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DEALING WITH YOUNG OFFENDERS

by

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ABSTRACT

This study of systems for dealing with young offenders takes as its starting point the contrast between recent developments in the United States and Britain. These developments have occurred as a result of questions which have been raised, on both sides of the Atlantic, about the role of the juvenile court in combatting delinquency. In the United States the resulting re-appraisal of the court's function has been characterised by an emphasis on the fact that the court is part of the criminal justice system, and that it therefore cannot ignore the need to protect society against harmful conduct and to observe the requirements of due process. In England and Scotland, on the other hand, the movement has been towards the creation of tribunals which pay less attention to the child's offence and which exercise a jurisdiction which tends to blur the distinction between offenders and non-offenders.

From an analysis of this contrast the thesis moves to an examination of a significant similarity between the emerging Anglo-American systems. Although different solutions have been adopted to the problem of re-defining the role of the juvenile court, the reforms in each of the countries studied have been accompanied by a desire to narrow the jurisdiction of the court. The conclusion which emerges from an examination of British and American experience is that, instead of seeing the juvenile court as an all-purpose delinquency-control agency, it should be viewed as an agency whose inherent limitations must be recognised if best use is to be made of its distinctive capabilities.

This conclusion raises four related problems which the thesis considers in detail. First, attention is given to the task of attempting to define the court's role, and an effort is made to determine which functions it can effectively and appropriately perform. Second, on the basis of this analysis, consideration is given to the formulation of criteria which indicate with precision the types of case which should be referred to court. Third, the design of an effective sieving device is discussed: machinery must be created which will ensure that the court receives only those cases which are appropriate to its re-defined role. Fourth, reference is made to the types of informal services which are required to deal with the cases diverted from the court.

Against this comparative and theoretical background aspects of New Zealand's system for dealing with young offenders are considered. This part of the study takes the form of an historical analysis of its development and a description of the system in operation. Because of the conclusion reached regarding the importance of limiting court intake particular attention is focused on the procedures and criteria employed in making the decision as to whether or not a child should be prosecuted. Hence the fieldwork on which much of the New Zealand material is based concentrates on the Youth Aid/Social Welfare conference. An attempt is made to describe and analyse the day-to-day working of this type of sieving device. The findings are discussed, and certain features of the conference system are criticised. The thesis concludes with comments on some of the difficulties which must be taken into account in implementing a policy which emphasises the informal handling of young offenders.

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INTRODUCTION

This thesis is concerned with the problem of youthful offending. In Britain and the United States of America much has been written about the part played by the juvenile court in attempting to combat this problem, and analysis of developments within the court system in these two countries provides a convenient starting point for a study of some of the central issues in the field.

This analysis reveals different approaches to the question of the way the young offender is regarded. Is a young person who violates the criminal law to be viewed primarily as an offender who happens to be a child, or as a child who happens to have broken the law? Should our response to him be much the same as to an adult offender - though softened to take his age into account - or should it be fundamentally different, so that we re-define him as a child 'in need', and treat his offence as an unimportant event which brought his difficulties to our notice? In short: does the offence matter?

In comparing the answers reached on each side of the Atlantic it can be said, as a very broad generalisation, that recent developments in the United States have tended to emphasise the criminal justice aspect of the juvenile court's role, while in England and Scotland the tendency has been to think in terms of a child welfare approach to delinquency. An examination of these differences forms the subject of Chapters One and Two.

From this analysis of the contrast between the two countries, the study moves to an examination of a very significant similarity between their emerging systems. The discussion embodied in Chapters

One and Two proceeded on the assumption that the juvenile court is the most important anti-delinquency agency, that the court is, as it were, the centre of gravity of the system. However, close consideration of recent experience in Britain and some parts of the United States suggests that this is not so. In both countries emphasis is now being placed on the need to narrow the jurisdiction of the juvenile court and, where possible, to avoid taking young offenders to court. Instead of seeing the juvenile court as an all-purpose delinquency-control agency, the tendency is now to view it as an agency whose inherent limitations must be recognised if best use is to be made of its distinctive capabilities. The movement towards a reduction of juvenile court jurisdiction forms the subject of Chapter Three.

The conclusion that, in future, the court should fulfil a more limited role raises three related problems. First, an attempt must be made to define that role: an enquiry must be made into the tasks which society imposes on the court, and a decision reached as to the functions which it can effectively and appropriately perform. Second, on the basis of this decision, criteria must be formulated which will indicate with precision the types of case which should be referred to court. Third, machinery must be created which will ensure that these criteria are observed; an effective sieving device must be created which will make sure that the court receives only those cases which are appropriate to its re-defined role.

The final element in the total pattern is, of course, the provision of alternative services to deal informally with the cases diverted from the courts.

With regard to the problem of determining the role of the court

my analysis of this - in Chapter Four - builds on the foundations laid in Chapters One and Two, for the way the phenomenon of delinquency is defined determines the type of tribunal created to deal with it. In Chapter Four the focus shifts from an examination of the nature of juvenile lawlessness to a consideration of the functions performed by the agencies which seek to deal with it.

Chapters Three and Four also examine British and American approaches to the tasks of formulating criteria and creating mechanisms designed to limit court intake. In addition, the former Chapter briefly compares the two countries' proposals regarding alternatives to court action. In passing, it is interesting to note that seemingly different solutions often turn out, on closer examination, to have much in common: there are many similarities in what is happening on each side of the Atlantic, but differences in terminology tend to disguise this fact.

Part II considers New Zealand's system for dealing with young offenders. The most profitable way of exploring the character of this system proved to be by means of an historical analysis of its development. This is contained in Chapter Five, which reflects many of the issues explored in Chapters One and Two. The strong influence of both English and American practices is discussed, and attention is focused on New Zealand's response to the problem of defining the young law-breaker and on its ambivalence with regard to the role of its Children's Court. This court represents a compromise between English and American approaches to the task of creating a special tribunal for juveniles.

Because the comparative research contained in Part I

highlighted the importance of, and the difficulties associated with, the control of court intake, my research into the operation of New Zealand procedures concentrated on the way in which the decision to prosecute was made. Chapter Six - which describes how young offenders are dealt with under the Child Welfare Act 1925 - provides an essential background to this analysis: only if one is aware of the total pattern can one appreciate the significance of the choices made and the pressures operating on those who make them. This description is supplemented by a series of case-studies - contained in Appendix I - which have been included to bring it to life and to convey a more vivid impression of the way the system works and of the sort of human and social problems with which it must deal.

In New Zealand the sieving device which controls referrals to the Children's Court is a Youth Aid/Social Welfare conference. The operation of this device is described in Chapter Seven, the object being to throw light on the functioning of one type of screening mechanism, on the criteria employed in determining whether a child should go to court or be handled informally, and on the decision-makers' expectations of the court.

By indicating some of the factors with which any screening device must attempt to deal Chapter Seven provides an opportunity for re-examining, in a less abstract manner, some of the issues raised in Part I. This re-examination is discussed in Chapter Eight, which offers some comments on the New Zealand conference system and on the assumptions underlying it. The Chapter also deals briefly with some of the difficulties which must be taken into account in implementing a policy which emphasises the

informal handling of young offenders.

Finally, mention must be made of the fact that, on 1 April 1975, new legislation regarding children in trouble came into force in New Zealand. This is the Children and Young Persons Act 1974. Consideration of this statute is outside the scope of this study, the fieldwork for which was completed while the Child Welfare Act was in force. However, as it would be unrealistic simply to ignore the advent of the new Act, I have included a discussion of those of its provisions which are relevant to the themes considered in this study. This discussion forms Appendix IV of the thesis.