

## THE YOUNG OFFENDER

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There is less truth than poetry, and there is little poetry, in these good-humoured lines from Gilbert and Sullivan's Savory Opera *Iolanthe*—(which was written before the advent of third parties in politics)—

I often think it's comical,  
How nature always does contrive  
That every boy and every gal,  
That's born into the world alive,  
Is either a little Liberal  
Or else a little Conservative.

Though many people exercise as much choice in choosing their politics, as they do their parents, the notion that a child becomes a member of an old line political party on his entrance into this world is the exact opposite of the truth.

The truth is that every child born into the world alive is an anarchist. The mighty-globe was made for him alone. It was created just for his own personal satisfaction. He is the centre of the universe. He wants no restraints. He wants to live by his own rules. He has to be taught to control his natural instincts and impulses. He has to learn to live by the roles of society. He must learn to fashion his behaviour in accordance with the law, which is a reflection of the minimum moral standards which society has laid down for the guidance of its members, to make it possible for man to live in relative harmony with his fellow-man. In short, a child must learn self-discipline, and self-control. He has to be taught how to live at peace with others, how to respect the rights of others so that they in turn may respect his. As Emerson said, "You teach your boy to walk, but he learns to run himself." But he will never learn to run, unless he has first been taught to walk. August Aichhorn puts it, in more technical language, in his classic book *Wayward Youth*, "Every child is at first an asocial being in that he demands direct primitive instinctual satisfaction without regard for the world around him. This behaviour, normal for the young child, is considered asocial or dissocial in the adult. The task of upbringing is to lead the child from this asocial to a social state."<sup>1</sup> This task is generously accomplished in the home. A normal child will learn self-discipline and self-control from his parents. From them he will get his first realization of his responsibility to others—from them he will learn the important lesson that his right to assist himself stops where the rights of others begin. The family home is the proper place for such lessons to be learnt. If parents fail in their primary obligation as parents, there is always the possibility that their child will come under the guidance of an old-fashioned, dedicated teacher who will point out to him the proper paths to be followed. If the

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1. Viking Compass edition (1965) 4.

home, and the school, and other agencies, such as the church, fail in the task of making a social being of a child, the problem eventually becomes one for the Courts. The Family Court is society's last line of defence in dealing with the problems of children who have not been taught to respect the rules of organized society. It is expected to remedy the failure of the home and the school and the other agencies that have had a part in moulding the social habits of a child.

If the court fails, when it enters the field after all other lines of defence have been breached, is it a matter for wonderment? It is easier to instill good habits in a child than it is to mend bad ones. The Family Court has no magic wand. It cannot be expected to work miracles—to cure, in all cases, bad social habits that a child has persisted in for a long time. But it does succeed in this task beyond all reasonable expectations. And the primary credit for its success must be given to the unsung heroes of the Family Court System—the probation officers. But more about them later.

The law never stands still. It is a moving stream, not a stagnant pool. A Greek philosopher once said that no man can step into the same stream twice. Certainly, no man can step into the same stream of law twice, for the stream is flowing continuously, if sometimes but sluggishly and fitfully.

To glance back over the long road that law has travelled since primitive man first laid down rules to govern his social conduct is the surest way to dispell the pessimistic doubts which assail us all, at times, as to the present state of the law, and as to the course which it will follow in the future. To reassure ourselves on this score let us take a brief glance at the law, say, of two centuries ago.

In his preface to *Barnaby Rudge*, Dickens refers to the case of Mary Jones, a married woman of nineteen years, the mother of two small children. Her husband was pressed into the army, their goods were seized for debt and she was turned into the street with her children. "She went to a linen-draper's shop (in Ludgate Street), took some coarse linen off the counter, (valued at more than a shilling) and slipped it under her cloak; the shopman saw her and she laid it down; for this she was hanged." "In her defence," she said "that she had lived in credit, and wanted for nothing, till a press-gang came and stole her husband from her; but since then, she had no bed to lie on; nothing to give her children to eat; and they were almost naked; and perhaps she might have done something wrong for she hardly knew what she did." Parish officers confirmed her story. Shop-lifting in Ludgate was then common. The Court felt that an example had to be made—and as Dickens reports "this woman was hanged for the comfort and satisfaction of shopkeepers

in Ludgate Street." She was conveyed from Newgate Prison to Tyburn, the place of execution, in a cart. Her younger child was feeding at her breast. The year was 1777.

We have travelled a long way since that time along the road of legal and penal reform. Today, Mary Jones would not be brought to trial. The law would recognize that she was the victim, not the enemy of society, and society would immediately seek ways to meet her needs and the needs of her children.

We have travelled, indeed, a long way in two hundred years, but we have not yet reached perfection. Perfection is still a beacon that gleams from afar. There are defects in our present system which we cannot see because we stand too close to them. As Walter de la Mare once said, "Malefactors of fourteen are not publicly hanged nowadays. Yet there are things we take for granted that may seem equally atrocious a century hence."

The basic structure of Canada's criminal law rests upon the common law of England. The common law is the law fashioned by the judges over the centuries from the customs of the people which were common to all parts of the country.

Under the common law the rule was that a child became responsible for his criminal acts at seven years of age. Between the ages of seven and fourteen, the law presumed a child to be incapable of committing a crime, but this presumption could be rebutted, and the records of the courts show that many children under the age of fourteen were punished, and very severely punished, for crime in England.

In a lecture which he gave, in 1935, Lord Hewart, then Lord Chief Justice of England, referred to an old Register still existing in Stafford Prison; and, as illustrative of the attitude of the law to the young offender, in the 19th century, he cited several entries from this Register. Here are four of them:

In 1837, Matilda Seymour, aged 10 years, for stealing one shawl and one petticoat, was sentenced to transportation for 7 years.

In 1834, George Saxon, aged 12 years, for stealing a gold watch, was sentenced to transportation for 7 years.

In the same year, Thomas Tow, aged 10 years, for stealing a donkey, was sentenced to transportation for 7 years.

In 1835, Thomas Bell, aged 11 years, for stealing two silk handkerchiefs, was sentenced to transportation for 7 years.

"The fact appears to be," commented Lord Hewart, "that in the last century the main concern of the Court, after conviction, was to weigh

the gravity of the guilt and to impose an appropriate dose of punishment. Little, if any, distinction seems to have been drawn between the adult offender, the adolescent, and the juvenile. They were all dangerous, all a nuisance, all fit for punishment, and the main question appears to have been how severe a punishment could be given for the particular offence against the law."<sup>2</sup>

In Canada adult and juvenile offenders were dealt with in the same courts, and pretty much on the same basis, until 1894; when the Dominion Parliament passed an act,<sup>3</sup> providing for the trial of alleged offenders under sixteen years of age in camera, and for their segregation from older alleged offenders.

The first Juvenile Delinquents Act went on the Dominion Statute books in 1908. The Juvenile Court was created, as a statutory instrument, to mitigate the harshness of the law towards children. Its broad purpose was to convert the process of dealing with juvenile offenders from a criminal to a civil one. Its philosophy was based on two revolutionary concepts. "The first was that a child was a growing and changing human being who should not be treated as an adult by the law. The second was that the purpose of the law in dealing with a child was to rehabilitate rather than punish him."<sup>4</sup> It represented a tremendous step forward. As Roscoe Pound, said: "The establishment of the juvenile court is one of the most significant advances in the administration of justice since the Magna Charta"<sup>5</sup>—that is since 1215.

In a valuable contribution to Canadian Law Times,<sup>6</sup> published shortly after the Juvenile Delinquents Act was adopted, W. L. Scott, then an enlightened lawyer in practice in Ottawa, explained the broad purpose of the Act, which introduced into Canada a system already in force in many parts of the civilized world. "If it is environment in childhood that counts in the making of criminals", said Scott, "the true and only way to cope with crime is to improve the environment, when it is capable of improvement, and when that cannot be accomplished, to remove the children to better surroundings. The rights of parents are sacred and ought not to be lightly interfered with, but they may be forfeited by abuse. Paramount to the rights of parents is the right of every child to a fair chance of growing up to be an honest, respectable citizen. What chance has the daughter of a prostitute, if left with her mother, to be other than a prostitute, or the son of a thief to be other than a thief?"

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2. Not Without Prejudice (no date) 255.

3. 57-58 Victoria, Cap. 58. An Act Respecting Arrest, Trial and Imprisonment of Youthful Offenders.

4. A View from the Bench, Judge Wise Polier (1964) 111.

5. Quoted from Guides for Juvenile Court Judges, edited by Marjorie Bell, (second printing, 1963) 127.

6. (1908) 28 C.L.T. 892.

And why should this girl be condemned, through no fault of her own, to a life of prostitution, or that boy, unwittingly, to a career of crime. The State, too, has rights and ought not to stand idly by while children are trained, either by evil example or by neglect, to disobey her laws.

"The Juvenile Delinquents Act supplies a practical application of this reasoning, and may be said to be based on three principles:

1. That probation is the only effective method of dealing with youthful offenders.

2. That children are children even when they break the law, and should be treated as such, and not as adult criminals. As a child cannot deal with its property, so it should be held incapable of committing a crime, strictly so called.

3. That adults should be held criminally responsible for bringing about delinquency in children.

"Other features of the Act," continued Scott, "are:

4. Trials of children before a judge specially selected for his fitness for the work.

5. Incarceration of children awaiting trial (when necessary), in detention homes instead of gaols.

6. Sentencing of children (when probation fails), to industrial schools, or reform schools, and not to jails and penitentiaries.

7. Supervision of probation work by a voluntary committee of citizens, who would also offer advice to the Court. Where there is a Children's Aid Society the committee of such society is intended to be the Juvenile Court Committee."

This feature is no longer relevant. Professionals—trained probation officers—have largely replaced amateurs. But there will always be a place for the amateur. Indeed, a recent issue of *Federal Probation, A Journal of Correctional Philosophy and Practice*, makes this statement: ". . . the early volunteers were honourably discharged as soon as we could pay people, and the pendulum swung hard toward paid professionals in the first five decades of this century. Today the pendulum swings back toward volunteers—but with a difference. While first probation was all volunteer and later virtually all paid professional, today it is both, and both are here to stay."<sup>7</sup>

The act of 1908 was re-enacted, with a few minor changes, in 1929. The present act is cited as the Juvenile Delinquents Act, Statutes of

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7. *The Professional and the Volunteer in Probation*, Ivan H. Scheier (June 1970) 12.

Canada 1929, c46. Proposals for the amendment of this Act have been brewing for a long time. The controversial Bill C-192—The Young Offenders Act—has been before the Dominion House. It proposes substantial changes in the law relating to the juvenile offender. What its fate will be remains to be seen. I shall not attempt to read the future and shall say no more about the bill, except that few bills can have been subjected to more unenlightened criticism.

Two sections in the present Act are good keys to open the understanding to the philosophy of the law with reference to the problems of juvenile delinquency. The first of these, Sec. 3 (2) reads as follows: "Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision." The second (Sec. 38) spells out the purpose of the Act more precisely: "This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance."

If the worthy purpose of the social rescue of children is not always realized, the failure is due, in no small measure, to lack of machinery to handle the problem efficiently. The court is charged with the responsibility of acting in the best interests of children but it does not always have at its command the resources to make dispositions which could best further these interests. In assessing the work of the court, some discount must be made for the limitations under which it labours.

Section 2(a) of the Act defines a 'child' as any boy or girl apparently or actually under the age of sixteen years, or such age as may be directed in any province. The Governor in Council may by proclamation direct that in any province the expression 'child' means any boy or girl apparently or actually under the age of eighteen years.

The Act is national legislation but it does not operate uniformly throughout Canada. A child of the age of 17 years may be treated in one province as a juvenile, and in the neighbouring province as an adult. Two provinces—Quebec and Manitoba have set the age for juveniles at 18; four provinces—Nova Scotia, New Brunswick, Ontario and Saskatchewan—at 16; three provinces—British Columbia, Newfoundland and Prince Edward Island—at 17; and Alberta has set the age for boys at 16 and the age for girls at 18.

A juvenile delinquent (Sec. 1(h)), is defined as "any child who

violates any provisions of the Criminal Code or any Dominion or provincial Statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or Provincial Statute."

The next Sec. provides that the commission by a child of any of the acts enumerated in the preceding paragraph constitutes an offence to be known as a delinquency.

The first juvenile court was established in Cook County, Illinois, in 1899. The sponsors of this court, the child savers as they have been called, invented a new meaning for the word delinquency. Canada borrowed this meaning when she passed the Juvenile Delinquents Act of 1908. W. L. Scott explained the purpose thus: "The object of adopting the designation "juvenile delinquent" is that children who break the criminal law may be known by some term other than "criminals", recognizing that they are in a different class from ordinary adult criminals and saving them from the brand of a "criminal record" at the outset of their careers."<sup>8</sup> Unless a child is transferred from Juvenile to adult court under the provisions of the Juvenile Delinquents Act, the Juvenile Court has exclusive jurisdiction to deal with juveniles. There is only one offence known to a juvenile court of which a juvenile may be found guilty—that is a delinquency. And a delinquency may be robbery with violence, or a complaint of proceeding against a red light while driving a motor vehicle. Technically, the court's authority over a child who has committed either offence is the same.

If a child has committed any offence, he must not be "convicted" but should be adjudged to have committed a delinquency. The Juvenile Court has no power to convict a child of any crime, or to treat him as a criminal offender.

"Under the Juvenile Delinquents Act, 1929," said Mr. Justice Du Val, in a Manitoba case, in re Dureault, "there is, as far as juveniles are concerned, only one offence, viz., "a delinquency" and the court has no power to convict a person charged under the Act of any crime, but merely adjudge that he has committed a delinquency. If such occurs the delinquent is not treated as an offender but must be dealt with under Sec. 20, which section contains the only powers possessed by the court in relation to a person adjudged to be a delinquent."<sup>9</sup>

Section 20 (1) of the Act, which sets out the only dispositions which

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8. *op. cit.* 901.

9. (1952) 4 W.W.R. (N.S.) 695.

the court may make, after a complaint has been established against a juvenile, reads as follows:

"In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the circumstances of the case:

"(a) suspend final disposition;

"(b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;

"(c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;

"(d) commit the child to the care or custody of a probation officer or of any other suitable person;

"(e) allow the child to remain in its home, subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;

"(f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;

"(g) impose upon the delinquent such further or other conditions as may be deemed advisable;

"(h) commit the child to the care of any Children's Aid Society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor-in-Council, or in any municipality in which there is no Children's Aid Society, to the charge of the superintendent, if one there be; or

"(i) commit the child to an industrial school duly approved by the Lieutenant-Governor-in-Council."

The Act gives express authority to the Court (Sec. 20 (5) ) to take such action, in every case, as in its opinion, is for the child's own good and in the best interests of the community. General provisions such as this open the door wide for the personal element to enter and make itself manifest in the judicial process in dealing with juveniles. What a court considers best for the community will be dictated by its training and social outlook. Many views, all of them honestly and sincerely held, may be taken of what may best serve the interest of the child and the community. Not so long ago, children were whipped for minor offences, in the firm belief that corporal punishment was the only sure method of correcting them and of protecting society. The justification for this



method of dealing with delinquent children was found in Sec. 20(g) of the Act. This section reads: "impose upon the delinquent such further or other conditions as may be deemed advisable." Any first year law student should know these words do not authorize whipping, but more of the same sort of treatment in harmony with the spirit of the Act.

Chief Justice Tritschler of the Manitoba Court of Queen's Bench gives an admirable interpretation of the meaning of the words: "such further or other conditions as may be deemed advisable," in the case of *Regina v. Strahl*.<sup>10</sup>

In this case a juvenile was found delinquent of causing a disturbance in a public place. The juvenile court judge suspended his driving license for a period of four months. On appeal to the Court of Queen's Bench, counsel for the boy argued that the *eiusdem generis* rule applied and that the further or other conditions which may be imposed on a juvenile are limited accordingly.

In rejecting this argument, the Chief Justice said; "The Act encourages a judge to take the role of a parent and I have no doubt that the learned judge in this case, by depriving the delinquent of his driving privileges, acted as a wise parent and imposed upon the delinquent a condition that was within the spirit and letter of the Act."

Probation is the most effective weapon in the arsenal of the juvenile court. Indeed, Judge Julian W. Mack, an early American juvenile court judge, said, in 1909, "Probation is, in fact, the keynote of juvenile court legislation."<sup>11</sup>

What is the true function of probation? There seems to be some doubt on this score in Canada. The brand most frequently used in this country is a hybrid brand. A sentence of imprisonment may be imposed on an offender to be followed by a period of probation. Imprisonment and probation do not face in the same direction. Probation was originally designed to keep offenders out of prison, to rehabilitate them while they are living in free society. As Lord Chief Justice Parker said, in speaking for the English Court of Criminal Appeal, in *Regina v. Evans* ". . . in the ordinary way a probation order must operate forthwith, whereas in the present case it could not become effective until the appellant was released from a detention centre . . . it seems to the court that an order for detention in a detention centre and an order for probation are wholly inconsistent."<sup>12</sup>

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10. (1967) 60 W.W.R. 765.

11. *The Juvenile Court*, (1909) 23 H.L.R. 116.

12. (1959) I.W.L.R. 26.

If supervision is to be imposed following a period of imprisonment, it should be in the nature of aftercare, and not probation. What's in a name? the matter-of-fact individual may ask? The answer has to be—a great deal, Probation and after-care are two entirely different matters.

Juvenile Law and Procedure in California gives this explanation of the proper function of probation: "Probation is a process by which society tries to provide corrective assistance to the individual who is in conflict with the law, at the same time affording protection to the community. Probation seeks to accomplish the rehabilitation of persons convicted of crime by returning them to society during a period of supervision rather than by sending them to jails or prisons. It is not feasible either socially or economically to imprison all offenders. Experience has shown that the majority can better be guided into constructive living without removing them from family, job or community."<sup>13</sup>

A more concise explanation of probation is found in Probation and Parole, edited by Drs. Barbara A. Kay and Clyde B. Vedder: "The essence of the probation system lies in the fact that the offender is not merely given "another chance", but that society provides him with constructive assistance in his struggle for social rehabilitation." . . . "The object of probation is the ultimate re-establishment of the probationer in the community."<sup>14</sup>

What are the advantages of probation? The most obvious advantage—its cost—should appeal to the tax-payer. Probation meets the claims of humanity and self-interest. An American writer asserts that it is cheaper to send a boy to Harvard than to jail.<sup>15</sup> The cost of keeping a prisoner in jail for a year varies between \$7,500.00 and \$9,500.00. The cost of placing a boy on probation is in the neighbourhood of \$150.00 and probation does a more effective salvaging job than prison. "Probation achieves (the goal of permanently reclaiming offenders as useful citizens)" says D. W. F. Coughlan, "in 70% of the cases it deals with, whereas incarceration falls short of this objective in an almost direct inverse ratio; over 75% of the people admitted to Canadian penitentiaries each year have been incarcerated before, and between 65% and 75% of those admitted to provincial reformatories have been incarcerated previously."<sup>16</sup>

Probation is designed to allow the offender to reshape his life in the framework of his normal living conditions.

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13. By Ernest R. Kamm, Derald D. Hunt and Jack A. Fleming, (1968) 153.

14. (2nd printing, 1971) 69.

15. No One will Listen by Lois G. Forer (1970) 153.

16. The History and Function of Probation, (1963) C.B.J. 198 at 202.

"Seen as alternative forms of treatment," says Howard Jones, in *Crime and a Changing Society*, "prison and probation are most strikingly distinguished by the fact that the latter is treatment given while the offender is living with the normal adult community, while the former involves treatment in an artificial community set up for the purpose."<sup>17</sup>

Probation does not dislocate the probationer's regular routines of life. It does not remove him from his home, his school, his work. "The importance of probation lies in the fact," says W. A. Eikin "that it is the one method open to the courts which aims at re-educating the offender or helping him to adapt himself to the circumstances of his life, without any violent interruption to the normal course of his existence."<sup>18</sup>

Probation gives the offender individual treatment. It realizes that all offenders do not need a dose from the same bottle. Therefore it adopts a different approach with each offender—one designed to meet his individual needs. It avoids the risk of confining the reformable offender with hardened criminals. "Prison," says the report of the United Nations on *The Young Adult Offender*, "becomes the final factor in his identification of himself with the criminal world. This world, "the inmate society," has its own system of values, a system strongly opposed to that of society at large. The prisoner's allegiance to the inmate society is apt to nullify all efforts at rehabilitation made in the institution and afterwards. Thus, Szelhaus believed of the re-cidivists he had studied, "that a spell in prison so far from favouring their reformation derailed them even further."<sup>19</sup>

An early Manitoba Statute<sup>20</sup> defined the duty of a probation officer in clear and concise terms that can hardly be improved upon:

It shall be the duty of a probation officer, subject to the directions of the court—

(a) To visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order, or subject thereto, as the probation officer may see fit;

(b) To see that he observes the conditions of his recognizance;

(c) To report to the court as to his behaviour;

(d) To advise, assist and befriend him, and when necessary to endeavour to find him suitable employment.

Section 31 of the *Juvenile Delinquents Act* defines the duties of probation officers in these general terms: "It shall be the duty of a probation

17. Pelican Books (1969) 106.

18. *English Studies in Criminal Science* Vol. 1; Penal Reform in England (1946) 111.

19. (1965) 88.

20. S.M. 1909, c. 50.

officer to make such investigation as may be required by the court; to be present in court in order to represent the interests of the child, when the case is heard; to furnish to the court such information and assistance as may be required; and take such charge of any child, before or after trial, as may be directed by the court."

In addition to acting as the extra arms and legs, and eyes and ears, that a juvenile court judge needs before he can discharge his duties in the spirit of the law, a probation officer has other responsibilities. Among these responsibilities is that of helping the probationer to mobilize his dormant capacities, to awaken his sleeping resources—to the end that he may energize at his maximum and behave at his optimum as a human being. He has further responsibility of mobilizing the appropriate resources of the community in the interest of the probationer. He must get for the probationer whatever help that the probationer needs and that society can provide. It is difficult work. It is emotional exhausting work. There are ten who will point to his failures, to one who will acknowledge his successes. He can, at best, but hope for a few lean scraps of praise. But what better work can engage a man's attention than to be concerned in the social rescue of children. Canada's great doctor, Sir William Osler, once said that if at the end of a lifetime devoted to teaching he could claim that he had lit a spark in the minds of three students, he would feel that his life had been a success. A probation officer must operate on the same principle. If he should succeed in having three boys permanently change the direction of their lives by his efforts, he may feel that his work is not in vain.

There is no single cause of juvenile delinquency. Many children are raised by conscientious parents in the most abject poverty. Yet they grow up to be useful, law-abiding members of the community. But poverty plus parental neglect is a sure formula for juvenile delinquency. There are many broken homes in which a mother, or a father, successfully does double duty as a parent. But a broken home plus alcoholism is another sure formula for delinquency.

"A common individual starting-point is insecurity in childhood," claims T. R. Tyrel, "due to a broken home or a bad family background. A child from such a home, feeling emotionally insecure and unloved, rejects rather than leaves his home. School to such a youngster often appears a mere meaningless accompaniment of the home which has failed him; the one prospect of securing esteem, and status seems to lie in the street gang and defiance of society; and this often is the start of delinquency."<sup>21</sup>

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21. Pelican Books (1963) 21.

Juvenile delinquency is not a modern phenomenon. The juvenile delinquent has always been with us. It is an old, old story—as old as civilization itself. The report of the Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders emphasizes this point: “In a time perspective, however,” it reads, “the problems of youth are not new. Only the forms in which they manifest themselves are different. Mankind has always lived in an age of transition and the age of adolescence has been perceived as an age of rebellion.”<sup>22</sup>

In this age, when we are hedged about with so many prohibitions, it is almost impossible for a growing boy, and to a lesser degree, for a growing girl, to avoid delinquent behaviour. All children commit delinquencies. All children do not get caught. In dealing with those who do get caught, the Court, like a wise parent, has to overlook trifles that it may have more influence in matters of moment. It must distinguish between the child who commits one or two delinquent acts and the child who is following a consistent pattern of delinquency.

To be a child in an age like the present age is not easy. It demands rare courage and fortitude—sufficient of these qualities to be able to live with fear and uncertainty. The world in which we live has changed more in the last fifty years than in the preceding thousand years. Man lives today under a sense of impending doom. He now has the means of destroying himself, of wiping himself and all his works from the face of the earth. The younger generation has a better realization of this stern fact than their parents have. They know that we are faced with a choice and that we do not have long to make that choice. As the Russian poet, Yevtushenko, says:

Of one thing  
I am firmly  
convinced:  
Universal destruction or  
universal brotherhood  
awaits us.

If universal brotherhood is our choice, it is the younger generation who will make it for us. For all their irritating habits, their stupid patterns of behaviour and their peculiar ways of life, for all their sensibility destroying music, and their body-and-soul destroying drugs, as Ramsay Clark, former attorney-general of United States, said: “Today’s youth, on the average, are the best educated, best-motivated, most idealistic and socially concerned generation yet produced . . .”<sup>23</sup>

Today’s youth are not in step with the materialistic standards of our acquisitive society. Recently, the Archbishop of York said: “Man is be-

22. (1967) 27.

23. *Crime in America* (1970) 245.

coming absorbed with things rather than with convictions; with the verb "to have" rather than with the verb "to be"; with goods rather than with character and destiny."<sup>24</sup> If the direction in which man is presently travelling is to be reversed, it is our young people who will reverse it. They enable us, against hope, to believe in the hope, that a better day may yet dawn.

A Trappist Monk, Thomas Merton, hit the nail squarely on the head with these words: "Yesterday I offered Mass for the new generation, the new poets, the fighters for peace and for civil rights, and for my own novices. There is in many of them a peculiar quality of truth that older squares have had rinsed out of themselves in hours of secure right-thinking and non-commitment."<sup>25</sup>

All things considered, one generation of children is no better and no worse than the preceding generation. What distinguishes the present generation from all previous generations is the increased opportunities and incitements that children have today of becoming delinquent. They suffer from exposure to "the excessive enticements of modern life." They are extended more invitations today to indulge in delinquent behaviour than ever before. To give an example; stores have reduced their staffs to a minimum, goods are displayed on counters, open to general inspection, self-service has become the order of the day. This practice constantly challenges the morals of the young by increasing their opportunity for shoplifting.

Their morals, their inherent urge to law-abidedness, are challenged in more direct fashions. Their latent instinct for violence is stimulated at every turn of their lives. T.V., movies, comic books, newspapers, even the arts, or what is accepted for them, in some circles today, make a constant appeal to the savage which lies dormant in them under a thin veneer of civilization.

They have drummed into their ears daily the lesson that violence is the answer to every problem. A Canadian poet, Alden Nowlan, sums up the modern situation in these words:

"A miracle consists of a violent solution  
to an insoluble problem.  
The mind absorbs such miracles—love stories  
end in a permanent kiss, and crimes  
are committed only by criminals,  
but the central fact  
is that any knot can be untied  
by a knife or a pistol shot."

24. Quoted by Rt. Hon. Lord Reith, Rectorial Address, University of Glasgow (1966).

25. Quoted by Lois G. Forer, op. cit. 65.

Spend an evening by your T.V. set and consider critically the advertisements that flash across the screen in a never-ending succession. Whether these advertisements are designed to sell soap or cigarettes, cosmetics or beer, their primary purpose is to appeal to the sex instinct. Under their stimulation young people grow up too quickly today. They sample fruits, which in other generations were forbidden to them by stern moral and religious codes, before they became mature. Many of them find their way into juvenile court. In the eyes of the law they have done wrong. But where does the real blame lie for their delinquent behaviour?

The use being made of commercial television today is enough to make Marconi and his fellow-workers turn over in their graves. And it is the young who are the chief victims.

In *The Insecure Offenders*, T. R. Fyvel, makes this observation: "Some recent interrogation of hardened New York delinquents has shown how deeply they were influenced by the fantasy crime world of television, and how little by school. Again, one can see a reason for the sharp increase in juvenile crime on the lower rungs of American society."

"However, as soon as one speaks of the cultural impact of the American affluent society, it has to be realized that this does not, of course, affect only the underprivileged minorities . . ."<sup>26</sup>

Many years ago, when Richard Bradford, a stout Puritan, saw a man on his way to Tyburn to be hanged, he said; "There but for the Grace of God go I." Bradford was an honest man who did not trifle with the truth. He knew, by looking into his own heart, that every man has in him the capacity for crime. He knew that all of us sail upon life's uncertain seas under sealed orders and that:

None can tell  
to what red Hell  
his sightless soul may stray.

Today, every father and every mother, who hears of a child in trouble should recall Bradford's words, and in all humility say: "There but for the Grace of God goes my child."

Let there be no mistake about it. Today, the delinquent is not always a product of a poor home in a poor neighbourhood. Today, in this tired, disillusioned world, in which the permissive has largely replaced the disciplined way of life; in which many of our children say to us, and the most promising among them: "I want out. I want no part of the world you have made. I'll find my own world and live by my own rules" —today the lightening of delinquency strikes where it will, from clear

26. *op. cit.* 172.

skys, without a hint of warning. Today, the wind of delinquency bloweth where it listeth, and thou hearest the sound thereof, but canst not tell whence it cometh, and whither it goeth. Today, no home from the most impoverished to the most affluent, from the hovel on the wrong side of the tracks to the mansion on the right side, can be securely insulated against the danger of delinquency.

Let there be no mistake about it. Today, we are all in this together, no matter on which side of the tracks we may live. The honest recognition of this fact may be the dawning of a new hope of victory in the battle which must be waged, day and night, against the menace of juvenile delinquency.

In this battle the probation officers are the front line troops but they cannot carry the burden themselves. There must be a total involvement of every member of the community. The citizen must stand behind and actively support the expert. "There are two very distinct aspects to the work of probation and, aftercare," asserts the European Committee on Crime Problems, "the work which can be done by untrained voluntary workers and the work which cannot. There will always be an immense field in which voluntary workers are not only useful but essential. There will never be enough State—or otherwise paid, trained officials to deal with the endless practical and social difficulties of (probationers). Also, contacts are often more human and reassuring when made by an unpaid member of society who is doing this work simply because he or she has a social conscience or even love for the more miserable sections of humanity. It is important for the (probationer) especially to feel that he has not been abandoned, and this is the best way for him to feel that he has not been rejected by society—that ordinary members of the community take an interest in his welfare."<sup>27</sup>

Many a boy who has taken a few steps down the path to delinquency has been persuaded to change his direction by becoming assured that some person has a real interest in him as a human being, not just as a number in a file. For a lonely boy, at odds with his family, with no friends among his age group, to be invited to a hockey game, or a wrestling match, by an adult who shows a real concern for him is sometimes enough to persuade the boy to mend wayward ways which if persisted in would lead inevitably to a life of crime.

Winnipeg Family Court has a programme called Compass. It is under the direction of Tom James and its purpose is to mobilize the latent resources of the community in the interests of children who need help. In busy urban centres, Juvenile Courts have reached the point where

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27. Probation and After-Care in Certain European Countries, (1964) 27.



volunteers are not just an added frill to help with the work of the Court but an absolute necessity. In Sweden and in Japan, indeed, in every country in the world where busy courts struggle with the problems of the young offender, the need for volunteer workers is recognized. This is what an American pamphlet, *The Future of the Juvenile Court*, has to say on the subject: "Volunteers have great potential as added resources for a probation team . . . Working without badges but with friendly interest, volunteers can be very helpful to delinquent and pre-delinquent youngsters and their families. They can function in a big-brother or big-sister capacity or as a friendly counselor to a family. Working with the probation team, they can assist the group worker, the recreation leader, or the juvenile delinquency prevention officer. They can also play an important role as a liaison between the team and the neighbourhood organizations."<sup>28</sup>

Most juveniles—about ninety per-cent of them—readily admit their delinquencies. Many of them seem under an irresistible compulsion to do so. Affection is as necessary for the growth of a child's soul as food is for his body. Children who suffer from emotional malnutrition often commit delinquencies to attract attention to themselves. They break the rules so that they may get someone to pay some heed to them and their needs. How can they achieve this purpose if they do not admit their fault?

And, for their own good, it is well that they do. I do not rest this opinion solely on the precept that confession is good for the soul. A juvenile does not learn from his mistakes unless he sees and admits them. If he should succeed in evading the consequences of his delinquency—if he should beat the rap by some technical defence—his own best interests will not be served. He will reason in this fashion: I got away with it once, and I have an even chance of getting away with it again. The function of a juvenile court is to treat delinquent children, to try to restore them as useful, law-abiding members of society—not to punish them. The sooner the process is begun the better for the juvenile. A disease too long neglected may not respond to treatment. A juvenile left too long to follow the downward path of delinquency may be beyond rehabilitation or cure. As the Roman poet Juvenal said:

No one ever reached the depths  
in one single little step.

In the beginning children follow the path of delinquency by small steps, but each small step that is left unchecked, gives place to a longer step, until finally the steps become strides, and the juvenile is on the way to a life of crime.

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<sup>28</sup>. A consultant's paper prepared for the Joint Commission on Correctional Manpower and Training (June 1968) 47.

A Juvenile court must proceed on the principle that the life potential of a promising boy or girl should not be cut off by reason of a single, thoughtless mistake. To brand a boy or a girl as a juvenile delinquent on his or her first appearance in court is not in harmony with the spirit and letter of the Juvenile Delinquents Act. Fortunately, there is a way out for the judge. A section<sup>29</sup> in the Act permits him to adjourn a complaint sine die. This must be done before a plea is entered, thus giving the child no record as an offender.<sup>30</sup>

It is a serious matter to assess a juvenile his first delinquency. "Once a juvenile delinquent, whatever his make-up, has been classified as such, "claims Dr. L. Bovet, "and has been subjected to various measures, secondary psychological reactions occur, unrelated to the origins of his delinquent behaviour but common to all who share his fate. On the other hand, public opinion and all "right-minded" people, because he has been labelled delinquent, take up special attitudes towards him, regardless of the individual features of his case."<sup>31</sup>

The sponsors of the Juvenile Delinquents Act adopted the designation 'juvenile delinquent' so that young offenders would not be called criminals, but the word 'delinquent' has taken on a different meaning, since it was first adopted in 1908. It has become a highly emotive word. "Despite attempts to purge 'juvenile delinquency' of pejorative implications," says Anthony M. Platt, in his book "The Child Savers", "it has come to have as much dramatic significance for community disapproval as the label 'criminal' which it replaced."<sup>32</sup> To attach the delinquent label to a juvenile may cast a shadow over his whole future life. But there is also another danger. The boy may think that he has a reputation to maintain—like the gunmen of the old West. "All too often, says Marvin B. Wolfgang, "the sting of that stigma so affects a juvenile soon to become a man that he fulfills the prophecy of the delinquent label because he cannot wash it off."<sup>33</sup>

Two American writers agree that the labelling process is indeed fraught with danger. "The evidence suggests that the official response to the (delinquent) behaviour . . . may initiate processes that push the misbehaving juvenile toward further delinquent conduct, and, at least, make it more difficult for them to re-enter the conventional world. This hypothesis is based upon the concept of labeling and a theory of its con-

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29. Section 16.

30. *R. v. S.*, (1946) 2 W.W.R. 561.

31. *Psychiatric Aspects of Juvenile Delinquency*, World Health Organization (1951) 10.

32. (1969) 160.

33. *Changing Concepts of Crime and its Treatment*, edited by Hugh J. Klare (1966) 42.

sequences . . . In other words, the individual begins to think of himself as delinquent, and he organizes his behaviour accordingly."<sup>34</sup>

In any discussion about the young offender there is one fact which must always be kept in mind—a juvenile court is a court of law, not a social agency, or a welfare committee. As an American handbook for juvenile court judges puts it: "(A Juvenile Court) is not a criminal court of modified jurisdiction nor a social agency embossed with certain legal trappings, but a special statutory court with broad equitable powers specifically designed for the adjudication and disposition of delinquent and neglected children's cases."<sup>35</sup> The court was never intended to disenfranchise children of their legal rights—though it has been used, and is still being used, to achieve just that purpose. When a juvenile stands before the court, he is presumed to be innocent until he has been adjudged delinquent—either on his own admission, or after a hearing at which he is given every opportunity to make a full answer and defence to the complaint alleged against him. His answer should be a defence on the merits, not a fabrication of strained and over-subtle technicalities such as some lawyers dredge up from the bottom of their bag of tricks. As Mr. Justice Dennistoun said in the Manitoba Court of Appeal, "Mediaeval technicalities are out of date; fiat justitia is the modern desire of our courts."<sup>36</sup>

There are certain earnest souls who believe that it is their responsibility to help every child who, in their own opinion, requires help. The Juvenile Court must operate on the principle that before a child can be treated as a delinquent, he must be found to be a delinquent. Only those whose status, after an adjudication, has been determined as delinquent may be subjected to the processes of correctional treatment.

May I pack this self-evident proposition into the nutshell of Emmanuel Kant's words: "judicial punishment can never be imposed merely for the purpose of securing some extrinsic good, either for the criminal himself or for civil society; it must in all cases be imposed (and can only be imposed) because the individual upon whom it is inflicted has committed an offence."

"No man," said Dr. Johnson, "forgets his original trade; the rights of nations, and of kings, sink into questions of grammar, if grammarians discuss them." In other words, a man tends to suffer from an occupational bias; to wear the harness, including the blinkers, of his trade or profession.

34. Wheeler and Cottrell, *Juvenile Delinquency: Its Prevention and Control*, quoted *Cases and Materials Relating to Juvenile Courts*, edited by Orman W. Ketcham and Monrad G. Paulsen (1967) 420.

35. *Procedure and Evidence in the Juvenile Court* (1962) 1.

36. *R. v. S.* op. cit., at 569.

The lawyer and the social worker do not view the problems of children through the same eyes. They may be seeking mutual goals but they approach them by different paths. To the lawyer, the first consideration must be has a child brought himself within the compass of the law. To the social worker, the question immediately presents itself, what can I do to help this child? This conflict can be a basic one—with the ultimate stake the fundamental liberties of the child. Because any disposition which is made of the case against a young offender should be in his own best interests, it does not follow that strict regard should not be paid to the legal rights which are guaranteed him as a citizen. A benevolent approach must not be pursued at the expense of elementary justice. When a plea of not delinquent is entered in Juvenile Court, the Judge has the responsibility of making sure that the child and his parents understand their legal rights; and, in this respect the National Council on Crime and Delinquency of United States has suggested these guides for juvenile court judges: "In such cases the judge should explain that the child and the parents have a right to council if they so desire; that the child will not be required to be a witness against himself; that at the hearing confronting witnesses may be cross-examined, and that he is entitled to have his own witnesses."<sup>37</sup>

Two recent decisions of the Supreme Court of the United States, in *re Kent*<sup>38</sup> and *re Gault*,<sup>39</sup> have caused a great deal of rethinking, both in that country and in this, on the subject of the civil rights of juveniles.

In the *Kent* case, Mr. Justice Fortas, speaking for a majority of the court, suggested that juveniles were being given the worst of two worlds—they were not being accorded the basic civil rights that an adult may claim, and they were not being given the treatment, the care that a concerned parent would give them, which the juvenile court was designed to provide for them.

In the *Gault* case, the fifteen year old defendant was convicted before an Arizona Juvenile Court of making lewd telephone calls and was sent to the state reformatory until he reached his majority. No notice of his hearing was given to his parents, he was not confronted by the neighbour who had reported him to the court, no complaint was read to him, no plea was entered, and no evidence was adduced. His trial as such was a pure and unadulterated farce. The penalty for similar misconduct by an adult, after a trial and a conviction, would have been a fine of from \$5.00 to \$50.00, or imprisonment for not more than two months. *Gault* was certainly not dealt with by the judge as a concerned parent would have dealt with his own child. Mr. Justice Fortas again spoke for a majority of

37. *Guides for Juvenile Court Judges*, op. cit., 60.

38. (1966) 383 U.S. 541.

39. (1967) 87 Sup. Ct. 1428.

the Supreme Court. In discharging Gault, the Court held that the 14th amendment requires States to provide various procedural safeguards for juveniles who are charged with delinquency. It held specifically that juveniles must be

- (1) given sufficient notice to prepare a defence to the charges
- (2) advised of the right of counsel, including free legal aid
- (3) advised of their right to remain silent
- (4) afforded the right of confrontation and
- (5) given the right of cross-examination.

Many books have been written in the United States since the Gault case from a deeply pessimistic point-of-view. Here is what Lisa Aversa Richette says in her book *The Throwaway Children*: "Virtually everyone involved in the (juvenile court) process—police, guards, matrons, probation officers, social-workers, psychiatrists and other therapists, lawyers, and judges—struggles with a sense of frustration. The system calls itself a missionary effort to effect genuine change in the lives of the young. Yet the brutal reality is that all too few individuals and communities support this goal. "You're coddling them!" is the familiar hue and cry.

"Control and punishment, not treatment and rehabilitation, are what the public really demands."<sup>40</sup>

I am not prepared to accept this conclusion. There will always be benighted people about, people who have not come into the twentieth century. Unfortunately, they are the noisy ones—the ones who make themselves heard in any current controversy. They give a false picture. The majority of the people have their hearts in the right place. When they know what the juvenile court is trying to achieve, they approve of its purpose. The trouble is that so few of them do know and there is need for a great deal of public relations work among the members of the public to bring home to them the philosophy upon which the work of the court is based.

The Juvenile Court is far from perfect. There is a wide gulf between the rhetoric and the reality. But it is my firm and unshakable belief that even in its short existence "(it) has demonstrated that, with all its limitations, it still represents the best method that our civilization has devised to handle one of our most critical and important social problems."<sup>41</sup>

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40. (1969) 15.

41. Quoted from *The Supreme Court and the Juvenile Court*, by Noah Weinstein and Corinne R. Goodman, *Crime and Delinquency* (October 1967) 487.

\* The Senior Judge of the Winnipeg Family Court.

