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Welfare and Social Progress in the Prevention and Treatment of Juvenile Delinquency

*by Judge William F. Burns**
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JUVENILE DELINQUENCY is a subject on which many papers might be written from different points of view and approaches. The study enters a field of social science, knowledge and organization in which a tremendous body of scientific information has developed during recent years. Universities, training schools for social workers, and numerous other agencies have shown an ever increasing interest in the study of the problem of the child.

Because of this, a better understanding of both the child and his behavior is much more possible than ever before.

The approach to problems of juvenile delinquency stem from the English common law of chancery. Blackstone tells us that the King, in his capacity *parens patriae*, assumed the general protection of all infants in his kingdom, through the keeper of his conscience, his Chancellor.

The general acceptance of the doctrine investing courts of chancery with equity jurisdiction over the persons and estates of minors was fully set forth by Lord Jekyll in 1772 and has been unanimously adopted by his successors.¹ Its application to the Juvenile Court has been set forth by Flexner and Oppenheimer as follows:

"That the Juvenile Court is of Chancery origin has been * * * affirmed by the overwhelming opinion of courts of last resort. It has generally been maintained that the Juvenile Court is but the embodiment in the law and in a specific institution of an ancient doctrine and of modern methods in the exercise of the power of the state as the ultimate parent of the child."²

With the independence of the American Colonies and the transplanting of the English common-law system, the state in this country has taken the place of the crown as the *parens patriae*

* Judge Burns, first judge to take the bench of the Euclid Municipal Court when it was created Jan. 1, 1952, has long been interested in the special problems posed by juvenile offenders. This article is based on his long study into the causes of juvenile delinquency and methods of handling it properly.

¹ Leading Cases in Equity, pp. 473-534, White & Tudor.

² The Legal Aspects of the Juvenile Court—Bernard Flexner & Ruben Oppenheimer.

of all minors. When courts of last resort have been called upon to construe the laws, through which the state assumed its rights to control custody of the child, they have almost uniformly upheld these rights on the broad principle that the courts as agents of the state are exercising a power derived from the court of chancery of England, which held from early times that such rights existed where the welfare or property of the child was at stake.³

During the nineteenth century there were sporadic signs of a growing conviction that juvenile offenders should be accorded a different treatment from that used toward adult offenders; that their lack of maturity and consequently, their limited criminal responsibility should be taken into consideration; and that measures of reform and moral encouragement, rather than punishment should be applied to wayward children in their formative period of life. This slowly, but steadily, developing attitude was reflected in critical reports in newspapers and other publications, in the adoption of specific laws, and in the efforts of individuals, societies and groups.

Henry Thurston in his book "Concerning Juvenile Delinquency," quotes from a report in the *New York Evening Post* of 1815. The report was concerned with a little girl of six who was frozen to death while sitting at a door on a city street:

"We have lamented until we are tired, for the want of society to authorize and provide for the prevention of so many children being bred up in ignorance, vice and destruction * * *."

The early houses of refuge, opened in New York, Boston and Philadelphia in the 1820's, had as their avowed purposes the reformation of young delinquents and their separation from old and more experienced offenders. In 1831 Illinois laws provided that for certain offenses the penalties for minors might differ from those of adults. In 1859 a shoemaker in Boston became the first probation officer doing a pioneering job in caring for children haled before his criminal court. In 1870 Massachusetts required separate hearings for juveniles, and various other states soon followed the example set by Massachusetts and provided the same court procedure.

In nineteenth century legal thought, general security meant security of acquisitions and security of transactions.

³ *Ex Parte Crouse*, 4 Wharton 9 (Pa. 1839); *In Re: Ferrier*, 103 Ill. 367 (1882); *Whalen vs. Olmstead*, 61 Conn. 263 (1891); *State vs. Fisher*, 213 Pa. 48 (1906); *Clique vs. Band*, 121 Atl. to 78 (1923); *Paddock vs. Ripley*, 149 O. S. 539.

Courts of law were established to dispense justice between two or more individuals or groups of individuals in litigation, and in cases of a criminal nature, between the state and the individual. Consideration of individual natural rights—their preservation or their restraint—governed legal thinking through several hundred years and reached its culmination in the nineteenth century. The person who was the subject of the court's attention, either in civil or criminal matters, was regarded as a mere abstraction, and not in terms of his relationship to any group or in his position within a social setting. The only social interest that was recognized as a controlling factor during that period was the social interest in the general security.

The approach of the twentieth century brought a change in this conception of the law. The rapid industrial development of the Western world, the growth of the cities, the movement of the populations, the organization of labor, the rise and fall of the economic curve—all these phenomena left their imprint upon the law. It is true that law is conservative and resistive to change, but it can never be static. The discoveries and teachings of a new discipline—social science—began to penetrate legal theory and practice. In the criminal law, in particular, the maxim of "making the punishment fit the crime," was the target of these influences. In it were manifest the two oldest goals of criminal justice—retribution and deterrence. The idea of rehabilitation as the modern arm of penal treatment came to the fore as a result of the influence of social science, and the concept of "making punishment fit the offender" began to replace the older premise.

The most spectacular landmark on the road toward a constructive approach to the problem of delinquency was the establishment of the first juvenile court in this country in Chicago on July 1st, 1899. Here for the first time the idea of treating the child offender in a way entirely different from the procedure in adult cases found its legal expression.

The juvenile court has been the first and so far the only institution in which the idea of sociological jurisprudence has found full realization.

Broadly considered, there are two kinds of approach to the modern delinquency problem—the judicial, or legal, view and the administrative, or case work, view. In the legal approach to misconduct, it is customary to describe offenses and penalties in specific terms in order to protect the citizen from arbitrary or unjust acts of police and judicial authority, and at the same time,

to secure the community against those whose conduct has been shown in court to be dangerous. Case work aims, generally, are therapeutic. They seek to aid in the individual's readjustment by seeking out the social roots of his difficulties and attempting to mitigate the conflicts that have caused disturbance. Case work attempts to deal with a wide assortment of personal and group problems that represent failures in man's personal and social adjustments. Largely, these are maladjustations in behavior, dependence, domestic conflict, avoidance of responsibility and desertion.

The blending of conflicting concepts of delinquency is fully revealed in the definitions of juvenile delinquency that appear in children's court statutes of the various states. The Ohio Code, for example, defines a child as any person under the age of eighteen years, except where reference is made to a crippled or otherwise physically or handicapped child; then the word child includes any person under twenty-one years of age.⁴ Children who are the concern of the Juvenile Court fall into three definite statutory categories, namely, the delinquent child,⁵ the neglected child,⁶ and the dependent child.⁷

A child who is arrested under any charge, complaint, affidavit or indictment whether for a felony or misdemeanor, must be taken directly before the Juvenile Court. If it happens that the child is taken before any other court, it becomes the duty of that court to immediately transfer the case to the Juvenile Court.⁸ If the child complained of has committed an act which if committed by an adult would be a felony, the court may, after full investigation and after a mental and physical examination by qualified persons, certify the case to the Common Pleas Court, whereupon Common Pleas Court is authorized to make such disposition of the case as it would for a like act committed by an adult.⁹ Such procedure is usually resorted to only when the act committed is a very serious crime and when the child is sixteen years old, or over.

The code provides that the trial of children's cases shall be conducted in an informal manner and without a jury.¹⁰ Such a

⁴ R. C. 2151.01.

⁵ R. C. 2151.02.

⁶ R. C. 2151.03.

⁷ R. C. 2151.04.

⁸ R. C. 2151.25.

⁹ R. C. 2151.26.

¹⁰ R. C. 2151.35.

procedure is well adapted to the trial of children's cases. The establishment of the facts constitutes the least difficult part of the proceedings, since, in most cases, the child readily admits the commission of the offense. The important and most difficult task is to determine the disposition of the case which will serve the child's best interest. Close adherence to the strict rules of evidence might prevent the Court from obtaining important facts as to the child's character and condition which could only be to the child's detriment.¹¹

In the development of the Juvenile Court system, though, one often wonders at the broad jurisdiction and large discretionary powers entrusted to the courts. The tendency is to include in their jurisdiction any child who may be in need of the guardianship of the state and any adult who offends against a child or who contributes to his delinquency, dependency or neglect in one way or another. The blanket provisions of the statutes, if unwisely construed, would give to Juvenile Courts so wide and such arbitrary powers that compared to them, as Dean Pound has said "the powers of the court of Star Chamber were a bagatelle."¹²

In the modern Juvenile Court, there is a compromising of the legal and case work approaches and an effort is made at socio-legal handling of the child.

The White House Conference on Children in a Democracy, which met in Washington during January of 1940, formulated a definition of the function of the Juvenile Court that would limit its jurisdiction to its strictly legal aspects. It concluded:

"It is the function of the Juvenile Court to provide legal action, based on social study with a view to social treatment, in cases of delinquency requiring court action, and in cases involving adjudication of custody and guardianship or enforcement of responsibilities of adults toward children."

In May of the same year (1940), the Association of Juvenile Court Judges of America, at its conference in Grand Rapids, Michigan, adopted the following definition in the form of a resolution:

"The Juvenile Court is designed, within the scope of its legal powers, for the care and protection of dependent and neglected children; for safeguarding their interests and en-

¹¹ Practice and Procedure in Juvenile Court (Feb. 1950—address by Walter G. Whitlatch before Cleve. Bar Assn.).

¹² "The Administration of Justice in a Modern City," Roscoe Pound, *Howard Law Rev.* (1913).

forcing the obligations of responsible adults; and for the correction, re-education, rehabilitation and redirection of delinquent youth. Although operating as a socialized court, it must recognize and protect the rights of those brought before it as provided by law and the Constitution."

What causes juvenile delinquency and what can we do to prevent it? Why does one boy succumb to the temptations of an unlocked car or unprotected goods and another ignore them? The delinquent act itself is no clue.

Juvenile court reports show the majority of the boys are brought in for stealing or committing malicious mischief. Most of the girl delinquents are brought in for being ungovernable, for running away or for having committed a sexual offense. Twenty-four percent of the nation's auto thefts and three percent of the homicide cases and seven percent of the rape cases are committed by delinquent juveniles.

In 1951 an estimated 350,000 children were brought to the attention of the juvenile courts in this country for delinquent behavior. The boys outnumbered the girls four to one. A much greater number, perhaps a million or so, came in contact with the police on account of misbehavior. This group included many who were referred to the court. We do not know definitely the number of delinquent children who escaped the attention of the law; but studies indicate it may be considerable. The Children's Bureau, a national organization, reports that the number of child delinquents increased twenty-one percent between 1948 and 1954. The majority of delinquent children who come before juvenile courts are between fifteen and seventeen years of age; 35% of them have been before the court on one or more occasions. The age at which the largest number of delinquents are first apprehended by the police or referred to the court is between thirteen and fifteen. Nine-tenths of these same children were having considerable difficulty adjusting to normal life before they were eleven years old. More than a third showed noticeable signs of becoming delinquent at the age of eight or younger. Of the one million children who came to the attention of the police for misbehavior last year about 750,000 were dealt with directly by the police who let them go with a warning or perhaps referred them to a social agency for help. The remaining 250,000 committed acts of delinquency so serious that the police referred them to the Juvenile Court. An additional 100,000 were brought to Juvenile Courts by parents, teachers, social agencies and the like.

Of the 350,000 who came before Juvenile Court, half of the cases were dismissed, adjusted, or held open without further action. Approximately 95,000 were placed on probation and the rest were either referred to other agencies, committed to institutions or handled in other ways.¹³

The probabilities of arrest for delinquency depend considerably on the numerical adequacy of the particular police force, its caliber and training on procedures employed in dealing with children. In some communities today the police are directed to avoid formal arrest whenever possible. Increasingly, when a child is involved in only minor misconduct, the police merely report to his parent, warn him, or refer the case to an agency. In both New York and Chicago there was an appreciable drop in the number of official cases when the police adopted a policy of attempting to deal with children informally rather than by arrest and court hearing.¹⁴

We know that most of the delinquents who come before the courts are underprivileged children from impoverished, overcrowded homes in deteriorated neighborhoods where demoralizing conditions, such as low grade poolrooms and taverns, cheap dance halls, gambling joints and houses of prostitution are rampant. Many of these children run about in gangs and have learned from others in the neighborhood how to steal a car or rob a drunk. Is the cause then poverty? Slum conditions? Bad companions? Then why is not every one who has lived in slums delinquent?

Many delinquents are malnourished and undersized. Many suffer from physical defects. Many seem dull and are retarded in school. Is delinquency then caused by physical or mental deficiency? But there are many healthy, bright delinquents, and only a small proportion of mental defectives get into trouble.

Does the influence of gangster movies, detective stories, and radio and television thrillers cause juvenile delinquency—a question that worries many parents. Probably not, for many children attend such pictures regularly and listen to such radio programs and watch such television shows almost every night before going to bed and yet never become delinquent.

A large proportion of delinquents come from miserable homes—homes that have been broken by death or desertion of a parent; depraved homes, where the mother may be immoral

¹³ *The Child*, Dec. 1952.

¹⁴ *Juvenile Delinquency*, p. 33—Paul W. Tappan.

and the father alcoholic or criminal; homes where the foreign born parents' old world culture clashes with that of the community to which the child is constantly exposed; homes where social values are cheap or altogether lacking. Is it then bad environment? Cultural conflict? False standards of behavior? Then why does one child become a thief and another in the same family becomes a useful citizen?

These are but a few questions that have puzzled all students of delinquency. They indicate the complexity of the problem. One single answer to "why" will not do.

It is reasonable to believe that all, or at least a vast majority of normal children sometimes indulge in forms of behavior that might come within the purview of delinquency. Whether a grown child will get into trouble depends largely on the interpretation that is attached to his conduct and the willingness or ability of the parent to deal with it. Considering the broad scope of legal provisions on insubordination, questionable behavior, injuring or endangering the morals or health of himself or others, truancy, running away, trespassing, and petty theft, it would be difficult to find any paragons of virtue who would be wholly exonerated of delinquency, save through parental understanding and leniency. Much of delinquent conduct, even that of more serious varieties, remains undiscovered. How much it is impossible to guess, but it is known that property offenses, particularly, very often escape detection. The more careful or intelligent child may pile up a large series of offenses before he is apprehended.

Countless studies of delinquency have been made and countless causes listed. Setting down relevant factors, even in an individual case, is only the beginning of the search. We must understand what part these factors played in shaping the particular delinquent's personality—whether or not they became a dynamic force in his feeling and thinking, propelling him into misconduct. Take, for example, the oft listed factor of poverty. One child may react to his poverty by feeling resentful toward the world and will perhaps steal in order to make up to himself for what he feels he is unjustly deprived of. His brother, on the contrary, may be spurred by the same situation to achieve legitimate success. In short there is no one cause of delinquency. There are many contributing causes and for each child they vary in significance. To understand the delinquent behavior of an individual child, it is necessary to learn all about him. We must know about his physical and mental make up. We must know

about the social and psychological forces that have played upon him from the time he was born. Above all, we must know how he feels about things, if we are to understand what makes him the kind of person he is and what prompts him to do the kind of things he does.¹⁵

We do not know everything about how to help, but we know some things and quite a bit about causes. Sooner or later delinquency becomes a community problem; we need to learn more about it and how to help.

Diagnostic studies of delinquency have already richly rewarded us by giving greater understanding of the delinquent and the causes of his offenses. But the coming years should see great strides forward in careful attempts at formulating, carrying out and evaluating treatment.¹⁶

Primary responsibility for protection of children rests upon parents. The community has a responsibility to help parents fulfill their obligation toward their children and to provide services outside the home that are necessary for the full development and protection of all children.

Prevention of delinquency, therefore, involves community concern for the needs of all children—the rich child and the poor child, the child across the tracks and in the city slums, the child in the depressed rural regions, the shopkeeper's child and the child of the factory worker; the crippled child and the dull child; the child in a foster home and the child in an institution; the child on relief, and the child who needs aid and is not getting it.

It involves taking action to meet their needs. It means providing basic community services that contribute to their healthful physical, social and emotional growth. These would include social services that build up and strengthen the economic and social security of the family; adequate health services and medical care for all children; protection against harmful community influences and against the exploitation of young people for commercial gain. It means enlisting the aid of the church, the school, the teacher, child guidance clinics, social service agencies, the police and Juvenile Court.

The advancement of healthy personality development calls not only for the understanding and utilization of present knowledge but also for continuing research.

¹⁵ U. S. Dept. of Labor Publ.—“Understanding Juvenile Delinquency”—1943.

¹⁶ “The Child, the Clinic & the Court”—A. F. Bonner, p. 75.

For our problems, there are no simple solutions. Only consistent, intelligent study and research with constantly increasing scope, can yield any appreciable improvement or any dramatic changes. In the modern world change and interaction seems to increase by geometric proportions. Many find it impossible to live comfortably with themselves; how can we expect them to face with equanimity relations with others—in their own family, the community, state and nation? ¹⁷

More and more we are faced with two seemingly opposed necessities. On the one hand we see the need for treating the delinquent as an individual; on the other hand we recognize the futility of this service of trying to help an individual by taking him completely out of his normal social setting. If we can help him in his group relationships, we might thereby measurably aid him in his total adjustment.

Thus sociological as well as psychological tools are required. These consist of inquiries into the social, economic, cultural and emotional factors that have shaped the life history of the individual; the interpretation of data regarding his family; his school career; his employment record; his recreational outlets; briefly, the social and psychological diagnosis of his personality. In this manner is introduced into the criminal procedure a host of data which has nothing to do with the commission of the particular act. But, from a social and psychological vantage point, these data explain the behavior of the individual offender and serve as guide posts in the determination of the proper sentence, punishment, treatment or other disposition.

Roscoe Pound, Dean Emeritus of Harvard Law School, summarized the trend in the socialization of law as follows:

“The history of law shows a continually widening area of recognized and secure interests, but the history of juristic thought shows also attempts to reduce the recognized and secured interests to some one type, with resulting exclusion of those which are not readily adjustable thereto. Today jurists are in reaction from one of these attempts and the state of legal development which this reaction reflects may be called the socialization of law in order to bring out the contrast to the abstract individualism of what may be called the maturity of law in the nineteenth century. What has been called socialized criminal justice is a phase of this general movement to expand the circle of legally secured interests

¹⁷ *Personality in the Making*, p. 444—Witmer and Kotinsky.

by increased insistence upon the social interest in the individual life.”¹⁸

There is no ready-made explanation of the causes nor any sure-fire prescription for the cure and prevention of delinquency. The challenge of the problem remains. But in the history of mankind, forces have always risen to meet a challenge. The danger exists of exaggerating or minimizing the extent and import of child delinquency. The pitfalls of either extreme may be avoided if the problem is seen as part of the total picture of our children's growth in the midst of the frustrations and the achievements, the conflicts and the blessings of present day society.

Programs for service to children, including delinquent children, should be coordinated at the state and local levels by some form of planning and coordinating body. Instruction and training in the handling of juveniles should be a part of the basic training of every police official. The Juvenile Court judge should have sufficient knowledge of the science of human behavior to be able to use and to be willing to use expert advice on the problems of human relations. Social services should have trained and skilled counselors to aid children placed on probation. The probation officer should be a specialist in the social sciences. Every detention facility should have a plant, program, and staff that will enable it to make detention the first step in a constructive treatment process. Psychiatric and psychological services should be available. A training school should be provided giving to delinquent children the equivalent educational opportunities that are offered to others in the community. An expanded recreational program directed by school and municipal officials, paid for by the community and participated in and sponsored by businessmen, service clubs, churches and other organizations should be undertaken to provide competitive sports, recreational activities and other healthful outlets for the youth of the community.

These are some of the methods we can use to meet the challenge of the problem. Much progress has been made since the days of Blackstone. Much progress still remains to be made.

¹⁸ *The Rise of Socialized Criminal Justice*, p. 12—Roscoe Pound.