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From Children to Citizens

Volume I

The Mandate for Juvenile Justice

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The Problem

Sometimes children become social problems. It happens when they commit crimes, or frighten other citizens. Or, it happens when they are exposed to dangers from which the society would like to shield them. The following cases, drawn from the dockets of a municipal juvenile court,[1] illustrate these possibilities.

Kevin: A Young Robber

Kevin is a 16-year-old boy charged with robbery. He knocked a middle-aged businessman to the ground, kicked him twice in the stomach, and took his watch and wallet.

Kevin is well known to the juvenile court. When he was 13, his mother filed a Child-in-Need-of-Supervision (CHINS) petition asking the court to keep him from running away and staying out late at night. Before that petition could be heard, Kevin was brought before the court on a delinquency petition for breaking and entering. Both petitions were dismissed. At age 14, Kevin ran away for a week, and his mother filed another CHINS petition. That petition, too, was dismissed. At age 15, Kevin was adjudicated delinquent for breaking and entering and was placed on probation. When he was 16, new burglary offenses were filed against him and Kevin was committed to the Youth Authority and placed in a private residential facility. He ran away. Now Kevin has been arrested for unarmed robbery and for a murder committed in a different jurisdiction.

Kevin's background includes physical abuse by his father. He admits he has difficulty controlling his temper, but talks often about the injustice of the world and his determination to fight back to get what he is owed.

A juvenile court judge is trying to decide whether Kevin should be transferred to the adult court for trial on the robbery charge.

Julie: An Angry Young Woman

Julie, a 15-year-old girl, has been arrested for attempted murder. Her boyfriend was shot when a gun held by Julie either was fired or went off

accidentally. He is now in a coma and unable to testify as to the circumstances of the crime.

Though Julie has had minor discipline problems in school, she has never before been in serious trouble. Julie's mother divorced Julie's father eight years ago because he was alcoholic. The mother then lived with another man who acted as a father to Julie, and the family seemed to do well. Recently, however, Julie's mother left this second man for a third. Julie claims that the most recent man has abused her physically and sexually. As a result she has spent more time with her own boyfriend, often staying away from home for several days at a time. Her mother denies that Julie has been abused.

The prosecutor is trying to decide what charge to file and whether to proceed in the juvenile or adult court.

Paul: A Teenaged Drunk Driver

Paul, a 16-year-old boy, has been arrested for vehicular homicide. He admits that he was driving his father's car home late at night after dropping his girl friend at her house. He also admits having taken advantage of his parents' absence to organize a party for his friends, and that he bought a keg of beer for the occasion. He further admits drinking a nightcap at his girl friend's house. On the way home, Paul accelerated through an intersection as the light was turning red. He hit an oncoming car as it turned left in front of him and killed the person on the passenger side.

The relatives of the victims are not vengeful; in their words, they are not "eager to throw Paul's life down the drain, too." Paul has previously been caught drinking twice at school. Paul's parents express great concern and promise to supervise him much more closely in the future. A juvenile court judge must decide what disposition to make.

Angelique: A Battered Child

Three-year-old Angelique was brought to the hospital by her mother. X-ray films showed a fractured skull. Angelique's mother explained that she hit Angelique's head against the wall in a momentary rage, just after she herself was beaten by her boyfriend. The boyfriend then left the house and was not expected to return.

There is no previous record of either abuse or neglect, and Angelique's medical and day-care records indicate that she is developing normally. The hospital has petitioned the juvenile court to place Angelique in foster care. Angelique's mother is adamantly opposed. The judge must decide what to do.

Royce: A Brash Delinquent

Royce, a 15-year-old boy, has just been arrested and charged with auto theft for the fourth time in three years. After his second offense, Royce was adjudicated delinquent and placed in an open residential program for multidrug abusers. During this period he continued to live at home with his aunt but spent a great deal of time in the program.

He seems intelligent and is able to relate well to others. He is proud of his criminal career, and brags that he has "only four busts for hundreds of thefts." He has a steady girl friend whom he says he would like to marry. He also says that he understands the penalties of crime will increase when he becomes an adult in the eyes of the law, and that he will then probably give up stealing cars. He justifies his current crimes by the simple statement that they "improve his life-style."

Chris: An Angry Son

Chris, a strapping 16-year-old, recently punched his father in the face and his father is now threatening to press charges for assault. Chris and his father have often argued about Chris's future, and this is not the first time the arguments have led to violence. Chris has also repeatedly run away from home. He usually returns within a short time when he runs out of money, but sometimes he has stayed away for several weeks. A year ago, Chris's father filed a CHINS petition asking the court to help him keep Chris at home. Chris's school record is good, but he has been held back because of frequent absences. The case is currently in the hands of the police who responded to the father's call.

Tina: A Malnourished Adolescent

Tina, a 12-year-old girl, has been referred to the Department of Public Health by her teacher, who believes that Tina is malnourished because she is always hungry, cold, and tired in class. The Health Department has found that Tina lives in a sparsely furnished apartment which, at the time of the investigation, contained little food. Moreover, two younger siblings seem to have nutrition-related health problems as well. Tina's mother, a single parent, works full-time to support her seven children. She also receives aid to families with dependent children (AFDC). She resents the school's interference and claims that she does her best to provide for her children. The public health officials are deciding whether to file an abuse and neglect petition with the juvenile court.

Tom: A Late-Night Loiterer

Tom is a 15-year-old boy who stays out late. The police recently picked him up for the fourth time loitering on the street at 2:00 a.m.—a violation of the city's curfew. His late-night companions are older men whom the police suspect of crimes. Tom has no criminal record. His older brother is in prison for heroin possession. His father is dead. Tom's mother seems surprised each time he is brought home by the police. The police must decide what to do with Tom.

Alphonse: A Runaway

Fifteen-year-old Alphonse has run away from home. The police found him sleeping in an abandoned car. Alphonse's mother works part-time but spends much of her time and effort caring for Alphonse's younger sister who is developmentally disabled. She explains to the police that Alphonse's wayward tendencies are the least of her worries. In addition to running away from home, Alphonse has often been truant from school. The police wonder what they should do.

Public Nomination

The children just described are social problems in two different senses. As a practical matter, they are social problems because someone has put their cases before the public. This is noteworthy because ordinarily the conduct of children and the arrangements made for their care, protection, and supervision escape public scrutiny. As a matter of both justice and prudence, the society leaves the task of raising children to parents (or other legal guardians), granting them wide autonomy in meeting the responsibility.[2] Yet in the cases cited, inhibitions about interfering with families have been overcome. Something about the children's conduct or condition has stimulated someone, usually an "outsider," to raise an alarm and focus public attention on the children and their situation.

This is hardly surprising in the cases of Kevin, the robber; Julie, the angry girl friend; Paul, the drunk driver; and Royce, the car thief. They have all committed deeds that would be treated as crimes if the doers were adults. The outsiders who have raised the alarm are the victims or relatives of the victims. They want their losses acknowledged, and they want assurances that the offenders will be sufficiently disciplined and supervised in the future so that they and others can be safe.

In the case of Chris, the angry son, the person nominating the case for public attention is also the victim of a crime. But this time he is a parent, who has asked for public assistance in managing his child.

In the cases of Angelique, the battered child; Tina, the malnourished adolescent; and Alphonse, the runaway, the outsiders who have nominated the cases for public attention are public officials in a hospital, a school, and the police department who have become concerned about the conditions under which the children seem to be living. In focusing public attention on these children, they seem to want a guarantee that the children will receive minimum levels of supervision and care.

To a degree, one can view these nominations as formally authorized or mandated by the society. There is a body of law—both common and statutory, civil and criminal—that prescribes the duties of children and parents to one another and also *to the broader society*.[3] Children are not supposed to commit criminal offenses.[4] They are usually obliged to be at home at night.[5] They are not allowed to drink.[6] They are supposed to remain responsive to parental supervision.[7] Parents are prohibited from attacking their children.[8] Parents are obligated to provide food and shelter.[9] And so on. Since these duties are owed not only between children and parents but also to the broader society, it is the legal right (and sometimes even the duty) of citizens to bring violations of these duties to light.

As a practical matter, however, interventions are probably animated more by custom and commonly shared notions of just and proper conduct than by any formal authorization.[10] The nominators in the cases act because they judge the situation to be dangerous, not because there is a formal authorization.

Public Risks

This is the second sense in which the children described are social problems. Someone has made the judgment that the situation in each case contains material threats to social welfare, now or in the future. The nature of the threats differs across the cases, however.

Generally speaking, paramount in the public mind is the immediate threat of criminal victimization. In some cases the child is the offender and the society the victim. The cases involving Kevin, the robber; Julie, the angry girl friend; Paul, the drunk driver; and Royce, the car thief, most obviously represent threats of this type. In other cases the threat is *to* the child: society is the offender and the child is the victim. The case involving Angelique, the battered child, is the most obvious example.

The cases of Tom, the loiterer; and Alphonse, the runaway, are different, for in these there seems to be no immediate or certain threat to life or property. With Tom, the salient threat is that Tom seems headed (with some probability) toward a life of crime.[11] The threat is neither certain nor imminent, but may nonetheless be real. With Alphonse, too, the worry is about the future, but in this case the threat is more to Alphonse than to the society. The worry is more that Alphonse will be victimized and will end up a social dependent than that he will become a criminal offender.

Figure 1.1 highlights the differences in these cases by arraying them two-dimensionally. The horizontal dimension shows the risk the *child presents to the society* relative to the risk *the society presents to the child*. This dimension measures whether the child is relatively more threatening or more threatened (taking into consideration that each case contains elements of both): the farther to the right, the greater the relative risk to the society; the farther to the left, the more salient the risk to the child.

The vertical dimension shows the absolute magnitude and imminence of the risk to the society and to the child of each case. The higher up the

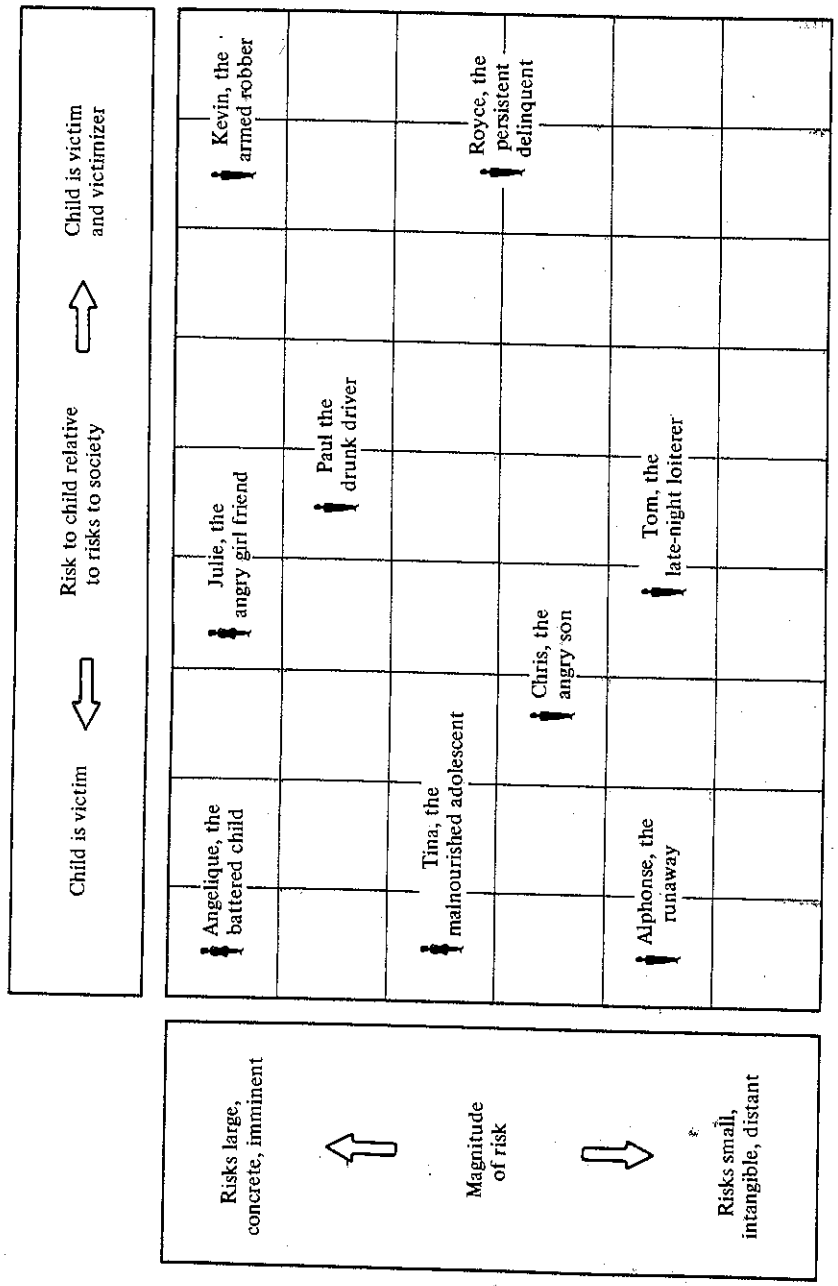


FIGURE 1.1. The domain of problems for juvenile justice.

scale the case appears, the more serious the risk appears. Cases toward the top of the scale involve large, imminent threats to life and property. Cases toward the bottom involve less tangible, less imminent, and less certain threats.[12]

Public Intervention

The effect of intervention in these cases—of raising public alarm about the conduct of the children or the conditions under which they are being raised—is to create a crisis in the existing arrangements for raising the children. The issue before the community is not only the current conduct of the children, but also the adequacy of the existing private arrangements to achieve the society's interests in supervising, protecting, and guiding the children.

Sometimes these issues will be dealt with quite formally. The cases of Kevin, Angelique, Julie, and Paul, for example, will probably be handled in a formal court adjudication because the risks involved seem to be more certain and imminent than those involved in the other cases. The case of Chris might also be handled formally if his father insists on pressing charges or if he petitions the court to help him supervise his son, but a great deal of effort will probably be expended to keep this case out of the court itself.

In the other cases, public agencies such as welfare and police departments will be involved in the discussion but the cases will not come directly before the court. The welfare department is already involved in the case of Tina, the malnourished teenager. The conversation will include people from a network of social work agencies; the issues will be whether Tina's mother is eligible for additional aid or could benefit from nutrition counseling. The conversation about Tom, the late-night loiterer, will be initiated by the police. They are likely to impress on Tom's mother the importance of more effective supervision of Tom and to threaten (or promise) their continuing efforts to keep him off the streets late at night.

These discussions can lead to a more or less radical restructuring of the existing arrangements for supervising the children. In a few cases, the primary responsibility for the child might be shifted from private institutions to public custody to ensure that the community's interests in protecting itself from violent children (or protecting children from violent parents) are met. Thus, Kevin may be placed in a secure facility or even in an adult prison. Angelique may be placed in a foster home where the threat of attack is judged to be less than in her own home.

In other cases, new obligations may be formally imposed on the parents or children or both. Royce might be obligated to make restitution to those whose cars he "borrowed." Paul and his parents may have to report regularly to a probation officer about the parents' supervision of his drink-

ing. Chris might be obligated by the court to not run away, under threat of legal punishment.

In still other cases, the conversation might result in additional resources, such as financial assistance or psychological counseling, being used to buttress the existing private arrangement. A review of Tina's situation might lead to her mother receiving additional AFDC benefits, or being provided with food stamps and nutrition counseling. Alphonse's mother might be referred to services for her disabled daughter so that she can have more time and energy for Alphonse.

A significant price must be paid for public interventions. To the extent that private arrangements for supervising and caring for children have been subjected to public scrutiny, an important principle has been breached. The state, or the community, has intruded into an area where it should not go. The breaching of this principle may be regarded as a price in itself. But it also has behavioral effects. Those previously responsible for the supervision, care, and guidance of the child may become demoralized and reduce their own level of effort.[13] Alternatively, they may become hostile to the public or private agencies that are trying to help. In either case, their overall capacity to care for the child will be reduced and the society's objectives thwarted.

Intervention also engages public resources. To the extent that families are supplied with assistance and that this assistance is financed with tax dollars, the society pays a direct financial price for intervention. To the extent that the formal authority of the state is invoked to impose new obligations on parents or children, a different kind of resource is engaged—namely, the coercive power of the state. In a society that loves privacy and freedom as much as ours does, that resource is always in short supply and must be husbanded.

Juvenile Justice

In an ideal society, the two different senses in which these cases are social problems would be closely related. Cases involving the conduct and condition of children would be nominated for public attention only when the intervention was formally authorized, the problems were serious enough to warrant the attention, and the situations could be improved by the resulting intervention.[14] Cases that were considered beyond the authorization of the society to act, or that were less serious or less amenable to public intervention would be left alone in the interest of minimizing intrusion and economizing on public resources. In this ideal society, the costs of public intervention would always be balanced by the benefits associated with reducing the short- or long-term public risks that motivated the intervention.

It is no easy task to produce this happy result. Yet precisely this result is the goal of the juvenile court and the juvenile justice system. This book aims to develop a perspective on the juvenile court and the juvenile justice system in which the philosophical foundations and the concrete operations will be closer to this goal.

It is useful at the outset to cast doubt on a familiar principle that is tacitly accepted as the philosophical foundation for juvenile justice and to set out a less familiar but potentially more accurate and useful principle. The familiar principle is that the state's primary (perhaps exclusive) justification for intruding into the private affairs of family and children is to control conduct that threatens the lives or property of citizens.[15] In this conception, the juvenile justice system is viewed as an adjunct to the adult criminal justice system that is designed to deal with the special problems of crimes committed by (and perhaps against) children. Its powers derive from the society's general police powers.

The principle proposed in contrast is that the state's motivations and justifications derive less from concern about crimes than from concern about superintending the relationships between parents and children and interest in maintaining minimally satisfactory conditions for the care, supervision, and guidance of children.[16] In this conception, the juvenile justice system is perceived as drawing on civil powers held by the state to oversee public institutions to ensure that they meet their public responsibilities. Just as the state (through the courts) now oversees businesses to make sure they meet their contractual obligations to lenders and creditors fairly when they go bankrupt,[17] oversees landlords to guarantee that they meet their obligations to tenants,[18] and oversees government agencies to ensure that their decision-making procedures meet standards of representation and rationality,[19] the state might have an interest in overseeing families to ensure that they meet minimal obligations to the society with respect to raising children. Such supervisory civil powers are exceedingly loose, and are triggered only by major problems. Nonetheless, the state has the power to regulate family relationships.

To clarify the subtle but important differences between these two principles, it is useful to look once again at society's stakes in the cases presented previously and at the particular ways in which the juvenile justice system intervenes. My contention is that while one can make one's institutions about the proper way to respond to these cases fit the police powers model, one must make a great many exceptions to do so. Moreover, once one has looked at the group of exceptions, one can formulate a different conception of the court that easily accommodates the anomalies. That different conception is the one that emphasizes civil powers over families and the conditions of child rearing rather than police powers over the conduct of children and parents.

Police Powers and Civil Powers

The cases that are most consistent with the notion that the juvenile justice system is an adjunct to the adult criminal justice system are those involving Kevin and Royce. In these, the court draws on its police powers. These boys have committed real crimes, and have done so repeatedly. They seem determined to continue offending. In fact, the question with respect to these cases is, why should they not be handled within the *adult* criminal court?

The answer generally given to this question is that, from a legal point of view, children are different from adults. Children are less mature and autonomous and therefore somewhat less responsible.[20] They are more easily moved by outside influences (such as the encouragement of peers or the provocation of victims) and more vulnerable to transient impulses that do not reflect their basic character and values. For these reasons parents (or legal guardians) have special responsibilities for supervision and guidance of children.

When a child commits an act that would be a crime if committed by an adult, then, we do not immediately assume it is a crime. We consider it just and reasonable to look behind the offense.[21] We examine the immediate context of the offense in an effort to determine whether the youthful offender was the prime mover or the relatively innocent dupe of other influences, such as the encouragement of peers, the manipulations of an adult criminal, or the provocative behavior of the victim. We explore the history of the offender to determine whether the offense was characteristic of him or her or was an odd and presumably transient impulse. And we assess the family background of the offender and his or her social circumstances to determine what part of the current conduct might be attributed to failure of private and public caretakers to live up to their obligations to provide care and guidance, rather than to the child's reluctance to learn or to accept obligations.

The society makes such examinations partly out of a concern for justice. If the offense seems out of character or explicable in terms of the failures of others to discharge their responsibilities to the child, the child's conduct would seem less culpable. This is what it means to view the offending child as a victim rather than as a victimizer.

The examination is also motivated by practical concerns. Analysis of the context of the offense may help in deciding the best response to the child's current conduct and condition. If the child seems to be basically sound but temporarily under the influence of bad associates (as in the case of Tom), the best response might be to impose conditions on the child that strengthen his or her contacts with family, school, and other healthy elements of the community. If the child seems to have deep personal problems that, whatever their cause, exist independently of the conduct of the parents (as in the cases of Julie and Alphonse), the appropriate

response may be sustained, individually based psychotherapy. And so on. The point is that the response should be tailored to the individual characteristics and social background of the child.

Such niceties may cut little ice in the cases of Kevin and Royce. There is little in their personal background or in the level of parental supervision to mitigate or excuse their offenses. For this reason their cases are simultaneously the purest objects of the state's police powers and the most obvious to be considered for handling in the adult court.

Considerations of individual characteristics and social background seem more relevant in the cases of Julie and Paul. There is no doubt in these cases that someone has been injured. What is in question is whether Julie and Paul *intended* to harm, and therefore whether they should be held criminally responsible.[22] Julie is clearly guilty of reckless conduct in handling the gun, but she might not have intended to shoot. The gun could have gone off by accident, or she might have fired in self-defense. The thought is also present that if her parents had dealt with her more sensitively and supervised her more effectively, the offense might not have occurred. None of these rationalizations excuse the deed, but they mitigate guilt and might lead to a different disposition than would be made in the adult criminal court.

In the case of Paul, one can argue that Paul is an incipient alcoholic, not a murderer. That is, it is increasingly characteristic of him to drink but not to kill. His drunk driving can and should be responded to as a crime.[23] But just as Julie's moral (and legal) guilt for shooting her boyfriend might be mitigated by the lack of intention, so might Paul's for the death of the passenger in the other car. As with Julie, Paul's parents are implicated to some degree in the crime and might therefore be included in the disposition. Their neglect was a contributing cause.

These concerns can be understood as just and useful qualifications of the state's ordinary police powers. Indeed, the quality of justice meted out in the adult courts might well be improved by the kind of probing investigation characteristic of the juvenile court.[24] But it is also possible that this concern for the background of the offense signals a different kind of state interest than the just and efficacious handling of crimes committed by juveniles. The concern about the character of the child and the capacity of parents to supervise him or her may be the *center* of the state's interest, rather than a side issue.

The case of Angelique presents a different kind of problem. It is similar to the cases of Kevin, Royce, Julie, and Paul in that there is physical injury. Hence, the state's response falls clearly within its police powers. Angelique, however, is the victim, rather than the offender. This circumstance does not answer the question of why Angelique's case should be handled in the juvenile court rather than the adult criminal court. Two features differentiate it from an ordinary assault case.

One is that an attack by a parent (or legal guardian) on a child seems

more serious than other physical assaults. It is not just that the attacker is so much more powerful than the victim. It is also that the society believes that parents have special moral and social responsibilities to their children. For the most part, this belief does not have to be acknowledged in law because it is so widely understood. But precisely for this reason the community is particularly offended when a parent breaks this code. The parent violates not only a general responsibility of citizenship, but a special responsibility that attaches to the "office" of parent in the society.[25]

A second difference is that if the parent is convicted of assault (or for the special offense of child abuse), the society must face the question of what to do with the child. In deciding whether to jail the parent or place him or her on probation, the court has to balance the general interests of the community in having its laws against child abuse strictly enforced and in ensuring that children are adequately protected from parental assault against the interests of parents and those of children and the society in salvaging the natural family.

What makes this situation different from an ordinary crime, then, is the prominence of the community's interest in family relationships. It is the sense that parents possess especially important responsibilities to their children that makes the offense of child abuse so repugnant and so deserving of community indignation and punishment. It is the society's interest in keeping the family together and functioning, however, that tempts the state not to punish a clear criminal offense with tough criminal sanctions. And the prospect that family functioning might be restored with counseling backed by the authority of the court motivates a shift from a punitive to a therapeutic style of social intervention.[26]

The interest in salvaging family relationships in cases of child abuse can be seen as an expression of a broad state interest in preserving families as the basic institution responsible for the development and socialization of children. It can also be seen as an indication of an even broader interest of the community (with the state and the juvenile justice system as its representatives) in overseeing the conditions under which children are raised. Indeed, these interests are implicit in the power of the state to maintain or fragment the family by shifting the custody of children when there is trouble within the family.

This set of interests seems quite different from the society's general interest in avoiding criminal attacks. Of course, interest in intervening in situations of child abuse may be linked to concern about criminal attack by arguing that the abused child is likely to become a criminal or an abusing parent in the future and therefore intervention is justified as a preventive effort.[27] But this is a long way around the barn. It seems much simpler to assert that the community has an obvious interest in the circumstances under which children are raised because it has an interest in the quality of citizenship they offer when they become adults. This may be linked to a prudential interest in preventing future criminal conduct by

or dependence of its citizens. Or it might simply be linked to the notion that a just society requires that all children receive that minimal level of care, investment, and guidance that gives them a fighting chance to become resourceful citizens.

The case of Chris raises a similar kind of issue. At first glance it seems that Chris's case belongs in the same category as those of Kevin and Royce, rather than that of Angelique. After all, it is Chris who is the attacker. The attack is physical. It has happened before. It seems likely to happen again.

What makes Chris's case different from Kevin's and Royce's and similar to Angelique's is the fact that Chris's victim is not a stranger: It is his father. This means that the *relationship* between Chris and his father is a casualty of the offense as well as the father. That plausibly is a social problem because the society is depending on the relationship between Chris and his father to accomplish some important objectives, for example, protection of Chris from threats, supervision so that Chris does not victimize others, and guidance of Chris toward responsible citizenship. If the relationship has fallen apart or become one in which violence occurs, the society's goals are thwarted.

The idea that the court is interested in the quality of family relationships and the future development of children helps to make sense of the society's response to the cases of Tom and Alphonse. From the perspective of police powers, the response makes little sense. No one's life or property has been attacked or even threatened. One can attempt to attribute the state's interest in these cases as an effort to prevent future crime. But the society has always been properly wary of giving the state too much power to prevent crime, because it understands how broad and preemptive that justification could become.[28] In fact, from the vantage point of the police powers model, the response in these cases seems strikingly inappropriate. It extends state power over individual conduct beyond appropriate limits. And it focuses attention on the children rather than on the parents, where the attention might more properly belong.

From the perspective of the state's use of civil powers over families, however, the response seems less anomalous. In both cases, parental supervision and care seem to be less than desirable, leaving the children exposed to both short- and long-term risks. Thus, there is reason to intervene. At the same time, this perspective does not view the child as necessarily at fault and the only focus of attention. It is the relationship of the parents to the child and their capacity to supervise the child that is the issue. Efforts should be made to motivate and equip the family to do its job more effectively.

In sum, if one views the juvenile justice system as concerned primarily with the short-run protection of the community against criminal offenses by children, one encounters some striking anomalies in the operations of the system. One cannot easily accommodate to short-run protection the

system's interest in exploring the social background of offenders and fitting the disposition of their cases to the strengths and weaknesses of the social network surrounding them, or the system's extraordinary emphasis on provision of services to children and protection of the family even at the price of risk to the community's interest in security. Nor can the system's focus on abuse and neglect cases be conveniently justified.

If, however, one views the juvenile justice system as a civil court system that superintends families and parents' responsibilities in the raising of children, these anomalies can be easily accommodated. Indeed, this conception covers all the principal features of the juvenile justice system: an individualized response to criminal offenses by children; the qualification of the response by concern for the context of the offense, the history of the child, and the competence of caretakers; concern for instances of abuse and neglect by private and public agencies that take responsibility for the development of children; and interest in leaving as much as possible of the work of fostering the development of children to institutions outside the juvenile justice system.

A Graphic Illustration of Police and Civil Powers

There is a great deal of overlap and a great deal of difference between these two conceptions. Figure 1.2 attempts to clarify the similarities and differences. The circle on the left represents the police powers model—the idea that the state's interest is primarily in guarding against property and violent crimes by children and in employing police powers to minimize such offenses. A necessary condition for the invocation of police powers then is a property or violent crime, or more broadly, any act that would be a crime if committed by an adult. How state power is used in juvenile cases, however, is not shaped entirely by the offense, as it would be in an adult system of retributive justice. Nor is it determined entirely by the blameworthiness of the child. It is also influenced by the capacity of private and public agencies to provide the supervision, guidance, and care that are necessary to protect the community from criminal acts by children in both the short and the long run. The smaller the threat the child represents and the stronger the private arrangements, the less the necessity for public intervention. In this conception, only a criminal act by a child engages the state's intervention, and the condition and background of the child are important only as qualifiers to the response.

The circle on the right side of Figure 1.2 represents the less familiar second conception—the civil powers model. The state's interest in this model is principally in ensuring minimal conditions for the development and socialization of children. Specific acts by children or their caretakers, such as crimes committed by the children or abuse and neglect by parents, signal breakdowns in these minimal conditions. In this conception, both

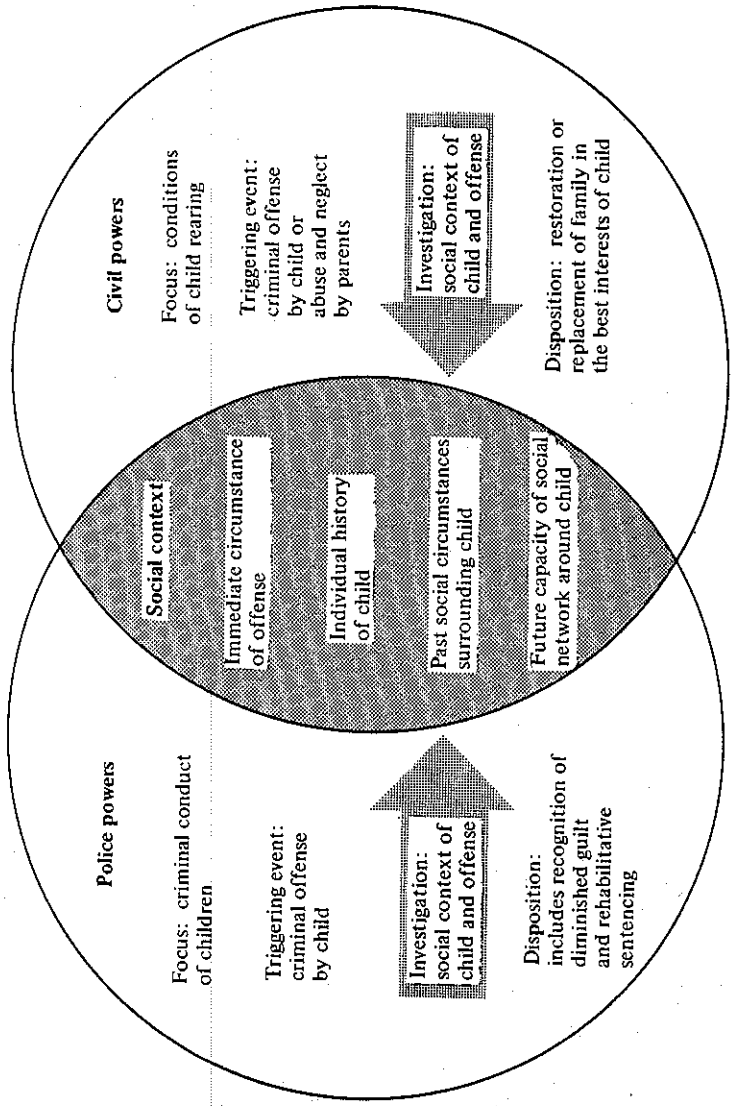


FIGURE 1.2. Police powers and civil powers: areas of separate and mutual intervention.

the act and a detailed investigation into the context of the act are important: It is the act that brings the case to public attention and the background investigation that guides the public response. The crucial difference between this conception and the police powers model is that the background investigation in this model is not a *qualification* of the state's primary interest, but an *exact expression* of it. The state's interest is in doing what it can to guarantee minimal conditions under which children are raised. It uses the conduct of children and parents as a way of focusing and limiting its concerns.

Figure 1.2 reveals that the two models overlap in the interpretation of the system's response to crimes by children. Both conceptions acknowledge criminal offenses by children as a problem that merits a public response. Both look behind the offense. Both condition the response on the basis of what can be observed about the context of the offense, the individual history of the child, and the strength of the child's private and public caretakers.

The principal difference between the two is in the principle that serves as the mandate for public response. The first conception, the one rooted in police powers, is guided by narrow, well-defined interests in doing justice to the child and the community and in preventing future criminal conduct by the child. The second conception, the one rooted in civil powers, is guided less by an interest in controlling crime than in making sure that the child is receiving minimally satisfactory levels of supervision, care, and guidance. The aim is not only to provide short-run protection from criminal offenses but also to protect community norms governing the care of children and to guard against both criminal offending and economic dependence in the future.

The response to criminal offenses is also different. The police powers model excludes cases in which there is a more or less significant breakdown in the development and socialization of children but in which no criminal acts are committed. If this model were to include these cases, it would have to deal with them as crimes committed against the child. It would have to explain why these crimes against children (but not by children) should be handled within the juvenile court or juvenile justice system. The second conception does not have this difficulty. The civil powers model easily embraces cases in which there are indications of a breakdown in the process of development and socialization; a crime does not have to have been committed for a case to arouse interest. Moreover, this model can justify its concern about these breakdowns in terms much broader than the society's crime control interests. It can talk in terms of minimizing future economic and social dependence of disadvantaged children.

A graphic illustration may be helpful in setting out this distinction. Figure 1.3 superimposes on Figure 1.1 the two alternative conceptions of the juvenile justice system. As Figure 1.3 (top) illustrates, cases in the top

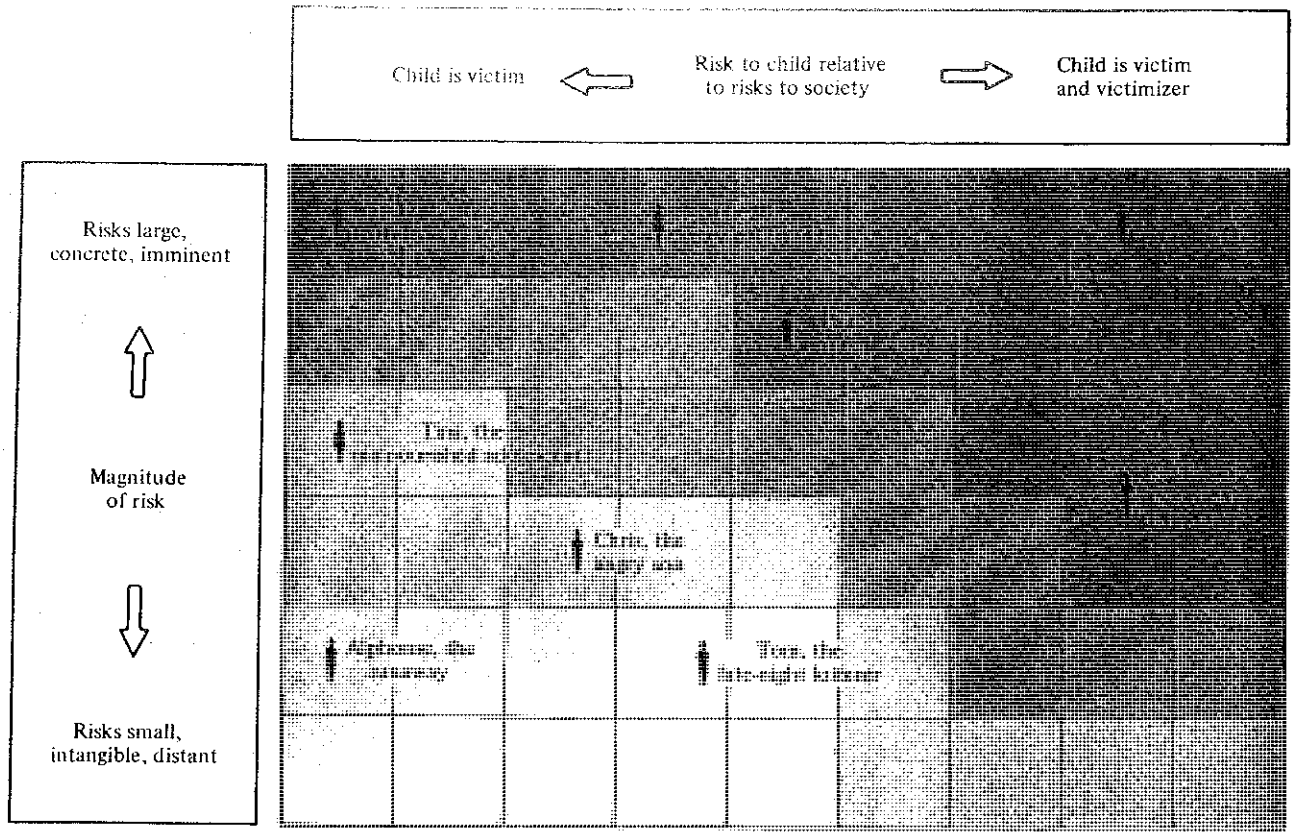
part of Figure 1.1 are at the center of the model based on police powers. Here the threats to the physical and economic well-being of the community are most obvious. Cases that fall in the upper left are included on the grounds that they represent criminal conduct by parents or that abuse and neglect are so strongly linked to future criminal offending that interest in preventing criminal offenses justifies the intervention.

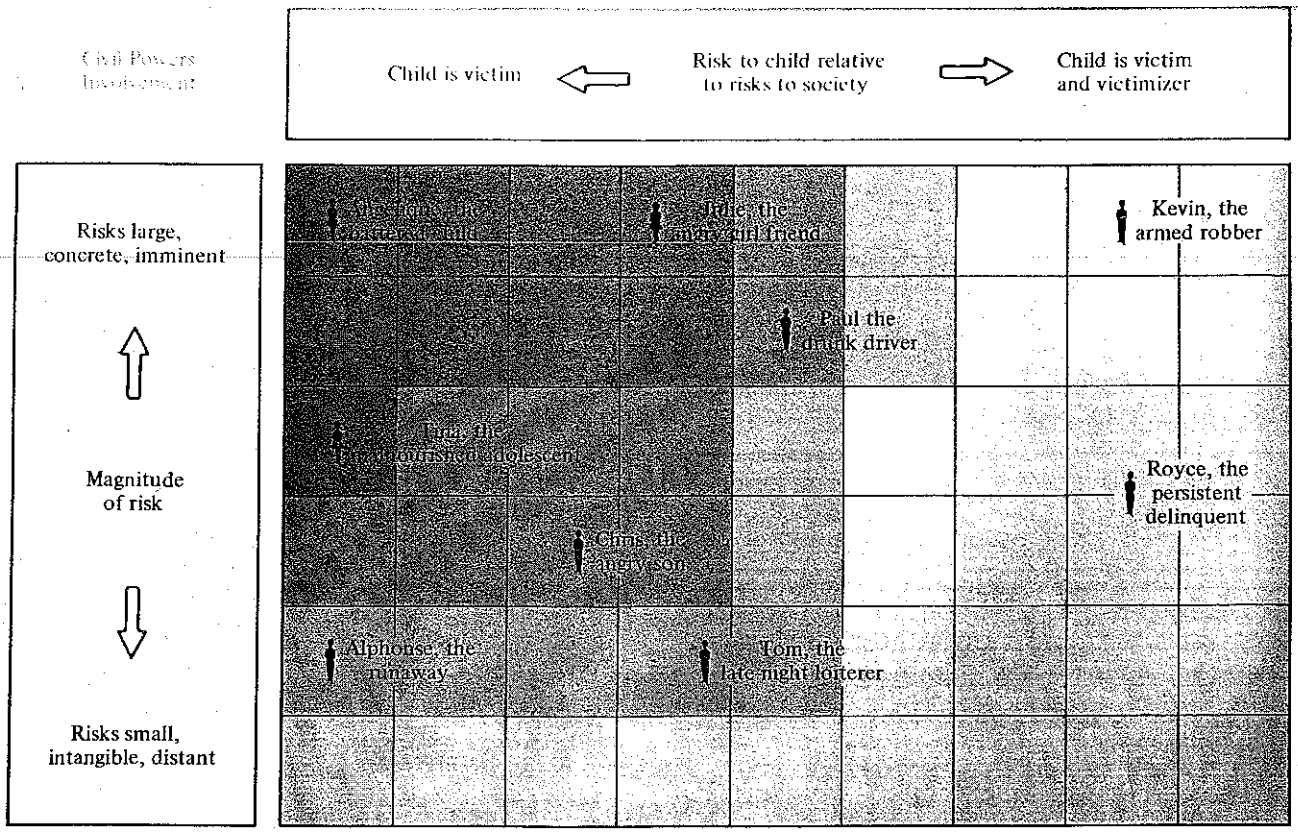
From the point of view of a conception rooted in police powers, however, these arguments seem tendentious. The crime committed by those who abuse and neglect their children is not simply a crime against the lives and property of others. It is an offense against their children and the society. This sort of offense seems much more closely related to the second concept of the juvenile justice system. If the principal virtue of the first conception is to focus public attention narrowly on crimes committed *by* children, there is no reason to confuse the issue with crimes committed *against* children.

The concept of juvenile justice tied to broad civil powers governing family relationships covers a different part of Figure 1.1. Specifically, it covers quite comfortably both risks to the society and risks to the child. Since risks to the child are its principal concern, and since it interprets most kinds of criminal conduct as indications of risks to the child as well as risks to the community, it includes cases on the left side of Figure 1.1 as well as those on the right (Fig. 1.3, bottom). It may exclude some criminal conduct, such as that exhibited by Kevin and Royce, on the grounds that the perpetrators have reached a level of threat and maturity where their acts can no longer be viewed as the consequences of external influences. But many other criminal offenses are easily embraced by the civil powers model.

This second conception of juvenile justice is extremely suspect both among those who would like to economize on the use of public authority and among those who would like to economize on the use of public money. One problem is that the powers it confers are so broad that they seem to license extensive state interventions into the affairs of families, schools, and social work agencies. A second problem is the risk that these broad powers might be exercised on behalf of too narrow and ethnocentric a view of the conditions that are proper for raising children. In effect, the court might become the instrument of middle-class values in child rearing with disastrous consequences for the freedom and cultural diversity of the society. A third problem is that a half century of experience with such interventions has led to doubt of their efficacy. For all of these reasons, the society is now exceedingly reluctant to concede any broad interest of the community or the state in overseeing the conditions under which children are raised.

Yet we do not seem quite able to wash our hands of this problem either. In responding to instances of abuse and neglect, and even in responding to criminal offending by children, we seem to have some interest in the





Lightly shaded areas represent more peripheral concerns.

social circumstances under which the children are being raised, and we seem willing to intervene. Moreover, viewing the enterprise of juvenile justice as a civil enterprise that exercises supervisory powers over children and those who care for them answers some of the most important objections directed at the traditional version of the juvenile court.

Conclusion

In my view, the principal flaws of the traditional juvenile court are not in its basic purposes. Nor are they in the scope of its jurisdiction. Rather the errors are (1) in thinking that the court can do all the work by itself, (2) in making the child the focus of legal power, and (3) in failing to experiment with a variety of methods for supervising children that draw more heavily on private and community resources. The conception of a civil court superintending families (and others who have responsibility for children) seeks to remedy these flaws by putting the court at a distance from the actual process of raising children. The conception operates by holding other institutions responsible for their part in child rearing. It thus draws in institutions better situated than the court to do the essential work of supervising and caring for children, shifts the focus of the court from the child alone to the child in the context of those who can supervise and care for him or her, and makes it natural for the court to think in terms of mobilizing others to support the natural family and community rather than trying to replace it. Because this form of court engagement is loose and more indirect than that of the traditional court, it seems to use less state authority, to run fewer risks of establishing narrow conceptions of virtue, and to encourage more experimentation with different community-based arrangements for supervising children.

This second conception of the juvenile court and juvenile justice system seems to be a more just and useful conception of the enterprise than the first. More specifically, my conclusions are the following:

1. The subject of juvenile justice is as much concerned with the conditions under which children are raised as it is about the criminal conduct of children. More provocatively, the juvenile court and the juvenile justice system are more properly concerned with superintending the conditions under which children are prepared for citizenship than they are with guarding the society from the criminal conduct of children or rehabilitating the children once they have committed crimes.

2. The principal role the juvenile court can play in managing the process of socialization is to lend its authority to overseeing the process as it is carried on by parents and children and by other private and public agencies. The court's job is to stand for the public importance of the task, to establish and maintain minimal standards of performance, and to hold both those who care for children and the children themselves responsible for their performance. Moreover, when it is clear that existing arrangements for caring for children are inadequate, the court must redistribute the responsibilities so that performance can be improved.

3. The family is not just a private institution. It is also importantly a public institution with an important public function: to help its children reach the status of resourceful and responsible citizenship. In doing this it must protect, supervise, and guide its children.

4. Children, too, have public responsibilities. Like adult citizens, they must respect the lives, property, and physical well-being of other citizens. In addition, children have special public responsibilities, namely, to equip themselves for effective citizenship. As a practical matter, this means taking the advice of parents and guardians, going to school, and avoiding activities where their inexperience and untested judgment would expose them to substantial hazards.

5. The community's interest in the care and socialization of its children is large enough to make it worthwhile to develop and use a great many specialized, publicly supported institutions to help with this task. Fortunately, in virtually every community history has produced many such institutions, some of them privately supported, some publicly; some devoted to assisting parents, some devoted to the children; some providing financial assistance, others devoted to education or employment, still others devoted to psychological or medical treatment. The important objective is to deploy and use these institutions to buttress the family rather than to substitute for it or replace it.

To justify these conclusions, I and my coauthors have taken the following approach. In chapter 2 we explore the history of America's policy toward children and the development of its institutions for dealing with children who are at risk and creating risks, in order to determine what values have remained constant and which have changed over three centuries of experience. In chapter 3 we examine the political and legal mandate for the juvenile justice system, to discover whether, and if so how, the values of the community are changing with respect to the juvenile justice enterprise and what the court is being authorized to do for the society. In chapter 4 we analyze the current operations of the system, to fix the boundaries of the system, understand how it currently operates, and explore its strengths and weaknesses. In chapter 5 we look at the current work load of the systems and project the work load for the future, to test whether the system should be scaled up or down to deal with a different set of problems than it has dealt with in the past. In chapter 6 we set out and evaluate some alternative futures for the court and the juvenile justice system, in order to understand what kinds of enterprises society can create to carry out its responsibility to families. In chapter 7 we draw conclusions about the most appropriate and valuable future uses of the

juvenile court and the juvenile justice system and about what investments should be made now to position them for that future.

Notes

1. These cases come from the Boston Juvenile Court. The names and a few of the nonessential facts have been changed for stylistic reasons and to protect the anonymity of the people. I am indebted to Dr. Richard W. Barnum of the Juvenile Court Clinic for assistance in locating and analyzing these cases.
2. Throughout this analysis I will distinguish between two different kinds of interests and arguments. One kind emphasizes practical or utilitarian interests and arguments. The other kind emphasizes issues of justice. The practical arguments are concerned about ends such as crime control and rehabilitation. The justice arguments are concerned about preserving proper relationships in the society: the just distribution of rights and duties across people in the society, the importance of due process protections to preserve proper relationships between the individual and the state, and the importance of holding people accountable who fail to live up to their duties. I will signal the first kind of argument through words such as *practical, wise,* and *useful.* I will signal the second kind of argument with words such as *just* and *principled.* Generally speaking, both kinds of concerns are involved in discussions of juvenile justice, but it is hard to join them. I have tried to give them equal standing in the discussion.
3. This body of law is generally taught in law schools under the heading of *Family Law.* An important text in this area is Judith C. Areen, *Family Law* (Mineola, NY: Foundation Press, 1978). Often, juvenile justice is taught as a different course. The criminal and sociological aspects of juvenile justice are sufficient to differentiate this subject from the broader subject of family law. An important text on the law of juvenile justice is that of Frank W. Miller, Robert O. Dawson, George E. Dix, and Raymond I. Parnas, *Juvenile Justice Process* (Mineola, NY: Foundation Press, 1976). A basic idea in this work is that these two fields of law need to be joined together to give a coherent account of the duties that parents and children have to one another and to the rest of the society. Once they were combined, we would discover that we had a more or less coherent body of law regulating family relationships.
4. See, for example, *McKinney's Consolidated Laws of New York Annotated,* Family Court Act, Art. 3.
5. Most curfew violations are established by local ordinance. Howard N. Snyder, John L. Hutzler, and Terrence A. Finnegan, *Delinquency in the United States, 1982* (Pittsburgh: National Center for Juvenile Justice, 1985), reported that 0.8% of delinquency referrals in 1982 were for curfew violations. For information on the general status of curfew laws see *American Jurisprudence,* 2nd ed., Vol. *42, Infants,* Sec. 19 (Rochester, NY: Lawyers Cooperative Publishing, 1969), pp. 24–25.
6. The prohibition against drinking by children may be represented in statute as a prohibition against the sale of alcoholic beverages to minors. See, for example, *Massachusetts General Laws Annotated,* Chapter 138, Sec. 34.

7. R. Hale Andrews, Jr., and Andrew H. Cohn, "Ungovernability: The unjustifiable jurisdiction," *Yale Law Journal 83*(7) (June 1974), note, pp. 1383–1409.
8. Massachusetts statute allows the court to intervene to prevent abuse regardless of which family member is the abuser and which the abused. See *Massachusetts General Laws Annotated,* chap. 209A.
9. The *Louisiana Statutes Annotated,* Civil Code Article 224, for example, mandates that parents are obligated "[t]o support, to maintain, and to educate their children according to their situation in life."
10. For a general discussion of the relationship between laws and normative practices in the society see Eugen Ehrlich, "Law and the inner order of social associations," reprinted in M. P. Golding, Ed., *The Nature of Law: Readings in Legal Philosophy* (New York: Random House, 1966), pp. 200–212.
11. There is a commonsense notion here that association with bad companions increases the likelihood of delinquency, and that delinquency increases the likelihood of criminal conduct in the future. This has been formalized into a powerful sociological theory. See Richard A. Cloward and Lloyd E. Ohlin, *Delinquency and Opportunity* (New York: Free Press, 1960). The theory is taken as axiomatic when the society considers the dangers of placing children in adult jails and prisons. The theory has less standing when it is used as a justification for giving the state power over "status offenses." In this context it is viewed as a hopeless effort to predict future criminality and a dangerous effort to extend state power over individuals on the basis of the erroneous prediction. For statistical evidence on the relationship between status offenses and future delinquency and criminality see David P. Farrington, "Early precursors of frequent offending," in volume 3 of this series. See also Solomon Kobrin and Malcolm W. Klein, *Community Treatment of Juvenile Offenders: The DSO Experiments* (Beverly Hills: Sage Publications, 1983). The basic conclusion of these studies seems to be that status offenses do increase the likelihood of future delinquency and crime, but the impact is small; that is, the likelihood of becoming an adult criminal offender is much higher if one has a record of "status offenses" in one's past, but the vast majority of "status offenders" do not become adult criminals.
12. Obviously, these are subjective judgments. Nonetheless, I think most people would agree with the ordering of these cases in this space. The Executive Session on Juvenile Justice, at least, accepted this ordering.
13. This notion that public interventions might change citizens' conceptions of their rights and responsibilities is one that has been neglected but is now coming into vogue. For an argument of this kind in the domain of welfare policy see Charles A. Murray, *Losing Ground: American Social Policy, 1950–1980* (New York: Basic Books, 1984).
14. This view is stated explicitly by the American Bar Association. See Institute of Judicial Administration–American Bar Association Joint Commission on Juvenile Justice Standards, *Juvenile Justice Standards* (Cambridge, MA: Ballinger, 1980).
15. This notion is fundamental to the theory of the liberal state. See John Stuart Mill, *On Liberty,* People's ed. (London: Longmans, Green, and Co., 1867). For a more modern discussion of the role of the criminal sanction see Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford, CA: Stanford University Press, 1968).

4
The Current System: Structure and Operations

With FRANCIS X. HARTMANN

A century of social innovation has produced a complex juvenile justice system. At its center are the juvenile court and youth corrections agencies. Farther out, but still within the boundaries of the system, are juvenile detention programs, halfway houses, probation agencies, and the police. Nearer the edges of the system are such things as youth guidance centers, family counseling programs, welfare agencies, youth athletic leagues, foster parents, and perhaps the family itself. All of these institutions can be seen as parts of the juvenile justice system for two reasons.

First, each of these institutions can nominate cases for juvenile court attention. A police department can file a delinquency petition. A probation officer may bring a case back to court. A foster parent may ask to be relieved of the duty of caring for a particular child. Parents can claim that their child is incorrigible.

Second, these institutions furnish some or all of the society's response to nominated cases. Often, cases that begin as delinquency or neglect cases wind up back in the family for continued handling. Others may end up in foster case, or with access to special recreational programs or group homes. Still others end up in the family but under close and continuing review by the welfare department or probation agency or by the court itself. A few end up in locked institutions operated by youth corrections agencies.

These institutions are linked to one another through the activities of nominating cases for attention, developing facts about the conduct and condition of the children, making decisions about how the case should be handled in the future, and then reviewing the situation as conditions change. These activities determine the ultimate consequences of the juvenile justice system: how intrusive it is; how fairly it distributes its burdens and opportunities; whether it strengthens, undermines, or replaces families; and whether it makes the lives of children safer or more dangerous. Moreover, it is only through changes in the character or relative sizes of these activities that the system can be improved. For example, by increasing the size of the family counseling system relative to the welfare

department, or by experimenting with group homes at the expense of the probation department one can make important changes in the character and performance of the system. Consequently, it is important to understand how the system now operates and how its activities are distributed across its different parts.

Our analysis of the current structure and operations of the system reaches the following conclusions. (a) Viewing the juvenile justice system as consisting of law enforcement agencies concerned about crimes by or against children is less accurate and useful than seeing it as a far larger and more complex system that superintends or actually participates in the raising of children. (b) The system of nominating and escalating cases for public attention and review is not based solely on the urgency of the particular threat to the society or the child, but also on how public agencies evaluate existing private capacities to deal with the problem. (c) The enthusiasm for due process in the handling of cases involving children has some attractive features but often leaves unrepresented in court proceedings two parties with vital interests at stake in the outcome of the proceedings, namely, the parents or legal guardians of the child and an abstract person who will soon be real, called "the future child." (d) The society is greatly underinvested in experimental programs that supervise children in community settings and thereby increase society's risk of minor crimes now but possibly reduce future crime and dependence through the establishment of close connections between the child and the community.

The Boundaries of the System

In analyzing the current operations of the juvenile justice system, the first question is: Which institutions fall within its purview? One's answer is significantly influenced by one's position on what the concern of the juvenile justice system should be, whether it should be restricted to crimes committed by (or against) juveniles or whether it should be broader and focused on establishing relatively safe and compelling relationships within which children can learn to be responsible adults.

The current fashion in thinking about the juvenile justice system is to depend heavily on an analogy with the adult criminal justice system.[1] In this conception, the central focus of the juvenile justice system is on crimes committed by children. The principal institutions are, therefore, those concerned with law enforcement and crime control: the police, the probation department, the courts, and the corrections agencies. Moreover, the process is viewed as primarily a criminal proceeding in which evidence of crimes is developed and nondiscretionary judgments are made according to the applicable laws.

Figure 4.1 presents a typical effort to describe the operations of the juvenile justice system in these terms. In this picture no private institu-

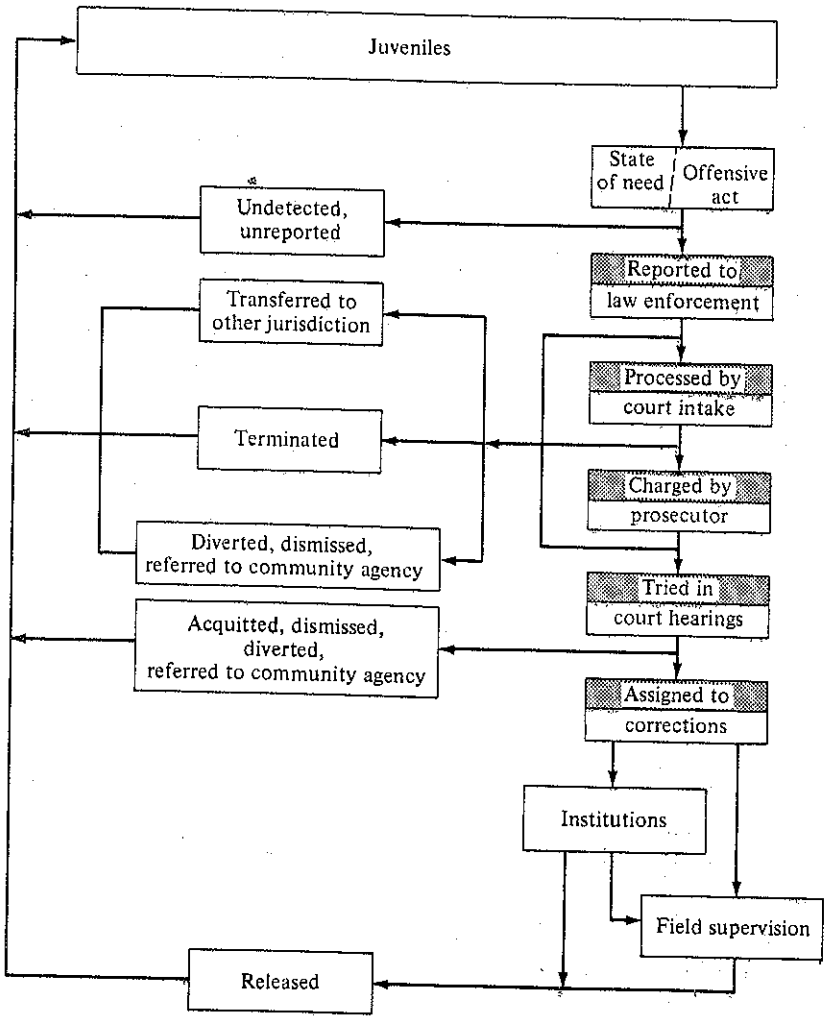


FIGURE 4.1. Generalized flowchart of the juvenile justice system. From Charles P. Smith, T. Edwin Black, and Fred R. Campbell, *Inconsistent Labeling*, Vol. 1, *Process Description and Summary* (Washington, DC: U.S. Department of Justice, 1979), p. 27.

tions such as family, church, or volunteer community groups appear. Social service institutions such as schools and welfare agencies are also ignored as a mutually exclusive (and often preferred) alternative to the handling of cases in the juvenile justice/criminal enforcement system.[2] The focus of this system is on individual children who have committed offenses. The central questions are whether the children will be treated

justly and effectively with respect to their past crimes and what threat they present to the society for the future.

There is a second conception of the juvenile justice system that begins with a quite different premise. In this conception, the central purpose of the juvenile justice system is to hold children, parents, and other caretakers responsible to the society for the task of becoming or of teaching children to become responsible citizens. In this conception, crimes by children and against children are viewed not only as failures of the particular individuals involved, but also as signs of breakdown in the set of institutional relationships the society is relying on to accomplish this task. The problem is to restore these institutions to proper functioning, partly through aid but also by reminding those involved of their individual responsibilities to the broader society. In this conception, the body of family law governing such things as divorce, child custody, foster care, and so on is central to the system's concerns, as are statutes that define delinquent acts and abuse and neglect by caretakers.[3]

Figure 4.2 captures this view of the juvenile justice system. The system incorporates many more institutions than does the first conception. Parents figure prominently. So do community institutions such as schools and local businesses, and public social service agencies such as schools, welfare departments, and recreation programs. In this conception, the juvenile court's job of handling individual cases becomes less important than the job of backing up other institutions in their jobs by establishing the values that guide them and acting as the forum of last resort for difficult cases. Although difficult cases eventually may wind up in the juvenile court, they wind up there only to be pushed right back to the other institutions for continued handling. In this conception, the social service institutions are not perceived as mutually exclusive alternatives to criminal justice system handling, but as partners to police departments, probation departments, the youth corrections agencies, and the juvenile court in seeking to improve the conditions under which children are being raised.

A third way to think about which institutions constitute the juvenile justice system is empirically based: Any institution that nominates cases involving children to juvenile court for adjudication, or any institution that furnishes any part of the community's response to children who are at risk or causing risks, can be considered part of the system. For the most part, we will adopt this empirical approach. We will be interested in the question of what actually happens in the system rather than in what we think should happen. In particular, we will resist the temptation to see the system exclusively in terms of criminal justice and crime control except where that seems to be the most satisfactory explanation of what is occurring. What we will discover is an important paradox: that while the juvenile justice system involves many law enforcement agencies, it is not obviously a crime control system. Indeed, its purpose more fundamen-

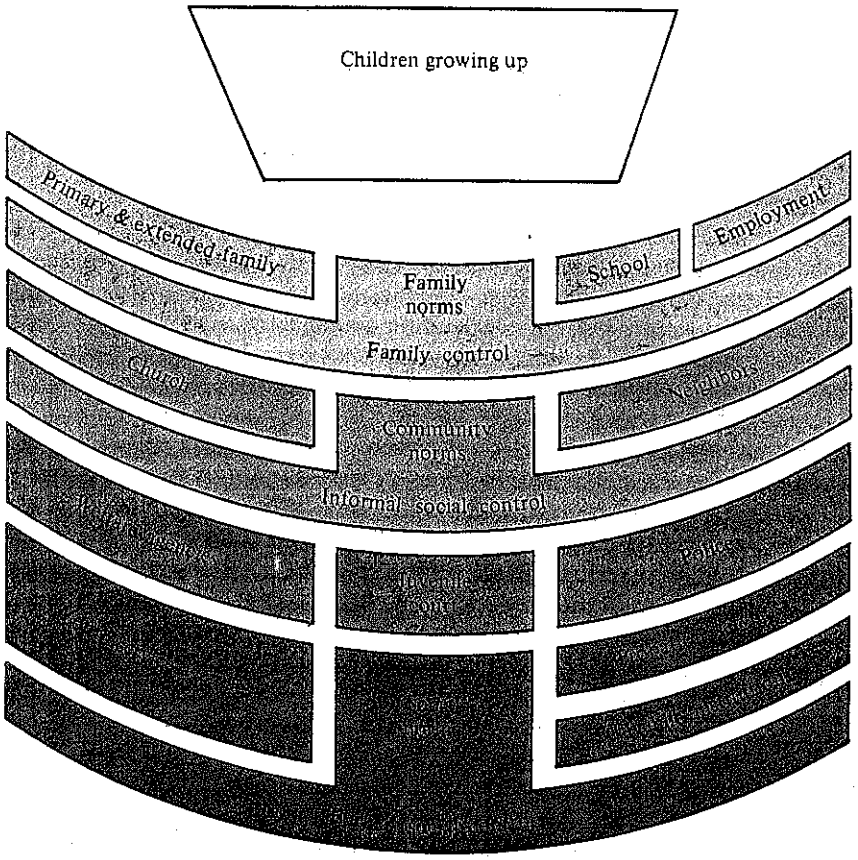


FIGURE 4.2. The court as backstop and linebacker: An alternative view of the juvenile justice system.

tally is to guarantee minimal conditions for child rearing by responding to situations in which those arrangements seem ineffective.

A Hierarchy of Private and Public Institutions

One way to think concretely about the institutional structure of the juvenile justice system is to ask who notices problems in the conduct or condition of children, and who shows up at a family's door when some event occurs (or some condition is revealed) that indicates a breakdown in a family's capacity to supervise or care for its children. Typically, intervention begins informally among those people closest to the family or

caretaker—members of the nuclear family, members of the extended family, perhaps friends and neighbors who are intimate enough to notice the problem and concerned enough to intervene. In a slightly haphazard process, the intervention might gradually escalate to include relative strangers representing community institutions such as churches or neighborhood associations or, more typically, government agencies such as welfare departments, health departments, and sometimes the police. Eventually, the problem might reach the courts.

While a social theorist might formulate idealized views of the ordering of these institutions in terms of the strength of their relationship to the children and caretakers who are the focus of the intervention, in any real community, and for any specific member of that community, the order may be quite different from what the theorists expect.[4] Some communities might feel much more closely attached to their schools than their churches. Some individuals within the community might have a closer, more supportive relationship with a social worker than with a nosy neighbor or a pompous minister.

Still, from the vantage point of minimizing the intervention of public institutions in this delicate area of family affairs, one can reasonably order different levels of intervention in terms of their subtlety and legitimacy. The ordering within the private, informal sector might look like this:

Family members who live together (nuclear family)
Extended family of relatives
Local friends
Neighbors (whether friendly or not)
Parents of children's friends
Members of the same community who are acquaintances
Members of the same church
Fellow employees
Pastor
Members of the community who are unknown
Informal voluntary organization
Schoolteacher
Employer

Informal, Private Interventions

Typically, informal interventions will be offers of help: babysitting for the child while the parent works, advice about how to deal with a problem, or simply moral support and friendship. Moreover, because of the close relationship and the informal auspices of such interventions, the gestures will be interpreted by the caretaker and child as help.

Often, however, there is also implied criticism and some future demands and expectations associated with the help. The intervention includes a desire to have the child or the child's caretaker face up to a problem. If the criticism is strong enough and the initial relationship weak enough, the intervention may shatter the relationship and lead to no important improvement in the situation. If, however, the relationship is intimate and strong, there is a reasonable amount of help forthcoming, and the implied criticism is muted but nonetheless clearly signaled, the intervention has the best chance of success in restoring functioning within the family.

Generally we assume that the character of the informal, intimate relationships just described are relatively strong, otherwise they would not be activated. And it is this assumption (along with the society's general desire to avoid public or state coercion) that makes us prefer that these informal situations and relationships do much of the work of keeping families to the task of socializing children.[5]

There are three problems, however, with relying exclusively on these informal, private interventions. First, although they are generally quite effective, they are not perfectly effective. In some situations the aid offered may not be large enough, sustained enough, or skillful enough to help the family reach tolerable levels of performance. It is significant that this need not occur very often for the situations to become major social problems. If 99% of children were being raised in tolerably satisfactory conditions, several hundred thousand children would still be headed for careers of crime or social dependence.

Second, these informal institutions seem to be weakening. Society today is quite different from that of Illinois in 1899. The primary institutions are in the process of significant change, and intervenors are far less likely to be instrumental in the socialization process. An assessment of the trends affecting these institutions would reveal the following.

Nuclear family: weakened
Extended family: more widespread, weaker influence
Friends: less likely to know about problems or to intervene
Neighbors: more likely to be strangers
Parents of children's friends: less likely to intervene
Members of the same community who are acquaintances: less likely to intervene
Members of church: less likely to be a significant community
Fellow employees: less likely to know about problems or to intervene
Pastor: significant, but to fewer persons
Members of the same community who are unknown: unlikely to intervene
Informal voluntary organization: may be helpful, but less likely to be aware of specific problems

Schoolteacher: may be helpful
Employer: unlikely to intervene

Third, the strength of these private, informal systems is not evenly distributed over the population. Just as the capacities and resources of families to raise their children are unevenly distributed, so are the capacities and resources of the informal community networks that surround and buttress the families. Of course, in discussing this issue one immediately enters an ideological thicket. Some argue for the ultimate equality and goodness of human beings in terms of their capacities to form families, raise children, and create communities.[6] Others argue that some people seem incapable or disinclined to handle such responsibilities.[7] One does not have to go to either extreme to insist on three important points: (a) Yes, even in the poorest families and communities there are strong relationships of love and responsibility. (b) Yes, among wealthier citizens the relationships are sometimes impoverished. (c) Nonetheless, there are important differences in terms of the size and capacity of the social networks that can be brought into play to help families meet their responsibilities to the community. A family in the South Bronx finds fewer shreds of community support (and these bring fewer resources) than a troubled family in an ethnic area of Queens can find (or must accept).

Public Social Service Agencies

When the network of private, informal agencies fails to handle the problem, or is simply nonexistent, a different set of agencies becomes involved. These are mostly public agencies: public schools, welfare agencies, private social service agencies, the police, probation departments, the courts, or youth corrections agencies. Sometimes special youth advocacy agencies have been established to fill some important gap between the social work agencies on the one hand and the police and courts on the other.

Such agencies need not be radically separated from the communities in which they operate, but as a practical matter they usually are. Over the last half century, these institutions have sought to legitimate themselves through professional expertise and independence rather than through close political ties to the communities they serve.[8] As a result, they now find themselves strangers to the individuals of their communities when they intervene in their lives.

Consider the differences in a situation in which a teacher notices that a child is coming to school hungry or behaving badly with respect to his peers a century ago compared with today. Typically, the modern teacher would be:

Less likely	More likely
- to live in the same community	- to be wary of rejection for intervening
- to know the parents	- to be constrained by school rules and procedures
- to be personally familiar with the home situation	- to know of formal helping organizations
- to know of helpers in the child's neighborhood	- to utilize formal processes
- to know of informal neighborhood helping organizations	

Thus, interventions by public social service agencies are assumed to lack the organic relationship to children and their caretakers that used to characterize interventions from the informal institutions just described. When we say that the intervention is *formal* rather than *informal* we mean that the justification for the intervention lies in a more distant, impersonal relationship between the family and the state.[9] In some sense, this means that the power of the family—its ability to mold the intervention to its needs and interpretation of the situation—is lessened, and with that, some of the legitimacy and effectiveness of the intervention. On the other hand, the total quantity of help available to the family may be increased dramatically.

Moreover, as in the case of the informal interventions, the interventions from social work agencies are likely to be seen as help rather than obligations. But the help will carry expectations and obligations with it. The teacher will expect the parent to do a better job feeding the child, or will expect the parent to become a partner in helping to control the child's bad conduct with explanations and more effective discipline at home.

Public Legal Institutions

Police, probation departments, courts, and corrections agencies are viewed as the most formal and distant intervenors. Indeed, because they are law enforcement agencies, this distance is deemed a virtue rather than a liability.[10] Moreover, the interventions which these organizations make are rarely considered help. They are recognized both by the organizations and by those who are the object of intervention as an imposition of obligations rather than as the provision of material assistance. Since we often assume that effective interventions into the lives of children at risk or causing risks require sensitivity, intimate relationships, and assistance rather than impersonality, distance, and obligations, we assume that interventions from public legal institutions are less desirable than interventions by public social service agencies.

There are several difficulties with these commonplace assumptions, however. The first is that the line between helping agencies and obliging agencies is far less sharp than is ordinarily assumed. As noted previously, help from informal and public agencies often comes with implied obligations. It is also true that the obliging agencies often deliver assistance of some kind along with obligations. Indeed, the irony is that many valuable services are available only to children who get into enough trouble to wind up in the juvenile court.[11] So, while the distinction between helping and obliging organizations is useful, it is also potentially misleading. It would be far better to see that most interventions involve elements of both obligation and assistance, though admittedly in varying proportions.

Second, it is not always true that legal institutions have exclusively formal relationships with client families, and that social service institutions have informal relations. Often the legal institutions handle cases quite informally. Even when the police are called in, they are likely to handle the case informally in the field.[12] Of the approximately 2 million juveniles whom the police arrest annually, about half of the cases are handled informally within the police department rather than nominated to the court for continued processing.[13] Similarly, effective supervision by a probation department inevitably involves a great deal of informal negotiation and bargaining between the caseworker and the client.[14] Even the court will often seek an informal resolution of a case through family mediation, or the diversion of a juvenile case to community agencies before any formal fact-finding proceeding.[15] Such acts are informal in the sense that they do not involve the simple application of a fixed rule to an individual case. There is room for the child, the caretaker, and the representative of a public agency to work out an arrangement that serves all of their interests and maintains their relationship more effectively than does formal application of the existing rules.

On the other hand, the social service agencies increasingly rely on formal proceedings. This is most evident when social work agencies, or much less frequently schools, bring cases to the juvenile court for formal handling in the court.[16] But it is also true that these agencies themselves, in the pursuit of fairness and due process, have often created formal processes of fact-finding and adjudication within their own auspices to deal with matters such as the suspension of welfare benefits or the discipline of children in schools.[17] Again, there are important differences among agencies, with legal agencies having a stronger commitment to formality than the social service agencies. But the differences are in degree rather than kind, and there is a great deal of overlap in the actual behavior of the agencies, if not in their underlying ideology.

Third, related to this notion that legal agencies can be informal as well as formal, it is possible that legal institutions could have close and personal relationships with communities and individuals. Of course, the idea that equates justice with equity (i.e., the equal treatment of similarly situated individuals) makes distance and impersonality a virtue of the system by creating conditions in which differences among individual cases that should be irrelevant or corrupting in applying the law are most likely to be blotted out. But a different idea of justice, one that empha-

sized the importance of dealing with each case as a particular problem to be sorted out and that promised to be responsive to important differences between a particular case and others—that is, an idea of individualized justice—would make detailed knowledge of particular circumstances a virtue rather than a potential corruption.

Similarly, while it is customary to think of courts as relatively autonomous agencies whose legitimacy rests on their technical knowledge of the law and who must occasionally stand against legislatures and executives when they attack fundamental individual rights, it is also possible to see courts as agencies that not only do but should reflect widespread social norms and aspirations. This goal is reflected in the fact that some judges are still elected, that judicial appointments are made and confirmed by elected political representatives, and that judges may be removed by recall petitions.[18] So there is room in our conceptions of legal institutions to see them as intimate and connected to the community as well as impersonal and distant. Indeed, one can argue that the most interesting aspect of the juvenile court is that it tries to establish a court that differs from other courts in precisely these dimensions.[19]

Fourth, it is well to remember that people, including children and their caretakers, may be aided by challenges and demands as well as by assistance. In this case a certain distance and impersonality may be an advantage rather than a disadvantage. We have all seen instances in which consistent challenges and demands placed on individuals and agencies have resulted in improved performance without the need for additional resources. Apparently, reserves of capacity and skill can sometimes be mobilized by exhortation to accomplish particular tasks.

But it is also clear under what circumstances such challenges can be effective. The challenge must be legitimate—one that children and caretakers can accept as compelling on their own terms. This acceptance, in turn, depends on both their view of what is being demanded of them and on their relationship to the agency or person making the challenge. Their response also depends on their perception of their ability to meet the challenge. The closer the challenge is to their own view of their obligations, the stronger their relationship to those making the challenge, and the more able they feel to meet the challenge, the more effective the challenge will be.

On the other hand, the more distance there is between the substantive demands of the challenge and the family's current activities, the more potential benefit there is if the family successfully meets the challenge. This suggests that there is an optimal degree of distance in challenging a relationship—one that strains the relationship but does not break it. Finding that balance may be what good court processing as well as good social work is all about. In this sense, obligations and distance may be therapeutic to the client families and children as well as protective of a social norm that generally establishes duties and obligations within the society.

In sum, one can view the institutions of the juvenile justice system arranged in a hierarchy that runs from informal private interventions at one end to relatively formal state interventions at the other. This ordering is produced by a simple conception that makes one distinction between private and public responses and a second distinction between service and enforcement agencies, and that makes a judgment that private responses are lighter and easier to bear than public and that service responses are easier to justify than enforcement or legal responses. As we have seen, this simple ordering runs the risk of exaggerating the differences among kinds of interventions, since all interventions involve combinations of private and public, assistance and obligation, understanding and challenge. But this hierarchy does seem to reflect common understandings about the ordering of these agencies in terms of the society's preferences for using them, and the expectations for success.

The Process of Nomination, Escalation, and Intake

Since agencies of intervention can be ordered in this neat hierarchy, it is tempting to believe that the process of escalating a case will follow it, that cases will be handled at the lowest possible level of public intervention and only the most serious will rise to the highest levels of public intervention. To a large degree, the system does seem to work this way: The vast majority of potential cases stay at informal, private levels,[20] while the most serious cases eventually do end up in court.[21] This seems to occur naturally as the result of a shared social understanding of what is private and what public, and what can be dealt with through assistance and what requires stiff obligations and supervision along with the assistance.

Some features of the process of nomination and escalation, however, do depart from this simple view. Special features of the process of nomination, for example, lead to some relatively minor cases reaching high levels of the system fairly quickly. In effect, they preempt the system. Some features of the escalation process also hold potential for introducing the appearance (or the reality) of racial or class discrimination into the system. Thus, when the actual operation of the system is compared with the expectation that cases will be escalated in this hierarchy of institutions according to their seriousness, some significant anomalies appear. These anomalies, in turn, undermine the overall legitimacy of the system.

The Police as Nominators

The first troublesome feature is that the current arrangement of public policies and public agencies has made the process of nomination quite different from that first pictured. Specifically, nominations for public at-

tention are *unlikely* to come from members of community institutions. They are much more likely to come from the police, from the parents themselves, or from public service providers.

The most recent data on sources of referral to the juvenile justice system indicate that the police are overwhelmingly the most important sources.[22] No doubt, this observation is partly an artifact of reporting: There is no systematic way to observe the informal nominations and handling of juvenile cases wholly within private or community institutions, and therefore the number of such events is wildly underestimated. But the importance of the police in making nominations to the juvenile justice system cannot be ignored.

Since we commonly assume that the police are generally concerned about crime, we imagine that the large number of police nominations indicates a large underlying problem of youth crime. The fact of the matter is, however, that many of these nominations do not involve criminal offenses by children. They involve curfew violations, minor disturbances, drunkenness, even truancy.[23] Why, if the cases do not involve crime, do the police make such nominations?

There are two different answers to this question that correspond to two different functions of the police. These have been deemphasized in the society's understanding of what the police are about, but have not been eliminated from police operations.[24] The first is that the police take these cases as part of their "order maintenance" function.[25] In this conception, children appearing at times and places where they are not supposed to be unsettles a community's sense of order and decorum. The police respond to particular or generalized community demands that the conduct of children be regulated not so much to reduce violent crime as to make people feel safe and secure. Obviously, in this conception, the community's interests are being advanced at the expense of children's freedom.

The second idea is that the police respond to these situations as part of their "emergency social service" function.[26] In this conception, police encounter a situation in which a child seems to be in danger, and no one else is around who can offer protection and assistance. Therefore, the police bring the case into the juvenile justice system. What qualifies the police to nominate the case is not any special knowledge or skill, nor is it their interest in crime control or order maintenance, but instead the fact that they are on the street 24 hours a day representing a public responsibility that is broader than crime control. In effect, they are the only government representatives who are so available to the public. If social workers, nurses, or doctors were prepared to work on the streets 24 hours a day, these cases would properly be theirs. The police see the children who are cold, who are alone on the streets at 2:00 in the morning. They respond as any responsible member of the society would. In this conception, both the child and the community are being aided by police nominations.

The point of these observations is to emphasize that the police involvement does not mean a crime has been committed. The police have important functions to perform in the society that go well beyond crime control.[27] In short, just as it may be important to see the juvenile court as involved in structuring relationships among children, caretakers, and the broader society rather than in simply adjudicating criminal offenses, it may be important to see the police as performing the same role, because they deal with cases in which caretaking relationships between children and caretakers have more or less temporarily, and more or less disastrously, fallen apart. The police substitute for a vigilant, informal community response to crises in relationships between children and their caretakers.

Parents As Nominators

The second important feature of the nomination process that is unexpected is the role that parents or caretakers play in nominating cases for public attention. This is particularly obvious if we include all the cases involving custody, care, and protection that appear in probate courts throughout the country.[28] But even if we restrict our attention to the cases that appear in juvenile courts, parents and caretakers are seen to play an important role: Approximately 2% of all cases in the juvenile justice system are nominated by relatives and 6.5% of status offense referrals are from parents and relatives.[29]

This fact is important for two reasons. First, in these cases the nomination is not made by an outsider; it comes directly from the nexus of child and caretaker. Thus, to the extent that this relationship is important to the society, the appeal has to be taken seriously. Even if the specific complaint turns out to be inaccurate in important ways, that a complaint is made at all signals trouble.

Second, the only thing that is at stake in such cases is the relationship between the child and caretaker. There is no criminal offense by the child, no community disorder that has been created, and no obvious abuse or neglect of the child. The only problem is that the relationship between the caretaker and the child has been exhausted and has lost its efficacy as a device for socializing the child.[30] Despite this, such a case will escalate rather quickly through the machinery of private interventions and perhaps even public service intervention. In effect, if a parent declares the relationship with his or her child bankrupt, the society must pay attention through its most formal intervention mechanism. This raises important questions about the process of escalation of cases as well as the process of nomination. For now, however, it is sufficient to see the anomaly of parental nominations within the standard notion that most cases will be nominated by people in the community who have been victimized or offended or have otherwise become concerned.

Ferreting Out Abuse and Neglect

A third interesting feature of the nomination process is that the society seems to be concerned that, left to its own operations, the system will not work effectively in cases of abuse and neglect. This seems like a reasonable worry, for the voices of the victims in such cases may well be muted. The children may be unaware of being treated worse than others. Even if they are aware, they may be afraid to report the treatment lest it worsen or they lose the love of their parent. To deal with this problem, many states have passed mandatory reporting laws that impose the duty on physicians, teachers, and other citizens who are in a position to observe abuse and neglect to report such instances when they see them.[31] In our terms, these laws are devices for changing the process of nomination by mobilizing heretofore passive actors, or devices for escalating these cases from informal, private handling to more formal, public levels of the system. These laws have increased the number of abuse and neglect cases being handled at all levels of the system, and have therefore increased the number of abuse and neglect cases in the overall operations of the juvenile justice system.[32]

These observations about the process of nomination show how the system of nomination, review, and escalation can be preempted by special features of the system. To a degree, the system is preempted by the immediate availability and broad interests of the police. To a degree, it is also preempted by the power given to parents to nominate their own children as problems for them and the society. And it is preempted by the society's current concern for abuse and neglect of children and the worry that such treatment will be underreported due to the disadvantaged position of children. Of course, cases nominated through these routes will not necessarily stay in the formal public institutions dealing with children at risk. Most of them, having been nominated within institutions that are already at high levels in the hierarchy of the community's response, will be pushed back into institutions that are lower in the hierarchy. The point is that these features of the nomination process will inevitably result in some cases that do not seem particularly serious being handled at a level in the system that looks inappropriate, that looks to be too heavy-handed for the problem as it is ultimately viewed or even as it is defined at the outset.

Private Capacity and the Process of Escalation

The fact that these preemptions exist and result in some potentially minor cases being escalated rather quickly in the system signals something important about the process of escalation as well as the process of nomination. Our view of how cases should (or actually do) escalate to different levels of public response borrows heavily from an analogy with the adult

criminal justice system. The assumption in the adult system is that cases reach higher levels of public intervention as a function of (a) the seriousness of the offense being considered and (b) the criminality of the offender as revealed by prior criminal offenses. The more serious the offense, and the longer the past record, the more appropriate and likely is heavy state intervention. A similar model applied in the juvenile justice context would suggest that the more serious the delinquent offense, and the more serious the prior record of offending, the more likely a heavy state intervention. To a great degree, this is what happens: The probability that a case will be handled informally is inversely related to the seriousness of the offense, and the probability that a child will end up in an institution is positively correlated with the seriousness of the offense and the number of previous contacts the child has had with the juvenile justice system.[33]

But there is an additional factor that seems to receive more consideration in the juvenile justice system than in the adult system and often plays a decisive role in determining both the escalation of the case and the nature of the ultimate disposition. That factor is the adequacy of the existing private and community arrangements to supervise and make investments in the child. The stronger these agencies—the more available and effective a parent, guardian, or relative to deal with a child's misconduct—the greater the likelihood that the case will be deescalated and returned to the family and the community for a private, informal resolution.

To a degree, this tendency can be seen as an expression of the general view that private handling of cases is better than public. In this respect, it would be as applicable in the adult system as it is in the juvenile system. But it can also be seen as reflecting the dependent status of children, and the superordinate status of parents and caretakers. In effect, parents are seen at least partly as agents of the community in helping to socialize children, and they are not only expected to fulfill this role, but are given the room to do so even if things do not seem to be going well.[34] Keeping as many cases as possible within private informal networks also makes sense as a device for economizing on the use of both public funds and public authority.

However sensible, there is a potential danger in relying on private and community capabilities to supervise, care for, and discipline the child when these agencies seem adequate to the task. The danger comes from the fact or the appearance of racial or class discrimination in the operations of the juvenile justice system.

If the adequacy of private or community institutions dedicated to caring for children is an issue in decision making within the juvenile justice system, then someone in the system must make an investigation and a judgment about this matter. Inevitably, the judgment must be subjective, because describing objectively what constitutes sufficient competence in supervising and caring for children is extremely difficult. It is even harder

to guarantee that the conditions are reliably met.[35] In this subjective process, class or racial biases can (or appear to) enter in.

This suspicion is raised, of course, when poor children or minority children end up deeper in the juvenile justice system than do rich children or white children charged with comparable offenses. This result can be explained in three different ways with significantly different moral and practical implications for the operations of the juvenile justice system.

One explanation is that individuals in the juvenile justice system who nominate and escalate cases are, in fact, biased against poor people and minorities. It is sufficient for them to know that a child is poor or belongs to a minority group and is in trouble to decide that the family or community is too weak to be trusted with the child. This, obviously, is intolerable.

The second possibility is that the bias creeps in in an un-self-conscious way. Officials make a conscientious effort to evaluate the situation and genuinely believe that they are doing so in an unbiased way. It just happens that when they interpret the data, they are unconsciously influenced by the economic status or race of the child. This is equally intolerable but probably easier to fix than the first problem, since the second starts with good motivations among officials.

The third possibility is that the real capacity to care for children at risk is, in fact, correlated with economic status or race. This is the most troubling possibility, for it implies that a perfectly conscientious and accurate effort to assess the capacity of private or community institutions to care for children would nonetheless produce decisions in which poor and minority children penetrated the system more deeply than others. Indeed, it is possible to interpret the overrepresentation of poor and minority children and families in the juvenile justice system in precisely this light: not as an expression of discrimination, but instead as the result of real differences in family and community capacity.[36] In this sense, public interventions are being sucked into a vacuum rather than being applied where they don't belong.

Which view one takes depends on one's judgment about two issues—whether it is reasonable to look at private capacities to supervise and guide children as a factor to be considered in escalating cases in the system and whether the system is making reasonable judgments about this issue. Both of these issues are controversial, but there seems to be more agreement about the appropriateness of examining background conditions than there is confidence in our ability to do this well.

The Process of Adjudication

A few cases of children at risk or creating risks reach the dockets of the juvenile court. Just as the society's image of the juvenile justice system is dominated by an analogy to the adult criminal justice system, so the image

of proper adjudication of cases that reach the juvenile court is also dominated by the analogy with the adult criminal court. In this conception, there are two parties at interest: the defendant (represented by defense counsel) and the state (represented by the prosecutor). The issue to be decided is whether the defendant did or did not commit a criminal offense against the community. The task of the judge is to make sure that the proceedings are consistent with rules of evidence and other aspects of courtroom procedure. The aim of the court proceeding is to produce justice, both in the sense of fairness to the accused and suitable punishment for an accused found to be guilty. It is assumed that this aim is best pursued by an adversary process that tests the strength of the evidence alleging that the defendant committed a crime.[37]

In recent years there has been a sustained effort to add much of this spirit and some specific trappings to juvenile court proceedings. Those interested in the rights of children have attacked the discretionary powers of the juvenile court and sought to introduce such rights as the right to counsel, the right to a jury trial, and the right to know the specific charges against the child.[38] Those concerned about the threat that juvenile offenders pose to the community have urged that some notion of accountability and sternness be added to the juvenile court.[39] As a philosophical matter, this implies that the concept of guilt be introduced in the juvenile court. As a practical matter, it means tougher sentences. And there have also been voices urging the opening up of the juvenile court, particularly to victims who want their victimization taken seriously.

These trends, if developed further, would gradually produce a miniature version of the adult criminal court. The only difference would be a slightly greater concern for the particular circumstances of the case, including the strengths of the family and community from which the child came. And even these differences would erode as the court focused increasingly on the characteristics of specific offenses committed by or against the child.

The virtues of an adult criminal court establish one standard for measuring the performance of the juvenile court. The question is whether there is any different standard. Our answer is yes. If the issue before the juvenile court is how to create a structure of obligations around the child and those who care for the child that is sufficient in the short run to protect the community from the child or the child from the caretakers, and that over the long run promises to facilitate the child's development, then, to do this job well, the juvenile court would have to differ from the adult criminal court in three crucial areas: (a) the recognition of the parties at interest in the court proceeding, (b) the focus of the evidence that is gathered and reviewed, and (c) the overall style and purpose of the proceeding.

Generally, criminal court proceedings revolve around a familiar trio: a victim, a defendant, and the state. This common trio also exists in the juvenile court. In the case of crimes committed by children, the child

occupies the role of defendant. In the case of crimes committed against children, the child is in the role of victim. It is tempting to imagine that the defendant, the victim, and the state are the only parties to be represented in juvenile court processing.

From our particular vantage point, we see two additional parties lurking in the shadow of the court. The most important additional party is the parents or caretakers of the child. Admittedly, they may be more or less central to the case. They are obviously central in cases involving abuse and neglect of the child. They are much farther from the scene in cases involving older juvenile offenders who have repeatedly committed violent crimes. Although their centrality may vary, in cases involving juveniles they are necessarily involved for several reasons.

First, from their own point of view, they are involved because their reputation as responsible caretakers is at stake. Unfortunately, their interests in this situation are by no means obvious. Probably they would like to avoid the embarrassment and loss of privacy and control to which their child's behavior exposes them. But they might choose to deal with this by blaming everything on the incorrigibility of their child rather than by using the occasion to reaffirm their commitment to the child and bringing additional resources to the tasks of supervision and guidance. Alternatively, parents or caretakers may be grateful for some social affirmation of their responsibility to the child and the child's responsibility to them, since this may strengthen their own resolve and capacity in dealing with the child. Or the parents might be interested in having the court help them to secure or organize services from public agencies to which they are entitled. Finally, in the most ironic and tragic cases, the parents may be willing to shift the responsibility for the child to the state, not because they want to wash their hands of a child who has become a burden, but simply because they judge that the state can provide a flow of services to the child that are substantially greater than the parents can provide as private citizens.[40]

From the society's point of view, the parents or caretakers are involved for two slightly different reasons. One is that, in the case of offenses committed by children, the parents share some of the responsibility for the crime, since it is their duty to supervise and guide their children. That is consistent with the view that children are subordinate to their parents or caretakers and therefore cannot quite be seen as independent moral agents.

The second is that the parents' interests and capabilities will affect the dispositional decisions of the court. Indeed, for all but the most serious crimes and the most persistent young offenders, the parents are likely to provide most of the effective postdisposition supervision of the child. Generally speaking, the child will be returned to their care and custody, perhaps under the guidance of a probation officer or with the assistance of special programs made available by the court. If the parents seem adequate to the task of managing the risks the child is creating for the community or for himself or herself, the court may well decide to keep the parents in that important role. Interests in economy, family autonomy, and generally maintaining responsibility for child rearing within private institutions will all line up on the side of keeping the child under the supervision of the parents. If, on the other hand, the parents seem disinclined or unable to furnish the necessary level of care, and if their efforts cannot be supplemented by other private or public agencies, then the court's disposition will be quite different because its interests in future problems will overwhelm its interest in staying uninvolved.

For these reasons, the parents, caretakers, or others in private and public agencies who are supposed to care for the child can be seen as parties at interest in juvenile court proceedings. It is worth noting that except in the case of child custody proceedings, there is no explicit place given in formal adjudications to parents and caretakers.[41] They are often there informally pleading for some disposition of the case that accommodates their interests. The judge may make use of them in a variety of informal ways. But there is no explicit role granted to parents or public caretakers of the child.

The second party lurking in the shadows of the juvenile court whose presence should be acknowledged is someone called "the future child." We use this awkward phrase to signal an important problem, namely, the difference between the expressed interests of the child who appears before the court and the interests that child might express several years later looking back. The basic notion is that children are not always good judges of what they need to equip themselves for the future. In particular, they may be unwilling to make painful investments in schooling, and may be particularly resistant to effective supervision of their conduct and instruction about their obligations to others. Yet these things may be very important not only for the immediate security of the community, but also for the long-run success of the child. In this respect, then, the interests of the future child may be quite different from the expressed interests of "the current child."

This difference creates difficulties for the effective representation of the child's interests. It is tempting for the child's defense counsel to think in traditional lawyer–client terms: the lawyer's job is to protect the client's liberty, secure whatever privileges and services are available, and ward off any liabilities.[42] In this, the lawyer generally finds a willing partner in the current child. Whether this is in the client's long-run interest, however, is more problematic. But defense counsel may feel ill-equipped to ask questions about the client's long-run interests. It is much easier to feel responsible to a real current child than to an abstract future child.

Yet somehow this future child's interests must be represented, for they are importantly at stake in the court's decisions. The child cannot reliably represent these interests because his or her judgments are likely to be flawed. The child's own counsel may also find it difficult to represent the

child's long-run interests for the same reason. The prosecutor cannot represent these interests because his or her responsibilities are more toward short-run community security than toward the future development of the child. The parents cannot reliably represent these interests for they have no official standing and have been at least partly discredited by the time the child comes to the court. It seems that it must be up to the judge to protect the interests of the future child. But that gives the judge a more substantive role in the court proceeding than is usual, and it draws on expertise that the judge does not necessarily possess. In the end, the interests of the future child must be represented by the conscientiousness of all those party to the court proceeding. They must find a way to represent that interest as at least one element of their deliberations and decisions. And this conclusion has important implications for other features of juvenile court processing.

In addition to incorporating parents and the future child in juvenile court proceedings, the juvenile court must open itself up to the presentation of different material facts about the case at hand. In traditional criminal court processing, the focus of the proceeding is on the evidence related to a criminal offense. Under special circumstances, evidence about the background and character of the defendant may be introduced.[43] And when it comes to making a disposition, the criminal court may consider not only the crime, but also the background of the offender.[44] Generally speaking, however, the question of the defendant's current relationships in the community, and the existence of someone who can vouch for his or her continued good conduct and future development, are not taken seriously.

In contrast, in the juvenile court proceeding attention is focused much less on the evidence of a crime committed by or against the child. The crime is what brings the case to the court's attention, but the issue of guilt or innocence is not the central one. What have more importance are two other features of the case: the background and character of the offender and the capacity of the parents and other caretakers to keep the child safe and to provide for his or her moral and social development. These are relevant in the juvenile court in terms of both justice and practicality. They are related to justice because they involve the question of whether the child is a relatively independent moral agent, and therefore justly vulnerable to criminal punishment, or is so young, so ill, or so disadvantaged that he or she cannot justly be held responsible. They are related to practicality because they might shed light on the question of what kind of intervention or disposition would be in the interests of community security, the child's future development, and economy in the use of public authority and money.

The third feature of juvenile court proceedings that might properly differ from criminal court proceedings is the general aim and style of the proceedings. In the criminal court the aim is to do justice by establishing

the guilt or innocence of the accused through a formal adversary proceeding. The concept of justice is quite well defined, and the procedures are well suited to protecting it. In a juvenile or family court the aim is far more complex, and the process that supports it is quite different. The substantive question should be what arrangement of institutions and responsibilities will be sufficient to assure the community that the child will be supervised well enough to avoid future offenses, cared for adequately to prevent immediate harm to the child, and invested in sufficiently to minimize the chance that the child will end up as a criminal or social dependent. These can be understood as the aims of justice insofar as a child is entitled to such services. These can also be understood as justice insofar as they represent an integration of the interests of the competing parties (e.g., the child, the parents, the victims, or the community). Or this can be understood as a useful way for the court to behave even if it is not quite consistent with notions of justice. This issue, however, is far different from a simple adjudication of guilt or innocence.

To support useful deliberations and wise decisions, it is probably helpful to see the juvenile court process as more like a civil than a criminal court proceeding—even when it is dealing with crimes committed by children and even when one of the possible outcomes is the placement of the child in a state institution. In the process a dispute or a problem is resolved through mediation and application of the law, rather than a judgment being made about guilt or innocence. In essence, this second view of the juvenile court sees the court as responsible for organizing and revitalizing the institutions that surround the child and as sharing responsibility for the child's effective supervision, care, and discipline. In this context it resembles a housing court that manages relationships between landlords and tenants, or a bankruptcy court that protects various interests when a corporation claims it can no longer meet its obligations.[45]

Formal Dispositions

A few of the cases that are entered on the dockets of the juvenile court result in formal dispositions, for example, a decision to commit a child to the care and custody of a state agency rather than to leave the child in the community in the care of parents or other caretakers. The vast majority of these cases involve instances of delinquency.[46]

To many, the decision to commit a delinquent child to the care and custody of a state agency for a certain length of time is closely analogous to a sentencing decision in the adult criminal court. In the criminal court decision the judge is expected to balance competing interests in doing justice (in the sense that the punishment fits the crime), in deterring both the offender and others from committing future crimes, in incapacitating the offender to promote community security, and in creating conditions

under which the offender might be rehabilitated.[47] The likely result of the decision is a period of confinement in an institution. Such institutions vary in the degree of security and amenities they provide. The judge is guided principally by the gravity of the defendant's offense and secondarily by the background and history of the defendant. Current connections to the community are given scant attention. The judge's sentencing decision is seen as an important culminating event that determines much of the justice and practical impact of all that has gone before. Moreover, it is viewed as decisive with respect to representing the community's interests, and it will have a profound influence on the handling of individual offenders by the corrections agency—even in a world in which the corrections agencies can release prisoners on parole and can establish classification systems for managing the prison population committed to their care.

Obviously the analogy to formal dispositions in the juvenile court is close. It is perhaps closest in the fact that the frequent result of a juvenile court commitment of a child to a youth authority is loss of liberty. Indeed, it was that fact (plus the lack of any evidence that the interests of the child were being served by the commitment) that caused the Supreme Court to view the juvenile court process as one in which children's due process rights existed and had to be protected.[48] But there are also some important differences, particularly when the juvenile court is viewed as an institution that tries to mobilize both private and public institutions to meet their obligations in raising children.

One crucial difference is that typically a youth authority has a great deal more discretion and more variety in the dispositions it can make than does a corrections department.[49] Often this discretion is established as a statutory matter.[50] The statutes that establish the sentencing authority of judges in the adult court, and the policies, programs, and resources of adult corrections agencies, are often quite specific with respect to such issues as how long a person may be kept under state supervision, the appropriate forms of state supervision, and sometimes even the rules that determine what sort of offenders may be held in what kind of facilities.[51] Moreover, the result of these statutes over time has been to produce a relatively small number of forms of state supervision over convicted offenders. There is probation on the one hand and more or less secure facilities for 24-hour supervision on the other.[52]

In contrast, youth authorities are typically granted much broader discretion.[53] They have not always been very creative in using this discretion. The use of locked institutions remains the dominant way the states exercise their supervision over children who are placed in their charge.[54] And there have been recent efforts to narrow the discretion of youth authorities through statutes.[55] But the fact remains that the youth authorities are generally freer to decide how best to supervise the children placed in their care than are corrections agencies. This reflects a greater social tolerance of the misconduct of children and a greater willingness to run

risks with them in the interest of justice. This tolerance, however, is gradually being eroded as society perceives the role of children in crime changing and as it senses a lack of accountability and performance in the youth corrections agencies.

A second crucial difference is that the mix of substantive purposes that are to be balanced and pursued by commitment of a child to a youth authority are quite different from those pursued by commitment of an adult to the adult correctional system. To the extent that youth commitments are for crimes, their purposes might be seen as similar to those in the adult court, namely, retribution, general and specific deterrence, incapacitation, and rehabilitation, the balance among these shifting depending on judicial philosophy or the particular background of the defendant. The difference in committing a youth to the state's care is that the programs to which the youth is exposed must accommodate two additional facts. First, the child is still developing, therefore still able to use investments, and therefore still entitled to them. Second, to the extent possible, the task of fostering the child's development and responsibility should be left to private institutions.

Sometimes it is assumed that the interest in the child's development is captured by the concept of "rehabilitation" or "treatment." To us, the idea of fostering a child's development as a responsible citizen seems different from the common understanding of what constitutes rehabilitation and treatment. Specifically, punishment and discipline are part of the concept of fostering responsibility and development. They are deployed to help children learn what is expected of them and that they are responsible for their acts. Of course, to be effective in fostering responsibility, the punishment must be administered by a credible source in a fair way. Otherwise, it simply breeds hostility.[56] But even with this important qualification about what constitutes punishment, punishment is generally considered inconsistent with treatment and rehabilitation.

In addition, we understand that the way children develop is through relationships to others. Consequently, how to construct the relationships, how to embed them in an instructive, compelling social environment, is an important focus of attention. In contrast, the idea of treatment and rehabilitation emphasizes pathology that can be treated on an individual basis separated from the relationships that surround the child. The image is of a doctor and patient rather than of a mobilization of relationships to protect, instruct, and make demands on the child. In these respects, the concept of fostering the child's social development seems different though not unrelated to rehabilitation and treatment.

In seeking to integrate the different (and sometimes competing) objectives of juvenile commitments, the society has latched onto various justifications. For many decades, the touchstone for making dispositions was captured by the phrase "the best interests of the child."[57] The vitality and power of this concept gradually eroded for three different reasons. One is

that it was sufficiently vague as to fail to give precise guidance. This, of course, is true of all such well-meaning guidelines, but is not much noticed until the concepts begin to fail on substantive grounds. The two substantive failings of this phrase were, first, that it was used to justify many decisions that were manifestly not in the best interests of the child, and second, that it failed to accommodate community interests in short-run security and the desire to hold children and their caretakers accountable for failures to meet their responsibilities to the society.

More recently the concept guiding decisions to detain juveniles was captured in the phrase "the least restrictive placement."[58] This often stood alongside the injunction to "at least do no harm."[59] What these phrases reflected was a profound disillusionment with the fairness and efficacy of the juvenile court as an institution that could, in fact, serve the best interests of the child. In the late 1960s and early 1970s, there was a widespread sense that the juvenile court had abused its discretion and effectively imprisoned children for acts that would not be crimes if committed by adults.[60] In addition, it was judged that institutionalizing children not only failed to rehabilitate them, but stigmatized them by labeling their behavior delinquent.[61] Finally, there was a strong belief that children, left to their own devices, would gradually learn a sense of responsibility.[62] Thus, the proper juvenile dispositions were those that were the smallest.

Currently, the phrase that captures the aim of juvenile dispositions is "accountability" or "just deserts."[63] This phrase expresses frustration with the perceived ineffectiveness of the juvenile justice system in controlling youth crime, and a general sense that the juvenile court has literally allowed children to get away with murder.

There are two difficulties with all of these guidelines. The first is that none of them adequately reflects the society's special interest in fostering a child's capacity for responsibility, nor in making sure that the private and public institutions that have the responsibility for doing this meet their obligations. The second is that despite the differences in emphasis and spirit among these phrases, not much has changed in terms of the real alternatives available in youth corrections. In most areas, the programs look much like they always have: a choice between probation on the one hand and a locked institution on the other.[64] It is quite rare to find programs that renegotiate relationships among the child, his or her caretakers, and the community; that establish firm structures of accountability of the child to the caretaker and the caretaker to the community; or that provide services to buttress rather than replace the care and supervision provided by the private caretakers.[65]

These observations lead to the third important difference between adult corrections departments and youth authorities. In designing programs, creating appropriate facilities, and placing children, there should be more room for private sector involvement, experimentation, and risk than in

the adult corrections agencies.[66] The role for the private sector is large for both historical and philosophical reasons. As chapter 2 indicated, private agencies such as church groups and voluntary associations have long been active in assuming responsibility for children who are at risk or creating risks. The YMCA, the boys clubs, the Boy Scouts, even police athletic leagues, are all historically rooted.[67] Today, increasingly, they are involved not only in prevention programs, but also in programs for those who have been adjudicated delinquent. The philosophical reason is that the society has always preferred that the activity of raising children remain in diversified, private hands, lest the society become too homogenized. There seems to be a great deal of room to build on these traditions.

The room for experimentation is created by three facts. First, most of the programs to which large-scale commitments were made in the past seem to have failed. Therefore, no approach or orthodoxy can now be confidently embraced. Second, how to handle children who have been adjudicated delinquent remains an important problem to be solved, and thus the society cannot simply decide to do nothing in this area. Third, a few programs have worked with some kids some of the time.[68] This demonstration of feasibility should stimulate continued investments.

The legal scope for experimentation with corrections programs—particularly those involving the private sector and relatively modest levels of supervision and control—would be useless were it not for one additional fact, namely, that the society seems to be prepared to run more risks with respect to future security when they are dealing with children than when they are dealing with adults.[69] This does not mean that the society is uninterested in its security, nor that it is willing to excuse all juvenile misconduct. The point is simply that this is not society's only concern when it comes to children and therefore, at the margin, it is willing to trade some security from future crimes against some enhanced prospects for rehabilitation and for increased responsibility among parents and caretakers. It is this fact that makes it possible to create and use a greater variety of programs than are now being used.[70]

Summary and Conclusions

The society has deployed a complex set of institutions to protect itself from the risks associated with unprotected, unsupervised, and unsocialized children. Central to this system are the family, laws mandating guardians for children when natural parents are inadequate or do not exist, the juvenile court to handle specific cases when the existing care arrangements have apparently frayed, and a variety of programs and institutions used to complement or substitute for the private child care arrangements.

While one can view the central purpose of this set of institutions as that of controlling crimes committed by or against children, it operates as though its purposes were broader: to do what can be done to create minimally acceptable conditions for raising children when natural, private arrangements seem inadequate to the task. This focus is strongly indicated by the following facts: (a) Many situations that do not involve crimes by or against children are nominated for public attention. (b) Cases in which relationships between parents and children have broken down are escalated rapidly through the system. (c) In dealing with crimes committed by children, the system investigates the family background of the child as well as the circumstances of the crime and relies on the parents to supervise the child in all cases except those involving the most threatening children. (d) The system intervenes forcefully when children are threatened but not criminally attacked by their parents.

In pursuing the objective of guaranteeing minimally attractive conditions for raising children and dealing effectively with the small number of cases in which the process of child care seems to be failing disastrously, the system should also strive to keep the costs of the intervention low. The costs are reckoned not only in terms of public expenditures, but also in terms of infringements on the principle of family autonomy and responsibility and the use of the state's coercive authority. The aim, then, is for the juvenile justice systems to deal with the fewest possible cases, and to deal with those cases with the least expensive, least coercive, least intrusive interventions.

This effort is hurt by drawing sharp lines between informal and formal, helping and obliging, and social service and law enforcement institutions. It is helped by viewing the system as an interrelated set of institutions that can be arranged in a hierarchy of cost and intrusiveness, and whose special capabilities are to be mobilized to deal with the problems presented by each case. Most of the activity will take place outside the juvenile court. The court's role is to backstop the other institutions, and to resist stepping in too early or too often.

This perspective also has implications for how the court and the juvenile corrections system should operate. With respect to the juvenile court, the implications of this perspective are that the parents or legal guardians of the child should always be a party before the court, and that someone must represent the interests of the future child as well as the current child. With respect to the juvenile corrections system, it seems important for society to run small, short-run risks of continued criminal victimization by allowing experimentation with programs that rely heavily on parental and community supervision of children. This is consistent with the aims of minimizing cost and intrusiveness, keeping responsibilities for child rearing fixed on parents and other legal guardians, and advancing the interests of the future child.

Notes

1. Charles P. Smith, T. Edwin Black, and Fred R. Campbell, *Inconsistent Labeling,* Vol. 1, *Process Description and Summary* (Washington, DC: U.S. Department of Justice, 1979).
2. Throughout the meetings of the Executive Session, the desire to construct some alternative social service-based approach to juvenile justice was frequently expressed. The aim was to avoid the coercion, stigma, and separation that are associated with juvenile court actions. (See Preface to this volume.)
3. On the body of law that is administered through the juvenile court, see Barbara Flicker, "A short history of jurisdiction over juvenile and family matters," in volume 2 of this series.
4. For a discussion of the differences between *Gemeinschaft* and *Gesellschaft* concepts of social solidarity see Talcott Parsons, *The Structure of Social Action,* Vol. 2 (New York: Free Press, 1968), pp. 686–694.
5. Kenneth Keniston and the Carnegie Council on Children, *All Our Children: The American Family Under Pressure* (New York: Harcourt, Brace, Jovanovich, 1977), chap. 9.
6. See Jane Jacobs, *The Death and Life of Great American Cities* (New York: Random House, 1961) on the cohesiveness of modest urban communities.
7. Edward C. Banfield, *The Unheavenly City Revisited* (Boston: Little, Brown, 1974).
8. This is generally true for public bureaucracies. For a discussion of the impact on policing see Mark H. Moore and George L. Kelling, "To serve and protect," *The Public Interest,* No. 70 (1983), pp. 49–65.
9. Parsons, *The Structure of Social Action,* pp. 686–694.
10. Separation from the community was often considered an aid to impartiality. Impartiality, in turn, was considered a virtue.
11. This point was made by a neighbor who works in a family guidance center. Often, poor clients cannot qualify for state financial assistance until they are before the court on a criminal matter.
12. Donald J. Black, "The social organization of arrest," *Stanford Law Review 23* (June 1971), pp. 1087–1111.
13. Edwin T. Black and Charles P. Smith, *A Preliminary National Assessment of the Numbers and Characteristics of Juveniles Processed in the Juvenile Justice System* (Washington, DC: U.S. Department of Justice, 1981).
14. George Kelling, "Caught in a crossfire of concepts: Correction and the dilemmas of social work," *Crime and Delinquency 14*(1) (Jan. 1968), pp. 26–30.
15. See for example New York State's mandatory PINS diversion legislation, chap. 813, *Laws of New York,* 1985.
16. Philip J. Cook and John H. Laub, "Trends in child abuse and juvenile delinquency," p. 111, in volume 2 of this series; Howard N. Snyder, John L. Hutzler, and Terrence A. Finnegan, *Delinquency in the United States, 1982* (Pittsburgh: National Center for Juvenile Justice, 1985), p. 2.
17. J. S. Fuerst and Roy Petty, "Due process—How much is enough?," *The Public Interest,* No. 79 (Spring 1985), pp. 96–100.
18. See generally *American Jurisprudence,* 2nd. ed., Vol. 26, Judges, Sec. 13–20 (Rochester, NY: Lawyers Cooperative Publishing, 1967), pp. 104–109.