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Thorns and Thistles: Juvenile Delinquents in the United States, 1825-1940

Robert Mennel. Hanover, New Hampshire: The University Press of New England (1973).

Within the last few years, a small literature has grown up concerning the history of deviants in American society, especially mental patients, criminals, and juvenile delinquents. In exploring what Americans consider deviant behavior, such studies tell us not only what society considers worthy and desirable, but also what it feels as threatening. On the basis of the historical record, it would seem that America has felt inordinately threatened by its children, and has treated them with appropriate harshness.

Robert Mennel's valuable book, *Thorns and Thistles: Juvenile Delinquents in the United States, 1825-1940*, extends our knowledge of the ways in which we have treated young people labeled "delinquents." Mennel is well-qualified to write this survey, having been an associate editor of the masterful documentary history, *Children and Youth in America*,¹ with special responsibility for the sections on juvenile delinquency. In one sense the title of his present work is misleading, for the book tells us comparatively little about young people themselves—what their backgrounds were, how they spent their time, the activities that got them into trouble with authorities, or how they perceived the adult social and political world around them. What Mennel sets out to do, and does very well, is to analyze "informed opinion" about juvenile delinquency in America, "the theories and feelings of some of the significant men and women who devoted their lives to the care of delinquents and the prevention of delinquency." (at xiv) Much of the study is also devoted to the actual institutions and

1. CHILDREN AND YOUTH IN AMERICA (R. Bremner, ed. 1970-1974).

agencies that processed and confined juveniles, from houses of refuge to juvenile courts.

This study illuminates one central truth: the history of “juvenile delinquents” in America has been one of attempts by upper- and middle-class white Americans to impose their standards and values on lower-class, non-white, and immigrant families and children. Through formal legal mechanisms and informal social agencies, America has waged a continuous battle to “reform” lower-class children. Mennel points out that respectable Americans in the early nineteenth century thought that the family had failed in its primary task of social control, and sought a new system which “would discipline homeless, vagrant, and destitute children—the offspring of the poor.” They developed an elaborate network of private and state institutions—houses of refuge, reform schools, industrial schools—by which poor children would be “suitably corrected and reformed.” (at xxvii)² While a later generation of reformers argued that children would do best if placed with hard-working families rather than in institutions, none dissented from the proposition that lower-class youths had to be “saved.”

Another point which emerges from Mennel’s book is that the guardians of social order have been as concerned with “predelinquents” as with children who committed crimes—that is, youths who were vagrant, idle, immoral, or “ungovernable,” and who were thought likely to become adult criminals if left to their own devices. A reformer wrote in 1855 that he would not wait until a child committed an overt act, but would “rescue him from the yearning gulf of poverty, drunkenness and crime, into which he is about to fall.” (at 12)

It would seem that statutory definitions of delinquency expanded during the nineteenth century, increasing the chances that juveniles would offend against the law. In the 1820s and 1830s child-saving groups were primarily concerned with sweeping young vagrants from the streets, whereas the Illinois Juvenile Court Act of 1899 (as amended in 1901) made “incurability” part of the definition of delinquency.³ It is no accident, as Anthony Platt has pointed out,

2. David Rothman, in *THE DISCOVERY OF THE ASYLUM* (1971), makes clear that the effort to “reform” juveniles through incarceration was only one aspect of early nineteenth century America’s conviction that deviants of all sorts could be turned into well-behaved citizens by isolating them behind walls.

3. J. HAWES, *CHILDREN IN URBAN SOCIETY* 185-186 (1971).

that in the earliest years of the Cook County Juvenile Court, over 50 percent of the delinquency cases arose from charges of "disorderly behavior," "immorality," "vagrancy," "truancy," and "incurability"; a main purpose of the juvenile court was to facilitate still further the "reformation" of those children whose behavior, while not criminal, was repugnant to respectable America.⁴

Today, critics are challenging the so-called "status offense" jurisdiction of the juvenile court, arguing that it is unjust to deprive juveniles of liberty if they have not committed a crime, that treatment cannot be coerced, and that, in any case, the juvenile justice system has failed to provide meaningful treatment for young persons with behavioral problems. If current efforts to find non-coercive, non-institutional methods of helping "misbehaving" youth are to be successful, the country must rethink its historical obsession with changing the behavior of young people who are not seriously threatening to society.

Many specific themes of this history will be familiar to observers of the contemporary juvenile justice and child welfare systems; the continuities between present and past are often striking. Mennel notes, for example, that early nineteenth-century refuge founders considered parental neglect to be the primary cause of delinquency, and argues that the founders of the New York House of Refuge "designed their institution to punish the habits of the parents as well as those of the child." (at 15) By apprenticing children to farmers, sea captains, or tradesmen, they permanently severed children from parents, and incidentally reinforced their own power.

This anti-parental bias is still a feature of the juvenile justice system. Sanford Katz has pointed out that broad neglect statutes are a means of policing and punishing parents who are poor, or whose dress, life-style, or child-rearing practices deviate from middle-class norms. Neglect statutes additionally enhance the power of child protective and welfare agencies, on whose judgments courts rely heavily.⁵

Racial discrimination was part of the nineteenth-century juvenile justice system, and is endemic today. Black children were either

4. A. PLATT, *THE CHILD SAVERS* 140 (1969). According to Judge Richard Tuthill, the first judge of the Cook County Juvenile Court, it was not important whether a child had committed a particular criminal act or not, but whether he or she was in a "condition of delinquency" requiring the state to exercise "parental care" over the child. J. HAWES, *CHILDREN IN URBAN SOCIETY* 182.

5. S. KATZ, *WHEN PARENTS FAIL* 65 (1971).

excluded from early houses of refuge or, if admitted, "were treated as inferior to the white children." (at 17) Our contemporary system is deeply biased racially, for black children are disproportionately represented in it and tend to receive harsher dispositions than whites. Sexism was also an element of the nineteenth-century scene, as girls were committed to institutions on allegations of "promiscuity"—still the main reason why female "status offenders" are incarcerated.

While the quality of life in present-day training schools is undoubtedly less coarse than that in nineteenth-century houses of refuge, there are depressing echoes of the past. Juvenile institutions, Mennel reports, provided little vocational training until the end of the nineteenth century: boys worked at dull, repetitive tasks, their labor contracted out to manufacturers of chairs or shoes, while girls did cooking, sewing, and washing. Some modern juvenile institutions still provide little vocational training; kitchen work and delivering laundry take the place of learning a meaningful skill. Corporal punishment, common in nineteenth-century juvenile facilities, still exists, although it may no longer be systematically employed. The recent case of *Morales v. Turman*⁶ uncovered (and successfully enjoined) shocking physical brutality in the Texas Youth Authority's correctional institutions.

Token economies based on modern behavior modification principles, currently in vogue in juvenile detention and correctional facilities, had precursors in early refuge classification systems that divided children into grades based on individual behavior and promoted them to higher grades with additional privileges if they obeyed the rules. The assumption, then as now, was that youths would not only remain orderly and docile while inside the institution, but would learn to modify their behavior to conform to society's standards once released.

A broader continuity in juvenile justice history has been the eventual decline in quality of each successive institution that was created to serve juveniles, and its replacement by new, supposedly more humane and effective institutions. Early houses of refuge, designed to remove youths from almshouses and adult jails, soon became known as "quasi-prisons" for children, where long incarceration was the rule and inmate riots common. State reform

6. 364 F. Supp. 166 (1973).

schools on the cottage plan were created to provide more education, fewer menial tasks, and simulated family life. Yet these frequently became repressive, as exploitive contract labor was reinstated, military men took over the administration of some schools and introduced rigid army drill, cruel punishment was not uncommon, and only the most rudimentary agricultural skills were taught.

Disillusionment with reform schools helped fuel the drive for the establishment of juvenile courts, which were supposed to give ample attention to each child and utilize the new concept of probation in place of incarceration. Critics were soon pointing out that the courts were overcrowded, hearings were frequently perfunctory, probationary supervision was inadequate, and probation officers and judges resorted to threats of further court hearings and incarceration to obtain compliance with court orders. Although Mennel states that judges preferred to send youths to reform school only as a last resort, it seems more probable that institutional commitment remained a basic tenet of child-saving philosophy and practice.⁷

Perhaps the most remarkable continuity of all has been our stress on the individual child's "reforming" to meet society's standards—rather than a concern with society's responsibility for "delinquency"—and our concomitant effort to inculcate youths with appropriate values. Refuge managers promoted the image of the self-reliant, diligent businessman, farmer, or professional; their watchwords were hard work, thrift, honesty, punctuality, neatness, and ambition. After 1850, a new generation of reformers doubted these virtues could be taught in large congregate institutions, but thought success could be reached if children were removed from corrupting urban environments, placed with sympathetic farming families, and made to perform healthy agrarian labor. Even proponents of institutional treatment became enamored of this agrarian myth, as rural "reform schools" based on the cottage system, supposedly simulating family life, became the fashion.

Juvenile court judges continued the emphasis on individual reformation after the turn of the century. Ben Lindsey, the highly influential judge of the Denver Juvenile Court, for example,

7. According to Anthony Platt, the early records of the Cook County Juvenile Court show that one-third of all juveniles charged with delinquency were sent to a Chicago training school, the state reformatory, or transferred to criminal courts; almost two-thirds of delinquent girls were committed to state and local institutions. *THE CHILD SAVERS* 140-141.

impressed on the boys brought before him that they must obey parents and teachers, be clean in their personal habits, and strive for success in commercial affairs.⁸ Even when courts began to move away from simple moralizing, and to utilize the nascent discipline of psychiatry to investigate the psychological causes of juvenile misbehavior, the focus remained on the individual child's changing to meet the expectations of middle-class adults around him.

Professor Mennel's book is a most useful survey and should pave the way for in-depth studies of themes he has outlined. I have only a few broad reservations about his study. First, the discussion of developments in institutional change or scientific thought about delinquency sometimes seems episodic and in need of fuller elaboration; this undoubtedly is a problem of any short survey. Certain central assertions, such as the claim that there was a widespread "collapse of faith" in reformatories by 1900, would have benefitted by fuller explanation and documentation.

More broadly, as a lawyer, I had unanswered questions about the interplay of the law, the courts, child-saving institutions and agencies, and the youths themselves. How many youths were actually processed by the courts in a typical year and for what offenses? How many of these had actually violated criminal laws, and how many were merely vagrant, idle, truant, or "ungovernable"? What were court hearings like for youths, and what were the conditions of detention? What were the criteria in state statutes for incarceration of juveniles, whether by courts or private agencies? To what extent did refuges, children's aid societies, and private training schools have to work through the courts, and to what extent could they confine youths with no judicial process? Mennel notes that the New York Children's Aid Society persuaded otherwise reluctant city youths to go west, although it "did not forcibly abduct vagrant children." (at 38) Was this process totally without judicial supervision, and did it operate even without parental assent?

In sum, while Mennel discusses in detail the theories and practice of the correctional process, one might wish for more information on how young people got into the process. He might also have said more about how young people themselves perceived their situation although such information is no doubt scanty. Did

8. J. HAWES, *CHILDREN IN URBAN SOCIETY* 228-231.

youths feel society was punishing them unjustly, were they totally passive, or did they in fact accept society's stigmatizing definition of their moral "degeneracy"? More information on the fate of racial and other minorities in the juvenile justice system would have been welcome.

Finally, the work might have benefitted from ampler discussion of the connections between various theories and practices of reforming young people and their political, social and intellectual contexts. While Mennel at times alludes to broader historical issues, his discussion of juvenile delinquency reform is for the most part self-contained. To what extent, for example, was institutionalization of young people, or placing-out to western farms, part of Jacksonian America's fear of immigrants, urban corruption, and lower-class upheaval? How did the values shared by child-savers at the turn of the twentieth century fit into the Progressive movement? Mennel notes in passing that child care was "the touchstone of the progressive reform movement" and mentions Judge Ben Lindsey's leading role in the Progressive Party, but the connections between Progressivism and the child-saving movement are not really pursued.

These are minor reservations, however, to an otherwise fine study, and one looks forward to Mennel's further work in this area. Historians, lawyers, and those generally concerned with justice for children will profit by reading this study and reflecting on our long-standing assumptions about juvenile "delinquency."

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