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Book Review: Juvenile Offenders for a Thousand Years; Selected Readings from Anglo-Saxon Times to 1900, edited by Wiley B. Sanders

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Juvenile Offenders for a Thousand Years; Selected Readings from Anglo-Saxon Times to 1900. Edited by WILEY B. SANDERS. Chapel Hill: The University of North Carolina Press. 1970. Pp. xix, 453. (\$12.50 U.S.)

Yes, another book on juvenile delinquency and that certainly sounds like a bore but this one is not concerned with the culture of the gang and the interaction of the peer group. This volume does not offer some bright-eyed solution to an insoluble social problem or a statistical analysis of fifteen-year-old car thieves in a middle sized American city or a follow-up study of identical twins who had been, respectively, high school valedictorian and heroin addict at fourteen.

Professor Sanders has produced a remarkable volume which collects and selects the most important information on juvenile delinquents, child crime or the seamy side of child life in the last one thousand years. The editor does not quite go back to the Code of Hammurabi or the laws of the Medes and the Persians but he seems to miss very little of importance in the millennium which he covers. His Dark Ages are extremely dark but, with the fifteenth century, his selections show that he has a very keen eye for the pertinent document. As one who has spent some years researching the same field, I cannot help but express my humbleness in the light of Professor Sanders' efforts. This editor loves his subject and this is obvious from the volumes cited which he has collected for his own library. If the library of the University of North Carolina is to be the recipient of the editor's library, it is going to have one of the world's richest collections on the history of juvenile delinquency.

I have no quarrel with this volume, except for a lack of an index, and have some difficulty in knowing the best way of reviewing it. It would be an insult to the editor and to the reader to quote a couple of pithy passages which were more sensational or ridiculous than most. One of the alternatives which seems to be most tempting would be to tell the history of juvenile delinquency by condensing the book under review. Neither of these methods is acceptable. Therefore I shall try to concentrate on a few themes which help to explain the present situation. By the present situation I mean the dilemma in which the juvenile court finds itself, the public's concern about juvenile delinquency and the injustices which are practised on the young by their elders and "betters". One or two things are obvious at the start: there has always been a generation gap. The adult has always worried about the iniquitous behaviour of the young because, as Jane Addams has said "every generation clings with an almost romantic fervour to the aims of its own age".

It is also obvious that problems of deviant youth will continue to exist so long as there are underprivileged children living in poor to horrid social conditions. The history outlined in this book will offer no aid to those seeking some sociological holy grail which will solve the problem of delinquency.

As I said earlier, there are some recurring themes which deserve a little more amplification. The first is that I would like to discount for all time that the good citizens and social pioneers of Chicago, Illinois deserve some humanitarian medal for providing the world with the first juvenile court. Besides the fact that it was not the first court in any case, the juvenile court was simply the end result of a long culmination of reform measures which were aimed at helping or "saving" children. The tragedy of the juvenile court was that this legalistic device was simply a sociological wolf in legal sheep's clothing. In retrospect, one cannot imagine why any one should have become so excited by the establishment of the court and, I would suggest, that if it had not been for the American genius for self-publicity and a similar national weakness for sentimentality about children, the juvenile court would have died in infancy or would have been successful. That may seem a harsh judgment but there has been so much nonsense talked about the juvenile court by the United States Supreme Court and other august bodies that the general public must be thoroughly fed up with the whole subject, partly because of overexposure and partly because they have not the slightest idea of what the court is all about.

Some popular historians of punishment like to give the impression that all children over the age of two years were publicly hung if they poached one fish from the lord's private trout stream. They suggest that the law was merciless and that the death penalty was mandatory. This, of course, is not correct. Even the earliest laws cited by Professor Sanders show that the law at least partially recognized the incapacity of infancy in the same way persons *non compos mentis* were granted mitigation by the law.

Yet, we find in this collection the most incredible inhumanity. For instance, on two or three occasions, the "reformers" state with perfectly straight faces that it is considered inadvisable to administer whippings after fourteen years of age. In another place these humanitarians suggest, equally seriously, that they are achieving great ameliorative reforms because the whippings were now being inflicted in private.

The law always took a haphazardly benign attitude toward the child; at many stages in history, the lawmakers seemed unable to decide when the child was beyond a point of immaturity. For instance, there is one case reported where an eight-year-old was charged with rape of a ten-year-old girl. There seems little doubt

that children under seven years of age were seldom hanged. Over that age, one could not speak with certainty. By the seventeenth century there seems some consensus that fourteen years was the age of discretion or as the French put it, the child was no longer *sans discernement*. Yet the catalogue of offences against children is horrendous and incredible. According to Professor Sanders extracts, these are not found so much in the fourteenth and fifteenth centuries but throughout the eighteenth and the nineteenth centuries. For instance, we find in Dalton's *The Country Justice* of 1618 that "An infant of eight years of age, or above, may commit homicide, and shall be hanged for it" but at this period there are explicit limits in that the death penalty would only be exacted if he had knowledge of "good and evil" which would be shown "by hyding of the person slaine".¹ A statute of Henry VII also provided that an "infant of such tender years, as that he hath no discretion or intelligence, if he kill a man, this is no felonie in him".²

In reading these materials one could gather that conditions were deteriorating in the nineteenth century but of course this was not necessarily true. This impression is gained because of better documentation and the stridency of reformer's criticisms and demands. Suffice to say that, for the first time, reform organizations existed and the conditions justified their existence. In 1803, for instance the Philanthropic Society interceded on behalf of a twelve-year-old boy who had been convicted of housebreaking after being abandoned by his mother and wicked stepfather.

During the same period, and, in particular, from 1813 and 1815, forty girls and two hundred and eight boys, all under the age of fifteen years were committed to Newgate. Of the twenty-seven convicts in the condemned cells, fifteen were under twenty years of age. At this time, the first systematic survey of juvenile delinquency in London was conducted. One case cited in that *Report* shows the condition of "criminal" children:

A.B. aged 13 years. His parents are living. He was but for a short time at school. His father was frequently intoxicated; and, on these occasions, the son generally left home, and associated with bad characters, who introduced him to houses of ill-fame, where they gambled until they had spent or lost all their money. This boy has been five years in the commission of crime, and has been imprisoned for three separate offences. Sentence of death has twice been passed on him.³

This case is a relatively mild one but its import was sufficient to prompt some citizens to form the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders. In its first report in 1818, the members were able to cite the case

¹ Cited at p. 11.

² *Ibid.*

³ P. 106.

of a nine-year-old boy who had been in prison eighteen times. (Such injustices to childhood were to continue. In 1850, the Westminster Bridewell had in custody one boy of five years and ten others under eight years.)

An 1829 study describes 300 boys under sixteen years of age who were incarcerated on a hulk. One third had no father, thirty-five were orphans, 133 had been in custody more than once, twenty were under ten years; a further eighty-two were under twelve years and 151 were thirteen and fourteen years of age.

In 1897, Oscar Wilde had written to the English newspapers describing the cruelties to children he had witnessed in Reading Gaol. There was nothing new about this maltreatment. Sir Peter Laurie, in the eighteen-forties had described the disciplinary measures used on convicted and unconvicted children in Reading Gaol. One fourteen-year-old convict had been subjected to eight hours in the dark cell on bread and water for the heinous offence of talking in chapel. By some cockeyed idea of punishment, the unconvicted children seem to have been treated more harshly. No doubt this was done because preventive-deterrent measures were thought to be more effective on a child awaiting some dire sentence. A nine-year-old awaiting trial in custody had behaved improperly in chapel which earned him one hour in the dark cell. A fourteen-year-old, S.L. was recalcitrant for disobedience, wilful damage and talking in chapel on three occasions, he received a total of four days and fourteen hours in the dark cell on a diet of bread and water. On another occasion when S.L. "endeavoured to communicate", he was deprived of his dinner. S.L. was simply awaiting trial and presumed innocent at this time.

Despite these brutalizing influences, commentators on juvenile delinquency beat their breasts about its increase. It should surprise no one that between 1840 and 1850, juvenile crime (and, of course, juvenile commitments) increased by one hundred per cent.

From the descriptions given by Professor Sanders, Birmingham Jail of the mid-nineteenth century must have been one of the worst places for juveniles. An investigation was carried out after fifteen-year-old Edward Andrews committed suicide. Andrews had had two previous doses of imprisonment. He had been imprisoned for two weeks for the boyish act of throwing stones and had later received a month for stealing fruit. On the third occasion he was jailed for two months, at hard labour for stealing four pounds of beef. The hard labour consisted of "the crank" which was described in these terms:

This crank labour is connected, we believe, with the water supply of the gaol; but, as a direct means of punishment, it is capable of being regulated according to the strength of each prisoner, and while the pressure representing only five pounds was put upon it in the case of the deceased prisoner, in consequence of the weak state of his health,

he had to turn this crank ten thousand times every day, two-thousand revolutions before breakfast, four thousand betwixt dinner and supper.⁴

Andrews had failed to keep up his daily average and so the deficiency was added to the next day's target. On two or three occasions he had broken the glass covering the dial recording the number of revolutions, in the vain hope of faking the daily total. He suffered further punishment for this — so that his one day of rest was spent in a strait-jacket of the most cruel variety on a diet of bread and water. After suffering other indignities, the boy gave up hope and hanged himself.⁵

The investigators, who were healthy well-fed adults, tried the crank. They were "dead beat" after eight minutes and in that time they had completed seventy turns which was sixty less than the number demanded of undernourished boys during the same period.

As late as 1875, the Howard Association reported that an eight-year-old had been sent to jail for fourteen days for petty theft and a seven-year-old had received a three-month sentence for "stealing fourpence and some sugar plums".

Therefore, some of these barbaric practices continued until late in the nineteenth century although by the middle of that century, reform schools, orphans' asylums and reformatories had been opened. One of the reasons for establishing the juvenile court was to ensure that all juveniles would be dealt with by a specialized agency and would be protected from the influences of the adult jails and the retribution of the judges in adult courts. In this sense, the juvenile court was an important invention. Yet we find that less than seventy years after its establishment, the court is considered a failure by many of its critics because it does not protect children's rights and provides, so the critics say, euphemistic punishment in the name of protection and therapy. This may seem ludicrous in the light of the conditions described in this book. Yet the germs of the confusion which have plagued the juvenile court can be found in the extracts in *Juvenile Offenders for a Thousand Years*. There are recurring themes in the British and American materials and the basic premises change very little throughout the late eighteenth and nineteenth centuries. The reformers and commentators are constantly concerned about the inadvisability of unsupervised charity where the recipients are not obliged to provide any services or make any effort to receive some philanthropic pittance. In the opinion of the charity workers (of whom there were very few until the mid-nineteenth century) indiscriminate alms-giving leads to more sloth, degradation and vice.

⁴ Cited at p. 245.

⁵ To avoid an overdose of mid-twentieth century smugness, compare the brutalities in reform schools described by Deutsch, *Our Rejected Children* (1950).

At the same time the reformers are unanimous in their desire to remove dependent, defenseless children from this environment. The appalling social conditions of slums, over-crowding and poverty remain remarkably constant throughout the nineteenth century as the result of the migration to the cities in the wake of the Industrial Revolution.

The reformers see idleness, vice, drunkenness (particularly drunkenness), lewd performances and prostitution as virulent diseases from which the children must be saved. We read of "contagion", "pollution", "contamination", "stigma" as if the social disease were indeed communicable. The scene is ripe for the Social Darwinists to argue that the nation will only be safe if the parents are deprived of their children (so long as they are still forced to support them in institutions). Some of the social evolutionists would go so far as to rid the country of the children of the "dangerous classes" and, of course, in the early nineteenth century, children were transported to Australia as a form of social hygiene; sometimes, these procedures were euphemistically described as a means of saving the children from further "contagion", "contamination", etc.

The child-savers were never quite able to make up their minds about saving all the children or only some of them. Some felt that there should be a clear differentiation between neglected and dependent on the one hand and delinquent, vicious children on the other. Some early critics of the reformatories claimed that their founders only accepted easy cases. This was true of some institutions but not of the more enlightened described and inspired by Mary Carpenter and Matthew Davenport Hill. Some other reformers were of the opinion that a clear distinction should be drawn between penal reformatory institutions and reformatory schools. Many, including the Rev. John Clay, took the view that all delinquents should have a short time in jail before being "reclaimed" in a reformatory. Many also felt that sixteen years was the maximum age for reformatory inmates. Whatever view one takes of the reformatory question, it must be remembered that the Victorians believed in institutional treatment. Probation or placing-out was approached very tentatively. This was due to their unassailable optimism in their own powers to reclaim and reform. It also reflected a paternalism which was not altogether a negative virtue as we find Mary Carpenter laying the groundwork for the modern concepts of child welfare and the juvenile court. Miss Carpenter saw the State as a surrogate parent with responsibilities for children whose natural parents had been derelict in their duties. From quite an early date, we find the equitable concept of *parens patriae* being used as the model.

We also find the practical-minded Victorians urging for State

control of children for good economic reasons. The State must force the parents to support the children who are placed in reformatories. The State has an interest in reducing dependency and delinquency because a law-abiding adult is an asset while an adult criminal will cost the State money.

Another theme which recurs in this excellent collection is the suggestion that a separate court for children should be established. In addition to the Chancery precedent, we find that apprentice courts, and "juries" of one's peers in disciplinary hearings in reformatories give the reformers the desire to have special treatment for children from the time of their first apprehension by the law. From the sixteenth century there had been a wide discretion in adult court judges to be more lenient with juveniles. The availability of judicial leniency also helps explain the lack of clarity and flexibility in the legal definition of criminal responsibility and the lack of precision in fixing a chronological age below which a child was not presumed responsible.

Finally, the readings provide one unchanging theme. So many of the individuals and committees quoted by Professor Sanders offer supposedly authoritative statements on the causes of delinquency. Some of these explanations appear a little dated because they deplore youth's inability to keep the Sabbath, or they rail against the evils of gin or the corrupting influences of licentious books and theatrical performances. (On second thoughts, perhaps these themes have not been altogether forgotten by some critics.) Most of them, however, recite themes on the aetiology of delinquency which are still being repeated — poor housing, neglectful parents, lack of schooling, the failure of discipline, poverty, insufficient social agencies, and so on.

Professor Sanders has provided a unique collection of materials which should convince the pessimists that we have made some progress in the last one hundred years in reducing the miseries of childhood. *Juvenile Offenders for a Thousand Years* should also show us that social deviancy among the young is hardly a new phenomenon and that its "cure" is neither simple nor lasting.

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