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Mark H. Moore and Stewart Wakeling

Juvenile Justice: Shoring Up the Foundations

ABSTRACT

America's juvenile justice system is besieged by critics from both ends of the political spectrum—from the Left for its intrusiveness, its unfairness, and its failure to provide needed services and from the Right for its failure to hold offenders accountable and to protect society. The juvenile courts' traditional *parens patriae* premise has been undermined, and the courts' credibility has declined. Its likeliest successors are abolition or "criminalization" of the juvenile court or its subsumption into family courts with broad mandates. The latter is the more promising, perhaps reconceptualized as courts for "bankrupt families," which encompass juvenile crime as merely one of their major subjects.

The signs are everywhere that the mandate for the nation's juvenile courts and juvenile justice systems has been badly eroded. Repeated attacks from all sides of the political spectrum have done the job. The Left has criticized the juvenile court for intruding into matters beyond its proper domain (Krisberg and Austin 1993), for abusing the rights of those who come before it (Feld 1993*a*), and for failing to provide the kind of services that could be counted on to deflect children from future criminal careers (Schwartz 1989). The Right has attacked the court's unwillingness to hold young offenders accountable for their crimes and its failure to make dispositions that could protect the com-

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community from youthful predators in the short as well as the long run (Springer 1986; DiIulio 1995).

These attacks have undermined both political and legal support for the current system. In the political system, ordinary citizens grumble, the media fulminate, policy elites argue among themselves, and legislators propose new legislation to reform the court (Butterfield 1996). Within the legal system, higher courts find reasons to interfere with and transform the operations of the juvenile court (Feld 1993*a*). The net result has been a dramatic shrinkage in the size of the court's discretion and jurisdiction—sure signs of an institution headed toward bankruptcy (Snyder and Sickmund 1995; Butterfield 1996).

To stand tall and cast a long shadow, public enterprises need strong foundations. But public enterprises in democracies are not rooted in earth and concrete. They are, instead, founded on the shifting sands of public aspirations. Their survival, their standing, and ultimately, their effectiveness depend on steady, enthusiastic support for what they do. This, in turn, is built on shared understandings and commitments to the purposes the public enterprises are meant to serve and the particular means considered appropriate and effective in serving their ends. In short, the foundations of public enterprises lie in their mandates for action (M. Moore 1990, 1995).

Not all mandates are equally valuable in guiding and sustaining public enterprises. Some are durable, widely supported, coherent, precise, easy to implement, and focus the institution on important, contemporary problems. These provide a firm, valuable foundation. Others are fragile, hotly debated, inconsistent, hard to operationalize, or increasingly irrelevant (Hargrove and Glidewell 1990). These do less well in legitimating and guiding public enterprises. Thus to build a strong public enterprise, one must do the political work required to forge a strong mandate for action. This is partly a matter of advocacy—of trying to build support for a particular public enterprise through education and persuasion. But it sometimes means responding and adapting to powerful currents that are running in the society (M. Moore 1995). At any given moment, mandates for action can be found in important formal documents: in the statutes that establish a public enterprise, in the court decisions that qualify and adapt the statutes in response to particular cases, in the policies promulgated by those who oversee or manage the enterprise, in the standard operating procedures that govern day-to-day operations of the system. Such structures give a consistent, recognizable shape to the enterprise and prevent it from

changing too rapidly or departing too far from its original purpose.

But other factors operate less formally and more dynamically to shape the future of the effort. After all, public discussion about the enterprise does not stop when the enabling legislation is passed; it continues. Problems with the ways in which the existing institution operates become the focus of political criticism. New methods for achieving old goals are proposed and implemented. And new problems, more or less central to the original purposes of the enterprise, come to the fore. The ongoing policy discussion about the operational weaknesses, desirable innovations, and new problems not only animate the present but also threaten to transform the formal structures relied on to constitute and control the enterprise in the future. Thus in seeking to interpret an enterprise's existing or emergent mandate for action, these dynamic factors, too, must be considered. These observations seem fundamental to any serious, contemporary analysis of the nation's juvenile court and juvenile justice system.

The question for this essay is whether a new, widely supported mandate for the juvenile court and juvenile justice system can be generated, and if so, for what purposes? The method will be first to clear away some preliminary matters having to do with defining the body of law that is to be administered through the juvenile court, the institutions that lie within the domain of the juvenile justice system, and the important social problems the juvenile court and juvenile justice system are supposed to solve. Then, we examine the mandate for the juvenile justice system as it has developed both historically and cross-sectionally across the states and consider the contemporary and future problems that the juvenile justice system must face if it is to be valuable to society. Two broadly different paths for the development of the juvenile court and the juvenile justice system are sketched and roughly evaluated. One, pushed by a public focus on juvenile crime, follows the path toward a "criminalized" juvenile court. The other, animated by heightened public concerns about "family values," works toward a broader conception of a "family court." This article closes with reflections on the kinds of investments that would be needed in the system's operational capacities if it were to fulfill either of these plausibly valuable future mandates.

I. Defining the Boundaries of Juvenile Justice

To fix conceptions, it is useful to start with a definition of the particular social institutions included within the "juvenile justice system" and

to describe the kinds of problems those institutions are expected to handle. This exercise is not just a technical problem of definition; it goes to the heart of what the enterprise of juvenile justice is expected to be. Yet this important strategic problem presents itself first as a technical, definitional problem.

A. *What Institutions Constitute the Juvenile Justice System?*

At the center of the juvenile justice system is the juvenile or family court. Typically, the juvenile or family court is a specialized unit within a larger state court system (Rubin and Flango 1992; Page 1993). The need for such a court is established in the first instance by the existence of a body of law (both statutory and common) that gives the state jurisdiction over certain matters involving families and juveniles such as abuse and neglect of children, so-called status offenses such as truancy and incorrigibility, and the crimes committed by youthful offenders (Areen 1978; Humm et al. 1994; Mnookin and Weisberg 1995). The particular form that a juvenile or family court takes is determined in the second instance by a legislative or administrative decision about how best to organize the work of a state court system (Katz and Kuhn 1991; Rubin and Flango 1992; Page 1993).

1. *The Jurisdiction of the Juvenile Court.* Appendix A sets out a list of the kinds of legal matters that can come before a state court and that represent candidate elements of the jurisdiction of a juvenile or family court. Typically, jurisdiction over these matters is distributed across probate courts, family courts, and juvenile courts by administrative decisions made by state court systems according to their judgments about what particular organizational arrangement could be expected to produce both substantive justice and administrative efficiency in court operations.

The fact that the juvenile or family court is constituted from the wide body of law regulating families and children carved up among courts to achieve the administrative purposes of the court raises the first and most interesting question about the definition of the juvenile justice system: namely, should we think of the entire body of law that regulates the behavior of families and children as part of the juvenile justice system or only that part that is explicitly given over to the institution that states define as the juvenile court? And, if a state has both a juvenile and family court (as well as perhaps a probate court), should

we include all these courts in our definition of the juvenile justice system, or only one or two, and if so, which ones?

This question is important for the obvious reason that the laws, and the administrative decisions to assign certain kinds of cases to certain kinds of courts, define the immediate boundaries of the work of the juvenile justice system. But it is also important for the less obvious reason that the reach of the juvenile justice system into social life, the kinds of dispositions it might make, and the kinds of expertise it might require to make just and efficacious decisions differ considerably depending on what particular laws we decide to administer through the juvenile justice system. It is one thing to imagine that the only laws being administered are those governing the state's responses to crimes committed by young offenders, but quite another to imagine that the juvenile justice system includes laws regulating divorce, child custody, responsibility for orphans, child abuse and neglect, and domestic violence among adults who are responsible for children.

2. *Functional Operations: Nomination, Adjudication, and Disposition.* As a practical matter, of course, the wide array of possible jurisdictions has been narrowed to a smaller number of possible choices. Most states have opted for a court organization that divides this wide jurisdiction into either a probate court (dealing with matters of divorce, child custody, and the like) or a juvenile court (dealing with offenses committed by young offenders, status offenses, and some kinds of abuse and neglect) or a family court (dealing with the same matters as the juvenile court plus selected other matters involving family relations such as divorce, child custody, etc.) (Katz and Kuhn 1991; Rubin and Flango 1992; Page 1993).

Even this limited amount of variation is enough to present problems, however. Once one begins thinking about the institutions that determine what cases get brought into the juvenile justice system, and what institutions are involved in the dispositions made by the juvenile justice system, even the relatively limited variation still produces very different conceptions of the boundaries of the juvenile justice system.

Consider, for example, the institutions that are potentially important in *identifying* or *"nominating"* cases for consideration by the juvenile justice system (M. Moore et al. 1987). In the case of a "juvenile court system" with its predominant orientation to crimes committed by or against children, attention is drawn naturally toward the police (and those who mobilize the police) as the most important intake mecha-

nism. In the case of a "family court," with its predominant orientation to intrafamily relationships, attention is turned away from the police toward individual family members who might themselves bring matters before the court.

Consider also the institutions that would be important in *the dispositions of the cases* made by the court. In the case of the "juvenile court system," attention is naturally drawn to the institutions and programs managed by the state's juvenile correctional agency. In the case of a "family court system," attention is more likely to be focused on the court's decisions about how relationships within the family are to be constituted in the future and the array of social services that is to be provided to families to allow them to function more effectively.

Finally, at the edges of the system, consider the institutions that might be considered important in *preventing the circumstances and events that bring cases into the juvenile justice system*. In the case of the "juvenile court system," the focus might be on institutions such as families, schools, and recreational and employment opportunities for young people as important in preventing delinquency. In the case of the "family court system," the focus might be on one of these key institutions for preventing delinquency explicitly and how it might be made to function more effectively by the provision of such things as jobs for adults, health and welfare benefits, parental training, and day care for children.

So what particular body of law is being administered through the juvenile justice system has important implications for what particular institutions are importantly engaged in its operations. One way to visualize the complexity of the system is to start with the idea that the laws define certain "matters" (i.e., events or circumstances) that involve the responsibilities of families and children toward one another and toward the wider society that may legally become the focus of public state action (Minow 1987). The whole set of such events and circumstances that occur in the world constitutes the potential jurisdiction of the juvenile justice system. (We understand that we are drawing a wide boundary here.)

Of course, only some portion of all the real events and circumstances that could, in principle, become part of the juvenile justice system will actually do so. The institutions that determine which potential cases become cases in the juvenile justice system could be thought of as part of the "nominating" and "gatekeeping" subsystem. Included here would be not only the police who decide whether and how to respond

to juvenile offenses but also social service agencies that must decide whether to report instances of abuse and neglect, even parents who must decide whether to ask for court assistance in controlling a rebellious teenager (M. Moore et al. 1987).

Those potential cases that are plucked out of ordinary social life and become part of a legal proceeding would then be subject to the "court processing" part of the system. Court processing would include the development of relevant facts and analyses for the court to use in its consideration of the case. It would also include appearances before the court of those who were considered parties to the case. And, it would include a disposition of the case that directed different parties to do different things. The quality of this court processing could be judged against standards of justice and fairness, on the one hand, and efficiency and effectiveness in achieving particular purposes, on the other.

The dispositions made by the court would then be carried out (more or less reliably) by those who were directed to do something. Many (but by no means all) of these dispositions would be carried out by youth corrections agencies. Many others (but by no means all) would be implemented by state-financed social service agencies. Some would be carried out simply by the parents, children, and other private caretakers who came before the court to have their cases heard and left with a new understanding of their rights and responsibilities toward one another.

To the extent activities and agencies designed to *prevent* juvenile delinquency or family dysfunction were considered part of the juvenile justice system, important parts of the juvenile justice system could include the voluntary efforts of parents, children, and neighbors on one hand and the tax-financed services of government social service, educational, and recreational agencies on the other (DeJong 1994; National Crime Prevention Council 1994). Figure 1 offers a crude graphic idea of the broad conception of the juvenile justice system (M. Moore et al. 1987). This is proposed as an alternative to the usual conception of the juvenile justice system as a "case flow management system." In the conception presented here, the laws governing families and children set the context for public action to deal with problems of family and children. The courts that enforce these laws are seen as "linebackers" or "backstops" to the ordinary operations of the private, informal institutions and the formal public agencies that shape the daily conditions under which children are being raised. The private, helping institutions are grouped on the left of the diagram. The public, obliging

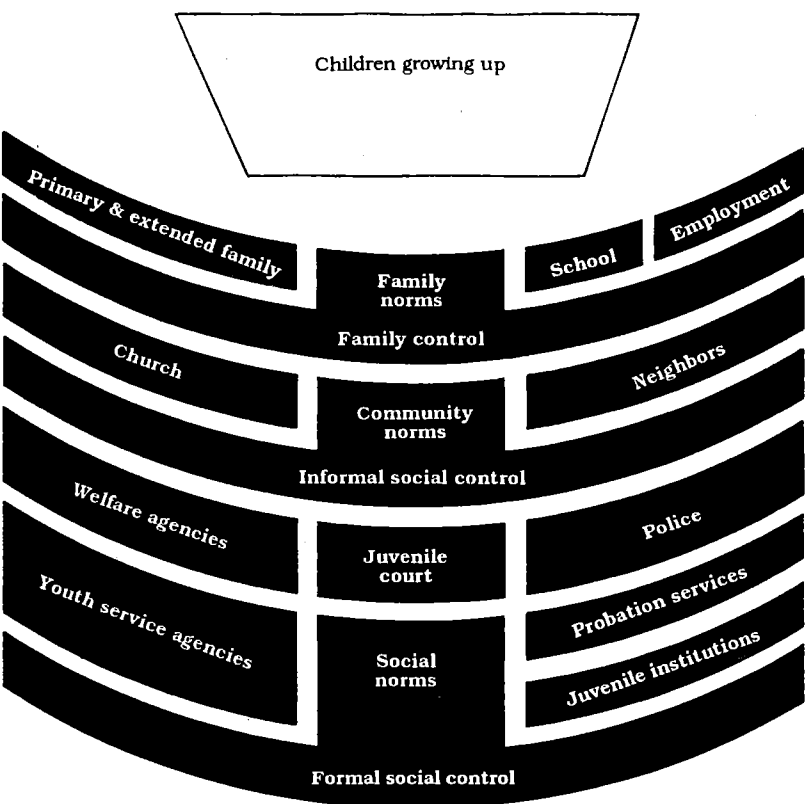


FIG. 1.—The court as backstop and linebacker: an alternative view of the juvenile justice system. Source: M. Moore et al. (1987).

institutions are grouped on the right. The institutions that are in regular daily contact with the children (such as parents, day care, schools) are placed in the front of the process of raising children. The institutions that are only occasionally and intermittently engaged with specific children (such as neighbors, police) are placed further back as the "linebackers" to deal with events and circumstances that breach the capacities of the front line agencies to handle them.

In this diagram, the process of nominating cases involves taking a case from the front line and requesting aid from the back lines. Often the response of the back line is simply to push the case back into the front lines without further action. Other times, it is to push the case back into the front lines with specific orders that particular agencies

on the front line take particular actions. On rare occasions, it is to remove the child to the care of youth correctional agencies.

This, of course, represents the broadest definition of the institutions of the juvenile justice system—so broad, in fact, that the boundary between juvenile justice and all of society has begun to blur. Of course, the institutions of the juvenile justice system can be defined far more narrowly. Yet what is surprising is the extent to which the combination of existing laws regulating families and children, concern for the processes by which some of the legally liable cases show up as real cases before the court, recognition that many of the most important dispositions made by the courts engage private and public social service agencies, and curiosity about the prospects for preventing juvenile delinquency and family dysfunction forces an analyst to widen the boundaries of the juvenile justice system. Perhaps more focus can be gained if attention is turned away from the institutions that constitute the juvenile justice system and toward the problems society is trying to solve through the operations of the juvenile justice system.

B. To What Problems Is the Juvenile Justice System an Answer?

Most citizens view the juvenile and family court as an institution designed primarily to deal with crimes committed by young offenders. This is not surprising. Juvenile crimes are by far the largest part of the juvenile and family court's caseload (Snyder and Sickmund 1995). It is also the portion of the court's caseload that is most salient to the public and most unambiguously a public issue. For both reasons, most citizens tend to view the juvenile court as a specially designed criminal court to deal with young offenders. They also tend to evaluate it in these terms. This is unfortunate, for in most states, juvenile and family courts include two other important jurisdictions: abuse and neglect of children, and status offenses (Katz and Kuhn 1991; Rubin and Flango 1992; Page 1993). Each of these represents a somewhat different problem that society looks to the juvenile and family court to solve.

1. *Juvenile Crime.* The juvenile and family court is most commonly associated in the public mind with responding to juvenile crime and youthful offenders. The public understands that this is the most important jurisdiction of the court. They want a just and effective response to such crime. And, to some degree, they recognize that society's response to juvenile crimes should be different from the response to adult crime (Schwartz, Guo, and Krebs 1992). What seems to have

been lost, however, is the rationale for treating young offenders differently than adult offenders.

The distinction between adult and juvenile offenders has long existed in the law. Under the English common law, children under the age of seven could not be found guilty of crimes because they were considered incapable of forming the requisite criminal intent (Radziewicz and Hood 1986). They were, in some sense, constitutionally innocent (despite their ability to inflict harm). But the notion that young offenders differed from adult offenders was significantly expanded in the statutes that established juvenile and family courts, gave them jurisdiction over crimes committed by young offenders, and transformed what had previously been viewed as "crimes" into instances of "delinquency" (M. Moore et al. 1987).

Both the original reason for distinguishing adults from children and the more recent extension of this idea are based on the idea that children differ from adults in ways that are relevant to the just and effective response to crimes committed by them. The most important way in which children differ from adults is that they are "in the process of becoming adults" rather than fully developed—a state that Zimring (1982) has described as "semiautonomous." Their moral characters are not fully developed. They remain vulnerable to external influences from peers. Their conduct is still being regulated to some extent by adults who are responsible for them. For all these reasons, their actions are not fully theirs and do not reliably reflect their intentions or character.

This view has important implications for a just and effective social response to crimes they commit. Because they are not fully developed as moral agents, it would be *unjust* to hold them strictly accountable for criminal offending. They are only partially responsible. Because they are still malleable, it might be *practically useful* to make investments in their future development rather than to consign them to the ranks of the unredeemable. Indeed, to the extent that they have been victims of private and social neglect in the past, they may even have some moral if not legal right to demand that society provide for them the kind of care, supervision, and instruction that is necessary to help them reach the status of competent adulthood (American Bar Association 1993; Carnegie Task Force on Meeting the Needs of Young Children 1994). Thus, for reasons of both justice and practical efficacy, the argument is that society should treat youthful offenders as "delinquents" rather than young "criminals." It follows that one important

task of the juvenile court is to fashion the appropriately different response to juvenile offenses and young criminal offenders; the response that would be more just (in the sense that it accommodated their partial guilt) and more effective (in the sense that it exploited their malleability to minimize the chance that they would become repeat offenders).

It is worth noting that the conception of what constitutes a just and effective response to youthful offenders seems to be changing. The changes began with criticisms focused on the ways in which the court processed juvenile offenses. In *In re Gault*, 387 U.S. 1 (1967), the Supreme Court ruled that, if young offenders faced dispositions of their cases in the juvenile court that could not be reliably distinguished from simple incarceration, as a constitutional matter they were entitled to the same due process protections that adults charged with crimes in the adult courts enjoyed. This began the process of what Feld (1993*b*) has described as the "criminalization" of the juvenile court.

More recently, society seems to be less inclined to extend the presumption of a kind of innocence to young offenders that the original conception of the juvenile court seemed to mandate. By reducing the age of jurisdiction of the court, and by developing automatic or discretionary mechanisms for transferring juvenile cases to the adult courts, society is saying that it sees in many juvenile offenders the same kind of moral culpability, and the same kind of social interest in exercising effective control over the offenders, as apply to adult offenders (Feld 1988). And, insofar as society supports dispositions such as youthful "boot camps" that are long on mechanisms of accountability and control and short on the educational and counseling services that could build dispositions and capabilities for citizenship, it seems that Americans are abandoning the original idea of making a different kind of response to young offenders in the interests of both justice and efficacy (Cronin 1994).

In any case, responding justly and effectively to crimes committed by young offenders remains one of the most important problems to which society expects the juvenile justice system to respond. To the extent that its response departs from contemporary views about what constitutes a just and effective response to these crimes, the legitimacy of the court is undermined. And it is probably the court's seeming inability to accomplish this goal, combined with growing fears of youth violence, that has most undermined its current standing (Bragg 1994; DiIulio 1995).

2. *Abuse and Neglect of Children.* Despite the importance and salience of the court's jurisdiction over crimes committed by youthful offenders, this remains but one of the problems society relies on the court to resolve. In many states, the juvenile or family court also has jurisdiction over cases involving the abuse and neglect of children (Katz and Kuhn 1991; Rubin and Flango 1992; Page 1993). Viewed from one perspective (the one that views the juvenile court primarily as a specially designed criminal court to deal with crimes committed by children), the inclusion of child abuse and neglect within the purview of the juvenile court seems odd, even anomalous. After all, these are crimes committed by adults *against* children, not crimes committed by children. As crimes committed by adults, why not treat them in the context of the adult criminal court? Does it not demean the significance of these cases as adult offenses to keep them in the juvenile court?

The reason that these cases are often heard in juvenile and family courts rather than adult criminal courts, of course, is that the state has concern about the present and future conditions under which children will be raised as well as an interest in adjudicating the guilt or innocence of adult offenders. That concern seems more consistent with the procedures and capabilities of the juvenile or family court than with those of the adult court. The future of the child will always be close to the center of the juvenile court's concerns. It has the license to investigate the totality of circumstances surrounding the instances of abuse and neglect, not just the question of guilt and innocence. And most important, the juvenile court can face the trade-off between the state's interest in criminal prosecution of the caretakers accused of abuse and neglect *and* the creation of an effective nexus of care and supervision around the juvenile victims. In short, because the state is concerned with family relations and the future of the child as well as with criminal dispositions in cases of abuse and neglect, it makes sense to handle these cases in courts that are competent to deal with these concerns.

3. *Status Offenses and "Children in Need of Supervision."* In many states, juvenile and family courts also retain a third jurisdiction: one that covers so-called status offenses such as truancy, incorrigibility, and promiscuity. This jurisdiction has also long seemed anomalous to those who viewed the juvenile or family court as essentially a specially designed criminal court to deal with crimes committed by children (Andrews and Cohn 1974). The reason is that, while it is true that this

jurisdiction focuses on acts committed *by* children (rather than by adults against children as in the case of abuse and neglect), the particular acts that are the focus of the court's concern seem to be better described as ongoing statuses than acts and, further, that neither the acts nor the statuses would be viewed as crimes if adults committed them.

To many commentators, the fact that youth faced court intervention in such circumstances revealed an unjust discrimination against children: they faced legal liabilities that did not attach to adults (Feld 1993a; Krisberg and Austin 1993). This seemed discriminatory on its face. Add to that the observation that the legal liability attached to vaguely described statuses rather than specifically described acts and the stage was set for a vigorous attack on the propriety of this particular jurisdiction.

These criticisms were powerful enough in some jurisdictions to eliminate the court's jurisdiction over these matters. In many other states, however, the cases were simply renamed. Instead of thinking about these as cases of "delinquency" that attached guilt and stigma to children, they were viewed as "child in need of supervision" cases in which any notion of child misconduct was downplayed, and the focus was placed instead on what could be done to improve the circumstances under which the child was being raised (Feld 1993a; Krisberg and Austin 1993).

It is important to consider why these cases remain within the jurisdiction of the juvenile court given that they do not describe crimes committed by children. One answer is simply that there are many children whose parents cannot or will not exercise effective control over, or provide sufficient care to, their children. The result is that children do things that are less than crimes but are nonetheless somewhat offensive to society. More important, these same acts are dangerous to the child's future as a resourceful citizen. Thus, legal authority and state courts are brought into play to help society find a just and effective response to these unfortunate circumstances. Despite the wish to keep these cases out of the courts, some keep appearing because society demands that the court act to assign responsibility for the care of the child.

There is an important question about both the justice and efficacy of the court's responses in these cases. It often seems unjust for the court to take legal action in cases where children have done nothing that would be considered a crime if an adult committed the offense. But one way to rationalize this jurisdiction is to take seriously the no-

tion that children *do* occupy a different legal status than adults. One feature of that unique legal status is the privilege of reduced liability for criminal offenses. That is an implication of treating crimes as delinquency rather than criminal offenses. Another feature of their status, however, is that, as children, they have some special responsibilities that do not attach to adults. This is the flip side of their special privileges. Arguably, some of those special responsibilities would be to avoid actions that could jeopardize the process of becoming responsible adults. That could, in turn, mean that they would be responsible for continuing to accept the supervision and instruction of their parents (incurability), and for going to school (truancy), and for avoiding fatherhood and pregnancies (promiscuity). Thus it might be just for children to have special responsibilities as well as special privileges as a feature of their unique legal status in society.

Whether the court can make an effective response to these circumstances is less clear. It may be that court interventions that take the form of requiring children to recognize these special responsibilities are ineffective. The court's response may be equally ineffective when it requires parents and caretakers to exercise more effective supervision over the children. Perhaps the capacity of the court effectively to oblige parents and children to take action in support of the development of the child is weak or counterproductive. This might be particularly true when the problem is that the parents and caretakers need help in discharging their responsibilities (rather than simply being reminded of what their responsibilities are) and where public resources or capabilities to provide needed assistance are inadequate. In short, the effectiveness of such interventions may depend crucially on the supply of services to struggling families as well as on the court's power to impose obligations. In any case, these problems remain a part of the court's jurisdiction.

C. *Toward a Coherent Theory of the Juvenile Court's Jurisdiction*

This discussion suggests that, in thinking about a proper and useful mandate for the juvenile and family court, everything would be much easier if it were thought of primarily, or even exclusively, as a specially designed criminal court to deal with youthful offenders—one in which the responses to young offenders could be tailored to the fact that they were less morally culpable and better able to change than adult offenders. There is a simplicity and coherence to this idea that is easy to

comprehend. It has the additional virtue of focusing attention on the jurisdiction of the court that is most salient and most obviously public.

The situation becomes far more complicated, however, when society looks to the court to respond also to problems such as abuse and neglect and status offenses. Abuse and neglect seem anomalous because they are crimes committed *against* rather than *by* children. Status offenses seem anomalous because they describe acts that are not crimes if committed by adults.

Yet, despite the anomalous status of these events in the conception of the juvenile court as a special criminal court to deal with crimes committed by children, they generally remain part of the court's jurisdiction. Indeed, if anything, these cases are becoming more important as families and other structures for supervising and caring for children erode, and there is increasing interest in finding ways to prevent as well as respond to juvenile criminal offending. Thus, in constructing a coherent mandate for the court, it becomes important to consider whether some concept can be developed that embraces these apparently diverse problems.

There is such a conception. It views the juvenile and family court less as a *criminal* court specially designed to deal with the problems of crimes committed by children and more as a *civil* court overseeing the conditions under which children are being raised. If the court were seen in this light, it would make perfect sense for the court to have jurisdiction over abuse and neglect and status offenses since these are obviously and importantly about constructing arrangements that can provide minimal levels of care and supervision over children. Thus, these apparently anomalous jurisdictions could be rationalized.

Even more important, however, adopting this perspective could importantly transform and rationalize current responses to *juvenile crime*. If a special court is needed to respond to crimes committed by juveniles because children are viewed as less able to form criminal intent and more able to profit from efforts made to deflect them from a future life of crime, and if an important part of the apparatus for accomplishing these results includes parents and other caretakers who were supposed to be providing effective care and supervision of the children who have emerged as criminal offenders, then it makes sense to respond to crimes committed by young offenders as events that were importantly influenced by the conditions under which children were being raised as well as by the criminal inclinations of the young offender. Delinquency cases would be viewed in the context of the same

questions about the adequacy of the arrangements for raising children that are raised by cases of abuse and neglect as well as status offenses. In each case, parents and caretakers would be parties to the proceedings. In each case, the concern would be less about specific events and whether particular individuals had or had not committed criminal acts than about the conditions under which children were being raised.

In short, if the juvenile or family court were seen as a civil court overseeing the conditions under which children were being reared rather than as a criminal court responding to young offenders, each component of its current jurisdiction could be understood and rationalized as part of a coherent whole. If, however, influenced by the importance and salience of the court's jurisdiction over juvenile crime, the court were seen as a special agency to deal with crimes committed by children, the rationale for having it also deal with abuse and neglect and status offenses is lost. Of course, there is nothing that says that these other problems could not be included within the court's jurisdiction opportunistically or because they did not fit anywhere else. But the court's foundations might be made stronger if there were a consistent and coherent rationale for all its work. Whether this would be a valuable and feasible mandate for the court is yet to be tested.

II. The Evolving Mandate for Juvenile Justice

In Section I, we noted some of the difficulties in deciding what institutions should be considered part of the juvenile justice system and in constructing a coherent rationale for the different kinds of problems society relies on those institutions to solve. We noted that viewing the juvenile justice system as consisting primarily of a court designed to respond to juvenile crime, and doing so through a set of dispositions managed by some kind of youth correctional system, had the advantage of being consistent with our images of the adult criminal justice system. However, it also had disadvantages: failing to account for all the institutions that could be considered part of the juvenile justice system, leaving as anomalous some important parts of the juvenile court's jurisdiction, and leaving potentially important opportunities for crime prevention unexploited. This discussion suggested the range of possibilities for a different but equally coherent mandate for action. In this section, we ask two more concrete, empirical questions: how have states acted over the last few decades to adapt the mandate of the juvenile and family court, and which of the problems to which the court could conceivably respond are becoming increasingly urgent?

A. Trends in Legislation Affecting the Juvenile Justice System

A straightforward way to examine the evolving mandate for juvenile justice is to look closely at the statutes that authorize the enterprise. Since 70 percent of the statutes seem to be modeled on the original 1899 Illinois statutes, it is useful to begin there (Bleich 1986).

1. *The Original Legislative Mandate.* The key provisions of this statute include the following:

Section 1: . . . For the purposes of this act, the words "dependent child" and "neglected child" shall mean any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; . . . or whose home by reason of neglect, cruelty or depravity on the part of its parents, guardians or other person in whose care it may be, is an unfit place for such a child. . . . The words "delinquent child" shall include any child under the age of 16 years who violates any law of this state, or any city or village ordinance. . . .

Section 7: . . . When any child under the age of 16 years shall be found to be dependent or neglected within the meaning of this act, the court may make an order committing the child to the care of some suitable State institution, or to the care of some reputable citizen of good moral character, or the care of some training school . . . , or to the care of some association willing to receive it.

The focus of this statute on the conditions under which children were being raised, treating crimes by children as instances of delinquency and removing children from dangerous home environments, established the basic conception of the *parens patriae* model of the juvenile court. This conception proved widely popular; within twelve years, twenty-five states had copied it. By 1925, its overall philosophy and specific provisions could be found in forty-eight of the fifty states (Krisberg and Austin 1993, p. 30).

2. *Criticisms of the Parens Patriae Court.* The initial, nearly universal enthusiasm for this conception of the juvenile court has not, unfortunately, stood the test of time. Criticisms from both the Left and the Right of the political spectrum about both the justice and effectiveness of the court have eroded this mandate.

The political Left attacks the fairness of the court by pointing to its overly broad and ambiguous jurisdiction, its cavalier approach to the due process rights of those who appear before it, and its apparently

discriminatory practices (Schwartz 1989; Feld 1993a; Krisberg and Austin 1993). It attacks the effectiveness of the court by claiming that premature court involvement "labels" youth, thereby hardening their identification with deviant subcultures and harming their prospects for successful development (Schwartz and Skolnick 1964; Schur 1971). Finally, the Left attacks the hypocrisy of justifying broad state powers to intervene in the lives of children in terms of a broad public interest in fostering the healthy development of children, when the state has consistently shown itself to be unwilling to provide the financial resources required to achieve that goal (Minow 1987). The Left's agenda for the juvenile court, then, is to shrink its jurisdiction, focus it narrowly on the most flagrant juvenile crimes and instances of abuse and neglect, provide adequate due process protections to those who come before it, and ensure the quality of the services made available to those who face the court.

The political Right's criticism focuses on its leniency with juvenile offenders. In their view, it is unjust to excuse the criminal conduct of children on grounds of immaturity or social deprivation. It is right to hold them accountable. Indeed, it is not only right to do so, it may be necessary to facilitate the moral development of young offenders and to protect the community in both the short and long run. Thus, many on the Right recommend the abolition of the juvenile court's jurisdiction in favor of adult court processing (Dawson 1990).

3. *A Potential Synthesis: The Criminalized Juvenile Court.* Standing in the middle of this fray, it is hard to see the way forward. Yet, when one stands a bit above the tumult, one can see points of agreement and sense at least one possible future for the juvenile justice system. The Left and Right agree on the following points: that the principal focus of the juvenile court should be on crimes committed by children, that status offenses and ambiguous cases of abuse and neglect should be excluded from the court's jurisdiction as unnecessary distractions and unnecessary extensions of state power, and that children should be guaranteed due process protections. In effect, both Left and Right agree that juvenile offenses could be handled more justly and effectively in a straightforward "justice" court for young offenders (M. Moore et al. 1987). To the extent that society wanted to continue to concern itself with other matters signaling family dysfunction (such as status offenses and uncertain conditions of abuse and neglect), it could create some different kind of forum that would make less extensive use of state authority.

Washington State pointed toward this conception of juvenile justice with a statute passed in 1977. That statute divides the domain of juvenile justice into two large components: crimes committed by children, and everything else. With respect to crimes committed by children, the process is highly formalized with due process protections, clear penalties for given offenses, and extensive prosecutorial involvement. With respect to "everything else," emphasis is placed on informal processing (Schneider and Schram 1983).

The basic appeal of this approach is clear. It moves the unfamiliar and discredited idea of a *parens patriae* juvenile court into a more comfortable niche in the public's mind—a criminal court for youthful offenders. It appeals to the Left because it narrows the court's jurisdiction, "constitutionalizes" its procedures, and strips away the hypocrisy of paternalism that often does nothing more than provide a cover for racism. It appeals to the Right because it promises to hold juvenile offenders accountable for their crimes and emphasizes the community's interests in secure dispositions.

4. *Limitations of the Criminalized Juvenile Court.* Despite the apparent appeal of the criminalized juvenile court, few states have followed Washington's lead. The problem is apparently *not* the basic appeal of dealing more harshly with juvenile crime. That interest is strong and growing stronger. Appendix B shows the jurisdictional approaches taken in the fifty states and the District of Columbia. Other states have established concurrent juvenile and adult court jurisdiction over some crimes and allowed either juvenile court judges or prosecutors from the adult system to decide in which court to proceed. Figure 2 summarizes state laws on minimum ages of offenders over whom juvenile court jurisdiction can be waived to permit adult court prosecution. So why have more states not transformed their juvenile courts and juvenile justice systems in the way that Washington did?

An answer to this question requires a more fine-grained, state-by-state analysis of the politics of juvenile justice than can be presented here. But an initial hypothesis is that the Washington statute fails to deal with two important problems that remain important to citizens and their representatives in legislatures and executive branch agencies.

The first is that, at the extreme, the idea of "criminalizing" the juvenile court leads eventually to an argument for its abolition. If society makes juvenile crime the principal focus of the juvenile court and "constitutionalizes" its procedures, the distinction between the adult

and juvenile court gets very fine indeed. Perhaps the juvenile court jurisdiction should be eliminated altogether.

That is, in fact, what two long-term observers of the juvenile justice system have recently concluded (Hirschi and Gottfredson 1993). Of course, they are in favor of remaking the adult criminal court in the image of the juvenile court's concerns with individualized treatment of offenders and detailed investigations of the backgrounds of offenders and the circumstances of crimes in the interest of making just and effective dispositions. In this respect they might be seen as *extending* the juvenile court to cover adult crimes. But the key point is that they think the only viable future of the juvenile court is to merge with the adult criminal court.

That conception seems to go too far for most state lawmakers. They seem to want to retain some special jurisdiction for the juvenile court—some way of responding to crimes committed by children between the ages of ten and sixteen that are not serious offenses. In this respect, the old mandate for the juvenile court remains alive, even if weakened.

The second, larger problem is that there is some important work society wants the juvenile court to do that is not fully captured by the concept of juvenile crime. Nor is it handled adequately when the concept is enlarged to include crimes committed *against* children (such as abuse and neglect). That work consists of dealing with "minor" family problems that signal greater problems in the future: parents who are absent, parents who are mildly but chronically neglectful or only intermittently abusive, children who have run away. These cases all grow out of situations in which the structures society is relying on to care for, protect, and supervise children have begun to deteriorate but have not yet collapsed into outright criminality by the parents or children.

It is significant that even the Washington statute does not eliminate state jurisdiction over these matters. They are simply diverted to more "informal" processing. It is also significant that, despite several decades of lobbying to eliminate "status offenses" from the law and from the jurisdiction of the juvenile and family court, most states retain the legal power to act in circumstances where children are without parents or behaving in ways that endanger their futures, and most states keep those cases within the jurisdiction of the juvenile or family court (Schneider and Schram 1983). The need for the state to act in the messy, difficult circumstances where children are at risk because families are collapsing is, apparently, the court's tar baby: it cannot seem

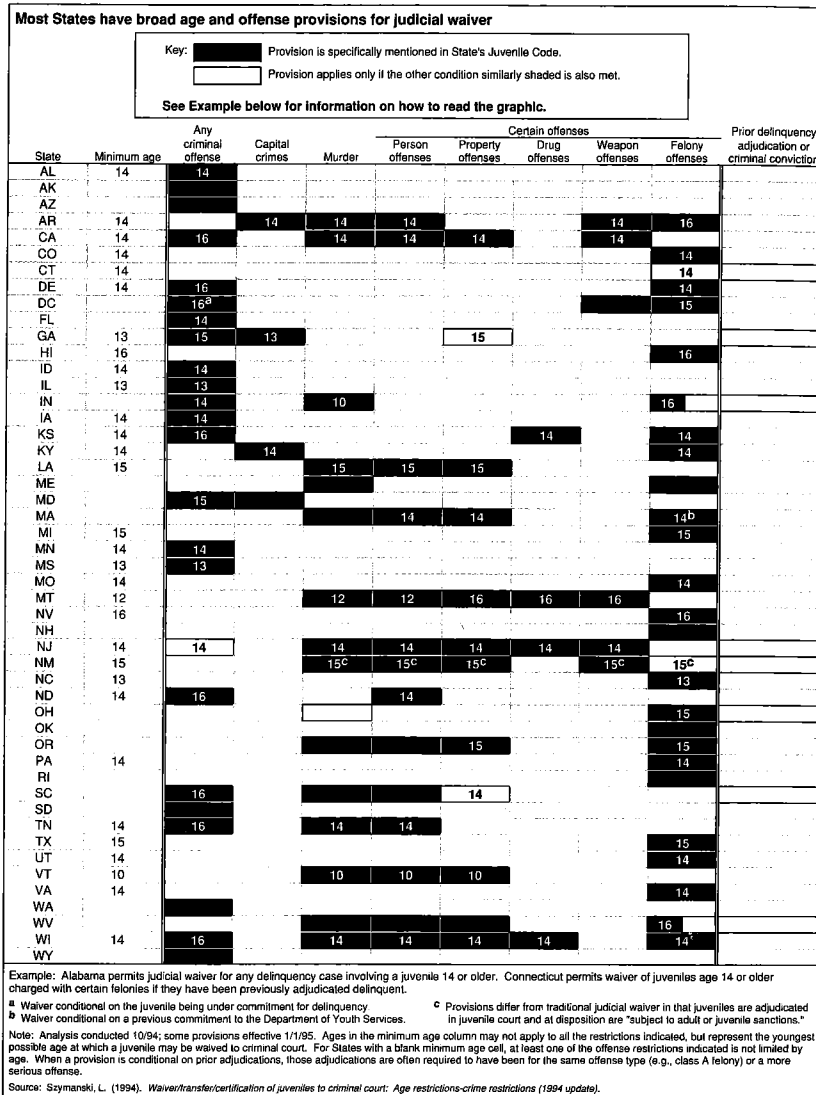


FIG. 2.—State laws on minimum ages of offenders over whom juvenile court jurisdiction can be waived to permit adult court prosecution. Source: Szymanski (1994).

to free itself from becoming society's agent in dealing with these sad and difficult situations.

Indeed, public concern about families and the conditions under which children are being raised and the desire to act on such conditions through laws and obligations as well as through social service institutions seem to be increasing rather than decreasing. Three important political movements are sustaining (or increasing) the focus on the conditions under which children are being reared.

One is the intense political concern that focuses on holding parents accountable for the misbehavior of their children. In the last few years almost half of all states have passed "parental responsibility" laws that compel parents of young offenders to attend counseling or education programs (Egan 1995; Applebome 1996). These laws reflect the public's concern that the family breakdowns that contribute to juvenile crime cannot be addressed without the active involvement of parents, whether it be voluntary or coerced.

The second is in the growing public concern about the effectiveness of family preservation programs. Public officials are increasingly concerned that family preservation programs neither protect children nor improve the conditions under which they are being raised. Many states are reviving policies that quickly remove children from high-risk families and place them in foster care (Dugger 1991, 1993; Firestone 1996). Public officials and other experts have also proposed reviving the use of orphanages and "inner-city kibbutzim" in which to raise children from high-risk or struggling families (Wilkerson 1994; Purnick 1996).

Behind these concerns lies a third: the sense that the family has weakened as a social institution and that the nation is now threatened by "kids having kids." This is variously seen as a problem tied to frequent divorces, working mothers, and latchkey children or as a problem of pregnancies and births among unmarried, young, urban poor people. However it is viewed, concern about recommitting the society to "family values"—the idea that family members have responsibilities to one another and to society that must be fulfilled if society is to flourish and be just—is an important feature of current politics (Whitehead 1993). To the extent that the nation's juvenile and family courts are involved with cases in which issues about the extent to which particular individuals are or are not living up to their responsibilities within the family (and, therefore, to the broader society), one can expect the debate over the future of juvenile justice to channel these broader concerns.

These issues—parental responsibility, family preservation, and family values—prevent the politics of juvenile justice from focusing too narrowly on juvenile crime. Indeed, it hardly seems accidental that just when the debate about the future of juvenile justice seemed to turn decisively in the direction of focusing on the control of juvenile crime through criminal court processes, society rediscovered its concerns about runaway children and the overall state of the family. Society does not seem to be able to disentangle the concern about juvenile crime from its concerns about how children are being raised. The interesting question here seems to be how these issues can be integrated in a political/legislative mandate for the court.

5. *An Alternative: The "Family Court Model."* The original legislation that authorized broad public interventions to save children and society from the consequences of inadequate parenting still survives, but in altered form. Society has come to be more cynical about the state's motives for intervention, more attentive to the rights of children and parents, and more skeptical about the capacity of the state to achieve the practical goals of restoring family functioning and reducing juvenile recidivism.

New legislation designed to enhance the accountability of juvenile offenders by exposing them to the rigors of the adult court or by importing into the juvenile justice system many of the features of the adult criminal court presents a serious alternative to the *parens patriae* court. Such legislation satisfies some who believe that these changes will improve society's response to the most important part of the juvenile court's mandate, namely, to deal justly and effectively with juvenile crime. But it worries others who believe that the adult criminal court model is both an unjust and ineffective response to juvenile crime and that, by emphasizing the juvenile crime aspects of the court's jurisdiction, other important problems that could offer useful points of intervention to reduce juvenile crime (such as child abuse and neglect) will be neglected.

A third alternative may now be coming into view: the family court model. The first family court was established in Cincinnati, Ohio in 1914—fifteen years after the establishment of the juvenile court, and relatively late in the Progressive Era (Katz and Kuhn 1991; Page 1993). There the concept died until 1959 when it was resurrected by the National Council on Crime and Delinquency, the National Council of Juvenile and Family Court Judges, and the United States Children's Bureau. They published a "Standard Family Court Act" that set out a

vision of a family court (Katz and Kuhn 1991; Page 1993). In 1961, Rhode Island enacted portions of that vision into law. Hawaii followed in 1965 with an even more ambitious version of the law.

The basic concept is that states should establish a special court (ideally, through constitutional amendment or statute rather than administrative decision) whose jurisdiction would embrace all those legal matters that involve relationships within the family and between the family and the state (Katz and Kuhn 1991; Page 1993; Shepherd 1993; Town 1994). The National Council of Juvenile and Family Court judges recommends that the following should be included within the jurisdiction of the family court:

13. A state's family court statute should include provisions determined by Symposium Conferees to be essential as follows: (a) an establishment clause which purports [*sic*] statewide effect; (b) Supreme Court authority to adopt rules of procedure relating to the family court; (c) a provision defining jurisdiction as proffered in recommendations 14–17; and (d) court authority to transfer jurisdictions as appropriate.

14. Family court jurisdiction should include all divorce/dissolution matters and anything attendant thereto, including marital property distribution, separation and annulment, child custody orders which include modification and visitation, Uniform Child Custody Jurisdiction Act cases, support and Uniform Reciprocal Enforcement of Support Act cases.

15. Family court jurisdiction should include all child dependency related matters including abuse and neglect, including termination of parental rights, family violence including protective orders, children and persons in need of services (CHINS and PINS) and adoption.

16. Family court jurisdiction should include all delinquency proceedings and juvenile traffic matters including driving while intoxicated offenses. Status offenses including liaison with public education districts relative to truancy matters should also be included.

17. Family court jurisdiction should include adult and juvenile guardianships and conservatorships, mentally retarded and mental health matters including civil commitment and confinement, legal-medical issues, e.g., right to die, abortion and living wills, paternity, emancipation and name change. (National Council of Juvenile and Family Court Judges 1989)

Their aim is to be ambitious; to err on the side of too much rather than too little. As one report put it: "The primary indicator of the establishment of a comprehensive family court is the placement of cases involving both juvenile delinquency and divorce within one single court system" (Page 1993, p. 8). The same report also noted that the farthest reaches of jurisdiction of family court extended to a concurrent jurisdiction with the criminal court, not only over cases involving intrafamilial violence, but over *any* crimes committed by family members (Page 1993). This would, in effect, force society to think about the consequences *for the family* of imprisoning fathers who also happened to be armed robbers or drug dealers.

The reasons for giving the court such a wide jurisdiction are partly philosophical and partly practical. On the philosophical side, the basic idea is to recover the idea of the family as an important social institution in whose operations society and the state not only have an interest but also a right to intervene. Of course, society has long understood that the family is an important social institution. It is at once an arena within which individuals live their lives and enjoy their rights and a complex productive system that has a profound effect on the life chances of those within its embrace—particularly the children. What has been disputed is whether society as a whole, and the state in particular, has any justification for interfering in family relations. Indeed, the tradition in liberal societies has been to set families aside as largely immune from public intervention. In this view, the family is a private institution that has rights to autonomy and privacy that kept it sacrosanct from state intrusion and which, in any case, performed best for the society if left alone (Zimring 1982).

Recently, however, that conception has gradually eroded as society has found reasons to be concerned about conditions within the family. One part of that concern has focused on the extent to which the rights of children and women were adequately protected within families. When it seemed plausible that the individual rights of any family member, but particularly women and children, were being abused within the family, the state would intervene to protect their individual rights. In effect, the state intervened to ensure justice *within* families as well as *between* the family and the state and, in so doing, changed the relationship between the family and the state (Zimring 1982). Instead of being immune to public inspection and regulation, the family became subject to it.

A second part of the concern has been that families were failing to perform important social functions, in particular, raising children. A part of this instrumental concern about the performance of families in raising children can be captured in the concern for protecting children's rights. To the extent that society believes children have particular substantive rights to such things as food, clothing, shelter, protection from abuse and neglect by their caretakers, effective adult supervision, reliable mentoring, good-quality education, and employment opportunities, society's interest in providing these things to children could be viewed as the vindication of a right in a just society rather than particular substantive interests that society decided to pursue through the instrumentalities of government (Minow 1987). But even if these things were not viewed as rights, society might well have an interest in trying to produce them. After all, future criminal conduct is the most obvious way neglected children can repay society for its neglect. To avoid future drug abuse, unwanted pregnancies, and economic dependency, society could act to provide for the well-being of children even if it did not treat such benefits provided to children as rights the children had not only vis-à-vis their caretakers but also, in their default, the state.

So society has acted. It has extended aid of various kinds to families and children. The extension of aid has raised some important questions on the part of clients as to the terms on which such aid is provided: what must they reveal about themselves and do to "qualify" for the aid (Mead 1986; Ellwood 1988; Johnson 1996)? For its part, the citizens and the state have often looked for ways to limit their obligations to families and to find others (such as "deadbeat dads") with whom they might share the burdens of caring for the failing families (Whitehead 1993; Dao 1995). Many of these issues have been litigated and have thereby entangled the state and the court even more deeply into the affairs of families. Moreover, in these cases, the interest of the state seems to have widened from a concern for protecting the rights of individual family members to a substantive concern that relationships within families be constituted in ways that are effective in achieving substantive results—such as operating in "the best interests of the child." This, too, has broken down the sharp boundary that was once thought to exist between families and the state.

Family courts, then, seem partly to be an expression of society's consistent and now increasing interests in helping families to function well. Society's interests are partly to ensure justice—that is, to ensure

not only that families enjoy the rights they have vis-à-vis society but also that they live up to their obligations—and to ensure that relationships within the family are as just as those relationships between the society and the family (Oshima 1987). But society's interests are also in achieving important practical results: for example, to do what it can to help families raise children.

Judge Robert Page recently summarized these trends in the following terms:

The movement toward individualism or self-realization tended to undermine the thought of the family as a collective unit. The women's movement emphasizes the value of women as individuals apart from the collective value of the family, as does the children's rights movement. The improved status of all family members as individuals has also increased the demand for more responsive laws and a better judicial system to most effectively resolve their disputes. Legislatures have responded with increased legislation involving family relationships. . . . These new laws . . . have substantially increased the workload and focus upon courts deciding intrafamilial disputes. . . . The increasing realization of the importance of these courts . . . and their emergence as a respected judicial system . . . [have put the lights on] a heretofore darkened area of the courthouse. With the increased status comes the increased demand for a responsible and effective system. (Page 1993, pp. 3–4)

No one wants to go back to the days when conditions within families remained largely invisible to the outside world and when, within that darkness, the rights of women and children could be abused. But having intervened in the domestic context to protect these rights, and to provide services to help the family function well, the state now finds itself having to deal with many more family issues. Perhaps it can learn more quickly how to do this if it creates a court that can embrace the full extent of the laws now regulating intrafamily relations. In any case, it is worth reminding ourselves that a family is more than the bundle of individual rights held by individual family members as individual members of the society, and it is worth asking ourselves what bundles of reciprocal rights and responsibilities distributed across family members define a "well-governed" family—one that not only meets its obligations to its various members, but also works reasonably well in achieving its important social purposes.

The practical argument for a family court is that a court that could look at all the legal matters involving a single family could do its job more efficiently, effectively, and fairly than a court system that tried to deal with different issues in different courts (Katz and Kuhn 1991; Rubin and Flango 1992; Page 1993; Shepherd 1993; Town 1994). Through consolidation, the courts could prevent "forum shopping" by family members disappointed in court decisions. Through consolidation, the courts could also gain whatever benefits would come in terms of justice or practical effect from seeing each individual matter before the court in light of the overall family situation as it was revealed through the investigation into the different matters before the court. Through consolidation, a significant amount of duplication of effort in creating basic information about the family situation could be avoided, to the advantage of both the family (who would be less intruded on) and the court (which would have to spend less time gathering the information). And through consolidation, greater consistency across cases involving both the same family and different families could be attained.

These arguments have been sufficient to persuade many states to adopt family court legislation and for many others to experiment with the idea (Shepherd 1993). Appendix C shows the status of the family court concept across the nation as of 1995. Beyond the boundaries of the United States there have been family court innovations in New Zealand, Canada, and Poland (J. Waterhouse and L. Waterhouse 1983; Mitchell 1990).

6. *Concerns about the Family Court Model.* Although the basic concept of a family court has enjoyed significant support and popularity, some important concerns remain. These include uncertainty about the sources, extent, and efficacy of the court's legal authority over children, parents, and other public caretakers, the availability of social services to support the work of the court, and some technical and administrative questions about the sorts of information systems that would provide the necessary basis for making improved dispositions.

Perhaps the greatest uncertainty about the family court model is the sources, extent, and practical efficacy of its authority over family members, parents, and other caretakers. This uncertainty is crucial, for it strikes at what is fundamental to the family court concept: namely, the idea that family members have responsibilities (as well as rights) toward one another, that the reliable execution of these responsibilities (and vindication of the rights) will allow the family to perform mini-

mally satisfactorily in both the short and long run, and that it is the court's job to ensure that these responsibilities (and rights) are lived up to in daily life. If the court, in fact, lacks these powers, or if, as a practical matter, the powers turn out to be useless in trying to restore family functioning, then much of the promise of the family court is lost.

Note that the question of whether the court has authority over caretakers really divides itself into two parts. One is whether the family court has powers over *parents*; the second is whether the court has power over other caretakers who have assumed responsibility for the conduct and care of children, including other private individuals who have volunteered their efforts, private individuals and agencies paid by government with tax dollars to perform this job, or tax-financed, civil service staffed public agencies. In today's world, where in-home placements are being sustained only through a continued supply of intensive social services, and where many more children are in out-of-home placements, the question whether the court has power over publicly supported agencies often seems more significant than whether it has power over parents, though both are important.

There is little doubt, of course, about the power of the state over parents or public caretakers when the cases involve the abuse and neglect of children. In these cases, no one doubts the interest of the state or the propriety of its focus on the parents and caretakers even if the proper response to the cases remains unclear. It is their conduct that has brought the case before the court.

Greater doubt attaches to the propriety and effectiveness of making caretakers parties before the court in cases involving either crimes or status offenses. The justification for such practices is the simple notion that, because children are supposed to be in the care and custody of their parents, their parents and caretakers share some of their guilt when they offend. This idea was explicit in colonial practices that allowed parents to be placed in public stocks for the misconduct of their children (Bremner et al. 1974). And it has enjoyed a recent public resurgence in Oregon, where a statute was passed that made parents responsible for the conduct of their children and exposed them to fines if the children misbehaved (Egan 1995). Moreover, one could argue that, insofar as society is currently committed to making the "least restrictive" disposition in juvenile delinquency cases (and therefore implicitly relying on parents and caretakers to shoulder the burden of effectively supervising young offenders), it is implicitly relying on the principle that parents and caretakers should be held accountable for

the actions of their children and wards (Institute of Judicial Administration, American Bar Association Joint Commission on Juvenile Justice Standards 1980). And, to the extent that the United States begins to adopt the practice of "family group conferences" pioneered in New Zealand for adjudicating and disposing of juvenile cases, the principle that parents and caretakers should be parties before the court in juvenile cases is being implicitly embraced (D. Moore 1993). In these respects, then, the concept of parental or caretaker responsibility seems well established.

But the idea that parents and caretakers should be parties before the court in delinquency and status offense cases and that they should be subject to court authority as part of the disposition the court makes strikes many as bizarre. After all, it is the conduct of the children that brought them before the court. Why is the court focusing on the parents?

Family court judges themselves report they are uncertain about whether they have the authority to order parents to take specific actions in disposing of juvenile delinquency cases and, if so, what the source of their power might be. A recent survey found that 76 percent of the judges surveyed thought they had the power to enforce an order to parents in delinquency cases through their contempt powers, 61 percent thought they could review treatment orders involving parents, but only 50 percent thought they could order protections and restraints, and only 26 percent thought parents would be subject to criminal sanctions for failure to meet the obligations ordered by the court (National Council of Juvenile and Family Court Judges 1989, app. A, pp. 25-31).

The situation changes, to some degree, when the guardian of the child is not the parent but is instead a foster parent or an agency of the state. The situation is easier since the court is less obviously intruding into a private institution. The line between public and private has already been blurred, if not erased. The question then becomes whether one branch of government—the judicial—can compel other branches of government—the legislative or the executive—to behave in particular ways with respect to whole classes of children or a particular child. This important "separation of powers" question has not been fully adjudicated (Chayes 1976; Nagel 1978; Horowitz 1983). It is clear that, on occasion, a court can order an agency to provide services to individual children. It is also clear that, on occasion, a court can place a social service agency into receivership if it is failing to protect the

constitutional rights of its clients (Cooper 1988). But what remains unclear is whether the court can write orders for each individual child and have the cumulative total of those orders bind the legislature to fund and the executive to provide. Arguably, such orders constitute the court's judgment about what justice requires for individual children. That judgment ought to have some kind of standing in the minds of legislators and executive branch officials. But it is not clear that the judicial views can overwhelm judgments of legislators or elected chief executives and their appointed commissioners about the level of supervision and care to be publicly supplied to children.

This brings us to the second principal concern about the family court: the availability of sufficient social services to achieve the purposes of the court. Many are dissatisfied with the prospects of a court that only imposes obligations on parents and children and does little to help them. While such a court could satisfy the desire to hold individuals accountable for meeting minimal standards as a parent, caretaker, or child, it would not necessarily achieve the desired results of producing well-functioning family systems unless the parents and children *responded* to the imposition of authority with improved behavior. That, in turn, may only be possible if they are provided with some material assistance.

Material assistance to struggling families may be both substantively and symbolically important. The substantive importance lies in the value that the assistance has in solving problems that now beset the family, for example, enough day care to relieve stress, or sufficient treatment to reduce drug and alcohol abuse. The symbolic importance lies in the fact that, by providing aid, society shows its continued concern for the family. It cannot be accused of merely "scapegoating" or "blaming the victim." The symbolic effect may have material consequences for the motivation of the family to improve. In any case, if providing services is an important part of the court's success in restoring family functioning, then it is obvious that the overall availability of such services and their particular availability to court-referred families becomes key to the success of the family court model.

It is in this key domain that family court judges voice their greatest degree of dissatisfaction. The same survey that reported judicial uncertainty about their power to order parents and public caretakers to provide services also found that 75 percent of the judges thought that their greatest problem was to "assure the availability of appropriate sanctions, service, or treatment resources." Importantly, the judges found

this limitation more significant in dealing with delinquency and status offense cases than in cases involving abuse and neglect (National Council of Juvenile and Family Court Judges 1989, app. A, pp. 23-24).

This is also the area in which the states that have actually established family courts have experienced the greatest problems and frustrations. In Rhode Island, the state that has had the longest experience in operating a unified family court system, family court judges and social service administrators agree that the unified court works much better for the children and families that come before it (Wakeling 1995). Yet, the principal problem they have encountered is that the court's operations have made the lives of social service administrators far more difficult. With judges ordering high levels of services for particular cases that come before them (and case workers playing the system to advantage their clients' prospects for services over others who are not court-involved), it is hard for social service administrators to ensure that their services are being fairly distributed according to their definitions of who needs services. In effect, a principle of bureaucratic rationality governing the fair and efficient delivery of overall services is coming into conflict with a judicial determination of what justice demands in individual cases. That problem could be solved if there were enough resources for all. But in a world in which resources are scarce, conflicts arise, and losses are incurred from one standpoint or the other.

In Hawaii, the situation seems somewhat better (Wakeling 1995). There are fewer conflicts between judges and social service agencies. The reason seems to be that the judges, social service administrators, and caseworkers act more as partners in the design and delivery of social services as part of the court's dispositions. They understand both the overall limitations of the social service system, the needs of the particular cases now before the judges, and the needs of other cases that are not now before the judge but are also in desperate straits. It also helps that Hawaii has in the past invested heavily in social service systems and, as a consequence, has a relatively large and diverse system. And it helps that many family court judges have acted as advocates in the political process for increasing investments in social service systems. The extent to which the better situation in Hawaii is explained by the larger supply of social services will probably be tested in the future as Hawaii is forced to cut back on social services due to unprecedented budget deficits. It may be that the situation there will come to more closely resemble that of Rhode Island.

The dissatisfaction of the judges with the availability of services to support troubled families and children both nationwide and in selected family court states is echoed by many others who see a huge gap between the needs of the nation's families and children and the limited availability of public programs (American Bar Association 1993; Carnegie Task Force on Meeting the Needs of Young Children 1994; Weissbourd 1996). If the aggregate, national picture is one of struggling families and limited social services, then it is not surprising that the courts find it hard to stimulate the appropriate supply of services in the disposition of the cases that come before them.

Why there is such a shortfall between responsible estimates of need and the supply of services is, of course, the subject of intense political discussion. One might consider this discussion well beyond the concerns of an essay focused on developing a proper mandate for the juvenile justice system. Yet there might be an important link.

The political argument for expanded social services is implicitly made on three different grounds. One is simple charity and compassion: the suffering of the families and children is great; it would be a virtue for society to alleviate it. A second is an appeal to enlightened self-interest: if society does not act now to deal with the plight of families and children, there will be a huge price to pay later on in terms of increased criminality and other social ills. The third is a general claim about justice: a just society would recognize that children have substantive rights to be cared for decently and act to ensure that such care would be provided. In many ways, this third ground is the most demanding claim. Yet there often seems to be little to back it up.

It is here that the nation's family and juvenile court judges could potentially have an effect. They could commit themselves to writing down dispositions of individual cases that come before them in terms of what they think justice requires *without being constrained by the availability of resources*. They could define these dispositions as the "just dispositions." The "real dispositions" would be the ones that were actually administered in the constrained circumstances the judges encountered. Each year, the courts could add up the total discrepancies between what the "just disposition" required and what the "real disposition" actually provided and describe the difference between the two as a measure of the extent to which society was doing injustice to its family and children. That shortfall could be reported publicly without further comment. The legislature and the executive could do whatever

they wanted with this information, but instead of being an abstract concept, the idea of what justice requires for family and children would have become quite concrete and particular.

The power of the claim that the aggregate total of the court's "just dispositions" represents an accurate picture of what justice requires society to do on behalf of family and children depends crucially on the quality of the dispositions the court can make. Society must believe that the family and juvenile court judges are making dispositions in individual cases that accurately reflect proper ideas of what family members owe to one another and what society owes to the family and its individual members. Moreover, it helps in legitimating these decisions if society also believes that the dispositions made will be instrumentally valuable in achieving practical social purposes—such as preventing future criminality by neglected and abused children. This is where the third concern about the family court arises: namely, in its technical capacity to produce just and effective dispositions in individual cases.

A host of technical problems beset family courts in making just and effective dispositions. It is by no means clear that the law has developed adequately in this domain for family court judges to have a clear conception of any of the important rights (and responsibilities) they are supposed to be protecting (and enforcing). What children really are entitled to from their private and public caretakers remains unclear. What duties parents owe society in caring for their children is also unclear (Minow 1987). Nor is it clear that our knowledge about how to intervene in the lives of family and children to help them function more effectively is well established. We do not really know whether it is helpful or harmful to future family functioning to have the court threaten or actually intervene in family matters. Nor do we know how to assemble different kinds of services in appropriate combinations to achieve the aims of the family court.

These facts, no doubt, account for some of the frustration experienced by those states that have committed themselves to family courts. Although much of the frustration that Rhode Island and Hawaii have experienced seems linked to the absence of both general legal authority and social service resources to accomplish the job, there is also evidence of frustration with the adequacy of the technical legal and substantive infrastructure for doing the job (Wakeling 1995). As a legal doctrine, family courts can commit themselves to the principles of "family maintenance" and "permanency planning," and it seems reasonable to suppose that these principles reasonably guide the courts to

just and effective dispositions in dependency cases (Fraser, Pecora, and Haapala 1991). But the case law that would provide instruction about how to balance conflicting rights and interests in hard cases and the social science evidence that not only demonstrates that these approaches work but also tells us what specific dispositions designed to be consistent with these principles should be are both sketchy and contradictory at present.

There is even a fundamental conceptual problem in thinking through what a "case" and what a "family" means in the context of a family court and how the structure and function of a family could be assessed to support findings and dispositions in the family court. Consider, first, what is meant by a "case" in the family court.

At one level, the answer is perfectly obvious: a case is a legal matter pending before the court. It could be a divorce petition, an allegation of abuse and neglect, a truancy, or a burglary committed by a youthful offender. The case is resolved when the court decides what is to be done with the matter before it: whether the divorce will be granted, the abuse and neglect proven and sanctioned or dismissed, and so on. Yet, in making each of these decisions, the court is typically not trying to assess simply whether an act occurred and whether the accused did it but instead to find out a great deal about the family circumstances that gave rise to the incident that brought the matter before the court (M. Moore et al. 1987, pp. 14–20). Moreover, the court is supposed to see this particular legal matter in the context of all other pending (and presumably prior) legal matters involving the family in the interest of making a more accurate and comprehensive assessment of the circumstance (Rubin and Flango 1992; Page 1993). And, once it makes a particular decision about a particular legal matter, that disposition will probably require some ongoing monitoring to see that it is carried out and what the effect on family circumstances turns out to be. Thus, a case is not a discrete event fixed in time and space to be responded to with a particular decision that ends the case; a case is an ongoing relationship between the family and the court where particular incidents give the court an occasion to review the overall performance of the family.

Consider, next, what is meant by a "family." At one level, again, this seems straightforward: a family is a caretaker for the children for whom the caretaker is responsible. But consider what that means in the concrete circumstances of today. Suppose there is a woman who is the natural mother of four children, and the court-appointed caretaker

for two others. Suppose, further, that the four natural children have two different fathers. Suppose still further that much of the care of the six children for whom the woman is responsible is provided by the woman's mother and a sixteen-year-old girl who has come to live with the woman because her mother was once a friend. In such a circumstance, if one tried to define the family in terms of family function, one would say that one was looking at a woman trying to support six children with the (intermittent) help of their two other natural parents, her mother, and a neighbor. But one could also define family from the point of view of each individual child. Viewed from that perspective, we would be looking at six different families in this one setting.

This could be seen as a mere semantic problem, but it goes deeper than that. To the extent that a family court is trying to improve family functioning with respect to the raising of children, it has to be able to look at the quality of family functioning from the perspective of each individual child. That means that it has to look at the quality of care and supervision that comes to a child not only from his or her primary caretaker, but also from the wider nexus of caretakers wrapped around the child. It may "take a village to raise a child," but it is up to the court to know what particular parts of the village are committed to dealing with an individual child.

Now consider what it would mean to do an investigation to support a disposition. An investigation might well begin with an effort to ascertain whether a particular juvenile offense, or a particular instance of abuse or neglect, did or did not occur and who committed it. Yet, the investigation would soon start ranging well beyond this narrow question. In investigating the particular offense, it would seek to understand the context in which the offense occurred because that would be a more reliable way to understand how the family was functioning and to guide an appropriate disposition. The investigation would then reach beyond the boundaries of the current incident and the context that led up to it and determine the extent to which parties to the current investigation had other matters pending before the court, either now or in the past. The aim would be to support accurate judgments about how well a particular nexus of care, supervision, and investment was working to support the development of the child whose current condition and future prospects formed the heart of the court's concerns.

This sort of investigation may require the skills of both police investigators and social workers. The interpretation of the data collected

from the investigation would require the skills of social workers who knew what sorts of relationships sustained over time would be most valuable to the future development of the child. The design of a just and effective disposition in response to the circumstances observed requires the skills of both social workers and judges. Whether the skills to conduct such investigations, make such interpretations, and propose appropriate dispositions really exist is quite uncertain. Yet, the success of the family court concept depends crucially on the existence of such capabilities, for without them the promise that the family court's interventions could be more effective than those of a more traditional court seems hollow.

B. Trends in Social Conditions Affecting the Work of the Juvenile Justice System

History seems to have brought society to a place where it is considering two broadly different paths for the juvenile justice system to follow. One is toward a "criminalized juvenile court." The other is toward a "family court." In trying to determine which should be embraced in the future, one can look to political and legal trends as we have been doing. It is in these domains that society's collective aspirations can be found. The alternative is to look out to the tasks that society will be relying on the juvenile justice system to perform in the future. That is the task of this section.

The most obvious and important thing to say about the tasks before the juvenile justice system is simply that over the next decade or two there is going to be a great deal of work for it to do no matter how we define its purposes. Demographic trends show increases in the population of concern to the juvenile justice system—both the twelve- to sixteen-year-olds who might become offenders and the younger children who might be victims of abuse and neglect (Snyder and Sickmund 1995, p. 2). The demographic data also suggest significant increases in families with problems that might bring them to the juvenile court (Snyder and Sickmund 1995, p. 6). Abuse and neglect continue to be reported at increasing rates; many of the cases are serious enough to reach the juvenile court but not serious enough to reach the adult court (National Center on Child Abuse and Neglect 1995). Foster care is increasing (U.S. House of Representatives, Committee on Ways and Means 1994; Tatara 1996). So are families with limited parental resources (Annie E. Casey Foundation 1996; Weissbourd 1996). In es-

sence, society has a great deal of child rearing to do, and the private and public institutions available to do it are quite limited.

This suggests to us that the embrace of the criminalization of the juvenile court would be a mistake. It puts the emphasis on the wrong problem. It leaves too many problems and too many public concerns neglected. The alternative approach, to strengthen our focus on the dependency jurisdiction through the further development of the family court, is the right way to go. The difficulty with this idea, however, is that it seems open-ended and unfamiliar.

III. Conclusion: A Court for Superintending "Family Bankruptcies"

Society is now vigorously debating the future of the juvenile justice system. The debate is, perhaps, overly influenced by the need to respond to crimes committed by young offenders and by the compelling analogy of the adult criminal court. The easiest way for society to think about the issue of juvenile justice and the future of the juvenile court is to think in terms of strengthening the juvenile court as a special kind of criminal court to deal with crimes committed by youthful offenders. That is the path that leads to a "criminalized" criminal court.

A harder way to think about it is to face up to the broader problems that society is trying to solve at least partly through the operations of the juvenile or family court. The broader problems have to do with the conditions under which children are now being raised. These are the conditions that are signaled by such matters as divorce, child custody, visitation rights, child support payments, conditions under which welfare benefits are provided to poor families, and "permanency planning" in foster care placements, and by juvenile crimes, abuse and neglect of children, and status offenses.

Different concerns could motivate society to look at these broader problems. It could be a simple desire to alleviate the pain and suffering of children. It could be a practical interest in preventing future criminal offending by neglected children. It could be a belief that children have rights to care, protection, and effective mentoring that society has to meet if their parents will not. These are values that are potentially at stake in the political discussion about the future of juvenile justice and the juvenile court, but they tend to get pushed off the stage by other more urgent and familiar concerns with responding to criminal offending by children.

Part of the reason that these values get pushed off the stage is that

these concerns seem softer and less urgent than the problems of juvenile crime. But another important reason is that society is not sure that it has the right, or can plausibly have an effect on, these broader conditions. It has become sufficiently frustrated with the *parens patriae* model of the juvenile court that anything that resembles this model must be considered suspect. The vision of the "family court" is, unfortunately, sufficiently close to that model that its prospects suffer from the defects of its predecessor. To give the "family court model" a chance in the debate about the future of the juvenile court, a fresh way of looking at such a court has to be invented.

A. *The Family Court as a Family Bankruptcy Court*

One idea that might be helpful in making the case for the "family court" model would be to liken it to "bankruptcy" courts (Jordan and Warren 1985; Practising Law Institute 1988). In essence, the family court model would be proposed as a court designed to oversee families that were going "bankrupt" in the sense that they seemed to be failing to meet their obligations to their creditors—that is, the wider society that is counting on them to do the job of raising children well.

The signs that a family is headed toward bankruptcy are present when the family declares itself "bankrupt," or when society has concrete evidence indicating that things are not going well with respect to the child rearing. These conditions are written into the codes defining the jurisdiction of the family court. They include situations where parents have divorced, failed to make child support payments, or have otherwise disappeared from the child's life; where parents and other caretakers have abused and neglected their children in physically more drastic ways; where children are committing crimes against other citizens; and where children are engaged in conduct that is particularly dangerous for their future development such as engaging in drug use or behaving in ways that can produce unwanted pregnancies.

Faced with such signs of "bankruptcy," the family court could intervene in two different ways broadly analogous to the options facing a bankruptcy court. It can decide to "liquidate" the bankrupt enterprise and transfer the child to the care and custody of someone other than the current caretakers. Or, it can decide to "restructure." It can explain to the "creditors" (such as the victims of juvenile crime or the citizens who are outraged by parental abuse and neglect) that, while they have reason to feel betrayed by the family's current conduct, they would not be particularly well served by insisting that the family be broken apart.

Instead, they would be better served if they could give the family room to begin functioning again.

To ensure that the interests of these creditors are protected, the court will order the family to behave in particular ways, will provide assistance of various kinds, and will keep monitoring conditions to ensure that the family is successfully emerging from bankruptcy. In defining and enforcing these obligations, the court would be well served by someone operating in the role of a "special master" in a bankruptcy case. This role could be assumed by a social worker, a court probation officer, or even a case manager for a youth correctional agency.

There is an important difference between the image of a court that superintends family bankruptcies and the *parens patriae* court. Like the *parens patriae* court, the family bankruptcy court retains a broad jurisdiction. The crucial difference, however, is that the relationship between the court and the child remains a mediated one. The court does not assume direct responsibility and control over the child; it holds private and public caretakers, and the children, responsible for living up to their duties to one another, and makes available to these parties the services that the state is willing to provide to support their work.

B. *Jurisprudential Axioms Supporting the Family Bankruptcy Court*

To accept this analogy, society would have to come to accept some uncomfortable but important truths about the relationship between families, children, and the wider society. Specifically, it would have to acknowledge three jurisprudential axioms defining the proper relationships among families, children, and society.

The first axiom is that, despite its desire to leave most of the child-rearing work to families, society as a whole has a widely acknowledged, broad responsibility for rearing its children. Put more provocatively, in the end child rearing is a public responsibility.

This may seem startling since, for the most part, the state does not participate in or interfere with child-rearing practices. Generally speaking, the responsibility for raising children rests with parents, and many discharge their duties tolerably well. That is fortunate since it allows the state to achieve the dual objective of protecting the privacy and autonomy of families and assuring the proper development of its future citizens. This state of affairs also makes it seem as though the state had few legitimate interests or concerns about the quality of child rearing.

What makes this axiom a plausible one, however, is that, where there is a significant and obvious default of the private responsibilities

of caring for children, society, in the form of its legal institutions, inevitably and invariably steps in. When a child lacks a legal guardian, the court appoints one. When a marriage with children breaks up, the state decides who will have custody. When parents attack a child, the state steps in to prevent future occurrences.

The second axiom is closely related to the first: parents, legal guardians, and other public caretakers of children have responsibilities to the broader society. They are not entirely autonomous. Put more provocatively, the family (and its various substitutes) are (at least to some degree) the agents of society in raising children.

This, too, may seem surprising—even outrageous. We are accustomed to thinking of families as being autonomous and granted great deference in child rearing. And so they are. The point is simply that, even with this wide deference, families remain under some degree of supervision and restraint by the state. Minimal standards for care exist implicitly in the laws defining abuse and neglect. They are also present in the standards regulating the conduct of those public agencies that assume responsibility for children. If the standards are violated, the caretakers—whether private or public—will come under public scrutiny. If the violation is serious enough, the court will seek to reconstitute the arrangements for caring for children to ensure that children receive the required minimum care, supervision, and training. It is in this sense that caretakers are agents for society.

The third axiom is that the just and effective public response to breakdowns in child-rearing arrangements includes not only the vindication of children's rights and the provision of public services but also the imposition of duties on caretakers and children. Often people imagine that the only proper and just response to breakdowns in child rearing is to provide material assistance to the child or his caretakers in the form of increased financial assistance, more social work counseling, or enhanced educational opportunities for the child. Such assistance may well be important, not only for its own sake, but also in establishing an effective working relationship in which struggling parents and children come to believe that society has not entirely abandoned them. But it is also important to keep in mind that a just and effective response to breakdowns in child rearing could include reminding both caretakers and children of their duties to the broader society. This could be described as holding parents and children accountable for the performance of their duties and could well be part of a just and effective response to signs of failure in child rearing.

C. *Investments Required to Support the Family Bankruptcy Court*

Acceptance of these basic axioms would provide much of the justification for proceeding with the development of the family court as the future of juvenile justice. But, to make the court work reliably, a great deal of additional work must be done on the basic technical infrastructure of the court. This includes working out in more detail than has so far been done what these axioms mean in particular cases. It also means developing the social science base that can guide the court to effective as well as just dispositions. And it means investing in a wide array of social services. Even with all this, it is by no means certain that the family court model could succeed.

Why, then, does it seem important—even urgent—for society to get on with the business of developing this family court model? The simple answer is that society's stakes in ensuring the quality of child rearing are very large even if largely unacknowledged. A society that neglects its children cannot hope to succeed. Nor can it claim to be either just or virtuous. And a society that has given up trying to succeed, and to be just and virtuous, is a society that is headed for bankruptcy itself.

The ancient philosophers always thought that the quality of relations in a society depended crucially on the quality of relationships within its constitutive parts—particularly the family (Aristotle 1995). More recently, we have acted as though we could take quality in family relations for granted. But the price of that has been the neglect of families that need both to be reminded of their importance to the society and given assistance in helping them meet their responsibilities. That is a particularly urgent task today, and a task that must be met in trying to produce justice for families and children and, through that, justice for the broader society.

APPENDIX A

Candidate Subject Matter Jurisdiction for Family and Juvenile Courts

Abuse and neglect
Adoption
Alimony
Child custody and visitation
Child support
Consent to marriage by minors
Dissolution of marriage (including divorce, annulment, separate maintenance, etc.)

Domestic violence
Spousal abuse
Elder abuse
External review of children in placement
Juvenile delinquency
Management of minors' funds
Palimony
Paternity
Spousal abuse
Status offenses (including children or families in need of supervision, incorrigibility, truancy, runaways, dependent and neglected, etc.)
Termination of parental rights

Adult criminal (intrafamilial)
Appeals of agency decisions affecting children
Commitment to mental health facilities or institutions
Competency
Motor vehicle offenses of minors

SOURCE.—Page (1993).

APPENDIX B

Juvenile Court Transfer Provisions

Waiver only:
Arizona
California
Iowa
Maine
Massachusetts
Missouri
Montana
New Jersey
North Dakota
Oregon
South Carolina
Tennessee
Texas
Virginia
West Virginia
Wisconsin
Exclusion only:
New York
Concurrent jurisdiction only:
Nebraska

Waiver and exclusion:

- Alabama
- Alaska
- Connecticut
- Delaware
- Hawaii
- Idaho
- Illinois
- Indiana
- Kansas
- Kentucky
- Maryland
- Minnesota
- Mississippi
- Nevada
- New Mexico
- North Carolina
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- Washington

Waiver and concurrent exclusion:

- Arkansas
- Colorado
- District of Columbia
- Florida
- Michigan
- New Hampshire
- South Dakota
- Wyoming

All three mechanisms:

- Georgia
- Louisiana
- Utah
- Vermont

SOURCE.—Snyder and Sickmund (1995).

NOTE.—Analyses were conducted October 1994; some provisions were effective January 1, 1995.

APPENDIX C

Family Court Status in the United States

Not Present (25):

- Alaska
- Arizona

- Arkansas
 - Georgia
 - Idaho
 - Indiana
 - Iowa
 - Louisiana
 - Maine
 - Massachusetts
 - Michigan
 - Montana
 - Nebraska
 - New Hampshire
 - New Mexico
 - North Carolina
 - North Dakota
 - Ohio
 - Oklahoma
 - South Dakota
 - Tennessee
 - Texas
 - West Virginia
 - Wisconsin
 - Wyoming
- Present (12):
- Connecticut
 - Delaware
 - District of Columbia
 - Hawaii
 - Nevada
 - New Jersey
 - New York
 - Pennsylvania
 - Rhode Island
 - South Carolina
 - Vermont
 - Virginia
- Experiment (3):
- California
 - Illinois
 - Kentucky
- Under Development (1):
- Florida
- Recently Enacted (1):
- Missouri
- Actively Considering (6):
- Colorado
 - Kansas

Maryland
Oregon
Utah
Washington

Specific District/Circuit (3):

Alabama
Minnesota
Mississippi

SOURCE.—National Center for Juvenile Justice (1995).

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