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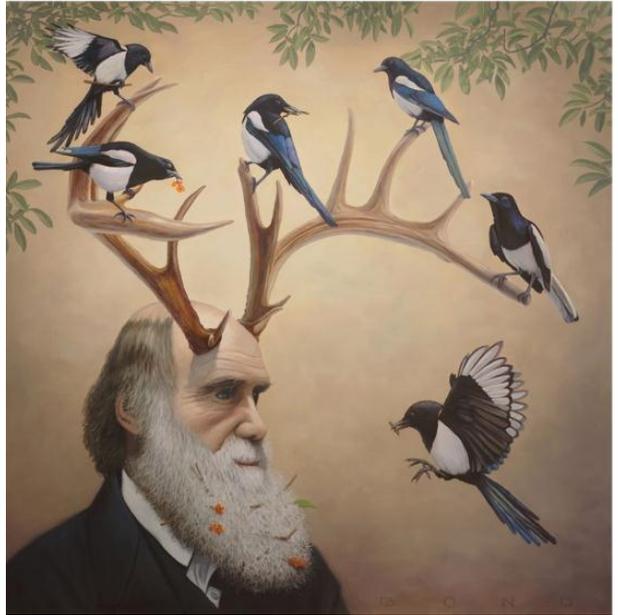
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The impact of new Canadian criminologist's opinions on the criminal procedure

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Abstract

The purpose of this article is to provide a useful remedy for the implementation of justice for child offenders in all stages of the proceedings via qualitative comparative research methods. In result, today's trend is to take remedial and curative measures for children and adolescents and many criminal justice laws have been formulated to protect the rights of children and re-socializing youth, which has been addressed by international agencies. In conclusion, the modern criminal law of different countries is in the direction of the evolution of the rules for young offenders and the attention of lawyers.

Key words: Children, Criminologists, Criminal procedure, Punishment.

El impacto de las nuevas opiniones de los criminólogos canadienses sobre el procedimiento penal

Resumen

El propósito de este artículo es proporcionar un remedio útil para la implementación de la justicia para niños que delinquen en todas las etapas del proceso a través de métodos de investigación comparativos cualitativos. En consecuencia, la tendencia de hoy es

tomar medidas correctivas y curativas para los niños y adolescentes, y se han formulado muchas leyes de justicia penal para proteger los derechos de los niños y reasociar a los jóvenes, que han sido abordados por agencias internacionales. En conclusión, el derecho penal moderno de diferentes países está en la dirección de la evolución de las reglas para los delincuentes juveniles y la atención de los abogados.

Palabras clave: niños, criminólogos, procedimiento penal, castigo.

1. INTRODUCTION

The onset of a child begins at the time of conception and ends with puberty. Considering that the child has benefits after 7.8 years, it is possible to raise criminal issues. The child is referred to someone who does not have the physical and mental development necessary for social life in terms of age. Of course, in domestic law, a certain age is considered for the child, which indicates physical and mental growth. In some countries where the sanity system is in place, the child is between 7 and 21 years old. The age of criminal responsibility is 7 years old. Although it is assumed that between 7 and 14 years of age, the child has no criminal liability. This assumption, if it is proven that the child understands the difference between the right and the wrong and consciously acts, so the child has a criminal responsibility. The Convention on the Rights of the Child, a child is defined as every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier.

In fact, the criminal responsibility of a person aged 18 is like an adult, and less than that age when viewed as a supportive crime. There

is no task more important than building a world in which all of our children can grow up to realize their full potential, in health, peace and dignity (ANNAN, 2001). There are millions of children in the world without the care of a family (SAEIDI, TAYEBI, KHOSRAVI, RAZI, SELLAMI, ABDERRAHMAN, & ZOUHAL, 2019; SELOMO & GOVENDER, 2016). They are being physically, mentally and emotionally damaged. Each 1 child in 3 is homeless, 1 in 5 has a criminal record, 1 in 7 is involved in prostitution, and 1 in 10 commits suicide. Among the tens of millions, there are an estimated 8 million children living in institutions. Until the Industrial Revolution, the law deal with children in much the same way as adults, and until the early 19th century children worked as adults.

Although equal in the eyes of the law this was not always reflected in the punishment meted out to the young: Age was, on occasion, a mitigating factor in sentencing (SEYMOUR, 1988). However, very young children were often treated brutally with the death penalty, physical punishment and transportation to Australia from the UK (SEYMOUR, 1988). Industrial developments led to concerns about children's working conditions and recognition of their special needs through employment controls, the establishment of reformatories and industrial schools by the private charitable sector (LEATHERLAND, 1987). This increased focus on the protection of children meant that they were sometimes placed in custody for non-criminal offences; vagrancy and destitution were reason enough for incarceration SEYMOUR (1988) by the end of the 19th and early 20th century, separate laws and courts for juvenile offenders were being

established in most Western democracies, including the USA, UK and Australia.

It can be said that by the 1960s, the criminology of North America, as well as the criminology of other European countries, focused on criminal factors and the mechanism of practicing criminal thought. That is why this criminology has focused on identifying preventive and preventive methods of crime and even preventing the repetition of criminal acts and ultimately paving the way for the social reintegration of prisoners. This article reviews the opinions of criminologists regarding the criminal procedure for pediatric patients and tried to examine these ideas from a legal, sociological and criminological point of view and explain the impact and role these views have on the current state of affairs of countries in the field of pedophilia (KOROUTCHEV, 2018: MAMBILE & MACHUVE, 2018).

1.1. Criminological Attitudes and Criminological Considerations for Pediatric Criminal Proceedings

Criminology is often associated with research about offenders, victims, criminal justice professional's decision making, operations, and policy. In most countries of the world, delinquent children need special attention since childhood, which unfortunately is denied. For example, the general purpose of criminal justice systems is to punish juvenile offenders. Unfortunately, children around the world are

sometimes held in jail instead of having appropriate supportive measures which makes them physically and sexually abused or transfer the children to adult prisons after the trial. CANTWELL writes:

There is a common belief that the fate of juvenile children is not prioritized by many governments. In fact, so far, the problem has been to tackle this issue more in the context of the fight against child crimes in order to improve the quality of criminal justice for children (1998: 18).

Criminological theories on the causes of crime, both individual and structural, have significantly influenced the means by which the state defines and governs law-breakers. One of the particular interests is the development of juvenile delinquent as a site of criminological knowledge and penal control. The identity of the child in the eyes of the law has evolved from a position of relative equality with adults to a special group marked out for intervention and control and, more recently, as a site of the blame. There is a complex interaction between juvenile justice and criminological theory.

While academic research and ideas have provided motivations for interventions with children, the experience of those working in the field has in turn influenced theoretical understandings of crime. Theorists look at the effects that official and non-official reactions to crime can have on the individual offender. They see the construction of crime as a social process, arguing that some actions are criminal because they are so labeled (WHITE & HAINES, 2004). Becker writes: "Deviance is created by society" (BECKER, 1963: 11). Social

groups create deviance by making the rules whose infraction constitutes deviance and by applying those rules to particular persons and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an offender.

The deviant is one to whom the label has successfully been applied; deviant behavior is behavior that people so label (BECKER, 1963; COHEN, 2002). New theories of deviancy that looked at labeling and unequal power relations, while popular with criminologists, were ignored by policymakers (COHEN, 1988). OMALLEY (1996) declares the rediscovery of community, individual responsibility and the place of the victim as examples of this new refiguring of the social. It is within this context that we can explore the emergence of new punitive measures of dealing with crime that remove the blame for the decline in communities from government and place it firmly on the head of the individual, most likely the child. As part of this refiguring of the social, we have seen, in the UK in particular, a shift away from a discussion of the way of youth delinquency (PITTS, 1992).

New measures such as Parenting Orders, and the notorious Anti-Social Behavior Orders (ASBOs), focus in particular on controlling youth crime. That theories on crime and criminality were influential in probation practice before they became officially recognized as criminological theories supports David Garland's history of criminological theory pre-1935, in which he emphasizes the place of

scientific thinking about crime in the social fabric as opposed to great schools of criminology (GARLAND, 1988). In Victoria, the separation of the child from adult came under the Children's Court Act (Vic) 1906 which also established the role of the Honorary Probation Officer, who was responsible for supervising juvenile offenders in the community. Under the Children's Court Act (Vic) 1928, any police officer who brought children before the Children's Court for offenses was ordered to notify a Probation Officer who was of the same religious persuasion as the child. The probation movement was founded in the moral order of individuals and based on Christian ideals of redemption; the work was an attempt to act upon the soul of an individual in order to rehabilitate him/her into society and avoid incarceration (WARNE, 2000).

1.2. The criminal justice system in Canada from the past to the present

The power of the law to punish wrongdoers has led academics and policymakers alike to attend to offending and the reaction by the justice system – why people engage in crime, the nature and operation of the criminal process, and the objectives and outcomes of this process. After World War II, increasing crime and repetition of the crime of children and youth, confused public opinion, because the children's laws were inadequate in preventing crimes. Criminologists and specialists to remedy this social dilemma and the prevention of the penalties for imprisonment, they presented plans to improve the

education of children and young people in a free environment and the implementation of new methods. For example, in 1950, Berne Children's Judge (Switzerland) and a judge of children in Brussels (Belgium), Without regard to penalties in children's laws, they decided to work in public affairs.

After the end of the Second World War, with the advent of industrial and technological progress in Europe and the United States, the emergence of new forms of crime and harassment of public opinion has led most countries to seek to change their criminal and criminal systems. Thus, in the United States, the National Criminal Justice Commission, Criminal Justice Criteria and Objective; or in Canada, the Legal Correctional Commission was established. So they had the rule of reviewing the criminal law in these countries. Looking at legislators' intentions in creating laws to attempt to control crime and delinquency among youth in Canada reveals a common trail: these laws, and modification to them, seem to oscillate between trying to establish systems that provide fair punishments and ways of protecting society on one hand and, on the other, trying to find ways to help youth rebuild social skills and improve their social networks.

1.3. The Period before 1908

The idea of a period known as childhood, during which children should be treated differently from adults, did not fully develop before the 19th century. Throughout the 17th and 18th centuries, the harsh

living conditions in North America required strict adherence to social rules and conduct for children and adults were similar. From the end of the French Regime to the establishment of the Canadian Dominion in 1867, there was no distinction between the way juveniles and adults accused or convicted of crimes were treated, with the notable exception of the *doli incapax* (Latin for incapacity to do wrong) defense as the way of acquittal for youth aged between 7 and 13. According to this principle, children under 7 were thought to be incapable of distinguishing between good and evil and were therefore not held responsible for their actions.

The same presumption of incapacity was extended to children aged between 7 and 13, but it could be rebutted by establishing that the child was sufficiently mature to appreciate that his or her conduct was wrong. Children between these ages, who were deemed capable of understanding the nature and consequences of their actions – which was apparently quite often the case - were sentenced as adults, which could mean imprisonment, physical punishment, or death. Adults and children were imprisoned in the same facilities. Thus, the *doli incapax* defense was not applied in every case, and its use varied greatly from case to case throughout what constituted Canada in that period, demonstrating a mix of rigidity and harsh punishment as well as, occasionally, some compassion, especially for younger children. The reform movement of the 19th century emerged in Canada, as elsewhere, as a continuation of the enlightenment.

1.4. The Period after 1908

Most criminological comments emphasize biological, psychological and sociological components and they have been working on remedies to deal with the phenomenon of delinquency. New criminology, Competition expresses two totally different flows which include state-owned projects and Lombroso's notions. Government Projects a series of studies and observational observations and experimental comets that are aimed at promoting the fairness of the criminal justice system. Lombroso's notions were made on this basis the criminals are distinguished from non-criminals, scientifically and biologically. Criticisms of Growth include new criminology. The opinions of criminology of cybercrime are important in identifying delinquency, preventing crime and the treatment and treatment of juvenile delinquents. This criminology for the first time analyzed human beings in relation to different periods of life with patterns and abundance of delinquency.

With the prevalence of theories that describe the conditions of various periods of human life and the various dimensions of the phenomenon of delinquency, a new chapter in criminology has begun which had particular attention to children and adolescents which according to their age Lead to various criminal offenses (CASEY, 2011). In examining the history of empirical research on public attitudes in Canada, one sees that systematic studies began in the late 1970s. Polling results from this time showed that members of the Canadian public believed that sentences were too lenient. While such

results might appear straightforward, Doob did not see them that way; he specifically demonstrated through experimental vignettes that some goals were more important for youth compared to adults. The public supported restorative sentencing objectives – promoting a sense of responsibility in the offender and securing reparation for the crime victim.

Nevertheless, when the Youth Criminal Justice Act was being introduced in 1999/2000, the government had to respond to public concern about the perceived leniency of the YOA. “The government attempted to do the impossible: be sensible but seem tough” (DOOB & SPROTT, 2004: 17), and in this case, the sensible approach prevailed. For example, in response to political and public pressure to lower the minimum and maximum ages for youth criminal responsibility, the Federal Government commissioned its own public opinion research that showed that support for a criminal justice sanction for under-age offending fell from 70% to 23% when the choice of a child welfare approach was provided as an option. This enabled the government to leave the age of criminal responsibility as it was, with the knowledge that the public favored child welfare approaches for young people under 12 years of age (DOOB & SPROTT, 2004).

With respect to youth, the public is supportive of spending money on alternatives to prison, prevention, and improved social programs rather than custody and is also very interested in rehabilitation as a goal of the youth justice system (DOOB, JANE, SPROTT, & KIMBERLY, 1998; MOON, SUNDT, CULLEN &

WRIGHT, 2000). Today, in Canada, a person is under 12 years of age and between 12 and 18 years of age in this way, perpetrators of heavy crimes are sentenced to 14 years in adults and convicted on a criminal law basis. In fact, the age of criminal responsibility is 14 years and Less than 14 years old of separation and recognition power is mandatory.

2. CONCLUSION

Since the percentages of the population are children and adolescents, it is inevitable that children and adolescents commit crimes and offenses. So there should be some measures to take advantage of this criminal justice and in the process of prosecution and their responsibility, they should be fair in their right to do so. At the beginning of the twentieth century, in the states of the USA, special Courts for Young Delinquents were created with a specific procedure and the basis of the work of these special courts applying educational regulations instead of punishing. International child protection laws have been taken into consideration by criminologists in view of the importance of this issue in preventing crime. A review of the lawsuits in Canada shows that in many existing institutions, there is a willingness to participate in the local community and tried until the process of correction and rehabilitation with a tendency to public opinion.

In general, it can be said that the modern criminal law of the countries of the world is in the direction of the evolution of the rules for young offenders and the attention of lawyers and sociologists is that instead of enforcing punishment, young criminals must be treated and in this treatment, the three basic factors must be synchronized.

1- Analysis and study of these factors and social, psychological, economic, family and individual effects of young delinquents.

2- Analysis and evaluation of these factors for choosing the most effective treatment.

3- Creation of special judicial and educational organizations for young delinquents.

These three factors have been inspired by the legislators of this age in the drafting of the twentieth-century modern law on young delinquents.

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