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## Problems in the Structure of the Juvenile Court

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present indicating the type of criminal behavior characterized by Reckless as "behavior of the moment" in response to certain situations.<sup>33</sup> Much teen-age vandalism appears to be of this kind; it is extemporaneous behavior, adventitious and fortuitous in character, an outgrowth of the restless and exuberant nature of the adolescent boy.

In the evening, between five or six, we was out to \_\_\_\_\_ Center (this center had been burned) messin' around. We was gonna play some ball. It was gettin' too dark for that, so one of us suggested to go in; so we went in . . . Climbed up on the rest room roof. See, it used to be a school, that's where the exits outside from the restrooms were. We climbed up on there and went in through the window . . . Well, first we went up and we thought we'd see what the Teen Town room looked like. Went up there, it wasn't bothered or burnt too much—floor was a little weak, dirty. Then we come back downstairs—we was gonna go in the art room but we couldn't get in there, the floor, it was burnt through. There was, oh, about an eighth of an inch of wood left. So we couldn't get in there. Uh—we just went messin' around. Started throwin' rocks . . . From what we heard they was gonna tear the building down, build one the full length of the lot down there . . . About in there an hour; just went around—throw one or two (rocks) . . . pretty soon we were going like mad . . . While we were doing it we didn't think nothing about doing it because, like I say, what we heard they was going to tear the whole building down and I didn't think they would save them (windows)—big percentage of them were cracked and discolored, anyway . . . What we was doing there would be about three of us outside and three of us inside and we would have wars, throwing rocks back and forth at each other . . . I guess anybody likes to get in trouble once in a while . . . not actually go out to look for trouble, but I mean at the time we thought it was fun until the police came; that was all.

On the other hand, the differential social expectations as to the roles of boys and girls are important in the inhibition of destructive behavior by girls. Since American culture does not place the same inhibitions on the boy's outward expression of his feelings, positive or negative, as it does on that of girls, the male youth, as one author has suggested, often appears to feel it essential to be self-directive in order to be considered masculine and acceptable to his peers.<sup>34</sup> Participation in vandalism is one way of meeting these needs for autonomy and peer group acceptance.

<sup>33</sup> RECKLESS, *op. cit.*, p. 73.

<sup>34</sup> See AILEEN SCHOEPPE, *Sex Differences in Adolescent Socialization*, *JOUR. OF SOC. PSYCHOL.*, 38 (November 1953), 175-185.

Fundamentally related is the frustration felt by the adolescent in a culture in which his role and status lack a well-defined normative structure. Moreover, there is little consensus on values and no consistency in adult behavior which might serve as guideposts. This absence of dominant and clearly defined norms, coupled with the factor of peer group loyalty with its attendant norms and values, results in conflict between the adolescent and adult authority figures, usually his parents and teachers. The consequence is behavior often termed delinquent by the adult world, while the adolescent defines it in terms of conformity to peer group expectations.<sup>35</sup>

This difference in the definition of behavior is true of vandalism. Whereas the adult world thinks of the teen-age vandal as a delinquent, the vandal may often have an entirely different self-conception. His self image is frequently that of a prankster:

We did all kinds of dirty tricks for fun. We'd see a sign, "Please keep the street clean," but we'd tear it down and say, "We don't feel like keeping it clean." One day we put a can of glue in the engine of a man's car. We would always tear things down. That would make us laugh and feel good, to have so many jokes.<sup>36</sup>

One time . . . four or five of us boys went to an apartment just being built, took a whole wall of cement down. We took a chisel and knocked down hundreds of cinder blocks, just mischievous. We went to old houses, broke windows . . . In one house we found a big victrola. We threw it down the stairs, we pushed down the bannister, we broke the chandelier. We didn't steal anything, just broke things . . . I had to do it so they wouldn't call me chicken.<sup>37</sup>

The fact that often nothing is stolen during such vandalism tends to re-enforce the vandal's conception of himself as merely a prankster and not a delinquent. Some writers have pointed this out as a distinguishing characteristic of the vandal when compared with other property offenders, assuming that since nothing is taken vandalism has a non-utilitarian function. However, these acts often do have a real meaning and utility for the participants, even though the reasons for participation are not

<sup>35</sup> For a criticism of the view that adolescent culture is in conflict with its adult counterpart, see FREDERICK ELKIN AND WILLIAM A. WESTLEY, *The Myth of Adolescent Culture*, *AMER. SOCIOLOG. REV.*, 20 (December 1955), 680-684.

<sup>36</sup> FREDERICK M. THRASHER, *THE GANG* (2nd Edition; Chicago: University of Chicago Press, 1936), pp. 94f.

<sup>37</sup> BENJAMIN FINE, *1,000,000 DELINQUENTS* (New York: World Publishing Company, 1955), pp. 36f.

expressed. Property destruction appears to function for the adolescent as a protest against his ill-defined role and ambiguous status in the social structure. Although role frustration is basic to this protest, the nature of the frustration differs as to the position of the vandal in the social structure as implied in this statement by a sixteen year old delinquent.

Well, he accused us of stealing some stuff out of his joint. He didn't come right out and say it was us, but the way he talked he made it sound like it—particularly us . . . Yeah, we was kidding him about an old rifle he had in there, about ninety years old, and he wanted fifteen dollars for it and the stock on it was all cracked up and everything. And we kept kidding his mother—she's in there (the store) with him—and we kept kidding her, and old Gay (the store owner), himself, come over there and started raising the devil, blowing off steam and everything. We didn't like it too well. We left and came back later . . . I told him (his companion) let's go down and break those windows. He said OK and we went down there and picked up some rocks along the way. We got down there and stood in front of the place till there weren't any cars very close to it and we threw the rocks and ran . . . I guess you gotta get into something once in a while or you don't live right out there. It didn't seem like then that it would amount to this much.

#### SUMMARY

It has been pointed out that more concentration of research on types of delinquency is needed. Rather than grouping all kinds of delinquencies and delinquents into a heterogeneous category

designated as "juvenile delinquents" and comparing this with an equally omnibus one labeled "juvenile non-delinquents," efforts should be directed toward a fuller understanding of the act itself and the kind of juvenile who predominantly commits this type of offense. The findings of such typological comparisons could conceivably be of help in the formulation of more specific theories of delinquent behavior and social control.

Vandalism has certain dimensions, specifically the community's definition of the act and its tolerance limits when property destruction occurs. Also of importance is the social setting in which the offense takes place. Whether or not there is a well-defined field in which vandalism is a permissible act has much to do with its occurrence and direction. Not only is it an important delinquency, judging from community reaction and financial cost, but vandalism is also illustrative of what has been called "behavior of the moment" in response to certain situations.

Research on vandalism has been largely explorative and descriptive without a unifying frame of reference and testable hypotheses. Consequently, it is proposed that property destruction be examined within a sociological framework of adolescent behavior. From this perspective vandalism is seen as one expression of the frustration felt by teen-age boys in their attempts to achieve autonomy and a satisfying self-conception in a culture where the adolescent's role and status lack a normative structure.

# PROBLEMS IN THE STRUCTURE OF THE JUVENILE COURT

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## INTRODUCTION

Almost sixty years have passed since the first juvenile court was founded in the United States. During that time, the court has become an integral part of the law-enforcement system in the United States. It exists in many forms: as a juvenile session of a district court, as a separate court system, or as part of a Domestic Relations or Family Court scheme. The jurisdictional limits and organizational lines of these courts vary from state to state, and even within a single state. But in the course of its development, the juvenile court has in many communities wandered far afield from the traditional areas in which a court of law functions. The juvenile court is no longer simply a court of law which dispenses impartial and blind justice; rather it has become for many communities the central agency to handle all the problems created by juvenile crime and delinquency. Thus, the court takes on a dual role: it attempts to function both as a court of law and as a social service agency. The basic problem facing the juvenile court today is that of clarifying its role in society, in order to determine which role is to predominate, and in which of the two capacities it will function. It is the opinion of the author that if the juvenile court accepts the role of social service agency, it cannot retain its vitality as a court of law. It is felt that the court, in order to preserve important social values, must retain its essentially juridical nature.

## PART A—I

Much has been written about the multiplication of functions in the juvenile court. Many writers have simply assumed that the court is judicial in nature, and have discussed its functions on this basis.<sup>1</sup> Some, however, have maintained that the juvenile court is not a court at all, but a kind of

<sup>1</sup> E.g., GUSTAV L. SCHRAMM, *Philosophy of the Juvenile Court*, 261 THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 101 (1949).

hospital for children afflicted with the disease of delinquency.<sup>2</sup> One writer has suggested that the name of the juvenile court be changed, so that the word "court" does not appear in its title.<sup>3</sup> Other writers have discussed at length the question of whether the juvenile court is actually a judicial body, or whether it is, rather, an administrative agency masquerading as a court.<sup>4</sup>

These conflicting views result from inconsistencies in the theories that gave birth to the juvenile court. They were not, however, as apparent at its inception as they became later on.

Holmes has written that the criminal law sprang from the necessity of finding a social means to satisfy the demands for retribution and vengeance created by the perpetration of anti-social acts.<sup>5</sup> The juvenile court movement seems to have had its roots in the desire to remove such elements from the law as it related to the treatment of children who committed crimes. It seemed unfair to expose childish offenders to the humiliation, censure and degradation accompanying criminal trial and punishment. Children were to be protected from the vengeance of society.

The movement was started and advocated in many places not so much from any legal theory, scientific motive, or any considerations of democracy or social economy, as from humanitarian considerations based on sentiment, sympathy, morality or humanity.<sup>6</sup>

<sup>2</sup> e.g., PAUL W. ALEXANDER, *Confessions of a Very Juvenile Judge*, in *Probation and Parole Progress*, N.P.P.A. YEARBOOK, 1941; for an extended use of the hospital analogy, see WILLIAM G. LONG, *The Relation of the Juvenile Court to Other Agencies*, 35 J. CRIM. L. & CRIMIN. 55 (1944).

<sup>3</sup> GLENN R. WINTERS, *Modern Court Services for Youths and Juveniles*, 35 J. AM. JUD. SOC. 112 (1949).

<sup>4</sup> FREDERICK W. KILLIAN, *The Juvenile Court As An Institution*, 261 THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 89 (1949); PAUL W. TAPPAN, *JUVENILE DELINQUENCY* (New York, 1949), Part III.

<sup>5</sup> O. W. HOLMES, JR., *THE COMMON LAW* (Boston, 1883), Lectures I & II.

<sup>6</sup> H. H. LOU, *JUVENILE COURTS IN THE UNITED STATES* (Chapel Hill, 1927), p. 22.

The first objective was to soften the conditions of punishment under which children convicted of crimes suffered. Only gradually did the idea evolve that stigmatization of children as criminals was itself an injustice; the final step was to remove the treatment of anti-social children from the criminal courts altogether. The history of the juvenile court movement has been recorded elsewhere.<sup>7</sup> For present purposes, it is sufficient to note that at the time the first juvenile court in the United States was created in Chicago, the study of dynamic psychology had not yet taken on major proportions. The necessity for utilizing the knowledge of the expert in dealing with behavior problems had not yet been recognized. To those people concerned with the juvenile court, it seemed that love of children and common sense were the only prerequisites necessary for the successful treatment of most juvenile delinquents. A sensitive man sitting on the bench as judge, together with a probation officer who had a good store of common sense, were thought sufficient to treat most delinquents brought before the court. Those children who did not respond to this treatment could be handled in the institutions run by state departments of welfare or private agencies, staffed, ideally, with educators and disciplinarians. Factors such as environment and physical health were recognized as the causes of delinquency. A subtler theory of causation, gained through a deeper understanding of human behavior and social mechanisms, was as yet undeveloped. In the next few years, however, there was an awakening of the social sciences and, especially in psychology, great advances were made toward a fuller understanding of the motivations of human behavior.

The growth of the new sciences began a process of reexamination into the purposes and methods of that part of the laws which attempts to govern anti-social behavior. The discovery of the unconscious and its tremendous influence over human behavior brought into question legal theories of responsibility.<sup>8</sup> The juvenile court movement was in part the outgrowth of a feeling that children who in the past had been considered

criminally responsible for their anti-social behavior were not in reality capable of forming the intent necessary to perform a criminal act.<sup>9</sup> By questioning contemporary theories as to the general nature of man's responsibility for his actions, the new concepts gave added impetus to the philosophy of legal non-responsibility of the juvenile offender for his conduct. Science, therefore, supplied a rationalization for the existence of the juvenile court that was lacking in legal precedent. Whether or not the early chancery practices supposedly at the root of the juvenile court idea did in fact supply an adequate justification for the juvenile court and its practices, modern social theories demanded some form of specialized treatment for children in trouble with the law.

Just as the growth of administrative law was fostered by the needs of a complex and expanding social structure, so was the growth of the juvenile court.<sup>10</sup> In the juvenile court, however, problems arose that were not as evident, or at least not as acute, in the administrative agencies. As Tappan has pointed out, "... the control over the liberty of the defendant and the potential influence on his personality through court handling... are greatly in excess of the powers ordinarily entrusted to the administrative agency-or to courts of equity."<sup>11</sup> Having been created as a replacement for the criminal courts in a certain class of cases, the juvenile courts retain powers over the fate of the individuals brought before it more akin to those of the criminal court than to the powers of any other institution of the state.<sup>12</sup> At the same time, however, proceedings in juvenile court are held without the paraphernalia of procedures used in criminal trials to protect the rights of the individual, on the grounds that use of these forms might be injurious to a child.

Herein lies the peculiar paradox of juvenile courts: designed to ensure a superior justice through protection of the child, they have to an excessive extent abandoned the fundamentals upon which the methods of promoting justice are based.<sup>13</sup>

The "peculiar paradox" arises from the indecision of those concerned with the juvenile court as to what its function should be. It arises from the complexity of the source of modern thought which

<sup>7</sup> H. H. Lou, *op. cit.* For a sketch of the development of ameliorative treatment of young criminals as well as of the juvenile court generally, see TEETERS and REINEMANN, *THE CHALLENGE OF DELINQUENCY* (New York, 1950), Chapters II and IX.

<sup>8</sup> For a brief account of the development of the law of responsibility in one area of the criminal law, see JOHN BIGGS, *THE GUILTY MIND: PSYCHIATRY AND THE LAW OF HOMICIDE* (New York, 1955).

<sup>9</sup> TEETERS and REINEMANN, *op. cit.*, p. 281.

<sup>10</sup> TAPPAN, *op. cit.*, p. 169.

<sup>11</sup> *Ibid.*, p. 170.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

provides the justification for continued existence of the juvenile court.

It has yet to be decided whether the juvenile court is to be limited to the adjudication and disposition of cases in which juvenile offenders have broken the law, or whether it is to become the central agency in the community for dealing with the problems of children in society. In writing of the accomplishments of the juvenile court, some authors proudly point to the variety of community projects undertaken by the court, its clinic to aid youngsters who have not been brought before the court formally, and its probation officers performing the tasks of "informal probation."<sup>14</sup> Even juvenile court judges, who wish to retain the court as a judicial body, have been known to advocate making the juvenile court, through its intake department or otherwise, a kind of "social service exchange."<sup>15</sup>

Interwoven with this problem is the question of how the disposition and treatment of cases adjudged delinquent by the court is to be carried out. It is at this point that psychology and casework are brought directly on the scene. Here the principles governing the juvenile court become blurred. It is here that the doubt and indecision as to the nature of the court are most clearly to be seen.<sup>16</sup> The decision as to disposition, according to statute, is supposed to be made primarily for the welfare of the child; yet the decision is made by a judge, untrained in the principles of child guidance.<sup>17</sup> The child is to be treated, "in so far as possible," as a child "in need of aid, encouragement and guidance" (emphasis added); yet, in most cases, the delinquent is placed in the care of a

probation officer, who is responsible to the judge. Thus, the judge is ultimately responsible for the treatment of most delinquent children. The final decisions as to the treatment of a delinquent child therefore remain, as they were before the juvenile court was founded, in the hands of a judge. He is trained in the principles of law, to act in the capacities of protector of the community and guardian of individual rights against the claims of the state; he is not a therapist or diagnostician. Neither psychologist nor social caseworker participates in taking the responsibility for these decisions affecting the welfare of the child. The judge, it is true, is furnished information by the probation officer and in some cases by the psychologist and the psychiatrist as well; but he is free to disregard these reports. Responsibility, therefore, remains with the judge. The therapist and social worker, representatives of the new sciences which provide the rationale for the existence of the juvenile court, must still take second place.

The fact that disposition and some forms of treatment are left in the hands of the judge has still further significance. For "in addition to restraint upon liberty, the methods of treatment and training through court action are in fact partially punitive."<sup>18</sup> Thus, it is a reasonable hypothesis that the criminal origins of the juvenile court have not been entirely forgotten by the community, and that punishment, in and for itself, is still an important element governing the juvenile court. It is to be noted that the child himself usually feels that he is brought before the court to be punished.<sup>19</sup> Moreover, the fact that disposition, and often treatment itself, is left in the hands of the judge may serve to indicate that the punitive element in the administration of justice is still, in practice, of equal importance with the therapeutic aims which find expression in the language of the statute.<sup>20</sup> The fact that the juvenile court does not have jurisdiction over children who commit offenses punishable by death<sup>21</sup> and that it may dismiss the complaint of delinquency in the case of a child over 14 so that he may be tried in the criminal

<sup>14</sup> GLENN R. WINTERS, *op. cit.*

A conversation with some probation officers and a psychiatrist participating in the court clinic program in the Boston area revealed the prevalence of the attitude that it is the function of the court clinic and the probation officers to handle informally as many as possible of the cases that come to their attention. One of the probation officers described to the author how he placed children in foster homes, by contacts with private agencies, in an informal way and without court action. The psychiatrist stated to me that it was his aim to give treatment to as many children as possible without sending them through a court proceeding. Apparently, the judge of this particular court sanctioned these practices.

<sup>15</sup> LIBBY E. SACHAR, *A Judge's View of Juvenile Probation and Parole*, N.P.P.A. YEARBOOK, 1952.

<sup>16</sup> All descriptions of procedure and discussion of the way in which the juvenile court and related agencies perform their functions are based upon the system presently in use in Massachusetts, unless otherwise stated.

<sup>17</sup> MASS. ANNO. LAWS, c. 119, sec. 53 (1956).

<sup>18</sup> TAPPAN, *op. cit.*, p. 220.

<sup>19</sup> HELEN L. WITMER, *Social Case Work in the Field of Juvenile Probation*, in PROBATION AND PAROLE PROGRESS, N.P.P.A. YEARBOOK, 1941, p. 161. It is not intended to convey the impression that punishment can never have therapeutic value. The only point is that the aims of the law, in the traditional sense, in inflicting punishment, and those of the therapist, are of a different nature.

<sup>20</sup> MASS. ANNO. LAWS, c. 119, sec. 53; 58 (1956).

<sup>21</sup> *Ibid.*, sec. 52.

court,<sup>22</sup> is further evidence that there is still a punitive element in the law governing the juvenile court. It is, in one aspect, regarded as the mildest punishment-inflicting agency of the state; but a punitive institution nevertheless. "Parens patriae" and retributive punishment are still competing with each other for supremacy in the juvenile court. The paradox in the juvenile court is, then, that treatment and therapy are, by the very nature of the court as a court of law, based upon a judgment of guilt or innocence; two different categories, that of legal judgment in terms of moral and ethical values, and that of therapeutic decision in terms of sickness and health, are intermingled to produce its decision. The change in terminology from that of the criminal court's "guilt" or "innocence" to that of "delinquency" or "non-delinquency" has not altered the fact that the court's adjudication of status is a social and moral judgment rather than a psychological diagnosis; calling the process of determining what to do with the delinquent after adjudication "disposition" rather than "sentencing" does not altogether eliminate the punitive element.

It would be interesting to discover the precise reasons why it is so difficult to eliminate the punitive element from the treatment of persons who have committed anti-social acts.<sup>23</sup> Perhaps, as Ruth Eissler suggests, it is connected with the community need for a scape-goat on which to vent the feelings of guilt which accompany the conscious or unconscious anti-social impulses of the members of society. Ruth Eissler speculates that the roots of the difficulty may have other factors of equal importance: she postulates that society really does not wish to stamp out delinquent behavior, and hence, it places obstacles in the way of developing an adequate program for its eradication. The reason for this reluctance, she maintains, is that delinquent behavior serves as a vicarious acting-out of the anti-social impulses of the law-abiding portion of the population.<sup>24</sup> If Eissler and the other psychoanalysts who have developed similar hypotheses are correct, it is not difficult to see why the element of punishment still remains a part of the system for dealing with delinquency. This

paper, then is concerned with the difficulties that arise in attempting to combine the requirements of the social order, both in psychological terms and in terms of the requirements of due process of law, with the therapeutic requirements of proper diagnosis and treatment to effect a cure of juvenile delinquency.

#### A—II

The "peculiar paradox" of the juvenile court was recognized soon after its establishment. The recognition took the form of an inquiry into the competence of a judge trained in the law to determine the proper therapy to be applied in the treatment of those cases which he had adjudged delinquent. In 1917, Judge H. M. Baker wrote:

It has frequently been declared that the purposes of the juvenile court are to prevent, not to punish; to reform, not to chastise. Theoretically this is true, but practically it has too frequently been forgotten. The truth is that the prevention of criminal tendencies in the young . . . properly rest on other than legal considerations.<sup>25</sup>

Judge Baker, moreover, was of the opinion that judges were not competent to pass on the "other than legal considerations": ". . . I believe that each man should stick to his trade, and that a mastery of law is about all that can be expected of the average individual . . ."<sup>26</sup>

It was thought that the expert judgment necessary to determine the form of treatment could be provided by an adequate probation department attached to the court.<sup>27</sup> Another suggestion was to provide an extensive referee system. Referees would be appointed on the basis of their expert knowledge of methods of dealing with delinquents. The referees would hear the petitions of delinquency, make a finding of fact and recommendations for disposition which would be subject to the approval of the judge.<sup>28</sup> Ultimate responsibility for disposition (and for treatment in the event that the child was placed on probation) rested with the judge alone.

Neither of these solutions considered the possibility of altogether relieving the judge of his power of disposition after adjudication of status. In the

<sup>22</sup> *Ibid.*, sec. 61.

<sup>23</sup> For an interesting discussion of this point, see RUTH S. EISSLER, *Scapegoats of Society* in SEARCHLIGHTS ON DELINQUENCY (New York, 1949), p. 288, following hypotheses developed from her clinical observations of interfamily relations. See also, the work of ADELAIDE M. JOHNSON, S. A. SZUREK and others.

<sup>24</sup> RUTH S. EISSLER, *op. cit.*

<sup>25</sup> HERBERT M. BAKER, *The Functions of the Juvenile Court*, 24 CASE & COM. 449 (1917).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p. 451; MIRIAM VAN WATERS, *The Socialization of Juvenile Court Procedure*, 13 J. CRIM. L. & CRIMIN. 61 (1922).

<sup>28</sup> MIRIAM VAN WATERS, *Ibid.*

late 1930's, however, with the publication of such works as the Gluecks' study of the juvenile court in Boston and its revelation of a discouragingly high percentage of recidivism among delinquents who came before the Boston court,<sup>29</sup> and the study of the plight of youthful offenders over juvenile court age in New York City by Harrison and Grant,<sup>30</sup> serious discussion began over the advisability of divorcing disposition and treatment from adjudication of status.<sup>31</sup>

As a direct response to the study by Harrison and Grant, *supra*, the American Law Institute undertook to consider ways in which the process of treatment determination might be separated from the criminal trial of youthful offenders. The outcome of its deliberations was the Model Youth Correction Authority Act.<sup>32</sup> The Model Act was intended for use in the sentencing and treatment of youthful offenders who came before the criminal court, and not for the disposition of cases before the juvenile court. In all of the states where it has been adopted, however, the Act has been used at least in part to dispose of juvenile cases. In none of these states has the Act been adopted as a whole.<sup>33</sup> Massachusetts is one of the states which has, with important modifications, adopted the Youth Authority idea; but it has limited the scope of the Authority (called the Youth Service Board) to the handling of juvenile cases.<sup>34</sup>

In modifying the Model Act, Massachusetts has left a limited discretion as to disposition after judgment in the hands of the judge; similarly, it has retained probation as a function of the court.<sup>35</sup> The Massachusetts Act, therefore, bears little resemblance in its structure to that which was envisioned by the drafters of the Model Code; it does not achieve the "coordination and integration of

treatment processes" which was a part of the original plan.<sup>36</sup> Nor does it substitute diagnosis and prescription of treatment for judicial disposition.

Perhaps the explanation for the action of Massachusetts in thus emasculating the Youth Authority Act is the reluctance of the legislature to abandon totally the punitive aspect of the law in relation to delinquency. But another element of importance must be considered as well. The Model Act was intended to function after trial in a criminal court. In the criminal courts, the jury trial and formal rules of evidence and procedure are still maintained. The question of guilt or innocence is often in dispute, and guilt must be proved by the state beyond a reasonable doubt. Therefore, even if the power of disposition after trial is taken from the court, it still has important powers and duties.

In the juvenile court, on the other hand, formal procedures are not strictly followed. Moreover, most of the defendants readily admit that they have committed the acts with which they have been charged.<sup>37</sup> Therefore, if the power of disposition were taken from the juvenile court judge, he would be left with merely formal functions in most cases in which a delinquency was charged. It may be that the legislature felt it inadvisable to restrict the juvenile court to such an extent.<sup>38</sup>

Closely connected with the question of whether the judge should retain discretion as to disposition is the problem posed by keeping probation as an arm of the court. In the present Massachusetts system, probation is the mainstay of the juvenile court. It is through the probation department of the court that the judge learns about the child's background. The probation officer recommends to the judge the form that treatment should take. Moreover, in most cases, the probation officer will administer the treatment as well; far more juvenile cases are disposed of through probation than in any other way, except for dismissal and filing.<sup>39</sup>

<sup>29</sup> S. & E. T. GLUECK, 1000 JUVENILE DELINQUENTS (Cambridge, 1934).

<sup>30</sup> LEONARD B. HARRISON AND PRYOR MCNEILL GRANT, *YOUTH IN THE TOILS* (New York, 1938).

<sup>31</sup> See THOMAS D. ELIOT, *Suppressed Premises Underlying the Glueck Controversy: Divorce Treatment from Adjudication!* 26 J. CRIM. L. & CRIMIN. 22 (1935).

<sup>32</sup> ALI YOUTH CORRECTION AUTHORITY ACT: Official Draft, June 22, 1940.

<sup>33</sup> For discussion of the Model Act and its fate in the five jurisdictions in which it had been adopted by 1951, see BERTRAM M. BECK, *FIVE STATES: A STUDY OF THE YOUTH AUTHORITY PROGRAM AS PROMULGATED BY THE ALI* (Philadelphia, 1951).

<sup>34</sup> MASS. ANNO. LAWS, c. 6, secs. 65-69A, c. 120 (1955).

<sup>35</sup> MODEL YOUTH CORRECTION AUTHORITY ACT, Sec. 11; MASS. ANNO. LAWS, c. 119, sec. 58 and sec. 64, as amended by Acts of 1956, c. 731, sec. 2; c. 276 as amended by Acts of 1956, c. 731.

<sup>36</sup> BECK, *op. cit.*, p. 4.

<sup>37</sup> This fact was brought out by Professor Glueck in a Seminar on Problems of Juvenile Delinquency at Harvard Law School, Fall Term, 1956.

<sup>38</sup> Throughout this paper, the discussion of the juvenile court relates only to its delinquency jurisdiction. Its neglect and dependency jurisdiction is not discussed. As will appear later in this paper, the writer does not feel, in spite of the opinion of many social workers and the position taken in the Standard Juvenile Court Act of the N.P.P.A., that delinquency cases should be treated in precisely the same way as neglect and dependency cases.

<sup>39</sup> I have been able to find no statistics later than those in TEETERS AND REINEMANN, *op. cit.*, p. 332,



The argument of Tappan against unofficial probation might be applied as well to all juvenile probation: "... unofficial probation ... full grown ... threatens to dwarf the judicial process. ..."<sup>40</sup>

Several writers have recommended detaching probation from the juvenile court. In its place, they would include the functions of probation among those of a state-side administrative agency for treating all cases from the juvenile courts.

... I am persuaded ... that ... probation ... will not always be contented with the role of advisory service to our courts; that the day is not far distant when probation will be independently organized and administered with the same dignity, initiative and independence that our hospital systems now enjoy.<sup>41</sup>

In the same way that the role of the juvenile court in society remains ambiguous, the position of probation vis-a-vis the court is unclear. It has already been noted that some probation officers consider informal probation one of their most important tasks.<sup>42</sup>

The statute providing for probation in the juvenile court sets out two specific tasks for the probation officer.<sup>43</sup> The first is an investigation of the background of each child adjudged delinquent; the second, supervision of children placed on probation. In addition, the probation officer is required to be present at the trial of the delinquent. He is required to report to the judge on the results of his investigation. The report must contain information as to the child's character, his school record, home surroundings, and previous complaints against the child. But other than providing a rather meagre outline of the officer's task, the statute is of little help in defining what the probation officer is to do. It does not specify the methods he is to use in his investigations, nor does it describe his duties of supervision. Therefore, there is room for each court and each probation officer to define their own concept of the probation job.

In his dealings with children placed on proba-

*Table of Dispositions.* This is a general nationwide survey, and it probably does not reflect the true situation in Massachusetts today. However, conversations with probation officers, members of the staff at the Judge Baker Clinic and psychiatrists attached to the District Courts, as well as with a representative of the Youth Service Board indicate the truth of the statement in the text.

<sup>40</sup> TAPPAN, *op. cit.*, p. 203.

<sup>41</sup> SANFORD BATES, *The Next Hundred Years, in PROBATION AND PAROLE PROGRESS, N.P.P.A. YEAR-BOOK, 1941*, pp. 83-84.

<sup>42</sup> See footnote 14, p. 5

<sup>43</sup> MASS. ANNO. LAWS, c. 119, sec. 57.

tion, the probation officer may assume two roles: one is that of a supervisor, who is there simply to see that the boy complies with the terms of his probation. The other is a quasi-therapeutic role, in which the probation officer acts as the child's "Friend" in his contacts with him. The latter role, however, carries with it inherent difficulties, in that the child must realize that his "Friend" will report him to the judge if he misbehaves; he may ask himself, therefore, whether the probation officer is in reality a very good friend.<sup>44</sup>

He (the probation officer) can only be what he is—a representative of the state, employed both to give aid and counsel to each delinquent with regard to eliminating or avoiding the situations productive of delinquency and to keep the court informed about the delinquent's progress in this endeavor.<sup>45</sup>

Here again, the therapeutic aims of the court system are confronted with its punitive aspect. Social workers such as Witmer feel that these two elements cannot really be reconciled in the same system. Wollan, in his description of the Citizenship Training Group program in Boston, mentions that the CTG must be divorced both from probation and from the court, and that it cannot have any punitive tasks. In the CTG system, all matters such as violations of attendance are referred to the probation officer for disposition.<sup>46</sup> Cantor, too, believes that the probation officer should limit himself in his functions to those of a "psychological policeman."<sup>47</sup>

From the point of view of the legal system as well as for the therapeutic considerations mentioned above, it would be desirable to clarify the role of the probation system in the treatment of delinquency, and perhaps, to consider its abolition as a separate entity altogether. It has already been shown that this recommendation has been put forth by several writers. The problem, however, is so inextricably tied up with the question of the extent to which the judge should have discretion in determining the form treatment, that it is difficult to discuss the one without the other.

<sup>44</sup> HELEN L. WITMER, *op. cit.*, pp. 165-66.

<sup>45</sup> *Ibid.*

<sup>46</sup> KENNETH G. WOLLAN, *The Citizenship Training Program of the Boston Juvenile Court*, in *PROBATION AND PAROLE PROGRESS, supra*, p. 385. Compare also, FRITZ REDL AND DAVID WINEMAN, *CHILDREN WHO HATE*, (Glencoe, Ill., 1951), pp. 236-37, for a description of role distribution in the Pioneer House project. There, too, it was felt imperative to separate discipline from therapy.

<sup>47</sup> NATHANIEL CANTOR, *The Function of Probation*, in *ibid.*, p. 277, 288.

## A—III

The statutory definition of delinquency is of crucial importance in discussing the scope of the court's jurisdiction. It is of great significance as well in discussion of the court's role as a judicial body. The definition will determine whether the court is to act in the capacity of an agency designed to prevent anti-social behavior prior to an infraction of the legal code, or whether, as a court of law, it is to limit itself to those cases where there has been such an infraction.

Probably, the early founders of the juvenile court movement were not concerned so much with the prevention of delinquency as with the treatment of young offenders; it was a movement that had as its first aim the amelioration of the treatment afforded convicted offenders, rather than the prevention of crime.<sup>48</sup> A secondary purpose was, however, to prevent crime, by transforming young offenders into good citizens. The movement was so closely connected to "child saving" in general that it is difficult in the early stages to distinguish the motivations of the founders regarding delinquency from the efforts to help neglected and dependent children.<sup>49</sup> For the purposes of this paper, it is important only that the movement was concerned specifically with the welfare of children, rather than with the protection of the community from youthful anti-social behavior. But today, both because of the existence of the juvenile court and because of the supposed prevalence of juvenile crime, those concerned with the juvenile court are increasingly interested in finding ways of protecting the community from the depredations of anti-social children. One reason for the growth of this interest may be the accusation that the court "molly-coddles" juvenile offenders. The recognition that many children who are not brought into court may nevertheless be either potential or actual menaces is an added factor in placing a considerable burden of prevention activity on the court.

The Massachusetts statute is so drawn that it can be used to impose treatment prior to the commission of a delinquent act. Delinquency itself is defined as the commission of an act in violation of the law and not punishable by death by a child under the age of seventeen. However, a child may be charged with "waywardness," and thus be subjected to the jurisdiction of the court without

having committed an unlawful act. A "wayward child" is

a child between seven and seventeen years of age who habitually associates with vicious or immoral persons, or who is growing up in circumstances exposing him to lead an immoral, vicious or criminal life.<sup>50</sup>

A distinction is drawn between the treatment that is to be afforded a wayward child and that given a delinquent. A delinquent child may be committed to the Youth Service Board under the broad powers given to that body in regulating the liberty of a delinquent. A wayward child, however, may be dealt with by the Youth Service Board only in the same way as a neglected child is treated by the Department of Welfare.<sup>51</sup> A child who has not violated the law is not subject to the same treatment as one who, but for the special laws concerning anti-social children, would be a criminal.

Nevertheless, the court is given jurisdiction over a child before he has violated the law. Thus, it enters into an area which, according to some writers, should be reserved for other agencies.

We must face realistically the inherent limitations of a legal process which is designed to enforce specific rules through their breach. The law may not . . . impose anticipatory control upon the individual who has not yet offended against it . . . It cannot without grave injustices prevent the first offense through efforts of personality diagnosis and treatment.<sup>52</sup>

Another writer has objected to allowing the court to impose "anticipatory controls" on the basis that scientific knowledge is not so accurate as to allow reliable prediction of future behavior. Therefore, he argues, it is unjust to impose such controls, because the child may never commit a violation of law.<sup>53</sup> Thus, disposition (and especially confinement) should depend in part upon the "gravity of the misconduct which brought the child before the court."<sup>54</sup> Further, the same writer asserts, in practice, commitments are frequently made to meet the requirements of "justice," rather than "treatment."<sup>55</sup> Insofar as the objection is based

<sup>50</sup> MASS. ANNO. LAWS, c. 119, sec. 52.

<sup>51</sup> MASS. ANNO. LAWS, c. 119, sec. 58.

<sup>52</sup> PAUL W. TAPPAN, *The Adolescent in Court*, 37 J. CRIM. L. & CRIMIN. 216, 227-228 (1946).

<sup>53</sup> DAVID BOGEN, 'Justice versus Individualized Treatment in the Juvenile Court,' 35 J. CRIM. L. & CRIMIN. 249, 251 (1944).

<sup>54</sup> *Ibid.*

<sup>55</sup> ". . . Thus we find that in practice the more severe types of treatment are resorted to only in cases where the child has committed an offense sufficient to justify

<sup>48</sup> See Part A—I.

<sup>49</sup> TEETERS AND REINEMANN, *op. cit.*, pp. 41-43.

upon the inadequacy of predictive tools, researches of the Gluecks and their development of the Glueck prediction tables may reduce its force.<sup>56</sup> The basic legal problem, however, will remain unsolved. The possibility of accurately predicting anti-social behavior will not supply a standard for invocation of the court's jurisdiction. In the case of any child before the court, it will still be necessary to determine whether the probability that he will become a danger to society is great enough to justify interference by the state with his liberty.

If the court were designed to protect all children, exercise of its powers without reliance upon well-defined standards would not pose such a difficult problem. However, the court was not established for such a broad purpose. It is limited to providing care only to those children in need of it. A child has the right not to become a ward of the state. In the case of delinquency, there is the possibility, at the very least, that the child may feel the consequences of being placed under the care of the state as unpleasant. A child who is not a danger to society has a right not to be subjected to unpleasant treatment by the community. Therefore, scientific advances will not obviate the necessity for adherence to proper standards in invoking the jurisdiction of the juvenile court. Only by adhering to legal norms can the rights of all children to their freedom be protected.

#### A—IV

This paper has analyzed the problems of delinquency control from the standpoint of the social institutions necessary to combat youthful anti-social behavior. It has not been concerned with substantive methods of treatment. It must be noted, however, that to a certain extent the problems of organization depend upon the form that treatment takes. If it is recognized that expert knowledge is necessary to determine how a delinquent can be cured, then the state should provide for its application to every case. If expert skill is required to carry out the treatment itself, the state must provide the necessary trained personnel. It must also develop a procedure through which their skill can be applied.

If places of confinement are in reality prisons,

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such a serious move. In other words, the juvenile court theoretically renounces the idea of dealing with the child on the basis of the offense but yet turns to the essential principle of "justice" when it comes to an important decision." *Ibid.*

<sup>56</sup> S. and E. T. GLUECK, *UNRAVELING JUVENILE DELINQUENCY* (Cambridge, 1950).

the only criterion for commitment should be the magnitude of the offense. If, however, they are treatment centers designed to cure sick children and to protect the community, the standards for commitment should be based on clinical diagnosis and the weighing of the rights of the child against the danger his actions present to the community. It has already been stated that the development of scientific methods of prediction will not eliminate the necessity for judicial decision. As Professor Sheldon Glueck has pointed out to the writer, a sick person has a right not to be treated; it is only when he becomes contagious that he may be quarantined. The same principle of social protection must be applied to the treatment of delinquent children.

#### PART B

In the following pages, a proposal is set forth embodying a suggested solution to some of the problems presented in this paper. The proposal is in the form of a statute with comments appended to each section. Because of limitations of space, the statute and the comments have been abbreviated. More detailed commentary may be obtained by communication with the author. The statute is concerned exclusively with the delinquency jurisdiction of the juvenile court. It does not enter into a discussion of dependency or neglect; nor does it deal with the problems raised by "defective delinquents" and other children whose behavior is described in recognized categories of mental disease. The reason for omitting discussion of these aspects of the court's jurisdiction is the author's opinion that the function of the juvenile court in delinquency is in large part determined by the fact that the community must be protected from anti-social behavior. In this sense, the juvenile court in its delinquency aspect is similar to the criminal courts. Even under ideal conditions, therefore, the child and the community look upon the court, at least in part, as an agency of punishment. This orientation of the delinquency jurisdiction of the court, therefore, raises problems of a different nature than those of the neglect and dependency jurisdiction.

The proposal was drawn for the purpose of providing a system in which the outcome of each case would be conditioned by considerations both of a legal and of a clinical nature. Under the present Massachusetts system, the lawyer, expert in the evaluation of only one of these considerations, is alone responsible for disposition. Under a Youth

Authority program, the judgment of the expert administrator prevails. The special skill of the administrator extends only to an evaluation of clinical data and the application of treatment necessary to cure the disease. The expert is not trained in the delicate process of balancing the rights of the individual against the demands of the community. The training of the lawyer and the insights of the clinician are equally necessary in arriving at a disposition. Therefore, a system is needed under which the results of evaluation in each case will be the integrated expression of all the values that strive for recognition in the concept of the juvenile court.

### B—I

#### PROPOSAL FOR A PLAN RELATING TO THE CONTROL OF JUVENILE DELINQUENCY

##### I. Definitions

##### 1. "Delinquent child" and "Wayward child"

A. A Delinquent child is a child between the ages of seven and seventeen who violates any city ordinance or town by-law or commits any offense against the laws of the commonwealth, and who is adjudged to be in need of:

- a. treatment or supervision in order to prevent further outbreaks of illegal and anti-social behavior, or
- b. confinement, in order to protect himself or the community.

B. A Wayward child is a child between the ages of seven and seventeen who:

- a. has engaged in a consistent pattern of serious anti-social behavior, (but has not violated any city ordinance or town by-law and has not committed any offense against the laws of the Commonwealth), and
- b. is in immediate danger of becoming a Delinquent child, or a criminal, unless he is subjected to preventive treatment, and
- c. is in need of, and will more probably than not benefit by, treatment or supervision without confinement.

*Comment:* Compare Mass. Anno. Laws, c. 119, sec. 52. The definition of "delinquent child" has been expanded so as to include children charged with capital crimes. Also, provision is made to permit the finding that a child has performed a delinquent act, but is not a delinquent child. If a finding is made that a child has performed a delinquent act,

but that it is not necessary either for his own welfare or for the welfare of the community to subject him to further state control, the child will not be found delinquent.

The definition of "wayward child" has been narrowed to provide a standard that is less vague than that in the present statute in Massachusetts. Compare Mass. Anno. Laws, c. 119, sec. 52. The section is intended to deal with those cases which appear to require attention by the state, but in which there has been no technical violation of law. It is to be noted that only supervisory, and not confinement, techniques may be used on children found to be "wayward."

##### II. Delinquency Control Areas

1. There shall be [X] Delinquency control Areas in the Commonwealth.
- [2. Establishment in each Area of a Court for the Disposition of Juvenile Cases, a Juvenile Court, and a Facility of the Youth Service Board.]

*Comment:* This section establishes a regional system under a state-wide plan of organization to deal with problems of delinquency control. In each regional area, there is a complete set of institutions, including the regional courts which are provided for in later sections, and a regional office of the Youth Service Board.

##### III. The Juvenile Court

1. There shall be one Juvenile Court for each Delinquency Control Area in the Commonwealth.
2. Composition of the Juvenile Court; qualifications of the judge.
  - A. The court shall consist of a judge, a clerk of the court, a court stenographer, and such administrative personnel as are required to keep the records of the court.
  - B. The judge shall be a lawyer and a member of the Bar of the Supreme Judicial Court of the Commonwealth, and shall have engaged in the practice of law in the Commonwealth for [X] years.
- [3. Powers, Duties, and Procedures. See Section VIII, subsection 1 below.]
4. Jurisdiction.

A. The juvenile court shall have jurisdiction over all cases in which there is a petition of neglect or dependency in the case of a child under seventeen years of age.<sup>57</sup>

<sup>57</sup> Since this paper is devoted to the delinquency jurisdiction of the juvenile court, for the reasons al-

- B. The juvenile court shall have jurisdiction over all cases in which there is a petition of delinquency or waywardness, and to render decisions as hereinafter provided.
  - C. The juvenile court shall have jurisdiction over adults in cases in which contribution to delinquency, waywardness, neglect or dependency is charged.<sup>58</sup>
  - D. The juvenile court shall be a court of record of the Commonwealth.
5. Appointment of Judges to the Juvenile Courts; terms of office.

- A. Judges of the juvenile courts shall be appointed by the Governor, upon the recommendation of the Board of Juvenile Court Judges.

The first appointments to the juvenile courts shall, however, be made by the Governor upon the recommendation of the Commissioners of Probation, Mental Health, Welfare and Corrections, the judge of the presently existing juvenile court of the City of Boston, the Youth Service Board and the Chief Justice of the Supreme Judicial Court.

- [B. Term of Judge. Provision for an extended term of office for judge.]

6. Referees.

The judge of each court may appoint such referees as necessary to hear petitions coming before the court and to make findings, subject to the disapproval of the judge.

*Comment:* The main feature of this section is that it establishes a state-wide juvenile court system, as a substitute for the juvenile-sessions system now used in Massachusetts outside of the city of Boston. Since the courts are established on a regional basis, rather than one for each political subdivision of the state, it is thought that the plan would be feasible from a financial point of view.

It is to be noted that no provision is made for a probation service attached to the court. The probation function is to be performed by the regional office of the Youth Service Board.

Formal qualifications for the position of juvenile court judge have been limited to legal education

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ready discussed, there will be no further mention of the neglect and dependency jurisdiction of the court.

<sup>58</sup> It has been thought desirable to retain the jurisdiction over adults of the juvenile court, since frequently, it is necessary to treat the parents in order to effect a cure of the child. However, this is a question that the writer has not explored fully, and therefore, there will be no further discussion of it in this paper.

and experience. Until it becomes possible to develop a separate profession of juvenile court judge, as suggested by Sheldon Glueck,<sup>59</sup> it seems advisable to limit the statutory standards to those stated in this section. Moreover, subsection 5, paragraph A, provides a method through which men qualified to act as juvenile court judges may be chosen.

*IV. The Board of Juvenile Court Judges*

[Sections 1 and 2 establish the Board of Juvenile Court judges, and provide that it shall be composed of the judges of all the Juvenile Courts of the state.]

- 3. The Board shall meet from time to time to discuss problems affecting the Juvenile Courts of the Commonwealth.

Upon the occurrence of any vacancy in any Juvenile Court, the Board shall present to the Governor a recommendation or recommendations as to candidates to fill the vacated office.

*V. The Court for the Disposition of Juvenile Cases*

- 1. There shall be a Court for the Disposition of Juvenile Cases (hereinafter known as the Court) in each Delinquency Control Area of the Commonwealth.

2. Composition.

- A. Each Court shall be composed of a Chief Judge and two Special Judges.

- (i) The Chief Judge shall be the Judge of the Juvenile Court of the Delinquency Control Area.

- (ii) The Special Judges shall be experts in the diagnosis and treatment of delinquent children.

- B. The Special Judges shall be chosen on the basis of their experience and training in the treatment and diagnosis of delinquent children.

- (i) One Special Judge of each Court shall have received the degree of Doctor of Philosophy or the equivalent thereof, in clinical psychology, from an accredited university, and shall have had at least [X] years of experience in the treatment of juvenile delinquency.

- (ii) One Special Judge of each Court shall have received a degree of Master of

<sup>59</sup> SHELDON GLUECK, *The Sentencing Problem*, Address delivered at the Judicial Conference of the Third Circuit, United States Courts, at Atlantic City, N. J., September 12, 1956.

Arts or Sciences, or the equivalent thereof, in sociology, psychology, or social work, from an accredited university, and shall have had [X] years of experience in social casework with juvenile delinquents.

### 3. Jurisdiction.

- A. The Court shall have jurisdiction over all cases arising in its Areas in which a petition of delinquency or waywardness has been filed, and in which the judge of the Juvenile Court has made a finding:
    - (i) in the case of a petition of delinquency, that the child has committed a violation of law, as described in Section I, subsection A;
    - (ii) in the case of a petition of waywardness or delinquency that the child has engaged in a consistent pattern of serious anti-social behavior.
  - B. The Court shall have jurisdiction as a court of first instance over all cases arising in its Area in which it is alleged that the Youth Service Board has abused its powers. In all such cases, however, the Chief Judge alone shall render the decision of the Court; the Special Judges shall, however, advise the Chief Judge in those aspects of such cases which concern methods of treatment of delinquents and wayward children.
  - C. In all other cases, decisions of the Court shall be rendered by the Chief Judge with the concurrence of at least one of the Special Judges.
4. Powers, Duties, Procedures.—[See Section VIII subsection 2, below.]
5. Appointment of the Special Judges.

The special judges of each Court shall be appointed by the Governor, upon the recommendation of the Youth Service Board and the Commissioner of Mental Health.

*Comment:* The dispositions court is the central feature of this plan which distinguishes it from other proposals which have been made for post-adjudication procedure in determining the form that treatment is to take. It differs from the present plan in effect in Massachusetts in that it divests the judge of the juvenile court, sitting alone, of independent responsibility for disposition; it differs from the Model Youth Correction Authority Act and similar proposals in that it leaves the power of disposition in a judicial body, and gives the juvenile court judge a voice in de-

termining disposition. The author is unaware of any other plan which provides for a sharing of ultimate responsibility by the court and the experts in determining the crucial question of what disposition will be made of a case that is before the juvenile court.

The proposal results from a consideration of the dilemma posed by the dispositions problem. On the one hand, it seems undesirable to leave ultimate responsibility for disposition in the hands of a lawyer-judge, who by training and often by temperament is not suited to make a decision that is in part a choice between therapeutic methods. On the other hand, since severe restraints upon the liberty of the individual may be imposed, it is equally unsatisfactory to place the dispositions function in an administrative body composed solely of experts on clinical method. The arguments of Bogen and Tappan concerning the undesirability of imposing what Tappan calls "anticipatory controls" upon an individual are relevant here as well.<sup>60</sup> The underlying premise is the same: the interest of the individual to have the state not interfere in his life is the kind of interest that ought to be given the greatest possible protection.

Because both therapeutic and legal principles are integral parts of each decision as to disposition, provision should be made for their direct expression in the body that performs the disposition function. Therefore, even a system in which the judge makes his decision upon the recommendation of experts is unsatisfactory, for two reasons: First, the judge acting entirely upon the experts' recommendations, is little more than a puppet; the prestige and meaning of the court as a court of law stand in danger of becoming entirely submerged. On the other hand, the judge left free to decide by himself the best course of treatment to be followed, may act on a relatively uninformed basis. The dispositions court is suggested to provide a forum in which the lawyer and the expert can discuss each case and take joint responsibility for the results of their deliberations. Further, it provides an opportunity for expert and judge to work out together a policy of disposition to be followed, in different classes of cases. Individualization of justice and the legal requirement of adherence to precedent may thus, to a certain extent, be reconciled.

The dispositions plan is a way to stave off the

<sup>60</sup> See page 18, ante.

abdication of the judges in determining what form treatment will take.

The wise judge does not surrender the judging process to the specialist . . . It is his domain to pass their contributions through the alembic of his mind and distil them into a workable program that takes account of legal demands and social limitations, as well as clinical findings.<sup>61</sup>

In this body, the judge will still bear the burden of responsibility for taking into account "legal demands and social limitations"; the specialist will interpret the clinical findings. Each will contribute his own point of view; individual rights, community demands and clinical requirements will, of necessity, be considered in every disposition made by this court.

The proposal is unorthodox in that it provides for laymen to sit as judges in a court of law. This practice is seldom followed in the United States; there is, however, a precedent in the English practice of using lay magistrates extensively (sitting, incidentally, without a lawyer to share the bench with them) to hear and dispose of cases involving juvenile offenders.<sup>62</sup>

The plan is similar to the proposal of Professor Sheldon Glueck that judges of criminal courts sit on parole boards, in that it serves to acquaint the judge, through direct participation in their deliberations, with the considerations that enter into the decisions of experts in deciding how to treat offenders.

More study and thought are necessary to determine what the qualifications of the Special Judges should be. The standards proposed in subsection 2B are thought to contain minimum educational requirements; however, it is possible that the fields of study designated as prerequisites for the office are not the most relevant ones. Considerable experience in practical work with anti-social children is, of course, essential.

The procedure of subsection 3B has been suggested because of the desire to emphasize the considerations that should govern the court's decision, and because it is felt that such cases will be directly concerned with questions of infringement of personal liberty. In such cases, the legal point

<sup>61</sup> SHELDON & ELEANOR GLUECK, 1000 JUVENILE DELINQUENTS, (Cambridge, 1934), p. 114.

<sup>62</sup> It has also come to my attention recently that in the Federal Republic of Germany the juvenile court of each district is composed of four unpaid lay magistrates who sit together with a stipendiary, lawyer-magistrate to decide upon juvenile cases. GORDON ADLAM (1956) CRIM. L. REV. 401 (June 1956).

of view should be predominate. The reason that this jurisdiction is placed in the dispositions court rather than in the juvenile court is to remind the lawyer to consider the clinical necessities of the case. The adversary nature of our court system is thereby tempered, as it is in all juvenile courts. Although the Youth Service Board will have an opportunity to defend its actions, the presence of clinicians in the court will tend to create the understanding and coordination necessary to the proper functioning of the system.

The Youth Service Board has been made responsible for recommending to the Governor persons to act as Special Judges. It is hoped that this plan will serve to bring personnel of the Youth Service Board into the court system, and thereby provide a means of advancement for social workers, psychologists and others employed by the Board. It is also hoped that this method of selection will bring about a degree of cooperation between court and agency.

#### VI. The Court of Juvenile Appeals

1. There shall be a Court of Juvenile Appeals to hear all cases appealed from the Juvenile Court and the Court for the Disposition of Juvenile Cases.
2. The Court of Juvenile Appeals shall be composed of the members of the Board of Juvenile Court Judges.
3. The Chief Justice shall be the Judge of the Juvenile Court of the Boston (Metropolitan) Delinquency Control Area.
4. Appeals from the decisions of the Court of Juvenile Appeals shall be made directly to the Supreme Judicial Court, according to the rules of that Court.
5. The Judge of the Juvenile Court of the Delinquency Control Area in which a case on appeal originated shall not participate in the deliberations of the Court of Juvenile Appeals concerning such a case.

*Comment:* . . . By providing for an appeal on the issue of *treatment* . . . the law stultifies that tribunal which . . . is best qualified to pass on treatment matters.<sup>63</sup>

The specialized appellate court is suggested to eliminate the difficulties arising from juvenile appeals in the ordinary court system.<sup>64</sup>

<sup>63</sup> S. & E. T. GLUECK, *op. cit.*, p. 24.

<sup>64</sup> The system of appeals in effect at present in Massachusetts is of such a nature that if it were used

### VII. The Youth Service Board

1. Except as otherwise provided herein, and except as inconsistent with the provisions of this Act, Chapter 6, Sections 65 through 69A, and Chapter 120 of the General Laws of Massachusetts, are hereby incorporated into this Act.
2. The powers and functions of the Youth Service Board are hereby extended to include:
  - A. Those functions formerly performed by the office of probation in juvenile cases, and
  - B. Those functions formerly performed by clinics attached to the District Courts of the Commonwealth in juvenile cases, and
  - C. Such other powers and functions as may be necessary to carry out the purposes of this Act.
  - D. If a delinquent child has been committed to the custody of the Facility or its Delegate without confinement, as hereinafter provided, and the Director of the Facility or his Delegate deems it necessary for the safety of the child or of the community, the Director may:
    - a. without notice to either the Juvenile Court or to the Court for the Disposition of Juvenile Cases, place the child in detention for a period not to exceed [X] hours, and
    - b. if the Director deems it necessary to place the child in confinement for a longer period of time, he shall apply to the Juvenile Court for an order changing the status of the child from that of treatment or supervision (as defined in Section I, subsection 2, A & B) to that of confinement (as defined in Section I, subsection 2, C).

Such an order of the Juvenile Court shall be subject to disapproval upon consideration by the Court for the Disposition of Juvenile Cases, under Section V, subsection 3, C.

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extensively it could destroy the juvenile court altogether. The trial on appeal is in the Superior Court; in effect, it is a proceeding *de novo*. If the appellant so desires, he may have a jury trial, since the case is to be determined as in a criminal trial. MASS. ANNO. LAWS, c. 119, sec. 56. The study by Alper of appeals from the Boston Juvenile Court from 1930-1935 demonstrates the damage that the juvenile court system can suffer from such an appeals system. B. S. ALPER, JUVENILE JUSTICE—A STUDY OF JUVENILE APPEALS TO SUFFOLK SUPERIOR COURT, BOSTON, 1930-1935, 28 J. CRIM. L. & CRIMIN. 340 (1937). The idea of a separate court to hear juvenile appeals is not original with the author; although I am unable to give citations, other writers have made similar proposals.

- E. Section 6 of Chapter 120 of the General Laws is hereby repealed.
3. The Youth Service Board shall establish a Youth Service Board Facility (hereinafter referred to as the Facility) in each Delinquency Control Area.
  - A. The Facility shall include a detention center, and
  - B. Such other buildings and equipment as are necessary to enable it to conduct studies and administer programs of treatment, supervision and prevention of delinquency in the Area.
4. There shall be an Area Director of each Facility, and such other appropriately trained personnel as necessary shall be employed by the Youth Service Board in each Facility to carry out the functions provided for in this Act.

*Comment:* The purpose of this section is to integrate all forms of treating anti-social children. The new service will retain the functions of the present Youth Service Board; in addition, it will undertake the tasks now performed by the probation office. The Youth Service Board is intended to be separate from the court system, but integrated with it. The personnel and study centers of the Board are to aid the courts in reaching decisions as to the disposition of cases involving delinquency and waywardness.

### VIII. Proceedings before the Juvenile Court and the Court for the Disposition of Juvenile Cases

1. Proceedings before the juvenile court.
  - A. Upon a child being brought before the juvenile court on a petition of delinquency or waywardness, a hearing shall be held before the judge of the juvenile court, in the presence of the child and his parent or guardian.
    - a. If the child has no parent or legal guardian, the juvenile court shall appoint a guardian for the purposes of the proceedings.
    - b. A representative of the Facility of the Youth Service Board of the Delinquency Control Area shall be present at all proceedings before the juvenile court.
  - B. If the petition complains of delinquency or waywardness, the juvenile court shall determine:
    - a. Whether the child has committed the act complained of, and
    - b. Whether, if it is determined that the child has committed the act complained of, the act constitutes a violation of any



- city ordinance, town by-law or offense against the laws of the Commonwealth, or
- c. Whether the child has engaged in a consistent pattern of serious anti-social behavior.
- C. Upon the determination of the juvenile court that a child has committed a violation of law as provided in subsection B. paragraphs a and b, the judge shall make a preliminary finding of probable cause for an adjudication of delinquency.
- a. The judge shall thereupon continue the case for a period of not less than [X] days and not more than [X] days.
- b. The judge shall thereupon place the child in the custody of a representative of the Youth Service Board Facility of the Delinquency Control Area.
- (i) During the continuance, the Area Facility shall undertake such study as may be necessary to determine final disposition of the case, and
- (ii) Write a report containing the results of the study and recommendations for disposition. Such report shall be forwarded to the Court for the Disposition of Juvenile Cases.
- c. If the juvenile court has reason to believe that the safety of the community demands that the child be placed in detention during the continuance, it may of its own motion order confinement of the child by the Facility of the Youth Service Board.
- d. If the representative of the Youth Service Board has reason to believe that the welfare of the community or of the child demands confinement of the child during continuance, the representative may make a motion that the juvenile court order the confinement of the child for the period of the continuance.
- Unless the juvenile court finds that the motion of the representative is not made with a reasonable belief that confinement during continuance is necessary for the welfare of the child or of the community, it shall grant the motion and issue the order of confinement.
- D. Upon the determination of the juvenile court that the child has engaged in a consistent pattern of serious anti-social behavior as provided in subsection B, para-

graph c, the judge shall make a preliminary finding of probable cause for an adjudication of waywardness.

- a. The judge shall thereupon continue the case for a period of not less than [X] days and not more than [X] days.
- b. The court shall thereupon place the child in the custody of a representative of the Youth Service Board Facility of the Delinquency Control Area.
- (i) During the continuance, the Area Facility shall undertake such study as may be necessary to determine final disposition of the case, and
- (ii) Write a report containing the results of the study and recommendations for disposition. Such report shall be forwarded to the Court for the Disposition of Juvenile Cases.

*Comment:* The purpose of this subsection is to set forth a procedure by which the judge may find the facts and the applicable law in cases of delinquency and waywardness. The juvenile court has then performed its function. Every case must be continued to provide an opportunity for the kind of study that the specialists deem necessary to arrive at an intelligent conclusion as to what should be done with the child. There is also a provision, in the case of children who have been charged with a violation of law, for the application of necessary restraints. There is no such provision in the case of wayward children. Again, this reflects the philosophy that a differentiation in treatment on the basis of "behavior circumstance," as some writers have called it, should properly be made in a legal proceeding.

## 2. Proceedings before the Court for the Disposition of Juvenile Cases.

- A. Upon termination of the continuance, the case of a child in which the juvenile court has made a preliminary finding of probable cause for adjudication of delinquency or waywardness shall be brought before the court for the disposition of juvenile cases (for purposes of this subsection, referred to as the "Court").
- B. If the juvenile court has made a preliminary finding of probable cause for adjudication of waywardness:
- (i) the Court shall determine whether the child:
- a. is in immediate danger of becoming a Delinquent child, or a criminal,

unless he is subjected to preventive treatment, and

- b. is in need of, and will more probably than not benefit by, treatment or supervision without confinement.
  - (ii) If the Court has found in the affirmative as to subparagraph (i) above, it shall adjudge the child Wayward, and remand him to the Youth Service Board Facility for treatment or supervision without confinement for such period, not to exceed two years, as the Facility deems necessary.
- C. If the juvenile court has made a preliminary finding of probable cause for adjudication of delinquency:
- (i) the Court shall determine whether the child is in need of treatment, supervision or confinement;
  - (ii) if the Court determines that the child is in need of treatment, supervision or confinement, it shall adjudge the child Delinquent.
  - (iii) The judgment of delinquency shall state that:
    - a. the child is in need of treatment or supervision, or
    - b. the child is in need of confinement.
  - (iv) The Court shall remand the Delinquent to the custody of the Director of the Youth Service Board Facility or his representative, for such period as it deems necessary, or until the child shall have attained his 23rd birthday. The order of remand shall state that:
    - a. the child is to be confined, or
    - b. the child is to remain at liberty, under treatment or supervision, in the discretion of the Director of the Youth Service Board Facility.
1. In the case of a child remanded with the direction that he is to remain at liberty, if thereafter it becomes necessary for the safety of the child or of the community, the Director of the Facility or his representative may, without obtaining an order from any court, confine the child in its detention home for a period not to exceed [X] hours.
  2. If the Director of the Facility deems it necessary to retain the

child in confinement thereafter, it shall apply to the juvenile court for an interim order of confinement. Such order shall be confirmed by the Court at its next regular session. Unless a question is presented of abuse of his powers by the Director of the Facility or his representative, the Court shall reach its decision in accordance with Section V, paragraph 2C. If such a question is presented, the decision shall be made in accordance with Section V, paragraph 2B.

- c. The Youth Service Board shall retain its powers, as enumerated in Chapter 120, section 12 of the Laws of Massachusetts, insofar as they concern children under confinement.

D. A representative of the Youth Service Board Facility shall be present at all hearings before the Court.

### 3. Right to Counsel.

The child shall have right to counsel at all hearings before the juvenile court and the Court for the Disposition of Juvenile Cases.

*Comment:* This subsection is spelled out in detail in order to define clearly the powers of the dispositions body. In its division between the permissible disposition of cases of delinquency and those of waywardness, the subsection is consistent with the philosophy that "behavior circumstances" should set limits on what kind of treatment may be administered.

The power of the administrative agency to determine whether or not the child is to be at liberty or not, is circumscribed. As has already been stated in another connection, it cannot, without consulting the court, change a child's status from that of liberty to that of confinement.

The divestment of the Youth Service Board of its powers to change freely the status of a child from liberty to confinement is compensated for by the participation of clinicians in the body determining disposition. Therefore, the need to change the status of offenders should not occur too frequently. When it does occur, the Youth Service Board representative will have to go before the court to obtain an order changing the status of the child. This procedure, while allowing the Board flexibility, protects the child from unnecessary infringements on his liberty.