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## The Boston Juvenile Court and the Progressive Challenge of Child-Saving, 1906-1986

Richard Klayman

There are few more unifying themes to the American people than the welfare of their children. From the last two decades of the nineteenth century through the first two decades of the twentieth century, concern for child welfare dominated the hearts and energies of reform-minded politicians, social activists, and a multitude of motivated citizens who helped shape our public policy. It has been said that the "fascination with the needs of children ignited an explosion of activity that produced juvenile courts, child labor laws, child guidance clinics, babies' health contests, free lunch programs, kindergartens, the playground movement, experiments in progressive education, numerous child-study groups, a profusion of organizations [including the Big Brothers, Big Sisters, Boy Scouts, and Girl Scouts], the formation in 1912 of the United States Children's Bureau, and . . . new institutions and associations concerned with the special needs of dependent children."<sup>1</sup>

All the while, American life in the pre-World War I years was jolted by a plethora of dizzying, unnerving societal changes, in part as a result of rapid urbanization and, often, the ghettoization of the American city. Some twenty-five million first and second generation immigrants of Italian, Jewish, and peoples of related Mediterranean or eastern European origins jammed into tenement

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1. Leroy Ashby, Saving the Waifs: Reformers and Delinquent Children, 1890-1917 (Philadelphia, 1984), p. 4.

buildings and neighborhoods that they, and the already ensconced Irish, would indelibly mark. And, in kind, the American workplace had given way from its traditional rural, agricultural underpinnings to smokestack factories, bustling stockyards and railroad depots, and steel and glass edifices housing the most diverse of industrial workshops.<sup>2</sup> Caught within the vortex of such urban change was a judicial system that sought to provide justice for children. Especially in Boston, a city characterized by its ethnic diversity, a concern for wayward and delinquent children challenged politicians, religious and lay community leaders, and jurists, to create a viable public policy that constructively differentiated between a criminal act and the treatment of children. Despite the tenor of the times, of which a noted American historian considered "an ethnic challenge in race conscious America [that] meant only barely less than a challenge to civilization itself," ethnic and racial rivalries and economic disparities among the citizenry were subordinated by the need for and establishment of the Boston Juvenile Court.<sup>3</sup>

The Legislature of the Commonwealth of Massachusetts enacted chapter 489 of the Acts of 1916, establishing the Boston Juvenile Court, the third of its kind in the nation. Within the neighborhoods of the city of Boston, including Roxbury until 1965, the legislation's mandate was stated simply and succinctly: "that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of encouragement and guidance."<sup>4</sup>

Curtis Guild served three terms as Governor, having inaugurated his tenure in 1906, the same year as the court's founding. Guild was the son of an old Republican family, his father being a noted author and journalist. In fact, in 1902, Guild served as the owner-editor of the *Boston Commercial Bulletin*, a year before his election as lieutenant-governor, a position in which he served from 1903 to 1905, before the "escalator system" of office-holding carried him to the executive office. But Guild was far from a status-quo

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2. See Howard P. Chudacoff, The Evolution of American Urban Society (Englewood Cliffs, New Jersey, 1975), chapter four.
  3. Richard M. Abrams, Conservatism in a Progressive Era: Massachusetts Politics, 1900-1912 (Cambridge, 1964), p. 133.
  4. Mass. Acts and Resolves, 1906, chapter 489, section 53.

politician who sought the lustre of the public limelight as a result of his dominance of the era's Republican Party or his pedigree. He was a social activist who looked to government to take the lead in establishing public policies that improved health, safety, and the overall quality of life among the people.<sup>5</sup> To Curtis Guild, stand-pat social policies were both politically unacceptable and morally bankrupt. Especially in regard to the problems of children, Guild was very much the activist; his endorsement of the Boston Juvenile Court was an expression of the need for social responsibility and political creativity from one of America's most committed progressive governors.

Undoubtedly because Harvey Humphrey Baker was as socially conscious and reform-oriented as the governor who selected him, he was appointed as the first presiding judge of the Boston Juvenile Court. At first glance, however, Judge Baker appeared an unlikely appointment to a court concerned with wayward urban youngsters, the sons and daughters of residents of Boston's ethnic enclaves. Baker was a Protestant, a bachelor, and the product of Roxbury Latin School, Harvard College, and Harvard Law School. He was the privileged son of a prosperous merchant family of nearby Brookline, and his appointment brought skepticism about his empathy and even his knowledge of those he was to judge.<sup>6</sup>

The superficiality of appearances, however, could not reveal Baker's qualities of mind and character that would distinguish him and the newly-established court which was his charge until his death in 1915. Baker possessed a faith in the working of public institutions to both encourage the development of a fulfilled, contributory citizenry, as well as to elevate the ethical, moral quality of the society. Emphatically, he believed in the rationality of people and the social order; as such, societal problem-solving necessitated a faith in knowledge and a commitment to utilize and draw upon society's collective wisdom. In many regards, Judge Baker believed that the Boston Juvenile Court possessed these qualities of a living laboratory where creative insight, social experimentation, and rigorous weighing of both legal and social prerogatives were indispensable in serving the public good.

Judge Baker was especially sensitive to questions of the public's confidence in the court, and, particularly, how that

5. Abrams, Conservatism in a Progressive Era, pp. 131-132.

6. Roy M. Cushman, "Harvey Humphrey Baker: Man and Judge," in Harvey Humphrey Baker: Upbuilder of the Juvenile Court (Boston, n.d.), pp. 2-10.

confidence was predicated upon his leadership of the court. He sought the advice and assistance of the Boston Children's Aid Society, the St. Vincent de Paul Society, the Italian Immigrant Society, the Home for Destitute Catholic Children, and the Council of Jewish Women, for the purpose of providing cooperation and, often, voluntary probationary services to the court. He was aware that the court must act as an ally to voluntary probationary services to the court. He was quite aware that the court must act as an ally to voluntary agencies in understanding children who were representative of diverse ethnic and racial groups. The court's community appeal and integrity would only be as responsive and heartfelt as the court's respect for the cultural pluralism manifested in Boston's population.<sup>7</sup> Baker understood that the Boston Juvenile Court's work could not be accomplished in isolation, nor could or should the court seek to define itself as a social control mechanism. Delinquent children could not be truly helped, Baker believed, by the imposition of a juvenile code that differed but in degree from the existing legal order. Child-saving was to be an end in itself, while always respectful and conscious of the needs of the public. If the purpose of the Boston Juvenile Court was to *control* children, then in fact the court was incapable of promoting social change. Judge Baker rejected an interpretation of the court's mandate that negated the court's *partnership* in promoting children's welfare and in advancing the *public welfare* as a perceptive instrument of public policy.<sup>8</sup>

Doubtless, Judge Baker subscribed to the *parens patriae* doctrine that provided the state the prerogative of serving the welfare of children. Baker believed that cases involving waywardness and truancy could be remedied by a sound diet, healthful habits of body and mind, and the most basic of medical care. In many ways, Judge Baker and other pioneers of the juvenile court system *personified* the new court's unique mandate: unlike the sad and often disquieting performances of the older reform schools, industrial schools, and orphanages, "there was almost a change in mores when the juvenile court was established." In the words of Jane Addams, one of the era's champions of a just society as well as the juvenile court movement, "The child was brought before the judge with no one to prosecute him and none to defend him -- the judge and all concerned were merely

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7. Ibid., pp. 65-67.

8. Ibid., pp. 109-120.

trying to find out what could be done on his behalf.<sup>9</sup> The personal touch of Judge Baker was deft. Although not of great physical stature, Judge Baker possessed an intense gaze and a sensitivity of spirit that shone through to those who received his counsel and guidance. And like the spirit of the age that both produced Judge Baker and the Boston Juvenile Court, the search for an evolving, efficacious public policy was constant. Judge Baker reflected: "Are we developing the Court as we should? Are the results what they should be?" The questions were, in large part, rhetorical. But Judge Baker sought to discern a logic and science in the study of the court's performance.

During the first five years of the court's operation, he maintained logs, charts, and other indices of the court's results and methods. The way to improve the court as an instrument of public policy might, he hoped, be revealed through an insightful analysis of all the available data. Again, Judge Baker hoped that quantification could better illuminate the juvenile court as society's laboratory, and thus utilize the legal system as an instrument of the most profound social change.<sup>10</sup>

Commenting on the life and conditions of the city of Boston, Baker observed that:

The number of children to the acre has increased greatly. One has only to look at the way every available foot is covered with dwellings . . . . There is no place in the modern apartment for a waking child, and no yard outside of it, so more of the free time of many children *must* be spent in the street or at any rate away from home.

Baker refused to place the blame for delinquency upon the "deterioration in the children's moral fibre, or even any decrease in the interest or vigilance of their parents." Rather, society needed to more appropriately allocate its resources for human ends and betterment: "better housing . . . better conditions of work . . . more suitable education and better facilities for play -- all these are nearer

9. Robert M. Mennel, Thorns and Thistles, p. 133.

10. Harvey Humphrey Baker, part 1, "Statistics and Statistical Comments: Number of Children Brought to Court," pp. 21-36.

to the heart of the difficulty than the court."<sup>11</sup> Judge Baker never lost hope in the rehabilitation of the delinquent child. Neither he nor the progressive era of which he was so much a part felt the need to be apologetic about the rectitude of the court's philosophy and the social policy that crafted it.

The philosophy of the Boston Juvenile Court did not change with the death of Judge Baker in 1915. The appointment of his successor, however, led to a broadened interpretation of the court's options. Governor Samuel W. McCall, a progressive Republican like Curtis Guild, appointed Frederick Pickering Cabot as the court's second presiding justice. From 1916 to 1932, Judge Cabot's leadership reflected both his sensitivity to the history and origins of the institution as well as his willingness to develop new approaches in combating delinquency. Clearly, Cabot appreciated the necessity of engendering a tripartite support for his role on the court. Numerous civic and ethnic organizations not only endorsed Cabot's nomination, but worked with him to maintain *family* and *community* support. Notwithstanding the irreversible professionalism of both the court's probationary service and diversity of juvenile treatment, the court's role was woven within the fabric of American society. Judge Cabot accepted, for example, the logic that abject poverty, economic injustice, and social pathology of an often impersonal and urbanized life, were loathsome but real conditions of twentieth-century life. Empty stomachs, physical hardship, and hopelessness of spirit were, indeed, elements of waywardness. Cabot was in many respects an environmentalist; he was known to coax a wayward youth through a heart-to-heart talk, or to inspire others by the rigors of outdoor life. He believed in the curative powers of sunshine, clean air, and the simplicity of country living. Cabot was quite interested in the child's medical record, as a clue to understanding the child's problems. But he refused to accept such rationales as sufficient to explain juvenile delinquency.

Situated among a multitude of cultures, the Boston Juvenile Court needed to become more of a problem-solver regarding delinquency, and such a role required that sentimentality be transcended by a cognizant public policy. Toward this end, he helped establish a center for the diagnosis and treatment of juveniles who required care for problems which appeared to be central to the child's future development. The center specialized in emotional, psychological, or psychiatric abnormalities that impeded a child from

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11. *Ibid.*, pp. 92-93.

being helped. Integral to the court's performance, Judge Cabot believed, was an assessment as to what was "wrong" with the child, or the child's family, or perhaps the societal milieu that nurtured the child. The greater the analytical power and insight the court could exercise, the more expansionist became the court's purview. Cabot appreciated the significant step such an undertaking meant for the Boston Juvenile Court; he believed that justice for the child and the rights of society could only be maintained by the court's extension of itself.

Cabot established the Judge Baker Foundation (later called the Judge Baker Guidance Center) toward this end, and in 1917 attracted Dr. William Healy, a physician, as its director. Together with the psychologist Dr. Augusta Bronner, who designed and utilized intelligence tests for children, Dr. Healy employed a diagnostic analysis of each child, learning as much as he could about the child's physical, emotional, psychological, home, and community life. Cabot also served as the first president of the Baker Foundation.

Judge Cabot became nationally-known for his work, and in 1930 he served as chairperson of the Committee on the Socially Handicapped and Delinquency of the 1930 White House Conference. In 1932, that committee published *The Delinquent Child*, in which Judge Cabot wrote that delinquency was "one of the natural outcomes of those clashes of interest, prerogative and need that are inherent in living as a social group."<sup>12</sup> Judge Cabot recognized, as such, that there was no panacea in battling juvenile delinquency; quite realistically, however, Cabot's philosophy set the Boston Juvenile Court on the path of *managing* delinquency both for the child's guidance and rehabilitation, as well as for the preservation of the rights of the society.

In 1932, John Forbes Perkins was appointed as the third presiding justice of the court, having been selected by the Democratic governor from western Massachusetts, Joseph B. Ely. In conjunction with the efforts of President Franklin Delano Roosevelt, Ely had the weighty and unenviable task of developing a governmental response to the Great Depression, which had a major impact on every segment of society. After only about a year as head of the court, Judge Perkins and the court were the focal point of considerable criticism. The high recidivism rate of juvenile delinquents, according to one of the first

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12. The Delinquent Child (Washington, D.C., 1932).



of many scholarly studies on courts and corrections, challenged the effectiveness of the juvenile court as an instrument of public policy.<sup>13</sup>

Both the Boston Juvenile Court and its recent adjunct, the Judge Baker Guidance Center, experienced a deflated sense of purpose as a result of Eleanor and Sheldon Glueck's study that revealed that the diagnostic evaluation of children produced negligible results in the rehabilitation of delinquents. In fact, the study argued for exactly what had been the direction of the court: "a delicate multifaceted approach." Undoubtedly, the findings would not have surprised Judge Cabot, who was among those to whom the book was dedicated. In hindsight, Judge Baker's rhetorical questioning -- "Are we developing the court as we should? Are the results what they should be?" -- possessed a timeless quality, prodding those who would work on behalf of children to be conscious of the need for measurable results.

In 1936, Judge Perkins inaugurated the Citizenship Training Group, Incorporated, a privately-funded adjunct to the court. Conceived out of crisis, as was so much of the pioneering social legislation of the 1930s, the CTG performed a multitude of supportive tasks for the rehabilitation of delinquents, but, just as well, the purposes of the CTG could have served an even larger constituency. The CTG's intent was to instill good citizenship in wayward children, a simply-stated goal of enormous dimensions. In effect, the CTG was a safety net; a delinquent child was made to encounter both one's problems and a panoply of services to remedy those problems. "A Juvenile Court, therefore, should not be an elaborate organization . . . engaged in separating delinquents from the community. It should be a central office, a clearinghouse . . . [whose goal is that] the delinquents can merge in the community and avoid the stigma and hampering influence of being regarded as a class apart."<sup>14</sup>

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13. Eleanor T. and Sheldon Glueck, One Thousand Juvenile Delinquents: Their Treatment by Court and Clinic (Cambridge, 1934). Shock waves rippled through America periodically regarding the problem of juvenile delinquency. As a case in point, Benjamin Fine's 1,000,000 Juvenile Delinquents (Cleveland, 1955) became a best-seller.

14. Judge John F. Perkins, "The Purpose of the Juvenile Court," April 24, 1939, typed manuscript in miscellaneous files, Boston Juvenile Court. See also Juvenile Delinquency in Massachusetts as a Public Responsibility: An Examination of the Present Methods of Dealing with Child Behavior, Its Legal Background and the Indicated Steps for Greater Adequacy, published by the Massachusetts Child Council (Boston, 1939).

In the absence of national public policies about either the preservation of sound family life or juvenile rehabilitation, the CTG served as an early and precocious entity. Privately funded, the CTG was predicated upon the identification of family and community values which the court utilized as the basis for a juvenile's rehabilitation. The CTG was an innovative family/community support group that was an expansion of the court's domain, made necessary because of a societal void in family maintenance. Thus, the rendering of juvenile justice was actually a barometric reading of a more permeating social malaise.

Existing as a vehicle for social change and intense, individualized evaluation, the CTG was a microcosm of the New Deal philosophy of "relief, recovery, and reform," but on a person-to-person basis. However, to Judge Perkins, the responsibility for change rested within each individual, and that was the challenge to every individual who appeared before him: "strength comes only from your own efforts."<sup>15</sup> Judge Perkins was very much the disciplinarian, both in overseeing the court and in his self-help, no-nonsense approach to juvenile rehabilitation.

Clearly, the Boston Juvenile Court experienced and weathered growing pains during the tenure of Judge Perkins. In truth, the city of Boston was the site of a multitude of social and economic dynamics which was prevalent in varying degrees throughout the country. For example, pressures on low-income families with the breadwinner unemployed or under-employed created an unstable environment for children. Further destabilization was evidenced by the fact that families in Boston were most transient during the entire decade. From 1935 to 1940, Boston's population was about 721,000. Some 43,855 individuals moved into the city in this period, with about 88,117 moving out.<sup>16</sup> While the overall population of Boston did not radically change, the city experienced an enormous flow of people. The widespread rootlessness placed a strain on the family and upon community life, and created a volatile environment for the court and other public institutions. The breakdown of

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15. Judge John F. Perkins, "The Breakdown of Standards," address at the meeting of the Association of Juvenile Court Judges of America, May 28, 1941, ms. in miscellaneous documents, Boston Juvenile Court.

16. Stephan Thernstrom, The Other Bostonians: Poverty and Progress, p. 27.

standards, which Judge Perkins lamented, was symptomatic of a society experiencing economic depression and then total war.<sup>17</sup>

In 1945, with the resignation of Judge Perkins, Governor Maurice J. Tobin appointed John Joseph Connelly as the fourth presiding judge of the Boston Juvenile Court, which he would serve until his death in 1964. Both Governor Tobin and Judge Connelly were brought up in the city of Boston, and they were both familiar with its peoples and neighborhoods. Earlier in his career, Tobin had served as mayor of Boston; his administration both at city hall and on Beacon Hill were noted for a strict adherence to fiscal responsibility. John Connelly was a star athlete at Boston College, after which he distinguished himself as a lawyer, professor, and social service advocate. He had served as the first director of the Citizenship Training Group, and was articulate in explaining the program's multi-faceted philosophy of juvenile rehabilitation.

Judge Connelly played an activist's role in his leadership of the court, during an era of national concern about the condition of the American family and its relationship to the increase in juvenile delinquency. The decade of the 1950s, in particular, witnessed numerous study groups and committee reports to which Judge Connelly contributed. His analysis of juvenile delinquency cut to the core of the problem: "Frankly, we know the chief causes of juvenile delinquency but we cannot remove them. We could stop most anti-social behavior now if we could press a magic button and instantly provide every child with a well-adjusted personality, with good companions, with conscientious parents in an economically and morally stable home."<sup>18</sup> Connelly spent the greater part of his tenure on the bench preaching about the social dimensions of delinquency.

Post-World War II America experienced a multitude of disquieting domestic occurrences, not the least of which was a dramatic upswing in juvenile crime. In fact, many commentators alluded to a war between the generations that manifested itself in a variety of subtle and often contradictory ways. Between 1945 and 1976, Dr. Benjamin Spock's classic work, *Baby and Child Care*, sold over twenty-three million copies in the pocket edition. Just when the

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17. A Wartime Plan for the Prevention of the Increase in Juvenile Delinquency in Boston, a pamphlet published by the Committee on the Cause and Cure of Crime of the Massachusetts Civic League, April 1942, in miscellaneous documents, Boston Juvenile Court.

18. Judge John T. Connelly, "Is Boston Losing Patience with Youthful Vandals," Boston Globe, April 27, 1952.

job of parenting appeared to be perceived and practiced with a commitment to the knowledge and acquisition of informed child-raising principles, juvenile delinquency and familial dissolution skyrocketed. Before World War II, the divorce rate accounted for less than ten percent of all marriages; in 1945, 14.3 percent of all marriages ended in divorce, and in 1946 that had risen to 18.2 percent. Simultaneously, the nation experienced a marriage boom that lasted throughout the decade of the fifties, as did the subsequent baby boom.

While the trends towards frequency of marriages and divorces reached new heights, the nation celebrated the culture of workable and blissful family life. Certainly, American television projected a suburban, middle-class family life as being "typical," "virtuous," and the cornerstone of American society. *Father Knows Best*, *Ozzie and Harriet*, *Leave It To Beaver*, *I Love Lucy*, and other television shows conflicted with persistent and worrisome trends across America: the rise of the single-parent household, teenage pregnancy and marriage, rebellion, delinquency, waywardness -- sometimes within the context of family life but always symptomatic and traceable to a hollow, unedifying family shell. The movie classic, *Rebel Without a Cause*, portrayed juvenile delinquency within the context of such a "misshapen family," a family absent of identifiable spirit, a system of values, or even a tradition of communicating, and, indeed, an absence of the possibility of any reconciliation.<sup>19</sup> From Congressional committees and presidential commissions, yet another message was carried to Americans, who were confused by the conflicting images of contemporary life conveyed in the myth-making of the television and Hollywood studio. The American family was becoming a troubled institution. And in the absence of a more substantive plan, the cry was heard for discipline; both palliative and panacea, discipline sought to cure the ills of juveniles as well as a dismembered and disaffected family life. Judge Connelly's remarks, again, remain insightful: "in a small city court we sense, we feel, in our every day work the vibrations of disorder, of this confusion."<sup>20</sup>

The decades of the 1950s and 1960s maintained a silence about the absence of a national policy of family maintenance and

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19. James Gilbert, Another Chance: Post-War America (New York, 1981), pp. 57-75.

20. Address of Judge Connelly before the Institute on Contemporary Trends in Religious Thought, Institute for Religious and Social Studies, and the American Academy of Arts and Sciences, November 30, 1948, ms. in miscellaneous documents, Boston Juvenile Court.

disapprobation to articulate what family and socially-related values must be imbued, taught, or otherwise integrated with the American family. Of course, even the preservation and support of the family unit might not guarantee that juvenile delinquency and other manifestations of societal breakdown and dissolution could be stemmed. The family, the voluntary community, and governmental agencies continued to pose a tripartite constituency, especially regarding the needs of children. In an age of discordant and varied signals about the efficacy of various institutions, the family as well as the courts, successful public policy necessitated such a unity of support and purpose. Judge Connelly observed: "we ought to be smart enough to realize how much money we could save by focusing our attention and directing our efforts to the prevention of delinquency."<sup>21</sup>

In 1964, Francis Gregory Poitrast was appointed by Governor Endicott Peabody as the fifth (and current) presiding justice of the Boston Juvenile Court. Poitrast had attended the Boston public schools, and had long appreciated the realities of working-class life in the city. He was a student of the history of the court, and was sensitive to the court's struggle for resources and results. Mostly, however, Poitrast recognized that the expectations for juvenile justice could never be realized without a marshalling of society's energies. Armed robbery, rape, and cases concerning care and protection have intruded themselves upon the juvenile court as they have upon the larger society. And the court's problems remain a microcosm of that society.<sup>22</sup>

In 1967, Judge Poitrast established the Herrick Center for Girls, a special forum for retraining and rehabilitating delinquent girls from the ages of twelve to sixteen. In 1968, more targeted and specialized social services were made available as a result of cooperation between the judge, and the Department of Public Welfare and the Boston Children's Bureau. Judge Poitrast worked to utilize both the appropriate vehicles and the requisite professionalism in addressing delinquency and its endless cavalcade of related social ills. Judge Poitrast has been especially concerned about the needs of neglected, abused, and battered children. Very much the realist as well as the sensitive jurist, he has helped draft legislation providing care for children in need of services. Ultimately, however, Judge Poitrast knew that public alertness and political mobilization still

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21. Address by Judge Connelly before the Volunteers of America, May 13, 1953, ms. in miscellaneous documents, Boston Juvenile Court.

22. Interview with Chief Justice Francis G. Poitrast, September 8, 1986.

needed to be crystallized around a concerted, informed family and juvenile policy.

After its first eighty years, the Boston Juvenile Court continues to ask of itself and the society that called it into existence: "Are we doing all we can?" Judge Baker's reflective inquiry about his contributions to the Boston Juvenile Court endures, as a humane and fundamental challenge to all who labor on behalf of children. The Boston Juvenile Court remains a testament to the progressive ideal that the problems of childhood mirrored the greater social ills of the society, and that it was society's obligation to combat juvenile problems. Juvenile justice was a progressive ideal that the twentieth century could neither forget nor resolve.