

# STATISTICAL AND SOCIAL INQUIRY SOCIETY OF IRELAND.

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## RECENT LEGISLATION IN ENGLAND AND OTHER COUNTRIES AFFECTING CHILDREN AND YOUNG PERSONS.

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*[Read before the Society on Wednesday, 7th December, 1932.]*

There has been no recent legislation in the Irish Free State dealing specifically with the law relating to children or young persons except a very short Act (No. 24 of 1929) extending the provisions of Section 58 of the Children Act, 1908, to meet the case of a child who is found destitute and is not an orphan and whose parents are, or his surviving parent, or in the case of an illegitimate child, his mother, is unable to support him. The Act enables such a child (subject to certain safeguards) to be sent to an Industrial School, but has no further operation.

In England and other countries the subject has received much attention, and my object this evening is to draw your attention to some enactments which have been passed dealing with the subject.

The Home Office Committee on the treatment of young offenders, over which I presided, spent two years in investigating the difficult problems of child life, and in our Report (Cmd. 2831, 1927) we made many recommendations, most of which have been carried into effect either by administrative action or by the Children and Young Persons Act of the present year (22 and 23 Geo. V. C. 46).

A few recommendations, notably the establishment of Observation Centres, have not been included in the Act for financial reasons, but I venture to hope that when the financial strain of the present time has disappeared money will be found for a much needed reform, which has the unanimous support of all the educational authorities in England.

In order to understand the meaning and effect of the new legislation it is desirable to look at it in its historical perspective, and with this object I propose to say a few words in the first instance about the early history of

- (1) Reformatory Schools.
- (2) Industrial Schools.
- (3) Probation.
- (4) Juvenile Courts.

The first thought that strikes one in considering the problem of the welfare of young people is how little Parliament did in the early

part of last century towards remedying the exploitation of child labour or dealing with the ever-rising tide of juvenile delinquency. The principle that a child has a right to special care and protection, and that training and reformation should take the place of imprisonment in nearly all cases was first stated and given effect to by practical philanthropists, men for the most part poor, but full of Christian thought and feeling, and who had to struggle for many years before Parliament would give statutory effect to their view.

In 1756 a few people met in London, and under the name of the Marine Society started a school for the children of convicts, and this was followed in 1788 by the Philanthropic Society which took into its school young offenders as well as the children of convicts, and may claim to have founded the reformatory system. The Society still exists, and in its school at Redhill, which I have visited more than once, continues with undiminished success the good work started 144 years ago.

The Philanthropic Society was the pioneer of other institutions all dependent on voluntary contributions, and Parliament did not intervene until 1838, when a separate prison for young offenders (i.e., under 18) was established under the Parkhurst Act of that year, with the intention that after being sufficiently trained they should be sent to the Colonies. This institution met with a fair success, but it took a long time to obtain State support for the existing voluntary institutions, and it was not until 1854 in England and 1857 in Ireland that the first Reformatory Schools Acts were passed.

The institutions remained under voluntary management and received legal powers of detention and control, while the interests of the State were safeguarded by inspection and certification, and this system as incorporated and developed in the Children Act, 1908, continues in force in Ireland to the present day. Industrial schools had a different origin but developed on similar lines. Primarily intended for neglected or homeless children, they had their origins in the ragged schools of England and the Industrial Feeding Schools of Scotland. John POUND, a Portsmouth shoemaker, was the originator of the first ragged school, which by his own efforts he established in 1818 for the poorest children of the town. Sheriff WATSON, of Aberdeen, worked for the same purpose in Scotland, and in 1854 Scotland got its first Industrial Schools Act. England followed in 1857 and Ireland somewhat later. The principle of management and control are the same for both reformatories and industrial schools, and our Committee were of opinion that the distinction between reformatory and industrial schools should be abolished, and the terms "reformatory" and "industrial" should be abandoned. We recommended that the schools should be described as schools approved by the Secretary of State, and effect has been given to our recommendation in the new Act, and both sets of schools will in future be known in England as "Approved Schools."

Most people seem to think that probation is an invention of the 20th century, and that nobody thought of it before, while in fact the principle prevailed in Christian England a thousand years ago. In the 10th century Athelstane enacted "men should slay none younger than a fifteen winters man," but this raised the question

what was to happen to a person who came within the prohibition and Athelstane supplied the answer :

“ 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 shall steal let men slay him or hang him as they did to his elders.”

(*Judicia civitatis Lundoniæ sub rege Athelstano edita.* Cod Ross. f88).

This enactment of a Saxon king, crude as its language may appear to be, clearly suggests mercy, probation and obedience to the law, and is the same principle which was established in our time by the Probation of Offenders Act, 1907, and is still regulated by that Act, as amended by the Criminal Justice Administration Act, 1914, and as regards England by Part I of the Criminal Justice Act, 1925.

If probation is of ancient origin, credit must be given to the practical philanthropists of the 20th century for the establishment of a Juvenile Court. It was first introduced into England and Ireland by Section 111 of the Children Act, 1908, which provides that when a child or young person is charged, the court shall sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held. The Committee were very much impressed with the importance of the Juvenile Court, and in our Report we say : “ It has long since passed the experimental stage, and we are satisfied that in any future legislation greater prominence should be given to the Juvenile Court, its constitution should be placed on a better footing and its functions enlarged.”

I will now give a short sketch of the protection and care which the English law gives to a child born to-day. Our Report contains 83 recommendations, and as the Children and Young Persons Act, 1932, which is intended to give effect to most of them contains 90 sections, five Schedules, and covers 106 pages of print, I will have to omit many matters of interest and deal with the subject only in the broadest outline. I will not refer to the Children Act, 1908, which is in force in Ireland, except in so far as its provisions have been altered or strengthened by the new legislation, but of course some knowledge of the older Act, not inaptly called “ The Children’s Charter,” is necessary in order to appreciate the changes now made.

The first thing for the law to do is to give protection to the newly-born. Mothers, more especially in industrial areas, very often give over their babies to be cared for by other people, at a weekly sum paid or promised, and it has been found that the confidence reposed in such people is often cruelly abused. To protect infant life the Act of 1908 made certain provisions which have proved ineffective and Sections 65-69 of the Act substantiate a new code providing amongst other things :

(a) that when a person undertakes for reward the housing and maintenance of an infant under the age of 9 years apart from its parents, or having no parents, he shall give notice in writing within a prescribed time to the local authority;

(b) that the local authority may fix the maximum number of

- infants under the age of 9 years who may be kept in any dwelling in which an infant is kept for reward;
- (c) that if such an infant is kept in unsuitable premises or by unsuitable persons it may be removed by the court on the complaint of the local authority;
- (d) that no paper shall publish an anonymous advertisement offering to undertake the care of infants.

When the child is growing up it becomes necessary to put restrictions on his employment before a certain age or in dangerous occupations. Sections 49-64 provide a complete code dealing with such matters and embody previous legislation. They provide:—(a) No child under 12 shall be employed, with the single exception of employment by his parents or guardians in light agricultural or horticultural work; (b) No child shall be employed before the close of school hours or for more than two hours on any day on which he is required to attend school; (c) No child shall be employed before 6 a.m. or after 8 p.m. on any day or to lift, carry or move anything so heavy as to be likely to cause injury to him; (d) A local authority may make bye-laws with respect to the employment of persons under 18; (e) No person under 16 shall be engaged in street trading but the local authority may make bye-laws prohibiting street trading by persons under 18; (f) Children are prohibited from taking part in entertainments, but a licence may be granted to a child who has attained 12 years subject to prescribed conditions; (g) Similar provisions as regards performances of a dangerous nature, including all acrobatic performances and all performances of a contortionist.

The Act has so far protected infant life and endeavoured to alleviate the evils of child employment, but it has also to deal with Juvenile Courts and to improve the previous legislation dealing with juveniles in need of care or protection and juvenile offenders.

Every child who is in need of care or protection, and every child of 8 who has committed an offence becomes subject to the jurisdiction of the Juvenile Court, and remains so until he reaches the age of 17. The Juvenile Courts have been an unqualified success, but our Committee made certain recommendations, numbered 1 to 21, in the Report for improving their constitution and these have been embodied in the Act. The principal changes are that Juvenile Courts shall sit either in a different building or room from that in which sittings of courts other than Juvenile Courts are held, or on different days from those on which sittings of such other courts are held. The Draft Bill contained a more stringent provision, but was modified in passing through Parliament. The Act further provides that Juvenile Courts outside London shall be constituted of members of a panel of justices specially selected for their qualifications for dealing with juvenile cases (Section 2); and that the procedure in Juvenile Courts shall be regulated by rules to be made by the Lord Chancellor. The rules have not yet been made, but I hope he will adopt the procedure suggested in our Report (p. 33) which seems to me to have the merit of simplicity and clearness, and to be within the capacity of any child to understand.

Having dealt with the constitution of Juvenile Courts I now have to point out the changes made as regards persons who may be brought there either as requiring care or protection or for having

committed offences. They are contained in Part II, Sections 9-45 of the Act, which in the official print cover 30 pages. I could not summarise them within a limited space were it not for the assistance gained by an explanatory Memorandum which was prepared in the Home Office at the time of the introduction of the Bill.

As regards those needing care or protection, the Act in Section 9 substitutes for the limited categories of neglect at present prescribed in Section 58 of the Children Act, 1908, a more general definition of neglect on the lines recommended by our Committee. This section further enacts that if a Juvenile Court are satisfied that a child or young person falling within this definition requires care or protection they may deal with him either by ordering him to be sent to an approved school, by committing him to the care of a fit person, by ordering his parent to enter into a recognisance to exercise proper care and guardianship, or by placing him under the supervision of a probation officer or other person. Apart from the more general definition of neglect and the wider discretion as to the method of treatment, the main changes are (a) that the Juvenile Court shall have jurisdiction to deal with all cases of neglect up to the age of 17, instead of 14 as at present; (b) that an ordinary court by which a person has been convicted of cruelty or any of various sexual offences against a child or young person may direct that the child shall be brought before a Juvenile Court as needing care or protection, and (c) that it shall be the duty of the local education authority, instead of the police, to bring neglected children before a Juvenile Court.

As regards young offenders, the main changes are contained in Sections 18 and 19. Section 15 takes the place of Section 10 of the Summary Jurisdiction Act, 1879, and proposes to abolish (in accordance with the recommendation of our Committee) the right of the parent or guardian of a child to elect that the child shall be committed for trial by jury. Section 18 gives effect to the recommendation of our Committee that where a child or young person is for any reason tried by a court which is not a Juvenile Court, there should be power to remit the case to a Juvenile Court to decide what method of treatment should be applied. Section 19 enacts in accordance with recommendations of the Committee, that the age of criminal responsibility should be raised from 7 to 8; and that the age below which sentence of death may not be passed should be raised from 16 to 18. Section 20 provides that the local authority shall furnish to the court information about the home surroundings, school record, health and character of children and young persons brought up either as offenders or as needing care or protection.

Section 24 provides that the courts shall have power to commit children and young persons to the care of the local authority as a fit person. Under Section 53 of the Children Act, 1908, the managers of industrial schools have power to board out with foster parents children who are sent to their school before reaching the age of 8. Section 23 provides that in future children under 10, shall not as a rule, be sent to these schools, and Section 25 empowers the courts to commit these younger children to the care of the local education authority, who will be directly responsible under the proposed new provisions for boarding them out with suitable foster parents.

The remainder of Part II of the Act deals, among other matters,

with the changes recommended by our Committee in the administration of the schools which are at present certified under the Children Act, 1908, for the training of neglected and delinquent children and young persons. The Act provides in Section 42 and the First Schedule that in place of the existing statutory distinction between Reformatory and Industrial Schools, these schools should in future form a single group, to be known as Approved Schools, and to be classified by the Secretary of State according to the needs and circumstances of the pupils. Under the existing law, persons may be sent to Industrial Schools until they reach the age of 16, and to Reformatory Schools for periods ranging from three to five years. The Act in Section 30 provides that the period of detention in an Approved School shall be three years, but that, if at the expiration of that period the child is still under the age of 15 years he can be detained until he attains that age.

Part III gives effect to the recommendations made in the third Report of the Child Adoption Committee (Cmd. 2771, 1926) for the registration and inspection of voluntary homes. Section 25 of the Children Act, 1908, already provides a power of inspection, which is replaced by Section 47 of the Act. Sections 46 and 48 give powers which are required (a) to make available to a central authority information regarding voluntary homes for the reception of poor children, and (b) to enable action to be taken in cases where children in such homes are found in conditions endangering their welfare.

There are some general provisions to which attention may be briefly drawn. The principles to be observed by Courts in dealing with children and young persons are clearly laid down in Section 21. "Every Court in dealing with a child or young person who is brought before them, either as needing care or protection, or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings or for securing that proper provision is made for his education and training."

Section 22 provides that the words "conviction" and "sentence" shall not be used in relation to persons dealt with summarily.

Section 36 gives power to the Secretary of State to transfer to an approved school persons under 18 undergoing Borstal treatment or young persons sentenced to imprisonment.

Section 45 gives power, with the consent of the Secretary of State, to receive in an approved school in England children and young persons from Scotland, Northern Ireland, Isle of Man and Channel Islands.

Section 76 enables a local authority or a poor law authority to institute proceedings for any offence under any part of the Act of 1908 or the present Act.

Section 80 prohibits the association of juveniles with adults in police stations, and Section 81 provides that no newspaper report of any proceedings in a Juvenile Court shall reveal the name, address or school or include any particulars calculated to lead to the identification of any child or young person concerned in these proceedings.

The Act of 1908 supplemented and in many ways improved and strengthened by the new Act is a fine piece of legislation, but the constant cross references and amendments makes it difficult to un-

derstand and it is hoped that a measure will soon be brought in to codify the law and make it more generally understood.

In our Report we said that much better facilities are required for the examination and observation of young offenders under 21, both by the Juvenile Court and the Adult Court, and for this purpose we recommended that at least three Observation Centres or Central Remand Homes should be provided by the State—one in London, one in the Midlands and one in the North. Our Committee came to this conclusion after an exhaustive consideration of the question and an examination of the methods adopted by other countries, especially in Belgium, where there is an Observation Centre for lads at Moll and a similar centre for girls at Namur. Several of our members visited Moll, and were much impressed by their visit, and while the Moll system would not fit in with English methods in every respect, there was much to learn and much which we would like to imitate. Unfortunately the Treasury refused on the ground of financial stringency to provide the money for the establishment of the centres, and the question must, as regards England, be left in abeyance at the moment. I might be allowed to give one quotation from our Report as regards the school at Moll (p. 44). "To this school young people are sent from the courts as a preliminary step, and their subsequent treatment depends on the results of the observation there. The school is organised on the basis of separate houses according to age, and there the lads live for several months under a carefully organised system of work and recreation, though there is considerable freedom of choice left to the individual. An ingenious system of tests is applied to ascertain as far as possible the particular boy's tastes, abilities and proclivities. As a result of the treatment some of the lads are returned to their homes after a stay of a few months (about 10 per cent), some are boarded out (about 10 per cent.), some are sent to voluntary homes (about 4 per cent.), some are sent to a State school (about 52 per cent.) and some to a special institution (about 21 per cent.). Moll is under a director of exceptional qualifications and enthusiasm for the work, and it is apparent that in this, as in other instances, the success of an institution largely depends on the personality of its head."

Following our Report though of course not in consequence of it the State authorities in New York took in hand the same questions which we had to deal with as regards Juvenile Courts and by a different road they arrived at very similar conclusions which are now embodied in an Act to amend the Children Court Act of the State of New York generally. (Chapter 393, Laws of 1930). This Act will repay perusal but can only be very briefly referred to. The children dealt with came under five classes which are described as (a) delinquent, (b) neglected, (c) abandoned, (d) destitute and (e) physically handicapped, and provision is made for the treatment of each in a very complete way. The powers and duties of probation officers are specifically dealt with (Section 35) and every county, town or municipal officer and every department in each county is required to render assistance and co-operation within his or its jurisdictional power to further the objects of the Act (Section 37). The court is authorised to appoint physicians to make physical examinations of children as the court may order (Section 35) and Section 24 contains the most complete provisions for providing

treatments of all kinds as may be required for dealing with particular cases such as :

- (a) Surgical, medical or therapeutic treatment, hospital care or necessary appliances and devices;
- (b) Educational needs including home teaching, transportation, scholarships, tuition or maintenance.

The expenses of such treatment when approved of by the court and duly audited shall be a charge on the county or the proper sub-division thereof, but the court may adjudge that the person or persons charged with liability under the laws to support such child shall pay a part or all of such expenses.

I had intended to deal with legislation in New Zealand particularly the Child Welfare Act of 1925 and also touch on recent developments in Continental procedure especially in Germany, but time does not allow and I must now draw my observations to a close.

In submitting what has been done in other countries, I offer no suggestion as to how far the legislation is applicable or ought to be adopted in the Free State. I leave that to others who are intimately acquainted with the working of the system as it exists here to-day. For many years I was intimately associated with it, and I knew, as perhaps few knew, how much good was done, mainly by the religious orders, in the Industrial and Reformatory Schools, at a very trifling cost to the State. The boys and girls who were brought up in our Institutions were in almost every case a credit to themselves and to their teachers and if some fell, or faltered on the way, the proportion was, I think, less than in any other country. We learn from many sources and in the Universe a few weeks ago Father Gleeson, the Chaplain of the Munsters, gave an account of the last moments of an Artane boy, Tom Byrne, Company Sergeant Major of the Dublin Fusiliers, as he lay mortally wounded on the field at Passchendaele which may well prove an inspiration and a hope to us all. The death scene reads like an epic of old, and I feel I cannot conclude better than by quoting the last words of Tom Byrne, after he had received the consolations of his Church: "May God bless you Father. I'm all right now. I live in Church Street. I am an Artane boy and know Brother Ryan. Tell him how I died. Tell him I never forgot Artane and was true to its teaching. Father, if you go there, tell them I spoke of them in death."