

Winter 1961

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### Recommended Citation

Robert G. Caldwell, Juvenile Court: Its Development and Some Major Problems, 51 J. Crim. L. Criminology & Police Sci. 493 (1960-1961)

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The Journal of  
**CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE**

VOL 51

JANUARY-FEBRUARY 1961

NO. 3

**THE JUVENILE COURT: ITS DEVELOPMENT AND SOME  
MAJOR PROBLEMS**

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In this article, Professor Caldwell reviews the history and characteristics of the juvenile court, noting the important trends and significant variations that have marked the court's development. In addition, he presents and assesses the principal criticisms which have been leveled at the court's philosophy and operation. Concluding with several proposals concerning the future of the court, Professor Caldwell calls for a reconsideration of certain basic questions, including these: (1) To what extent should the court subordinate its potential as a moral agency in order to serve as a treatment center? (2) To what extent should the court embrace not only judicial functions but social service functions as well? (3) How far ought the court go in denying traditional legal safeguards to the juveniles and their parents in order to maintain an informal procedure and atmosphere and protect the juvenile from being marked as a criminal?

The author prepared this article at the special request of the Board of Editors in commemoration of the Journal's fifty years of publication.—EDITOR.

On July 1, 1899, the first juvenile court in the world<sup>1</sup> began its legal existence in Chicago, Illinois.<sup>2</sup> This event has been widely acclaimed as a revolutionary advance in the treatment of delinquent and neglected children and as the beginning of a new era in the cooperation of law, science, and social work in the field of child welfare. In fact, according to some writers, it foreshadows

the time when all offenders, both juvenile and adult, will be treated individually through scientific and case work processes instead of punished by the methods of criminal law.<sup>3</sup>

#### LEGAL ROOTS OF THE COURT

The juvenile court owes a great deal to American ingenuity and enterprise, but it also has legal roots that can be traced back to principles that are deeply embedded in English jurisprudence. These principles are to be found in the differential treatment which was given to children by the English courts through the application of common law and equity doctrines for the protection of innocence and dependency.

One of the legal roots of the juvenile court is the principle of equity or chancery that originated because of the rigidity of the common law and its

<sup>1</sup> There is some difference of opinion as to whether the first juvenile court was established in the United States. It is said, for example, that children's courts were introduced by ministerial order in South Australia in 1889, and later legalized under a state act in 1895, but it is generally agreed that the United States should be given credit for having the first real juvenile court. There is also some dispute as to whether Chicago, Illinois, or Denver, Colorado, had the first juvenile court in the United States, but preference is generally given to Chicago, since the law approved in Colorado on April 12, 1899, was essentially a truancy law although it did contain some of the features of a juvenile court law. See LOU, *JUVENILE COURTS IN THE UNITED STATES* 13-23 (1927); Lindsey, *Colorado's Contribution to the Juvenile Court, THE CHILD, THE CLINIC, AND THE COURT* 274-89 (Addams ed. 1925); CLARKE, *SOCIAL LEGISLATION* 375-77 (1957).

<sup>2</sup> For easy reference to the first juvenile court act, see 2 ABBOTT, *THE CHILD AND THE STATE* 392-401 (1938).

<sup>3</sup> LOU, *op. cit. supra* note 1, at 2; Pound, *The Juvenile Court and the Law*, YEARBOOK, 1944, 1-22 (Nat'l Prob. Ass'n, 1945); Chute, *Fifty Years of the Juvenile Court*, YEARBOOK, 1949, 1-20 (Nat'l Prob. & Parole Ass'n, 1950); Winnet, *Fifty Years of the Juvenile Court: An Evaluation*, 36 A.B.A.J. 363-66 (1950).

failure to provide adequate remedies in deserving cases. Eventually the chancellor, who was the head of England's judicial system, was held responsible for giving greater flexibility to the law in such cases and for balancing the interests of litigants in a more equitable manner as measured by the merits of the individual case. Since equity was thus dispensed by the Council of Chancery, the terms "equity" and "chancery" came to be used interchangeably. Through this system of equity the king acted as *parens patriae*, or as "father of his country," in exercising his power of guardianship over the persons and property of minors, who were considered wards of the state and as such entitled to special protection. Although originally equity was used chiefly to protect dependent or neglected children who had property interests, its action prefigured the protective intervention of the state through the instrumentality of the juvenile court in cases of delinquency.

The other legal root of the juvenile court is the presumption of innocence thrown about children by the common law. According to its doctrines a child under the age of seven is conclusively presumed incapable of entertaining criminal intent and therefore of committing a crime. Between the ages of seven and fourteen, a child is presumed to be incapable of committing a crime, but the presumption may be rebutted by showing that the offender has enough intelligence to know the nature of his act. After the age of fourteen, children, like adults, are presumed to be responsible for their actions. Thus the creation of the juvenile court involved the extension of the principle that children below a certain age cannot be held criminally responsible—a principle that has a long history in the common law.<sup>4</sup>

#### HISTORICAL BACKGROUND OF THE COURT

In America, where English jurisprudence was introduced by the early colonists, such tendencies as the increase in the complexity of social relationships, the growth of humanitarianism, and the rise of the social sciences contributed to the expansion of the area in which the child received differential treatment by law.<sup>5</sup> Thus in order to

<sup>4</sup> LOU, *op. cit. supra* note 1, at 1-12; CLARKE, *op. cit. supra* note 1, at 372-74; SUSSMAN, LAW OF JUVENILE DELINQUENCY 15, 16 (1959); POUND, *op. cit. supra* note 3, at 4-8. See also Pound, *The Rise of Socialized Criminal Justice*, YEARBOOK, 1942, 1-22 (Nat'l Prob. Ass'n, 1942).

<sup>5</sup> CALDWELL, CRIMINOLOGY 360 (1956).

protect children from confinement in jails and prisons, institutions for juvenile offenders were opened in New York in 1825, in Boston in 1826, and in Philadelphia in 1828. Gradually such institutions were constructed in other parts of the country. The foster-home movement, originating in New York in 1853 with the establishment of the Children's Aid Society, which specialized in the placement of destitute and deserted children, soon spread to other states. Chicago as early as 1861 provided for a commission to hear and determine petty cases of boys from 6 to 17. Suffolk County (Boston) in 1870 and New York in 1877 instituted separate hearings for children, and then in 1892 New York created separate dockets and records as well as separate trials for juveniles under 16. By the enactment of a statute in 1869, Massachusetts stipulated that an agent of the State Board of Charities should attend the trials of children, protect their interests, and make recommendations regarding them to the judge. Between 1878 and 1898 Massachusetts established a state-wide system of probation and thus initiated a movement that eventually carried this method of correction into every state in the United States. The years of the nineteenth century also saw the enactment of laws for the regulation of child labor, the development of special services for handicapped children, and the growth of public education.<sup>6</sup>

As this brief summary of some of the important changes in the field of child welfare indicates, there was a growing acceptance of public responsibility for the protection and care of children, but as yet there was no legal machinery by which juvenile offenders could be handled, not as criminals according to the regular procedure of the criminal court, but as wards of the state who were in need of special care, protection, and treatment. Meanwhile, however, Chicago welfare and civic organizations, notably the Chicago Woman's Club and the Catholic Visitation and Aid Society, were setting the stage for the appearance of exactly this kind of machinery. As a result of their persistent agitation, a spirited campaign was begun for the establishment of a juvenile court,

<sup>6</sup> Chute, *op. cit. supra* note 3, at 2, 3; SUSSMAN, *op. cit. supra* note 4, at 11-14; TEETERS & REINEMANN, THE CHALLENGE OF DELINQUENCY 282-86 (1950); TAPPAN, COMPARATIVE SURVEY OF JUVENILE DELINQUENCY (Part I, North America) 14-16 (United Nations Department of Economics and Social Affairs, 1958); BLOCK & FLYNN, DELINQUENCY: THE JUVENILE OFFENDER IN AMERICA TODAY 307-12 (1956).

and under the leadership of such organizations as the State Board of Charities and the Chicago Bar Association, this campaign was eventually successful in creating the world's first juvenile court.<sup>7</sup>

An examination of the historical background of this court shows that many varied influences helped to produce the climate in which it had its origin. In fact, its establishment may well be considered a logical and exceedingly important development in a much broader movement for the expansion of the specialized treatment given to children in an increasingly complex society. Although the idea of the juvenile court combined the already existing elements of institutional segregation, probation supervision, foster-home placement, separate judicial hearings, and an approach that emphasized the rehabilitation of the juvenile offender, even so, as Tappan explains, it did constitute a significant achievement in judicial integration by providing for a more systematic and independent handling of children's cases.<sup>8</sup>

#### THE FIRST JUVENILE COURT

The Juvenile Court of Cook County, the first of its kind in the world, was established in Chicago by a state law approved on July 1, 1899. This law, entitled "An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children," provided for the establishment of a juvenile court in all counties with a population of over 500,000, but since only Cook County had a population of that size, it alone received such a court. In other counties circuit and county courts were to handle cases arising under the law. The juvenile court was given jurisdiction over children under the age of 16 years who were adjudged to be dependent, neglected, or delinquent, and it was to have a special judge (chosen by the circuit court judges from among their number at such times as they should determine), a separate court room, separate records, and an informal procedure, which meant that such important parts of the criminal court trial as the indictment, pleadings, and jury (unless the jury was demanded by an interested party or ordered by the judge) were to be eliminated. A summons, unless it proved to be

ineffectual, was to be used instead of a warrant in all cases, and the court was given authority to appoint probation officers, who were to serve without compensation. The juvenile court act was to be construed liberally so that the care, custody, and the discipline of the child should approximate as nearly as possible that which should be given by his parents.<sup>9</sup>

If one bears in mind the following facts about the first juvenile court law, it may help him to acquire a better perspective of the juvenile court movement in the United States:

1. The first court was not to be a new or independent tribunal but merely a special jurisdiction in the circuit court.

2. The juvenile court was to be a special court and not an administrative agency. As Dean Pound has said, "It was set up as a court of equity, with the administrative functions incidental to equity jurisdiction, not as a criminal court, and not, as might have happened later, as an administrative agency with incidental adjudicating functions."<sup>10</sup>

3. The law did not stipulate that juvenile delinquents should be "treated" and not punished. It merely provided that the child should receive approximately the same care, custody, and discipline that his parents should give to him.<sup>11</sup>

4. A juvenile delinquent was simply defined as "any child under the age of 16 years who violates any law of this State or any city or village ordinance."<sup>12</sup>

5. In all trials under the law any interested party might demand, or the judge might order, a jury of six to try the case.<sup>13</sup>

In effect, then, the first juvenile court law established the status of delinquency as "something less than crime."<sup>14</sup> In doing this it made two fundamental changes in the handling of juvenile offenders that are especially noteworthy. First, it raised the age below which a child could not be a criminal from seven to sixteen and made a child who was alleged to be delinquent subject to the jurisdiction of the juvenile court. Secondly, it placed the operation of the court under equity or chancery jurisdiction and thereby extended the application of the principle of guardianship, which

<sup>7</sup> Lathrop, *The Background of the Juvenile Court in Illinois*, and Hurley, *Origin of the Illinois Juvenile Court Law*, *THE CHILD, THE CLINIC, AND THE COURT* 290-97, 320-30 (Addams ed. 1925); 2 ABBOTT, *op. cit. supra* note 2, at 330, 331; Chute, *op. cit. supra* note 3, at 3, 4; LOU, *op. cit. supra* note 1, at 20, 21; SUSSMAN, *op. cit. supra* note 4, at 13, 14.

<sup>8</sup> TAPPAN, *op. cit. supra* note 6, at 14, 15.

<sup>9</sup> 2 ABBOTT, *op. cit. supra* note 2, at 392-401.

<sup>10</sup> POUND, *op. cit. supra* note 3, at 5.

<sup>11</sup> 2 ABBOTT, *op. cit. supra* note 2, at 400, 401.

<sup>12</sup> *Id.* at 393.

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

<sup>14</sup> TAPPAN, *op. cit. supra* note 6, at 14.

had been used to protect neglected and dependent children, to all children, including juvenile delinquents, who were in need of protection by the state. These two changes, in modified form, remain as essential characteristics of all juvenile court legislation.<sup>15</sup>

#### TRENDS IN THE JUVENILE COURT MOVEMENT

*Geographical Expansion.* After Illinois had taken the initiative, other states soon followed her example and established juvenile courts. In fact, within ten years twenty states and the District of Columbia enacted juvenile court laws. By 1920 all except three states had done so, and in 1945, when Wyoming took action, the list of states having juvenile court laws was finally complete. Today all states, the District of Columbia,<sup>16</sup> and Puerto Rico have some kind of juvenile court legislation,<sup>17</sup> and the movement has had considerable success in other countries.<sup>18</sup>

*Jurisdictional Extension.* While the juvenile court movement was spreading, the jurisdiction of the court itself was being extended. In general, the definition of juvenile delinquency was broadened, and the types of nondelinquency cases (such as those involving illegitimacy, mental and physical defectives, etc.) under the jurisdiction of the court were increased. Furthermore, the tendency was to raise the upper age level of the children subject to the authority of the court from 16 to 17 or 18, and for some cases in a few states, to 21. In addition, the juvenile court was given jurisdiction over adults in certain cases involving children—for example, in cases in which an adult had contributed to the delinquency of a juvenile.<sup>19</sup>

<sup>15</sup> CALDWELL, *op. cit. supra* note 5, at 360, 361.

<sup>16</sup> There are no federal juvenile courts. Children under 18 who violate a federal law not punishable by death or life imprisonment may be transferred to a state juvenile court or proceeded against as juvenile delinquents in a federal district court. SUSSMAN, *op. cit. supra* note 4, at 76.

<sup>17</sup> SUSSMAN, *op. cit. supra* note 4, at 15, 65-76; CALDWELL, *op. cit. supra* note 5, at 361.

<sup>18</sup> See SMITH, *JUVENILE COURT LAWS IN FOREIGN COUNTRIES* (U. S. Children's Bureau Publication No. 328, Washington, D. C.: U. S. Government Printing Office, 1951); CLARKE, *op. cit. supra* note 1, at 377-83; INT'L COM. OF THE HOWARD LEAGUE FOR PENAL REFORM, *LAWLESS YOUTH: A CHALLENGE TO THE NEW EUROPE* (London: George Allen and Unwin, Ltd., 1947); WATSON, *BRITISH JUVENILE COURTS* (London: Longmans, Green and Co., 1948); Henriques, *Children's Courts in England*, 37 J. CRIM. L. & C. 295 (1946); Sellin, *Sweden's Substitute of the Juvenile Court*, 261 ANNALS 137 (Jan. 1949); Pihlblad, *The Juvenile Offender in Norway*, 46 J. CRIM. L., C. & P.S. 500 (1955).

<sup>19</sup> CALDWELL, *op. cit. supra* note 5, at 361.

*Increase in Court's Influence.* Then, too, after the creation of the juvenile court, it began to exert an increasing influence on the principles and methods used in the adjustment of many other family problems and in the handling of adolescent and adult offenders. For example, some cities, like Cincinnati, Philadelphia, and Wilmington, Delaware, established special courts, called family or domestic relations courts, with jurisdiction over cases involving all kinds of family problems, such as delinquency, dependency, neglect, adoption, illegitimacy, nonsupport, and crimes by members of a family against one another. In effect, the operation of these courts means that many of the principles and methods of the juvenile court are being applied to an increasing variety of social problems. Moreover, special courts for adolescents have been set up in certain cities, like Chicago, Philadelphia, and New York, in which an attempt is being made to combine some of the principles and methods of the juvenile court with those of the criminal court in proceedings against youthful offenders who are above the juvenile court age but below the age of twenty-one. A much more systematic and inclusive program for dealing with this type of offender is represented by the various youth authorities that have been created in such states as California and Minnesota. In their emphasis upon individual diagnosis and treatment these programs, too, reflect to some extent the spreading influence of the philosophy of the juvenile court. Finally, it may be said that this influence can also be seen in the use of presentence investigation and probation in the cases of adult offenders in our criminal courts.<sup>20</sup>

The increasing complexity of American society has contributed significantly to these trends in the juvenile court movement. Such interrelated factors as industrialization, urbanization, the un-

<sup>20</sup>No attempt will be made in this article to discuss the development of family and adolescent courts and the various youth authorities. However, a considerable bibliography about these subjects now exists. See for example, TEETERS & REINEMANN, *op. cit. supra* note 6, at 344-83, 762-65; BLOCK & FLYNN, *op. cit. supra* note 6, at 459-507; CALDWELL, *op. cit. supra* note 5, at 378-85; TAPPAN, *DELINQUENT GIRLS IN COURT* (1947); BECK, *FIVE STATES* (1951); LUDWIG, *YOUTH AND THE LAW* (1955); Tappan, *The Young Adult Offender under the American Law Institute's Model Penal Code*, 19 FED. PROB. 20 (Dec. 1955); Youngdahl, *Give the Youth Corrections Program a Chance*, 20 FED. PROB. 3 (March, 1956); Tappan, *Young Adults under the Youth Authority*, 47 J. CRIM. L., C. & P.S. 629 (1957); Melson, *Delinquency and the Family Court*, 23 FED. PROB. 13 (Mar. 1959).

precedented movement of populations, the amazing utilization of natural resources, the rapid accumulation of inventions and discoveries, and the acceleration of transportation and communication have tended to undermine the family and the neighborhood and, forcing our communities to find additional sources of social control, have given considerable impetus to the establishment of juvenile courts and sent into them an increasing number and variety of cases. In the meantime, other influences have more specifically affected the philosophy and methods of the juvenile court. Thus social workers, under the aggressive leadership of such organizations as the United States Children's Bureau, the National Probation and Parole Association, and various other associations now united into the National Association of Social Workers, have joined with psychiatrists in stressing the importance of case work training and treatment services in the operation of the juvenile court, and the efforts of a comparatively few well-organized, big-city juvenile courts at conventions and conferences have served to focus and intensify these influences. The resulting tendency has been to picture juvenile delinquency as symptomatic of some underlying emotional condition, which must be diagnosed by means of the concepts and techniques of psychiatry, psychology, and social work, and for which treatment, not punishment, must be administered through the efforts of a team of psychiatrists, psychologists, and social workers. Surprisingly enough, the legal profession, also, has contributed to this tendency through important court decisions regarding the juvenile court that have stressed its social service functions and minimized its legal characteristics. The total effect of all this has been to place increasing emphasis on the treatment of the individual and to give decreasing attention to his legal rights and the security of the community. Thus the balance between rights, on the one hand, and duties and responsibilities, on the other, which every court must seek to maintain, has been upset as the juvenile court has been pushed more and more into the role of a social work agency.

#### CHARACTERISTICS OF THE JUVENILE COURT

Although the juvenile court has had an uneven development and has manifested a great diversity in its methods and procedures, nevertheless, certain characteristics have appeared which are

considered essential in its operation. As early as 1920, Evelina Belden of the United States Children's Bureau listed the following as the essential characteristics of the juvenile court: (1) separate hearings for children's cases, (2) informal or chancery procedure, (3) regular probation service, (4) separate detention of children, (5) special court and probation records, and (6) provision for mental and physical examinations.<sup>21</sup> Of course, many so-called juvenile courts have few of these characteristics, and others possess them in varying degrees. However, in the opinion of many observers, if a court does not have them, it cannot claim to be a juvenile court.

A few years ago, Katharine Lenroot, then chief of the United States Children's Bureau, presented a summary of standards for the juvenile court which indicate the characteristics that many now believe the court should have. These standards call for the following:

1. Broad jurisdiction in cases of children under eighteen years of age requiring court action or protection because of their acts or circumstances.

2. A judge chosen because of his special qualifications for juvenile court work, with legal training, acquaintance with social problems, and understanding of child psychology.

3. Informal court procedure and private hearings.

4. Detention kept at a minimum, outside of jails and police stations and as far as possible in private boarding homes.

5. A well-qualified probation staff, with limitation of case loads, and definite plans for constructive work in each case.

6. Availability of resources for individual and specialized treatment such as medical, psychological, and psychiatric services, foster family and institutional care, and recreational services and facilities.

7. State supervision of probation work.

8. An adequate record system, providing for both legal and social records and for the safeguarding of these records from indiscriminate public inspection.<sup>22</sup>

These standards form much of the basis of the *Standard Juvenile Court Act*, the latest edition of

<sup>21</sup> BELDIN, COURTS IN THE UNITED STATES HEARING CHILDREN'S CASES 7-10 (U. S. Children's Bureau Publication No. 65, Washington, D. C.: U. S. Government Printing Office, 1920).

<sup>22</sup> Lenroot, *The Juvenile Court Today*, 13 FED. PROB. 10 (Sept. 1949).

which was issued by the National Probation and Parole Association in 1959,<sup>23</sup> and to a great extent they have been incorporated in the *Standards for Specialized Courts Dealing with Children*, which was prepared by the United States Children's Bureau in 1954.<sup>24</sup>

#### THE PRESENT STATUS OF THE COURT

In the United States the juvenile court varies greatly from one jurisdiction to another, manifesting at present all stages of its complex development. And it should not be overlooked that its philosophy, structure, and functions are still in the process of evolution. Rarely is the court a distinct and highly specialized one, and in the more rural counties it is largely of a rudimentary nature. Usually it is part of a court with more general jurisdiction, the judges holding sessions for juveniles at regular or irregular intervals.<sup>25</sup> Since there is this great diversity, no simple description of the juvenile courts of the United States can be given. However, it is possible to indicate in general terms their present status with respect to certain important features.

*Philosophy of the Court.* In the words of Tappan, the juvenile court and its methods are "by no means a mere direct borrowing from chancery and common law," but, on the contrary, have emerged largely from "the philosophy and techniques of modern case-work and, more particularly, the ideologies of the child-welfare movement concerning the rights of children and the devices that should be used to meet their needs." In fact, "the operations of the specialized juvenile court reflect the contemporary impact of casework oriented probation officers, administrative social agency procedures, and other non-legal (if not distinctly anti-legal) forces far more than they

<sup>23</sup> A STANDARD JUVENILE COURT ACT (rev. ed.; New York: Nat'l Prob. and Parole Ass'n, 1959). This act is the product of the efforts of the National Probation and Parole Association and the United States Children's Bureau together with others who want to promote greater uniformity and higher standards in the juvenile courts of America. Its various editions have been published in the hope that they might be used as models in the preparation and amendment of state laws. For the provisions of the 1959 edition of this act and comments on its various sections see 5 NAT'L PROB. AND PAROLE ASS'N JOUR. 323-91 (1959).

<sup>24</sup> STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN (U. S. Children's Bureau Publication No. 346, Washington, D. C.: U. S. Government Printing Office, 1954).

<sup>25</sup> TAPPAN, *op. cit. supra* note 6, at 15, 24.

do the influence of either chancery or common law, modern or ancient."<sup>26</sup>

Although generalizations about anything as complex as the juvenile court are always hazardous, it appears that the following are important elements in the court's philosophy:

(1) *The Superior Rights of the State.* The state is the "higher or ultimate parent" of all the children within its borders. The rights of the child's own parents are always subject to the control of the state when in the opinion of the court the best interests of the child demand it. If the state has to intervene in the case of any child, it exercises its power of guardianship over the child and provides him with the protection, care, and guidance that he needs. This is an adaptation of the ancient doctrine of *parens patriae*, by which all English children were made wards of the Crown.<sup>27</sup>

(2) *Individualization of Justice.* A basic principle in the philosophy of the juvenile court is the recognition that people are different and that each must be considered in the light of his own background and personality. The court, therefore, must adapt its actions to the circumstances of the individual case by ascertaining the needs and potentialities of the child and coordinating the knowledge and skills of law, science, and social work for the promotion of his welfare. This means the balancing of interests in an equitable manner by administrative rather than adversary methods within a flexible procedure such as that provided by chancery. Dean Pound has called this "individualized justice."<sup>28</sup>

(3) *The Status of Delinquency.* The state should try to protect the child from the harmful brand of criminality. In order to accomplish this the law

<sup>26</sup> *Id.* at 9. There is a difference of opinion regarding the extent to which the principles of equity and the criminal law contributed to the origin of the juvenile court. See Mack, *Legal Problems Involved in the Establishment of the Juvenile Court*, THE DELINQUENT CHILD AND THE HOME 181 (Breckinridge & Abbott ed. 1912); POUND, INTERPRETATIONS OF LEGAL HISTORY 134, 135 (1923); S. & E. T. Glueck, *Historical and Legislative Background of the Juvenile Court*, THE PROBLEM OF DELINQUENCY 258, 259 (Glueck ed. 1959); LOU, *op. cit. supra* note 1, at 2-7.

<sup>27</sup> Mack, *op. cit. supra* note 26, at 181-87; LOU, *op. cit. supra* note 1, at 2-9; Schramm, *Philosophy of the Juvenile Court*, 261 ANNALS 101 (June 1949).

<sup>28</sup> Pound, *The Future of Socialized Justice*, YEARBOOK, 1946, 6 (Nat'l Prob. Ass'n 1947); Schramm, *op. cit. supra* note 27, at 103, 104; LOU, *op. cit. supra* note 1, at 2-5; BLOCK & FLYNN, *op. cit. supra* note 6, at 317, 318; STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN. *op. cit. supra* note 24, at 1, 2.

created the status of delinquency, which is something less than crime and is variously defined in different states. However, this still does not satisfy some students of the court who advocate the removal of even the "delinquency tag," which they claim is just another harmful label, and assert that delinquency acts have no significance except as symptoms of conditions that demand investigation by the court.<sup>29</sup>

(4) *Noncriminal Procedure.* By means of an informal procedure the juvenile court functions in such a way as to give primary consideration to the interests of the child. In general the courts have held that the procedure of the juvenile court is not criminal in nature since its purpose is not to convict the child of a crime, but to protect, aid, and guide him, and that, therefore, it is not unconstitutional if it denies him certain rights which are guaranteed to an adult in a criminal trial.<sup>30</sup>

(5) *Remedial, Preventive, and Nonpunitive Purpose.* The action of the juvenile court is to save the child and to prevent him from becoming a criminal. It seeks to provide him with about the same care and protection that his parents should give him. Although, as we have explained, the first juvenile court law did not stipulate that the child should not be punished, many subsequent court decisions and most of the literature on the subject insist that the substitution of treatment for punishment is an essential element in the philosophy of the court.<sup>31</sup>

*Geographical Area Served by the Court.* The county is the geographical area served by most juvenile courts in the United States, but for some the jurisdictional unit is the town, the city, the borough, or the judicial district. Since the county is the conventional unit of state government and of many private organizations, its use as the

jurisdictional area for the court has obvious advantages in the coordination of the court's work with that of other agencies interested in child welfare. However, most counties cannot afford to maintain courts at modern standards, and even if they could, the volume of work would not justify the necessary expense.<sup>32</sup> In some states this problem could be solved by making the area served by the juvenile court the same as the judicial district served by other courts in the state and thereby enable one juvenile court to take care of the cases of two or more counties. Utah, Connecticut, and Rhode Island have pushed beyond this and, establishing state systems of juvenile courts, have created larger jurisdictional districts within their borders.<sup>33</sup>

*Types of Juvenile Courts.* There are about 3000 juvenile courts in the United States, although actually many are only slightly different from criminal courts. In referring to the inferior quality of many juvenile courts, Lowell Carr has said, "In well over 2000 counties in the United States nobody has ever seen a well-staffed, modern juvenile court in action."<sup>34</sup> Even New York City, a wealthy community with relatively high welfare standards, has fallen considerably short of the ideal level of performance set for the juvenile court.<sup>35</sup>

Juvenile courts in the United States may be classified into these three types: (1) "designated courts," such as municipal, county, district, and circuit courts which have been selected or designated to hear children's cases and while so functioning are called juvenile courts; (2) independent and separate courts whose administration is entirely divorced from other courts; and (3) coordinated courts, which are coordinated with other special courts such as domestic relations or family courts. The great majority of the juvenile courts are "designated courts," and even many of the separate and independent ones are presided over by judges from other courts so that their

<sup>29</sup> Mack, *op. cit. supra* note 26, at 189; SUSSMAN, *op. cit. supra* note 4, at 20; TAPPAN, *op. cit. supra* note 6, at 14, 15.

<sup>30</sup> CLARKE, *op. cit. supra* note 1, at 410; LOU, *op. cit. supra* note 1, at 10. For a convenient digest of some of the important cases regarding the constitutionality of the juvenile court, see THE PROBLEM OF DELINQUENCY 334-506 (Glueck ed. 1959).

<sup>31</sup> Mack, *op. cit. supra* note 26, at 190; INT'L COM. OF THE HOWARD LEAGUE FOR PENAL REFORM, *op. cit. supra* note 18, at 9-21; STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN, *op. cit. supra* note 24, at 1; Chute, *op. cit. supra* note 3, at 1; LOU, *op. cit. supra* note 1, at 7; Hurley, *op. cit. supra* note 7, at 328; CLARKE, *op. cit. supra* note 1, at 410-15.

<sup>32</sup> Carr, *Most Courts Have To Be Substandard*, 13 FED. PROB. 29 (Sept. 1949).

<sup>33</sup> SUSSMAN, *op. cit. supra* note 4, at 25; Larson, *Utah's State-Wide Juvenile Court Plan*, 13 FED. PROB. 15 (June, 1949).

<sup>34</sup> Carr, *op. cit. supra* note 32, at 31. See also Dobbs, *Realism and the Juvenile Court*, 31 FOCUS 104 (July, 1952).

<sup>35</sup> TAPPAN, *op. cit. supra* note 6, at 15, 16. For a careful study of New York's juvenile courts, see KAHN, *A COURT FOR CHILDREN* (1953).



separateness and independence may be more nominal than real.<sup>36</sup>

*Jurisdiction of the Court.* All juvenile courts have jurisdiction in delinquency cases, and almost all of them have jurisdiction in cases of dependency and neglect as well. In addition, some have authority to handle other problems such as feeble-mindedness, adoptions, illegitimacy, and guardianship. Although the definition of delinquency varies from state to state, in most states the violation of a state law or municipal ordinance (an act which in the case of an adult would be a crime) is the main category of delinquency. Yet in all states delinquency is more than this, including such items as habitual truancy, incorrigibility, waywardness, and association with immoral persons.

Juvenile court laws differ also with respect to the age of the children over whom the court has jurisdiction. The laws of most states do not specify any lower age limit, merely providing that children under a certain age are subject to the jurisdiction of the court. Most states make eighteen the upper age limit; some set it at sixteen or seventeen; and a few put it as high as twenty-one. In some states the upper age limit differs according to the sex of the child. Many states permit the juvenile court, after it has once acquired jurisdiction over the child, to retain jurisdiction until he has reached twenty-one.

In many states the juvenile court does not have exclusive jurisdiction over all delinquency cases but has only concurrent jurisdiction with the criminal court, delinquency cases being handled by either court. Often, however, such concurrent jurisdiction is limited by law to cases of children above a specified age or to cases involving certain offenses or to certain counties. Furthermore, in many states certain offenses, for example, murder, manslaughter and rape, are entirely excluded from the jurisdiction of the juvenile court, and in these states children charged with such offenses are tried in the criminal court.

The jurisdiction of the court is affected in still another way by the provision in most states that it may exercise authority over adults in certain cases involving children. Thus in many states the juvenile court may require a parent to contribute to the support of his child, or it may try

adults charged with contributing to the delinquency, neglect, or dependency of a child.<sup>37</sup>

*The Judge and the Probation Officer.* Although the effectiveness of the juvenile court depends to a very large degree upon the efficiency of its personnel, relatively few courts have staffs that are especially qualified for their work. In most juvenile courts the judges have been appointed or elected on the basis of their general qualifications for judicial work, and they divide their time between adult and juvenile cases. Only in a very few courts has the judge been selected because he has some specialized training or experience in the handling of children's problems. Often, however, a referee is appointed to assist the judge in the performance of his juvenile court duties. Although considerable progress has been made in improving the quality of probation in some parts of the country, the great majority of courts are still without the services of a sufficient number of well-qualified and adequately paid workers.<sup>38</sup>

*Procedure of the Court.* Police action initiates the procedure in most delinquency cases, but often it begins with action by a parent or other private person or with a referral by a social agency or another court. In recent years, about 50 percent of the delinquency cases have been handled informally or unofficially, that is, without an official record or hearing, but with the judge or someone else, such as a probation officer, taking the necessary steps to dispose of the case. The types of cases that are handled in this way vary greatly from court to court, but the tendency seems to be to reserve official hearings for older children and those brought before the court on serious charges.

When a case is handled officially, a petition (which is merely a statement containing important facts of the case, such as the names and addresses of the child and his parents or guardian and the cause of the action) is filed in the court, and the case is then scheduled for a hearing. If the child is not being held in detention and his presence is required, a summons ordering him to appear, or in some cases a warrant for his arrest, is issued.

<sup>37</sup> SUSSMAN, *op. cit. supra* note 4, at 18, 19, 26-28.

<sup>38</sup> Lenroot, *op. cit. supra* note 22, at 14, 15; Killian, *The Juvenile Court as an Institution*, 261 ANNALS 92 (Jan. 1949); TEETERS & REINEMANN, *op. cit. supra* note 6, at 313-19; TAPPAN, *op. cit. supra* note 6, at 13; Davis, *The Iowa Juvenile Court Judge*, 42 J. Crim. L. & P.S. 338 (1951).

<sup>36</sup> TEETERS & REINEMANN, *op. cit. supra* note 6, at 295-97.

In most jurisdictions a prehearing investigation is conducted so that both the hearing and the disposition of the case can be based on the facts so obtained. Some jurisdictions, however, require that the child must be adjudged delinquent before his case is investigated. In these jurisdictions the hearing is held first, and if the child is found to be delinquent, the court is adjourned, the investigation is completed, and the information is then used by the court in the disposition of the case. Unfortunately, inadequacy of personnel and excessive case loads often prevent the investigation from being more than a superficial inquiry.

Juvenile court hearings are usually less formal than trials in the criminal court, but the degree of informality varies considerably throughout the country. Privacy, however, characterizes most hearings; only persons who are definitely connected with the case are permitted to attend. Seldom is a prosecuting attorney or a counsel for the defense present during the hearing, and although jury trials are permitted in many jurisdictions, usually juries are not used. However, the right of appeal in one form or another is available in most jurisdictions.<sup>39</sup>

*Disposition of Cases.* After the hearing, the case may be disposed of in one of several ways. The case may be dismissed; a court order may be issued stipulating that the child be examined and treated by a physician, psychiatrist, or psychologist or placed in a hospital or some other institution or agency for whatever care may be necessary; the child may be placed on probation or in a foster home; or he may be committed to a correctional institution. According to the United States Children's Bureau, almost half of all delinquency cases disposed of by the juvenile courts during 1957 were dismissed, adjusted, or held open without further hearing, and about one-fourth were placed on probation.<sup>40</sup>

*Cooperation with Other Agencies.* The success of the juvenile court depends to a great extent upon the work of other agencies, such as the police, schools, clinics, churches, welfare organizations, and correctional institutions, and it in turn can

<sup>39</sup> SUSSMAN, *op. cit. supra* note 4, at 29-37; NAT'L CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON JUVENILE COURT LAWS 6, 7 (Washington, D. C.: U. S. Government Printing Office, 1947).

<sup>40</sup> SUSSMAN, *op. cit. supra* note 4, at 45-50; UNITED STATES CHILDREN'S BUREAU, JUVENILE COURT STATISTICS, 1957, 2 (Statistical Series, No. 52, 1959).

significantly contribute to the success of these other agencies. It should be obvious, then, that the court should play an important part in promoting greater coordination among the law-enforcement and welfare agencies of the community and in the establishment of a delinquency prevention program. Some courts have coordinated their work very closely with other agencies, but many have done very little to foster this relationship.<sup>41</sup>

#### CRITICISMS OF THE JUVENILE COURT

Ever since the juvenile court was established over sixty years ago, it has been severely criticized by both its friends and its enemies.<sup>42</sup> At first much of the criticism questioned the constitutionality of the court, but as one judicial decision after another supported the court, the attack against it shifted toward its modification or improvement. In fact, today few critics would have the temerity to advocate the abolition of the court, and it seems, as Dr. William Healy has said, that "the juvenile court is here to stay."<sup>43</sup> However, since so many well informed persons have joined in the criticism, several of the important questions raised by them require our examination.

1. *Has the juvenile court dealt effectively with juvenile delinquency?* This question is so complex that perhaps any discussion of it can succeed in only raising other perplexing questions. It is true that various statistical attempts have been made to evaluate the effectiveness of the juvenile court. Several of these show that from about one-fourth to over two-fifths of older juveniles and adult offenders have previously been dealt with by the court.<sup>44</sup> Another study, made by the Gluecks, revealed that 88.2 percent of the juveniles included in their analysis again became delinquent within five years after the end of their official treatment by the juvenile court of Boston, and

<sup>41</sup> Schramm, *op. cit. supra* note 27, at 104, 105; NAT'L CONFERENCE ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON JUVENILE COURT ADMINISTRATION 18-20 (Washington, D. C.: U. S. Government Printing Office, 1947); BRECKINRIDGE, SOCIAL WORK AND THE COURTS 231-40 (1934).

<sup>42</sup> Much of the discussion of the criticisms of the juvenile court presented here is an adaptation of that contained in the author's text, CRIMINOLOGY, published by the Ronald Press Co. in 1956. See pp. 370-78.

<sup>43</sup> Healy, *Thoughts about Juvenile Courts*, 13 FED. PROB. 18, 19 (Sept. 1949).

<sup>44</sup> SUTHERLAND, PRINCIPLES OF CRIMINOLOGY 316, 317 (1947).

that 70 percent of them were actually convicted of serious offenses.<sup>45</sup>

However, studies such as these have not been conclusive. Not only have comparatively few courts been carefully studied, but also the findings of the investigations have not been consistent. Besides, there are all kinds of juvenile courts, many being such in name only, and an evaluation of one is hardly a fair appraisal of others. Then, too, the cases covered by the investigations often do not constitute a representative sample of those coming before the court, and the recidivism noted is only that of which there is a record. Actually no one knows how much undetected delinquency and crime there is among those who have been previously handled by the court. Furthermore, the court is only one part of a very complex culture, with which it is inextricably and functionally related, and no one, therefore, knows to what extent influences other than (and perhaps even in spite of) that of the court caused the improvement in those who subsequently did not become recidivistic.

But suppose it could be proved that the juvenile court has failed, should delinquents be tried in the criminal court? Certainly no informed person would be in favor of this. Is the solution, then, "bigger and better" juvenile courts? To this question no simple answer can be given. Most counties have too few people to justify, others too little wealth to afford, better juvenile courts. Besides, large segments of our population are already restive under the burden of heavy taxation. Should taxpayers be asked to contribute more for the improvement of our juvenile courts? Should some of the funds that are now being spent for other purposes, for example, for the operation of public schools, be diverted to the development of the juvenile courts?<sup>46</sup>

But even the "biggest" and the "best" court could do little to change the conditions that are causing crime and delinquency. No systematic science of human behavior exists, and the knowledge that we do have requires the support of public opinion if it is to be used most effectively. Furthermore, how much judicial regulation will a community tolerate? If a community is to preserve certain rights and privileges, how much regulation

should it tolerate? Obviously, questions of this kind can be considered only as they are related to other values in our culture.

Still other questions must be raised. What is meant by a "better" or the "best" juvenile court? What criteria should be used to measure the quality of a court? There is considerable disagreement regarding these questions. Some claim that the provisions of the *Standard Juvenile Court Act* should be used as the criteria for evaluating a juvenile court, but others would refuse to endorse such a proposal. However, in spite of the fact that so many difficulties interfere with attempts to evaluate the effectiveness of the juvenile court, certain steps can be taken now to improve the quality of its work. Some of these will be mentioned later in the discussion of the problems of the court.

2. *What types of cases should be handled by the juvenile court?* Like the first question, this one is too broad to be examined thoroughly in an article of this kind, but reference to a few specific situations will indicate why it has been raised.

After the juvenile court was established it became the one agency in most communities which could provide some kind of social service for the increasing number of children who needed care and protection, and so it tended to assume responsibility for a growing volume of cases. Moreover, this tendency was accelerated by the passage of laws that stipulated that certain types of children were to be cared for at public expense. In general the court did not resist this tendency, and in some communities court officials actually encouraged it so that they might gain in power and influence. And once the court had assumed responsibility for certain cases, it tended to keep this responsibility even after the need for doing so had disappeared. As a result, the juvenile court has become a catchall for a great variety of cases requiring public attention.

As educational facilities and child welfare services have developed throughout the country, there has developed an increasing demand for the transfer of certain cases from the jurisdiction of the court to that of the schools and welfare agencies. However, it is difficult to determine just what criteria could be employed in dividing the cases between the court and other agencies. Some who speak for the welfare agencies say that the juvenile court could exercise functions that are primarily judicial and pertain to law-enforce-

<sup>45</sup> S. & E. GLUECK, *ONE THOUSAND JUVENILE DELINQUENTS* 167 (1934). For opposing views regarding this study, see Sheldon Glueck's and Harry L. Eastman's articles in *YEARBOOK*, 1934, 63-103 (*Nat'l Prob. Ass'n*, 1934).

<sup>46</sup> CALDWELL, *op. cit. supra* note 5, at 371.

ment, while the welfare agencies could exercise functions that are primarily administrative.<sup>47</sup> But this suggested standard is not sufficiently precise to indicate exactly where the line is to be drawn. Undoubtedly it would mean the transfer of many neglect and dependency cases to welfare agencies, but opponents have stressed the complexity of the situation. Neglect, dependency, and delinquency are often interrelated, and delinquency cases involve much administrative work. Besides, many neglect and dependency cases require the exercise of authority supported by the law. In many instances only the court has sufficient authority to enforce decisions and to protect the rights of children and parents, and depriving the court of its administrative duties would unnecessarily complicate the handling of every delinquency case.

The suggestion that certain cases, such as truancy and incorrigibility, be transferred from the juvenile court to the school has likewise stirred up a controversy. Those in favor of the transfer have argued that schools are in close contact with children and their families, have a great deal of information about them, and are already doing a considerable amount of work with them through the efforts of visiting teachers, counselors, clinicians, and parent-teachers' associations; that children should not be exposed to court experience, with its stigmatizing and traumatic implications, except as a last resort; and that the schools would develop more effective programs for the prevention of delinquency if they were not permitted to shift so many of their responsibilities to the court. On the other side of the controversy, many have contended that the personnel of the schools are already overworked and underpaid and should be relieved of some of their responsibilities instead of being given more; that schools do not have enough authority to handle many of the cases; that the stigma of a law-enforcement agency would be attached to the schools if they had to handle

delinquency cases; and that many children are not attending school or are in private and parochial schools and thus beyond the authority of public educational officials.

Actually there is much merit in the arguments on both sides of this controversy. Some of the work of the court can be safely transferred to educational and welfare agencies, but many administrative duties must be retained by it. Just where the line will be drawn will probably have to be worked out on a local basis through the judicious balancing of needs and resources and the development of greater cooperation among courts, schools, and welfare agencies.<sup>48</sup>

Apart from this, however, other critics of the court have insisted that older juveniles who commit serious crimes, such as murder, manslaughter, rape, and robbery, should not be dealt with in the juvenile court but should be tried in the criminal court. In fact, many states have laws giving the criminal court either original or exclusive jurisdiction over such cases. Opponents of this policy have branded it as reactionary and in violation of the philosophy of the court. According to this philosophy, they explain, the court should have exclusive jurisdiction over all children requiring judicial action, should guide and protect those who come before it, and should not stigmatize or punish them or hold them up as examples for others.

In reply to this argument, those who believe that older juveniles charged with serious offenses should be tried in the criminal court contend: (1) that the upper age limit of children, especially those charged with serious crimes, over whom the juvenile court should have jurisdiction is a debatable subject; (2) that although the juvenile court uses words like "guidance," "care," and "protection," the fact is that it, too, resorts to punitive methods in handling children; (3) that the public, regardless of what the philosophy of the court may be, looks upon the court as a place

<sup>47</sup> See, for example, Nutt, *The Responsibility of the Juvenile Court and the Public Welfare Agency in the Child Welfare Program*, YEARBOOK, 1947, 206 (Nat'l Prob. and Parole Ass'n, 1948). See also, Nutt, *The Future of the Juvenile Court as a Case Work Agency*, YEARBOOK, 1939, 157 (Nat'l Prob. Ass'n, 1939); Nutt, *Juvenile Court Function*, YEARBOOK, 1942, 94 (Nat'l Prob. Ass'n, 1942); Geiser, *The Court as a Case Work Agency*, YEARBOOK, 1942, 105 (Nat'l Prob. Ass'n, 1942); Mead, *The Juvenile Court and Child Welfare Services*, YEARBOOK, 1947, 224 (Nat'l Prob. and Parole Ass'n, 1948).

<sup>48</sup> Eliot, *Case Work Functions and Judicial Functions: Their Coordination*, YEARBOOK, 1937, 252 (Nat'l Prob. Ass'n, 1937); Pound, *op. cit. supra* note 3, at 14, 15; Schramm, *The Juvenile Court Idea*, 13 FED. PROB. 21 (Sept., 1949); CONTROLLING JUVENILE DELINQUENCY (U. S. Children's Bureau Publication No. 301, Washington, D. C.; U. S. Government Printing Office, 1943); Hyatt, *The School, the Juvenile Court, and the Social Attitude*, YEARBOOK, 1931, 49 (Nat'l Prob. Ass'n, 1931); Harper, *School and Court Relationships Concerning Behavior Problems*, YEARBOOK, 1932 and 1933, 163 (Nat'l Prob. Ass'n, 1933); Taber, *The Judge and the Schools*, YEARBOOK, 1944, 41 (Nat'l Prob. Ass'n, 1945).

where violators of the law are sentenced and punished; (4) that one measure of the support that courts and the law receive is the intensity of the feeling that law-abiding citizens have against law violators; and (5) that failure to punish serious violators not only encourages others to commit crimes but also discourages law-abiding citizens from supporting law-enforcement agencies.

In this controversy, also, there is much to be said in favor of both sides. Certainly no court can exist apart from the community in which it functions and to which it must look for support, and to hold that the court should try to ignore the deep feelings and strong desires of the people whose values it is called upon to enforce is a highly unrealistic and arbitrary attitude. It is partly because of this fact that the *Standard Juvenile Court Act* includes a provision that juveniles sixteen years of age or older charged with serious crimes may be tried in the criminal court if the juvenile court deems this to be in the best interest of the children and the public.<sup>49</sup> However, if the case of a youthful serious offender is heard in a juvenile court, then this should be done according to clearly defined rules of procedure, and he should be protected from arbitrary action and abuse of authority just as the adult felon is in the criminal court.

There has also been some recognition of the limitations of the juvenile court for dealing with older and more serious offenders in states where the pressure has been to raise the upper age limit of the court and to give it exclusive jurisdiction over all children. For example, in California where the court had exclusive jurisdiction to the age of eighteen and concurrent jurisdiction to the age of twenty-one, a special study commission in 1949 recommended that the juvenile court judge should be required to decide specifically whether a juvenile over sixteen charged with a crime could be better handled by the juvenile court or by a criminal court.<sup>50</sup>

3. *Are the rights of the child and his parents protected in the juvenile court?* As the juvenile court has developed it has become increasingly dominated by the ideas and methods of child welfare and case work authorities. Contributing to this tendency have been the occupancy of many juvenile court positions by persons who have been trained in social work or who are in agreement

with its principles, the very infrequent presence of attorneys in the court, the inadequate legal training of many of its judges and referees, the general exclusion of the public and the press from its hearings, and the rarity of appeals from its decisions. As a result of this departure of the juvenile court from some of the most basic concepts of justice in our culture, there has appeared a growing controversy over whether the rights of the child and his parents are being endangered by the increase in the authority and administrative functions of the court.<sup>51</sup> In this controversy, criticism has been directed especially against (1) broad definitions of delinquency, (2) unofficial handling of cases, (3) prehearing investigations, and (4) extreme informality of procedure.<sup>52</sup>

In general these aspects of the court have been defended by the claim that they facilitate preventive and nonpunitive action by the court. Thus advocates of a broad definition of delinquency contend that it permits the court to act in situations which warrant its intervention without becoming entangled in technical disputes over the meaning of terms. In conformance with this point of view, some states have broadened the definition of delinquency by substituting a few general categories of delinquency for a number of specifically defined acts. The laws of some other states and the *Standard Juvenile Court Act*<sup>53</sup> have gone beyond this and do not define delinquency at all. Instead, without using the term delinquency, they merely describe certain situations and classifications of children over which the court has jurisdiction. This avoidance of the

<sup>51</sup> *Id.* at 2. Administrative functions of the court include such activities as investigation of cases, planning for the care of children, supervision of probationers, and foster-home placement. These are to be contrasted with the court's judicial functions, which refer to such matters as adoption and guardianship and decisions regarding custody and commitment.

<sup>52</sup> See TAPPAN, *JUVENILE DELINQUENCY* 195-223 (1949); Schramm, *op. cit. supra* note 48, at 19-23; Pound, *op. cit. supra* note 4, at 1-22; Waite, *How Far Can Court Procedure Be Socialized without Impairing Individual Rights?* 12 J. CRIM. L. & C. 339 (1921); Rubin, *Protecting The Child in the Juvenile Court*, 43 J. CRIM. L., C.&P.S. 425 (1952); KAHN, *op. cit. supra* note 35, at 95-135; Nunberg, *Problems in the Structure of the Juvenile Court*, 48 J. CRIM. L., C.&P.S. 500 (1958); Herman, *Scope and Purposes of Juvenile Court Jurisdiction*, 48 J. CRIM. L., C.&P.S. 590 (1958); Diana, *The Rights of Juvenile Delinquents: An Appraisal of Juvenile Court Procedure*, 47 J. CRIM. L., C.&P.S. 561 (1957); Allen, *The Borderland of the Criminal Law: Problems of "Socializing" Criminal Justice*, 32 SOC. SERV. REV. 107 (1958).

<sup>53</sup> A STANDARD JUVENILE COURT ACT, *op. cit. supra* note 23, at 8.

<sup>49</sup> A STANDARD JUVENILE COURT ACT, *op. cit. supra* note 23, §13.

<sup>50</sup> TAPPAN, *op. cit. supra* note 6, at 8.

"delinquency tag," it is argued, enables the court to help and protect the child without stigmatizing him in any way. The unofficial handling of cases has been justified on the grounds that official court action is not needed in many situations, that it enables the court to assist children who, although not yet within its jurisdiction, are in danger of becoming so, and that the official label of delinquency should be avoided as much as possible. Prehearing investigations should be used, it is asserted, because they provide important facts for the hearings and thus allow the hearings themselves to be utilized as part of the treatment process. Extreme informality of procedure is favored by those who believe that only by minimizing all rules can the philosophy of the juvenile court gain full expression. They maintain that rules are not important anyway since the state is not bringing action against a defendant, as it would in a criminal trial, but is rather acting as a guardian of the child, and that therefore we need not be concerned about protecting the child from possible harm.

However, a number of important points have been stressed on the other side of the controversy, and an examination will now be made of some of these. Broad definitions of delinquency and the unofficial handling of cases, it is contended, channel an increasing number of children not having serious problems into courts which, by general admission, are overloaded, understaffed, and inadequately equipped for preventive work. Handling by these courts not only gives such children the appearance of being seriously delinquent in the eyes of the public, and thus actually defeats the alleged purpose of this practice, but also exposes them to the danger of being treated as if they were serious delinquents or, what is worse, of being indiscriminately committed to correctional institutions when perhaps they are suffering only from neglect or dependency. Moreover, even when the court can engage in extensive preventive work, this activity may discourage the development of other agencies better organized and equipped to do this work.

Besides, it is argued, where is the child who does not have a problem? With little effort hundreds of children who have problems can be found in any community and brought into court. And if the court is not vigilant, it may be used by parents as a weapon against children in situations where the parents themselves are to blame. Thus the

family is given a crutch at a time when it should be encouraged to strengthen itself through its own efforts—and other agencies can assist the family to do this far more effectively than can the court.

Furthermore, it is asserted, the situation is not improved by the use of the prehearing investigation. Too often this tends to become the hearing itself—a process during which the facts are gathered and the decision regarding disposition is reached even before the court has determined whether the child is delinquent. Indeed, his mere presence in court may be interpreted as presumptive evidence of his delinquency, and this may be easily inflated to conclusive evidence if some personal problem in his history can be discovered and dilated upon by the probation officer. If the hearing has been conducted with an extremely informal procedure, the child will find that the decision can be overturned only with great difficulty. If, as its advocates claim, the prehearing investigation is not to be used to acquire evidence against the child, then there is no sound reason why the investigation should not be postponed until after the child has been adjudged delinquent. Here another point needs to be stressed. The court cannot be certain that a problem child will become a delinquent child, and besides, its own ineptitude may convert a problem into delinquency.

Moreover, it is urged, the rights of the child and his parents are especially endangered if the case is handled with extreme informality, because then there is no attorney to guard against the abuse of authority, no set of rules to ward off hearsay and gossip, no way of breaking through the secrecy of the hearing, and often no appeal from the court's decision. The child and his parents have even less protection if the case is handled unofficially, for in such a procedure very few legal checks limit the court's discretion, and redress at law becomes difficult since no official record exists upon which the child can plead his case. The situation can be worse if broad definitions of delinquency are used, because these leave the term vague and fuzzy, and under them all children tend to be pooled indiscriminately as wards of the state without an opportunity to marshal evidence against a specific charge. If these children are then processed through unofficial handling or informal hearings from which many, if not most, of the limitations of due process have

been removed, they are largely at the court's discretion, which too frequently may be only the expression of the judge's prejudice. How ironical it is that this situation is justified in the name of equity, especially since the court of equity has always had its rules and formality for the same reason that rules and formality should be present in the juvenile court, that is, to check the abuse of power and to protect the rights of the individual.

Finally, it is protested, euphemistic terminology, such as "hearing" instead of "trial," or "disposition" instead of "sentence," should not be allowed to conceal the fact that the nature of the entire procedure in the juvenile court may be little different from that of a criminal court. In fact, it may be worse, for it may abandon the principles upon which justice is based under the guise of promoting a superior justice. It is understandable, therefore, why Carr has said, "No man is wise enough or good enough to be trusted with arbitrary power—even the arbitrary power to prejudge the case of some delinquent child in the juvenile court."<sup>54</sup>

These, then, are some of the points that have been stressed by those who are opposed to broad definitions of delinquency, unofficial handling of cases, prehearing investigations, and extreme informality of procedure. That they are impressive ones is evidenced by the fact that an increasing number of thoughtful writers have demanded greater protection for the child and his parents in the juvenile court. And Tappan, in dismay over the seriousness of the situation, has asked, "Who is to save the child from his saviors?"<sup>55</sup>

This analysis of the criticisms of the juvenile court clearly shows that we are dealing with questions of emphasis and fine distinctions in a process which involves the balancing of the best interests of both the individual and society. It also indicates some of the social, philosophical, legal, and operational problems that confront the juvenile court. In the consideration of these problems, we shall be able to maintain a better sense of proportion if we remember these facts: (1) Although the general tendency has been toward the operation of the juvenile court as an administrative agency with great emphasis on social service functions, this type of operation has not been achieved to any great extent except in the comparatively few highly-organized, inde-

pendent courts in our large cities; but, it must be added, these courts have been exerting a disproportionate influence in the establishment of standards and goals in the juvenile court movement. (2) Many courts, instead of taking action themselves, are already referring a large number of cases to schools and welfare agencies. (3) Many courts that have few of the essential characteristics of the juvenile court are nevertheless effectively handling cases because of the wisdom of the judge and the support of interested citizens. (4) Many courts, regardless of what can be done in their behalf, will remain "substandard courts" even when measured by the most moderate criteria—a fact which becomes increasingly apparent since these courts have shown little improvement despite the unprecedented prosperity of this country. (5) Many communities will have to continue to send their neglect and dependency cases and some of their truancy cases to the juvenile court simply because they do not now have, and may never have, any other agency able to assume this responsibility. (6) The majority of the alleged delinquents appearing in the juvenile court do not contest the allegations brought against them and are actually delinquent, although, of course, this does not mean that these children are not entitled to all necessary legal protection.

Since the juvenile court in the United States is a functioning part of an increasingly complex culture, it must share in all the social problems, including delinquency, that this type of society tends to produce. To the extent that the juvenile court operates effectively to rehabilitate juvenile offenders and to deter others from becoming delinquent, it functions as an agency of prevention and contributes somewhat to social reorganization. But obviously it can remove only some of the conditions that are causing the delinquency with which it is dealing, and it has virtually no control over industrialization, urbanization, and other such powerful forces that are transforming and disorganizing American society—including the juvenile court itself—and piling up social problems faster than we can handle them.

Although there has been considerable debate about how the juvenile courts can improve their staffs, lower their case loads, and reduce their other operational problems, most students of the court agree that certain changes can be made now to accomplish these objectives. Many com-

<sup>54</sup> CARR, *DELINQUENCY CONTROL* 240 (1950).

<sup>55</sup> TAPPAN, *op. cit.* *supra* note 52, at 208.

munities can and should spend more money on their courts, and others should use their present expenditures more effectively. Many courts should have judges who are better trained in both the law and the social sciences, larger jurisdictional areas, and a stronger position in their state's judicial system.<sup>56</sup> All courts should closely coordinate their operations with those of welfare and law-enforcement agencies. And everywhere the public should be told more about the court and encouraged to support its work.

It is recognized, of course, that all the problems of the court are interrelated and interacting and that many of them are beyond its control. However, there are major problems of a philosophical and legal nature with which the court can deal directly and which are contributing materially to its operational difficulties. The juvenile court, like all courts, must try to balance the interests of the individual and society in the adjudication of its cases. In the United States social relationships are being torn apart by conflicts, and agencies of social control subverted by divisive influences. The ensuing confusion is blurring the sense of right and wrong, diluting basic loyalties, endangering many cherished rights, and sweeping away duties and responsibilities essential for the security of the community. The juvenile court can help to reduce this confusion if its philosophical and legal foundations are strengthened. The proposals advanced below are designed to do this by casting the court in a more realistic role, protecting the rights and clarifying the duties of those coming before it, and enabling it to effect a better balance between the rights of the child and his parents and the security of the community.

#### PROPOSALS REGARDING THE COURT'S PHILOSOPHY AND LEGAL BASIS

*Philosophy of the Court.* The roots of most of the controversy over the juvenile court are to be found in the dual role that it plays in attempting to function both as a court of law and as a social service agency. In fact, many writers on the subject believe that the basic problem confronting

the court involves a decision as to which of its two functions, the legal or the social service, is to predominate.<sup>57</sup>

The juvenile court was established as a court, albeit a special one, and in structure, function, and procedure it remains essentially a court.<sup>58</sup> Therefore efforts should be made to strengthen its true, or judicial, nature and to retain and develop only that part of its social service function that is necessary for the administration of individualized justice.

As a court, even in the administration of this type of justice, it must not only express the values of the society in which it functions but also reinforce these values. Dean Pound, a friend of the juvenile court, clearly recognized this when he said:

"If we work out a system of making penal treatment fit the crime, we risk losing sight of the individual delinquent in pursuit of system. If we look only at the individual delinquent, we risk losing system in pursuit of individual treatment and lose objectivity which is demanded when we are constraining the individual by the force of politically organized society. It comes down to the reconciling of the general security with the individual life, which as I have said, is a fundamental problem of the whole legal order."<sup>59</sup>

In other words, no court, not even the juvenile court, can be just a therapeutic agency. It is, and must be, a moral agency as well. And when a child is adjudicated a delinquent by the court, he is, and of necessity must be, stigmatized as a violator of the moral values of his society. This is what the people want and expect of any agency such as a court which is established to protect and strengthen their values. In fact, the court must act in this way if it is to promote the rehabilitation of the child. If it did otherwise, it would flaunt the very values to which the child must learn to adjust and for which he must develop a loyalty. This is not to ignore the fact

<sup>57</sup> See for example, Baker, *The Functions of the Juvenile Court*, 24 Case and Com. 449 (Nov. 1917); Long, *The Juvenile Court and Community Resources*, YEARBOOK, 1940, 24 (Nat'l Prob. Ass'n, 1940); Eastman & Cousins, *Juvenile Court and Welfare Agency: Their Division of Function*, 38 A.B.A.J. 575-77, 623 (1952); Nunberg, *op. cit. supra* note 52, at 500.

<sup>58</sup> Both legal scholars and social welfare authorities have recognized this fact. See, for example, Pound, *op. cit. supra* note 3, at 5; Nutt, *op. cit. supra* note 47, at 212.

<sup>59</sup> Pound, *op. cit. supra* note 4, at 15.

<sup>56</sup> The way in which the position of the juvenile court in the state's judicial system is to be strengthened will be affected by the surrounding social and political conditions. According to the Standard Juvenile Court Act, if the court is not part of a state system of juvenile courts, it should be set up within the existing judicial structure as a separate division at the level of the highest court of general trial jurisdiction. SUSSMAN, *op. cit. supra* note 4, at vii. See also Rubin, *State Juvenile Court: A New Standard*, 30 FOCUS 103 (July, 1951).



that values change and that considerable confusion regarding moral standards exists in the United States. The point is that the court cannot avoid its responsibility as a moral agency. It must do what it can to reduce this confusion. It must devote itself to the interests of the delinquent and respect his rights, but it must also take its stand with the community and insist that he learn to discharge his duties and assume his responsibilities as a member of society, thus giving encouragement and support to lawabiding citizens and helping to maintain the public sense of justice. The way in which the court does this will, of course, depend upon the facts of the case as they are revealed and evaluated in the process of "individualized justice."

Furthermore, in the disposition of the delinquency case the court forces the child to submit to its authority by placing him on probation, by committing him to a correctional institution, or by dealing with him in some other similar way. And by no stretch of the imagination can what actually happens to the child during this process be called merely treatment. Thus the action of the court involves both community condemnation of antisocial conduct and the imposition of unpleasant consequences by political authority—the two essential elements of punishment.<sup>60</sup> It is, therefore, highly unrealistic to say that the court treats, but does not punish, the child. What it really does is to emphasize treatment in a correctional process which includes, and of necessity must include, both treatment and punishment.

This conclusion tends to be supported by several other facts. There is no systematic science of human behavior, and the concepts and techniques of treatment are still largely inadequate. Moreover, as Dunham has explained, neither the child nor his parents are inclined to view his behavior as symptomatic of a sickness that needs treatment, but instead "are committed to the view that the court is there for justice and for punishing a person who has done something that is wrong."<sup>61</sup> Besides, the stipulation that the court should act as a parent in protecting and caring for the child does not rule out the necessity and desirability of punishment. Here again Dean Pound had a clear understanding of the nature of the court. "Juvenile

probation," he said, "is not a mode of penal treatment nor a substitute for punishment. It is a mode of exercising the authority of the state as *parens patriae*. It may be conceded that the parent may have at times to administer what common law called reasonable correction to the child. No doubt there is often a corrective element in judicial treatment of juvenile offenders. But the spirit is that of the parent rather than that of the ruler."<sup>62</sup>

This modification of the philosophy of the juvenile court is superior to that generally accepted in several important respects. First, it clearly recognizes the necessity of balancing the interests of the delinquent and the community in the process of "individualized justice." Second, it provides a practical basis of action which can be accepted without conflict by both law-enforcement officers and court personnel. Third, by honestly admitting that the court must not only treat but also punish, this modified philosophy dispels the cloud of hypocrisy now enveloping the juvenile court, and gives it a position in society where it can be respected by all law-abiding citizens. Finally, by revealing the true nature of the court, this modified philosophy brings the possibility of the abuse of power out into the open where it can be clearly understood and effectively controlled.

*Jurisdiction of the Court.* The jurisdiction of the juvenile court should be limited to (1) delinquency cases, and (2) those dependency and neglect cases in which a decision must be made affecting the legal status of the child, his custody, or the rights of his parents. All other dependency and neglect cases should be handled by administrative agencies without court action, and truancy should be dealt with by the schools.<sup>63</sup> This proposal is made in recognition of the fact that the juvenile court is essentially a court and not an administrative agency, and that, therefore, it suffers from inherent limitations in welfare work. Furthermore, the considerable increase in the number of welfare agencies and public services during the past few decades not only makes this transfer of responsibilities possible but also leaves the court with a greater capacity to handle the growing volume of delinquency cases.

<sup>62</sup> Pound, *op. cit. supra* note 4, at 16.

<sup>60</sup> Hart, *The Aims of the Criminal Law*, 23 LAW AND CONTEMP. PROB. 401 (1958).

<sup>61</sup> Dunham, *The Juvenile Court: Contradictory Orientations in Processing Offenders*, 23 LAW AND CONTEMP. PROB. 520 (1958).

<sup>63</sup> This is essentially the proposal made by SOL RUBIN in his book, *CRIME AND JUVENILE DELINQUENCY* 60-63 (1958). See also Nutt, *op. cit. supra* note 47, at 213; Hanna, *Dependency and Neglect Cases in the Juvenile Court*, YEARBOOK, 1941, 136 (Nat'l Prob. Ass'n, 1941).

The court should deal with children who can be shown to be delinquent by the application of specific, sharply defined criteria, and not with children who have problems according to the opinions of teachers, clergymen, and social workers—however sincere these beliefs may be. Juvenile delinquency, therefore, should be defined as the violation of a state law or city or town ordinance by a child whose act if committed by an adult would be a crime. This simple, specific definition eliminates all the references to such vague conditions as "being ungovernable" or "growing up in idleness" which clutter up our statutes on delinquency and invite loose interpretation and abuse of authority. Thus it will prevent the juvenile court from moving into areas where other agencies can render more effective service, and at the same time it will protect children and their parents from indiscriminate handling by the court without regard for the cause of action in the case.

The juvenile court should have original and exclusive jurisdiction over all children between the ages of seven and eighteen who are alleged to be delinquent, except in cases where a child is charged with a minor traffic offense or where a child of sixteen or over is charged with a serious felony, such as murder, armed robbery, or rape. In the cases involving minor traffic offenses, there is no need of special handling. They can be adequately dealt with by a police or traffic court, and thus the burden on the juvenile court can be reduced.<sup>64</sup> In the cases where children sixteen or over are charged with serious felonies the criminal court should have original jurisdiction but with authority to transfer such cases to the juvenile court if in the opinion of the judge this would be in the best interests of both the child and the community. The criminal court should have the authority to act first in these cases, because it, more than the juvenile court, is held responsible for the security of society and is organized and administered especially for this purpose. As Ludwig has emphasized, "Making treatment of all criminal behavior of young offenders, regardless of its seriousness or triviality, depend solely upon the individual need of the offender for rehabilitation may well lead our impressionable young community to conclude that fracturing someone's skull is no more immoral than fracturing his

bedroom window."<sup>65</sup> This point is particularly important since a large and increasing percentage of serious crimes are being committed by young people. Thus the handling of a large percentage of these young offenders in the juvenile court—a court which is not primarily concerned with the public sense of justice and security—will make the criminal law increasingly inoperative and cause additional confusion regarding our code of morality and the importance of vigorous law enforcement. This in turn may contribute to the growth of indifference and cynicism regarding the duties and responsibilities of citizenship and to an already alarming trend toward the centralization of power in the hands of a few who, under the guise of science and treatment, often seek to impose their own values upon an increasingly disorganized people. To make matters worse, what is hailed as humanitarianism is frequently just public indifference regarding the way in which delinquents and criminals are handled.

The case of an adult charged with an offense against a child should be handled not in the juvenile court but in the criminal court. This will place these cases in a court better designed to assure protection of all fundamental rights in a criminal proceeding<sup>66</sup> and will help the public to understand that the juvenile court is a special court for children and not in any sense of the word a criminal court.

*Procedure of the Court.* Through its intake procedure the juvenile court should carefully screen all cases brought to its attention so as to eliminate those that do not require the attention of the court or any other agency and to insure the referral of as many other cases as possible to agencies that are better equipped than the court to provide curative and preventive treatment. The cases that are accepted by the court should receive official handling. If a case is not in need of official handling, it should not be handled by the court at all, but should be referred to some other agency. Too often unofficial handling is merely the haphazard, ineffective disposition of cases by understaffed, overloaded courts, which is justified under the guise of avoiding the "delinquency tag."<sup>67</sup>

<sup>65</sup> LUDWIG, *op. cit. supra* note 20, at 311.

<sup>66</sup> *Id.* at 151.

<sup>67</sup> Tappan, *Unofficial Delinquency*, 29 NEB. L. REV. 547 (1950); Herman, *op. cit. supra* note 52, at 596; SUSSMAN, *op. cit. supra* note 4, at 29, 30; RUBIN, *op. cit. supra* note 63, at 66-68; STANDARDS FOR SPECIAL-

<sup>64</sup> See STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN, *op. cit. supra* note 24, at 29, 30.

The court should establish the fact of delinquency in a case before an investigation of the case is made. Prehearing investigations are not only an encroachment upon the rights of the child who has not yet been proved delinquent, but are costly in time, energy, and money in the cases of those who are discharged as not delinquent.

The procedure during the hearing should be informal but based upon sufficient rules to insure justice and consistency. The child and his parents should be fully informed regarding their legal rights. These should include the right to be represented by counsel, to have a clear explanation of the allegations against the child, to cross-examine hostile witnesses, to summon witnesses in the child's defense, to have protection against irrelevant and hearsay testimony and compulsory self-incrimination, to have a hearing before a jury if this is desired, to have proof of delinquency by at least a preponderance of convincing evidence, and to have access to a higher court for the purpose of an appeal. In addition, every juvenile before the court should be given the opportunity to have a public hearing if he so desires, and if he prefers a private one, members of the press should be admitted to the hearing but should not be permitted to publish the name of the child or any identifying data regarding him without the permission of the court. Their mere presence, however, should exert a wholesome and restraining influence on the court's operations.<sup>68</sup>

*Disposition of Cases.* The disposition of the case should be made by the judge after a study of the investigation report and consultation with the probation officer and other specialists who have worked on the case. However, simply because the judge must turn to specialists for assistance in his disposition of the case does not mean that it might be better to have the disposition made entirely by a panel of "experts." In the first place this incorrectly suggests that there is a type of knowledge that the judge does not have, cannot understand, and can never acquire. This not only grossly exaggerates the amount of knowledge we now have regarding human behavior but also greatly underestimates the intelligence and skill of the majority of our judges. If a particular judge

is so incompetent or stubborn that he cannot, or will not, benefit by having the assistance of specialists, then the solution lies in his removal from office, not in unnecessarily complicating the machinery of the court by the creation of a panel of "experts." And if the judge is so overworked that he does not have time to analyze carefully the facts contained in the investigation report and to consult with specialists about the various aspects of the case, then the answer is to be found in the appointment of more judges. There is no short cut or cheap way to "individualized justice," and the mere existence of a juvenile court does not insure its achievement.

Furthermore, the facts of adjudication and disposition cannot be examined as if they existed apart from each other. These facts exist in the life of a single child who must be seen in his entirety—developing from what he was to what he will be. They must be assembled creatively in the mind of one person who has the authority to balance the interests of both the individual and the community and who is held responsible by the community for this function. The facts of a case can be seen in a variety of ways, depending upon the relation of the examiner to the facts, and the mind is easily misled into seeing only one side of this picture. The judge who decides that a child is a delinquent should make this decision to intervene in the child's life not only in full knowledge of what will happen to the child as he is subjected to the available social services but also in deep awareness of being held responsible for the entire procedure. Only in such a process of sober deliberation can the knowledge of the facts be creatively transformed into a wise decision. The division of authority among the members of a panel fragmentizes the facts of the case and dilutes the sense of responsibility regarding the interests of the child and his relationship to the community.<sup>69</sup>

These proposals are not advanced with any desire to convert the juvenile court into a criminal court but rather with full recognition of both its great potentialities and its inherent limitations. The juvenile court must be seen as a court—not as an administrative agency, but as a court—designed to protect the child from the traumatic experiences of a criminal trial and to provide more

IZED COURTS DEALING WITH CHILDREN, *op. cit. supra* note 24, at 43-45.

<sup>68</sup> Tappan, *Treatment without Trial*, 24 *Social Forces* 308 (March 1946); Cappello, *Due Process in the Juvenile Court*, 2 *CATHOLIC U. L. REV.* 90 (1952); Geis, *Publicity and Juvenile Court Proceedings*, 30 *ROCKY MT. L. REV.* 101 (1958).

<sup>69</sup> KAHN, *op. cit. supra* note 35, at 277; Hall, *The Youth Correction Authority Act, Progress or Menace?* 28 *A.B.A.J.* 317 (1942); FRANK, *COURTS ON TRIAL* ch. 4 (1949).

flexible machinery for balancing the interests of the child and the community in the light of the most recent knowledge regarding human behavior. It is not, however, especially equipped to do welfare work, and so wherever possible it should be divested of jurisdiction over cases in which the child is simply in need of aid. On the other hand, it is a court, and its action does necessarily stigmatize the child. Therefore, its jurisdiction and procedure should be governed by simple, specific rules so that while the child is receiving guidance and protection, his rights and the security of the community are not neglected.

The foregoing proposals have sought to strip away those excrescences that have interfered with the expression of the true nature of the juvenile court, but they have left it with all the characteristics which are essential to its functioning and growth. Delinquency as a status different from that of crime, judges carefully selected on the basis of both their legal and social science training and knowledge, separate hearings as informal and private as are consistent with the protection of rights, availability of resources, such as medical, psychological, and psychiatric services, that can be used to make the investigation of cases more effective, regular probation service by

an adequate number of well-trained officers, separate detention of children, special and confidential court and probation records—all these and more remain intact and are given a deeper meaning by a more realistic philosophy.

It is recognized that not all these proposals can immediately be put into effect everywhere. It is believed, however, that they do represent desirable goals toward which all juvenile courts should be directed so that they will become more effective agencies of social control.

But, as Dean Pound wisely counseled, "the law is not equal to the whole task of social control. Delinquency presents a problem far too complex to be dealt with by any single method. Hence in this field cooperation is peculiarly called for and is called for in a very wide field. If a socialized criminal justice is to achieve all that it may, we must be thinking about more than cooperation of judge and probation officer and social worker. These must cooperate, or at least be prepared to cooperate with the community organizer, the social engineer, the progressive educator, the social coordinator, the health officer, the clergyman, and the public-spirited promoter of legislation."<sup>70</sup>

<sup>70</sup> Pound, *op. cit. supra* note 4, at 13, 14.