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# FROM RHETORIC TO REALITY: THE JUVENILE COURT AND THE DECLINE OF THE REHABILITATIVE IDEAL

*Samuel M. Davis\**

THE BEST-LAID PLANS: AMERICA'S JUVENILE COURT EXPERIMENT. By *Ellen Ryerson*. New York: Hill and Wang. 1978. Pp. 180. \$9.95.

There have been three great moments in the development of the juvenile court as an institution. The first was the creation of the country's first juvenile court in Cook County, Illinois, in 1899. The second was the Supreme Court's momentous 1967 decision in *In re Gault*,<sup>1</sup> which precipitated a vast outpouring of decisions by lower, mostly state, courts, expanding the meaning and application of *Gault* far beyond its specific holding. In *Gault* the Court held that young people are entitled to many of the same rights in juvenile court proceedings that adults enjoy in the criminal court, including the fifth amendment privilege against self-incrimination and the sixth amendment right to counsel. Viewing *Gault* as a kind of shooting star, lower courts followed its spirit more than its letter, bringing about a significant transformation of the juvenile court in accordance with constitutional due process requirements.

The third watershed of the juvenile court's development is taking place now, barely eleven years after *Gault*. Ironically, it is the result of dissatisfaction with what the juvenile court has become. The current movement is challenging some of the fundamental notions on which the juvenile court has been based, *e.g.*, that the court ought to exercise very broad jurisdiction over all kinds of youthful misconduct, including truancy, disobedience to parents, and running away from home, and that the judge ought to possess very broad discretion to fashion an appropriate disposition to meet the needs of the individual child. The rather profound changes urged in the proposed Juvenile Justice Standards, most of which have now been approved by the American Bar Association, are an example of this new movement in the juvenile court's development. The Standards propose, *inter alia*, to elimi-

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nate so-called "status offenses" from the jurisdiction of the juvenile court, and to abandon the rehabilitative ideal in favor of the principle of proportionality—definite "punishments" to fit the wrong committed.

Ellen Ryerson's new book spans all of these developments in her attempt to fathom the juvenile court's origins and to explain the loss of faith in its effectiveness as an institution. Her focus is on intellectual history, not social history, in that she is concerned with ideas more than with people. The subject lends itself particularly well to a humanistic approach, and professionals in the fields of history, law, psychiatry, and sociology will find *The Best-Laid Plans* a significant and valuable addition to the literature on the juvenile court.

In the introduction, Ryerson modestly acknowledges that "[o]ne asks for trouble by suggesting that an institution bears the imprint of a certain period . . ." Yet she accomplishes this task with consummate skill. In its historical and sociological context the juvenile court as an institution was just as surely an outgrowth of the progressive movement as in its legal context it was a product of the social jurisprudence movement. Ryerson does not simply begin, however, with the creation of the juvenile court by turn-of-the-century reformers; rather, she reaches back into the early nineteenth century to discover antecedents of the concept of specialized treatment for children. Moreover, she analyzes the changes since the progressive era in psychiatry, sociology, and law that, along with the contrast between rhetoric and reality, have contributed to the failure of the juvenile court.

She undoubtedly was aided in her task by the publication of earlier works that examined the same subject: Anthony Platt's *The Child Savers* (1969); Sanford Fox's 1970 *Stanford Law Review* article, *Juvenile Justice Reform: An Historical Perspective*; and Robert Mennel's *Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquents* (published in a 1972 issue of *Crime and Delinquency*). Platt's and Fox's works in particular are "revisionist" accounts of the motivations that led to the creation of the juvenile court. They argue that the founders of the juvenile court were less concerned with the plight of children than with preserving traditional values against the rising tides of urbanism and industrialism that threatened to destroy those values.

Ryerson augments her credibility by resisting jumping on the revisionist bandwagon. To be sure, she acknowledges the enormous scope of urbanism, industrialism, and population growth

and their impact on American life and thought, and she recognizes the threat these powerful forces posed to the romantic view of American life as rural, morally correct, and simple. But she is reluctant to consider this as direct evidence that the motives of reformers were other than humane.

No one can fault the reformers for a lack of zeal or faith that their new creation would work. But their faith may have been misplaced because of the profound departure from existing practice that the juvenile court represented. It was envisioned more as a social agency than a court, leading Ryerson to comment: "Juvenile courts, unfettered by the rules of criminal procedure, took delinquency out of the adversary process much as other progressive reforms took issues out of the contentious, unpredictable world of electoral politics."

Yet it was this conceptual difference that probably accounted for much of the critical perception of the juvenile court as a *social* institution attempting to deal with the serious problem of crime. The criticism, in brief, was that as a social institution deployed to combat crime, the juvenile court was in over its head and poorly equipped to deal with the problem. In 1926, for example, John H. Wigmore, the great evidence scholar, wrote:

We recognize the beneficent function of the juvenile court. We have always supported it, and we are proud that Illinois invented it. But its devoted advocates, in their zeal, have lost their balance. And, as usual in other fields of science that have been awakening to their interest in the crime problem, their error is due to their narrow and imperfect conception of the criminal law. They are new to it, hence their inability to understand it. The criminal law does three things, two of which it does alone. (1) It pronounces and reaffirms the moral law. (2) It threatens other possible offenders, so as to deter them from offenses. (3) It handles this individual offender, now caught, so as to prevent repetition by him.

Now the third of these things is the affair of the penal administrative branch of the state. . . . Ever since Raymond Saleilles, the Paris professor of law, thirty years ago published his book on "The Individualization of Punishment," that principle has found wider and wider recognition. But in many quarters it has come to be regarded as the only principle of criminal law; and that is where the social workers and the psychiatrists are going wrong. They are ignoring the other two functions of the criminal law, and they are virtually on the way to abolish criminal law and undermine social morality, by ignoring those other two functions. . . . The courtroom is *the only place in the community today where the moral law is laid down* to the people with the voice of authority. The churches do not do it. The clubs do not do it. Public opinion has

no concrete and authoritative organ. The court alone does it, through the criminal code.

But the social workers and the psychologists and the psychiatrists know nothing of crime or wrong. They refer to "reactions" and "maladjustments" and "complexes." Look at that definition of crime, quoted from a society for hygiene, on p. 311 of volume XVI of the *Journal of Criminal Law and Criminology*; crime, we learn, is "merely a pattern-shift, and one always highly potential, in the kaleidoscope of broad individuo-social handicap, hardship, and maladjustment. . . ."

The people need to have the moral law dinned into their consciences every day in the year. The juvenile court does not do that. And to segregate a large share of daily crime into the juvenile court is to take a long step toward undermining the whole criminal law.<sup>2</sup>

To a limited extent, as a result of the *Gault* decision, the adversary process has returned to the juvenile court. Lawyers, who had been supplanted by social workers, psychologists, and psychiatrists, in turn have replaced the social scientists. But these reforms were instituted not as a protection for society, not as an answer to Wigmore's concerns, but rather as a protection for juveniles whose rights had too often been arbitrarily trampled. Thus Ryerson observes: "However intent reformers were upon the social or therapeutic nature of the juvenile court, and however successful in expunging from its language the vocabulary of criminal law, the juvenile court was and is a legal institution."

Even when viewed as a legal institution the juvenile court has met with harsh criticism for becoming too much like its criminal counterpart. Dissenting in the *Gault* case, Justice Stewart said:

The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the trappings of a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced to death by hanging. The sentence was executed. It was all very constitutional.<sup>3</sup>

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2. Wigmore, *Juvenile Court vs. Criminal Court*, 21 ILL. L. REV. 375 (1926).

3. 387 U.S. at 79-80 (footnote omitted).

Perhaps one reason for the failure of the juvenile court to reach the lofty heights anticipated by its founders, and one which might explain Justice Stewart's lament, is that simply too much was expected of it, which is so often the pitfall of reform efforts. One need only look at the statements of some of the persons prominent in the creation and management of the court to appreciate this suggestion. For example, Ryerson quotes one reformer who believed: "There is such a thing as an instantaneous awakening of the soul to the realization of higher and better things by the magnetic influence of one soul reacting upon another." Another commented: "There is no more potent influence over a boy than a good man or woman . . . The way to make a good boy is to rub him against a good man." Such boundless faith in the rehabilitative ideal! It is no wonder that it was doomed, if not to failure, then to disappointing abstraction.

It is precisely in the area of the reformers' extraordinary idealism and faith in the regenerative potential of the juvenile court that Ryerson reveals great insight. As we look back over the enormous changes that have taken place in the present century, the reformers seem to take on an almost two-dimensional quality. More important, their statements appear so out of focus with reality, albeit perhaps only because viewed by us from afar, that they seem to have viewed the subjects of their own concern—the children—as being two-dimensional themselves.

Disillusionment over what the juvenile court has become unquestionably exists, but Ryerson is not overly pessimistic. She predicts, safely, that the juvenile court will continue to exist in some form, if for no other reasons than that it seems to do no harm to treat children separately from adults and that we do not hastily discard old ways of dealing with social problems. She ends on an almost positive note: "Due process thinking and more modest ambitions may help us stage a not too undignified retreat. We need not be too gloomy about the retreat: if experience dictates that we aim to do less with law, there is at least the possible satisfaction of doing it more frankly and fairly." A juvenile court with limited rehabilitative goals and with procedural safeguards to protect the rights of youthful offenders would seem most likely to fulfill the ideal of fairness without the danger of inflating expectations.