

## Lecture

### Child psychiatry and the law\*

#### Juvenile justice in Scotland

FREDERICK H. STONE, formerly Professor of Child and Adolescent Psychiatry,  
Royal Hospital for Sick Children, Yorkhill, Glasgow

It is a great privilege to be asked to give this memorial lecture. There must be few in this audience who do not know the name of Jack Kahn, if only from his classic writings on school refusal. To many of us, however, he was a dear friend as well as a rather special colleague. I seem always to have known Jack, although in fact I probably first met him in the middle '60s at just such a residential conference as we are having now, on that occasion in Harrogate. This was in the days of the RMPA. Jack was chairman of the Child Psychiatry Section and the guiding spirit behind the organisation of that particular conference. I recall particularly the concluding session on the Saturday morning when to our surprise (although we would be less surprised to-day) the presentation was not by one of our members or distinguished guests but by a local dramatic society who presented us with one scene from a play which Jack, as master of ceremonies with his customary skill and flair, used as the catalyst for an exciting large group discussion.

It is probably fair to say in retrospect that Jack was always somewhat ahead of his time. The small portly figure, the beaming benevolent expression, the strong Yorkshire accent, were all very much in keeping with his original professional identity as a general practitioner, as a respected and beloved family doctor. It was from this background that he migrated to psychiatry and in particular to family psychiatry. As director of the West Ham Child Guidance Clinic he and his colleagues pioneered developments in community based mental health services for children and families, and from an early stage his writings showed an unusual flair for conceptualising the problems and principles of multidisciplinary work. Jack was never really an Establishment Man – his interests were both too wide and too deep for narrow affiliations. Yet he never lost sight of his central concern: the welfare of the developing child and adolescent within the context of family and community. He was one of

the founding fathers of the Child Guidance Trust where, along with Robina Addis, Wallace Hamilton and others, he sought to establish a meeting place for all the various disciplines and organisations allied to our own. In the deliberations of the Trust and its new identity “Young Minds” I learned to appreciate anew Jack’s unusually sensitive talents.

It is an appropriate time to consider the relationship between child and adolescent psychiatry and the law. Leo Goodman has spoken to us about the Children Act which is pending; here in Scotland we await the deliberations of the Child Care Law Review working party.† One of the great problems for the practising clinician both north and south of the border is that legislation relating to children, adolescents, and families is not to be found in any one act of Parliament or any one book of regulations but is scattered throughout a multitude of official acts, supplements and guidance notes. The very least we can hope for is that the present endeavours in England and in Scotland will provide us with one source book, succinct and intelligible, from which the relevant information can be obtained.

Juvenile justice in Scotland has taken a new and different direction and it is the story of this development that is the main substance of my lecture. In 1991, the Children’s Hearing System in Scotland will celebrate its 20th anniversary. Over 30 years ago I was invited to become a member of the Children and Young Persons Committee (the Kilbrandon Committee) whose remit read as follows: “To consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and in particular the constitution, powers, and procedure of the courts dealing with such juveniles . . .”. We had a charismatic chairman in Lord Kilbrandon and a most knowledgeable group of committee members from the law, education, police, academic life, voluntary organisations, and myself, the sole medical member. Looking back, I recall the hard work of that

† Published in October 1990.

\*The Jack Kahn Memorial Lecture, presented to the Child and Adolescent Specialist Section, Glasgow, 14 September 1990.

committee as essentially a learning experience. Although the report is now out of print, if you have never read it do beg or borrow a copy from a colleague as it is quite a remarkable document. The outcome of the publication of this report in 1964 was as remarkable as the document itself for within a relatively short time its recommendations were enshrined in the Social Work Scotland Act (1968) and became official legal procedure, the so-called Children's Hearing System.

In brief, the central recommendation of the Kilbrandon Report was that juvenile courts should cease to exist and be replaced by lay tribunals of three carefully selected volunteers whose task would be to meet the child and the parents in order to arrive at what seemed the most constructive measures for the welfare of that child and his or her family. What this proposal did was to separate entirely the issue of innocence or guilt, the essential function of the law court, from measures of correction or treatment. The Children's Hearings can deal with a family only when the child and the parents acknowledge that the grounds have indeed occurred as stated. At the outset there was much opposition to the scheme and some confidently predicted that the great majority of children and families would simply deny the grounds, in which case the proceedings would then have to be transferred to the usual Scottish Courts, the Sheriff Courts, and nothing whatsoever would have been gained except the expenditure of a great deal of money and effort. In fact 90% of all the families who have been referred to Children's Hearings have acknowledged the grounds, itself a remarkable fact.

But I run ahead of my theme. Not quite everything that our committee recommended was in fact adopted. For example, it was our proposal that the hearings should deal with every child whom it was considered was in need of compulsory measures of education and training. The White Paper had altered this to "compulsory measures of care". The suggestion that the responsibility for administering and providing such care services would be that of a new kind of department called the Social Education Department within the education authority was not accepted either. Instead autonomous social work departments were created whose responsibilities extended beyond children to the whole range of family problems. I would remind my English colleagues at this point that all of this preceded the setting up of the Seebohm Committee. The Kilbrandon Committee further proposed that the notion of the age of criminal responsibility of a child should be abolished as the non-prosecution measures which we were proposing made the concept of negligible practical importance. However this legal absurdity remains in force to the present day – eight years of age in Scotland, ten years of age in England!

These were peripheral matters. The Children's Hearings were first held in 1971 and have continued ever since. As some of you will be aware, and those colleagues who work in Scotland are only too aware, prosecution in Scotland is the responsibility of an official known as the Procurator-Fiscal. It was not too surprising, therefore, that an analogous appointment was created to administer the referral side of the children's hearings system, the Reporter to the Children's Panels. It is to this official that all concerns are reported whether from the police, social work departments, medical practitioners, school teachers or indeed members of the public. The Reporter's task, having obtained background and, when indicated, specialist reports, is to decide whether compulsory measures of care (i.e. the type of supervision) are required, and if so to arrange for the child and parents to appear before a Hearing.

The grounds on which the Reporter makes this decision are as follows:

- (a) beyond parental control
- (b) falling into bad associations or in moral danger
- (c) lack of parental care
- (d) subject to assault or sexual abuse
- (e) not attending school or excluded for bad conduct
- (f) has committed an offence
- (g) has abused a volatile substance
- (h) "in care" and requires secure accommodation

The Reporter may decide, however, that voluntary measures are appropriate, and arrange for the family to be seen by a social worker.

If the offence committed by a child is of a very grave nature, it will be referred to a court of law, but this is rare.

Present at a Hearing are the three lay members of the panel, one of whom is the chair person, the Reporter, the social worker who has prepared the background reports, and the child and his parents or parent substitutes. The proceedings are intended to be informal to allow for wide-ranging discussion of the family situation and the difficulties that beset them. Sometimes a guidance teacher is present, a trainee, an observer (to be mentioned later), but the decision as to who is or is not present is entirely at the discretion of the chairman of the panel. Essentially, the Children's Hearing will decide whether measures of compulsory care are indeed required; if not the case is discharged; if so, whether the child remains at home or elsewhere, at least for a time. The child and the parents have the right of appeal, in which case they will appear in due course before a Sheriff who will decide how matters should proceed.

In the year 1971, 600 children were referred; in recent years the number has approached 15,000. In the whole of Scotland, there are some 1600 volunteer

panel members. These volunteers require not only careful selection (which is the work of a parallel organisation known as the Children's Panel Advisory Committee) but also training, which is the responsibility of a Training Officer of whom there are one or more in each region of the country located in an appropriate University Department of Adult Education. The Advisory Committee also has the extremely demanding task of keeping a watching brief on how the selected volunteers function at subsequent hearings by a process of regular monitoring.

In recent years, the types of problem being referred to the Children's Hearings has changed dramatically due to the increasing proportion of cases of suspected physical, sexual, or emotional abuse. When one recalls the stress which most workers experience in relation to such cases and their management, you will not be surprised to learn that for the volunteers this development has made quite special demands on training and support within the Children's Hearing system. The statistics for Strathclyde with approximately half the total population of Scotland are very revealing. In 1976/77 'Care and Protection' cases amounted to some 4%; in 1988/89 this figure was 23%. For the same years offences fell from 85% to 66%.

There is one particular aspect of the Hearings to which I would draw your attention. When a child appears before a panel, there is an obligation that the child's progress will be reviewed in not less than 12 months time, and the social worker, the child and the parents all have the right to request an earlier review if they so wish. I would emphasise the importance of this compulsory provision for review in cases of suspected or actual child abuse, especially where the child has been taken into care. Every Scottish child who is removed to a "Place of Safety" must appear before the Children's Hearing within a matter of a few days.

"Does the Scottish Children's Hearing system actually work?" This question can be answered in different ways. First of all, after 19 years the procedures are continuing with no insuperable problems emerging. As you might expect, there are criticisms. Some members of the public seem to regard the Hearings as a "soft option". Interestingly and reassuringly, such a view seems to be held only by a small minority of the police. There are criticisms, not infrequently from the panel members themselves, that their recommendations to social work departments are not carried out quickly enough or effectively: in short that resources do not meet demands, but when did resources ever meet the needs of children and families? There are ongoing tensions between children's panels and social workers and their supervisors. It has to be recalled that a panel is under no obligation at all to accept the recommendation of a social worker, a psychologist, a child psychiatrist, or any other expert

whose opinion is called for. The responsibility of the decision about compulsory supervision is entirely that of the panel of three.

It has to be admitted that in sections of the public there is a curious lack of knowledge, or at any rate accurate knowledge, about the workings of the Children's Hearing system so that the public relations task is still far from complete and perhaps never will be. We might well ask whether the methods of selection of volunteers really works, for to date no focused research on this problem has ever been undertaken. The civil service view, at least by one involved member, is: "Any solution to a problem that achieves public tolerance and removes the friction that brings the problem into the political arena can be counted a political success. . . . From this point of view, the Children's Hearings system can be claimed to have been a political success. Juvenile delinquency remains a problem and a matter of public concern in Scotland. The Children's Hearing system has not solved it, neither has it obscured the problem, but the change has reduced unease and dissatisfaction which existed under past arrangements and the new system has won general public acceptance and all party support." (Cowperthwaite, 1989). In some respects, the most impressive aspect of the system is the continuing commitment and enthusiasm of the voluntary workers.

In England, the Law Society, the British Association of Social Workers, and the Magistrates Association, although differing in their views about the possible shape and scale of English reforms, are all agreed that some of the features of the Scottish system could usefully be introduced. "Outside the UK (I quote from a recent paper by Kathleen Murray) the reputation of the Scottish panels as they are generally known has gone from strength to strength. As early as 1977 the United States Federal Government invited the late Professor Fred Martin of Glasgow University to carry out a large-scale systematic study of the operation of the system to determine what lessons could be learned and might have relevance to reforms taking place across the Atlantic. His incisive and comprehensive report not only laid the foundations of a number of experimental programmes in the USA, but of equal value and importance was the information it provided to those with responsibilities within the system on the standards of practice prevailing at that time. Versions of the Scottish Hearing's System in Cleveland, Ohio and Cambridge, Massachusetts are still in force. Recently the American Bar Association gave over a session of their annual meeting in San Francisco to consider the juvenile justice system in Scotland. (Murray, 1989).

We may well ponder as to how a working party report so rapidly became enshrined in Scottish law. A number of explanations can be offered. It was an unexpectedly radical report very persuasively

argued, and the opinions expressed were unanimous. Secondly, whereas legislation is ordinarily dealt with in Parliament firstly as it applies to England and Wales, and then later to Scotland with appropriate amendments, especially regarding its separate legal system, in this instance the order was reversed for reasons which were apparently entirely fortuitous. Indeed, Cowperthwaite goes so far as to suggest that had the ordinary sequence taken place the Children's Hearing System would never have come into existence, given the lack of support from senior members of the legal profession in England. Moreover, in the midst of these negotiations—that is between the publication of the White Paper and the Social Work Scotland Act (1968)—there was a change of government and the new Conservative government supported the Bill.

I venture to suggest that Jack Kahn would have enjoyed this part of my presentation because what we are describing here is the influence of chance. I quote from the last pages of *Job's Illness*. "The final dimension is the general philosophical position in which man has to choose between the assumption that the universe is understandable and the assumption that there will always be phenomena beyond comprehension. These opposite principles are represented in human thinking by the ideas of determinism and indeterminism. The principle of determinism was convincingly applied to some very simple relationships which were expressed as laws of science; and these are the foundations of physics and chemistry. These principles were transferred to living as well as inorganic matter and the science of biology was created. More recently there have been extensions of the principle to the study of human relationships and to the inner processes of the human mind. The latter is expressed as psychic determinism. Surprisingly, the idea of moral determinacy is older than physical and psychic determinism. In all these worlds of thought

there has been a corresponding and co-existing principle of indeterminacy which for some reasons has seemed less attractive. Many people seem to prefer to believe that the concept of chance is somehow unscientific and that the idea of chance would disappear if we were able to correlate all the operating factors. The confusion is between two meanings of the word 'law', the confusion which Maimonides pointed out as existing between the laws which human beings make and which have to be obeyed as against the laws of nature which are merely the regularities which have been observed."

### Acknowledgement

I am indebted to Mr Fred Kennedy, Reporter to the Children's Panel for Statistics relating to Strathclyde Region.

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