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Treatment Practices in Juvenile Court

Eleanor A. Blackley*

THE MODERN DISTINCTION between punishable offenses against the law and acts morally wrong but not illegal is partly due to thinking of the late eighteenth and early nineteenth century writers, while the general recognition (however ineffectual) of a humanitarian duty toward offenders was greatly strengthened about the same time.¹ The utilitarian view that the duty of interference falls upon the state rather for the protection of its citizens than for vindication of moral laws is the basis of most modern thought on the subject, but throughout the nineteenth century almost the only weapon the state held for this purpose was that of deterrence by the infliction of punishment. As a historical matter there has never been the rigorous insistence upon clear definitions and proof in dealing with juveniles that the criminal law requires in its general application. This has been rationalized on several grounds, although the justifications advanced do not in fact warrant so complete a departure from the rule of law as may commonly be observed.²

To argue that the adjudicated child is not "punished" as the adult offender but is provided care, protection, and treatment is to make a distinction without a difference. The sanctions employed by the children's court are essentially the same as those the criminal court uses: principally, probation and institutional commitments.³

With real appreciation of the problem presented by the young offender, the American Law Institute in 1940 prepared and published a "model law"⁴ relating to his treatment. The under-

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¹ Fry, *Arms of the Law* 1, 2 (1951).

² Tappan, *Legal Aspects of Juvenile Delinquency*, American Law Institute 20 (1955). In 1952 Mr. Tappan was a member of the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders, United Nations. He is a contributor to criminological, legal, sociological, and psychiatric periodicals.

³ *Ibid.*

⁴ Crawford, *The Youth Correction Authority*, 21 U. of Kansas City L. R. 184 (1953).

lying philosophy of the enactment is to substitute for retributive punishment, methods of training and treatment designed to correct and to prevent anti-social tendencies. Rehabilitation is its chief concern. The power of the court to grant probation is unaffected by the act which merely provides a cumulative remedy. The court may, in the exercise of its discretion, either put the defendant on probation or commit him to the division or sentence him under any other applicable provision of federal law. Thus considerable flexibility of action is afforded the court.

Juvenile delinquency is a status peculiarly difficult to define as to its behavioral connotations compared with most other classes of offense or status that are covered by modern systems of law.⁵ The doctrine of "justice under law" is among the most basic of the conceptions of due process of law not only in the Anglo-American system of justice but in numerous other legal systems as well. The principle has been interpreted to mean that only that conduct is illegal that is specifically prohibited by statutory definitions and that to be brought properly before the court the defendant must be charged with a definite offense proscribed by statute.⁶

Among substantial statutes that are vaguely drawn, none are more so than those defining juvenile delinquency.⁷ The ancient doctrines relating to responsibility have little real relevance under modern theory and practice of correction.⁸

Children's courts have come to be dominated increasingly by the persuasion of child welfare and other casework authorities, and a juridical approach is quite uncommon. Professor Pauline Young⁹ states that the juvenile court is concerned with personality and total social situation. Mr. Paul Tappan¹⁰ suggests that the juvenile courts' practice of "unofficial treatment"

⁵ Comparative Survey of Juvenile Delinquency, Part I, North America, United Nations 1 (1958).

⁶ *Ibid.*

⁷ The antecedents of the juvenile court are commonly traced to the old chancery functions of care and protection of infants along with other incompetents, tasks that were for a time at least (until equity became standardized like the common law) more administrative and discretionary than the operations of the ordinary criminal courts.

⁸ Standards for Specialized Courts Dealing with Children, prepared by Children's Bureau, U. S. Department of Health, Education and Welfare, U. S. Gov't Printing Office 55 (Washington, 1954).

⁹ Young, *Social Treatment in Probation and Delinquency* 181-184 (2nd ed. 1952).

¹⁰ Tappan, *op. cit. supra*, note 2.

cuts into the privacy and freedom of the individual by avoiding completion of a court hearing, adjudication, and legally controlled treatment. Many courts keep no records on such cases.¹¹ These "unofficial delinquents" are not necessarily delinquents at all but individuals on whom the courts are attempting "preventive" probation work. They are youngsters with problems of the same sorts that are more generally and appropriately dealt with by specialized social agencies in the same jurisdictions, but in the courts such children are under the continuous threat of adjudication and/or commitment. The Children's Bureau has taken a strong stand against such practice in its set of standards.¹²

Many children who come to the attention of courts are not in need of authoritative handling but do need and desire help and guidance through the casework process . . . In communities where no agency has been established or where the existing agencies have been unable or unwilling to assume responsibility for providing this service, the court should urge and support the development of such services. Until such services are established, the court may have to continue to provide them, but it should be made clear to the community why it is doing so.

Rules of court should provide safeguards against possible abuse in its use. Casework services should be clearly differentiated from probation status. Unlike probation status, the worker providing the service has no authoritative control in the situation. This service should not be offered as an alternative to the filing of a petition as such action would be tantamount to using the authority of the court without proper invocation of its use through the filing of a petition.

By treating in our courts individuals who have not violated the law, attaching to them the stigma of the court, we inevitably increase both the problems that these youngsters experience and the probability of their becoming delinquents.¹³

Although the juvenile court comes to be considered by some authorities as a very general tool of child welfare resources to help youngsters in trouble, among casework and child welfare

¹¹ This accords with the views of a substantial segment of probation authorities as evidenced in recommendations of the National Probation and Parole Association of the U. S.

¹² Statistical Series, No. 18, Juvenile Court Statistics, 1950-52, prepared by Children's Bureau, U. S. Dep't of Health, Education and Welfare, U. S. Gov't Printing Office (Washington, 1954).

¹³ Tappan, *op. cit. supra*, note 2.

authorities who are not associated with the courts it is the accepted view that official and authoritarian agencies should be used only rarely, when essential because of the type of problem presented.

Police arrest data,¹⁴ as reported by the Federal Bureau of Investigation, show that juveniles and youths commit a large proportion of serious property offenses in the United States each year. A relatively small proportion of crimes against the person, such as homicide, rape, assault, drug law violations and offenses against the family are committed by young people.

Since it is predicted that the age group from 10 to 17 will increase almost 50 per cent between 1954 and 1965, it is reasonable to believe that the juvenile courts may handle a million or more delinquent children by the latter date if present trends continue.¹⁵ The large development of "unofficial handling" in juvenile courts has contributed further to this trend toward court control in cases that would not be considered delinquent normally or in other countries of the world. There is abundant evidence here of confusion between delinquency and other social, emotional, and behavioral problems of children, and of a related confusion as to appropriate functions and methods of children's courts. The juvenile court assumes that the child needs protection and guidance.¹⁶

The influence of child welfare doctrines is instrumented directly through probation departments and indirectly through the National Probation and Parole Association and the Children's Bureau. This is true although accepted graduate schools of social work in the United States have been disinclined to provide special training for probation or to encourage their graduates to go in for this type of work until recently. Probation workers,¹⁷ while paying lip service to the methods and objectives of professional social work, have had little training or opportunity to provide anything like a real psychiatric or family casework service to clients of juvenile court. By the indifference and default of others, children's care through courts as well as through social agencies generally has come under control of a group that is oriented rather completely to philosophies with emphasis upon

¹⁴ United Nations, *op. cit. supra*, note 5.

¹⁵ *Ibid.*

¹⁶ Young, *op. cit. supra*, note 9.

¹⁷ United Nations, *op. cit. supra*, note 5.

individualized diagnosis and therapy for emotionally unadjusted clients.

Of the agencies officially concerned with delinquents, the police have first opportunity to determine how serious their misbehavior is and what is called for in the way of treatment. It is believed that too often children are released to their parents without further action in cases where the family lacks either the interest or the ability to deal with its problems. Vigorous attacks have been made upon the common practice whereby police provide a sort of "unofficial probation." While conceding that direct service and supervision are outside the police function, critics stress that in many communities there is a void in existing public and voluntary services and maintain that police must fill the vacuum until such services are adequately provided by other agencies.¹⁸

This handling of the child in juvenile court requires use of some interim device for the child's custody.¹⁹ It is ordinarily considered that a detention facility should be used only under certain circumstances.²⁰ In addition to good physical care, detention should provide a well-rounded program to meet both the emotional and mental needs of the child.²¹

Institutional facilities²² have represented—and still do—the community's effort to rid itself of difficult and dangerous offenders by segregating them under custody. They have been more affected by the philosophy and methods of criminal law and penology than by ideas of modern behavioral science. Although they remain a primary resource of the children's court, their use has declined with the development of probation as a preferred method of treatment.²³

The suspended sentence is employed largely where the youngster's past history and present character do not seem to

¹⁸ *Ibid.*

¹⁹ He may be paroled with his own family, relatives or friends, or he may be remanded to some form of detention.

²⁰ Conditions in the child's home may make it inadvisable to parole him, or seriousness of the offense may indicate danger in leaving the child at large.

²¹ United Nations, *op. cit. supra*, note 5.

²² In Ohio a Ford Foundation project pointed out the fact that a high percentage of child commitments to training schools would be unnecessary if community services were strengthened. Subsequently, a bill was introduced in the Ohio legislature for a grant-in-aid program to counties for probation service to every child who needs it regardless of residence.

²³ All states have some statutory provisions for probation for minors.

require punitive or rehabilitative treatment. If after a hearing disposition of the case is postponed, then during the interim, probation or referral for outside treatment may be used to discover whether the child's problems may be alleviated without a formal probation or commitment to an institution. At the adjournment date the sentence may be suspended on the basis that a successful conclusion has been reached.

A few cases are referred to other agencies for treatment but generally continue to be under the administrative authority of the court. The nature of the relationship between the courts and other community agencies does not encourage referral or cooperation. The social agency and the court may differ considerably in their philosophical orientation,²⁴ in their treatment atmosphere, and in the attitudes they evoke in the child and his family. This situation points up the need for greater cooperation between agencies and courts so that cases brought to court attention which might more appropriately receive agency assistance may be referred as early as possible to the agency rather than be carried under court jurisdiction. Where, as is often the case, skilled and intensive family or psychiatric casework is required for the delinquent, the juvenile court must generally rely on its own inadequate resources.

Mr. Sanford N. Katz²⁵ states that the lawyer views the social worker as an intruder in areas traditionally reserved for him. He adds that the lawyer is unaware of the differences between the professional social worker and the untrained worker, and in many types of cases lawyers have direct contact only with untrained workers in public welfare agencies.

Mr. H. Warren Dunham²⁶ holds the view that the juvenile court's adherence to a social agency concept occasions moral confusion in both the child and his parent.²⁷ He suggests that it is cogent to inquire how far we can carry certain theories of treat-

²⁴ The accepted doctrine of voluntary social work is that the client must want help and be cooperative. Many delinquents are resistant to guidance or treatment.

²⁵ Katz, *The Lawyer and the Caseworker: Some Observations*, 42 *Social Casework* (1) 10 (1961).

²⁶ Dunham, *The Juvenile Court: Contradictory Orientations in Processing Offenders*, 23 *Law and Contemp. Problems* 508 (1958).

²⁷ *Id.* Parents lacked understanding as to the function of a psychiatric clinic to which the court referred their children. One instance was cited in which the parents and child considered the clinic action a part of the punishment for the offense instead of a means of treatment.

ment of criminal behavior without undermining the concept of legal responsibility.

In almost every state, jurisdiction over family problems is divided among many courts and other authorities. The problem of investigating, inspecting and supervising foster homes and institutions also is divided among different authorities so that they and private philanthropies are struggling independently and competing with each other for personnel. To equip all our courts dealing with children with more psychiatrists, psychologists, and social workers to assist judges in diagnosing cases and prescribing treatment is hardly more than a partial remedy; however, there can be no argument against the view that courts are to be encouraged to approach the cases from the point of view of preventive law.²⁸

The law need not be content to protect society through current means. While the seriousness of juvenile delinquency cannot be challenged, many of the comments about it show gross misunderstanding of the nature of this activity. Knowledge of the behavioral sciences today is sufficiently useful, well-established, and widely enough understood that to fail to incorporate it will let the social procession get well out of sight of the law.²⁹

It is in the nature of the universal childhood expectation³⁰ that we may understand something of the difficulty which besets efforts to make more rational criminal codes and corrective institutions. It illustrates some of the forces which make it progressively more difficult, in the face of our ethical concept of relationships,³¹ to deal out violent punishments. To be educated into a civilization requires the inhibition of impulses and the control of those impulses or, at the very least, their redirection into channels which are accepted socially. Each is willing to submit to external codes only if they are felt to be equitable and to relate justly to him.³²

²⁸ Wherry, *Preventive Law and Justice to Children*, 36 *J. Amer. Jud. Soc.* 114 (1952).

²⁹ Watson, *A Critique of the Legal Approach to Crime and Correction*, 23 *Law and Contemp. Problems* 611 (1958).

³⁰ *Id.* "The child relinquishes his hostile . . . impulses . . . to secure friendly treatment . . . from his immediate family and society. If he breaks his "bargain or agreement," he expects to be punished severely; . . . fantasies of children in this regard are little different from the real penalties doled out to early criminals. . . ."

³¹ *Ibid.*

³² *Id.*

Forward looking additions to the apparatus of criminal justice depend upon predictability and this prerequisite is still largely ignored or minimized. Determination of traits and factors most markedly differentiating children who remain non-delinquent from those who became delinquent, and delinquents or criminals who respond satisfactorily to one or another of the methods of peno-correctional treatment from those who recidivate, is a rational approach to the problem. The integration of the differentiative traits and factors into syndromes³³ constitutes the first significant break-through in the quest for cause, cure, and prevention of delinquency and criminalism.

There is no greater need in the entire field of justice as it concerns delinquents and criminals than a device for determining the kind of correctional and therapeutic endeavor most suited to the particular defendant as representative of a relevantly defined type.³⁴ The prediction design of Sheldon and Eleanor Glueck provides a basis for judicial decisions that have a practical relation to the problem situation.

The basic topic considered at the International Penal and Penitentiary Congress at the Hague in 1950 was whether a preventive examination of the offender was advisable, so as to assist the judge in choosing the method of treatment appropriate to the needs of the individual. There was a unanimous affirmation of this proposal.

The monograph published in 1960 by the Joint Commission on Mental Illness and Health shows evidence that even with the consuming interest in crime and delinquency in recent years, the public has been generally apathetic to improving correctional measures. The great promise of probation has not been fulfilled.³⁵ Because the supply of graduate social workers throughout the United States is inadequate, and will be for many years to come, minimum educational qualifications are designated as graduation from college with a specialization in social science plus a year's experience in a social agency.³⁶ Although such

³³ Glueck, *Predicting Delinquency and Crime* 1 (1959).

³⁴ *Ibid.*

³⁵ Twenty-five percent of more than 3000 counties in the U. S. have no organized probation service. Many others lack sufficient trained personnel to carry out an effective program. (Statistics from report of Joint Commission on Mental Health and Illness, 1960).

³⁶ Robinson, de Marche, Wagle, *Community Resources in Mental Health*, Monograph 5, 132 (1960).

training is gaining acceptance by juvenile court judges,³⁷ a very small minority of probation officers today have social work training; many are not even college graduates. Lack of qualified treatment staff and lack of geographic coverage by juvenile courts are among the hindrances to progress in development of a real probation and parole system.

The development of innovations in the structure and program of state institutions for juvenile delinquents has occurred to a great extent in California, Minnesota, Massachusetts, Wisconsin (four youth authority states), and in New York and New Jersey. These are populous, industrialized, wealthy and generally progressive jurisdictions where there is a tradition of strong welfare services.³⁸ (These states are also characterized by high rates of delinquency and crime.)

In tune with the spirit prevalent in the founding of this nation, the individual was the fountainhead.³⁹ Humanitarians sought better ways of helping the individual to change his way of life. Later they felt that one had to look for the conditions that were creating the problem and to avoid confusing symptom with cause.⁴⁰ The emphasis is still strong in society today, however, on individualization in treatment approaches although the offender is recognized as a product of social forces. The view is prevalent that the difficulties encountered are consequences of personal inadequacies in a culture that is essentially sound and adequate. Professional social work today is moving from the traditional individualistic approach to one in which the social worker "reaches out"⁴¹ to reluctant, disinterested individuals and groups.

Despite the varied and expensive treatment efforts, there has appeared no real evidence that delinquency is being reduced or its seriousness mitigated.⁴²

³⁷ National Council of Juvenile Court Judges, recognizing the need for professionally trained probation officers, passed a resolution in 1959 urging the federal government to include a training program in any measure adopted for juvenile delinquency control.

³⁸ United Nations, *op. cit. supra*, note 5.

³⁹ *Cohen, Social Work* 4 (1958).

⁴⁰ *Id.*

⁴¹ See early exploratory studies in Chicago of boys' groups by Clifford B. Shaw and Henry D. McKay whose work documents beginnings of this "aggressive" approach which has gained popularity. *Juvenile Delinquency and Urban Areas* (1942).

⁴² United Nations, *op. cit. supra*, note 5.

In July, 1961, Abraham A. Ribicoff⁴³ suggested as a move to counter delinquency that child-labor laws be eased to allow children a "valuable" taste of "useful, gainful employment." Mr. Ribicoff made this suggestion when testifying on a bill to authorize \$10,000,000 a year for a Federal program to combat juvenile delinquency. The proposed legislation would provide \$5,000,000 annually to train persons to cope with juvenile delinquency problems, and \$5,000,000 to establish pilot programs under Federal leadership in a small number of communities.

⁴³ As reported in *New York Times*, 33 (July 11, 1961).