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THE ADOLESCENT IN COURT

Paul W. Tappan

The author, of New York University and Queens College, conducted the court research on which this short appraisal and his book, *Court for Wayward Girls*, were based as Interdisciplinary Research Fellow (1943-1944) of the Social Science Research Council in Sociology and Law, in which fields he holds advanced degrees. He believes that methods now institutionalized in Children's Court and coming into usage in new Adolescent Courts are both significant and hazardous procedures. They threaten presumably (and often in fact) innocent defendants with involvement in contaminating machinery of "liberalized" but correctional quasi-criminal courts.—EDITOR.

Interest in the youthful offender against the law has shown a marked and fairly continuous growth in recent years as the statistical data of the criminologist have made clear the large and apparently increasing role of the adolescent in the commission of serious crimes. The modification of the rigorous application of criminal penalties to children came early in modern criminal law as a result of humanitarian considerations rationalized by theories of limited responsibility. And the United States in recent years has introduced various devices in the application of specialized attention to the problem. Associated with these innovations has been a significant movement toward the extension upward of the new techniques beyond the 14-year common law age limit of non-responsibility to the older adolescent age groups.¹ The general adoption of juvenile court laws, many of them with a coverage through the adolescent years has been an important part of this development. A concurrent growth of special institutions for the training of the young and the beginnings at least of a reformatory and non-punitive philosophy have occurred.

During the past generation a few jurisdictions have established courts specifically to deal with the adolescent, paralleling the juvenile court system; these particularly in states where the upper age of the delinquent group is low. For the most part provisions have rarely been made for the legal handling of youths over 18. Yet the recent proliferation of tribunals in New York State and their beginnings elsewhere attest the growing consciousness of the need for more effective work with incipient criminals before their anti-social careers are fully developed. It becomes a matter of great importance, therefore, that the philosophy and methods adopted by the new adolescent courts be designed realistically to deal with the pre-adult criminal: that reformation and rehabilitation may reasonably

¹ At common law there was a rebuttable presumption of the incapacity of a child aged 7 to 14 to commit a crime.

be anticipated from the methods used. By careful analysis of the experimental techniques already initiated we may prevent the spread of apparently ill-designed devices and their natural entrenchment in institutional forms. Court-ways and correction-ways tend to persist without regard to their merits through the vesting of interests and the established habits of personnel, resisting modification once they are formalized. Moreover, the zeal with which a method once established is carried on and defended against change is not, unfortunately, a reliable index of its social effectiveness or utility.

The writer's aim here is mainly to analyze a few of the central tendencies of the developing adolescent court system, based in large part on the practices of New York courts which typify certain current trends and which have spread more widely here than have the experimental courts in other states. We may expect other jurisdictions to look for their own methods to the models established in New York.

The central issues in the evaluation of courts as social institutions are these: *What ends are sought and how nicely do the means proposed conform to the alleged objectives?* The political inclination simply to define a broad and unimpeachable idealistic goal may be used to inspire support among men of good will for a cause toward which the detailed implementing procedures could not conceivably conduce. And popular methods may be used when the social consequents are concealed or unknown. Infinite social and individual tragedy results from non-critical acceptance of fine phrases without skeptical and empirical investigation of the emergent methods and the consequences entailed by them. Nowhere is this truer than in the areas of legal activity. Indeed, the dangers are enhanced herein by popular ignorance of the procedural devices and institutional practices, the day-to-day actualities of the criminological processes. Even the professional criminologist may be wooed through generalized utopian proposals and, in the heat of his passion for the ends of ideal justice, be deceived by the realities of personnel and methods in operation. He who is concerned to deal effectively with the criminal must consider ultimate goals, but his primary, continuous vigilance must attach to the immediate, on-going processes by which the actual results are achieved. With apologies to Maine, *injustice* may be secreted in the interstices of judicial and institutional procedure. It behooves the criminologist therefore to evaluate, experiment, and reform pragmatically: the test of a technique is in its operational effect, not in its general purpose avowed *a priori*.

In the instance of adolescent courts special difficulties arise in the working out of means and ends. There is at the start

considerable conflict in the philosophies and goals ascribed. Indicative of the problem without its exhaustive consideration: reformative and rehabilitative attitudes struggle with lagging punitive ones; theories of juvenile non-responsibility and determinism competing with those of adult free will and moral accountability emerge fused and confused in concepts of partialities of responsibility; a subjective approach of religious exhortation vies with objective clinical methodology; objectives of prevention advance and perish under the fire of traditional correctional treatment philosophies and techniques; purposes of progressive individualization are embraced, then strangled by agencies become bureaucratic in "efficient" standardization. Goals have not been clearly enunciated. They reflect a variety of institutions and attitudes genetically antecedent to the youth courts (principally the juvenile courts and criminal courts) and are expressed differentially in the behavior of court personnel. To add confusion to chaos, the methods used in the total processing of the offender show neither internal consistency nor over-all adaptation to avowed purposes. Where a court has established some homogeneity of general goal, it lacks, under our total institutional organization, the needed philosophical and methodological integration with our systems of correctional, parole, referral, and other consanguine agencies. A logical continuum of effort and purpose being impossible, in our methods of dealing with the criminal, the frequent result is nullification of assorted aims.

Antagonism toward legal "red-tape" is a common reaction among reformers and laymen generally. As the writer has said elsewhere, "It proceeds from the belief that the spirit of social amelioration is lost in the form of legal procedure: that indirection, delay and distortion derive from the circumlocutions required by law; that the objective sought is often not attained because of seemingly absurd technical requirements. The inclination then it to cut tape, abolish form, by-pass the rule and take the direct route to utopia." Without advocating the preservation of procedural formalities for their own sake, the criminologist must recognize that while legal forms will not alone accomplish substantive objectives, court procedure may very effectively prevent or facilitate the effectuation of policy. Limited in large part by procedural regularities are such vital matters as selection of defendants for trial, safeguards in adjudication to the accused and to the state, operational efficiency, homogeneity of purpose and effort, etc. Procedural rules are required in order that the determination of legal issues may be carried on with some efficiency and predictability. It is important then that the procedures used be designed to accomplish the ends that are sought. The chief concern of this paper

is the procedures which obtain in the adolescent courts in their relation to the social policy of these courts. Let us consider the development of these tribunals and their procedures.

Since the courts for adolescents are in the main an extension of the principles inherent in the juvenile court movement, the statutory provisions for the older group and their implementing judicial and correctional methods mirror many of the precedents established in dealing with neglected and delinquent children. Their conjugate development in New York is clear upon inspection of the legislative history and the procedures of the adolescent courts: The statutory purpose apparent in each has been to assist, supplement or replace parental authority in prevention and rehabilitation among young offenders. (As noted above, however, there is much cross-purposing of the more specific goals toward which the courts appear to strive.) The substantive statutory provisions in both levels of courts are of a general character, basing adjudication upon a course of conduct deemed to be mediately or immediately anti-social. In New York the special treatment of juveniles and adolescents was provided for by "incurability statutes" as early as 1882 whereunder individuals of youthful age (14 to 21 years under the statute of 1882, 12 to 21 under the Laws of 1886) who were in danger of "becoming morally depraved" might be institutionally segregated.² The Children's Court Act of 1922, amended in 1924, defining juvenile delinquency and the Wayward Minor Statute of 1923, both designed to forestall "moral depravity," reveal their common origin in a succession of these broad incurability statutes. The Youthful Offender Law of 1943, replacing the Wayward Minor Act as the basis for jurisdiction in the Courts of Special Sessions and the County Courts of New York, has operated in a fashion similar to that which previously obtained: its chief function has been to lend statutory formality to the previously existing procedure.

Despite some diversity of ends and means referred to above, there have evolved in the adolescent courts of New York State similarities and common problems which point the way of possible continuing development in this state and elsewhere. Very largely these uniformities are consistent with and products of the juvenile court system and its methods. The following similarities are important in understanding the operation of these courts: A greater degree of informality of procedure characterizes the adolescent courts than the ordinary criminal courts for adults; this varies considerably from court to court, to be sure, the County Courts operating under the Youthful Offender Act being considerably more formal than the tribunals of the Mag-

² See Laws of 1882, c. 410, sec. 466; Laws of 1886, c. 353, sec. 1466; Laws of 1903, c. 436.

istrates' system, yet by and large the semi-chancery procedure of the juvenile court has been adapted to the adolescent branches.

Separation from adult offenders has also been set up as a goal and partially achieved: where the separate courts exist there is at least a segregation for adjudicative purposes. In pre-adjudication and pre-disposition remand confinements, however, we have not attained complete institutional segregation. Even children, as well as adolescent boys, are kept in the new Tombs, and young girls are often remanded during court adjournments to the Women's House of Correction. A similar situation exists relative to institutions of final commitment; despite the existence of some institutions designed especially for adolescents, separation is far from perfect even for the limited number of youths who go through the specialized courts. In spite of the flood of ink that has been spilled on the issue of contamination through institutional contact, we grind forward very slowly to remedy our obvious correctional defects.

In all the specialized courts at least a lip service is paid to the ideology of "individualization" based upon social investigation. Yet, the term has little specific content in practice: such individualization as there is appears clearly to be based more upon idiosyncrasies of probation officer or judge handling the case than upon the defendant who receives "treatment." When non-specialized and non-individualized institutions and personnel continue to be used in treatment, a change merely in adjudicative techniques will not assure greater individualization. It is absurd to use the term in application to our traditional correctional facilities or, indeed, to modern "office probation." A non-punitive and individuated approach cannot be superimposed automatically and formalistically upon procedures, practices, institutions, and personnel that have long been imbued emotionally with a vindictive and lumping reaction toward offenders. The application of the term "socialized" or its equivalent does not produce modified or beneficial results, but may in its convenience for rationalizing and idealizing *any* method employed, serve to reenforce and perpetuate devices actually inappropriate or downright damaging. Too, individualization of offender treatment can be meaningful only if there has been devised from experience a system of methods for dealing with types of individual problems; a sharing or collaboration of experience, and consistent application of similar tested methods to similar situations. The tendency of the adolescent courts in operation has been quite different from this: The tradition of autonomy of the individual officers of the court has persisted. In the probation staffs which occupy so central a position in these courts because of the emphasis on

social investigation and supervision, there is generally no real case work supervision — each officer using largely his own methods of investigation, reporting and supervision. More dangerous still, his personal and private prejudices in reference to offenses and offenders, his peculiar notions of causation and optimum treatment techniques may be determinative of the alleged offender's court disposition. The training, philosophy, energy, interest and skill of the individual officers vary tremendously; the relation of the officer to the defendant, therefore, may be decisively beneficial or destructive depending on the officer whom he happens to "draw."

As to the judges, they too, and by even stronger tradition, operate as isolated autonomous units with little or no interpenetration among them of ideas or philosophy, without a sharing of their experiences in dealing with the young defendants. The judge's private notions about the role of God, alcohol, sex, or poverty; his general reaction to youth and their offenses, toward punitive or rehabilitative devices; these may be decisive of the fate of the individual defendant. Before Judge A, woe to the unmarried girl who has had a sexual experience and enjoyed it, or who while on remand during social investigation was found to be lazy or uninterested in religion, or to the boy before Judge X who has remained sullen and unrepentant in his court. One judge refuses to extend youthful offender treatment to the sex delinquent; another draws the line at the boy who carries knife or gun. Though effort is made in some of the adolescent courts to give the assignments there to judges interested in adolescent problems (no perfect criterion of selection, to be sure), the judges in all these courts serve also in courts of adult criminals. Obviously they do not change their methods, their roles, their attitudes, in any profound way as they shift from one court to another. Their discontinuous service moreover makes for further overlap and conflict as the adolescent may be confronted by a succession of judicial personalities, each using his own peculiar methods.

A further difficulty of a practical nature emasculates the treatment aspirations of the experimental courts, namely the quantitative and qualitative inadequacies of the probation staffs upon which successful individualization is so largely dependent. The Seabury Commission inquiry as well as other reports have revealed that the criminal courts and the Domestic Relations Courts of New York City are pathetically lacking in numbers of trained personnel to carry on effective case work.³ The only tribunal credited with good probation has been that of General Sessions wherein relatively but a small

³ Report of the Joint Committee on Probation in New York City, 1942.

part of the adolescent adjudications and supervision occurs and which, moreover, deals with alleged offenders only after a more or less extended preliminary exposure to the customary run of the mill procedures of the police, magistrates courts, grand jury, and detention. Its facilities are available too only after the average adolescent offender has gone through a series of prior lesser violations of the law with resulting experiences in the lower courts. To expect successful unconditioning and reconditioning of character traits by the General Sessions probation department is excessively optimistic. The law's delayed solicitous concern for the adolescent's plight appears to be a piece of pretty but unfunctional embroidery appended to a coarsely woven fabric of neglect.

The lacks in probation personnel are associated with an anomalous perversion of the probation process: so excessive a proportion of the probation officers' time is devoted to the preliminary work of social investigation of their cases that little remains for the vital and truly creative work of supervision. In consequence commitments are too frequent from some courts and in others the periods of probation too short, the supervision itself a routine of superficial, mechanical office appointments. Investigation is, of course, a condition precedent to supervision, yet when the former consumes the officer's energies, effective case work and individualization are impossible — the substance if not the form of probation is abandoned.

Two basic trends in adolescent court operation aggravate the losses of ineffective probation — one involving chiefly a substantive issue, the other procedural, though they are functionally related. The former is the inclination, under the very general statutes, to ignore or assume the offense alleged to have been committed and to concentrate attention on the individual and the social problems represented by the case. This emphasis is permitted and encouraged by the generality of terms employed in the statutes by which the youthful offenses are defined. The theory — often plausibly presented — is that for reformatory, preventive therapy the crime itself is irrelevant, being merely symptomatic of personality and of the social factors which themselves constitute the primary objects for constructive manipulation: that preoccupation with the offense, its proof and its punishment, represents misplaced attention when it is the person and his character which must be treated. The thought is seductive: its results are potentially catastrophic to the adolescent before the court. For a *specific offense* against the law, proven in due process by proper evidence is the clearest indication of the need for therapeutic measures, based upon facts rather than idle speculation, biased personal philosophy, or inadequate social investigation. Where atten-

tion is directed *ab initio* to social factors and not to offense, the great danger — in some of the courts dealing with the young a consummated reality — is that the court will come to attempt to deal with all social problems presented to it, without regard to whether or not a violation of the law has actually occurred, or whether the problem is amenable to constructive treatment through a court.

Aside from the fact that the indiscriminating treatment of all social and behavior problems violates the tradition of criminal court operation, its faults even within the framework of its rationalizing philosophy are obvious. Chiefly in that the court system is not designed to deal with problems which are not directly associated with law violation: The philosophies of courts, commitment institutions, and probation bureaus are preponderately correctional and punitive. Their roles have been clearly assigned in the mind and reactions of the defendant by the stereotypes of the cop, the criminal court, the reform school, and the probation officer. Similarly the public attitude toward these institutions and the adolescents subjected to them renders it wholly unrealistic for the court to attempt to operate as a general social agency; they bear the indelible stamp of public stigma and ostracism. *Thus the frame of reference within which the court may legitimately and effectively operate is narrowly limited by public and institutional definition.* Attempts therefore at comprehensive social work are sheer folly: the problems of domestic relations, psychological pathology, occupational maladjustments, etc. are not within the sphere of appropriate function. This is the more obviously true when no offense has been shown — haphazard manipulation by the unskilled or partially trained probation officer in areas of specialized therapy adds misapplied treatment to the injustice of court and institutional contact.

Even when an offense has been proven, far greater success in treatment could be achieved by the referral of problems requiring trained and non-correctional specialized assistance to proper public and private agencies. (Yet, the adolescent courts are far from attaining a nice integration with the varied social agencies of the city, though the fault is not wholly their own.) In addition to the inappropriateness of crimino-legal handling of general social problems, the absurdity of this trend is enhanced by the insufficiency of personnel in the courts. Where, for optimum results, they should work experimentally and intensively on a carefully selected sample of favorable probation risks to insure creative individualization and reformation, the expansive drive in some courts toward problem-solving for all-comers has resulted in attenuated, inexact, and ineffectual service. The proper sphere of social agencies and behavior

clinics should not be usurped by the courts, however benevolent the motivation. It appears clear that the work of crime prevention must be performed, if at all, *before* court contact and by non-court agencies. *The personnel of correctional court and institution is not equipped to do a non-correctional job.*

Not only do the generalized provisions of youth statutes as to substantive offense facilitate this trend toward unrestricted expansion of coverage with its associated injustice and ineffectuality but also the procedures of the courts encourage the same result. In fact the developing procedural methods are often more at fault, for, though in some of the courts a specific criminal complaint must first be lodged against the defendant before it can be reduced to a youthful-offender charge, the administrative techniques tend to nullify this protection of substantive definitions. The chief device in use — varying somewhat in forms but similar in effect — is that of the *consent procedure*. The defendant is induced to consent to the waiving of certain of his procedural rights: he thereby sanctions 1) an investigation by a probation officer of his social and personal background *before* a hearing is held in his case, 2) an adjournment during the period of investigation when he may be either paroled or remanded to an interim institution for temporary confinement, and 3) decision by the court on the basis of the investigation both as to guilt and disposition.⁴ This last implies the use of hearsay information from a social report and, stranger still, that the defendant may not — in fact usually does not — even know the nature of the facts or surmises alleged in the report on the basis of which he is adjudicated. This method differs from traditional procedure in that probation investigations are customarily conducted only after trial and conviction, the findings being used to determine in part the desirable treatment-disposition for the case. Information obtained *after* an alleged offense (e.g. from neighborhood gossip and opinion) is excluded on the issue of guilt because it lacks sufficient probative value for the function of adjudication, though it is admissible after conviction to guide the sentencing process. It must be apparent that many defendants whose consent is secured in the name of “socialized procedures” are unaware of the nature and extent of their lost rights: the courts, of course, are wont to minimize these and in one tribunal at least the principle of “implied consent” has been deemed sufficient!

The danger inherent in the current procedures is that, in concentrating attention upon the non-criminal issues in the social genesis of the case, the guilt of the defendant will be presumed without proof or with insufficient proof. The devices

⁴ Under the youthful offender statute, however, adjudication is based upon defendant's plea of guilt or by a finding of three judges if he pleads innocent; this process occurs after the pre-adjudication investigation.

used encourage the risks — alluded to above — that the existence of an offense will receive little consideration while the court is seeking to find individualized causes and cures of behavior problems. Whereas proper and convincing evidence of law-violation should be a condition precedent to *both* the social investigation and the disposition of the cases, the court may require no evidence at all in reference to an offense, may accept testimony of dubious probative value, or may adjudicate on a merest scintilla of proof.

The observable effects are normal consequents of the prevailing methods of procedure in these courts. Since emphasis is upon the socially pathological situation of the defendant, determinable only after investigation, the court inclines to look for a social problem in all cases which come before it and, having found a problem — as one easily may in the lives of non-delinquents as well as delinquents — to adjudicate and apply treatment. This is the defect of 1) *insufficient selectivity of cases and unwarranted adjudication*.

Secondly, the technique implies an excessive and unnecessary drain upon probation facilities already overtaxed in requiring investigations of all cases whether or not guilt of an offense has been or can be proven; a postponement of investigation until after adjudication would not only husband the limited probation resources but would effect a proper legal selection of cases for social investigation and more intensive treatment. It would at the same time mean that adjudication could not be based upon hearsay evidence in probation reports derived from sources whose competence and credibility cannot be tested. This is the defect of 2) *an inefficient and hazardous use of scanty probation facilities for purposes from which the law has traditionally and properly excluded them*.

Perhaps most serious of all, the defendant offered an opportunity for adolescent court treatment is coerced — however subtly — to consent to the deprivation of his procedural rights and his adjudication as an offender is rendered highly probable. His consent to preadjudication investigation may require a confession of guilt to an offense or may operate as the equivalent of such a confession in the likelihood that investigation will reveal a social problem considered sufficient to warrant treatment regardless of law violation.⁵ Where, as in some of

⁵The choice which the adolescent must make is shown in this exposition by one of the Adolescent Court judges:

"The adolescent is asked if he consents to an investigation by the probation officer and to the consideration by the court of the written report on the investigation, prior to deciding either of the two motions. This consent is requested to prevent any claim later that the court passed sentence unwarrantedly and in violation of the defendant's rights. The adolescent's consent secured, both matters are adjourned." . . . "If the adolescent were not to agree to all these things, we would not proceed, and the case would have to go to the criminal court indicated." In-service training program, Magistrates Courts, 1944, pp. 30, 32.

these courts, a large proportion of the cases are put on probation, a defendant may be presented in effect with a choice between certain conviction with a probation sentence or an ordinary criminal court trial which might result either in discharge, probation, or commitment to an institution. The temptation to the defendant, innocent or guilty, is to take the certainty of probation as a wayward minor (a non-criminal category, in legal theory) rather than to stand trial in the uncertainty whether he will be freed or incarcerated. The device smacks strongly of the popular techniques by which prosecution is made easy, quick, "efficient," and the conviction rate kept at a very high figure, but through which the defendant and the people are left without proper protection. As in the familiar "copping of pleas," the defendant is assured of conviction but reduced sentence. If innocent, the conviction is not justified: if guilty the public may not be secured by an adequate preventive detention. If such discretionary procedure is justified in the ordinary criminal court in dealing with matured individuals on the grounds of expediency or efficiency, there is certainly not such justification in dealing with formative adolescents. Too, the personnel in the adolescent courts, including assigned attorneys, are less inclined to inform the defendant or to interpose for him his legitimate defenses, rationalizing their conduct in terms of the socialized procedures in an individuated court. This is the defect of 3) a "*bargain-counter justice*" wherein adolescents may be induced to accept conviction by assurance of leniency without reference to actual guilt.

One further characteristic of some of these adolescent courts should be noted as a fault affecting procedure and, more particularly, the welfare of defendant and state: The absence of attorneys to represent the interests of the parties. In the Wayward Minor Court there is no prosecuting attorney and almost never a defense attorney. In the Magistrates' adolescent courts for boys, though there is a prosecutor, generally no attorney appears for the defense. The presence of both prosecuting and defense attorneys in the court is desirable, especially where tribunals are held in private session, to help check the development of possible abuses. General and Special Sessions Courts, operating under the Youthful Offender Act, do provide counsel from the Legal Aid Society. It has been noted by the writer elsewhere that in courts where defendants are unrepresented their legal rights are not accorded the careful consideration which the law is assumed to provide. A greatest value in the contentious procedure of the criminal law is that it furnishes the mechanics for full exposure by the opposed attorneys of the facts and arguments in support and derogation of the defendant's innocence, leaving to the judge the sufficiently difficult

task of impartially sifting and weighing the evidence before decision. It is psychologically impossible for one individual to carry on the three functions of prosecution, defense, and analysis of evidence with the completeness, objectivity, and accuracy that is needed for the selective determination of delinquent behavior among adolescents.

Preventive Justice and Youth Courts

To summarize, at the core of the writer's thesis has been the contention that *the operation of the adolescent court* should be specifically and rather narrowly defined, that it *must be predicated upon*: 1) *definite and precise statutory offense or conduct categories*. Administrative abuse is invited when an agency is given a free hand to adjudicate cases on policies developed by itself *ad hoc*. This is only the more true when its edicts may result in incarceration in correctional institutions. 2) *the function of the criminal law* — which though mitigated for certain special classes — remains correctional and inhibitory. Moralization, apart from policies established in the law, religious proselytizing, social problem-solving among non-delinquents — these and other efforts of "socialized" courts tend to undermine legal justice itself. 3) *the nature of the facilities as they naturally exist, institutional and personnel*, rather than an idealized view of them. The immediate defendant is exposed to existing facilities. To establish rules, standards and procedures fitted to a merely imaginary treatment system dis-serves both the defendant and the community.

We must face realistically the inherent limitations of a legal process which is designed to enforce specific rules through their breach. The law may not (aside from such special situations as in attempts and conspiracy wherein, however, definite overt acts leading proximately to a crime must be proven) impose anticipatory control upon the individual who has not yet offended against it: Its character intrinsically is to operate through postliberation. It cannot without grave injustices prevent the first offense through efforts at personality diagnosis and treatment. For its techniques and facilities are not such as to improve the pre-delinquent behavior problem; nor have the findings of criminology taught us yet what forms of non-criminal conduct are sufficiently likely to lead into actual offenses to warrant the application of criminal court facilities for preventive purposes. If the prescribing of rule and penalty in the law will not deter — as so frequently they do not — preventive justice can operate only by treatments designed to prevent recurrent violations. Individualized therapy by the court is possible and can be developed to a finer degree where specifically delinquent conduct has been shown. Then reformatory, rehabilitative, and preventive techniques may be applied.

It is no criticism nor absolute weakness in the control techniques of the criminal law that its sanctions must await the failure of its rules. For the criminal law and its penalties are a last resort in the system of social controls, implying failure of the home, school, church and community to impose the measure of required conformity. The agencies and influences of the modern community for conditioning and reconditioning standards of conduct are legion. Many of them — in the aggregate — are quite effective in establishing the minima of uniformities which our society requires. Each agency of control has its function, its area, its own techniques and consequences. New agencies may be needed and old ones discarded as ineffective or harmful. It is in general dangerous, however, to allow an agency of control to expand outside the control area which is proper to its means and methods. The institutions and social agencies of the community, public and private, are equipped in personnel, method, and function to conduct pre- and anti-delinquent training. Preventive work may be done best by home neighborhood and church or, in their failure, by social agencies especially designed for familial, financial, occupational, medical, psychiatric, and other therapy. Where all of these fail, as evidenced by specific overt misconduct violative of the law, the courts for delinquency must be resorted to for specialized and intensive therapy and retraining.

For more effective action in our communities the adolescent court should, when confronted by a non-delinquent, refer the case to appropriate social agencies of the community. Or when the delinquent before the court could profit most from the application of the special facilities of the social agencies, the corrective therapy of the court should be supplemented by exploiting those facilities. When needed agencies or institutions are lacking in the community, the court should urge and cooperate in their establishment, rather than attempting to act as an inexact and unjust substitute. By a proper legal selection of cases for its specialized treatment, the court must learn to apply its methods and treatment on the basis of empirically-derived, pragmatically-tested, and cooperatively-shared experience.

In place of the consent procedures which have developed in these courts, it would be more logical, legal, efficient, and protective to individual and social interests to reinstate some elements of traditional procedure which have disappeared — apparently out of the symbiotic influence of the Children's Court. A general offender information should be drawn to cover the criminal offense charged. Upon arraignment, opportunity should be given for a short adjournment for the defendant to procure the aid of counsel, friends, and witnesses. Where he

cannot himself obtain counsel, an attorney should be assigned by the court. Obviating the use of the consent device, a full hearing should be held on the adjourned date to determine whether the specific offense charged was committed by the defendant. When no delinquency can be proven by the ordinary methods of law, the complaint should be dismissed. If the defendant is found to be guilty beyond a reasonable doubt, he should be adjudicated at once as a youthful offender (or a wayward minor), with examinations and investigation following upon the decision to determine the treatment methods to be used. Whether the disposition be harsh or lenient could then depend on both the offense proven and the individual's prior history. By this procedure all adjudicated individuals from 16 to 19 would be known as youthful offenders, just as all offenders under the age of 16 are now known as juvenile delinquents. Though there would not in this case be a discrimination among individuals as to those to whom the privilege of the youthful offender method should be applied, it is strongly arguable that the result would be superior:

1. All defendants of this important age category need the special attention and carefully devised plans of treatment which can come from a specialized court.

2. The distinctions between those who may and those who may not be given youthful offender treatment are at best dubious — based upon highly questionable and little-defined criteria of degrees of moral responsibility. The standards are too vague to entrust them to the discretion of a particular judge, district attorney, or probation officer.

3. Innocent defendants under this procedure need not be seduced to concede their guilt to escape the hazards of criminal court trial and disposition.

4. The probation departments could do more intensive supervisory work, being spared the amount of investigation now required.

5. The courts would not then operate under a threatening cloud of unconstitutionality.

6. A variety of treatment methods could be used under this procedure according to the individual's requirements, with no necessity of molycoddling habitual criminals. Indeed this procedure would tend to emphasize more clearly the need for greater variety in facilities for therapy and perhaps to encourage their growth. A truer individualization of adolescent treatment should be the result.