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Introduction

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Though the institution of the juvenile court dates from the turn of the century, lawyers, legal scholars and, indeed, legislators (apart from establishing the court and voting appropriations for it) took little interest until about a decade ago. The traditional legal norms for dealing with adult offenders, it was thought, had little to do with the child protective—child saving mission of a children's court. This mission was best done by employing a model of wise discretion informed by parental concern for the young, as opposed to the rule-governed operations of state officials working under constitutional limitations. Law with its inevitable tendency to treat like cases alike unless some objective, demonstrable difference can be discerned, was not regarded as a helpful tool in a program of character building treatment. The ideal of equality before the law seemed to threaten the making of purely clinical judgments in the interest of each individual child.

At long last in the late fifties and early sixties more law-trained persons turned their attention to the juvenile court. The trickle of scholarly articles became a rushing stream. Juvenile Court Acts in two major states, California and New York, were reworked between 1959 and 1962. Both were based on the troubled recognition that informal juvenile court proceedings were productive of dissatisfaction, if not injustice. Both statutes made provisions for greater procedural formality in the handling of cases as well as for additional legislative limitations on the juvenile court's power to make dispositional orders. For example, New York's statute established a right to counsel, a method of offering paid lawyers to indigent respondents, a privilege of testimonial silence and new rules regarding the admissibility of evidence. New York also limited the duration of a probation order, as well as the length of time a child might remain in a training school. Lawyers were prominent among the legislators responsible for the legislation and among members of citizens' committees assisting the effort.

The courts, state as well as federal (*Kent v United States* and *In Re Gault* are only the two most highly visible opinions) took a new look at the juvenile court system and imposed procedural safeguards for youthful respondents not unlike those available for

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persons accused of crime. Finally, the President's Crime Commission, speaking for the executive branch of government, called for more formality in the hearing of juvenile matters.

Why this insistence on procedural norms?

Surely several factors have played a role. The ideal that the judge is to perform like a substitute father with loving concern for an erring son cannot be carried out in the nation's large cities (if, indeed, it can be done anywhere). A white judge in Chicago, a well paid law graduate, does not seem like a father to the black teen-age dropout appearing before the court—nor does the judge feel as a father to the child. Tension and conflict, not affection, haunt the hearing in such a case. In the eyes of the respondent, discretionary justice is indistinguishable from acts of discrimination. A formal hearing might restore the appearance of justice.

The rights of a person accused of crime are valued more highly today than at the turn of the century. Not many lawyers in 1900 would have seen the privilege against incrimination in the same light as Mr. Justice Fortas. In *Gault* the Justice wrote, "The roots of the privilege . . . top the basic stream of religious and political principle . . ." The "loopholes" of McKinley's day have become the indispensable safeguards of liberty today.

The juvenile court has never received the support in resources which the ideal of saving children required. Judge Friederich's paper provides us with documentation. He reports the lack of adequate detention, probation and aftercare services. The means predicated as necessary to rehabilitate young offenders have not been made available. If procedural rights were put aside in order to facilitate the offering of services, the rights ought to be restored if services are not forthcoming.

There is a more far reaching point. More and more persons have come to doubt whether we have at hand the means to "reform" offenders. The *President's Crime Commission Report* (p. 80) makes the point:

> But it is by no means true that a simple infusion of resources into juvenile courts and attendant institutions would fulfill the expectations that accompanied the court's birth and development. There are problems that go much deeper. The failure of the juvenile court to fulfill its rehabilitative and preventive promise stems in important measure from a grossly overoptimistic view of what is known about the phenomenon of juvenile criminality and of what even a fully equipped juvenile court could do about it. Experts in the field agree that it is extremely difficult to develop successful methods for preventing serious delinquent acts through rehabilitative programs for the child.

The point goes deeper. The juvenile court process, far from helping the youth, may harm him.

> Official action may actually help to fix and perpetuate delinquency in the child through a process in which the individual begins to think of himself as delinquent and organizes his behavior accordingly.

Such considerations moved the Crime Commission to suggest that the juvenile court's basic strategy is wrong. We can not significantly reduce the level of crime by hoping to treat and rehabilitate identified offenders. Crime can be reduced to an important degree only by taking broad measures of social reform: improving prospects for the employment of youth, expanding educational opportunities, building new housing in better urban environments. The Commission's basic program is social and not directed to the individual offender.

The Crime Commission, of course, is aware that something must be done when a teenager commits a serious violation of law. The Commission, however, would take the youth to court only reluctantly. It would provide him with services and treatment prior to court adjudication, if at all possible. The juvenile court thus would become a court of "last resort" for those teenagers who can not be reached except by the use of disciplinary authority. The court would not be a gateway through which a youngster passes to obtain the services he requires but an instrument of community reassurance, deterrence and rehabilitation if possible.

The papers in this symposium reflect the interests of today. The execution of the plan for publication in the Law Review is itself another example of the broad interests which lawyers now take in the juvenile court field.

Judge Arthur does not write as one who recognizes the legal rights of children in a grudging fashion. His essay exhibits a desire to identify what fairness demands of a court which deals with children. Children, he writes, should not be "as equal as people" and should not have as much liberty. But some rights they have. A lawyer is a constitutional necessity and "should advocate that which his client would seek if his client were mature of thought." Yet jury is not required, "justice can better come from judges than juries." Judge Arthur seeks a balance between the necessary protection of children by legal safeguards and those procedural devices which might stand in the way of treatment opportunities.

Judge Friederich tells of local action aimed at improving the situation of juveniles in North Dakota. He reprints a portion of a report undertaken by the Division of Juvenile Delinquency Service

of the Children's Bureau. The report recommends legal training for the judicial officers who make decisions about children; "unofficial" hearings should be discontinued; the statute should define "juvenile delinquency" more narrowly and precisely. These matters are precisely the kinds of things that reflect the new lawyer's interest in this field.

One by-product of more lawyers paying attention to juvenile courts is that the problems arising in the courts are receiving more detailed analysis. There is less general talk and a bit more attention to detail. How should a juvenile court judge handle a mentally disordered youth? Mr. Donovan's piece, admirably, does not answer the question. That question is too simple minded. The real questions are more detailed. The big issue needs to be broken into parts such as the problem of incompetency at trial, the problem of waiving a mentally disordered youth to the criminal court, the problem of the defense of insanity in a juvenile court case. Mr. Donovan not only makes distinctions but gets his answers by looking to the world, by gathering facts not wool. By his method we are all enlightened.

This symposium again serves to remind us that, while law is important in juvenile court, in the final analysis the most important matter is what happens to the youthful respondent. We are not sure how we can help him but if there is a way we should employ it. If there are reasonable techniques for treatment we should embrace them. Let us not forget a related point. If we can not help much, we surely ought not to harm. We should scrutinize our processes and uproot, to the degree practicable, that which degrades, embarrasses, costs or hurts.

The editors of the Review deserve congratulations for giving the lawyers of North Dakota this look at the juvenile court. I hope the lawyers will be moved to give the court and its satellite institutions the benefit of their wisdom and further, be moved to act for improvement.