

August 2013

The Federal Juvenile Delinquency Act

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Recommended Citation

Bienstock, Benjamin M. (2013) "The Federal Juvenile Delinquency Act," *St. John's Law Review*: Vol. 14: Iss. 1, Article 27.
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol14/iss1/27>

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signed to correct a specific evil, may do more harm than good. However, since the Commission and the Legislature have adopted Section 112(d) allowing suit against the same defendant on the contract, and then, upon defeat, to sue for reformation, why in Section 112(c) of the Act were they inconsistent, in not allowing both a contract and conversion action against the *same* defendant?

These statutory changes in the common law rule, effective September 1, 1939, are among the first statutes passed which tend to abolish the doctrine.⁴⁹ The law elsewhere in the United States and England still follows the common law doctrine of election of remedies.⁵⁰

The Law Revision Commission in its report said that it desired to correct the four above-mentioned specific instances only, and that they did not recommend any general legislation to do away with the doctrine.⁵¹ They felt that any cases not covered by these sections of the Statute would be covered by the liberality of the courts as shown in the *Schenck* and *Clark* cases. However, instead of drawing statutes doing away with parts of the doctrine and leaving the rest to courts whose diversity has been one of the difficulties in its application,⁵² why not adopt Professor Rothschild's proposal⁵³ and say, "The doctrine of election of remedies as heretofore known, is abolished."

SEYMOUR C. SIMON.

THE FEDERAL JUVENILE DELINQUENCY ACT.—A truly remarkable example of the manner in which the law is attempting to keep pace with social realities is the development of the modern concept of juvenile delinquency.¹ At common law the status of an infant ac-

⁴⁹ Section 80(d) of the N. Y. PERS. PROP. LAW denies application of the doctrine of election of remedies expressly. That section reads as follows: "After retaking of possession * * * the buyer shall be liable for the price only after a resale * * *. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods * * *. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer."

See the Draft of an International Law of Sale of Goods [League of Nations (1935) Unification of Private Law No. 1] L. O. N. 1935, U. P. L. Draft 1, which allows rescission and damages for breach of contract as consistent actions.

⁵⁰ LEG. DOC. NO. 65(F) (1939) 39.

⁵¹ *Id.* at 9.

⁵² See notes 15, 29 and 47, *supra*.

⁵³ See note 2, *supra*.

¹ See U. S. Children's Bureau Pub. No. 193 (1933) 1, 2.

cused of crime differed little from that of an adult. A juvenile offender was fully responsible for his acts when he was found to be capable of entertaining the essential criminal intent.² The question of his age was immaterial,³ except insofar as it affected certain legal presumptions. Thus, it was conclusively presumed that a person under the age of seven could entertain no criminal intent;⁴ hence he was incapable of committing a crime.⁵ A similar presumption in favor of an infant between the ages of seven and fourteen was rebuttable upon proof of his capacity.⁶ An infant over the age of fourteen was *prima facie* capable of committing a crime.⁷ Where no incapacity was established, an infant was subject to the criminal law and was punished in the same manner as an adult.⁸

So long as this procedure and punishment was condemned solely on humanitarian and ethical grounds, no effective measures were taken to discard antiquated common law rules.⁹ The basis for improvement was laid when a more concrete understanding of the needs of the community revealed the futility of such a policy.¹⁰ It was pointed out that subjecting a youth in his formative years to the effects of imprisonment very often resulted in producing a criminal hardened by his record, his prison experiences, and the knowledge he had gained from his fellow inmates. The psychological impact of

² *Beason v. State*, 96 Miss. 105, 50 So. 488 (1909).

³ *People v. Domenico*, 45 Misc. 309, 310, 92 N. Y. Supp. 390, 391 (1904) ("the capacity of committing a crime within certain limits of age is not so much measured by years and days as by the strength of the delinquent's understanding and judgment").

⁴ *Beason v. State*, 96 Miss. 105, 50 So. 488 (1909).

⁵ *Allen v. United States*, 150 U. S. 551, 14 Sup. Ct. 196 (1893); *Beason v. State*, 96 Miss. 105, 50 So. 488 (1909); *People v. Townsend*, 3 Hill 479 (N. Y. 1842).

⁶ *Allen v. United States*, 150 U. S. 551, 558, 14 Sup. Ct. 196, 199 (1893); *People v. Domenico*, 45 Misc. 309, 92 N. Y. Supp. 390 (1904); 4 BL. COMM.* 23, cited in *People v. Squazza*, 40 Misc. 71, 72, 81 N. Y. Supp. 254, 255 (1903) ("Convictions have been had of infants between seven and fourteen. But in all such cases the evidence of that malice which is to supply age ought to be strong and clear beyond all doubt and contradiction").

⁷ *Allen v. United States*, 150 U. S. 551, 14 Sup. Ct. 196 (1893); 31 C. J. (1923) p. 1097, § 218.

⁸ See *In re Rousos*, 119 N. Y. Supp. 34 (1909).

⁹ It is true that occasional efforts were made to improve such procedure, but with no success. In HARRISON AND GRANT, *YOUTH IN THE TOILS* (1938) 7, there is this interesting comment: "As long ago as the reign of Athelstane in the tenth century when death penalties in England were common, it was enacted that efforts should be made to reclaim minors found guilty of serious offenses against the public security: 'If his kindred will not take him, nor be surety for him, then swear he as the bishop shall teach him that he will shun all evil, and let him be in bondage for his price. And if after that he steal, let men slay him or hang him as they did to his elders.' After ten centuries of contending with criminals we find that there is no more sensible way of stopping a youthful criminal career than to follow this ancient practice of first undertaking to rehabilitate the offender by means of a mild form of compulsion which seeks to enlist his willing cooperation."

¹⁰ See note 1, *supra*.

detention in the company of criminals, followed by a formal criminal trial, had no small effect upon convicted juveniles, as well as upon those subsequently found innocent.¹¹ The loss fell not only upon the individual offender, but also upon society.¹²

The rising influence of sociology, psychology, and allied sciences suggested the policy of rehabilitation of juvenile offenders with a view to reclaiming them for society.¹³ In accord with this purpose, the states have passed juvenile delinquency and juvenile court acts, sweeping away the procedure and penalties of the common law.¹⁴ The essential purposes of these acts may be summarized as follows: Juveniles are at all times to be kept apart from adult criminals, so as to escape their undesirable influence. The trial is to be informal, avoiding all atmosphere of a criminal proceeding. Legal questions have no place at the trial; instead, the testimony, given in part by psychologists and social workers, concerns the personality, background and social environment of the delinquent. Where institutional guidance is found necessary, the juvenile is committed to an institution for children.¹⁵ This substituted policy of reform avoids the greatest dangers of the common law, and permits the knowledge gained by the growth of the social sciences to be used in the treatment of juvenile delinquents.¹⁶

Until recently, the federal criminal law lacked any broad provi-

¹¹ HARRISON AND GRANT, *YOUTH IN THE TOILS* (1938); SEN. REP. NO. 1989, 75th Cong., 3d Sess. (1938) ("Students of criminology and penology generally agree that it is undesirable, from the standpoint both of the community and of the individual, that all juvenile offenders be treated as criminals. Many of them can be reclaimed and made useful citizens if they are properly treated and cared for, and are not permitted to mingle with mature and perhaps hardened criminals. In order to achieve these purposes it is important that juvenile offenders should not become inmates of penitentiaries or other penal institutions in which adults are incarcerated. It is likewise advisable that a juvenile delinquent for whom there is some hope of rehabilitation should not receive the stigma of a criminal record that would attach to him throughout his life."). See THRASHER, *THE GANG* (1936) cc. 22, 23. (This is an important and well-documented study of the juvenile delinquency problem, from the sociological viewpoint.)

¹² *Ibid.*

¹³ See note 11, *supra*; U. S. Children's Bureau Pub. No. 193 (1933).

¹⁴ Every state but Maine and Wyoming has adopted legislation providing for juvenile courts. See, for example, Ala. Acts 1927, No. 225, amended by Ala. Acts 1931, No. 451; Iowa Code 1931, c. 179; N. Y. Laws 1933, c. 482.

¹⁵ U. S. Children's Bureau Pub. No. 193 (1933) 4 ("These are not the methods of the old common law; they are the instruments forged by a jurisprudence which realizes that law, like medicine, is social engineering.") See note 11, *supra*.

¹⁶ See *People v. Roper*, 259 N. Y. 170, 177, 181 N. E. 88, 91 (1932) ("For the child's benefit, as well as for the benefit of the State, it treats [such child] merely as a juvenile delinquent, an unfortunate ward of the State rather than a criminal. The law, in its mercy, demands that a child should be subject to such correction as may tend to remove the causes which have led the child to commit acts inimical to society; * * * each child must be given the opportunity to benefit by corrective treatment * * *"); note 11, *supra*.

sions on this subject.¹⁷ On June 16, 1938, the Federal Juvenile Delinquency Act¹⁸ was passed, its aims and methods being substantially in accord with those of the state statutes. This Act applies to all federal offenses not punishable by death or life imprisonment, committed by a person seventeen years of age or under.¹⁹ The Attorney General is granted the option of prosecuting the juvenile either on a charge of juvenile delinquency, or for the substantive offense of which he is accused.²⁰ Thus, if it appears desirable, incorrigible offenders may be prosecuted in the same manner as adults.²¹

The Attorney General is to be notified of the arrest of any juvenile and may provide for his detention in a juvenile home.²² Thereafter, delinquents are tried without a jury before a district judge, who may hold court for this purpose at any time and place within the district, in chambers or otherwise.²³ As a result of these provisions, the detention of juveniles in jails is reduced to a minimum.²⁴

If the juvenile has been found guilty of juvenile delinquency, he may be placed on probation or may be committed to the custody of the Attorney General. The period of his probation may not exceed his minority, nor may it in any event exceed the term for which he could have been sentenced if he had been convicted of the substantive offense.²⁵ The Attorney General may designate any agency for the custody and care of such juvenile.²⁶ By thus making pos-

¹⁷ The Act of June 11, 1932 (47 STAT. 301 (1932), 18 U. S. C. § 662a (1934)) was the only provision which Congress had enacted on the subject. This Act empowers the Department of Justice to surrender a juvenile offender to state authorities if he has also committed a state offense, or is a delinquent under the laws of a state that can and will assume jurisdiction over him.

¹⁸ 52 STAT. 764 (1938), 18 U. S. C. A. §§ 921-929 (Supp. 1938).

¹⁹ 52 STAT. 764 (1938), 18 U. S. C. A. § 921 (Supp. 1938) ("* * * a juvenile is a person seventeen years of age or under, 'juvenile delinquency' is an offense against the laws of the United States committed by a juvenile and not punishable by death or life imprisonment.") The age limit is approximately the same as the limits provided by the states. The saving clause respecting capital crimes is also general.

²⁰ 52 STAT. 764 (1938), 18 U. S. C. A. § 922 (Supp. 1938) ("Whenever any juvenile is charged with the commission of any offense against the laws of the United States, other than an offense punishable by death or life imprisonment, * * * he shall be prosecuted as a juvenile delinquent if the Attorney General in his discretion so directs * * *").

²¹ See SEN. REP. No. 1989, 75th Cong., 3d Sess. (1938).

²² 52 STAT. 764 (1938), 18 U. S. C. A. § 925 (Supp. 1938).

²³ 52 STAT. 764 (1938), 18 U. S. C. A. § 923 (Supp. 1938).

²⁴ See note 15, *supra*.

²⁵ 52 STAT. 764 (1938), 18 U. S. C. A. § 924 (Supp. 1938) ("In the event that the court finds such juvenile guilty of juvenile delinquency, it may place him on probation * * * the period of probation may * * * not exceed the minority of the delinquent; or it may commit the delinquent to the custody of the Attorney General for a period not exceeding his minority, but in no event exceeding the term for which the juvenile could have been sentenced if he had been tried and convicted of the offense which he had committed * * *").

²⁶ 52 STAT. 764 (1938), 18 U. S. C. A. § 924 (Supp. 1938) ("The Attorney

sible the use of suitable state and local institutions and quasi-public homes, juveniles may be kept apart from adult criminals.²⁷ The Parole Board may parole a juvenile at any time,²⁸ thereby permitting his early return to the more normal and healthy atmosphere of his home.

Juvenile delinquents are to be prosecuted by information rather than by indictment.²⁹ As has been stated, informal procedure of this type has been found to aid in the attainment of the objects of such legislation.³⁰ It is submitted that this provision is not invalidated by the Fifth Amendment,³¹ which provides that those charged with capital or infamous crimes must be indicted by a grand jury. It is true that the offense committed may have been infamous,³² but the defendant is not charged with the substantive offense.³³ He is charged with juvenile delinquency,³⁴ for which no infamous punishment is provided, and which is therefore not an infamous crime.³⁵ Furthermore, even if this be considered an infamous crime, it has been held that a defendant may waive indictment.³⁶

Unquestionably, this Act provides for a significant improvement over the common law.³⁷ Separation from adults, institutional guidance when necessary, and a measure of informality of trial, are a few of the noteworthy benefits embodied in the statute.³⁸ Yet, despite the fact that this Act so closely adheres to the forms and methods of the state acts, an analysis will reveal a subtle but far-reaching distinction.

The states have understood that criminal jurisdiction, and the resulting criminal procedure, would render unattainable the full benefits of this type of treatment.³⁹ As a result, the state acts are not

General may designate any public or private agency for the custody * * * of the juvenile * * *").

²⁷ See SEN. REP. No. 1989, 75th Cong., 3d Sess. (1938).

²⁸ 52 STAT. 764 (1938), 18 U. S. C. A. § 927 (Supp. 1938) ("A juvenile delinquent committed under this act who has, by his conduct, given sufficient evidence that he has reformed, may be released on parole at any time by the Board of Parole * * *").

²⁹ 52 STAT. 764 (1938), 18 U. S. C. A. § 922 (Supp. 1938).

³⁰ See note 16, *supra*.

³¹ U. S. CONST. Amend. V ("No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a Grand Jury").

³² See note 19, *supra*. The broad provisions of the Act include infamous crimes.

³³ See note 20, *supra*.

³⁴ See note 20, *supra*.

³⁵ *Mackin v. United States*, 117 U. S. 351, 6 Sup. Ct. 777 (1885); see *In re Claasen*, 140 U. S. 205, 11 Sup. Ct. 735 (1891).

³⁶ *United States v. Gill*, 55 F. (2d) 399 (D. C. N. M. 1931).

³⁷ SEN. REP. No. 1989, 75th Cong., 3d Sess. (1938) ("The act has the endorsement of a number of Federal judges and many juvenile experts, criminologists, and sociologists. It is further endorsed by the Chief of the Children's Bureau of the Department of Labor.").

³⁸ See note 15, *supra*.

³⁹ While the necessity of the constitutional safeguards in favor of one

based on criminal jurisdiction, and consequently, have discarded the last vestiges of criminal procedure.⁴⁰ The Federal Act, on the other hand, is explainable only on the premise that it is an exercise of criminal jurisdiction.⁴¹ Consequent shortcomings as a reformative measure are evident. The essential element of informality⁴² is, to some extent, lessened. The presence of a prosecuting officer and counsel presents the atmosphere and surroundings of a criminal trial.⁴³

There is another, and possibly a more potent, weakness. The Constitution guarantees to one accused of a crime the right to a trial by jury,⁴⁴ which right, it appears, may be waived.⁴⁵ In order to obtain some measure of informality, the Act provides for a trial without a jury.⁴⁶ Therefore, to insure its constitutionality, there is a provision that the offender may be prosecuted as a juvenile delinquent only when his consent to such procedure is obtained,⁴⁷ which consent is to be deemed a waiver of trial by jury.⁴⁸ Thus we have a situation wherein an undetermined number of misled juveniles may withhold their consent, and thereby lose all the benefits of the Act. It can be seen that the criminal jurisdiction upon which this Act is directly based results not only in the surrender of a large measure of its effectiveness, but has necessitated, as well, the desperate expedient of nullifying the Act completely at the whim of the juvenile. Any attempt to ascertain the possibility of improving the Act will therefore require a consideration of the reasons for the difference in jurisdiction between the state and the federal acts.

The constitutional basis of the states' statutes is unquestioned. In England, the king, as *parens patriae*, was parent to all dependent children.⁴⁹ Chancery, in exercising this jurisdiction, became, in a sense, the guardian of all infants with respect to their personal and

accused of a crime cannot be denied, it is manifest that compliance with the requirements of a formal criminal trial would dissipate the effectiveness of the treatment of juvenile delinquents. See note 11, *supra*.

⁴⁰ See notes 15, 16, *supra*.

⁴¹ There can be no other purpose for the requirement of waiver of jury trial. See notes 47, 48, *infra*. This is further evidenced by the provision that "he shall be prosecuted as a juvenile delinquent". See note 20, *supra*.

⁴² See note 15, *supra*.

⁴³ See note 15, *supra*.

⁴⁴ U. S. CONST. Art. III, § 2 ("The Trial of all crimes * * * shall be by jury * * *"); U. S. CONST. Amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a trial by * * * jury * * *"). This right may not be withheld by statutes. *In re Debs*, 158 U. S. 564, 15 Sup. Ct. 900 (1895).

⁴⁵ See *Patton v. United States*, 281 U. S. 276, 50 Sup. Ct. 253 (1930) (Here it was held that the right to a jury of twelve may be waived. The court also stated that a total waiver of jury trial is valid). See also *Jabczynski v. United States*, 53 F. (2d) 1014 (C. C. A. 7th, 1931); Note (1938) 13 ST. JOHN'S L. REV. 369, 370.

⁴⁶ See note 48, *infra*.

⁴⁷ 52 STAT. 764 (1938), 18 U. S. C. A. § 922 (Supp. 1938).

⁴⁸ 52 STAT. 764 (1938), 18 U. S. C. A. § 923 (Supp. 1938).

⁴⁹ *New York Life Ins. Co. v. Bangs*, 103 U. S. 435 (1880); 14 R. C. L. (1916) p. 267, § 42.

property rights.⁵⁰ Inasmuch as the state courts, in enforcing the juvenile delinquency acts, are exercising the ancient power of *parens patriae* with respect to the personal rights of infants,⁵¹ it has been held that juvenile delinquency is not a crime.⁵² Hence there is no necessity for indictment, trial by jury, or other requirement of criminal procedure.⁵³ The purpose of such legislation is not to punish, but to save.⁵⁴

It is widely assumed that the Federal Government has no power of *parens patriae*,⁵⁵ and consequently has no power of guardianship over infants.⁵⁶ Apparently, the sociological defects of the Act are due to the belief of the draftsmen that provision for a criminal trial is necessary to obtain jurisdiction over infants.⁵⁷ However, while there is much authority denying to it the power of *parens patriae* in regard to the *property* rights of infants,⁵⁸ the writer has found no case holding that the Federal Government lacks jurisdiction to protect their *personal* rights. On the other hand, the Supreme Court has stated that, with respect to the individuals' relation to the Federal Government " * * * it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status."⁵⁹

If experience should reveal that the expected benefits of the Act⁶⁰ are substantially weakened by the criminal jurisdiction upon which it is based,⁶¹ it is submitted that Congress can properly amend it by revising the provision for prosecution in a manner more in

⁵⁰ *Ibid.* The extent of the power of equity to protect the personal rights of infants is strikingly demonstrated by the power of the court to take the custody of children from their parents, when the latter have shown themselves unfit. *People ex rel. Johnson v. Erbert*, 17 Abb. Pr. 395 (N. Y. 1864); 14 R. C. L. (1916) p. 271, § 44.

⁵¹ *McLean County v. Humphreys*, 104 Ill. 378 (1882); 14 R. C. L. (1916) p. 267, § 42.

⁵² *Mill v. Brown*, 31 Utah 473, 481, 88 Pac. 609, 613 (1907) ("Such laws are most salutary and are in no sense criminal and not intended as a punishment, but are calculated to save the child from becoming a criminal."). *Ex parte Januszewski*, 196 Fed. 123 (C. C. S. D. Ohio 1911); *People v. Roper*, 259 N. Y. 170, 181 N. E. 88 (1932); *People v. Murch*, 263 N. Y. 285, 189 N. E. 220 (1935); Note (1909) 18 L. R. A. (n. s.) 886.

⁵³ *Ibid.*

⁵⁴ See notes 10-13, 15, 16, 52, *supra*.

⁵⁵ *Fontain v. Ravenol*, 17 How. 393 (U. S. 1854); *New York Life Ins. Co. v. Bangs*, 103 U. S. 435 (1880); *American L. & T. Co. v. Grand River Co.*, 159 Fed. 777 (C. C. W. D. Ky. 1908); 14 R. C. L. (1916) p. 267, § 42; BLACK, LAW DICTIONARY (2d ed. 1910) 872.

⁵⁶ *Ibid.*

⁵⁷ See note 41, *supra*.

⁵⁸ See note 55, *supra*.

⁵⁹ *Massachusetts v. Mellon*, 262 U. S. 447, 486, 43 Sup. Ct. 597, 600 (1923), quoted with approval in *Florida v. Mellon*, 273 U. S. 12, 18, 47 Sup. Ct. 265, 267 (1926).

⁶⁰ See note 37, *supra*.

⁶¹ See note 41, *supra*.

accord with the state statutes, and by eliminating the juvenile's right of waiver. In construing a revision in such tenor, it is probable that a clear-sighted judiciary would give due weight to the statement that "It is the unquestioned right and imperative duty of every enlightened government, in its character of *parens patriae*, to protect and provide for the comfort and well being of such of its citizens as, by reasons of infancy * * * are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of government functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise."⁶²

BENJAMIN M. BIENSTOCK.

THE STATUTE OF LIMITATIONS AND INTERPLEADER.—On June 8, 1939, Section 51a of the Civil Practice Act¹ went into effect. This is a statute introducing a novel way of handling the problem of the hazard of double liability to which debtors are subjected. The method employed is a short statute of limitations. The passage of the statute was made necessary by the practical defects of the existing state² and federal³ interpleader acts insofar as service upon adverse claimants is concerned. This need was further intensified by the recent political developments in Europe and the Far East.⁴ In order to guard against threatened liquidation and confiscation of their monies and assets, prospective refugees in the former republics of Austria and Czechoslovakia had deposited monies with New York residents, banks or insurance companies. When these refugees sought to satisfy their claims in New York, the bank or other depositories were also met with claims made by a foreign government, or its representative, the liquidator, who alleged an assignment in fact or an assignment by operation of law.⁵ In order to determine the controversy completely so as to avoid the risk of double liability, multiplicity of suits, the possibility of inconsistent jury verdicts, and to save costs and expenses, the interpleader procedure suggests itself.⁶

The unavailability of the New York interpleader statute⁷ in

⁶² *McLean County v. Humphreys*, 104 Ill. 378 (1882).

¹ N. Y. Laws 1939, c. 805; the bill was introduced by Assemblyman Mitchell.

² N. Y. CIV. PRAC. ACT §§ 285, 287.

³ 49 STAT. 1096 (1936), 28 U. S. C. A. § 41(26) (Supp. 1939).

⁴ But the Act is by no means intended to be an emergency one, but is to be a permanent enactment. See *Bulletin of Legislative Reporter*, N. Y. L. J., April 18, 1939.

⁵ See *Stern v. Steiner*, N. Y. L. J., April 20, 1939, p. 1810, col. 4.

⁶ *Metropolitan Life Ins. Co. v. Segaritis*, 20 F. Supp. 739 (D. C. Pa. 1937).

See 11 CARMODY, PLEADING AND PRACTICE (2d ed. 1935) at 608, § 727.

⁷ See note 2, *supra*.