The Future of the Juvenile Court: A Theoretical Framework That Fits

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Abstract

The juvenile court has been subject to increasing criticism over the years, particularly with regard to its handling of delinquency cases. This is in part the result of an inaccurate view of the court as primarily a criminal court that adjudicates crimes committed by children. This article proposes an alternative model for the court, one that encompasses its jurisdiction over dependency and status offense cases, as well as delinquency cases.

In describing this new conception of the juvenile court, an analogy is made to a “bankruptcy” court that intervenes when family members violate the laws regulating their relationships to one another. This new juvenile court would not take direct responsibility for the rehabilitation of child or family. Instead, it would use its power to hold private and public caretakers accountable for fulfilling their roles as supervisors and habilitators of children. The article concludes by exploring the advantages and potential disadvantages of this new vision of the juvenile court.

Over the years, trenchant criticisms have undermined the legitimacy of the juvenile court. One attack decries the court’s overreaching, particularly its jurisdiction over status offenses and its neglect of young offenders’ due process rights. A second faults the court’s failure to hold young offenders accountable and to protect society from their continued depredations. A third reproaches the court’s inability to deflect young delinquents from subsequent criminal careers.

Significantly, these criticisms have focused principally on one part of the court’s jurisdiction: juvenile crime. Moreover, the criticisms have drawn much of their sting from an implicit comparison with the principles that guide adult criminal courts. In these respects, the criticisms reflect a common misconception of the nature of the juvenile court, namely, that it is nothing more than a special kind of criminal court that handles crimes committed by children.

Despite their narrow focus, the criticisms have eroded confidence in the court as a whole. In response, legislators have carved away pieces of the
court’s jurisdiction by expanding the category of offenses that must or can be waived to the adult court. Many states have “de-criminalized” status offenses such as truancy and incorrigibility, and have invested in social service systems to reduce long-term court intervention in abuse and neglect cases.

This article describes a conception of the juvenile court which seeks to preserve its social value by providing a coherent rationale for both its wide and varied jurisdiction and its distinctive mode of operation. Central to this conception is rejection of the idea that the juvenile court is best conceived of as a specially designed criminal court to deal with crimes committed by children. Instead, the court is best understood and operated as a civil court responsible for administering a body of law that regulates the conduct of parents and other caretakers, as well as children. Like all law, this body of law is primarily concerned with producing just relationships. With regard to juvenile court cases, this means vindicating the rights of parents, children, and caretakers, and imposing the responsibilities they have in relation to one another and to the wider society. These laws and the institutions that administer them are also in place to advance certain practical goals, namely, avoiding future crime and other forms of social dependency by assuring that children are decently cared for, effectively supervised, and properly trained for the tasks of citizenship.

This conception of the juvenile court reorients public expectations and some aspects of the court’s internal operations. First, it increases emphasis on the court’s dependency jurisdiction. Second, it encourages important changes in the adjudication of delinquency cases. The new focus on child rearing requires the court to look behind the offenses of children to the context of their upbringing. To do this, parents and other caretakers must be brought in as parties before the court. Their presence is important partly because their actions may have contributed to the children’s offenses and partly because they will often be asked to assume specific responsibilities for supervising and caring for their children as part of the court’s disposition of the case. Third, the conception also suggests a principled basis for deciding which juvenile delinquency cases should be transferred to the adult court, namely, those cases that are distinguished not only by the seriousness of the offense or the offender’s potential for rehabilitation, but also by the offender’s intent and the persistence of the offending.

First, this article discusses the jurisprudential principles underlying this alternative conception of the court. Next, it describes the concept in greater detail. Finally, it explores advantages and disadvantages, pointing to some of the many issues that would have to be resolved before this model of the court could actually be implemented.
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Jurisprudential Principles of the Family Bankruptcy Court

The claim that the juvenile court is best conceived and operated as a civil court overseeing the conditions under which children are being raised is based on four broad jurisprudential principles.

- Structuring child-rearing relationships is ultimately a public responsibility. The state rarely interferes with child rearing. However, when there is an obvious and significant default of private responsibilities for caring for children, society, through its legal institutions, invariably steps in. When a child lacks a legal guardian, the court appoints one. When a marriage with children dissolves, the state ultimately decides who will have custody. When parents abuse or neglect a child, the state steps in to prevent future offenses.

One can argue that, in stepping into such situations, the state is simply adjudicating a private dispute between parents and children. But the state’s interests also go to substantive concerns about the adequacy of the arrangements that exist to care for, supervise, and develop children as future citizens. This interest can be justified in practical terms. If child rearing does not go well, society pays a great price later on. Future criminal offending is only the most obvious way that neglected or badly treated children can repay society for their mistreatment. They can become ill, refuse to work, or bear a new generation of children whom they mistreat. Alternatively, society’s interests in child rearing can be justified as a matter of justice. Children are entitled to decent care, adequate supervision, and effective training, and it is the state’s responsibility to see that they receive all three.

- Caretakers can also be viewed as agents of society in relation to children’s delinquent acts. By legally transforming criminal acts committed by children into instances of delinquency, society is shielding children from full moral responsibility for the acts.

This role becomes explicit when, in making dispositions of delinquency cases, the court asks the parents and guardians to assume responsibilities that would otherwise be assumed by a youth correctional agency. When the court returns a young offender to the custody of parents and guardians, it is, in effect, deputizing the parent to act as an effective supervisor and habilitator. When the court makes dispositions that are designed to maintain connections between the young offender and his or her caretakers, the state is sharing the responsibility for custody and development with the caretakers. Insofar as the court operates on the principle of making the “least restrictive disposition consistent with the needs of public safety” and partly substitutes parent and community supervision for state supervision, it is both recognizing and using caretakers as agents of the state.

- Justifications for transferring juvenile delinquency cases to the adult criminal court should include a demonstration that the offense reflected the mature, considered intentions of the offender. Criminal law makes having a criminal intent (the mens rea) necessary to a judgment of criminal liability. Society’s uncertainty about whether children can form clear intentions and have sufficient control over their conduct is one justification for treating crimes committed by children as instances of delinquency. Because children are buffeted by...
impulses and vulnerable to external pressures, their acts are not necessarily reliable indications of their intentions, values, or characters. Thus, children cannot be held morally accountable for their offenses in quite the same way as adults.

If this is true, laws that allow juvenile cases to be transferred to the adult court should require evidence that the young offender had unusual maturity, acted alone, or persisted in committing crimes. The judge or prosecutor could then conclude that the instant offense was intended in a way which justified exposing the juvenile to adult criminal liability. In contrast, the particular offense committed, no matter how serious, tells the court relatively little about the durable intentions and character of the young offender or the offender’s potential for rehabilitation. The just transfer of cases to the adult forum would focus on the intentions of the offender and the chronicity of the offending, as well as on the seriousness of the offense. (For more information on waivers into adult criminal court, see the articles by Ainsworth, by Rubin, and by Snyder in this journal issue.)

An important way in which courts in general, and the juvenile court in particular, act on public problems is to structure relationships by enforcing the obligations, duties, and responsibilities that individuals have toward one another. The distinctive competence of a court, as compared with other social agencies, is that it administers a body of law giving it the power to impose duties on specific individuals. This body of law can be conceived of as serving two different purposes: (1) deontological, to ensure justice, and (2) utilitarian, to accomplish practical public goals. In fulfillment of the first purpose, the juvenile court structures relations among parents, children, and other caretakers in ways that vindicate particular rights and impose specific responsibilities. The second purpose is achieved when the juvenile court advances society’s practical interests in avoiding future crime and other forms of dependency by assuring that children are decently cared for, effectively supervised, and properly trained for the tasks of citizenship.

The role of the court in imposing duties on caretakers and children is often neglected in contemporary views of the juvenile court. Much preferred is the idea that the best response society can have to breakdowns in child-rearing arrangements is to provide material assistance in the form of counseling, financial assistance, or educational services. This assistance is important because it can improve the lives of the parents and children who receive it, and reassure them that society has not abandoned them. However, society can also respond to instances of family breakdown by reminding both parents and children of their obligations, and holding them accountable for the performance of their duties. Indeed, in colonial times, when little material assistance was available, a common public response to breakdowns in child rearing was putting parents of misbehaving children in the stocks! Laws like the one recently enacted in Oregon which make parents responsible for the misdemeanor infractions of their children seem to be in keeping with this tradition of holding caretakers accountable. Another example is family group conferences that involve parents in the adjudication of juvenile offenses and impose duties on them as part of case dispositions.

The Juvenile Court and Family “Bankruptcies”

In recent years, private capacities for the care, supervision, and development of children have weakened and become a source of public concern. Public services are being used more and more frequently to accomplish the important tasks of child rearing. As a result, a distinct role emerges for the juvenile court. Its task is not simply to respond to crimes committed by or against children. Instead, it is to help organize the increasingly complex task of child rearing by intervening in situations where breakdowns in child-rearing capacities have occurred, seeing what needs to be done to achieve minimum standards, and then holding private and public caretakers and children accountable for the performance of their
duties. The court is the only social institution that can use state power to impose such public duties on caretakers and children.

To grasp this image of the juvenile court, an analogy might be helpful. The juvenile court can be likened to a bankruptcy court that oversees a quasi-public institution called family and intervenes when there is evidence that the family is not adequately performing its task of child rearing. The court can learn about family “bankruptcies” in two different ways. First, a family may request court assistance. This happens when, for example, there is conflict over custody in divorce, or when parents allege the incorrigibility of their child. Second, the court itself may declare a family “bankrupt” when family members violate the body of law that regulates their behavior toward one another and the broader society. Such violations include instances of child abuse or neglect, criminal offenses committed by children, and other conduct by children that seems particularly dangerous to their future development such as the status offenses.

Faced with signs of “bankruptcy,” the court can intervene in two different ways broadly analogous to the options available to a bankruptcy court. It can decide to “liquidate” the existing arrangements and transfer the child to the care and custody of someone other than the current caretakers. Or, the court can seek to “restructure” the enterprise, keeping the family together but insisting that caretakers live up to their duties and overseeing the provision of publicly available services that would allow them to do so.

Note that this image of the court is not the image of a parens patriae court. Like the parens patriae court, the family bankruptcy court retains jurisdiction in delinquency, dependency, and status offense cases. The difference, however, is that in the family bankruptcy court, the relationship between the child and the court is a mediated one. The court never assumes direct control over and responsibility for the child. It is no more directly responsible for achieving the goal of rehabilitation than a bankruptcy court would be for returning a company to profitability. Instead, the child remains under the custody and control of others. The court achieves its goals by holding those who remain responsible for the child accountable for performing their particular roles. In structuring these responsibilities, the court is guided by notions of justice, as well as concerns about what would be practically useful in achieving substantive goals.

Evaluation of the Conception: Strengths and Weaknesses

This alternative vision of the court is being proposed to stimulate new debate about the role of the juvenile court. While it is not without its flaws, it also has several attractive features.

First, it is consistent with the country’s political values as they have been enacted over time. Even with all the criticism of the juvenile court, it seems clear that society will not abolish it. Just as society is calling for more emphasis on juvenile crime, it is also becoming increasingly alarmed about runaways, truants, and abused children. Society remains concerned about the conditions under which children are being raised and views the law as a means of regulating conduct in this domain.

Second, the concept seems consistent with developing legal doctrines that view the juvenile as “semi autonomous.” Status insulates children from full exposure to criminal accountability and implicates caretakers in juvenile offending. However, children are expected to assume certain responsibilities associated with making the transition from “semi autonomous” to “fully autonomous,” such as responding to parental control and continuing to attend school.

Third, this model of the court unifies its various functions into one vision of purpose. It provides an alternative to the view of the juvenile court as primarily a criminal court for children and gives proper acknowledgment of and justification for its dependency jurisdiction.

Fourth, the concept encourages the continuing development of the most interesting and exciting programs in juvenile courts. These include family mediation, family group conferences, integrated family services, and the development of varied court dispositions that are administered by case managers from youth correctional agencies.
(For more information about innovative court programs, see the articles by Edwards and by Greenwood in this journal issue.)

Fifth, this model encourages the court to begin thinking in terms of a nexus of care for children created by the biological family, foster parents and guardians when the biological family is not available, and publicly provided services. In addition, it challenges legislatures and courts to explore the use of legal authority to help organize this nexus of care for children from otherwise disjointed private and public efforts.

There are potential problems with this alternative model of the juvenile court. First, it may well be that the authority of the court is ill-suited to the task of organizing a nexus of care around children. Court authority may introduce issues of guilt and blame that destroy rather than help construct proper relationships. Or, it may be that the available technical skills are inadequate to use the powers of the court effectively in this new way. Second, it may be that current race and class biases affecting juvenile court decision making would continue, deepening rather than ameliorating the disadvantages of the children and families who come before it. Disparities in social position could expose “bankrupt” poor families to the pain of public supervision while equally “bankrupt” middle-class families could avoid public supervision. Finally, it may be that the court would not have adequate legal mechanisms to enforce its decisions. Using the threat of removing children from their homes to impose obligations on parents may not be adequate to motivate the parents to comply. There may be constitutional issues at stake in giving the court power over parents and public caretakers, particularly in delinquency cases. And the court would still have to contend with the problem of limited public resources for the care of children.

Conclusion

These are valid concerns. But the solution is not to conclude that the juvenile court has no role to play in responding to the enormous problems now faced by many of the nation’s families and the social service systems now in place to serve them. The courts can help shore up the sagging mechanisms through which society seeks to produce reasonable opportunities for children to become resourceful citizens. That is what children deserve and what society should provide.


10. See note no. 8, Moore, p. 178.


20. This preference for providing material assistance to families when child-rearing arrangements have failed is apparent in federal laws like the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), which makes federal funding to the states contingent upon the provision of certain services and subsidies to foster children and their parents, foster parents, or adoptive families. See, for example, 42 U.S.C. §§ 620–628, 670–679. For more information on Public Law 96-272, see the article by Hardin in this journal issue.


27. The term parens patriae literally means “parent of the country.” Here this term refers to the court’s taking on a role similar to that traditionally given to the state in which the state became the guardian of persons, like juveniles, who could not care for themselves. See Black, H.C. Black’s Law Dictionary. 6th ed. St. Paul, MN: West, 1990.

28. See note no. 8, Moore, pp. 1–24.