IX IORNS, C.J. Second Time around.

SECOND TIME AROUND:

A Critique of the Process of Reform of the Children and Young Persons Act 1974

by CATHERINE J. IORNS

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CONTENTS

Introduction 1

Part A: Suggested Process 3

1 - The Problem 3
- The Courts 4
- Children's Boards 5
- Youth Aid Screening 7
- Discretion 8
- Prevention 9
- Ideology 10
- Implementation 11

2 - Brainstorming 12

3 - Evaluation 13

4 - Legislative Proposals 15

Part B: The Actual Process 16

National Party Proposals 16

Department of Social Welfare Draft 18

Red Paper 19

October Bill 25

Conclusion 27

Footnotes 29

Bibliography 36

Introduction

In December 1983 the then National government's Minister of Social Welfare, Venn Young, announced an intention to review the Children and Young Persons Act 1974 (1), just ten years after its introduction. Various proposals have since been forthcoming, the project having been adopted by the Labour government in 1984. The process of reform has been lengthy, a Bill not yet having been presented to Parliament. The intention of this paper is to assess the proposals to date with respect to the process employed to produce them.

The process is important because it is difficult to assess the substantive issues of any proposals (whether or not the proposed solution is the 'correct' one) until it is known what the perceived problem is and how a particular proposal helps solve it.

The traditional method of undertaking major law reform such as this was to establish a working party or similar body to assess the situation and draw up recommendations and/or a draft Bill. This Bill would be introduced to parliament and be referred to a select committee for submissions and further consideration. The Labour Government has stated that it intends to change that process to make it take more account of public opinion. The working party would be established which would draw up first a public discussion document to elicit public comment. Then the working party would assess the responses and draw up their recommendation and/or a draft Bill. The reform would then follow the established parliamentary process, including the select committee and further submissions.

There is a correct method for problem solving in general. In brief, the steps are:
1- Identify the problem;
2- Brainstorm - think of possible solutions, without evaluative considerations;
3- Evaluation - decide on the criteria to use to choose between the various proposals, use these criteria to evaluate the proposals and choose the resulting 'best' solution;
4- Use that solution to draw up the legislative proposal.
A good public discussion document will request (and receive) comment on all of these stages. This will ensure that a resulting draft Bill will have as broad an information base as possible.

In comparison, the traditional method receives public comment after a position on the subject has already been adopted. Consequently, public discussion is primarily focussed on justification for or against that stated positon rather than a neutral discussion of a range of other possibilities as well. The Labour Government's suggested process appears to be an attempt to embody the method of general problem-solving mentioned above (2). It is evidence of a different attitude toward public input - a larger emphasis on its importance.

The focus of this paper is on the reform of the juvenile offending provisions of the CYP Act 1974. Part A outlines what would be required by the suggested process for law reform (the problem-solving approach) and how that might be applied to the offending provisions in particular. Part B attempts to assess whether or not the reform process undertaken in the past two-and-one-half years has in fact been conducted in accordance with the suggested structure and method. This assessment will include a description of what has been done and whether or not the suggested requirements outlined in part A have been considered.

PART A : Suggested Process

1 - The Problem

The most crucial step in any attempt to solve a problem is its definition - what precisely is it that needs correction. With respect to law reform that definition should include an identification of the purpose or aim of the relevant aspect of the justice system. If that aim is not being achieved then one must ask why not. The answer to this question should identify the particular factors which hinder achievement and therefore which need to be rectified.

In the writer's opinion the main purpose of the juvenile justice system is to 'turn' the delinquent teenager 'into' a responsible adult. Related to this principal purpose is the aim to prevent primary offending (that is, so children do not commit their first offence). The aim behind both of these could be said to be the protection of the community, or societal order. The primary prevention is achieved (in principle) through deterrence (the fear of detection and possible punishment) and socialisation, both encouraging a youth to be a responsible adult. Secondary prevention is achieved through the juvenile justice system.(3)

The Child Protection and Child Offenders Act 1979 of South Australia and the South Australian Supreme Court also hold this view of the primary purpose of the juvenile justice system. Section 7 of the Act, reiterated by the court in Hallam v. O'Dea (4) states that the aim of the court must be to (5)

> *seek to secure for the child such care, correction, control or guidance as will best lead to the proper development of his [or her] personality and to his [or her] development into a responsible and useful member of the community.*

There have been indications that the present system is not achieving these aims. Recidivism is high (6), which indicates that delinquents are not being reformed. There has been criticism form the government and the public about various aspects of the system which are thought to contribute to recidivism (7). These criticisms will be discussed below.

The Children and Young Persons Courts

At the time of its introduction, the CYP Act 1974 was not merely a modification of the old approaches but an innovation. Its aim was to reduce the role of the courts and, where possible, to bring offenders before a less formal body. Separate juvenile courts were established with exclusive jurisdiction over care, protection and control (offending) matters. These were to be presided over by District Court Judges (8) who were "suited" (9) to this jurisdiction, although the courts were to be physically separate from the adult District Court(10). The judge would develop a specialist expertise in dealing with youth offending, weighing up the many associated conflicting principles (11). Proceedings were envisaged as being easier for the young offenders to understand.

The policy of the new system was to be 'diversion'. "Diversion" is a wide term indicating that the intention is to 'divert' people from the traditional, formal system of courts and imprisonment. There are three aspects - diversion away from the courts (release without a formal hearing), diversion away from institutions and residential care (often separately labelled "deinstitutionalisation"). There is also diversion to another less formal body (for example, Children's Boards) and/or treatment (for example, community care) in place of the courts and institutions respectively. This emphasis on diversion was for two reasons. First, that the courts had not succeeded in rehabilitating juveniles (there was more offending and a 40% chance of reappearance for those dealt with by the courts). Second, the Minister wanted a stronger emphasis on prevention and early intervention. The overall result was intended to be a system sensitive to the needs of youths. Where the courts were to be used there was to be a congenial atmosphere and surroundings, designed to put youths at ease.

The actual physical conditions of the various CYP Courts in New Zealand vary, but have been criticised in the Tauroa Report as generally inadequate (12). There is typically a small waiting room which is crowded - not private or congenial by any stretch of the imagination. Nor are the families given the peace and quiet they were thought to need. The time delay before the hearing of cases is typically abysmal. There is no system of appointments, so families can (and often do) wait all day for their case to be heard. In Wellington, with the large number of cases, before an extra day for the court to sit was agreed upon, this waiting time was liable to be continued the next week. As the Tauroa Report stated, no adult would tolerate this in any other situation and would "walk out" (13).

The roster system for District Court Judges in the CYP Court does not provide judges with "special interest, experience or qualifications" (14) to sit "primarily" in these courts. The rotation (on roster) almost ensures that a parity of sentencing is not attained.(15)

The proceedings themselves may be more informal than the District Court, but are (apparently) still hard to follow and understand for the youths concerned (16). Even the language is often not understood. For example, "admonished and discharged" left youths unsure of what had happened to them, according to one survey (17). Even with a closed court (with fewer people) youths find it difficult to answer questions in front of the people, also feeling uncomfortable standing when everyone else sits.

None of these problems are inherent in the CYPA 1974. They appear to the writer to be administrative and relatively easy to overcome. As a comparison, for example, the Family Court Judges (when presiding over care and protection matters) are said to be very understanding and sympathetic, and talk on a level the youths can understand. District Court judges could be trained and/or chosen differently so as to be able to cope similarly. Or perhaps Family Court judges could be used in their place (18).

A problem which is possibly inherent in the present Act is racial and ethnic insensitivity, particularly in relation to the Maori culture. The system, in many respects has ignored the cultural difference and thereby established a cultural barrier. Communication is difficult and only achieved on the terms of the majority. Thus, the surroundings and less formal procedures are unlikely to be congenial or able to put these participants at ease. There have been some structural changes (such as providing interpreters in the courts) but the overall system and ideology remains steadfast. It may be that the system needs to change in a different, more fundamental way to break down these cultural barriers and bridge the communication gaps.

Children's Boards

The establishment of Children's Boards was to enhance the process of diversion (started in the 1960-s (19)), elevating diversion to a policy to be actively pursued. It was proposed as a complete alternative to court processing for children (aged 10 to 13 years) and a possible method of screening before court for young persons (14 to 17 years) where appropriate. The Board's role was seen as a fence at the top of the cliff rather

than the ambulance at the bottom (20), embracing considerations of the welfare of the child.

The Board consists of a police officer, a social worker, an appointee of the secretary for Maori Affairs and a local resident. It meets informally and can make recommendations (unenforceable) on how the child should be handled and/or what the child should do. In doing so the Board must bear in mind the needs and rights of the child and the community (21). It may seek reports about the child and/or arrange for counselling. It pursues informal alternatives to court processing and is a bar to court proceedings for children.

The VUW Institute of Criminology ~~Department~~ also studied the operation of the Children's Boards (22) by interview (of the children, their parents and the panel) and by watching the Boards "in action'. Their first criticism is that the Boards do not meet before the cases, so their approach is ad hoc - not agreed upon in advance. Consequently, members having different approaches would invariably conflict, often interrupting each other's line of thought or enquiry to pursue their own. A problem with the community member was that they seldom had a philosophy or approach, nor were they confident enough to override the 'professional' approaches. As a result they often had little to say. Some members were extremely helpful, others were not.

The study found that there was a difficulty in encouraging the child to actually say anything. Some children felt overwhelmed by all the people. Others said that the panel did all the talking for them. Alternatively, they did not know what to say. There is certainly a problem with the number of different approaches appearing as a barrage. Consequently, the Boards' meetings are often not discussion, participation and agreement about a plan for a solution - they are more an acceptance of whatever is suggested by the panel. This could be seen as a problem as the solutions are not enforceable (which was criticised by the panel members). If the youth and/or parents do not agree entirely then there is a risk of the solution not being implemented.

There were administrative problems due to the fact that the Board only convened for one morning per week. This often caused a delay in the scheduling of cases. It also meant that the Board had a lot to do in one sitting - the hearings closer to noon being invariably shorter and more rushed.

More general criticisms have been raised concerning the concept of the Boards as community justice. The mere addition of a representative from the greater area one resides in does not ensure the panel is more represent-

ative of a particular community. If community justice was a primary aim then it could be achieved far more effectively (23). Another general criticism concerns the conforming of the treatment by the Board to the child's perception of justice and the legal system. None of the children surveyed expected to be dealt with in this informal, seemingly lenient manner and were not sure what to make of it. Should the system be changed? Or should perceptions about the system change?

Youth Aid Screening

The police or Youth Aid screening presently operates as the initial stage for pre-court diversion for all children and young persons. The screening panel consists of a police (Youth Aid) officer and a social worker, although the actual decisions are made by a senior police officer on their recommendation. The roles of both the social worker and the police have been criticised. With respect to the social worker, the police have all the documents and first-hand information on the situations and it is felt that the social worker is only given the information the police feel is relevant. As a result, it is said that the social worker becomes merely a rubber stamp for the police decisions (24).

With respect to the role of the police, there is one criticism of the decision makers - that there is a mixed response around New Zealand by the various Commissioners of Police to Youth Aid recommendations, some hot, some cold. The other criticism is of the appropriateness of the police being a body concerned with 'social enquiry' reports. The police department is an agency concerned with detecting and prosecuting offences. Morris et al argue that (25)

> *the police are unlikely to become an integral part of a diversionary approach to children in trouble - such values have a low or marginal position in the values of their profession. The central duties of the police are the prevention, control and detection of crime and the normal end-product is to take the individual to court. To ask the police to be the main agency for keeping children out of court creates a conflict in the various roles to be performed by an individual officer, and leads to conflict with his [or her] colleagues.*

Some of these problems could be overcome by vesting the decision-making power in the panel itself, though an independent 'panel' would probably be better.

Discretion

Discretion is an inherent part of the present system. It is exercised at all the levels mentioned above - at the sentencing stage in court, at the Chiildren's Board hearings whan making recommendations for treatment, at Youth Aid screening when deciding whether or not to prosecute. There is also discretion exercised by the police officer on the 'street' when deciding whether or not to arrest. Where it is exercised without central monitoring or control there is a risk that decisions may be made on an ad hoc basis, thereby violating natural justice. Present criticisms are that inequities are resultimg from the improper exercises of discretion throughout the system.

Discretion has been blamed for the unrepresentative proportion of Maori offenders and the disparities in their treatment. For example, it is often suggested that the police are more likely to arrest Maori youths that pakeha at the 'street' level The police have been criticised for failing to take account of the cultural rights of minorities and being ill disposed toward them, their families and communities. If these minorities feel a resulting animosity toward the police then full cooperation is unlikely to be given in preparing Youth Aid reports which will in turn be more likely to be rejected by all parties. This will maintain the disparity in treatment of minorities and maintain the prejudices toward them.

There are also figures showing a disparity in the treatment between girls and boys (26). This is again likely to be the result of personally-held assumptions about and prejudices toward the children by those with discretion. These criticisms may appear to imply that all youths should be treated exactly alike. Some people do advocate this, but others say that this is not necessarily so. The other view is that 'irrelevant' charateristics such as race and sex should not be taken into account when exercising discretion but that there are some factors which may. Such factors could be the cause of the offending and/or the needs of the youth. For example, where a child steals school supplies because their solo parent cannot afford them. If the family was given financial help one could expect that the child would not continue to steal so that punishment would not be necessary. Related to this view of 'needs' is the view that race can be relevant because of different cultures and values. Thus, when a Maori youth is apprehended a system reflecting Maori values should be used. This is where the use of programmes such as Maatua Whangai comes in. Such a system would probably not be appropriate for those brought up with different value systems (primarily non-Maoris).

These views on needs are not accepted across the board. There is a continuing conflict between this 'welfare' approach and a more justice-base approach. The 'justice' view usually calls for discretion to be eliminated or strictly controlled so that all youths are treated alike, perhaps only offending histories and age producing any differences (27).

Diversion requires a large measure of discretion. It is exercised in order to decide the best means of treatment for each particular offender. Such a system starts form the proposition that all are not necessarily alike, rather than that they are all the same.

Any changes to solve problems involved with discretion thereby require fundamental, ideological changes as well as the structural changes. It is not something to be achieved by 'tinkering'.

Prevention

Sections 5 and 6 of the CYP Act 1974 provide for preventive measures to be undertaken. Section 5(1) holds that "it shall be the duty of the Director-General to take positive action" to assist in preventing children from committing offences. Section 6(1) provides for a duty to take steps to "promote both the well-being of families and communities and the most advantageous development of their children and young persons". To carry this out the Director-General must liaise with individuals and organisations (both government and community) and provide financial assistance to "welfare organisations... and individuals with projects, schemes, research or activities designed to implement the objects of this Act" (28).

Many community groups in New Zealand claim that there has not been any emphasis placed on prevention by the Director-General (29). If money has been budgetted for the implementation of sections 5 and 6 they claim not to have seen enough of it. The writer is of the opinion that there should be three levels of prevention and that the criticisms are directed at the inadequacy of the first two. First, at a general level, is the support for 'normal' families as everyone has the occasional problem. For example, Neighbourhood Watch or Support Groups, activities for children. The second level provides a response to specific problems, such as providing Women's Refuges for domestic violence victims, options for incest sufferers who do not want to live at home, rehabilitation centres for drug (incuding glue and alcohol) users (30). The third and final level is provided by the justice

system. It is generally accepted that it is necessary to use this facility but that it should be a last resort. The criticisms point to the fact that the justice system is being used where problems might have been better dealt with at the community levels. Hence the desire for diversion before the court stage, to make these community services available to those who need them. The problem of funding these sorts of prevention schemes is not inherent in the structure of the Act, but the very opposite. This is provided for in the Act, merely not implemented as fully as desired.

Ideology

A relatively frequent criticism of the present system is that it does not serve well clients of racial and ethnic minorities. Criticisms of the courts are outlined above. These comments are equally applicable to other aspects of the system - official 'processing' and 'treatment'. Criticisms by Maoris have been the strongest and some attempts have been made to alter structural aspects to fit their desires. For example, s. 4A CYP Act 1974 mentions the importance of "whanau or other culturally recognised family group[s]" (31), there is the appointee of the secretary for Maori Affairs who sits on the Children's Boards. But does the system and its attitude toward the treatment of juvenile offenders accord with the Maori sense of justice? Some say that even this is different. If so, then the ideological base may need to change. It is possible that the various attitudes are incompatible and/or that compromises will need to be made. Even a compromise could be a step forward from the tyranny of the majority presently enjoyed.

A perennial ideological conflict is that between a welfare and a justice-based system. This conflict is implicit in many of the concerns voiced about the court system being too soft on criminals (especially "today's youth"). The conflict is between the handling of young offenders according to their 'needs' or their 'deeds'. The former usually entails a look behind the scenes at what may have caused the youth to offend. If there are any family or social problems then these are treated (at least, this is attempted), often instead of any 'punishment'. The latter entails treatment - usually punishment - in accordance with the severity of the crime, assessing what they did rather than why they did it. Most justice systems embody a mix if the two - welfare of the child and 'justice' for the community and the child (in the formal sense of "justice").

Perception of many of the problems mentioned in the preceding sections will depend on which of these ideological views is held. For example, one's opinion of discretion and disparities on treatment are likely to be correlated with opinions on the welfare and justice ideals. If the welfare of the child and its needs are considered paramount then youths with different needs can be expected to be treated accordingly. Thus, any difference will not (necessarily) render their treatment unjust. Whereas this is likely to be seen as unjust by one who favours treatment according to deeds; two youths who have committed the same act (usually with similar offending histories, as well) can be expected to be handled in the same way, no matter their reasons for offending.

The present system involves a mix of the two approaches. Needs are given more weight for children and deeds for young persons (perhaps reflecting views of differing culpabilities with differing ages). History has seen different emphases in our justice systems - in the mid-nineteenth century the system was purely justice oriented, in 1925 the passing of the Child Welfare Act evidenced a needs-oriented approach (32) . The criticisms outlined in Part B are of the welfare approach and are advocating a (return) swing toward a justice-oriented system. Yet criticisms also come from community groups in particular saying that the justice-based approach does not prevent recidivism, hardly deterring first offenders, and that the cause of the offending needs to be eliminated to achieve this, which is best done via a welfare-based system.

The result is that there are at least two (33) conflicting ideologies and any proposals for juvenile justice reform should evaluate their various options.

Implementation

The government does not have a monopoly on the criticisms of the system so the public's comments are important - this is why the new reform process was suggested. These comments and criticisms should be requested through a public discussion document (such as the Red Paper mentioned in Part B or the recent discussion books on Social Welfare Services (34)). Such a discussion paper would ideally be produced by the working party established to evaluate the situation (including receiving and evaluating the submissions and eventually drafting a Bill).

2 - Brainstorming

The purpose of the brainstorming exercise is to obtain a wide range of options - as wide as possible - from which to choose or make up a solution. There is in fact a wide range of options which could sensibly be discussed in this law reform exercise (35). A few examples are given below.

Given that a large number of criticisms are about the (non)implementation of the present Act one option would be to keep it in its present form but implement it as it was envisaged. A related option would be to keep the basic structure of the present Act but to modify one or two aspects, such as the Children's Boards (possibly their administration, operation, structure and/or their jurisdiction. The Youth Aid screening process could be modified to take account of the criticisms mentioned above (36).

Other options could be the solutions chosen by other countries to the problem of juvenile justice. For example, our present system was modelled on the South Australian diversion system. Basically, that system has a screening panel the same as New Zealand's. There are Children's Aid panels, similar to our Children's Boards but with a slightly different constitution. There is also a specialist, closed Children's Court. But it is said to operate slightly differently - perhaps attributed to the wider range of community alternatives (37).

The Scottish Reporter system has a structure different from any other in the world. Its main feature is the establishment of a Reporter who screens all the young offenders. The Reporter is a single person, independent of any other government department or agency, who can recommend a wide variety of options for dealing with the offenders. Given the criticisms of the Youth Aid screening process this system would be a desirable option to examine.

Implementation

The brainstorming exercise would also be undertaken by the working party mentioned above (38). Options should be discussed by the working party and a number of the more pertinent ones included in the public discussion paper. They could be examined and public comment on these ideas could be called for, including requests for other ideas, preferably with reasons for and against the various proposals. Thus, discussion and evaluation could take place (after identification of the options), which is the task of the next step.

3 - Evaluation

Many principles and factors are considered when evaluating proposals for a juvenile justice system. Each should probably be referred to and considered, including those not necessarily enjoying current popularity (as with most fashions, many reappear, or perhaps have appeared before (39)). The aim is not to bandy around jargon or assumptions but to attempt to evaluate the effects of each identified option with respect to these competing factors, outling possible pros and cons. Examples of such factors are:

- the conflicting principles of welfare and justice, whether or not the needs of the child are at least as important as the right to due process;
- diversion, both away from the formal copurt system and diversion to some programme (for example, to treat the cause of the offending - where identifiable);
- deinstitutionalisation, or diversion from state, residential care;
- protection of the community;
- accountability for decisions made about young offenders;
- the possible conflict of police duties (as illustrated in the discussion of the Youth Aid screening (40));
- avoidance of the widening the net of social control. For example, a youth who might have previously not been arrested but given a street caution may instead be arrested so as to be diverted to an agency or programme, thereby interfering with their personal liberty, more than before;
- consistency of decisions and parity of results;
- avoidance of the possible stigma and labelling associated with a particular method of handling offenders (for example, court processing) which is thought to encourage reoffending, not prevent it;
- the practicalities of implementation. The solution must, for example, be able to apply to both urban and rural areas. For example, the (in)frequency of the arrival of the various judges in the rural areas may restrict the options for the types of judges to deal with juvenile offending, if it is thought desirable that children should be dealt with very quickly.;
- what kinds of programmes actually work in preventing recidivism. For example, whether there are any studies which show a particular system, or type of system, works.

All of the abovementioned points are commonly discussed by writers when evaluating juvenile justice systems. Discussion of law reform in this area could reasonably be expected to include the majority of them. Such discussion could include mention of opinions of some of the writers on the various factors. The justice and welfare ideologies and their implications and effects have been well canvassed for most of this century. There are

studies and evaluations made of other juvenile justice systems of the world - ones which embody those principles to differing extents. Such studies often focus on specific aspects of a system (such as the diversion in South Australia or the independent screening in Scotland) and evaluate their impact on the results of the system. What 'works' is a hotly debated subject so some opinions on this would be expected as well (41). A working party could reasonably be expected to read many of these opinions and mention some in the discussion paper, perhaps with some comments of their own about the opinions. At the very least references should be made to any studies or writers used in the paper. The public could then examine the opinion referred to themselves, enabling them to agree or disagree with the basis for a proposal rather than fumbling around trying to deduce why a particular comment may have been made.

When submissions have been received it would be the working party's task to assess the reasoning employed and their persuasiveness. If there was any major disagreement with the working party's suggestions in the discussion paper then it should not be swept under the carpet but honestly taken into account.

The process in this evaluative step could reasonably be expected to be lengthy. For example at least three months should be allowed for submissions to be made (longer if the Christmas break fell within that time). Before that stage is reached the working party must research the situation and draft the discussion paper. It is only after options have been well-considered that a Bill can be drafted - a Bill which must embody the best overall solution. This is not a process which can be short-cut.

4 - Legislative Proposals

This step is fairly self explanatory. The intention should be to undertake this after the discussion in the previous steps. This way, the desired substance of the proposal is certain before it goes to the Parliamentary Counsel's office for drafting. It should encourage clarity and save time.

An important part of the draft Bill is the Explanatory Notes. These should include a reference to the public discussion paper's proposals and what submissions were made in response. If the Bill has any changes from these proposals then they should be identified, as well as the reasons for change. Thus, the Bill can be effectively assessed at the select committee stage. Without such an explanation it would - again - not be easy to make informed comment (42). A summary and analysis of the submissions would also be extremely helpful (whether it was in the Explanatory Notes or issued separately). This would all help open up the law reform process, the cards being laid on the table, so to speak, for the public to see. Overall, this should encourage the development of the best possible juvenile justice system for New Zealand.

PART B : The Actual Process

The proposals for the CYP Act 1974 reform unfortunately do not fit neatly in to the structure outlined in Part A. The reform process to date is better understood in chronological order.

National Party Proposals

The original intention to review the CYP Act 1974 flowed from the desire to introduce urgent amendments to the child protection provisions. This included separating the jurisdictions of the CYP Court. Children needing care and protection were to be dealt with in the Family Court, and young offenders were to be dealt with by panels (similar to the Children's Boards) and the CYP Court (being a division of the District Court).

The only problems identified with the youth offending system were in the operation of the Children's Boards. The Boards were admittedly "most valuable", particularly because of their success with diversion, and were doing "very useful work" (43). Their drawback was that their "effectiveness" was "limited" (44). This was attributed to their statutory terms of reference regarding their jurisdiction (not generally able to deal with those aged fourteen, fifteen and sixteen) and their function - not able to "follow up" matters referred to it (45).

No other problems were specifically identified in the statement. And there was still a definite emphasis on the value of diversion,(46)

> *the object of [the youth offending] section of the legislation would be to maximise diversion - that is, to keep the young person out of the formal court process and to achieve resolution in the community if possible.*

Also that (47)

> *it seems important to examine possible new approaches to diversion from the formal court process and to ensure that the mechanisms of diversion have within them greater capacity to ensure some effective followup and sustained social work response where this is needed.*

The provisions put forward to achieve these aims were:
A- Screening panel for all alleged offenders comprising of a Youth Aid officer and a social worker. This panel could
(i) decide on no further action,
(ii) review applications for bail,

(iii) ensure the youth is in an adequate home,
(iv) approve the holding of a youth in police custody,
(v) refer them to court, where the gravity of the offence warrants it,
(vi) refer to a community resolution meeting.

B - A Community Resolution Meeting which would comprise two local residents (of the young person's community), a social worker, the initiating police officer, a representative of the youth's school, the youth and their parent(s), and the victim (or their representative). The Meeting would be similar to the present Children's Boards, its function being to resolve the "matters arising out of the alleged offending" and "the preparation of a management plan for treatment or social work action designed to meet the young person's needs and prevent his [or her] further offending" (48). This meeting could decide on the action it feels appropriate, from discharge to court resolution.

C - The court would have options of imprisonment for "very serious offences", community work, periodic detention, referral to the Family Court for an Intervention Order, discharge, detention in a social welfare home and quite a few more. It is a wide range of options but they are more offence-oriented than needs-oriented.

(Comment)
Both diversion and welfare principles have been embodied in the pre-court measures. The court provisions are characteristic of an offence-oriented approach. Overall, the proposals are a compromise between the two approaches. The immediate drawback to the proposals is that major reform to the structure of the juvenile justice system does not stem from any major flaw in the youth offending area. The impetus for reform has come from problems perceived in the care and protection jurisdictions of the Court (49). As a result there has not been a full evaluation of the system as a whole - that is, whether or not this is the best result for the youth offending jurisdiction. It would be desirable to make such an assessment before reform were implemented - it would certainly be necessary in order to accord with the suggestions in Part A of this paper. If it were not considered the best result for youth offending an evaluation of other proposals, also outlined in Part A, would then become necessary.

In July 1984 the incoming Labour Government adopted the suggested CYP Act reform. In August 1984 a Working Party was established by Ann Hercus (the Minister of Social Welfare) to draw up a proposal and discussion document for new legislation. The Working Party reported in December 1984, publishing the document referred to as the Red Paper. Before December a draft document was also written by the DSW (50). Both of the documents outlined, to differing extents, rationale for change, principles which should be incorporated into any proposals for a justice system and some proposals for reform. In the writer's opinion the documents have different emphases so they will be treated separately.

DSW Draft

The main criticism outlined in this draft of the overall system is that there is a "lack of clarity" as to whether measures used in the system are designed to be retributive, deterrent or rehabilitative. This lack of clarity in the basic philosophy is said to cause "confusion" (51) (though it does not say what is the result of this confusion nor who is confused). It is agreed that considerations of the welfare of the child must be tempered with considerations of justice but the complaint is that it is unclear as to what extent this should be taken und unclear as to justice for whom (52). The consequential 'disparity' between sentences is therefore considered inequitable.

The draft also states that diversion as a policy has its limitations, often violating due process and having a net-widening effect (53). Specific points made are that diversion often causes an admission of guilt (in order to be diverted from the court) and produces greater interference in the youths' lives and with their liberty than - say - a short, sharp court sentence. The discretion involved in the practice of diversion is identified as the cause of the (inequitable) discrepancies in treatment.

Problems with the Children's Boards are outlined. The Boards are apparently seen as an arm of the DSW (54) so are treated by the participants as merely another bureaucratic entity, or arm of the government. The effectiveness of the Boards is said to vary, and that the Boards do not have enough power to make their recommendations properly effective anyway. Yet it is also said that the Boards have too much power with regard to the far-reaching effects of those recommendations - particularly regarding intrusion into family life. The community involvement is criticised as "token" and the lack of legal representation is said to violate natural

justice/due process.

The DSW draft also attacks the Youth Aid screening process, saying that:
- there is no community or independent party involved in the making of the decision;
- only the police know about the situation so the social worker helps to act as a mere rubber stamp for police decisions;
- usually none of the parties to the decision have first-hand knowledge of the incident;
- the procedure can be bypassed;
- there is no opportunity for the child or the parents to be represented by counsel;
- the decision is not binding on the police, subject to being overridden by the commissioner in charge, so the reports of the Youth Aid section are likely to be compromises between what might be appropriate and what might be acceptable to those in charge (who do not usually have a proper grasp of the situation).

(Comment)
The DSW criticisms are more structural than the public's common criticisms, akin to the National Party's, both mentioned above (55). Consequently the draft advocates a change of structure and of principles, which are grounded in criticisms of the operation of the system (identified as being due to the welfare ideology). The criticisms of the operation and conditions of the Court were not identified so it is not surprising that solutions have not been proposed for them.
A positive aspect of the paper is the number of alternatives which it proposes, akin to the brainstorming step outlined in Part A. But, the Children's Boards and the Youth Aid screening are the only parts which have a justification for change. A large omission is of the justification and/or evidence that the large, structural changes which are proposed are really necessary.

Red Paper

According to the Red Paper change is needed because society has changed rapidly in the last ten years (56). As unhelpful as this sounds the Red Paper continues to mention a number of things wrong with the system and a large number of principles that need, therefore, to be taken into account.

The largest fault is seen as the violation of due process by intervention based on welfare ideals. It states that children should have the same right to natural justice as adults. There has been "a growing realisation"(57) that

treatment measures violate children's rights by state intervention out of proportion to the seriousness of the offence (58). A related criticism is that the net of social control has been widened as a consequence of treatment measures. Also, that treatment measures do not accord with the youth's sense of justice, that family problems are exacerbated by coerced intervention (instead of voluntary) and that too many open-ended guardianship orders are made (which is considered out of proportion to any offence committed). Ultimately, the Paper criticises the fact that the 1974 Act is based on the belief that offending is symptomatic of underlying problems (for example of the family's). It claims that this is not really the case so that offending cannot be treated with "social work and therapy"(59).

Criticisms about the police handling of youths involves an overuse of arrest, too much prosecution when informal measures would do and too many minor offenders going to court. There is also an over-use of custody, especially when a non-custodial sentence is usually imposed.

Regarding the Children's Boards, it mentions criticisms of the delay, net widening, its image as an arm of the DSW and the lack of power to function affectively.

In general, there was an acknowledgement of the fact that too many Maori and Pacific Island youths were coming to official notice and invariably being treated differently from their pakeha counterparts. The Red Paper recognised that the system needs to change to serve the needs of minority cultural groups better (60). There was also the general argument raised regarding the stigma of court appearances encouraging recidivism, and the vague notion raised of needing to ensure justice for those offended against.

The Red Paper's proposals continue the distinction between the treatment of those who require care and protection and those who have broken the law. The needs of the two groups are said to be different. For the former, the "welfare of the child"(61) is paramount. For the latter it is stated that "many young people who commit offences do not have any special family or social problems"(62). A list of principles is given for offending: (63)
(a) we should react to delinquency not ignore it;
(b) we should not overreact;
(c) we should not promote further delinquency;
(d) any system should make sense to its consumers;
(e) any system must make sense to and be accepted by the community;
(f) it should have some chance of being effective;
(g) parental responsibility is important.

This set of principles produced a slightly different system from previous proposals:
1 - Youth aid screening for arrest.

2 - Youth Assessment Panel, comprising a Youth Aid officer, a social worker, a maatua whangai appointee and, where the alleged offender is a Pacific Islander, an appropriate member of their community. The function of this panel is to consider the allegation(s) and make a referral to a Community Resolution Meeting, Family Court for care or protection proceedings, to a Maori (resolution) Committee, to Court for prosecution, for counselling or for release.

3 - Community Resolution Meeting, the same as the National Party proposals - the function being to resolve the "matters arising out of the alleged offending" and "the preparation of a management plan for treatment or social work action designed to meet the young person's needs and prevent his [or her] further offending"(64), also to "arrange some measure of 'pay back' by the young person" for the "victim and/or community" (65).

4 - The proposed court system is also the same as in the National Party proposals.

Emphasis is still placed on diversion, both to prevent the use of the court process and, at the court-sentencing stage, to avoid formal institutions. Yet with the stated change in the underlying principles - away from the welfare of the child toward due process - the philosophy is moving away from a needs-based system to a deeds, or offence-based one.

(Have the proposals solved the problems?)

Most of the problems identified by the Red Paper have had solutions proposed. For example, to help the sensitivity of the system to minority groups, as an alternative to the Community Resolution Meetings, a youth may attend a Maori Committee meeting. There is the contact with a maatua whangai worker when a maori youth is apprehended, or a member of the Pacific Island community for an Island youth. This contact is repeated at various stages throughout the system, particularly on the various decision panels.

The problems peculiar to the Children's Boards have easily been resolved with the elimination of the Boards. But with the introduction of the Community Resolution Meetings many of the problems of the Boards have been reintroduced, and some possibly exacerbated. For example, giving the Meeting increased (decision-making) powers will eliminate the problem of effectiveness, or enforcement, but is likely to intefere with people's lives to a greater extent.

The emphasis on diversion goes against the emphasis on due process and justice. It is the South Australian diversion system which our present Act is based on, so it is odd that the Red Paper is also trying to build a different system entirely. It is in South Australia where a net-widening effect was first reported (but this is not mentioned). Diversion necessarily involves discretion, and with the discretion exercised at so many different levels (rather then, say, all at the court level) the disparity in treatment could be expected to continue, or even grow.

A solution to the problem of the lack of an appointment system in the court has been attempted. But in respect of the other court problems (for example, the waiting rooms, the specialist judges) the existing principles have merely been reiterated. No mention is made of what might be done to achieve it.

(Comment)

The writer's primary criticism regards the lack of discussion and justification for the proposals in the Red Paper. There is a view put forward, but statements such as "research indicates"(66) and "[i]t is well established by studies in New Zealand and overseas that ..."(67) should be referenced - what studies and what research? The writer does not wish to comment on the substance of the principles of justice mentioned in the Red Paper(68) but they were taken directly from a book edited by A. Morris and H. Giller (69) - at least the reference should be made.

The largest examples of omission of discussion are regarding any rationale for the changes proposed by the Red Paper. The comments are that children's rights are being violated and that offending is not symptomatic of underlying family or social problems (70). These are assertions, no attempt having been made to support them. Compare this with the Royal Commission on the Courts' statements to the contrary (71), that the real justification for the creation of the Family Court system is to be able "to look at larger problems of which the matter before it may only be symptomatic"(72). The example given is that (73)

> *truancy or antisocial behaviour on the part of a child may be that child's way of expressing, perhaps unconciously, a sense of deprivation because of parental problems.*

The New Zealand Federation of Voluntary Welfare Organisations (Inc) echo the Royal Commissions comments: (74)

> *from our work we are very much aware of the close links between youth offending and family functioning.*

The Red Paper does not appear to entertain the idea that there may be opinions other than its own on this point. So being without justification for their statements does not help informed comment on their proposals.

The Red Paper implies that the lack of due process is causing 'the problem'. But it does not say what the actual problem is - what its effect is, whether this is the same problem as the writer envisaged earlier - there is no systemic aim identified nor an evaluation of its achievement. Consequently there is not the suggested discussion on how to achieve that aim. The Working Party may be of the opinion that nothing works at preventing recidivism and that the best route to follow is that which best safeguards legal rights. But there is no mention of this position, nor any justification for it (either that nothing works or that due process is therefore the best alternative). This also contradicts the desire for diversion.

The Working Party occasionally presented alternatives in the Red Paper. For example, an open or a closed court, an independent person in place of the Youth Aid officers. But these alternatives are few and far between, and are only in respect of details - there is no suggestion of a different structure for the system. The DSW draft had more breadth than this, and that did not even measure up to the suggestions in Part A.

The scope for submissions on the Red Paper was on the proposals presented. But if the public does not know of the different possibilities, or their pros and cons, then the comments can not really be expected to be either extensive or informed.

A noticeable omission is of discussion regarding the separation of the courts. The Royal Commission on the Courts also made proposals on this aspect, but theirs are completely contrary. The Royal Commission's suggestion was to place all the CYP Court jurisdictions in the Family Court. One argument quoted in the report is that (75)

> *[f]rom Juvenile Court to Family Court is a natural transition. For it is commonplace that for successful treatment of a child in trouble it may be essential to work with the whole family and that delinquency, child neglect and matrimonial difficulties may be simply facets of a larger problem. It is this concept of a family as a social unit that underlies the basis for a Family Court. Much delinquency and other social ills are traceable to the inadequacy and break down of families. To treat incidents separately may not do justice to the whole.... If the children are in trouble the parents are in trouble.... The problems are so interrelated that there should be an integrated system.*

The Commission was established solely to examine the position of the courts and make suggestions for their future. Their Report is well-reasoned and considered highly, so one would expect a counter opinion to be at least as well reasoned.

Similarly, there has been a lot written about the adoption of welfare and justice ideals. Instead of assuming that either one is the better it should be mentioned that many writers disagree. The history of New Zealand's juvenile justice system has been characterised by swings in attitudes toward these principles (76).

Likewise with diversion. It is expressed to be one of the basic principles of any reform proposals. But there have been studies showing many, and often conflicting, conclusions about the effectiveness of diversion(76). Again, the writer does not want to say that the Working Party has chosen the wrong principles, but they are at least debatable and a discussion document should refer to differing views and invite discussion on these aspects as well.

Overall, the intentions are laudable - to produce a document to elicit public comment before a legislative proposal is defined. It indicates that the governement is open to suggestion. But the large number of assertions, particularly in respect of the nature of the problem itself, indicates that perhaps a solution has been anticipated for the community perception of the system rather than its actual achievement.

The process suggested in Part A has not been complied with for both the content of the 'discussion' in the Red Paper and its production. It was produced in a very short time (the Working Party was established in August and the Paper was available in the first week of December); it was rushed in terms of time and this shows in the content (and lack of it).

October Bill

Over 400 submisions were received on the Red Paper by April 1985 (78). In October 1985 the DSW produced a draft Bill (79). The October Bill is not a discussion document. As such, the Explanatory Notes accompanying the Bill do not generally identify the problem to which it is the solution. But the Notes do specify the principles the Bill based on.

The Explanatory Notes state that the emphasis is on "due process"(80). The Bill implements the separation of the courts, as envisaged since 1983. As in the Red Paper the Bill reiterates that the "separation of jurisdictions is based on the view that many young people who commit offences do not have any special family or social problems" (81). Also that those "who have offended and don't need immediate diversion into the care and protection systems should be held responsible for their behaviour"(82). What is suddenly missing from the October Bill is any mention of the previously-proposed Youth Assessment Panels or Community Resolution Meetings. Nor is there any justification for this change.

The resulting proposals consist of the initial screening by Youth Aid officers (without any other participation, such as by a social worker) then, if action is recommended the matter goes straight to the new Youth Court. This will be a division of the District Court and is for those aged fourteen to seventeen. These proposals eliminate any problems associated with the Youth Assessment Panels and Community Resolution Meetings (83), but they retain the problems with the initial screening. As this is the only screening mechanism then it could be expected that the problems would be exacerbated (again!). The dropping of the social worker is justified in the Notes as being because of the criticisms of their being merely a "rubber stamp"(84). Yet this eliminates any check on the decisions and is likely to increase the role conflict experienced by police officers. The elimination of the intermediate diversion stages is directly counter to the stated principles of diversion in the earlier documents (which was noticeably omitted from the Explanatory Notes to the Bill (85).

Clause 6 of the Bill specifically mentions the duty of the Director-General(DSW) to allocate funds toward prevention programmes and measures in the community. But this does not necessarily solve the present problem of non-implementation (the provisions in the present Act are very similar). Its value is really in indicating that there is a perceived problem (presumably identified by the submissions received) and that the intention is to tackle it.

A major omission in the October Bill is the lack of any reflection of Maori values in the system. This problem was recognised and addressed in the Red Paper but here, for example, there is no mention of the Maori Committee option, or contact with maatua whangai workers. The Bill has therefore introduced a larger problem than existed after the indicated proposals of the Red Paper. This ommission is particularly bad when the present Act has been amended regarding the importance of whanau (86) and other legislation is also being modified to take account of cultural differences (87). The October Bill appears to be trying to ignore or deny any difference. ACORD puts it more strongly (88):

> *[the Bill] shows nothing but contempt for the right of people and communities to decide what should happen to them and their youth. It shows outright racism in its rejection of all things Maori.*

Another major omission is any hint of how those aged ten to thirteen will be handled. Presumably they will be screened by the Youth Aid officers, but then again, there are no official structures proposed for them to be referred to. Perhaps it is assumed that if children offend (as opposed to young persons) they are more likely to be referred to the Family Court for care or protection proceedings (although the suggestion that the Family Court officially handle young offenders - children or young persons - was rejected). But what about those who are not referred to the Family Court? The implication is that they will simply be released. Again, the worst aspect of this is that there is no justification for it - like having a court decision with no knowledge of possible grounds for appeal, just the decision itself.

Overall, it appears that there must have been a public reaction to the Red Paper's proposals (possibly a rejection of some of them) and the October Bill is the Working Party's reaction to that. For example, there were problems with the Youth Assessment Panels and Community Resolution Meetings and they were identified in all the submissions the writer has read. But to choose to eliminate these problems by eliminating the 'cause' is too simplistic a view. The system is an interactive one - taking away the cause of one problem may cause a different one somewhere else. This 'solution' does that in respect of the Youth Aid Screening, the cultural sensitivity of the system and the handling of children. The last thing the October Bill appears to be is well-considered.

Conclusion

In the exercise undertaken, described in this paper, there are many specific and general ideas underlying and identifying many smalller, specific goals. But they are without an ultimate, uniting aim. The solutions proposed, therefore, cannot be designed around such an aim - one such as the writer proposed in Part A (89). As a result, the solutions proposed are reactive and not coherent. In 1983 a perceived problem was reacted to. The resulting solutions produced other problems which were 'resolved' in 1984. Yet, again, these solutions prompted the submissions which identified more problems, which were in turn reacted to in 1985 (90). With hindsight, it is not surprising that the solutions have evolved this way given that there was never a large problem identified in the area of juvenile offending from the outset. The questions should have been asked - what is the juvenile justice system for? Is it achieving that? If not, how could it be better achieved? If these were asked there may or may not have been any coherent answers. If not, then the reformers should have been a little more hesitant. As the proposals stand now, there is very little justification for them. For example, the biggest change could be that of the separation of the courts. Yet the least has been said in support of it - merely the stated change in philosophy. The contrasting example is the Royal Commission on the Court's proposals (mentioned above (91)). The report identified an underlying belief about the aim of a legal system and seven criteria essential for a court structure in New Zealand (92). As mentioned above (93) the resulting proposals are well reasoned. In comparison, the present proposals are not.

It can be said that the publishing of a discussion document for the public (the Ped Paper) was in itself a step forward from the traditionally closeted past practice. But a step forward may only be half-way there. It is the lesser of two evils and not necessarily a good process in itself. In comparison, the Minister of Social Welfare (Ann Hercus) has established a Task Force on Social Welfare Services which has published a very good public discussion document on a proposed review of social welfare services (94).

The Minister, in her foreword, states that the "Government is committed to public consultation before embarking on reforms" and seeks "wide ranging discussion on the nature of reforms"(95). The Task Force has "raised a number of issues" and the public has been "invited to make submissions on any of these issues, or any other matters relating to the social welfare services"(96).

The report identifies a coherent aim of the Task Force and the review (97) and underlying principles which might guide the delivery of social welfare services"(98). There is a description of the New Zealand system (99) and a lengthy description of the various concerns which have been voiced in the past about the system and/or lack of one (100). Part III examines possible directions and options for change (101). There is a wealth of background information provided in the nine appendices (102) including a glossary of terms used (103) and information on how to make a submission (104). The proposed process of reform is outlined, which will include the publication of those submissions which are not confidential and an analysis of all the submissions.

This document is the type envisaged by the writer in Part A, the stated aims of the Labour Government in respect of law reform being a factor in holding this view. Why was the Red Paper not designed in this way? Why has the analysis of the submissions (made in 1985) not yet been released (105)? Does the difference lie in the nature of the two subjects of reform? How to handle juvenile offending is perhaps more contentious than the provision of social welfare services and, therefore, more politically sensitive. It may mean that the government (or the Minister) already has an idea of the desired result of reform. Perhaps the submissions hold contrary views. It would be politically embarassing to have elicited public comment and then make it known that it was subsequently ignored. Unfortuneately political struggles (such as this might be) often produce awkward compromises. They may be good political solutions but are not usually the best solutions for the problem at hand, the subject of reform.

The juvenile justice system has been tinkered with and, furthermore, by different mechanics. Parts have given a bit of trouble, some have been taken out, altered and put back; some ultimately discarded altogether. The orientation has been changed in places. What is needed is an (apolitical) overhaul of the whole system. Without it, do not be surprised if the system does not run smoothly and/or breaks down sooner than expected.

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FOOTNOTES

1 - Hereinafter referred to as "CYP Act 1974".

2 - A comment should perhaps be made on the applicability of the problem-solving method to law reform. Laws are designed around an aim, generally to deal with a specific social problem. In this case it pertains to changing an aspect of juvenile behaviour. Finding a solution to satisfy that aim should involve the four stages identified above - identification of a problem, ways it might be solved, choosing the best solution and implementing it in legislation. This should be so whether it is tinkering to fine tune an existing solution or undertaking a complete overhaul. The writer is of the opinion that this is a good method of law reform.

3 - As a last resort, the aim is to protect society via the incareration of offenders so that they are taken out of 'circulation', unable to commit further crimes. This aim does not detract from the primary aim first identified.

4 - (1979) 22 SASR 133.

5 - Ibid, 136.

6 - Lovell,R & Stewart,A Patterns of Juvenile Offending in New Zealand:No 2 - Summary Statistics for 1978-1982 (Office of Childcare Studies, DSW, Wellington, 1984) 32.

7 - The public's criticisms have been articulated in the many submissions to the Red Paper, discussed in more detail below.

8 - Magistrates, at the time of implementation.

9 - Section 21(2) CYP Act 1974: "by reason of his special interest, experience, or qualifications".

10 - To protect the young from the "sordid details of the the Police Court" - NZ Royal Commission on the Courts, Report (Wellington, Government Printer, 1978) 16.

11 - For example, the needs and responsibilities of the child versus those of society.

12 - Advisory Commitee on Youth and the Law in Our Multicultural Society Report - Chairman E.te R. Tauroa (Wellinton, Government Printer, 1983)

13 - Ibid, 171.

14 - Supra, n 8.

15 - In an (as yet) unpublished study by the Institute of Criminology, Victoria University of Wellington, Jane

Bradbury says that she interviwed one judge who presided in the CYP Court so infrequently he admitted having to "learn up" on the Act before going into court. Also, apparently those judges who sat less frequently in the CYP Court imposed more punitive measures and were usually harsher than other judges.

16 - Insitute of Criminology study, op cit n 15.

17 - Idem.

18 - Although this is likely to cause administrative problems. For example, see page 13 of this paper.

19 - Seymour,J.A. Dealing With Young Offenders in New Zealand - An Evolution (Auckland 1976, Legal Research Foundation Occasional Pamphlet, 11) 46.

20 - Although the writer would say that a true 'fence' is the primary prevention. This proposal is more like a safety net half way down.

21 - It is envisaged that the community member helps to ensure that the Board represents 'community justice'.

22 - Institute of Criminology study, op cit n 15.

23 - For example, by giving tha total control to the community and not the professionals. Whether or not this is a good solution is another question, but the present Boards cannot be considered community-based justice.

24 - From the public submissions on the Red Paper. This is also mentioned in the Draft Bill (infra n 79) p.16.

25 - Morris, Giller, Szwed & Geach Justice for Children (London, Macmillan, 1980) 61.

26 - Lovell & Stewart, supra n.6 pp 33-34;
Alder & Polk, "Diversion Programmmes" Borowski,A & Murray,JM (eds) Juvenile Delinquency in Australia (Methuen, Australia, 1985) 277, 285-286;
Hancock,L & Chesney-Lind,M "Juvenile Justice Legislation and Gender Discrimination" Borowski & Murray (eds), 236

27 - This conflict is discussed further on pages 10-11 of this paper.

28 - CYP Act 1974, s. 6(3).

29 - In submissions to the Red Paper, a list of which is in the Bibliography.

30 - Note that the government has recently approved large amounts of funding for the Women's Refuges around New Zealand (approximately $1.5 million) and for drug rehabilitation centres such as Odyssey House in Auckland. But until very recently (particularly over the period of the last three National Governments) criticisms are that the funding was very sparse, such that many existing services have deteriorated and others that are needed have not been able to get started.

31 - Section 4A(1)(b), as inserted by s.3 CYP Amendment Act 1983.

32 - Seymour, op cit n 19, p 38 also pp 53-58.

33 - "At least" because the writer is not sure whether or not the Maori view(s) fits into either the welfare or justice ideologies. It may encompass something entirely different.

34 - See infra n 94 and accompanying text.

35 - True brainstorming would include the sensible and the extreme options. "Sensible" is an evaluative word which rightfully comes into the next section. But to entertain extremes in a paper such as this (for example, capital punishment for all juvenile delinquents) would not be practical.

36 - Pages 3-7.

37 - Nichols,H "Childrens Aid Panels in South Australia" in Borowski & Murray (eds) op cit n 26, 221.

38 - Page 7 of this paper.

39 - For example, since the inception of New Zealand's justice system there have been swings between welfare and justice ideals on how juveniles should be treated. See Seymour op cit n 19 (for a summary see pp 53-58).

40 - Mentioned above, pages 5-6.

41 - A very good American book on this subject refers to most of the points made and evaluates what appears to work and why. There is a wide range of juvenile justice systems within America providing a large amount of information to analyse. See Finckenauer,JO Juvenile Delinquency and Corrections: The Gap Between Theory and Practice (Orlando, Academic Press, 1984).
See Also Schriro,D & Mann,D "What Works with Serious Juvenile Offenders: The US Experience" Borowski & Murray (eds) op cit n 26, 328.

42 - Particularly if the proposals do not accord with a particular submission you may have made. Without such an explanation you could be left wondering whether the Working Party discounted your opinion in favour of their own or in favour of other submissions.

43 - "Proposed Changes to CYP Legislation" - internal DSW paper, 1984, p 2

44 - Idem. (Note that there was a lack of any supporting evidence).

45 - Idem.

46 - Ibid, 9.

47 - Ibid, 3.

48 - Ibid, 10.

49 - Ibid, 1.

50 - Hereinafter referred to as the "DSW draft". A draft of what, the writer is not entirely clear. But it appears to be a precursor to the Red Paper. It could be a brief by the DSW for the Working Party , but that is unlikely given the similarity with the Red Paper.

52 - Ibid, 2.

52 - The draft claims that the youths dealt with by the system feel that they are being "punished", even when they are described as receiving treatment or benevolently-intended measures - p 3.

53 - That is, the widening of the net of social control due to more youths being formally diverted than would have gone to court under the previous (or another) system. This is usually because they would not even have been arrested whereas they are (now) arrested so as to be diverted - p 6.

54 - Ibid, 8.

55 - Pages 10-13.

56 - Review of Children and Young Persons Legislation - Public Discussion Paper (DSW, Wellington, N.Z., 1984) 1

57 - Idem

58 - Fears are about situations where, for example, two youths commit the same offence. One is from a highly unstable home so is put into state care. The other may be

from a stable home where the parents attempt to deal with the problem. This latter youth is merely let go with a warning. Those who think that people should be dealt with according to their deeds see this as inequitable. Those who prefer treatment according to needs are likely to approve of this.

59 - Red Paper, op cit n 56, p 35.

60 - Ibid, 41-42.

61 - Ibid, 4.

62 - Ibid, 35.

63 - Ibid, 4-5 (see also infra n 69 and accompanying text)

64 - National Party Proposals, op cit n 43, p 10.

65 - Red Paper, op cit n 56, p 42.

66 - Ibid, 1.

67 - Ibid, 35.

68 - Ibid, 4-5.

69 - Morris,A & Giller,H Providing Criminal Justice for Children (London, Edward Arnold, 1983) 90-96.

70 - Supra notes 58, 59 and accompanying text.

71 - N.Z. Royal Commission on the Courts Report op cit n 10.

72 - Ibid, para 514 (p 159).

73 - Idem.

74 - Submission on the Red Paper, 1985.

75 - This was "well summed up in the submission of a Magistrate" - Royal Commission on the Courts Report op cit n 10, para 513.

76 - Supra n 39.

77 - So far, various studies have shown that:
- diversion reduces recidivism (studies in 1976, 1978, 1982);
- diversion increases recidivism (1975);
- diversion produces mixed results (1978, 1981);
- diversion produces no difference in future court appearances of divertees (c.f. a control group),(1979).

As a result, no-one can say whether diversion works or not. Other findings include:
- certain combinations of youth seem to benefit from certain programmes (Palmer & Lewis 1980, Blomberg 1982);
- diversion programmes are "net-widening" (Blomberg 1977, Bohstedt 1978);
- net-widening is not a negative outcome (Blomberg 1980);
- an unintended outcome is the accelerated movement for diverted youth and their families into the justice system (Blomberg 1977, Polk 1978);
- youth may not be receiving the services they were diverted to receive (Collingwood et al 1976, Klein 1976);
- or that the quality and quantity of services receives are inadequate (Dinford 1977).

See: Alder & Polk "Diversion Programmes" op cit n 26;
Sarri,R "Paradigms and Pitfalls in Juvenile Justice Diversion" Morris & Giller op cit n 69, 52.

78 - Hon. A Hercus Speech to the AGM of the Presbyterian Support Services (23 November 1985).

79 - Proposed Children and Young Persons Legislation : Explanatory Notes and Draft Bill (DSW, Wellington, October 1985). This October Bill is the one presently available to the public. Further drafts have apparently been produced since then (January and May 1986) but have not been released.

80 - Ibid, 1.

81 - Ibid, 4.

82 - Idem.

83 - And there were many identified in the submissions (see the Bibliography for the submissions the writer has read).

84 - October Bill, op cit n 79, p 16.

85 - For example, two thirds of the DSW draft (pages 5-15) was spent discussing diversion options. The October Bill was silent.

86 - Supra n 31 and accompanying text.

87 - For example, section 2 Criminal Justice Act 1985 includes in the definition of "programme":

> *(b) Placement within such programmes as Maatua Whangai;*
> *(c) Placement in the care of members of an appropriate ethnic group, such as a tribe (iwi), a subtribe (hapu), an extended family (whanau), or*

marae, or in the care of any particular members of any such group, such as an elder (kaumatua).

88 - ACORD, Outline of the Draft CYP Bill in Light of the Discussion Paper on CYP Bill Distributed by the Minister of Social Welfare in December 1984 (1985) 1.

89 - Page 2.

90 - With the publication of the October Bill.

91 - Supra notes 71, 72, 73, 75 and accompanying text.

92 - op cit n 10, pp 74-77.

93 - Pages 23-24.

94 - Social Welfare Services: Resource Book (DSW, Government Printer, Wellington, July 1986). There is also a smaller Discussion Book by way of a summary of the issues, without the background information contained in the Resource Book.

95 - Ibid, "v".

96 - Idem.

97 - Ibid, 2-3.

98 - Ibid, 6.

99 - Ibid, 8-12.

100 - Ibid, 13-21.

101 - Ibid, 23-40.

102 - Ibid, 42-79.

103 - Ibid, 42-43.

104 - Ibid, 78-79.

105 - This analysis has been the subject of applications to the Ombudsman (the Wellington Community Law Centre being persistent) who has suggested its release but the Minister of Social Welfare, Ann Hercus, has vetoed it.

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