

Spring 1991

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Recommended Citation

Maurice B. Jr. Cohill, Why Do I Like Broccoli, 82 J. Crim. L. & Criminology 125 (1991-1992)

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WHY DO I LIKE BROCCOLI? (DE GUSTIBUS NON EST DISPUTANDUM)

MAURICE B. COHILL, JR.*

I. INTRODUCTION

The way in which a society treats its children—its young people—says something about the future of a society, its beliefs, and the viability of its beliefs. The way in which a society treats children who deviate from the beliefs of that society, when those beliefs are expressed in laws, says something about its humanity, its morality, its resilience, its ability to be self-correcting.¹

Having spent eleven years as a judge in the Juvenile Court of Allegheny County (Pittsburgh), Pennsylvania, and having heard some 25,000 delinquency, dependency, and neglect cases during that time, I have developed a few notions, personal theories, and ideas about delinquency and its causes and cures. These theories were quite different from the ones I held going into the job.

Like most laymen, I felt that firm discipline was all that was needed to straighten out delinquent kids. I soon concluded, however, that discipline was but a fraction of the total equation. I also concluded shortly thereafter that we know very little about what works because we have been too immersed in our caseloads to make the necessary inquiry. In 1973, these conclusions prompted some other judges and me, as members of the National Council of Juvenile and Family Court Judges ("National Council"), to establish the National Center for Juvenile Justice ("National Center") in Pittsburgh, Pennsylvania, as the research arm of the National Council.

Most juvenile judges cannot tell you what their "success" rate is with juveniles, primarily because "success" is ill-defined and variably measured. Some judges define success as keeping the juvenile

* Chief Judge, United States District Court, Western District of Pennsylvania. The author acknowledges the great assistance he received from Hunter Hurst, Director of the National Center for Juvenile Justice, in preparing this paper. Mr. Hurst reviewed it, made valid criticisms, and assisted in editing. The opinions expressed are those of the author.

¹ National Council of Juvenile and Family Court Judges, *A Proposal for the Establishment of a National Center for Juvenile Justice* (1973) (available through the author).

from ever returning to juvenile court; others define it as avoiding the necessity of institutional commitment. My goal was keeping the delinquent from ever entering the adult criminal justice system.

How to accomplish these goals was (and is) the quintessential question. Prior to 1973, little effort was made to search for the answer. As judges, we decided that we had to do something to promote research in all areas of delinquency. That is why I am pleased to review studies such as the three under consideration here. Although I may not agree with all the conclusions or methodology, it is encouraging to see how much research in these difficult areas is being done throughout the United States. I hasten to add that the three papers reviewed here are the results of the independent research of their authors and have no connection with the National Council or the National Center.

It would be presumptuous for me to fault any of the three studies as research because I am not a researcher. It would likewise be inadvisable for me to explore the implications that these "studies will have on society's understanding of juveniles and juvenile delinquency and how this new understanding will impact upon the social, economic and legal concerns that form the foundation of society's institutional response to juvenile delinquency." That is what the editor asked me to do, but this charge includes some presumptions that I'm not sure are valid. I'm not sure that this research gets to the heart of the problem (I use the word "heart" advisedly), nor am I sure that the researchers have gone beyond data which can easily be given an empirical dimension.

II. GENERAL CRITICISMS

All three of the studies use "Social Control Theory" as a point of departure for this postulate testing, but none of the researchers control for the effect of strong social bonding with criminal parents. No matter how "bad" parents may be, we judges have all seen the attachment many children have for their parents when we decide that they must be removed from the home. Moreover, if bonding with a socially conforming "good" parent predicts non-delinquent behavior, it is at least possible that strong bonds with criminal parents will predict delinquent behavior.

Second, all three of the studies assume that the caretaker/guardian was a significant socializer of children. This tendency was especially pronounced for the Loeber *et al.*² and

² Loeber, Stouthamer-Loeber, Van Kammen & Farrington, *Initiation, Escalation and Desistance in Juvenile Offending and Their Correlates*, 82 J. CRIM. L. & CRIMINOLOGY 36 (1991).

Thornberry *et al.*³ analyses. In these two studies, caretaker/guardian translated into "mothers or stepmothers" 95% of the time. Fathers, paramours of the mothers or stepmothers, older siblings, and grandparents were treated as if they were peripheral or non-existent.

Third, none of the studies examined genetic, organic, and/or biological variables, although Huizinga *et al.*⁴ purport to be collecting unspecified biological data. Does the absence of this constellation of data reflect unarticulated values of the researchers?

Finally, as noted earlier, I had the distinct impression that these researchers were most interested in data that could easily be given an empirical dimension. Wouldn't it be wonderful to have these researchers' conclusions after they had lived with the subjects of the research for a while, rather than intermittent interviewing, recording, and then number crunching? Then, we might be able to see the subjects as people, not unidimensional statistics.

III. SPECIFIC CRITICISMS

The Huizinga *et al.* study seems to combine impulsivity and hyperactivity into the same construct. Most students, of course, would agree that lack of impulse control is what criminal behavior is all about, and that certain kinds of hyperactivity may explain some poor impulse control, but treating these variables as interchangeable obscures understanding of what each contributes to the equation.

Loeber *et al.* and Thornberry *et al.* both tend to talk about *caretakers* rather than *caregivers*. Caretakers are everybody and nobody. They may be the worker at the day care center or even the guard at the jail, but these caretakers are not the child's mother and father. The researchers seem to have assumed (and rather methodically at that) that this generic character whom they have labelled "caretaker" is all controlling in the socialization of children. The researchers fail to give these individuals a human dimension (*e.g.*, "Momma," "Poppa" or "Grandma") and to demonstrate what role they actually play in the child's socialization.

Loeber's work provides insight into the correlates of initiation and desistance of delinquent careers. However, it sheds no light on

³ Thornberry, Lizotte, Krohn, Farnworth & Jang, *Testing Interactional Theory: An Examination of Reciprocal Causal Relationships Among Family, School, and Delinquency*, 82 J. CRIM. L. & CRIMINOLOGY 3 (1991).

⁴ Huizinga, Esbensen & Weiher, *Are There Multiple Paths to Delinquency?*, 82 J. CRIM. L. & CRIMINOLOGY 83 (1991).

the population that should concern us most—the children who begin and then escalate their delinquent careers.

As a judge, I am not nearly as concerned about transient behavior in children as I am about intractable criminal behavior. This particular study would have had more potential for addressing critical policy issues if it had distinguished between the correlates of assaultive-type behavior and the correlates of deceptive-type behavior. Deceptive types (thieves) constitute the overwhelming statistical majority of delinquents and adult offenders, but they have never been the group that drives our crime policy from a political standpoint.

Assaultive behavior, although it constitutes only ten percent of juvenile arrests, causes fear. Because it causes fear, assaultive behavior exerts a disproportionate weight on our prevention and control policies. As a result, the government spends most of its time developing strategies to abate public fear of crime, rather than dealing with underlying issues. Consequently, understanding the correlates of different types of behavior is both essential and useful to effective delinquency intervention and prevention. For example, if aggressive behavior in a five-year-old is a correlate of later homicide, then our policy of intervention in kindergarten should be quite different than if aggressive behavior in a five-year-old is a correlate of later shoplifting.

Thornberry *et al.*'s study is a valid inquiry, but may not be welcome news for those who believe that early intervention may negatively label the child and serve as a secondary cause of delinquency. I believed their thesis after my first few days in juvenile court—some twenty-five years ago. Thornberry *et al.*'s final conclusion states "if problems in the family, or school, or initial delinquency itself are left unattended, a behavioral trajectory is established that increases considerably the likelihood of a delinquent career."⁵ They continued, "However, if early problems are successfully treated, then the same reciprocal quality of the system works to decrease the chances of delinquency and increases the chances of conformity. For example, successful family intervention should both reduce delinquency and increase commitment to school"⁶ Frankly, I would have been shocked had they reached any other conclusion.

IV. "YOU GOTTA HAVE HEART"

"You Gotta Have Heart" was one of the popular songs from the Broadway show "Damn Yankees." One of the problems with the

⁵ Thornberry, *supra* note 3, at 32-33.

⁶ *Id.* at 33.

kinds of research projects published here is the tendency of nearly all researchers (lawyers, too, I might add) to conduct research that is basically one dimensional. Researchers and lawyers like to collect documentation and data to which they can ascribe numbers. Sometimes the numbers may be misleading or of little help without knowing something about the child who is represented by the number.

When children, particularly delinquent children, are the subject of a study, does anyone ever look beyond their schools and intra-family relationships to their hearts, their characters, their ambitions—those human qualities that are so important? Should not we be looking for signs of sensitivity and how that may prove a pathway to preventing and correcting delinquent propensities?

What I loved about juvenile court was the opportunity to see those kids and their families. Even to see them interact in the artificial arena of the court was instructive. To mete out so-called justice was rarely an easy task. I wrote an article once, titled “The Critics Don’t Look in Their Eyes.”⁷ It was an attempt not only to answer the critics who espoused the “lock ’em up and throw away the key” philosophy but to counteract those who advocated removing status offenders entirely from the courts—intentionally doing nothing about truancy or incorrigible behavior.

My thesis was that it is easy for the critics to sit on Mount Olympus, or in an ivory tower somewhere, and say that those kids should all be removed from their own homes and either locked-up or placed in foster homes, or—at the other extreme—that courts should do nothing when children run from home or are truant from school because juvenile court is simply a training ground for young criminals. But when you are in the same room with them, you have quite a different point of view—a living dimension that is absent from most research papers. You quickly discover that these kids and their families (such as they are) are people.

The Thornberry *et al.* paper, based on the Rochester Youth Development Study, takes a look at one of the conclusions I had reached independently after a short time on the juvenile bench. I found that two common factors in the lives of delinquent children are: (i) a disruptive home life; and (ii) poor performance in school. The authors conclude that bonding adolescents to society is important; no single pathway to delinquency exists but a “complex causal network suggest[s] the need for comprehensive, holistic treatment strategies;” programs need to address all of these causal influences

⁷ Cohill, *The Critics Don't Look in Their Eyes*, Pittsburgh Press, Family Magazine (Nov. 9, 1975).

in a coherent package; intervention should start early; the educational arena is important; and, without intervention into family or school problems, the likelihood of delinquency is increased.⁸

I cannot disagree with any of these conclusions.

The Loeber *et al.* paper on the Pittsburgh Youth Study considers a two-year follow-up of boys who were in grades one, four and seven. The authors are careful to note that their conclusions are tentative and should be followed by additional study. They established "correlates of offending" and considered school factors, early intervention versus late intervention, and prevention efforts aimed at preventing delinquency and the escalation of delinquent conduct. In a recent study of delinquent careers, Howard N. Snyder identified truancy as the offense of first referral that was most predictive of subsequent court referrals for criminal law violations.⁹ Neither Loeber's nor Snyder's findings are news. We have known for years that school failure, for whatever reason, is predictive of social failure, but we have not acted accordingly.

V. *DE GUSTIBUS NON EST DISPUTANDUM*

The father of my best friend used to say "De gustibus non est disputandum" to us when we were boys arguing over whether some food or style or book was "good" or not. The Latin expression covers that situation—"Concerning taste, there's no disputing." It is useless to argue about taste.

The President of these United States recently announced that he doesn't like broccoli and, now that he is President, he isn't going to eat it. Well, I happen to like broccoli. Why? Who knows? The President and I could argue all day over why it does or doesn't taste good, but neither would be able to change the other's viewpoint on that score.

The causes of delinquency are a bit like that. Unless we can somehow grasp the entire character of the child, especially the essence of the heart, we will not proceed very far in shaping his development or in treating him after the fact. Anyone who has dealt with delinquent children knows as much. We have all sat and listened to a child describe a sickeningly violent act as calmly as describing a baseball game. The child ought to be crying. The court psychologist would tell you that the child's "affect" was "inappropriate."

⁸ Thornberry, *supra* note 3, at 32.

⁹ H. SNYDER, COURT CAREERS OF JUVENILE OFFENDERS (1988) (monograph prepared for OJJDP).

But it seems to me that understanding the clinical dimensions of the affect are only the tip of the iceberg.

We have to know how to affect that "affect." How do we get through?

Alcohol has always gone hand-in-hand with delinquent behavior (both child and adult). Over the past twenty years, drugs have been added to the equation—both legal and illicit. Any substance that relaxes your social conscience, that releases your internal social controls, poses problems. You do things that you would not do otherwise.

Some researchers see a link between heredity and behavior.¹⁰ Numerous researchers believe that such a link exists with respect to alcoholism and other dependencies. There may be merit to that argument.

We also observe, or are aware, that seriously delinquent kids do not learn from their experiences. Failure is the best teacher, but our schools condemn failure. Is it possible that our teaching methods are related to the inability of delinquent recidivists to learn from their mistakes? Is it also possible that our large, curriculum-rich, impersonal schools impede the development of sensitive, caring qualities in our children?

I have alluded to the "heart" in this paper. I have meant it in the sense of character, but does it not carry over to other aspects of the heart?

Just as Herrnstein theorizes that there is a genetic link to crime and delinquency, most cardiologists believe that there is a genetic link to heart disease.

Just as we now have a much better arsenal of methods to combat heart disease, I hope that social researchers in the field of juvenile delinquency will likewise develop better means of delinquency intervention and prevention. No one answer exists, but researchers—such as those whose work we have considered here—will be in a position to make great contributions, given sufficient time and money.

Finally, I do not know the ages of the authors of the papers reviewed here, nor do I know how much research money they will be able to acquire. To continue research of the type conducted by these researchers will require longevity and lots of money. If these researchers can conduct these studies for the next thirty years or so, and sustain their funding at adequate levels, they might learn something of lasting benefit to mankind.

¹⁰ See, e.g., Herrnstein, *The Individual Offender*, 7 TODAY'S DELINQ. 5 (1988).