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THE RIGHTS OF JUVENILE DELINQUENTS: AN APPRAISAL OF JUVENILE COURT PROCEDURES

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The origins of the juvenile court are to be found in the public welfare movement, particularly as it related to children. Child welfare considerations became elaborated into concrete protective services for children.[1] In the area of delinquency, reform movements turned from conceptions of individual responsibility to the effects of social environmental factors and concentrated their attack on protecting young people, who were felt to be largely the victims of circumstances, from the demoralizing influences of criminal procedures. The new approach in child welfare was supported by a rising clinical ideology.[2]

The legal roots of the juvenile court are found in the English courts of chancery which were well established by the beginning of the fifteenth century. The chancery courts were more flexible and administrative than the common law courts and carried the power of parens patriae or the power of guardianship over persons, especially children, who lacked adequate remedy at law.[3] These features were incorporated in the establishment of juvenile courts throughout the country since 1899. However, juvenile courts generally have gone so far beyond the traditional limits of earlier equity courts that most of them today operate not so much as judicial agencies, but mainly as social agencies attempting the rehabilitation of a wide range of problem cases which may or may not involve delinquency. The reaction against the extremes of the penal code when applied to juveniles has in many jurisdictions led to the removal of virtually all procedural safeguards and to the formulation of a concept of juvenile courts which makes of them, in effect, child guidance agencies supported by the compelling power of the state. This concept has been reaffirmed in a recent decision of the Pennsylvania Supreme Court. In *in re* Holmes, Chief Justice Stern maintained:[4]

> The proceedings in such a court are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and rehabilitation of the minor child. Their purpose is not penal but protective—aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on a evil course and deprived of proper parental care, the strong arm of the State acting as *parens patride*. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life.

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[1] HENRIETTA L. GORDON. *Report of Conference on Protective Services*, Special Bulletin, Child Welfare League of America, February 1944.

[2] PAUL W. TAPPAN. JUVENILE DELINQUENCY. New York: McGraw-Hill, 1949, pp. 348-349.

[3] *Ibid.*, p. 7.

[4] 379 Pa. 599, 109 A.2d 523 (1954).

Such an opinion is not new to the State of Pennsylvania. In *Commonwealth v. Fisher*,[5] the Supreme Court declared that a child could be brought into court *without any process at all* "for the purpose of subjecting it to the State's guardianship and protection. . . . When the child gets there and the court, with the power to save it, determines on its salvation and not its punishment, it is immaterial how it got there."

In short, constitutional rights granted to adults accused of crime do not apply to children who are brought before juvenile courts. In *in re* Holmes, the Supreme Court went so far as to say that:

> Even from a purely technical standpoint heresay evidence, if it is admitted without objection and is relevant and material to the issue, is to be given its natural probative effect and may be received as direct evidence.[6]

It is apparent in many other cases that juvenile courts have been granted a vague and broad jurisdiction and such a wide latitude of discretionary powers as enjoyed, probably, by no other single tribunal. The reason in part may be found in the idealized interpretations of juvenile court laws and the unquestionably desirable aims on which those interpretations are based. Thus, the main purpose of the court is to help the child in trouble by a process of individualized treatment, the assumption being that there is no conflict between the child and the State.

The purpose of this paper is to examine both the logical validity of the prevailing official attitudes toward the juvenile court and the procedures to which they give rise in practice. The question needs to be asked, to what extent are the idealized statements of juvenile court philosophy translated into practice? If the practice does not measure up to stated goals, then, do the ends continue to justify the means?

Jurisdiction of the Juvenile Court

Definitions of delinquency in the law are very broad. The status of delinquency is not confined to those children who are found to have violated a law. It is enough that a child has engaged in antisocial behavior or that he has acted in such a way as to endanger the morals or health and general welfare of himself as well as others. But how does one decide when a child has acted in such a way? On the basis of whose values should such decisions be made? Current conceptions of delinquency are not consistent, nor are they such as to allow one to discriminate among different cases. Delinquency can and should, it seems to the writer, be defined not in abstract and vague terminology but specifically, even in degrees, although not to the extent to which this process is carried in the criminal code. Where delinquency is not specifically defined, adjudication too often depends upon the personal values of the judge on the bench. Too often under such circumstances it is assumed that the mere filing of a petition charging delinquency automatically makes a child a delinquent.

The danger in not utilizing more detailed and precise norms lies in the retention of court jurisdiction over children who have committed no violation of law.[7] It is a

[5] 213 Pa. 48, 62 Atl. 198 (1905).

[6] 379 Pa. 599, 109 A.2d 523 (1954).

[7] Other jurisdictions from time to time have adopted similar views: *Mill v. Brown*, 31 Utah 473, 88 Pac. 609 (1907); *Ex parte* Daedler, 194 Cal. 320, 228 Pac. 467 (1924); Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1929); State v. Elbert, 115 Conn. 589, 162 Atl. 769 (1932); People v. Lewis, 260 N. Y. 171, 183 N.E. 353 (1932).

fundamental American belief that in order to protect individual rights there is a presumption of innocence until or unless the reverse is proved beyond a doubt. Juvenile court philosophy, taking its cue from social work ideology, does not speak in terms of innocence or guilt. On the other hand, though there may be no presumption of guilt, there is sometimes the assumption that any child referred to the court needs the court's "attention." The problem of delinquency is often taken for granted or ignored.

To illustrate: The writer was assigned to investigate a case in which two boys were accused of throwing stones through a factory window. The investigation revealed that only one of the boys had broken the window. As far as it could be determined the other boy, whom we may call Ken, was not involved except for the fact that he had been present at the time the incident occurred. However, the judge of the juvenile court was one who prides himself on an approach which emphasizes *not* the question "Did you or did you not?" but "Why, under what circumstances, and what can be done to help?"[8] Consequently, he allowed the principal of the school which Ken attended to testify that *it was reported* that *at one time* Ken's mother used to have the boy solicit the attention of men for her amusement and profit. The school social worker then expressed her opinion that Ken was suffering from a "castration complex"! In addition, she reported that four years previously, when Ken was nine, he *reportedly* had tried to take off the panties of a little girl his own age. Subsequent discussion continued in this vein and centered about problems other than the charge on account of which the boy had been referred. If the writer's memory serves him well, the charge was not once mentioned at the hearing except in the probation officer's initial summary of the case. The case of the other boy who actually was guilty, and whose past behavior and background were even less desirable, took considerably less time to be heard. The approach was consistent in that the emphasis was not on "Did you or did you not?". But, the question remains, how can one legitimately consider "Why, under what circumstances, and what can be done to help?" if the first question is brushed aside? It is significant that in the present case there was no point to the second question for the boy *did not.* What was discussed was the boy's alleged general behavior and background which should more properly have come after adjudication. To take a dim view of a child's behavior and background when no delinquency is proven and then place him on probation (the result in the case described) is not to begin to solve his problem. The judicial process involves (1) seeking the facts, and (2) applying the law to the ascertained facts. "Isn't it obvious," asks Judge Waite, "that the rights of the individual who holds the state at arm's length and says, 'The charge is false. You have no right to interfere with me' should be more strictly regarded during the first process *before* his status as someone with whom public interference is warranted?"[9]

The modern approach to delinquency with its impatience with traditional legalistic restraints can be traced to the influence of a social work ideology. The anti-legalistic approach which characterizes it has in some quarters assumed the importance of a

[8] GUSTAV L. SCHRAMM. *Philosophy of the Juvenile Court,* Annals of the American Academy of Political and Social Science, *Vol. 261:* 101–108, January 1949.

[9] E. F. WAITE. *How Far Can Court Procedure Be Socialized Without Impairing Individual Rights?,* Jour. of Crim. Law and Criminol., *Vol. XII:* 339–347, November 1921.

vested interest. There are those, for example, who hold tenaciously to the belief that it is the "whole child" which is important, not merely the charge brought against him. On the other hand, whatever the meaning of "whole child," one may well ask if the traditional rights applied to all other age groups in the population should not also be applied to the child? Is not the consideration of such rights the inital function of a judicial agency and a part of the picture of the "whole child"? It seems to the writer to be a presumptuous point of view which implicitly assumes that the juvenile court can and should handle the wide range of problems which come before it. Where there is no violation of law on the part of the child, parents have the right to raise their children according to their own precepts, however much any court may be appalled at those precepts. Yet in philosophy as well as in practice, many courts presume to take the place of parents. With the sanction of the state a juvenile court may intervene to train children according to vague and conflicting standards, and to help them "adjust" when in fact those who are hired by the state for this enterprise are often far from being adjusted themselves and seldom in agreement, even about the meaning of adjustment. There must be limitations upon the kind of power which leaves the matter of public interference with individual lives to the discretion of well meaning judges and social workers. In *Lindsay v. Lindsay*,[10] the court insisted: "The juvenile court law should be given a broad and liberal construction, but it should not be held to extend to cases where there is merely a difference of opinion as to the best course to pursue in rearing a child." Nor, as stated in *People v. Gutierrex*,[11] does the juvenile court law envision taking children from parents "merely because in the estimation of probation officers and courts, the children can be better provided for and more wisely trained as wards of the state." It should be undeniable that parents and children have a perfect right to lead unadjusted lives, if they please, without the authoritarian influence of court or any other agency, *so long as their behavior does not interfere with the rights of others as specifically defined by law.* Those who find legal restraints irritating obstacles placed in the path of the impregnable goal of child welfare may do better to encourage unadjusted non-violaters of law to seek and accept treatment in agencies other than courts. They also can have their work cut out for them if they were to exert themselves in efforts to establish more and better facilities designed to treat problems of a non-legal character. Ultimately, it is inconceivable how a consideration of the rights of a child can be inconsistent with his welfare. A child as much as any other person, perhaps more so, needs to be defended from the arbitrary and one-sided actions of others, irrespective of how well meant their intentions. In the words of Justice Musmanno: "But fairness and justice certainly recognize that a child has the right *not* to be a ward of the State, *not* to be committed to a reformatory, *not* to be deprived of his liberty, if he is innocent."[12]

The Court Hearing

According to Sussman[13] the informality characteristic of juvenile court hearings does not mean that rules of evidence are to be disregarded. In practice, however,

[10] 257 Ill. 328, 100 N.E. 892 (1913).

[11] 47 Cal. App. 128, 190 Pac. 200 (1920).

[12] *In re* Holmes, 379 Pa. 599, 613, 109 A.2d 523, 529 (1954).

[13] Frederick B. Sussman. Law of Juvenile Delinquency. New York: Oceana Publications, 1950, p. 30.

they usually are. Hearsay evidence is admitted and recorded and the statements of complainants and witnesses are admitted without their presence being required in court. It is taken as sufficient that their statements appear in the record of the investigation made by the probation officer *before* a case is heard in court. Indeed sometimes statements of complainants are not obtained at all. In any event, the pre-hearing investigations center chiefly around social background information obtained from parents, from school and from other interested persons and social agencies. Diagnoses and opinions of court psychiatrists, psychologists and social workers are also included. But even diagnoses reflect the orientation of the person making them. Objectivity in such reports cannot be taken for granted. The whole process is further complicated by the fact that the pre-hearing investigations are usually conducted hurriedly and superficially. It cannot be otherwise considering the heavy case loads of probation officers and the pressures upon them to meet court deadlines.

When the parents walk into the court room, they expect that the charge and the circumstances leading up to it will be discussed. More often than not, however, they are apt to feel that everything has been decided beforehand. This is not always the case, to be sure. But most people are prepared to meet a traditional procedure and are not aware that their statements given to the probation officer before the hearing comprise a major segment of the entire process. When parents stand before the judge, all the available social background information has been placed in the case record, together with a recommendation by the probation officer and his supervisor. What need to go into the situation further unless some new and unforeseen development has come about? As juvenile court procedure is now set up, such a situation is largely unavoidable but it suggests that the procedure itself should be changed. From the point of view taken here, the court hearing should be used to determine whether or not a child is delinquent and what the disposition shall be. The social investigation should come *after* the hearing and be used to determine what specific plan of treatment would be best for any particular case.

This, however, involves other assumptions. Under a law which defines specific delinquent acts, there should be set definite limits of time within which a child could be committed to a correctional institution or placed on probation for various types of offenses. There is no justification, from the writer's point of view, in incarcerating a child or in keeping him on probation for an indefinite period because he has failed to reach an official standard of adjustment, which may be higher than that imposed on the average person, or on the assumption that continued commitment or probation will bring about such an adjustment.

Under many present laws the judge of the juvenile court can establish his own procedures. Re-hearings and appeals are few and far between. Thus, there is little if any check upon the court. Parents usually are not advised of their rights. If they are dissatisfied with the results of a hearing or if they feel there has been a miscarriage of justice, they are informed they may ask for a re-hearing and then appeal. But they are subtly discouraged from taking such a course and the fact that they can do so as a matter of right is not a piece of information imparted to them routinely and as a matter of course. This, perhaps, reflects once more the absence of a legal emphasis. In the same connection, the right to be represented by counsel is subtly discouraged, though it is never denied. The attitude prevails that an attorney is a wrench which

is ready to be thrown into the court machinery. Attorneys are to be tolerated lest they get the "wrong" impression of what the court is trying to do, but if they can be induced to accept the court's motives in a spirit of cooperation to do what, in the court's opinion, is "best for the child," so much the better. The fear commonly expressed when attempts are made to legislate the right of juveniles to counsel is that the restrictions then imposed will prevent the court from carrying out its program of working with the child in his best interest. In other words, the feeling is that the attorney will stand between the court and the child. This may or may not be the result, but it can scarcely be denied that some members of the bar unfortunately are more interested in their clients' successful evasion of the law than in seeing that justice is done. In any event it is better to risk the child's evasion of the law than that he should be unjustly detained within its jurisdiction. But this is a point of view which would undoubtedly meet with stiff opposition in the field. Juvenile court philosophy sees no discrepancy between a consideration of the welfare of a child and an absence of constitutional safeguards. Perhaps many practitioners feel that because their motives are of a noble strain they carry within them their own inviolable sanctions and, therefore, deserve no interference from others. It is a presumptuous point of view but it has the advantage of stirring up an endless stream of rationalizations. Under them any adopted procedures become immune to logical contradictions.

This may be illustrated by a type of disposition which is called a "protective placement." When applied to cases of delinquency, it usually turns out to be a new name for an old practice, commitment to a correctional institution. For example, the writer was once assigned to a case involving homosexuality. A boy of limited intelligence, whose I.Q. was about 80, had been forced to submit to a college student. Afterwards the boy ran home to his father who called the police and had the adult charged with a criminal offense. The police also took the boy to the juvenile detention home. On the police paper no charges were stated, only the circumstances leading up to detention. (The boy had had one previous appearance for truancy, after which his attendance had improved.) At the hearing the boy was sent to a reformatory "for his own protection." The assumption underlying such a commitment is that the reformatory has a successful organization capable of treating this type of problem and that the boy would be better off there than at home. Ironically, the adult in this case was freed in criminal court as the boy was not a very capable witness.

Summary and Conclusions

The main points of contention concerning juvenile court procedures may be summarized as follows:

(1) Because there has been a strong reaction against the abuse of criminal procedures applied to children, much that was essential to the protection of individual rights has been eliminated in the laws relating to adjudication and treatment of delinquency.

Some of the features of criminal procedure which have been eliminated are here considered not to be inconsistent with the welfare of a child.

(2) The idea that the specific offense of which the child is accused is irrelevant in a rehabilitative approach is also rejected.

A specific offense may be irrelevant for treatment *after* a child has been adjudged delinquent, but not before. One must consider the grounds on which one is entitled to attempt the rehabilitation of any child and those grounds are fundamentally legal. Adjudication should merely establish the right to treat and the conditions under which treatment is to take place. As treatment now stands, it is mainly conducted within the official imagination. The attitude seems to be that if a child "needs" treatment, keeping him under the protective wing of the court in and of itself is beneficial.

(3) Most juvenile courts are probably not equipped to deal with problems not tied to violations of law.

Cases involving psychological, domestic and other problems where no delinquency is found should be referred to other agencies but only on a voluntary basis.

The juvenile courts' indiscriminateness in taking all kinds of cases is a large part of the problem. Many seem to think that the juvenile court should do all things, but in effect this permits the court to do only the easy, the immediate and the practical things and to neglect the difficult and important treatment of the most serious delinquents. In confusing its role with that of parents the juvenile court succeeds only in spreading its efforts thinly.

(4) Despite statements of philosophy to the contrary, the ideals of rehabilitation in practice may give way to punitive judgments depending upon the nature of the offense and any bias of the court.

Such bias could be checked by statutory limitations prescribing specific penalties.

(5) The philosophy or frame of reference of the juvenile court is not effectively transmitted to the court "public."

Most people whose children are referred to the court do not visualize it as a social agency. For the most part the writer believes the court public associates procedures with a punitive ideology requiring traditional safeguards such as right to counsel, right to confront witnesses, and so on. The court cannot operate well beyond the limits of public definition and the attempt to do so may limit an already limited efficiency.

(6) Present procedures, including the practice of conducting pre-hearing investigations and the emphasis on minor and problem cases, overtaxes probation facilities.

The time now given almost exclusively to court hearings might be more profitably spent in developing a systematic approach to treatment. In this respect an administrative separation of the courts and probation departments seems advisable. Probation staffs themselves could decide upon an area of function with the aim of bringing ideals to the level of reality. Limitations should be outlined and insignificant details omitted from the job.

(7) The young delinquent and his family are not usually informed of what rights they do possess under existing law.

On the contrary, there is an assumption that no violation of rights is possible.

(8) The state has no fundamental right to impose control over those who have committed no offense.

In other words, "treatment" by the court aimed at preventing delinquency is unjustified even if the court were equipped to provide such treatment. In addition knowledge has not yet advanced to the point where delinquency can be predicted

unquestionably in any individual case. The current use of subtle distinctions, such as filing a petition "on behalf of" a child rather than against him, does not alter the inherently legal and fundamentally punitive character of the juvenile court's processing of delinquents. And if the court puts its own rubber stamp of approval on all its activities, that is no assurance that all it does is for the benefit of the child.

(9) Once a petition has been filed against a child, there is often a presumption of delinquency.

If there is not always a presumption of delinquency, there is at least the presumption that the child needs the "help" of the court. In many cases there is a decided reluctance on the part of the court to let the matter rest when no obvious delinquency is involved. On the contrary, the attempt is made to find either some problem or some other delinquency not connected with the current charge.

(10) The sometimes indiscriminate acceptance of cases held for the court's adjudication overloads the court calendar and frequently results in an insufficient amount of time given to a consideration of average cases.

(11) The results of a law nebulously formulated have been: (1) an increase in the powers of the court acquired through administrative procedures, (2) a circumvention of traditional legal procedures and, (3) the emergence of an implicit and sometimes explicit attitude that the court is another social agency.

There is in some quarters a feeling of pride in the anti-legal approach to the handling of offenders and apparently little or no realization of the very real abuses which may be involved.

If the points outlined above are correct, and many of them can be objectively verified, then the decisions of some state supreme courts are a hollow mockery.[14] In *in re Holmes* the appellant, Joseph Holmes, age 16, had been committed to the Pennsylvania Industrial School "on his prior record, his present activities, the failure of his parents to control him, and the desirability of his receiving the training provided in such an institution." The only *proven* offense of this boy had been operating a motor vehicle without a license. Five days later a delinquency petition charged him with participation in the armed robbery of a church, an allegation which was not conclusively substantiated. From this and from similar decisions in the past is the public to believe that incarceration, commitment to a reformatory, constitutes "helping," "salvaging," "safeguarding" a boy by throwing around him "the strong arm of the State"? Are the sacrosanct motives and purposes of the state then to justify its interference in the lives of any hapless child and his parents merely on the implicit assumption that stated motives and purposes are identical with their realization?

The point is not that the state should not step in to help "save" a child, but does the child need to be "saved," and if so, does it need to be saved by the state? The difficulty is in allowing decisions about a need to save to the discretion of judges of juvenile courts and their staffs. The criteria for public interference with the freedom of action of any individual, child or adult, should be stated in the law. To this end present laws need to be reexamined, modified and even re-written entirely. They need to consider that the mere declaration of a procedure to be non-criminal does not justify

[14] *In re* Holmes, 379 Pa. 599, 603, 109 A.2d 523, 524 (1954).

infringement of personal rights. The speciousness of the reasoning which has supported juvenile court philosophy has been most skillfully highlighted by Tappan:

> The presumption is commonly adopted that since the state has determined to protect and save its wards, it will do no injury to them through its diverse officials, so that these children need no due process protections against injury. Several exposures to court; a jail remand of days, weeks, or even months; a long period in a correctional school with young thieves, muggers, and murderers—these can do no conceivable harm if the state's purpose be beneficient and the procedure be "chancery!" Children are adjudicated in this way every day without visible manifestations of due process. They are incarcerated. They become adult criminals, too, in thankless disregard of the state's good intentions as "*parens patriae*."[15]

It is time for an "agonizing reappraisal."

[15] TAPPAN, *op. cit.*, p. 205.