

5-15-1978

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Recommended Citation

Enrique H. Pena *Introduction: The Role of the Juvenile Court - Social or Legal Institution?*, 5 Pepp. L. Rev. Iss. 3 (1978)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol5/iss3/1>

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**Second Annual Juvenile Law
Thematic Journal**

**Introduction: The Role of the
Juvenile Court—Social or
Legal Institution?**

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OUR "FAILING" JUVENILE JUSTICE SYSTEM

Rumblings of discontent with the actual operations of juvenile courts are being heard from all parts of the country and

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from all types of individuals having contact with juvenile courts.¹ After several decades people are still asking: What is wrong with our juvenile courts? Why have our courts failed to prevent crime and delinquency? There is a prevailing attitude in society today that our juvenile justice system does not promote justice; that is, justice with respect to all interests: the victim, the delinquent, and society alike.

The main reason for this negativism is that the public has been led to expect too much of the juvenile courts. Even those who administer the courts, for the most part, believe that if they are provided with the necessary ancillary personnel, they, the courts, will be the panacea for all social ills of children. The harsh fact that history has taught us is that even in those juvenile courts where the full panoply of social workers, intake and probation officers, and other trained personnel are totally utilized, the overall result must be judged something less than desired. This is so because the phenomena of juvenile delinquency is a response to deep social, cultural, and political currents quite beyond the influence and control of the juvenile court or, indeed, the juvenile justice system.

The system, and much less the juvenile courts, cannot be expected to rectify social inequities abrogating the persistence of poverty alongside conspicuous plenty. It cannot abolish racial discrimination; it cannot abolish the drug culture; it cannot de-escalate the use of handguns. It cannot eliminate the myriad of forces that contribute to the breakdown of families, rich or poor.

What should be done; should there be reform of the system? It is suggested herein that we dispell the unrealistic expectations which have long blighted the juvenile courts of this country. The emotional stage responsible for the over-enthusiastic and frequently extravagant statements of what juvenile courts can accomplish has long since passed.² The juvenile courts, notorious for their lack of faith, should not be visualized as social case-working agencies that will solve the social ills of childhood.

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1. Moran, *New Light on the Juvenile Court and Probation*, [1930] NAT. PROB. ASSOC. YEARBOOK 67-75.

2. FOX, MODERN JUVENILE JUSTICE (1972).

The juvenile justice system has been described in terms of its component parts: police, courts, corrections.³ Of course this conception, whether acceptable or not, greatly over-simplifies a complex network of uncoordinated, unorganized and unsystematic operations of numerous public and private agencies. It is on this system that the public has imposed as a primary obligation, the assignment of reducing and preventing delinquency. As a practical matter, most, if not all, factors contributing to delinquency are beyond the reach of the juvenile courts to resolve. As a policy matter it would be exceedingly difficult and unwise to require the juvenile courts to spearhead programs that would affect the basic social, educational, economic, and political values of large numbers of young citizens. Surely no one would contend that juvenile courts should be responsible for educating small children or directing unemployment. This is not to malign the desire to reduce and prevent delinquency or the need to make those social changes that could improve the lives and treatment of children and alter their misbehavior. Instead, it is to strongly suggest that the juvenile court is not the primary institution for such efforts and further suggest that such efforts might be more fruitfully performed outside the juvenile court with its complete assistance and cooperation.

American life has undergone many changes since the end of World War II. These revolutionary changes have affected greatly the child-care field. The creation of juvenile courts has itself brought new and unforeseen problems. Seen as an answer to children's problems, the juvenile courts have been overwhelmed with new responsibilities. It would be dishonest to state that there is no reason for the critical attitude of the public towards juvenile courts. It might even be stated that such criticisms are justifiable. However, these criticisms are based on two misconceptions: (1) that juvenile courts continue to be mere criminal courts, and (2) that juvenile courts have failed in their original mission of "saving" children, that is, in the actual treatment of the child.

The juvenile courts have failed, if indeed they have failed, by allowing themselves to be overwhelmed with jurisdiction over

3. NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, JUVENILE JUSTICE AND DELINQUENCY PREVENTION 7 (1967).

problems as widely divergent as divorce and custody matters. Furthermore, each year new responsibilities are added to juvenile courts.

ROLE AND PURPOSE

There is no question that change is necessary within the juvenile courts. The question is whether the "wheel" is to be re-invented or whether the "wheel" is to be used to move on to new, imaginative and more effective programs. Is there a better path for the future of the juvenile courts, or should the well-travelled path of the past be urged? If the choice is the former, how is that path to be forged?

First, paternalism should not be permitted to compromise law. Second, excessive optimism should not compromise a more effective work product. The over optimism of juvenile courts, old and new, and the unrealistic expectations placed on the juvenile courts have distorted the past and blurred the vision of the present, deterring courts from honestly addressing the real problems and issues facing the juvenile courts today. It needs to be recognized that the juvenile courts are being asked to do an impossible task, that is, prevent and control juvenile crime and delinquency. Additionally, the juvenile courts are being asked to accomplish this awesome task at a time when socializing institutions such as the family, neighborhoods, churches and schools are breaking down.

The juvenile courts must define their role and purpose, especially in those cases involving children in which the court is incapable of achieving its rehabilitative objectives. Incapacity may result from the limits of scientific knowledge, the inadequacies of the facilities and personnel available to it, or the particular problems of adolescent misconduct, particularly the sort that give rise to issues no juvenile court can adequately confront or resolve. The juvenile courts must therefore recognize their limitations and then accordingly, define their role and purpose.

In 1967 the President's Crime Commission submitted the following findings:

The failure of the juvenile court to fulfill its rehabilitative and preventive promise stems in important measure from a grossly over optimistic view of what is known about the phenomenon of juvenile criminality and of what even a fully equipped juvenile court could do about it . . . what research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behavior

produced by a multitude of persuasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, or psychiatrist.⁴

This statement exposes the inadequacy of any theory of the juvenile court that views the institution wholly as a rehabilitative or therapeutic device. The fact remains that all juvenile courts are confronted by great numbers of adolescents whose behavior cannot be ignored, but who, as a class, elude the reformative capabilities of the juvenile courts. These children are alienated from the legitimate institutions of society. They lack opportunities for employment and goal satisfaction and are victims of discrimination and cultural deprivation. Regardless of the causes of these conditions, the conditions are not within the control of the juvenile courts.

It has been stated that the highest motives and most enlightened impulses lead to a peculiar system for juveniles, unknown to our law in any comparable context: "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."⁵ The Chairman of the Pennsylvania Council of Juvenile Court Judges observed:

Unfortunately, loose procedures, high-handed methods and crowded court calendars, either singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process.⁶

Before a court can begin to adhere firmly to legal principles, it must develop a coherent philosophy. The issue is usually posed in terms of alternatives: whether the juvenile court should function as a social service agency or whether it should function basically as a court and legal institution. By its own definition, a juvenile court is a court, and must function as a court. It would be utter hypocrisy for an institution that purports to interpret the law, adjudge conduct under the law, and apply the law with great authority, to question whether it is bound by all appropriate legal principles.

4. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 78, 80 (1967).

5. *In re Gault*, 387 U.S. 1, 18 (1967).

6. Lehman, *A Juvenile's Right to Counsel in a Delinquency Hearing*, 17 JUV. CT. JUDGES J. 53, 54 (1966).

The image of the juvenile court, with all its informality designed to create an atmosphere of concern for the individual, has led Dr. Elliott Studt to describe it as,

[a] confused and confusing organization, in which it is difficult to know what to expect.

Because the official world has meant to be helpful by deemphasizing procedural aspects, there is often too little explanation about what is going on while the child and his parent are moved through a bewildering series of procedural steps.⁷

Unfortunately, because of the willingness of the juvenile court to find extra-legal solutions to the problems that bring children to court, the public, including jurists, believe that it is appropriate to overlook certain legal aspects of the problem. In too many cases the court's authority has been used to intervene in a child's life without the jurisdictional basis to act and without adhering to due process procedures and legal rules. This ignores the basic fact that children have an even greater need for such protections than adults. A court cannot and should not intervene in a child's life except through legal processes in a legal institution. Above all other institutions of government, a court must itself demonstrate respect for law. The court must not indulge in the hypocrisy of making the execution of the courts' great power dependent upon the untrammelled authority of each judge—a trust that is not, nor should it be, placed in any individual.

The above statement should not be interpreted to imply that adherence to law minimizes the usefulness of the court's skill in the area of social reform or its concern for children. Rather, limitations where appropriate, enhance the role of the court and give it focus. It is entirely compatible for a court to function as a court while at the same time carry out social objectives, provided those objectives recognize the importance of adherence to legal principles, of consistency in approach, and of retention of a child's basic responsibility for his acts.

CONCLUSION

There are things in the past that should not be repeated, yet there is much that has been learned of the past that should be remembered.

The Preamble to our Constitution charges the courts with a responsibility to promote justice, domestic tranquillity, liberty,

7. STUDT, *THE CLIENT'S IMAGE OF THE JUVENILE COURT: JUSTICE FOR THE CHILD* 200 (1962).

and the general welfare. It is these principles upon which all governmental action in the United States is premised.

Our Constitution, of course, was drafted when America was a nation of farms and small hamlets. There were no great cities or great cultural centers. Family, social and religious ties were strong. A man was assumed to have almost complete control over his own destiny—practically free of government intervention. Children who chose the wayward path of crime and delinquency were dealt with by the community—a community which considered its obligation to mete out justice so that the child would choose a proper course of behavior.

It is apparent that social conditions have changed since this approach to a child's deviant behavior was crafted. This suggests, then, a need to scrutinize and evaluate these changes in order to better understand the causes and solutions of the problems of juvenile delinquency. For as Thomas Jefferson so eloquently stated: "Laws and institutions must go hand in hand with the progress of the human mind. . . . As new discoveries are made, new truths disclosed, and manners and opinions change in circumstances, institutions must advance also, and keep pace with the times."

Today, the emotionalism which is present in the thinking of the general public and public officials, with respect to the juvenile justice system, should be abandoned. A broad search must be made for those conditions which breed crime and delinquency. Then, necessary approaches to prevent children from engaging in deviant behavior must be developed.

