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SINS OF THEIR CHILDREN: PARENTAL RESPONSIBILITY FOR JUVENILE DELINQUENCY

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It was not by mere chance that the United States near the turn of the last century became the first country in the world to establish a separate court for the handling of behaviors that came to be called juvenile delinquency.¹ Americans always have been beguiled and bewildered by youth. Europeans during the Second World War often commented on what they regarded as an extraordinary concern and indulgence by American soldiers for youngsters in battle zones and occupied areas.

The first juvenile court, established in Illinois in 1899,² reflected a deeply-held American belief in the malleability of young persons and their potentiality for reformation and reclamation.³ Ultimately, the juvenile court movement would sweep the world, but its ethos remains a reflection of American ideals. "A democratic society," the United States Supreme Court has said, reflecting these ideals, "rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies."⁴

Difficulty typically arises, however, when benign goodwill fails to produce the kind of appreciative and positive response that it is designed to elicit. It is one thing to have youngsters who are of no particular concern misbehave; another to have young people in whom you have invested so much emotion, and for whom you believe you have done so much, to remain

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1. See generally Roberts, *The Emergence of the Juvenile Court and Probation Services*, in JUVENILE JUSTICE: POLICIES, PROGRAMS, AND SERVICES 56-60 [hereinafter JUVENILE JUSTICE].

2. Illinois Juvenile Court Act, 1899 Ill. Laws 131-37.

3. See generally A. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* 46-74 (1969).

4. *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) (holding that children under 12 may be forbidden to sell papers or merchandise on the street).

intransigently bad. It makes you frustrated and angry.⁵ A prominent sociologist has summarized the situation by noting that

it seems clear that there is in American culture a strikingly high evaluation of "youth" as a time of life. Yet in this same culture, adolescence tends to be a period of relatively great stress and strain, and the "problems of youth" are the objects of widespread discussion and concern.⁶

Another well-known scholar stated the second part of the previous comment more tersely: the United States, he believes, presents "one of the extremest examples of endemic filial friction in human history."⁷

Frustration and anger are the twin reflexes that underlie the recent proliferation of attempts to control delinquency by use of the law to foster civil and criminal responsibility on parents and guardians for the misdeeds of their children. These actions are vulnerable to criticism on ethical grounds, particularly because they punish one person who does not (and perhaps cannot) control another for deeds done by that other person. In addition, the laws are heir to the standard criticism of general deterrence, that it is unacceptable to punish one person in order to teach another a lesson: indeed, it has been argued that unless punishment is "graded according to seriousness of inclination to misconduct rather than the gravity of the misconduct itself,"⁸ deterrence is not a logical or ethical rationale for dealing with law-breakers. Finally, and perhaps most important, there is no evidence that the laws punishing parents inhibit the delinquency of their children; nor does reflective common sense or the theory dominating the study of delinquency offer support for the idea that they can do so. It is not unlikely, in fact, that the laws contribute, at least in some cases, to a deterioration of the parent-child relationship and, because of this, to an increase in delinquent behavior.

5. Note the following plaint against parents: "We find that an element of oversight, carelessness, disinterest, or ineptitude in the discharge of parental duties appears in almost every case." Smyth, *The Juvenile Court and Delinquent Parents*, in *THE PROBLEM OF DELINQUENCY* 970-1 (S. Glueck ed. 1959). Cf. Hoover, *Punish the Parent?*, 89 *THE ROTARIAN* 24 (Oct. 1956).

6. R. WILLIAMS, JR., *AMERICAN SOCIETY: A SOCIOLOGICAL INTERPRETATION* 77-78 (1964).

7. Davis, *The Sociology of Parent-Youth Conflict*, 5 *AM. SOC. REV.* 523, 523 (1940).

8. A. GIDDENS, *DURKHEIM* 75 (1978).

A particularly notorious use of the concept of parental responsibility arising from motives of frustration and malignity can be found in the announcement late in 1989 by the Israeli army that it would impound property or seal homes belonging to the parents of Palestinian children who threw rocks at Israeli soldiers in occupied territories. This policy was inaugurated despite reports that "the army admits that stone-throwing among the thousands of children who wander Palestinian refugee camps and villages is almost always spontaneous and beyond the control of parents or adults."⁹ More than half of the stone throwers were said to be under thirteen years of age; if caught, a large number must be released on bail because Israeli military law forbids jailing children below the age of twelve.¹⁰

Punishment in the United States of parents and guardians for the acts of their children and wards has taken three major forms. The first centers on statutes outlawing a variegated and often ambiguous realm of acts labeled "contributing to delinquency." The second focuses on civil liability under the general heading of "parental responsibility," and the third, the most recent development, uses statutes or ordinances to deal criminally—usually as misdemeanors—with what are defined as illegal parental actions or omissions.

I. CONTRIBUTING TO DELINQUENCY STATUTES

The offense of contributing to delinquency was first incorporated in the 1903 Colorado juvenile court law, and now exists in forty-two American states and the District of Columbia.¹¹ Contributing statutes allow adults, including parents, to

9. *Israel to Seize Property of Young Stone-Throwers' Parents*, N.Y. Times, Dec. 22, 1989, at A3, col. 2. The article continues:

... [T]he military has tried to deter the children in the past by fining, arresting and jailing their mothers and fathers. In May 1988 the army began enforcing a law that said parents could be held responsible if they did not prevent their children from participating in street demonstrations. . . .

But before a parent could pay a fine or serve a brief jail sentence for acts committed by one child, another son or daughter would be arrested for hurling rocks. Soon Palestinian parents were facing huge fines they could not afford and the army was forced to jail people repeatedly.

After a few months, the army quietly abandoned its policy of fining and arresting parents. *Id.* at cols. 2-3.

10. *Id.* at col. 2.

11. See Garlock, *Contributing to the Delinquency of Minors*, in 1 ENCYCLOPEDIA OF CRIME AND JUSTICE 240 (S. Kadish ed. 1983). For

be dealt with in juvenile courts for behaviors that often are at best arguably related to juvenile delinquency, even loosely defined. In 1959, for instance, in *State v. Gans*,¹² the Ohio appellate court upheld the conviction of the adoptive parents of an eleven-year-old girl who had taken her from that state to West Virginia where, with their connivance in misrepresenting her age, she was married in what apparently was a legal ceremony. The Ohio law not only allowed penalties to be imposed for actions "causing" but also for those "tending to cause" delinquency. The appellate court declared that encouragement to marriage constituted encouragement to truancy—a delinquent act—and it deemed the girl's situation particularly deplorable because she had been a good student. The marriage "would have strong propensities to render [her] incapable of continuing her school attendance, with the probable result that she would . . . be found a delinquent child because of truancy."¹³ This sophistry may have caused the court some passing unease, because it then ventured a further guess at what might happen if its prediction of truancy proved inaccurate. If the girl were to remain in school, the Ohio court declared, "the more successful her marriage would be the more it could tend to cause her to act so as to adversely affect the morals of her classmates."¹⁴

Contributing to delinquency laws are explained as encompassing "the broad purpose . . . to stamp out juvenile delinquency at its roots."¹⁵ Given such a judicial benediction, appellate courts typically have echoed the guideline offered by the Pennsylvania appellate bench that "no court should be astute in finding reasons to relieve those who violate its provisions."¹⁶ In *State v. McKinley*,¹⁷ the decision of a New Mexico court asked to rule on the vagueness of the state's contributing to delinquency statute illustrates the illogic that often has been

discussions of contributing to delinquency statutes, see Geis, *Contributing to Delinquency*, 8 ST. LOUIS U.L.J. 59 (1963); Comment, *Contributing to Delinquency: An Exercise in Judicial Speculation*, 9 AKRON L. REV. 566 (1976); Note, *Contributing to Delinquency Statutes—An Ounce of Prevention?*, 5 WILLAMETTE L. REV. 104 (1968).

12. 168 Ohio St. 174, 151 N.E.2d 709 (1958), *cert. denied*, 359 U.S. 945 (1959).

13. *Id.* at 182, 151 N.E.2d at 714.

14. *Id.* at 183, 151 N.E.2d at 715.

15. *Commonwealth v. Jordan*, 136 Pa. Super. 242, 249, 7 A.2d 523, 527 (1939).

16. *Id.* at 251, 7 A.2d at 528.

17. 53 N.M. 106, 202 P.2d 964 (1949).

employed to defend the punishing of parents for the acts of their children:

The ways and means by which the venal mind may corrupt and debauch the youth of our land . . . are so multitudinous that to compel a complete enumeration in any statute designed for protection of the young . . . would be to confess the inability of modern society to cope with the problem of juvenile delinquency.¹⁸

Interestingly, Rubin¹⁹ has pointed out an inherent contradiction in the contributing statutes. It lies in the fact that parents will *not* be prosecuted if their child's offense is so serious that it is tried in an adult criminal court. If the child is a habitual truant, for example, the parent may be held legally responsible; if the same child commits murder, the parent cannot be tried under the contributing to delinquency laws.

II. PARENTAL LIABILITY LAWS

Parental responsibility or liability laws are a second way in which states have sought to punish, deter, or reform parents or guardians of juveniles who have committed harmful acts. Prior to the 1950s, only under statutory law in Hawaii²⁰ and Louisiana²¹ could victims recover from the parents of underage malefactors.²² Hawaii's law, first enacted in 1846,²³ remains the most far-reaching by not limiting the financial bounds of recovery and by imposing parental liability for negligent as well as intentional torts by underage persons. The Hawaii and Louisiana laws were in line with the civil codes of Europe, Central and South America, Quebec, and Puerto Rico. These civil

18. *Id.* at 111, 202 P.2d at 967. *Cf.* *State v. Crary*, 10 Ohio Op.2d 36, 155 N.E.2d 262 (1959).

19. S. RUBIN, *CRIME AND JUVENILE DELINQUENCY: A RATIONAL APPROACH TO PENAL PROBLEMS* 38 (1958).

20. *See* HAW. REV. STAT. § 577-3 (1988).

21. *See* LA. CIV. CODE ANN. art. 2318 (West 1979 & Supp. 1990). For historical background on art. 2318, see *Turner v. Bucher*, 308 So.2d 270, 272-76 (La. 1975).

22. New Jersey enacted a statute shortly after the Civil War making parents liable for vandalism damage done by their children to schools at which they were pupils. The law was dusted off more than a century later to join with other parental responsibility laws to the distress of Justice Clifford of the New Jersey Supreme Court, who, in a dissenting opinion, said that it ought to be delivered a "sockdolager" [slang: a mortal blow], since similar state laws now were available to reach the same ends. *Board of Educ. v. Caffiero*, 86 N.J. 308, 326, 431 A.2d. 799, 808, *appeal dismissed*, 454 U.S. 1025 (1981).

23. *See* *Bryan v. Kitamura*, 529 F. Supp. 394, 396 (D. Haw. 1982).

codes may reflect cultural emphasis on family solidarity compared to the high value the common law places on individualism.²⁴

At common law, no recovery from parents for damages intentionally caused by their children was permitted unless the damage was due to some parental action or inaction,²⁵ a doctrine that, as a common-law rule, typically was strictly construed.²⁶ Generally, the parents become liable only if (1) they directed or subsequently ratified the act;²⁷ or if the child (2) was acting as the parent's agent or servant;²⁸ (3) was entrusted with a dangerous instrumentality, such as a gun,²⁹ or was negligently given access to an automobile;³⁰ or (4) the parents' negligence was a proximate cause of the harm.³¹

Considerable attention was focused in 1989 on this common law rule of recovery when a Vermont jury found a ninety-one-year-old grandmother liable for \$950,000 for an accident in which a car driven by her grandnephew, to whom she had loaned the money to buy the vehicle, drove off a railroad bridge. A passenger in the car lost his leg as a result of the crash. The grandnephew did not have a driving license and, with his companions, had been drinking heavily and smoking marijuana on the night of the accident. The grandmother admitted knowing that her grandnephew did not possess a

24. See Stone, *Liability for Damage Caused by Minors: A Comparative Study*, 5 ALA. L. REV. 1, 6 (1952).

25. For discussions, see Alexander, *Tort Liability of Parents and Teachers for Damage Caused by Children*, 16 U. TORONTO L.J. 165 (1965-66); Comment, *Liability of Negligent Parents for the Torts of their Minor Children*, 19 ALA. L. REV. 123 (1966).

26. See, e.g., *Jolly v. Doolittle*, 169 Iowa 658, 149 N.W. 890 (1914).

27. See, e.g., *Sharpe v. Williams*, 41 Kan. 56, 20 P. 497 (1889) (parent liable for tort of minor sons, since offer to pay half the cost of any damage from "ducking" sons' teacher in frozen creek deemed tacit consent).

28. See, e.g., *Corley v. Lewless*, 227 Ga. 745, 182 S.E.2d 766 (1971) (son committed tort while on errand for his mother).

29. See, e.g., *Mazzilli v. Selger*, 13 N.J. 296, 99 A.2d 417 (1953). But see *Skelton v. Gambrell*, 80 Ga. App. 880, 57 S.E.2d 694 (1950), in which the court refused to impose parental liability in a case in which a 14-year-old killed the plaintiff's spouse with a gun his parents had given him. The parents knew that the son had several times pointed the gun at other people, but this was held insufficient to establish that he was likely to commit manslaughter.

30. See, e.g., *Gossett v. Van Egmond*, 176 Or. 134, 155 P.2d 304 (1945) (court imposed liability on the parents of a mentally defective 20-year-old, denied a driving license by the state, who killed an 11-year-old while driving his parent's car with their permission).

31. See, e.g., *Ellis v. D'Angelo*, 116 Cal. App. 2d 310, 253 P.2d 675 (1953).

driver's license.³² A retrial, based on the Vermont Supreme Court's ruling that there had been error in excluding the auto dealer from the trial, was avoided when the parties settled for an amount that all agreed not to disclose.³³

The common-law doctrine rested on the age-old foundation that, unless specific exceptions had been set forth, there could be no liability without fault. Take, for example, the case of *Moore v. Crumpton*,³⁴ which was decided on common-law grounds. A seventeen-year-old, with severe physical and psychological problems, got drunk, used drugs, and then broke into the plaintiff's house and raped her. The court, granting summary judgment for the seventeen-year-old's parents, noted that the case represented "the story of a modern American family tragedy,"³⁵ and then added, sensibly, that "[s]hort of standing guard over the child twenty-four hours a day, there was little that the defendant father could do to prevent John, Jr. from leaving the home after the father was asleep."³⁶ When the limited reach of the common law was slightly extended, as in *Hopkins v. Droppers*,³⁷ such judicial rule-making won the applause of scholars concerned about family irresponsibility, such as the highly-regarded authority on the law of evidence, John Wigmore:

[T]his is a period in which parents do very little forbidding [T]he pernicious philosophy of education now dominant, which apotheosizes self-expression, is interpreted to permit the child to make an unrestrained

32. See *Loan Puts Widow, 91, in Jeopardy*, N.Y. Times, Oct. 28, 1989, at A8, col. 1.

33. See *Widow in Vermont Won't Lose Home*, N.Y. Times, Feb. 21, 1990, at A20, col. 1.

34. 306 N.C. 618, 295 S.E.2d 436 (1982).

35. *Id.* at 629, 295 S.E.2d at 443 (quoting Judge Wells) majority opinion in the Court of Appeals in *Moore v. Crumpton*, 55 N.C. App. 398, 400, 285 S.E.2d 842, 843 (1982).

36. *Id.* at 626, 295 S.E.2d at 442. *Cf.* *Parsons v. Smithey*, 109 Ariz. 49, 504 P.2d 1272 (1973), involving a 14-year-old with a police record (arson at ages eight and 11, theft of his father's watch at age 10, joyriding three times at age 14, and running away at age 9), who beat a neighbor woman with a hammer, told her to "take off [her] clothes and lay down on the floor," and cut her ear almost entirely off. He relented only when offered a small sum of money. The court felt that "it would stretch the concepts of foreseeability beyond permissible limits" to hold the parents liable. Tellingly, though, the court added: "We are certainly concerned about the serious problem of juvenile delinquency and agreed as to the importance of generating a sense of responsibility on the part of the parents with respect to the behavior of their children." *Id.* at 54, 504 P.2d at 1277.

37. 184 Wis. 400, 198 N.W. 738 (1924).

fool of himself in as many ways as his immature impulses may dictate. But that philosophy does not excuse parents for letting the child make a nuisance of himself to others.³⁸

Beginning in the 1950s, states sought to overcome the remaining barriers of the common law by enacting statutes similar to those in Hawaii and Louisiana to allow recovery by victims of intentional delinquent acts from the parents of the perpetrators. Nebraska led the way with a 1951 statute,³⁹ and today all states except New Hampshire have such laws.⁴⁰ Slightly more than half of these laws permit recovery both for property damage and personal injury; the remainder restrict recovery to property damage.⁴¹ Part of the goal of such statutes is to place the burden of a loss upon the parents of the person who is responsible for the wrong rather than leaving the victim to bear the cost. But more fundamentally, the civil liability laws are intended to control juvenile delinquency by making parents pay for the acts of their children. The Georgia parental responsibility statute expressly decrees that its purpose is "to provide for the public welfare and aid in the control of juvenile delinquency, not to provide restorative compensation to victims."⁴² A New Jersey appellate court decision in 1981 offered a similar rationale for that state's parental responsibility law:

The eradication of vandalism in public schools will require more than a parental liability statute. But the starting point for a solution could be a resurgence of the belief that parents should take responsibility for their children's activities. This responsibility comes with one's status as a parent and reaches legal and moral dimensions in our society. The laws of this State, if not higher principles, may properly provide incentives for parents to fulfill their roles in the lives of their children.⁴³

38. Wigmore, *Torts—Parent's Liability for Child's Torts*, 19 ILL. L. REV. 202, 205 (1924).

39. Nebraska's law also was the first such statute to be involved in an appellate review. In *Connors v. Pantano*, 165 Neb. 515, 86 N.W.2d 367 (1957), the Nebraska Supreme Court held that a child under 5 years old was too young to be culpable for setting fire to the plaintiff's garage, and therefore that his parents were not liable for the damage.

40. See Scott, *Liability of Parents for Conduct of Their Child Under Section 33.01 of the Texas Family Code: Defining the Requisite Standards of "Culpability"*, 20 ST. MARY'S L.J. 69, 87-91 (1988).

41. See Note, *Vicarious Parental Liability in Connecticut: Is It Effective?*, U. BRIDGEPORT L. REV. 99, 121-24 (1986).

42. GA. CODE ANN. § 51-2-3(c) (1982).

43. Board of Educ. v. Caffiero, 86 N.J. 308, 325, 431 A.2d 799, 807

With but one exception,⁴⁴ and often accompanied by high-minded dicta such as the foregoing, these parental liability laws have been declared to meet constitutional standards.⁴⁵ Some of the early statutes—those in Georgia, Louisiana, and Nebraska⁴⁶—placed no limit on the amount that could be recovered. Today the limits uniformly placed on recovery range from \$250 in Vermont to \$15,000 in Texas, with an average of about \$2,500.⁴⁷ The existence of such limits strongly supports the conclusion that the primary purpose of these laws is juvenile crime control, not restitution. This is particularly so in regard to harms from violence, for which the injured party usually would be able to recover much higher sums, if warranted, from victim compensation funds.⁴⁸

In upholding the constitutionality of the parental liability laws, appellate courts have evaded appraisal of the underlying assumption that such laws will have an impact on juvenile delinquency. In an Illinois case, the court ignored sociological studies cited by the defendant which showed that peers and social institutions typically play a larger role than parents do in fostering or controlling juvenile behavior, and peremptorily decreed that the “means employed [by the law] is substantially related to the end sought[.]”⁴⁹ Similarly, a New Jersey court declared: “Though we acknowledge the difficulties of being a

(1981). Cf. Note, *The New Jersey Parental Liability Statute*, 39 TEMP. L.Q. 177 (1966) (“parental liability statutes . . . attempt to control or place some effective check upon the rising rate of juvenile delinquency”).

44. See *Corley v. Lewless*, 227 Ga. 745, 182 S.E.2d 766 (1971) (holding that a mother and uncle were not liable for the act of 12-year-old boy who threw a stone “at no one in particular” during a street brawl and injured a 10-year-old). Some commentators have interpreted the ground for the decision as lying in the absence of a recovery limit in Georgia. See, e.g., Note, *Vicarious Parental Liability in Connecticut: Is It Effective?*, U. BRIDGEPORT L. REV. 99, 118 (1986). But a more accurate reading suggests that *Corley* was declared unconstitutional because of the remoteness of any adult responsibility for what had happened. Cf. *Board of Educ. v. Caffiero*, 86 N.J. 308, 320 n.7, 431 A.2d 799, 805 n.7 (1981).

45. See generally Note, *Torts: The Constitutional Validity of Parental Liability Statutes*, 55 MARQ. L. REV. 584 (1972); Kent, *Parental Liability for the Torts of Children*, 50 CONN. B.J. 452 (1976).

46. See Meckel, *Parent and Child—Civil Responsibility of Parents for the Torts of Children—Statutory Imposition of Strict Liability*, 3 VILL. L. REV. 529, 538 (1958).

47. See Scott, *supra* note 40 at 87-92.

48. The maximum awards in each state are set out in A. KARMEN, *CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY* 315 (2d ed. 1990).

49. *Vanthournout v. Burge*, 69 Ill. App. 3d 193, 196, 387 N.E.2d 341, 343 (1979).

parent, we cannot say that there is no rational basis for the statute."⁵⁰ As Prescott and Kundin have noted:

It has not been conclusively shown . . . that these acts encourage greater parental supervision of children, thereby reducing the number of juvenile crimes. Thus, if the purpose of the statute is deterrence, the act may not be rationally related to that goal. The courts have side-stepped this problem by finding that the *possibility* that these statutes might effectuate the desired result satisfies the rationality requirement.⁵¹

III. MISDEMEANOR CRIMINAL SANCTIONS

Ordinances enacted in August, 1989 in Dermott, Arkansas, a city with roughly 4,700 inhabitants, represent a particularly harsh, even ugly, legal reaction against parents of juvenile delinquents. The Dermott City Council, in the wake of a street fight the night before and a crime increase during the summer, decreed a possible term of two days in the open-air stockade for parents whose children under eighteen years violated the eleven p.m. to five-thirty a.m. curfew. Further punishment could include the publication of a parent's picture in a local newspaper over the caption "Irresponsible Parent." If the parents maintain that they are unable to control their minor children, they must sign a statement to this effect, and the youngsters will be referred to the juvenile court as delinquents. The parents then will have to pay the city \$100 for each child so designated or perform twenty hours of community service.⁵²

The ordinances attempt to avoid the suggestion of vicarious liability by defining the parent and child as fused into a single legal entity, a doctrine that has been upheld in cases in which parents knowingly accept items stolen by their children,⁵³ but which seems unacceptable in regard to the behavior dealt with in the Dermott ordinances. Parents in Dermott are not to be punished for past errors or omissions, but only for complicity in a current act after a written notice had been given regarding a prior curfew violation. As of March, 1990, the Dermott ordinances had produced three warnings to parents,

50. Board of Educ. v. Caffiero, 86 N.J. 308, 320, 431 A.2d 799, 805 (1981).

51. Prescott & Kundin, *Toward a Model Parental Liability Act*, 20 CAL. W.L. REV. 187, 216 (1984).

52. See City of Dermott, Ark., Ordinance 609 (Aug. 21, 1989); City of Dermott, Ark. Ordinance 610 (Aug. 28, 1989).

53. See, e.g., Beedy v. Reding, 16 Me. 362 (1839).

but no further actions. The city attorney, responsible for drafting the measure, believes that "the deterrent effect of the ordinances has been tremendous."⁵⁴

Forerunners of such enactments include an 1849 Arkansas law making parents liable for a fine imposed on their child for destroying another's property.⁵⁵ In 1927, Minnesota passed a law decreeing that the "[f]act that a child has been adjudged more than once to be a delinquent on account of the conduct occurring while in the custody of his parents . . . shall be presumptive evidence that such parents . . . are responsible for his last adjudicated delinquency."⁵⁶ The statute was amended in 1953 to place it in general accord with the contributing to delinquency laws in other states.⁵⁷ A 1975 Trenton, New Jersey ordinance made parents criminally responsible—and subject to fine of up to \$500—for the misbehavior of a child who twice within a year was adjudged guilty of acts defined as violations of the public peace. The ordinance was declared unconstitutional, however, on grounds that it could not be said "with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend."⁵⁸

In addition, a 1985 Wisconsin statute made both parents and grandparents liable for a baby born to unmarried minor children. It imposed fines of up to \$10,000 and possible two-year jail terms.⁵⁹ The act was expected to prevent teenage pregnancy, but, according to the legislator who introduced it, in its first five years, "by and large" it had not been all that successful.⁶⁰ County social service departments had referred 107 cases during the first eighteen months of the statute's life; financial support was ordered in thirteen of the cases.⁶¹

54. Letter from Charles S. Gibson to Author (Mar. 2, 1990).

55. ARK. CODE ANN. § 50-109 (1959).

56. 1927 MINN. LAWS, ch. 192, § 7.

57. See 1953 MINN. LAWS, ch. 436, § 1.

58. *Doe v. City of Trenton*, 143 N.J. Super. 128, 132, 362 A.2d 1200, 1203 (1976) (quoting *Leary v. United States*, 395 U.S. 6, 36 (1969)).

59. Abortion Prevention and Family Responsibility Act of 1985. The Act was "sunset" on Dec. 31, 1989 because of legislative concern that the provisions might have a negative effect on parent-teen relations and, as a result of parental pressure, lead to a higher rate of abortion and lower rate of establishing paternity. See WISCONSIN DEPT. OF HEALTH & SOCIAL SERVICES, FINAL REPORT ON GRANDPARENT LIABILITY PROVISIONS OF 1985 WISCONSIN ACT 56 at 4 (1988) [hereinafter WISCONSIN DEPT. OF HEALTH].

60. Kantrowitz, Springer, Annin, & Gordon, *Now, Parents on Trial*, NEWSWEEK, Oct. 2, 1989, at 55 [hereinafter *Parents on Trial*].

61. WISCONSIN DEPT. OF HEALTH, *supra* note 59 at 2.

More recent attempts, in court decisions as well as in statutory law, to control delinquency by punishing parents for the misbehavior of their children include a 1990 Florida law that subjects parents to a five-year prison term and a \$5,000 fine if their child uses a gun that has been left around the house.⁶² In Indiana, in 1989, the testimony of a state psychologist that the parents' drug and alcohol abuse and marital discord had "caused" their son's delinquency led a judge to order the parents to repay the state \$30,341 for the son's incarceration and treatment in a correctional home.⁶³ Several courts recently have fined or jailed the parents of chronic school truants. In Baltimore, for instance, a mother was sentenced to a ten-day jail term for the truancy of her fifteen-year-old daughter. The judge blamed the child's absence on the mother's "laziness," pointing out that she had failed to appear for several meetings with school officials.⁶⁴ Obviously, these truancy actions against parents—and other enforcement procedures like them—are not guided by the legal doctrine⁶⁵ that an accessory should never suffer greater punishment than has been meted out to the principal.

California's Street Terrorism Enforcement and Prevention Act⁶⁶ has been a widely publicized recent effort to punish parents for the illegal acts of their children. The Los Angeles city attorney who drafted the law has said that its aim is "to rid the streets of hoodlums that are terrorizing and killing our citizens."⁶⁷ The Act allows parents to be arrested if their child becomes a suspect in a crime and they have knowingly failed to control or supervise him. The maximum sentence is a year in jail and a \$2,500 fine. Defending the law against criticism that it was "headline justice," a Los Angeles city council member declared that "it was a necessary tool to compel . . . parents to participate in programs to improve their parenting skills."⁶⁸ She noted further that:

Before any parents are prosecuted under this law, they are offered an opportunity for counseling as an

62. See FLA. STAT. ANN. § 784.05 (West Supp. 1990).

63. See *Parents on Trial*, *supra* note 60, at 54.

64. N.Y. Times (West Coast ed.), July 20, 1989, at A4, col. 3.

65. See, e.g., *People v. Duncan*, 363 Ill. 495, 496, 2 N.E.2d 705, 706 (1936).

66. CAL. PENAL CODE, §§ 186.20-.27 (West Supp. 1990). The parental punishment provision is found *id.* at § 272.

67. L.A. Times, Jan. 6, 1989, § 2, at 3, col. 1.

68. Molina, *Law on Parental Responsibility*, L.A. Times, July 11, 1989, § 2, at 6, col. 5.

alternative. It is only when parents have clearly not demonstrated the capacity or willingness to control their criminal children, and they refuse counseling, that they are referred for prosecution.⁶⁹

Echoing the Los Angeles city attorney, the councilwoman insisted that "[p]arents of street hoodlums should not be allowed to divorce themselves from responsibility for their minor children who terrorize our communities."⁷⁰

The first arrest under the new law was that of a thirty-seven-year-old woman whose twelve-year-old son allegedly had participated in the gang rape of a girl of the same age. Detectives had seized two photograph albums in the mother's house containing pictures of her and gang members posing in the backyard with their hands making gang signs. There were also pictures of her four-year-old son pointing a pistol at the camera and her nineteen-year-old daughter wearing a semi-automatic pistol in her belt. The investigating detective, after the house search, declared: "I couldn't believe my eyes. In all my twenty years on the police force, I have never seen anything like this. It was obvious that the mother was just as much part of the problem because she condoned this activity."⁷¹

Two months later the case was dropped when it was learned that the mother earlier had taken a parenting course. A prosecutor indicated that it would not have been in the spirit of the law to try her because she had taken steps to attempt to control her child.⁷²

IV. PARENTING AND DELINQUENCY: THE SOCIAL SCIENCE PERSPECTIVE

The various legal sanctions against parents described in the preceding section mean, of course, that parents can have judgments against them, can be fined, or can go to jail for acts committed by someone else. An American Civil Liberties Union (A.C.L.U.) official has described the newer laws, which are particularly punitive, as establishing as a crime the act of "having a kid who commits a crime." The A.C.L.U. representa-

69. *Id.*

70. *Id.*

71. *Gang Member's Mother Denies "Failure" Charge*, L.A. Times, May 20, 1989, § 2, at 1, col. 3.

72. *Mother Seized Under Gang Law Cleared*, L.A. Times, June 10, 1989, § 1, at 1, col. 3.

tive maintains that the laws are "knee-jerk reactions to the frustrations of our more complicated age."⁷³

There seems little doubt that the various forms of parental responsibility laws are a legislative reaction to a juvenile delinquency situation that is regarded as out of control and impervious to routine penalties. As one commentator notes: "By viewing parental responsibility statutes as penal in nature, courts may be trying to establish a standard of care for parents to follow."⁷⁴ The conclusion of a review of the background of Connecticut's 1955 statute could equally well be applied to the laws in most other jurisdictions:

A single overriding concern about the increasing amount of juvenile delinquency runs throughout the legislative history of Connecticut's parent liability statute. The primary purpose . . . was to curb juvenile delinquency, particularly vandalism, by using the law as an economic club to force parents to act more responsibly in their child rearing practices.⁷⁵

We suspect that, as with the more frenetic advocates of the ongoing "war on crime" and victims' rights movements, there also is in the parental responsibility drive an element of middle-class uneasiness regarding the illegal acts of minority group members. Juvenile delinquents disproportionately come from minority ethnic and racial groups, and there is a deep suspicion that too often the parenting in these groups is not "adequate". That this condition often is accompanied by inadequate housing, poor health care, substandard educational opportunities, and similar deficiencies in the material and, ultimately, in the emotional situation of those blamed is ignored.

It is of interest to note that juvenile court judges, who are much more aware of the dynamics of delinquency than legislators and appellate court jurists, have shown reluctance to use contributing to delinquency laws without some evidence of affirmative acts that can be seen as clear contributors to the wrongdoing. Juvenile court judges typically seek to enlist the parents in a cooperative effort to make the family a more effective functioning unit.⁷⁶ For their part, the parental liability laws

73. *Parents on Trial*, *supra* note 60, at 55.

74. Axel, *Statutory Vicarious Parental Liability: Review and Reform*, 32 CASE W. RES. L. REV. 559, 577 (1982).

75. Note, *Vicarious Parental Liability in Connecticut: Is it Effective?*, 7 U. BRIDGEPORT L. REV. 99, 111 (1986).

76. See generally Roberts, *Family Treatment*, in JUVENILE JUSTICE, *supra* note 1, at 220-44.

suffer from the common failure of efforts to recover from persons who commit crimes or those who juridically are declared responsible for the consequences of their crimes: those liable are judgment-proof because they have neither the insurance nor the money to make payment. The newest group of laws and ordinances inflicting criminal responsibility upon parents for the delinquent acts of their children appears to represent an attempt to overcome the shortcomings of the contributing laws and the limited reach of the parental liability civil law enactments, to get at those parents who, it is believed, will be straightened up by the fear of fines and jail terms.

Based on empirical findings and theories from the social sciences, how likely is it that these attempts to control delinquency will succeed? There is no question that the kind of parenting children receive often will influence the kind of behavior they manifest.⁷⁷ A longitudinal study by West and Farrington put the matter flatly: "[T]he fact that criminality is transmitted from one generation to the next is indisputable."⁷⁸ The use of the word "transmitted" implies some biological process; but what the authors mean (as the context makes clear) is simply that parents who themselves have gotten into trouble with the law are more likely than other parents to raise children who have the same problem.

77. See generally S. GLUECK & E. GLUECK, UNRAVELING JUVENILE DELINQUENCY (1950); Loeber & Dishion, *Early Predictors of Male Delinquency: A Review*, 94 PSYCHOLOGICAL BULLETIN 68 (1983); Patterson & Dishion, *Contributions of Families and Peers to Delinquency*, 23 CRIMINOLOGY 63 (1985). A popular contrary view is put forward in a chapter titled *Parents Don't Turn Children into Criminals* in S. E. SAMENOW, INSIDE THE CRIMINAL MIND 25-49 (1984). Samenow argues that the perpetrator must be held "completely accountable for his offense" (*id.* at 6), and asks, "if a domineering mother or an inadequate father produce delinquent children, why is it that most children who have such parents aren't delinquent?" (*id.* at 17). That "inadequate" parents sometimes raise respectable children does not satisfactorily challenge the punishing of those who seemingly fail to do so. Samenow does, however, introduce a point that supports our position:

When a teenager skips school, hangs out at a pool hall, joyrides, drinks, smokes pot, and steals from stores, it should be no surprise that he tells his parents little about his day [H]e will greet parental interest and concern with accusations that the parent is prying into his business. No matter how hard they try, mothers and fathers cannot penetrate the secrecy, and they discover that they do not know their own child. He is the kid who remains the family mystery. *Id.* at 18.

78. D.J. WEST & D. FARRINGTON, THE DELINQUENT WAY OF LIFE 109 (1977).

A comprehensive review by Loeber and Stouthamer-Loeber of "all accessible reports on relevant research"⁷⁹ regarding the relationship between parental situation and behavior and juvenile delinquency bodes ill for the likely efficacy of laws that punish parents with the aim of reducing juvenile delinquency. The study fundamentally concludes that characteristics of the child—being "temperamentally difficult, overactive, impulsive, or with a short attention span"—together with the "limited resources" of the parents "to cope with such a child" are the key precursors of delinquency in terms of the family situation. The "limited resources" of the family include "marital discord, loss of a partner, social isolation, lack of social support from outside the nuclear family, and poor parental physical or mental health." The situation can be further aggravated, the authors note, by handicaps such as economic hardship and large family size.⁸⁰

Concurrent studies (i.e., studies that examine a cohort at one point rather than over a period of time) indicate that the manner in which a child is raised has less bearing on subsequent delinquency than the child's rejection of the parent or the parent's rejection of the child.⁸¹ Though there are no data on who typically rejects whom first, it can be noted that "it is also difficult to love children who make one's life miserable."⁸² "Some children," the authors write, "develop multiple problem behaviors over time that are difficult to eradicate fully, even for the most skilled parent," and "in the more serious cases, the child will have developed behaviors primarily aimed at undermining adults' attempts to bring about change in the child's behavior."⁸³

The notion that parents can "create" delinquent children does not appear from the review of research to provide a satisfactory basis for the assumption that punishing parents will break that chain or will induce other parents to pay greater heed to their offsprings' waywardness. Hirschi, on the basis of a highly-regarded research investigation, concluded that "[t]he more strongly a child is attached to his parents, the more strongly he is bound to their expectations, and therefore the more strongly he is bound to conformity with the legal norms

79. Loeber and Stouthamer-Loeber, *Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency*, in 7 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH, 29, 30 (M. Tonry & N. Morris, eds. 1986).

80. *See id.* at 97.

81. *See id.* at 29, 33.

82. *Id.* at 54.

83. *Id.* at 33.

of the larger system."⁸⁴ Hirschi maintains that even deviant parents most often pressure their children to conform. But he notes that in many instances neither the importance of the parent-child relationship nor the parents' intentions can carry the day:

[E]ven a parent who knows what to do and has the will to do it may be hampered for other reasons. The percentage of the population divorced, the percentage of homes headed by women only, and the percentage of unattached individuals in the community are among the most powerful predictors of crime rates.⁸⁵

To this caveat, Mays adds that "the way in which parents interpret their roles is as much a function of the neighbourhood as of their own personalities."⁸⁶

It has been noted that "[i]f . . . studies show that there is no reasonable relationship between parental liability and the deterrence of juvenile delinquency, there would seem to be serious doubt as to the constitutionality of the statutes in so far as their purpose is to deter juvenile delinquency."⁸⁷ While there have not as yet been studies that conclusively prove the point, there is preliminary statistical evidence indicating that the delinquency rate is not significantly effected by the adoption of statutes that punish parents. New Hampshire, for instance, which does not have a parental liability statute, has a rate of juvenile delinquency that is different in no significant way from that of its neighboring New England states, and is notably lower than that for the country as a whole.⁸⁸ Similarly, from 1937 to 1946, Judge Paul Alexander of Toledo dealt with 1,027 cases of contributing to delinquency, of which about one-half involved parents. Three-quarters of the parents pleaded guilty or were convicted, and of these, one-quarter were sentenced to prison. On the basis of this experience, Alexander noted: "We find no evidence that punishing parents has any effect whatsoever on the curbing of juvenile delinquency Imprisonment means breaking up the family; fining means depriving the child and family of sustenance."⁸⁹ Along the same lines, a mid-1960s study by a Department of Health, Education, and Welfare official showed that from 1957 to 1962 the

84. T. HIRSCHI, *THE CAUSES OF DELINQUENCY* 94 (1969).

85. Hirschi, *Families and Crime*, 7 WILSON Q. 132, 138 (1983).

86. J.B. MAYS, *CRIME AND THE SOCIAL STRUCTURE* 126 (1963).

87. Note, *The Iowa Parental Responsibility Act*, 55 IOWA L. REV. 1037, 1043 (1970).

88. See WEBSTER, *UNIFORM CRIME REPORTS* 236-240 (1986).

89. Alexander, *supra* note 25, at 28.

sixteen states which had parental liability laws showed a 27.5% increase in their delinquency rates, while the increase for the entire country was 26%.⁹⁰

Anecdotal evidence also suggests that punishing parents can exacerbate an already difficult situation. Note, for instance, the following case, and consider how much more infuriated the father might have been had the state fined or jailed him for his child's behavior:

There was the post-encephalitic youth of sixteen . . . [who] tampered with little girls. When parents complained, the boy's mother pleaded with them not to inform the police, saying that she and her husband would handle the matter.

They reasoned with their son, warned him, followed him about, and finally, after another tampering incident, the father beat the boy almost to death The father was a decent enough man. He had simply thought a thoroughgoing thrashing would "teach the lad a lesson he'll never forget."⁹¹

Anecdotal material, the New Hampshire statistics, Alexander's intuition and the primitive calculations of the HEW official, however, merely offer a hint of possible validation of the assumption that the laws do not significantly affect delinquency rates. To be scientifically persuasive, the HEW study, for instance, should have matched the jurisdictions with the laws against those without them (rather than the country as a whole), and should have made an effort to compare contiguous states to control for demographic and cultural differences that play an important role in delinquency statistics.⁹² It also would be particularly valuable to carry out a scientific investigation that through interviews and record checks would determine some of the actual consequences of the imposition of criminal

90. See Freer, *Parental Liability for Torts of Children*, 53 Ky. L.J. 254, 264 (1965). We place little credence in the early popular press reports that Michigan's parental liability statute was successful in reducing malicious destruction of property. In Detroit, the total was said to have dropped from 244 to 192 cases, and to be down 50 percent in adjacent Lincoln Park. Whitman, *Michigan Puts It Up to the Parents*, 68 READER'S DIGEST 161 (March 1956). Even if accurate, these rates undoubtedly long since have reverted to the level found in sites of similar character. For a critique of the Michigan acts, see Clute, "Parental Responsibility" Ordinances—Is Criminalizing Parents When Children Commit Unlawful Acts a Solution to Juvenile Delinquency?, 19 WAYNE L. REV. 1551 (1973).

91. H.L. STALLINGS & D. DRESSLER, *JUVENILE OFFICER* 123 (1954).

92. See generally A. BINDER & G. GEIS, *METHODS OF RESEARCH IN CRIMINOLOGY AND CRIMINAL JUSTICE* (1983).

penalties or civil liability upon parents for the delinquent acts of their children.

Such research would provide a much firmer basis for opinions about the benefits and costs of holding parents responsible for illegal acts of their children. It would allow more rational evaluation of the histrionics against state intervention in family life by libertarian writers such as Donzelot,⁹³ and would respond to Pearce's reasoned suggestion that in this realm "[d]etailed evaluations of the effects of specific legal decisions should replace such a *priorism*."⁹⁴ Legislators and judges ought to be alert to the cautionary note that appeared in the Seerbohm Report in Britain:

It is both wasteful and irresponsible to set experiments in motion and omit to record and analyze what happens. It makes no sense in terms of administrative efficiency and, however little intended, it indicates a careless attitude towards human welfare.⁹⁵

V. CONCLUSION

It seems clear that the idea of imposing penalties upon parents for the waywardness of their children is based upon a sound identification of one of the major links in the chain that has fed into the production of the delinquent act. But the inadequacy of the laws—indeed, their nasty and vicious nature—lies in their imputation of willfulness and negligence to parents who often are doing the best that they can. It may be argued, with Justice Holmes, that the law is justified in holding legally competent persons to certain standards, regardless of the different capabilities within the populace to meet such standards.⁹⁶ But the parental punishment laws deprive persons of money and liberty not on the basis of what they provably do—and have been given fair notice not to do—but upon highly speculative presumptions that what they have done or (more likely) failed to do is meaningfully affected by threats of a possible civil or criminal response. If, in fact, we spelled out what we regarded as satisfactory parental behavior and punished *all*

93. See J. DONZELOT, *THE POLICING OF FAMILIES* (G. Deleuze tran. 1979). For a critique, see J. MINSON, *GENEALOGIES OF MORALS: NIETZSCHE, FOUCAULT, DONZELOT AND THE ECCENTRICITY OF ETHICS* (1985).

94. F. PEARCE, *THE RADICAL DURKHEIM* 102 (1989).

95. REPORT OF THE COMMITTEE ON LOCAL AUTHORITY AND ALLIED PERSONNEL SERVICES para. 455, Cmnd. 3703 (1968).

96. See O.W. HOLMES, JR., *THE COMMON LAW* 50 (1881).

those who fell short, the outcry over this absurdity would demonstrate at once the illogic of the current laws.

The need for further information is obvious; but lacking such definitive data, we would recommend that legislators and judges attend to the message that then-Governor Averell Harriman attached to his veto in 1956 of a parental responsibility bill voted by the state legislature. Such a law, Harriman noted, might "lead to added strains in families where relationships already are tense and might even give to troublesome delinquents a weapon against their parents which they would not hesitate to use."⁹⁷

97. A. Harriman, *Veto Messages*, in PUBLIC PAPERS OF AVERELL HARRIMAN, FIFTY-SECOND GOVERNOR OF THE STATE OF NEW YORK 240 (1956). Cf. Kenny and Kenny, *Shall We Punish Parents?*, 47 A.B.A. J. 804, 808 (1961) (arguing that "in some cases 'punish the parents' laws would only encourage more juvenile delinquency").