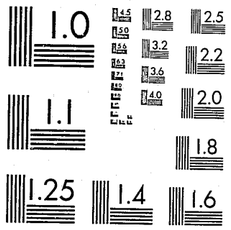

Federal Probation

MARCH 1983

Juvenile Court: An Endangered Species*

BY ROGER B. MCNALLY
Department of Criminal Justice, State University of New York at Brockport

THE JUVENILE COURT has been in existence in America for over 80 years. For the first 65 of those years this institution and the juvenile justice system went unchallenged, unchanged and unnoticed! It wasn't until the mid–1960's that this sociolegal institution came under attack and became the focal point of libertarians, interest groups from the "right," and the court of last resort—the Supreme Court.

This awakening has generated a slow erosion of the jurisdictional authority of the court. In just the last 15 years the expressed and implied powers of this institution have been threatened with extinction. In numerous states the legislators are questioning the efficacy of this court by limiting its authority. The public, angered by well-publicized crimes committed by juveniles, believes these youth are being coddled by juvenile courts. Unmanageable youth (status offenders) whom parents and school authorities cannot handle are receiving fewer "services" from the court due to limiting policies, i.e., the notion of deinstitutionalization.

The application of procedural safeguards and the inability of this court to mediate, to litigate, and to resolve intrafamily conflicts, have set into motion a slow destructive process. Barry Feld, a University of Minnesota law professor (Kiersh, 1981:23), and others, believe there is no justification for separate systems of treatment; one for adults and one for youth.

What we have at stake is the entire concept of juvenile justice in America, and it appears threatened with extinction. Consequently, this article through a literature search, will critically examine the evolution and emasculation of the juvenile court. The writer will identify and analyze trends and issues beginning with the philosophical underpinnings of the court, e.g., parens patriae, evaluate due process litigation and its subsequent impact on the court, and present significant contemporary issues that threaten the very existence of this unique institution.

The significance of this research is multifaceted. It will provide a current historical analysis of the metamorphosis of the court with a particular emphasis on the denigration of the court's jurisdictional powers. Secondly, based upon the research, the writer will identify alternatives to curtail this erosive effect, and lastly, the writer will analyze the feasibility of juvenile courts providing both justice and treatment.

**Based on a paper presented at the Annual Meeting of the Academy of Criminal Justice Sciences, Louisville, Kentucky, March 23–27, 1982.*

Juvenile Court: The Need

In order to better appreciate the current dilemmas this court is experiencing, a brief historical analysis will provide a framework for this critical examination.

Until 1899, children in America were considered both property and the spiritual responsibility of their parents. This was evidenced by the 1646 Massachusetts Stubborn Child Law Act, predicated on the Christian view that children were basically evil. This later became known as the "recapitulation theory" whereby through proper guidance and influence, social reformers could transform evil youths into virtuous souls. (Simonsen/Gordon, 1979:24)

Jane Addams (1860–1935) and other social reformers known as "child-savers," were influenced by this theory. Additionally, between 1877 and 1890 the general population grew rapidly. Much of this growth was attributed to the high influx of eastern European immigrants settling in American cities. A growing cultural conflict developed with the immigrants being blamed for the poor and run-down conditions of the cities (McNally, 1982:2). This parade of events—urbanization, industrialization, immigration, compulsory education, child labor laws, and an emerging reform movement—precipitated the creation of the first juvenile court established in Cook County, Illinois, 1899.

This new court's roots can be traced to the chancery courts of England which were predicated on the doctrine of parens patriae. This doctrine held that the power to protect and to act on behalf of helpless people was lodged with the King or his delegate. (Pettibone, et al., 1981:12). Hence, this new system was designed to treat youthful criminals paternalistically, on the assumption that they are young enough to be guided away from an adult life of crime.

In essence, "juvenile courts, as an American institution, were established so that children would not be treated as criminals or adults....but as failure of society" (Pettibone, et al., 1981:1). Therefore, their proceedings were civil rather than criminal, and their mission was dedicated to the treatment of youth through protective services rather than punishment. Consequently, by 1945 there were juvenile courts in every state and a dramatic increase in the institutionalization of children, the end product of this new system.

1899–1960: Benign Custody

A brief survey on the effects of the new court during its first 50 years of operation will shed light on the process of erosion. Additionally, the events (1899–1960) during this period of benign neglect will reveal why the juvenile justice system became the object of public scrutiny.

The early reformers found it appalling that youth were tried in adult courts and given sanctions that were more appropriate to an adult criminal. Nevertheless, they (public) were not ready to accept the paternalistic treatment given to these young criminals through the more liberal philosophy of children's court. The increase in juvenile crime rates and the proliferation of institutions for juveniles seems to contradict this preferential treatment. Moreover, the notion that children's court being rooted in social welfare rather than corpus juris, seems to be more of an ideal when measured in light of judicial review, i.e., *Kent, Gault, Winship, et al.*

Perhaps the fact that these new courts were charged with acting in an unconstitutional manner is the underlying factor for the self-destruction. The notion that the court "...was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problem...and benevolent and wise institutions of the State provided guidance and help to save him from a downward career," (*In re Gault*, p. 25) was a little unrealistic from the onset. It seems to suggest that the notion of parens patriae and judicial responsibility may have been incompatible. Further, the self-interests of the community and the juvenile courts may be at odds with the needs of the children. These circumstances and others gave rise to *Gault* which led to "...a new *proceduralism* in juvenile courts and to a new emphasis on legal safeguards for juvenile offenders." (Pettibone, et al., 1981:12)

The alleged justification for abridging the due process rights was predicated on the concept that juveniles obtained benefits from the special procedures applied to them, i.e., not labeling them as criminal, maintaining confidentiality, etc. Time has demonstrated that this altruistic theory of denying due process in the name of "benefits" has serious implications.

Contemporary Trends

The prelude of events during the early years of juvenile justice has exacerbated what some experts refer to as a "crisis." The current issues nourishing this crisis can be identified under the aegis of proceduralism, de-institutionalization, justice as treatment, and restrictive legislation. An analysis of these contemporary trends will clearly illustrate why experts feel that the juvenile court is an endangered species.

After refusing to review juvenile court decisions for nearly 50 years, in a series of relatively few cases, the Supreme Court has decided that the applicability of due process is not only desirable but essential in juvenile proceedings. In landmark opinions in *Kent* and *Gault*, the Court established that procedural guarantees are required in juvenile proceedings. These safeguards were later extended in applying the criminal standard of proof beyond a reasonable doubt (In re: *Winship*) and protection against double jeopardy (*Breed* v. *Jones*).

These decisions had far-reaching implications. The civil foundation of the court, its benevolent philosophy, and the ability of the court to provide both rehabilitation and justice, came under attack. With the new proceduralism, proponents of the court were concerned with the adversarial nature of this new dimension. Increasingly, the issue of how far should the court go in applying the principles of constitutional and criminal law in juvenile proceedings, became supplanted by the issue of the propriety of this court as a provider of social services. In other words, are there too many competing demands that are inherently in conflict, i.e., justice and rehabilitation?

The trend toward the judicial approach in juvenile justice gained impetus when Congress, concerned with the ineffectiveness of this system, approved the Juvenile Justice and Delinquency Prevention Act of 1974. The act provided for, among other things, the deinstitutionalization of status offenders. Historically, this category of offender became a catchall for almost all behaviors disapproved of by a particular family, school, or court. The act questioned the wisdom of coercive intervention and the incarceration of noncriminal youth. This act was a further blow to the authority of the court. Heretofore, the court could mandate "treatment" by placing status offenders in institutions. According to Senator Birch Bayh, "the act was designed to prevent...young people from entering our failing juvenile system...under its provisions...the thousands of youth who have committed no criminal act - status offenders...are not jailed, but dealt with in a healthy and more appropriate manner" (Congressional Record, July 28, 1977). Clearly, the intent of this act is an indictment of the juvenile court.

The dual responsibility of this court, rendering justice and treatment simultaneously, has become a focal point of controversy. The American Bar Association, Rosemary Sarri, Paul Piersma, et al., question the judicial involvement in the delivery of social services. "If delinquency is generated by social conditions, how far can the juvenile court go in changing those conditions? Have juvenile courts the authority or the responsibility to prevent the delinquency they are responsible for adjudicating?" (Pettibone, 1981:4). It seems to the writer that time has not supported the notion that a balance can be struck between the concept of individualized treatment and due process. Hence, it seems that the provision of procedural safeguards has taken precedence over paternalism.

Perhaps what might prove to be the most fatal blow to the juvenile court, has been the recent trend in the revision of juvenile codes. Since 1978 this movement has been gaining momentum further emasculating the court's authority. Implicit in these new codes is a lack of confidence in the juvenile court's ability to render sociolegal justice. From a constructionist point of view, these codes apply the preferential standard of due process since many legal scholars believe the adversarial model does a better job with protecting juvenile rights. The majority of states have codified a mechanism to process the "serious" juvenile offender in criminal court. What is surprising is that most states have always had a waiver process to handle certain categories of violent youth in an adult manner.

A brief survey of juvenile laws reveals the trend toward a more punitive model. An April 1980 report, *A National Assessment of Serious Juvenile Crime and the Juvenile Justice System: The Need for a Rational Response*, by Charles Smith, et al., concludes, among other things, "It will come as no surprise to learn that the emphasis in recent juvenile justice statutes has been on more *punishment* of serious offenders...and states are likely to adopt more restrictive methods for handling the offender." They cite mandatory sentencing laws and the punitiveness of permitting juveniles to be confined in adult facilities as examples of the new laws.

The application of parens patriae has been lost altogether when one begins to analyze some of these new statutes. For example, New York's new juvenile offender codes not only subject certain 13–,14–, and 15–year olds to criminal court rigors, but also call for mandatory sentencing. New Jersey lowered from 16 to 14 the age at which a waiver may be considered. Delaware has instituted a series of mandatory sentences and Florida, as well as many other states, now

designate criminal court to be the court of original jurisdiction for certain criminal acts.

The State of Minnesota has taken this erosive process one step further. Their new codes clearly question the credibility of juvenile court. These new laws are much more punitive in that they are directed at the multiple offender rather than just the violent offender. "The Minnesota law, focusing on the property offenders, goes well beyond the laws of most other states and well beyond the guidelines established...by the American Bar Association" (Kiersh, 1981:22).

Although most of these new statutes were spurned by a mood of conservatism, this writer believes they reflect frustration with the ideals of juvenile court. Until 1978, irrespective of the nature of the charge, the maximum sentence that a juvenile could receive was 18 months. In general this translated to 9 months custody and the remaining portion of the order served on a parole basis. This apparently incensed many politicians. According to New York's Governor Hugh Carey, "A fifteen year-old killer may be too young to send to prison, but he's also too dangerous to return to the streets." (Boyd and Waters, 1979:54).

Implications

At this juncture it is difficult to argue with Barbara Flicker who concludes, "until the juvenile court reforms itself so that it can be relied upon to deal effectively with the...problems of delinquency, it is in danger of annihilation as a separate system of justice." (Kiersh, 1981:28) It certainly appears that the present trends have set the system on an irreversible course. Hence, what are the implications of this route?

With the new juvenile codes, the burden seems to be on the defendants to prove he/she can profit from the protections of juvenile court. Furthermore, some of these juveniles are foregoing the protections of parens patriae without the full panoply of due process, i.e., right to trial by jury. In addition, juvenile proceedings have become a new battleground for the press. In a sensationalized juvenile proceeding this fall (September 1981), a district court judge ruled in the local newspaper's favor, ordering the proceeding open. "While the policy considerations of confidentiality...are arguably suited to the rehabilitation of juvenile delinquents...I cannot conclude that they are superior to First Amendment freedoms of press and speech." (Mauro, 1981:14)

It is quite evident that the public's standard priority is the protection of society, rather than protecting the interests of youths. This trend is in complete contrast to the historical rationale for the courts, preserved in *Kent*, "...that the court has been conducted on a parens patriae basis, that the purpose of the court was to supply guidance and rehabilitation to the juvenile..." (In re *Kent*, 383 U.S. 541:8) Implicit in this trend is the perceived failure of juvenile court to provide guidance and rehabilitation. With the wilder application of due process, the use of plea bargaining, the introduction of punitive and restrictive codes, and the increase in adult criminal sanctions applied to juveniles, belief in this perception is clear.

Traditionally, society has considered the age and corresponding developmental stage of the offender, and believed in remedies which are appropriate to the known characteristics of young people. However, the contemporary trends in juvenile justice are negating these traditional beliefs. "Nearly a century later, we have gone through a metamorphosis that has returned us to our original form." (McNally, 1982:10)

Summary

As one researches the literature for the trends that stimulated this emasculation, it is difficult to ascertain any singular process. However, in order to profit from mistakes made, it is incumbent upon experts to recognize and analyze the significant issues that are slowly destroying this social institution, one which was once perceived of as a panacea for the problems of delinquency.

This writer suggests that any institution with such a magnitude of responsibility and so little accountability, eventually will become the object of public scrutiny. However, the present trend does not need to be a natural course of action. The current path symbolizes the frustration of a society searching for immediate answers to a complex problem. As irrational as this may be, so too is the notion that a single social institution can mete out justice, be a cure-all for adolescent abberations, protect the interests of the community, and abide by constitutional safeguards, *all* at the same time!

Although experts, legal scholars, and the public are justified with their criticisms of the court, this system's emulating the adult justice system would constitute a major travesty. The adversarial model of justice presumes the offender has achieved mental maturation and, therefore, is responsible to account for his behavior. There is just too much evidence that indicates adolescence is a unique period of growth.

Moreover, conferring adult penalities upon youth seems to only reflect the public's anxieties with delinquency. It is well known that adult prisons have been an abysmal failure; even when measured against the standard of protecting the community. Additionally,

the rates of incarcerating adults is far exceeding the system's ability to provide even minimal custodial care. To aggravate an already chaotic situation by sentencing juveniles to prison would not only be a gross injustice to all but immoral as well.

The Future and Alternatives

Given the aformentioned, it is without question, the American juvenile justice system will be a creature of the past if a major transformation does not occur. The data presented in this article illustrate clearly the need for change. Now the question is: Is it necessary to re-invent the wheel or is it more desirable to learn from past experiences and strengthen the foundation of an institution that *may* be fundamentally good? It is an inescapable conclusion that the juvenile justice system has made some major blunders. However, this writer, like the early reformers, believes a separate system of justice is necessary.

The rationale for this institution is no different today than it was in 1899. It is imperative that society acknowledge different developmental stages, e.g., maturational levels. Furthermore, it is essential that we profit from the inadequacies of a unitary system; there is no reason to believe that placing adults and youth in the same institutions will yield any better social benefits today than in the past.

The alternatives advanced thus far range from the modification of to the complete abolition of the juvenile court. This writer strongly encourages the retention of the court with some structural and procedural changes. For example, the status offender jurisdiction should be repealed and handled on an administrative basis by both the public and private sector. These youth need mental health and social service care, and this can best be accomplished on a noncoercive basis. Secondly, the serious offender category should be retained as should be status of the "court of original jurisdiction." This notion is supported by a recent study (Merril Soble, "The Juvenile Offender Act: A Study of the Act's Effectiveness and Impact on the New York Juvenile Justice System"). Sobie concludes that only a small percentage of all juvenile offender cases reach conviction stage in adult court. He not only suggests that this is "a cogent reason to reassess the act," but recommends that "...every juvenile offender case should be filed initially in family court." (Sobie, 1981:32)

An additional reason to retain jurisdiction over this category, has been some youths' lengthy pretrial confinements. A 1980 report by the Florida Youth Services Program Office examined data on youths removed from the juvenile courts and charged in criminal courts. The data reveal that 62 percent of a random sample of 300 cases were detained in county jails because of their inability to make bond, and, the average length of incarceration was 112 days. (Tallahassee Report, 1980:37) Given the low conviction rates in Sobie's report, and the general conditions of most county lockups, one must question the application of the adult standard. More importantly, this is in direct contrast to the "swiftness" of processing that most juveniles receive in the juvenile court setting.

Since time seems to have established that paternalism and the application of proceduralism are irreconcilable, then it seems advisable the court should proceed on a sense of humanity, fairness, and accountability. The constitutional standard of due process should be preserved since it was this area that made the juvenile court vulnerable to abuses. The necessity of due process is summed up best in *Gault.* "There is evidence...there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protection accorded adults nor the solicitous care and regenerative treatment postulated for children." (*Supreme Court Reporter* 387 U.S. 16:-1438)

In sum, it is evident to this writer that the unresolved issues impacting on the juvenile justice system, and the juvenile court in particular, clearly need to be examined and refined. Nonetheless, these conflicts and inadequacies require progressive analysis if future generations of American youth are to profit from wisdom rather than decisions emanating from frustration. Although the path of least resistance, e.g., the dissolution of juvenile court, may seem inviting to some, this overreaction may only serve to destroy 80 years of struggle for social justice. Additionally, if it is a desirable goal to prevent juveniles from building criminal records, that will ultimately mean a younger prison population and an expanded adult criminal system, then time is of the essence for reform.

REFERENCES

Boyd, Frederick and Walters, Linda, "Treating Kids Like Adults," *Newsweek* (April 16, 1979).

Congressional Record (July 28, 1977).

Kent v. *United States* (383 U.S. 541) 1966.

Kiersh, Edward, "Minnesota Cracks Down on Chronic Juvenile Offenders," *Corrections Magazine* (December 1981).

Mauro, Tony, "Juveniles in Court: Battle for Access to Teen Records," *Democrat and Chronicle*, Rochester, N.Y. (November 12, 1981).

McNally, Roger B., "Nearly A Century Later: The Child Savers-Child Advocates and the Juvenile Justice System," *National Council of Juvenile and Family Court Judges* (August 1982).

Pettibone, John M., et al., *Major Issues in Juvenile Justice Information and Training: Sevices to Children in Juvenile Courts: The Judicial-Executive Contoversy*, 1981. Academy for Contemporary Problems (U.S. Dept. of Justice - Office of Juvenile Justice and Delinquency Prevention).

In re Gault (387 U.S. 16).

Simonsen, Clifford E. and Gordon, Marshall S., *Juvenile Justice in America*, 1979. Glencoe Publishing Co.

Smith, Charles P., et al., *A National Assessment of Serious Juvenile Crime and the Juvenile Justice System: The Need for a Rational Response.* April 1980. U.S. Department of Justice, Law Enforcement Assistance Administration.

Sobie, Merril, "The Juvenile Offender Act: A Study of the Act's Effectiveness and Impact on the New York Juvenile Justice System," New York Foundation for Child Development (1931).

S27982 Florida. Youth Services Program Office. "Analysis of the penetration of children into the adult criminal justice system in Florida." Tallahassee, 1980.

END