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Review of Justice for the Child, edited by Margaret K. Rosenheim

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Book Reviews

JUSTICE FOR THE CHILD. Edited by Margaret K. Rosenheim. New York: The Free Press of Glencoe. 1962. Pp. 240. \$6.95.

Sixty-four years ago, women of the Catholic Visitation and Aid Society in Chicago became deeply concerned about children in jails and in criminal courts. They sought the aid of the Chicago Woman's Club and together tried to do something about these children. This social service society and civic organization pressured the Chicago Bar Association to help them carry out their campaign to set up separate court facilities for juveniles. On July 1, 1899, the first juvenile court was established in Cook County, Illinois. This new American institution was hailed by Charles Chute of Probation and Parole fame as one of the greatest child welfare advancements in a century. Roscoe Pound heralded the juvenile court movement that was begun in Chicago as the most significant landmark in the advance of criminal procedure since Magna Carta.

Today we are still concerned with children and their involvement with law enforcement agencies. Juvenile delinquency has become a national problem. The statistics on "teenage crime" are high—too high for a society that prides itself on being so affluent.

In recent years a great deal of literature has been written about juvenile delinquency and juvenile courts. Few books, however, are as thoughtful or include material with as much insight into problem areas of the juvenile court as *Justice for the Child*, a compilation of articles that was an outgrowth of conferences held at the University of Chicago and sponsored by its School of Social Service Administration.

There are certain perennial problems in the juvenile court, writes Mrs. Margaret K. Rosenheim, the editor of the book: what should the role of the court be? what specialized service should it offer and what training should its personnel have? what kind of procedure ought to characterize its operations? The writers have attempted to offer answers to these difficult questions.

There are various levels of delinquent behavior. There are problems even in defining "delinquency", "neglect", and "dependency" as Professor Monrad Paulsen points out in his article, "The Delinquency, Neglect, and Dependency Jurisdiction of the Juvenile Court." One major problem in this field is when to invoke the jurisdiction of a court rather than to seek some other remedy. When is a problem a "court problem" rather than one requiring parental discipline, school discipline or referral to a child guid-

ance clinic? When an infant engages in childish pranks, one is reluctant to suggest that the child ought to undergo a court experience. But when pranks take on serious overtones, or a child has a history of serious antisocial behavior, then the matter becomes complex. Paul Tappan, in his article, "Juridical & Administrative Approaches to children with Problems," writes:

Court power should be employed only in those cases that require the application of authority, restraint, or correctional supervision. Exercise of legal authority should be predicated upon a scrupulous determination that the child has engaged in delinquent conduct of a character seriously threatening to the community or that he has suffered from the willful neglect of his parents.¹

Mr. Tappan's remarks are, of course, related to the instances when a child faces legal proceedings. "Court power", or what he later refers to as "juridical control", is the power to control actions, to deprive a parent of the child's custody, to deprive a child of his liberty by institutionalizing him. These are the extreme or serious cases. But not all cases brought to the attention of a juvenile court end up with the child's being institutionalized. Howard Fradkin, in his article, "Disposition Dilemmas of American Juvenile Courts," discusses in great detail the kinds of disposition available in the juvenile court setting. These are intake, informal, and formal dispositions. To Mr. Fradkin, the intake disposition includes those situations in which the intake worker screens complaints and allegations brought to the attention of the court by police, truant officers, parents, friends or neighbors and disposes of the case by dismissing it, placing the child in a detention home pending court action, releasing the child to his parents with instructions to return to the court at some later date for an official hearing, or placement on "unofficial probation" with or without the consent of the parents. Mr. Fradkin writes that about one-half of all cases reaching the juvenile court are dismissed at the intake level of disposition. Ordinarily the intake worker is a trained social worker. Informal disposition refers to cases in which a treatment disposition has been made by the juvenile court judge without the filing of a petition and a legal adjudication. A formal disposition includes dismissal, probation and institutionalization, and is made by the judge after a judicial proceeding.

The life of a child is involved in each decision that is made. When a policeman makes his decision to take a child into custody, or not to take him into custody, he is taking a serious step. Does he know what is involved if he refers a case to the juvenile court? Paul Keve discusses police involvement in the juvenile court process in his article, "Administration of Juvenile Court Services." Mr. Keve points out that the court has an educational function to play with the police. He wisely states that while the court has

¹ JUSTICE FOR THE CHILD 166-67 (Rosenheim ed. 1962).

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no responsibility to inform the police of the disposition it makes on a particular case, it ought to report back to the police department the actions it has taken on cases referred to it by the police. A great many of the "molly-coddling" remarks made by police and public in their discussion of juvenile court decisions are based on a misunderstanding of the kinds of dispositions that a court can and does make. "A close working relationship and regular reciprocal communication on cases between court and police promote a mutual respect," writes Mr. Keve.²

The decisions of the police are out-of-court decisions. What about decisions made by the intake workers and the judges? Are these people trained to make them? As for the intake workers and probation workers, there is a great dearth of trained people for these positions. Schools of social work have been slow to promote this area of their curricula. While one can appreciate the generic approach to social work education, there is an important distinction between doing casework in a child guidance clinic, for example, and casework in a juvenile court setting. Paul Tappan writes:

Courts are employed to deal with delinquency in part because illegal aggression has a peculiar significance for official action: it is *sui generis*. A juvenile court must determine what measure, if any, of social dangerousness is manifested in a child's conduct. It is concerned with reducing the probability that a violator will offend again or that others will follow his example. Thus the juvenile court is concerned with what the child *has done* as well as with what he *is*. The nature of his illegal act, together with his prior history of violations and the circumstances surrounding his offence, are the best evidence of the present and future threat that he poses to the community. An agency that is interested only in its client's welfare and adjustment is not oriented to the nuclear problem of lawlessness. Because the problem of delinquency and its treatment is qualitatively distinct from that involved in other forms of maladjustment, a juvenile court system tends to produce more apposite and effective treatment of the antisocial and aggressive juvenile. The court employs correctional measures utilizing authority as a central and suitable feature of treatment in order to achieve its ultimate goal of social protection. Both the theory and techniques involved differ from those applied to other forms of problem behavior or pathological situation.³

Social work educators can profit greatly from the chapter by Mr. Tappan and the one entitled "Court and Community" written by Professor Alfred Kahn.

For years the caliber of juvenile court judges has not been high. In some states politicians have used the juvenile court judgeship as a patronage post. Usually the appointment has been a disappointment to the new

² *Id.* at 195.

³ *Id.* at 154-55.

judge. In some places welfare directors appoint judges. It has only been in recent years that there has been serious concern for filling the position of juvenile court judge with a truly qualified person. What are these qualifications?

I support Mr. Fradkin when he writes:

The judge needs training and background in the social sciences in order to render an intelligent decision concerning primary disposition matters, that is, whether the child is to be treated at home under a probation agreement or whether the child should be given intensive treatment by the professional staff of an institution.⁴

Mr. Fradkin does not put much faith in self-education. Instead he calls upon law schools to require applicants for admission to have had a heavy concentration in the social sciences in their undergraduate training. I think this recommendation is an unworkable limitation. The responsibility for preparing people for the bench rests primarily on law schools and in legal education. The content of courses in family law and criminal law would bear directly on juvenile court problems. So long as those courses are taught in the traditional manner—case by case analysis without the benefit of material from other disciplines—they will have little impact on the training for a juvenile court judgeship. Elsewhere I have recommended that law schools abandon their parochial approach to the teaching of family law.⁵ It is encouraging to see that Yale, Pennsylvania and Minnesota are making efforts to rethink the teaching and content areas of family law.

Even though Mr. Fradkin makes light of self-education, I think there are values in it. By daily becoming involved with the cases a juvenile court judge hears, he certainly must gain insight into human relations. The education from this involvement is probably worth much more than a few courses in psychology.

Training for juvenile court judgeships and workshops for the judges are being conducted by the National Council of Juvenile Court Judges. The judge soon to be appointed, along with judges who are presently sitting on the bench, are given short-term courses in the form of institutes and conferences in human growth and development, court procedure, special case analysis and other problems intimately connected with the judge's function. This educational program undertaken by the National Council is a most hopeful development.

Juvenile court procedure has been a serious problem. It has been the subject of controversies between judge and lawyer and between lawyer and social worker. On the one hand, there must be a continuation of the

⁴ *Id.* at 132.

⁵ Katz, *The Lawyer and the Caseworker: Some Observations*, 42 *SOCIAL CASEWORK* 10 (1961).

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underlying philosophy and program of the court—that of treating the youngster as a juvenile offender, not a criminal. On the other hand, the child brought before the court ought to be afforded a fair and proper hearing. One thing is certain: the courts of this country are in agreement that a proceeding against a child in a juvenile court is not a “criminal proceeding” within those provisions of the Constitution which prescribe certain standards and procedures for “criminal proceedings.” The important question, however, is this: how much of the juvenile court proceeding should be formal with constitutional safeguards that are present in adult criminal courts and how much of the juvenile court proceeding should be informal?

Writers in *Justice for the Child* have taken various positions in their discussion of the proper kind of proceeding that should be available in the juvenile court and of the juvenile offender's civil liberties. Dr. Elliot Studt, in his article, “the Client's Image of the Juvenile Court,” cautions against a strictly informal proceeding. To him the symbolic value of the juvenile court would be lost if there were “too great a disparity between the informality of the process and the seriousness of what actually happens in the life of the family.”⁶ He calls for a formal procedure:

the placing of each actor in relation to another, the way of addressing each actor, the order in which topics are discussed, the rules that govern discussion, and the differentiation of one phase of action from another—to communicate through dramatic action what verbal abstractions can never communicate in full.⁷

Formal procedure calls for specific safeguards. It suggests the use of the adversary system. This is what Mr. Alex Elson calls for in his article, “Juvenile Courts and Due Process.” To Mr. Elson, the “decision based on the product of contesting forces is sounder, and hence fairer, than decisions based on unilateral investigation, even if court supervised.”⁸ Judge Alexander would qualify that statement by saying that the “contesting forces” should be lawyers with social consciences. He writes in his chapter on “Constitutional Rights in Juvenile Court”:

When . . . a lawyer appears [in a juvenile court proceeding] who possesses no social conscience or is constitutionally contentious or vainly legalistic or mentally myopic, he seems impelled to earn his fee by putting on a show for his client. He must win his case by hook or by crook, “spring the kid,” and get for his clients what they want regardless of ultimate consequences to child or family. Since, as a rule there is no counsel to oppose him, he frequently succeeds—but to what end? So that the child can further pursue his delinquent ways? . . . To correct a defiant, disturbed delinquent is at best a difficult, delicate process.

⁶ Rosenheim, *op. cit. supra* note 1, at 204.

⁷ *Id.* at 205–06.

⁸ *Id.* at 97.

To insist on such a legal bull in a china shop is surely dubious due process.⁹

Mr. Elson calls for an extensive use of procedural safeguards in the juvenile court proceeding. However, he cautions that they should not be used at the expense of contravening the underlying philosophy of the court. He wants due process safeguards built into the present procedure. The principal due process safeguards that he advances under the heading of safeguards that do not involve the hearing or decisional process have to do with limitations on detention practices, prohibitions against criminal prosecution for offenses already tried in the juvenile court and provisions concerned with confidentiality of records. The second group of safeguards involves the hearing and decisional process. These include: right to counsel, separation of determination of jurisdiction and fact-finding from disposition, application of some rules of evidence, hearing made a prerequisite to transfer of the jurisdiction of the child to a criminal court, and requirement of a hearing prior to the modification of a decree and strengthening the right to appeal.

Judge Alexander would take issue with Mr. Elson's extensive formal procedural requirements. Like Judge E. Barrett Prettyman,¹⁰ he believes that the due process to which an infant is entitled is a process suitable to his status and his substantive rights. Judge Alexander points out that the "Bill of Rights was essentially designed to deal with adversary proceedings in criminal courts and, consequently, does not readily fit into the picture of the juvenile courts."¹¹ To Judge Alexander, the juvenile court proceeding should be "a nonadversary, nonpunitive, solicitous approach aimed to protect and correct the child malefactor."¹²

Judge Orman W. Ketcham takes an unusual approach to the problem of due process and the juvenile court proceeding. In his chapter, "The Unfulfilled Promise of the American Juvenile Court," he advances what he calls "The Mutual Compact Theory of *Parens Patriae* in America." Essentially it is this:

This compact authorizes the juvenile court, in its discretion, to substitute state control for parental control. But such an intrusion of governmental supervision rests on the assumption that the state will act in the best interests of the child and that its intervention will enhance the child's welfare. Applying the contractual analogy, it follows that, unless the state satisfactorily preforms its obligations under the compact, the juvenile and his parent should have a right to consider the agreement broken and insist upon their full constitutional rights.

⁹ *Id.* at 89.

¹⁰ Prettyman, *Three Modern Problems in Criminal Law*, 18 WASH. & LEE L. REV. 187, 199 (1961).

¹¹ Rosenheim, *op. cit. supra* note 1, at 84.

¹² *Id.* at 85.

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In other words, if the state fails to make good its promise to act for the improvement of the child's welfare, the child and his parents may demand the full protection of criminal due process afforded adults charged with crime.¹³

One comes away from reading *Justice for the Child* hopeful about the juvenile court problems in America. There is hope because intelligent and thoughtful people in key positions are concerned with the juvenile court system and are engaging in useful discussions advancing new and sometimes unorthodox ideas. Judge Ketcham's conclusions and recommendations are inspiring:

If the juvenile court experiment is not to be swept away by the tide of legal history, those interested in its philosophy must strongly urge (1) that legislatures provide juvenile courts with sufficient trained judges and adequate professional staff to dispose patiently yet expeditiously of all cases referred to them; (2) that juvenile court procedures that afford due process and fair treatment for the child and his parent and prevent the unwarranted intervention of overzealous representatives of the state in the private lives of such individuals be formulated by bar associations and put into universal application; (3) that procedures for assessing the needs of children coming before these courts be developed by behavioral scientist; and (4) that the state appropriate sufficient funds for the prompt construction and adequate staffing of institutions truly designed to provide delinquent and dependent juveniles the care, guidance, and discipline that should have been provided by their parents.¹⁴

When these things are done, we can be assured of justice for the child.

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¹³ *Id.* at 26.

¹⁴ *Id.* at 38-39.

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