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Socialization of Juvenile Court Procedure

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THE SOCIALIZATION OF JUVENILE COURT PROCEDURE[1]

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The usefulness of any human institution depends on the degree to which it is socialized. The juvenile court movement represents to a remarkable extent the way in which such an ancient legal institution as court procedure may be animated by the spirit of humanism. Courts, for thousands of years, have been rendering decisions, but until the juvenile court with its clinics, its staff of experts, doctors, psychologists, psychiatrists and social workers was established no one ever traced the actual result of a court decision in terms of human values. What becomes of the lives of individuals upon whom the courts pass judgment? What sum total of end-results have we accumulated? No one knows. But the juvenile court is conceived in the spirit of the clinic; it is a kind of laboratory of human behavior.

How this result is achieved by a procedure that is socialized this paper will try to explain. For illustration of the statutory law on which the juvenile court is based, California will be chosen as an example.

The Juvenile Court of California, first established by legislative enactment in 1903, now operates under statutes amended in 1915 substantially as follows: A judge of the Superior Court is chosen by his fellow judges to sit as a Juvenile Court judge. Jurisdiction extends to persons under twenty-one years of age. (Under certain conditions persons charged with felony between the ages of eighteen and twenty-one are dealt with by the criminal courts.) The law formulates no definition of delinquency or dependency, but enumerates fourteen specific conditions under which a child may be brought before the court. These conditions embrace the range of offenses, behavior-difficulties, physical, mental and social handicaps which cause or tend to cause a child to need the protection and guardianship of the state. The Juvenile Court has jurisdiction over adults criminally liable for contributing to certain of the above conditions.

Proceedings are begun by petition filed with the clerk of the Superior Court by any interested person who, on information and belief, alleges that a child comes within the provisions of the law. The attendance of the child and its parents is secured by citation; a warrant may be issued if citation seems likely to be ineffectual. Attendance of witnesses is secured by subpœna.

[1]Referee of Juvenile Court, Los Angeles County, Calif.

The law states,[2] No. 5: "In no case shall an order adjudging a person to be a ward of the Juvenile Court be deemed to be a conviction of crime." Any order made by the court may be changed, modified, or set aside, as to the judge may seem meet and proper. Provision for an appeal from judgment is made. The keynote to the Act is found in No. 24, entitled "Construction": "This Act shall be liberally construed, to the end that its purpose may be carried out, to-wit, that the care, custody and discipline of a ward of the Juvenile Court, as defined in this act, shall approximate as nearly as may be that which should be given by his parents.[3]

California, in counties of the first class, that is to say, Los Angeles, joins New Mexico as the only state that specifically provides by law for the appointment of a woman referee to hear cases of girls and young boys brought before the court. The referee has the usual power of referees in chancery cases, hears the testimony of witnesses and certifies to the judge of the Juvenile Court findings upon the case, together with recommendation as to the judgment or order to be made.

Such, in brief, is the legal background of the Juvenile Court in Los Angeles County. Since the enactment of 1915 all cases of girls under twenty-one, and boys under thirteen, have been privately heard in the detention home by a woman referee. Socialization of procedure has been the rule, and if the number of cases appealed is a test, the plan has been successful, for during the four years when Orfa Jean Shontz, the first woman referee to be appointed, heard these cases, over six thousand matters were before the court, and not one appeal was taken from her findings and recommendations.

The qualifications of the woman who is to serve as referee of the Juvenile Court have not been defined by law. In chancery practice it is presumed that the master, or referee, is chosen because of some special skill; thus cases where estates are involved are sometimes referred to accountants; referees in bankruptcy proceedings are very general. Anciently the Anglo-Saxon usage was to appoint learned men, bishops, physicians or lawyers, and that the custom was displeasing to some is indicated as early 1377, when a petition was addressed by the House of Commons to the King pleading that "masterships and other singularities" be done away with, but we find King Henry V addressing one of his masters in chancery thus, "that ye make suche an ende in this matiere that we be no more vexed hereafter with thaire complaints and God have you in His keeping."[4]

[2]California Statutes, approved June 5, 1915; amended 1917, p. 1002.
[3]Loc. Cit., Section 5.
[4]*Henderson, John G.,* Chancery Practice, p. 121; Chicago, 1904.

The referee is the "arm of the court." In the training of a woman referee of the Juvenile Court sound legal knowledge is essential, particularly of the law of evidence and principles of the laws relating to the protection of minors and women and all that pertains to domestic relations. Knowledge of psychology, mental hygiene, sociology and anthropology, at least those branches of anthropology that deal with criminology, and racial traits and capacities is much to be desired. The referee should have had training in social work, in the elements of the case-method and in the practical field of probation. She should have imagination and a sense of humor and a genuine love of youth.

Socialization—what do we mean by this term as applied to Juvenile Court procedure? I take it to mean the process by which the purpose and goal of the Juvenile Court is best attained, that method which best frees the spirit of the Juvenile Court and permits it to serve the social ideal it was created to express.

Briefly, then, we must call to mind its origin. The Juvenile Court sprang into being in the decade following the Illinois legislation of 1898 in response to the demand of a civic conscience freshly awake to the horror of treating children as criminals. In theory this court is parental, a court of guardianship, not a criminal or quasi-criminal court, but a court where the paramount issue is the welfare of the child. Rooted in the ancient Anglo-Saxon concept of the King as the "ultimate guardian of his subjects, who by reason of helplessness could not help themselves," the Juvenile Court is the modern outgrowth of the power of *parens patriae,* administered through the English courts of chancery, as students of the Juvenile Court movement, notably Judge Edward Waite of Minnesota, have so ably pointed out.[5]

That simple folk looked to the courts of equity for remedy against the rigors of the common law is expressed as early as 1321. Aubyn de Clyton, complaining of a gross and outrageous trespass, petitions the court of equity on the ground that "the said Johan and Phillip hold their heads so high and are so threatening that the said Aubyn does not dare contest with them at the common law."[6] Desire for socialization in this ancient chronicle here mingles with a touching confidence in its attainability.

While the legal basis of the Juvenile Court is rooted in equity, two fundamental, modern ideas concerning the child, one biological, the other social, have united in the formation of the Juvenile Court.

[5]*Waite, Edward F.,* The Origin and Development of the Minnesota Juvenile Court. Pub. by the State Board of Control, St. Paul, Minn., 1920, 20 p.

[6]*Henderson,* John G., Chancery Practice, p. 121; pub. Chicago, 1904.

Biology teaches us that the child is a being quite different from the adult. His way of feeling and his response are governed by natural laws that pertain to youth; his behavior is an adjustment to life, ruled by cause and effect. *The whole being of the child is sacred to growth.* And throughout the period of growth, during the whole course of his immaturity, he is held to be plastic, capable of infinite modification. Unless this modern concept of the child is mastered we cannot understand the principle of the Juvenile Court.

The second fundamental idea is that of the child as an asset to the state. The child is an asset, greater than all his faults. It is the duty of the state in the interests of its own self-preservation to take care of the child when parents have failed him. The Juvenile Court law formulated by the legislature of Illinois in 1898 was an expression of these principles, and the machinery created to express and to enforce these principles harked back to the ancient usage of Anglo-Saxon jurisprudence. It is well to stress this point for the benefit of certain critics who think, or appear to think, the Juvenile Court a kind of modern, benevolent mushroom, foisted on the body of the law by social uplifters.

In our discussion of rights in the Juvenile Court the main right to be considered is the right of the child, his primary right to shelter, protection and proper guardianship. The first requirement in socialization is a method for getting the whole truth about the child.

Analogy here brings the court close to the spirit of the clinic. The physician searches for every detail that bears on the condition of the patient. The physician demands all the facts because he believes it is only good that can follow to his patient. The patient is privileged to expect a *good,* but only on condition that he reveal all the facts and submit himself utterly. He is freed from fear because the aim of the examination is his own welfare.

Quite contrary is the spirit of legal action. The defendant is hemmed about with elaborate safeguards against improper questions. The right of a witness not to incriminate himself, his right to the secrecy of certain inviolate privileged relations and communications, all the rules of evidence that exclude certain kinds of truth from the ear of the court as irrelevant, incompetent and immaterial have grown up with a view to protect the individual from the power of the state to inflict penalty upon him. Fear of injustice, dread of punishment, these are the human emotions expressed vividly in the dry phrasing of the rules of evidence, just as in the folk saying:

"Only the rich can afford justice; only the poor cannot escape it."

The Juvenile Court, on the other hand, can demand the whole truth because it has the power to save, to protect, and to remedy. Its orders, or judgments, are not penal, but parental. Its object in determining truth is not *incrimination* but the gaining of that understanding which must precede constructive discipline or treatment. In a trial at law the early history of the defendant is immaterial from a legal point of view. The fact that in childhood he suffered from night terrors, that at nine years of age he had convulsions, that an early sex experience has distorted his view of reality, that his sisters are prostitutes and his father an alcoholic epileptic may not have the slightest relevancy in court procedure. His wife may be incompetent to testify that he confided to her the secret strains and repressions that have warped his behavior. In short, the truthful picture of the man as an individual may be ruled out of consideration. In a socialized Juvenile procedure no useful evidence should be excluded from the court. Each relevant fact should be admissible, but we should adhere closely to that body of the rules of evidence which applies the test to truth. Hearsay, incompetent evidence, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling—all these sources of error should be ruled out of the Juvenile Court as rigidly as from any other court. If socialization of court procedure means letting down the bars so that social workers can dispense with good case-work, or can substitute their fears and prejudices for the presentation of real evidence, heaven forbid any increase in socialization! No, the test of truth in the Juvenile Court should be definite, scientific, carefully scrutinized.

The second principal in socialization is co-operation. In order to secure the welfare of a human being it is necessary that he assent. Compulsory uplift, like compulsory education, is difficult, if not, socially, impossible. To the clinic the patient comes because he feels sick; in the court the young person comes because he must. It is the business of the social worker . . . to make him feel sick beforehand; that is to say, the social seriousness of the situation should be established. The child should be made to feel penitent, but charging him with guilt is not the best way to accomplish this result. Such a course in the nature of an attack places him on the defensive; it is a challenge and his mind leaps to the encounter.

"What are you charged with, Jim?" asked the matron in a detention home of a small boy. "Soda water, see, I am charged with soda water. I stole a case of it." His flippancy disappeared in court, however, under the following procedure. "Who earns the living in your home?" "Mother." "How?" "She scrubs floors, but she is in the

hospital now." "Who cooks?" "My little sister." "What do you do to help?" "Nothing."

The small boy begins to feel uncomfortable and to shed tears. Your response depends on where you place your emphasis.

How change of emphasis from a procedure designed to incriminate and to convict to a procedure socialized and aiming at welfare—how this change of emphasis leads to change in the attitude of the child is seen nowhere more clearly than in the treatment of young girl sex-offenders. Los Angeles is the honey pot of movie-dreaming youth. One girl of eighteen was recently before the court on a police complaint of soliciting. She lived in Detroit and had lodged in half a dozen jails en route. Arraigned in the police court of Los Angeles, she was transferred to the Juvenile Court. She was plainly bored there. Well she knew she could not be convicted of anything more serious than vagrancy. This quiet room, this woman sitting as judge, these women who sat as clerk, reporter and bailiff—why, it was all child's play.

"Why are you here?" she was asked.

"Well, they can't *prove* anything on me. No one ever saw me take a cent, and I had my clothes on."

"You are not accused of anything here, save that you are a person under the age of twenty-one with no parental control, and in danger of leading an immoral life, and should the court find it necessary for your protection, you can be held until you are twenty-one."

It was a bewildered young person. Gone were the old words to lean on, "bail," "guilty or not guilty," "fine," "thirty days," etc.; gone the smiling policeman, the friendly detectives. She was just a girl, stranded; a prodigal daughter, not a defendant. Yet this court impressed her with the power it had to compel obedience. She told her story. She submitted to discipline. What prosecution could not do, coöperation secured in half an hour.

So, too, in matters pertaining to the custody of children. Parents accustomed to regard the child as private property are perplexed at a view which places the welfare of the child first. A girl of eleven had been neglected at home. Parents, two sets of step-parents, flanked by the in-laws, flung mutual charges ranging from blasphemy to incest. "This is not a domestic arena," they were told; "only one issue is here today—what can you suggest for the welfare of this child?" When it was made clear to them that the child herself had the paramount right, that parental selfishness must give way, their attitude changed

gradually and, instead of demanding a property right, they agreed that at the present time none of them were fit to have her.

A third principle in socialization is the dynamic principle of modification of order provided for in the Juvenile Court. In general legal proceedings the sentence, or judgment, is final. The game is lost or won; the finality of Doomsday is not mere irrevocable. But the Juvenile Court's decisions are like youth itself, capable of being modified, meeting each tomorrow afresh, adjusting perpetually to life. The courts have held unfitness temporary. What does that mean? It means eternal chance for the erring parent; it may mean the opportunity for reconstructed family or individual life.

Jennie, a girl of twenty-three, formerly a ward of the Juvenile Court, was married to a soldier and mother of a three-year-old boy. The husband had sought unsuccessfully in the divorce court and in the criminal court to deprive her of the custody of the child on the ground of her unfitness. Nothing could be *proved* against this mother, and yet one look at the child, thin, with pale, sad eyes, supported the belief that he needed care. The matter came into the Juvenile Court. Jennie resisted any attempt to incriminate her, and her success as a client on the defensive had become proverbial.

"Your *child*—has he had a chance?" not the question, had she been guilty of misconduct? but—"Your little boy—is he all right?"

Brushing aside her attorney, she said, "No, no, I have neglected him."

Then followed her statement of her unfitness with a plea for a chance to prove fitness. Six months afterwards she had won back her baby, whom she had given up voluntarily for his welfare. She had coöperated in a plan of constructive rehabilitation.

A fatal blow to socialization, however, is the attempt to use evidence secured in the Juvenile Court as the basis of other legal action. Jennie's husband, after her rehabilitation, tried to use her statements made in the Juvenile Court as evidence against her in the divorce court. He was unsuccessful. Twenty-six states have safeguarding provisions against using evidence gained in the Juvenile Court against the child in other proceedings.[7] But this protection should be extended to parents who in good faith, for purposes of child welfare, give evidence against themselves in the Juvenile Court.

A driving force in socialization is the use of the social opinion of the group one belongs to, and has most respect for; from a sociological

[7]A Summary of Juvenile Court Legislation in the United States, Federal Children's Bureau Publication No. 70, p. 41.

point of view this is one of the benefits of a jury trial, the submission of one's self to judgment of one's peers. How this social force can be obtained in children's cases is a problem. Recently an experiment was tried in the Juvenile Court of Los Angeles, where the girl officers of an opportunity, self-government school, known as El Retiro, maintained by the county for wards of the court, were asked to sit with the referee in the cases of two girls who had run away. The proceeding was entirely informal, but the benefit secured to the runaway girls and to the morale of the school has been of untold significance. Far-reaching indeed is the effect of placing responsibility on youth, and in permitting them, in so far as their young shoulders are able, to carry the burden of the waywardness of their fellows.

Is the concept of socialization antagonistic to legal principles? Let us first ask, What is law? In a discussion of this matter reviewed in the Reports of the American Bar Association, 1902, Vol. 25, page 445, the definition of Blackstone and Austin of the law as a *command,* or body of commands, proceeding from the supreme power of a state is commented on thus, "The law is something more than the mere formal rules which have been declared in constitutions and statutes and applied in precedents. . . . The real social force is made up of the principles of social organism; the expressed laws are but rules of operation."

Lord Coke, certainly no sympathizer of looseness, said: "The principles of natural rights are perfect and immutable, but the condition of human law is ever changing, and there is nothing in it which can stand forever. Human laws are born, live and die."

One of Wendell Phillips' epigrams was this: "Ideas strangle statutes."

From an anthropological view, that is to say, from a human point of view, the law is a culture-product of the human race. Its majesty is derived only from the human spirit, and it is subject to change and growth just as any other organism. This highly complex, apparently adamantine structure is indeed changing, and if we read aright the spirit of the times it is changing quite in the spirit of the modern family; it is following the lead of its youngest offspring, the Juvenile Court movement.

To sum up: Socialization of Juvenile Court precedure depends on the clear, firm grasp of the principles of equity. The court is one of guardianship, not a penal court. Nothing that the child says can incriminate him in this court because the object of the court is his welfare. Socialization involves getting at the whole truth; nothing that

is true and relevant should be excluded. Socialization involves co-operation, constructive discipline, and the dynamic concept, as expressed in the principle that an order in this court may be modified as life conditions are modified.

The chief obstacles to socialization of Juvenile Court procedure are lingering shreds of penal terminology and criminal law usage. Obsolete thinking and unclear thinking are obstacles. Socialization implies that judges and court officials are to be experts, experts with scientific training and specialists in the art of human relations.