TREATMENT OF JUVENILE DELINQUENTS

BY
RICHARD ROY PERKINS

ROCKFORD
Press of C. F. McIntosh
1906

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PREFACE

Out of a situation betraying the stage of experiment, attentive to the cry of a world of neglected children, encouraged by the spectacle of the earnest army of volunteer servants of the unfortunate, these thoughts have grown. With the many factors to take account of, time no less than thought and action is necessary for the working out of juvenile salvation. Therefore, one must be content not to draw up a final program, but rather to reconnoitre.

But the careful and successful scout always knows the retrospect of the land as well as he does the prospect. Yesterday's experience with delinquent childhood has been written in such bits that it has been difficult to read it as a continuous arc, enlightening us as to the exact path trodden and yet to be followed. It is yesterday's path we tread, but never before with such eagerness and progress, nor with such impatience toward injustice and undue conservatism, nor again, with such disposition to unite forces. We begin to relate civic righteousness, moral uprightness in business, public health and culture, with the community's childhood and its environment, and the campaign is launched. To take a small part in it would be worth while.

R. R. P.

January, 1906.

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INTRODUCTION

CHAPTER I.

INTRODUCTION

The early sculptor carved a child, and he carved a man in miniature, with muscular limbs and body and small head. The beauty of the child physique fled before this caricature. The legal sculptor has attempted to chisel a child who has broken the laws of the group, and his model has been an adult criminal. And the moral beauty of childhood has often taken a like course. To lose in the statue the plumpness and the irresistible grace of childhood jars our æsthetic sense, but the incomparably greater loss of really injuring child life condemns us. Where we should have used a magnifying glass on the child we have used a minifying glass on the man and judged the result to be the same. Today we are redefining both crime and juvenile delinquency in the attempt to remedy the error, and doing it to the advantage of both classes.

Every member of a community is considered delinquent or faultless, his action licit or illicit according to his attitude towards the accredited opinion of the group, usually expressed in its written law. The aim of the group is to bring all into conformity with its standard. Success depends upon many conditions, among them educational advantages and the use made of them; economic conditions in the group, immediacy of need, number of providers, etc.; the corrective apparatus through which conformity is enforced where necessary; religious beliefs and practices; the constitution and character of the family; the size of the group and its relations with other groups.

But there is one further condition which in our effort to promote conformity to group standards we have come to consider important, namely the *age* of the member of the group. The child cannot well live *up to* the standard: he lives *toward* it. This has been acknowledged in some manner in all early and primitive groups. The child has usually remained subject only to the discipline of the family, and the responsibility for his conformity has been on the head of the family. Even when old enough to be accounted responsible in some measure, or entirely so, often the penalties for non-conformity have been mitigated or suspended. But neither among such peoples nor among us has sufficient emphasis been placed upon youth and upon consequent irresponsibility for actions as factors in juvenile delinquency. As our life becomes more complex, the problem of training the child into harmony with all his associates grows to appalling proportions and new elements are added continually. Yet we may learn much from the past and

its estimate of the child and his place in the group life, especially in the family and before the law. It is a question of deepest concern whether the present legal status of the child finds him following the legal fortunes of his parents without reference to his age, or whether in the story of the race and its child life there has gradually developed a feeling that he is subject for special treatment *as a child*, or again, whether the modern revolt against identifying him with the adult before the law is so entirely modern that it is not yet to be trusted. We are seeking broad and safe principles of procedure in regard to the treatment of children, and we dare not neglect the experience of other peoples and ages any more than we can afford to pass by the highly valuable data of child psychology and pedagogy. Hence we are led into today through a brief glimpse at yesterday.

PART I

THE JUVENILE DELINQUENT IN THE ABSENCE OF SPECIAL LEGISLATION

CHAPTER II.

THE CHILD IN ANCIENT CIVILIZATIONS

*1. **Introduction.*** A child is born, and immediately faces a jury—the jury of the whole group. This body has its inevitable standing instructions and on the basis of these it is to determine the status of the child. "What is his sex?" it asks. "What is the family organization? Which parent shall control his early life? Is he a legitimate child? Are both parents of the same group and of the same religion? To what social class do they belong? Is the child by virtue of birth a member of the group, or only of the family? Which has final control of his fortunes?" And instantly there is passed a verdict from which there is no appeal. According to the instructions dictated by custom or written law he is thus early assigned his place as a hanger-on, as an alien within the group, as a citizen with rights today, or tomorrow to be granted, as in line for class privileges or as simply a member of the family with no claims or rights beyond. Among ancient peoples this last was usually precisely the case.

In no way may we better appreciate the justice, the inevitableness, the whole significance of the verdict of the modern group upon the place of the child within it, than through a rapid survey of the judgment passed upon the matter throughout the centuries. To make such a survey inclusive of the detail of custom and legislation would be as impossible as it would be useless for our purpose. But we may with profit observe broad tendencies and typical cases sufficiently to furnish us the sweep of the development that we wish. Clearly there is such a development. Revaluation of child life and of its significance to the future of the group is continually going on, with the child gradually but certainly emerging from the darkness of neglect into the light of a vastly improved condition. Men had but to observe that as the twig inclined so the tree grew, and to observe the social disaster following upon the growth of many gnarled and stunted and unhealthy lives in order to know the importance of more careful training and sane prevention. The knitting together of the members of the group and the constantly increasing interdependence of all members of the social body furnished a final impulse.

*2. **The Child as a Member of the Family.*** The early group was a society, unified through kinship. The members were subject to the laws of the group, framed with a view to group advantage. The primitive struggle for existence demanded that men should "hang together lest they hang separately," and what was

more natural than that there should develop a strong sense of family unity, centering in that member of the family who was the most effective leader and provider? Thus into the hands of the father, usually, the fortunes of the family drifted: he was responsible, and he was powerful. 1 This seems a far more logical explanation of the *patria potestas*, the paternal power over the fortunes of the children, than the attribution of it to the more special influence of religion. To be sure, the father in many of the earlier civilizations was formally the religious head of the family, but we do not need to resort to this for the explanation of his power over his family. 2 The fact exists that extraordinary powers were centered in the father, and the education and correction of the child were usually left to him rather than to the group as a whole. The child was not a member of the latter and neither owed the other anything, until such time as the "state" feeling, based upon territory and property, became so strong that a broader, more inclusive authority was sought.

The *patria potestas* is observed typically in early Rome, which is the more remarkable in that it operated even on into the time when the "state" idea was strong, and the great ambition of the Roman youth was to be a "citizen." The power of the father over his children was absolute. He might kill them if he would, and there was no greater power to interfere. Such power continued ordinarily to the close of the father's life and included not only his own children but also the children of his sons and those of his sons' sons. 3 Of course, daughters after marriage came under the *patria potestas* of another group. The son's position as a citizen was not at all affected by his subjection to this despotic power: in his public relations he was on the level with his father. 4 This involved peculiar relations at times. Yet this anomalous condition of affairs serves better than anything else to set before us the development of the matter. The unity of the family was still profoundly felt, carrying along with it the rights and responsibilities of its head, but the sense of the larger social relationships was growing. The inevitable result was a modification of the *patria potestas*. Legally the son had "had no remedy, either civil or criminal, against his father for any act, forbearance or omission of any kind whatever." 5 The father had had the right to twice sell his son into slavery without the son having any claim of exemption from paternal authority. 6 In the Empire the power of life and death could be exercised only with the concurrence of the government, and selling the child remained only as a form of certain legal transactions. 7 Upon the rise and spread of Christianity after

1 L. H. Morgan, *Ancient Society*, pp. 465-6.

2 For a detailed expression of this suggestion, see Gaston Drucker, "*De la Protection de L'Enfant contre Les Abus de la Puissance Paternelle*" Premiere Partie.

3 James Hadley, "*Introduction to Roman Law*" p. 119. 4 Ib. p. 121.

5 W. E. Hearn, "*The Aryan Household*," p. 92.

6 Table IV. "*Twelve Tables*," time of compilation, 451 B. C. See Lee, "*Historical Jurisprudence*," p. 198.

7 Hadley, "*Introd. to Roman Law*," p. 123.

Constantine, there was a further decline in the *patria potestas*, till by the time the Justinian Code was projected in 527, after some decades of codification by others, the laws of the family, property and succession were altered and the *patria potestas* in its absolute form finally disappeared. The state had given the child a right to life and liberty—he was a *person.* 8 The prophecy of this is to be seen centuries back in the formality observed in admitting the boy to citizenship in the state. After such a significant act became an institution, the *patria potestas*, as ever against the state's interest in the child, must live by its own momentum. In Roman Law alone there is thus most interesting evidence of tremendous social change, and the earnest of our modern legislation assuming the parental function of the state.

What is typically observed in Rome existed in nearly all the ancient civilizations. In Babylon the son stood to the father much as a slave; the father hired him out and received payment for his services, and exercised great powers over his person. 9 The same was true in Israel, though Moses (10) limited the power of life and death by making it necessary for the parent to lay the accusation before the court of elders. 11 The *patria potestas* seems to have been a fundamental principle of Aryan Society, outgrown always at some time in favor of the "state" view of things, but outgrown apparently almost accidentally, at widely different times in various groups, with the immediate cause here one thing and there another.

In Egypt the child was protected through enlarged rights of the mother, stated in the contract of marriage and enforceable by law. The father could not disinherit or cast out the eldest son. The *patria potestas* was here modified but hardly in favor of the *parens patriæ* as we have it.

In India as late as Manu's "Institutes of Sacred Laws," which are hardly later than the second or third century, A. D., a son other than the eldest might be sold by his parents to be adopted into another family. But evidently a keen moral sense against this was organized there long before it was in other countries. 12

Athens early felt the need of adjustment between the rights of the clan and the rights of the state in the child. Contemporary with the recognition of the latter's rights was a curtailment of the *patria potestas*, and this is plainly to be seen by Solon's time (638-558). He deprived the father of rights which had always been considered inherent in fatherhood, treating father and son as independent individuals whose respective claims were based upon the fulfillment of their respective duties. 13 This was an inevitable concomitant of the rising community feeling. The son was a future member of the community, and therefore the state had a right in him, superior to that of his father. Being born a free citizen po-

8 Lee, "*Historical Jurisprudence*," pp. 306-7.
9 Lee, "*Hist. Jurisprudence*," p. 39.
10 Deut. XXI. 18ff. 11 See Ploss, "*Das Kind*," ii, 246.
12 Lee, "*Hist. Jurisprudence*," p. 132. 13 Lee, "*Hist. Jurisprudence*," p. 173.

tentially, he could not be sold as a slave, nor disinherited without just cause. It was a community interest that he be educated, fitted to live, and the state pressed its point by maintaining that unless he were so fitted he should be under no obligation to support his father in his old age. 14 Up to 16, however, he was under the control of his father. This was a transition time in the status of the child and the regulations bear the stamp of it. Between 16 and 18 the state dictated a two years' course of training in the gymnasia, and following this preliminary preparation for its service he was formally admitted to full citizenship, swearing fealty to it and to its religion, and receiving from it a shield and spear in token of his acceptance. And it was the father of the family ordinarily who presented him! 15

Among the Germanic tribes during the early Christian centuries there does not seem to have been the same extraordinary development of the power of the father over the child. The child was soon needed in the group and attained majority early. The family idea was strong, but in a militant group the need of the group for the sons would naturally curb the absolute power of the father. Yet among these peoples late into the Middle Ages the father's right to sell the child is recognized, although its exercise seems to have become obsolete. 16

The tendency thus far is clear; the social process is going on. The community feeling becomes larger than that of the family, and is based on common interest and protection rather than on kinship. The child in his training and correction belongs to the larger group, and though the father may have full control of him up to a certain age, or only nominally so long as he lives, yet in the exercise of his parental functions he is looked upon as a *representative of the state.* The laws of domestic relations, the laws of property, and the criminal laws begin to reflect it, indeed had done so in Solon's time. But that is another study. We may observe briefly this same tendency where the state gained a sense of its unity and responsibility over each member so early as to furnish us a spectacle of the state acting as parent to an extent to which we shall not approach so long as we hold our present views on the superiority of the family as a home for childhood and the inadequacy of any other institution to do its work.

3. The Child as a Member of the State. In the preceding paragraph it is suggested that the power of the father over the child came to be exercised as a representative power—for the state. But nothing is so clear as that the *patria potestas* was ordinarily an institution operating in the interests of the father only or at most of the family. This is so true that it would be quite right to treat Sparta as an exception rather than as another rule. Sparta was a military camp during much of its comparatively brief existence, never embracing more than two-fifths of the peninsula—"hollow, lovely

14 Lee, "*Hist. Jurisprudence,*" p. 173. 15 Hughs, "*Ancient Civilization,*" § 608.
16 Hearn, "*The Aryan Household,*" p. 93.

Lacedæmon," as Homer wrote, shut in by the glorious mountains to her own narrow, intense self. Why should she not turn herself to the defense of her small world? and why should she not do her task invincibly? Why, if every Spartan were to be a hero on the battlefield, should not all interests be subordinated to those of the state, and the child trained with her future in view? Thus it was that the Spartan had to expose his feeble child on the hills for the state's benefit. The healthy child was left with his mother only until seven, then was placed in the common-school or gymnasium and kept at the expense of the state. The parents "had no part or voice in the education of their children, but assisted in persuading them to undergo the trials and hardships without flinching or whimpering." 17 Not only was the aim of the family and the state entirely one in regard to the child, but the co-operation was complete in training him. The modern state is Spartan in the social value it gives the child, and without bearing the burden of being essentially Spartan, is in many communities beginning to insist on an analogous right to superintend the fitting of the child for life in the group. Fortunately there exists the fundamental difference that now the task is mediated through the family where the family proves itself to be adequate. It has been worth the centuries it has required, to learn that it is not the child for the social body *or* the family, but the child for the social body *through* the family. The world preferred to stumble along laboriously into a more promising and satisfactory solution which should preserve its most sacred institution. Sparta was not followed because the typical Spartan was not the typical man. Let the dreamer of to-day who sets off the two institutions against each other take notice.

17 Hughs, "*Ancient Civilization*," § 560.

CHAPTER III.

THE CHILD AMONG PRIMITIVE PEOPLES

It is plain, surely, that the status of the child depends very largely on the standard the group sets for itself. That once well formulated, the methods through which conformity to it is demanded will work themselves out. Penalties for non-conformity and stimulations to conformity are in order. How the child stands in the group is the question to be answered in each case, and the ultimate aim is the determination of principles, based upon observation of both child and group—principles that will effectively aid us in preventing delinquency and promoting conformity in any group whatever.

The nearer we are to primitive life the more delinquency is couched in terms of failure to conform to a standard that is closely and immediately utilitarian. The highest morality is *effectiveness* in behalf of the tribe. To be a brave, uncowed man, a good hunter and warrior is the aim. Therefore what is most detested and condemned is cowardice or treachery, and a multitude of things which in a more civilized community would be subjects of legislation and not at all countenanced, are in a primitive group passed by as thoroughly incidental. Often there is no punishment for insolence, thievery, cheating or lying. The line of the great good is nearer to the instincts, especially those of gaming, hunting and fighting. 1

Thus, among the American Indians the notion has pretty generally existed that the boys, who were to be the warriors and providers of tomorrow, were to be permitted to do almost anything which roused the warrior spirit, and were to be subjected to nothing which served to dampen their ardor. The California Indian child was never flogged, "as it was thought to break his spirit." 2 The same has been observed in Mexico, (3) and of the Arawaks of South America. Among the latter a parent "will bear any insult or inconvenience from his child tamely rather than administer personal correction." 4 "He is very wicked" is the greatest praise to be accorded a parent concerning a child among the Dyaks of Borneo. 5

In many respects the power of the parent among primitive peoples is absolute. It is the common report of travelers that

1 Ratzel, "*Hist. of Mankind*," vol. i, p. 441.
2 Bancroft, "*Native Races of the Pacific States*," i, 437.
3 Carl Lumholtz, "*Unknown Mexico*," 1902, vol. i, p. 247.
4 Hillhouse, J. R. G. S. ii, 229.
5 Roth, "*The Natives of Sarawak and British North Borneo*," 103.

infanticide is practised, (6) and that the sale of children is frequent. 7 The status of the child is determined by the group's manner of life, which is usually nomadic and on a war basis. Therefore we expect that the children will be in early years left largely with the women, to be instructed in the traditions of the tribe, in elementary woodcraft and in all the matters which are regarded as the special interest and function of that sex. 8 With the distinction between the sexes usually observed among primitive peoples we cannot but look for a time in the life of the boy when he shall leave one group for the other—a time of great consequence to him and marked by ceremonies of initiation to manhood. 9, 10 It is not to be supposed that during early childhood the child had no communication of an intimate sort with the men of the tribe, nor that he received no instruction from his father or paternal relatives. The fact of his future vocation as a warrior and hunter guaranteed such oversight. But normally there was a definite time of transfer from maternal or family control to tribal membership and citizenship, just as there was among the Romans. "Every Australian native," say Spencer and Gillen, "so far as is known, has in the normal condition of the tribe to pass through certain ceremonies of initiation before he is admitted to the secrets of the tribe and is regarded as a fully developed member of it." 11 Then the absolute character of parental authority disappears; often the child is completely independent of the family and is subject only to tribal discipline. 12

It is evident that throughout the child's early life the standard of excellence in his group is held out to him, and everything is calculated to bring him into conformity with it. The function of the family with the child is in terms of the standard; the social body is conscious of its unity. The group is in general greater than the family.

In all this we see a simple group morality, to ignore which is to be delinquent; the family and the larger group co-operating in furthering conformity and discountenancing non-conformity, there being always a tendency to recognize the interdependence of all in the social body. This tendency most vitally affects the juvenile member of the group, his status, his training, his treatment in case of delinquency. The broadening vision of things reveals mutual responsibility. The child must obey the voice of the group; the latter must protect the former. Clearer and clearer the situation grows, here and there crystallizing into laws, everywhere promoting a higher ideal for the child, and always creating the machinery for more perfect harmony. The growth is slow; generations are days. But this tendency prophesies a time when the child shall have become a figure quite central in the consideration of the group. That time is here. But it is easier to learn that the Sabbath is made for man than that the group is created for the child.

6 Bancroft, "*Native Races of the Pacific States*," i, 169, 197, 242. 7 Ib. i. 219.
8 Eastman, "*Indian Boyhood*," loc. cit.
9 Featherman, "*Social History of the Races of Mankind*," ii, 303.
10 Bonwick, "*The Daily Life of the Tasmanians*," 60.
11 "*Native Tribes of Central Australia*," 212.
12 Bancroft, "*Native Races of the Pacific States*," i:80, 412.

PART II

THE DEVELOPMENT OF SPECIAL LEGISLATION FOR THE JUVENILE DELINQUENT

CHAPTER IV.

EARLY AND INCIDENTAL LEGISLATION

The foregoing sections have dealt with conditions which demanded only unwritten law. Furthermore, nothing is observable, as a rule, which concerns itself with the special class now so well differentiated as to bear the name "juvenile delinquent." Such a class implies closely formulated laws and machinery for enforcing them, and something akin to modern urban life, with dense population, and life in many respects abnormal and loose. What early child life was and what forces controlled it were the real inquiries. Having ascertained some of the facts, we are ready to proceed to the study of some of the early and incidental legislation which is a sure index of the emergence of the class giving rise to our inquiries.

The earliest recognition of the rights of children was evidently in regard to property. As a matter of policy the early Cæsars granted to soldiers the right to retain all properties acquired in war; it no longer belonged to their fathers. In 178 A. D. it was decreed that mother and son should stand in immediate line of succession, an evidence of the fast-growing feeling of the leading jurists. 1 In the Justinian code of 527 the laws of family, property and succession were so changed that we may say that legally the child had become a person. 2 But progress was exceedingly slow. "In the seventh century even the church was compelled to allow that in case of necessity an English father might sell into slavery a son who was not yet seven years old. An older boy could not be sold without his consent." 3 The same was true on the Continent among the Teutons even late in the Middle Ages, although the exercise of the right seems to have become obsolete. 4

In this general attitude towards the child in the law of domestic relations there was promise of emancipation. But there was still another obstacle. The delinquent child must come under the criminal law, and there were yet centuries to come before there could be clear distinction between child and adult on this basis. Punishment took little account of the *person* committing a forbidden act, or his *motive;* its prime consideration was the act, or the one injured, and its spirit that of vengeance. So long as this was true, a criminal was a criminal, irrespective of his age, and the only possible alleviation of the situation was, if the delinquent were a child, to neglect to bring him to trial at all, to ignore his delinquency, which was neither wise nor common.

1 Lee, "*Historical Jurisprudence*," pp. 266-7. 2 Ib. 306-7.
3 Pollock and Maitland, "*Hist. of English Law*," ii. 436-7.
4 Hearn, "*Aryan Household*," 93.

The early observation of the close bond between dependency and delinquency furnished another working direction. Children who were neglected or vagabond inevitably failed to observe laws. To prevent such from becoming delinquent was the aim of much of the early, incidental legislation. The Apprenticeship laws of the time of Henry the Eighth (1491-1547) provided that children between the ages of 5 and 14 who were found begging or unemployed were to be apprenticed to tradesmen. Under Elizabeth (1533-1603) they were sent to the workhouse. In 1756, a society was formed which furnished clothing for these unfortunates and sent them off to sea whenever possible. The Philanthropic Society in 1788 founded the Farm school at Redhill—the forerunner of many private institutions soon to follow. All this was preventive work, but often of a doubtful sort.

CHAPTER V.

SPECIAL LEGISLATION IN VARIOUS STATES

*1. **England.*** While the *patria potestas* had full force in Rome, the father was responsible for the acts of his children just as he was as owner responsible for the acts of his slaves and animals. 1 But when this was broken up and the child became legally a person, there went along with what rights he had certain responsibilities. In criminal law there grew up a feeling that the child under seven should be held responsible for nothing. Among the Germanic peoples usually the child did not assume rights and responsibilities until the age of twelve, when he was formally invested with the implements of war. Early English law hesitated between the two ages. In Anglo-Norman days the age of twelve was favored, "while a seven-year limit appears in later criminal law as the subject of a presumption against criminal intent," the influence being probably Roman. 2 At the same time there was a strong tendency in practice to consider the intent of the action immaterial. Thus, whenever there was manifested a disposition to exempt the infant from punishment because of his tender years, it was forbidden because age and intent theoretically had nothing to do with the case. Until the *person* became the centre of attention in criminal cases, the feelings of judge or lawyer had to be satisfied if at all under the guise of some device or irregularity. Early in the seventeenth century the infant was ranked with the lunatic as "liable civilly on the ground that the intent (i. e. bad intent, bad motive) was immaterial." 3 This was a miserable compromise. Gradually the Roman influence grew until it became English common law that the child under 7 was exempt from punishment as incapable of entertaining criminal intent. A like presumption was allowed for those between 7 and 14, but it might be rebutted. After 14 one was presumed to have sufficient capacity and must affirmatively show the contrary. 4 It is not necessary to follow this development closely; the emergence of the child as a legal person is clear in the observation of typical cases here and there in legal history.

There was no significant movement in England before the second quarter of the nineteenth century. The law of August 10, 1838, provided for the establishment of a juvenile prison at Parkhurst, and the treatment of the inmates was left largely to the discretion of the officials. The preamble to the law indicates that

1 O. W. Holmes, The Common Law, pp. 6 ff.
2 J. H. Wigmore in Harvard Law Review, vii, 447. 3 Ib. vii, 448.
4 Tiffany, *Persons and Domestic Relations*, pp. 401-2.

the Queen had been in the habit of pardoning juvenile offenders to the care of private charitable institutions. But such institutions often refused to undertake the responsibility and care of the harder cases. The same difficulty is experienced today in England. 5 In 26 years this prison was closed, partly because the private institutions had taken advantage so largely of their opportunity to relieve the state, and partly because superceded by the institutions established in accord with the Reformatory and Industrial Schools Act of 1865 and similar acts. These institutions have never been provided by the state. Reformatories had been founded privately, and after 1854 they were certified by the Secretary of State and inspected by an Inspector of Prisons. In 1866 a special Inspector of Reformatories was appointed. The Reformatories provided for offenders under 16, for not less than two nor more than five years, "in addition to imprisonment in gaol not less than fourteen days" (1854), which was later amended to ten days for both England and Scotland. According to Sec. 14 of the Law of 1866 no offender under 10 was to be sent to a reformatory, unless "either the sentence were passed at Assizes or Quarter Sessions, or he had been previously charged with an offence punishable with penal servitude or imprisonment." Thus the English Reformatory is closely related to the Prison. Except as affected by changes in other institutions and by minor changes in the laws, the English Reformatories exist today (1906) practically as they did a quarter of a century ago. 6

The Industrial School is the mainstay in England in juvenile correction. Dating back to 1854 (Scotland) and 1857 (England), it has been variously adapted to include mendicant and destitute and morally imperilled children in general. The age limit is 14, and at that age the parent may claim the children and return them to any sort of environment.

The lines protecting the youth were a bit more closely drawn by the Elementary Education Act of 1876, providing for *day* industrial schools and the more extended use of industrial schools. The Summary Jurisdiction Act of 1879 and the Probation of First Offenders Act of 1887 are based upon the idea of summary hearing for first offences and dismissal upon payment of costs, with admonition; or suspension of sentence dependent upon good behavior, and in graver cases with the alternative of payment of a fine. 7 The Howard Association laments in its report of 1897 that the Act of 1887 is not used to the proper extent. This is unfortunate, indicating the reluctance of the English people to fairly enter into the probation system, so popular in the United States.

The truant schools of England are very effective, not only keeping the child from the street, but affording him instruction of a very practical sort. There is also a class of youths in English prisons called "juvenile adults" (over sixteen) who are subjects of

5 Report of Comptroller of Prisons, New South Wales, on Prisons of Europe and America, 1904, p. 51. 6 See Cane, "*Punishment of Juvenile Offenders*," p. 202 ff.
7 See Drahms, "*The Criminal*," 305-6.

special treatment, but this is not a significant thing. Industrial and truant schools are rendering great service. There seems to be some hesitation, however, in England in claiming full power over the child for the state, even when the parent has proven his inability to fill a parent's place for him.

2. France. In the French law of 1791 the distinction was clearly drawn between the child who had acted with discernment of the meaning of his act and the one who had not. The former was rigorously punished as we view the matter, but little allowance being made for youth, while the latter was either returned to his family or sent to a house of correction to remain not later than his twentieth year. 8 All the past experience was formulated in the Code Penal of 1810. Separation of young and old offenders was contemplated, but was not carried out. 9 This idea was ahead of its time, and indeed in the small prisons would have been impossible. The second quarter of the century was one of experiment and progress. Demetz and Lucas advanced the belief that agricultural training would win the delinquents over to an orderly life. Their institutions were subsidized by the state, and became the models for others in private hands. The legal expression of this period came August 5, 1850, and the advance is brought out into relief. The right of youthful prisoners of both sexes under 17 to religious, moral and trade education was recognized, and the sexes were separated. "Colonies penetentiares" with strenuous discipline and agricultural and trade education took the place of the houses of correction. These were either public or private. The children given more than two years sentence were sent to "colonies correctionelles," public institutions in France and Algiers. Another feature was that those liberated were in some sense given over to the care of public charity. 10 This tendency is emphasized in the law of July 24, 1889, "for the protection of children maltreated or morally abandoned," which protection is extended by the charity authorities, and in the law of July 24, 1898, which provides that the child shall be given over to a parent, or other person, or charitable institution or cared for from the public charity funds. 11 In the former law the right of the state to take the child from the family in which it was morally imperilled, was recognized; the state exercised its power not through the criminal law but through the arm of charity. Again this path is followed in the slight changes of the law of June, 1904. This seems to be characteristic of the French view of the situation. It is another recognition of the close relation of dependency and delinquency, but other countries have thus far chosen to separate the classes.

3. Germany. Up to the middle of the nineteenth century the Roman and canonical law contention that the child under seven is absolutely incapable of crime was nominally in force in German states, but as elsewhere its complete action was rendered impos-

8 Raux, "*Nos Jeunes De'tenus*," 221 ff. 9 Krohne "*Gefaengniskunde*," 83.
10 Raux, "*Nos Jeunes De'tenus*," 261.
11 "*Traite' Theoretique et Pratique D'Assistance Publique*," H. Derouin, pp. 27-30.

sible because of the strength of the idea of retribution and terrorizing. In several German states there were two legal divisions of children, those of absolute and those of relative responsibility. The ages are rather higher than we are accustomed to think of, the first period varying in its higher limit between 10 and 12 years and the second between 14 and 21. Bavaria had such a law as early as 1813, Saxony in 1838 and Wirtemberg in 1839. The Prussian code of 1851 followed the French lead, turning aside from the inflexible law and leaving it to the judge to determine whether the child had acted with an understanding of his action. The law of May 15, 1871, (somewhat altered in 1876) the first that might with justice be spoken of as German law, declared that criminal capacity does not exist in the child under 12, that it is doubtful between 12 and 18, and that even beyond 18 there is no legal presumption for it, i. e. it must be affirmatively proven. This advancing of the ages and breaking from the hard law which regarded only age and not individual development was no small step.

Yet the close of the century found the child in Germany under a penal code that carried along with its decisions the stigma of crime, the pernicious short term of confinement in an institution of reform (*Besserungsanstalt*), and limited employment of the deferred sentence, i. e. sentence which is not operative until a subsequent act of wrong again brings the offender before the court. In 1900 Germany embodied her experience with juvenile delinquents in a "Law of Educational Guardianship" (12) with the result that many of the "leaks" were stopped and child-saving tremendously promoted. Following the American pattern, it was made possible that any child in any manner morally imperilled could be brought before the court and dealt with without criminal taint and irrespective of the claims of incompetent, unfit parents. In these respects Germany is abreast of the best legislation. Her particular contribution lies in having made specific financial provision for every possible case. Our own laws are often rendered inoperative by lack of funds.

4. The United States. We can afford to pass by the legislation of other countries as either duplicating that of England, France or Germany or as not in any manner significant. Italy has been greatly interested in the psychological, physiological and pathological aspects of crime, both of adults and juveniles, but has, perhaps for that very reason, contributed nothing of especial value in the treatment of juvenile delinquents who are not criminal. The countries of northern Europe offer nothing advanced. Like the others, they have depended largely on private interest and private means to do what little has been done. 13

As in England, the great word of the nineteenth century for the United States in regard to juvenile delinquents was "correction."

12 Das Preussische Fuerzorgeerziehungsgesetz vom 2 Juli, 1900, C. von Massow.

13 Krohne, "*Gefaengniskunde*," loc. cit.

Separate confinement of children in prison and their assignment to reformatories with a view to their correction took precedence over any preventive measures. As a matter of fact this correction was undertaken to prevent crime; now we are beyond the prevention of crime in the ordinary sense. Our aim would find itself accomplished far short of that. The end of the century revealed to us the fact that ordinarily we are not dealing with crime at all in dealing with children. The break between the centuries marks a passing from the reformatory to the probation system as the centre of attention. 1825 was the year of the first reformatory in this country, the House of Refuge of New York, and uninterruptedly we have developed this institution until the Elmira Reformatory and many others which have followed its lead stand as models for the world. 14 To trace that development here is unnecessary. More profitable would be the noting of the growth of certain accessorial ideas now central in our system, namely the probationary powers of the court, the terminable sentence and the parental power of the state. All these are a reflection of the rapidly changing sentiment of people who, as teachers, psychologists, parents, administrators in many capacities, were creating a new child-world. This new world proves incompatible with much that is in the old, therefore an expression of the situation in new laws and new institutions. Carrying along with us our old institutions, public and private, and much of our former mental and legal equipment, and careful and conservative as to innovations, we have entered into a new era, looked upon as experimental by many, but full of such promise and achievement and backed by so much sanity and experience that we are very confident in the working directions adopted.

As early as 1853 Mary Carpenter in her "Juvenile Delinquents" tells of a recommendation rejected by Parliament in which were closely foreshadowed the terminable sentence and large probationary powers of the court. This came from students of juvenile delinquency and was evidently premature. It was not probation in our present sense, being merely a form of suspended sentence with no oversight except parental. This was already present in the United States and England in the informal and sympathetic administration of the laws by intelligent and kindly judges. To make the necessary incorporation of it in legal form was left as a task of the twentieth century.

The actual recognition and approval of the probation system which employs the probation officer professionally is found in the legislation of Michigan and Massachusetts in the '70s. 15 The parent of the probation system was not this or that legislator or legislature, but common-sense understanding of child nature. It is a negative credit to have framed a law at the end of the nineteenth century providing apparatus for the treatment of the child as a child and not as a criminal. That apparatus will later be considered. Just now it is enough to analyze in the large the legal

14 Drähms, "*The Criminal*," Chap. on Juveniles. 15 Charities, Jan. 7, 1905.

temper of the United States towards the child.

The United States is indebted directly to England for the transmission of the old common-law heritage of the responsibility of the child for his acts. But the former country has proceeded with considerable independence of all countries to the advanced position she occupies at present. Some of the comparatively recent legal expressions are most instructive. One writer says, "The rights of parents result from their duties, being given them by law to aid in the fulfillment of their obligations * * * This is the true foundation of parental power." 16 "The parent has only a moderate degree of authority over the child's person, which authority relaxes as the child grows older." 17 "The cardinal principle * * * is to regard the benefit of the infant, to make the welfare of the children paramount." 18 This is a tremendous concession; the child is truly a person and the attitude of the state is broadly social. The child's welfare and conduct are of concern to it, therefore it will assure the child of fair treatment. Schouler further generalizes, (19) "In this country the doctrine is universal that the courts of justice may, in their sound discretion, and when the morals or safety or interests of the children strongly require it, withdraw their custody from the father and confer it upon the mother, or take the children from both parents and place the care and custody of them elsewhere." Both he and Hochheimer (20) contend that there is far more hesitancy in England in the State exercise of parental function than in America. Here the right of the state is fully admitted and clearly expressed. Nearly fifteen years ago, September 1891, Mr. Charles Martindale wrote in the "North American Review": "It is a vulgar supposition that the parent has some natural property in his children; that children 'belong to their parents.' Such is not the legal status of the infant. From the time of his birth, the infant is a subject of the State, having an individuality separate from its parents, with distinct rights of person and property, with separate obligations to and claims upon the sovereign. The only right of the parent recognized by the law is one of guardianship. The right and custody of their children * * * comes to parents not by the course of nature, not by birth or blood, but is derived from the State, and must be exercised under the authority and supervision of the State. * * * Parents are intrusted with the persons and education of their children under the natural presumption that the children will be properly taken care of and brought up with a due education in literature, morals and religion, and that they will be treated with kindness and affection. But whenever this presumption is removed * * * the Court of Chancery may interfere and deprive them of their custody and appoint a suitable person to act as guardian." The paper further indicates that this has long been the theory of the matter. Yet in practice it is not only compar-

16 Schouler, "*Domestic Relations*," 5th ed. 383. 17 Ib. 384. 18 Ib. 390.
19 Ib. 389. 20 "*Custody of Infants*," pp. 33-34.

atively new, but is strictly limited. In France, Germany and the United States it is the presupposition to all action. On it are built the special Children's Court and the whole Probation System, and the use that is made of the various classes of institutions to which children are assigned from the Court.

This, as applied to the definite situation, is mediated in the various Juvenile Court Laws of many States of the Union. Nineteen States have such laws and six others have a probation system in operation without the special court. 21 In general the elements of the law are present in the California Law, approved Feb. 26, 1903. In the first section of the law, the "Juvenile Delinquent" is defined, also the "Dependent" who comes under the same law: "This act shall apply only to children under the age of sixteen years not now or hereafter inmates of a State institution, or any reform school for juvenile offenders, or any institution incorporated under the laws of the State for the care and education of children.

For the purposes of this act the words 'dependent child' shall mean any child under the age of sixteen years that is found begging or receiving or gathering alms (whether actually begging or under the pretext of selling or offering for sale anything) or being in any street, road or public place for the purpose of so begging, gathering or receiving alms; or that is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence; or that is found destitute, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; or that frequents the company of reputed criminals or prostitutes, or that is found living or being in any house of prostitution or assignation; or that habitually visits, without parent or guardian, any saloon, place of entertainment where any spirituous liquors, or wine or intoxicating or malt liquors are sold, exchanged or given away; or who is incorrigible; or who is a persistent truant from school. The words 'delinquent child' shall include any child under the age of sixteen years who violates any law of this State or any ordinance of any town, city or county of this State."

Sections follow providing, "for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act, and prescribing the duties of such boards; and providing when proceedings under this act shall be admissible in evidence." 22

Specifically the recent laws have also made provision for bringing any child who would come under the act to the attention of the court by any individual who judges the child subject for such

21 Charities, Jan. 7, 1905.

22 See "*International Prison Commission—Children's Courts in the United States*," 1904, House Doc. No. 701, pp. 165 ff.

attention, whether that person be a representative of the law in any capacity or not; (23) furthermore that no child under 12 (14 in Colorado) shall be imprisoned in jail under any circumstances; (24) that the religious preferences of the parent shall be respected in the assignment of the child to an institution or family; (25) that the child may under proper conditions, if dependent, be surrendered by the one having the right to so dispose of the child for adoption. 26

More significant, even, than these specific provisions is the general clause appended in practically identical phraseology in all the State Laws:

"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 child shall approximate as nearly as may be that which should be given by its parents, and, in all cases where it can be properly done, the child be placed in an approved family, with people of the same religious belief, and become a member of the family, by legal adoption or otherwise." 27

5. Conclusion. The tendencies observable long before there emerged any special legislation in behalf of juvenile delinquents are now settling down into working order as a part of our legal and institutional equipment. Some may say that very early the child was quite as truly a member of the state as of the family. It is evidently true that as a subject for discipline and general parental oversight he was never a member of the state. That body's first care for him specifically was in protecting him in his property rights from the cupidity of dishonest men. Criminal law of the state never went farther than barely to recognize that he was not an adult; it never defined him. It accorded him confinement in prison apart from adults, and there he waited to be discovered and set up in his rightful place. It was the teacher and the psychologist and the moralist in his many capacities who rescued him. Through the efforts of such it may be said with some justice that the modern sculptor of unfortunate childhood when he carves a child carves a *child;* not a miniature man, but an embryo man.

We have yet to complete the learning of one supreme lesson—the same lesson that our world of labor in all its distress cannot learn, but must as the alternative to its misery. Law is a resultant thing, only a somewhat more final expression of experience gained, in this case, from long dealing with the child and careful study of his nature and his activities. But law may be persistent, conservative to the point of harmful obstinacy when questioned by a new mass of experience and new judgments even of expert specialists. Such has been the case. We put a halo over law. We must put a halo over something which shall be final authority

23 Sec. 4, Illinois Law. See "*Juvenile Courts*," 2nd ed. p. 61. Compiled by T. D. Hurley, 1904. 24 Sec. 11, Illinois Law; Sec. 9, California Law. 25 Sec. 17, Illinois Law.
26 Illinois Law, Sec. 15. 27 Sec. 13, California Law.

for us. But that halo becomes a dark cloud obscuring truth and right when it imparts to Law absolute finality and perfection. Law is a secondary thing, derived from and generalizing experience. We are getting a tremendous amount of new experience in regard to the child, which must be incorporated into the laws and they must be flexibly enough interpreted and administered to favor child nature. This brief glance at the matter of the status of the child through the ages ought to convince us that progress has been criminally slow. The conservatism of Law has been one reason for this, especially in times since Law began to be expressed more formally. Let this never be charged again. Let Law hold itself open in spirit; let legislators and administrators make and use laws not as an end but as a means. In such times as these it should be a corallary to every law concerning juveniles that it is soon to be remodelled or replaced if the interest of the children and our better understanding of them demand it.

If we were to refrain from looking into the future we might say, after tracing the development of sentiment concerning the child and the reluctant assignment to him of the place of a legal person, that our present institutions which really assure him his place are the flower of it all. But already the prophet voice is heard crying the hope that we shall not long have to endure many of the existing features even of the special juvenile court or the probation system, and that the institutions to which we have to send children may soon lose all the characteristics that they have inherited from another regime, and reflect more consistently the spirit of the modern view of childhood unfortunately or accidentally delinquent. In recent years we have come at the matter with a rush, and have swept away injustices and in a multitude of details begun to reconstruct our apparatus. There is great promise that the momentum gained is such that we shall not be condemned to too early crystallization of principle or too finally committed to methods. Progress here as elsewhere consists in a large degree in keeping stirred up into the realm of the questioned and the admittedly improvable everything that threatens to settle down into tradition. We need not fear chaos so long as we are guarded on one side by ultra-conservative legislators and on the other by careful, far-sighted specialists who have reverence at once for precedent and for unfound truth. It is in this spirit that today we are beginning to look upon our recent constructions and to reinterpret them in the light of our rapidly growing mass of experience with and appreciation of childhood both normal and abnormal. The first step towards criticism is description. Therefore shall we briefly describe our present machinery for dealing with juvenile delinquents.

PART III

THE APPARATUS FOR THE TREATMENT OF JUVENILE DELINQUENTS

CHAPTER VI.

THE JUVENILE COURT

*1. **Origin.*** Logically the Juvenile Court is an offspring of the Criminal Court, made necessary by the full recognition of the fact that the child is ordinarily not criminal and that the Criminal Court taints the child brought into it with the character given it by its dealing with confirmed criminals. Historically it is of the same origin. Even now the judge of the Children's Court is ordinarily simply detailed from the older Court. Though the way had long been leading up to it, the first real Juvenile Court was established by Sec. 3 of the Illinois Juvenile Court Law, in force July 1, 1901. Many States have followed, and in the main have followed closely.

*2. **The Judge.*** In some cases there is but one judge acting in the Juvenile Court, though the duties of that Court may not be sufficient to occupy his whole time. Whatever cases come before this Court, either for the first time or as "repeaters," he passes upon, being always in the peculiar atmosphere of this Court and never carrying over into it from the other courts anything that is foreign to it. It is very important that the same judge should continue the hearing of a case in which he has been interested before. On the other hand, it is quite common that the judges of the circuit court take turns in presiding over this court. In the county in which Indianapolis is situated the presiding judge is elected like any state officer. In Colorado, jurisdiction is given solely to the Judge of the County Court, while in other localities the police courts and justices' courts exercise jurisdiction. Thus there is great variety of usage in the matter of appointment.

The term of service and the powers of the Judge are subject also to local custom. But the relation of the Judge to the probation system is largely a matter of personal preference, except where his other duties absorb his attention entirely. It is in some instances possible for the Judge to be in effect the chief probation officer of his Court, taking close, personal interest in the children brought before him, even to the extent of following them up through various reforming or preventive agencies. Such a force is Judge Lindsey of Denver. But ordinarily that is not possible. However, experience seems to have shown that in general the men have been chosen or appointed as judges who have most sympathy with childhood and therefore are most likely to succeed. In fact the Indiana county above referred to has restricted the eligibility to the position so that only a man of forty years of age and a parent may be elected. 1

1 Charities, Jan. 7, 1905, 336.

3. The Jury. The jury is a remnant of the adults' court in most cases dispensed with altogether, in a few instances existing, but almost functionless. The reason for its survival is the desire to accord to all the right of trial by jury, on the part of those living so far back in the past that they do not realize that there are really few or no *trials* in the Children's Court. But the appendage is harmless. In the Chicago Court the jury is ignored and often must inquire to learn even so much as the disposition of the case. In a serious offence the Judge may well feel reluctance about passing individual judgment against a criminal child, and the jury has a place, but the sentiment is strongly against it, as interfering with the moral and educational influence of the Court, and as increasing publicity.

4. Legal Representative for the Child. In some Children's Courts a lawyer is provided for the child, perhaps to protect him from selfish or wicked parents, or to aid the judge and the probation officer in getting at the whole truth of the case. As such he performs a very necessary service, yet it is a fair question whether the same service could not quite as well be done by the judge or the officer, the former settling legal questions and the latter looking up the facts of the case. It is a great advantage to the Court if the probation officer is a good lawyer. The whole atmosphere of the institution seems to argue against such a representative simply as a means of assuring fairness to the child. Furthermore, a lawyer often influences the child to deceive, disturbs the decision of the judge and sometimes sends away the child justified in flagrant or doubtful violation of the law, and looking upon the Juvenile Court as an enemy or at least an institution lacking in the very thing it means to assume—parental interest in every child. None cares to deprive any member of the State of the right to a fair hearing and protection against injustice, but the Children's Court is an educational institution seeking both to deter from a path full of dangers and to point the way to clean and useful manhood and womanhood, and it is bad pedagogy to set the child against it. We are inclining rapidly to this view of things even where the children are evidently vicious and criminal. Prevention is very reluctant to give way to Correction today.

5. Procedure. In what does the dignity of the Law consist? A few judges still insist that it consists in its clothing and its bearing—a dignity that is often very impressive, but like the analogous dignity of individual gentlemen, not always quick and unbending and sympathetic enough to do the simplest and greatest services. Is there not vastly more dignified and worthy human nature shown in a judge who will take a child aside, screening him from publicity and consequent harm, stating his own case to him, urging thoughtfulness and industry, deploring bad associations, planting in him the germ of self-help, than in the one who, because of a false notion of his office or pique at his assignment to a Children's Court, insists on publishing the history of a sensitive

child to an audience of curious listeners through the established procedure? Law is a schoolmaster to a child, but the best schoolmaster is not the legalist of that type. It is the law that is written on the heart, revealing a heart-beat at every letter, not the hard, cold law of statute books that the child learns. The judge as man and not the judge as judge is the best mediator between the group standard as found in the law and the child. When we shall have fully learned that the law is made for the child and not the child for the law we shall easily fall into a way of conducting proceedings that will turn the court-room into a home and the judge into a parent to every unfortunate child brought before him. The origin of the Children's Court is altogether too evident in its conduct. The time will come when there will be no public court-room for the child, when we shall deny that all we have stripped from the police court to make way for the child in the new court is the rogues' gallery. Dignity will be defined in terms of effectiveness, not show. We are somewhat content to move slowly in this matter beyond a certain point for the reason that this is an incidental question, the solution of which depends upon that of another and vastly more fundamental one—the adjustment made necessary by the fact that machinery employed through centuries upon centuries in turning out the criminal grist of the world and furnished its motive power by the spirit of vengeance, repression or at best reformation, is now set to work upon youthful, unformed lives, and the motive power changed already, so far as it touches the child, into prevention by development.

6. Place of Detention. By law some of the States forbid the placing of children under a certain age in jail, even while waiting for a hearing in the Court. Therefore it has been necessary to provide a place of detention for such of the children as cannot be sent to a home or kept under the guardianship of some interested person. Some cities have founded a home, superintended by a man and woman who shall exert proper influences over the boys. In some cases the boys are kept in these homes for a considerable length of time, before or even after their appearance before the Court. Perhaps it may be deemed right to dismiss the case without a hearing because of the good influence of this institution. In other places the old ideas have exerted such force that the law is met by the provision of a cell (!!) adjoining the court-room, in which the child is locked pending his hearing. Of course this is archaic. The detention home may be made a great feature in child-saving, especially among the homeless waifs whose lot will almost inevitably be cast in the great cities, who have the taste of the city and can not be "placed out" in country homes. Coupled with personal interest on the part of superintendents and matrons and opening, as they do, very evident opportunities to settlement and church workers, they may yet develop into far more than they were intended to be. Established to fulfil a temporary function, they reveal a field not unlike that of the "homes" or "lodges" or

"lodging houses" for homeless men, with the significant distinction that, the juvenile population being less nomadic, there is chance for permanent betterment where the other institutions are hardly more than for temporary accommodation to most of their inmates.

7. Juvenile Courts and Parents. It is the unanimous opinion of workers for children that delinquency may more often be traced to the home life or the lack of it than to any other cause or number of causes. As remedial measures the Court may remove the child from his environment or, leaving him there, seek to improve it for him. It often happens that the child's delinquency is due to a train of circumstances of which the parents know nothing, and all that is necessary is to call the attention of the parents to the life of the child. Unfortunately it is the rule that not simply the ingenuity of the child in concealing his activities and his associations from his parents is the great factor, but rather the latters' ignorance or carelessness or wrong. Therefore the attitude of the Court towards them must be active; it must encourage, instruct, aid parents in their task. Thus far the Court has found great difficulty in dealing with those parents who resent the interference of the Law in their domestic life, or who are so vicious or ignorant that while in general to be trusted with the children they occasionally place themselves in the position of actually contributing to their delinquency. The most common case in point, perhaps, is in sending the child to a saloon to buy liquor and thus putting him in touch with a life that promises much danger to him. Such an act is punishable ordinarily, yet in the legal process it has not been shown with sufficient clearness that this is not only an act reprehensible, but is such because of its consequences to the child. The parent is punished, if at all, in one court, and the child in another. Could a parent and child be brought before the same court and this which is one offence be dealt with as such? The situation brought forth considerable legal sparring for points, in which common sense won in spite of the lack of precedent. Where it had been possible in all the Courts to bring the parents in for a reprimand only, it is now possible in at least one to make the charge against the parent rather than against the child, and to administer the necessary correction. The Colorado "adult delinquent law" of 1903 reads as follows:

"Sec. 1. In all cases where any child shall be a delinquent child or a juvenile delinquent person, as defined by the statute of this state, the parent or parents, legal guardian or person having custody of such child, or any other person, responsible for or by any act encouraging, causing or contributing to the delinquency of said child shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be fined in a sum not to exceed one thousand dollars ($1000) or imprisoned in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment. The court may impose conditions upon any person found

guilty under this act, and so long as such person shall comply therewith to the satisfaction of the court the sentence imposed may be suspended."

No other feature of the whole system is so much an innovation, or so much an evidence of the strength of modern sentiment. It justifies our hope that soon we shall be able in a hundred respects to construct and reconstruct apparatus for dealing with the juvenile delinquent entirely on the basis of utility and common sense and independent of useless traditions either in principle or method.

8. The Court and Private Interest. "Every reform," says Emerson in his Essay on History, "was once a private opinion, and when it shall be private opinion again it will solve the problem of the age." It is too easy to get into the beaten path of things. It is easy enough to get out of it also, but to only the few who hardly find content in the beaten path. It is the private opinion, the conviction of such spirits that insistently makes its way into the life of others in the group, that formulates itself in Juvenile Courts, and new laws and probation systems. The legal profession at the beginning set itself against the reform almost by necessity, as did the police. Both are accustomed to look for fault and delinquency and crime; the child-saver is looking for everything else. Individuals with the teaching and the saving spirit wherever they happened to be, espoused this cause. Clubs with energy and means to expend, judges who saw the error of fitting the child into adults' clothing, charities associations and children's societies of all sorts added their private conviction, bore the brunt of the reform and the construction and the expense until such time as private opinion should be "private opinion again" and everywhere. Such is the general history of the movement. Balls, bazaars, fairs, subscriptions, petitions, publication—all sorts of influence have been brought to bear wherever necessary in order to legalize private opinion into public institution. Even now the State proclaims its only partial conversion in failing to provide adequate means for the management of the system. Probation officers must yet be privately paid, the expense of caring for children in many cases is likewise neglected, surely, in view of ceaseless waste and misexpenditure of public moneys, not for lack of funds, but for lack of inclination.

Yet we can conceive of nothing so fortunate as all this. It is the cause that attracts to itself strong advocates who are willing to crusade for it, who find opposition and in meeting it find their cause growing upon them and giving them a great message, that finally is founded substantially. The judges and the lawyers who opposed once are the strongest advocates for the very reason that they know the value of the idea that conquered them. And it is of inestimable worth to have had the advertising of this form of child saving among so many individuals. The Juvenile Court lobby has extended far beyond legislative halls, and the lobbyists have been actuated by the consciousness of right and the call of

long-suffering childhood. When, even with such rapid development, we grow impatient that juvenile life is made to wait upon red tape and undue conservatism, we may be quieted with the thought that there is nothing to fear so much as a movement getting beyond its average observers, or becoming crystallized into a form to be laid aside because men have not seen it in the process of crystallization. Or when we are tempted to think of the unforgivable crime of not having distinguished between the juvenile delinquent and the adult criminal through the centuries, it is well to reflect that it is the appreciation of the enormity of this very offence that has made this institution one of the most popular and significant in recent history, and in a comparatively brief period.

CHAPTER VII.

THE PROBATION SYSTEM

1. Origin. The probation system is a Topsy-like creation; it "just grew." How futile for this State or that to claim precedence in this matter, identifying legislative approach to it with origins! When we find the first administrator of the law whose heart and decision registered a protest against clamping the criminal procedure over juvenile life, holding it rigidly in a mold too small and altogether unfitting, we shall have found the source of this mighty flowing. Perhaps that protest and like protests resulted only in the dismissal of the cases in want of alternative possibility, but the legal mind is too keen and merciful and impartial notwithstanding its weaknesses to overlook infringement of law. Revolt is never completed until there is revolt *to* something as well as away from something. The judge who revolted against sending a child to company with criminals in jail, in that very act proved the existence of the spirit which made him turn about and help to provide for the child's welfare by some means not yet legal. He went beyond the law he was sworn to administer in releasing the child who might be technically guilty of wrong, and he went outside the pale of things legal for a remedy. Either he himself, not as judge but as private citizen, exercised the rights always accorded to greatheartedness, and entered upon a campaign of saving the child to wholeness of life, or he co-operated with those who as private citizens or institutions were committed to such service. "Every reform was once private opinion." Yes, and every reformer a prophet—prophet of gradual acceptance of protests and final formulation and application of something better. The early principle of discernment or lack of discernment, responsibility or lack of responsibility on the part of the child in his act, seen in French and German codes was prophetic of probation. Likewise were the principle of the suspended sentence during satisfactory behavior, the indeterminate sentence, separate confinement of juveniles and adults in prisons and the same thing extended in the establishment of reformatories. Historically, probation has come to us not as one of the series of devices but as a principle; not the isolation of the child from the society he has offended or which has harmed him, but the application of good to him through the direct medium of lives sympathetic to those in the formative period. If we may prophesy, strictly on the basis of the history of child status and child treatment and with a view to the actual turning of the attention of the race back upon its children, we

may allow all sorts of variation in method, unlimited extension in application, and yet insist that in *principle*, whether we name it probation or patronage or education or religion, we cannot advance—we can be no more than *parental* in our attitude at best. And that is enough. When we get this sweep of things, how unimportant it seems whether it was Judge Sanity of the City of Puremont of the Commonwealth of Massachusetts or Judge Kindly of Spotless Town who first informally applied the probation idea to some youngster who was fortunate enough to "get caught swipin' things!"

In the United States probation was operative in some form and to some extent in a number of the older communities before Juvenile Court laws made specific provision for it on a much more extensive plan. New York paroled children to individuals and to the New York Society for the Prevention of Cruelty to Children for twenty years prior to our present laws. Statutory provision for the step was made in Massachusetts as early as 1878 and 1880, and at least as early as that Michigan covered practically the same ground through its State Board of Charities and Correction. [1] Illinois and Indiana were both groping for light and relief, experimenting and preparing the way for advanced legislation.

But "probation" has within a half dozen years taken on a very definite character. The impossibility of dealing with the child under the criminal law became so patent to so many people, and especially the disposition of the cases which actually need some oversight became so problematical that some departure was inevitable. It was wrong in principle to simply turn loose the child who had offended. There were no institutions entirely answering the purpose, and the treatment in those institutions which could receive the small minority of the children tried was very expensive and not adequate to any more than the small minority. The whole trend of the day was against "institutions." How would *men* do? The very thing that not only the Courts and the Boards of Charity and the Child Saving Societies had been seeking more or less consciously, but that the spirit of the age demanded! The Judge could not follow the child as he left the Court, not guilty in a measure that would justify incarceration in jail or detention in a reformatory, but not so guiltless or well environed but that his departure, unguarded and technically vindicated, left a burden on the mind of the Judge. What he could and did do is very aptly expressed by Dr. C. R. Henderson, always in the forefront in the study of the sociology of the delinquent group: "An old proverb ran thus: 'God could not be everywhere, so he made mothers.' The judge cannot be everywhere, so he must have probation officers."

The child is "paroled," released on probation usually for an indefinite period, with the understanding that good conduct will end in his release from probation and the oversight of the Court,

[1] Charities, Jan. 7, 1905, p. 331.

and that failure to behave properly will make him liable to return to the Court and to final disposition of his case just as if he had not been paroled.

2. Probation Officers. The probation officer, of supreme worth in the system of child-saving, has had to justify himself. At first there was seldom a way made for his appointment, and the public purse-strings are still closely drawn against him. Even Illinois, leader in many respects in the affairs of juvenile delinquents, does not yet pay him as such. The mayor of Chicago details policemen to this duty and the city pays them as policemen. There are also volunteers and still others paid by philanthropic organizations. In a few States his appointment is mandatory and in a few he is paid from the public treasury. In more States no provision whatever is made for his appointment. Others leave it optional. Office is held ordinarily during the pleasure of the appointing body. Often the Court appoints, sometimes the governor does so. In Colorado the appointee must be approved by the State Board of Charities and Corrections. 2 All this uncertainty indicates clearly that we are yet in the experimental stage in this matter, at least in the public mind. It is true that many of the best friends of the system have opposed payment of officers from the public funds on the ground that the qualities necessary in the officers are rarely found in politically dependent men. The same argument would apply with identical strength against the employment of policemen as probation officers. There is basis for this argument certainly in our American public life, but on the other hand this particular movement has not only succeeded in keeping itself from the hands of the spoilsmen, but it has been in actual development and will be in the nature of the case close to the healthy censorship of individual and institutional interest. Therefore, while we may be sceptical about the wisdom of optimistically trusting public officials even in this high task, can we afford not to encourage by decent remuneration the many who voluntarily serve such a cause? They are enough so that among them we may surely find splendidly equipped probation officers. When we have once confessed to ourselves that the only real problem is to keep the political buzzards away from us, we shall find a way to do it. If we cannot check them in the Colorado plan of requiring the approval of the charities organization to the appointment, surely with the backing there is in this popular enterprise we may safeguard ourselves in some other way. At least let us not be guilty of listening to those who insist that we cannot afford to pay probation officers. It does not require an expert accountant, as Judge Lindsey and others have shown us in their reports of the enormous saving of the Court to the State, to convince us that we can afford from that source alone to pay more officers than we need to perform the present functions of the office.

2 "Charities," Jan. 7, 1905, gives a complete list to date of appointing power, terms of appointment, compensation, term of service and scope of powers according to States.

3. The School and Probation. The great majority of the States which have probation laws are Northern States which have compulsory education laws, making it necessary for the children to attend school up to about the age which is the higher limit of Juvenile Court jurisdiction. This fact alone suggests the close relation between the Juvenile Court and the School.

During the year ending April 30, 1904, there were heard in the Juvenile Court of St. Louis 815 cases of delinquents. Missouri has no compulsory education law. Of these 815 only 174 were attending school! Of the remaining 641 only 222 were at work. The problem of St. Louis in its child-saving is with the 419, more than 50 per cent. who were neither at school nor at work. Rather might it not be said that if the laws which make such conditions impossible elsewhere were in force there, probably about 50 per cent. of the problem would disappear. It may easily be seen that the relation of the Court and the schools cannot be very close in St. Louis. During approximately the same year, that ending December 31, 1903, Chicago had in its Juvenile Court 1817 delinquent cases, the great majority 14 years of age or under and the greater part of all of them coming under the Illinois compulsory education law. 589 of these were paroled to probation officers, whose primary source of information concerning those in school were the teacher and the school record. The officers visited the schools and consulted with the teachers, or received from time to time reports and records from them—information which was of course invaluable both to the officers and the Judge, if the case came to his attention again. It is to be hoped that usually the teacher was doubly interested in the cause of the children on the appearance of the danger signal given by the Court. Together they may have a double reading of the barometer which responds to every indication of the threatening cloud of crime.

4. The Church and Probation. Judge Lindsey's opinion of the matter is worth quoting. He writes from Denver:

"The churches have given us their moral support, which is of great importance and has been encouraging and helpful to those who have done the work. As for direct assistance or any practical co-operation with the churches there has been practically none. At the present time some of the churches are taking hold of the club work and opening their churches to the boys. The churches and pastors have shown the kindest feeling and disposition and are anxious to help the court, but the difficulty has been to devise any system to harness this willing material in such a way as to receive from it practical advantage. This is something to be worked out and we are trying to do it through the Juvenile Improvement Association. It has been rather a lack of method than any lack of disposition on the part of the churches that has prevented us from crediting the churches with any more direct work in our behalf. The church women rallied to our support at election time."

"Willing material" is a phrase which, when used to accompany a confession of this sort, stands as a challenge. It is hardly to be expected of the church that it shall work out the problems of all the institutions to which it is willing to furnish "material." But it is expected to be in working, practical sympathy with such great, thoroughly Christian movements as this.

5. The Home and Probation. The probation officer has a two-fold character. He is a representative of the law, the great *power* of the State, yet he is a representative of it in its parental function. If indeed he must not be all things to all men (and women too in this case!) he must surely be these two things in his relation to the family. More frequently than not the family has contributed to the child's delinquency because of some laxity of parental control, some misfortune in its organization or some looseness of living. Just what the situation is the probation officer must in some manner determine and his procedure must be framed with that in view. In the home he must be proof against deceit, gentle with weakness and firm with evil. He is clothed with authority, for is he not the Judge stepped down from his bench and into the life of those whom he serves? When one notes in the hearing of the child before the Court how final is the word of the officer to the Judge, one feels how important is the office. He gets closer than any other to the whole problem of the child's salvation, and if he advises that the parents are unfit to retain custody of the child, usually the child is taken from them. If, on the other hand, he with quick intuition assigns the delinquency to some condition easily remedied here in the home with parents, child, officer and Judge co-operating, he has inaugurated a change that no other agency could so wisely direct. Visits to the home, talks with the father and mother and with the child, sympathy, counsel of patience and love in the matter of child-training—with these means he may make himself a respected brother and parent to many a family where nothing else is needed. It is the probation officer's first business to know the home life of the children in whom he is interested. In addition to the direct and invaluable service rendered through this relation, there is an absolutely inestimable advantage in having thus added to our great force of social workers a body of men and women who in the years just ahead of us can out of their vast experience lay down foundation principles and upon them build up a structure for child-saving which shall cause us to wonder at our former lack of understanding. The half of the story of juvenile delinquency could never be told us without the probation officer and his studies of the home. Those States where only sufficient officers are provided to do the accounting of the enterprise or receive reports once a week from the children in their offices, never or seldom visiting the home, have no probation system.

6. Some Methods in the Probation System. We glorify the man in time of battle between two great men-of-war, down in the

deep lungs of his ship, sweltering, frantically working that she may breathe and live, knowing that at any moment she may be blown into pieces or sunk with her men strangling like rats in a trap. But what do we know about it? A magazine has published pictures of the engines and the hold and the men, and there are statistics about the amount of coal consumed. We have been on board such a vessel. That, with the picture which our imagination makes of it is about all we can know of it. We can get about as near as that to the working of the probation system. Numbers, records, pictures, stories, comedy, tragedy, childhood, crime and success! And yet there goes with it all the final attraction to myriad lives—it is child-saving! If we may get closer to it we are willing to take many details and facts at second hand.

For the apprehension, the hearing and the disposition of the case of the child, there are various blanks to be filled out containing the necessary information in regular form. But most interesting of all is the history sheet or memorandum made out by the probation officers for the use of the Court, containing information bearing upon the child's parentage, his health, his economic, his educational and his moral interests, the domestic life, and all conditions which may enter into full consideration of the case. This history sheet is of the greatest value not only to those who deal immediately with the child, but to those who have an interest in the general problems of juvenile delinquency. Unfortunately, they have not been made up with this larger purpose in view and they have been as a rule badly kept. More and more we shall go to such first hand statistics for our generalizations. The ideal history sheet is yet to come.

It not infrequently develops that delinquency would have been prevented by employment. Then the probation officer's duty is clear: he should insist that the child be employed, and if no one else is interested he should make it a part of his service to find employment. The Denver Juvenile Court is really an extensive employment agency. Many of the boys are employed in the beet fields in the beet season, and incidentally work is found for many others, there as elsewhere, nearly always with splendid results. The moral support afforded by the knowledge that someone is watching and encouraging is sufficient to keep many a lad at work who otherwise would prefer to do almost anything else. Judge Lindsey of the Juvenile Court of Denver has alluded to the juvenile law proper, the compulsory education law and the child labor law as a "trinity of laws" in close co-operation. Really the Juvenile Court through its probation system and its close relation with the schools and child-saving institutions, is a great factor in protecting the children from abuse in the industrial system, where abuse seems so easy. As a matter of fact there is little that serves to limit the powers and possibilities of the probation system except the lack of efficient men to play the parent to the child. There is no limit to the parent's interest and his ability to guide

the child, and this system is deeply and fundamentally parental.

There is a field of effort already entered by probation officers which seems to offer place for the many spirits inclined to help unfortunate children, applying energy and talent which has heretofore done a like service in the settlement and in the church and the mission, namely the field of club life. The boy belongs to a "gang" about as naturally as he belongs to the family, and at a certain age is more enthusiastic about the former than the latter. Boys are brought into the Court in gangs and for faults which are traceable directly to the fact of such association. A few wise officers have turned the gang spirit to good use. Judge Lindsey has succeeded so well that with the aid of his crowds of boys he has been enabled to stop lawlessness that the police could not touch, has used the boys to detect crime and delinquency, and has had more than 200 voluntary delinquents, boys who because of their faith in his being "square wit' de kids," have confessed their faults at the suggestion of other boys in the gangs, and been started on the right path. He writes of the Juvenile Improvement Association, a voluntary auxiliary of the Juvenile Court: 3

"This association is also * * * engineering three or four boys' clubs in those parts of the city where they are most needed. In such neighborhoods it has supplied baseball suits for baseball nines, and exacts in return the promise of the boys in that neighborhood to enforce the law. Some of this work is largely experimental, but so far gives promise of eminent justification."

Mr. McManaman, chief probation officer of the Chicago Court, has established a club of homeless boys taken from the John Worthy School or from the Court, furnishing board at a nominal cost and keeping an eye on the savings of the boys, on their health and their work. He has little trouble in finding employment for his boys, frequently numbering thirty. This feature is capable of almost limitless extension provided the leaders can be found.

Furthermore, the models are already in existence for classes, excursions, etc., which will work quite as well among the paroled delinquents as among any others. There comes a place always where a judge or a probation officer is at the limit of his possibilities for the simple reason that he is but one and there are many in his flock, restless, full of life and energy and always looking for new occupation. It is quite natural that he should have looked upon these established methods as his own; they were born out of conditions similar to those he faces. But he cannot be omnipresent. Perhaps as the judge creates the probation officer because he cannot be everywhere, this officer must ally with himself the large forces of "willing material" about him. The problem truly is the working out of methods which shall harness together the men and women of social spirit. We may find ourselves at the end of our fine spurt in dealing with juvenile delinquents, and unable to proceed until our forces are thus augmented.

3 "*The Problem of the Children*," p. 133. 1904.

CHAPTER VIII.

CHILD-SAVING INSTITUTIONS AND THE JUVENILE COURT

The Juvenile Court found waiting for it a large heritage in the way of institutions committed to child-saving, institutions charitable, religious (denominational), industrial, reformatory, truant; institutions established by individuals, by civic bodies, by societies, each ordinarily for some small class of children, but all having essentially the same aim, the rescue of juveniles from peril and misfortune. The larger number of these are private in control, but in recent years many State institutions have sprung up as a concession to the growing sentiment which forbade the assignment of juveniles to jails or even to reformatories. It was a recognition, too, of the fact that a great number of delinquents were such because they had been deprived of fitting parental oversight. Such institutions were founded in the hope that through them this want might be filled. But as a rule they are not at all adequate.

For example, during the year 1903, of the 1586 delinquent boys of the Chicago Juvenile Court, 717 or nearly half of them were sent to the John Worthy School. But this is a "part of the city bridewell;" it is a prison, as Judge Tuthill of the Juvenile Court has said. It is too crowded to permit sufficiently long residence in each case to accomplish what it ought, which is a very common complaint. The "St. Charles Home for Boys" which is being erected on about 1000 acres of the finest farm land in Illinois, with an initial appropriation from the State of $325,000 for buildings and $50,000 for maintenance, will help greatly. Private benevolence furnished the first $100,000.

St. Louis is calling for an Industrial School. At present she is sending children to an institution organized as "a penal institution, reformatory and asylum * * * which achieves none of its objects satisfactorily." 1 State Industrial Schools are depended upon more than any other institutions. It is difficult to make these institutions seem parental in any real sense; parents are not institutions. This is the real problem of child-saving. Children need parents, and the system that furnishes the best substitute will be the most successful system. But until we get more probation officers helping the child while he is yet permitted to live at home, we shall have to depend on institutions. During the year (1903) when Chicago sent 717 boys to the John Worthy School, 224 were sent to the Parental School and only 564 were paroled to officers. 2 The Buffalo Court has paroled over 50 per cent. of its children to probation officers. 3

1 *Children's Courts in the United States*, Barrows, p. 164.
2 Juvenile Court Record, Jan. 1904, p. 5.
3 *Children's Courts in the United States*, Barrows, p. 14, 1904.

We are in that state of affairs in regard to our child-saving institutions inevitable to our complete disorganization of method. Our efforts have been partial, spasmodic, isolated; there has been no unifying theory nor practice. No plan has been devised which covers the whole field, bringing to the attention of some single body all the delinquents and all the dependents. To such a state we are looking, and when we reach it we shall easily and naturally fall into consistency with regard to our institutions. We shall need them less because we are leaving behind the institutional idea as too impersonal, but the institutions which survive will not needlessly duplicate in either function nor expense, and will be closely related both by whatever theory underlies our treatment of juvenile delinquents and by whatever method is central to the whole system.

PART IV

CRITIQUE OF PRINCIPLES, MEANS AND METHODS

SUMMARY

CHAPTER IX.

PRINCIPLES DRAWN FROM EXPERIENCE

Thus, always feeling the imperative of protest against antiquated and pitifully inadequate methods and principles, impelled by really scientific studies of child nature, and the effects of city life and environment upon it, following close upon every suggestion of institutions that constituted the vanguard, passing all too gradually from the ground of vengeance as a means of protection and control to that of punishment, then pinning its faith upon reformation, only to finally recognize that prevention would avoid much of the problem altogether, ever calling more earnestly for the mediation of all its methods and principles through intelligent and consecrated men and women, there has slowly emerged and shaped itself a more or less elaborate, disorganized apparatus for the study and treatment of juvenile delinquents. Its friends are conscious of not having apprehended; they are in the "press forward" stage. Private initiative is in the lead. The legal mind has been softened and enthused as the standard of education for the legal profession has advanced. Concessions without number have been made in procedure and principle to delinquent childhood. Agitation has made many friends and advocates. Spoilsmen have been steadily and persistently invited to forget that this might be a field for politics. Best of all the State has been invoked in its parental function. To be sure it has regularly betrayed its awkwardness and inexperience, as a parent, but with thousands of delinquents born every year into the courts and other institutions there is little fear that the State, now fully conscious of its parenthood, will not learn and succeed.

In any fair description of the machinery of the modern juvenile delinquent system, especially if it were written as a comparative study having in mind the stages of development, one might read between the lines and find that it is constructed to do a different task and furnished with different motive power than the machinery formerly given the task of grinding out the criminal grist. But it has been as impossible not to follow more or less closely the old mechanism as it would be not to find much of the printing press of 1885 incorporated into the press of 1905. An entirely new development of either could not be expected. Yet we have been unduly conservative, have held too close to the criminal procedure throughout. At many points we understand child life better than ever before, and our understanding is not half reflected in our apparatus. The school, the church, the home have learned much

concerning him in recent years. Medical science has contributed no small share. But it is not all brought together and appreciated. If it were we should not be following so closely upon criminal procedure in the case of the delinquents. Our principles must grow out of our experience; our experience grows only by small additions to that point where it is possible to generalize anew, to seek new directions with confidence. In recent years the strides have been long and many, we have dared to experiment, we have enjoyed comparing notes. Anyone who fully appreciates the magnitude of the matter hesitates to predict for the immediate future much more than a continuance of the experimental work, confident that after all our understanding warrants it. Careful criticism is due at every point, and we are assured that it will be forthcoming in such spirit as will profit us much. But let the warning note be again and again sounded that we are not yet building even the framework; we are making up the specifications. Interest is deep, many of the forces enlisted are strong, the problem is stupendous. We must be content to move slowly and cautiously. Our best advance has served to define the group which we call the juvenile delinquent group, and that is surely half the battle.

The particular value of our historical study of the child, his delinquency, its nature, causes and treatment, his standing in the group as reflected in laws and other apparatus for conforming him to its will, is not so much in the description of how the delinquent child is and has been treated, as in the possibility of revealing elementary principles, safe working directions in which to rest assured of the sanity and effectiveness of criticism, extension, elimination, initiative in method. We thus confess our indebtedness, not only to the careful student of child psychology and physiology, but to the Greeks and the Barbarians of yesterday and today, who have experimented and blundered and succeeded, but at least have furnished us with points of departure.

It is of value to us certainly to have recognized that we have many factors to deal with, demanding co-operation, that the child himself is the greatest factor, that what the group expects of the child is a determining feature, and this in itself is a variant. We have found that the standard of the primitive group is simple, following lines of instinctive action. That is good which furthers the simple ends of the group, and that bad which defeats them. The standard is much the same for the individual, the family and the tribe. The stimulations to conformity are usually as simple as kinship and direct economic need. The agencies promoting conformity are in the child's earlier years the family, and later the tribe, with the transition usually marked by some sort of initiatory ceremonies.

In the more advanced group it is a far more difficult thing to determine what is good or bad. With the complexity of group activity the standard to which conformity is demanded becomes less simple, and that conformity is urged and enforced by legal

formulations, more or less artificial and arbitrary. The family is the agent insisting upon conformity and, too, through a more prolonged period of infancy, while at the same time the larger group formally through laws, education and perhaps religion, and informally through public opinion as expressed in patriotism, politics, etc., seeks to prevent delinquency. Difficulty creeps in wherever the interests of the family actually or seemingly cease to be identical with those of the community or nation, and this condition, together with the inability of the larger group to intelligently deal with the delinquent child, is to be looked upon as the source of our unending uncertainty and fault. Both family and state have tremendous responsibility which must be roughly formulated and well understood. The child is a member of both; each is his guardian. The relation is real and close. Ideally, state must be essentially family, and family of that character which makes it possible for men to dwell together in the numbers and the life necessary in the state, before the child can enter with any assurance of happiness and successful outcome upon his training which looks to his conformity to a complex ideal under the direction of at least these two teachers.

The state finds itself confronted with the task of holding before the child, who has already felt the irksomeness of often yielding his will to the members of his own family, the necessity of further considering every member of the state as having equal rights with him. It is the same lesson that he has learned in the family, but it does not seem the same. The state is impersonal; he is not interested in its agents. The state insists that he shall not be delinquent. First it does this indirectly through the parent. The parent has learned the lesson and now hands it along. If he fails, the state asserts its parental function by taking his place and declaring him irresponsible. Then directly, by means of the law in its corrective and punitive function, by the schools, by variously so fitting and environing him that the total of his life activities and interests may tend towards harmony with the group standard, it demands conformity.

At the same time the state is called upon to recognize the close ties of the family as an ideal relation which it may not hope to attain to, but of which it must take account and approximate as nearly as possible. It must, furthermore, look to the nature of the child. He is not a criminal ordinarily, no matter how serious his departure from the path laid out for him. He is not an adult in understanding nor in judgment. It should recognize him as subject for the same sort of thing that it has learned to accord him in its function as educator in those things calculated to positively equip him for his place in the state, namely formative, directive influences. He is the same being the state seduces into effective citizenship by the attractiveness of the schoolroom; it must still be seducer when he makes a mistake.

Again, and quite as important, the state must take account of

the fallible, partial, derived nature of its laws as an expression or even as a guardian of group morality. Its "laws" are a reflector of average group morality and through them it is a schoolmaster to the child. Its duty is never to get away from the sense of the general, final power always resident in the *people* of the group. Put into other form, the less the legislative, judicial and police powers of the state are used merely negatively, and the more they are mediated educatively, on the truer basis we shall be. The law should certainly be more than our policeman. We have a right to ask today that it shall be our schoolmaster. And when a more ideal day arrives, when teachers shall have been better trained to a larger task, shall have merited such distinction by attracting children away from delinquency, we may hope to turn the caption about and declare that the *schoolmaster is our law.*

One more principle is fundamental. It would be impossible to discover any advance in the treatment of juvenile delinquents which had not been inspired by some interested and observing individual and then enlisted to itself others among the few who are free to fight the battles of the children. Without champions, the cause has faltered and mistakes been perpetuated. Invariably, as it has attracted them, it has been furthered. Ergo, if the state hopes to continually elevate its standard and expects conformity thereto, it must free a vastly larger body of its members to the task. The social spirit is gaining ground popularly, and the attestation of this fact lies both in the devotion of splendid lives to the uplifting of the unfortunate of every condition and the training of such workers in our academic circles. The state has one plain duty, namely to make such financial provision for those fully trained that men and women most desired in the service of juvenile delinquents may not fear to devote themselves exclusively, professionally to that service. This is a first principle, and its neglect is the gauntlet lying nearest us among the many we have not dared to take up.

CHAPTER X.

THE SPIRIT OF THE LAW AS A FACTOR IN THE TREATMENT OF JUVENILE DELINQUENCY

It is a short step from principles to means and methods. Once granting that our point of departure is the nature of the child and the significance of his delinquency to his life and therefore to the social body of which he is a part, one meets the necessity of reviewing the apparatus which has dealt with him in order to judge whether it has taken account of the principles gradually evolving from our experience. Juvenile delinquency renders its account first to the law of the realm. Is that law adequate to the situation? What is its essential nature? Shall it reflect only the experience of yesterday? Or shall it be in spirit leader and initiator? Shall it in any manner experiment with the situation? The relation of law and delinquency is a matter which bids fair to concern revolution in law quite as much as to settle specific problems of delinquent childhood.

Pollock (1) says that law is the sum of the rules necessary to permit men to live together in harmony. Yet law has always been on a war basis; it has been a protective, regulative thing, a police power, even when it has risen above the dignity of vengeance or repression. Customs, based on utility or not based on utility, have become fixed into law. The earlier we start in the process the smaller the group of persons in whose interest the law is formulated. In the Homeric stories it was the king, with the strange mythical partner, Themis or fate, constituting a sort of primitive "divine right of kings;" in the Athenian State it was an oligarchy; and a final form is the fixed code or constitution with a larger legislative and judicial body.

The development is slow and comparative. "The jurisprudence of one age is history in a later." [2] "We must alternately consult history and existing theories of legislation." [3] And through it all the central thing has been, in criminal law, indeed in all law of persons, the *act* and its effect upon the community, whether the spirit was that of vengeance, repression or reform, rather than the *person*, and the person as a member of the social whole. [4]

Law is an ethical thing in not the highest sense. It stands upon a certain eminence and looks back over the field of human

1 First Book of Jurisprudence, p. 11.
2 Alfred Russell, "*The Police Power of the State*," 1900.
3 O. W. Holmes, Jr., "*Common Law*," 1887.
4 See *American Journal of Sociology*, Jan. 1899, p. 523. "Criminal Anthropology and Jurisprudence," by Frances A. Kellor.

experience and generalizes, seeking a basis of harmony. "By far the greater part of our law has been and is developed—by the judges, the jurists and the bar, and the greater part of our law has been developed after men have acted and in determining the effect of their actions." Legislative enactment "setting out rules of conduct to be observed subsequently is in reality the least important method of law making." 5

It is not largely an ethical thing in its operation. The judicial arm is called upon to pass a free judgment only when the legislative will is silent, and the legislative will seems obliged to take account of precedent in its enactment to an extent that is damaging to the ethical sense. Dillon (6) says that "ethical considerations are *generally* the foundation or animating principle" of enactment. The lawyer's business is to "inform rather than to invent, to be accurate rather than original; to chronicle the decisions of others, not his own desires; to illumine paths already trodden * * and in fine, to emblazon that long list of judicial precedents through which our Anglo-Saxon freedom 'broadens slowly down.'" 7 On its eminence law remains, as an observer and chronicler, with a broader vision as experience widens before it, always on a war basis. The result is a morality as high as is demanded by the legislator and not impossible to the worst, but probably never in many points even a decent compromise between best and worst. It is "the embodied conscience of the political community" as Mr. Warville says in his "Legal Ethics," (8) and in many political communities necessarily very fallible as an expression or guardian of the ideal group morality or even the real group morality.

But in the meantime the extra-legal ethical expressions of the relations of man to man, especially relations of children and the group, have gone on under the influence of psychological interest and investigation. The individual as over against the group has taken a new place. The former is a part of the latter, not only in respect to his duties and responsibilities, over against which are set penalties, but he is a part of the group in his whole make-up, physical, mental and moral. The *group* duties and responsibilities come into view. The group asks itself what it owes to and may reasonably expect from its members, and the question is an ethical "open-sesame," throwing no small light on the individual as a being physically, mentally and morally conditioned by the group. As a result of this new attitude laws of domestic relations "have felt the softening influences of modern civilization. The common-law doctrine of parent and child finds its most important modification in the gradual admission of the mother to something like an equal share of parental authority; in the growth of popular systems of education for the young; in the enlarged opportunities of earn-

5 Russell, "*Police Power of the State*," p. 10.
6 Storr's Yale Lectures, 1891-2. "Laws and Jurisprudence in England and America."
7 Schouler, "*Domestic Relations*," 5th ed., p. 21. 8 P. 17.

ing a livelihood afforded to the children of idle and dissolute parents; and in the lessened misfortunes of bastard offspring. Guardian and ward, a relation of little importance up to Blackstone's day, has rapidly developed since into a permanent and well-regulated system * * * and much of the old learning on this branch of the law has become rubbish for the antiquary. The law of Infancy remains comparatively unchanged." 9

Theoretical Ethics is departed from its war basis, with the self-assertion of its Egoism, the self-suppression of its Determinism, the truce and compromise of its Prudentialism, its "computed expediency," and has come to peace, to self-sacrifice in its idealism. In its train have gone psychology and pedagogy and to a large extent even Criminal Anthropology. Why should not Jurisprudence follow also, especially in its law of persons? The evidences just read are but the slightest indication of its intention. There is other evidence, however, in the movement centering about the Juvenile Court, insofar as it is disposed to recognize the well-accepted facts concerning the nature of the adolescent youth.

It is interesting and profitable to note the source of the existing juvenile law reform. It came from the psychologists, the educators, the theorists, the students of children otherwhere than in the courts. It was irresistible—because it was true. It is one of the most splendid instances in all legislation that the people are the law, that there is nothing inherent in the nature of the law that prevents it from entering into its inheritance of moral right in some form, and that assigns to it the exercise of police power only, forbidding it to become in any real sense a formulator of peace measures in the interests of childhood. Pollock says, (10) "Law cannot enforce all moral rules, but may sometimes react on the moral standards * * * It may even elevate the standard of current morality." Indeed it may elevate the standard of morality, and what institution is in better position, or is in possession of more actual experience out of which to raise a standard?

This last fundamental generalization is by no means a maxim in jurisprudence; it is anything but that. The facts that have made possible the entering wedge in the treatment of juvenile delinquents could all have been gathered by the agents of the law, and were observed by them, yet what action has been taken was under strong protest from administrators of the law in many quarters and resented as the dreams of dilletantism.

Yet there is serious disadvantage in having those outside the legislative and judicial and administrative machinery the only advocates of ethical peace. It means a double standard, hostility of forces, waste of energy and expense, relegating to individual initiative and institutional (private) care what should be public interest. The law is in such position, in its actual contact with the juvenile delinquent, observation of his life, environment, training, etc.,

9 Schouler's "*Domestic Relations*," 5th ed., pp. 20-21.
10 "*First Book of Jurisprudence*," 46ff.

that no other can so well judge of the nature of a child's delinquency. Here is a child subject for educational treatment in accordance with another ethical standard and another pedagogical apparatus, in the hands of an institution whose ethical decalog has been written in characters of repression, correction or at best reformation. Let it be so; here lies the suggestion of our juvenile salvation. The law is its own best student, critic, observer, legislator. It is the institution that is observing the delinquent members of the community, after some act has given them the warning. It is also the institution that, using its understanding of this class, should turn its attention, guided by the new principle underlying the law, to the prevention of delinquency. Here is a part of the juvenile world that is waiting in earnest expectation for the revealing of common sense.

The traditional place of the law is in the courts, dealing with the exceptions, with the rebels or the ignorant or the careless. Therefore we have difficulty in recognizing it when in and out of the court-room it commits itself to dealing with incipient or threatened delinquency or to the actual prevention of it. But is it not the same law that punishes truancy and makes possible the school? Is it not the same public spirit which stands behind the school-teacher and the judge. Is it not the same end that they seek? Again, that the courts have been dealing with adults and criminals until the spirit of vengeance and repression and reformation prevails, making it difficult for the officials when placed in charge of the children's courts to get away from that spirit into a more fitting one. The law as it operates in the children's courts and in the maintenance of the public schools is the same thing, and should be actuated by one spirit. These two are among the greatest public agencies for dealing with the child, and many children still slip through into delinquency of a serious nature. More is due to the development of the children than these agencies now afford. Some supplementary measures, some extension of function there must be, call them preventive or educational as we may. Now if the law as it operates in the children's courts can be seen to be the same thing as that in the public school I believe that these supplementary agencies may better be a part of the court than of the school, because the court is, by its historical position and attitude, looking for delinquency while the school expects conformity. Let the instruction of the public as to conditions in the community threatening delinquency be a function of the children's court. Let the records of bad housing and over-crowding and bad streets and poor sanitation and lack of playgrounds and ignoring of laws of labor and all the defects which actually contribute to delinquency, and which may be remedied by the community, be heralded abroad by the court. Let the agitation centre here. Let the remedial measures in the form of clubs and night schools and employment bureaus and giving of aid and the hundred other things that are undertaken by the outsiders, become legal things.

Make it possible for Judge Lindsey to do his work as Judge Lindsey and not as a philanthropic bachelor who does as a "father" to the boys what he is not permitted to do as Judge.

The protest comes that the law in the form of the children's court would be little other than an experiment station thus. But the schools have done some very profitable experimenting for the child, and at the same time have retained their disciplinary power. Why not so with the courts? The agents of the law are not qualified to do such work? It is not the formal agents of the law in any but exceptional cases that are doing the work of the children's courts anyway. There are plenty of individuals and institutions willing enough to see their work organized permanently in the extended functioning of the court, and content, furthermore, to see the law in the business of elevating the standard of the group through any means, even though it depart from traditional paths.

Thus the law, one expression of the voice of the group, is challenged to a fresh study of the child, to a new approach to the matter of juvenile delinquency. It is asked to become an agent in the formative process in accordance with the principles above formulated. Judging from results already attained, the form which the growing understanding of the matter will take will be more laws specifically aimed to make permanent the claims of those who have been closest students of child nature, and displacing inadequate and unfit laws, especially those relating the juvenile delinquent to the criminal. The legal judgment passed upon him will be different from that of the criminal more uniformly than now, and will be reached by a more direct path. In our legal conservatism we have hesitated to go very far from the well-beaten way. A firm grasp on the spirit and meaning of the law is bound to make us fearless and independent. Other directions of juvenile law reform will take account of two chief relations of the child, the home and the school ties, resulting on one hand in vastly closer co-operation between the court and the school, and on the other in a surprisingly extended exercise of the parental function of the state over the *parents*. So long has it been thought that the only exercise of this power possible was in taking the place of the parent when he failed with the child that we have not been well prepared for the paradox presented in the state turning adviser to and guardian of the parent, doing through the parent as proxy what it learned from the parent. That feeling of responsibility which is or should be instinctive with the parent, growing into great proportions as the possibilities of the life of the child are measured, is a thing of reason to the state. One plain direction of juvenile law reform will be the reasoned quickening by the state of the failing instinct of the parent.

CHAPTER XI.

THE FUNCTION OF THE COURT AND THE PROBATION SYSTEM

The friends of the children's court are rapidly generalizing their experiences. A branch of the criminal system in its origin, it has now entered into an estate of its own, in many cases practically independent. In its constitution and procedure it necessarily much resembles its ancient parent, but this much may now be said, that in general it is already looked upon as a legalized child-saving institution, correcting delinquency and preventing crime. What it should be is a legalized child-*studying* and child-*forming* institution, as far as possible preventing delinquency. There is no doubt that as the years go on it will be more and more an independent organization, free to extend as it sees best, carrying over nothing from the law, which will always stand behind it, except its sanction of power, and through its experience exercising a reflex influence on the law in its spirit and letter. If the child is ever father of the man, we shall see that case here, with the juvenile delinquent court teaching its well-learned lessons to the criminal court.

Nothing is contributing to its thorough emancipation and its effectiveness so much as the interest and consecration of its friends. What would not yield to that! Let it be kept from the moth and the rust of politics and "graft" and it cannot fail to exercise a tremendous influence upon future national life. It has its positive tasks. It must agitate. It must experiment. It must demand funds of the municipality for the care of the child when necessary. It must press the duty of equipping and maintaining the best men and women who can thus be drawn into its service. It must legalize its powers over parents and children—powers that seem absurd to those who are accustomed to appeal to the state for the exercise of individual freedom. Law is the only means to freedom, as it has been the only means to protection and as it shall be the only means of development and education of many of our powers. The court must remain a legal thing, but with powers and opportunities commonly not associated with the formal concept of law. Its problems, beyond those suggested, will solve themselves as its place is fixed and its guiding principles formulated. More than specific suggestions concerning advance, we need full understanding of the principles underlying our procedure. These are just beginning to appear, and to be formulated.

He who said that the judge was the "centre" of the juvenile court system spoke the truth. But he can be only "centre" in

himself alone. The probation officer is the *radius*, and to him is left the task of determining by the length of his service to the child where shall be drawn the circumference which measures the total influence of the system. The judge alone touches the child at one point. The probation officer, and through him the judge, has as many points of contact with him as he will. In this simple analogy appears the whole matter of probation. Shall it be simply an administrative arm of the court? Shall the probation officer be only a clerk or at most a lawyer to investigate and plead the case? Shall the judge create the officer and limit or define his place? Or shall the task make the man? Upon the answers to these questions, worked out in the next few years of experience, depends the sphere of the probation officer, and more, the meaning of probation.

Already many cases are investigated and dismissed by probation officers without having a hearing before the judge. Already officers extend the radius of their influence and power beyond what is required by the judge and the law, and do it because there is need that it be done. Already latitude is given the officers by intelligent judges which amounts to an extensive guardianship over the child, over the parents, over the school life and the work life of the paroled delinquent. The life of many an officer is an incarnation of the gospel of contact. He determines how long a period his active influence shall cover, how real and how practical shall be the help he renders, how little he shall be an officer of the law and how much an interested companion and adviser.

But the radius of action is usually much too limited. Officers have not had opportunity to imbibe the broad social spirit that actuates the best service. They are not trained to observe conditions that cause delinquency. The apparatus calculated to insure honest, effective effort in behalf of delinquency is slow in the making. It must wait for experience in many fields, and for experienced and sane teachers. It must wait for public sympathy and public support. Again, it is condemned to wait for public indifference to pass away. Like all good enterprises, it must wait long after it has begun to deserve a hearing.

The probation system is bound to present a fine example of the fact that we must eternally move backward towards an ideal but never-to-be-reached point where prevention may properly begin. We prevent crime by taking the delinquent in hand. We prevent delinquency by educational methods, especially by such methods as will interest the child in line with his instinctive action. He is a playing animal; he is a constructor, an actor. Therefore we are beginning to let him play and build and effect things. The probation system must find itself in methods far back in the line of prevention, hand in hand with other educational methods where possible, and in spirit pregnant with this view of the matter. There is nothing inconsistent in the notion of a probation officer being a policeman in one instance or at one time and a teacher and leader in another, unless it lies in the narrow and too special

interpretation of both functions. Finding its beginning in the desire to prevent, its experience has at many points taught it that a prime way to prevent is to use the child's interest and powers. The boy who steals, perhaps does it because he has no work by which to earn and buy. The boy who is incorrigible probably would as easily spend his over-abundant energies in work that was attractive. Thus the officer finds it necessary to be fundamentally two things, policeman and teacher or leader. He must be these things whether the case gets to the court or not. If he is to succeed he must extend his office and anticipate legal action, especially in connection with the school, the truant officer and the home. He mingles with the folk of the community. Better than almost anyone else he knows its pulse and its life if his territory be small enough. He sees more than the policeman and more than the teacher, because he is looking for more. To a great many he may be more important than either. Do we in our eagerness exalt the office of the probation officer? Surely not when we consider that the comparatively few he has to deal with are the very ones whose salvation to good life is of the moment of life and death to the community. Surely, too, we thus exalt him as he is, but not as he has opportunity to be. The greatest service that can now be rendered to probation is the opening up of its possibilities to those who, consecrated but somewhat untrained, have enlisted and do their tasks as well as possible, but who feel themselves handicapped and checked by lack of thorough knowledge of conditions, by the narrowly legal view of their office, and by the fact that theirs is a pioneer field. Every officer could double his service by assuring himself that in pioneering one is not held to beaten paths, and by further assuring himself that he does not do half his duty unless he possesses his country as unexplored land and in an unhampered, unlimited, spirited answering of the call of juvenile delinquency for the satisfaction of needs that neither delinquents nor their guardians fully know.

CHAPTER XII.

WHERE THE JUVENILE DELINQUENT RANKS ARE RECRUITED IN ST. LOUIS; SUGGESTIONS FROM A PARTICULAR STUDY

There is fair chance today to view the world from which the ranks of the juvenile delinquents are recruited. Such a view opens retrospectively into conditions and causes, and at the same time reveals the problems of the future with some solutions. Less each year it is necessary to guess and experiment with delinquents; more and more does our experience shape itself into confidence in dealing with the situation. A bit of experience from the city of St. Louis is instructive. The law establishing the juvenile court there was approved March 23, 1903, and went into effect immediately. The number of cases examined is not very large, the records are not completely kept, the force employed is altogether inadequate, the atmosphere is more than in many courts that of the criminal court, but the experience is uniform month after month, and presents in general the same aspects to be observed elsewhere.

1. The Recruiting of the Ranks. Through the courtesy of the probation officers, who are making a good fight for their charges, the records of many months were thrown open for examination, and several hundred cases closely considered. The records of ten years hence will be a veritable mine in comparison with this survey of the surface. A few localities furnish the great numbers of delinquents. Conditions in those localities are such that delinquency may be expected. The situation presents no mysteries. Care was taken to weigh any unusual circumstances which would not ordinarily be duplicated. The results are worth our while. Of one group of 200 delinquents, so selected that arrests at all seasons of the year were represented, a certain 5 of the 12 police districts contributed 74 per cent. The same districts claimed 65 per cent. of another 200, and throughout the records these five districts are seen to have manufactured delinquents and turned them over to the juvenile court in entirely disproportionate numbers. This furnished the basis of extended inquiry. Next it was necessary to learn whether the delinquents arrested in these districts, namely Nos. 2, 3, 4, 5, and Central, lived in the districts in which they were arrested, or lived elsewhere, and made these their "hang-out." Central Police District is that which embraces the main business streets of the city, extending in length back from the Mississippi River twenty-four blocks, being about half as wide as long. Dis-

tricts 4 and 5 lie to the north and 2 and 3 to the south of Central District, all being skirted by the River, quite thickly populated, with little park space, poorly built up in the residence sections, and with dirty, crowded streets. It is not strange that they contribute so large a share of delinquents.

The place of arrest is important. If large numbers are arrested in one locality, the presumption is that there is a sore spot in city juvenile life. The investigation proved that the nearer the centre of the city where conditions are hostile to clean living, the greater the number of arrests, or in other words, other things being equal, the greater the liability to delinquency on the part of the children. From all parts of the city they flock to this section. District 2 is a large district, and the larger part of it is a considerable distance from the real hot-bed of delinquency. Only 5 per cent. of those arrested in that district out of a considerable number lived outside that district, that is, found "hang-outs" away from home. 95 per cent. were arrested in their own district, and the number was not abnormal, considering the unfavorable conditions. In District 3 8.7 per cent. were from the outlying districts, this being a bit nearer the centre of the city. District 5 contributed a large share to the total and 21 per cent. had drifted in, to be arrested in District 5 "hang-outs." A still larger number came from without to District 4, over 18 per cent. not residing there. More than 30 per cent. of all the arrests in the city came from Central District, and 61 per cent. of these did not reside there. These figures are essentially duplicated in the total experience of the court. The nearer the evil and confusion and looseness of the centre of the city, the more delinquency, and the increase is evidently not the natural accompaniment of boy and girl life, but is the accompaniment of the life of those particular districts where life is worst. In absolute numbers the most guilty are Central and Nos. 4 and 5, the second of these presenting conditions that are particularly disgraceful. A study of this district is very enlightening, if we use the juvenile court figures as a basis, then examine the locality, and finally grasp the causal relations, poverty, miserable accommodations of life, lack of opportunity on one side, and failure, delinquency and crime on the other. The Open Air Playgrounds Committee of the Civic Improvement League, in its report of 1903, analyzes the lower half of this district, nearest the River, including in the analysis a small part of District No. 5, which part is of far higher average than the portion of District No. 4 described. But taking the inventory of the whole section the following is the equipment for manufacturing delinquents:

92 blocks and a population of 30,000, among them Negroes, Russian Jews, Germans, Irish, Poles, Italians, Syrians and Roumanians.
7 blocks have a density of more than 300 people per acre.
23 " " " " " from 200 to " " " "
28 " " " " " " 100 " 200 " " "
12 " " " " " " 50 " 100 " " "
22 " " " " " less than 50 people per acre, but are

used almost entirely by foundries, factories, lumber yards, stores, warehouses, railroads.

The largest actual density is 656 people per acre.
The average for the city is less than 50 people per acre.
There are no parks, and very little play space is available.
The enrollment of the schools for the year 1902-1903 was 4159.
No compulsory education law.
Nearly all streets unpaved.
Street cars on *every* street north and south.
Street cars on all but two streets east and west.
Three schoolhouses with no adequate playgrounds.

In this district we also find 5 Jewish, 6 Catholic and 18 Protestant churches and missions, but what is needed is not churches, but places for the outlet of youthful spirits. The committee reports, "if the schools were provided with adequate spaces for playgrounds, open after school hours, during the school year, and open throughout the summer vacation, a material reduction of juvenile arrests would follow." It hardly seems necessary to add that the same result would follow if the life indoors were more attractive, if the houses were well built and roomy, with back and front yards for play spaces. The houses are built flush with the walks. The children are driven to the streets and the delinquencies are those of the street, such as ball-playing, "flipping" cars, "crap-shooting," petty stealing, fighting, gang organization and depredation.

2. The Facts Ensemble in the Records. It is as easy to fix the responsibility as it is unpleasant to some to have it so fixed. With this particular locality in mind it may be profitable to suggest in detail such organization of forces and such procedure as would lay the situation open to all interested and demand action from whom action is due. First of all the *facts* must be known, and must be known *ensemble;* the whole picture must appear at once. There is much value in the cartoon method, which calls for but a glance to convey the idea. No less important is it that the whole predicament of the juvenile delinquent be portrayed in a carefully formulated record, or at least that to a few minds it be declared by as many records as may be necessary. It should be known and advertised, for the story is so tragic and so needless that its recital and portrayal is its best argument.

The present records are too exclusively history sheets of the case in hand, of use only to the probation officer and the judge, and too little calculated to serve the larger purpose of making those very records to a large extent unnecessary. It is a natural error. But if the records were such that every entry condemned someone besides the child and justly so, laying bare someone's fault, the very clerks who registered them would cry out against the wrong. It is the repeated generation of such feeling that spells reform. It is not enough that the child's address, age, place of birth, parentage, occupation of self and parents, nationality and creed of all, members of family, name and address of employer, name of school-teacher be given. The majority of these things

have little to do with his delinquency, and not always much to do with his salvation. The causes are easier to get at than they seem. The data mentioned above are usually given with a fair degree of accuracy and are in some cases valuable. But the matters calling for most attention are slighted, the officer does not care or does not have time to ascrtain the truth and cannot depend on the child to report correctly. The ecclesiastical connections of the child and family are important in that certain forces there may be called in to investigate the case further and to contribute largely in the reformation or help of the child. The names of employer and teacher mean nothing on the records, but consultation with them and enlistment of them in the campaign means much. It is probably a fact that very generally these things are neglected. Certainly it has been so in the writer's knowledge of the matter.

In the St. Louis records there is a caption, "Social Environments," and the entry is usually, "Five rooms," "One room," "Bad," or other vague and uninspiring record, and as long as there are no more officers to relieve the over-burdened and helpless strugglers this most important factor will be much neglected. Of one group of 200 cases what few figures were given showed that the average number of rooms per family was 3.21. The result is valueless. The figures are incomplete, some of the children had no rooms to live in at all, and the number in the families was not given. It certainly happens often that two rooms for one family would be better than eight for another. But if it were possible to keep these statistics completely it might be shown that a certain district were overcrowded shamefully, that the law was being violated, that the large part of the blame for delinquency lay at the feet of the landlords. If so, a thousand probation officers would be of little service, while a bit of reform which might be brought about in six months or less might change the face of the situation. Again, the condition of the streets and alleys might be serious, the play spaces inadequate or absent. If so, one need go no farther in search of causes of delinquency. The educational opportunities might be poor, the police force small or corrupt, the neighborhood flooded with criminals and criminal resorts. The probation officer would be helpless.

In all this we have hall presumed that the probation officer is not merely to deal with the particular cases paroled to him, but is a sponsor of the juvenile life of the community. That he is not at present, but will be, and without being policeman. He cannot afford longer to needlessly spend his energies reforming and watching after the trouble has begun, and raise no hand or voice in protest against the continued presence of causes. He is not the sort of individual surely who would gladly see the grist coming in simply because he held a position in the mill. We cannot presume that the juvenile court in its records is to constitute the statistical department of the city. But we do insist that a thorough grip on the situation presupposes the existence of such

statistical department, and the full use of it by the court and the probation officers not only in dealing with the children, but in dealing with the community at large in the effort to make it see its responsibility. The probation officer and the court have no right not to be reformers! The first step in reform is education—education to the facts. It would be a great service to any city if the statistical department should be centralized, and statistics of health, tenements, streets, population, education, recreation, employment, industry, moral and religious forces be so easy of access and combination that at any time a community might have placed before it a cartoon of itself that might be suddenly shown to be not a cartoon, but an actual likeness. Do moral conditions wait upon dry statistics? *Yes*, but the figures are clothed with life! The task that is waiting to be done is the gathering together of the facts and turning them into a propaganda. The Civic Improvement Leagues are undertaking the task in some cities. It must be done now with the Juvenile Court as the point of departure. The Juvenile Court will live by giving life.

3. The Task of the Schools. Invariably the records of a juvenile court furnish evidence that the child has not been drawn out, educated, trained properly. The family comes in for the first and largest share of the blame, and then the school is proven guilty. It would be presumptuous and unfitting to here propose a curriculum better suited than that in vogue to save the child from delinquency. The best will always be open to the charge of being unrelated to the life that the child will enter after his school days, and the charge will be unjust in proportion as the purpose of education is misunderstood. The school cannot afford to make its sole end the production and turning out of finished engineers, carpenters, ministers or lawyers; to be a man is vastly more important, to be upright, considerate of all things and all men, to be an effective servant to the highest welfare of the community. Yet the life of the delinquent is a call for certain things.

a. Compulsory Education. It goes without contention that education should be compulsory. The records of such a court as that at St. Louis, where of one year's grist only 21 per cent. were in school, are sufficient argument except in localities where for one reason or another ignorance is courted.

b. Moral Training. Evidently the most important element in education for the prevention of delinquency, is proper moral training. The child who is schooled to fear the consequences of a wrong decision, to turn decidedly upon the wrong as soon as it is detected, as Christ turned upon the protest of Peter that he need not go to the contemplated lengths of sacrifice, is the child who will at once avoid delinquency and be best fitted to meet the trust that modern life gives into his hands. The result will be failure where Rooseveltian fearlessness of consequences of decision is not found. The teacher is a poor teacher who fails here. The question of moral instruction is not one to be consigned to the ethical

faddist. The curriculum in the ordinary school is already crowded, and seems to preclude the possibility of introducing a department of ethical instruction. Nor would it be desirable. Deep moral lessons may be taught in every department, from spelling to mathematics. Especially do literature and history lend themselves to the making of moral children. The principal desideratum is that teachers shall be conscious of the necessity of opening the way everywhere for right decisions. The child should not find it necessary to go through a long course of reasoning, laboriously weighing the elements, in order to decide a question. In most matters he should be able to take his stand instantly. Certainly when he has come to the point where his mind is settled, his will should be immediately set in motion.

The teacher of history has the splendid opportunity of leading the pupils through time, making over again the decisions of the ages, analyzing errors, positing results that would follow from various possible courses, coloring all with a high morality. There could not be written that text book on history which would not be a great laboratory in practical ethics, fine practice in the business of making right decisions. The same is true of literature, from the most serious to the least. How deep the lessons in Burns' "To a Mouse," and "To a Daisy;" in Wordsworth's "To a Fly;" in Eugene Field, in Stevenson, in Dickens, in all the Romantic School, to say nothing of the purpose novels of Kingsley! And these with a thousand others are entirely in line with the regular work of the teacher. The instructor *must* understand that the child's life demands that history and literature and all the other subjects are to be presented not merely as things of beauty or entertainment or material profit, but always as a part of real life and especially for the accumulation in the child's life of experiences not unlike those gained elsewhere and which by analogy shall help him. So commonplace does such advice seem that it is necessary to appeal to its neglect to give it force. The Ethical Culture School of New York has begun to show the possibilities. Thoughtful teachers everywhere have touched the borders of this land. Normal schools have a responsible task in making the teacher consciously a teacher and leader in juvenile morality. The whole matter is worthy of extended treatment with the records of the juvenile courts as a basis and inspiration for the task.

c. Civic Instruction. Instruction in matters civic is another thing to be urged in the light of our experience with delinquents. To understand his relation to his fellows and his duty in a specific case is the first essential for the child, yet often enough all this takes the form of his relation to the community. A fair acquaintance with the ways of the city and the state, the duties of officials, the value of life and property, the rights of men with men, will prevent much evil that the child now walks into only half conscious of infringement. Instruction in civics is very incidental in the ordinary school. Here is a field for special organizations with-

in the schools something after the plan of the George Junior Republic in procedure. The time-honored debating society could do no better than to devote the wrangling propensities of the youth concerned to the learning of the life of the city and the duties of the officials, disguised under the form of the various city departments. Thus the child could learn without knowing that he was learning all the possible relations he might sustain to the community which stands ready on small provocation to pronounce him delinquent.

d. Manual and Religious Training. The bearing of manual and religious training is patent, and these matters will soon be placed on a good working basis in the schools. So large is the discussion of these matters that their relation to delinquency is here indicated by only a word.

4. Parks, Playgrounds, Vacation Schools and Settlements. Just as we look for moths in the spare rooms, where they have opportunity to work unmolested, we look to the spare time of our youth for much of the delinquency that is only the result of inactivity. This fact has been one of the chief arguments leading to the establishment of vacation schools, parks and playgrounds. All these give place for the normal expression of the child's life, and in the first and last his energies are carefully directed so that his pleasure becomes also his direct profit. When placed where most needed, the vacation schools and playgrounds without any question have saved many a child from delinquency and many a delinquent from crime. Their worth is incalculable, and they are being appreciated to the extent that back of them stand scores of supporters and agitators. But the parks and boulevards are usually lacking in the crowded districts which contribute most to the courts. 1. The settlements with their various features, clubs, gymnasia, baths, playgrounds, employment bureaus, and most of all their consecrated and competent resident sharing in their everyday life, have done valiant service. They have insisted on clean community life and clean individual life.

5. The Place of the Library and the Librarian. There are facilities in a well equipped library which have not been fully used. A good juvenile department is always popular, irrespective of the condition of the children of the locality. The children can find many books which are almost as real to them as real life, and will occupy their time with a good book in those very moments when their sheer restlessness makes them uneasy and reckless. The juvenile book world is a veritable mine today, and the department calls for those adapted and trained for the service they may render. An adept not only knows the literature, but knows the boy, and invariably a good choice on her part invites the repetition of the child's confidence in her judgment. He may be introduced to a new world in every book. His mind may be filled with riches that he can command all his life. His moments may be rescued from

1 T. J. Riley, "*The Higher Life of Chicago*," p. 14, 1904.

worse than idleness and a genuine contribution made to his life equipment. It is a splendid field for one who has the instincts of the teacher, the playmate and the book lover.

Less than a year ago a librarian in a large city library was approached by a worker in the juvenile department who had all the qualifications, education, interest to direct the reading of the crowds of boys who came to the library, many of whom had been in the juvenile court for delinquency. She wished to give her time during the whole afternoon to a closer contact with the boys, directing their reading, learning more of their lives that she might better know their needs, reading to groups of the younger ones and in general putting the means of the department at the disposal of the children. The opportunity was to do a great service, to establish in the juvenile department a movement which should be the ideal for every city library, to render to the city world of youth a help that it may long wait for. But every one on the force was needed to do clerical work! The funds were low! And at that very moment one highest up in the force of "clerical" workers was embezzling the funds of the library—had been doing so for years unwatched! The plan was not for a moment considered. What a splendid opportunity the juvenile department of a large library offers in behalf of delinquent and threatened children. Honor to the library furnishing funds and talent to this work!

6. Civic Improvement Leagues. It has been sufficiently indicated that juvenile delinquency has many causes. If the evil is remedied there must be many changes in the environment of the youth. The task is manifold and the forces must correspond. The time has come for the establishment of a clearing-house in every city for the betterment of the city in every respect, and of such an establishment the juvenile court can make the greatest use. Many such bodies come into existence as Improvement Leagues whose prime interest is the promotion of the beauty and cleanliness of the city. Others make for clean politics. Both are of benefit to childhood. It is now suggested that such organizations enrich their purpose and extend their efforts by having more consciously in view the improvement of childhood. The Civic Improvement League of St. Louis has committees on the press, legislation, open air play grounds, free baths, waste paper boxes, public sanitation, vacant lots, statuary, junior horticultural farm and school gardens, tree planting, wide tires, water purification, sub urban improvement, signs and sign boards, historic tablets, street naming, tenement houses, pure milk, also a ladies' sanitary committee, membership and general committees. There is, of course, the possibility of change and addition and expansion indefinite. A Civic Improvement League enlists those most closely and really interested in improvement, and enlists them as volunteers. When open to facts and actual conditions such persons can exercise the healthiest censorship over officials who are inclined to get away from the notion of the public good. They learn of conditions hid-

den and ugly, they agitate, they enlist followers, they publish conditions, they keep the standard of official action high, they act privately, legally, publicly. For many years the men and women of social spirit have known that there were other fields than the church for their efforts. The result has been the settlement, the organized bureau of charities, the voters' leagues, and a hundred other forms. The systematic organization of the moral forces of the community is as inevitable as the organization of labor. The result will be more action, cleaner cities, more accurate knowledge of facts, dissemination of those facts, higher ideals and achievement of them. It is just this that the youth of the city need. The result will be shown in the records of the courts. Civic Improvement Leagues must be the order of the future, accomplishing through private interest what public interest is powerless to accomplish.

CHAPTER XIII.

CONCLUSION.

The centuries have brought the state to the fore. Its will is the dominant will. But there is no state except the aggregate of individuals brought to their united best through the years of experience. It is not an arbitrary thing existing for itself. Its great and only task is the insurance of the good of its members. It is protector of rights and guardian of happiness. For these purposes it has formulated laws, ever closing in upon its members, restricting individual action in certain spheres, but by defining rights, making men free. The early laws took little account of the rights of children, the family being sponsor for them. But in recent years more account of the children has been taken. They are legally persons, and therefore have rights. But beyond all this, the state has taken it upon itself to give all its members equal chance of life and happiness. In the case of the children it does this by insisting that they receive their due heritage of family training and instruction and help, whether it comes from the family or from the state in its parental function.

It is in connection with the exercise of this power by the state with the delinquent group that our problems rise. Legal delinquency is but an incident, often an accident. But in the main it is inevitable when certain conditions exist which do exist generally, especially in our cities. The duty of the state, therefore, is with those various conditions. It is surely not sufficient to punish the delinquent child. We are beginning to believe that the state does not perform its duty even in reformation of the delinquent. It must prevent, and it must go to such lengths in prevention that it is the same state, operating in the same spirit, that cares for the child in the school, in the street, in the playground, in the factory, in the court and in the home. It cannot afford to wait for the formal declaration of delinquency; it must anticipate, ward off. It must yet learn to forget the delinquent of the court and the probation office and start back with the child yet too young to come in contact with the world in many places, yes, even plan now for generations of the future. It must learn to idealize to the extent of thinking of every child as a possible delinquent before it may dream of every child as an acceptable member of society, and lay its plans accordingly.

It is not too much to insist again that where prisons and reformatories and courts have stood there shall be homes, schools, institutions of a hundred sorts, all under the state's eye and care, all marking its entrance into parenthood. And the men and the women through whom this office is mediated, if they be not the officers to whom are committed the care of streets, schools, playgrounds, tenements and all the forms which gather up the interests of the people, must be the interested, the reformers, the volunteer fathers and mothers. After all, they are the state quite as much as the police or the judges, each one a prophet of the day when government shall be *parental* in spirit and in the best sense, each a prophet of the day when the state shall seek for its servants and mediators the Rooseveltian men and women, the spirits able to look upon the veriest arab and rag-a-muffin and dream dreams and see visions of an upright and effective citizen. Today the call is for such. It is the line of the skirmish that is to be occupied; the main army is not yet recruited. It is hoped that this glance back over the country will reveal some things not seen as we have advanced, that the plea that the state do its work as a state rather than in its few leaders, may be heard. Further, may not the state feel its burden of responsibility over every child who is delinquent or may be delinquent? Our reconnoitering will soon yield many plans of campaign. We can continually gain more vantage points, open up new territory, fortify previous occupations, and hear ever the call to further unselfish, undiscouraged service in the battle for childhood.