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A Pattern for Progress:
The Minnesota CHILDREN'S CODE

Edward MacGaffey

Minnesota has long demonstrated a strong sense of state responsibility for the guardianship of all the children within its boundaries. It has enjoyed a reputation for progressive legislation in this regard since the enactment of its so-called "Children's Code" in 1917. That year the legislature passed a total of thirty-five laws for the protection of children. The Children's Code reiterated the English common law principle that the state is ultimately responsible for the welfare of children and that it will intervene to protect them against dependency, neglect, or other threatening conditions.

To effectuate this principle, the statutes placed administrative and supervisory responsibility for all child welfare laws—except those relating to education, recreation, health, or industry—with the state board of control. The board was authorized to set up the necessary machinery to enforce the new legislation through the creation of a children's bureau and county child welfare boards upon the recommendation of local officials. The state was made the actual guardian of children committed to state institutions of any sort, of youngsters entrusted to it by the courts, and of all feeble-minded persons. As a result, the board of control undertook the management of state institutions for dependent, defective, or delinquent children and the supervision of the feeble-minded and blind outside of institutions. Further, the board was required to license all maternity hospitals and private child-placing and child-caring agencies, to investigate foster homes, and to supervise and protect unmarried mothers and their children. The existing juvenile court law and system of mothers' pensions were revised. The Children's Code of 1917 was perhaps the greatest achievement in the history of Minnesota's social legislation. It amplified and unified the previous scattered laws for the protection of children and, most importantly, provided the means for enforcing those laws.

In 1930, Katharine F. Lenroot, then assistant to the chief of the United States children's bureau, paid tribute to the individuals responsible for the passage and enforcement of the 1917 legislation: "To the members of..."
the child welfare commission, of which Judge Edward F. Waite was chairman and William Hodson was executive secretary, to the joint legislative committee which sponsored the bills, to the members of the Board of Control who with vision and courage undertook to create the necessary instruments for carrying out the laws, and to Mr. Hodson who, as first director of the Children's Bureau, laid the foundations of their administration, not only Minnesota, but the people of the United States, owe a very real debt of gratitude.”

In Minnesota, as in nearly every young state of the union, the problem of dependent children was at first considered a local matter. The territorial legislature had provided that boards of county commissioners be vested with “entire and exclusive superintendence of the poor in their respective counties.” Some youngsters were sent to poor farms with their families; many were apprenticed as indentured servants, a common and lawful practice of the period. Few public provisions were made for those unfortunate children who were not provided for by local authorities or private organizations.8

During the second half of the nineteenth century, however, there was a growing realization that physically, mentally, and socially handicapped children should be made a public responsibility. The first state legislature provided for the establishment of a state institution for deaf children which began to operate on an experimental basis in Faribault in 1863. A year later, blind students were admitted and, in 1879, a third department was set up for the instruction of the feeble-minded. Similarly, delinquent boys and girls came to be the special concern of the state. The State Reform School, first known as the House of Refuge, was founded in St. Paul in 1866, just eighteen years after the first state institution of this kind was created in Massachusetts. Established in 1905 was Minnesota’s juvenile court system, which gave “original and exclusive” jurisdiction in cases involving dependent, neglected, or delinquent children to the district courts of counties having a population over 50,000. This experiment was not initially successful, owing to the jumble of amendments and old laws attached to it and the absence of an official probation system. All the early institutions were governed by their own boards, which served without compensation and made reports directly to the legislature. There was no uniformity in their administration or over-all planning for the needs of the state.4

Autonomous management of public charitable and correctional institutions gave way to centralized supervision with the creation of a state advisory board in 1883. The six-member state board of corrections and charities assumed full responsibility for investigating the whole system of public insti-

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8 Katharine F. Lenroot, “First Ten Years’ Work of the Children’s Bureau, Minnesota State Board of Control,” in Quarterly, 30:31 (State Board of Control, September 12, 1930, St. Paul).
9 Minnesota Territory, Laws, 1849, p. 128 (quote); Minnesota, Statutes, 1849-58, p. 471.
4 Minnesota, General Laws, 1858, p. 175; 1905, p. 419 (quote).
tutions without compensation. Through its co-operation with the National Conference of Charities and Correction, its establishment of a state-wide conference, and the visits of its members to other states, the board was able to introduce the most progressive thoughts and methods of the time into Minnesota's existing institutions. A beginning was made in the regulation of private child-caring and child-placing institutions as well. In 1893, an act was passed requiring these organizations to report regularly to the state board, which was also granted power to inspect homes used by an agency and to remove children from unsuitable environments. The law was amended in 1899 to provide that the board certify any institution receiving dependent children under two years of age. A central administrative body, the state board of control, succeeded the state board of corrections and charities in 1901. With the power of certification added to that of inspection and the requirement of reporting, the board of control seemed to have been given effective supervisory authority over private institutions and agencies. Yet, faced with overwhelming administrative responsibilities for the state institutions, it was unable to spare the necessary time or personnel to exercise authority over private organizations.

NATIONWIDE dissatisfaction with the conditions obstructing improved services for dependent children was increasingly manifest during the first decade of the twentieth century. This concern culminated in the appeal by several persons—including Theodore Dreiser, later famous as a novelist; Hastings H. Hart, former secretary of Minnesota's board of corrections and charities; and Homer Folks, secretary of the New York Charities Aid Society—to President Theodore Roosevelt to call a conference on behalf of children. The White House Conference of 1909, to which more than two hundred leaders in the field of child welfare were invited, awakened the country to the need for better protection of children.

This new social consciousness was reflected in the 1910 meeting of the National Conference of Charities and Correction in St. Louis. There, plans were discussed for the drafting of a model law to be used by states interested in enacting a children's code. As a direct result of this conference, Ohio passed the first comprehensive legislative program pertaining to children. In less than ten years, seventeen states, including Minnesota, had created commissions for this purpose. Although Minnesota was among the forerunners in protective legislation, "child welfare agencies . . . had a tough struggle, in 1917, to get passed a law which . . . enabled adequate state control of young children under the care of persons other than their parents."7

In 1913, the Minnesota State Conference of Charities and Correction unsuccessfully sponsored a bill for the appointment of a commission to study and make recommendations concerning the existing and needed child welfare legislation. Undaunted by this failure, Judge Edward F. Waite from the juvenile division of the Minneapolis District Court addressed the conference in 1914: "I earnestly recommend that the members of this conference, by organized or individual effort, . . . do all they can to secure an act of the Minnesota legislature early in the session about to be held, authorizing the governor to appoint an expert commission to revise, and if deemed advisable, codify, the laws of the state relating to children, and to submit their work for approval at the earliest possible date. Only thus will our great state fulfill her present duty to her citizens in the making,—those in whom

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are rightly centered her most minute solicitude and her largest hope."

Later that fall some fifty organizations and institutions formed the Minnesota Committee on Social Legislation to promote the cause of the proposed commission. Through the efforts of this body a second bill providing for a commission to “revise, consolidate, and suggest amendments to the laws pertaining to children” was introduced to the legislature in 1915. It, too, met defeat. The same legislature was asked to make appropriations for child hygiene. A United States public health service official, Dr. Carroll Fox, pointed out the inadequacies of the state’s program in 1914, saying, “It is the duty of the health department to study infant or child welfare, including prenatal care of mothers, and to institute measures to conserve human life during the earlier periods of existence.” Dr. Fox spoke with “obvious dismay of Minnesota’s sparse interest in conserving child life and said that school hygiene and child welfare were subjects of such vast importance that ‘it is to be hoped the coming legislature will appropriate sufficient money to continue this and similar work.’” From the vantage point of a half century later these early attempts at community organization and social action can be regarded as a necessary educational prelude to 1917. To those deeply concerned individuals on the committee, however, the defeats of 1913 and 1915 served only to demonstrate the “indifferent attitude” of the lawmakers.

At the request of welfare agencies throughout the state, Governor J. A. A. Burnquist in August, 1916, appointed a semiofficial committee, the Minnesota Child Welfare Commission, to study the statutes pertaining to children. The twelve members, selected on the basis of their experience and ability, included Otto W. Davis, Catheryne C. Gilman, Galen A. Merrill, Judge Thomas D. O’Brien, Judge Grier M. Orr, Agnes L. Peterson, Rabbi Isaac L. Rypins, John B. Sanborn, Clara Ueland, Charles E. Vasaly, State Senator Albert L. Ward, and Judge Waite, who was chosen chairman. Davis was named secretary, and William W. Hodson was secured as executive secretary. The new commission found itself without funds but with widespread support. The Minnesota Committee on Social Legislation paid the necessary salaries, while the United States children’s bureau and various state departments co-operated to facilitate the group’s work. Despite the limited time it had to complete its report, the commission was determined to do a thorough job, “getting down to fundamentals in any changes it might recommend, rather than content[ing] itself with a mere correction of obvious inconsistencies and omissions in present laws.” The members investigated four major subdivisions: defective children, including the blind, the deaf, the crippled and deformed, and the feeble-minded and epileptic; dependent and neglected children, relating to illegitimacy, adoption, maternity hospitals, baby farms, and institutional homes; delinquent children, with reference to courts, correctional institutions, and moral safeguards; and general child welfare, including birth registration, school attendance, regulation of employment, and punishment of crimes against children.

Although the comment was made later that the Twin Cities newspapers reacted with “bitter resentment” and “closed their editorial columns to the entire body of child-welfare legislation” because of the child labor aspect of boys selling papers on the streets, it is interesting to note that the


the study of these matters with a view to codifying and reviewing the laws relating to children and presenting the results of their labors to the Legislature for appropriate action.” It is possible that this stand by a prominent newspaper contributed to the commission’s success, a few months later, in obtaining legislative enactment of most of its proposals.12

On February 15, 1917, the commission sent Governor Burnquist its final report with forty-three legislative proposals appended. Recognizing the fact that abuses and deficiencies in the care of children existed in several interrelated areas, chairman Waite explained that “A considerable number of its [the commission’s] measures are so closely co-ordinated that it is not willing to be understood as recommending any one of them alone. If one of this group should fail of passage or be amended the others, or some of them, would need to be withdrawn or changed.” The governor passed on the report with the hope that “the Legislature will favorably consider the proposed measures which the report of the commission shows are closely correlated and inter-dependent and have been scientifically and exhaustively prepared.” Of the forty-three proposals, forty-one were introduced as bills to the legislature, and thirty-five were ultimately passed. This, as Hodson pointed out,
was a remarkable achievement for a session that considered more than two thousand bills and enacted less than a quarter of them.13

PRIOR to the enactment of the Children's Code the duties of the state board of control were particularly vague in regard to maternity and infant homes. Despite the attempts at state regulation in the statutes of 1901, 1905, and 1911, commercial hospitals and “baby farms” continued to flourish. Traffic in infants, poor placements, falsification of records, financial exploitation of unmarried mothers, and physical abuse of both the mothers and babies were among the vicious practices the board combatted. Affidavits from former patients testified to the sordid story of the “baby farm,” described as “a base version of a specialized maternity hospital and an infant home.” One unmarried mother-to-be had entered a private hospital under an agreement of receiving care and placement of her infant for $100 if she worked for her room and board. After the birth of the child, the operator wrote the girl’s family demanding $35 more and stating it would cost an additional $300 to place the baby. A woman witnessed the secret exchange of two newborn infants in order to satisfy an individual wanting to adopt a girl baby. At another establishment a mother “went down to the room where the baby was and found the child in a filthy condition, wrapped in rags, and in a cold room. . . . the only person in charge was a twelve year old girl by the name of Betty.”14

Speaking before the State Conference of Charities and Correction held in Bemidji in 1914, Judge Waite protested the existing condition of maternity hospitals in the state: “In practice, if not in the express provisions of its laws, the state of Minnesota says to the unmarried woman who is about to become a mother, . . . ‘Come to Minnesota for your confinement. Here you will find both commercial and charitable institutions where your identity may be carefully concealed, your child born and promptly taken off your hands, with no attempt to hold you or its father to further accountability. There will be no meddling by the state’ . . . I am very certain that in all this transaction the state ought not to stand aside.” The judge was not alone in deploiring these evils. A dramatic illustration of the concern of humanitarian


The board of directors of St. Paul’s Protestant Orphan Asylum, in the early 1900s
organizations appeared in the headlines of the Minneapolis Journal in 1916: "Battle For Babies Staged In Court. Two Infants Seized at Maternity Home. Parents Bring Suit." An agent of the Humane Society had removed two infants from a private maternity home on the grounds that they were "poorly nourished and that marks on their bodies were from external causes." Habeas corpus proceedings were instituted, nonetheless, to return the children to the home.15

The attitude of the respectable maternity hospital was indicated in an undated memorandum to the Child Welfare Commission from Emma W. Dayton, head of the directors of the Maternity Hospital of Minneapolis. In this document Mrs. Dayton outlined a program for the "care and guardianship of destitute children and children born out of wedlock." All maternity hospitals would be licensed by the state, which would also set standards for their physical and social conditions. All accredited agencies would be allowed to release children without court procedure or representation from the board of control, but the state would be represented in the adoption of such children. All records pertaining to adoption or illegitimacy proceedings would be sealed and protected.16

Chapter 212 of the Children's Code, which consists of twenty-three sections covering maternity hospitals, infant homes, and child-caring and child-placing agencies, was one of the most significant parts of the 1917 legislation. Its provisions for state licensing and supervision marked the beginning of a new era in the regulation of private child welfare agencies and institutions in Minnesota.17

Yet, the toughest challenge to the Children's Code centered around this chapter and the attempt to control private maternity hospitals. On June 22, 1918, a complaint under the new law was filed against the Women's and Children's Hospital in the municipal court of St. Paul. The hospital was a notorious establishment which had provoked so many complaints that the board of control had refused to license it the previous February. The operator had continued to take in patients, however, and the court fined her twenty-five dollars. The woman appealed to the district court and finally to the state supreme court, which found chapter 212 of the laws of 1917 unconstitutional on the grounds that every separate law must deal with one subject only. Popular opinion

17 Session Laws, 1917, p. 301.
overwhelmingly supported the corrective measures, and a campaign was initiated to have the law rewritten. In a special legislative session called in 1919, chapter 212 was re-enacted in three parts—one each for maternity hospitals, child-placing agencies, and infant homes. The denial of another license to the same operator was then upheld by the state supreme court.

IN THE YEARS between this test case and the general reorganization of Minnesota's public welfare agencies in 1937, the children's bureau under the direction of Hodson and then Judge Charles F. Hall worked to eliminate the most undesirable baby farms, child-placing agencies, children's institutions, and boarding homes and to improve the standards of others. With the co-operation of the county boards and private organizations, the state board of control was able to organize the beginnings of a state-wide case work service. It also could control the permanent placement of children, inaugurate a program for the support of feeble-minded persons outside institutions, and provide legal safeguards for unmarried mothers and their children.

Minnesota had led the states, for the most part, in making legal provisions for its dependent children, but its Children's Code left many problems unsolved. Every phase of the board of control's activity suffered from a lack of funds and personnel. The state's own institutions for children, encumbered by firmly established patterns, found it difficult to update their standards and administration. The code had largely neglected the vital areas of health and education.

The voluntary character of the county welfare bodies handicapped the board of control's work until the legislation of 1937 required each county to establish a welfare board equipped with a duly organized staff. Mrs. Gilman, a former member of the Child Welfare Commission, reported to a radio audience in 1924 that "there are now 68 active child welfare boards in the state. There should be 86, one for each county. The women of the counties in which there are no boards should not rest until the County Commissioners pledge themselves to the support of a County Child Welfare Board for the coming year. There is no subject in the county so important, there is nothing more necessary, than that the problems of childhood should have consideration." Four years later the number had increased to eighty-two.

Despite these drawbacks, Minnesotans could take pride in the Children's Code. It represented a pioneering attempt to guarantee to all youngsters the opportunity for growth and development which is considered their right in a democratic society.

"State of Minnesota v. Women's and Children's Hospital, 143 Minnesota 137; Extra Session Laws, 1919, p. 76, 79, 82; State of Minnesota v. Women's and Children's Hospital, 150 Minnesota 247.

For a summary of the board of control's activity until 1937, see Ma, One Hundred Years, 106, 111-121; Catheryne C. Gilman, "Child Welfare Work in Minnesota," April 25, 1924, Gilman Papers.

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