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THE JUVENILE COURT MOVEMENT: THE ILLINOIS EXPERIENCE

The social situation in Chicago in 1890

The particular history of the Chicago juvenile court is interesting for a number of reasons. There was a rare climate of reform in the city at that time; the mere presence of Jane Addams, Julia Lathrop, Florence Kelley, and other Hull House residents should be sufficient explanation. In addition, the middle class ladies of Chicago Woman's Club, and particularly Lucy Flower and Ethel Sturges Dummer, were proving that the first stage of women's liberation meant the acceleration of social change, particularly for children.

While Ben Lindsey was the best-known juvenile court judge, the most famous court was that of Cook County. This means that it was also the best documented.

Finally, the establishment of the University of Chicago and the appointment of enlightened citizens to state boards created a reform climate which was unique; the sentimental and unthinking philanthropy of the nineteenth century was discarded in favour of social thought allied to political action.

The Illinois State Board of Charities

Chicago's juvenile court sprang from very distinctive roots. This is very obvious from the proceedings of the Illinois State Board of Commissioners of Public Charities. While its reports contain the usual homilies about good homes and wise parents, it is very clear that in the event of neglect or worse, the state (not some private philanthropic body) was obliged to protect children from moral, mental, and physical destruction. There is also mention of the contamination of children in adult institutions. The 1899 report talked, surprisingly, of the 'science of political economy' but in a much less vacuous way than we have come to expect from these well-meaning but often ineffective groups of philanthropists. Political economy 'no longer deals with human beings as mechanical abstractions, but has learned to take

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account of their sensibilities, to recognize their rights, and to be influenced by ethical as well as economic considerations. Its more or less openly avowed aim ... is the abolition of poverty.' The same report described charitable handouts as a 'malign form of selfish indifference.'[1] The commissioners also argued that the natural condition of a child was dependency and if his parents refused to succour him, then he had a right to demand such aid from the community. To carry out this obligation, the Board wanted the state to act as parent for the dependent child. One delegate described this as 'the lowest law of self-defence.' This did not mean the state should make the child become 'some decimal fraction of an institution, which is the artificial unit in an imperfectly organized state.'

Another delegate cited *County of McLean* v *Humphries*,[2] a remarkably prescient judgment in which an Illinois court cited the *parens patriae* concept and held that the state must protect the child in the same way that the law recognized the incapacity of the insane, the infirm, and the old. More important, the court also decided that the law was obliged to place all children on as equal a footing as possible (and that 'all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise'). The Illinois reformers translated this not into immediate plans for better institutions but into an enthusiasm for boarding out children in foster homes.

The Board even seemed to have decided that criminal and dependent children were very similar. When Dr F.H. Wines talked of the need for an 'entirely separate' children's court,[3] he still seemed to be talking only of dependent children and he asked the state to stop a process by which 'we make criminals out of children by treating them as if they were criminals' indicating that he thought none of the children before the courts should be considered as anything but misguided.

This remarkable report even exhibited some social realism when a delegate described the sense of injustice a child felt when sent to a contaminating bridewell because his parents were too poor to pay the fine or had 'no "pull" with the alderman so as to secure the mayor's pardon.'

No doubt there was a very different climate among Chicago child-savers. They had a very clear idea of how they wanted to protect children and this did not include succumbing to the 'institution craze.' They supported proba-

1 All these quotes are from *15th Biennial Report of Board of State Commissioners of Public Charities of State of Illinois* (1899), at 64.

2 The judgment stated: 'It is the unquestioned right and imperative duty of every enlightened government in its character as *parens patriae* to protect and provide for ... citizens ... unable to take care of themselves ... much will have been accomplished to depopulate our prisons and penitentiaries and to prevent the frightful fruitage of the gallows tree.' For a post-1900 decision on the constitutionality of the juvenile court, see *Commonwealth* v *Fischer*, 213 Pa. 48, 62 Atl. 198 (1905).

3 *15th Biennial Report*, supra note 1, at 319. Wines, formerly of Illinois State Board of Charities said in 1897 that Chicago should have a juvenile court and a probation system (ibid, at 336).

tion for most 'delinquent' children and boarding out for other children who needed the protection of the state. Most important, the government was to take responsibility.

Yet, in a very few years, this atmosphere had dissipated. The subsequent boards were often composed of political hacks. The county and city governments seemed intent on attacking the juvenile court. Many child-savers soon reverted to a belief in institutions.

Jane Addams

In 1889, Jane Addams started a social settlement at Hull House in a poor neighbourhood of Chicago. Her upper middle-class background and her guilt and distress over her comfortable financial situation, compared with the poverty of Chicago slums, prompted her to find a new weapon to fight social injustice. She wanted to 'interpret democracy in social terms' but she was no political revolutionary. She sympathised with the 'deep enthusiasm for humanity' of the Social Gospel but she abhorred 'the pseudo-scientific and stilted' charity methods of the nineteenth century. 'Don't give to the poor,' she said, 'don't break down their self-respect.'[4] This did not mean, however, a return to 'friendly visiting' by genteel club-ladies.

Her ideas were a far cry from Josephine Shaw Lowell's assurance to a Charity Organisation Society donor that not one cent of a gift would go direct to the poor. At that time 'less eligibility' required relief to be administered to relieve but also to deter. Addams was responding to Frederic Howe's allegation that the COS was 'a business enterprise to keep poverty out of sight.'[5] Charles Booth's London surveys had shown that poverty was 'not an amorphous, intangible, pseudo-religious problem but a concrete situation capable of economic definition and worthy of scientific scrutiny.'[6]

4 Addams *Democracy and Social Ethics* (1964), at 67

5 Howe *Confessions of a Reformer* (1925), at 78

6 Bremner *From the Depths: The Discovery of Poverty in the United States* (1956), at 6. Compare the late nineteenth-century attitude toward crime. One now hears very little of crime – there is a great deal about poverty, intemperance and degradation which causes crime. Perhaps, Bremner, at 71, was correct when he said that at that time, 'few crimes were more reprehensible than inability to make a living.' Somewhat the same sentiment is found in Loch's remarks that public maintenance of the individual was undesirable because 'no social system of rewards and punishments ... will be a substitute for the influence of the social law by which energy, honesty, and ability have their own reward, and failure in these things carries with it its own reward': quoted by Woodroofe *From Charity to Social Work in England and the United States* (1962), at 33.

The fight to stop crime found its new weapons in the juvenile court's arsenal. Yet, as explained at the beginning, the timing of the court was unfortunate. While the young had to be saved from the degradation and dangers of the slums and the streets, the juvenile delinquent received his reward by the establishment of a new court rather than a basic change in social conditions. The time had not yet arrived for Devine's 'anticipatory justice' which not only dealt with the individual's problems but also the conditions which 'tended to perpetuate crime, pauperism and degeneracy.' See Devine *When Social Work was Young* (1939), at 114.

Practical charity, with the help of a good mixture of expertise, political common sense, and social intuition, was replacing the old order. Jane Addams saw herself as a catalyst between the Charitable and Radical forces in the community which were converging on a middle ground where they could make 'an effective demand for juster social conditions.'[7] The charitable (who had often been satisfied to pity the poor) came to realise that poverty and crime were 'often the result of industrial conditions' while the radicals (who had simply railed against injustice) had learned that the sorry state of the poor and the criminal could only be effectively attacked if data were carefully collected about actual people. This was a march of progress from cure to prevention to vital welfare. The words relief and charity would be replaced by prevention, amelioration and social justice. (The gatherings of philanthropists and reformers of the period had been quite consciously and deliberately entitled National Conferences on *Charities* and *Correction.* The juxtaposition of those terms seems strange to us but quite natural to the Victorian.)

Jane Addams did not so much want to help the poor as she wanted to understand them and, in doing so hoped to bridge 'the chasm that industrialism had opened between the social classes.'[8] No longer could charity be considered, in C.S. Loch's term, the 'great regenerator.'

Jane Addams tried to achieve her aims for social progress by opening the Hull House Settlement. She wanted to create a community for the whole family. Hull House would be a social centre for the sons of migrant families who would otherwise become delinquents. In addition, it would run classes in cooking, crafts, and language for the boys' parents. The settlement succeeded in its second aim but was not as efficacious in helping the boys of the streets.

Hull House became much more than a club for the lower classes. The young women who joined Ellen Starr and Jane Addams at Hull House formed a remarkable group. Florence Kelley, the first woman factory inspector, became a pioneer in reform of the child labour laws. Julia Lathrop was a leader in child welfare work and was the first head of the US Children's Bureau when government took a direct responsibility for its children. Others, such as the Abbott sisters, became members of the University of Chicago social work school. Many of the early lessons in professional social work and social research methods were learned at Hull House. These social frontierswomen had anticipated the advice given by Charles Horton Cooley[9] that the proper study of the causes of social acts was empirical research. A Hull House group, for instance, had carried out a survey on truancy in a

7 Addams, 'Charity and social justice,' President's Address, *Proceedings of the National Conference of Charities and Correction* (1910), quoted in *Jane Addams: A Centennial Reader* (1960), at 85–6

8 Lasch (ed) *The Social Thought of Jane Addams* (1965), at xiii

9 See generally Cooley *Social Organisation* (1909).

poor area of Chicago and was able to show the authorities that there were school places for only much less than half the eligible school-age children. They carried out many such surveys. (After the establishment of the Juvenile Court, which was housed in a building opposite Hull House, the Juvenile Protective Association carried on this work.)

A resident of Hull House became the first probation officer of the Chicago juvenile court but, as early as 1892, this same resident had been appointed as a county agent. Alzina Stevens investigated cases needing social guidance and assistance. She got to know the local populace and her recommendations were accepted by the officials of Cook County. As far as juveniles were concerned, this county agent held a semi-official position at the local police station and the sergeant of police gave this 'probation officer' (in part sponsored by the Chicago Woman's Club) provisional charge of every child arrested for a trivial offence.

Jane Addams understood urban problems. She had a warm compassion for those citizens, particularly migrants, who lived in the big city 'without fellowship, without local tradition or public spirit, without social organisation of any kind.'[10] She wanted to make these people (and their children of course) part of a real community which would be fostered by Hull House workers. She also had a vision of the family idea being carried into the 'large life.' (She may have failed with juveniles because their delinquent acts showed that family life had already broken down.)

Jane Addams' idea of the greater family, along with the stimulus she gave to the emerging profession of social work, had a far-ranging effect in the United States. With the waning of moral defect and pauperism as *indicia* of social decay, the new social workers took over the environmentalist idea that the alleviation of internal and external pressures on the family would provide an answer to social breakdown.

While Jane Addams was creating a social milieu in the neighbourhood surrounding Hull House she was also interested in the much broader field of fostering government intervention in social problems. Her progressive politics replaced the populist distrust of big institutions. There was a movement away from the dogma of natural rights toward a 'relativistic, environmentalist and pragmatic view of the world.'[11] In one sense it was the inevitable destruction of the family and of the local neighbourhood in an industrial age which prompted Jane Addams to require the state to find a replacement for these hitherto stabilizing influences, particularly for the urban masses.

John Dewey and the role of the schools

It was no coincidence that Jane Addams and John Dewey had a close social

10 Addams *Twenty Years at Hull House* (1960), at 255

11 See White *Social Thought in America: The Revolt against Formalism* (1957), cited by Lasch *The New Radicalism in America, 1889–1963, The Intellectual as a Social Type* (1965), at xiv.

and intellectual acquaintance. In the year that the Chicago juvenile court opened, Dewey wrote *The School and Society* in which he argued for making the school a part of life – a 'miniature community,' an 'embryonic society'; this was necessary because the neighbourhood and household had disappeared. This change had deprived the child of 'training in habits of order and industry, the idea of an obligation to produce something in the world, an acquaintanceship with natural materials and ways of making them into socially useful things.'[12] He wanted children to learn cooperation and sharing rather than competition and rivalry. In other words, he did not want the school to perpetuate the existing social system. He wanted the curriculum to relate morality to the actual conditions and problems of community life. The children were to gain 'social insight, social responsiveness – the organized capacity for social functioning.'[13] He shared with the transcendentalists the belief that democracy was not so much a form of government as a method of living together to break down the artificial barriers between the masses who worked with their hands and the intellectually trained.

He believed that 'in directing the activities of the young members of society, society determined its own future in determining that of the young.'[14] Dewey, like the Victorian child-savers, applied the term 'plasticity' to the child who could be trained under his new system. Habits should be 'so manipulated that they remain co-operating factors in the conscious reconstruction of experience for human betterment.'[15]

These thoughts were obviously closely shared by Jane Addams. She often called for a new attitude toward communal life, for the poor to have a chance to break out of the social prison where circumstances placed them. Vice and ignorance resided in the authorities, not the poor.

Jane Addams was, however, sufficiently acute to see that Dewey's arguments provided children with a two-edged sword; what they would learn in a school run by the philosopher of instrumentalism could also be learned in the street gangs, in the 'dens of vice,' in the cheap theatres, and in places of employment.

Dewey saw education as 'action' – toward desired egalitarian and cultural goals – in very much the same way that Matza[16] later argued that delinquency was 'action' rather than 'infraction,' as most criminologists see it. We could carry this further and say that while both Matza and Dewey saw the child as being determined by various social forces, neither of them seemed sanguine about the idea of a governmental authority – whether an education authority

12 Dewey *The School and Society* (1899), at 23–4

13 Quoted by Curti *The Social Ideas of American Educators* (1959), at 523

14 Dewey *Democracy and Education* (1916), at 49

15 Cited by Curti, supra note 13, at 517. In his *Outlines of a Critical Theory of Ethics* (1891), Dewey thought that charity was simply a method of regulating the conduct of its recipients; instead it would be better to provide conditions which instead of promoting 'social inequality and social slavery' would secure for the poor the means of getting along without charity and altruism. Quoted by Curti, at 509.

16 Matza *Delinquency and Drift* (1964), at 4

or a juvenile court – imposing Austinian commands on the child. Both would go further and say that the child would (or should) not be happy with that situation either. (Today some commentators, at least in relation to the school, say that the authority and conformity of the peer group has taken over from the previous sovereignty of the teacher and the adult world.)

Yet one sympathises with the hope that Jane Addams and the Chicago Woman's Club and other leaders in the juvenile court movement placed in Dewey's teachings. Educators at the turn of the century agreed with Ellen Key that the twentieth century was truly the Century of the Child and that the schools must reverse the usual educational process and adjust the system to the boy.[17] The reigning educational psychology had been that of the prodigal son and the lost sheep and Dewey's principles denied this paternalism. A cynic would say that the child was simply being 'saved' in a new way. Yet the reformers argued that the school had a crucial role to play in providing services for the child – recreation, supplemented diet, health care, etc – which were not available in poverty-stricken areas.

We find incredible intellectual wealth in Chicago pushing toward a new form of child-saving. Francis Wayland Parker, whom Dewey called the father of progressive education, had become principal of Cook County Normal School in the late nineteenth century.[18] He believed in the 'divinity' of the child and the need to foster its spontaneous tendencies. Obviously, at the centre of the school, indeed of society, should be the child. In language which an early Victorian child-saver would find very easy to understand, Parker said: 'We must believe that we can save *every child.* The citizen should say in his heart, "I await the regeneration of the world from the teaching of the common schools of America."'[19] Parker, however, went on to envisage the child being saved so that he could become a contributor to the national wealth and a participant in the government of the democracy which is not quite what Dewey or Addams had in mind. If Mary Richmond had had her way, the school would be interested in everything:

> Anything that influences the character of a child must concern its teachers. They are concerned with, though not directly responsible for, improvement in home conditions; they are interested in the segregation of the mentally defective; in the cure and prevention of physical and mental disease; in the reduction of irregular school attendance, improper and under-feeding, and dead-end occupations; in the abolition of premature employment; and in the prevention of that waste of unusual ability which comes from lack of longer training.[20]

17 A typical sentiment from the beginning of this century is quoted by Hofstadter *Anti-Intellectualism in American Life* (1966), at 365: 'We shall come to our place of rejoicing when we have saved everyone of these American children and made everyone of them a contributor to the wealth, to the intelligence, and to the power of this great democratic government of ours.'

18 On progressive education generally, see Hofstadter, ibid., at 365 ff.

19 Parker *Talks on Pedagogics* (1894), at 450

20 Richmond *Social Diagnosis* (1917), at 231

Later, we shall see that, in Chicago at least, the school and the juvenile court unfortunately became rivals.

The Chicago Woman's Club and juvenile reform

Historians have paid too little attention to US clubs for women. They were not merely social gatherings which had poetry readings, flower-arranging classes, and charity bazaars. Women had developed a social conscience over the issue of slavery and it was no coincidence that the first clubs started immediately after the Civil War.[21] Female suffrage was certainly not their sole social concern.

The Chicago club had an active interest in penal reform, securing the services of a night matron in the police stations and, in 1886, helping establish the Protective Agency for Women and Girls.[22] In the eighteen-eighties they discussed industrial schools, associated charities, and kindergartens. The members wanted not to turn the club into a charity organisation but to discover 'the best methods of advancing humanitarian principles and of helping individuals and organisations to become self-sustaining.'

The club members believed in good citizenship and argued that all children should grow up under conditions which gave them a chance to attain 'the good life.' When they secured the appointment of a night matron (whose salary they paid until the city undertook the expense), they discovered young girls of ten years awaiting trial – sometimes for months – and congregated with hardened professional thieves. They endorsed a bill for a reform school for girls so that 'comparatively good girls' who had committed only 'light' offences could be segregated from vicious company which would have permanently blighted them.

Child labour practices were attacked. The Club protested the lack of laws relating to street children who were left to the discretion of the policeman. They also wanted compulsory education as it had been proved to raise 'the standard of morality.'[23] (Never daunted, ten years later they were organising a Truant Aid Committee.)

They attended at police stations, paying the fines of impecunious female petty offenders and successfully remonstrating against the transport of women prisoners with male prisoners.

In 1892, they were trying to raise money for an Industrial School for boys.

21 Most of the following data, unless otherwise stated, come from the *Annals of the Chicago Woman's Club, 1876–1916*, compiled by Henriette Greenbarm, Frank and Amalie Hofer Jerome (1916) (hereafter *Annals*).

22 By 1892, there were three police matrons, each doing an eight-hour shift. The Chicago clubwomen derived their interest in and knowledge of penal ideas from England and the east coast. For a description of the penal reform achieved by the club, particularly after 1918, see Powers, The Chicago Woman's Club, an unpublished MA thesis at the University of Chicago (1939), at 189 *et seq* (hereafter Powers).

23 *Annals*, supra note 21, at 42

At that time, they reported, 470 children were in poorhouses and receiving no education, and more than half of the 200 children in the Reform School had 'drifted into crime through neglect.'[24]

Lucy Flower was a clubwoman but she was more than that. Ben Lindsey once called her 'the mother of the Juvenile Court law.' She was responsible for the clearing of children from the poor-houses; she claimed that children were being contaminated. The publicity gained by this campaign accelerated the setting up of industrial and training schools. She called it a 'shame and disgrace' that the city jail and bridewell were full of children. Even a 'bad boy' should have a chance to keep his self-respect, she said, and did not deserve to go out into the world with 'the stigma of criminality' upon him.[25]

Mrs Flower and Mrs Perry Smith organised a jail school for children in 1892. At that time, Mrs Smith also made the first suggestion for a separate court using the same argument as prompted the jail school – the dangers of contamination.[26] The club paid the salary of the jail teacher who acted as an informal probation officer, going into court with the boys and visiting their homes. In 1893, Mrs Flower, in addition to being the woman organiser of the International Congress on Charities, Corrections and Philanthropy held in Chicago that year, visited her native Boston to study the work of probation. On her return she headed the newly formed legislation committee to draft a bill but it was abandoned when the measure was discovered to be compulsory and therefore unconstitutional.[27] Two years later, another abortive effort was made but the state's attorney promised 'to expedite the trial of boys' and the jail teacher had been assured that Judge Tuthill would hold special hearings on Saturday mornings.[28] The following year a special docket was instituted for boys' cases.

The club was very successful in sponsoring child-saving schemes such as the jail school and a parental school for boys but the three attempts to pass a probation law (which would lead to a separate court) proved difficult. De-

24 Ibid, at 84

25 Farwell *Lucy Louisa Flower (1837–1920): Her Contribution to Education and Child Welfare in Chicago* (1924), at 9. (Mrs Farwell was Lucy Flower's daughter.) Farwell says that, as early as 1888, Flower started demanding the removal of all children under sixteen years from the jurisdiction of the adult criminal courts. A bill, sponsored by a number of societies on the insistence of the club, was introduced in the legislature in 1891 but it was rejected on second reading: Farwell, at 28–9. Another version suggests that Timothy Hurley as president of the Chicago Visitation and Aid Society (a Catholic charity) arranged in 1891 for a bill to be introduced which would have provided 'that in the case of any child who had no proper parental care or who was being trained in vice and crime by the person or persons having charge of it, or was destitute and incapable of providing for itself, the court was authorized to commit the custody and care of such child to any society whose object was to provide for such children.' Hurley *Origin of the Juvenile Court Law* (1907), at 13. The result was the same; the suggested law failed to pass.

26 *Annals*, supra note 21, at 125. This source is subject to some doubt.

27 Powers, supra note 22, at 195. The Massachusetts law was the Probation Law, Mass. Acts and Resolves 1878, c 178, at 146.

28 *Annals*, supra note 21, at 159

spite clubmember Julia Lathrop's assistance, the women realised they needed the wider support of social agencies and the legal profession. On the advice of their lawyer friends and husbands, club deliberations became more specific and were framed in language approximating legal concepts. The juvenile court gestation period proved to be one of legal manoeuvrings. The 'philosophy' of the juvenile court was already being practised but the law seemed to be obstructing what was later hailed, with little justification, as a social welfare court.

Probation has already been described as the core of the court for children and, in spirit at least, the special functions of the new court were operating when Julia Lathrop engineered the start of probation work in 1898. She had wanted a probation law so that 'the children who are not criminals should not be sent to the Bridewell.' She wanted a club member appointed by the judge as the offender's guardian – to supervise him for a specified period.[29] The club contributed money for the investigation of children's cases in police stations. Club members, and later two probation officers, secured suspended sentences and supervised children, visited their homes and schools, guarded and guided them, and kept them off the streets.

Mrs Flower learnt from the failures of previous years and had a probation and juvenile court law drafted which was supposedly constitutional. This law was then subjected to much unofficial lobbying among influential people in the community, including some of the judges.[30] Because of the enthusiasm of the drafter, Judge Hurd, and Mrs Flower's organising abilities, the Bar Association officially sponsored the bill on the 'unofficial agreement that, with the exception of one delegation of lawyers to Springfield, the women would do all the work.'

In February 1899, Miss Lathrop and Mrs Henrotin, as club delegates, had lobbied in Springfield for the passage of the improved Truant and Parental Schools Bill.[31] Miss Lathrop also did invaluable work for the juvenile court bill. Through her membership on the State Board of Charities and Corrections, she was acquainted with almost every court official and judge in the state and wrote letters and made visits lobbying for the bill. She also went to Springfield with Mrs Flower.[32]

29 *Annals*, supra note 21, at 187–8. Club members addressed the State Conference on Charities and Corrections in 1898 on the probation system, children's courts, special judges, and the separate detention of children. Platt *The Child Savers; The Invention of Delinquency* (1969), at 83–92, gives a portrait of another clubwoman, Louise de Koven Bowen who made a substantial contribution to child reform.

30 Much of this material is found in Farwell, supra note 25, at 30–2. The author cited Mrs Flower emphasizing that 'the bill was doomed to failure at Springfield unless men as well as women backed it'; at 30.

31 Among the organizations co-operating were the Illinois Board of Public Charities, the Illinois Federation of Woman's Clubs, the Board of Education, and the Illinois Conference of Charities.

32 Farwell, supra note 25. Judge Hurd, who was the author of the Bar Association's bill, spoke in support of it and Miss Lathrop spoke on the subject of dependent children. Two weeks later Miss Lathrop was back in Springfield with Mrs F.P. Bayley in support of the Truant

The contribution of the bar

Despite all the clubwomen's work, the act would never have passed without the help of the Chicago Bar Association and the credit for having enough political sense to enlist the help of the lawyers must go to Julia Lathrop.

Governor Altgeld started it all by appointing Miss Lathrop the first female member of the Board of State Commissioners of Public Charities. The Board, with Julia Lathrop as chief investigator, made a full survey of the condition of dependent and delinquent children. Miss Lathrop, with the support of her fellow Board member Ephraim Banning, made a report to Governor Tanner exposing shocking conditions in the institutions and the state generally, and demanding remedial legislation.

Miss Lathrop decided 'This is a legal matter. It must not go to the Legislature as a woman's measure; we must get the Bar Association to handle it.'[33] A Committee of the Bar Association reported on the laws relating to neglected, dependent, and delinquent children and found them fragmentary and lacking in continuity. It made the usual complaints about children in the common jail, police station, and bridewell, and the presence of dependent children in almshouses. The courts of Chicago were so overcrowded that they could not give proper attention to children's cases. Therefore, remedying legislation should be passed so that the state could 'assume its responsibilities as *parens patriae* ...'[34]

Probably few realize that the lawyers of the Bar Association were involved in investigating the conditions of children. The Association, at that time, had no reputation for social reform and no doubt the ladies of the Chicago Woman's Club had proved very persuasive. (Mrs Flower's husband was a successful lawyer in the city.) In fact, it is likely that the Bar Association

School and Dependent Children's Bill. Miss Lathrop had persuaded Judge Hurd to draw up the juvenile court bill because it was a legal and not a woman's matter. The bill went forward in the name of the Bar Association (at the ladies' urging). Club pressure had caused the creation of a commission in 1898. The commission declared that a more adequate truancy law was needed, along with more parental schools.

The truancy provisions were passed, along with the juvenile court law, in 1899. This law provided that all cities with populations over 100,000 had to establish schools for children in need of discipline, instruction, and confinement. The compulsory education law had to wait until 1903 when the law was changed requiring all children from 7 to 14 years to attend the entire school year of not less than 100 days. Aid to mothers wholly or partially dependent on working children was provided by a 1907 law and the Mother's Pension Act, 1911. Compare Hurley's version, infra. For Miss Lathrop's version, see 'Development of the probation system in a large city,' (1905), 13 *Charities* 344.

33 Hurley, supra note 25, at 18

34 *The Minutes of the 26th Annual Meeting, Chicago Bar Association, 1899*, 57–63. A resolution was passed which pointed out that Chicago was 'lamentably deficient' in care for delinquent children, that children are kept in jails and prisons, that the ordinary courts could not devote proper attention to children's cases, and that the public almshouse was unsuitable for dependent children. The resolution ended by appointing a committee of five members of the association to investigate conditions of child life and to co-operate with other organisations in formulating and securing remedial legislation.

Committee was shown some of the existing conditions by such women as Addams, Lathrop, Kelley, or Flower. In carrying out its investigation, the committee invited the co-operation of public officials, representatives from the public schools and from child-saving institutions and societies, and women's clubs and other associations. The Committee's findings were substantially the same as the submissions made in Springfield by Judge Hurd who drafted the legislation which was 'settled,' in lawyer's language, by the whole committee.

Timothy Hurley was a lawyer who eventually became the first chief probation officer of the new court. He had helped in the drafting of the bill. He said that great care was taken to 'eliminate in every way the idea of criminal procedure.' He also said:

> All the proceedings were to be informal. The strict rules of evidence were not to be adhered to; the effort being, first to find out what was the best thing to be done for the child, and second, if possible, to do it. It will be seen at once that this procedure contemplated a complete change; instead of punishment and reformation, it was formation. The procedure contemplated care, attention and formation, rather than reformation. In short, the Chancery practice was supplemented for that of the criminal.[35]

Section 2 of the penultimate draft of the bill had included:

> Proceedings under this act shall conform as nearly as may be to the practice in chancery PROVIDED, that in cases where a criminal offence is charged, the accused shall have the right to a trial by jury. When a case is being heard, all persons not officers of the court or witnesses, and those having a direct interest in the case being heard, shall be excluded from the court room.[36]

This was dropped, on the suggestion of Hurley. No explanation is given for this excision but one can assume that it was because of the fear of unconstitutionality.[37]

Hurd, Hart, and Hurley may have decided that sufficient equity was built into the system by the well-known 'philosophy' or 'policy' section which was found in section 21 of the original Act:

> CONSTRUCTION OF THE ACT. This act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done the child be placed in an improved family home and become a member of the family by legal adoption or otherwise.

35 Hurley, supra note 25, at 23, 24
36 Quoted, ibid, at 27–8
37 The successful legislation made no mention of chancery practice or closed courts. The only substitute for the passage quoted was: 'In all trials under this act any person interested therein may demand a jury of six or the judge of his own motion may order a jury of the same number to try the case.' s 2 of 1899 Act.

The only other substantive change to the draft which affected the rights of the child before the court was in section 11 of the draft (section 10 of the final act). After providing that the child under sixteen should be transferred to the jurisdiction of the juvenile court (or tried on petition under the new act rather than warrant under the criminal law), the draft provided that:

In any case the court may proceed without notice, or it may cause such notice to be given, and investigation be made as it may think for the interest of the child, and may adjourn the hearing for that purpose.

This was deleted and replaced with:

In any case the court shall require notice to be given and investigation to be made as it may think for the interest of the child, and may adjourn the hearing for that purpose.

This in turn was deleted and replaced in the final Act, section 10, with:

In any case the court shall require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for the purpose.[38]

The legislation

The bill was introduced in the Senate by the Hon Solon H. Case and in the House of Representatives by the Hon John R. Newcomer, and in March 1899 the judiciary committee of both Houses sitting in joint session held a hearing.[39]

The bill had no trouble in the Senate but did not pass the House until the late afternoon of the final day of the session. At one stage the outlook for the bill was so bleak that the Bar Association committee had 'presented the matter personally to Governor Tanner and Speaker Sherman, explaining the objects of the Bill and securing their support and co-operation.'[40]

The clubwomen alleged that the bill had been filibustered by 'powerful political opponents,' including the police justices 'who feared the loss of the fees they received in handling the children's cases under the old regime.'[41]

38 All versions cited, Hurley, supra note 25, at 33–4.

39 At the first hearing the Bar Association was represented by Harvey B. Hurd, Ephraim Banning, and E. Burritt Smith. 'Other interests' were represented by Judge Orrin N. Carter, Thomas C. MacMillan, and Timothy D. Hurley. The last named later became chief probation officer. At a second hearing Hurd and Banning represented the association and Hurley 'other interests.' Hurd 'and others' visited Springfield to look after the final passage of the bill.

40 Hurley, supra note 25, at 59

41 Farwell, supra note 25, at 31. This version is disputed by Hurley's history of the legislation which records that in January 1899 Mrs Flower (and her associates of the club) entered the premises where the justices of the various courts were lunching. The judges 'strongly protested against the then existing conditions at the Bridewell and urged the establishment of suitable homes where the youthful offenders would not be educated to follow in the paths of their degenerate companions.' Hurley, supra note 25, at 23. Judge Tuthill

The best legislation which the supporters of the bill could promise Flower and Lathrop was one which had had the appropriation sections removed. (These appropriations would have provided for probation officers, a detention home, a court room away from the regular adult courts, and for the placing-out of children presently held in almshouses.) Flower wanted the emasculated bill passed, promising that she would find the means to make it effective. The bill was removed from the regular calendar and brought to a vote.[42]

The lawyers for the state were obviously also in favour of the new legislation.[43] Albert Barnes, assistant state attorney, told an audience in Ottawa that the idea behind the legislation was that 'the State must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime.' Some further remarks of Mr. Barnes were both prophetic and rather optimistic:

Embodying as it does, the ripest thought upon this question, the results of scientific inquiry and special study of the causes and conditions of crime, and the lessons from practical agencies employed, not only in this country but in Europe, this act, unless thwarted by persistent and unnatural foes, by niggardly means for carrying out its provisions, or by the assault of those who seek to defeat rather than promote

offered another comment on the court and some possible opposition to it: 'There were many defects in the statute, but the court in various ways did enforce the law. Experience taught many things, and the effort to give the children under it proper parental care, its purpose and aim, at last won the support and approval of all thinking men and women ... that court ... was often spoken of by people who thought that caring for children's cases was rather beneath the dignity of a real judge, as "the Kindergarten Court" ... it has not changed the nature of the boys of this great metropolis, who have never had proper parental care, but it has done an incalculable good to many thousands of them.'

42 Cited in *Annals*, supra note 21, at 181. Farwell reports that during the early sessions of the court, Mrs Flower often sat on the bench with Judge Tuthill 'in order that he might confer with her in regard to the perplexing situations that were to form the precedents of the new court.' Farwell, supra note 25, at 34. This version seems to be fanciful on a reading of Hurley's much more carefully documented record. There was one 'nay' vote in the Senate and none in the House of Representatives. The bill was first introduced in February and finally passed in April 1899. Hurley, supra note 25, at 40–4.

43 (1899) 31, *Chicago Legal News* 367 noted: 'It would seem to be contrary to the spirit expressed in this law to compel the minor children of this country to go to a Probate court held in a building containing the jail and where the Criminal Court is held, which is visited by criminals, thieves and vagabonds.'

In another report in the same paper but one year later, we have the *Legal News*' verdict on the first year's operation of the court. The editors state that the court 'has been more successful than its most sanguine friends anticipated.' Much of the credit, they believed, was due to the 'kindhearted and fatherly' Judge Tuthill. The court had had 2,298 children before it in that period. 1,100 had been paroled to a probation officer and only 15 per cent had been before the court for a second hearing. The editors continued: 'Hundreds of children who have been guilty of some little offense for the first time have been reprimanded but not punished, and have been started on the road to reform. Through the agency of the court, children have been taken from evil environment that has been the cause of their misdemeanours and placed in better surroundings. Those whose conduct has not justified such treatment have been sent to institutions but not branded with a criminal sentence.'

beneficial legislation, will prove the dawn of a new era in our criminal history, and of a brighter day for the people of Illinois.[44]

The legal profession did not look upon the juvenile court as anything but another legal institution although of a very different kind. The lawyers were not concerned about due process or constitutionality. They saw the court as a direct substitute for the criminal process. They saw the judge as a legal official (who would be 'firm and just enough to do what he *legally* can to improve their condition') but as a very kindly one who would do something for the 'little ones' or the 'poor unfortunate children.'[45]

The bill which passed was administratively far from perfect but it did have the virtue of 'combining already practised policies under a consistent theory.'[46] Children under sixteen, rather than seventeen, years were deemed for the purpose of the juvenile court to be not legally responsible as criminals; the children would be 'treated' rather than punished and equitable guardianship would be extended to protect children before the court for delinquency or parental neglect.

The new court opened on 5 July 1899. From that date to 31 October 1899, 581 children came before the court; of these, 381 were paroled, 176 were sent to the John Worthy School (which was the children's branch of the House of Correction),[47] 13 went to the Home for Juvenile Female Offenders, 13 (including a nine year-old) were held for the grand jury, and 18 were sent to Pontiac.

The actual operation of the court

At a conference in November of the following year, the court's first judge, the Hon. R.S. Tuthill explained the lack of facilities which had prompted the establishment of the court.[48] The people of Illinois had come to realise that the inadequate laws for child-care were breeding a 'hostile force,' 'an army of criminals' who would not only be a menace to the lives and property of the 'taxpayers and peaceable citizens of the state' but would also require great expense in police protection and the building of prisons. These burdens would not be necessary if an 'ounce of prevention were applied in the days of childhood.'

On first impression, the judge's concern for the taxpayers' dollars and reference to some unstated theory of social hygiene seem naive and simplis-

44 Farwell, supra note 25, at 62–3
45 *Chicago Legal News*, supra note 43, at 372; emphasis added
46 Powers, supra note 22, at 197
47 At this time, recommendations were made for a system of parole for children released from the John Worthy School.
48 Unless otherwise indicated, all quotations in this section are taken from *16th Biennial Report of Illinois Board of State Commissioners*, (1900), at 42, and at 324–53.

tic. He gave little thought to the social conditions which produced these potentially dangerous children although he claimed good rates of success, except from children living in 'shockingly sub-standard housing.' He also took the enlightened view that the percentage of delinquent children who were 'abnormal in their moral nature' was no higher than among the children of 'well-to-do and honest parents.' The cause of delinquency was not 'hereditary taint' but the environment of bad homes, bad parents, and bad supervision.

Cure would be slow, said Tuthill. There would be no 'instanteous conversion' of the delinquent, and he could not promise 'transformation' in 100 per cent of the cases in his court. He wanted to dispense justice while adhering to the rehabilitative idea. He contradicted his earlier remarks by suggesting that good family homes would not be the answer for the delinquent who 'tires of the monotony of such a life,' escaping to the 'excitement of the vicious life in the alleys and galleries of the variety theatres of a great city.'

The delinquent must go to a school to learn discipline and to learn a trade. The only institution available, the John Worthy School, was inadequate for the 'reformation or reclamation' of delinquent boys, because boys had to be released before they were ready. Instead a cottage system farm should be opened.[49]

The judge seemed unable to reconcile his philanthropic view that delinquents were simply energetic youths who needed guidance with the fear that they might develop into criminals 'endangering the peace and welfare of the law-abiding, and spreading an evil influence in ever-widening divisions, an influence which will sap the foundations of the State.'

During much of his speech the judge had the rather restricted vision of the lawyer and saw his judicial role as guarding the security of the nation. The state, he said, could exercise the 'highest duty' of a civilised state and stand *in loco parentis* to the neglected and delinquent children. He was most concerned by the lack of separate detention facilities because of the 'almost unvarying characteristic of the delinquent' to escape from parent, friend, or official who seeks to 'restrain, control, or in any way to interfere with his conduct or actions.' These comments were made by a juvenile court judge who presumably believed that children could be saved by separate facilities and informal proceedings.

The judge described the practice of the court and made it clear that probation was the core of the court. After hearing the evidence and judging the child to be 'in a condition of delinquency,' 'a liberal and fair trial' of the probation system was given. If the child failed on probation, he would be 'otherwise dealt with.'

The judge described the investigations undertaken by the probation officers which included inquiries from the child, neighbours, teachers, police officers, police records, and poor records. The probation officers

49 He cited examples of such institutions in Glen Mills, Pennsylvania, and in Indiana.

were given the following instructions, explaining the philosophy of the juvenile court:

It will be the endeavour of the Court to carry out both the letter and the spirit of this Act, and to this end the Court will have in mind the following considerations ...:
1. *The welfare and interests of the child* – It is the desire of the Court to save the child from neglect and cruelty, also to save it from the danger of becoming a criminal or dependent.
2. *The welfare of the community* – The most practical way of lessening the burdens of taxation and the loss of property through the ravages of the crime class is by the prevention of pauperism and crime. Experience proves that the easiest and most effective way of doing this is by taking hold of the children while they are young – the younger the better.
3 *The interests and the feelings of parents and relatives.* It is right and necessary that parental affection should be respected, as far as this can be done without sacrificing the best interests of the child and without exposing the community to unnecessary damage.

The most crucial question in the view of the judge was whether the child should be separated from his parents and the secondary question was whether he should be placed out or sent to an institution. The court would not ordinarily separate children from their parents unless: the parents were criminals; the parents were vicious or grossly cruel; the parents were entirely unable to support the children; the home was in such condition as to make it extremely probable that the child would grow up to be vicious or dependent. The court was most emphatic in pointing out that it would not be used as a 'convenience for purposes of relieving parents or relatives from their natural obligations.'

The first court professed opposition to institutional care. The directive described above also suggested that children should only remain in the detention home for very short periods. This was due to overcrowding but also because the child needed the care of parents or of some suitable family. Similarly, when a child was under a probation officer's supervision, he should live with his parents or in a suitable family home. The probation officer would supervise the child in whatever environment the child was placed. In the scheme of the juvenile court, the probation officer was 'the keystone which supports the arch of the law.' Waxing poetical, Tuthill described this 'arch' as the 'rainbow of hope' for those who love children, saving them from vicious lives and helping them develop into good, honest, and useful citizens.[50] He pointed out that, while he appreciated the work of the policemen who had been volunteers, the best probation work could only be done if he had full-time paid officers.

50 More metaphors are found in the remarks of La Monte, clerk of the Juvenile Court, at 353: 'This act properly administered throughout the State will make the juvenile courts' engines to batter down the walls of the citadel of crime. They will prevent many children from beginning careers of crime. No cost should be spared from a false sense of economy.'

Hurley, the Chief Probation Officer, was convinced that probation work was efficacious, and cited recidivism figures of only 18 per cent which would decrease with the appointment of more probation officers – he needed twenty.

While the juvenile court was a valuable innovation, there seemed little certainty as to the next step. Some complained that parents and schools were the culprits because they failed to train and teach. A new environment was needed but there were no clear guidelines. The contamination theory was still popular. Juvenile institutions were not favoured as the reformatories were already overcrowded or unsatisfactory. The commentators on these problems did not offer very practical suggestions; they spoke vaguely of training, usually of a moral nature. They mentioned trade training but more frequently they wanted to solve urban society's ills by sending city boys to rural training farms. (C.L. Brace's solution for New York City could not work in Chicago.)

Some reaction to the juvenile court had set in. There was a vague feeling that 'something essential to reform' was lacking. Admonition and restraint were not reform and new methods had to be discovered.

Frequently, the court was working with insufficient help from social agencies and, instead of being able to offer constructive help, had to resort to crude deterrence. One judge, Judge Stally, used to fine delinquents and, in default, send them to prison. He had changed his technique; he would now leave them in jail for a day or two with the sheriff observing their behaviour. Then they were brought to court and given a stirring lecture. The judge thought it was a good system. 'In most instances,' he said, 'when you talk to these boys and girls who had been committed to prison for the first time, you can tell whether they have any desire to make men and women out of themselves.' The judge claimed 90 per cent success for his suspended sentence system but he wanted some improvements; a public guardian appointed who would take control of these children and find suitable foster homes for them. Stally justly criticized the juvenile court law because the institutions to which the children could be sent were not represented in court. (Presumably he wanted these institutions to have the opportunity to present their case and to explain their aims and purposes.) Yet after making these constructive suggestions, Stally ended his remarks by reverting to the stance of pious judge and respected churchgoer when he observed that 'the great question of the hour ... is the saving of the immortal souls of these children.'

Delegates commented on these papers. William O. La Monte was Clerk of the Juvenile Court in Chicago and made comments appropriate to a court administrator. He spoke of the need for keeping good records so that the act was 'strictly complied with';[51] the verified petition must 'state facts not

51 He cited *Peacock* v *Bell*, 1 Saund. 69; *Haywood* v *Collins*, 60 Ill., 328.

conclusions, and the facts must be such that if proven they will bring the child within the act as either a dependent, negligent or delinquent child.'[52] He was equally circumspect in procedure when children were going to industrial school. La Monte's comments suggest that the court had already been criticized for its relaxed procedures. He cited the Illinois constitution which guaranteed the right to 'demand the nature and cause of the accusation,' observing that 'children have constitutional rights whatever may be our view as to the supposed rights of parents.' The juvenile court must act in a constitutionally proper fashion where children were involved 'because the proceedings under the Act in many cases fixes the status of human beings forever.' Natural parents had rights too because their status was also being affected but the common law vested in the parent 'only such authority as is conducive to the advantage of the child.' The parents could only be stripped of those rights 'by strict compliance with law and the record should so clearly show.' The record was essential so as to protect foster parents with whom the child was placed if the unworthy parents sought to regain the child.

La Monte was not a lawyer but a civil servant administering the law and, no doubt to protect his position, took a stricter stand than many child-savers. Timothy Hurley took a different view. He agreed with La Monte that the natural parent had no absolute right to the custody and control of a child but rather was a 'trustee' whose rights would be terminated if he violated the trust. The probation officer gave a description of the juvenile court which was difficult to match with La Monte:

> I desire to emphasise the point ... that the children coming before the Juvenile Court are never accused or tried for a crime. The Court rather deals with the condition of the child, and deals with him accordingly, the idea being to apply the necessary correctional means, so as to change the life of the child. It is not necessary nor was it ever necessary to find a child guilty of a crime so as to detain him in a school or reformatory. No child has liberty in the sense that we understand the term. A child's wants must be supplied; the school selected, the rules of life provided, the mode of conduct mapped out for him. All of these things are supplied, not by the child, but by the parent. When the parental care is lacking, then it is the duty of the State who stands *in loco parentis* to the child to take the place of the parent.

Although Hurley may have been prepared to cater to La Monte's need for legal security and certainty by allowing the clerk all the forms, warrants, and notices he might require, complete discretion as to the disposal of the child

52 Ibid, at 350. La Monte also said: 'The petition should contain a clear and distinct statement of the facts, and the facts proven must satisfy statutory requirements as must the evidence.' (See Illinois Constitution, art 2, 9.) In elaboration, he said, at 350: 'Unless the petition and notice ... are in compliance with the statute, even though the court might have jurisdiction of the general subject matter, it would have no power to render a valid judgment in the particular case. All the papers filed in a case become a part of the record.' He cited *Stevens* v *Ernest*, 80 Ill. 513. He also cited *Vail* v *Inglebart*, 69 Ill. 332: 'The court can only determine the legal effect of a judgment from an inspection of the whole record.'

was to be in the hands of the child-savers. (The irony is that Hurley was legally trained and had been seconded from the Law Department of the city). Hurley was quite prepared for paternalism because 'the State is not dealing harshly with the child when it applies the same rules and regulations to it that the natural parent usually does.'

The later history of the court

In its first ten years, the Cook County juvenile court had had 190 sessions. There had been 3181 hearings for 2260 case dockets. Of these, 1095 were released on 'parole' to probation officers (and 203 of these were recidivists within the year) and 541 were committed to the John Worthy School during the year ended 30 June 1900: 33 of these had been remanded (presumably this means that they had recidivated and would go to Bridewell or worse). 162 boys released from the school in the care of the probation officer had not returned to the court. 18 had been committed to the State Reformatory at Pontiac (and all but two had been released within the year). 37 were held for the grand jury. 48 were committed to the State Home for Juvenile Female Offenders at Geneva and 28 were committed to the House of the Good Shepherd. Almost thirty per cent of the delinquents and two-thirds of the dependent children were sent to institutions and therefore the call for more probation officers and the wholesale introduction of placing-out seemed justified.[53] Certainly the committal rate of delinquents, particularly girls, was much higher than it is today.

The report of the court gives the 'causes of delinquency': a third were petty thefts, 340 for disorderly conduct, 210 for truancy, 110 breaking into premises, 41 assaults, 35 'cutting out lead pipe,' 34 'railway depredations,' 55 arson, and 226 'incorrigible.'

Most of the causes of dependency were considered to be direct acts (or omissions) of the parents: 135 'lack of parental care,' 168 drunkenness of parents, 79 death of parents, 68 sickness of parents, 156 poverty of parents, 145 desertion by parents.

Six probation officers were engaged full-time with salaries paid from private sources. One 'coloured woman' devoted her 'entire time' free of charge to the care of the coloured children coming before the court (although the statistics are not broken down in terms of race). Twenty-one truant officers under the Board of Education had been commissioned by the court as probation officers but they only worked on truancy cases. There was

53 The dependent children were disposed of in the following rough categories:
Industrial and Training Schools/368
Orphan Asylums/161
Adoption or Placing-out Agencies/202
Crippled Children's Home/1
Deaf and Dumb Asylum/1
Chicago Erring Women's Refuge for Reform/1

a further classification of fourteen men who were described as 'Officers and agents of the various Associations assisting the Court who have been commissioned Probation Officers, but take charge of dependent cases only.' Sixteen police officers assisted the probation officers in their visitation work. In addition, 'The Court has appointed thirty-six other persons as Probation Officers to take charge of individual cases. These latter officers have seldom been assigned more than two or three cases.'

The juvenile court of Cook County had been formed on a 'hand-me-down' basis. Police officers had been seconded as probation officers. The chief probation officer was borrowed from the city law department. The salaries of the full-time probation officers were paid from private sources (as, in due course, was the psychopathic clinic, of Dr William Healy). The juvenile court was something of a poor relation without a budget or real home of its own; all its facilities, court room, judge, clerk, state's attorney, temporary detention home, and office were lent by Cook County. This may seem unimportant but, in time, this makeshift quality and lack of permanent and formally financed organization were to cause very serious problems from which the court never fully recovered.

Hurley wanted twenty full-time, remunerated probation officers for specific districts. He wanted the county and city to spend much more money and compared the parsimonious attitude of Chicago with the $2,350,000 annual child welfare budget of New York City. The New York Children's Aid Society alone spent more money in 1900 than the entire expenditure for Chicago's children. He reminded the city fathers that they must not stint on the probation service which was more effective and economical than institutionalisation.[54]

There should also be an adequate detention building, publicly financed, for all classes of children coming before the court so that they were 'separate and apart from all suggestion of jail, hospital or lunatic asylum.'[55]

The report of the court indicated that its officers were convinced that they had saved 'hundreds from homeless life or from so-called homes that were utterly unfit and placed them in good institutions or the care of societies to find them suitable homes.'

The Chief Probation Officer also gave his views on the causes of delinquency; the more prominent, in his opinion, were truancy, 'junking,' and child begging. Truancy led to idleness, bad companionship, and mischief. The education department had been useful in co-operating against truancy but matters would be even better when the new parental school was in

54 Supra note 48, at 354. The daily expenditure of the John Worthy School was estimated at $600 or 60c per boy. Hurley thought that child welfare finances could be supplemented if the court had summary power to compel parents and guardians to support their children, inside and out of institutions: at 356.

55 Ibid. At that time the children were still housed in overcrowded quarters at the insane hospital. The children were kept there for a week. Later the use of a remodelled cottage was donated and the cost of maintenance was paid by the city on a *per diem* basis.

operation. The junk men had encouraged delinquency by purchasing lead pipe, etc, from boys. Children had been sent into saloons to beg, bringing on their degradation. Fortunately, the juvenile court, with the help of the police chief, had almost eradicated begging.

The report of the court also gave an 'authoritative' statement on its philosophy and the application of that philosophy.

> Under this new plan of procedure the child is treated as a child; impressed by the Court with the idea that he may have been guilty of a technical offence for which he might be punished, yet he will be given a chance, and he is thereupon made a ward of the Court, and allowed to return to his home under the friendly care of a probation officer, who sees him from time to time, assists him, advises him in respect to his home and surroundings and thus helps him.[56]

The Chicago court had suffered from the same disability as the Adelaide one in that its specialized jurisdiction was not fully recognized.[57] Police magistrates had dismissed twice as many cases as had been transferred to the juvenile court.

On the credit side, the court had brought about a 'harmonious co-operation' among child-care agencies. For the first time, Illinois law recognized these bodies so that 'the baby can now be legally assisted, as was the older brother or sister under the industrial school laws.'[58] This emphasizes, once again, that the juvenile court wanted to catch them young and perhaps had little hope for the 'hardened' older child.

Hurley's hopes for probation implied less use of institutions. He encountered some opposition from reformatory superintendents who argued that the new juvenile court legislation obviated any of the involvement of the law. Child-care authorities could commit children direct. Hurley found an ally, however, in Mrs Murdock of Chicago who warned against the dangers of disciplinary methods in institutions which robbed a child of his childhood and made him a cog in a machine. She thought the whole country was 'drifting toward institutionalization.' Not only dependent children but also the blind and consumptive were institutionalized to avoid 'the intricate responsibilities of domesticating.'[59]

56 Ibid, at 355

57 See Parker, 'Some historical observations on the juvenile court' (1967), 9 *Crim. L.Q.* 467, at 488–9.

58 *16th Biennial Report of Illinois Board of State Commissioners*, (1900), supra note 48, at 357. A judge, Hon. Murray F. Tuley, had called the law 'the greatest ever enacted in Illinois.' He thought it would do more good in one year than the criminal court could do in ten or twenty years. He thought it was the duty of the state 'to take care of dependent children and see that they do not grow up in vice and become, by evolution, by natural process, criminals.' Ibid.

59 Ibid, at 360.

The further work of the Chicago Woman's Club

The club's interest in the idea of the juvenile court did not abate after the bill passed. Financial support for the probation service was continued and extended. Alzina Stevens, the first probation officer, reported to the club that in the first eight months of the court's existence, she had supervised and visited 177 cases.

Most of the juvenile court laws passed at the turn of the century made provision for a juvenile court committee. This was essential in courts such as Chicago's which were unfinanced and undermanned. In 1902, Mrs Flower organised the Chicago Juvenile Court Committee to raise funds and give general aid in child-saving. In eight years, the Juvenile Court Committee helped develop a staff of 22 probation officers and found between 200 and 300 volunteers. It also undertook the maintenance and management of the detention home and arranged for the appointment of a teacher there. The salaries of the chief clerk and chief stenographer of the court were paid by the committee which also persuaded the city and county to erect the Children's Building to house the court and the detention home.

When the county took over financial responsibility for the juvenile court, the committee was disbanded and replaced by the Juvenile Protective Association which had a close relation with Hull House. The JPA carried out surveys on juvenile and other social problems; the emphasis was on prevention rather than reformation.

In this new preventive guise, the club was demanding improvements in education; specifically the members wanted technical high schools to cater for boys in the fourteen to sixteen year-old age-group who composed half the court's docket.[60] The club also started the 'visiting teacher' scheme which was eventually adopted by the government.

While the clubwomen believed the juvenile court was successful, some of the older children needed help. In co-operation with the JPA, a social worker was provided at the county jail to interview every 'juvenile adult,' to obtain a history of the boy or girl and made an effort 'to secure such disposition of the case as shall make for the permanent good of the boy or girl.'[61] This work, primarily with first offenders, finally led to the establishment of the Boys' Court as a branch of the Municipal Court.[62]

60 In the opinion of the reformers, girls did not need as much education but the club was helping Judge Barthelme by caring for those who were 'paroled' by the juvenile court. A half-way house was established where the girls lived until placed in service.

61 *Annals*, supra note 21, at 317. They aimed at 'readjusting the boys or girls to a normal environment.'

62 Powers said that the value of the court: 'has been nullified in part by the number of changes which have been made in the head of it, by lack of time for interviews of sufficient length and of sufficient privacy to serve their purposes adequately, and by inadequate detention facilities and lack of authority for follow-up work. The real work of the court was to have

At this time, Jane Addams sought the club's help in caring for 'subnormal' young people. A survey of Judge Olson's court had shown that 70 per cent of those appearing and incarcerated were 'not responsible and should be a charge of the State, not a criminal.'[63] The Finance Committee employed a special teacher who separated the youths into classes according to their aptitudes and abilities. The committee urged the establishment of a home for such delinquent boys and girls as 'would be a menace to the community when released, after serving the sentence imposed by the court.'

The child-savers seemed to be changing. They still insisted that the juvenile court was a remarkable innovation but it was not quite the panacea they had envisaged. Therefore there was more classification, more labelling (helped by the new 'science' of psychiatry), and more institutional care, particularly for those just above the juvenile court age limit.

Concern for the subnormal is interesting because Jane Addams' plea came when Dr William Healy was leaving Chicago, the psychopathic clinic's future was threatened, and the court had been under general attack. Its critics thought that the court was failing and one of the most constant complaints was that the system was too 'soft' and the new interest in the psychological aspects of crime did not help. The child-savers argued that the court had never had adequate and properly-financed resources. As we have seen, they also responded with suggestions for more institutions and administrative structure.

The court under attack

With the assistance of a newly elected county administration, the critics attacked the court through its probation service. The press publicized the probation cases which had 'resulted disastrously' and called the officers 'child snatchers.'[64] The county civil service commission joined the attack through a pretended investigation of the court. This skirmish was unsuccessful but a committee of five citizens was appointed to make an impartial investigation.

A reporter named Neil of *The Examiner* had written a series of articles which had inflamed the public and provided ammunition for the County Board and in particular Mr Bartzen, the president of the board. Julia Lathrop was unable to decide whether a 'series of attacks' on the juvenile

been the search for deep-rooted anti-social attitudes and their remoulding. In order to accomplish this a group of Big Brothers was formed and was one of the factors in the early success of the court. These were business and professional men. Another group called the Public Defenders Association (members of the Bar Association) was formed while Judge Dolan was on the bench of this court. But this group lost its enthusiasm after he left the court.' Supra note 22, at 199.

63 *Annals*, supra note 21, at 341

64 Jeter *The Chicago Juvenile Court* (1922), at 5 (hereafter Jeter)

court had been a 'coincidence' or 'contrived.'[65] Neil claimed that Witter (the Chief Probation Officer) and the 'Hull House Crowd' had misunderstood him; that he was really 'attempting to do constructive work and there is no shadow of politics in it.'[66]

Miss Lathrop had been fighting for a non-partisan Board of Commissioners for Illinois but with very little success. She also wanted places in the civil service (which included the juvenile court staff) filled by merit examinations rather than by patronage. She thought it was crucial that 'the most important court in Cook County' be absolutely free of political influence.[67] For too long there had been apprehension that changes in probation personnel would be made 'for other reasons than the good of the service and there had been too much difficulty in securing changes and discipline when the offender had "pull." '[68]

Some of the accusations against the probation service were of a very underhand kind. Bartzen was alleged to have accused Witter of 'taking orders from private corporations.'[69] One of the supposedly helpful or, at best, neutral articles in the *Chicago Examiner* had made reference to a coloured probation officer having jurisdiction over white children. The officer concerned, Joanna Snowden, wrote to Julia Lathrop asking her to stop these 'grievously wrong and unjust' statements.[70]

Much of the criticism of the probation service came from the child institutions themselves. The probation service was discovering some of the evils of these institutions and made no secret of its desire to see many of them become obsolete.[71]

65 Unpublished rough manuscript, undated, in Lathrop papers at Rockford College Library, Rockford, Illinois

66 Copy letter from Dr William Healy to Julia Lathrop, 29 July 1911, at 1 (in Rockford collection). Dr Healy tended to believe Neil and had no doubt been flattered by Neil's support for Healy's Clinic. Neil said that it was his opinion that 'the only way to handle the situation is to give more time to study the needs of the individual cases and causative factors.' Ibid, at 2.

67 Lathrop, supra note 65

68 This is made clear in a 'confidential' letter from Julia Lathrop to Lieutenant-Governor F.W. Treadway of Ohio, 15 February 1910 (Lathrop papers in Rockford collection). Yet the Board of State Commissioners of Public Charities was very necessary so long as it was non-partisan. In a copy letter from Professor C.R. Henderson, Sociology Department, University of Chicago, to William Graves of Springfield, 24 April 1908, the professor said: 'If [the Board] were blotted out of existence by some unwise act today, we should in a short time discover that we had turned over immense powers of administration to a few persons without the means of impartial public inspection and supervision.' at 1–2 (Lathrop papers). In a letter to Julia Lathrop of 20 January 1910, Hastings Hart (director of the Department of Child Helping, Russell Sage Foundation), had said that 'the state should not relieve the placing-out agencies of their own responsibilities, but that the work of the state agency should be to assure the faithful discharge of their duties by the placing-out agencies.' at 1 (Lathrop papers)

69 Letter, 25 September 1911, from John H. Witter to Julia Lathrop, at 1 (Lathrop papers)

70 Letter from Joanna C. Snowden to Julia Lathrop, 30 July 1911, at 2 (Lathrop papers)

71 Two examples: A'[Bernard Flexner] was somewhat shocked at the condition of affairs at the Illinois Industrial School'; letter from Gertrude Howe Britton (superintendent of the

The probation service was also accused of acting as a 'police force' by interfering in the family life of parents (and foster-parents) whose allegedly neglectful or abusive behaviour had been reported by concerned (or inquisitive) neighbours. In the committee enquiry, this was denied by Judge Pinckney although he did not really speak to the point when he said the probation officer wanted a friendly, trusting relation with the parents of a child under his supervision and obviously would not do 'police work.' The committee found that the regular police seldom brought a child directly to court but reported the case to a probation officer who made an enquiry. Judge Pinckney also explained that only 25 per cent of complaints received were brought to court. It was better, in the judge's opinion, 'to have unnecessary complaints and investigations than a child be lost.'[72]

The judge staunchly defended his probation officers. He refused the committee's request to lay down definite rules for probation work because the treatment of a delinquent is a 'personal equation.' The juvenile court was dealing with 'a human soul' not a 'piece of merchandise.'

The finding of delinquency was the 'smallest part' of the work of an officer who tried to adjust as many cases as possible without bringing the children to court. If a case involved more than a faulty home environment which he could remedy in the community, the officer gave the courts the full facts about the home, the parents, the child's associates and other causes of the delinquency.

Judge Pinckney told the committee that he had eliminated the 'prosecutor spirit' among some probation officers. If an officer showed that tendency, the judge soon disabused him and made it clear that he was only 'to represent the interests of the child and the welfare of the child and to lay the facts, simply the facts, before the court.' In addition, the Chicago court had appointed a Mr Deneen, a former state's attorney, who was 'a representative of the children, and of the state.'

The judge defended the court's right to transfer some cases to the adult

Juvenile Protective Association) to Julia Lathrop, 8 September 1911 (Lathrop papers). B In a letter from J.W.M. (written on letterhead of chief probation officer of the Chicago Juvenile Court) to Julia Lathrop, 9 May 1907, the writer referred to a 16½-year-old girl 'before me' today for 'sexual immoralities.' She had been in the Soldiers' Orphan Home, Normal, Illinois, for eight years. The writer continued: 'She tells me that practically all of the girls who left there have gone wrong, and are in Houses of Prostitution, or at any rate leading immoral lives. She gives me the names of the following girls who, she says, are now prostitutes ... She also says that the Superintendent, who has left there but whose wife is still there, used to squeeze and kiss the girls and make obscene remarks to them. That they would let themselves out of the windows at night and meet the boys. I cannot judge whether she is telling the truth or not, but a more abandoned, depraved girl, as she showed herself to be today in court, none of us have ever seen. I sent her to Geneva.' The author was probably (Judge) Julian W. Mack (Lathrop papers).

72 Testimony of Judge Pinckney in Breckinridge and Abbott *The Delinquent Child and the Home* (1912), at 206, 207. The judge also pointed out that 'sometimes it was necessary to bring the father and mother and the children into my chambers on conference day and the difficulties are adjusted in that way.'

criminal courts. Some critics wanted all children dealt with in the new social welfare tribunal; they could not be faulted for taking this attitude as they had believed the promises made by the founders of the court. The judge answered in terms very reminiscent of the nineteenth century: some boys were 'so thoroughly vicious' and recidivistic that it would be unfair to children of less depravity to be in the same institution (or the same court) with them. The contamination theory lived on!

The judge did not consider the powers of the court excessive or abused. The committee obtained evidence from the judge as to his control of institutions and, far from finding that the court tied the hands of the institutions, the judge's powers in that regard were rather limited.[73]

Although he admitted that, in an ideal situation, there were many reforms which should be made to the court, the judge was pleased with the work of the court with one exception – the evidence on the 'psychological side' was unsatisfactory. After describing the establishment of Dr Healy's Juvenile Psychopathic Clinic, the judge told the committee that, during his first six months on the bench, Dr Healy had attended all court hearings but as he grew busier was only able to come on request. This was not sufficient because the 'true cause' of delinquency or truancy could not be discovered without Dr Healy's help.

The committee commented on a series of newspaper articles which alleged 'gross shortcomings' in the administration of the juvenile court, particularly with relation to the separation of children from their natural homes. There were also rumours that the County Civil Service Commission was about to remove Mr Witter, the chief probation officer.

The committee assessed the newspaper reports as 'destructive, personal ... and misleading' and perhaps politically motivated. While admitting that child-care in Illinois was not perfect, the committee stated bluntly that 'the work of decades would be sacrificed if the Juvenile Court were to become an

73 In his testimony on his power to visit and inspect and demand reports of accredited institutions, the judge said: 'The power is not very broad, as those reports can be made by affidavit and be within the law, or officers can be brought in and called upon to answer charges made or testimony offered. It is only when a complaint comes to me about an institution that I can exercise the authority under the law to call for a report. When the Board of Administration has issued a certificate annually accrediting that institution to me, I feel that prima facie I am justified in sending the child there without further inquiry or investigation on the part of the court ... [Under section 9(e) of the Act] I can demand a report on the evidence heard and testimony before me as to the character and fitness of an institution to have the care of children. If the court thinks that the institution is not a proper institution to have the custody of the dependent and delinquent child, or that the superintendent who is named as guardian is not a fit person, I can not only remove the child but I can call the attention of the State Board of Control to the situation, and they can act in the case of the institution, although I myself have no authority. I could, however, prevent the sending of any more children to that institution.' Ibid., at 218–19, 220. A fair assessment of these institutions was made by Breckenbridge & Abbott, ibid., at 9–10: 'Institutions are painfully inadequate, whether public or private. They are almost without exception crowded, overgrown, and incapable of affording proper classification.'

attachment to a political machine.[74] The committee's bipartisan status had been threatened by pressures imposed by the Civil Service Commission and the president of the County Board but it had not been deflected by these intrusions. It called for the honest and effective administration of civil service laws and deplored 'the depth to which the County Civil Service has fallen.' Until 'capable' and 'patriotic' citizens undertook the task there could be little 'intelligent responsiveness to child problems.'

This committee, made up of well-meaning, trustworthy citizens with no expertise in child problems, produced a report which was a strange blend of administration and theory, of sheer amateurism and professionalism with smatterings of intuition, pure conjecture, and observed facts. A stock-taking was needed – to ascertain 'the real objects of child care' and to set standards to meet those objects.

The report was the usual mixture of vague optimism – 'training for citizenship through appeal to the essential wholesomeness of youthful human nature' and good practical advice of equal vagueness – that all those engaged in child work, from the public school to the institution for 'the most hardened offenders,' were all seeking the same goal. Finally, the report asked for further study of the 'conditions responsible for juvenile maladjustment and family breakdown' and called for 'early and exhaustive consideration and comprehensive measures' to bring about reform.[75]

The committee's recommendations described the over-all conditions extant in Cook County. From the viewpoint of the authorities, particularly the county board, these remarks about the problems of Chicago undoubtedly appeared to be a mere smoke-screen to hide the deficiencies of the juvenile court. This was certainly not the case and yet the committee must have realised that the juvenile court could never be a panacea and that the court and the whole community must act in co-operation.

The committee had also recommended that the probation service should be 'enlarged and perfected' with a view to reaching 'the standard of keeping children out of court and dealing with them in their own houses.' The idea of keeping children 'out of court' seems strange. Presumably it was seen not as an innovation but rather as a continuation of a past policy of the juvenile court catering mostly for pre-delinquent children.

Another recommendation is a little mystifying. The committee sought 'ample authority' for the court to 'enforce its decrees' and 'supervise all the processes attendant upon the bringing of children to court' such as preventing the abuses of children in patrol wagons and the use of male escorts for girls. These irregularities were some of the very ones which had caused the juvenile court to be started in the first place.

74 The Juvenile Court of Cook County, Illinois *Report of a Committee appointed under Resolution of the Board of Commissioners of Cook County, August 8, 1911*, at 1

75 Ibid., at 57

Another recommendation is all too easily understood because committees and boards of enquiry and academic criminologists are still calling for 'definite standards' for assessing institutional care and for 'uniform records and reports' from the institutions.[76]

The committee's rather acid references throughout the report to the Civil Service Commission and the County Board are not surprising. On 28 September 1911, when the committee was still working on its report, the president of the County Board of Commissioners suspended Chief Probation Officer Witter and filed charges against him with the Civil Service Commission. These charges alleged 'incompetency, lack of executive ability, and neglect of duty.'[77] Despite the existence of the committee, the commissioner heard these charges and made an investigation of the probation department, the detention home, and the industrial schools. On 6 January 1902, the commission found against Witter and dismissed him, but he successfully appealed the case. The court decided that the legislation providing for probation officers' appointment by the county commissioners was unconstitutional.[78] This ensured the freedom of the court to select its own officers and, in the future, the selections were made by the judges of the circuit court who agreed to delegate this power to the juvenile court judge. This procedure was important because after 1912 the probation officers were declared to be 'assistants of the court, performing judicial functions, and as such to be chosen only by popular vote or appointed by the court itself.[79]

76 Ibid. The Committee agreed on the following changes regarding placing-out: 'Agencies for placing homeless children should be perfected and further agencies to meet religious or other requirements should be developed. The success of several different organizations in Massachusetts in evolving common records for investigation of families and subsequent supervision, together with the results there achieved demonstrates the feasibility of successful work in the field. Financial support sufficient to provide needed personal and administrative equipment should make placing one of the most constructive activities in behalf of children. In favoring this form of child care the framers of the Illinois law were seeking an end distinctly attainable.'

77 Jeter, supra note 64, at 7. The charges are set out in a document (found in the Julia Lathrop papers at Rockford College) which is a letter, dated 29 September 1911 addressed to John Witter from Peter Bartzen, president of the County Board. In general terms, Witter was being suspended for neglect of duty, incompetence, and lack of executive ability. He had allegedly failed to instruct new probation officers in their duties, failed to consult with and supervise the officers in reference to final discharge of probationers, failed to confer with the officers on a whole range of other matters and failed to make arrangements for enforcement of payments by parents. In addition, he had not made himself familiar with cases, had not acquainted himself with the children before the court, had allowed children of aliens to become wards of court as public charges, had not inspected houses where wards were placed. Finally he was charged with being generally disorganized.

78 *Witter* v *Cook County Commissioners*, 256 Illinois 616. It was held unconstitutional on the ground that it was a violation of the principle of separation of powers laid down in Article III of the Illinois Constitution. See Jeter, supra note 64. See also *People* v *S., B. & Q.R.R. Co.*, 273 Illinois 110. The report of the committee, supra note 74, showed that the Civil Service Commission's finding against Witter was groundless.

79 Jeter, supra note 64. Since 1912, there had been competitive examinations for probation officers. In 1917, the probation service was attacked again. The county treasurer was

Jeter endorses the committee's findings, saying that the court never had the opportunity to function under conditions which could be termed entirely satisfactory. In particular, it had 'suffered from open political attack, from legislative caution and legislative blundering, from the hostility of other administrative bodies, and from public indifference.[80] Of course the court could never have been as 'successful' as its wildly optimistic supporters had hoped but we might wonder why Chicago had such peculiar problems. Perhaps an historian of public administration or religious intolerance might provide an answer.[81]

Perhaps some clue may be found in a comparison of the conditions in New York City and Chicago which were roughly similar in 1910. They both had slums, heavy migration, poverty, and many wayward children. Their reform groups and courts were very different. The child-savers in Chicago continued to maintain a close interest in their creation, the court and the probation service, while the impression one gains of New York is of an innovation which soon atrophied or once again became dominated by organisations such as the CAS and SPCC which were themselves rather stultified. Yet the very strength of these New York child-saving organizations may have lent some stability to the court.

Mrs Lowell was more conservative and much less an activist than Florence Kelley, Jane Addams, Julia Lathrop, or Lucy Flower. Chicago had a fund of imaginative programs, a great number of relatively 'radical' reformers, and many private philanthropies well-stocked with money and volunteers. New York was much more institutional and formalized and yet in that city the government, although no less corrupt, did not try to wreck the child-savers' programs. Perhaps the social ferment in Chicago never gave the court a chance to settle down. But then, would the Chicago juvenile court movement really have been very different or 'better' if none of the attacks had been made on the new system?

Ethel Sturges Dummer, William Healy, and the juvenile court

Dr William Healy, a psychiatrist, first head of the clinic attached to the

enjoined from paying the salaries of the probation officers. This was solved by a group of private citizens acting as guarantors. See special legislation, Laws of Illinois, 1917, at 536. Laws of Illinois, 1907, at 59, authorized the erection of a detention home. Laws of Illinois, 1911, at 126, authorized the court to grant relief in certain dependency cases. There was further elaboration, and provision for mothers' pension in Laws of Illinois, 1913, at 127, *ibid*, 1919, at 780–1, 781–2.

See Abbott and Breckinridge *The Administration of the Aid-to-Mothers Law in Illinois* (1921).

For a discussion of the later legal problems of the court, see Benjamin, 'The constitutionality and jurisdiction of the Juvenile Court of Cook County, unpublished MA thesis, University of Chicago, 1932.

80 Jeter, supra note 64, at 10.

81 Fox 'Juvenile justice reform: An historical perspective,' (1970), 22 *Stanford L. Rev.* 1187, at 1228, is illuminating on the sectarian issue and juvenile institutions.

Chicago Juvenile Court, and author of several important books on juvenile delinquency, praised Ethel Sturges Dummer not only for instigating programs for 'the advancement of humanitarian science and education' but also for being 'a highly original thinker' in her own right.[82] She was a philanthropist, a friend of reformers (as well as one herself), a financial supporter of research projects, and a confidante and inspirer of many social thinkers and social scientists in the first third of this century. She corresponded with almost all the important psychiatrists, sociologists, social workers, and social reformers between 1895 and 1935.[83] In particular, she had extensive correspondence with William Healy; Miriam Van Waters, who was strongly influenced by her, describing her as 'a great spiritual commander';[84] Thomas Eliot; W.I. Thomas; Felix Adler; Adolf Meyer; and William Alanson White. In this study, we are primarily concerned with the first three who, of this group, were the most interested in the juvenile court and juvenile delinquency.

Very soon after the Juvenile Court was established in Chicago, Dummer, who was a member of the Chicago Woman's Club, was serving on the Board of the Juvenile Protective Association. She used to visit the juvenile court and observed children in that court. 'Of special interest to me,' Dummer said, 'were those who again and again repeated one delinquent act with no apparent reason. They seemed abnormal and at once I felt that a skilled physician should study this situation.'

Dummer called a series of meetings and interested Jane Addams, Julia Lathrop, and Professor George Mead of the University of Chicago who formed a committee to seek a suitable director for research into delinquent child behaviour. On the recommendation of Adolf Meyer and William James, Healy was selected. In March 1909, the Juvenile Psychopathic Institution was founded. Dummer paid all the expenses (including Healy's salary) for its first five years.

Dummer had been shocked by the 'squalor, poverty and evil' which she witnessed as a member of the Juvenile Protective Association. She decided that the child-victims were not bad and that 'any normal child deprived of all right opportunities would behave in the same way.' She was unable 'to

82 Testimonial to Ethel Sturges Dummer, 16 December 1938, at Chicago Society for Personality Study. Found in Dummer papers at Schlesinger Library, Radcliffe College (hereafter ESD).

83 An anonymous writer (but probably William Healy) had assessed the remarkable qualities of the Dummers: 'their unity of purpose and understanding,' 'the reaching out and universalizing of their spirit of parenthood to embrace disadvantaged children everywhere,' 'their keen intellectual imagination,' their willingness to submit 'their intuitions and theories and to entrust their resources to the test of verification by experimental demonstration,' 'their generous welcome ... to every pioneer of thought,' in criminology, psychiatry, sociology, education, and recreation, their support of symposia conferences and publication of papers. The document, which is here paraphrased, was found in the ESD papers.

84 Van Waters to ESD, 8 December 1920 (ESD)

condemn that which I had always been taught abstractly was evil.' The real responsibility lay with 'those having leisure and intelligence to bring about better environment' for the atypical child. She had profound faith in psychiatry and discovered that no one in that discipline was making a special study of delinquency. She had difficulty persuading the Juvenile Protective Association and she recalled 'the torrent of legal phraseology poured out upon me by Judge Mack, even after the establishment of the clinic when I suggested that a wise physician rather than a man trained in the law, would be of value in a juvenile court.'[85]

The Chicago School of Civics and Philanthropy and the Children's Hospital Clinic at the Detention Home had carried out some research into the physical state of delinquent children and Dummer wanted to extend this work to include inquiries into their mental defects.

Despite her admiration for Pasteur and her unusual belief that 'germs' cause mental abnormality, Dummer made a fortunate choice in William Healy, who was a disciple of William James.[86] Healy also had some Lombrosian ideas. While he admitted that he did not know the cause of delinquency (and listed the possibility of alcohol, heredity, atavism, and defective nutrition of the nervous system), he suggested in his early years that many of the delinquents were 'degenerates.'[87] He studied antecedents, 'searching for stigma of degeneration, having errors of vision, adenoids, *etc.* corrected.'

He soon dispelled any notion that he believed in physical stigmata, but in 1908 the psychiatrists sounded a little like Lombrosians of the mind, searching for 'absence or perversion of function, mostly cerebral, rather than visible abnormality of structure.'

In both methodology and in his practice, Healy was a psychiatrist who grew in stature and outlook. He believed in studying the individual as the only way to understand the over-all problem and to cure the delinquent in question. He distrusted vague, generalist theories.[88] At this stage, to Healy,

85 Undated manuscript, ESD

86 Healy fitted the needs of the founders of the institute. This is obvious from the following extract which might well have been written by Healy himself: 'It is desired to undertake in Chicago an inquiry into the health of delinquent children in order to ascertain as far as possible in what degree delinquency is caused or influenced by mental or physical defect or abnormality and with the purpose of suggesting and applying remedies in individual cases whenever practicable as a concurrent part of the enquiry.' In ESD papers, dated 2 January 1909.

In describing his then future work, Healy said: 'I have been over the field fairly thoroughly and I am convinced of the need for a work that may be as classical as that of Lombroso, that may be much more scientifically founded and a thousand times more practically beneficial.' Healy to Dummer, 4 April 1908 (ESD).

87 He told Mrs Dummer (in a letter of 4 April 1908) that 'we stand with reference [to causation of delinquency] where we stood fifty years ago with reference to the cause of malaria.'

88 In 1912, this is an important innovation in penology; Healy referred to Professor Moore of Yale as being convinced (after a visit to Hull House and a truant school in Los Angeles) that the 'need of individual studies' is 'quite beyond any general system of reform.' A few years

'the problem of the delinquent, the backward, the degenerate, the mental defective, the unfit is ... pretty much all one.[89] Healy wanted to individualize and to investigate cases as early as possible. Frequently, in his opinion, the cases came to him too late. His aim was scientific prevention. He wanted society to spend as much energy on bettering conditions for people as was being spent on the first world war. 'Anyhow,' he told Dummer, 'my job seems to be plain, to continue to accumulate undeniable evidences of the benefit and sometimes entirely therapeutic effects of better nurture and better education.'[90]

Healy was a pioneer in follow-up research and he was convinced that his 'individual' studies had enabled him to develop typologies for the instruction of judges and probation officers. He had proved to his own satisfaction that 50 per cent of the failures in his clinic were mentally abnormal (with 60 per cent of those psychotic) while only 24 per cent of the successes were abnormal (with only 10 per cent psychotic).[91]

He was extremely critical of people who were 'apt to draw conclusions from incomplete studies and from material that has not been followed up through the evolution that years of human life brings.[92]

He felt that his work was hampered because insufficient time was spent in 'following along every detail of adjustment.' He was, in effect, making a criticism of probation services because there had been insufficient 'individuation, sympathy and understanding of all of the influences that bear on the individual ...'[93] There was too little follow-up. Social workers had 'altogether too much readiness to pass off onto something new.' The agencies in Chicago had little knowledge of the results of their work.[94]

His Chicago follow-up study and his later researches with Dr Augusta Bronner had convinced him that the 'scientist' as well as the social worker had to go further than merely discovering the 'atypical' child at the earliest possible date and that a thorough study of children related to their family situation was essential. With the help of trained specialists, the juvenile court should be able to achieve its ends. Healy was a liberal penologist who saw in the adult courts the failure to make use of reformative methods. The juvenile court was started to remedy this situation for children. Bernard Glueck had discovered that, among prisoners in Sing Sing, 'criminal tendencies and careers with astonishing frequency begin in childhood or adoles-

later, Mrs Dummer wrote to Julia Lathrop: 'Someone must interpret the delinquent type, her craving for the rhythm and color of life. The pitiful stories of women on the downward path show such inhuman treatment and lack of understanding at the time of the first mistake.' 8 September 9, 1918 (ESD)

89 Healy to Dummer, 4 April 1908 (ESD)
90 Healy to Dummer, 11 November 1918 (ESD)
91 Informal statement to Dummer, 4 October 1915 (ESD)
92 Healy to Dummer, 14 January 1920 (ESD)
93 Healy to Dummer, 24 February 1921 (ESD)
94 Healy to Dummer, 1 October 1921 (ESD)

cence.'[95] The juvenile court should recognize the importance of this background information and should not feel obliged to 'follow set forms of treatment of offenses' as the adult courts did. The juvenile court must not forget that its function was 'individualization both of understanding and of treatment.'[96]

Healy acknowledged that the human sciences (or the 'science of conduct') lagged behind but knowledge was being quickly accumulated, although it was not being used or harnessed to stop delinquency before it became adult crime. Instead, the juvenile court was resorting to scoldings, exhortations, sermonizing or threats, shrewd guesses, orders for treatment on 'meager facts,' and extrajudicial probation treatment. In Dr Healy's view, this was unscientific, unbusinesslike, and shortsighted. The juvenile court 'so far, is a fine-spirited adventure, perhaps carried out in a high-minded and sympathetic way, but with no ledger worthy of the name for balancing expenditures of effort over against success and failure.'[97]

Scientific study was essential. This could not be done by relying solely on one piece of data such as intelligence quotient or resorting to mere labels such as 'psychopathy.' 'It is a misconception,' he said, 'even of those who want to be progressive, that a ready-to-wear classification is sufficient.' Instead, the whole child in the whole social situation had to be studied. Of course, it would include mental attitudes but much more: family conditions, hidden bad habits, physical health, school attitudes, companions, past delinquent behaviour, etc. Healy wanted full diagnosis so that he could give the court and other child-helping agencies a professional scientific diagnosis.[98]

Healy and Dummer perform a post-mortem on the Chicago court

Whether Healy's theories were valid or otherwise, the work which he did in

95 Healy's word; found in Healy *The Practical Value of Scientific Study of Juvenile Delinquents* (1922), at 8

96 *Ibid*; emphasis in original. He also continued his description of the court: 'Properly it should require of the judge more thoughtfulness, a wider education in the human sciences, more shrewd discernment, more close reasoning on the relation of theory, fact and proposed treatment to outcomes than is demanded in any other court. And all this just because of the wide range of scientifically ascertainable conditions, motives and influences leading to juvenile transgressions, the wide range of treatments possible, and the very absence of the fetish of unscientifically concocted forms and codes of practice and procedure, which in some other courts form such a drag upon effective dealing with offenders.' at 9.

97 Ibid, at 11, 31

98 Healy wanted to extend his work in Chicago, by making more use of data already collected, by follow-up studies, new research on standardization of mental tests and inquiries into their validity, more preventive work in relation to 'certain alterable causes of conduct,' more work on vocational guidance, development of a research and training institute. The projected work would not be limited to criminalistics but would include aspects of applied psychology, sociology, law, and psychological medicine, and characterology. From 'Informal Statement,' prepared by Dr Healy for Mrs Dummer in 1915 (ESD).

Chicago was not continued. After five years, Dummer believed that the city or county should take over the financing of the Juvenile Psychopathic Institute, but sparse support was provided. The attacks on the juvenile court in 1911 (and after) did not make the political or social climate conducive to the institute's continued existence in Chicago despite the efforts of such influential citizens as John Wigmore, dean of Northwestern University Law School, who believed that Chicago 'possessed the coming method for the scientific treatment of juvenile delinquency' and should be prepared to support it with money.[99] Wigmore wanted to endow Healy's treatment work and to set up a 'laboratory of criminology' at the law school. His efforts failed and Healy went to Boston to the Judge Baker Clinic[100] where he worked for the rest of his professional life, assisted by Dr Augusta Bronner whom he later married.

After his departure Healy's remarks about Chicago were never very cordial. He referred to the 'miserable turmoil connected with the court,'[101] and the 'tragedy of untreated cases coming to such bitter ends'[102] in Chicago.

In 1924, Dummer helped to arrange a celebration of the twenty-fifth anniversary of the Cook County juvenile court and the fifteenth anniversary of the clinic. She begged Dr Healy to 'consider seriously Chicago's need of a sound lecture on its maladministration and stupidity.'[103] Dr Healy replied:

> I am not so sure but that your celebration out there ought not to be a period of fasting and prayer ... Dr. Bronner and I feel that there is so much that ought to be altered that we doubt whether we would be in good odor if we said what we really think. It is not nice to be a fault finder.[104]

However, Healy's reaction to the Chicago years was not all negative:

> The fact that we ... got our information concerning the personality of these boys across to the Judge without having to plead their irresponsibility and the fact that we were permitted to give their past careers and many facts instead of a mere opinion, has been truly a great advance.[105]

Neither Dummer nor Healy had much patience with the law. Dummer was an instinctual person who became more interested in mysticism as the years progressed and, in the circumstances, her impatience with the formalism and jargon of the law was understandable. Healy also once referred to 'the fetish of unscientifically concocted forms and codes of practice and procedure, which in some other courts form such a drag upon effective

99 Circular, 'Shall Dr Healy's work be lost to Chicago?' dated 18 December 1916 (ESD)
100 The Judge Baker Clinic was the joint effort of the Boston Juvenile Court, Harvard Medical School, and private benefactions.
101 Healy to Dummer, 26 July 1911 (ESD)
102 Healy to Dummer, 29 September 1921 (ESD)
103 Dummer to Healy & Bronner, 24 October 1924 (ESD)
104 Healy to Dummer, 27 October 1924 (ESD)
105 Healy to Dummer, 20 November 1924 (ESD)

dealing with offenders'[106] and hoped that this would not apply to the juvenile court, and thought that his researches would stop the juvenile court from taking the same approach. He became disillusioned, partly due to lack of financing but also because he felt that juvenile courts were not employing his methods even when available. He blamed this partly on the unenlightened attitudes of the lawyers and the procedures to which they adhered. He did not give up hope and thought that the legal profession could be educated through a proper law school curriculum. Wigmore, as shown above, had evinced great interest and Professor Keedy of the Pennsylvania Law School wanted Healy to give a course of lectures there. This 'delighted' Healy because 'it is largely through ignorance on the part of lawyers that so little advance has been made in the past.'[107] Dummer agreed, as she

106 See note 96, supra.

107 Healy to Dummer, 24 January 1914 (ESD). In later years, Mrs Dummer was no more impressed by legal procedures: 'The men are a little discouraging in their blindness to the need of reorganizing the administration of justice here. The only thing to do is to go on pushing the constructive effects in psychology and psychiatry which prove so convincingly the improvability of human nature, and in time parents will see the meaning of it all. Then the legislation will come more easily.' (Dummer to Jessie Binford, of Hull House, 29 August 1923). 'For some years I have dreamed of a different court procedure for girls and women ... It is my hope that with the *rapid* development of psychiatry there may be established at the new women's court a court of domestic relations, a clinic for personality adjustments.' (Emphasis in original) (Dummer to Dean William Kirchway of the Columbia School of Social Work, 8 July 1923 (ESD). Kirchway had carried out a survey and recommended a woman's court. Mrs Dummer had been campaigning for years on behalf of prostitutes and better treatment for unmarried mothers.) 'At the trial the evidence was submitted that these boys [Negro boys suspected of stealing rugs from a department store] were held for a number of days, one as long as fifteen days in ... police stations without being booked. The boys also claimed that they had been mistreated and kept in cells with men offenders. The discouraging feature of the hearing was that the state's attorney detailed to the Juvenile Court made the statement that he considered the police were within their legal rights in holding the boys in this way, and that he would have held them for six months, to get the information concerning the stolen goods.' From (1918) 7, *Woman's City Club Bulletin* (ESD): 'Does not man act more in accord with evolution when not held back by the dead hand of law.' Dummer to Healy, Summer 1919 (ESD).

Miriam Van Waters was referee of the Los Angeles Juvenile Court who also carried out surveys on the juvenile court for Harvard Crime Survey. She was certainly against the legal approach to the juvenile court. In the nineteen-twenties, Dr Van Waters was Mrs Dummer's closest contact with the juvenile court. 'I know you would think it was a good idea to put before these lawyers and judges the social and humanistic view of a court ...' Van Waters to Dummer, 3 June 1921 (ESD).

'These eastern men have no conception what a juvenile court may be ... The central core of the inquiry is the administration of criminal justice. While juvenile court procedure here is unfortunately modeled largely on criminal procedure, the children by reason of his [Healy's] helpfulness and appeal to those engaged in teaching and in science is gradually modifying the entire court system, even in Boston ... The spirit of the courts is strictly penal. Social workers bring charges of fornication against girls of 11 and 13 who have been abused by older men. Little boys are fined for trespass, and for gaming on the lords Day, and being present where cards are played. At first I was startled, now I am surprised at nothing. I have had meetings with social agencies, visiting teachers, settlement workers, stage agents and League of Women Voters. None of them has the slightest conception of what goes on every day in the courts.' Van Waters to Dummer, 22 May 1927 (ESD).

explained to Dr William Alanson White, 'during the years of my study of delinquency, court procedure has tried my soul.'[108]

On balance, Healy decided that 'The Juvenile Court had not been the eminent success that it should have been if it had the right sort of adjunct work of many kinds, and the situation ought to be met.'[109] He still believed good work could be done – outside Chicago. The follow-up material was the 'most educative' brought before the public because it was the first 'real case study.' The educative value was obvious to Healy because *even* a 'prosecuting attorney in a large city in Ohio ... wanted to know where he could find the right man to join forces with him and study his cases.'[110]

Healy and Dummer still had faith in evaluative studies which, they decided, had not failed, they simply had not been tried.[111] Professional people were ignorant of the proper methods. Chicago seemed hopeless to Dummer with the schools 'wrecked by financiers' and the juvenile court 'deteriorated to common police court with a judge who sentences boys to the Detention Home for definite periods as punishment.'[112] It was time to 'build all over again,' and she wanted to start by educating public school parents.

In the nineteen-twenties, Dummer had not lost her faith in Healy's methods and the contributions which could be made, given a chance, by the behavioural scientists. She criticized the Chicago School of Civics because it 'emphasized technique, minimizing personality.'[113] Even the social scientists

108 Dummer to Dr W.A. White, 5 November 1911 (ESD)

109 Healy to Dummer, 20 November 1924 (ESD)

110 Healy to Dummer, 24 November 1924 (ESD). Cf the attitude of Miriam Van Waters in a letter to Mrs Dummer on 4 December 1924 (ESD): 'We shall strike one clear note that will make all courts and many communities more sensitive to the position of youth in our land ... Shall I try to forecast the task of the next twenty-five years and show what the Court will be doing then and how the child ought to be faring 10 or 20 years from now? Will we keep our machinery and our labels? Will we have more or less formal treatment then; or will we scrap much of our "organization" and deal more spiritually? Shall I show us still struggling with legalistic atomisms casting off those that infect and retard us, as we go upward into a clearer idea of the Kingdom of Childhood on Earth.' In commenting on another Chicago problem, Miriam Van Waters had written to Mrs Dummer: 'It is too bad Julia Lathrop cannot answer it. Perhaps she is too tired. The old idealism of the early Chicago group must surely descend upon some young and vigorous spirits.' (ESD, undated)

111 See Dummer to Healy, 1 October 1924 (ESD) and Dummer to Van Waters, 20 November 1933 (ESD). In another she wrote: 'Last week I took an English guest to visit our Juvenile Court and Detention Home, and was quite horrified at the atmosphere and changed procedure. Judge Bicek, who has succeeded Mary Bartelme, seems to have no understanding of Dr. Healy's contribution or of the fundamental idea of his court as a court of chancery for protection of wards of the state. He even releases children on bond, and looks upon the Detention Home as a place of punishment, ordering for a child a definite commitment of so many weeks behind those bars. Of course that building is but a glorified jail.' In a footnote she added: 'It was suggested to me last night that this bonding practice in the Juvenile Court might be a racket, and I am quite disturbed.'

112 Dummer to Van Waters, 9 September 1933 (ESD)

113 Dummer to Healy, 30 April 1920 (ESD). Dr Van Waters replied: 'More and more I am coming to feel that the greatest human suffering is caused because the average person, that is to say, the average intelligent and kindly human being, is ignorant of the facts of human

were deserting her for casework practice, but she believed that 'science' would eventually prevent prostitution and control disease by understanding 'emotional experience' although, occasionally, she felt that the psychoanalysts were only 'groping' toward a law of nature.[114]

In 1922 Miriam Van Waters wrote that 'in ten years the whole attitude toward delinquency will be changed' by a demonstration of Dr Healy's methods.[115] Dummer could not understand why the nation's leaders were not already using the new 'scientific method' which provided a 'good working basis for a campaign for radical changes in court and penal procedure.'[116]

Van Waters claimed to be putting these ideas into practice in the Los Angeles Juvenile Court and the El Retiro Home for Girls which she ran in her spare time. She saw an 'essential identity' in the modern phenomena of delinquency, illegitimacy, and nervous breakdowns.[117] Dummer enthusiastically agreed and had no patience with those who were becoming cynical about probation and parole. There was even a tendency in the Juvenile Protective Association 'to wonder if longer terms for offenders might not be wise.' 'At this rate,' Dummer told Professor W.I. Thomas, 'there will be more freedom in men's minds in prison, than out of it.'[118]

The old juvenile court concept would have disappeared if Dummer could have arranged it. The new scientists would take over the treatment of children. The Juvenile Protective Association would have to change its focus and merge with the Illinois Society for Mental Hygiene. The old psychiatrists would have to stop talking about symptoms and leave the task to those with 'personality and subtle insight.' The 'scientist' was obviously giving way to the mystical therapist[119] and the social worker was returning to favour if she were 'an artist in so portraying the ideal as to stimulate the patient to measure up to his possibilities.'[120] The 'patient' replaced the delinquent

conduct. The changing of human conduct is the greatest mystery in the world. The adjustment is the most delicate process imaginable. To me, every human being is a kind of sacred mystery. Reverence, respect – these terms are not too much to describe the attitude which everyone who is dealing with human relationships should bring to the approach ... How shall we teach these essential facts to people?' Van Waters to Dummer, 19 November 1921 (ESD).

In a letter to Van Waters, 16 July 1925, Mrs Dummer asked 'how can we give to the young people of today a sense of the reality of that unknown spiritual power which is above all and in all and through all – that which stabilizes us. The psychiatric group of social workers at Cleveland showed such a tenseness, a restlessness' (ESD).

114 Dummer to Jessie Binford, Easter Sunday 1921 (ESD)

115 Van Waters to Dummer, 31 January 1922 (ESD)

116 Dummer to Mrs W.I. Thomas, 28 April 1920 (ESD). In a letter to Van Waters on 20 May 1922, Mrs Dummer refers to Dean Kirchway's jail survey in Chicago and sees the occasion of public outcry over Kirchway's report and the 'crime wave' was a good time for the Mental Hygiene adherents to emphasize the importance of preventing delinquency (ESD).

117 Van Waters to Dummer, 6 August 1922 (ESD)

118 Dummer to Thomas, 27 January 1921 (ESD)

119 Dummer to White, 23 March 1925 (ESD)

120 Dummer to Lathrop, 16 December 1927 (ESD)

offender[121] and it was not law enforcement which would solve problems for the juvenile court but 'psychology and right education.'[122] Her bubbling enthusiasm continued in her letters as she told Jessie Binford that the 'last word in psychiatry is the baby clinic ...'[123]

In her advocacy of psychiatry and other behavioural sciences and her criticisms of legal institutions, this remarkable woman, who had done so much to build up the juvenile court, was an unconscious leader among those forces trying to dismantle it.

Dummer's rhapsodies on the new 'science' contain a second irony; with very little change her highly coloured and optimistic comments could easily be transformed into the pious comments of the Victorian reformers who wanted to save the deviants from the squalor of their physical environment. The enthusiasts for psychiatry had discovered a new environment – the psychic slum of the mind. Whether it was a science of charity or a science of the mind, the result was the same for the deviant – he could not be left alone, his life had to be adjusted. Under either system, this often meant institutionalization – for his own good of course.

The school, the community and the juvenile court

One reason alleged for the 'failure' of the juvenile court was that the enthusiasm of social reformers waned as they were enticed by the new concept of the school as a social centre manipulating the plasticity of the child. (The child guidance movement also played a diversionary role.)

The juvenile court was the agency for the state as surrogate-parent and it had about as much success as the average parent. (Perhaps it would be fairer to qualify that and say it was as successful as any average heavy-handed parent who was offered much advice but little help.) Those who pinned their new hopes in the school as a social panacea might easily forget that too often the juvenile court was asked to cater for the 'divinity' or 'plasticity' of a child who was already a school reject. This kind of child had escaped the attentions of those new educationists who would change the whole world by transforming the play, fun, leisure, and learning of the child.[124]

Both the school and the juvenile court have made great advances in the last seventy years – at least in terms of physical facilities and size of staff. If they both 'failed,' perhaps it was for very similar reasons. In commenting on progressive education, Hofstadter makes some comments which might apply equally well to the juvenile court: 'although immensely fertile and

121 Dummer to Van Waters, 25 October 1922 (ESD). Miriam Van Waters' writings in *The Survey* would 'so help the masses to understand the new attitude toward a social behaviour we must stop using the term "delinquency", mustn't we?'

122 Dummer to Adolf Meyer, 2 April 1919 (ESD)

123 Dummer to Binford, 14 July 1922 (ESD)

124 Jane Addams often spoke with enthusiasm of the need for a 'play element' in the bleak lives of poor children.

ingenious concerning means, [progressive education] was so futile and confused about ends; much of what it had to say about teaching methods was of the highest value, but it was quite unclear, often anarchic, about what these methods should be used to teach.'[125]

Many students of the juvenile court may not realise that attempts were made in Chicago (and other places) for a rapprochment between the school and the court, as we shall presently see. Dewey had been strongly influenced by Froebel, the founder of the kindergarten, and Spencer. Froebel saw education making a child 'a living member of a living whole,' so that his individual life would 'flow with the current of nature and humanity.' Ethel Sturges Dummer was in complete agreement. Spencer's ideas had been a little more concrete. He believed that the only way to solve social problems was through the nurture of young children. Education should be preparation for complete living, and for the individual child learning would be experiential. The child's experience would impose its own punishment. To Spencer, artificial punishments with artificial infliction of pain would not provide moral discipline.[126] In applying these ideas to penology, Spencer commented that the only successful reformatories were privately established ones which 'do little more than administer the natural consequences of criminal conduct: diminishing the criminal's liberty of action as much as is needful for the safety of society ...'[127] Attempts were being made to apply Froebel's ideas to kindergartens and mental hygiene clinics. When this was done, Spencer's evolutionary education would be possible.

Educational utopia has not been achieved. No one could say that the schools of the 1960s and 1970s have been free of problems. Delinquency is still with us and deviant children have been increasingly excluded from a school system which is now, even more than in Dewey's time, a gateway to a college diploma and middleclass affluence. The defenders of the educational enlightenment would no doubt echo the juvenile court's champions: the system did not fail, its true objects were simply never carried out.

Thomas Eliot was another young man profoundly influenced by Dummer. He wrote a remarkable book on the juvenile court in which he argued that, in many respects, the juvenile court was an unnecessary institution and that much of its work could be done by other organizations and, in particular, the schools.[128] Most of the functions performed by the court were not essentially judicial in character. The mere fact of taking child problems into court would give them a penal flavour which was unnecessary and unfortunate. For instance, Eliot believed that the best detention homes were like special schools and therefore should be administered by the public school

125 Cited by Hofstadter, supra note 17, at 375

126 Spencer *Essays on Education* (1911), introduction by Eliot, at xi

127 Ibid, at 89. See also Jessie Taft, 'Early conditionings of personality in the pre-school child,' (1925) 21 *School and Society*.

128 Eliot *The Juvenile Court and the Community* (1916) (hereafter Eliot)

system. Schools could also handle employment problems of children through vocational training and guidance.[129] The schools should administer child labour permits and recreation in social centres, playgrounds, and parks. Clinical treatment of all atypical children should be done through the school board or the local board of health or hospital. He also argued that truancy (and truant- and parental-schools) was more closely allied to education than to the juvenile court or penology (although he expressed the hope that penology and education were 'approaching each other').[130]

Eliot wanted educational and placing bureaux with 'no compulsory or pseudo-compulsory process.' Judge Mack was in substantial agreement: 'It is unfortunate that parents should have to go through even the form of trial to secure for their children proper education such as the reform schools offer. We ought not to have to wait until a child passes the delinquency line to give him decent training.'[131] According to Eliot, the probation officer was only a special kind of teacher.[132] He wanted to break down the idea of absolute categories so that there was 'no fixed point among the degrees of abnormality and special education at which a court can consistently stand.'[133]

The core of Eliot's thesis was also found in the 1913 Report of the National Probation Association: 'A combination of school, home, intelligent police, church, neighbourhood, recreation, and well-organized public and private relief, should be sufficient to reduce greatly the number of cases that come to the juvenile court. It would become largely a clearing-house for the most serious cases which require a commitment to an institution. It may be expected that in time the juvenile court will resolve itself chiefly into an agency for the legal commitment of children to institutions when such treatment is absolutely necessary.'[134] In Eliot's own words, 'So long as the child-caring system of a community is defective, the probation officer's task is quadrupled.'[135]

Dummer thought that Eliot had been a 'prophet' in 'predicting the passing of the Juvenile Court.'[136] She strongly disapproved of the use of the juvenile court for cases which were the fault of the educational system, and wrote: 'The Truancy Department is so bad that each week there come before Judge Bartelme from 30 to 50 truants whose cases should all have been solved by

129 Eliot, at 19. These ideas had been carried out in Gary, Indiana, and Cincinnati, Ohio, when Eliot's survey was made.

130 Ibid, at 128–9.

131 Cited, ibid, at 131

132 Something of this idea was incorporated into the intensively supervised probation work done in such programs as the Boston Citizenship Scheme.

133 Eliot, supra note 128, at 146.

134 Quoted, ibid, at 184. Eighteen years later the National Probation Association was still constituting committees to study the relation between the juvenile court and the school: Dummer to Lathrop, 22 November 1931 (ESD).

135 Eliot, supra note 128, at 185.

136 Dummer to Eliot, 11 March 1921 (ESD). Mrs Dummer was referring to articles which had appeared in *The Survey* in 1919 on the juvenile court and the schools.

the school department.'[137] Dummer nevertheless had some hope for the public school system of Chicago because truancy cases sent to the juvenile court had been reduced by 60 per cent as the result of a study carried out by Edward Stulken.[138] The superintendent of schools had been told truancy was his responsibility.

Edward Stulken was principal of the Montefiore school, a special day school in Chicago which opened in 1929. In essence, it was an educationally and psychologically sophisticated truant school. Once again, it had its origins in the work of Hull House.[139] The school was opened with a carefully chosen staff on a six hours per day, twelve months per year, basis. Another school (Moseley) was opened a year later. The problem children from all the schools under the jurisdiction of the Chicago School Board were sent there. In Stulken's opinion his school (and the Moseley school) were unique because they combined the advantages of a child guidance clinic and a special school. The classes were small, the program varied, and the staff were experts.[140] Physical defects were remedied. The program tried to discover the special aptitudes and capacities of each boy.[141] The school claimed that 82 per cent of the boys had satisfactorily adjusted. The superintendent of schools issued the following data from the first two years of the schools' operations:

1 Previous to the opening of the Montefiore School there was a waiting list of from 100 to 200 boys to be taken to the Juvenile Court. There is now no waiting list.
2 Formerly a boy who violated his parole from the Parental school was out for weeks or months, usually on the street, before he could be returned. There is now no waiting list of violators of parole from the Parental School.
3 Membership of boys at the Parental School has been so reduced that one cottage has been taken for girls. This fills the need caused by the closing of the Girls'

137 As late as 1937, Mrs Dummer still looked upon Thomas Eliot as a 'prophet.' Dummer to Eliot, 17 May 1937 (ESD). Frederic Thrasher, author of *The Gang* (1927) and another young academic who received intellectual stimulus from Mrs Dummer, agreed substantially with Eliot in 1931. Thrasher taught a course at NYU on juvenile delinquency and education which sought to give school teachers and administrators a better understanding of juvenile delinquency problems. The National Probation Association had a committee concerned with relations between the school and the juvenile court. Thrasher was a member of the committee.

138 The Dummer files contain considerable correspondence between Dummer and the Chicago educationist, particularly Stulken.

139 Miss Neva Boyd opened a recreational training school there (it was later taken over by Northwestern University). This school had originally been with the Chicago School of Civics and Philanthropy but later moved to Hull House to train workers for playgrounds, summer camps, and community recreational programs. This was an early attempt to co-ordinate programs for helping children in their own communities.

140 The program included both academic and shopwork, a recreation program and many activities such as art, music, science, and library. The school had full-time dentist, doctor, nurse, and psychologist, several social workers, and special remedial teachers.

141 Stulken, 'How are the schools preventing delinquency?' undated and otherwise unidentified paper in Dummer collection. Another system was the visiting teacher movement described in Sayles *The Problem Child in School* (1925), 253–80.

Parental School in January, 1930, and cares for the girls at much less expense than formerly.

4 All court work has been taken from the principals, teachers and truant officers of the 200 schools contributing to the Montefiore and Moseley Schools. This means that time formerly spent by principals, teachers and truant officers in preparing and serving papers and in appearing in court has been saved for preventive work with other pupils.

5 1012 boys have been saved a court experience and 1107 have been saved a Parental School experience.

6 The average attendance for the year of these former truants was 89.35 *per cent* of the Montefiore and 91.1 *per cent* at the Moseley. The average for the schools of the entire city was 94.9 *per cent*. The percentage of attendance in these truant schools is in fact almost as high as that of several regular schools.

7 79 *per cent* of these boys are retarded more than two years. A group selected for study made a gain of more than a year in reading in three months.

8 144 boys have been graduated from the eighth grade in these two schools. These boys have gone out into work with a feeling of success rather than failure.

9 From the Montefiore School, 84 boys were returned to the elementary schools February 1, 1931. 70 of these made good in their own schools; 14 had to be returned to the Montefiore. This small number of failures seems to show that the school is really able to change the attitude of the boys and enable them to fit into regular schools.

10 This new type of education has attracted the attention of educators and social workers from all over the world. More than 300 copies of the first annual report of the Montefiore School were sent upon request to people in this and other countries. Among the visitors this year were prople from New Zealand, Switzerland, Russia, Germany, England, Japan, Denmark, France, Poland, China, Czecho-Slovakia, Sweden, Australia and South Africa.

These facts seem to indicate that this method of dealing with truancy has many advantages over the old, and the cost is less than one fourth as much.[142]

For an historian of the juvenile court, the most distinctive part of the progress report on the special schools is the 'saving' of the boys from a 'court experience.'

Stulken, like Eliot, was convinced that the juvenile court was a superfluous institution for dealing with problem children. In an address some years later when he was still principal of the Montefiore school, Stulken told a conference on delinquency prevention: 'I am much more concerned by the general theme of our Conference "Delinquency Prevention Through the Coordinated Efforts of Community Agencies" than by the subject for this morning's discussion, "Delinquency Prevention Through Welfare Legislation" because I believe fundamentally the problem is one of education and pre-

142 Circular letter from William J. Bogan, superintendent of schools, 9 September 1931 (ESD)

vention rather than one of legislation.'[143] The prevention of juvenile delinquency would only come through the work of civic groups, educational programs and youth agencies. In the light of the history of child welfare already outlined, it is a sad commentary on 'progress' that Stulken could add that juvenile delinquency would not be stopped unless there was 'public concern in the enforcement of laws made to protect youth from poverty, the vicious, illicit employment and protected from vice and crime.'[144] Stulken's philosophy was that delinquency and maladjustment were symptoms of a disease and not the disease itself. Legislation must be viewed as an 'educational venture' using the school and 'educational procedures for effectively caring for delinquent children.' Such legislation must be 'planned for social welfare and cannot get its inspiration from or be patterned on adult criminal codes.'

The juvenile court was an anachronism to Stulken who wanted to move the delinquent child into an educational milieu as soon as possible. The school was a society in miniature where the child would learn. The school was not solely concerned with the child absorbing data. It also had the task of 'confronting the child when he was brought face to face with the demands of society'; in Stulken's pithy phrase, the school was as much concerned with formation as information. Agreeing with Herbert Spencer, Stulken added: 'the child is largely the product of the strivings, needs, lacks and richness of his whole environment ... For him who guides the delinquent and makes the laws to guide him, the matter of days attended, of the intelligent quotient of disciplinary troubles, should be but the clues that lead to what the teacher, the fellow pupils, the curriculum and the school mean to the child in answering his craving for security and development.'

Stulken thought the courts and police were treating children substantially the same as adults. They were 'exemplifying force rather than understanding.' Many juvenile courts were still 'greatly influenced by traditional concepts of the criminal law' and were agencies of discipline 'primarily for the sake of the group, rather than of scientific study and treatment for the sake of the child.'

143 Stulken, 'Needed legislation to aid youth,' 5 November 1938 (ESD). The following material is derived from pages 2–4.

144 Ibid. He also said: Any program to prevent delinquency will be faced with the problems arising out of a heterogeneous population, the struggle for existence among the poorer classes and the complicated life for all children which intensifies the problem of rearing and educating them successfully. This situation is aggravated by the tendency in many communities to have schools, churches and neighborhood agencies in the poorest regions most overcrowded and of providing the most meager facilities for youth in the very place where conditions are the hardest. The State, therefore, when it attempts a legislative program to deal with problem children must make compensations for such poor home surroundings. Any provision which the legislature can make to increase the peace, satisfaction, economic and social status of the people, and to develop justice, honesty, industry and good citizenship in the community atmosphere will be legislation needed to aid the youth of our day.'

He saw the probation officer as a fact-gatherer and semi-policeman rather than as a true social worker. Similarly, the institutions were becoming instruments of punishment. He hoped that the best juvenile courts and probation departments would 'through expert study, case work and personal friendships' try to understand the child, and to rebuild his life in his environment and to make him fit to live as a responsible person in the larger community.' The social aim was the same but it would only succeed if the police and courts became 'more and more the teacher ... closely tied to the educator and the social engineer in their task of community education.'

These perceptive comments leave us with the dilemma still facing the court today. Despite his earlier brave words, Stulken did not, at base, altogether do away with the coercive element of the law. The remaining structure was legal and, by definition, more than educative on occasion. Perhaps he would argue that this coercive element applied only to the 20 per cent of the Montefiore children who 'failed.' According to Lasch, Dewey and his followers failed because their very aim in education was innately conservative: they were really providing education for citizenship without making a clear unequivocal break in political ideology.[145] Their attitudes seemed so revolutionary but in fact they worked very much within the democratic framework. By analogy, we could say that the juvenile court reformers thought they were making great changes but they simply remained within the strait-jacket of the law and took away some of the advantages an accused would find in an ordinary court – due process, legally trained judges, the right to counsel, and strict proof of evidence. Despite the good intentions, the juvenile court seemed to operate according to some quasi-penal Parkinson's Law; there was a court docket, a detention home, probation officers, and numerous institutions which had to be used and fully occupied. In that sense, Platt is correct when he says that the child-savers 'invented' delinquency.[146] This exercise in overcriminalization is not very different from the remarks of an educator, speaking about visiting teachers, who said that as the school came into contact with almost all children, it was therefore 'the logical place to detect symptoms of future inefficiency, whether they be departures from the neutral, social or physical standards.'[147] This seems reminiscent of the Victorians who could microscopically grade children on a continuum from innocent and dependent to depraved and delinquent.

The family has presumably always been at fault. The auxiliary cause has changed from time to time: from idleness, to drink, to pauperism, to poverty, to poor housing, to working mothers, to brutal unloving fathers. The suggested cure has not faltered in its insistence on the active intervention of

145 Lasch, supra note 11 at 13–14
146 See generally Platt, supra note 29.
147 Hodge 'Why a visiting teacher,' *National Education Association, Addresses and Proceedings* (1919), at 224

an outside agency. In all instances the outsiders could do much more than the family or parents – first it was the poorhouse, then apprenticeship, transportation to overseas colonies, the house of refuge, the reformatory, the 'friendly visitor,' the county agent – and now the school would serve the function of creating a new environment and imposing a new morality. In other words, the child was to be saved again. Sandwiched in that long list of child-saving devices should have been the juvenile court. Somehow the court, which was meant to have such a close liaison with the school, was forgotten. Was this because it dealt with children who had already lost their place in the new society? Had the juvenile court simply become an institution which would dispose of deviant children? Such children would surely be destructive of the aims of Dewey's new education.

Critics of the new reform

While we have seen that one of the traits of the Progressive was his willingness to use government as an instrument of reform, sometimes his high hopes made him rather reckless with others' freedom. Jane Addams was virtuously motivated and was looked upon as a great liberating influence, but she had no compunction in talking of the 'adjustment' of man in society and, in particular, of the sociological subjects who lived near Hull House.

These 'new radicals,' as Lasch called them, failed because their political views never reached beyond their own class, let alone to 'the people.' In many instances, even large segments of the middle class were unaffected or unmoved by the reformers' ideas. The new radicals wanted the working class to have the very advantages which they were professing to reject. He also put it a little less kindly: 'At the very moment when they became aware of the other half of humanity, they became aware of each other and came to see themselves as yet another class apart.'[148] This was particularly true of emancipated women and the new social workers (and further exaggerated in the case of the latter because of their search for professionalism).[149]

For reasons that are far from clear, Lasch uses the 'cure' of delinquency as a vehicle for examining the new radicals: 'The new radicals' attitude toward delinquency, their insistence that a policy of repression perpetuated the evils it was supposed to eliminate, represented a striking departure from the conventional attitude. Indeed, their sympathy for juvenile delinquents and for criminals of all classes made them almost as objectionable, in eyes of

148 Lasch, supra note 11, at 147, 149. Brand Whitlock, a real reformer, said in his autobiography, *Forty Years of It* (1914), at 239: 'Your true reformer is not only without humour, without pity, without mercy, but he is without knowledge of life or of human nature, and without very much of any sort of sweetness and light. The more moral he is, the harder he is, and the more amazingly ready with cruel judgments; and he seldom smiles except with the unction that comes with the thought of his own moral superiority. He thinks there is an absolute good and an absolute bad, and absolutely good people and absolutely bad people.'

149 See Devine *The Spirit of Social Work* (1911).

respectable citizens, as the criminals themselves.[150] Yet Lasch shows that the radicals could not give full endorsement to this rebellion of youth which so troubled the middle class. They did not agree that industrial society was brutal and vulgar (although that can hardly be true of what Jane Addams and John Dewey *said* although it seems to ring true for the social workers). The new 'adjusters' tried to divert juvenile delinquents into productive channels. Even the seemingly rebellious and feisty Ben Lindsey persuaded his young friends that honesty and hard work and straight talking were real virtues although they were growing up in a city where Lindsey believed the administration was corrupt because of The Beast of corporate influence and the violent tactics of the Ku Klux Klan.

The reformers wanted to remedy the evils of society, not so much by the reform of the law and its administration but by social engineering. Lasch succinctly described the new radicals as proposing 'political solutions for cultural problems and cultural solutions to political problems.[151]

Roscoe Pound was a great admirer of the juvenile court and proclaimed it the greatest innovation in the judicial process since Magna Carta. When he and Felix Frankfurter conducted the Cleveland Survey in the nineteen-twenties, they criticized not the basic system of justice but only the way in which it was being administered. Injections of trained, uncorrupted personnel and massive scholarly forays into criminal law and criminology would solve the problem. The police, the prisons, and the criminal law had not been able to make men (and boys) obey. The reformers did not want to put a man in prison because they knew that the prison did not make him penitent. Instead, they wanted to enlist the criminal's participation in self-improvement.[152] Many of the books of the period read like lists of New Year's resolutions. Earp's *The Social Engineer* (1911) detailed all the problems and demanded answers to the causes of poverty, crime, delinquency, and rickets but he had few suggestions for substantive reform. The word 'socialize' occurred very frequently and it certainly was not meant to have any leftist connotation. For instance, on the subject of the Boy Problem, Earp said: 'If we discover the causes of the increasing number of delinquent boys in every civilized country to be *preventable social causes*, then the fact is clear that *preventive salvation is the solution of the boy problem.*'[153]

Lasch's verdict is sombre and might well be an epitaph for the high hopes of the juvenile court: 'The new radicals were torn between their wish to liberate the unused energies of the submerged portions of society and their enthusiasm for social planning, which led in practice to new and subtler forms of repression.'[154] Just when the juvenile court was founded, the new

150 Lasch, supra note 11, at 154
151 Ibid, at 163.
152 Cf similar suggestions in *Radical Alternatives to Prison* (1970).
153 Earp *The Social Engineer* (1911), at 262: emphasis in original
154 Lasch, supra note 11, at 168

social planners were basking in the comfortable belief that a new science of society had emerged. Hull House was very much in this tradition; it was much more a school of practical sociology (with residents doing surveys among the poor) than it was a group of muckraking iconoclasts. Sociology would solve society's problems and create harmony at least and equality at best. Society itself need not be reformed; simply cured of its ills.[155] This hope probably did not die completely until the great depression. In the meantime those who believed that juvenile delinquency could be treated if not cured had the further consolation of Freud's theories. In effect, these shattered dreams of reform leave one with the impression that the fantasies of Horatio Alger Junior were no more harmful and perhaps even less pernicious. Enforced therapy took the place of the American Dream. Instead of banal indifference to the poor, social planners wanted to interfere constantly in the lives of the deviant, the different, and the disadvantaged. This could be described as a progress from 'less eligibility,' through mythical equality, to far too much eligibility.

Social work and social progress

Social work originated at the same time as the juvenile court. Probation had played an important part in the campaign to free children from the adult criminal courts. A totally separate court was merely a natural reaction to the probation officers' work.

There had been charity workers in the nineteenth century. Only a few of them, such as Elizabeth Fry and Mary Carpenter, had been much more than 'friendly visitors' distributing jars of calf's foot jelly and smoothing the pillow of the dying. Jane Addams and her Hull House residents wanted to practise constructive social work. Most of the work was done by volunteers, and the juvenile court was one of the first agencies to have paid social workers. These social workers– probation officers – were perhaps a little different from the almoner in a hospital, or the assistant in an insane asylum. The probation officer had some legal authority because he was an 'officer of the court' and supervised the probationer in such a way that the status of the offender could be changed – from a boy on suspended sentence to inmate of a reformatory or industrial school. The probation officers of the juvenile court had the crucial problem of functioning as a co-operative profession in the conflict environment of the juvenile court. This returns us to the masquerade of the juvenile court exhibiting to the world the velvet glove of a helping, administrative or social welfare agency when, underneath, the iron fist of the law was fairly tightly clenched.

Some commentators feel that this problem has been aggravated by the

155 Filler's comment on social reform generally seems appropriate here: 'they groped for causes and found nothing but effects': Filler *Crusaders for American Liberalism* (1939), at 40.

stance of the social work profession during the life of the juvenile court. Social work services have proliferated and the talent which, in 1900, was focussed on the juvenile court, had to be spread among many different types of social service.[156] Some of these fields have proved more rewarding, more appealing, and easier than work with neglected and delinquent children.

Jane Addams clearly saw the juvenile court as a vindication for social work: 'The social workers may, I think, claim the juvenile court ... The probation officer of the juvenile court is still considered a social worker, and the court itself, while conducted by a judge, has to a considerable extent that coordinating and organizing function, that mobilizing of the curative and preventive services provided in astonishing variety for the assistance of those in distress, which we have come to define as social work.'[157] Bruno, in his history of the National Conferences of Social Work, took a less optimistic view; probation had never really been tested because the court procedure for evaluating evidence was so different from the processes of social work. There were exceptional juvenile court judges who appreciated this difficulty but Bruno thought they were very rare.[158] (Bruno looked upon the delinquency finding as one of fact rather than law but, given the 'philosophy' of the juvenile court, that is a natural assumption to make.[159])

Mary Richmond, the author of the influential *Social Casework*, thought the combination of the juvenile court and the psychopathic institute were decisive factors in the evolution of casework, and, in particular, of differential casework. Under Richmond's guidance, the social workers became specialists in the problem of the family, taking the view that through this 'nuclear social institution ... the community transmitted its moral, cultural and spiritual heritage.'[160] This of course was also an inheritance from Jane

156 The cities became involved in new social programs: hospitals, clinics, free meals for school children, playgrounds, evening schools, public baths, free libraries, inspectorates for tenements, sanitation and fire control, medical inspections at schools, free milk, visiting nurses.

157 Addams, 'Social workers and other professions,' *National Conference of Social Work Proceedings* (1930), at 50

158 'The point of contact with law is the probation officer. He has been brought into the criminal law and juvenile court as a means of enabling the court "to know" the person concerning whom it must make some decision; but the procedure of the court in evaluating evidence is so far different from that of social work and, on the whole, is so well established ... that probation had never been tried ... There are very few Judge Pinckneys or Judge Bakers.' Bruno *Trends in Social Work, 1847–1956* (1957), at 282.

159 At the 1910 National Conference of Social Work, Bernard Flexner suggested that the jurisdiction of the juvenile court should be limited to delinquency and adult contribution to delinquency cases. All the other 'family' matters such as relief, mother's pension, etc, should be handled by an administrative agency. Bruno suggests that, in an incidental fashion, the juvenile court had influence on adult court procedures. John T. Munford Boyd of Charlottesville, Virginia, pointed out in the 1928 Conference of Charities and Corrections that the logical development of the juvenile court idea was to produce a revision of the general body of criminal law and criminal procedure of the future.

160 See Lubove *The Professional Altruist: The Emergence of Social Work as a Career, 1880–1930* (1965), at 45.

Addams who fostered the idea of environment, as opposed to defect, as being the major contributory factor in dependency. The rise of the physical or psychiatric guidance clinic attracted the social worker who could investigate and counsel the patient and his family. Social workers saw the clinic as an educational and preventive agency.

Unfortunately all these factors in the evolution of social work became increasingly irrelevant to the juvenile court. The clinics became completely separated from the court. (This was even true of the Judge Baker Clinic; Healy became too busy and his research interests spread to more general problems of social pathology.) The high hopes held out for the court became transferred to the clinic. The research foundations became interested in child problems to the partial or total exclusion of the court. The Russell Sage Foundation funded projects on child problems in schools[161] and the Commonwealth Fund was following the same policy as its 1922–3 report showed:

> The wide employment of unintelligent methods of dealing with delinquents and criminals, the persistence of the punishment theory, the fact that a very large proportion of criminals begin their unsocial careers in youth and that many children are impelled toward delinquent conduct through lack of wisdom and understanding on the part of parents, teachers, and others – all these things pointed to the outstanding need for a better comprehension of the entire situation, for the placing of emphasis upon the checking of wayward tendencies early in their development, and more concretely, for the development of methods and processes by which results of this character might be secured.[162]

This statement has a certain quality of *déjà vu*. Are these comments very different from the aspirations of the juvenile court founders or of the managers of the reformatories established in the eighteen-thirties? The moral content of the latter has been replaced by the socializing theories of the twentieth century. Child guidance clinics were to be the new panacea as Dummer obviously believed. Lubove points out that these clinics 'initially accepted many cases from the juvenile court, but later turned to other community agencies in the hope of detecting personality disorders in their earliest stages. A program of preventive mental hygiene, it discovered, did not begin in the courts, but in the school, family, and social agency.'[163]

Social workers were attracted to child guidance clinic work because, instead of the sordid backdrop of poverty and delinquency encountered in the COS or the juvenile court, the perception of the professional role was enhanced when they thought they were contributing to the solution of the 'universal problems of emotional disturbance.' There was another unfortunate by-product; the social worker, engrossed in mental hygiene, became less interested in social reform, despite Mary Richmond's dubious argument

161 The Foundation published Mary Richmond's *Social Diagnosis* in 1917.
162 5th Annual Report, 1922–1923, at 22
163 Lubove, supra note 160, at 93

that, as mass betterment and individual betterment were interdependent, social work led to social reform. Since the Progressive era, when they fulfilled a vital liaison and mobilization function, the social workers have neglected their potential role as reformers.[164] Social work schools also neglected the study of social legislation in favour of social casework.

When the juvenile court started, social work was liberal or even radical. The legal profession was then conservative and almost Blackstonian in its desire to adhere to the status quo, to precedents, and to the formality of legal rules and legal procedure. In the 1960's, when the lawyers made a constitutional attack on the juvenile court, the roles had been reversed. Many critics of social work and social work education would blame this stultification on Mary Richmond and Abraham Flexner, Richmond because her *Social Diagnosis* enshrined social casework as the *modus operandi* of social workers to the exclusion of all else, Flexner because he caused a collective trauma in social workers by declaring that there were no recognizable skills in social work which would attract professional status. These influences may have had a decisive effect on the operation of the juvenile court but it is doubtful. The 'traditionalist' juvenile court judge stood on his judicial dignity and kept at arm's length his probation officer who had to be content with the preparation of stereotyped social histories. The 'socialized' judge had a close relation with his social worker and sought his or her advice at every opportunity. The concentration on casework did tend, however, to make the social workers' understanding of delinquency problems very rigid and to rob the juvenile court of much of its flexibility in disposition.

Considering the reliance that Richmond placed on the juvenile court for the spread of social diagnosis, she had very little to say about the court in her book. She was pleased that, in the juvenile court, the methods of experimental psychology had been adapted to the needs of social inquiry although she relied on rather thin evidence for this assertion. She endorsed the remarks of Judge Baker as an accurate description of the way in which a juvenile court was making proper use of social diagnosis; this may have been true of Boston but there were few indications that it represented a universal or even common practice. Judge Baker is quoted as saying: 'The judge and probation officer consider together, like a physician and his junior, whether the outbreak which resulted in the arrest of the child was largely accidental, or whether it is habitual or likely to be so; whether it is due chiefly to some inherent physical or moral defect of the child, or whether some feature of his environment is an important factor; and then they address themselves to the question of how permanently to prevent the recurrence.'[165]

164 Ibid, at 107. Woodroofe, supra note 6, at 146–7 commented: 'In the low-vaulted past the individual was poor through personal inadequancy. Now in the Freudian present he could be poor because of his early childhood. This not only justified the exclusion of the unsuccessful, but it distracted the social worker's attention from possible alternative explanations for poverty, such as low wages, lack of protective labour laws and an inequitable social system.'

165 Richmond, supra note 11, at 33

Richmond praised the relaxed legal procedures of the juvenile court but she looked upon the tribunal as a court of law. She and other social workers were imprisoned by their concept of social institutions and the legal controls which could be enforced through the 'court' machinery. Yet the 'best interests of the child' allowed some latitude which, to Richmond, made the tribunal something less than a court of law: 'Not only have the courts come to recognize the value of a more liberal inclusion of imperfectly relevant evidence in disposing of child offenders; they are growing to feel that even the method of gathering evidence has an influence upon the welfare of the child. They believe that such investigation should be inspired not by the ambition to run down and convict a criminal but by a desire to learn the best way to overcome a boy's or girl's difficulties.[166]

She complained that some literal-minded social workers wanted to ask all the questions listed in her manual which she had never intended; the error is understandable in a new profession. On the other hand, the over-enthusiastic probation officer must have been something of a trial to a juvenile court judge if a social history tried to answer all the questions in *Social Diagnosis* on the family which included data to be obtained on family illness, poverty, and the following: 'Has either parent even signed the pledge or has either any respect for it? Does either use drugs? Is either immoral? Obscene in language or action before the children? Is father a loafer? Does mother neglect her household duties, spend much time away from house or in association with criminal or immoral persons? Has either an ugly or dangerous temper? Does either beat or otherwise abuse the children? Is either given to gambling? Dishonest? Quarrelsome?[167]

The questions on children which sought to make fine distinctions between neglect and destitution and between dependency and neglect are also included in the following: 'Are the children constantly on the streets and late at night? Do they frequent low picture shows, visit saloons or other places likely to lead to an idle and dissolute life?' 'Has the lack of salutary control reached the point where wrong-doing is a habit and the child is delinquent? Is there record of habitual truancy? Theft? Immoral conduct or association with immoral persons? Frequenting houses of ill repute? Street walking? Begging or vagrancy? Use of vile language? Relative incorrigibility?'[168]

There is not much twentieth-century social sophistication in these questions but then they are not very different from the multiple causation factors which Matza and other criminologists have questioned.

These routine reports, probably written in officialese, which were constantly being presented to the busy juvenile court judge, seem a far cry from Devine's call to the social worker to 'seek out and to strike effectively at those

166 Ibid, at 44. Flexner and Baldwin *Juvenile Courts and Probation* (1914), at 52, were in favour of hearsay evidence.

167 Richmond, supra note 11, at 408

168 Ibid, at 409

organized forces of evil, at those particular causes of dependency and intolerable living conditions which are beyond the control of the individuals whom they injure and whom they too often destroy.'[169]

Devine was obviously too idealistic but his aims were commendable. Richmond later gave more sophisticated instructions to social workers; they provide an instructive contrast and show how the social work profession had changed. She wanted social workers to have skills in discovering the social relationships and the 'power to utilize the direct action of mind in their adjustment.'[170] This seems almost grotesquely irrelevant to the everyday workings of the juvenile court and the problems of the individual child whether he is labelled neglected, dependent, or delinquent. Una Cormack, in effect, agrees with Francis Allen's plea for curbs on the individualization of rehabilitative therapy when she describes the social work interviewer with her stereotype techniques, her dangerously little learning in the behavioural sciences, who: 'shoots a sitting bird, plucks him, trusses him, bastes him, and dishes him up finally settled in his right relation to society.'[171] This is very much at variance with Katherine Lenroot's call for the reconciliation of individual freedom and social security with the social worker making a major contribution to 'profound and permanent changes in our economic and social structures.'[172]

More than one critic has suggested that social work has become preoccupied with administrative procedures, routine, and loyalty to a profession rather than creative service.[173] This seems to be true of the juvenile court where probation officers have become obsessed with the numerical size of caseloads and have frequently turned supervision into a meaningless ritual. (In fairness, we must add that many juvenile court judges have done the same.) Only very recently have we seen some change, with volunteers being used for routine supervision, the appointment of detached social workers, and social workers becoming interested in community organisation, a skill or technique which had been sadly neglected for decades since Jane Addams tried to practise it at Hull House.

The social workers, under a number of pressures, seem to have forgotten Richmond's advice in *Social Diagnosis* (which was originally published in

169 Devine, 'The dominant note of modern philanthropy,' *33rd National Conference on Charities and Corrections, Proceedings* (1917), at 114

170 Richmond, 'The social caseworker's task,' *44th National Conference on Social Work, Proceedings* (1917), at 114

171 Richmond, 'Developments in casework,' in Bourdillon (ed) *Voluntary Social Services*, at 104

172 Lubove *The Professional Altruist: The Emergence of Social Work as a Career 1880–1930* (1965), at 85, quoted by Epstein in 'The soullessness of present day social work,' (1928), 28 *Current History* 391: 'Having become too practical to be passionate, social work no longer possessed a spiritual equilibrium. Thanks to her infatuation with technique, the social worker had not only transcended charity and preventive reform but social panaceas and far-visioned dreams as well.'

173 See Vintner, 'The social structure of service,' in Kahn (ed) Issue in American *Issues in American Social Work* (1959), at 248.

1917): 'It will still be necessary to do different things for and with different people, and to study their differences, if the results of our doing are to be more good than bad. It will still be necessary to study the social relations of people, not only in order to understand their differences but in order to find a remedy for the ills that will continue to beset them.'[174]

174 Richmond *Social Diagnosis* (1917), at 370