

A SPECIAL SAVOR OF NOBILITY: CONFRONTING THE DEHUMANIZATION IN CHILDREN'S JUSTICE

by *Lisa A. Richette*

For what gives justice its special savor of nobility? Only the divine wrath that arises in us, girds us, and drives us to action whenever an injustice affronts our sight.¹

To comprehend fully how a technologically advanced society committed to humanitarian and democratic goals of limitless personal growth tolerates a control system which brutalizes and mutilates significant numbers of children, we must take a glance at the past. Not only will we avoid Santayana's prophecy that those who cannot remember the past are condemned to repeat it, but we will also be in a position to confront honestly a profound question most social reformers avoid but which is, nevertheless, part of the folklore response to proposals for humanization—the question of the immutability of human nature. Proponents of atavistic solutions to crime control, from death penalties to the whipping post, maintain that propensity to criminal behavior is a fixed human trait. One can ask whether instead it is the response to criminal behavior that is inexorably programmed, and to what extent the premises of both religion and science are programming forces. The question may also be posed in another way. Are concepts of sin and deviation so imprinted in the consciousness of Western man that he is forever barred from a humanized view of the offender, both young and old?

A LOOK AT THE RECORD

Since contemporary American juvenile justice provides an excellent

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microcosm of the tensions between dehumanizing and humanizing concepts of social control, we may begin by looking at the evolution of this structure with a primary objective: to discern whether in fact the structure is a logical outgrowth of the unique contradictions within our system, or whether it in fact represents transcendental forces in patriarchal Western society to be reckoned with in any thrust toward humanization. Although large, this question is here posed to avoid identifying the problem exclusively in terms of our own historic frame (thereby permitting us to assess blame, in the cliché of the sixties, against the Establishment, as we choose to define it) and oversimplifying its dimensions (thereby lulling us into ready acceptance of the instant panacea, one of the most lamentable tendencies in contemporary American theory, especially as it affects vulnerable people and, most notably, the young).²

How telling it is of the low value traditionally ascribed to childhood for historians, both ancient and modern, to have been too preoccupied with major political and military upheavals to record the comparatively minuscule dramas of human childhood in any given epoch. In the foreword of *Child Life in Colonial Days*, published in 1899, Alice Morse Earle, a careful researcher, notes: "When we regard the large share which child study has in the interest of the reader and the thinker of today, it is indeed curious to see how little is told of child life in history. The ancients made no record of the life of young children; classic Rome furnishes no data for child study; the Greeks left no child forms in art. The student of original sources of history learns little about children in his searches; few in number and comparatively meagre in quality are the literary remains that even refer to them."³

Our own age has produced one great scholar—the French cultural historian sociologist Philippe Aries—whose book, *Centuries of Childhood*, underpins many of the reflections and conclusions reflected in this paper. Yet, from the sparse sources available, it becomes apparent that ancient, medieval, and modern societies erected two parallel systems to deal with troublesome children. These twin processes finally merged in the twentieth century into the hydra-headed legal anomaly of the juvenile court. Western society traditionally has intervened in the lives of children in two contexts: when the child is apparently homeless and lacking legitimate adult custodians, or when the child pursues a life-style the community has categorized as criminal or abnormal. Until this century, these categories were perceived as discrete and unrelated—one group as orphans, the other as criminals—and even the language of recent juvenile legislation preserves this dichotomy by distinguishing between children in need of supervision

and children utterly delinquent. We shall presently want to ask ourselves the purpose and utility of this distinction.

In societies which limit parental duty only to children born of legally sanctioned marriages, the legal system itself will orphan many children who are born of illicit or casual sexual encounters. The illegitimate child in Roman and Anglo-Saxon law was doctrinally and literally *nullius filius*, "nobody's child," a stigmatized nonperson whose shadowy status has fired the imaginations of novelists, poets, and opera librettists. To permit chance circumstances of birth, over which the child has no control, to determine his entire legal and human destiny seems in twentieth-century terms unconscionable, yet as recently as 1970 the United States Supreme Court refused to disturb state laws that deny fundamental legal protection to the property and human rights of children born out of wedlock.⁴ The most laudable advance, and it is hardly cause for jubilation, is to permit the natural fathers of illegitimate children to be heard in family court proceedings dealing with custody issues, where the father ardently desires a role in the child's future.⁵

Ancient and premodern society readily perceived illegitimate children as well as children physically orphaned by death and desertion as social victims for whom the state should assert some modicum of responsibility. Even under imperial regimes in which slavery and human brutalization were widespread, token measures of largesse toward orphans are recorded.⁶ With the conversion of Europe to Christianity, child-rescuing missions became the charge of the Church and its clergy who chose to heed Christ's admonition to suffer the children to come into His Presence.⁷ But the presence into which these children were received was not a conventional family-oriented childhood experience. The ambience was borrowed from the religious model most readily at hand—the monastery or convent with its strict discipline, its rule of silence, and its focusing on human sin and error. From this early religious prototype and by way of the usual historical bypasses and circumnavigations have developed not only the orphanage, the training school, and the reformatory, but also the adult penitentiary so pivotal in the entire American criminal justice system. American prison cells are the twentieth-century secularized monastic cubicles of early times and the Middle Ages. We seemingly expect the human beings involuntarily locked inside them to work out their terrestrial salvation as surely as the monks hoped to achieve salvation within their walls.

Until the late Renaissance, those who committed crimes, the second perceived category of problem children, regardless of family status, were not eligible for inclusion in state or church-administered

rudimentary welfare systems. A culture whose theories of human behavior derived from metaphysical and theological views of causation and whose jurisprudence relied heavily on ecclesiastical authority could cope with deviant criminals only by viewing them as nonhuman sinners possessed by satanic forces. The criminal justice system treated them accordingly, and the punishments it meted out were fiendish and inhuman. Children under seven were immune from these sanctions, but from seven on to formal adulthood they could indeed be found guilty of crimes and sentenced to the same horrendous punishments meted out to adults. Records indicate that in the early nineteenth century, an eight-year-old English child was hanged for stealing a letter from a mailbox and that in at least one American colony, East Jersey, a 1688 law decreed that "stubbornness and cursing of parents were punishable by hanging."⁸ Today the better view is that parent-child tensions are not properly the subject of legal review, although most juvenile court acts still define incorrigibility as a delinquent act. During the height of the English mania for capital punishment when over 220 offenses required the death penalty, nine out of ten persons who were hanged were youths under twenty.⁹ Clearly, young persons in their immaturity and vulnerability have always contributed heavily to the crime count of any society, and it is equally certain that repressive eras in human history marked by the so-called law-and-order syndrome have come down most heavily upon the young. The trend continues in the current day-to-day administration of the criminal justice system. In a major felony trial courtroom where I have conducted criminal trials for almost two years, over 90 percent of the defendants are between the ages of eighteen and twenty-four. It is interesting to note that under quaint medieval scholastic categories of the Ages of Man, such as Isidor's, this group of defendants could be regarded as adolescent.¹⁰ Reformers have urged the abandonment of the fixed juvenile-adult status and have viewed California's concept of the youthful offender as more realistic and humane, but their suggestions go unheeded in a period when most pressure is in the reverse direction, to lower the age limits to sixteen from eighteen years. Some writers seek to comfort the student by assuring him that, despite the harsh penalties, judges and juries are reluctant to sentence children. Nevertheless, the legal sanctions available offer no alternatives.

From the early eighteenth century to the present day, the search for viable humanistic alternatives to inhuman adult sanctions is the dominant theme, and its varied orchestration would suggest that many of the schemes have produced negative, if not disastrous, results. To this day, theoretical constructs for a juvenile system tend to

be reactive rather than innovative. Implicit in all schemes is the idea of sanction application as a means of controlling behavior.¹¹ For this legacy, we are indebted once again to ecclesiastical intervention.

In the first year of the eighteenth century, Pope Clement XI established the monastic model, hitherto reserved for orphaned and bastard children, as a humane way of treating youthful male delinquents. The Hospice of San Michele at Rome satisfied at once the requirements of segregation, expiation, and penance when the criminal's life is not terminated by court order. That San Michele's youth were chained, flogged, and required to wear hoods drawn over their heads did not offend contemporary religious or ethical notions. One of San Michele's many admirers was John Howard, the English prison reformer, who adapted many of its features for existing workhouses to which youthful offenders were committed. In London, Christ's Hospital served as the English counterpart of this "humane" reform and other austere institutions proliferated. This cruel, dehumanizing, yet religiously motivated network of children's prisons inspired Charles Dickens to descriptive novelistic heights, and Charles Lamb, in one of the *Elia* papers, roundly denounced John Howard and his works: "This fancy of dungeons for children was a sprout of Howard's brain; for which methinks I could spit willingly upon his statue."¹²

As always, expressions of personal outrage, even by the most eminent writers of the day, could not daunt the child savers as they refined and expanded the monastic model. Under the prodding of sensitive critics, notably of the Quaker persuasion, the more blatant abuses were corrected, but the underlying legitimacy of the system remained unchallenged. So nineteenth-century child-saving missions continued to be premised on religious doctrines of redemption and penance. Interestingly, the French version established at Mettray by Judge Frederic Demetz, and denounced by Kropotkin as destructive and demoralizing, was the institution to which Jean Genet was sent at age nine because he was both illegitimate and intractable. His account of his years at Mettray illustrates superbly the effects of dehumanizing on a talented child. It was there Genet was initiated into homosexuality and thievery as life patterns.¹³ Not only Genet but thousands of human beings have been permanently scarred by the experience of monastically modeled institutionalization. An aggressive mugger before my court on his fourth adult offense recently had spent five and one-half years—from age fourteen and one-half to twenty—in such an ambience, working daily on a rock pile.

The American experience devised yet another alternative to institutionalization, a scheme based on the colonial system of indenture. Beginning in 1618, children found wandering, begging, or sleeping

under London stalls were sent to the House of Correction and thence shipped forth to the New World as indentured servants. What happened to these children is unknown, but the practice continued in one form or another throughout the eighteenth and nineteenth centuries when homeless or convicted young persons were given the opportunity to migrate to the United States. The transplanting of young children to a different environment as a means of reformation became the obsession of the greatest nineteenth-century child saver, Charles Loring Brace of New York. Indeed, the Children's Aid Society he founded served as the precursor of present-day foster care and placement agencies. Brace literally shipped thousands of children as human cargoes out of New York City to southern and western states; reliable estimates conclude that between 1853 and 1879, over 48,000 children were sent to so-called foster homes where many were exploited and treated inhumanly. The religious coloration of this movement is visible in the Magdalen societies of that era who placed "fallen girls" as maids and domestics in private homes.¹⁴

Much of the literature of child saving in the nineteenth century is replete with projects and proposals all of which center around institutional or foster home projects; in both instances the child's legal and human rights remained ambiguous and his human dignity undefined. Yet the movement had value apart from saving children from jails and penitentiaries, for it forced a confrontation with the harsh legal system and inspired a coherent and unified humanizing movement for legal reform which culminated at the end of the century in the establishment of the juvenile court. Now for the first time a central secular public agency was charged with the legal responsibility of providing care and educational and vocational opportunities for all children, orphans as well as delinquents. The new laws specifically included both categories of children in their purview, and mandated no real distinction in the treatment of either group. Social reformers who led the movement urged the new courts not to focus on the child's actions but rather upon his own total personal condition, and to base their decisions on the child's needs rather than on vengeance or punishment.¹⁵

In the wake of the juvenile courts came a new group of child savers to replace the representatives of the private religious societies. They, too, were now secularized into the profession of "social work" and approached their task from a self-proclaimed and defined "scientific" basis.

Initially, the "scientific" innovations consisted of record keeping, measuring, testing, and other indicia of objectivity to replace the personal and intuitive techniques employed in the era of the Braces. For

specific content the new science borrowed heavily from the newly emerging medical specialty of psychiatry. Social workers penetrated both the juvenile courts and public welfare systems. Joined in the courts by clinical psychologists and psychiatrists, they set as goals for the system the emulation of a medical model. Treatment replaced salvation as the desideratum, and the old vision of the child as a potential or actual sinner was replaced by the perception of the child as a patient. The scientific medical model was equated with humanization; for decades American intellectuals accepted the myth that the psychiatric or psychological disciplines represented the ultimate humanizing cultural force, and that the mere presence of psychiatrists or social workers in an institutional process insured enlightened and humane treatment.

In reality, nineteenth-century vintage orphanages, cottage-system institutions, and foster care were often the only resources available to many juvenile courts. No matter how sophisticated the treatment plan devised for an individual child, judges found themselves powerless to implement it, and sought for next-best alternatives. So cultural accommodations were made, and compromises flourished in which petty formalisms triumphed over substance. Although classification, diagnosis, and psychiatric terminology replaced the moralistic exhortations of the nineteenth century, not a great deal changed in what actually happened to children. One most devastating result was that the inhumanity seemed legitimated by the new religion of "science"; all was now permissible in the name of "therapy" and "rehabilitation."¹⁶ That human rights and human dignity were still denied was irrelevant to most criminologists and observers, so enthralling were the promises of the therapists and theoreticians. It seems difficult to accept the premise, in the light of our present understanding, that the juvenile court movement constituted the great white hope of American penology, but it is important to stress that the basic confusion arose from equating therapeutic concepts with humanizing forces. In retrospect, the promised millennium appears to have been founded on nothing more than a loosely coordinated series of psychological assumptions, folkloristic beliefs about the proper upbringing of the young, and an effort to accommodate both the assumptions and the myths into the existing institutional structure inherited from the preceding century, with no basic changes in mass public educational and welfare systems.

Pervasive social injustices, racism, poverty, inadequate prenatal and day-care services, and disruptions in interpersonal and family relationships were less conditions to be changed than proof of need for individual therapy. Another theoretical shortcoming was that the

juvenile court's assumptions about children did not flow from a humanistic science of children. From its origins as a legal term, delinquency rapidly became a psychological concept loosely used in psychiatric and sociological literature to describe a spectrum of administrative psychiatric and legal problems. Now it is functionally necessary for legal systems to make postscriptive judgments about human events, so that they may categorize the behavior of participants in these events as either criminal or noncriminal. But when any group of allegedly scientifically oriented intellectuals adopts unquestioningly the conclusion reached by an unrelated discipline which uses different values, different norms, and, moreover, performs a unique political function, it would appear to be asking for trouble. And of trouble there is abundance in the present-day juvenile justice system, as well as in the entire area of public psychiatry.

It would appear that the classification process has served more often to fill institutional needs dictated by legislative budgets rather than to advance insight in the understanding of a particular child's situation. In sum, "scientific" intervention in the juvenile justice system has served as a further dehumanizing force.

CONTEMPORARY PRACTICE

Documenting the dehumanized treatment of children in our own times, under the aegis of a legal system dedicated to their rehabilitation, has been largely the work of journalists like Howard James, the dedicated former *Christian Science Monitor* staff member, and lawyers engaged in the representation of children in the courts. Brutalities have ranged from beatings, solitary confinements, and forced labor to more subtle, less easily documented, viciousness which results, to use Erikson's poignant phrase, in the mutilation of a child's spirit. In the treatment of more vulnerable and blatantly atypical children such as the mentally retarded or disturbed—that catchall category subsumed under the euphemistic term of "exceptional children"—the record is even more shocking. Vast and bleak concentration camps for these children—operating under state subsidies and state laws regulating the health, safety, and morals of children—are an integral part of the American pattern of child care; the Willowbrooks are presided over by men and women of "science."¹⁷ Recently, in my own state of Pennsylvania, one doctor was removed from his post as superintendent of a facility for retarded children when it was discovered that he regularly placed children in large wooden pens for long periods of each day. The qualitative horror of these children's prisons defies description.

Where have the lawyers been all this while? Sadly enough, Ameri-

can lawyers have refused until recently to perceive many dehumanizing social conditions as having any relevance to their legitimate professional concerns; the concept of professional responsibility has been a limited one pertaining to the immediate lawyer-client relationship; its broadest social parameters have extended to bar association activities which traditionally have been controlled by lawyer-technicians dealing with corporate and business problems. The humanization of the legal profession is another story all unto itself; one can cite the lifework of the late Edmond Cahn, who struggled to fuse humanistic and democratic concepts, to transform the law from its old outlook which he termed "imperial" to a new sensitivity he labeled as the "consumer perspective."¹⁸ Cahn wished to destroy as antidemocratic the view that law was a static doctrinal body floating above the populace like a lofty mountain in a Japanese woodcut; he saw instead that the legal system interpenetrated human groupings and structured power relationships in a society. His scholarly briefs for what he termed the "consumer perspective" gave academic validity to the new lawyers of the sixties and seventies who began appearing in courts on behalf of children, prisoners, inmates of mental institutions, defective delinquents, and the like. By the shattering firsthand testimony of these witnesses, buttressed by the lawyers' careful investigation of the realities of institutionalization and court processes, these consumer advocates were able to confront, challenge, and rectify many injustices. One of the most important target areas for reform was the juvenile court system, insulated for decades from public view by doctrines of privacy, and seemingly invulnerable to legal attack because the proceedings against children had been officially viewed as non-punitive or adversary and, hence, not subject to the ordinary ground rules for due process. But perhaps the most serious theoretical principle to be challenged was the law's refusal to regard children as persons within the meaning of the great protective clauses of the Bill of Rights and the Fourteenth Amendment.¹⁹

As Cahn repeatedly states, the first step in the humanization of law is the evolution of a coherent theory of personhood, rooted in constitutional principles, bestowing human dignity on every individual within society. It is this sensitivity and appreciation of human dignity which distinguishes the new perspective in law from the old imperial view in which citizens are perceived *en masse*, and the operations of law grossly rationalized as being for the common good of this mass, without reference to their impact upon individual human destinies. Only with such an outlook could democratic theorists and jurists have tolerated and condoned the brutalities and excesses committed against children in the name of their salvation and rehabilitation.

Cahn explains well how dehumanization becomes an accepted principle:

The ugliest sign of our thralldom to the old outlook is that it tends to desensitize men of fine intellect and good will. Somehow they learn not to notice what happens to individuals, and even to suppress, though they cannot entirely forget, their own involvement. As it was customary for an emperor, king, despot to think of the people in large quantitative terms, as raw materials for programs or convenient fodder for cannon, a view of the law conceived in the old imperial perspective will almost inevitably adopt the same wholesale approach. Fancying himself a ruler of the destinies of men, or perhaps a species of pagan god, the old-style philosopher assumed a post of lofty remoteness where he could look down on the scurrings of the populace as one might watch a swarm of interesting but not important insects. If curiosity happened to draw him closer to the scene, they might appear somewhat larger to his eye, and then, instead of assimilating them to a beehive or an anthill, he might call them "the herd."²⁰

Against this ingrained view a group of vigorous civil libertarian-oriented lawyers have interposed a succession of well-briefed and litigated test cases designed to extend personhood rights to children and adult prisoners, to men and women labeled as defective, insane, psychopathic, or delinquent. They have had two ambitious goals: first, to extend constitutional protections to these individuals during actual judicial processes, such as right to counsel, right to confront accusatorial witnesses, and right to trial by jury on fundamental issues involving deprivation of liberty; and, second, to compel the courts to establish humanistic standards for treatment within the mass institutions to which the state makes wholesale commitments. The humanist lawyers, therefore, sought to transform both theory and practice, using the full arsenal of constitutional attack weapons whose biggest guns are the Eighth Amendment, which prohibits cruel and unusual punishment, and the Fifth and Fourteenth Amendments, which guarantee to "persons" (never further defined within the Constitution except negatively with reference to slaves who are deemed three-fifths of persons for purposes of electoral districts) the right to due process of law and the equal protection of law.

How these technicians of due process succeeded in at least the first part of their endeavor is a fascinating chapter in American legal history which must be told elsewhere. Suffice it to say that their efforts resulted in one judicial declaration after another that children were indeed persons within the meaning of the Constitution, that at least basic principles of due process were operative in the juvenile justice system, and that the ends of rehabilitation could not justify the blatantly illegal and inhuman means by which children were swept away by the child savers.

But strict adherence to due process requirements in a courtroom, which assures each child the right to have a lawyer by his or her side, is only a small part of the humanization process. What happens afterward if, in fact, the child has been fairly adjudged and found to be in need of special services? Can the law's arm reach behind institutional walls and into psychiatric offices and psychological laboratories to guide and, where necessary, restrain? And if not, who then will set down humane limits and protect the human dignity of clients?

These issues, subsumed under the phrase "right to treatment," continue to preoccupy federal and state courts. Since the *Gault* decision established clearly in 1967 that American children had basic constitutional rights and were included in our legal theory of personhood, the courts have been compelled to grapple with the complex and subtle implications of those premises.²¹ To what extent can individualized treatment be mandated and reviewed by courts? What should be the goals of such treatment in terms of the individual child, and who should establish them? Can the courts intervene in the inner workings of allied professions and sciences dedicated to humanitarian ends to see whether in fact these ends are achieved? May the courts question the credibility of the child savers and the experts?

Although most courts have answered these questions in the negative and have steadfastly refused, except in the most shocking circumstances, to exercise supervisory powers, I submit that their current abstention has come not from insensitivity but from a proper sense of the limits of legal intervention in a pluralistic and open society. These judges glimpse fearfully the Pandora's box concealed under the compelling humanistic briefs. All too clearly have we seen the repressive and political potential of involuntary therapeutic confinement, ordered and approved by the judicial system. The true humanist solution does not lie in transferring power from one bureaucracy to another, but rather in developing coexisting and independent proposals and programs which will synergize and accelerate humanizing forces already at work in American life. An assessment of these forces may allow us at least tentative hope.

The articulate and felt presence of young people themselves constitutes a high-order potential for humanization; the ever-widening ripple effect, for example, among both high school and university students of documented exposés of social injustice is more than encouraging; it insures career choices and life commitments in fields of law, social work, prison administration, and juvenile court work, whose thrust is idealistic and reform oriented. To what extent the idealism will be viable after the usual collisions with bureaucratic barriers is unanswerable but given the example of older professional allies and a post-Watergate raising of public consciousness, one can be

hopeful. Certainly these new recruits into the service professions are qualitatively different from the professional students of the fifties whose expectations were almost totally careerist in nature.

Religiously motivated participants in the juvenile and adult justice field now define their roles differently; they are not content to work within the institutional model based on the old monastic ideal. Prison chaplains and priest and nun administrators increasingly identify themselves as revolutionary forces for change echoing in their daily work the words of Daniel Berrigan: "We are that small and assailed and powerless group of people who are non-violent in principle and who are willing to suffer for our beliefs in the hope of creating something very different for those who will follow us. It is we who feel compelled to ask, along with, let's say, Bonhoeffer or Socrates or Jesus how man is to live as a human being and how his communities are to form and to exist and to proliferate as instruments of human change and of human justice, and it is we who struggle to do more than pose the questions—but rather live as though the questions were all important even though they cannot immediately be answered."²² Evidences of this humanistic commitment by religious service groups are everywhere. Large mass institutions are abandoned and dismantled in favor of smaller human communities; black garb is modified or dropped altogether, and the relationship between the religious child saver and the child is one of openness and love. Father Paul Engle, a Franciscan priest working in western Massachusetts, exemplifies the religious humanist-activist at work to change institutional as well as individual patterns. His Downside Home concept is a frontal challenge to old-line foster care rooted in the system of the demislave status of children. Father Engle's mission is to establish a viable network of these new human communities, which he is certain will one day be the new models for abandoned and adrift children. It is interesting to note that Father Engle came to this work after a seminary assignment involving the religious instruction of mentally defective children, some fifteen thousand of them penned up in a huge warehouse in upper New York State. He refused to preach the love of God to children who seemingly had been rejected by God's world; he chose rather to work for full human acceptance of these children. Dietrich Bonhoeffer, cited by Berrigan, experienced a similar epiphany during his own imprisonment when, for the first time, he realized that young persons were subjected to the brutalizations of confinement. In one of his moving letters from prison, he describes his feelings: "It certainly makes a great difference whether one is in prison for a month or a year; in the latter case one absorbs not only an interesting or intense impression, but a radically new kind of life. At the same

time, I think certain inward preconditions are necessary to enable one to assimilate this particular aspect of life without danger, *and I think a long imprisonment is extremely dangerous for very young people as far as their spiritual development is concerned.* The impressions come with such violence that they may well sweep a great deal overboard."²³

Yet another powerful humanizing force is the widespread revolution in education. Moving away finally from the rigid scholasticism of mass education, with its insistence on measurable intelligence levels, conformity, and quantifiable skills achievement, educators and educational psychologists appear to be heeding Piaget's admonition that the child is the principal agent of his own growth. Humanization and individualization of education have become viable professional goals. The debate over the open classroom and nongraded achievement levels is more than an internal dialogue over detail; it is a confrontation between clashing educational philosophies and of control versus freedom, and from it will come an attempt to redefine both child and teacher as human participants in a delicate and important interaction.

From Erik Erikson's brilliant humanistic researches into child development and especially in the treatment of emotional illness among children come beacon lights to chart the future theoretical study of the meaning of childhood and its interaction with society. Erikson has succeeded in liberating post-Freudian psychology from a culturally determined concept of normalcy which has been reified into a pseudoscientific dogma. Erikson's commitment to human freedom and cultural pluralism gives new dimension to our vision of human interaction; he has replaced the asylum of Charenton with a concept of *communitas*, a dynamic and positively oriented nonviolent world in which all men grow and achieve dignity. Erikson has perceived more clearly than any other twentieth-century thinker the human exploitation involved in conventional concepts of childhood, and he has cautioned his fellow scientists to sensitize themselves to the distortions and perversions that are constant professional risks:

Clinical knowledge, then, like any knowledge, is but a tool in the hands of a faith, or a weapon in the service of a superstition. . . . Our concerned efforts therefore should focus on a reduction of political and economic prejudice which denies a sense of identity to youth. To this end, however, it is essential to understand the basic fact that human childhood provides a fundamental basis for human exploitation. The polarity big-small is the first in the inventory of existential oppositions such as male-female, ruler and ruled, owner and owned, light skin and dark, over all of which emancipatory struggles are raging both politically and psychologically. The aim of these struggles is the recognition of the divided function of partners who are equal not because they are essential and alike, but because in their very uniqueness they are both essential to a common function.²⁴

ZYGON

In an era that has seen helpless prisoners lobotomized, young children subjected to behavioral modification experimentation, and the like, Erikson's resolute rejection of such "Clockwork Orange" approaches to human personality is a most valuable lesson to those concerned with humanizing society. He has argued constantly against the reduction of man to a scientific stimulus-response programming machine. In essence, Erikson tells us that beyond freedom and dignity lie barbarism, horror, and fascism. He states categorically that "the attempt to make man more exploitable by reducing him to a simpler model of himself cannot lead to an essentially human psychology."²⁵ Skinnerians, beware!

REMEDIAL TASKS

Since my own skills are legal and my humanistic contribution must be in the arenas of justice where law impinges directly upon human beings, I must finally address myself to the tasks ahead for my profession. Given the long history of insensitivity to social injustice and the past reluctance of my profession to define itself as a humanizing force, it is imperative that primary legal training include at every level encounters with those legal consumers (to use Cahn's phrase) who will never interact with the average middle-class lawyer. Lured by the largesse of a Ford Foundation subentity, the Council on Legal Education for Professional Responsibility, American law schools are beginning to institute so-called clinical programs in which law students leave the classroom and the library and work in courts, prisons, asylums, and juvenile jails, representing flesh-and-blood clients. It is a direct application to law of Alexander Pope's dictum that the proper study of mankind is man. As clinical professor of law at Villanova University Law School, I perceived and documented the valuable humanizing effect of a full, humanly oriented program during the formative years of professional training. Sensitization sharpens not only to legal issues but also to people at all levels of the legal process. In a recent long article on Watergate, James Michener noted that most of the participants in the illegalities were lawyers, including the attorney general of the United States. What, he asked, are they teaching in law schools these days?²⁶ It is a good question, and part of the answer is that slowly, reluctantly, and against the grain of many of the entrenched academicians, we are beginning to teach awareness of the human dimensions of the legal professional role. And the future seems bright for clinical education when one considers that Harvard University, the bastion of Langdell's case method, is now offering sixteen semester credits for clinical work.

Lacunae in legal procedures dealing with vulnerable people need

shoring up. One may easily devote an entire professional career to juvenile justice reform, or prison or mental health reform. It is difficult to find lawyers of sufficient independent wealth to perform such tasks as a gratuitous public service. Dollar-a-year men and women do not gravitate toward lowly and unglamorous legal posts. It will be necessary to provide adequate government subsidies for these law reformers, and to persuade Congress to override vetoes and impoundment measures so that the dedicated and meddlesome lawyers who annoy bureaucrats and upset imperial officialdom may continue their work.

For children ensnared in juvenile law machinery, it is clear that humanization requires more than spooning out to them, however meticulously, a child-size portion of due process of law. We must insure full protection of their human status by enacting a federal bill of rights for youth, and by establishing a separate governmental unit at the highest executive level to implement it by generating the needed research programs and subsidies so that every American child may receive his birthright guarantee of equal opportunity. Abandoning the restrictive concepts of normalcy and delinquency, a humanistic society will be concerned rather with maximizing human growth and eliminating the counterforces to growth. It will be finished forever with labeling, classification devices, and self-fulfilling predictions. Instead, a humane community will find new ways to permit children to recognize and respect their own strengths, and to treasure their own human potential. And in so doing the community and all who are privileged to interact with young persons will find that in liberating children, they are also liberating themselves. Justice Louis D. Brandeis once noted that the true measure of a civilization lies not in its lifeless artifacts but in the degree of vibrant solicitude it displays for the most vulnerable persons in its midst. Children are physically, emotionally, and spiritually vulnerable. At the moment, neither our legal nor social institutions dealing with children respect this vulnerability.

Despite the follies and horrors, and at the price of the untold suffering of thousands of children, we may yet qualify for a civilized status. The prelude to civilization must be "hominization," to use Teilhard de Chardin's term. It appears that his faith in our steady approach to the noosphere may yet be justified. One cannot end a discussion of the dehumanization produced by masquerades of religion, science, and justice—masquerades that have created death camps for children—on a note of shallow optimism, yet neither is it appropriate to despair. One can only repeat Bonhoeffer's simple question: "Are we still of any use?" And one finds no better answer

than his, written in the midst of a human holocaust from a prison cell:

We have been silent witnesses of evil deeds; we have been drenched by many storms; we have learnt the arts of equivocation and pretense; experience has made us suspicious of others and kept us from being truthful and open; intolerable conflicts have worn us down and even made us cynical. . . . What we shall need is not geniuses, or cynics, or misanthropes, or clever tacticians, but plain, honest, straightforward men. Will our inward power of resistance be strong enough, and our honesty with ourselves remorseless enough, for us to find our way back to simplicity and straightforwardness?²⁷

Simplicity and straightforwardness lead us then to a conservative humanism which resolutely rejects all that is repressive and antihuman, yet is totally open to all that expands human growth and enhances the value and quality of life.

NOTES

1. Edmund Cahn, *Confronting Injustice* (Boston: Little, Brown, 1962), frontispiece.
2. A review of Morris Kline's *Why Johnny Can't Add: The Failure of the New Math* (New York: St. Martin's Press, 1973) reflects this Panglossian tendency in the American sixties and seventies in related areas dealing with the education of the young: "This is an important book. Its significance goes far beyond its immediate topic. Rather it raises the broader issue of how, in field after field in American life, there come to be sudden fixations on supposed panaceas for perceived problems. All too often, however, these panaceas turn out to have unforeseen consequences as bad as or worse than the original difficulties that triggered their adoption" (Harry Schwartz, "Dethroning the New Math," *New York Times*, July 20, 1973, p. 29). The panaceas proposed by lawyers for the juvenile justice morass have often generated paradoxes of a similar order, as will be shown in the course of this discussion.
3. As quoted in Negley K. Teeters and John O. Reinemann, *The Challenge of Delinquency: Causation, Treatment, and Prevention of Juvenile Delinquency* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1950), p. 65.
4. *Labine v. Vincent*, 401 U.S. 532 (1971).
5. *Stanley v. Illinois*, 405 U.S. 645 (1972).
6. Lisa A. Richette, *The Throwaway Children* (New York: J. B. Lippincott Co., 1969); Charles L. Brace, *The Dangerous Classes of New York* (New York: Patterson Smith, 1880), pp. 14-21.
7. Parish orphanages existed during early centuries of the Christian era; foundling homes and orphanages arose at Treves and Angers in the sixth and seventh centuries. In the twelfth century the first Children's Aid Society was organized at Montpellier, and became a trans-European movement (Teeters and Reinemann, p. 43).
8. Teeters and Reinemann, p. 69.
9. See Richette, chaps. 15-16. Arthur Koestler (*Reflections on Hanging* [London: Gollancz, Ltd., 1956]) provides the most documented and graphic survey of the progenitive criminal justice system in whose grip we still remain, in large measure.
10. For a detailed description of the medieval doctrines of the Ages of Man, see Philippe Aries, *Centuries of Childhood* (New York: Alfred A. Knopf, 1962), pp. 21-22.
11. Harold D. Lasswell and George H. Dession, in their collaborative years at the Yale Law School, developed a theory of sanction imposition as a value statement as well as a value imposition which I find profoundly useful to an understanding of legal history and theory. For legal materials organized under this approach, see Dession, *Criminal Law, Administration and Public Order* (Charlottesville, Va.: Michie Casebook Corp., 1948).

12. Teeters and Reinemann (n. 3 above), pp. 44–45.
13. Jean Genet, *The Thief's Journal* (New York: Grove Press, 1964), p. 220.
14. Teeters and Reinemann, pp. 76–77.
15. Richette (n. 6 above), pp. 288–97.
16. For a contemporary catalogue of dehumanization in a hospital for exceptional children, see Wyatt v. Stickney, 344 F. suppl. 373 (1972), where Chief Judge Johnson sets down, as part of the judicial relief granted, minimal human conditions to be maintained.
17. For a compilation of a documented *New York Times* series on conditions at Willowbrook, see Gerald Rivera, *Willowbrook* (New York: Vintage Books, 1972).
18. For a comprehensive and lucid symposium of Cahn's thought, see *Confronting Injustice* (n. 1 above).
19. Richette (n. 6 above), p. 302.
20. Cahn, p. 7.
21. See Larry L. Simms, "The Courts, the Constitution, and Juvenile Institution Reform," *Boston University Law Review* 52 (1972): 33–63.
22. Daniel Berrigan and Robert Coles, *The Geography of Faith* (Boston: Beacon Press, 1971), p. 77.
23. Dietrich Bonhoeffer, *Letters and Papers from Prison* (New York: Macmillan Co., 1953), pp. 61–62; italics added.
24. Erik H. Erikson, *Childhood and Society* (New York: W. W. Norton & Co., 1950), pp. 417–18.
25. *Ibid.*, p. 419.
26. James Michener, "Is America Burning?" *New York Times Magazine*, July 1, 1973, pp. 10–11.
27. Bonhoeffer, p. 27.