secure units provide a brief sojourn in an expensive anteroom to the penal system".[49] Section 25 of the Criminal Justice Act 1982 gives the juvenile courts some measure of control over use of these secure units and says they may not be used to restrict an offender's liberty unless it appears:

(a) that –

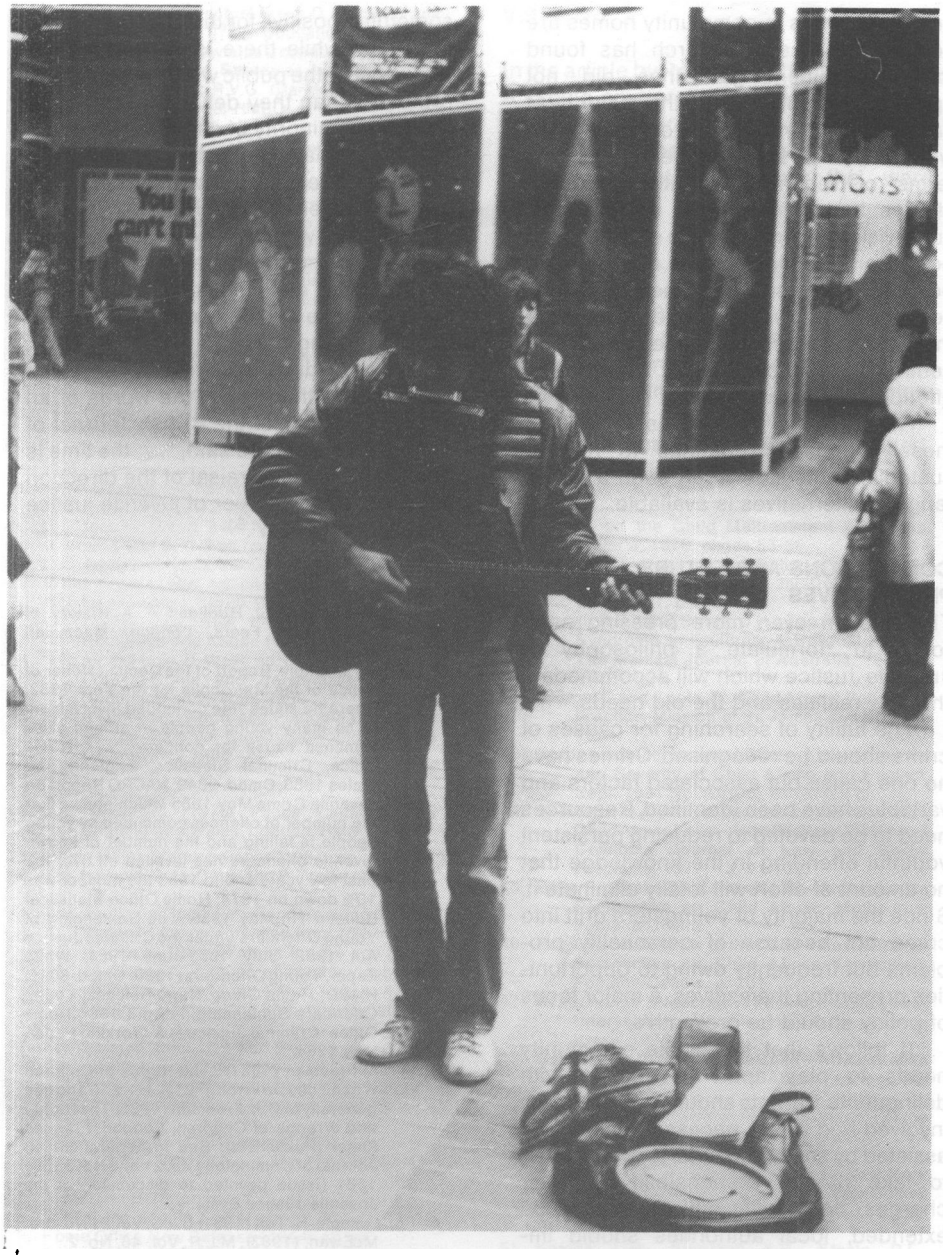
(i) he has a history of absconding and is likely to abscond from any other description of accommodation; and

(ii) if he absconds it is likely that his physical, mental or moral welfare will be at risk; or

(iii) that if he is kept in any other description of accommodation he is likely to injure himself or other persons."

The section empowers the Secretary of State to make regulations specifying how long such a child may be locked up without access to the juvenile court and how long a period of containment may be authorised by the juvenile court.

In addition to secure units there are also two Youth Treatment Centres which are highly specialised and expensive



facilities. Each one deals with a couple of dozen children designed for children and young persons who are too disturbed and disruptive to respond to treatment in community homes but do not need treatment in hospital.

Borstals were introduced for young offenders aged between 16 and 21 by the Prevention of Crime Act, 1908. The minimum age was subsequently lowered to 15 by the Criminal Justice Act 1961. The sentence was semi-indeterminate originally of not less than 9 months and not more than three years, release depending upon progress. Research has established that success on release is very little affected by the time spent in an institution, so more recently the period was reduced to a minimum of 6 months and a maximum of 2 years. The number of offenders sent to borstal have been rising and there was a tendency to send youngsters at a younger age. Pressure of numbers forced the administration to process offenders through borstal in 8 or 9 months irrespective of other factors unless the inmate made a serious assault on an officer. Successive acts of parliament have made it increasingly difficult for offenders in this age range to be sent to prison so borstal, which originally had very clear conceptual goals over time became a relatively short and fixed term facility for young offenders.[50]

The other principal short-term institution for young offenders is the detention centre, linked with the phrase "short, sharp shock" as it replaced corporal punishment when it was abolished in 1948 and was intended to give a brisk rather punitive regime. Most detention centres modified their approach towards a training-orientation albeit for the short period available. The Criminal Justice Act 1982 reduced the length of detention centre orders to a minimum of 21 days and a maximum of 4 months. Some critics argued that this would result in increasing numbers of boys being sent to detention centres. This has not happened but the early monitoring of the Criminal Justice Act 1982 reveals, perhaps, a more worrying trend.[51]

The CJA 1982 abolished prison and borstal sentences and replaced these with a fixed term sentence of youth custody. Terms upwards of 4 months are spent in institutions modelled on the best of the borstals. These changes serve a variety of purposes: attention is paid to the justice model of corrections by eliminating the semi-determinate element from the bostal sentence; power is restored to the judiciary as less discretion over release is left with the executive; furthermore, the sentence has the advantage of flexibility of allocation between overcrowded institutions. However, the switch in sentence has not been accompanied by an increase in resources. Before imposing a sentence of yough custody, the court has now to obtain a social inquiry report and there is a clear injunction to courts not to pass a custodial sentence of youth custody unless they are "of the opinion that no other method of dealing with him is appropriate because it appears to the court that he is unable or unwilling to respond to non-custodial penalties or because a custodial sentence is necessary for the protection of the public or because the offence was so serious that a non-custodial sentence cannot be justified." In addition, the court has to state its reasons for being of the opinion that non-custodial methods of dealing with the offender are inappropriate and the offender must be legally represented.

No claims have been made for the rehabilitative qualities of youth custody. Borstal training clearly made the trainees release dependent on his response to the "treatment" in theory if not in practice. Following release from youth custody, the offender will be supervised, if he is not parolled for three months or until after the remission date which ever is the later. Youth custody sentences may not be suspended (borstal training could not be suspended). However, in the past many young offenders received suspended sentences. The lack of availability of this power could run the risk of adding to the numbers in youth custody centres and prisons. The Government argued that if youth custody was to be imposed only where no other sentence is appropriate, it would be inconsistent to suspend it.[52]

It might be suggested that young girls are worse off than their male counterparts. There is still no short sentence for girls under 17 but girls aged 15 or more may receive a youth custody sentence for more than 4 months in length. The shortage of institutions for females in the country could result in more younger girls receiving longer sentences for no other reason than lack of facilities. However, for the first time guidance on sentencing girls is provided and the Government has stressed that wherever possible, girls should be near to home and share the facilities with older women which it is hoped will be beneficial.

Policy statements prior to legislation said "The government is doing as much as possible to encourage the development of

non-custodial facilities so that the courts may continue to have a range of alternatives sufficient to ensure that an offender is given a custodial or residential sentence only when he is a real danger to society or has shown himself unwilling or unable to respond to non-custodial penalties, or, in the case of a juvenile, is in need of care and control that he unlikely to receive at home."[53]

RESEARCH POLICY AND PRACTICE

It has been mentioned above that the Criminal Juctice Act 1982 was intended to discourage courts from sending juvenile offenders into custody. Research findings of the Act's first six months show that there has been a significant increase in the number of custodial sentences imposed on girls (as far as females aged 14-16 are concerned, the latest Home Office figures show that the use of immediate custody doubled between 1982 and 1983/84)[54] There has also been a substantial move away from the detention centre order towards the more serious youth custody sentence for young men. (Magistrates were imposing 12 per cent more of the new sentences than the old ones they replaced). It is possible that magistrates are avoiding the brisk and more disciplined regimes provided by detention centre orders because they are heeding warnings not to use detention centres to give young people "a taste of custody". This trend may diminish over time but is nevertheless disturbing.

As a general rule there has been little connection between research findings and actual policy in England and Wales. This is exemplified by the Government's recent decision to extend the tougher, brisker regime introduced into 4 detention centres to all detention centres despite negative findings concerning their effectiveness published by the Young Offender Psychology Unit in August 1984.[55] Features of the stricter regime in detention centres include the following: more emphasis on parades and inspections, earlier lights out, harder work, a brisker tempo and restrictions on privileges. Yet the researchers found that the inmates preferred several aspects of the "tougher" experimental regime, for example, drill sessions and physical education. The latter are thus excluded from the new regimes to make room for more hard work. The findings also show that the introduction of the tougher regimes had no discernible impact on the trainees reconviction rate and did not affect crime trends amoung young people.

The overwhelming weight of evidence favours a major shift away from custodial measures and towards community based methods of dealing with the majority of juvenile offenders. Trends in sentencing of this age group hve been the reverse of this approach. The percentage of juveniles given conditional discharges and fines is similar to the position a decade ago; and fewer care orders and supervision orders are being imposed. As far as care orders and placements in community homes are concerned, recent research has found that Government guidelines did not appear to be followed in the majority of cases and that in one third of cases there were no previous court appearances.[56] In terms of reconviction rates repeated studies have shown that, for example, supervision orders are more effective than borstal or detention centres and whilst 45 per cent of those supervised by social services for two years re-offended during that time, 75 per cent of those at detention centres and 84 per cent at borstals re-offended within two years of release.[57]

The question remains as to why all these youngsters continue to receive custodial sentences when such a broad range of alternatives is available.

CONCLUSIONS AND FUTURE PERSPECTIVES

There is an even more pressing need today to "formulate a philosophy of Juvenile Justice which will accommodate the new realities and the old needs."[58]

The futility of searching for causes of crime should be recognised. Crimes have no one cause but associated factors and variables have been identified. Resources need to be devoted to reducing persistent youthful offending in the knowledge that no amount of effort will totally eliminate it. Since the majority of youngsters drift into crime not because of personality problems but frequently owing to opportunities presenting themselves, a major focus of policy should be preventive.

It follows that the whole community needs to play apart in dealing with delinquents. Parents should become more involved and where necessary should be assisted by social services; teachers need to take greater responsibility of their charges; community policing should be extended; local authorities should improve the design of their estates, provide more caretakers and take more care in their housing allocation policies.

As evidence has suggested that the vast majority of youngsters mature out of delinquency and initial encounters with the criminal justice system tend to generate even more offending, efforts should be directed towards less intervention in all respects achieved by decriminalisation, diversion and deinstitutionalisation.[59] Paying lip-service to the latter while actually extending the net of social control by developing community disposals in addition to the wide range of custodial and residential measures is not what is here intended.[60]

The juvenile courts should be made more informal and proceedings should be made more comprehensible to the children involved.

The majority of youngsters appearing before the court should be given non-custodial sentences. Adequate resources are required to ensure the success of such measures. And there is no doubt that this type of strategy would provide better value for money as well as doing something positive for the youngster in the long term while there is no evidence to suggest that the public will be any less well protected than they deserve to be.

For the minority of offenders for whom custody is unavoidable, the importance of a purposive regime and specialist staff are vital ingredients. Resorting to 'human containment' would not be appropriate but at the same time a youngster should not be detained in an institution for lengthy periods on the dubious ground that "treatment" is taking place.

In concluding, the present writer can do no better than quote the words of an Associate Editor of the British Journal of Criminology when he said, ". . . the time is ripe for some reappraisal of the direction and intellectual temper of juvenile justice research in Britain".[61]

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In the article by Ro Roberts "Child Abuse – A Socio-environmental perspective" on page 11, 3rd paragraph, line 15 the words –**'chosen. In the following discussion it must be pointed out that the'** were omitted.

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In the article "Health Professional's Knowledge of and Attitudes Towards Child Abuse Reporting Laws and Case Management, in Victoria", by Dot Shamley, Lisa Kingston and M. Smith, on page 7 references nos. 39 to 86 were omitted. These are as follows:

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