

A Proposal to Reorient the Juvenile Court Process

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The original concept behind the juvenile or family court was that the court could act as a social agency for the treatment and care of children in danger or trouble.¹ Unfortunately, as many recent studies in New York and other states make clear, the juvenile court has not been able to transfer this ideal into reality.² Since its inception, the court has been denied the necessary staff, operating funds, and auxiliary services and facilities to fulfill its rehabilitative purpose.

Doubtless, if additional funds were made available to juvenile courts and related agencies, the picture would be less bleak. However, lack of funds has been a too easy scapegoat for the court's failure. By lamenting the dearth of money and services, critics of the system have avoided the more complex issue of weaknesses inherent in the structure and process of juvenile courts and the fun-

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1. See, e.g., H. LOU, *JUVENILE COURTS IN THE UNITED STATES* 1-2 (1927).

2. See, e.g., *JUVENILE JUSTICE CONFOUNDED: PRETENSIONS AND REALITIES OF TREATMENT SERVICES*, COMMITTEE ON MENTAL HEALTH SERVICES, Appellate Division of the First and Second Department (1971); *THE CHALLENGE OF CRIME IN A FREE SOCIETY*, PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE 80 (1967).

damental bankruptcy of existing "rehabilitation" programs to reach the majority of juvenile court clientele.³

Juvenile courts never had the opportunity to fulfill their ideal because of the invalidity of the reformers' underlying assumptions, namely, that vibrant, effective rehabilitative programs to deal with the problems of children independent of the total family unit could be and would be established in a court setting.

Juvenile courts have been held responsible for problems which no court, no matter how generously funded, could deal with. A substantial amount of juvenile misconduct or "delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor or psychiatrist."⁴

Such realities should not cause us to give up on the concept and promise of juvenile courts. The Nation's juvenile courts have succeeded in their overriding purpose—the removal of youth offenses from the criminal court and the removal of most children from adult jails.⁵

There has been a failure to define the limitations of the role of the court, in terms of these vast societal problems.

The juvenile court, in fact any court, cannot be expected to deal with such problems successfully. When a child's misbehavior is caused by the conditions around him, a court ought best recognize its inherent limitations. Community conditions and pressures cannot be altered by a court. A juvenile court judge cannot order the creation of 50,000 new jobs for inner-city youth. He cannot create better housing. He cannot rejuvenate the schools. This is not to say that we as a society should not take cognizance of these problems. It is certainly not to say that children who commit seriously anti-social acts should not be brought

3. See, e.g., JAMES, *CHILDREN IN TROUBLE: A NATIONAL SCANDAL* (1971).

4. *THE CHALLENGE OF CRIME*, *supra* note 2, at 80; see also, F. ALLEN, *THE BORDERLAND OF CRIMINAL JUSTICE* 45 (1964).

Expansion of metropolitan areas, population shifts within urban centers, and proportionately more serious offenses among youth are trends whose intersecting effects are already becoming clear. The juvenile court each year becomes more deeply involved with the unyielding problems of the urban centers. . . . The courts and law enforcement agencies are then dealing as much with a people and a society in crisis as with youth in trouble." [Vinter, *The Constitutional Responsibility of Court-Related Personnel*, in GAULT: *WHAT NOW FOR THE JUVENILE COURT* 119, 123 (Nordin, ed. 1968)]

5. *But see*, *THE CHALLENGE OF CRIME*, *supra* note 2, at 179, reporting that there were over 100,000 juveniles in adult institutions in 1965.

before a court to be dealt with. However, in a situation in which rehabilitation is bound to fail, as it is in too many cases juvenile courts must deal with, we should not blame the juvenile court system as such. A juvenile court is better off concentrating on those problems and those children susceptible to assistance. We should work toward developing a system that takes these inherent limitations into account and directs the limited resources and energies of the juvenile court in the direction that will do the most good.⁶

To abandon the juvenile court concept would be to again relegate our children to the criminal court process. Instead, we must, in Justice Blackmun's words in *McKeiver v. Pennsylvania*, "further experiment and . . . seek in new and different ways the elusive answers to the young."⁷

If the juvenile court concept means anything, it means treating children as children, adolescents as adolescents, and families as families. In broadest considerations, this means that they should not be placed in adult criminal facilities. But on a more sophisticated level it means that these youths must be treated within the context of their total life experience, namely the family and social conditions in which they find themselves. This principle is fundamental to psychiatry, psychology, and social work, disciplines with which the juvenile court is closely allied; yet, it is ignored by the structure and operation of the juvenile court, which places blame on one person and too often prescribes rehabilitation in an individualized vacuum.

A family oriented approach to the understanding of individual adjustment has become increasingly prevalent in the last twenty, and particularly the last ten years. A greater emphasis on working with the family as a unit has resulted.⁸ The family is viewed increasingly as a dynamic entity with a system of defenses and balances. Accordingly, change in one family member must be understood and treated within the framework of its meaning to the other family members.⁹

6. MIDONICK AND BESHAROV, *CHILDREN, PARENTS AND THE COURTS* 165 (1972).

7. 403 U.S. 528, 547 (1971).

8. Jackson and Satir, *A Review of Psychiatric Developments in Family Diagnosis and Therapy* in *EXPLORING THE BASE OF FAMILY THERAPY* 29-51 (Ackerman *et al.*, ed. 1961).

9. Ackerman, *Emergence of Family Psychotherapy on the Present Scene in CONTEMPORARY PSYCHOTHERAPIES*, 228-44 (Stein, ed. 1961).

Jay Haley, *Whither Family Therapy?*, *I FAMILY PROCESS* 69-100 (March 1962).

In doing so, the family's social milieu, cultural framework, and economic situation must also be considered.¹⁰ Psychiatrists and social workers treating the children and youths who pass through juvenile courts have long seen that "antisocial" behavior must be understood in the context of family and social environment.

Quite often an adolescent who is not too seriously disturbed, but who can no longer conform to the demands made upon him by his family, will make a number of abortive attempts to achieve what for him may be positive and constructive goals, only to find that they eventually bring him into court. An adolescent, for instance, may flee from a school situation only after repeated demands have been made upon him in excess of his social, emotional, or intellectual capacities. While truanting he may attempt to get a job, again in violation of society's standards. The fact that he is finally driven to achieve what he wants in an irregular fashion is often the result of a series of factors that reinforce each other, including disturbed parental relationships, the unsatisfactory nature of extra-familial and neighborhood life, and the inadequate facilities within the community and its agencies for meeting his needs.¹¹

The structure of the juvenile court fails to deal with these fundamental dynamics of human behavior. We propose a reorientation of the court so that the situation of the entire family within its community context is considered. Such an approach would lead to the treatment of the source of the problems rather than symptoms manifested in the behavior of one member.

In addition to the broad goal of family preservation, such a proceeding would serve many specific purposes in the juvenile system as well. It would present the family as a unit before the law, encouraging its members to rely upon it for mutual benefit and support. The court would no longer have any need to divide the unit for the purposes of a purely individual focus; parents and children would thus be spared the damage of an adversary relationship in the courtroom. The new proceeding would allow the family itself to assume some responsibility for helping the troubled child; parents and children would participate together in the treatment process.

Finally, the range of dispositional options available to the court would be broadened and made more flexible, eliminating excessive

10. Scherz, *What is Family-Centered Casework?*, 34 *SOCIAL CASEWORK* 343 (Oct. 1953).

11. Peck and Bellsmith, *Treatment of the Delinquent Adolescent*, (1954).

and unproductive use of remand and institutionalization as a major form of juvenile treatment.¹² It would bring within the realm of the court consideration of the family's practical problems which can bear as much responsibility for family strain as the psychological disorders to which the juvenile court currently gives its overriding consideration. Some of these practical issues, including housing, employment, finances and child care, are influences on the family environment over which the parents may have no control and yet, from which the child may suffer adverse effects. The juvenile system has as great responsibility to recognize and deal with these conditions as it does the more personal psychological problems.

Considering the problems of family members together, and at one time, would greatly improve court administration. Family problems which might have resulted in the filing of up to three different petitions, representing three sets of forms and three autonomous proceedings, would be contained in a single petition. For an overburdened court, such efficiencies of operation can not be gainsaid.

Finally, the adoption of a family orientation by the juvenile court would serve to encourage the establishment of family oriented social services. Within our proposed structure the court would only act when such services were available, except in cases where a child's or the community's safety is at stake.

We have discovered over and over that when we attempted to solve treatment problems by defining and isolating small sectors and then by setting up a small shop to treat that type of problem we tend to shuffle patients back and forth between such shops while we try to figure out who is going to handle them. This is enormously wasteful, and by conservative estimates we waste 60 percent of our resources in this shuffling process. The basic goal of community psychiatry is aimed at solving this basic logistical problem. How can treatment resources be coordinated so that patients, many of whom seek any excuse to avoid treatment and change anyway, will not be able to use administrative indecision as grounds for maintaining the status quo? . . . I personally believe that if the juvenile court attempts to solve this problem by subdividing the problems into different categories which it then deploys through a series of treatment agencies, it will fall into precisely the same impasse which we ourselves are now trying to extricate ourselves from in treatment institutions.¹³

12. Sheridan, *Juveniles Who Commit Noncriminal Acts: Why Treat Them in a Correctional System?*, 31 *FED. PROBATION* 28 (March 1967).

13. Watson, *Panel Discussion*, in GAULT, *supra* note 4, at 182-183.

With this perspective, our existing child protection and child welfare system requires radical reorganization. The present time is a propitious one for change. The reorganization of local Departments of Social Services into separate social service and public assistance eligibility units, now in progress, will free large numbers of caseworkers from income maintenance chores, and they will be available to provide services with a real potential of helping children in their families.

A detailed description of the services helpful to families under the multiple stresses of urban life today is beyond the scope of this paper. However, we picture a more systematic range of services offered through community based institutions. One viable model is presented by the Citizen's Committee on Children in *A Dream Deferred* (1971). They outline in general terms a concept of "locally-based general family service social workers. They will work from the neighborhood offices of a reorganized Department of Social Services. And they will be outposted by the Department in schools, settlement houses, health stations, hospitals, housing projects, etc."¹⁴ Families with problems would go to their community based family social worker. Services would be offered to try to prevent placement, but if it were necessary the family social worker would continue to work with the family toward return home of the child. The family social worker would be responsible for case accountability and service integration, the coordination of efforts to help a family.¹⁵

Where a family oriented service proves an effective method of treatment, current expenditures for high cost institutional and foster care can be reduced. Treating the real problems of the child and of his family will serve the best interests of our society as well as of the child.

What will be the role of the juvenile court in relation to such a "family-oriented" service? We propose that a range of treatment services should be available to families prior to coming before the juvenile court. The exceptions would be serious cases of child abuse and neglect where involuntary removal of a child may be necessary

14. *Id.* at 23.

15. *Id.* at 23-24.

or delinquency cases where serious criminality is in question. However, in less severe child abuse, neglect and delinquency situations, and in cases of ungovernability, appearances before the juvenile court should be considered after other services fail, rather than as a first step because no other form of help is available.

The juvenile court should be used with more discrimination. It should be used when it is the most appropriate service available. For many families efforts and funds could be used more productively in other settings. For many families contact with the juvenile court is not a positive, constructive experience. The intake evaluations, all too often duplicated, the questioning by lawyers, the adjournments, and the appearance before the court are frequently upsetting and divisive to a family as well as costly to society. The juvenile court then should be seen as the last resort in a gamut of services to be used only when diagnostically indicated and socially required.

The juvenile courts today provide only a small fraction of the help available to children and families. Many more children and families do not go to court because of help received elsewhere in schools, neighborhood centers, social work agencies, hospital clinics, and psychiatric clinics.

There has been an expansion of welfare service programs apart from the court but of particular significance to its clientele. Except in certain states the court is no longer a major source of public services available to youth in trouble, and it may have little voice in how these services are provided even for cases coming before it.¹⁶

Our proposal would encourage such out-of-court help for those children whose problems have traditionally been shunned by such agencies.

Our view of the juvenile court is grounded on the belief that inappropriate societal intervention is often worse than no help at all. In this way, the juvenile court would accept jurisdiction only when such jurisdiction is likely to help the family involved or when the child's safety or that of the community must be protected.

16. Vinter, *The Constitutional Responsibilities of Court Related Personnel*, in GAULT, *supra* note 4, at 119, and 123-24.

