The Juvenile Court: Pioneer in Social Jurisprudence

John J. Kenney

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TO THE inquiry frequently put to the writer as to why he deserted the practice of law after fifteen years and entered an entirely new and separate field, there is but one answer, to wit: That the writer has not left his chosen profession of the law, but sincerely believes that he is laboring in the laboratory where there is being developed the practice and methods for the application of sociological jurisprudence. As these experiments are successfully demonstrated, they are being adopted into the general practice of law where it deals with the human element. The legal profession on the whole is not conscious of this absorption of these new methods into the general practice, but evidences of them may be seen in the practice of the circuit court calling for social investigations in divorce actions, and in the methods now pursued by the judges of the criminal courts in conducting social inquiry prior to sentence, an application of individual justice unknown to their predecessors. And is not the acceptance by the people, the bench and the bar of these new practices, in the absence of statutory authority, evidence of the desirability of bringing to the law such sciences as medicine and such as deal with human behavior,—biology, sociology, and psychology?

As pointed out by Professor Herbert H. Lou, in “Juvenile Courts in the United States,” “Law is a living social institution, and there is no reason why it should not keep pace with the progress of the modern social sciences and incorporate and utilize the ideas, the methods, and the morals developed therein. It would seem strange if our criminal law, our law courts, in court procedure were still clinging to the medieval sentiments of vengeance despite the tremendous advances that have been made in these sciences. With the advent of the sociological school of jurisprudence of the present century, which advocates the unification of all social sciences, of which law is but one, law is no longer regarded as a self centered, self sufficing science, isolated from the other social sciences. We are realizing more and more that law should be conceived as a means toward social end. This new conception of law compels us to take account of social causes and social effects in relation to social conditions and social progress. This is sometimes called social justice.”

It is natural that, as these practices and methods spread to other courts, the attention of lawyers is directed toward the juvenile court

*Chief Probation Officer of Milwaukee County.
as practically the first legal tribunal recognizing the inadequacy of the law unaided in the finding and readjusting of social conditions, and it is in a desire to place before them in a brief manner something in the philosophy, history, methods and practices of the juvenile court that the following is submitted.

The juvenile court is of comparatively recent origin, but the legal principles underlying it may be traced far back in legal history, and the court should be looked upon as a growth in legal theory and not as a departure therefrom. Its common law basis is found in the idea of chancery or equity and the extension of the English law investing the crown as parens patriae. This development from chancery is practically confined to cases involving the handling of the neglected and dependent, for in the handling of delinquents it is largely a development on the side of the criminal law. I believe that the establishment of the Juvenile Courts, as we know them, is chiefly due to public opinion and socially minded judges who had no chancery idea at the time of their establishment. Their proven desirability has caused an effort to reconcile them with historical legal dogmas.

Space does not permit the history of the development of the juvenile court. In different states the court operates under different legal systems, but as the result of thirty years of experience, methods have been tested and the main principle of technique standardized. The distinguishing feature of the juvenile court, wherever found, is the fact that the court has within itself investigational and supervisory departments and that the judge of the court is vested with administrative as well as judicial functions. From its legal aspect it is a part of the judicial system of the State—a part of the judicial branch of government—it is still a court of law deciding legal questions involving the custody and disposition of children according to the established principles of law.

The juvenile courts may be separate or independent courts, designated courts, or co-ordinated courts. The present system employed throughout the state of Wisconsin is that of designated courts. It is very important that the Judge of the Juvenile Court be a trained lawyer. As stated by Miss Lathrop, "The more the Juvenile Court departs from the penal methods, the more its bench needs legal ability of a high order with a clear sense of law as an instrument for perfecting social justice." The judge of course must be an expert in the sciences of human behavior and must possess ability to adjust human relations.

To assist the court, the judge has under his direction investigational and supervisory officers, generally known as Probation officers, together with detention home, clerical force, and physical and psychological clinics.
From a legal point of view, the procedure of the juvenile court is statutory, but from the administrative point of view it is socialized and parental in nature. Its procedure seeks to approximate the conduct of the parent and for this reason within the general limits prescribed by the statutes it is unhampered by tradition and precedent. The methods of ascertaining the facts is far different than that used by other courts. No longer does the court have to rely upon prosecutor and jury, but secures the facts in the same manner as though it were making inquiry in a business conducted by trained experts.

The court procedure in other courts is practically limited to the events taking place in the court room. In the Juvenile Court the court procedure is divided into three parts: (1) the process before hearings; (2) the court hearing; (3) supervision or treatment.

The court, through its investigational branch, begins to function whenever any person gives to the juvenile court information tending to show that a child is neglected, dependent or delinquent, thereupon the court makes preliminary inquiry to determine whether formal jurisdiction should be acquired. Upon completion of this inquiry, the court may authorize a petition to be filed, but only so does when it is apparent that conditions warrant court action. One of the most important functions of the court is the receiving of and passing upon complaints in the first instance. This power is usually delegated by the judge, or by statute, to the chief probation officer, and over 80% of the complaints are adjusted in this manner.

When a petition has been filed, the court may direct a further investigation and it is the character of these investigations and reports that gives the court the opportunities only available to the juvenile court. Discretion, of course, must be used in investigating each case. Cases involving city ordinances, traffic cases, ball playing on streets, etc., generally need no investigation. In addition to all the facts that the social investigator can obtain, the court should have such facts as can be contributed by competent physicians, psychiatrist, and psychologists.

At the completion of the preliminary steps, the case must be heard by the court. The proceedings are simple and informal, without strict adherence to legal formality. The general public is barred from its hearings. In Milwaukee County, representatives of the press are admitted in the belief that undue privacy might be as injurious as undue publicity. Due to the fact of the informality of the procedure, it is important that the Judge be thoroughly grounded in the principles of evidence and constantly mindful of them, and at the same time he should be mindful that no useful evidence is excluded.

The third stage of Juvenile Court procedure follows the court hear-
ing. The case may be dismissed, child placed on probation, placed in a foster family home, or committed to an institution. Charles L. Schute, Secretary of the National Probation Association, gives the following definition: "Probation, as it relates to children may be defined as a system of treatment for the delinquent child, or in the case of neglected or destitute child, for delinquent parents, by means of which the child and parents remain in their ordinary environment and to a great extent at liberty, but throughout the probation period, subject to the watchful care and personal influence of the agent of the court known as Probation Officer."

The social aspect of probation is much more important than its legal one. Legally, probation is but a definite order for suspending sentence, but socially it is the vital part of the court's work, for it deals with the fundamental purposes and methods of the court itself. Descriptions of methods of good probation work are too extensive to be treated here, but they include a formulation of plan of treatment, home visits and work with the family, school and recreational aspects of probation, vocational and medical aspects, and the particular problems involved in girls' cases.

In preparing this outline of the Juvenile Court, the writer has made use of H. H. Lou's work on the Juvenile Court in the United States and wishes to express his appreciation thereof.