

The Liability of Infants for Crimes

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THE LIABILITY OF INFANTS FOR CRIMES.

At the common law an infant under the age of seven had no capacity to commit a crime,¹ and the same rule has been embodied in our Penal Law.² Infants over seven and less than fourteen years of age were in what Blackstone called the "Dubious Age of Discretion," and as to them clear evidence of understanding was required to repel the presumption against capacity.³ This rule has likewise found expression in our Penal Law, but the age has been limited to twelve.⁴ Where it has been possible to overcome the presumption against capacity, and to establish felonious intent as an independent fact, instances may be cited, both at the common law and in the nineteenth century of the conviction of infants for the crime of murder.⁵ Whether such a conviction may be sustained if the finding of criminal intent is based upon the commission of another felony is a question recently decided in the negative by the Court of Appeals.⁶

An infant under the age of sixteen was indicted in common-law form for murder. The prosecution proved the commission of the homicide while the defendant was engaged in the perpetration of a robbery. The trial judge charged the jury that their verdict must be either guilty of murder in the first degree, or not guilty. The jury convicted. On appeal the conviction was reversed and it was held that an infant under the age of sixteen cannot be convicted of a felony murder, unless the underlying felony was punishable by death or by life imprisonment.

An indictment in common-law form stating the facts constituting the crime and charging the killing to have been done by the defendant, wilfully, feloniously and with malice aforethought is sufficient to sustain a conviction of murder in the first degree, if the proof as to manner of commission of the crime brings it within one of the statutory definitions.⁷ An infant under the age of sixteen may be guilty of murder in the first degree, since it is punishable by death.⁸ In such case every essential element of the crime, including felonious intent, must be proved. This element of proof may be satisfied, ordinarily, by showing that the act was done by one then engaged in the com-

¹ 1 WHARTON, CRIMINAL LAW (12th ed. 1932) §85.

² N. Y. PENAL LAW §816.

³ 4 BLACKSTONE'S COMMENTARIES 23; 36 L. R. A. 197.

⁴ N. Y. PENAL LAW §817.

⁵ 1 HALE, P. C. 25, 26; *State v. Aaron*, 4 N. J. L. 231, 7 Am. Dec. 592 (1818); *State v. Guild*, 10 N. J. L. 193, 18 Am. Dec. 404 (1828); *Godfrey v. State*, 31 Ala. 323, 70 Am. Dec. 494 (1858); *Broadnax v. State*, 100 Ga. 62, 25 S. E. 844 (1896).

⁶ *People v. Roper*, 259 N. Y. 170, 181 N. E. 88 (1932).

⁷ *People v. Giblin*, 115 N. Y. 196, 21 N. E. 1062 (1889); *People v. Osmond*, 138 N. Y. 80, 33 N. E. 739 (1893); *People v. Nichols*, 230 N. Y. 222, 129 N. E. 883 (1921); *People v. Seiler*, 246 N. Y. 262, 158 N. E. 615 (1927).

⁸ N. Y. PENAL LAW §2186.

mission of another felony.⁹ The intent to perpetrate one kind of felony is transferred by implication to the homicide which has actually been committed, so as to make the latter a killing with malice aforethought, contrary to the real facts of the case.¹⁰ The independent felony is established for purpose of characterizing the degree of the crime charged. Thus the defendant's guilt is dependent upon his having participated in the robbery with felonious intent. Since the Legislature has decreed that all the acts committed by an infant, other than those acts constituting a felony punishable by death or by life imprisonment, shall be treated as though done without felonious intent, such felonious intent, therefore, may not be gathered from the participation in the robbery, and the conviction has been obtained upon an intent which does not exist.¹¹ That the defendant may in fact have acted pursuant to the criminal intent is not an issue now, for a conviction erroneously obtained on one theory may not be sustained because it probably would have followed had the proper course been pursued.¹²

The liability of infants under the age of fourteen for felonies other than those punishable by death or life imprisonment was first modified in 1894, the court being granted the discretion to try the charges as for a misdemeanor.¹³ In 1902 the age limit was raised to sixteen¹⁴ and in 1905 the court was deprived of its discretionary power and such offenses became misdemeanors automatically.¹⁵ The present statute was enacted in 1909 and created a new classification entirely, the act of the child dropping below the degree of statutory crime, and becoming known as "Juvenile Delinquency."¹⁶

Concurrently with this development in the substantive law was the change wrought in the procedure upon the trial, and in the treatment subsequently accorded the infant in an attempt to restore him to a useful and satisfactory life. The first instance of legislative recognition of the desirability of differentiating the methods of trial of an adult from that of an infant is found in the laws of 1892, when children under the age of sixteen were permitted separate trial, separate docket and separate record.¹⁷ In 1901 the legislature created a Children's Court to be housed in separate buildings but the act applied to New York City only.¹⁸ Subsequently the Children's Court was given concurrent jurisdiction over all cases of adults contributing

⁹ *People v. Conroy*, 97 N. Y. 62, 68 (1884); *People v. Nichols*, *supra* note 7, at 226, 129 N. E. at 884.

¹⁰ *People v. Enoch*, 13 Wend. 159, 174 (N. Y., 1834).

¹¹ *People v. Roper*, *supra* note 6 at 178, 181 N. E. at 91.

¹² *People v. Smith*, 232 N. Y. 239, 244, 133 N. E. 574, 575 (1921); *People v. Moran*, 246 N. Y. 100, 105, 158 N. E. 25, 37 (1927).

¹³ N. Y. LAWS 1894, c. 726.

¹⁴ N. Y. LAWS 1902, c. 103.

¹⁵ N. Y. LAWS 1905, c. 655, §4.

¹⁶ N. Y. LAWS 1909, c. 478; *People v. Pollack*, 154 App. Div. 716, 139 N. Y. Supp. 831 (2d Dept. 1913).

¹⁷ N. Y. LAWS 1892, c. 217.

¹⁸ N. Y. LAWS 1901, c. 466.

to or responsible for the delinquency of children.¹⁹ Finally an amendment to the State Constitution permitted the establishment of Children's Courts in each county in the State.²⁰ These are the major steps which together with numerous other legislative enactments²¹ have combined to clothe the juvenile courts with some of the aspects of the old English Court of Chancery in their informal dealings with the child and its parent. The jurisdiction of the Chancery Courts over the infant was based on the conception that the state owed a duty of protection to the children of the realm. This duty the king delegated to his chancellors.²² In this country the state has taken the place of the king and the equity powers have been delegated to a specialized court. The juvenile court may thus be seen as a growth in rather than a departure from the *parens patriae* theory of the Chancery Courts.²³

On the other hand, from the standpoint of delinquency jurisdiction the underlying purpose of extending the common law age of criminal responsibility is evident since legal guilt is dependent upon the *mens rea*, which is in turn dependent upon age, the extension of the common law rule by the widening of the age limit is apparent.²⁴ Basically no distinction exists between the crime committed by the infant at common law, and the act of the delinquent today, for intent was necessary then to stamp the infant a criminal, and is necessary today to stamp the infant a delinquent. The difference lies in the resulting treatment accorded the child today. Recognizing the fact that in a vast majority of the cases, the impelling cause of the criminal act is rooted in evil associations, poor family surroundings, and other circumstances beyond the control of the infant, the state calling for its own benefit, as well as the child's, has refused to stigmatize the offender by calling him a criminal, but has provided for him under the less opprobrious name, delinquent.²⁵ The net result of such a policy has been not to make the act less criminal in fact but arbitrarily to call it something else. The soundness of the decision in the instant case is indisputable when viewed in the light of such a policy.

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¹⁹ N. Y. LAWS 1903, c. 331.

²⁰ N. Y. Constitution amending art. VI, §8.

²¹ N. Y. LAWS 1903, c. 613 (probation officers and their duties); N. Y. LAWS 1919, c. 416 (as to place of confinement); N. Y. LAWS 1922, c. 547 (granting court wide discretion in disposal of case; provision for mental and physical examination of each child).

²² 6 HOLDSWORTH, HISTORY OF THE ENGLISH LAW, 648.

²³ Flexner, *Legal Aspects of the Juvenile Court* (1923) 57 AM. L. REV. 65.

²⁴ H. H. LOU, JUVENILE COURTS IN THE U. S. (1927).

²⁵ *People v. Roper*, *supra* note 6 at 177, 181 N. E. 91.