

## Juvenile Courts and Juvenile Delinquency

Roscoe Pound, at one time Dean of the Harvard Law School, said that the erection of the juvenile court was the greatest forward step in jurisprudence since the Magna Carta. This, of course, is a broad and startling statement. However, a man of Pound's standing as a lawyer and an educator must have based this conclusion on sound reasoning. If just a brief glance is taken at our legal history one will find that there are many reasons why Dean Pound spoke as he did about the juvenile court.

In the earlier days of our jurisprudence the law was extremely harsh in its treatment and punishment of wayward children. In England in 1784, just 170 years ago, a ten year old boy received sentence of death as a criminal. Our stern forefathers, apparently, made no distinction between adult and juvenile offenders. With them it was the old cruel law of an eye for an eye, and a tooth for a tooth. There was at that time, and for many decades after, one law for all, men, women and children alike. And although the severity of the treatment and punishment of earlier days was gradually relaxed, both for adults and children, it was not until the close of the last century that a distinction was made between adult and juvenile offenders, as to their treatment while in custody pending trial, their mode of trial and their punishment upon conviction. In the words of the late Judge Wallace of Halifax: "Instead of blindly following a method similar to the system proposed in Gilbert's Mikado, 'to make the punishment fit the crime', our legislation began to aim at making the punishment fit the criminal or the delinquent." Space will not permit tracing the growth of this idea in Britain with respect to children.

### The Juvenile Delinquents Act<sup>1</sup>

At any rate it was not until July 20th, 1908, that the Juvenile Delinquents Act, as it is known today, with many amendments, of course, was enacted by the Parliament of Canada. This Act made drastic changes in the handling and treatment of wayward children. Prior to its enactment juvenile offenders were tried in the regular criminal courts just as adults were. They could demand trial by jury. They are tried in those same courts today, sometimes with juries, in those communities where juvenile courts have not been set up. They were kept in gaols with adult prisoners pending trial. They were tried in open court, and upon conviction they were committed to gaols and penitentiaries with adult convicts.

The Juvenile Delinquents Act, however, did away with this atrocious system of dealing with children accused of, or convicted of, a violation of the law. Its approach to the problem of juvenile delinquency in Canada was entirely new and novel. It created a new court

1. Stats. of Can., 1908, c. 40. Replaced by the Juvenile Delinquents Act, Stats. of Can., 1929, c. 46. Appears as amended as c. 160, R. S. C., 1952.

with absolute jurisdiction over offences committed by juveniles. "The juvenile court was the first attempt in the history of jurisprudence to eliminate from the law the element of hostility toward the law breaker, and to substitute therefor a social objective."<sup>2</sup> The purpose of the Act, then, is to readjust and rehabilitate, rather than to condemn; to reform, rather than to punish. In short, the Juvenile Delinquents Act, in the opinion of competent observers, is one of the finest and most progressive pieces of legislation ever written into the statute books of any country.

Section 2 of this Act provides that "child" means any boy or girl apparently or actually under the age of 16 years.<sup>3</sup> The minimum age, of course, is 7 years, because there is a presumption of law that any one under that age cannot commit a criminal offence.<sup>4</sup> There is a further provision in section 2 to the effect that in any province the age limit of a juvenile may be raised to 18 years, and that this limit may apply to boys only or to girls only or to both boys and girls.<sup>5</sup> In the province of New Brunswick "child" means a boy or girl under the age of 16 years. In several of the other provinces the maximum age is 18 years. It is the considered opinion of the writer that the age limit in this province, at least in the case of boys, should be raised to 18 years. This view is shared by many others who concern themselves with the problems of youth. For instance, at the last meeting of the Association of Children's Aid Societies of the Province of New Brunswick a resolution was passed asking that this be done, in the case of boys and girls. Many reasons are advanced in support of this proposed change. It is felt that boys below the age of 18 years are still, in the great majority of cases, immature, and should not be committed to gaols and penitentiaries, where they come into contact with hardened criminals. Unfortunately under the present system, no boy over the age of 16 years may be sentenced to a reform school.<sup>6</sup> A search of the records of the Magistrate's Court for the County of Westmorland shows that during the year 1952, 35 boys between the ages of 16 and 18 years were convicted of criminal offences. Four of these boys were committed to the Dorchester Penitentiary, and eight of them were sent to gaol. Imposition of sentence was suspended in the other cases. This problem of the age limit of juveniles is not important in the case of girls and women for there are in this province two excellent reformatories for adult females, one at Coverdale and the other at Saint John.

There are forty-five sections in the Juvenile Delinquents Act, all of which have some importance. Space permits a treatment of only a few of the more important ones in this article. A section of prime importance is section 3:

(1) The commission by a child of any of the acts enumerated in paragraph (h) of subsection (1) of section 2 constitutes an offence to be

2. Mead, *Psychology of Punitive Justice*.

3. *The Juvenile Delinquents Act*, R.S.C., 1952, c. 160, s. 2 (1) (a).

4. *Criminal Code*, R.S.C., 1927, c. 36, s. 17.

5. s. 2 (2) (a).

6. *Boy's Industrial Home Act*, R.S.N.B., 1952, c. 22, s. 1 (c)

known as a delinquency, and shall be dealt with as hereinafter provided.

(2) 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.

A careful reading of the above section will show that the Act has changed the very concept of the criminal law with respect to wayward children. If we interpret Section 3 properly, we must reach the conclusion that a child who is adjudged to be a juvenile delinquent has not committed a crime, cannot be called a criminal and does not have a criminal record. This is altogether fitting and proper because a child, perhaps at a very early age, might do some foolish and thoughtless act that would brand him as a criminal forever and give him a record that would plague him for the rest of his life. In the opinion of competent observers, Section 3 is the heart of the Juvenile Delinquents Act.

It was said above that prior to the passage of the Juvenile Delinquents Act a child could demand trial by jury; he can still be so tried, even in communities where the Act is in force. Section 9(1) provides that if a child is over the age of 14 years, and if the act complained of is an indictable offence, the Juvenile Court may, in its discretion, order that the child be tried in the ordinary courts. This may not be done, however, unless the judge is of the opinion that the good of the child and the interest of the community demand it. This, without doubt, is a most salutary provision, because situations do arise where it must be invoked. Take, for example, a case where the act complained of is murder. No single person would care to try a case of that kind. The result is that in such cases the Juvenile Court waives jurisdiction and transfers the complaint to the superior courts. As the judge of a juvenile court for some 19 years the writer has invoked this section of the Act on three occasions only. In each of these instances, the child had escaped from a reform school several times, and stated flatly in the juvenile court that he would not remain if sent there again.

Section 20 of the Act makes provision for the courses of action the Court may take after a child is adjudged to be a juvenile delinquent. Several things may be done under the provisions of this section, and the Court is allowed a great deal of latitude in the disposition of the case. It may suspend final disposition; it may adjourn the matter for any definite or indefinite period; it may impose a fine; it may commit the child to the care of a probation officer, and so on. Finally, it may "commit the child to an industrial school duly approved by the Lieutenant-Governor in Council".<sup>7</sup> A committal to an industrial school, of course, is the last resort. Such a committal should never be made, except in the case of very serious offences, unless and until other courses of action have been taken and have failed. Moreover, in this province, unfortunately, our set up for the institutional care and training of delinquent boys is very inadequate. The result is that many of those

7. R.S.C., 1952, c. 160, s. 20 (1)(i).

committed to the Boys Industrial Home at East Saint John become repeaters after their release.

Strange as it may seem to those not familiar with the Act, adults may be tried for certain specific offences in a juvenile court. Section 33 of the Act reads in part:

- (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,
  - (a) aids, causes, abets or connives at the commission by a child of a delinquency; or
  - (b) does any act producing, promoting or contributing to a child's being or becoming a juvenile delinquent or likely to make a child a juvenile delinquent, is liable on summary conviction before a Juvenile Court, etc.

The purpose of this section is to preserve the morals of children and to prevent, if possible, their morals from being endangered. It covers cases where a parent or a guardian or another may encourage a child to steal, either by direction or by receiving goods that a child has already stolen. It covers also many types of sexual offences, committed with, or in the presence of, children. The juvenile court, it would appear, was given jurisdiction over offences such as these so that a child involved would not have to appear as a witness in an adult criminal court.

#### The Juvenile Courts Act<sup>8</sup>

Although the Juvenile Delinquents Act is a federal enactment the provinces co-operate by providing for the establishment of Juvenile Courts. In 1944, the Legislative Assembly of this province enacted the Juvenile Courts Act.<sup>9</sup> This Act gives to juvenile courts in New Brunswick all the powers vested in a juvenile court under the Juvenile Delinquents Act.<sup>10</sup> In addition, it vests in these courts the power to try any child charged with an offence against the laws of New Brunswick.<sup>11</sup>

This would include, it is assumed, an offence against the provisions of the Intoxicating Liquor Act and other Acts which require a mandatory gaol sentence for a violation of some of their prohibitions. It would follow that the juvenile could not be sentenced, it is submitted, to a term in gaol, and would have to be dealt with under one or another of the provisions of Section 20 of the Juvenile Delinquents Act. Moreover, the Juvenile Courts Act confers jurisdiction in cases under the School Attendance Act, in which case the parents or guardians are charged with an offence, and not the truant child.<sup>12</sup> Also, it is stated in the Deserted Wives and Children Maintenance Act that cases arising under it may be tried either by a magistrate or by the judge of a juvenile court.<sup>13</sup> Here again the juvenile court is given the right and the duty to try adults.

8. R.S.N.B., 1952, c. 123.

9. Stats. of N.B., 1944, c. 44.

10. R.S.N.B., 1952, c. 123, s. 3.

11. *Ibid.*

12. *Ibid.* See also R.S.N.B., 1952, c. 202, s. 11.

13. R.S.N.B., 1952, c. 61, s. 1 (a).

The Juvenile Courts Act says further that a juvenile court "shall also have power . . . to deal with all cases arising under the provisions of any Act which relates to the treatment of children."<sup>14</sup> One such Act is the Children's Protection Act.<sup>15</sup> This statute was enacted for the purpose of enabling the state to discharge another of its responsibilities to the child: its responsibility for the welfare of the dependent and neglected child, rather than with the prosecution of the delinquent and wayward child. Where a juvenile court has territorial jurisdiction, all cases arising under the provisions of this Act are dealt with in that court.<sup>16</sup> The Children's Protection Act gives the court power to commit to the care and custody of a Children's Aid Society, either permanently or temporarily, any child found to be dependent and neglected.<sup>17</sup> The task of dealing with cases under this Act is an onerous one for the court, particularly in contested cases where the parents resist the attempt of the state to deprive them of the custody of their children.

It has been attempted to set out as briefly as possible the set up and function of juvenile courts in the province of New Brunswick. The writer understands that there are not more than four such courts in this province. After an experience of more than 19 years as the judge of a juvenile court, it is felt that there should be courts of this kind in all the larger centres of the province at least.

### The Problem of Juvenile Delinquency

Juvenile courts were erected to deal primarily with the problem of juvenile delinquency. The first question that might be asked, of course, is, What is a juvenile delinquent? And the answer to this is: A juvenile delinquent is a boy or girl, over the age of 7 years and under the age of 16 years in this province, who has, for one reason or another, made a false start in life, who has set out on the pathway that leads to moral and physical degradation, and who has been convicted finally of a violation of the law. A juvenile delinquent, in other words, is, in many cases, an anti-social human being who, at a comparatively early age, has flouted the customs, conventions and laws of civilized society: he is a juvenile law breaker.

The next question might logically be, What are the causes of juvenile delinquency. A few of them may be mentioned:

(1) A too materialistic concept of life on the part of too many of us. The ages of faith have passed for many adults. We stress material things, forgetting the idealistic and the spiritual. This outlook upon life is bound to have, and does have, an ill effect upon our youth.

14. s. 3.

15. R.S.N.B., 1952, c. 28.

16. *Ibid.* Secs. 2 & 3.

17. *Ibid.* s. 10 (1) (b) & (c).

(2) A lack of parental control and parental responsibility. Many parents are nothing more than grown children themselves, without the faintest conception of the duties and responsibilities of parenthood.

(3) The reading of filthy and degrading books and magazines and other periodicals, including so-called comics, that deal with crime, violence and sex. These pander to the worst in human nature. The printed word, of course, has a profound effect on the minds and imaginations of immature boys and girls.

(4) Motion pictures and radio programs, whose characters are gangsters, racketeers and criminals. These leave bad impressions in the minds of our youth, although the professed object of the film or program is to point a moral and show that crime does not pay. Unfortunately, too many young people forget the moral and remember only the details of the crime.

(5) Broken homes, resulting from the divorce, judicial separation, or other separation, of parents. Many individuals believe that the broken home is the greatest cause of crime and juvenile delinquency. Chief Justice McRuer, of the Supreme Court of Ontario, speaking to a grand jury some two or three years ago said: "I participated some time ago in an investigation of the penal system of Canada, and I made it my business to ask officials in Canada, and in other countries as well, this question: 'What is the greatest cause of crime?' The answer in almost every case was: 'broken homes'."

The next question is: How serious is this problem today? It is so serious that one can find very few newspapers, magazines or other periodicals in which there is not at least one article or editorial warning society of the menace that threatens it if juvenile delinquency is not curbed. Probably the problem in Canada is not as acute as it is in the United States and in other countries with big populations and many large cities. In Canada in 1939, there were 9,497 convictions for juvenile delinquency. In 1942, the number of convictions was 13,802, an increase of 4,305 in three years. This startling increase might be attributed to the fact that during these years many fathers were in the armed forces, and that there was, as a consequence, a lack of parental discipline in a great many homes, for there has been no comparable increase in any three year period since; on the contrary, there has been a substantial decrease in the number of convictions during several years. It is true that far too many boys and girls—boys particularly, in the ratio of ten to one—are haled into the criminal courts every year. It must be remembered, however, that there are thousands and tens of thousands of other boys and girls who have never committed a delinquency, and never will. This is so because the great majority of our homes are good homes, and because most parents are good parents who have an adequate conception of the duties and responsibilities of parenthood.

It is submitted in conclusion that this problem of juvenile delinquency is not beyond partial solution at least. It can never be entirely

eliminated because human beings are human beings and there will always be some who will fall by the wayside despite everything that may be done for them. This problem has two aspects: prevention or formation and rehabilitation or reformation. The late Judge Wallace once said: "Formation is better and cheaper and easier than reformation." The Churches, therefore, and all those organizations, within and without the Churches, which have the welfare of youth at heart, must continue with undiminished zeal their efforts to prevent juvenile delinquency, and to help, guide and supervise those who have fallen into a state of delinquency. The Juvenile Court, particularly, needs all the assistance it can get in its efforts to save our boys and girls for God, for country and for society.

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