Juvenile Court: A Behavioral Science Perspective

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Introduction

The inception of the Juvenile Court at the turn of the last century was inspired by the goal of protecting and rehabilitating the youthful offender. Reformers, appalled by the inhumanity of subjecting children to the procedures and penalties of adult criminal law, desired to create a unique, non-adversary system that would spare minors the trauma, and the social stigma, of being cast among criminal adults. The goal was to individualize justice by recognizing that the youthful offender was not in the same category of responsibility as the adult and might be more amenable to rehabilitation by virtue of being young. The state's role was not to decide guilt and punishment, but rather to make the child feel that his welfare was a matter of concern and solicitude. The rigidities, technicalities and harshness inherent in criminal proceedings were to be discarded in favor of a process characterized by a benevolent paternal guidance. The commitment of the Juvenile Court to the primacy of rehabilitation and the protection of the offender from the negative aspects of criminal law are embodied in the following statements of legislative intent in California:

> The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should be have been given by his parents. This chapter shall be liberally construed to carry out these purposes.[1]

> The purpose of this chapter is to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of public offenses. To this end it is the intent of the Legislature that the chapter be liberally interpreted in conformity with its declared purpose.[2]

Because the dream of individualized justice for juveniles has yet to materialize, a widespread feeling exists that the Juvenile Court, as a philosophical system, is a failure. The present authors do not believe that the juvenile system has failed, any more than the adult system has failed; and yet, because the expectations for the juvenile system were greater, or somehow qualitatively different, the pain, despair, and disappointment that one feels about its shortcomings seem greater. Society has seen the Juvenile Court's original standard of benevolent discretion abused by arbitrary and often unfair judgments. Its reaction to this failure has been the condemnation of the system as ill-conceived in theory. The United States Supreme Court's landmark *Gault* decision of

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1967[3] and subsequent related judicial decisions are disheartening because they represent a regression to the standards of the adult system. This article does not condone the abuse that was present in the *Gault* case; obviously young Gault was treated in a harshly punitive manner philosophically inconsistent with the Juvenile Court's stated goal of protecting and rehabilitating youth. But the conclusion of the United States Supreme Court, *per* Mr. Justice Fortas, that "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure,"[4] has reversed the trend toward individualized justice.

Behavioral scientists are concerned by the consequences of the decision because it ignores the causes underlying the failure of the dream that was held for the Juvenile Court. The attempt to correct the system's abuses in the legalistic manner of regularizing and formalizing procedures has not corrected the features of the system that were interfering with the original goal of rehabilitation. As a result, the focus in Juvenile Court has become increasingly directed toward issues of pre-trial and trial, as in the adult system. Energy and time have been diverted from what should have been emphasized, promoted, and developed – the dispositional and implementation aspects of the system. The important distinction that Mr. Justice Stewart emphasized in his dissenting opinion on the *Gault* case has been forgotten:

> Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act.[5]

The Perspectives of the Behavioral Scientist

The goal of the Juvenile Court represents a philosophy similar to that of a behavioral scientist concerned with therapy and rehabilitation; therefore, the perspectives of a psychiatrist may be helpful in evaluating the problems of the juvenile system. These perspectives appear quite obvious and basic to the behavioral scientist, but may suggest a fresh viewpoint to those within the legal system.

First Perspective

The first perspective involves an appraisal of the legal system as primarily an investigative and decision-making process. It is indisputable that investigations are important and necessary, but one must always be critically conscious of the quality of the investigation and the value of the data that is gathered. Decision-making is also an important aspect of any system; again, however, one must consider whether the decisions made have any relevance to or bearing on the ultimate goals and ideals to which the system is committed. The problem with the legal system is that society has come to expect results solely from the two steps of investigation and decision-making. The preoccupation with these preliminary steps has obscured the fact that there are subsequent steps to take, that there must be implementation of programs designed to transform decisions made into a reality achieved. W. C. Fields' classic one-liner that "It is easy to give up drinking – I've done it hundreds of times," shows how easy it is to make decisions because the decision, *per se*, is not corrective, curative, or therapeutic.

The legal system, including the Juvenile Court system, utilizes what psychiatry calls "magical thinking" in its expectation that problems will be solved by the mere act of decision making. "Magical thinking" is a psychological mechanism present to a large extent in small children, but there is a residual of it in all adults. Occasionally even the most rational adult makes a concession to the child within who feels that, if he just

wishes long enough, his dreams may come true. Everyone is entitled to a few harmless adventures in magical thought, but when magical thinking is an inherent part of one's operations, then trouble ensues.

Because the legal process is primarily oriented towards investigation and decision-making, it naturally restricts outsiders, such as behavioral scientists, to narrowly delineated roles which involve them only as accessories to the decision-making process.

Second Perspective

The second perspective concerns the isolation of the individual as the source of the problem in the criminal justice system. There is debate within the system over questions of methodology – how to best approach and correct the individual's problem – but the focus of attention upon the single deviant is unquestioned, indeed is inherent in the legal philosophy. The traditionalists attempt to admonish the individual and order him, upon pain of retribution, to conform. They differ from the behaviorally inclined, who are concerned with how they are going to train the individual to conform. Yet, despite these differences in method, both approaches focus attention upon the individual, a philosophy described by Herbert W. Titus in an article entitled "The Perils of Decriminalization":

> . . . Whether or not moral judgment is passed, the remedy triggered by the state's use of the criminal sanction focuses exclusively upon the individual's failure to cope with a given value system and given economic, political, or social conditions. The criminal justice system, then, inevitably is single-purposed: it seeks individual compliance with those givens.
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> The treatment programs, proposed as a substitute for the criminal justice system, do not depart from this theme. The solutions of an alcohol treatment or a drug rehabilitation program focus exclusively upon the task of helping the individual to deal with his or her problem so as to achieve reintegration into society. Again the society's value system and its economic, political, and social conditions, although questioned, are not seriously challenged. Rather, they are accepted as inevitable and, thus, unreachable.[6]

The focus upon the individual in the legal system is analogous to a situation in medicine known as the "band-aid approach," which refers to the treatment of a symptom, such as an ulcerated wound, while ignoring the underlying cause of disease that produced the pathology. This myopic approach precludes the possibility of a successful cure, because it ignores the total picture. The desire to solve the problem of juvenile delinquency can be compared to the search for a malaria cure within a community. If one reacts exclusively to the individual who is afflicted with the disease, then important questions regarding the environment that produced the condition – questions that will eventually lead to the discovery that a mosquito distributes the disease – will be unasked and unanswered.

It has been maintained that the Juvenile Court system has no chance of achieving its goal of preventing and correcting the problems of the juvenile. The source of the majority of juvenile maladjustments is never changed by the court system – it intervenes too late to correct problems which have roots in social, economic, and racial features of the community in which the child has developed. By virtue of its exclusive focus upon the individual, the Juvenile Court system is self-limited, and therefore incapable of solving the problem of juvenile crime. It is difficult to accept the premise that the social system within which we all function is the source of the juvenile problem, because the notion renders all well-intentioned efforts to rehabilitate juveniles meaningless. Yet, as long as this thought is rejected and dismissed, a system is perpetuated which has limiting and constraining aspects that will frustrate our best intentions.

Recommendations for Improvement

These perspectives of a behavioral scientist – the first involving the critical focus upon the legal system as an agent concerned primarily with investigation and decision making, and the second recognizing the limitation of the system's jurisdiction to the single individual – impart a pessimistic feeling about the fate of the Juvenile Court. The authors would like to inject a note of optimism by recommending four courses of action which may aid in renewing hope in the dream of juvenile justice.

First Recommendation

The first recommendation, that there should be a recommitment to the rehabilitation ideal, is, of course, not original with this article. There is an urgent need for re-examination of the procedures followed within the Juvenile Court system to determine whether they contribute to its original goal of rehabilitation. It is a common malady of bureaucratized institutions to become so preoccupied with procedures and routines that these processes assume more significance than the goal which they were implemented to achieve. This phenomenon of the "bureaucratic means" superseding and replacing the original goals of an institution is referred to by sociologists as "goal displacement." It occurred in psychiatry for many decades when the process of applying diagnostic labels to patients replaced the search for effective cures. The legal profession is especially susceptible to this problem because it is so concerned with process, procedure, and precedent. It is tempting to become lost in routine when what one is doing seems futile and hopeless and rewards are not clearly seen – indeed, the routine becomes an escape and avoidance mechanism. A total recommitment to the rehabilitation ideal will necessitate the regular examination of daily tasks by those within the legal system to determine whether they are really helping achieve the goal of the Juvenile Court. Only those procedures that contribute to the goal of rehabilitation should be retained – a "weeding-out" process that will be difficult for those accustomed to familiar routines.

Second Recommendation

The second recommendation is that the jurisdiction of the Juvenile Court be diminished, that the number of types of cases which fall within its purview be rendered smaller. Available data indicate that many cases are not helped by going through the juvenile system and, unfortunately, some are harmed. Diversionary programs must be created to handle many of the cases which now burden the Juvenile Court. This suggestion is not original with the authors, but rather echoes and emphasizes that made in "Challenge of Crime in a Free Society," by the President's Commission on Law Enforcement and the Administration of Justice:

> A specific and important example of this principle is the Commission's recommendation that every community consider establishing a Youth Services Bureau, a community-based center to which juveniles could be referred by the police, the courts, parents, schools and social agencies for counseling, education, work and recreation programs and job placement.
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> The Youth Services Bureau – an agency to handle many troubled and troublesome young people outside the criminal system – is needed in part because society has failed to give the Juvenile Court the resources which would allow it to function as its founders hoped it would.[7]

Third Recommendation

The third recommendation is based upon very clear and persuasive evidence in the

mental health field which indicates the superiority of community-based programs to institutionalization. Behavioral scientists have investigated the failure of mental health and correctional institutions and have discovered that institutionalization is as desocializing an experience as an individual can undergo. The desocialization process renders a person incapable of functioning within a social structure. The data indicate that the amount of desocialization experienced is directly proportional to two factors – the deficits with which the individual enters the institution, and the length of time he is institutionalized. An individual hospitalized for an acute disturbance in the most ideal institution will show initial progress as illustrated by an upward slant on a graph plotting progress over time. The graph, however, will plateau and then go downward the longer the individual stays within the institution. The message of the whole curve, from upswing to downswing, is clear: at first the patient is obtaining therapeutic value from institutionalization, but with increasing time, he becomes progressively less capable of returning to society.

Institutions are organized to run smoothly for the convenience of those who operate them. They develop an inevitable routine which simplifies daily operation at the expense of compromising individuality. Keepers and inmates alike become so immersed in the routine that they lose sight of their original purpose, thus undergoing a "goal displacement" in which rehabilitation is replaced by standard operating procedures. Through the process of transfer in the case of an inmate, or resignation due to frustration in the case of the staff member, all who clash with the system are excluded.

This clear evidence underlies the recommendation that existing institutions be examined to uncover and destroy those features which hamper rehabilitation and promote desocialization, and to revitalize those features which promote healthy growth and maturation. This task will not be easy because of the enormous economic, political and social investment in retaining the status quo in correctional institutions. The authors also recommend that traditional institutions be bypassed in favor of community-based programs. Institutions should be reserved for extreme cases that cannot possibly be handled within the community; for all others society must find, create, and provide alternatives. The period of transition will be difficult because the philosophy of institutionalization is entrenched in the society's attitude towards social deviants. The attitude that the offender is an outcast to be feared and avoided must be overcome and replaced with the realization that he is a deviant who requires extra care and concern within the community that originally produced him.

Fourth Recommendation

The fourth and final recommendation concerns the role of the behavioral scientist within the court system. The greatest tragedy in the history of the collaboration between the legal process and the behavioral sciences is that the courts have created tasks for the behavioral scientist unilaterally and unimaginatively, neglecting the actual expertise of the behavioral scientist and failing to encourage his suggestions. Behavioral sicentists have been pigeonholed in narrow roles defined for them within the investigative and decision-making processes of the legal system. Traditionally, they have been involved in the adult criminal process with the issues of pretrial and trial phase that affect the verdict, such as competency to stand trial and psychiatric defense – in fact, 99 percent of court appointments at the Superior Court criminal level in Los Angeles County go to these two issues.

The authors recommend that the Juvenile Court allow the behavioral scientists they consult to delineate their own roles. As a consultant to the court, the behavioral scientist should be given the freedom not only to redefine the question posed to him, but also to redefine his role and view the problem from a perspective perhaps unanticipated by those who requested his service. This article is not intended to provide an analysis of the

unexploited potential of the behavioral scientist as court consultant; Suarez has already explored this area.[8] The authors urge the legal system to respect the inherent difference of the behavioral scientist and to allow him to suggest improvements and revisions based upon his unique perspectives. The valuable functions which he may render must not be sacrificed by making him only an accessory to the legal system.

Conclusion

This article was intended to scrutinize the Juvenile Court system from the unique perspectives of the behavioral scientist. The authors have taken the liberty to criticize the Juvenile Court system in terms of the discrepancies between its stated goals and its failure to implement programs to achieve those goals. Finally, four specific recommendations, based upon the data and experience available to the behavioral scientist, have been offered in the hope that the dream of juvenile justice can be revitalized.

References

1 California Juvenile Court Law, Statutes 1961, Ch. 1616, 2
2 California Youth Authority Act, Statutes 1941, Ch. 937, 1
3 *In re Gault*, 387 *U.S.* 1, 18 L. Ed. 2d 527, 87 S. Ct. 1428. A 15-year-old boy, Gerald F. Gault, was committed as a juvenile delinquent to the Arizona State Industrial School for the period of his minority (unless sooner discharged by due process of law) by the Juvenile Court of Gila County, Arizona. The boy was taken into custody by the city sheriff without notice to his parents. A petition which was made the following day and not shown to the boy or his parents made no reference to the basis for his arrest. At the hearing, the boy was not advised of his right to silence and was unrepresented by counsel. No one was sworn and no transcript was kept. The complainant, who had reported the boy for an obscene phone call, was absent. After the boy was ordered to the State Industrial School by the Juvenile Judge, the parents filed a petition for *habeas corpus* with the Maricopa Superior Court. The Superior Court dismissed the petition, and the Supreme Court of Arizona affirmed. On appeal, the U.S. Supreme court reversed, stating that the boy was denied due process of law.
4 387 *U.S.* 1 at 18, 18 L. Ed. 2d at 541
5 387 *U.S.* 1 at 78.9, 18 L. Ed. 2d at 575
6 Titus HW: The perils of decriminalization. Center Report, Center for the Study of Democratic Institutions, Vol. VII, No. 1 (Feb. 1974), p. 3
7 Challenge of crime in a free society. A Report by the President's Commission on Law Enforcement and the Administration of Justice, February 1967, p. vii
8 Suarez JM, Hunt J: The scope of legal psychiatry. Journ Forensic Sciences 18: 60-68 (1975)