THE JUVENILE COURT.

THE past decade marks a revolution in the attitude of the state toward its offending children, not only in nearly every American commonwealth, but also throughout Europe, Australia, and some of the other lands. The problem of the delinquent child, though juristically comparatively simple, is, in its social significance, of the greatest importance, for upon its wise solution depends the future of many of the rising generation. The legal questions, while not complicated, have, nevertheless, given rise to some discussion and to some slight dissent from the standpoint of constitutional law.

The first thought which suggests itself in connection with the juvenile court is, What is there distinctively new about it? We are familiar with the conception that the state is the higher or the ultimate parent of all of the dependents within its borders. We know that, whatever may have been the historical origin of the practice, for over two centuries, as evidenced by judgments both of the House of Lords and of the Chancellors, the courts of chancery in England have exercised jurisdiction for the protection of the unfortunate child.

The proposition that the court of chancery could not act unless the infant had property, was declared by North, J., in *Re* McGrath,[1] to be wholly unsupported by either principle or authority. He added:

"In *In re* Spence, 2 Ph. 247, Lord Chancellor Cottenham said: 'I have no doubt about the jurisdiction. The cases in which the court interferes on behalf of infants are not confined to those in which there is property. . . . This court interferes for the protection of infants, *qua* infants, by virtue of the prerogative which belongs to the Crown as *parens patriae* and the exercise of which is delegated to the great seal.'"

In the early case of Cowles *v.* Cowles[2] Caton, J., said:

"The power of the court of chancery to interfere with and control not only the estates but the persons of all minors within the limits of its

[1] [1892] 2 Ch. 496. See also *In re* Flyn, 2 DeG. & Sm. 457 (1848); Brown *v.* Collins, 25 Ch. D. 56 (1883); *In re* Scanlan, 40 Ch. D. 200 (1888); *In re* Neven, [1891] 2 Ch. 299; Barnardo *v.* McHugh, [1891] A. C. 388; *In re* W., [1907] 2 Ch. 557; *In re* H's Settlement, [1909] 2 Ch. 260. Several of these cases involve questions of religious education of the child.

[2] 3 Gilman 435 (1846).

jurisdiction, is of very ancient origin and cannot now be questioned. This is a power which must necessarily exist somewhere in every well-regulated society, and more especially in a republican government. A jurisdiction thus extensive and liable, as we have seen, to enter into the domestic relations of every family in the community, is necessarily of a very delicate and even of a very embarrassing nature; and yet its exercise is indispensable in every well-governed society; it is indispensably necessary to protect the persons and preserve the property of those who are unable to protect and take care of themselves";

and shortly thereafter in the case of Miner *v.* Miner [1] he enunciated the practically unanimous American doctrine that the parents' rights are always

"subject to control by the court of chancery when the best interests of the child demand it."

Support was found for the contention that a property interest is essential to jurisdiction in the fact that, until comparatively recent times, the aid of the court in England was seldom sought, except when the child had an independent fortune; but, as was said by Lord Eldon, whose decree in the Wellesley case [2] was affirmed by the House of Lords,[3]

"It is not from any want of jurisdiction that it does not act, but from a want of means to exercise its jurisdiction, because the court cannot take upon itself the maintenance of all the children in the kingdom. It can exercise this jurisdiction fully and practically only where it has the means of applying property for the maintenance of the infant."

This want has now been met both through the extension of the parental obligations and through public grants of money or institutions for the support, maintenance, and education of the children. The judges of the juvenile court, in exercising jurisdiction, have, in accordance with the most advanced philanthropic thought, recognized that the lack of proper home care can best be supplied by the true foster parent. Though the orphan asylums of the civilized world have ever been valuable and their recent improvement is marked, nevertheless, following the splendid lead of Massachusetts, greater effort is being put forth everywhere to solve the problem of the per-

[1] 11 Ill. 40 (1849).
[2] 2 Russ. 1 (1827).
[3] 2 Bligh N. S. 124 (1827).

manently dependent or neglected child by finding for it a foster home where it shall receive that individualized love and care that a true father gives to and would always desire for his own little ones.

While in most jurisdictions the juvenile-court laws make provision for the dependent as well as the neglected, the truant and the delinquent child, some of the best workers in this field have objected to a court's having anything to do with the strictly dependent child, the child whose parents must ask assistance, merely because of poverty or misfortune. If friends or the church fail to supply the necessary help, and the aid of the state is to be sought, it should be granted through poor law or relief commissioners. The court should be called upon to act only in the case of a persistent truant, or a victim of neglect or wrongdoing, either on the part of others or of itself. It is particularly in dealing with those children who have broken the law or who are leading the kind of life which will inevitably result in such breach, that the new and distinctive features of the juvenile-court legislation appear.

Our common criminal law did not differentiate between the adult and the minor who had reached the age of criminal responsibility, seven at common law and in some of our states, ten in others, with a chance of escape up to twelve, if lacking in mental and moral maturity. The majesty and dignity of the state demanded vindication for infractions from both alike. The fundamental thought in our criminal jurisprudence was not, and in most jurisdictions is not, reformation of the criminal, but punishment; punishment as expiation for the wrong, punishment as a warning to other possible wrongdoers. The child was arrested, put into prison, indicted by the grand jury, tried by a petit jury, under all the forms and technicalities of our criminal law, with the aim of ascertaining whether it had done the specific act — nothing else — and if it had, then of visiting the punishment of the state upon it.

It is true that during the last century ameliorating influences mitigated the severity of the old régime; in the last fifty years our reformatories have played a great and very beneficent part in dealing with juvenile offenders. They supplanted the penitentiary. In them the endeavor was made, while punishing, to reform, to build up, to educate the prisoner so that when his time should have expired he could go out into the world capable at least of making an honest living. And in course of time, in some jurisdictions, the youths were separated from

the older offenders even in stations, jails, and workhouses; but, nevertheless, generally in this country, the two classes were huddled together. The result of it all was that instead of the state's training its bad boys so as to make of them decent citizens, it permitted them to become the outlaws and outcasts of society; it criminalized them by the very methods that it used in dealing with them. It did not aim to find out what the accused's history was, what his heredity, his environments, his associations; it did not ask how he had come to do the particular act which had brought him before the court. It put but one question, "Has he committed this crime?" It did not inquire, "What is the best thing to do for this lad?" It did not even punish him in a manner that would tend to improve him; the punishment was visited in proportion to the degree of wrongdoing evidenced by the single act; not by the needs of the boy, not by the needs of the state.

To-day, however, the thinking public is putting another sort of question. Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.

And it is this thought — the thought that the child who has begun to go wrong, who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the state, not as an enemy but as a protector, as the ultimate guardian, because either the unwillingness or inability of the natural parents to guide it toward good citizenship has compelled the intervention of the public authorities; it is this principle, which, to some extent theretofore applied in Australia and a few American states, was first fully and clearly declared, in the Act under which the Juvenile Court of Cook County, Illinois, was opened in Chicago, on July 1, 1899, the Hon. R. S. Tuthill presiding. Colorado followed soon after, and since that time similar legislation has been adopted in over thirty American jurisdictions, as well as in Great Britain and Ireland, Canada, and the Australian colonies. In continental Europe and also in Asia the American juvenile courts have been the object of most careful study, and either by parliamentary or administrative

measures similar courts have been established, or at least some of their guiding principles have been enforced.

The Lord Advocate of Scotland, in the course of the debates last year on the Children's Bill,[1] stated that

"There was a time in the history of this House when a Bill of this kind would have been treated as a most revolutionary measure, and half a century ago, if such a measure had been introduced it would have been said that the British constitution was being undermined."

That era has passed away forever.

Juvenile-court legislation has assumed two aspects. In Great Britain, in New York, and in a few other jurisdictions the protection is accomplished by suspending sentence and releasing the child under probation, or, in case of removal from the home, sending it to a school instead of to a jail or penitentiary. The criminal proceeding remains, however. The child is charged with the commission of a definite offense, of which it must be found either guilty or not guilty. If not guilty of the one certain act, it is discharged, however much it may need care or supervision. If guilty, it is then dealt with, but as a criminal. And this would seem to be true even under the New York statute of May 25, 1909, which provides that

"A child of more than seven and less than sixteen years of age, who shall commit any act or omission, which, if committed by an adult, would be a crime not punishable by death or life imprisonment, shall not be deemed guilty of any crime, but of juvenile delinquency only. . . . Any child charged with any act or omission which may render him guilty of juvenile delinquency shall be dealt with in the same manner as now is or may hereafter be provided in the case of adults charged with the same act or omission except as specially provided heretofore in the case of children under the age of sixteen years."

This would seem to effectuate merely a change in the name of every crime or offense from that by which it was theretofore known to that of juvenile delinquency. Beyond question, much good may be accomplished under such legislation, dependent upon the spirit in which it is carried out, particularly if, as the English law provides, the conviction should not be regarded as a conviction of felony for the purposes of any of the disqualifications attached to felony.

But in Illinois, and following the lead of Illinois, in most jurisdictions,

[1] 186 Hans. Parl. Deb., 4th series, 1251.

the form of procedure is totally different and wisely so. It would seem to be obvious that, if the common law could fix the age of criminal responsibility at seven, and if the legislature could advance that age to ten or twelve, it can also raise it to sixteen or seventeen or eighteen, and that is what, in some measure, has been done. Under most of the juvenile-court laws a child under the designated age is to be proceeded against as a criminal only when in the judgment of the judge of the juvenile court, either as to any child, or in some states as to one over fourteen or over sixteen years of age, the interests of the state and of the child require that this be done. It is to be observed that the language of the law should be explicit in order to negative the jurisdiction of the criminal courts in the first instance. In the absence of such express provision the Supreme Court of New Hampshire in State *v.* Burt [1] recently upheld a criminal conviction. On the other hand, the Supreme Court of Louisiana has decided in the case of State *v.* Reed [2] that a criminal proceeding against one within the age limit must be quashed and the case transferred to the juvenile court.

To get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma, — this is the work which is now being accomplished by dealing even with most of the delinquent children through the court that represents the *parens patriae* power of the state, the court of chancery. Proceedings are brought to have a guardian or representative of the state appointed to look after the child, to have the state intervene between the natural parent and the child because the child needs it, as evidenced by some of its acts, and because the parent is either unwilling or unable to train the child properly.

Objection has been made from time to time that this is nevertheless a criminal proceeding, and that therefore the child is entitled to a trial by jury and to all the constitutional rights that hedge about the criminal.

The Supreme Courts of several states have well answered this objection.

In Commonwealth *v.* Fisher [3] the court says:

[1] 71 Atl. 30 (1908).
[2] 49 So. 3 (1909).
[3] 213 Pa. St. 48, 62 Atl. 198 (1905).

"To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection.

"The action is not for the trial of a child charged with a crime, but is mercifully to save it from such an ordeal, with the prison or penitentiary in its wake, if the child's own good and the best interests of the state justify such salvation. Whether the child deserves to be saved by the state is no more a question for a jury than whether the father, if able to save it, ought to save it. The act is but an exercise by the state of its supreme power over the welfare of its children, a power under which it can take a child from its father, and let it go where it will, without committing it to any guardianship or any institution, if the welfare of the child, taking its age into consideration, can be thus best promoted.

"The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child. The severity in either case must necessarily be tempered to meet the necessities of the particular situation. There is no probability, in the proper administration of the law, of the child's liberty being unduly invaded. Every statute which is designed to give protection, care, and training to children, as a needed substitute for parental authority, and performance of parental duty, is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails. No constitutional right is violated."

In one of the most recent decisions[1] the Supreme Court of Idaho thus refers to the juvenile court:

"Its object is to confer a benefit both upon the child and the community in the way of surrounding the child with better and more elevating influences, and of educating and training him in the direction of good citizenship and thereby saving him to society and adding a good and useful citizen to the community. This, too, is done for the minor at a time when he is not entitled, either by natural law or the laws of the land, to his absolute freedom, but rather at a time when he is subject to the restraint and custody of either a natural guardian or a legally constituted and appointed guardian to whom he owes obedience and subjection. Under this law the state, for the time being, assumes to discharge the parental duty and to direct his custody and assume his restraint.

[1] *Ex parte* Sharpe, 15 Idaho 120, 96 Pac. 563 (1908).

"It would be carrying the protection of 'inalienable rights,' guaranteed by the Constitution, a long ways to say that that guaranty extends to a free and unlimited exercise of the whims, caprices, or proclivities of either a child or its parents or guardians for idleness, ignorance, crime, indigence, or any kindred dispositions or inclinations."

Years ago, in considering the power of the court to send a child to the House of Refuge, Chief Justice Gibson said:[1]

"May not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right the business of education belongs to it. That parents are ordinarily entrusted with it, is because it can seldom be put in better hands; but where they are incompetent or corrupt, what is there to prevent the public from withdrawing their faculties, held as they obviously are, at its sufferance? The right of parental control is a natural, but not an inalienable one. It is not excepted by the declaration of rights out of the subject of ordinary legislation."

Care must, however, be taken not to provide for dealing with the child as a criminal. The city of Detroit lacked, for a time, a juvenile court, as the result of the decision in Robinson *v.* Wayne Circuit Judges.[2] The Supreme Court of Michigan, following the cases cited and numerous others, overruled many objections urged against the constitutionality of the Detroit Juvenile Court Act, but nevertheless held it invalid, saying:

"The statute, it is true, declares that the proceedings shall not be taken to be criminal proceedings in any sense; and yet by section 14 it is provided that if the child be adjudged a delinquent child, the court may place the case on trial, and impose a fine not to exceed $25.00, with costs, etc. This can have no other purpose than punishment for a delinquency, which means nothing less, or at least includes one who violates any law of this state or any city ordinance.

"In the present case, however, this statute is a state law, providing for a penalty. A complaint, an arrest, and trial are authorized, and, upon a determination, the imposition of a fine. It is difficult to conceive of any element of a criminal prosecution which may be said to be lacking. And, as section 28 of article 6 of the Constitution very plainly provides for a

[1] *Ex parte* Crouse, 4 Whart. 9 (1838).

[2] 151 Mich. 315, 115 N. W. 682 (1908).

jury of twelve men in all courts of record in every criminal prosecution, the provision for a jury of six for the trial of delinquents is in violation of this section."

Further legislation has now corrected this defect.

In answer to the objection that the act has the effect of depriving a parent of the custody of his child, in violation of his constitutional rights, the Supreme Court of Idaho, in *Ex parte* Sharpe,[1] says:

"If the parent objects to the child's being taken care of by the state in the manner provided for by the act, he may appear and present his objections. If, on the other hand, he is not made a party to the hearing and proceeding, under all the recognized rules of legal procedure, he is clearly not bound by the judgment and none of his rights are precluded.

"The parent or guardian cannot be bound by the order or judgment of the Probate Court in adjudging a child delinquent and sending him to the Industrial Training School unless he has appeared or been brought into the proceeding in the Probate Court."

The Supreme Court of Utah, in Mill *v.* Brown,[2] emphasized this requirement when it said:

"Before the state can be substituted to the right of the parent, it must affirmatively be made to appear that the parent has forfeited his natural and legal right to the custody and control of the child by reason of his failure, inability, neglect, or incompetency to discharge the duty and thus to enjoy the right.

"Unless, therefore, both the delinquency of the child and the incompetency, for any reason, of the parent concur and are so found, the court exceeds its power when committing a child to any of the institutions contemplated by the act."

It is, therefore, important to provide, as has been done in the most recent statutes, but as was not done in the earlier acts, that the parents be made parties to the proceedings, and that they be given an opportunity to be heard therein in defense of their parental rights.

The Supreme Court of Illinois, however, in the case of People *ex rel.* Schwartz *v.* McLain,[3] struck a discordant note in a decision releasing a child from the State Training School for Boys. Subsequently, it granted a rehearing, and, because of the discontinuance thereafter of the *habeas corpus* proceedings, rendered no final judgment in the

[1] *Supra.*

[2] 88 Pac. 609 (1907).

[3] 38 Chi. Leg. N. 166 (1905).

cause. In the original opinion, which we may, in view of the rehearing, regard as retracted, the court, while upholding the constitutionality of the juvenile-court law in the case of a child whose parents actively contributed to its wrongdoing, said:

"If this enactment is effective and capable of being enforced as against the relator, father of the boy, it must be upon the theory that it is within the power of the state to seize any child under the age of sixteen years who has committed a misdemeanor, though the father may have always provided a comfortable, quiet, orderly, and moral home for him, and have supplied him with school facilities, had not neglected his moral training, and had been and was still ready to render him all the duties of a parent. We do not think it is within the power of the General Assembly to thus infringe upon parental rights."

The answer to this, made by counsel in the argument on rehearing, would seem to be conclusive. They said:

"The boy incorrigible at home must be corrected by the state. Whether this correction be by fine, imprisonment, or commitment to school, is a matter which does belong to the legislature and not to this court to determine.

"This law applies, with equal force, to the son of the pauper and the millionaire, to the minister's son (who is sometimes the wolf among the flock) as well as to the son of the convict and the criminal. The circumstances and disposition of the parents are not the test by which the state measures its power over the child; the right of the parent to retain the society and the services of the child is rightfully suspended when the parent is unsuccessful in keeping the child in a state of obedience to the criminal law of the state; he cannot keep his child and allow him to continue to violate the law of the state without successful check or barrier thereon, just because he has a comfortable and moral home.

"The manner in which the power of the state shall be exercised, and the extent to which the deprivation of the parent shall go, is a matter for the determination of the legislature, and the legislature by this Act has confided it to a court of chancery, where the parental power of the state has been lodged and exercised from time immemorial."

They quote, too, the passage heretofore cited from the decision of Chief Justice Gibson in *Ex parte* Crouse, with this addition:

"The right of parental control is a natural but not an inalienable one. It is not excepted by the Declaration of Rights out of the subjects of ordinary legislation, and it consequently remains subject to the ordinary legislative

power, which, if wantonly or inconveniently used, would soon be constitutionally restricted, but the competency of which, as the government is constituted, cannot be doubted."

One more legal question remains. In a decision, characterized by the Supreme Court of Michigan in the Robinson case[1] as "now chiefly notable as an example of the vigor with which that which is not the law may be stated," the Supreme Court of Illinois, in People *ex rel. v.* Turner,[2] released a child from the reformatory on the ground that the reformatory was a prison; that incarceration therein was necessarily punishment for a crime, and that such a punishment could be inflicted only after criminal proceedings conducted with due regard to the constitutional rights of the defendant. Whether the criticism be just or not, the case suggests a real truth, and one which, in the enthusiastic progress of the juvenile-court movement, is in danger of being overlooked. If a child must be taken away from its home, if for the natural parental care that of the state is to be substituted, a real school, not a prison in disguise, must be provided. Whether the institutional life be only temporary until a foster home can be found, or for a longer period until the child can be restored to its own home or be given its complete freedom, the state must, both to avoid the constitutional objections suggested by the Turner case, and in fulfilment of its moral obligation to the child, furnish the proper care. This cannot be done in one great building, with a single dormitory for all of the two or three or four hundred or more children, in which there will be no possibility of classification along the lines of age or degrees of delinquency, in which there will be no individualized attention. What is needed is a large area, preferably in the country, — because these children require the fresh air and contact with the soil even more than does the normal child, — laid out on the cottage plan, giving opportunity for family life, and in each cottage some good man and woman who will live with and for the children. Locks and bars and other indicia of prisons must be avoided; human love, supplemented by human interest and vigilance, must replace them. In such schools there must be opportunity for agricultural and industrial training, so that when the boys and girls come out, they will be fitted to do a man's or woman's work in the world, and not be merely a helpless lot, drifting aimlessly about.

[1] *Supra.*

[2] 55 Ill. 280 (1870).

Some states have begun to supply this need.[1] But despite the great ultimate financial saving to the state through this method of dealing with children, a saving represented by the value of a decent citizen as against a criminal, the public authorities are nowhere fully alive to the new obligations that the spirit as well as the letter of this legislation imposes upon them. It has, however, been specifically provided in Canada that before the Dominion Act shall be put into force in any province, the governor in council must be satisfied, among other things, that an industrial school, as defined by the Act, exists, to which juvenile delinquents may be committed.

Private philanthropy has supplemented, and doubtless in the future will supplement the work of the state in providing for the delinquents. To a large extent it is denominational, though many organizations are non-sectarian. None have accomplished more good or give promise of greater continued usefulness than the George Junior Republics and similar organizations that stand for self-government, self-reliance, and redemption through honest labor.

Some of the main principles involved in juvenile-court legislation were pointed out by Mr. Herbert Samuels, in introducing into the House of Commons his excellent Children's Bill. In reference to that part of the bill which has to do with juvenile offenders, he said[2] that it is based on three main principles:

"*The first* is that the child offender ought to be kept separate from the adult criminal, and should receive at the hands of the law a treatment differentiated to suit his special needs; that the courts should be agencies for the rescue as well as the punishment of children. We require the establishment through the country of juvenile courts — that is to say, children's cases shall be heard in a court held in a separate room or at a separate time from the courts which are held for adult cases, and that the public who are not concerned in the cases shall be excluded from admission.

"In London we propose to appoint by administrative action a special children's magistrate to visit in turn a circuit of courts. Further, we require police authorities throughout the whole of the country to establish places of detention to which children shall be committed on arrest, if they are not bailed, and on remand or commitment for trial, instead of being committed to prison.

"*The second principle* on which this bill is based is that the parent of

[1] See the admirable report of the Commission to select a site for the N. Y. State Training School for Boys. N. Y. Sen. Doc. No. 39 (Apr. 28, 1909).

[2] 183 Hans. Parl. Deb., 4th series, 1434.

the child offender must be made to feel more responsible for the wrong-doing of his child. He cannot be allowed to neglect the up-bringing of his children, and having committed the grave offense of throwing on society a child criminal, wash his hands of the consequences and escape scot free. We require the attendance in court of the parent in all cases where the child is charged, where there is no valid reason to the contrary, and we considerably enlarge the powers, already conferred upon the magistrates by the Youthful Offenders Act of 1901, to require the parent, where it is just to do so, to pay the fines inflicted for the offense which his child has committed.

"*The third principle* which we had in view in framing this part of the bill is that the commitment of children in the common gaols, no matter what the offense may be that is committed, is an unsuitable penalty to impose. The government has come to the conclusion that the time has now arrived when Parliament can be asked to abolish the imprisonment of children altogether, and we extend this proposal to the age of sixteen with a few carefully defined and necessary exceptions."

To these, however, should he added, as the fourth principle, that taking a child away from its parents and sending it even to an industrial school is, as far as possible, to be avoided; and as the fifth and most important principle, that when it is allowed to return home, it must be under probation, subject to the guidance and friendly interest of the probation officer, the representative of the court. To raise the age of criminal responsibility from seven or ten to sixteen or eighteen, without providing for an efficient system of probation, would indeed be disastrous. Probation is, in fact, the keynote of juvenile-court legislation.

But even in this there is nothing radically new. Massachusetts has had probation, not only in the case of minors, but even in the case of adults, for nearly forty years, and several other states now have provisions for the suspension of a criminal sentence in the case of adults, permitting the defendant to go free, but subject to the control of a probation officer. Wherever juvenile courts have been established, a system of probation has been provided for, and even where as yet the juvenile-court system has not been fully developed, some steps have been taken to substitute probation for imprisonment of juvenile offenders.

Most of the children who come before the court are, naturally, the children of the poor. In many cases the parents are foreigners, frequently unable to speak English, and without an understanding

of American methods and views. What they need, more than anything else, is kindly assistance; and the aim of the court, in appointing a probation officer for the child, is to have the child and the parents feel, not so much the power, as the friendly interest of the state; to show them that the object of the court is to help them to train the child right; and therefore the probation officers must be men and women fitted for these tasks.

Their duties are oftentimes of the most delicate nature. Tact, forbearance, and sympathy with the child, as well as a full appreciation of the difficulties that the poorer classes, and especially the immigrants, are confronted with in our large cities, are indispensable. The New York Probation Commission say, in their second annual report for the year 1908, p. 32:

"In courts where the probation system is most effectively conducted there is great variety in the work done by probation officers. The most successful workers regard the receiving of reports from probationers as much less important than the visiting and other work done by the probation officers. The probation officers obtaining the best results enter into intimate friendly relations with their probationers, and bring into play as many factors as possible, such as, for instance, securing employment for their probationers, readjusting family difficulties, securing medical treatment or charity if necessary, interesting helpful friends and relatives, getting the coöperation of churches, social settlements and various other organizations, encouraging probationers to start bank accounts, to keep better hours, to associate with better companions, and so forth."

The procedure and practice of the juvenile court is simple. In the first place the number of arrests is greatly decreased. The child and the parents are notified to appear in court, and unless the danger of escape is great, or the offense very serious, or the home totally unfit for the child, detention before hearing is unnecessary. Children are permitted to go on their own recognizance or that of their parents, or on giving bail. Probation officers should be and often are authorized to act in this respect. If, however, it becomes necessary to detain the children either before a hearing or pending a continuance, or even after the adjudication, before they can be admitted into the home or institution to which they are to be sent, they are no longer kept in prisons or jails, but in detention homes. In some states, the laws are mandatory that the local authorities provide such homes managed in accordance with the spirit of this legislation. These are

feasible even in the smallest communities, inasmuch as the simplest kind of a building best meets the need.

The jurisdiction to hear the cases is generally granted to an existing court having full equity powers. In some cities, however, special courts have been provided, with judges devoting their entire time to this work. If these special courts can constitutionally be vested with full and complete chancery and criminal jurisdiction, much is to be said in favor of their establishment. In the large cities particularly the entire time of one judge may well be needed. It has been suggested from time to time that all of the judges of the municipal or special sessions courts be empowered to act in these cases, but while it would be valuable in metropolitan communities to have more than one detention home and court house, nevertheless it would seem to be even more important to have a single juvenile court judge. The British government has adopted this policy for London.

By the Colorado Act of 1909 provision is made for hearings before masters in chancery, designated as masters of discipline, to be appointed by the juvenile court judge and to act under his directions. This may prove to be the best solution of a difficult problem, combining as it does the possibility of a quick disposition of the simpler cases in many sections of a large city or county, with a unity of administration through the supervisory power of a single judge.

The personality of the judge is an all-important matter. The Supreme Court of Utah, in the case of Mill *v.* Brown,[1] commenting upon the choice of a layman, a man genuinely interested in children, pointed out that,

"To administer juvenile laws in accordance with their true spirit and intent requires a man of broad mind, of almost infinite patience, and one who is the possessor of great faith in humanity and thoroughly imbued with that spirit.

"The judge of any court, and especially a judge of a juvenile court, should be willing at all times, not only to respect, but to maintain and preserve, the legal and natural rights of men and children alike. . . . The fact that the American system of government is controlled and directed by laws, not men, cannot be too often or too strongly impressed upon those who administer any branch or part of the government. Where a proper spirit and good judgment are followed as a guide, oppression can and will be avoided. . . .

[1] 88 Pac. 609 (1907).

"The juvenile-court law is of such vast importance to the state and society that it seems to us it should be administered by those who are learned in the law and versed in the rules of procedure, to the end that the beneficent purposes of the law may be made effective and individual rights respected. Care must be exercised both in the selection of a judge and in the administration of the law."

The decision but emphasizes the dangers which beset the path of the judge of the juvenile court. The public at large, sympathetic to the work, and even the probation officers who are not lawyers, regard him as one having almost autocratic power. Because of the extent of his jurisdiction and the tremendous responsibility that it entails, it is, in the judgment of the writer, absolutely essential that he be a trained lawyer thoroughly imbued with the doctrine that ours is a "government of laws and not of men."

He must, however, be more than this. He must be a student of and deeply interested in the problems of philanthropy and child life, as well as a lover of children. He must be able to understand the boys' point of view and ideas of justice; he must be willing and patient enough to search out the underlying causes of the trouble and to formulate the plan by which, through the coöperation, ofttimes, of many agencies, the cure may be effected.

In some very important jurisdictions the vicious practice is indulged in of assigning a different judge to the juvenile-court work every month or every three months. It is impossible for these judges to gain the necessary experience or to devote the necessary time to the study of new problems. The service should under no circumstances be for less than one year, and preferably for a longer period. In some of our cities, notably in Denver, the judge has discharged not only the judicial functions, but also those of the most efficient probation officer. Judge Lindsey's love for the work and his personality has enabled him to exert a powerful influence on the boys and girls that are brought before him. While doubtless the best results can be obtained in such a court, lack of time would prevent a judge in the largest cities from adding this work to his strictly judicial duties, even were it not extremely difficult to find the necessary combination of elements in one man.

The problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in

the interest of the state to save him from a downward career. It is apparent at once that the ordinary legal evidence in a criminal court is not the sort of evidence to be heard in such a proceeding. A thorough investigation, usually made by the probation officer, will give the court much information bearing on the heredity and environment of the child. This, of course, will be supplemented in every possible way; but this alone is not enough. The physical and mental condition of the child must be known, for the relation between physical defects and criminality is very close. It is, therefore, of the utmost importance that there be attached to the court, as has been done in a few cities, a child study department, where every child, before hearing, shall be subjected to a thorough psycho-physical examination. In hundreds of cases the discovery and remedy of defective eyesight or hearing or some slight surgical operation will effectuate a complete change in the character of the lad.

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the court-room are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

The object of the juvenile court and of the intervention of the state is, of course, in no case to lessen or to weaken the sense of responsibility either of the child or of the parent. On the contrary, the aim is to develop and to enforce it. Therefore it is wisely provided in most of the recent acts that the child may be compelled when on probation, if of working age, to make restitution for any damage done by it. Moreover, the parents may not only be compelled to contribute to the support even of the children who are taken away from them and sent to institutions, but following Colorado, in many states, they, as well as any other adults, may be made criminally liable for their acts or neglect contributing to a child's dependency or delinquency. In most of the jurisdictions which have established separate juvenile courts, as well as in some of the others, all criminal cases affecting children are tried by the juvenile-court judge. In

drafting legislation of this kind, however, it must not be overlooked that if the proceedings against the adult are criminal, his constitutional rights must be carefully safeguarded. Following general principles, such penal acts are strictly construed, and therefore in the recent case of Gibson *v.* People [1] the Colorado Supreme Court limited the application of the Act of 1903 to the parents and those standing in a parental relation to the child. Colorado, in 1907, however, as well as other states, expressly extended the scope of such statutes so as to include any person, whether standing *in loco parentis* or not. The Supreme Court of Oregon in State *v.* Dunn [2] construed such legislation to refer only to misconduct not otherwise punishable.

Kentucky in 1908, followed by Colorado in 1909, has enacted a statute providing for the enforcement of parental obligations, not in the criminal but in the chancery branch of the juvenile court. A decree not merely for the payment of support money, but for the performance or omission of such acts, as under the circumstances of the case are found necessary, may be enforced by contempt proceedings.

Valuable, however, as is the introduction of the juvenile court into our system of jurisprudence, valuable both in its effect upon the child, the parents, and the community at large, and in the great material saving to the state which the substitution of probation for imprisonment has brought about, nevertheless it is in no sense a cure-all. Failures will result from probation, just as they have resulted from imprisonment. As Judge Lindsey has said: [3]

"It does not pretend to do all the work necessary to correct children or to prevent crime. It is offered as a method far superior to that of the old criminal court system of dealing with the thing rather than the child. That method was more or less brutal. The juvenile court system has a danger in becoming one of leniency, but as between this method and that of the criminal court, it is much to be preferred. But the dangers of leniency as well as those of brutality can be avoided in most cases. Juvenile-court workers must not be sentimentalists any more than brutalists. In short, the idea is a system of probation work, which contemplates coöperation with the child, the home, the school, the neighborhood, the church, and the business man in its interests and that of the state. Its purpose is to help all it can, and to hurt as little as it can; it seeks to build character — to make

[1] 99 Pac. 333 (1909).
[2] 99 Pac. 278 (1909).
[3] Juvenile Court Laws Pamphlet, 23.

good citizens rather than useless criminals. The state is thus helping itself as well as the child, for the good of the child is the good of the state."

But more than this, the work of the juvenile court is, at the best, palliative, curative. The more important, indeed the vital thing, is to prevent the children from reaching that condition in which they have to be dealt with in any court, and we are not doing our duty to the children of to-day, the men and women of to-morrow, when we neglect to destroy the evils that are leading them into careers of delinquency, when we fail not merely to uproot the wrong, but to implant in place of it the positive good. It is to a study of the underlying causes of juvenile delinquency and to a realization of these preventive and positive measures that the trained professional men of the United States, following the splendid lead of many of their European brethren, should give some thought and some care. The work demands the united and aroused efforts of the whole community, bent on keeping children from becoming criminals, determined that those who are treading the downward path shall be halted and led back.

In a word, as was well said [1] in the course of the debates on the Children's Bill in the House of Commons:

"We want to say to the child that if the world or the world's law has not been his friend in the past, it shall be now. We say that it is the duty of this Parliament and that this Parliament is determined to lift, if possible and rescue him, to shut the prison door, and to open the door of hope."

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[1] 186 Hans. Parl. Deb., 4th series, 1262.