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Due Process in the Juvenile Courts

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John X is a boy sixteen years old. He does not like school and has built up a truancy record by frequently preferring fishing, ball games and movies to his scholastic studies. His stern parents have tried to cope with his truancy and his disobedience to their strict edicts as of smoking and late hours by even sterner methods. John feels misunderstood both at school and at home. His rebellion, though unfortunate, is understandable in a teenager. Against this background, circumstantial evidence points to him as the thief of a fifty dollar bill from the purse of one of his mother's bridge club members. He is subjected to constant night and day questioning by his family and friends. He is reported to the juvenile court authorities for appropriate action. Disillusioned by his parents' lack of faith in him and to put an end to their constant probing, John rashly "confesses". His later plea of innocence falls on deaf ears. He has no lawyer. His forced confession is the only substantial evidence against him. Witnesses were neither sworn nor confronted by him. Not a jury, but an unsympathetic and busy judge whose appointment was political rather than meritorious, heard John's case. The present charge, coupled with his truancy record and disobedience to his parents, convinced the judge to send John to a reformatory. The reformatory is such a one as was scored by Dr. Elliot, Chief of the United States Children's Bureau for its "brutal, degrading and harsh treatment".[1] John is kept there until he reaches twenty-one—a five-year sentence, far in excess of what an adult offender would have received for a fifty dollar theft. John regains his freedom at last and returns to society as a wronged, embittered youth.

Under our present juvenile court laws such a hypothetical case could happen. Behind the present closed doors of the judge's chamber, it may well be happening. And it is this possibility which has promoted this article, the purpose of which it is to question the propriety of the lack of constitutional safeguards accorded to youthful offenders in our juvenile courts today.

That these safeguards are lacking is well recognized.

> A recent product of the solicitude of the law for the welfare of infants is the creation by statute of 'juvenile' or 'children's courts' to deal with dependent, neglected, and delinquent children. By the term 'delinquent children', as used in these statutes, is meant children who have committed offeness against the law, or who are found to be falling into bad habits, or to be incorrigible. The essential feature of these statutes is the creation of a special court, the procedure of which is less and more paternal than that of the regular criminal courts, and in which the child is protected from publicity and from association with adult criminals. The court is given a wide discretion in dealing with the child before it, and may order commitment to the care of probation officers or to charitable institutions, or in case of incorrigibility or actual criminal acts to a reform school, or reformatory, instead of to the jail or penitentiary. Children below a certain age, which sometimes differs as between the sexes, are included in the scope of these acts. The courts have treated

[1] Washington Post, Sept. 5, 1951, p. 4, col. 3.

> these statutes as beneficial and entitled to favorable construction. The objection that the informal procedure of the children's court does not constitute due process of law, and hence that the parental rights of the child's custody, or the child's own liberty, cannot be taken away legally by its order of commitment, has been uniformly overruled.[2]

Although the state and federal statutes creating the juvenile courts vary from one another in some degree, all contain some of the following denials of rights found in either the state or federal constitutions pertaining to criminal proceedings: no provision for a jury trial; no allowance of bail; no grand jury indictment; no confrontation by witnesses; no public trial; no appeal; no conformance to due process of law generally; no right against self incrimination; no notice to the person.

How have the courts rationalized this denial of constitutional rights to a segment of our citizenry accused of lawbreaking? By the simple expedient of declaring that the proceedings in the juvenile courts are not criminal in nature, but rather the exercise of the common law doctrine of "parens patriae". One case defined this term thus,

> These words, meaning, 'father of his country', were applied originally to the king, and are used to designate the state, referring to its soverign power of guardianship over persons under disability.[3]

This doctrine was administered in England by the Court of Chancery, and therefore the juvenile court judges declare their court proceedings to be civil and equitable, not criminal in nature[4]. Further they say that the reformatory is not a prison but a school; that the juvenile court does not convict, but saves.

To strengthen this position, many state statutes creating the juvenile courts expressly provide that juvenile court procedure is not to be considered a criminal proceeding, nor the child sentenced thereunder as convicted of a crime, nor the civil disabilities ordinarily applied to criminals to attach to the juvenile offender.

By such reasoning it has become settled law in this country that the constitutional guarantees applicable to criminal procedure accorded to known criminals, acknowledged Communists, and enemy aliens before our courts, need not be considered in the sentencing to reformatories of our young citizens adjudged to be juvenile delinquents. Examples of this are found in the following cases which represent but a few of many similar decisions. *Wissenberg v. Bradley.*[5] (Due process of law does not require a trial by jury in a proceeding in a juvenile court for the commitment of a child as delinquent and incorrigible to a state institution.); *Bryant v. Brown.*[6] (Restraint put upon the child does not amount to a deprivation of liberty within the meaning of the Declaration of Rights); *Ex Parte Nichols*[7]. (An act providing for establishment of a school

[2] 14 R. C. L. 277.
[3] *In. Re Turner,* 94 Kans. 115, 145 P. 871 (1915).
[4] *Commonwealth v. Fisher,* 213 Pa. 48, 62 A. 198 (1906).
[5] 209 Iowa 813, 228 N. W. 205, 67 A. L. R. 1675 (1930).
[6] 151 Miss. 398, 118 So. 184, 60 . L. R. 1325 (1928).
[7] 110 Cal. 651, 43 P. 9 (1896).

of industry for detention of minors guilty of criminal offenses until majority, which may be a longer period than the term of inprisonment for an adult convicted of same offense is not unconstitutional as providing unequal punishments for the same offenses.) *People v. Lewis*[8]. (Failure to warn against self-incrimination not necessary.); *Wissenberg v. Bradley*[8a] (Failure to make provision for an appeal in a statute providing for commitment by juvenile courts of delinquent and incorrigible children to a state institution does not deny due process of law.) *Cinque v. Boyd*[9]. (Juvenile Court Act not being criminal in nature, it is not invalid for nonconformity to constitutional right of accused to be confronted by witnesses against him.); *Mill v. Brown*[10] (No arraignment, plea or warrant of arrest necessary.); *Dendy v. Wilson*[11] (No public trial.); *Espinosa v. Price*[12]. (Constitutional and statutory provisions as to bail in criminal cases not applicable.); *In re Santillanes*[13]. (The fact that the act creating juvenile court failed to protect against double jeopardy and self-incrimination could not render such act unconstitutional as a denial of due process of law.); *Ex Parte Nacarrat*[14]. (Constitutional guaranties respecting due process of law and cruel and unusual punishment applying to defendants in criminal cases do not apply in delinquency cases.); *Rule v. Geddes*[15]. (Neither lack of notice nor hearing in her own behalf, deprives juvenile committed to reform school for girls of due process of law.)

Who is classified as a juvenile and who as deliquent under these laws, which exist now in all the states? Generally, the upper age limit is set at eighteen years[16]. Since the purpose of the juvenile court is to remove juvenile offenders from the jurisdiction of the criminal courts, definitions of delinquency invariably include violations of laws and ordinances by children. The Federal Juvenile Deliquency Act reads,

> A juvenile alleged to have committed one or more acts in violation of a law of the U. S. not punishable by death or life imprisonment, and not surrendered to the authorities of a state, shall be proceeded against as a juvenile delinquent . . . [17].

Other acts in their delineation of the juvenile subject to the jurisdiction of the juvenile court, avoid the use of the term "delinquent" because of its connotations. They are more inclusive, and include many acts or courses of conduct not punishable if committed by adults. The Juvenile Court Act of the District of Columbia reads,

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[8] 260 N. Y. 171, 183 N. E. 353, 86 A. L. R. 1001 (C. A. 1932).
[8] Note 5 *supra.*
[9] 99 Conn. 70, 121 A. 678 (1923).
[10] 31 Utah 473, 88 P. 609, 121 Am. St. Rep. 935 (1907).
[11] 142 Tex. 460, 179 S. W. 2d 269 (1944).
[12] 144 Tex. 121, 188 S. W. 2d 576 (1945).
[13] 47 N. M. 140, 138 P. 2d 503 (1943).
[14] 328 Mo. 722, 41 S. W. 2d 176, 76 A. L. R. 654 (1931).
[15] 23 App. D. C. 31 (1904).
[16] Lenroot, *The Juvenile Court Today,* Federal Probation, Sept. 1949, p. 11.
[17] 18 U S. C. 5032 (Supp. 1951).

(a) This chapter shall apply to any person under the age of 18 years—(1) Who has violated any ordinance or regulation of the District of Columbia; or (2) Who is habitually beyond the control of his parent, custodian or guardian; or (3) Who is habitually truant from school or home; or (4) Who habitually so deports himself as to injure or endanger himself or the morals or safety of himself or others; or (8) Who associates with vagrants; vicious, or immoral persons; or (9) Who engages in an occupation or is in a situation dangerous to life or limb or injurious to the health or morals of himself or others[18].

Let us now examine the procedure in the juvenile courts which has supposedly replaced the need for these constitutional safeguards. The following procedure is that recommended by the National Probation Association and found in the Standard Juvenile Court Act[19] drafted by the Association with the help and approval of the United States Children's Bureau of the Department of Labor. It is based on those provisions of the existing state statutes which have proven their merit, plus recommended provisions of the Association not yet adopted. It has been revised five times and represents the best in juvenile court procedure. It must be realized that many of the state statutes setting up the juvenile courts fall short of this ideal.

I. *Initiation.* The initiation of a child's case may be made by any person who informs the court that a child is within the purview of the Act. A preliminary inquiry by the court is then ordered to be conducted by the staff of the court to see if further action is required. If the court feels that the investigation so warrants, a verified peition is filed upon information and belief. This petition states the facts which bring the child within the scope of the act, the child's name, age, and residence, and also that of the child's parent, legal guardian, person having custody, or nearest known relative.
II *Summons.* A summons is then issued personally, by registered mail, or by publication, if necessary, to the child's custodian to bring the child before the court. The judge, in his discretion, may by endorsement on the summons have the officer serving same take the child into custody at once if his condition or surroundings so warrant.
III *Detention.* The taking of a child into custody is not to be termed an arrest. A child found violating any law or ordinance or whose surroundings endanger his welfare may be taken into custody and then, if possible and unless otherwise directed by the court, released to his parent or guardian or custodian under their written promise to bring the child into court when directed. If not released to custodian, the child is to be detained in a place designated by the court. No child is to be held longer than 2 days, unless so ordered by the judge. A child is not to be transported or kept with adults under arrest. No bail allowed. No fingerprints or photographs taken without consent of judge. Peace officer's records of children to be kept separate from adults and not open to public inspection. Special detention homes for temporary custody of children to be set up, or arrangements made for use of private homes or any institution or agency to provide temporary care and custody for children within jurisdiction of the court.
IV *Hearing and Decree.* Separate hearings on an informal basis without a jury are to be held. The general public is excluded, and only such persons admitted as judge finds has a direct interest in the case or work of the court. Transcript of hearings are required only if court so orders. The presence of the child may be waived at any stage of the proceedings. If the judge determines that the child comes within the provisions of the Act, he may so decree and proceed as follows: (1) Place the child in his home on probation; (2) Commit the child to the custody or guardianship of a public or private institution or agency authorized to care for children or

[18] D. C. Code § 11-906 (1940).
[19] Nat. Probation and Parole Ass'n, *A Standard Juvenile Court Act* (Rev. ed. 1949).

to place them in family homes, or under guardianship of a suitable person. Such commitment shall be for an indeterminate period but in no event shall it continue beyond the child's 21st birthday; (3 & 4) Order such medical and mental care as is necessary; (5) Dismiss the petition or otherwise terminate its jurisdiction at any time. No adjudication shall be deemed a conviction, nor impose any civil disabilities, nor shall the child be found guilty or deemed to be criminal by reason of such adjudication.

V *Appeal.* An appeal may be made by any interested party aggrieved by any order or decree of the court. An appeal will be allowed whenever in the opinion of the court the decree or order should be reviewed.

VI *General Provisions.* Records are to be kept, but open to inspection only by consent of the judge. Unless ordered by the judge all information and social records are privileged and not to be delivered directly or indirectly to anyone other than judge or others entitled under the Act to receive same. The name or picture of the child under jurisdiction of the court is not to be made public by any newspaper, radio or television station except as authorized by the court. Persons guilty of violation may be fined and imprisoned for a year.

Much can and has been said in behalf of the procedure. It has the firm backing of child psychologists, penologists, and social workers. Their sanction is well earned. Children are now shielded from publicity, from heartbreaking airings of family discord, from corrupting exposure to adult offenders, and from the legalized stigma of conviction. The procedure as applied to the neglected, abandoned or mistreated child is ideal. But as to those children the juvenile court functions like an administrative agency of the state to provide for their welfare and to act truly as "parens patriae". When the same procedure is applied to a child in a delinquency proceeding, regardless of whether he denies the acts which have brought him before the court, and they result in his confinement in a reformatory, the secret proceedings with none of the traditional guaranties of due process do not measure up to the language and spirit of our state and federal constitutions.

To this the courts have temporized, "But this is not a criminal proceeding—there is no need for those constitutional safeguards here!" Statutes have expressly so declared. This legal and legislative reasoning that a youth alleged to be a lawbreaker, adjudged to be delinquent, taken from his home and family, and sent to a reformatory has not been deprived of his liberty in a criminal proceeding lacks realism.

Black cannot be made white by either legislative or judicial fiat. Neither can a proceeding essentially criminal in nature be robbed of constitutional safeguards by merely appending another label to it. Judge Gibbs in *People v. Fowler* had this to say,

> I am inclined to agree with the learned counsel for the society that the proceeding is not a criminal trial, yet it is certainly a judicial inquiry, in which the state steps in, seeking to prove the child a fit subject for institutional confinement, and the parent or parents of the child proceeding against as unfit to exercise control. Upon the state proving its case, the parent is deprived of the society of the child and the child of its home and the society of its parent or parents, the child is further deprived of its liberty for years perhaps and forever branded as an inmate of an institution; the parents stigmatised as possessing a child, who, upon judicial inquiry, was incarcerated in an institution. So it will be seen that in a proceeding

> or inquiry of this kind whether in referring to it we use the terms trial, sentence, proceeding, quasi criminal proceeding, or other term, (it) is, in the final analysis, a proceeding in which are involved basic and fundamental rights of the parent and of the child, which should be safeguarded by all the forms of law[20].

Judge Waite, of the District Court, Minneapolis, Minnesota wrote,

> When we have minimized the stigma of an adjudication of delinquency in every way that kindly ingenuity may devise, it remains true that in the mind of the child, his family and his acquaintances who know about it, it is practically equivalent to conviction of a criminal offense. In the face of this fact legal theory should give way, and no less evidence should be required than if the hearing were a criminal trial[21].

Nor can it be denied that the institutions to which the delinquent may be committed do imprison the child. Judge Anderson, dissenting in *Bryant v. Brown,* said,

> It cannot be said truthfully that the Industrial Training School in this state is not a penal institute. It is as much a penal institution as the modern, well-regulated, humanely managed penitentiary. Its inmates are restrained of their liberty of action, notwithstanding the purpose of the law is to reform and educate them. That also is true in a large measure of all penal institutions, both state and federal[22].

Before advocating substitution of this new court procedure for our time-honored constitutional guarantees, its proponents should show that it functions so flawlessly that they are not needed. That it does not is evidenced in many ways. For one thing, the conditions in many of the training schools, or reformatories, for delinquents are worse than some of the better run prisons. Dr. Martha M. Eliot, speaking at her first press conference after being sworn in as chief of the United States Children's Bureau scored the "brutal, degrading and harsh treatment" of children in these schools. She said,

> Let's substitute informed and intelligent handling of these children so they are helped to fit into society instead of fighting it all their lives[23].

Crowded court dockets and inadequate personnel to staff the juvenile courts leave much to be desired in the handling of juveniles. The following condition was found to exist in the District of Columbia, Washington, D. C. and reported in the Washington Post,

> A 16-year-old boy has been held for 107 days at the overcrowded District Receiving Home, awaiting disposition of his case by Juvenile Court, the Washington Post learned yesterday.
>
> He remained at the home yesterday. Four others were taken to court. They had been at the institution, 1000 Mount Olivet Rd. NE, for 92 days, 53 days, 50 days and 41 days. . . .
>
> One night last month, 15 children slept on mattresses on the floor because there were not enough beds, Shea said. Sixty-two beds have been placed in the institution, which has a capacity of 43, he said"[24].

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[20] 148 N. Y. S. 741, 744 (Bronx County Ct. 1914).

[21] Waite, *How Far Can Court Procedure be Socialized Without Impairing Individual Rights,* 12 J. Crim. L. & Criminology 344 (May-Feb. 1921-22).

[22] 151 Miss. 398, 118 So. 184 (1928); see Note 60 A. L. R. 1336.

[23] Washington Post, Sept. 5, 1951, p. 4, col. 3.

[24] Washington Post, June 7, 1951, p. 1, col. 2.

And what of the qualifications of the judges, who have almost plenary power over our children in court? This power can be noted by the frequency with which such words as "in the court's discretion", or others of similar import, appear throughout the juvenile court acts. Of these powers it has been written,

> Statutes such as these intrust to juvenile courts large powers, powers compared to which, as Dean Pound has said, 'the powers of the court of Star Chamber were a bagatelle'[25].

Minimum standards have been set up for the juvenile court judges by the United States Children's Bureau and the National Probation Association:

> "D. *The Judge*
> 1. The Judge should be chosen because of his special qualifications for juvenile-court work. He should have legal training, acquaintance with social problems, and understanding of child psychology.
> 2. The tenure of office should be sufficiently long to warrant special preparatory studies and the development of special interest in juvenile work, preferably not less than six years.
> 3. The judge should be able to devote such time to juvenile work as is necessary to keep detention at a minimum, to hear each case carefully and thoroughly, and to give general direction to the work of the court."[26].

Yet seldom in practise is there any assurance that these standards will be followed in the selection of judges to the juvenile court bench. Mr. Frederick B. Sussman, writing of the laws on juvenile delinquency throughout the forty-eight states, found the following,

> "In most places they (the judges) are elected by popular vote, like the judges of other courts. This is the method, for example, in Denver, Colorado, Marion County (Indianapolis), Indiana, Allegheny county (Pittsburgh), Pennsylvania, Alexandria, Virginia. In Connecticut the judges of the state juvenile court are appointed by the general assembly on nomination of the governor. In Utah the state juvenile court judges are appointed by the state public welfare commission. In New York City the judges of the Domestic Relations Court, of which the Children's Court is a division, are appointed by the mayor. In Georgia appointment is by the judges of the superior courts. The Juvenile Court judge of the District of Columbia is appointed by the President with the advice and consent of the Senate. In California and some other jurisdictions the judges of the superior or circuit or district court designate one of their number to preside in the juvenile court. While bills have been introduced in New York and Florida to provide for merit system examinations for selection of judges of domestic relations and juvenile courts, and Utah at one time chose such judges in this manner, no state presently uses this system"[27].

Under the Federal Juvenile Delinquency Act[28], the District Court judges serve also in the capacity of juvenile court judges. Thus it can be seen that under the existing laws political reasons and legal background may be far more determinative of the judges selected than the standards espoused by the United States Children's Bureau and the National Probation Association. Yet to these judges

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[25] 57 Am. L. Rev. 80 (1923).
[26] *Juvenile Court Standards,* U. S. Children's Bureau, Bureau Publication No. 121 (1948), p. 2.
[27] Sussman, *Law of Juvenile Delinquency: The Laws of 48 States,* Legal Almanac Series No. 22, Oceana Publication (1950), p. 51.
[28] 18 U. S. C. 5031 (1946).