

Volume 18 | Issue 4

1967

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Recommended Citation

Walter G. Whitlach, *The Juvenile Court-A Court of Law*, 18 W. Res. L. Rev. 1239 (1967)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol18/iss4/9>

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The Juvenile Court — A Court of Law

Walter G. Whitlatch

The juvenile court, as a court of law, has often come under attack on procedural and constitutional grounds. After stating that these attacks are probably due to a lack of public understanding of the court, the author explains why they are unjustified. He also traces the growth and development of the juvenile court, emphasizing the juvenile court of Ohio, and concludes that the court represents a growth in legal theory rather than a departure therefrom.

IN THE NEARLY seventy years of its existence as part of the judicial system of the United States, the juvenile court has successfully withstood many vigorous and sometimes virulent attacks on its concept, philosophy, procedure, and constitutionality.¹ These attacks have been predicated on the alleged failure of juvenile court law to provide the constitutional guarantees of criminal law, for example, trial by jury, bail, the privilege against self-incrimination, and the right to counsel.

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Such attacks were to be expected when the court first came into existence. The doctrine of *parens patriae* was quite old, but here for the first time it was expressed in the establishment of a specialized court, and although originated by lawyers and judges who knew the inadequacies and the harshness of the criminal statutes when dealing with children, the practicing lawyer accepted the court only reluctantly after repeatedly challenging its constitutionality.² The bar, with only infrequent appearances in the juvenile court and having learned nothing of its procedures in law school, was shocked to learn that criminal procedures were not followed. This discovery

¹ *Pee v. United States*, 274 F.2d 556, 563 (D.C. Cir. 1959) (see citations upholding constitutionality therein); *Application of Gault*, 99 Ariz. 181, 407 P.2d 760 (1965), cert. granted, 87 Sup. Ct. 498 (1966); *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E.2d 457 (1964); *In re Darnell*, 174 Ohio St. 335, 182 N.E.2d 321 (1962); *State v. Shardell*, 107 Ohio App. 338, 153 N.E.2d 510 (1958).

² See, e.g., *Ex parte Januszewski*, 196 Fed. 123 (S.D. Ohio 1911); *In re Daedler*, 194 Cal. 320, 228 Pac. 467 (1924); *Cinque v. Boyd*, 99 Conn. 70, 121 Atl. 678 (1923); *In re Sharp*, 15 Idaho 120, 196 Pac. 563 (1908); *Lindsay v. Lindsay*, 257 Ill. 328, 100 N.E. 892 (1913); *Robison v. Wayne Circuit Judges*, 151 Mich. 315, 115 N.W. 682 (1908); *State ex rel. Matacia v. Buckner*, 300 Mo. 359, 254 S.W. 179 (1923); *Commonwealth v. Fisher*, 213 Pa. 48, 62 Atl. 198 (1905).

should have occasioned no surprise, since the purpose of the juvenile court was to free the child from antiquated procedures in the hostile, punitive atmosphere of the criminal court. As Mr. Justice Holmes has reportedly stated "they [judges and lawyers] are more likely to hate at sight any analysis to which they are not accustomed and which disturbs repose of mind, than to fall in love with novelties."³

Perhaps the most apt description of the juvenile court concept is that given in the report of the Chicago Bar Committee which, in 1899, drafted the first juvenile court law known to the world:

The fundamental idea . . . is that the State must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime. . . . It proposes a plan whereby he may be treated not as a criminal, or legally charged with a crime, but as a ward of the state, to receive practically the care, custody and discipline that are accorded the neglected and dependent child, and which, as the Act states, "shall approximate as nearly as may be that which should be given by its parents."⁴

As pointed out by one author,⁵ "the juvenile court should be looked upon as a *growth* in legal theory and not as a departure therefrom."⁶ It will thus be the purpose of this article to trace the growth and development of the legal theory that forms the basis for the juvenile court which functions today as an integral part of the administration of justice and as a modern court of law. While, as might be expected, this development has not been uniform throughout the United States — with the various legislatures reacting and over-reacting to criticism of this relatively new judicial structure — there has been a steady growth in the direction of protecting the statutory and constitutional rights of those brought before the court. In the past several years, both California⁷ and New York⁸ have adopted new codes which attempt to provide a practical balance between civil due process for the child and the informal court proceeding which minimizes the harmful effects of an adver-

³ Address by Kenneth D. Johnson, Dean, New York School of Social Work, Columbia University, Fiftieth Anniversary of the Juvenile Court of Cuyahoga County, Cleveland, Ohio, May 22, 1952, in EASTMAN & MCDERMOTT, CUYAHOGA COUNTY JUVENILE COURT FIFTIETH ANNIVERSARY, ANNUAL REPORT FOR 1952, 10 (1953).

⁴ Report of the Chicago Bar Committee, as quoted in 2 JUVENILE CT. JUDGES J. 10 (1960).

⁵ LOU, JUVENILE COURTS IN THE UNITED STATES (1927). This text is valuable for its presentation of the early history and philosophy of the juvenile court.

⁶ *Id.* at 3. (Emphasis added.)

⁷ CAL. WELFARE & INST'NS CODE §§ 500-914. For a discussion of the California changes, see *Selected 1960-61 California Legislation*, 36 J.S.B. CAL. 643, 862 (1961).

⁸ N.Y. JUDICIARY LAW §§ 711-84.

sary proceeding and encourages the child's receptivity to treatment. The most common point of reference in this article, however, will be the juvenile court of Ohio, where there has been an intelligent growth and development of the law, a situation not untypical of other states.

I. JUVENILE COURT BACKGROUND AND DEVELOPMENT

A. *In General*

While the juvenile court is a comparatively modern juridical concept, the legal principles underlying it stem from the ancient common law doctrine of *parens patriae*, under which the king reposed the protection of the kingdom's infants in his chancellor, the keeper of his conscience.⁹ Thus, the juvenile court is the legal embodiment of a common law doctrine in the form of a special court, coupled with modern methods of discharging the state's power as the ultimate parent of the child.

Modern juvenile court law extends and refines the common law principle that children under seven years of age are incapable of formulating criminal intent and that children from seven to fourteen are rebuttably presumed to be incapable of formulating such intent.¹⁰ While the juvenile court law in Ohio extends the presumption of inability to formulate criminal intent to age eighteen,¹¹ the court may determine that *any* child who has committed an act which would be a felony if committed by an adult should be tried as an adult, the case then being certified to the court of common pleas.¹² In effect, then, this certification removes the presumption of the child's inability to formulate a criminal intent. Today, after a sociological and juristic reformation which began throughout the civilized world a century ago, the concept is that a child who has violated the law is not a criminal,¹³ but rather he is to be taken in hand by the state as protector and ultimate guardian rather than as his enemy.¹⁴

⁹ 3 BLACKSTONE, COMMENTARIES *426-28.

¹⁰ There is a common law presumption of criminal incapacity below the age of fourteen which is conclusive prior to age seven and rebuttable thereafter. PERKINS, CRIMINAL LAW 731 (1957).

¹¹ Statutory provisions have limited the criminal capacity to those above seventeen or eighteen. *Id.* at 733. In Ohio, a "child" is one who has not reached eighteen years of age. OHIO REV. CODE § 2151.01.

¹² OHIO REV. CODE § 2151.26.

¹³ See *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E.2d 457 (1964).

¹⁴ See MACK, THE JUVENILE COURT (1909); 23 HARV. L. REV. 104, 109 (1909).

Ohio's law is neither criminal nor penal in nature; rather, it is an administrative police regulation of a corrective character.¹⁵ In the exercise of its power of *parens patriae*, the legislature has established the juvenile court and delegated to it certain powers to discharge the state's guardianship over minor children.¹⁶

Long before the juvenile court evolved in its present form, however, state legislatures found it necessary to recognize the difference in the treatment of children and adults with respect to restraint of liberty and confinement.¹⁷ The same issues being raised now in attacking the juvenile court were raised, argued, and disposed of in connection with these early legislative enactments.¹⁸

B. *The Constitutional and Procedural "Problems"*

(1) *In General.*—The earliest case specifically dealing with the constitutional rights of what is now called a juvenile delinquent is *Ex parte Crouse*,¹⁹ decided by the Supreme Court of Pennsylvania in 1839. There it was said: "As abridgment of indefeasible rights by confinement of the person, it is no more than what is borne, to a greater or less extent, in every school; and we know of no natural right to exemption from restraints which conduce to an infant's welfare."²⁰ Similar decisions were in abundance before the juvenile courts as such came into existence.²¹

¹⁵ *Ex parte Januszewski*, 196 Fed. 123 (S.D. Ohio 1911); *Gerak v. State*, 22 Ohio App. 357, 153 N.E. 902 (1920); *State ex rel. Fortini v. Hoffman*, 12 Ohio App. 341 (1920); *Leonard v. Licker*, 3 Ohio App. 377 (1914); *State v. Joiner*, 20 Ohio N.P. (n.s.) 313 (C.P. 1917); *In re James L. _____, Jr.*, 194 N.E.2d 797 (Ohio Juv. Ct. 1963).

¹⁶ *State v. Miclau*, 104 Ohio App. 347, 140 N.E.2d 596, *aff'd*, 167 Ohio St. 38, 146 N.E.2d 293 (1957); *In the Matter of Viselich*, 22 Ohio App. 528, 154 N.E. 55 (1926); *Bleier v. Crouse*, 13 Ohio App. 69 (1920).

¹⁷ See LOU, *op. cit. supra* note 5, at 15-19.

¹⁸ *Id.* at 13-25.

¹⁹ 4 Whart. 9 (Pa. 1839).

²⁰ *Id.* at 11.

²¹ *In the Matter of Ferrier*, 103 Ill. 367, 371 (1882):

We perceive hardly any more restraint of liberty than is found in any well regulated school. Such a degree of restraint is essential in the proper education of a child, and it is in no just sense an infringement of the inherent and inalienable right to personal liberty so much dwelt upon in the argument.

See also *Reynolds v. Howe*, 51 Conn. 472 (1883):

[T]he boy is not proceeded against as a criminal. Nor is confinement in the State Reform School a punishment, nor in any proper sense imprisonment. It is in the nature of a parental restraint. It is a mode of education to usefulness; compulsory, but not for that reason improper; and the restraint is a necessary incident of the compulsory education. It is all made necessary by the corrupting influences that surrounded and are likely to control the boy, and by the need of society for protection, and that necessity justifies the proceeding. To make the restraint and instruction of any permanent value they must be

Despite these decisions, however, it was recognized before the end of the nineteenth century that the problem might not remain settled:

The question of the extent to which the state may assume the guardianship of children who have committed no offense is one which has never proved a very difficult one practically because of the limited efforts of the Legislature in that direction; but the question goes to the very depths of the subject of civil government, and may grow more difficult as the necessity of saving the young from evil lives becomes more pressing or apparent.²²

The creation of the juvenile court was recognition that the limited efforts of legislatures of the nineteenth century were not sufficient and such laws must be extended because the necessity of saving the young from evil lives did become more pressing and apparent.²³ "Juveniles have particular and peculiar rights and they require particular and peculiar treatment. *The basic right of a juvenile is not to liberty but to custody.* He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so."²⁴

(2) *Ohio*.—An early effort by the Ohio legislature to provide special treatment for children who violated criminal statutes was the enactment of a statute in 1857²⁵ providing that if a child under the age of sixteen years was charged with a crime, and there appeared to be evidence to support the charge, the grand jury could in its discretion make a return to the court directing that the child be committed to a house of refuge. This statute was attacked on constitutional grounds in 1869, the plaintiff in error contending that the commitment to the house of refuge deprived him of due process of law in derogation of the fifth amendment of the United States Constitution; of trial by jury in contravention of article 1, section 5 of the Ohio Constitution; and of the right to appear, defend, and have a trial by jury contrary to article 1, section 10 of the Ohio Constitution.²⁶ The Supreme Court of Ohio, although

continued for a long time. Habits are not changed in a month; not often in a year. This is specially true of bad habits. The attempt to reform viciously inclined boys would be an utter failure if limited to a few months. *Id.* at 478.

Cf. Milwaukee Industrial School v. Supervisors of Milwaukee Co., 40 Wis. 328 (1876).

²² Rich, *State Guardianship of Children*, 15 L.R.A. 593 (1893).

²³ *Ibid.*

²⁴ Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719, 720 (1962). (Emphasis added.)

²⁵ 1857 Ohio Laws 163. *State v. Worden*, 162 Ohio St. 593, 124 N.E.2d 817 (1955) held that this statute was repealed by implication upon the enactment of the Juvenile Code in 1937. See 117 Ohio Laws 268.

²⁶ *Prescott v. State*, 19 Ohio St. 184 (1869).

taking notice that the statute made no provision for a defense nor for notice of the pendency of the proceedings and that it was an ex parte proceeding, nevertheless took the position that this proceeding was not criminal in nature and therefore the constitutional rights asserted by the plaintiff in error had no application.²⁷ Said the court: "The proceeding is purely statutory; and the commitment, in cases like the present, is not designed as a punishment for crime, but to place minors . . . under the guardianship of the public authorities named, for proper care and discipline"²⁸

While this is an instance of the state exercising its authority of *parens patriae* long before the establishment of the juvenile court, the reasoning and the very language of the court is quite similar to that of the Ohio Supreme Court in 1964,²⁹ holding that commitment of a minor to the reformatory without an indictment or jury trial pursuant to section 2151.35 of the Ohio Revised Code was not violative of the fifth, sixth, and fourteenth amendments to the federal constitution or of article 1, section 10 of the Ohio Constitution.³⁰

The significant procedural differences in the two cases well exemplify the growth and development of the law in the interest of the child. The law now provides that the child must have a hearing;³¹ that his parents must have notice of the hearing;³² that such notice is jurisdictional;³³ and that the child has the right of counsel³⁴ and the right of appeal.³⁵ In the determination of his needs, the child now has the benefit of an investigation by a probation officer³⁶ and of clinical examinations³⁷ — all in an effort to determine what course of action is in his best interest.

These statutory provisions did not come about overnight, however. Actually, it was in 1937 that Ohio first adopted the standard

²⁷ *Id.* at 188.

²⁸ *Ibid.*

²⁹ *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E.2d 457 (1964).

³⁰ *Id.* at 478, 196 N.E.2d at 459.

³¹ OHIO REV. CODE § 2151.35.

³² OHIO REV. CODE § 2151.28.

³³ *State ex rel. Clark v. Allaman*, 154 Ohio St. 296, 95 N.E.2d 753 (1950); *In re Frinzi*, 152 Ohio St. 164, 87 N.E.2d 583 (1949); *In re Corey*, 145 Ohio St. 413, 61 N.E.2d 892 (1945).

³⁴ OHIO REV. CODE § 2151.35 (Supp. 1966).

³⁵ OHIO REV. CODE § 2501.02 (Supp. 1966).

³⁶ OHIO REV. CODE § 2151.14.

³⁷ OHIO REV. CODE § 2151.53.

Juvenile Court Act.³⁸ This act was drawn under the auspices of the National Probation Association (now the National Council on Delinquency and Crime), by a committee of judges, lawyers, and social workers. With the exception of several important modifications, the act remains today essentially unchanged. In the thirty years since its enactment, the "Juvenile Code" has frequently come under the critical scrutiny of the legislature. It has not always "found it good," but generally in close collaboration with the Ohio Association of Juvenile Court judges, the legislature has made salutary amendments aimed at protecting the legal rights of the children and parents who come under the court's jurisdiction.

One of the first important modifications mentioned briefly above was the provision that parents must receive notice of hearing before any temporary order depriving them of custody of children was made permanent.³⁹ In 1955, the legislature specifically provided that the court of appeals had jurisdiction to review upon questions of law "the finding, order or judgment of a juvenile court that a child is delinquent, neglected or dependent."⁴⁰ In 1957, with the objective being to definitely establish the legal rights of persons before the juvenile court, the legislature provided that a child had the right to counsel and that any report concerning a child used in the hearing should be made available to counsel upon a showing of good cause and a request in writing therefor.⁴¹

The specific provision for appeal was unnecessary since judgments of the juvenile court were already covered by the general provisions relating to courts of record inferior to the Ohio courts of appeals.⁴² Special provision as to the right of the child to counsel was likewise unnecessary. Although the provisions of the sixth amendment to the United States Constitution and of article I, section 10 of the Ohio Constitution have no application because a delinquency proceeding is a civil and not a criminal action,⁴³ the right to counsel is guaranteed by the "due process" clause of both the United States and the Ohio Constitutions.⁴⁴ Hence, no statutory

³⁸ 117 Ohio Laws 268.

³⁹ OHIO REV. CODE § 2151.28.

⁴⁰ OHIO REV. CODE § 2501.02 (Supp. 1966).

⁴¹ OHIO REV. CODE § 2151.35 (Supp. 1966).

⁴² OHIO REV. CODE § 2501.02 (Supp. 1966).

⁴³ *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E.2d 457 (1964); *State v. Shardell*, 107 Ohio App. 338, 153 N.E.2d 510 (1958). *But cf.* *Kent v. United States*, 383 U.S. 541 (1966).

⁴⁴ U.S. CONST. amend. XIV; OHIO CONST. art. I, § 16.

provision was necessary to grant the right of counsel in a delinquency case. Both these amendments as to appeal and right to counsel were thus an expression of the wariness of lawyers in the legislature toward the juvenile court. Nevertheless, while unneeded, these amendments served a very useful purpose in helping to remove the uneasy feeling that many lawyers possessed because of their unfamiliarity with the court.

The amendment which permits counsel to inspect the social workers' records used in the hearing⁴⁵ has likewise had a mollifying effect on the attitude of lawyers toward the juvenile court. It is within this writer's knowledge that, prior to the amendment, it was argued that to permit the lawyer to see these reports would be completely destructive of the entire juvenile court process. Those who opposed disclosure claimed that such procedure would destroy the confidential relationship of court worker and client; would be disruptive of family relationships, since one member of a family would learn what another member had said concerning him or her; and would completely dry up sources of information.

None of these dire predictions have materialized. Actually, now that the statutory right is available, it is a rarity when the lawyer asks to see the record. When he does exercise the right, he finds that it is not so full of hearsay and gossip as he so fearfully suspected and that his perusal of it adds little information that he could not have obtained upon his own inquiry. It is also evident that such a disclosure has not had the feared results. With a word of caution from the court, the lawyer can be depended upon not to disclose information to the family or others that might be disruptive of family relationships. Giving the lawyer the right to inspect the social records has had an ameliorating effect on the uneasy partnership of the law and social work that constitutes the juvenile court. Indeed, even without the lawyer's request, it is sometimes most helpful to the judge to have the lawyer examine the clinical reports so that he may share with the judge the heavy responsibility of providing the care recommended by the psychologist and the psychiatrist.

Another attack upon the court involves the hearing process, which, by Ohio law, is informal.⁴⁶ As was said in *State v. Shaddell*:⁴⁷

⁴⁵ OHIO REV. CODE § 2151.35 (Supp. 1966).

⁴⁶ *Ibid.*

⁴⁷ 107 Ohio App. 338, 153 N.E.2d 510 (1958).

This [the hearing process] is obviously to do away with the usual and customary ceremony and procedure of a court trial in order to surround the child with an atmosphere of friendliness and good will rather than one of hostility and faultfinding. It is thus proper for the judge to carry on a conversational type of investigation which is more conducive to eliciting the truth and arriving at an impartial, fair and more acceptable solution of the problem of the child involved.⁴⁸

Dean Pound, speaking of such procedures, said:

Instead of being wholly contentious the proceeding in the [juvenile court] . . . should be investigatory directed to determining the best disposition or adjustment of the family situation as a whole and seeking a complete disposition thereof. It may involve contentious trial of certain issues of fact. But the proceeding as a whole should not be primarily and characteristically contentious.⁴⁹

As has been amply demonstrated by personal juvenile court experience, this "judicial inquiry" type of hearing not only develops more facts but also develops them more quickly and pleasantly than does an adversary procedure. Certainly, ample proof of the fact that children are not adjudged delinquent contrary to the weight of the evidence is that there are no reported cases in Ohio nor are any known in the United States where a delinquency judgment of the juvenile court has been reversed on such grounds.

The absence of the rules of criminal procedure from a delinquency proceeding does not mean that there are no rules governing such a proceeding or that the juvenile court judge is given a *carte blanche* authority to improvise his own procedures. While juvenile court acts rest on the theory that "the State is *parens patriae* rather than prosecuting attorney and judge . . . the admonition to function in a parental relationship is not an invitation to procedural arbitrariness."⁵⁰ Unquestionably, "the customary rules of evidence shown by long experience as essential to getting at the truth with reasonable certainty in civil trials must be adhered to. The findings of fact must rest on the preponderance of evidence adduced under those rules."⁵¹ The customary rules of evidence and the due process clause of the fourteenth amendment of the United States Constitution and its counterpart in most state constitutions require that the right to confrontation of witnesses and cross-examination of adverse

⁴⁸ *Id.* at 340-41, 153 N.E.2d at 512.

⁴⁹ Pound, *The Place of the Family Court in the Judicial System*, 10 CRIME & DELINQUENCY 532, 542 (1964).

⁵⁰ *Kent v. United States*, 383 U.S. 541, 554-55 (1966).

⁵¹ *People v. Lewis*, 260 N.Y. 171, 178, 183 N.E. 353, 355 (1932).

witnesses be accorded a child in a delinquency proceeding.⁵² Professor Wigmore has said that granting judges "the *power* to commit to long detention any person without giving the person *any opportunity to hear the substance of the testimony against him*, is fundamentally unsound and practically dangerous."⁵³

It is likewise true that a judgment in a delinquency proceeding cannot be grounded on hearsay. "Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feelings, the hopes and fears of social workers have no more place in Children's Courts than in any other court."⁵⁴ It is true that by reason of the informality of the juvenile court proceeding in which police officers and social workers give "reports" instead of having their testimony elicited by questioning, some of the evidence presented is clearly hearsay. But it is also true that some hearsay testimony creeps into every case, civil and criminal, under the most rigid rules governing adversary proceedings. This is corrected, however, by the judge's admonishing the jury to disregard such testimony. When the court is the trier of the facts, the judge sustains the objection and assures counsel that the objectionable hearsay will be disregarded and stricken from the record. It is the writer's practice in juvenile proceedings to state that everything in the reports given by policemen and social workers which is not competent will be considered as would the opening statement of counsel, that is, not as evidence but rather as being what the witness expects the competent evidence to show, and that any hearsay contained in the report is rejected unless it is later supported by competent, sworn testimony. Unquestionably, hearsay has no place in any juvenile court proceeding and there is no reason to believe that juvenile court judges do not share the legal profession's traditional attitude toward hearsay.

In the juvenile court's early eagerness to employ the behavioral sciences, especially in social work, in the solution of its many human problems, there was a marked tendency to allow the opinions of clinicians to overly influence the court's judgments. One heard such expressions as "trial by probation officer," "social workers run

⁵² In *Bullard v. State*, 192 S.W.2d 329 (Tex. Civ. App. 1946), the following is found:

The accused in such cases should be faced by witnesses who give evidence against him and should be permitted to hear such evidence and have an opportunity to cross-examine the witnesses. . . . We are of the opinion, therefore, that the trial court erred in considering statements of a material nature made out of the presence and hearing of the appellants. *Id.* at 332.

⁵³ 5 WIGMORE, EVIDENCE § 1400, at 145 (2d ed. 1940).

⁵⁴ *People v. Lewis*, 260 N.Y. 171, 178, 183 N.E. 353, 355 (1932).

the court," and "the decision was right socially but wrong legally." With the court's development and maturation, the clinical reports remain very necessary and important, but they now receive only the consideration that the law permits. Accordingly, this writer asserted in a 1963 opinion:⁵⁵

As in no other Court, the judge in the Juvenile Court must take under consideration the opinions of psychiatrists, psychologists and social workers. But this is not to say that [these clinicians] . . . are charged with the responsibility of making the judge's decision. The distinction between the role of the judge and the clinician must not be blurred. It is the clinician's job to make findings and recommendations; it is the judge's job to make the decision after careful consideration of the clinical reports and the [other] evidence in the case.⁵⁶

True, the court is required to act in the best interest of the child, but this requirement applies *only* to the child who has been legally determined to be within the court's jurisdiction. As was said in *In re Coyle*:⁵⁷ "Juvenile Court procedure has not been so far socialized and individual rights so far diminished that a child may be taken from its parents . . . simply because some court might think that to be in the best interests of the state."⁵⁸

II. CONCLUSION

Mr. Justice Fortas recently said that the theory of the juvenile court is "rooted in social welfare philosophy rather than in the corpus juris."⁵⁹ In this article an attempt has been made to show that the juvenile court theory *is* rooted in the corpus juris, and deeply so, and that it represents growth in legal theory rather than a departure therefrom. The problems of the juvenile court arise from the failure of society to provide the necessary facilities and personnel with which to achieve the aims of its social welfare philosophy rather than from any shortcomings in the court's legal procedures. As was said by Senator Estes Kefauver, Chairman of the Senate Subcommittee on Juvenile Delinquency: "There's nothing wrong with the juvenile court idea, there's nothing wrong with the great majority of juvenile courts, that a little understanding, community sup-

⁵⁵ *In re Larry & Scott H.*, 192 N.E.2d 683 (Ohio Juv. Ct. 1963).

⁵⁶ *Id.* at 687.

⁵⁷ *In re Coyle*, 122 Ind. App. 217, 101 N.E.2d 192 (1951).

⁵⁸ *Id.* at 219, 101 N.E.2d at 193.

⁵⁹ *Kent v. United States*, 383 U.S. 541, 554 (1966).

port and proper staffing won't cure."⁶⁰ It has been this writer's experience that whenever a youthful law violator has been placed in a facility where he would receive the care, control, and education that he required, counsel and parents have expressed gratitude, with no suggestion by the latter that their children had suffered a denial of constitutional safeguards. As was also said by Senator Kefauver: "[T]here are few social problems to which the public has devoted more hysterical wringing of hands and less intelligent thinking than juvenile delinquency."⁶¹

Perhaps society's glaring failure to provide the juvenile court with necessary facilities is best demonstrated by noting that the Ohio Youth Commission has a present existing need for residential schools to accommodate four thousand children but has facilities for only 1800 of these children.⁶²

It is ironic that the juvenile court, after having withstood many attacks which, of course, have contributed to its refinement and maturation, should now be inundated by criticism which arises from recent criminal court cases involving the denial of constitutional guarantees. This failure of the adversary system to recognize constitutional rights should not be permitted to vitiate the juvenile court procedures which have developed over the centuries in the recognition that children are not adults and that their problems require procedures which are different from those designed for adult criminals. With the necessary public support and with proper recognition by the bar and the law schools, the juvenile court can continue to pioneer in the field of individualized justice and to render children the service for which it was designed.

⁶⁰ Kefauver, *The Juvenile Court System*, in SELECTED PAPERS, 18TH ANNUAL CONFERENCE OF THE NATIONAL COUNCIL OF JUVENILE COURT JUDGES 8 (1955).

⁶¹ *Id.* at 12.

⁶² The author derives this information from his experience during the last four years as a member of the Youth Services Advisory Board of the Ohio Youth Commission.