

# Juvenile Court: A Lawyer's Reply to the Behavioral Science Perspective

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## Introduction

In the preceding article, Dr. Suarez and Ms. Smith have presented a behavioral scientists' view of the operation of the juvenile court. In doing so, they have thrown into stark relief the differing perspectives of the lawyer and the psychologist in this area. The authors have been highly critical of the legalistic emphasis of the juvenile court, at one point characterizing it as "magical thinking." There is probably little doubt that from a behavioral science viewpoint all of these comments would seem to be justified. The problem with such an approach is that, like the blind man describing the elephant, the view of the juvenile court seen solely through the behavioral science eyeglass ignores many other aspects of the court's operation which are of paramount concern to the system. An attempt will, therefore, be made in this brief essay to outline the objectives that are sought in the juvenile court — in addition to providing treatment — which concern lawyers. It is hoped that through this attempt certain ideals will be recognized which are important to society and which are as significant to the function of the juvenile court as is behavioral science theory.

## The Juvenile Court and Mental Health

The first observation which must be made and which must constantly be kept in mind is that the juvenile court is not a vehicle for the civil commitment of the mentally ill. Separate procedures exist in every state by which a person who is mentally ill and who is dangerous to himself or others may be involuntarily committed for psychiatric treatment. These commitments may be sought and obtained for anyone in that class, regardless of age.

Once this fact is realized, the question then arises: why have a juvenile court? If the sole objective is to provide treatment for damaged children, what does a juvenile court add to the procedures otherwise established for the commitment of the mentally ill? The answer, of course, is that the jurisdiction of the juvenile process can reach children who would not come within the scope of the mental health laws. Through the definition of the kinds of acts which will give rise to the exercise of power by the juvenile authorities, many children can be separated from their families and forced to undergo "treatment" against their will. Most of these children will probably not be "mentally ill" within most accepted meanings of those words. Many will only have committed an act which if done by an adult would have constituted a criminal offense. Unless one believes that anyone who has committed a crime must necessarily be mentally ill, it can be seen that the range of the juvenile court's jurisdiction extends much further in some directions than does that of the mental health laws. If it is to be contended that all people who commit crimes are mentally ill, *ipso facto*, then, of course, the juvenile court is superfluous. It must be recognized, however, that this can be an extremely dangerous idea. To appreciate the

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danger fully, one must remember that what is being discussed is not whether an individual might benefit from some sort of therapy, but rather, when it is permissible for the government to order a person to submit to it. Today we might concede that the exercise of such power by government is defensible when the conduct engaged in by the individual is of the kind proscribed by the criminal law, namely that which is essentially predatory. But if a purely behavioristic theory is to be followed, why should the power of the state be restricted to only those areas? If it is determined that many social ills arise because individuals possess different value systems, for example, why should the government not attempt to resocialize those individuals? Should being a Catholic, a Jew, or a Democrat be the basis upon which the state can attempt to compel a person to reorder his life? Contemporary legal thought would deny this power to the government, but apparently, a consistent behavioristic theory would not.

### **The Primacy of Liberty**

What should be clear from the foregoing discussion is that the treatment of anti-social children is not the sole purpose of the juvenile court. Indeed, one of the prime concerns of the modern juvenile court runs directly contrary to the psychological model. The juvenile court today stands not only as a means of providing help to children in need, but also as a guardian of the child to insure that the exercise of power by the state is justifiable. In doing so the court must observe a delicate balance between society's interest in the security of the community and the ideal of individual liberty. The concept of freedom is an ideal to which our society is dedicated and which is reflected in the law. Such a position requires that the state obtain something analogous to a license to intervene in an individual's life against his will. The state may obtain such a license only upon a showing of appropriate need in a proper manner. Further, it is from the principle of liberty that the legalistic procedures of the juvenile court are derived, as a bridle on Kafkaesque actions by the state. In this sense the description of the legal system by Dr. Suarez and Ms. Smith, as primarily an investigative and decision-making process, is quite accurate. The legal system has been built on a clearly obstructionist design, not to block treatment in appropriate cases, but to serve as a blockade against overzealous government. Consequently, the grounds upon which the state may proceed have been defined. The procedures to be employed have been established. The government is capable of asserting its rights, and the burden placed upon it is only that necessary to observe the appropriate balance between it and a child. To suggest that this should all be swept away to further the goal of treatment not only ignores what is at stake, but probably also amounts to an indulgence in "magical thinking."

### **Identifying the Real Problem**

The diatribe by the authors of the preceding article against the Juvenile Court is, in many respects, reminiscent of the famous anecdote of Dean William Prosser. An Indian was sitting on a rock looking out to sea and was heard to say:

Lighthouse, him no good for fog. Lighthouse, him whistle, him blow, him ring bell, him flash light, him raise hell; but fog come in just the same.

The argument seems to be that in some way the preoccupation of the juvenile court with the individual rather than with societal maladies is misplaced. In the "second perspective" of Dr. Suarez and Ms. Smith, the suggestion seems to be that only through rectifying the social, economic, and racial features of a community can true treatment take place. Such a proposition is probably incapable of refutation. There is, however, an elision occurring in the logic being forwarded here. Put in syllogistic form, it could probably be stated in this way: Major Premise: The juvenile court has the responsibility of dealing with children with problems; Minor Premise: Children have problems because

of the structure of society; Conclusion: The juvenile court has responsibility for dealing with the structures of society.

Even if it were the responsibility of the juvenile court to deal with such things as societal racism, economic depression, or political alienation, one would not be hard-pressed to predict the outcome of such an effort. The point is, of course, that it is not the responsibility of the juvenile court to do this, any more than it is the responsibility of the New York Philharmonic. The responsibility of the juvenile court is to determine whom the state may treat on an involuntary basis. Once this fact is recognized, one begins to get a true picture of the target of the aspersions, namely, the treatment facilities. For the most part, all such facilities, whether institutional, community-based, or of the individual psychotherapy variety, are beyond the control of the juvenile court. In almost every state, these facilities are operated by a department of the state government independent of the court system. As pointed out earlier, the court has merely given the state the license to send the child to such a department, where it is hoped appropriate treatment will be provided. If it is thought that effective treatment programs do not exist in these facilities, then two separate questions must be addressed.

First, it is frequently suggested that if more and better-trained staff were present, or if different kinds of buildings or equipment existed, then the problems of the children could be more effectively dealt with. Such a deficiency may be attributed to the niggardly nature of state legislatures. If that is the source of the frustration, then it must be confronted, but criticizing the procedures of the juvenile court in this connection is clearly illogical. The second question which must be dealt with is, perhaps, the more unnerving: If all the money in the world were available to the treatment facilities, could the behavioral scientists do an effective job of rehabilitation? In other words, do the behavioral sciences possess the technical wherewithal to do the job to which they aspire? It is beyond a lawyer's ken to provide an answer to this question. An observation seems in order, however. Even if the state of the art within the field has reached the point at which the effective treatment of large numbers of people can be accomplished, that fact has not been clearly communicated beyond their field. This is not intended as an indictment of the behavioral sciences, for certainly it is clear that they can treat successfully in many instances. The question is whether they can do it on the scale that is suggested here. It may be possible that they can, but that has not been demonstrated as yet. In addition, if limitations exist upon the knowledge or effectiveness of the behavioral sciences, it is incumbent upon them to apprise the rest of us with candor as to what those limitations are.

In any event, it may be seen that at the present time the function of the juvenile court is primarily to determine whether or not the state may force a child to submit to treatment. If it is determined that the exercise of state power is appropriate, a commitment is made to provide that help. At this point the juvenile court has, in effect, turned the child over to the behavioral sciences to do whatever they deem proper. Also, such a commitment will usually be for an indefinite period. If such treatment is not effective or is nonexistent, it certainly is not because of the legalism of the juvenile court.

## **Conclusion**

If one were to adopt an entirely behavioristic theory upon which to base the operation of the juvenile court, then there would be much in its present structure that would be considered not only inappropriate, but deleterious to the ultimate goals. The legal theory which lies at the heart of the juvenile court, however, must take into consideration other factors in addition to the behavioral science objectives. There is no real dispute between the behavioral sciences and the law upon the point that the juvenile court should be a vehicle through which treatment is sought for children in need. With this ambition in mind, however, the law must still serve other goals. If it be remembered that it is the

obligation of the juvenile court to adjudicate all the interests of the state, of the child, and of society's values, then the structure and procedures of the juvenile court do not seem quite so anachronistic or bureaucratic. It is through these devices that the concepts of freedom and individual liberty are observed.