

Construction of the Psychological Child

The Child and the Law

I looked at the kids for a moment. They were not something new. They were something very old, without family, or culture; prehistoric, deracinated, vicious, with no more sense of another's pain than a snake would have when it swallowed a rat. I'd seen atavistic kids like this before: homegrown black kids so brutalized by life that they had no feelings except anger. It was what made them so hard. They weren't even bad. Good and bad were meaningless to them.

Robert B. Parker, *Walking Shadow*, 1994

JUVENILES, JUSTICE, AND PSYCHOLOGICAL KNOWLEDGE ABOUT CHILDREN

On October 13, 1994, in a crime that shocked the country because of its callousness and the youth of the perpetrators, two boys—one ten and the other eleven—dangled a five-year-old boy, Eric Morse, for five minutes off the roof of a fourteen-story building in Chicago before dropping him to his death. The older boys tortured and killed the younger one because he would not steal candy for them.

What is the appropriate course of action for society to take with respect to such children?

Long before modern clinical psychology entered the picture, the American legal system distinguished between children and adults

in assessing responsibility for criminal acts. When children are accused of crimes it is thought necessary to assess their maturational competence to stand trial and to determine the appropriate legal consequences of the crimes for children of different maturational levels.

It is generally believed that children below a certain age do not have either the necessary thought processes or the knowledge to appreciate their criminal actions, and that children under a particular age can have their criminal behavioral tendencies eradicated by psychological treatment. The assumption is that most children, unlike most adults, can be rehabilitated; they can be taught to be better people, to return to society as full, productive, noncriminal citizens.

For children, the legal issue of the possibility of psychological rehabilitation arises not only in the context of sentence, but also in the initial determination of competence to stand trial. Under common law, a child under the age of seven is conclusively presumed incapable of knowing the wrongfulness of crimes. From ages seven to fourteen, there is a presumption of incapacity that can be rebutted by clear proof that the child appreciated the quality and nature of the acts. Again under common law, a child over the age of fourteen is treated as an adult. Common law has, until rather lately, applied in most states, subject to statutory age changes from state to state. In most cases juvenile defendants under the age of eighteen are processed under juvenile delinquency statutes that are set up to implement the rehabilitation of the juvenile. Juvenile court, however, can waive jurisdiction, and authorize the trial of a child under eighteen as an adult.

If a forensic evaluator thinks that a young offender can be rehabilitated by psychological treatment, then the child is tried not as an adult but as a juvenile. This often means, depending on the state, that he or she will be out of custody at age twenty-one after serving time in a youth facility, which is essentially a locked hospital.

Where this determination is not a matter of statute, courts turn to psychologists to judge whether a particular child understands his or her crime—if that child is competent—and/or if that child can be rehabilitated by psychological counseling.

Can psychologists tell the court whether the ten- and eleven-

year-old boys from Chicago who deliberately dropped the five-year-old child to his death from the roof of a fourteen-story apartment house are capable of understanding that their action was wrong?

According to Don Terry, in a story in the *New York Times* of January 30, 1996, the younger killer had an IQ of 60 and the older one 76. Mr. Terry, in reporting these scores on the front page of his paper, is apparently suggesting that the boys were either too stupid or too immature mentally to understand the nature of their crime. Is that really what intelligence test scores of 60 and 76 reveal about these children? Or about anyone else with such scores?

MATURATIONAL COMPETENCE

How do psychologists tell if a child has the necessary competence to understand the nature of his or her criminal actions? How do psychologists determine, for example, whether a six-year-old child who attempted to kill a newborn baby actually understands the concept of the permanence of death? Do psychologists have any special knowledge unavailable to courts and the public on the mental abilities and general knowledge of children of different ages? Yes, they do, but not as much as they say they do.

Intelligence Tests

When forensic psychologists are asked to evaluate the maturational competence of a child defendant, they often give the child an IQ test. IQ tests do perform fairly well at predicting academic performance in school. Since these tests are at bottom general knowledge tests—with age norms—the psychologist is simply determining whether the child has more or less general knowledge than other kids of the same age. And of the same racial background. Different ethnic groups have different IQ norms for how well children of different ages perform, on the average, on the tests, so any such evaluation must be interpreted relative to the child's own ethnic group.

Does giving the ten- and eleven-year-old children from Chicago such standardized intelligence tests tell the courts anything about whether they are capable of appreciating the wrongfulness of their act?

No. It does not. It showed that both boys perform on the IQ test at a significantly lower level than their age and race peers, but it