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The Linacre Quarterly

Volume 9 | Number 1 Article 4

January 1941

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Recommended Citation

Flynn, Joseph C. H. (1941) "The Law and the Doctor Try to Salvage Youth," *The Linacre Quarterly*: Vol. 9: No. 1, Article 4.
Available at: http://epublications.marquette.edu/lnq/vol9/iss1/4

THE LAW AND THE DOCTOR TRY TO SALVAGE YOUTH

By HONORABLE JOSEPH C. H. FLYNN
City Magistrate of the City of New York*

Sitting day after day in Adolescents' Court has not dimmed my faith in youth for if it did it would have dimmed my faith in America. And I have an abiding faith that this great country has been ordained by God to go on to greater heights and greater achievements in doing its share of His work on this earth. I have that faith because I have hope that the youth of today will do their job better than we have ours. There is less pretense to them and there is more frankness. They are more alert to the things that are happening, more alert to redress wrongs, more forthright and more courageous in facing the future and what it holds. This, in spite of what we have done to them and what we have failed to do for them. When the youth of today have mastered the problems we have left for them, perhaps they will be made of sterner stuff and the metal in them will show. I hope so. I think so. If this happens, mark me well, they will take this country back to the American fundamentals—love of God, love of country, love of family, a decent respect for the rights of others, true equality and justice as absolute as man can make it and administer it.

Let us here particularize on that part of youth that comes under our vision and that segment of youth that is occupying our jails. The numbers are great but so are our population figures in our large communities. The increase in recent years is alarming. What to do with this challenge is the problem not only of us who have foregathered here but of every thinking man and woman in every community in this country. To cure an ill the cause must be diagnosed properly and must be removed and the treatment must be correct. I have tried to outline in broad general terms what I think are some of the generic causes that lead young men, and, less frequently, young women into the commission of crime or anti-social acts. How these causes can be eliminated I would rather leave to other and more expert hands. They never will be eliminated until the public wants them eliminated, that I know. That demand will follow only an aroused public conscience. We can play only a small part and in our own sphere of influence in bringing that devoutly-to-be-wished-for result. But we must do so if we care for the future of America. With the treatment of disease after it has set in, the anti-social or criminal act of youth, we have more concern, more influence and more interest.

* Extract from speech delivered at New York State Conference of Probation Officers, October, 1940.

The development of the law, in this country, in eliminating the brutalities of it has been splendid. We paved the way for England, advanced as it was, and showed them how to classify crime and sub-divide the same crime in various degrees or groups in accordance with the facts in each case. We led the way for the country that gave us the common law by reducing to two the number of capital offenses. England about one hundred years ago had more than one hundred capital offenses. Following us, there are now only four. Enlightened public opinion here compelled a different treatment for the child who had offended the moral or the penal code. Of these things American lawyers and laymen can be proud. But brutalities still remain in our law and strangely enough those brutalities are visited upon our most helpless, our most forgotten and yet our most valuable possession —our youth. What imagination, what intelligence our lawmakers lack when they decree in stiff-necked fashion that a mere stripling, an adolescent who has barely cut his wisdom teeth is a full-fledged man for the purpose of the criminal law—responsive to and responsible under that salutary but sometimes severe statute. What a statutory lie it is to say that a boy of 16 is a man. True he is not a child and he should not be treated as a child. Those who advocate extending the period of juvenile delinquency beyond the span now covered by it would, in my humble opinion, also be legislating a lie, would render a disservice to him whom they would help and would be doing incalculable damage to real child offenders by forcing on them an association with those over 16 years old. Granted that there must be a line of demarcation somewhere why not make that line a natural one. Why force ourselves into definitions that are repugnant to everything we know, everything we have ever been taught?

We know beyond doubt that despite the criminal law, a boy of 16 is not a man, and despite well-meaning persons who are rightly shocked at this brutal classification, one who is somewhere between 16 and 19 is not a child. The change from boyhood to manhood does not occur overnight. The transition is gradual and covers a period of years. In the period of adolescence the youth is in a sort of twilight zone—neither child nor man. Great changes are going on about him, great changes are going on within him, changes that he barely recognizes and rarely understands. With some the complete change, physical, mental and intellectual takes place faster than in others but with all of them —if they are normal—somewhere in between those years. Is it fair when they run afoul of the criminal law that they should be treated as are fully-developed men? We think not. And we think it would be as unfair, unscientific and as stupid to treat them as

children. They are adolescents and they should be treated as such with the measure of responsibility fixed by individual capacity and the type of offense committed. That is what we are trying to do at our Court for Adolescents in Brooklyn and Queens.

The Court was sponsored by the social agencies and was formally opened by Mayor La-Guardia in January, 1935. The first judge to sit there was Magistrate John D. Mason, who with Magistrate Lindau and myself now constitute the judicial personnel, each of us sitting there one-third of the time. In that court, we have arraigned before us all boys arrested in any part of the county charged with any offense, misdemeanor or felony who are between the ages of 16 and 19. The court is open every day in the year. If the charge is a vicious one or if the defendant has offended before, we proceed as a committing magistrate—we conduct a hearing and either dismiss the complaint or hold the defendant for trial at Special Sessions or for Grand Jury action. In cases where we have summary jurisdiction we make final disposition. But if there has been no violence and neither the offense nor the boy is inherently or apparently vicious and if there is no record of a previous offense but there is a record of good home or substitute for it we look into the matter quite closely to determine if something should and can be done to spare the boy a felon's brand.

Our probation officers—and we have an excellent staff—make a fast in-take and survey on arraignment day and render a preliminary report and suggestions. If it is the sort of case where the boy should be helped, the assistant district attorney is brought in and his cooperation is sought. If he approves, he makes the approach to the complainant seeking, and, practically always, obtaining, the consent of the latter to a substitution of the charge. It is pointed out to the complainant that if the boy is once convicted of a felony even though sentence is suspended on him his chances of going anywhere in life are practically ruined, while if adjudged a wayward minor a charge upon which he can be held in check during his minority and even sentenced, he may still retain all civil rights and privileges. If everyone is agreeable to it, the parent is asked to make a wayward minor charge against the boy. When he is so adjudged, the charge that brought him to the court originally is dismissed, with the consent of the District Attorney, and a sentence day is fixed—usually three weeks later. During that time the boy is paroled. I might add, after arraignment and before hearing, in most instances the boy is paroled; also, if the charge is slated to be reduced. Our records over a period of five years show that only one out of every seventy-five or eighty boys fails to return as directed. During the three weeks' period that the probation

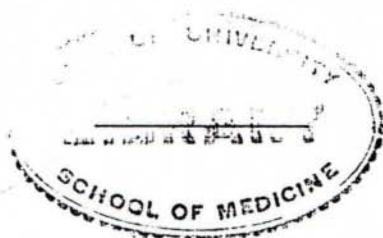
officer is investigating the boy before sentence he arranges for a psychiatric examination of the defendant at Kings County Hospital, so that the doctor's report and probation officer's are on the judge's desk on sentencing day. If the whole indicates a commitment the boy is sent to New York Vocational Institute at Coxsackie, New York City Reformatory, the Jewish Home for Boys at Hawthorne, or Children's Village at Dobbs Ferry. If it seems that he will be responsive to probation, he is placed on probation for an indefinite time. Our Brooklyn records show that only slightly more than 6% of those placed on probation are ever returned to court on a subsequent charge. In Queens the figures are even better. That county is, perhaps, a better home community than Kings (Brooklyn) now is or, perhaps, a community of better homes. Twenty-five hundred boys and young men out of a total arraignment of about 8,000 were placed on probation in the first five years of the Brooklyn court's existence with such splendid results. The cost to the city for investigation and supervision for each boy on probation has been $22.00 per year, less than it costs to keep one prisoner in jail one month. Is it worth it? Let any intelligent person answer that question. In dollars and cents the court is profitable to the city. The human salvage cannot be computed. The value to the community in future years of thousands of young men who have overstepped the bounds, going back into the life of the community unbranded and rehabilitated cannot be estimated. Here youth is served and here youth's challenge is understood and met.

I respectfully suggest to this conference that if the work this court is doing is a good thing for Brooklyn and Queens boys, as well as for those communities, that kind of court would do a good job in other counties of this state and in other states. We have no monopoly on the results and we seek no patent to them. In fact, we are certain that in other counties even better results could be obtained because conditions there are better suited to the work.

I offer for your consideration the proposition that the legislature should create in every county in this state a Court for Adolescents wherein all persons between the ages of 16 and 19 charged with any offense, misdemeanor or felony (except murder or a crime carrying with it life imprisonment) should upon arrest be immediately arraigned, if the defendant has had no previous conviction for felony or misdemeanor. In the City of New York the Court for Adolescents should be a part of the City Magistrates' Courts and in counties outside the city the Judge of the Adolescents' Court should be the County Judge of the County. The Judge of such a court should have all the powers now vested in a City Magistrate of the City of New York

and in addition the powers now vested in a Justice of the Children's Court to make findings of fact. He should have the power to hear, determine, reduce and dismiss any and all charges and should have the power to reduce any charge to that of Wayward Minor as defined by Section 913(a), C. C. P., even though there be but one isolated act not a part of a general course of conduct if, in his opinion, that single act tends toward moral depravity. He should have power to fix bail or parole without bail at any stage of the proceedings before him. If a judge of such a court at the conclusion of a hearing before him deemed it not in the public interest to reduce a charge to that of Wayward Minor, he should have the power to direct that the defendant be held to answer in the same manner as are other defendants provided, however, that where, under such circumstances, a defendant is held, no testimony given or statements made by him or on his behalf in the Adolescents' Court in his defense or in support of an application for reduction of charge could be used against the defendant in or at any other proceeding, trial or place.

If we had such a statute on our books, we of the Empire State would have gone a long ways towards serving youth, erring youth, if you will, but, nevertheless, the American men and women, fathers and mothers of tomorrow.



Science and Religion

(*Continued from page 6*)

who see with Alfred Noyes in the "Watches of the Sky":

"What is all science then
But pure religion, seeking everywhere
The true commandments, and through many forms
The eternal Power that binds all worlds in one?
It is man's age-long struggle to draw near
His Maker, learn His thoughts, discern His law—
A boundless task, in whose infinitude,
As in the unfolding light and law of love
Abides our hope, and our eternal joy."