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First Annual Juvenile Law Thematic Journal Pepperdine Law Review: Introduction

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First Annual Juvenile Law Thematic Journal Pepperdine Law Review

INTRODUCTION

JOHN L. ROCHE*

Evolution or revolution, that is the choice facing our juvenile courts. But the evolution is not a Darwinian survival of the fittest. It is progress, movement along a path leading to a dimly perceived but better future. And the revolution is not Marxist class violence, but merely the circular movement of the rim of a wheel around a fixed axis, turning but going nowhere.

A hundred years ago our children were victims of a young Industrial Revolution. Moving from the family-centered, rural economy to the exploitation of the sweatshops of industry, they were viewed as small adults. When they came into conflict with

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their society by committing delinquent acts they were prosecuted and punished as adults. Aghast at this, social reformers cried out for more compassion for the foibles of youth. The theory was widely argued that the judge, as a father-figure primarily interested in the welfare of the child and able to give kindly paternal advice, could provide better guidance for youngsters than the stern, blackrobed purveyor of justice. On a ground swell of public opinion, the juvenile court came into existence at the turn of the century and rapidly spread across the nation.

But as we have so frequently observed, in attempting to implement great social theories, those theories turn out to bear little relationship to practice. The judges' training was in the law, and their experience was in the courtroom; it was rarely adequate training for the role of correctional counselor. Even if sufficient court time had been provided, most judges were not suited by temperament or training to counsel troubled youth. And the time was not available. In many jurisdictions, the juvenile calendar was, and is, but a small part of the judge's duties. In smaller communities this function may be accorded only a half-day per week or less. And, since it was not necessary to accord the juvenile the full legal formalities required for adults, it was possible to handle the cases more quickly and therefore permit the calendaring of more cases in the same session. The time saved by taking away adult due process requirements did not redound to the credit of the juveniles, but was rather used to permit a heavier case load. What a boon to busy courts! What a travesty of justice for children!

But what about all the help the judge was to have? It was never planned that the juvenile court judge was to work in a vacuum. And, to some extent, almost every court has been provided with some type of ancillary personnel. Populous, wealthy communities now employ hundreds or even thousands of probation officers, social workers, psychologists, psychiatrists, physicians and nurses to diagnose, advise, supervise, report and recommend as the case may require. Yet even in these, the best equipped juvenile justice systems in the nation, three-quarters of a century of juvenile courts has taught us some harsh facts: even if the court functions as originally designed, even if the full panoply of social workers and other trained personnel is totally utilized, the overall result must be judged a failure. Juvenile crime is growing everywhere. It is growing in the numbers of participants, in the numbers of crimes and in the juveniles' percentage share of the total crime picture. For over a decade

we have been aware that more than half of the major property crimes in the nation are committed by children. Violence is increasing. Juvenile gangsterism is spreading.

The wheel of justice began to turn in the late 1960's when the United States Supreme Court recognized that juvenile courts were giving neither the due process we were accustomed to as a free nation, nor the paternal guidance we had bargained to get in return for it. There was no *quid* for the *quo*. *Kent v. U.S.* and *In re Gault* were the landmark cases which called for a return of due process rights to children. Many other cases have followed so that now, in most jurisdictions, children enjoy nearly all of the protections accorded adults. Procedural due process is an everyday reality as to most aspects of modern juvenile courts.

If procedural rights in the adjudicative phase of the juvenile justice system have experienced almost a complete reversal since *Gault*, what of the dispositional process? What equivalent great strides have been made in youth correction, the necessary backup to the courts? Along with special courts for young people, it had always been envisioned that special treatment facilities would be provided. In many communities this never came to pass. Even to this day, in many jurisdictions juveniles whose cases have been adjudicated in juvenile courts find themselves incarcerated in the same institutions with adults. Where they have been provided, the large probation staffs and expensive county and state institutions have not been able to "rehabilitate" or "correct" the large numbers of children in conflict with their society. If they had been, the statistics set forth above as to the increase in crime would necessarily be due entirely to new entrants upon the scene. We know that this is not so. Recidivism in juvenile cases is shockingly high and it does not stop when children achieve majority. In short, we have noted marked increases in the numbers of young felons being processed as adults who have extensive juvenile histories.

As a result of our disappointment with the way the system has been working a new trend is developing. There is now a tendency to narrow the spectrum of cases within the juvenile court's jurisdiction and to eliminate from it those which are peripheral. Thus, the tendency is to "divert" the status offenders, children

who are in conflict with their families or with society but who have not committed a crime, so that they do not enter into the formal judicial system at all. These cases are then simply closed, or perhaps referred to some other community agency without the juvenile court's coercive power. Cases at the other extreme, notably those involving violent youths with extensive records who may have committed serious criminal offenses, are found unfit for juvenile court jurisdiction and transferred to the adult court for processing. The rehabilitative ideal of the juvenile court is acknowledged to have been unsuccessful in their cases, and as failures they are transferred into a more punitive system.

Each of these trends appears to be the result of a belief that the juvenile justice system is not effective and that change is necessary. The question facing us is whether that change will be to return to discredited remedies, those in effect before the juvenile court came into popularity, or whether we will move on to new, imaginative and more effective programs. Is the wheel merely to turn back to where we were, or are we to move along a path to a better future? For each advocate of the one, there is an advocate for the other. For each person supporting new and innovative approaches, hoping to discover new methods and principles, there are others who feel that change for change's sake is not proper, and that if we don't know what we are doing, perhaps we should do nothing at all. The field seems ripe for research, for small scale experimentation and for trying harder to understand the principles underlying the modification of human behavior.

What is going to happen next? What direction will we take? What non-productive methods should be abandoned? Which new methods should be tried? These are the questions to be discussed by our contributors in the pages to follow. When you have read this volume perhaps you will still not be able to answer them. But I promise you this: you will be better equipped than you are now.