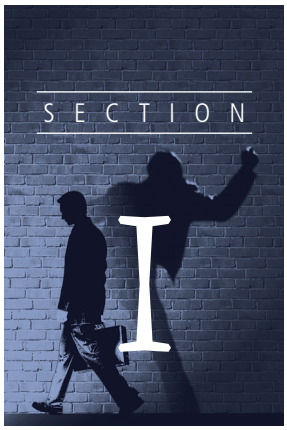

HISTORY AND DEVELOPMENT OF THE JUVENILE COURT AND JUSTICE PROCESS

SECTION HIGHLIGHTS

- Historical Overview of Juvenile Justice
- The Origins of American Juvenile Justice
- Houses of Refuge and Legal Doctrines
- The "Child-Saving" Movement
- The First Juvenile Court
- The U.S. Supreme Court on Juvenile Justice
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The American juvenile justice system has developed over the past century with a number of differences that distinguish it from the adult criminal justice process. Juvenile justice advocates supported the differences on diminished youthful offender accountability and legal understanding, and youths' greater amenability to treatment. The first juvenile court was established in Chicago, Illinois, in 1899; yet a century later there is still considerable debate over the goals and the legal procedures for dealing with juvenile offenders. The question of whether juvenile offenders should be tried and sentenced differently than adult offenders elicits strongly held opinions from citizens, policy makers, and professionals. The juvenile justice system was established on the principle of individualized justice and focused on rehabilitation of youthful offenders. While due process protections were considered important, they were considered secondary in importance given the court's emphasis on care, treatment, and rehabilitation for juveniles. It was believed that youths could be held responsible for their unlawful behavior and society could be protected through an informal justice system that focused on treatment and "the best interests of the child." This approach is still appropriate and effective for the majority of juvenile offenders whose crimes range from status offenses, to property offenses, to drug offenses. The juvenile justice system has come under increasing scrutiny, however, as a growing number of juveniles are involved in violent crimes, especially school violence, gang-related violence, and assaults with weapons resulting in fatalities and serious injuries. Despite the fact that juveniles are involved in a proportionately small number of murders each year, violent crime committed by juveniles elicits widespread media coverage. The public and political/legislative response to juvenile violence has been to demand more accountability and punishment, resembling that of the criminal justice system. One century after the development of the first juvenile court, the system faces a multitude of challenges and questions.

Historical Overview of Juvenile Justice

Laws and legal procedures relating to juvenile offenders have a long history, dating back thousands of years. The Code of Hammurabi some 4,000 years ago (2270 B.C.) included reference to runaways, children who disobeyed their parents, and sons who cursed their fathers. Roman civil law and canon (church) law 2,000 years ago distinguished between juveniles and adults based upon the idea of "age of responsibility." In early Jewish law, the Talmud set forth conditions under which immaturity was to be considered in imposing punishment. Moslem law also called for leniency in punishing youthful offenders, and children under the age of 17 were to be exempt from the death penalty (Bernard, 1992). Under fifth-century Roman law, children under the age of 7 were classified as infants and not held criminally responsible. Youth approaching the age of puberty who knew the difference between right and wrong were held accountable. The legal age of puberty (age 14 for boys and 12 for girls) was the age at which youth were assumed to know the difference between right and wrong and were held criminally accountable.

Anglo-Saxon common law that dates back to the 11th and 12th centuries in England was influenced by Roman civil law and canon law. This has particular significance for American juvenile justice because it has its roots in English common law. The Chancery courts in 15th-century England were created to consider petitions of those in need of aid or intervention, generally women and children who were in need of assistance because of abandonment,

divorce, or death of a spouse. Through these courts the king could exercise the right of *parens patriae* ("parent of the country"), and the courts acted *in loco parentis* ("in place of the parents") to provide services in assistance to needy women and children. The principle of *parens patriae* later became a basis for the juvenile court in America. The doctrine gives the court authority over juveniles in need of guidance and protection, and the state may then act *in loco parentis* (in place of the parents) to provide guidance and make decisions concerning the best interests of the child.

The Origins of American Juvenile Justice

The separate system of justice for juveniles has developed just over the past 100 years. Following the tradition of English law, children who broke the law in 18th-century America were treated much the same as adult criminals. Parents were responsible for controlling their children, and parental discipline was very strict and punishments were harsh. Youth who committed crimes were treated much the same as adult criminal offenders. The law made no distinction based on the age of the offender, and there was no legal term of *delinquent*. The American judicial procedures in the 19th century continued to follow those of England, subjecting children to the same punishments as adult criminals. Some punishments were very severe. Youth who committed serious offenses could be subjected to prison sentences, whipping, and even the death penalty. During the 19th century, criminal codes applied to all persons, adults and children alike. No provisions were made to account for the age of offenders. Originally there were no separate laws or courts, and no special facilities for the care of children who were in trouble with the law.

A number of developments during the 19th century paved the way for a separate system of justice for juveniles. An increase in the birthrate and the influx of immigrants to America brought a new wave of growth to American cities. With this growth came an increase in the numbers of dependent and destitute children. Urban youth and children of immigrants were thought to be more prone to deviant and immoral behavior than other youth. Early reformers who were members of the Society for the Prevention of Pauperism expressed dissatisfaction with the practice of placing children in adult jails and workhouses. They called for institutions that would instruct delinquent youth in proper discipline and moral behavior (Mennel, 1973).

Houses of Refuge and Legal Doctrines

The doctrine of *parens patriae* provided the basis for official intervention in the lives of wayward youth. Parents were expected to supervise and control their children, but when it became apparent that parents were not properly controlling and disciplining their children, the State was given the authority to take over that responsibility. The Society for the Reformation of Juvenile Delinquents in New York advocated for the separation of juvenile and adult offenders (Krisberg, 2005, p. 27), and in 1825 the New York House of Refuge was established to take in dependent, neglected, and delinquent youths. Other houses of refuge in Boston and Philadelphia were soon established, and these were followed shortly thereafter by reform schools for vagrant and delinquent juveniles. State reform schools opened in Massachusetts in 1847, in New York in 1853, in Ohio in 1857; and the first State Industrial School for Girls was opened in Massachusetts in 1856 (Law Enforcement Assistance Administration, 1976, p. 65).

▲ **Photo I-1** Police officers take a young boy into custody in the late 19th century. (© Bettmann/CORBIS)

The doctrine of *parens patriae* was first tested in the Pennsylvania Supreme Court case of *Ex parte Crouse* in 1838. The father of Mary Ann Crouse argued that his daughter was illegally incarcerated without a trial. The Court denied his claim, stating that the Bill of Rights did not apply to juveniles. The Court stated that when parents are found to be "incompetent" in their parental duties, the state has the right to intervene and provide their child with guidance and supervision. The *Crouse* ruling was based on what the Court believed was the best interests of the child and the entire community, with the assumed intentions that the state could provide the proper education and training for the child. As states intervened in more juvenile cases, especially ones involving minor misbehavior, the concept of *parens patriae* would later meet more legal challenges.

The early juvenile reform schools were intended for education and treatment, not for punishment, but hard work, strict regimentation, and whippings were common. Discriminatory treatment against African Americans, Mexican Americans, American Indians, and poor whites remained a problem in the schools. Sexual abuse and physical attacks by peers (and sometimes staff members) also were problems. Institutional abuses against incarcerated juveniles came under increasing criticism by the last half of the 1800s. The practice of taking custody of troubled

youths under the concept of *parens patriae* led many by the mid-1800s to question whether most youths benefited from the practice. There is evidence that the State is not in fact an effective or benevolent parent, and that there was a significant disparity between the promise and the practice of *parens patriae.* The author of the first reading in this section (Pisciotta, 1982) reviewed the *Ex parte Crouse* ruling and noted that subsequent legal decisions revealed that judges in the 19th century were committing minors to reformatories for noncriminal acts on the premise that the juvenile institutions would have a beneficial effect. In theory, reformatories were "schools" that provided parental discipline, education, religious instruction, and meaningful work for incarcerated youth. Pisciotta (1982) examined the records, annual reports, and daily journals of superintendents, and found a significant disparity between the theory and practice of juvenile incarceration. He noted that discipline in the juvenile reform schools was more brutal than parental, and inmate workers were exploited under an indenture or contract labor system. The schools were marked by institutional environments that had a corrupting influence on the residents, as evidenced by assaults, homosexual relations, and frequent escapes.

Critics of this extensive State intervention argued against intervention on behalf of youth over minor, noncriminal behavior, and claimed that reformatories were not providing the kind of parental care, education, or training that was promised under the *parens patriae* doctrine. In a legal challenge, the Illinois Supreme Court ruled that "we should not forget the rights which inhere both in parents and children. . . . The parent has the right to the care, custody, and assistance of his child" (*People v. Turner,* 55 Ill.280 [1870]). The Court ruled that the state should intervene only after violations of criminal law and only after following due process guidelines. The ruling actually did little to change the prevailing practices in most other states, however. It would take later court decisions to clearly define the rights of children and their parents in State intervention.

The "Child-Saving" Movement

The failure of the houses of refuge and early reform schools brought more interest in the welfare of troubled youth who were abandoned, orphaned, or forced to work under intolerable conditions. In the latter half of the 19th century, following the Civil War period, humanitarian concerns were directed toward troubled children and their treatment. A pivotal point in the development of the juvenile justice system in America was what became known as the "child-saving movement" (see Faust & Brantingham, 1979; Law Enforcement Assistance Administration, 1976). The child savers were a group of reformers that included philanthropists, professionals, and middle-class citizens who expressed concerns about the welfare of children. They pushed for state intervention to save at-risk children through shelter care and educational programs. The result of this child-saving movement was to extend government intervention over youth behaviors that had previously been the responsibility of parents and families. The leading advocates in the child-saving movement believed that such youth problems as idleness, drinking, vagrancy, and delinquent behaviors threatened the moral fabric of society and must be controlled. If parents could not or would not control and properly supervise their own children, then the government should intervene. They pushed for legislation that would give courts jurisdiction over children who were incorrigible, runaways, and those who committed crimes.

The First Juvenile Court

The latter part of the 19th century, following the Civil War, was marked by a reform movement that led to the development of a separate court for juveniles. Some states, including Massachusetts in 1874 and New York in 1892, had passed laws providing for separate trials for juveniles. The first juvenile court was established in Cook County (Chicago), Illinois, in 1899. The *parens patriae* doctrine was the legal basis for court jurisdiction over juveniles and was central to the juvenile court philosophy, because children who violated laws were not to be treated as criminals. Children were considered less mature and less aware of the consequences of their actions, so they were not to be held legally accountable for their behavior in the same manner as adults. Under the juvenile justice philosophy, youthful offenders were designated as delinquent rather than as criminal, and the primary purpose of the juvenile justice system was not punishment but rehabilitation (see Mennel, 1972).

The juvenile courts sought to turn juvenile delinquents into productive citizens by focusing on treatment rather than punishment. The laws that established the juvenile courts clearly distinguished their purpose as different from the adult penal codes. A ruling by the Pennsylvania Supreme Court in the case of *Commonwealth v. Fisher* in 1905 supported the juvenile court's purpose, and illustrates how the court's role in training delinquent children superseded the rights of children and their parents.

> The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child. . . . Every statute which is designed to give protection, care, and training to children, as a parental duty, is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails. No constitutional right is violated. (*Commonwealth v. Fisher,* 213 Pa. 48 [1905])

The Pennsylvania Supreme Court thus supported the juvenile court's treatment objectives over the rights of the juvenile or the parents. For the next 50 years juvenile courts continued the practice of legal interventions over a broad range of juvenile cases, from status offenses to criminal code violations. The focus on offenders' needs for supervision and rehabilitation more than on offenses committed had an impact on judicial procedures and decisions. Decisions of what cases would go to court were made by a juvenile court intake division, unlike criminal court where district attorneys made the decisions. Juvenile court intake considered extralegal as well as legal factors in deciding how to handle cases, and had discretion to handle cases informally, diverting cases from court action.

Because the purpose of the juvenile court was for the protection and treatment of the child and not for punishment, the juvenile proceeding was more civil than criminal. The juvenile legal process was purportedly "in the best interests of the child," so the hearing was more informal, unlike the more formal, adversarial criminal court process. Advocates believed that children did not need the formal procedural rights common in criminal court, so they were denied many of the legal rights of adults, such as formal notice of the charges and the right to legal counsel. The juvenile reform efforts were also based on the growing optimism that application of the social sciences was more appropriate for handling juvenile offenders than the law. Delinquency was viewed more as a social problem and a breakdown of the family than a criminal problem. Thus, social workers, probation officers, and psychologists took the place of lawyers and prosecutors.

▲ **Photo I-2** A juvenile court proceeding in 1910. Judges often conducted hearings informally and privately in their chambers in the first juvenile courts. (© CORBIS)

They examined the background and social history of the child and the family environment to assess the child's needs, and then developed a treatment plan that was intended to change delinquent juveniles. The author of our second reading in this section (Ferdinand, 1991) notes that the juvenile court judge was expected to be more like a father figure than a legal jurist. The focus was on offenders and not offenses, on rehabilitation and not punishment, and this was to be accomplished through individualized justice for juvenile offenders.

The development of the first juvenile court in Chicago was followed shortly by one in Denver, and by 1945 all states had juvenile courts (see Ferdinand, 1991). For the first half of a century after it was first developed, the juvenile court system went largely unchallenged in the manner in which juvenile cases were processed. Despite some differences among states and jurisdictions, there was general agreement on the goals and objectives of juvenile justice, and how it should be similar to, and distinct from, the criminal justice system. The author of our second reading (Ferdinand, 1991) summarizes the criticisms of the juvenile court, particularly the failure of treatment programs, and offers a proposal to counter those criticisms.

The U.S. Supreme Court on Juvenile Justice

The policies and practices of the juvenile court went unchallenged for the first 60 years following its origin and development. The stated purpose of the juvenile court was for treatment

rather than punishment, it resembled an informal civil proceeding more than a criminal trial, and the most severe sanctions for adjudicated delinquents were less than 1 year in a residential facility. Despite the fact that juveniles did not receive the same due process protections in court as those accorded adult offenders in criminal court, the attorneys who provided legal counsel for juveniles saw little reason to question the juvenile court process or dispositions. This began to change in the 1960s, however, as it became apparent in a number of court cases that juveniles were being sentenced to institutions resembling adult prisons or transferred to criminal court, but without due process protections common to criminal court. Criticisms of some of the long-standing practices of the juvenile court were highlighted in a number of U.S. Supreme Court cases beginning in the 1960s.

Kent v. United States

Morris Kent, age 16, was on probation when, in 1961, he was charged with rape and robbery. He confessed to the offense, and his attorney filed a motion requesting a hearing on the issue of jurisdiction because he assumed that the District of Columbia juvenile court would consider waiving jurisdiction to criminal court. The judge did not rule on the motion for a hearing, but waived jurisdiction after making a "full investigation," without describing the investigation or the grounds for the waiver. Kent was found guilty in criminal court and sentenced to 30 to 90 years in prison. Appeals by Kent's attorney were rejected by the Appellate courts. The U.S. Supreme Court ruled that the waiver without a hearing was invalid, and that Kent's attorney should have had access to all records involved in the waiver, along with a written statement of the reasons for the waiver. *Kent* is significant because it was the first Supreme Court case to modify the long-standing belief that juveniles did not require the same due process protections as adults, because the intent of the juvenile court was treatment, not punishment. The majority statement of the justices noted that juveniles may receive the "worst of both worlds"—"neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children" (383 U.S. 541, 86 S.Ct. 1045 [1966]).

In re Gault

Gerald Gault, age 15, was on probation for a minor property offense when he and a friend made what was described as obscene comments in a telephone call to a neighbor woman. Gerald was picked up by police and held in a detention facility until his parents were notified the next day. Gerald was not represented by counsel at his court hearing. The victim was not present and no evidence was presented regarding the charge, but Gerald was adjudicated delinquent and committed to a training school. (The maximum sentence for an adult making an obscene phone call would have been a $50 fine or 2 months in jail.) An attorney obtained later by the Gaults filed a writ of habeas corpus that was rejected by the Arizona Supreme Court and the Appellate Court, but was eventually heard by the U.S. Supreme Court. The Court found that Gerald's constitutional due process rights had been violated; it ruled that in hearings that could result in commitment to an institution, juveniles have the right to notice and counsel, to question witnesses, and to protection against self-incrimination (387 U.S. 1, S.Ct. 1428 [1967]).

In re Winship

Samuel Winship, age 12, was accused of stealing money from a woman's purse in a store. A store employee stated that Samuel was seen running from the store just before the money was reported missing, but others in the store disputed that account, noting that the employee was not in a position to see the money actually being taken. At the juvenile court hearing, the judge agreed with Winship's attorney that there was some "reasonable doubt" of Samuel's guilt, but New York juvenile courts (like those in most states) operated under the civil law standard of "preponderance of evidence." Winship was adjudicated delinquent and committed to a New York training school. Winship's attorney appealed the case on the issue of the standard of evidence required in juvenile court. The U.S. Supreme Court ruled that the standard of evidence for adjudication of delinquency should be "proof beyond reasonable doubt" (387 U.S. 358, 90 S.Ct. 1068 [1970]).

McKeiver v. Pennsylvania

Joseph McKeiver, age 16, was charged with robbery and larceny when he and a large group of other juveniles took 25 cents from three youths. At the hearing, the judge denied his attorney's request for a jury trial, and McKeiver was adjudicated and placed on probation. McKeiver's attorney appealed the case to the state Supreme Court, which affirmed the lower court. The case was then appealed to the U.S. Supreme Court, which upheld the lower court rulings. The Court argued that juries would not enhance the accuracy of the adjudication process, and could adversely affect the informal atmosphere of the nonadversarial juvenile court hearing process (403 U.S. 528, 91 S.Ct. 1976 [1971]). The significance of *McKeiver* is that it is the only one of these first five cases in which the U.S. Supreme Court did *not* rule that juveniles must receive all the same due process rights as adults in criminal court.

Breed v. Jones

Gary Jones, age 17, was charged with armed robbery and appeared in Los Angeles juvenile court, where he was adjudicated delinquent. At the disposition hearing, the judge waived jurisdiction and transferred the case to criminal court. Jones's attorney then filed a writ of habeas corpus, arguing that the waiver to criminal court after adjudication in juvenile court violated the double jeopardy clause of the Fifth Amendment. The court denied the petition on the basis that juvenile adjudication is not a "trial." The case was appealed to the U.S. Supreme Court where the Justices ruled that adjudication is equivalent to a trial, because a juvenile is found to have violated a criminal statute. Jones's double jeopardy rights had therefore been violated, and the Court ruled that double jeopardy applies at the adjudication hearing as soon as any evidence is presented. A juvenile court waiver hearing must therefore take place before or in place of an adjudication hearing (421 U.S. 519, 95 S.Ct. 1779 [1975]).

These U.S. Supreme Court cases profoundly affected the legal process and procedures in juvenile courts throughout the United States. Additional procedures and legal forms were instituted, from the county or state's attorney prosecuting the cases down to the intake probation officer working with juveniles referred from police departments for delinquent behavior. The overall purposes of the juvenile court remained the same, but court personnel were now required to inform the youth and their parents of due process rights. State legislation quickly followed to amend juvenile court procedures in accordance with the Supreme Court rulings.

Juvenile Versus Criminal Court: Legal and Procedural Distinctions

Distinctions between juvenile and adult offenders are based on English common law, which formed the basis for a separate juvenile justice system. At the core of this distinction is the question of what age and under what circumstances children are capable of forming *criminal intent.* More than 1,000 murders are committed by juveniles every year. Many citizens and policy makers react to what is perceived as a growing trend toward more juvenile violence with demands to punish violent juvenile offenders like adult criminals. Under law, however, two elements are necessary in order to find a person guilty of a crime. Most attention is focused on the first element, the criminal act itself. The second element, criminal intent, is equally important, though often overlooked. In weighing evidence against a suspect, a court must determine that there is sufficient evidence for both a criminal act and criminal intent, known as *mens rea* or "guilty mind." The critical question is: At what age is a child capable of understanding the differences between right and wrong and of comprehending the consequences of a criminal act before it occurs? The answer to the first question appears clear to most persons, who would argue that even very young children know that killing a person is wrong. It is less clear whether children charged with violent crimes have carefully weighed the consequences of their actions, however, or whether they have formed criminal intent comparable to that of an adult. Laws and policies that place limitations on youths' drinking, driving, and marrying and entering into other contracts illustrate our belief that they are not equally prepared as adults to engage responsibly in these activities. Based on the belief that youth do not have equal capacity for careful thinking and awareness of the consequences of their behavior, young people are treated differently and allowed limited responsibility under the law for most other critical decisions while they are minors. Judicial experts generally agree that legal sanctions for criminal behavior should be consistent with laws limiting juveniles' legal rights in other areas. Distinctions between legal procedures for juveniles and adults therefore stem from the differences in juveniles' maturity, limited knowledge of the law and its consequences, limited legal responsibility, and the belief that youth should be processed separately from adults throughout the judicial system.

Distinctions Between Juvenile and Criminal Procedures

Juvenile justice grew out of the criminal justice system, so they share common ground. The main features that have distinguished juvenile court proceedings from criminal court proceedings may be summarized as follows:

- *Absence of legal guilt.* Because juveniles are generally less mature and often unaware of the consequences of their actions, they are not held legally responsible for their actions to the same extent as adults. Legally, juveniles are not found guilty of crimes, but are "found to be delinquent." Juvenile status, generally being under 18 years of age, is a defense against criminal responsibility, much like the insanity defense. Exceptions are made in cases of more mature juveniles who have committed serious offenses. The juvenile court may then waive jurisdiction and transfer the case to criminal court.

- *Treatment rather than punishment.* The stated purpose of the juvenile court is treatment of the child and community protection, not punishment as for adult felony offenders in criminal court.

- *Informal, private court proceedings.* Juvenile court hearings are more informal and in many states they are not open to the public, with usually only the child, parents, attorneys, and probation officer present. Hearings have often been held in the judge's chamber. The majority of hearings are informal, noncontested, nonadversarial proceedings that take less than 10 minutes. This practice is rooted in the original child-saving philosophy that the purpose of the court was for treatment, not punishment. Proceedings for more serious juvenile offenders are now often open to the public.

- *Separateness from adult offenders.* Juvenile offenders are kept separate from adult offenders at every stage of the juvenile process, from arrest (or "taking into custody") to detention; pretrial and court proceedings; to probation supervision and institutional corrections. All juvenile records are also maintained separately from adult criminal records, including in computerized information systems.

- *Focus on a juvenile's background and social history.* A juvenile's background and the need for and amenability to treatment are considered of equal importance with the offense committed when making decisions on handling each case. This is consistent with the stated purpose of treatment rather than punishment. The assumption that court officers can assess and treat juveniles' needs is open to question. Basing the length of "treatment" on the child's needs as well as the offense has come under criticism. Children committing relatively minor crimes but with "greater needs for treatment" are often supervised for longer periods of time than more serious offenders who have been determined to be less "in need of treatment."

- *Shorter terms of supervision and incarceration.* The terms of probation supervision, confinement in a detention center, or commitment to a correctional facility are usually shorter in duration than for adult offenders—generally not much longer than 1 to 2 years, on average. In recent years many states have revised their juvenile statutes, extending jurisdiction and length of incarceration over violent juvenile offenders.

- *Distinctive terminology.* Consistent with the need to treat juveniles differently from adults because of their immaturity and limited legal accountability, different terms are used when handling juveniles at each stage of the process. Juveniles are "taken into custody," not arrested; transported to a detention center, not booked into jail; a petition for delinquency is filed with the court, not a criminal indictment; the result is an adjudication of delinquency rather than conviction of a felony or misdemeanor crime.

Purpose Clauses for Juvenile Courts

The distinctions noted above indicate that the primary purpose of the original juvenile courts was prevention and treatment, more than punishment. There is variation among states in how they describe the purposes of the juvenile court, and many states' juvenile codes have been amended in recent years. The purpose clause of several states is based on the Standard Juvenile Court Act that was originally issued in 1925. The 1959 revision used by some states declares that a child who comes within the jurisdiction of the juvenile court shall receive care, guidance, and control appropriate for the child's welfare; and when removed from parental custody the court shall provide care equivalent to what the parents should have provided (Snyder & Sickmund, 2006, p. 98). Other states have drawn from the *Legislative Guide for Drafting Family and Juvenile Court Acts.* This publication from the late 1960s lists four purposes for the

juvenile court: (1) to provide for the care, protection, and wholesome mental and physical development of children involved with the juvenile court; (2) to remove from children committing delinquent acts the consequences of criminal behavior and offer a program of supervision, care, and rehabilitation; (3) to remove a child from the home only when necessary for his or her welfare or in the interests of public safety; and (4) to ensure their constitutional and other legal rights (Snyder & Sickmund, 2006, p. 99). The most common purpose clauses among states today have components of Balanced and Restorative Justice that give equal attention to three concerns: (1) public safety, (2) individual accountability to victims and the community, and (3) the development of skills to help offenders live law-abiding and productive lives.

In summary, jurisdictions vary in the extent of their distinctions between juvenile and criminal justice. Some of the distinctions are less visible today as states modify the purpose clauses of their juvenile laws, and place more emphasis on public safety and individual accountability that are common in criminal codes applicable to adult offenders. As many of the traditional distinctions between juvenile and adult laws have begun to fade, there has been considerable discussion recently about the possibility of merging the juvenile and criminal justice systems. These changes are based upon beliefs and assumptions about juvenile crime, its causes, and whether juvenile offenders are amenable to treatment or should be held accountable and punished similar to adult offenders. Laws and policy decisions should ideally be based upon an understanding of delinquency and what research findings have indicated as the most effective sanctions and responses for preventing juvenile crime and changing young offenders.

Federal and State Legislative Changes

During the first 100 years of history and development, juvenile justice practices were a function of state and local jurisdictions. Local city and county juvenile courts processed juvenile cases, and referred youth to probation supervision or to public or private residential programs. The federal government's role in juvenile justice was virtually nonexistent for the first 60 years of development. Concurrent with U.S. Supreme Court decisions requiring certain due process rights for juveniles in court, a special Presidential Commission and the American Bar Association in separate actions were also critically examining juvenile delinquency and the juvenile justice process. The President's Commission on Law Enforcement and Administration of Justice (1967b) recommended narrowing the range of offenses going before the juvenile court; and groups such as the American Bar Association–Institute of Judicial Administration (1982) called for an end to adjudicating and incarcerating status offenders in juvenile institutions. The U.S. Congress in the Juvenile Delinquency Prevention and Control Act of 1968 recommended that children charged with noncriminal or status offenses be removed from formal adjudication and commitment to detention centers and juvenile institutions. Juvenile lockups and training schools housed many youths whose only "crime" was disobeying their parents, running away, or school truancy. Advocates of such practices argued that involvement in status offenses was the first step toward more serious delinquency and that early intervention might prevent serious delinquency. Opponents noted the unfairness of punishing youths for minor deviant behavior, and voiced concerns about the adverse effects on status offenders being housed with older, hard-core juvenile offenders. Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974 that required as a condition for receiving formula grants the deinstitutionalization of status offenders and non-offenders, as well as the separation of juvenile delinquents from adult offenders. In the 1980 amendments

Table I-1 Core Requirements of the Juvenile Justice and Delinquency Prevention Act of 2002

Year[a]	*Major Requirements of the Juvenile Justice and Delinquency Prevention Act*
1974	The deinstitutionalization of status offenders and non-offenders requirement specifies that juveniles not charged with acts that would be crimes for adults "shall not be placed in secure detention facilities or secure correctional facilities."
1974	The sight and sound separation requirement specifies that "juveniles alleged to be or found to be delinquent and [status offenders and non-offenders] shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges." This means that juvenile and adult inmates cannot see each other and no conversation between them is possible.
1980	The jail and lockup removal requirement states that juveniles shall not be detained or confined in adult jails or lockups. Exceptions: juveniles being tried as a criminal for a felony or who have been convicted as a criminal felon; 6-hour grace period to temporarily hold juveniles until other arrangements can be made; jails in rural areas may hold delinquents up to 24 hours.
1992	The disproportionate confinement of minority youth requirement specifies that states determine the existence and extent of the problem in their state and demonstrate efforts to reduce it where it exists.
1996	Regulations modify the Act's requirements: (1) In nonresidential areas in jails, brief, accidental contact is not a reportable violation; (2) permit time-phased use of nonresidential areas for both juveniles and adults in collocated facilities; (3) expand the 6-hour grace period to include 6 hours both before and after court appearances; (4) allow adjudicated delinquents to be transferred to adult institutions once they have reached the state's age of full criminal responsibility, if such transfer is expressly authorized by state law.

SOURCE: Adapted from Snyder & Sickmund, 2006, p. 97.

[a]The years the requirement was first included in legislation.

to the 1974 Act, Congress added a requirement that juveniles be removed from adult jail and detention facilities. The reforms that began in the 1960s continued into the 1970s as community-based programs, diversion, and deinstitutionalization became the highlights of juvenile justice policy changes (Snyder & Sickmund, 2006). The major provisions of the Juvenile Justice and Delinquency Prevention Act are summarized in Table I-1.

Changes and Trends in Juvenile Justice

The history and development of the juvenile court and a separate system of justice for juveniles has presented a picture of a benevolent, caring system that has promoted the "best interests of the child." Children and youth were separated from adult offenders in a legal process that combined both civil and criminal law. Juvenile court dispositions consisted mainly of a year or less of probation supervision or short-term treatment in "houses of refuge" or "reform schools." The early juvenile court clearly distinguished its goals and purposes as different from the goals of punishment and deterrence for adult offenders. Overall, the juvenile court process was promoted as progressive, humanitarian, and an improvement on the older practice that failed to differentiate offenders by age.

Questioning the Child Savers

The view of the juvenile court as a benevolent, humanitarian development that promoted the "best interests of the child" has not been shared by everyone. Anthony Platt (1977) has portrayed the child-saving movement as simply a part of a larger social movement in the 19th century. The "child savers," according to Platt, were a group of middle- and upper-class Americans who were concerned about the growth of a lower-class population of immigrants and unruly children who were not properly supervised and disciplined by their parents. The child savers' primary concern was to discipline and train these youth to enter the labor force and support the growth of corporate capitalism in America. Others have joined Platt in questioning the benevolent and humanitarian motives of the juvenile court. Pisciotta (1982) noted that there was a significant disparity between the care promised to minors by juvenile court judges and the actual training and care provided for them in houses of refuge, reform schools, and through the system of contract labor. The care provided was often more abusive than parental and the contract labor system was more exploitation than training, leading Pisciotta to conclude that the state was not an effective parent under the doctrine of *parens patriae.* Krisberg (2005), the author of the third reading in this section, noted that the child savers viewed the lower-class urban families as a potentially dangerous class that could threaten order and progress in America. He has questioned the benevolent image of the child-saving practices, noting that lower-class youth were "placed out" with rural families and required to do long hours of hard labor. Black youth were leased out to railroad, mining, and manufacturing companies with little regard for their age, similar to the convict lease system common in adult prison programs. The exploitation of labor and inhumane living conditions raises questions about the benevolent and humanitarian goals of the early juvenile court.

Cycles of Juvenile Justice

Every generation has had the opinion that many if not most young people are behaving badly, and are much worse than the previous generation (Hamparian, Schuster, Dinitz, & Conrad, 1978). Bernard (1992) noted that every generation for the past 200 years or more has held the belief that the current cohort of juvenile delinquents is the worst ever and commits more crime than other groups. Bernard referred to a "cycle of juvenile justice" as tougher laws were passed in response to the "juvenile crime wave" and the mistaken assumption that juveniles commit more crime because the laws are too lenient. The assumption that lenient juvenile justice policies encourage juveniles to "laugh at" the system and commit more crimes leads the public and lawmakers to demand more punitive policies, less leniency, and harsher punishments for juveniles. DiIulio perpetuated this belief that juvenile crime was getting worse when he predicted a juvenile crime wave based on projections of the Philadelphia Birth Cohort Study and the growth of the juvenile population (Bennett, DiIulio, & Walters, 1996). Assuming that the Philadelphia cohort from the 1960s was applicable to the nation in the 1990s, DiIulio and his associates predicted that a large group of what he called juvenile "super-predators" would dramatically drive up the violent crime rate. Juvenile crime experts including Snyder and Sickmund (1999) and Howell (2003) have noted the methodological and statistical errors that incorrectly led to the super-predator myth. In short, it is a mistake to use aggregate or group data to predict individual behavior and trends, and it is a mistake to assume that crime rates from one decade will remain constant through following decades. Juvenile violence in fact has

been decreasing each year since the peak year of 1994 (Snyder & Sickmund, 2006). Despite the annual decrease in juvenile crime over the years, perceptions of a juvenile "crime wave" and lenient laws prompted a number of changes away from the original juvenile justice philosophy of treatment toward more severe sanctions and a punitive philosophy.

Legislative Changes and "Getting Tough"

Following the federal statutory guidelines and the U.S. Supreme Court decisions that occurred in the 1960s and 1970s, the pendulum began to swing toward law and order in the 1980s. In response to public perceptions that serious juvenile crime was increasing and that the system was too lenient with offenders, many state legislators responded by passing more punitive laws. Some laws removed juvenile offenders charged with violent crimes from the juvenile system; other laws required the juvenile justice system to be more like the criminal justice system, and to treat more serious juvenile offenders as criminals but in the juvenile court. The result has been to exclude offenders charged with certain offenses from juvenile court jurisdiction, or to have them face mandatory or automatic waiver to criminal court. In some states, concurrent jurisdiction provisions give prosecutors the discretion to file certain juvenile cases directly in criminal court rather than in juvenile court (Snyder & Sickmund, 2006).

The trend continued through the 1990s as state legislatures continued to pass more punitive laws in an effort to deal more harshly with juvenile crime. Five areas of change have emerged as states passed laws to crack down on juvenile crime. Most of the statutory changes involved expanding eligibility for criminal court processing, sentencing juvenile offenders to adult correctional supervision, and reducing confidentiality protections that have been customary for juvenile offenders. Between 1992 and 1997, all but three states changed laws in one or more of the following areas:

- Transfer provisions: Laws in 45 states made it easier to transfer juvenile offenders from the juvenile to the criminal justice system.
- Sentencing authority: Laws in 31 states gave criminal and juvenile courts expanded sentencing options.
- Confidentiality: Laws in 47 states modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open.
- Victims' rights: Laws in 22 states increased the role of victims of juvenile crime in the juvenile justice process.
- Correctional programming: As a result of new transfer and sentencing laws, adult and juvenile correctional administrators developed new programs (Snyder & Sickmund, 2006, pp. 96–97).

The changes in juvenile justice laws reflect the belief that leniency in juvenile court processing accounted for what many perceived to be dramatic increases in juvenile crime. The tougher laws are based on the assumption that juveniles who commit "adult-like" crimes are equally culpable as adult offenders. Lawmakers pushing for "get-tough" legislation used phrases such as "adult crime, adult time" to win approval for statutory changes to existing juvenile laws. Juveniles who commit crimes that would be punished as felony convictions if committed by adults, the belief was, should be prosecuted and punished like adult offenders. The tougher laws also were intended to send the message to serious or chronic juvenile offenders that

they will be held more accountable. The movement away from rehabilitation and treatment and toward retribution and "just deserts" has occurred simultaneously in both the criminal and the juvenile justice systems. Garland (2001) has documented political and social changes over the past 30 years that have led to demands for more formal social controls of juvenile and adult offenders. The changes that led to more formal controls have been the rising crime rates, challenges to the welfare system, a growing concern for victims, a more diversified population, and a perceived inability of families and other social institutions to control their deviant members. Until the 1980s, criminal justice practitioners generally recognized what criminologists had identified as the causes of deviant behavior, including inequities in society and the social influences on the offender. Under the practice of indeterminate sentencing, the courts took into account the individual and social problems that likely influenced the offender's criminal behavior, and individualized sentences were based on the crime as well as the offender's treatment needs. That practice has given way to determinate sentencing and the belief that individuals of all ages choose to commit crimes and need to be held accountable for their actions. Despite the movement to "get tough" with juvenile offenders, there is evidence that the public has not entirely given up on the possibility of saving children. The authors of our last reading (Moon, Sundt, Cullen, & Wright, 2000) show that there is still public support for juvenile rehabilitation.

Juvenile justice experts have differing opinions on the results and consequences of the statutory changes in juvenile justice. Research evidence is mixed as to whether tougher laws are likely to have much effect on reducing juvenile crime. The laws have clearly resulted in more juvenile offenders being waived to criminal court prosecution and sentencing and more juvenile offenders serving time in adult correctional facilities. What is not clear is whether the tougher laws have any significant deterrent effect on juvenile offenders. We will discuss more of the changes and reforms in the juvenile court and changes in correctional processing in later sections of the book.

The End of the Death Penalty for Juveniles

The death penalty for juveniles convicted of murder has been a controversial issue. The United States has until recently been one of the few nations in the world, and the only democratic, industrialized nation, to allow the execution of juveniles convicted of murder (Cothern, 2000; Streib, 2005). From 1973 through 2004, a total of 228 juvenile death sentences were imposed; 22 (14%) resulted in execution and 134 (86%) were reversed or commuted (Streib, 2005). The majority of those executions (13, or 59%) occurred in Texas. Juvenile death sentences have accounted for less than 3% of the nearly 7,000 total U.S. death sentences since 1973, and two thirds of those were imposed on 17-year-olds, while about one third were imposed on 15- and 16-year-old juveniles (Cothern, 2000). As of the end of the year 2005, a total of 20 states authorized the execution of juveniles (under 18 years): 9 states specified the minimum age at 16 or less, 5 states specified the minimum age at 17, and 6 states did not specify a minimum age (Snell, 2006). The number of states that allow the death penalty for juveniles under 18 has been declining for years, and most states with statutes authorizing the juvenile death penalty have neither imposed nor carried out the death sentence on a person convicted of murder as a juvenile (Death Penalty Information Center, 2007).

On March 1, 2005, the United States Supreme Court ruled in *Roper v. Simmons* (U.S. 125 S.Ct. 1183) that imposition of the death penalty on persons who were under age 18 at the time

of their crimes was cruel and unusual punishment and therefore a violation of the Eighth and Fourteenth Amendments. The *Roper* decision is the third and final ruling on juveniles and the death penalty in the past 20 years. In 1988 the U.S. Supreme Court in *Thompson v. Oklahoma* (487 U.S. 815) held that execution of juvenile offenders under age 16 violated the Eighth Amendment against cruel and unusual punishment. The next year (1989) the Court held in *Stanford v. Kentucky* (492 U.S. 361) that the execution of juvenile offenders 16 and 17 years of age was *not* unconstitutional. Fifteen more years passed before the Supreme Court in *Roper* put an end to the execution of all juvenile offenders under 18 years of age. In a close 5–4 majority opinion, the Court drew upon an earlier decision in *Atkins v. Virginia* (536 U.S. 304) forbidding execution of the mentally retarded. In *Roper* the Court held that

> capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution." (*Atkins v. Virginia,* 536 U.S. at 319; and *Roper v. Simmons,* 125 S.Ct. at 1186)

The decision was based in part on the earlier *Thompson* decision and rested on what the Court recognized as three general differences between juveniles under 18 and adults, and why juvenile offenders cannot be classified among the "worst offenders." First, because juveniles are susceptible to immature and irresponsible behavior it means that "their irresponsible conduct is not as morally reprehensible as that of an adult" (*Roper v. Simmons,* 125 S.Ct. at 1186; *Thompson v. Oklahoma,* 487 U.S. 815 at 835). Second, the Court reasoned that because juveniles still struggle to define their own identity, "it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character" (125 S.Ct. at 1186). Third, because the Court recognized juveniles' diminished culpability compared with adults over 18, then (similar to the mentally retarded, in *Atkins*) "neither of the two penological justifications for the death penalty—retribution and deterrence of capital crimes by prospective offenders . . . provides adequate justification for imposing that penalty on juveniles" (125 S.Ct. at 1186). In ruling against the death penalty for juvenile murderers, the Justices acknowledged that they could not deny or overlook the brutal crimes that too many juvenile offenders have committed. While the State may no longer execute those juveniles under 18 for murder, the Court added a reminder that "the State can exact forfeiture of some of the most basic liberties" (125 S.Ct. at 1197); that is, a life sentence in prison. The *Roper* decision will have an impact on 20 states, 9 of which had specified the minimum age for the death penalty at 16, 5 states at 17 years, and 6 states with no minimum age established. Of the 38 states that authorize capital punishment, 18 of the states and the federal judicial system had already specified 18 as the minimum age for execution (Snell, 2006).

The close 5–4 decision of the Supreme Court was not without controversy. In the majority opinion, Justice Kennedy noted the trend in the United States of moving consistently away from executing juveniles, and he noted the overwhelming international sentiment against executing persons under 18. In a dissenting opinion, Justice Sandra Day O'Connor protested that the majority had not demonstrated that there existed a sufficient national consensus against executing juveniles to conclude that the practice violated the Eighth Amendment, and she argued that the sentence should be available for imposing the death sentence on juveniles who commit the most heinous murders. In an opinion of the other three dissenters, Justice Scalia (who has expressed opposition to allowing international laws and legal decisions to influence

American case law) objected to the majority's reliance on national consensus and trends in other states, arguing that is more within legislative policymaking. Justice Scalia also argued that the majority opinion was based on a selective, incomplete reading of social scientists' conclusions regarding juveniles and the death penalty.

The substitute for the death penalty that the majority opinion suggested for juveniles who murder is also not without question and controversy. Life in prison without parole (LWOP) has been raised as an issue now that thousands of juveniles have been sentenced to life in prison, and the American Civil Liberties Union (ACLU) has recommended that the maximum prison sentence for juveniles should be 25 years (Benekos & Merlo, 2005). The practice of LWOP for juveniles in the United States also constitutes a violation of Article 37(a) of the United Nations Convention on the Rights of the Child, which holds that

> no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. (Office of the High Commissioner for Human Rights, 1989)

The meaning of "cruel and unusual" has changed considerably over the past years, and not too long ago (1989) the U.S. Supreme Court in *Stanford v. Kentucky* held that executing juveniles did not violate this standard. Considering the "evolving standards of decency," Benekos and Merlo (2005) suggest that life imprisonment for juveniles may well be the next issue to be confronted by the Court.

SUMMARY

The history and development of the juvenile court and justice process are highlighted by a number of points:

- Laws and legal procedures relating to juvenile offenders have a long history, dating back thousands of years.
- American juvenile justice was based on English common law that dates back to the 11th and 12th centuries.
- The legal doctrines of *parens patriae* and *in loco parentis* enable the State to take custody of a child and to exercise parental authority, and to provide guidance, protection, and needed services to needy children.
- Before the development of the juvenile justice system in America, parents were expected to control and discipline their children; juveniles who committed crimes were treated the same as adults.
- Houses of refuge were developed in New York, Boston, and Philadelphia in the 1800s, and were the first step toward development of reform schools.
- The "child-saving movement" was begun by a group of concerned child reform advocates who pushed for State intervention to save at-risk children through shelter care and educational programs.
- The first juvenile court was established in Chicago (Cook County), Illinois, in 1899, to provide for separate trials for juveniles.

- Juvenile court procedures went unchallenged for 60 years, until some of the long-standing practices of the juvenile court were overturned in a number of U.S. Supreme Court cases beginning in the 1960s.
- Juvenile justice procedures have traditionally been distinguished from criminal justice procedures for adults, by different terms and emphases.
- The Juvenile Delinquency Prevention and Control Act of 1968 recommended that children charged with noncriminal (status) offenses be handled outside the court system.
- State and federal legislation has altered many of the original treatment goals, instituted more punitive measures, and excluded many serious or chronic youthful offenders from juvenile jurisdiction.
- The U.S. Supreme Court in *Roper v. Simmons* (125 S.Ct. 1183 [2005]) held that the death penalty for juveniles was unconstitutional.

KEY TERMS

Breed v. Jones
"Child savers"
Criminal intent/*mens rea*
Houses of refuge
In loco parentis
In re Gault
In re Winship
Juvenile Justice & Delinquency Prevention Act
Kent v. United States
McKeiver v. Pennsylvania
Parens patriae
Purpose clauses
Reform schools
Roper v. Simmons
Stanford v. Kentucky
Thompson v. Oklahoma

DISCUSSION QUESTIONS

1. Based on your understanding of the earliest laws relating to juvenile offenders (Code of Hammurabi, Roman civil and canon law, Jewish and Moslem laws), discuss whether they are significantly different from today's or are quite similar.
2. Do you believe the power and authority of a state under the doctrines of *parens patriae* and *in loco parentis* are too severe or are appropriate under most circumstances?
3. Give an example of how some laws and policies governing youthful offenders are, in the opinion of some persons, too invasive and punitive. Offer support for how the laws and policies are for the best interests of children and youth.
4. Do any of the provisions of the Juvenile Justice and Delinquency Prevention Act reflect the movement to "get tough" on juvenile offenders? What provisions seem to emphasize some of the original goals of juvenile justice?
5. Present an argument for the following positions: Federal and state legislative changes to juvenile justice are (1) based on the latest research findings on deterrence and effective correctional approaches, or (2) are based more on perceptions of increases in juvenile crime and public and political demands for more punitive sanctions.
6. Summarize arguments for and against the death penalty for juveniles. Based on readings in this text and supporting documents, what do you believe are the strongest arguments for each position?

WEB RESOURCES

The following Web sites provide information and discussion on the history and development of the juvenile justice system:

American Bar Association Juvenile Justice Center, on the juvenile death penalty: http://www.abanet.org/crimjust/juvjus/EvolvingStandards.pdf

Juvenile Offenders and Victims: 2006 National Report: http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf

Youth Law Center, on juvenile justice: http://www.buildingblocksforyouth.org/issues/

Death Penalty Information Center: http://www.deathpenaltyinfo.org/

Bureau of Justice Statistics, on capital punishment: http://www.ojp.usdoj.gov/bjs/pub/pdf/cp05.pdf

Juvenile Death Penalty Facts and Figures: http://www.abanet.org/crimjust/juvjus/dparticles/factsheetfactsfigures.pdf

Convention on the Rights of the Child (United Nations): http://www.unhchr.ch/html/menu3/b/k2crc.htm

How to Read a Research Article

As you travel through your criminal justice/criminology studies, you will soon learn that some of the best known and/or emerging explanations of crime and criminal behavior come from research articles in academic journals. This book has research articles throughout the book, but you may be asking yourself, "How do I read a research article?" It is my hope to answer this question with a quick summary of the key elements of any research article, followed by the questions you should be answering as you read through the assigned sections.

Every research article published in a social science journal will have the following elements: (1) introduction, (2) literature review, (3) methodology, (4) results, and (5) discussion/conclusion.

In the introduction, you will find an overview of the purpose of the research. Within the introduction, you will also find the hypothesis or hypotheses. A hypothesis is most easily defined as an educated statement or guess. In most hypotheses, you will find that the format usually followed is: If X, Y will occur. For example, a simple hypothesis may be: "If the price of gas increases, more people will ride bikes." This is a testable statement that the researcher wants to address in his or her study. Usually, authors will state the hypothesis directly, but not always. Therefore, you must be aware of what the author is actually testing in the research project. If you are unable to find the hypothesis, ask yourself what is being tested and/or manipulated, and what are the expected results?

The next section of the research article is the literature review. At times the literature review will be separated from the text in its own section, and at other times it will be found within the introduction. In any case, the literature review is an examination of what other researchers have already produced in terms of the research question or hypothesis. For example, returning to my hypothesis on the relationship between gas prices and bike riding, we may find that five researchers have previously conducted studies on the increase of gas prices. In the literature review, I will discuss their findings, and then discuss what my study will add to the existing research. The literature review may also be used as a platform of support for my hypothesis. For example, one researcher may have already determined that an increase in gas causes more people to roller skate to work. I can use this study as evidence to support my hypothesis that increased gas prices will lead to more bike riding.

The methods used in the research design are found in the next section of the research article. In the methodology section you will find the following: who/what was studied, how many subjects were studied, the research tool (e.g., interview, survey, observation . . .), how long the subjects were studied, and how the data that were collected were processed. The methods section is usually very concise, with every step of the research project recorded. This is important because a major goal of the researcher is "reliability," or, if the research is done over again the same way, will the results be the same?

The results section is an analysis of the researcher's findings. If the researcher conducted a quantitative study (using numbers or statistics to explain the research), you will find statistical tables and analyses that explain whether or not the researcher's hypothesis is supported.

If the researcher conducted a qualitative study (nonnumerical research for the purpose of theory construction), the results will usually be displayed as a theoretical analysis or interpretation of the research question.

Finally, the research article will conclude with a discussion and summary of the study. In the discussion, you will find that the hypothesis is usually restated, and perhaps a small discussion of why this is the hypothesis. You will also find a brief overview of the methodology and results. Finally, the discussion section will end with a discussion of the implications of the research, and what future research is still needed.

Now that you know the key elements of a research article, let us examine a sample article from your text.

Saving the Children: The Promise and Practice of Parens Patriae, 1838–1998

Alexander W. Pisciotta

***Crime & Delinquency,* Vol. 28, pp. 410–425, 1982**

1. What is the thesis or main idea from this article?

   ◆ The thesis or main idea is found at the end of the introduction of this article. Pisciotta directly states on page 412, ". . . it is the purpose of this study to assess the validity of the assumptions underlying the doctrine of *parens patriae* as it was applied before the founding of the juvenile court in 1899."

2. What is the hypothesis?

   ◆ The hypothesis is also found in the introduction of this article. Following the stated purpose of the research, Pisciotta concludes the introduction with his research statement regarding *parens patriae,* which is stated as: "Justices across the country, throughout the 19th century, invoked *parens patriae* on premises which were, at best, questionable" (p. 413). In other words, Pisciotta is interested in the validity of the rehabilitation process of wayward juveniles.

3. Is there any prior literature related to the hypothesis?

   ◆ As you may have noticed, this article does not have a separate section for a literature review. However, you will see that Pisciotta devotes a section related to the literature in the introduction. Here, Pisciotta spends a considerable amount of time discussing court rulings based on the rehabilitative principles delineated in *Ex parte Crouse.* This is to lead the reader into understanding the effect of the precedent established in *Ex Parte Crouse* and how, in support of Pisciotta's hypothesis, the invoking of *parens patriae* was based on an unfounded premise due to the lack of internal research in juvenile institutions.

4. What methods are used to support the hypothesis?

   ◆ Pisciotta's methodology is known as a historical analysis. In other words, rather than conducting his own experiment, Pisciotta is using evidence from history to support his hypothesis regarding the questionability of invoking *parens patriae* in the 19th century. When conducting a historical analysis, most researchers use archival material

from books, newspapers, journals, and so on. Pisciotta makes mention that he is using the records of a number of juvenile institutions, as well as investigative reports.

5. Is this a qualitative study or quantitative study?

◆ To determine whether or not a study is qualitative or quantitative, you must look at the results. Is Pisciotta using numbers to support his hypothesis (quantitative) or is he developing a nonnumerical theoretical argument (qualitative)? Because Pisciotta does not utilize statistics to support his overall conclusion in this study, we can safely conclude that this is a qualitative study.

6. What are the results and how does the author present the results?

◆ Because this is a qualitative study, as we earlier determined, Pisciotta offers the results as a discussion of his findings from the historical analysis. The results may be found in the conclusion of this article. Here Pisciotta states that "the available investigations and records of the nineteenth century juvenile institutions offer compelling evidence that the state was not a benevolent parent. In short, there was significant disparity between the promise and practice of *parens patriae*" (p. 425).

7. Do you believe that the author/s provided a persuasive argument? Why or why not?

◆ This answer is ultimately up to the reader, but looking at this article, I believe that it is safe to assume that the readers will agree that Pisciotta offered a persuasive argument. Let us return to his major premise: Justices throughout the country, throughout the 19th century, invoked *parens patriae* on premises that were, at best, questionable. Pisciotta supports this proposition with a historical analysis of investigative reports that shed light on the abuse, slavery, religious conflict, and violence that existed within the juvenile institutions. This evidence compels the reader to agree with Pisciotta that there was a disparity between the promise of a benevolent parent invoking a solid system of rehabilitation, and the actual practice of the juvenile institutions.

8. Who is the intended audience of this article?

◆ A final question that will be useful for the reader deals with the intended audience. As you read the article, ask yourself, to whom is the author wanting to speak? After you read this article, you will see that Pisciotta is writing for not only students, but also professors, criminologists, historians, and/or criminal justice personnel. The target audience may most easily be identified if you ask yourself, "Who will benefit from reading this article?"

9. What does the article add to your knowledge of the subject?

◆ This answer is ultimately up to the reader, so ask yourself, "What do I know now that I did not know before reading this article?" You may find yourself answering that you did not know about the abuse that took place within the juvenile institutions. Perhaps you did not know this history of *parens patriae* and how invoking *parens patriae* not only was based on questionable premises, but also affected the juvenile courts of the 20th century. All in all, as you finish reading the article, you should be able to add something new to your knowledge of the subject. This is the beauty of research.

10. What are the implications for criminal justice policy that can be derived from this article?

- Pisciotta offers implications for criminal justice policy at the end of this article. In the concluding paragraph he states: "If there is any practical lesson to be learned from evaluating the historical record of *parens patriae,* it is, perhaps, that contemporary child savers would be well advised to assess objectively, rather than assume, the 'benevolent' effects of their rehabilitative efforts" (p. 425). In other words, any policy must be thoroughly investigated before assumptions about its validity may be made.

Now that we have gone through the elements of a research article, it is your turn to continue through your text, reading the various articles and answering the same questions. You may find that some articles are easier to follow than others, but do not be dissuaded. Remember that each article will follow the same format: introduction, literature review, methods, results, and discussion. If you have any problems, refer to this introduction for guidance.

READING

Saving the Children

The Promise and Practice of Parens Patriae, 1838–1898

Alexander W. Pisciotta (1982)

Parens Patriae: The Promise of Salvation

The landmark decision incorporating *parens patriae* into the American legal structure was ruled upon by the supreme court justices of the state of Pennsylvania in 1838. In this case, the Pennsylvania court was presented with an appeal on a writ of habeas corpus submitted by the father of one of the inmates immured in the Philadelphia House of Refuge—Mary Ann Crouse. Mr. Crouse maintained that his daughter (who had been committed by his wife, without his knowledge, as "incorrigible") was illegally detained because she had not been granted the benefit of a trial on account of her age. Unfortunately for Mary Ann and her father, the justices of the Pennsylvania court rejected this interpretation of the law and rendered a unanimous decision which concluded that the Bill of Rights (in this case the sixth and ninth sections) did not apply to minors. The justices based their opinion on the doctrine of parens patriae, which, heretofore, had been an English jurisprudential innovation. "May not the natural parents, when unequal to the task of education, or unworthy of it," asked the judges, "be superseded by the *parens patriae* or common guardian of the community?"[1]

The justices' *per curiam* opinion clearly indicates that they based their ruling on the assumption that the Philadelphia House of Refuge had a beneficial influence on its charges: "The House of Refuge is not a prison, but a school where reformation and not punishment is the end." The justices also clearly specified their reasons for assuming that the Philadelphia institution was a "school" and not a prison: "The object of charity is reformation, by training . . . inmates to industry; by imbuing their minds with the principles of morality and religion; by furnishing them with means to earn a living; and, above all, by separating them from the corrupting influence of improper associates."[2]

Although parens patriae was not directly employed as a rationale for the founding of houses of refuge—four were already in operation by 1838—the administrators of juvenile reformatories across the country were eager to proclaim, after 1838, that their institutions were organized and operated upon the rehabilitative principles delineated in *Ex parte Crouse*. "The language employed by the Supreme Court of Pennsylvania," declared the managers of the New York House of Refuge in 1862, "expresses the idea which the managers desire to bring to the public, in regard to the character and object of the House of Refuge of this City."[3] The keepers of the

SOURCE: *Crime & Delinquency, 28*(3), 410–425, July 1982.

Baltimore House of Refuge echoed the optimism of their New York counterparts when they concluded that they had "done good work for man, and for the city and commonwealth—for the cause of humanity and God."[4]

Based upon assurances received from the keepers of juvenile institutions that they were, indeed, providing education, religious instruction, parental discipline, and training for future employment, magistrates across the country did not, for the rest of the century, hesitate to follow the precedent established in *Ex parte Crouse* and reject writs of habeas corpus which challenged the powers afforded to the state under parens patriae.[5] In a representative case, when the parents of Francis Degnen challenged the right of the managers of the New York House of Refuge to hold their son on a charge of petty theft until he reached the age of majority—an offense for which an adult could be incarcerated for only six months—the justices of the New York State Supreme Court issued a unanimous ruling in favor of the keepers of the refuge which resounded the rationale employed by the Pennsylvania justices thirty-one years earlier:

> Even if there is any ambiguity in the language, it should be construed liberally, for the authority given to the institution is beneficial in its effect on the individual prisoner and on society; in relation to the former, the exercise of the authority amounts to a commutation of ordinary punishment. Strictly speaking, confinement in the House of Refuge does not partake of the degradation or physical suffering to which persons are subject. Its discipline is reformatory, with the view of saving persons, during the susceptibility of tender years, from total profligacy, and restoring them to society in a condition no longer dangerous to it.[6]

There was, however, a significant flaw in the logic of the courts: Their knowledge about the internal operations and "benevolent effect" of reformatories was derived almost solely from information imparted by the managers of these institutions.[7] The justices ruling in the case of Mary Ann Crouse assumed that the Philadelphia House of Refuge had a beneficial effect on the children because the prominent members of the board of managers assured the court that their charges were receiving moral, religious, and educational instruction at the same time that they were learning a trade. Judges in other states blindly followed the precedent established by the Pennsylvania court and repeated its error by not closely investigating the internal affairs of these institutions in order to make certain that they were, indeed, "great charities." The result, as might be expected, was that the opinions rendered by the courts in juvenile cases throughout the century were "distressingly similar."[8]

In response to this oversight by the courts, it is the purpose of this study to assess the validity of the assumptions underlying the doctrine of parens patriae as it was applied before the founding of the juvenile court in 1899. Were inmates in reformatories provided with parental discipline, meaningful labor, religion, and education? Were they "separated from the corrupting influence of improper associates" in institutions that were truly reformatory in nature? An examination of the records of a number of juvenile institutions, as well as investigative reports, strongly suggests that there was a significant disparity between the theory and practice of these reformatories. In short, justices across the country, throughout the nineteenth century, invoked parens patriae on premises which were, at best, questionable.

The State as Disciplinarian: Parental or Abusive?

One of the conditions under which the courts reserved the right to invoke parens patriae and separate children from their natural parents occurred when the parents physically abused their offspring. Judges justified this intervention by promising to place the children under the care of reformatory school administrators who were

humane and compassionate; and the managers of the "benevolent institutions" reinforced this belief by describing their methods of discipline in terms that were almost identical to those employed by the keepers of the Western House of Refuge in 1851: "The discipline of the institution is intended to be mild, conciliatory and parental but firm."[9] There was, however, often a considerable difference between the rhetoric of the keepers and the reality confronting the inmates; even for an age in which stern corporal punishment was expected of parents,[10] the techniques of subjection applied in many reformatories could not, by any reasonable standard, be described as "parental" in nature.

An investigation into the internal affairs of the Providence Reform School in 1868, for example, revealed that inmates were punished with rattans and a "cat" with six twelve-inch leather thongs attached to a wooden handle—for recalcitrant children, the wooden handle was used as a whipping surface. Eban J. Bean was one of a number of former employees who described Superintendent James Talcott's method of discipline:

Bean: He was stripped naked in the room, his fingers put on the wall as high as he could reach, and he was licked with what I should call a cat o'nine tails. . . . He was licked 'til the blood ran down his back.

Alderman: How long did the punishment last?

Bean: I should say about five or ten minutes. He boxed the boy first, he boxed his face, and slapped his face. He bloodied the floor considerably. He first talked, and then the boy stripped for him.[11]

The testimony of the inmates supported the allegations of cruelty raised by the former employees. William DeMars provided a graphic description of one of his encounters with the institution's official disciplinarian, Mr. Rockwell:

DeMars: Mr. Rockwell has knocked me around and punched me in the guts, knocked me down and knocked me out of breath; he struck me in the head and knocked me senseless, so that I lay on the ground before I could get my breath; I was senseless.

Alderman: When he struck you in the guts, did he knock all your senses out?

DeMars: No, sir; he struck me in the head and knocked all my senses out.[12]

Female inmates were treated with almost as much severity. The testimony revealed that it was a common practice to have their "dresses taken down, so as to expose the upper part of their back and shoulders, and punishment by the strap." In defense of this mode of discipline, the superintendent pointed out that a female officer was "usually present" to supervise the whipping.[13] The girls were also subjected to the punishment of being tied and "ducked" under water in a large tub. Mary Symonds's experience with the superintendent was similar to other reported cases:

Alderman: Did he put you in all over?

Symonds: He put my head where my feet ought to go in the bath tub, and held me under the water for a few minutes.

Alderman: Did he keep you there till you strangled?

Symonds: He just held me and then took me out; I halooed, and said something to him that I ought not to say, and then he put me back again; I swore at him, and he ducked me a second time.

Alderman: What did he do then?

Symonds: He slapped me on the side of the face, and I halooed murder.[14]

An investigation of the State Reform School at Westborough, Massachusetts, in 1877 revealed an even more elaborate system of punishments. Flogging with the "cat" was, once again, the primary method of maintaining order, and each of the officers was permitted to administer corporal punishments at his own discretion. The experience related by seventeen-year-old Cornelius Callahan is disturbingly similar to the stories told by the inmates of the Providence Reform School eight years earlier[15]:

> Mr. Phillips punished me. He made me take off my jacket and pants. He wanted me to bend over. I did not. He strapped me for a long time while standing up; then I went on my knees. He put his hand on my throat. I could not speak, but made a motion for him to take his hand off my throat. He whipped me until the blood ran down my legs.[16]

The keepers of the Westborough Reform School also placed their more obstreperous children in a "sweatbox," which was ten inches deep and fourteen inches wide with three one-inch slits in the front for air holes; one boy testified that he was locked in the "sweatbox" for seven days from half past five in the morning until a quarter past six at night with his hands strapped behind him. The straightjacket was also commonly used; and, for those children who would not submit to any of these forms of punishment, the keepers applied a steady stream of ice cold water from a hose until the recalcitrant child repented.[17]

The methods for securing the subjection of the inmates in the country's first juvenile reformatory—the New York House of Refuge—were equally severe. An 1872 investigation revealed that in addition to whipping the inmates, the superintendent hung boys by their thumbs for serious infractions of the rules.[18] In 1879, representatives from the State Board of Charities found marks on the boys indicating that they had received a "severe flogging." The inmates were punished with a variety of instruments, including a nineteen-inch leather strap.[19] The investigators of the New York House of Refuge might well have been describing the modes of discipline applied in nineteenth century reformatories across the country when they concluded that, in contrast to the assumptions of committing judges, "corporal punishment is, and always has been, a conspicuous feature of the discipline of the House; and it is manifest that a main reliance is placed upon it for the accomplishment of the reformatory work proposed."[20]

Contract Labor: Training or Exploitation?

Throughout most of the nineteenth century, reformatory managers used a system of contract labor in order to fulfill the mandate of the *Crouse* decision of "training its inmates to industry" and "furnishing them with a means to earn a living."[21] Although there were a number of variations, the programs of labor were essentially similar. Private businessmen supplied machinery, material, and overseers; the inmates supplied their labor; and the managers of the institution were paid on a per diem or piece-price basis. The inmates received either a menial sum or, as was more generally the case, no remuneration at all. The items produced in the New York House of Refuge in 1857 were almost identical to the goods produced in other institutions. The boys worked under contract for five to seven hours each day making shoes, clothes, wire, sofa springs, and cane chairs, while the girls were responsible for the institution's domestic chores. "Every child from the oldest to the youngest has a daily task wisely adapted to its age and ability," explained the chaplain of the New York House of Refuge. "A trade in most instances is thus secured."[22] The managers of the Cincinnati House of Refuge expressed the optimism of managers across the country when they proclaimed that "the contracting system is decidedly the most advantageous in all respects."[23]

In practice, however, the system of contract labor did not fulfill the expectations of judges who believed that they were sentencing minors to a

term of vocational education. An investigation of the system of contract labor in fourteen institutions in New York State in 1870 by the noted penologist, Enoch C. Wines, is most enlightening. The unequivocal conclusion of Wines's committee was that "[t]he contract system is bad and should be abolished,"[24] a finding certainly not consistent with the exhortatory evaluations of the managers. The investigators were most critical of the system of contract labor in operation at the New York House of Refuge, which was viewed, ironically, as a model program of labor at this time.

The testimony of five former employees of the shops of the New York House of Refuge revealed a number of serious abuses. The overseers bribed the boys with tobacco and "sandwiches, sausages, and pie" in exchange for increased production, and reported good workers on fabricated charges so that they would not secure early release dates; "small boys were required to do as much as a man outside."[25] The most serious finding, however, was that the boys were severely whipped when they did not fulfill their production quotas. One former employee who had worked in the shops for eight years testified that he had "seen boys punished for not completing their tasks, so that the blood ran down their boots."[26] Another witness described the disciplinary ritual in practice during the three years in which he was employed:

> The Superintendent or his Assistant used to come around daily, at about ten o'clock, to receive complaints; if he thought a boy ought to be whipped, he sent him down to the closet; when the boys came back, I have seen stripes on their back through holes in their shirts, and it was a common saying among the boys, "You'll get the stars and stripes."[27]

The primary beneficiary of the contract labor system was not the inmates; rather, it was the contractor, George Whitehouse. After hearing the contractor's former bookkeeper, George Coffin, testify that shoes produced in the open market for $.50 could be made by the boys for $.15, Wines's committee investigated the financial status of Mr. Whitehouse. Their findings were not at all consistent with the presumed rehabilitative effects of contract labor. In 1869 the contractor realized a profit of $183,875 from the labor of the 575 boys in the institution. "We put it to all fair-minded men, we put it to the managers themselves," asked the commissioners in disbelief, "whether the contractor on Randall's Island pays a fair price for the labor he obtains there? . . . In the thirteen years during which he has held the shoe contract on Randall's Island, the contractor has built up a large fortune for himself."[28] The effects of working for Mr. Whitehouse, and of being in the refuge were, perhaps, most aptly stated by bookkeeper Coffin. "I have known boys sent there for some trivial offence [sic] who were not bad boys at bottom when they first went there, but who became, in a short time, as thoroughly hardened as in any institution." In contrast with the assurances of the managers that their institution was a "school," Coffin concluded that "it is generally understood up there that the boys are not reformed."[29]

Religion: Salvation or Proselytization?

Nineteenth century judges and reformers who cited the doctrine of parens patriae also did so on the grounds that by placing wayward children in reformatories they were saving them from a godless existence by "imbuing their minds with the principles of morality and religion."[30] Almost without exception, religious instruction consisted of nonsectarian chapel services on Sunday mornings followed by Sunday school classes in the afternoon, as well as daily prayer. The managers of reformatories, once again, did not hesitate to reassure the courts that they were fulfilling the principles of *Ex parte Crouse*. "The Chaplain's Department," concluded the keepers of the State Reform School at Westborough, "is one of vast importance to the highest welfare of the boys, involving worth of the spiritual as well as the temporal well being of those under its charge."[31] The managers of the New York House of Refuge supported their claims of

salvation in the same year by noting that although 66 percent of the children had never learned any verses of Scripture at the time of entering the refuge, 53,166 verses had been committed to memory and recited by the end of the year.[32]

In reality, however, control over the religious instruction of children in reformatories was a symbolic source of dispute between the Protestant managers, who maintained that they were saving the children of foreign-born Catholics from lives of depravity and crime by exposing them to nonsectarian services, and Catholic clergymen and parents, who felt that their sons and daughters were being stolen from them and molded into heretics.[33] In essence, the confrontation over the proselytization of the children mirrored the tensions and hostilities that characterized the relations between native Protestants and foreign-born Catholics outside the walls of juvenile institutions, as native Protestants attempted to maintain their control over the political, economic, cultural, and religious structures of society. The Catholic view of the New York House of Refuge in the nineteenth century, as one instance, was succinctly stated in 1879 by Father Ignatius Renauld:

> . . . they [the Catholic church] consider that everything in the House, so far as religious ministration is concerned—whether by the Chaplain or by the institution or otherwise—is Protestant; the Bible used is the Protestant Bible; the Prayer, as used, has the Protestant conclusion which Catholics do not have in the Lord's Prayer; while the order of the service carried on is considered as Protestant by the Catholics at large.[34]

An unusually sympathetic chief justice of the supreme court of Illinois, Isaac Redfield, expressed a similar concern about the purpose of the Chicago Reform School in 1870 when he observed that a Catholic child "cannot be torn from home and immured in a Protestant prison, for ten or more years, and trained in . . . a heretical and deadly faith, to the destruction of his own soul."[35]

The perceptions of Father Renauld, Justice Redfield, and others who questioned the intentions of the keepers of juvenile institutions were generally well-founded. From the opening of the New York House of Refuge in 1825, as one example, the managers vehemently opposed all attempts by Catholic clergymen to hear confessions or hold mass on Sundays. Even after the Western House of Refuge—a model of the New York City institution which was opened in Rochester, New York, in 1849—incorporated without incident separate Catholic services into its regimen of reform, the keepers of the city institution remained adamant in their resistance, and warned that allowing priests to attend their flock "would be at once a breaking down of the discipline, and lead to disorganization."[36] When Catholic clergymen and laymen finally appealed to the state legislature to force the keepers of the refuge to permit secular services, the Protestant managers offered extraordinary resistance, and even sent members of their "law committee" to Albany armed with briefs which charged that the passage of such a law would be illegal. Although the Protestant managers succeeded in quashing several bills presented in the legislature, the growing political influence of Catholics finally resulted in the passage of a law ordering the keepers to allow mass on Sundays in 1892.[37] In essence, the managers of the New York House of Refuge, Chicago Reform School, and other institutions were not incorrect in proclaiming that they were "imbuing their [charges'] minds with the principles of morality and religion," in accordance with *Ex parte Crouse;* they merely neglected to note that the indoctrination was restricted to the Protestant faith.

Apprenticeships: A Home in the Country?

The ultimate test of the success of juvenile institutions in transforming neglected, dependent, and delinquent minors into God-fearing, law-abiding, and hard-working citizens, in accordance with the principles of parens patriae, was, in the

view of the keepers, reflected in the successful reintegration of the youths into the community through apprenticeships. The system instituted at the New York House of Refuge in 1825, once again, served as a model throughout the nineteenth century. Once the inmates had resided in the New York institution for a sufficient amount of time, and had participated in the regimen of reform with a significant degree of compliance, they appeared before the institution's "indenture committee," which was composed of several members of the board of managers. At the discretion of the board, the children—who were always committed for indeterminate terms which could not extend beyond the age of majority—could be returned to their parents or discharged to a master who was required to sign a contract wherein he agreed to provide the apprentice with food, clothes, shelter, religious instruction, and a nominal payment when the apprentice reached the age of majority. Boys were generally apprenticed to farmers in the country, and girls were exclusively placed as domestics.[38] In essence, the apprentice system transferred the responsibility of parens patriae from the state to the master.

As evidence of the success of the apprentice system, the managers of the New York institution included "representative letters" from the masters in their annual reports. The report from the master of J. H. was standard:

> In answer to your circular in regard to J. H., I inform you that he learns pretty well, and will, I think, make a bright man. I feel so much interest in him that I intend to see that he has a good trade. He often speaks of you in the highest terms. His morals are good, and I intend doing all I can for him.[39]

Letters from the apprentices were also offered as testimony to the successful adjustment of the apprentices. "The place that I now live is one of the most beautiful I was ever in," wrote one boy, "and Mr. B. and his lady, with whom I live, treat me kindly as their son."[40] Based upon reports of this nature, it is understandable that the managers concluded that "it is ground of congratulations that so many have been provided with homes in the country amid the peaceful occupation of farm life."[41]

In contrast with the exhortations of the keepers, the terms of the indenture contract were generally not fulfilled. A random sample of 210 case histories selected between 1857 and 1862 from the records of the New York House of Refuge reveals that 72 percent of the inmates either ran away, voluntarily returned to the refuge because they were not pleased with their placement, were returned to the refuge by their master, or committed an offense and were incarcerated in another institution.[42] Entries in the superintendent's daily journal indicate that the relationship between master and apprentice was generally not as congenial as the administrators suggested in the "representative letters" cited in their annual reports. For instance, Margaret Shaw voluntarily returned to the refuge complaining that she "has had bad treatment, that Mrs. Pitcher is intemperate and that she has not been in Sunday school or church since she left the house."[43] Thomas Collier was forced to run away because he was "badly clothed and stated that he ran away because he [his master] abused him, and had tied and whipped him."[44] A number of female apprentices faced a different type of problem. When Mary Gash returned to the superintendent and informed him that she was pregnant by Mr. Rue, her master, the superintendent, perhaps naively, "advised her to return to Mr. Rue and inform Mrs. Rue of her condition . . . and ask for care and protection."[45]

The experiences of the apprentices from the Western House of Refuge were often as unpleasant. Thomas Dorney voluntarily returned to the Rochester institution in 1856 complaining that he was "not properly treated," and the superintendent also noted that "his feet were frosted and appeared half frozen."[46] Charles Darby returned in 1858 complaining that his master had "whipped and abused him."[47] That the primary interest of many of the masters was not the reformation of the children, but profit, also seems evident. One Mr. Fletcher returned his apprentice, and the

superintendent noted his explanation: "He [the apprentice] was a great eater, that he [Mr. Fletcher] took two bushels of wheat to the mill the day after he got the boy and it did not last at all, he also noted that their groceries went much faster, had to go to the grocery quite often."[48]

The discrepancy between the promise and the practice of the indenture system was not, however, solely a result of the cruelty and greed of the masters, for it was not unusual for apprentices to escape as soon as they got their first chance. The note received by the superintendent of the New York House of Refuge from the master of James Wells stating that the boy "left him before he got out of the city"[49] was not exceptional. Other well-intentioned masters actually demonstrated exceptional forbearance. John Cooper was returned to the refuge by his master when, after being pardoned three times, "he began his old capers last night, for the fourth time entered Mr. Grove's bedroom with the evident intention of stealing his pocket book."[50] Another master whose apprentice stole $50 and ran away was undoubtedly speaking for Mr. Grove, and a number of other masters, when he wrote to the superintendent of the New York institution in 1862 denouncing him for "bringing such boys out to this country and palm[ing] them off as good, honest, industrious boys when they know there is no honesty, industry or any good trait of character about them."[51] It seems, then, that the failure of the apprentice system was not only a result of the cruelty and greed of some masters, but also a result of the unwillingness on the part of a significant number of children to give their parental substitutes a chance to teach them a trade and provide them with a home in the country.

The State: An Effective Parent?

Perhaps the most significant commentary on the ability of the state to act in *loco parentis* is reflected in the behavior of the inmates toward their parental substitutes. An examination of the extant records of juvenile reformatories reveals that, behind the imposing walls of these institutions, hidden from the purview of the judiciary and the public, the children often did not interact with their keepers in a manner that would suggest that they perceived the state as a benevolent parent. The frequency of attempted escapes, assaults upon guards and fellow inmates, attempted arson, and homosexual relations indicates that the inmates were not "separated from the influence of improper associates," as suggested in *Ex parte Crouse.* Instead, based on the fact that most of the inmates were incarcerated for what would today be termed status offenses, it is more likely that the inmates were introduced to new forms of vice.

Although an official of the New York House of Refuge proclaimed that inmates "will never run away, whatever may be their opportunities . . . if placed on [their] honor,"[52] the frequent reference made to attempted and successful escapes in the superintendent's daily journal indicates that the inmates did not share this opinion. In fact, between 1825 and 1875, 184 prisoners succeeded in escaping, while hundreds of others were thwarted in their attempts.[53] Escapes were also a major problem in other institutions. The determination and imagination demonstrated by the inmates of the Western House of Refuge were not unusual. John Hicks, for instance, eluded the officer who was taking him to the Rochester institution by jumping off of a train while it was traveling at forty miles per hour.[54] In the same year, 100 boys took advantage of an open gate and fled.[55]

Inmates who were not astute enough to secure their freedom by outwitting their keepers sometimes resorted to violence. At least three guards were murdered by inmates in attempts to escape from the New York House of Refuge, and dozens of others were fortunate to survive assaults made with knives, bats, blackjacks, bricks, and pipes.[56] Officer J. H. Tower provided a graphic description of an attack by the boys which says as much about their determination to gain freedom as it does about their feelings toward their keepers:

> About five o'clock in the morning of March 16th I was lying on the platform in the hall

> reading. The boy Schaffer hit me on the head with a blackjack. . . . When I came to three boys were on top of me. The boy Schaffer was choking me. The boy Mellori was tying my legs. When I went to rise up the boy Rawls struck at me with a knife.[57]

The inmates did not, however, direct all of their frustrations against the officers: Deadly weapons were also used by the inmates against their peers. Much of the violence, throughout the nineteenth and into the twentieth century, was attributable to disputes over money and tobacco between gangs that were divided on ethnic lines. "A few fellows call themselves 'Ups,'" explained one gang member. "They call themselves 'Ups' and get some other fellows and get money from people, and another gang would try to get the money from them, and they would fight and stab each other."[58] This inmate's description was not at all inaccurate. In 1900, only one year after the doctrine of parens patriae was used as the underlying rationale for the founding of the juvenile court in Chicago, one boy was stabbed in the back, another in the head, and two in the neck.[59]

The danger of fire was also a pervasive threat in nineteenth century reformatories. The concern of managers across the nation was expressed by Superintendent Samuel Wood of the Western House of Refuge when he observed that "there is no safety for us, but in the most constant vigilance."[60] Although Superintendent Wood enforced the standard rule of reformatories, which prohibited any employee or visitor from bringing matches into the institution, fires were still started, including endeavors that resulted in $60,000 dollars in damage to a shop in 1864 and the complete destruction of the department for females in 1887. The inmates of the New York House of Refuge vented their hostilities in a similar manner: One shop alone was burned to the ground in 1861, 1884, and 1899. The manager's concern with the threat of arson is reflected in the maintenance of fifty-two separate insurance policies in 1867 valued at over $364,000.[61]

Homosexual relations were also a disturbingly common practice among the inmates. In the Western House of Refuge the problem became so pervasive that the superintendent warned that "unless the problem is dealt with more vigorously, more severely, the time is near at hand when it will be of infinite damage for any boy committed to the institution whom, at the time of his commitment, is not already a sexual pervert."[62] Nor was the problem restricted to the boys. The matron of the Western House of Refuge denounced the open dormitory system in 1887 as the "most diabolical system yet devised for the demoralization of the girls!" She went on to explain that "in spite of the constant vigilance of a watch-woman who gives her whole attention to one dormitory, the black and the white girls elude her and get together in bed."[63]

Conclusion

It would certainly be an oversimplification and distortion of history to suggest that all reformatory managers were cruel xenophobics whose primary concern was the proselytization of innocent Catholic children, that inmates never benefited from their incarceration, or that reformatories were complete failures in achieving their objectives (whatever those were). However, the available investigations and records of nineteenth century juvenile institutions offer compelling evidence that the state was not a benevolent parent. In short, there was significant disparity between the promise and practice of parens patriae. Discipline was seldom "parental" in nature, inmate workers were exploited under the contract labor system, religious instruction was often disguised proselytization, and the indenture system generally failed to provide inmates with a home in the country. The frequency of escapes, assaults, incendiary incidents, and homosexual relations suggests that the children were not, as the Pennsylvania court presumed in 1838, "separated from the corrupting influence of improper associates."

Based on the historical record of parens patriae, one must wonder how the doctrine could have been extended and employed as the legal and moral foundation of the juvenile court in 1899. Even more perplexing, perhaps, is the fact that the juvenile court and parens patriae were hailed as humanitarian innovations well into the 1960s. It was not until 1966, when the United States Supreme Court issued its opinion in *Kent* v. *United States,* that the legal and moral foundation of the juvenile justice system was called into question. In his widely cited opinion, Justice Fortas warned that while the state promised minors "parental" treatment under parens patriae,

> There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[64]

If there is any practical lesson to be learned from evaluating the historical record of parens patriae, it is, perhaps, that contemporary child savers would be well advised to assess objectively, rather than assume, the "benevolent" effects of their rehabilitative efforts. It is certainly ironic, and perhaps even tragic, that the humanitarian imagery projected by supporters of the juvenile justice system has, for decades, buried the "evidence" that the child "receives the worst of both worlds." It may seem paradoxical to contemporary child savers that the initial step toward developing a truly humane juvenile justice system requires the abandonment of unfounded humanitarian rhetoric, but the historical inconsistency between the promise and practice of parens patriae seems to leave few alternatives.

Notes

1. Ex parte Crouse, 4 Wharton (Pa.) 9 (1838).
2. Ibid.
3. Society for the Reformation of Juvenile Delinquents, *Thirty-Seventh Annual Report* (New York: Wynkoop, Hallenbeck and Thomas, 1862), p. 14.
4. Managers of the Baltimore House of Refuge, *Sixth Annual Report* (Baltimore: James Lucas and Sons, 1857), p. 7.
5. For two exceptions to this generalization, see The People v. Turner, 55 Illinois 280 (1870); and Ex parte Becknell, 51 Pacific Reporter (Ca.) 692 (1897). Both of these rulings were quickly overturned in ensuing appellate decisions, so that their effect was minimal.
6. The People v. Degnen, 54 Barbour's Supreme Court Reports 165 (1869).
7. Sanford J. Fox, "Juvenile Justice Reform: An Historical Perspective," *Stanford Law Review,* June 1970, pp. 1204, 1206; Steven L. Schlossman, *Love and the American Delinquent: The Theory and Practice of "Progressive" Juvenile Justice, 1825–1920* (Chicago: University of Chicago Press, 1977), p. 14.
8. Douglas R. Rendleman, "Parens Patriae: From Chancery to the Juvenile Court," in *Juvenile Justice Philosophy: Readings, Cases and Comments,* 2d ed., Frederic L. Faust and Paul J. Brantingham, eds. (St. Paul, Minn.: West, 1979), p. 82.
9. Western House of Refuge, *Second Annual Report* (Albany, N.Y.: Charles Van Benthuysen, 1851), p. 5.
10. Robert Bremner et al., eds., *Children and Youth in America,* vol. 2 (Cambridge, Mass.: Harvard University Press, 1971), pp. 117–18.
11. *Investigation into the Management of the Providence Reform School, Made by the Board of Aldermen, under the Direction of the City of Providence* (Providence, R.I.: Hammond, Angell and Co., 1869), p. 218.
12. Ibid., p. 591.
13. Ibid., p. 389.
14. Ibid., p. 628.
15. The similarity in the testimony of inmates who experienced, and former employees who witnessed, the administration of punishments in nineteenth century reformatories precludes any possibility that their accounts were contrived. The witnesses were generally questioned individually, and there is also a similarity between the testimony heard before different investigative committees.
16. *Extracts from Testimony Taken before the Committee on Public Charitable Institutions on the Management of the State Reform School at Westborough* (n.p., 1877), p. 17.
17. Ibid., pp. 4–6.
18. New York State Commissioner of Public Charities, *Record of the Proceedings and Testimony*

before a Committee of State Commissioners of Public Charities at the House of Refuge in New York (New York: Thitchener and Glastacter, 1872), pp. 91, 106–07.

19. New York State Board of Charities, *Report of the Committee of the State Board of Charities Appointed to Investigate the Charges against the Society for the Reformation of Juvenile Delinquents* (Albany, N.Y.: Weed, Parsons, 1881), pp. 27–28.

20. Ibid.

21. *Ex parte Crouse.*

22. Bradford K. Peirce, *A Half Century with Juvenile Delinquents: The New York House of Refuge and Its Times* (1868; rep. ed. Montclair, N.J.: Patterson Smith, 1969), p. 84.

23. Board of Directors of the Cincinnati House of Refuge, *Seventh Annual Report* (St. Louis: Missouri Democrat Book and Job Office, 1857), p. 6.

24. New York State, *Report of the State Commission on Prison Labor Together with the Proceedings of the Commission* (Albany, N.Y.: Argus Company, 1871), p. xi.

25. Ibid., pp. 141, 146, 163, 164, 169.

26. Ibid., pp. 181–82.

27. Ibid., pp. 163–64.

28. Ibid., p. xxiv.

29. Ibid., p. 169.

30. Ex parte Crouse.

31. State Reform School at Westborough, *Eleventh Annual Report* (Boston: William White, 1857), p. 6.

32. Society for the Reformation of Juvenile Delinquents, *Thirty-Second Annual Report* (New York: Wynkoop and Hallenbeck, 1857), p. 27.

33. For support for this theme, see Robert S. Pickett, *House of Refuge: Origins of Juvenile Reform in New York State, 1815–1857* (Syracuse, N.Y.: Syracuse University Press, 1969), p. 15; Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1969), p. 74; Fox, "Juvenile Justice Reform," p. 1195; Rendleman, "Parens Patriae," p. 79; David J. Rothman, *The Discovery of the Asylum; Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971), p. 207; Robert M. Mennel, *Thorns and Thistles: Juvenile Delinquents in the United States, 1825–1940* (Hanover, N.H.: University Press of New England, 1973), pp. 5–8, 15–16; Alexander Liazos, "Class Oppression: The Functions of Juvenile Justice," *The Insurgent Sociologist,* Fall 1974, p. 8; Harold Finestone, *Victims of Change: Juvenile Delinquents in American Society* (Westport, Conn.: Greenwood Press, 1976), p. 18; Schlossman, *Love and the American Delinquent,* pp. 19–20, 35; Alexander W. Pisciotta, "The Theory and Practice of the New York House of Refuge, 1857–1935" (Ph.D. Diss. Florida State University, Tallahassee, 1979), pp. 18–22.

34. New York State Commissioner of Public Charities, *Record of the Proceedings and Testimony before a Committee of State Commissioners of Public Charities at the House of Refuge in New York,* p. 172.

35. Quoted in Rendleman, "*Parens Patriae,*" p. 93.

36. New York Commissioner of Public Charities, *Record of the Proceedings and Testimony before a Committee at the House of Refuge in New York,* p. 134.

37. Pisciotta, "Theory and Practice of the New York House of Refuge, 1857–1935," pp. 119–21.

38. Ibid., pp. 72–74.

39. Society for the Reformation of Juvenile Delinquents, *Thirty-Third Annual Report* (New York: Wynkoop, Hallenbeck and Thomas, 1858), p. 45.

40. Ibid., pp. 52–53.

41. Ibid.

42. Pisciotta, "Theory and Practice of the New York House of Refuge, 1857–1935," p. 132.

43. Superintendent's Daily Journal, Apr. 18, 1866. Documents of the New York House of Refuge, Record Group 518, New York State Archives, Albany, N.Y. (Hereafter, all documents in the New York House of Refuge Collection will be cited as DNYHR.)

44. Minutes of the Indenture Committee, Apr. 17, 1887, DNYHR.

45. Superintendent's Daily Journal, July 25, 1872, DNYHR.

46. Superintendent's Daily Journal, Feb. 15, 1856, Documents of the Western House of Refuge, Record Group 519, New York State Archives, Albany, N.Y. (Hereafter, all documents in the Western House of Refuge Collection will be cited as DWHR.) At the request of the New York State Archives, the names of inmates taken from the DNYHR and DWHR have been changed to protect anonymity.

47. Ibid., Jan. 23, 1858.

48. Ibid., June 18, 1874.

49. Case History No. 7329, DNYHR.

50. Superintendent's Daily Journal, Oct. 30, 1886, DNYHR.

51. Minutes of the Indenture Committee, Sept. 25, 1862, DNYHR.

52. Society for the Reformation of Juvenile Delinquents, *Forty-Sixth Annual Report* (New York: Joseph Longking, 1871), p. 38.

53. Society for the Reformation of Juvenile Delinquents, *Fifty-First Annual Report* (New York: National Printing Co., 1876), p. 79.

54. Superintendent's Daily Journal, June 3, 1860, DWHR.

55. Ibid., July 24, 1860.

56. Pisciotta, "Theory and Practice of the New York House of Refuge, 1857–1935," p. 229.

57. Minutes of the Acting Committee, Mar. 22, 1901, DNYHR.

58. Special Hearings on the House of Refuge, 1909, DNYHR, p. 114.

59. Pisciotta, "Theory and Practice of the New York House of Refuge, 1857–1935," p. 231. In the annual reports of the New York House of Refuge, the physician noted that he had treated eight "puncture wounds" in 1908, eleven in 1909, nine in 1913, and twelve in 1917. The euphemism "puncture wounds" was substituted for stabbing by order of the Board of Managers after the state legislature began to raise questions about violence in the institution.

60. Superintendent's Daily Journal, Mar. 29, 1850, DWHR.

61. Pisciotta, "Theory and Practice of the New York House of Refuge, 1857–1935," p. 233.

62. Letter from Superintendent Franklin Biggs, 1902, DWHR.

63. Matron's Daily Journal, Apr. 6, 1887, DWHR.

64. Kent v. United States, 383 U.S. 541 (1966).

DISCUSSION QUESTIONS

1. What legal claim was made by the father of Mary Ann Crouse? What was the decision of the Pennsylvania Court?
2. Can you offer examples where the "rhetoric" and the "reality" of *parens patriae* were different in actual practice, according to this case?
3. What was the role of religion in early "child-saving" practices and juvenile reformatories?
4. What was the role of "apprenticeships" in child-saving and juvenile institutions? Were these beneficial to children? Why or why not?
5. According to evidence offered by Pisciotta, was the State an effective parent? Why, or why not?

READING

Many of the problems in juvenile justice can be traced to the 19th century when *parens patriae* programs were established with little attention to their influence upon one another. As newer programs for status offenders were begun, older centers received mainly hardened delinquents, and their policies became more punitive. In the absence of clear communication, cooperation, guidance, or understanding of administrators and policy makers, more of the entire system became more punitive. Theodore Ferdinand believes that a solution to this criminalizing of juvenile justice might entail a state-level department devoted to the treatment of delinquents in the community or in custodial facilities, and small facilities that are

limited to 15–20 beds each, focusing on narrow segments of the delinquent population. In this article he provides an overview of the history and development of the juvenile court, the failure of treatment, and why many failed, and he concludes with a proposal for more effective treatment programs in juvenile justice.

History Overtakes the Juvenile Justice System

Theodore N. Ferdinand (1991)

Justice systems have a way of shaping their parts to the needs of the whole, and the juvenile justice system is no exception. Many of the juvenile court's problems can be understood in terms of how the court adjusted over the years to the custodial institutions, clientele, and treatment facilities it served. Its deficiencies today stem largely from its roots in the civil courts and the difficulties it encountered in fulfilling *parens patriae* in a system of juvenile institutions already dominated by a custodial if not a punitive viewpoint. The juvenile justice system has acted very much as a loose but dynamic system over the last 165 years, and to understand its difficulties we need to look to the historical contradictions that were built into the juvenile justice system during its early years.

Of particular interest are several questions that have been raised repeatedly over the years. First, what purposes did the juvenile justice system serve when it was introduced in eastern cities during the early 19th century, and what role did the juvenile court play in that system when it was introduced in the early part of the 20th century? Second, why has treatment been such an uneven enterprise in juvenile justice? Is the process of treating delinquents fraught with such obstacles that consistent successes are impossible, or are less formidable reasons responsible for this inconsistency? Finally, why has juvenile justice been unable to maintain a parens patriae focus within its custodial institutions? Is there an inherent flaw in such institutions that ultimately vetoes any long term effort to improve juveniles in institutions?

Many have addressed these and similar questions, and along these lines Cohen (1985) has identified four distinct approaches to the problems of the justice system. The "conventional" view asserts that flaws in the justice system derive basically from the limitations of its pioneers. If their vision is partly cloudy, or their commitment falters, their reforms ultimately founder on inertia and indifference. But different leaders inject new enthusiasms, and the overall result is gradual progress in the justice system through the cumulated efforts of its visionaries over generations.

The second approach, "we blew it," as represented by David Rothman (1980) in his work, *Conscience and Convenience,* is less optimistic. It sees the sources of ineffectiveness in the justice system in the inevitable triumph of mindless routine and parochial interest over moral purpose. The possibility of lasting progress in the justice system is compromised by custodial inertia and trivial, convenient routine.

Cohen (1985) describes in addition two other approaches: "It's all a con" and, most recently, "destructuring." Foucault (1979) represents the first with his suggestion in *Discipline and Punish* that the justice system before all else buttresses order in civil society by its threat of punishment, however ineffective it may be in rehabilitating offenders. It is indispensable as a reinforcement of responsibility, no matter how dismal its treatment record or brutish its methods. We must forgive its ineffectiveness for the sake of its crucial symbolic value. The "destructuralists," today's visionaries, are less programmatic and

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more idealistic. They claim that order overwhelms and stultifies humanity, and to reawaken moral ideals in society, order must be sacrificed.

My approach to this issue concedes the importance of juvenile justice as a symbol of responsibility, but I locate the failures of juvenile justice not simply in compromise with routine, nor in the fallibilities of its pioneers, but in the conflicts that different approaches have built into juvenile justice over the years. We must probe the sources of juvenile justice's ailments in the 19th century, if we ever hope to understand their essential nature and correct them.

The 19th Century Origins of Juvenile Justice

During the Jacksonian era industrialization took firm root in several American cities. As trade with Europe, the Caribbean, and other American cities flourished, as new factories for spinning yarn and weaving cloth were built, and as new schools opened, employment grew more plentiful. The slow drift of population to centers of commerce and industry grew very quickly to sizable proportions in the northeast, and several American cities began to encounter adolescent misbehavior and waywardness in a variety of forms (see, for example, Ferdinand 1989, pp. 94–97). Not only were wayward children nuisances on the city's streets, but when convicted of crimes in the criminal courts, they were sometimes sent to adult prisons where they mixed with hardened convicts and became career criminals.

But unless wayward children were criminals, the criminal courts had no jurisdiction over them. A convenient doctrine—parens patriae—however, enabled the civil courts to step in and take custody of these wayward or dependent children. The criminal law served for those children who had violated the criminal code, but for those who were merely beyond control, or whose parents were negligent, parens patriae sufficed. The child's first responsibility was to obey his or her parents, and the nascent juvenile justice system awaited those few who steadfastly rejected parental authority.

Furthermore, in many eastern cities bold plans for compulsory education were underway (see Schultz 1973). On the eve of the industrial revolution in 1789 Boston authorities established a system of free grammar schools, and in 1821 the city opened its first public high school, Boston English High. By 1826 Boston's school system enrolled a majority of its school-aged children (Kaestle and Vinovskis 1980).

These new schools represented a second arena wherein many children were held accountable. Just as children who were beyond parental control and roamed the city at night could not be ignored, so too children who disrupted school or truanted needed to be held in check. Parens patriae was applicable here as well, because the children were in school for their own well being. The schools' problem children became a second concern for the nascent juvenile justice system.

In short, as compulsory education and industrialization swept America's cities in the 19th century, they produced a growing troop of wayward, incorrigible children who resisted in one fashion or another the efforts of society to shape them for adulthood. Something like a juvenile justice system was needed to bolster the authority of the family and the school in industrializing America so that both could be more effective in socializing young people. The juvenile justice system, as it emerged, represented the community's attempt to come to grips with a new social status: the juvenile.

At first the effort was limited to the major cities where education and economic development were centered, but soon it spread to entire states as whole regions were developed. The juvenile was expected to be obedient to both parents and teachers, and if he refused, he was held liable by the courts. The juvenile justice system was basically a sociolegal institution for holding juveniles accountable and for strengthening both the family and the school as they adapted to the changing social order.[1]

Recently John Sutton (1988) uncovered evidence that strongly confirms this view of the relationship between emerging school systems and

juvenile justice. He investigated the impact of growing school enrollments on the introduction of juvenile reformatories in the latter half of the 19th century and found it more powerful than either industrialization or the growth of government. According to Sutton (1988, p. 114), "from 1850 to 1880, a 1 percent increase in school attendance is associated with a 13 percent increase in adoption rates (of juvenile reformatories)."

As a concept of the juvenile emerged, the juveniles' parents and teachers were responsible for them, and they were expected to obey both. Parens patriae was the relevant legal doctrine, because it allowed the state to intervene when either the family or the school was deficient. Because parens patriae was available only in the civil courts, juvenile delinquency was lodged in that jurisdiction. It covered all but the major criminal offenses by juveniles, which were still handled in the criminal courts.

Under parens patriae the civil courts acted in behalf of the child against ineffective parents or the child himself and provided dispositions that a responsible parent would. If the parents could control the child, the courts accepted them as the proper guardian. For the most part, state appellate courts endorsed this mission for the court, (see, for example, *Ex parte Crouse* 1838; *In re* Ferrier 1882; *Commonwealth v. Fisher* 1905; Garlock 1979, p. 399).

The civil courts still could not deal with juveniles who violated the criminal law, and many communities continued to send serious juvenile offenders to the criminal courts. Although most were sent to juvenile facilities upon conviction, some were still sent to adult institutions (see Garlock 1979, Appendix).

Several facts stand out regarding the juvenile justice system up to 1899. First, it consisted of a very diverse collection of private and public institutions and community programs including probation for minor delinquents and status offenders, all served by the civil court and its doctrine of parens patriae. A survey (see Mennel 1973, p. 49) of 30 juvenile reform schools conducted in 1880, for example, found an extraordinary heterogeneity. Six accepted children convicted of crimes punishable by imprisonment, and 14 took children who had committed minor offenses. Thirteen schools specialized in children rebelling against parental authority; seven accepted mainly neglected or deserted children; and five dealt with children committed by their parents for various reasons.[2] Coordination among such a diverse group of custodial institutions and the civil courts must have been difficult, indeed.

Second, the civil court with its doctrine of parens patriae provided moral leadership within the system. But its authority was at best exhortatory and informal. It had little control over the staffing, budgets, practices, or objectives of the far flung juvenile programs it served.

Third, this system was kept largely separate from the criminal justice system. Juvenile miscreants who warranted a criminal court hearing by virtue of serious offending were handled as adults. The rest were handled by the civil court and sent to juvenile facilities. In the 19th century a bifurcated justice system handled a bifurcated population of juvenile offenders. The early juvenile justice system neatly avoided today's complexity in which serious offenders are handled along with minor offenders in a single, parens patriae system.

This system was the result of separate initiatives at several different levels of government over the better part of a century. Even though most juvenile facilities were guided at first by a parens patriae philosophy, the system had no central authority that could impose a focus or common mission on the whole. Without a central organizing authority, however, the system was left to respond as local conditions dictated. And it continues today to embrace a growing variety of public and private facilities (Sutton 1990, pp. 1369–70).

Moreover, as the 19th century drew to a close, it was becoming clear that the civil courts could not handle the sheer volume of juvenile cases coming into the system. As early as the Civil War, for example, the mass of juveniles arrested in Boston was already large, and the same was true of other eastern cities as well.

During the 1820s and early 1830s very few juveniles were charged with serious offenses in Boston's felony court—the municipal court. But by 1850 indictments had grown in the municipal court to 220 per 10,000 juveniles (Ferdinand 1989, Figure 2) and were the fastest growing component in Boston's crime problem. Furthermore, between 1849 to 1850 and 1861 to 1862 the arrest rate for juveniles rose 479% from 506 to 2,932 per 10,000 juveniles (Ferdinand 1989, Figure 3).[3] After the Civil War, juvenile arrests in Boston receded somewhat from the high rates of the Civil War period (Ferdinand 1989, Figure 3). Still, from 1870 to 1900 they ranged between 7,900 and 11,200 arrests annually.

This sizable flow of juvenile cases no doubt strengthened the argument that juveniles needed a specialized court—a court that was attuned to their special needs. First, they needed a judge who was familiar with the social psychological nuances of family conflict as well as the legal complexities of family/child problems. They needed a legal doctrine that took into account their social deficits as well as their misbehavior. Juveniles also needed a court whose officers were closely familiar with the range of facilities available for troubled children and could assign each to a program that was geared to his or her own needs.

The older civil court served the legal needs of juveniles, but it was devoted foremost to other issues. It dealt with divorces, torts, contracts, and wills—all adult issues. The civil law was narrow and intricate, and few probate judges or lawyers had a strong interest in the psychology of juveniles or their facilities and potential. They were largely amateurs in those areas most relevant to juveniles and their problems.

Frederick Wines, a noted criminologist, commented in Chicago in 1898 that "an entirely separate system of courts [was needed] for children . . . who commit offenses which would be criminal in adults. We ought to have a 'children's court' in Chicago, and we ought to have a 'children's judge,' who should attend to no other business" (quoted in Mennel 1973, p. 131).

The New Juvenile Court

In 1899 the Illinois legislature enacted the first juvenile code and established, in Chicago, the first juvenile court. Its jurisdiction extended to virtually all juveniles—serious criminal offenders, status offenders, and neglected and dependent children. It embraced a much wider jurisdiction than the 19th century juvenile justice system ever had. Nevertheless, its mandate was to deal with all of them by means of parens patriae.

Several contemporary observers commented on the new court's usefulness. The new court gave custodial institutions "the legal status and powers that they have most stood in need of and "in large cities juvenile courts are little more than clearing houses to get together the boy or girl that needs help and the agencies that will do the most good" (Sutton 1988, p. 143). It gave authority to social services, it provided intelligent assessments of juveniles, and it assigned them to programs that were closely related to their needs. It offered a specialized knowledge of and commitment to juveniles and their needs that the old civil courts could never provide.

In their enthusiasm, however, the reformers failed to ask whether serious offenders with criminal intent were appropriate subjects for a parens patriae court.[4] Furthermore, the new court did little to unify the juvenile justice system. It was still a very loose collection of programs and facilities with no central direction.

Despite these defects the remaining states quickly followed Illinois' example, and 30 states had established juvenile courts by 1920. By 1945 all had. The juvenile justice system was separate from the adult system. Parens patriae was the philosophic foundation of the court, and many if not most of its facilities and programs subscribed to that perspective.

These programs, as we have seen, had emerged in haphazard fashion during the preceding 80 years and most were organized by state or city governments. Because the juvenile court was generally lodged at the county level, juvenile

programs both public and private were still largely free to follow their own mandate.

The new court was hailed as a visionary institution that would bring clarity, order, and humanity to the emerging juvenile justice system. In addition the new court provided a podium for the parens patriae approach in the justice system, and its early judges were outspoken in advocating treatment and humane care for offenders.

Judge Benjamin Lindsey of Denver, for example, was one of the first to argue in behalf of juveniles, and in 1904 he wrote, "The Juvenile Court rests upon the principle of love. Of course there is firmness and justice, for without this [*sic*] there would be danger in leniency. But there is no justice without love" (quoted in Mennel 1973, p. 138). Many of the early judges felt the same way, although many were critical of Lindsey's flamboyance.

The juvenile court maintained an informal atmosphere and gave the judges ample room to carry out their rehabilitative philosophy. The early courts were fortunate in that many judges showed a deep sympathy for young delinquents. Judge Richard Tuthill, the first judge of Chicago's juvenile court, proclaimed, "I talk with the boy, give him a good talk, just as I would my own boy, and find myself as much interested in these boys as I would if they were my own" (quoted in Mennel 1973, p. 135). Judge George W. Stubbs of Indianapolis said, "It is the personal touch that does it. I have often observed that if . . . I could get close enough to [the boy] to put my hand on his head or shoulder, or my arm around him, in nearly every such case I could get his confidence" (quoted in Mennel 1973, p. 135). With the appearance of the juvenile court in many communities, vigorous and often eloquent spokesmen for a parens patriae handling of juveniles got, and kept, the public's attention.

As the juvenile court spread through the states during the first 2 decades of the 20th century, however, commitments to juvenile institutions went down (Sutton 1990, p. 1392). A growing number of judges were becoming uncomfortable with custodial institutions for children.

Parens Patriae and Fairness

Shortly after World War II the critique of the juvenile court got underway with Paul Tappan's (1946) keen analysis of the court's due process failures. Tappan, a legally trained criminologist, pointed out that many constitutional rights of juveniles were ignored in the parens patriae juvenile court.

Others took up the same complaint (see Allen 1964 and Caldwell 1961). They noted that the court's therapeutic measures, even when sincerely applied, often turned out to be worse than routine punishments. It was not unusual in the 1960s to find that status offenders were punished more severely than all but the most serious delinquents (see Creekmore 1976; Cohn 1963; and Terry 1967), and racial discrimination in the juvenile court, though not found in some courts, was all too common (see Thornberry 1973; and Fagan, Slaughter, and Hartstone 1987; but see also Rubin 1985, pp. 203–5; Cohen 1976, pp. 51–54; and Dungworth 1977).[5] Such flagrant violations of equal protection under the law were intolerable especially in the charged atmosphere of the 1960s and 1970s.

A Growing Demand for Reform

In addition to Tappan's early criticism of the court's due process lapses and the discovery of racial and gender biases, steady reports of scandalous conditions in state training schools began to surface (see Rothman 1980, pp. 268–86 and Deutsch 1950). The need for reform in juvenile justice was inescapable, and the response took several forms.

First, the states attempted to cope with difficulties inherent in combining serious and minor offenders in the same system by separating status offenders from delinquents in confinement and later, by removing most of them (status offenders) from the juvenile court's jurisdiction. California differentiated delinquents and status offenders in its original juvenile statute, and in 1962 New York passed a Family Court Act, which

among other things distinguished status offenders (renamed PINS) from delinquents. In 1973 the New York Court of Appeals ruled in *In re* Ellery (1973) that the policy of confining PINS with delinquents in an institution was unconstitutional, although in 1974 in *In re* Lavette (1974) the same court ruled that PINS could be confined in facilities organized for PINS.

In the decades that followed many states enacted similar statutes, separating status offenders and delinquents both in definition and treatment, and by the late 1970s many had gone even further by making court-ordered treatment plans for status offenders voluntary. Such children had committed no criminal offense and legally did not deserve custodial confinement.

Juvenile justice in the United States seemed to be following a path charted in Scandinavia in which problem juveniles under 22 years of age are treated voluntarily in social agencies, and serious offenders after 15 years of age are handled in the criminal courts (see Sarnecki 1988). Such a plan often fails, however, in that it permits status offenders to respond with either a "political" compliance to treatment suggestions or an impulsive rejection of them.

The Failures of Treatment

At the same time ambiguities surrounding the rehabilitative approach spurred the federal government to sponsor a host of delinquency prevention projects. In the mid-1960s under the impetus of President Lyndon Johnson's War on Poverty, a major effort to prevent delinquency and rehabilitate delinquents was undertaken by the Office of Economic Opportunity. As a centerpiece the War on Poverty mounted a massive preventive program on the Lower East Side of Manhattan—Mobilization for Youth. It was modeled after the Chicago Area Projects and addressed the problems of preschool children, juveniles, gangs, schools, and community adults. But it was too broad and complex to evaluate, and we will never know as with the Chicago Area Projects whether this community approach to delinquency prevention was effective.[6]

More specialized programs dealing with distinctive facets of delinquency were also fielded in Boston, Chicago, and elsewhere. Studies of innovative juvenile programs were funded in Michigan, Massachusetts, and Utah, and community-based treatment programs in California were generously supported. The federal government in conjunction with the Ford Foundation and other private groups sought to determine whether juvenile justice could remedy its ills.

Sentiment for reform of the juvenile justice system was strong, but the direction of reform was still hotly debated. Should it focus on predelinquents with the idea of keeping them out of the juvenile justice system, should it reform the court itself, or should it concentrate on juvenile institutions? Much hinged on the outcome of the War on Poverty programs, and millions of dollars were spent to insure that sound methods and skilled researchers were used. But to nearly everyone's dismay, few if any initiatives were effective. In the 1960s the detached worker program investigated by Walter Miller (1962) in Boston and later in Los Angeles by Malcolm Klein (1971) were worse than ineffective. Klein found that in Los Angeles detached workers actually made delinquency worse. Gerald Robin (1969) evaluated the Neighborhood Youth Corps and its attempts to provide counseling, remedial education, and supervised work for juveniles in both Cincinnati and Detroit. He found no positive effect in either program.

In Provo, Utah, Empey and Erickson (1972) designed a community program for delinquents in which they participated in group therapy sessions for 5 or 6 months. Empey and Erickson compared the delinquents with a comparison group of boys who had simply been placed on community probation and a second comparison group that had been sent to the state training school. Although the boys in the community treatment program averaged about half as many arrests as the boys who were sent to a training school, the difference between them and the boys placed on probation was small. Moreover, when a similar program was repeated at Silverlake in Los Angeles, boys in the community treatment

program showed only slightly lower delinquency rates than boys who were sent to an open institution for delinquents (Empey and Lubeck 1971). In effect the failure of these several delinquency treatment programs discredited treatment as a method for reforming delinquents or predelinquents.

To be sure successes were also found among the treatment projects. Probation, for example, has been thoroughly studied in terms of the degree of supervision afforded juveniles and its success rate (see Diana 1955; Scarpitti and Stephenson 1968). The results indicate that despite haphazard supervisory practices a large majority of juveniles complete probation without further incident and go on to crime-free adult lives as well.

Further, Warren (1976) and Palmer (1974) reported strong results in treating specific types of delinquents in the community when compared with similar youngsters sent to custodial institutions in California. In addition the studies of Street, Vinter, and Perrow (1966) in Michigan discovered that benign institutions with supportive staffs were much more effective in molding positive attitudes in children than custodial institutions and punitive staff. The former were especially successful in instilling a prosocial climate among the bulk of their children. Finally, Kobrin and Klein (1983, chapters 5, 6) found that the level of coordination of diversion programs with established juvenile justice agencies strongly influenced their success. Where diversion programs were implemented in close cooperation with existing agencies, they were usually effective, but where the two worked at cross-purposes, diversion was ineffective.

Nearly all of these studies have been rigorously scrutinized, and serious reservations have been lodged against several (see, for example, Lerman 1975). However, the critics have not been able to defeat the obvious conclusion that significant numbers of juveniles respond to sound treatment programs, especially when these juveniles are assigned to program and treatment staff according to their need (see Lipsey 1991 and Andrews et al. 1990). Despite these results, the view took hold that treatment, whether in an institution or in the community, is ineffective in reducing delinquency (Martinson 1974)

The Crisis in Juvenile Justice

The conclusion that treatment does not work seemed to strike a chord in the nation at large, and the advantage swung quickly to those who favored a retributive approach to delinquency. Criminologists had been arguing for decades as to the causes of delinquency and the best methods of treatment. This quarrel was more basic and more serious.

The evidence was by no means unequivocal, but the fact that a retributive response was so widely endorsed suggests that something much deeper was responsible. No doubt a general disillusionment with professionalism and government was a factor as well as the conservative views of the Nixon and Reagan administrations.

If the juvenile court could not provide wholesome treatment for juveniles under its care, it seemed to imply that the parens patriae court was discredited. Parens patriae was a noble idea, but if the juvenile court could not act effectively as a parent, the least it could do was act effectively as a court by finding guilt justly and by administering punishments fairly. In effect the juvenile court and parens patriae were held hostage to the ineffectiveness of community and institutional treatment programs in rehabilitating delinquents!

Why Do Treatment Programs Fail?

As we have seen, the juvenile court has never had much influence over treatment programs, whether in custodial institutions or in the community, because both were almost always organized by independent agencies. The one program the court did control, probation, has been effective in helping delinquents regain their social composure. In effect the juvenile court and parens patriae have been evaluated not only in terms of their relevance to the needs of juveniles, but also in terms of their ability to guide the rest of the juvenile justice system along the path of treatment.

The critics of the parens patriae court expected it to impose its rehabilitative mission on the rest of juvenile justice despite its very limited ability to shape therapeutic programs whether in the community or in custodial institutions. It was doomed from the start by the contradiction between its mission and its limited authority.

The parens patriae court did not fail. The state failed, because it enacted a parens patriae court without providing solid support for community and institutional treatment programs. True, state programs, first as individual juvenile institutions and then more recently as systems of state juvenile facilities, have been established, some even predating the juvenile court. But these programs had as their first objective the confinement of juveniles in large institutions where custodial policies and attitudes soon dominated (see Schlossman 1977; Brenzel 1983; Pisciotta 1985). Rehabilitation, though used effectively as a public relations device, was almost always a secondary consideration with these state-based programs. Rarely has a state agency had any responsibility for funding and directing treatment programs in the community for delinquents.

Many treatment institutions and community programs were established over the years with the help of private philanthropy, religious groups, social welfare agencies, and even the federal government. But these were either underfunded or short term, or both. These nonstate programs were hobbled by uncertainty. Because state correctional agencies were committed basically to providing secure facilities and nonstate rehabilitative programs were uncertain both as to funding and to endurance, inevitably the parens patriae effort fell short.

No state agency had primary responsibility for the treatment of delinquents, and no state agency developed the necessary skills in creating and administering programs for delinquents. However, without cumulative experience in staffing and administering treatment programs, no one gained the necessary skills to guide such programs. Ironically, in most states the only state agency serving delinquent youth was the department handling juvenile corrections. States became skilled in developing custodial facilities for juveniles, but no state agency had lengthy experience in providing effective treatment programs for juvenile delinquents.

A Proposal

It would seem that the solution to the problem of effective treatment programs is straightforward. A continuing public authority is needed with responsibility for treatment programs both in the community and in juvenile institutions.[7] Where it should be situated in the hierarchy of state services to juveniles, or the scope and details of its responsibilities to delinquents need not concern us here. Whether it should be an independent department, part of the Department of Social Services, or the Department of Juvenile Corrections and Parole is not at issue at this point. Its mission should be treatment, and it should be in effect the court's rehabilitative arm, just as juvenile corrections is the court's custodial arm.[8]

Treatment programs for juveniles with psychological or social needs are as essential in civil society as unemployment insurance is for adults. Many juveniles need wise, skilled help in making a sound adjustment in adolescence, but unfortunately many cannot get such help from their families or anyone else, and to deny them by abandoning treatment programs is in effect cruel and socially destructive.

Treatment has worked only haphazardly because it has not been championed consistently by experienced agencies with roots in local communities. Where such agencies have emerged, as in Massachusetts during 1972 in the Department of Youth Services and in Utah during 1981 in the Division of Youth Corrections, the results have been generally humane and effective.[9]

Massachusetts under the Department of Youth Services has been using a system of community-based treatment programs for its delinquents since 1972 with solid results (see Loughran 1987). On any given day its youthful

clients number about 1,700. Some 1,000 youths live at home and participate in a wide variety of treatment and educational community programs. The remaining children, 700, are divided between foster homes (30), nonsecure residential programs (500), and secure facilities (170). Serious offenders are dealt with via careful screening for violent tendencies, emotional stability, threat to the community, and social needs and are given programming specially designed for their situation.

The results in Massachusetts have been noteworthy (Miller and Ohlin 1985; Krisberg, Austin, and Steele 1989). In the beginning budgetary costs of caring for children via a system of community-based treatment programs were slightly more than for the old network of custodial institutions (Coates, Miller and Ohlin 1976, chapters 7, 8). However, the two systems were compared as of 1974, after only 2 years experience under the new system. More recently the system has become more effective, and today the annual cost per child in the Department of Youth Services (DYS) is about $23,000 compared with $35,000–40,000 reported by many other states (Krisberg, Austin, and Steele, 1989, pp. 32–37).

Since 1974 DYS has strengthened its program, and by 1986 delinquency arraignments in Massachusetts had dropped by 24% from their 1980 level (Massachusetts Department of Youth Services 1987, p. 10).[10] Further, delinquency arraignments for all released offenders compared with their level before admission to DYS is about one half, and arraignments for chronic or violent offenders decreased by slightly more than half (Krisberg, Austin, and Steele 1989, p. 19). In addition, the number of adult inmates in Massachusetts who had also been clients of the juvenile justice system in that state dropped from 35% in 1972 to 15% in 1985 (Loughran 1987). Since 1974 recidivism rates measured in terms of delinquency arraignments among DYS youth have dropped sharply, from 74% in 1974 (see Coates, Miller, and Ohlin 1976) to about 51% in 1985 (Krisberg, Austin, and Steele 1989, pp. 24–25). In comparison with other states where recidivism has been measured comparably, DYS dischargees have equaled or bettered the recidivism rates of all other state systems (Krisberg, Austin, and Steele 1989, pp. 26–32). These results suggest that many serious juvenile offenders within the Department of Youth Services have been helped by their experiences in the system.

In Utah, a new Division of Youth Corrections modeled after the Massachusetts Department of Youth Services was inaugurated in 1981 with full responsibility for secure and community-based treatment programs for delinquents in the state. Although the system is still too new to offer firm evidence of its effectiveness, its architects are delighted with results so far.

First, the shift to community-based programming required a budget $250,000 less than the old custodial-oriented system (Simon and Fagan 1987). The number of beds in secure facilities in Utah dropped from 450 in 1976 to 70 in 1986, while beds in community facilities increased from under 50 to 157 during the same period. Children in jails dropped from more than 700 in 1976 to 26 in 1986, and status offenders in detention declined from 3,324 to only 162 between 1976 and 1986. The shift was on to nonsecure facilities in Utah under the new treatment-oriented system.

Proof of its results is in the system's effects on delinquents. Preliminary data indicate that, as in Massachusetts, the community-based system is probably less criminogenic than the custodial system it replaced. A study by the Utah Division of Youth Corrections (1986) found that 73% of the youths who had received community placements remained free of criminal convictions for 12 months following their release, although fully 76% of the youths confined in secure facilities were reconvicted during their first year after release. Even here their offenses were much less serious. Before commitment these youths had averaged 24 convictions, including many serious violent and property offenses. After their term in Youth Corrections they were convicted primarily of minor offenses.

The twin goals of rehabilitation and justice can be blended effectively in the juvenile justice system. If dependable diagnostic and treatment programs can be made available to juvenile judges via a state treatment authority, justice in adjudication can be balanced with humane, effective treatment in dispositions.

Bifurcation: A Stumbling Block?

A difficult problem still remains. The history of juvenile justice confirms that secure facilities tend to become more punitive with age. Since the time of the houses of refuge, custodial institutions have shown a clear custodial drift with time (Ferdinand 1989, pp. 87–93).

According to Cohen (1985, pp. 218–35) institutions tend to differentiate themselves into custodial, punitive, exclusionary programs and rehabilitative, community-based, inclusionary programs. Cohen saw this bifurcation as paralleling a bifurcation of the system's clientele. On one hand, we have a small stream of stigmatized, antisocial offenders committed to a criminal way of life. On the other, we have a large stream of tractable but problem-bound offenders who want to become contributing citizens. Punitive, exclusionary programs serve the former and transform them into hardened, predatory criminals who are feared and shunned by the community. Inclusionary programs serve constructive offenders who are still looking for a rewarding life in mainstream society. Many of them, however, become agency-dependent and socially peripheral (see Ferdinand 1989).

According to Cohen (1985, chapter 7) inclusionary programs themselves become punitive and stigmatizing and are transformed thereby into exclusionary programs by virtue of the fact that newly established programs draw off the best clientele from older programs, leaving them to deal mainly with intractable inmates. As older programs adapt to a deteriorating population mix, they change slowly into punitive centers. Inclusionary programs gradually become exclusionary programs, and a long term pattern of institutional decay is established as the system repeatedly attempts to reform itself by reaching out to more responsive populations and relegating the rest to older, established programs.

Although Cohen was interested primarily in the adult system, he describes almost exactly the century-long development of juvenile justice in the United States (Ferdinand 1989). The houses of refuge were greeted enthusiastically by reform-minded progressives, only to see them transformed into punitive, stigmatizing institutions over the years (Brenzel 1983; Pisciotta 1982). The same was true of the state juvenile reformatories established in the last half of the 19th century (Rothman 1980; Schlossman 1977).

Ultimately, the juvenile correctional system in many states came to resemble a hierarchical system (see Steele and Jacobs 1975, 1977) of punitive, exclusionary institutions at the deep end (the maximum-security level) serving predatory, antisocial inmates, coupled with inclusionary, community-based programs at the shallow end serving a social tractable clientele with more focused problems. As each new program came on stream, it attracted the most promising clientele and the most progressive staff, and the rest were forced to adapt as best they could in the ensuing realignment.

An answer to this repetitive pattern of reform and decay, however, is not difficult to imagine. New programs need not focus on just the more tractable, responsive clientele. They could focus also on the other end—on the more serious, predatory offenders. After all, these are the offenders that spell the most trouble for society in the long run, and any advances in dealing with their problems would certainly be helpful. In this case the older programs would be asked to give up some of their *least* responsive inmates; their inmate mix would improve with each reform at the deep end; and one source of custodial drift, at least, would be arrested.

Such a policy would avoid drawing off the more promising clientele from the older, more experienced centers, but it would also foster small, specialized treatment settings—exactly the

kind of centers that foster personal relationships among staff and children and thereby offer a chance for the staff to influence youth in positive ways (Street, Vinter, and Perrow 1966). Such centers are also easier to manage and supervise, with the result that treatment policies can be implemented more consistently over the long term.

This policy has been followed by Massachusetts since 1972—small, treatment oriented centers for virtually all juveniles in the Department of Youth Services (the largest is only 36 beds)—and no doubt some of the success of the DYS can be attributed to the positive attitudinal climate that small centers usually generate (see Krisberg, Austin, and Steele 1989, p. 4). But if this analysis is correct, this policy will also help to inhibit the souring of the custodial centers as their programs become routine.

A system of small treatment facilities must still be closely monitored lest some of them stray from their assigned mission. There is always the possibility that a center will develop punitive policies for other reasons. To avoid such missteps it is essential that each center be held closely accountable to clear standards of performance. Each center should be required to justify its policies with verifiable research.

Conclusion

Few maintain that juvenile justice has lived up to its promise in the United States, and many assert that its future lies basically with a due process/just deserts orientation. If treatment and rehabilitation are abandoned, however, in favor of a just deserts policy whereby serious delinquents are punished in large, custodial institutions, several untoward consequences would probably result.

First, delinquency would deepen in seriousness and expand its sway, laying the foundation for a worsening problem among adult predatory criminals in the years ahead. Second, an important voice for humane programs in the justice system would be stilled with the result that a monolithic retributive system and its programs would prevail not only in delinquency but in criminal justice as a whole.

The difficulties of treating juveniles in residential centers are, however, soluble. Differentiated systems of small, community based treatment facilities in both Massachusetts and Utah have shown themselves as more humane; comparable in cost; and more effective than the traditional network of juvenile custodial institutions. A permanent state agency committed to delinquency treatment programs would be a more responsible manager over the long term than the haphazard collection of private philanthropy, correctional departments, and federal agencies that have spearheaded most treatment reforms in the states up to now.

State departments of treatment services for delinquents also need research arms that can evaluate their programs with an eye to weeding out those programs that are ineffective. They need detailed information on their programs to represent the rehabilitation philosophy to state government and the mass media. The people of a state must ultimately choose the direction that is best for them, but they must be fully informed of the alternatives.

If such departments were available at the state level, it would give an immense lift to the juvenile court. This court has long pursued parens patriae in the community but with uncertain success and lately with waning confidence. A department of treatment services could provide both the variety in community programming and political support that the court needs to carry out its mission effectively.

The juvenile court cannot be both classification agent and programs agent for the rehabilitative process. It was never given a mandate to sponsor community-based treatment programs. The court is reasonably effective as a juvenile classification and assignment agency, but it needs an effective right arm to create and evaluate treatment programs throughout the state geared to local needs. Local juvenile courts working hand in glove with a state department of treatment services could finally realize the full potential of parens patriae.

To improve the juvenile court it is important to strengthen its links with the rest of the system, especially with those agencies that sponsor treatment programs. Up to now responsibility for these programs has been left mainly to custodial or private initiatives. Without a concept of the system as a whole, reform of the court inevitably focuses on inappropriate remedies, and the situation of delinquents only deteriorates. If the failure to rehabilitate juveniles lies with juvenile custodial facilities, reform should focus there and not solely on the parens patriae mandate of the court. Historical analysis can pinpoint the sources of the court's difficulties and thereby suggest appropriate lines of reform. Without such analyses our efforts will remain limited by ideological blinders and our reforms will decay as usual into tomorrow's problems.

Notes

1. It is interesting that as the juvenile court's jurisdiction over status offending has eroded in the last 30 years, runaways and school misbehavior have grown dramatically (see Gough 1977, pp. 283–87; Shane 1989). Although other factors have been active in this arena, the court's abandonment of status offenders may have contributed to the reemergence of these problems in the modern era.

2. Overlap among these schools accounts for the fact that their sum is much more than 30.

3. These figures were computed from statistics issued by the Boston Police Department and the U.S. Bureau of the Census. The population data for 1860 were gathered during an especially turbulent period, and may have missed a substantial portion of the transient population including juveniles. Thus delinquency arrest rates for that period may be overestimated.

4. In this sense the new court was a step back from the old civil court, because it handled both the most hardened, serious offenders in the same way as minor status offenders.

5. There is no room in juvenile justice for racial or gender bias, but most studies of bias have ignored an important fact that throws new light on the problem. Because the community (parents, school officials, and neighbors) enjoys wide discretion in defining juvenile offending, an officer's decision to make an arrest, or a court's decision to detain a juvenile depends heavily on the biases of the complainant (see Hazard 1976; and Black and Reiss 1970). Where a biased victim demands action against a minority juvenile, chances are good that the police or the court will comply. A dismissal is difficult, if a complainant seeking punishment is close at hand. Thomas and Cage (1977) found in a study of more than 1,500 juveniles that their sanctioning in court was more severe if someone close to the case was pushing it.

6. Earlier the renowned Chicago Area Projects initiated by Henry Shaw and Clifford McKay in the 1930s probably had been successful, even though a failure to use an experimental design rendered a definitive statement as to their success impossible (see also Schlossman and Sedlak 1983).

7. We might call this authority the Department of Youth Services. Many states have a Department of Family Services that serves nondelinquent children, and the Department of Youth Services would offer many of the same programs for delinquents and children at risk of delinquency. It would coordinate its efforts with the juvenile courts, just as juvenile corrections does. Three state agencies, therefore, would provide social services to adolescents: Juvenile Corrections, which manages custodial institutions for juveniles; the Department of Youth Services, which manages the treatment effort for juvenile delinquents; and the Department of Family Services, which manages the treatment function for nondelinquent youth. Further consolidation of these three agencies need not be ruled out.

8. Some will say, "The state has already proven its ineptness in programs for youth. It does not deserve a second chance." My response is, if that is true, then the *only* alternative is the status quo, that is, a due process court and punitive juvenile institutions. Rehabilitating delinquents is too important to abandon simply because the state has stumbled in its efforts to fulfill parens patriae. If we can understand some of the reasons behind the state's ineptness, for example, a primary commitment to security in facilities, we can correct them.

9. Youth Services Bureaus, an offspring of Lyndon Johnson's 1960s campaign against delinquency,

represented a similar effort to bring treatment programs together under a single community agency. They were locally financed and suffered budget problems in many small cities, and they often differed with judges as to what delinquents needed.

10. Certainly, other factors, for example, the downside of the baby boom and the cooling of the drugs epidemic among high schoolers, have contributed to this decline. But the size of the decline—24%—is consistent with a positive effect from juvenile justice.

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DISCUSSION QUESTIONS

1. How did compulsory education and problem schoolchildren affect the early juvenile justice system?
2. What were the criticisms directed at the juvenile justice system after World War II?
3. Ferdinand disputes the belief that juvenile treatment programs were a failure. What are some examples of effective juvenile treatment programs?
4. What is Ferdinand's proposal for treatment in juvenile community and institutional programs?

READING

Barry Krisberg traces the development of juvenile justice in America and how it was patterned after the British and European justice systems. He discusses the failures of the early U.S. juvenile justice system to adequately serve marginalized youth, and the role of houses of refuge and child savers in the history of juvenile justice. The Progressive Era of American juvenile justice is highlighted with a discussion of the Child Guidance Clinic Movement, the Chicago Area Project, the Mobilization for Youth, and changes in institutional and community-based corrections and the juvenile law.

The Historical Legacy of Juvenile Justice

Barry Krisberg

The first institution for the control of juvenile delinquency in the United States was the New York House of Refuge, founded in 1825, but specialized treatment of wayward youth has a much longer history—one tied to changes in the social structure of medieval Europe. These same changes prompted the colonization of the New World and led to attempts to control and exploit the labor of African, European, and Native American children.

Virtually all aspects of life were in a state of flux for the people of Europe in the later Middle Ages (16th and 17th centuries). The economy was being transformed from a feudal system based on sustenance agriculture to a capitalistic, trade-oriented system focusing on cash crops and the consolidation of large tracts of land. In religious matters, the turmoil could be amply witnessed in the intense struggles of the Reformation.

SOURCE: B. Krisberg. *Juvenile Justice: Redeeming Our Children* (2005).

Politically, power was increasingly concentrated in the hands of a few monarchs, who were fashioning strong centralized states. The growth of trade and exploration exposed Europeans to a variety of world cultures and peoples.

For the lower classes of European society, these were "the worst of times." The rising population density as well as primitive agricultural methods led to a virtual exhaustion of the land. Increasing urban populations created new demands for cheap grain, and landlords responded by increasing the fees paid by peasants who worked the land. Large numbers of peasants were displaced from the land to permit the growth of a capitalist pasturage system. The standard of living of the European peasantry dropped sharply, and this new, displaced class streamed into the cities and towns in search of means of survival. The workers and artisans of the cities were deeply threatened by the prospect that this pauper class would drive down the general wage level. Most European towns experienced sharp rises in crime, rioting, and public disorder.

To control and defuse the threat of this new "dangerous class," the leaders of the towns enacted laws and other restrictions to discourage immigration and contain the movement of the impoverished peasantry. "Poor laws" were passed, preventing the new migrants from obtaining citizenship, restricting their membership in guilds, and often closing the city gates to them. Vagrancy laws were instituted to control and punish those who seemed a threat to the social order. Certain legislation, such as the Elizabethan Statute of Artificers (1562), restricted access into certain trades, forcing the rural young to remain in the countryside.

Urban migration continued despite most attempts to curtail it. The collective units of urban life, the guild and the family, began to weaken under the pressure of social change. Children often were abandoned or released from traditional community restraints. Countless observers from the period tell of bands of youths roaming the cities at night, engaging in thievery, begging, and other forms of misbehavior (Sanders, 1970).

At this time family control of children was the dominant model for disciplining wayward youth. The model of family government, with the father in the role of sovereign, was extended to those without families through a system of *binding out* the young to other families. Poor children, or those beyond parental control, were apprenticed to householders for a specified period of time. Unlike the apprenticeship system for the privileged classes, the binding-out system did not oblige the master to teach his ward a trade. Boys generally were assigned to farming tasks and girls were brought into domestic service.

As the problem of urban poverty increased, the traditional modes of dealing with delinquent or destitute children became strained. Some localities constructed institutions to control wayward youth. The Bridewell (1555) in London is generally considered the first institution specifically designed to control youthful beggars and vagrants. In 1576 the English Parliament passed a law establishing a similar institution in every English county. The most celebrated of these early institutions was the Amsterdam House of Corrections (1595), which was viewed as an innovative solution to the crime problem of the day.[1] The houses of correction combined the principles of the poorhouse, the workhouse, and the penal institution. The youthful inmates were forced to work within the institution and thus develop habits of industriousness. Upon release they were expected to enter the labor force, so house of correction inmates often were hired out to private contractors. Males rasped hardwoods used in the dyeing industry, and when textile manufacturing was introduced to the houses of correction, this became the special task of young woman inmates.

The early houses of correction, or so-called "Bridewells," accepted all types of children including the destitute, the infirm, and the needy. In some cases, parents placed their children in these institutions because they believed the regimen of work would have a reformative effect. Although it is debatable whether the houses of correction were economically efficient, the founders of such institutions dearly hoped to

provide a cheap source of labor to local industries. The French institutions, called *hospitaux generaux,* experimented with technological improvements and different labor arrangements. This often brought charges of unfair competition from guilds, who feared the demise of their monopoly on labor, and businessmen, who felt threatened by price competition at the marketplace. Some authors stress the economic motive of these early penal institutions: "The institution of the houses of correction in such a society was not the result of brotherly love or of an official sense of obligation to the distressed. It was part of the development of capitalism" (Rusche & Kirchheimer, 1939, p. 50).

The enormous social, political, and economic dislocations taking place in Europe provided a major push toward colonization of the Americas. People emigrated for many reasons—some to get rich, some to escape political or religious oppression, and some because they simply had nothing to lose. Settlement patterns and the resulting forms of community life varied considerably. In the Massachusetts Bay Colony, for example, the Puritans attempted to establish a deeply religious community to serve God's will in the New World. The Puritans brought families with them and from the outset made provisions for the care and control of youths.

In contrast, the settlement of Virginia was more directly tied to economic considerations. There were persistent labor shortages, and the need for labor prompted orders for young people to be sent over from Europe. Some youths were sent over by "spirits," who were agents of merchants or ship owners. The spirits attempted to persuade young people to immigrate to America. They often promised that the New World would bring tremendous wealth and happiness to the youthful immigrants. The children typically agreed to work a specific term (usually 4 years) in compensation for passage across the Atlantic and for services rendered during the trip. These agreements of service were then sold to inhabitants of the new colonies, particularly in the South. One can imagine that this labor source must have been quite profitable for the plantations of the New World. Spirits were often accused of kidnapping, contractual fraud, and deception of a generally illiterate, destitute, and young clientele.

Other children coming to the New World were even more clearly coerced. For example, it became an integral part of penal practice in the early part of the 18th century to transport prisoners to colonial areas. Children held in the overcrowded Bridewells and poorhouses of England were brought to the Americas as indentured servants. After working a specified number of years as servants or laborers, the children were able to win their freedom. In 1619 the colony of Virginia regularized an agreement for the shipment of orphans and destitute children from England.

That same year, Africans, another group of coerced immigrants, made their first appearance in the Virginia Colony. The importation of African slaves eventually displaced the labor of youthful poor because of greater economic feasibility. The black chattels were physically able to perform strenuous labor under extreme weather conditions without adequate nutrition. These abilities would finally be used to describe them as beasts. Also, the high death rates experienced under these conditions did not have to be accounted for. The bondage of Africans was soon converted into lifetime enslavement, which passed on through generations. The southern plantation system, dependent on the labor of African slaves, produced tremendous wealth, further entrenching this inhuman system (Stamp, 1956; Yetman, 1970). Racism, deeply lodged in the English psyche, provided the rationale and excuse for daily atrocities and cruelties.[2]

Studies of slavery often overlook the fact that most slaves were children. Slave traders thought children would bring higher prices. Accounts of the slave trade emphasize the economic utility of small children, who could be jammed into the limited cargo space available on slave ships. Children were always a high proportion of the total slave population, because slave owners encouraged the birth of children to

increase their capital. Little regard was paid by slave owners to keeping families together. African babies were a commodity to be exploited just as one might exploit the land or the natural resources of a plantation, and young slave women often were used strictly for breeding. A complete understanding of the social control of children must include a comparison of the institution of slavery to the conditions faced by children in other sections of the country.[3]

Another group of children who often are ignored in discussions of the history of treatment of youth in North America are Native Americans. In 1609 officials of the Virginia Company were authorized to kidnap Native American children and raise them as Christians. The stolen youths were to be trained in the religion, language, and customs of the colonists. The early European colonists spread the word of the Gospel to help rationalize their conquests of lands and peoples. But an equally important motivation was their interest in recruiting a group of friendly natives to assist in trade negotiations and pacification programs among the native peoples. The early Indian schools resembled penal institutions, with heavy emphasis on useful work, Bible study and religious worship. Although a substantial amount of effort and money was invested in Indian schools, the results were considerably less than had been originally hoped:

> Missionaries could rarely bridge the chasm of mistrust and hostility that resulted from wars, massacres and broken promises. With so many colonists regarding the Indian as the chief threat to their security and the Indians looking upon the colonists as hypocrites, it is little wonder that attempts to win converts and to educate should fail. (Bremner, Barnard, Hareven, & Mennel, 1970, p. 72)

Unlike attempts to enslave children of African descent, early efforts with Native Americans were not successful. Relations between European colonists and Native Americans during this period centered around trading and the securing of land rights. These contrasting economic relationships resulted in divergent practices in areas such as education. Although there was general support for bringing "the blessings of Christian education" to the Native American children, there was intense disagreement about the merits of educating African slaves. Whereas some groups, such as the Society for the Propagation of the Gospel, argued that all "heathens" should be educated and converted, others feared that slaves who were baptized would claim the status of freemen. There was concern among whites that education of slaves would lead to insurrection and revolt. As a result, South Carolina and several other colonies proclaimed that conversion to Christianity would not affect the status of slaves (Bremner et al., 1970). Many southern colonies made it a crime to teach reading and writing to slaves. A middle-ground position evolved, calling for religious indoctrination without the more dangerous education in literacy (Bremner et al., 1970; Gossett, 1963).

In the early years of colonization, the family was the fundamental mode of juvenile social control, as well as the central unit of economic production. Even in situations where children were apprenticed or indentured, the family still served as the model for discipline and order. Several of the early colonies passed laws requiring single persons to live with families. The dominant form of poor relief at this time was placing the needy with other families in the community (Rothman, 1971). A tradition of family government evolved in which the father was empowered with absolute authority over all affairs of the family. Wives and children were expected to give complete and utter obedience to the father's wishes. This model complemented practices in political life, where absolute authority was thought to be crucial to the preservation of civilization.

Colonial laws supported and defended the primacy of family government. The earliest laws concerning youthful misbehavior prescribed the death penalty for children who disobeyed their parents. For example, part of the 1641 Massachusetts *Body of Liberties* reads as follows:

> If any child, or children, above sixteen years of age, and of sufficient understanding, shall CURSE or SMITE their natural FATHER or MOTHER, he or they shall be putt to death, unless it can be sufficiently testified that the Parents have been very unchristianly negligent in the education of such children: so provoked them by extreme and cruel correction, that they have been forced thereunto, to preserve themselves from death or maiming: *Exod* 21:17, *Lev* 20:9, *Exod* 21:15. (Hawes, 1971, p. 13)

Although there is little evidence that children were actually put to death for disobeying their parents, this same legal principle was used to justify the punishment of rebellious slave children in the southern colonies. Family discipline typically was maintained by corporal punishment. Not only were parents held legally responsible for providing moral education for their children, but a Massachusetts law of 1642 also mandated that parents should teach their children reading and writing. Later, in 1670, public officials called tithing men were assigned to assist the selectmen (town councilmen) and constables in supervising family government. The tithing men visited families who allegedly were ignoring the education and socialization of their children. Although there are records of parents brought to trial due to their neglect of parental duties, this manner of supervising family government was not very successful.

The family was the central economic unit of colonial North America. Home-based industry, in which labor took place on the family farm or in a home workshop, continued until the end of the 18th century. Children were an important component of family production, and their labor was considered valuable and desirable. A major determinant of a child's future during this time was the father's choice of apprenticeship for his child. Ideally the apprenticeship system was to be the stepping stone into a skilled craft, but this happy result was certain only for children of the privileged classes. As a consequence, children of poor families might actually be *bound out* as indentured servants. The term of apprenticeship was generally seven years, and the child was expected to regard his master with the same obedience due natural parents. The master was responsible for the education and training of the young apprentice and he acted *in loco parentis,* assuming complete responsibility for the child's material and spiritual welfare. Although apprenticeships were voluntary for the wealthier citizens, for the wayward or destitute child they were unavoidable. The use of compulsory apprenticeships was an important form of social control exercised by town and religious officials upon youths perceived as troublesome (Bremner et al., 1970).

The industrial revolution in North America, beginning at the end of the 18th century, brought about the gradual transformation of the labor system of youth. The family-based productive unit gave way to an early factory system. Child labor in industrial settings supplanted the apprenticeship system. As early as the 1760s there were signs that the cotton industry in New England would transform the system of production, and by 1791 all stages in the manufacture of raw cotton into cloth were performed by factory machinery. The Samuel Slater factory in Providence, Rhode Island, employed 100 children aged 4–10 years in cotton manufacture. Here is a description of the workplace environment:

> They worked in one room where all the machinery was concentrated under the supervision of a foreman, spreading the cleaned cotton on the carding machine to be combed and passing it though the roving machine, which turned the cotton into loose rolls ready to be spun. Some of the children tended the spindles, removing and attaching bobbins. Small, quick fingers were admirably suited for picking up and knotting broken threads. To the delight of Tench Coxe, a champion of American industry, the children became "the little fingers . . . of the gigantic automatons of

labor-saving machinery." (Bremner et al., 1970, p. 146)

During the next two decades, the use of children in New England industrial factories increased, and children composed 47%–55% of the labor force in the cotton mills. The proliferation of the factory system transformed the lives of many Americans. On one hand, enormous wealth began to accumulate in the hands of a few individuals. At the same time, the switch from a family-based economy to a factory system where workers sold their labor meant that many families were displaced from the land. A large class of permanently impoverished Americans evolved. The use of child labor permitted early industrialists to depress the general wage level. Moreover, companies provided temporary housing and supplies to workers at high prices, so that workers often incurred substantial debts rather than financial rewards.

Increased child labor also contributed to the weakening of family ties, because work days were long and often competed with family chores. Children were now responsible to two masters—their fathers and their factory supervisors. Work instruction became distinct from general education and spiritual guidance as the family ceased to be an independent economic unit. Conditions of poverty continued to spread, and the social control system predicated upon strong family government began to deteriorate. During the first decades of the 19th century, one could begin to observe a flow of Americans from rural areas to the urban centers. As increasing economic misery combined with a decline in traditional forms of social control, an ominous stage was being set. Some Americans began to fear deeply the growth of a "dangerous class" and attempted to develop new measures to control the wayward youth who epitomized this threat to social stability.

The Houses of Refuge (1825–1860)[4]

Severe economic downturns in the first two decades of the 19th century forced many Americans out of work. At the same time, increasing numbers of Irish immigrants arrived in the United States. These changes in the social structure, combined with the growth of the factory system, contributed to the founding of specialized institutions for the control and prevention of juvenile delinquency in the United States (Hawes, 1971; Mennel, 1973; Pickett, 1969).

As early as 1817, the more privileged Americans became concerned about the apparent connection between increased pauperism and the rise of delinquency. The Society for the Prevention of Pauperism was an early attempt to evaluate contemporary methods of dealing with the poor and to suggest policy changes. This group also led campaigns against taverns and theaters, which they felt contributed to the problem of poverty. The efforts of several members of this group led to the founding in New York City of the first House of Refuge in 1825. The group conducted investigations, drew up plans and legislation, and lobbied actively to gain acceptance of their ideas. In other Northeastern cities, such as Boston and Philadelphia, similar efforts were under way.

A number of historians have described these early 19th-century philanthropists as "conservative reformers" (Coben & Ratner, 1970; Mennel, 1973). These men were primarily from wealthy, established families and often were prosperous merchants or professionals. Ideologically, they were close to the thinking of the colonial elite and, later, to the Federalists. Popular democracy was anathema to them because they viewed themselves as God's elect and felt bound to accomplish His charitable objectives in the secular world. Leaders of the movement to establish the houses of refuge, such as John Griscom, Thomas Eddy, and John Pintard, viewed themselves as responsible for the moral health of the community, and they intended to regulate community morality through the example of their own proper behavior as well as through benevolent activities. The poor and the deviant were the objects of their concern and their moral stewardship.

Although early 19th-century philanthropists relied on religion to justify their good works, their primary motivation was the protection of their class privileges. Fear of social unrest and chaos dominated their thinking (Mennel, 1973). The rapid growth of a visible impoverished class, coupled with apparent increases in crime, disease, and immorality, worried those in power. The bitter class struggles of the French Revolution and periodic riots in urban areas of the United States signaled danger to the status quo. The philanthropy of this group was aimed at reestablishing social order, while preserving the existing property and status relationships. They were responsible for founding such organizations as the American Sunday School Union, the American Bible Society, the African Free School Society, and the Society for Alleviating the Miseries of Public Prisons. They often were appointed to positions on boards of managers for lunatic asylums, public hospitals, workhouses for the poor, and prisons.

The idea for houses of refuge was part of a series of reform concepts designed to reduce juvenile delinquency. Members of the Society for the Prevention of Pauperism were dissatisfied with the prevailing practice of placing children in adult jails and workhouses. Some reformers felt that exposing children to more seasoned offenders would increase the chances of such children becoming adult criminals. Another issue was the terrible condition of local jails. Others worried that, due to these abominable conditions, judges and juries would lean toward acquittal of youthful criminals to avoid sending them to such places. Reformers also objected that the punitive character of available penal institutions would not solve the basic problem of pauperism. The reformers envisioned an institution with educational facilities, set in the context of a prison. John Griscom called for "the erection of new prisons for juvenile offenders" (Mennel, 1973). A report of the Society for the Prevention of Pauperism suggested the following principles for such new prisons:

> These prisons should be rather schools for instruction, than places of punishment, like our present state prisons where the young and the old are confined indiscriminately. The youth confined there should be placed under a course of discipline, severe and unchanging, but alike calculated to subdue and conciliate. A system should be adopted that would provide a mental and moral regimen. (Mennel, 1973, p. 11)

By 1824 the society had adopted a state charter in New York under the name of the Society for the Reformation of Juvenile Delinquents and had begun a search for a location for the House of Refuge.

On New Year's Day, 1825, the New York House of Refuge opened with solemn pomp and circumstance. A year later the Boston House of Reformation was started, and in 1828 the Philadelphia House of Refuge began to admit wayward youth. These new institutions accepted both children convicted of crimes and destitute children. Because they were founded as preventive institutions, the early houses of refuge could accept children who "live an idle or dissolute life, whose parents are dead or if living, from drunkenness, or other vices, neglect to provide any suitable employment or exercise any salutary control over said children" (Bremner et al., 1970, p. 681). Thus, from the outset, the first special institutions for juveniles housed together delinquent, dependent, and neglected children—a practice still observed in most juvenile detention facilities today.[5]

The development of this new institution of social control necessitated changes in legal doctrines to justify the exercise of power by refuge officials. In *Commonwealth v. M'Keagy* (1831), the Pennsylvania courts had to rule on the legality of a proceeding whereby a child was committed to the Philadelphia House of Refuge on the weight of his father's evidence that the child was "an idle and disorderly person." The court affirmed the right of the state to take a child away from a parent in cases of vagrancy or crime, but because this child was not a vagrant, and the father was not poor, the court ruled that

the child should not be committed. Judicial officials did not wish to confuse protection of children with punishment, because this might engender constitutional questions as to whether children committed to houses of refuge had received the protection of due process of law.

The related question of whether parental rights were violated by involuntary refuge commitments was put to a legal test in *Ex parte Crouse* (1838). The father of a child committed to the Philadelphia House of Refuge attempted to obtain her release through a writ of habeas corpus. The state supreme court denied the motion, holding that the right of parental control is a natural but not inalienable right:

> The object of the charity is reformation, by training the inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and, above all, by separating them from the corrupting influence of improper associates. To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae,* or common guardian of the community? The infant has been snatched from a course which must have ended in confirmed depravity; and, not only is the restraint of her person lawful, but it would have been an act of extreme cruelty to release her from it. (*Ex parte Crouse,* 1838)

The elaboration of the doctrine of *parens patriae* in the Crouse case was an important legal principle used to support the expanded legal powers of the juvenile court. It is important to recognize the significance of both social class and hostility toward Irish immigrants in the legal determination of the Crouse case.[6] Because Irish immigrants were viewed at this time as corrupt and unsuitable as parents, it is easy to see how anti-immigrant feelings could color judgments about the suitability of parental control. As a result, children of immigrants made up the majority of inmates of the houses of refuge.

The early houses of refuge either excluded blacks or housed them in segregated facilities. In 1849 the city of Philadelphia opened the House of Refuge for Colored Juvenile Delinquents. Racially segregated refuges were maintained in New York City and Boston only through the limited funds donated by antislavery societies. Because refuge managers viewed all young woman delinquents as sexually promiscuous with little hope for eventual reform, young women also received discriminatory treatment.[7]

The managers of houses of refuge concentrated on perfecting institutional regimens that would result in reformation of juveniles. Descriptions of daily activities stress regimentation, absolute subordination to authority, and monotonous repetition:

> At sunrise, the children are warned, by the ringing of a bell, to rise from their beds. Each child makes his own bed, and steps forth, on a signal, into the Hall. They then proceed, in perfect order, to the Wash Room. Thence they are marched to parade in the yard, and undergo an examination as to their dress and cleanliness; after which they attend morning prayer. The morning school then commences, where they are occupied in summer, until 7 o'clock. A short intermission is allowed, when the bell rings for breakfast; after which, they proceed to their respective workshops, where they labor until 12 o'clock, when they are called from work, and one hour allowed them for washing and eating their dinner. At one, they again commence work, and continue at it until five in the afternoon, when the labors of the day terminate. Half an hour is allowed for washing and eating their supper, and at half-past five, they are conducted to the school room, where they continue at their studies until 8 o'clock. Evening Prayer is performed by the Superintendent; after

> which, the children are conducted to their dormitories, which they enter, and are locked up for the night, when perfect silence reigns throughout the establishment. The foregoing is the history of a single day, and will answer for every day in the year, except Sundays, with slight variations during stormy weather, and the short days in winter. (Bremner et al., 1970, p. 688)[8]

Routines were enforced by corporal punishment as well as other forms of control. Houses of refuge experimented with primitive systems of classification based on the behavior of inmates. The Boston House of Reformation experimented with inmate self-government as a control technique. But, despite public declarations to the contrary, there is ample evidence of the use of solitary confinement, whipping, and other physical punishments.

Inmates of the houses of refuge labored in large workshops manufacturing shoes, producing brass nails, or caning chairs. Young woman delinquents often were put to work spinning cotton and doing laundry. It is estimated that income generated from labor sold to outside contractors supplied up to 40% of the operating expenses of the houses of refuge. The chief problem for refuge managers was that economic depressions could dry up the demand for labor, and there was not always sufficient work to keep the inmates occupied. Not only were there complaints that contractors abused children, but also that such employment prepared youngsters for only the most menial work.

Youths were committed to the houses of refuge for indeterminate periods of time until the legal age of majority. Release was generally obtained through an apprenticeship by the youths to some form of service. The system was akin to the binding-out practices of earlier times. Males typically were apprenticed on farms, on whaling boats, or in the merchant marine. Young women usually were placed into domestic service. Only rarely was a house-of-refuge child placed in a skilled trade. Apprenticeship decisions often were made to ensure that the child would not be reunited with his or her family, because this was presumed to be the root cause of the child's problems. As a result, there are many accounts of siblings and parents vainly attempting to locate their lost relatives.

The founders of the houses of refuge were quick to declare their own efforts successful. Prominent visitors to the institutions, such as Alexis de Tocqueville and Dorothea Dix, echoed the praise of the founders. Managers of the refuges produced glowing reports attesting to the positive results of the houses. Sharp disagreements over the severity of discipline required led to the replacement of directors who were perceived as too permissive. Elijah Devoe (1848), a house of refuge assistant superintendent, wrote poignantly of the cruelties and injustices in these institutions. There are accounts of violence within the institutions as well. Robert Mennel (1973) estimates that approximately 40% of the children escaped either from the institutions or from their apprenticeship placements. The problems that plagued the houses of refuge did not dampen the enthusiasm of the philanthropists, who assumed that the reformation process was a difficult and tenuous business at best.

Public relations efforts proclaiming the success of the houses of refuge helped lead to a rapid proliferation of similar institutions (Rothman, 1971). While special institutions for delinquent and destitute youth increased in numbers, the public perceived that delinquency was continuing to rise and become more serious. The founders of the houses of refuge argued that the solution to the delinquency problem lay in the perfection of better methods to deal with incarcerated children. Most of the literature of this period assumes the necessity of institutionalized treatment for children. The debates centered around whether to implement changes in architecture or in the institutional routines. Advocates of institutionalized care of delinquent and dependent youths continued to play the

dominant role in formulating social policy for the next century.

The Growth of Institutionalization and the Child Savers (1850–1890)

In the second half of the 19th century, a group of reformers known as the Child Savers instituted new measures to prevent juvenile delinquency (Hawes, 1971; Mennel, 1973; Platt, 1968). Reformers including Lewis Pease, Samuel Gridley Howe, and Charles Loring Brace founded societies to save children from depraved and criminal lives. They created the Five Points Mission (1850), the Children's Aid Society (1853), and the New York Juvenile Asylum (1851). The ideology of this group of reformers differed from that of the founders of the houses of refuge only in that this group was more optimistic about the possibilities of reforming youths. Centers were established in urban areas to distribute food and clothing, provide temporary shelter for homeless youth, and introduce contract systems of shirt manufacture to destitute youth.

The Child Savers criticized the established churches for not doing more about the urban poor. They favored an activist clergy that would attempt to reach the children of the streets. Although this view was somewhat unorthodox, they viewed the urban masses as a potentially dangerous class that could rise up if misery and impoverishment were not alleviated. Charles Loring Brace observed, "Talk of heathen! All the pagans of Golconda would not hold a light to the ragged, cunning, forsaken, godless, keen devilish boys of Leonard Street and the Five Points . . . Our future voters, and President-makers, and citizens! Good Lord deliver us, and help them!" (quoted in Mennel, 1973, p. 34). Brace and his associates knew from firsthand experience in the city missions that the problems of poverty were widespread and growing more serious. Their chief objection to the houses of refuge was that long-term institutionalized care did not reach enough children. Moreover, the Child Savers held the traditional view that family life is superior to institutional routines for generating moral reform.

Brace and his Children's Aid Society believed that delinquency could be solved if vagrant and poor children were gathered up and "placed out" with farm families on the western frontier. Placing out as a delinquency-prevention practice was based on the idealized notion of the U.S. farm family. Such families were supposed to be centers of warmth, compassion, and morality; they were "God's reformatories" for wayward youth. Members of the Children's Aid Society provided food, clothing, and sometimes shelter to street waifs and preached to them about the opportunities awaiting them if they migrated westward. Agents of the Children's Aid Society vigorously urged poor urban youngsters to allow themselves to be placed out with farm families. Many believed that western families provided both a practical and economical resource for reducing juvenile delinquency. The following passage from a Michigan newspaper gives a vivid picture of the placing out process:

> Our village has been astir for a few days. Saturday afternoon, Mr. C. C. Tracy arrived with a party of children from the Children's Aid Society in New York . . .
>
> Sabbath day Mr. Tracy spoke day and evening, three times, in different church edifices to crowded and interested audiences. In the evening, the children were present in a body, and sang their "Westward Ho" song. Notice was given that applicants would find unappropriated children at the store of Carder and Ryder, at nine o'clock Monday morning. Before the hour arrived a great crowd assembled, and in two hours *every child was disposed of,* and more were wanted.
>
> We *Wolverines* will never forget Mr. Tracy's visit. It cost us some tears of sympathy, some dollars, and some smiles. We wish him a safe return to Gotham, a speedy one to us

> with the new company of destitute children, for whom good homes are even now prepared. (Mennel, 1973, p. 39)

Contrary to the benevolent image projected by this news story, there is ample evidence that the children were obliged to work hard for their keep and were rarely accepted as members of the family. The Boston Children's Aid Society purchased a home in 1864, which was used to help adjust street youth to their new life in the West. The children were introduced to farming skills and taught manners that might be expected of them in their new homes.

Another prevention experiment during the middle part of the 19th century was the result of the work of a Boston shoemaker, John Augustus. In 1841, Augustus began to put up bail for men charged with drunkenness, although he had no official connection with the court. Soon after, he extended his services to young people. Augustus supervised the youngsters while they were out on bail, provided clothing and shelter, was sometimes able to find them jobs, and often paid court costs to keep them out of jail. This early probation system was later instituted by local child-saving groups, who would find placements for the children. By 1869 Massachusetts had a system by which agents of the Board of State Charities took charge of delinquents before they appeared in court. The youths often were released on probation, subject to good behavior in the future.

These noninstitutional prevention methods were challenged by those who felt an initial period of confinement was important before children were placed out. Critics also argued that the Children's Aid Societies neither followed up on their clients nor administered more stringent discipline to those who needed it. One critic phrased it this way:

> The "vagabond boy" is like a blade of com, coming up side by side with a thistle. You may transplant both together in fertile soil, but you will have the thistle still. . . . I would have you pluck out the vagabond first, and then let the boy be thus provided with "a home," and not before. (Mennel, 1973, p. 46)

Many Midwesterners were unsettled by the stream of "criminal children" flowing into their midst. Brace and his colleagues were accused of poisoning the West with the dregs of urban life. To combat charges that urban youths were responsible for the rising crime in the West, Brace conducted a survey of western prisons and almshouses to show that few of his children had gotten into further trouble in the West.

Resistance continued to grow against the efforts of the Children's Aid Societies. Brace, holding that asylum interests were behind the opposition, maintained that the longer a child remains in an asylum, the less likely he will reform. (The debate over the advantages and disadvantages of institutionalized care of delinquent youth continues to the present day.) Brace continued to be an active proponent of the placing out system. He appeared before early conventions of reform school managers to present his views and debate the opposition. As the struggle continued over an ideology to guide prevention efforts, the problem of delinquency continued to grow. During the 19th century, poverty, industrialization, and immigration, as well as the Civil War, helped swell the ranks of the "dangerous classes."[9]

Midway through the 19th century, state and municipal governments began taking over the administration of institutions for juvenile delinquents. Early efforts had been supported by private philanthropic groups with some state support. But the growing fear of class strife, coupled with increasing delinquency, demanded a more centralized administration. Many of the newer institutions were termed *reform schools* to imply a strong emphasis on formal schooling. In 1876, of the 51 refuges or reform schools in the United States, nearly three quarters were operated by state or local governments. By 1890, almost every state outside the South had a reform school, and

many jurisdictions had separate facilities for male and female delinquents. These institutions varied considerably in their admissions criteria, their sources of referral, and the character of their inmates. Most of the children were sentenced to remain in reform schools until they reached the age of majority (18 years for girls and 21 for boys) or until they were reformed. The length of confinement, as well as the decision to transfer unmanageable youths to adult penitentiaries, was left to the discretion of reform school officials.

Partially in response to attacks by Brace and his followers, many institutions implemented a cottage or family system between 1857 and 1860. The cottage system involved dividing the youths into units of 40 or fewer, each with its own cottage and schedule. Although work was sometimes performed within the cottages, the use of large congregate workshops continued. The model for the system was derived from the practice of European correctional officials. There is evidence from this period of the development of a self-conscious attempt to refine techniques to mold, reshape, and reform wayward youth (Hawes, 1971).

During this period, a movement was initiated to locate institutions in rural areas, because it was felt that agricultural labor would facilitate reformative efforts. As a result, several urban houses of refuge were relocated in rural settings. Many rural institutions used the cottage system, as it was well suited to agricultural production. In addition, the cottage system gave managers the opportunity to segregate children according to age, sex, race, school achievement, or "hardness." Critics of the institutions, such as Mary Carpenter, pointed out that most of the presumed benefits of rural settings were artificial and that the vast majority of youths who spent time in these reform schools ultimately returned to crowded urban areas.

The Civil War deeply affected institutions for delinquent youth. Whereas prisons and county jails witnessed declines in population, the war brought even more youths into reform schools. Institutions were strained well beyond their capacities. Some historians believe that the participation of youths in the draft riots in northern cities produced an increase in incarcerated youths. Reform schools often released older youngsters to military service to make room for additional children. Due to the high inflation rates of the war, the amount of state funds available for institutional upkeep steadily declined. Many institutions were forced to resort to the contract labor system to increase reform school revenues to meet operating expenses during the war and in the postwar period.

Voices were raised in protest over the expansion of contract labor in juvenile institutions. Some charged that harnessing the labor of inmates, rather than the reformation of youthful delinquents, had become the raison d'être of these institutions. There were growing rumors of cruel and vicious exploitation of youth by work supervisors. An 1871 New York Commission on Prison Labor, headed by Enoch Wines, found that refuge boys were paid 30 cents per day for labor that would receive 4 dollars a day on the outside. In the Philadelphia House of Refuge, boys were paid 25 cents a day and were sent elsewhere if they failed to meet production quotas. Economic depressions throughout the 1870s increased pressure to end the contract system. Workingmen's associations protested against the contract system, because prison and reform school laborers created unfair competition. Organized workers claimed that refuge managers were making huge profits from the labor of their wards:

> From the institutional point of view, protests of workingmen had the more serious result of demythologizing the workshop routine. No longer was it believable for reform school officials to portray the ritual as primarily a beneficial aid in inculcating industrious habits or shaping youth for "usefulness." The violence and exploitation characteristic of reform school workshops gave the lie to this allegation. The havoc may have been no greater than that which occasionally wracked the early houses of refuge, but the association of conflict and the contract system in the minds of victims and outside labor interests made it now seem intolerable. (Mennel, 1973, p. 61)

The public became aware of stabbings, fighting, arson, and attacks upon staff of these institutions.

> All signs pointed toward a decline of authority within the institutions. The economic troubles of the reform schools continued to worsen. Additional controversy was generated by organized Catholic groups, who objected to Protestant control of juvenile institutions housing a majority of Catholics. This crisis in the juvenile institutions led to a series of investigations into reform school operations.[10] The authors of these reports proposed reforms to maximize efficiency of operation and increase government control over the functioning of institutions in their jurisdictions. One major result of these investigative efforts was the formation of Boards of State Charity. Members of these boards were appointed to inspect reform schools and make recommendations for improvements but were to avoid the evils of the patronage system. Board members, who were described as "gentlemen of public spirit and sufficient leisure," uncovered horrid institutional conditions and made efforts to transfer youngsters to more decent facilities. Men such as Frederick Wines, Franklin Sanborn, Hastings Hart, and William Pryor Letchworth were among the pioneers of this reform effort. (Mennel, 1973, p. 61)

Although it was hoped that the newly formed boards would find ways to reduce the proliferation of juvenile institutions, such facilities continued to grow, as did the number of wayward youths. These late-19th-century reformers looked toward the emerging scientific disciplines for solutions to the problems of delinquency and poverty. They also developed a system to discriminate among delinquents, so that "hardened offenders" would be sent to special institutions such as the Elmira Reformatory. It was generally recognized that new methods would have to be developed to restore order within the reform schools and to make some impact upon delinquency.

Juvenile institutions in the South and the far West developed much later than those in the North or the East, but did so essentially along the same lines. One reason for this was that delinquency was primarily a city problem, and the South and far West were less urbanized. Another reason was that in the South, black youths received radically different treatment from whites. Whereas there was toleration for the misdeeds of white youth, black children were controlled under the disciplinary systems of slavery. Even after Emancipation, the racism of southern whites prevented them from treating black children as fully human and worth reforming. The Civil War destroyed the prison system of the South. After the war, southern whites used the notorious Black Codes and often trumped up criminal charges to arrest thousands of impoverished former slaves, placing them into a legally justified forced labor system. Blacks were leased out on contract to railroad companies, mining interests, and manufacturers. Although many of these convicts were children, no special provisions were made because of age. Conditions under the southern convict lease system were miserable and rivaled the worst cruelties of slavery. Little in the way of specialized care for delinquent youth was accomplished in the South until well into the 20th century. The convict lease system was eventually replaced by county road gangs and prison farms, characterized by grossly inhumane conditions of confinement. These were systems of vicious exploitation of labor and savage racism (McKelvey, 1972).

Juvenile Delinquency and the Progressive Era

The period from 1880 to 1920, often referred to by historians as the Progressive Era, was a time of major social structural change in the United States. The nation was in the process of becoming increasingly urbanized, and unprecedented numbers of European immigrants were migrating to cities in the Northeast. The United States was becoming an imperialist power and was establishing worldwide military and economic

relationships. Wealth was becoming concentrated in the hands of a few individuals who sought to dominate U.S. economic life. Labor violence was on the rise, and the country was in the grip of a racial hysteria affecting all peoples of color. The tremendous technological developments of the time reduced the need for labor (Weinstein, 1968; Williams, 1973).

During the Progressive Era, those in positions of economic power feared that the urban masses would destroy the world they had built. Internal struggles developing among the wealthy heightened the tension. From all sectors came demands that new action be taken to preserve social order and to protect private property and racial privilege (Gossett, 1963). Up to this time, those in positions of authority had assumed a laissez-faire stance, fearing that government intervention might extend to economic matters. Although there was general agreement on the need for law enforcement to maintain social order, there was profound skepticism about attempts to alleviate miserable social conditions or reform deviant individuals. Some suggested that if society consisted of a natural selection process in which the fittest would survive, then efforts to extend the life chances of the poor or "racially inferior" ran counter to the logic of nature.

Others during this era doubted the wisdom of a laissez-faire policy and stressed that the threat of revolution and social disorder demanded scientific and rational methods to restore social order. The times demanded reform, and before the Progressive Era ended, much of the modern welfare state and the criminal justice system were constructed. Out of the turmoil of this age came such innovations as widespread use of the indeterminate sentence, the public defender movement, the beginning of efforts to professionalize the police, extensive use of parole, the rise of mental and IQ testing, scientific study of crime, and ultimately the juvenile court.

Within correctional institutions at this time, there was optimism that more effective methods would be found to rehabilitate offenders. One innovation was to institute physical exercise training, along with special massage and nutritional regimens. Some believed that neglect of the body had a connection with delinquency and crime. Those who emphasized the importance of discipline in reform efforts pressed for the introduction of military drill within reform schools. There is no evidence that either of these treatment efforts had a reformative effect upon inmates, but it is easy to understand why programs designed to keep inmates busy and under strict discipline would be popular at a time of violence and disorder within prisons and reform schools. As institutions faced continual financial difficulties, the contract labor system came under increasing attack. Criticism of reform schools resulted in laws in some states to exclude children under the age of 12 from admission to reform schools. Several states abolished the contract labor system, and efforts were made to guarantee freedom of worship among inmates of institutions. Once again, pleas were made for community efforts to reduce delinquency, rather than society relying solely upon reform schools as a prevention strategy. The arguments put forth were reminiscent of those of Charles Loring Brace and the Child Savers. For example, Homer Folks, president of the Children's Aid Society of Pennsylvania, articulated these five major problems of reform schools in 1891:

1. The temptation it offers to parents and guardians to throw off their most sacred responsibilities . . .
2. The contaminating influence of association . . .
3. The enduring stigma . . . of having been committed . . .
4. . . . renders impossible the study and treatment of each child as an individual.
5. The great dissimilarity between life in an institution and life outside. (Mennel, 1973, p. 111)

One response was to promote the model of inmate self-government within the institution's walls. One such institution, the George Junior Republic, developed an elaborate system of inmate government in 1893, in which the institution became a microcosm of the outside world. Self-government was viewed as an effective control technique, because youths became enmeshed in the development and enforcement of rules, while guidelines for proper behavior continued to be set by the institutional staff. The inmates were free to construct a democracy, so long as it conformed to the wishes of the oligarchic staff (Hawes, 1971).

The populist governments of several southern states built reform schools, partly due to their opposition to the convict lease system. But, these institutions too were infused with the ethos of the Jim Crow laws, which attempted to permanently legislate an inferior role for black Americans in southern society. One observer described the reform school of Arkansas as a place "where White boys might be taught some useful occupation and the negro boys compelled to work and support the institution while it is being done" (Mennel, 1973, p. 12). Black citizens, obviously displeased with discrimination within southern reform schools, proposed that separate institutions for black children should be administered by the black community. A few such institutions were established, but the majority of black children continued to be sent to jail or to be the victims of lynch mobs.

Growing doubt about the success of reform schools in reducing delinquency led some to question the wisdom of applying an unlimited *parens patriae* doctrine to youth. In legal cases, such as *The People v. Turner* (1870), *State v. Kay* (1886), and *Ex parte Becknell* (1897), judges questioned the quasi-penal character of juvenile institutions and wondered whether there ought not to be some procedural safeguards for children entering court on delinquency charges.

The state of Illinois, which eventually became the first state to establish a juvenile court law, had almost no institutions for the care of juveniles. Most early institutions in Illinois had been destroyed in fires, and those that remained were regarded as essentially prisons for children. Illinois attempted a privately financed system of institutional care, but this also failed. As a result, progressive reformers in Chicago complained of large numbers of children languishing in the county jail and pointed out that children sometimes received undue leniency due to a lack of adequate facilities.

A new wave of Child Savers emerged, attempting to provide Chicago and the state of Illinois with a functioning system for handling wayward youth.[11] These reformers, members of the more wealthy and influential Chicago families, were spiritual heirs of Charles Loring Brace, in that they, too, feared that social unrest could destroy their authority. But through their approach, they hoped to alleviate some of the suffering of the impoverished and ultimately win the loyalty of the poor. Reformers such as Julia Lathrop, Jane Addams, and Lucy Flower mobilized the Chicago Women's Club on behalf of juvenile justice reform. Other philanthropic groups, aligning with the powerful Chicago Bar Association, helped promote a campaign leading to the eventual drafting of the first juvenile court law in the United States. Although previous efforts had been made in Massachusetts and Pennsylvania to initiate separate trials for juveniles, the Illinois law is generally regarded as the first comprehensive child welfare legislation in this country.

The Illinois law, passed in 1899, established a children's court that would hear cases of delinquent, dependent, and neglected children. The *parens patriae* philosophy, which had imbued the reform schools, now extended to the entire court process. The definition of delinquency was broad, so that a child would be adjudged delinquent if he or she violated any state law or any city or village ordinance. In addition, the court was given jurisdiction in cases of incorrigibility, truancy, and lack of proper parental supervision. The court had authority to institutionalize

children, send them to orphanages or foster homes, or place them on probation. The law provided for unpaid probation officers, who would assist the judges and supervise youngsters. In addition, the law placed the institutions for dependent youth under the authority of the State Board of Charities and regulated the activities of agencies sending delinquent youth from the East into Illinois.

The juvenile court idea spread so rapidly that within 10 years of the passage of the Illinois law, 10 states had established children's courts. By 1912, 22 states had juvenile court laws, and by 1925 all but two states had established specialized courts for children. Progressive reformers proclaimed the establishment of the juvenile court as the most significant reform of this period. The reformers celebrated what they believed to be a new age in the treatment of destitute and delinquent children. In *Commonwealth v. Fisher* (1905), the Pennsylvania Supreme Court defended the juvenile court ideal in terms reminiscent of the court opinion in the Crouse case of 1838:

> To save a child from becoming a criminal, or continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislatures surely may provide for the salvation of such a child, if its parents or guardians be unwilling or unable to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection.

Critics, pointing to the large number of children who remained in jails and detention homes for long periods, expressed doubt that the court would achieve its goal. Some judges, including the famous Judge Ben Lindsey of Denver, decried the seemingly unlimited discretion of the court. With so much diversity among jurisdictions in the United States, it is difficult to describe the functioning of a typical court. As the volume of cases in the urban areas soon overwhelmed existing court resources, judges became unable to give the close personal attention to each case advocated by the reformers. As little as 10 minutes was devoted to each case as court calendars became increasingly crowded. Similarly, as caseloads soared, the quality of probationary supervision deteriorated and became perfunctory.

It is important to view the emergence of the juvenile court in the context of changes taking place in U.S. society at that time. Juvenile court drew support from a combination of optimistic social theorists, sincere social reformers, and the wealthy, who felt a need for social control. The juvenile court movement has been viewed as an attempt to stifle legal rights of children by creating a new adjudicatory process based on principles of equity law. This view misses the experimental spirit of the Progressive Era by assuming a purely conservative motivation on the part of the reformers.

Although most reformers of the period understood the relationship between poverty and delinquency, they responded with vastly different solutions. Some reformers supported large-scale experimentation with new social arrangements, such as the Cincinnati Social Unit Experiment, an early forerunner of the community organization strategy of the war on poverty of the 1960s (Shaffer, 1971). Other reformers looked to the emerging social science disciplines to provide a rational basis for managing social order. During the Progressive Era, there was growth in the profession of social work, whose members dealt directly with the poor.[12] Progressive reformers conducted social surveys to measure the amount of poverty, crime, and juvenile dependency in their communities. They supported social experiments to develop new behavior patterns among the lower classes to help them adjust to the emerging corporate economy. The development of mental testing became crucial in defining access to the channels of social mobility and for demonstrating, to the satisfaction of the white ruling class, their own racial superiority. Moreover, biological explanations of individual

and social pathology rationalized the rise in crime and social disorder without questioning the justice or rationality of existing social arrangements.

The thrust of Progressive Era reforms was to found a more perfect control system to restore social stability while guaranteeing the continued hegemony of those with wealth and privilege. Reforms such as the juvenile court are ideologically significant because they preserved the notion that social problems (in this case, delinquency, dependency, and neglect) could be dealt with on a case-by-case basis, rather than through broad-based efforts to redistribute wealth and power throughout society. The chief dilemma for advocates of the juvenile court was to develop an apparently apolitical or neutral system while preserving differential treatment for various groups of children. The juvenile court at first lacked a core of functionaries who could supply the rationale for individualized care for wayward youth, but soon these needs were answered by the emergence of psychiatry, psychology, and criminology, as well as by the expanding profession of social work.

The Child Guidance Clinic Movement

In 1907, Illinois modified its juvenile court law to provide for paid probation officers, and the Chicago Juvenile Court moved into new facilities with expanded detention space. The Juvenile Protective League, founded by women active in establishing the first juvenile court law, was intended to stimulate the study of the conditions leading to delinquency. The members of the Juvenile Protective League were especially troubled that large numbers of wayward youth repeatedly returned to juvenile court. Jane Addams, a major figure in U.S. philanthropy and social thought, observed, "At last it was apparent that many of the children were psychopathic cases and they and other borderline cases needed more skilled care than the most devoted probation officer could give them" (Hawes, 1971, p. 244).

But the new court facilities did provide an opportunity to examine and study all children coming into the court. The Juvenile Protective League promised to oversee this study of delinquency, and Ellen Sturges Dummer donated the necessary money to support the effort. Julia Lathrop was chosen to select a qualified psychologist to head the project. After consulting with William James, she selected one of his former students, William A. Healy. Healy proposed a 4- to 5-year study to compare some 500 juvenile court clients with patients in private practice. The investigation, according to Healy, "would have to involve all possible facts about heredity, environment, antenatal and postnatal history, etc." (Hawes, 1971, p. 250).

In 1909, the Juvenile Protective League established the Juvenile Psychopathic Institute, with Healy as its first director and Julia Lathrop, Jane Addams, and Judge Julian W. Mack on the executive committee.[13] The group, in its opening statement, expressed its plans

> to undertake . . . an inquiry into the health of delinquent children in order to ascertain as far as possible in what degrees delinquency is caused or influenced by mental or physical defect or abnormality and with the purpose of suggesting and applying remedies in individual cases whenever practicable as a concurrent part of the inquiry. (Hawes, 1971, pp. 250–251)

Jane Addams added her concern that the study investigate the conditions in which the children lived, as well as the mental and physical history of their ancestors.

Healy held an MD degree from the University of Chicago and had served as a physician at the Wisconsin State Hospital. He had taught university classes in neurology, mental illness, and gynecology; had studied at the great scientific centers of Europe; and was familiar with the work of Sigmund Freud and his disciples. The major tenet of Healy's scientific credo

was that the individual was the most important unit for study. Healy argued that the individualization of treatment depended upon scientific study of individual delinquents.

Healy and his associates published *The Individual Delinquent: A Textbook of Diagnosis and Prognosis for All Concerned in Understanding Offenders* in 1915. This book, based on a study of 1,000 cases of repeat juvenile offenders, was intended as a practical handbook. The methodology involved a study of each offender from social, medical, and psychological viewpoints. Healy even did anthropometric measurements, suggested by Cesare Lombroso and his followers, although Healy doubted that delinquents formed a distinctive physical type.[14] However, Healy never was able to locate a limited set of causes for delinquency through empirical observation He stressed the wide range of potential causes of delinquency, including the influence of bad companions, the love of adventure, early sexual experiences, and mental conflicts. At this stage, Healy adopted an eclectic explanation of delinquency: "Our main conclusion is that every case will always need study by itself. When it comes to arraying data for the purpose of generalization about relative values of causative factors, we experience difficulty" (Mennel, 1973, p. 165). Despite exhaustive research, Healy and his associates could not find distinctive mental or physical traits to delineate delinquents from nondelinquents.

Later, in 1917, Healy advanced his theory of delinquency in *Mental Conflicts and Misconduct.* In this work, Healy stressed that although individuals may experience internal motivation toward misbehavior, this usually results in their merely feeling some anxiety. When mental conflict becomes more acute, the child may respond by engaging in misconduct. These ideas were heavily influenced by the work of Adolf Meyer, whose interpretation of Freud had a major influence on U.S. psychiatry. Healy agreed with Meyer that the family was a crucial factor in delinquency: "The basis for much prevention of mental conflict is to be found in close comfortable relations between parents and children" (Hawes, 1971, p. 255). Healy's emphasis on the family was well received by those in the delinquency prevention field who had traditionally viewed the family as God's reformatory.

The significance of Healy's work cannot be overemphasized, as it provided an ideological rationale to defend the juvenile court. Healy's work gave legitimacy to the flexible and discretionary operations of the court. Although some used Healy's emphasis on the individual to minimize the importance of social and economic injustice, there is evidence that Healy understood that delinquency was rooted in the nature of the social structure:

> If the roots of crime lie far back in the foundations of our social order, it may be that only a radical change can bring any large measure of cure. Less unjust social and economic conditions may be the only way out, and until a better social order exists, crime will probably continue to flourish and society continue to pay the price. (Healy, Bronner, & Shimberg, 1935, p. 211)

Healy's work also gave support to the concept of professionalism in delinquency prevention. Because juvenile delinquency was viewed as a complex problem with many possible causes, this rationale was used to explain the increased reliance on experts. In the process, the juvenile court became insulated from critical scrutiny by its clients and the community. If actions taken by the court did not appear valid to the layman, this was because of a higher logic, known only to the experts, which explained that course of action. Moreover, the failure of a specific treatment program often was attributed to the limits of scientific knowledge or to the failure of the court to follow scientific principles in its dispositions.

After his work in Chicago, Healy went to the Judge Harvey Baker Foundation in Boston to continue his research, where he began actual treatment of youths. Healy became a proselytizer

for the child guidance clinic idea. Working with the Commonwealth Fund and the National Committee for Mental Hygiene, Healy aided the development of child guidance clinics across the nation. These efforts were so successful that by 1931, 232 such clinics were in operation. There is even a report of a traveling child guidance clinic that visited rural communities in the West to examine children. The child guidance clinic movement became an important part of a broader campaign to provide mental hygiene services to all young people. The clinics initially were set up in connection with local juvenile courts, but later some of them became affiliated with hospitals and other community agencies.

In Sheldon and Eleanor Glueck's classic delinquency research, they evaluated the success of Healy's Boston clinic. In *One Thousand Juvenile Delinquents: Their Treatment by Court and Clinic* (1934), the Gluecks found high rates of recidivism among children treated at the clinic. Healy, though deeply disappointed by the results, continued his efforts. The Gluecks continued, in a series of longitudinal studies, to search for the causes of delinquency and crime.[15] Like Healy, they maintained a focus on the individual, and they increased efforts to discover the factors behind repeated delinquency. The work of the Gluecks reflected a less optimistic attitude about the potential for treatment and rehabilitation than that found in Healy's work. They emphasized the importance of the family, often ignoring the impact of broader social and economic factors. It is ironic that the thrust of delinquency theories in the 1930s should be toward individual and family conflicts. As 20% of the American people were unemployed, the effects of the depression of the 1930s must have been apparent to the delinquents and their families, if not to the good doctors who studied them with such scientific rigor.

The Chicago Area Project

The Chicago Area Project of the early 1930s is generally considered the progenitor of large-scale, planned, community-based efforts with delinquent youth. The project differed from the dominant approaches of the time, which relied on institutional care and psychological explanations for delinquent behavior. The Chicago Area Project, conceived by University of Chicago sociologist Clifford Shaw, was an attempt to implement a sociological theory of delinquency in the delivery of preventive services. The theoretical heritage of the project is found in such works as *The Jack-Roller* (1930), *Brothers in Crime* (1938), and *Juvenile Delinquency and Urban Areas* (1942), all written by Shaw and his associates. They attributed variations in delinquency rates to demographic or socioeconomic conditions in different areas of cities. This environmental approach assumed that delinquency was symptomatic of social disorganization. The adjustment problems of recent immigrants, together with other problems of urban life, strained the influence on adolescents of traditional social control agencies such as family, church, and community. Delinquency was viewed as a problem of the modern city, which was characterized by the breakdown of spontaneous or natural forces of social control. Shaw contended that the rapid social change that migrant rural youths are subjected to when entering the city promotes alienation from accepted modes of behavior: "When growing boys are alienated from institutions of their parents and are confronted with a vital tradition of delinquency among their peers, they engage in delinquent activity as part of their groping for a place in the only social groups available to them" (Kobrin, 1970, p. 579). The Chicago Area Project thus viewed delinquency as "a reversible accident of the person's social experience" (Kobrin, 1970).

The project employed several basic operating assumptions. The first was that the delinquent is involved in a web of daily relationships. As a result, the project staff attempted to mobilize adults in the community, hoping to foster indigenous neighborhood leadership to carry out the programs with delinquent youth. The second

assumption was that people participate only if they have meaningful roles; therefore, the staff attempted to share decision making with neighborhood residents. To maximize community participation, staff members had to resist the urge to direct the programs themselves. The final premise of the Area Project was that within a given community there are people who, when given proper training and guidance, can organize and administer local welfare programs. A worker from within the community, who has knowledge of local customs and can communicate easily with local residents, is more effective in dealing with delinquency problems. The project staff believed that placing community residents in responsible positions would demonstrate the staff's confidence in the ability of residents to solve their own problems.

The Area Project was overseen by a board of directors responsible for raising and distributing funds for research and community programs. In several years, 12 community committees developed in Chicago as "independent, self-governing, citizens' groups, operating under their own names and charters" (Sorrento, quoted in Sechrest, 1970, p. 6). The neighborhood groups were aided by the board in obtaining grants to match local funds. Personnel from the Institute for Juvenile Research at the University of Chicago served as consultants to local groups. The various autonomous groups pursued such activities as the creation of recreation programs or community-improvement campaigns for schools, traffic safety, sanitation, and law enforcement. There were also programs aimed directly at delinquent youth, such as visitation privileges for incarcerated children, work with delinquent gangs, and volunteer assistance in parole and probation.

Most observers have concluded that the Chicago Area Project succeeded in fostering local community organizations to attack problems related to delinquency (Kobrin, 1970; Shaw & McKay, 1942). Evidence also shows that delinquency rates decreased slightly in areas affected by the project, but these results are not conclusive. Shaw explained the difficulty of measuring the impact of the project as follows:

> Conclusive statistical proof to sustain any conclusion regarding the effectiveness of this work in reducing the volume of delinquency is difficult to secure for many reasons. Trends in rates for delinquents for small areas are affected by variations in the definition of what constitutes delinquent behavior, changes in the composition of the population, and changes in the administrative procedures of law enforcement agencies. (Witmer & Tufts, 1954, p. 16)

The Illinois State Division of Youth Services took over all 35 staff positions of the Area Project in 1957. It appears that this vibrant and successful program was quickly transformed into "a rather staid, bureaucratic organization seeking to accommodate itself to the larger social structure, that is, to work on behalf of agencies who came into the community rather than for itself or for community residents" (Sechrest, 1970, p. 15).

The Chicago Area Project, with its grounding in sociological theory and its focus on citizen involvement, contrasts sharply with other delinquency prevention efforts of the 1930s. Its focus on prevention in the community raised questions about the continued expansion of institutions for delinquent youth. Although some attributed support of the project to the personal dynamism of Clifford Shaw, this ignores the basic material and ideological motivation behind it. It would be equally shortsighted to conclude that child saving would not have occurred without Charles Loring Brace or that the child guidance clinic movement resulted solely from the labors of William Healy. Certainly Shaw was an important advocate of the Chicago Area Project approach, and his books influenced professionals in the field, but the growth of the project was also a product of the times.

Because no detailed history exists of the founding and operation of the project, we can only speculate about the forces that shaped its

development. We do know that Chicago at that time was caught in the most serious economic depression in the nation's history. Tens of thousands of people were unemployed, especially immigrants and blacks. During this period, a growing radicalization among impoverished groups resulted in urban riots (Cloward & Piven, 1971). The primary response by those in positions of power was to expand and centralize charity and welfare systems. In addition, there was considerable experimentation with new methods of delivering relief services to the needy. No doubt, Chicago's wealthy looked favorably upon programs such as the Area Project, which promised to alleviate some of the problems of the poor without requiring a redistribution of wealth or power. Both the prestige of the University of Chicago and the close supervision promised by Shaw and his associates helped assuage the wealthy and the powerful. Shaw and his associates did not advocate fundamental social change, and project personnel were advised to avoid leading communities toward changes perceived as too radical (Alinsky, 1946). Communities were encouraged to work within the system and to organize around issues at a neighborhood level. Project participants rarely questioned the relationship of urban conditions to the political and economic superstructure of the city.

Later interpreters of the Chicago Area Project did not seem to recognize the potentially radical strategy of community organization within poor neighborhoods. Its immediate legacy was twofold—the use of detached workers, who dealt with gangs outside the agency office, and the idea of using indigenous workers in social control efforts. Although detached workers became a significant part of the delinquency prevention strategy of the next three decades, the use of indigenous personnel received little more than lip service, because welfare and juvenile justice agencies hired few urban poor.

The success of the Chicago Area Project depended upon relatively stable and well-organized neighborhoods with committed local leaders. Changes in the urban structure that developed over the next two decades did not fit the Chicago Area Project model. The collapse of southern agriculture and mass migration by rural blacks into the cities of the North and West produced major social structural changes. This movement to the North and West began in the 1920s, decreased somewhat during the depression years, and later accelerated due to the attraction provided by the war industry jobs. During this same period, large numbers of Puerto Ricans settled in New York City and other eastern cities. Although economic opportunity attracted new migrants to the urban centers, there was little satisfaction for their collective dreams. Blacks who left the South to escape the Jim Crow laws soon were confronted by de facto segregation in schools, in the workplace, and in housing. Job prospects were slim for blacks and Puerto Ricans, and both groups were most vulnerable to being fired at the whims of employers. In many respects, racism in the North rivaled that of the South. The new migrants had the added difficulty of adapting their primarily rural experiences to life in large urban centers (Coles, 1967; Handlin, 1959).

Racial ghettos became places of poverty, disease, and crime. For the more privileged classes, the situation paralleled that of 16th-century European city dwellers who feared the displaced peasantry or that of Americans at the beginning of the 19th century who feared the Irish immigrants. During this period, riots erupted in East St. Louis, Detroit, Harlem, and Los Angeles. To upper-class observers, these new communities of poor black and brown peoples were disorganized collections of criminals and deviants. Racism prevented white observers from recognizing the vital community traditions or the family stability that persisted despite desperate economic conditions. Moreover, the label *disorganized communities* could be used ideologically to mask the involvement of wealthy whites in the creation of racial ghettos (Ryan, 1971). A liberal social theory was developing that, though benign on

the surface, actually blamed the victims for the conditions in which they were caught. Attention was focused upon deviant aspects of community life, ascribing a culture of poverty and violence to inner-city residents and advocating remedial work with individuals and groups to solve so-called problems of adjustment. The following quote from the National Commission on the Causes and Prevention of Violence (1969) is illustrative of this posture:

> The cultural experience which Negroes brought with them from segregation and discrimination in the rural South was of less utility in the process of adaptation to urban life than was the cultural experience of many European immigrants. The net effect of these differences is that urban slums have tended to become ghetto slums from which escape has been increasingly difficult. (p. 30)

Delinquency theorists suggested that lower-class communities were becoming more disorganized, because they were not characterized by the stronger ties of older ethnic communities:

> Slum neighborhoods appear to us to be undergoing progressive disintegration. The old structures, which provided social control and avenues of social ascent, are breaking down. Legitimate but functional substitutes for these traditional structures must be developed if we are to stem the trend towards violence and retreatism among adolescents in urban slums. (Cloward & Piven, 1971, p. 211)

Irving Spergel, leading authority on juvenile gangs, suggests that social work agencies made little use of indigenous workers after World War II because delinquency had become more aggressive and violent. Welfare and criminal justice officials argued that only agencies with sound funding and strong leadership could mobilize the necessary resources to deal with the increased incidence and severity of youth crime.

The movement toward more agency involvement brought with it a distinctly privileged-class orientation toward delinquency prevention. Social service agencies were preeminently the instruments of those with sufficient wealth and power to enforce their beliefs. The agencies were equipped to redirect, rehabilitate, and, in some cases, control those who seemed most threatening to the status quo. Workers for these agencies helped to perpetuate a conception of proper behavior for the poor consistent with their expected social role. For example, the poor were told to defer gratification and save for the future, but the rich often were conspicuous consumers. Whereas poor women were expected to stay at home and raise their families, the same conduct was not uniformly applied to wealthy women. The well-to-do provided substantial funding for private social service agencies and often became members of the boards that defined policies for agencies in inner-city neighborhoods. The criteria for staffing these agencies during the two decades following World War II included academic degrees and special training that were not made available to the poor or to people of color.

Social agencies, ideologically rooted and controlled outside poor urban neighborhoods, were often pressured to respond to "serious" delinquency problems. During this period, the fighting gang, which symbolized organized urban violence, received the major share of delinquency prevention efforts. Most agencies, emphasizing psychoanalytic or group dynamic approaches to delinquency, located the origin of social disruption in the psychopathology of individuals and small groups. The consequence of this orientation was that special youth workers were assigned to troublesome gangs in an attempt to redirect the members toward more conventional conduct. Little effort was made to develop local leadership or to confront the issues of racism and poverty.

Detached worker programs emphasized treatment by individual workers freed from the agency office base and operating in neighborhood settings. These programs, with several variations,

followed a basic therapeutic model. Workers initially entered gang territories, taking pains to make their entrance as inconspicuous as possible. The first contacts were made at natural meeting places in the community such as pool rooms, candy stores, or street corners:

> Accordingly the popular image of the detached worker is a young man in informal clothing, standing on a street corner near a food stand, chatting with a half dozen rough, ill-groomed, slouching teenagers. His posture is relaxed, his countenance earnest, and he is listening to the boys through a haze of cigarette smoke. (Klein, 1969, p. 143)

The worker gradually introduced himself to the gang members. He made attempts to get jobs for them or arranged recreational activities, while at the same time persuading the members to give up their illegal activities. Manuals for detached workers explained that the approach would work because gang members had never before encountered sympathetic, nonpunitive adults who were not trying to manipulate them for dishonest purposes. A typical report states, "Their world (as they saw it) did not contain any giving, accepting people—only authorities, suckers and hoodlums like themselves" (Crawford, Malamud, & Dumpson, 1970, p. 630). This particular account even suggests that some boys were willing to accept the worker as an "idealized father." The worker was expected to influence the overall direction of the gang, but if that effort failed, he was to foment trouble among members and incite disputes over leadership. Information that the workers gathered under promises of confidentiality was often shared with police gang-control officers. Thus, despite their surface benevolence, these workers were little more than undercover agents whose ultimate charge was to break up or disrupt groups that were feared by the establishment. These techniques, which focused on black and Latino youth gangs in the 1950s, were similar to those later used with civil rights groups and organizations protesting the Vietnam War.

There were many critics of the detached worker programs. Some argued that the workers actually lent status to fighting gangs and thus created more violence. Other critics claimed that the workers often developed emotional attachments to youthful gang members and were manipulated by them (Mattick & Caplan, 1967). Community residents often objected to the presence of detached workers, because it was feared they would provide information to downtown social welfare agencies. Although studies of the detached worker programs did not yield positive results, virtually all major delinquency programs from the late 1940s to the 1960s used detached workers in an attempt to reach the fighting gang.

The Mobilization for Youth

During the late 1950s, economic and social conditions were becoming more acute in the urban centers of the United States. The economy was becoming sluggish, and unemployment began to rise. Black teenagers experienced especially high unemployment rates, and the discrepancy between white and black income and material conditions grew each year. Technological changes in the economy continually drove more unskilled laborers out of the labor force. Social scientists such as Daniel Moynihan (1969) and Sidney Wilhelm (1970) view this period as the time in which a substantial number of blacks became permanently unemployed. Social control specialists for the privileged class surveyed the problem and sought ways to defuse the social danger of a surplus labor population.

The Ford Foundation was influential during this period in stimulating conservative local officials to adopt more enlightened strategies in dealing with the poor (Marris & Rein, 1967; Moynihan, 1969). Once again an ideological dash occurred between those favoring scientific and rational government programs and those who feared the growth of the state, demanded balanced

government budgets, and opposed liberal programs to improve the quality of life of the poor. The Ford Foundation, through its Grey Area projects, spent large amounts of money in several U.S. cities to foster research and planning of new programs to deal with delinquency and poverty.

The most significant program to develop out of the Grey Area projects was the Mobilization for Youth (MFY), which began in New York City in 1962 after 5 years of planning. It aimed to service a population of 107,000 (approximately one-third black and Puerto Rican), living in 67 blocks of New York City's Lower East Side. The unemployment rate of the area was twice that of the city overall, and the delinquency rate was also high. The theoretical perspective of the project was drawn from the work of Richard Cloward and Lloyd Ohlin:

> "A unifying principle of expanding opportunities has worked out as the direct basis for action." This principle was drawn from the concepts outlined by the sociologists Richard Cloward and Lloyd Ohlin in their book *Delinquency and Opportunity.* Drs. Cloward and Ohlin regarded delinquency as the result of the disparity perceived by low-income youths between their legitimate aspirations and the opportunities—social, economic, political, education—made available to them by society. If the gap between opportunity and aspiration could be bridged, they believed delinquency could be reduced; that would be the agency's goal. (Weissman, 1969, p. 19)

The MFY project involved five areas—work training, education, group work and community organization, services to individuals and families, and training and personnel—but the core of the mobilization was to organize area residents to realize "the power resources of the community by creating channels through which consumers of social welfare services can define their problems and goals and negotiate on their own behalf" (Brager & Purcell 1967, p. 247). Local public and private bureaucracies became the targets of mass protests by agency workers and residents. The strategy of MFY assumed that social conflict was necessary in the alleviation of the causes of delinquency. Shortly after MFY became directly involved with struggles over the redistribution of power and resources, New York City officials charged that the organization was "riot-producing, Communist-oriented, left-wing and corrupt" (Weissman, 1969, pp. 25–28).

In the ensuing months, the director resigned, funds were limited, and virtually all programs were stopped until after the 1964 presidential election. After January 1965, MFY moved away from issues and protests toward more traditional approaches to social programming, such as detached-gang work, job training, and counseling.

Another project, Harlem Youth Opportunities Unlimited (Haryou-Act), which developed in the black community of Harlem in New York City, experienced a similar pattern of development and struggle. The Harlem program was supported by the theory and prestige of psychologist Kenneth Clark, who suggested in *Dark Ghetto* (1965) that delinquency is rooted in feelings of alienation and powerlessness among ghetto residents. The solution, according to Clark, was to engage in community organizing to gain power for the poor. Haryou-Act met sharp resistance from city officials, who labeled the staff as corrupt and infiltrated by Communists.

Both MFY and Haryou-Act received massive operating funds. Mobilization for Youth received approximately $2 million a year, Haryou-Act received about $1 million a year, and 14 similar projects received more than $7 million from the federal Office of Juvenile Delinquency.[16] It was significant that, for the first time, the federal government was pumping large amounts of money into the delinquency prevention effort. Despite intense resistance to these efforts in most cities because local public officials felt threatened, the basic model of Mobilization for Youth was incorporated into the community-action component of the War on Poverty.

In 1967, when social scientists and practitioners developed theories of delinquency prevention

for President Lyndon Johnson's Crime Commission, MFY was still basic to their thinking (President's Commission on Law Enforcement and the Administration of Justice, 1967). Their problem was to retain a focus upon delivery of remedial services in education, welfare, and job training to the urban poor without creating the intense political conflict engendered by the community action approach. The issue was complicated because leaders such as Malcolm X and Cesar Chavez and groups such as the Black Muslims and the Black Panther Party articulated positions of self-determination and community control. These proponents of ethnic pride and "power to the people" argued that welfare efforts controlled from outside were subtle forms of domestic colonialism. The riots of the mid-1960s dramatized the growing gap between people of color in the United States and their more affluent "benefactors."

It is against this backdrop of urban violence, a growing distrust of outsiders, and increased community-generated self-help efforts that delinquency prevention efforts of the late 1960s and early 1970s developed. A number of projects during this period attempted to reach the urban poor who had been actively involved in ghetto riots during the 1960s. In Philadelphia, members of a teenage gang were given funds to make a film and start their own businesses. Chicago youth gangs such as Black P. Stone Nation and the Vice Lords were subsidized by federal funding, the YMCA, and the Sears Foundation, In New York City, a Puerto Rican youth group, the Young Lords, received funds to engage in self-help activities. In communities across the nation there was a rapid development of summer projects in recreation, employment, and sanitation to help carry an anxious white America through each potentially long, hot summer. Youth patrols were even organized by police departments to employ ghetto youths to "cool out" trouble that might lead to riots. Few of the programs produced the desired results and often resulted in accusations of improperly used funds by the communities. Often financial audits and investigations were conducted to discredit community organizers and accuse them of encouraging political conflicts with local officials.

One proposed solution that offered more possibility of controlled social action to benefit the young was the Youth Service Bureau (YSB; Norman, 1972). The first YSBs were composed of people from the communities and representatives of public agencies who would hire professionals to deliver a broad range of services to young people. The central idea was to promote cooperation between justice and welfare agencies and the local communities. Agency representatives were expected to contribute partial operating expenses for the programs and, together with neighborhood representatives, decide on program content. Proponents of the YSB approach stressed the need for diverting youthful offenders from the criminal justice system and for delivering necessary social services to deserving children and their families. Ideally YSBs were designed to increase public awareness of the need for more youth services.

The YSBs generally met with poor results. Intense conflict often arose between community residents and agency personnel over the nature of program goals, and YSBs were criticized for not being attuned to community needs (Duxbury, 1972; U.S. Department of Health, Education, and Welfare, 1973). Funds for these efforts were severely limited in relation to the social problems they sought to rectify. In some jurisdictions YSBs were controlled by police or probation departments, with no direct community input. These agency-run programs temporarily diverted youths from entering the criminal justice process by focusing on services such as counseling.

The most important aspect of the YSBs was their attempts to operationalize the diversion of youth from the juvenile justice process, although the effort's success seems highly questionable. Some argue that diversion programs violate the legal rights of youths, as they imply a guilty plea. Others warn that diversion programs expand the welfare bureaucracy, because youths who once would have simply been admonished and sent home by police are now channeled into therapeutic programs. Still others believe that

diversion without social services does not prevent delinquency. In any case, a major shift has occurred from the community participation focus of the Mobilization for Youth to a system in which community inputs are limited and carefully controlled. This change in operational philosophy often is justified by the need to secure continued funding, as well as by claims of increasing violence by delinquents. It is important to remember, however, that these same rationales were used to justify a move away from the community organizing model of the Chicago Area Projects of the 1930s. Whenever residents become involved in decision making, there are inevitably increased demands for control of social institutions affecting the community. Such demands for local autonomy question the existing distributions of money and power and thus challenge the authority of social control agencies.

Institutional Change and Community-Based Corrections

Correctional institutions for juvenile delinquents were subject to many of the same social, structural pressures as community prevention efforts. For instance, there was a disproportionate increase in the number of youths in correctional facilities as blacks migrated to the North and the West. In addition, criticism of the use of juvenile inmate labor, especially by organized labor, disrupted institutional routines. But, throughout the late 1930s and the 1940s, increasing numbers of youths were committed to institutions. Later on, the emergence of ethnic pride and calls for black and brown power would cause dissension within the institutions.

The creation of the California Youth Authority just prior to World War II centralized the previously disjointed California correctional institutions.[17] During the 1940s and 1950s, California, Wisconsin, and Minnesota developed separate versions of the Youth Authority concept. Under the Youth Authority model, criminal courts committed youthful offenders from 16 to 21 years old to an administrative authority that determined the proper correctional disposition.[18] The CYA was responsible for all juvenile correctional facilities, including the determination of placements, and parole. Rather than reducing the powers of the juvenile court judge, the Youth Authority streamlined the dispositional process to add administrative flexibility. The Youth Authority was introduced into California at a time when detention facilities were overcrowded, institutional commitment rates were rising, and the correctional system was fragmented and compartmentalized.

The Youth Authority model was developed by the American Law Institute, which drew up model legislation and lobbied for its adoption in state legislatures. The American Law Institute is a nonprofit organization that seeks to influence the development of law and criminal justice. The institution is oriented toward efficiency, rationality, and effectiveness in legal administration.

The treatment philosophy of the first Youth Authorities was similar to the approach of William Healy and the child guidance clinic. John Ellingston, formerly chief legislative lobbyist for the American Law Institute in California, related a debate between Healy and Clifford Shaw over the theoretical direction the new Youth Authority should follow. The legislators, persuaded by Healy's focus on diagnosis of individual delinquents, ensured that the clinic model became the dominant approach in California institutions.

Sociologist Edwin Lemert attributed the emergence of the CYA to the growth of an "administrative state" in the United States. In support of this assertion, Lemert noted the trend toward more centralized delivery of welfare services and increased government regulation of the economy, together with the "militarization" of U.S. society produced by war. Lemert, however, did not discuss whether the purpose of this administrative state was to preserve the existing structure of privilege. The first stated purpose of the CYA was "to protect society by substituting training and treatment for retributive

punishment of young persons found guilty of public offenses" (Lemert & Rosenberg, 1948, pp. 49–50).

The centralization of youth correction agencies enabled them to claim the scarce state delinquency prevention funds. In-house research units publicized the latest treatment approaches. In the 1950s and the 1960s, psychologically oriented treatment approaches, including guided-group interaction and group therapy, were introduced in juvenile institutions. During this period of optimism and discovery, many new diagnostic and treatment approaches were evaluated. Correctional administrators and social scientists hoped for a significant breakthrough in treatment, but it never came. Although some questionable evaluation studies claimed successes, there is no evidence that the new therapies had a major impact on recidivism. In fact, some people began to question the concept of enforced therapy and argued that treatment-oriented prisons might be more oppressive than more traditional institutional routines (Mathieson, 1965). Intense objections have been raised particularly against drug therapies and behavior modification programs. Takagi views this as the period when brainwashing techniques were first used on juvenile and adult offenders.[19]

Another major innovation of the 1960s was the introduction of community-based correctional facilities. The central idea was that rehabilitation could be accomplished more effectively outside conventional correctional facilities. This led to a series of treatment measures such as group homes, partial release programs, halfway houses, and attempts to decrease commitment rates to juvenile institutions. California was particularly active in developing community-based correctional programming. The Community Treatment Project, designed by Marguerite Warren in California, was an attempt to replace institutional treatment with intensive parole supervision and psychologically oriented therapy. Probation subsidy involved a bold campaign by CYA staff to convince the state legislature to give cash subsidies to local counties to encourage them to treat juvenile offenders in local programs. Probation subsidy programs were especially oriented toward strengthening the capacity of county probation departments to supervise youthful offenders.[20]

Proponents of the various community-based programs argued that correctional costs could be reduced and rehabilitation results improved in a community context. Reducing state expenditures became more attractive as state governments experienced the fiscal crunch of the late 1960s and the 1970s.[21] It also was thought that reducing institutional populations would alleviate tension and violence within the institutions, but it appears that these community alternatives have created a situation in which youngsters who are sent to institutions are perceived as more dangerous and, as a result, are kept in custody for longer periods of time.

The ultimate logic of the community-based corrections model was followed by the Department of Youth Services in Massachusetts, which dosed all of its training schools for delinquents. Youngsters were transferred to group home facilities, and services were offered to individual children on a community basis (Bakal, 1973). The Massachusetts strategy met intense public criticism by juvenile court judges, correctional administrators, and police officials. Some recent attempts have been made to discredit this policy and to justify continued operation of correction facilities, but the Massachusetts strategy has influenced a move to deinstitutionalize children convicted of status offenses—offenses that are considered crimes only if committed by children, such as truancy, running away, or incorrigibility. In 1975, the federal government made $15 million available to local governments that developed plans to deinstitutionalize juvenile status offenders.

At the moment, the forces opposing institutionalized care are making ideological headway due to past failures of institutional methods in controlling delinquency. However, previous experience suggests that the pendulum is likely to swing back in favor of the institutional approaches. Already there is increased talk about

the violent delinquent and the alleged increases in violent youth crime; these words have always signaled the beginning of an ideological campaign to promote more stringent control measures and extended incarceration or detention. It is also significant that most states are not firmly committed to community-based treatment. Most jurisdictions still rely on placement in institutions, with conditions reminiscent of the reform schools of 100 years ago. Children continue to be warehoused in large correctional facilities, receiving little care or attention. Eventually they are returned to substandard social conditions to survive as best they can.

Changes in Juvenile Court Law

In the late 1960s the growing awareness of the limitations of the juvenile justice system resulted in a series of court decisions that altered the character of the juvenile court. In *Kent v. United States* (1966) the Supreme Court warned juvenile courts against "procedural arbitrariness," and in *In re Gault* (1967) the Court recognized the rights of juveniles in such matters as notification of charges, protection against self-incrimination, the right to confront witnesses, and the right to have a written transcript of the proceedings. Justice Abe Fortas wrote, "Under our Constitution the condition of being a boy does not justify a kangaroo court" (*In re Gault,* 1967). The newly established rights of juveniles were not welcomed by most juvenile court personnel, who claimed that the informal humanitarian court process would be replaced by a junior criminal court. Communities struggled with methods of providing legal counsel to indigent youth and with restructuring court procedures to conform to constitutional requirements.

The principles set forth in Kent, and later in the Gault decision, offer only limited procedural safeguards to delinquent youth (Kittrie, 1971). Many judicial officers believe the remedy to juvenile court problems is not more formality in proceedings, but more treatment resources. In *McKiever v. Pennsylvania* (1971), the Supreme Court denied that jury trials were a constitutional requirement for the juvenile court. Many legal scholars believe the current Supreme Court has a solid majority opposing extension of procedural rights to alleged delinquents. The dominant view is close to the opinion expressed by Chief Justice Warren Burger in the Winship case:

> What the juvenile court systems need is less not more of the trappings of legal procedure and judicial formalism; the juvenile court system requires breathing room and flexibility in order to survive the repeated assaults on this court. The real problem was not the deprivation of constitutional rights but inadequate juvenile court staffs and facilities. (*In re Winship,* 1970)

The Supreme Court's decision in *Schall v. Martin* (1984) signaled a much more conservative judicial response to children's rights. Plaintiffs in *Schall v. Martin* challenged the constitutionality of New York's Family Court Act as it pertained to the preventive detention of juveniles. It was alleged that the law was too vague and that juveniles were denied due process. A federal district court struck down the statute and its decision was affirmed by the U.S. Court of Appeals. However, the U.S. Supreme Court reversed the lower courts, holding that the preventive detention of juveniles to protect against future crimes was a legitimate state action.

The Emergence of a Conservative Agenda for Juvenile Justice

From the late 1970s and into the 1980s, a conservative reform agenda dominated the national debates over juvenile justice. This new perspective emphasized deterrence and punishment as the major goals of the juvenile court. Conservatives called for the vigorous prosecution of serious and violent youthful offenders. They alleged that the juvenile court

was overly lenient with dangerous juveniles.

Conservatives also questioned the wisdom of diverting status offenders from secure custody. The Reagan administration introduced new programs in the areas of missing children and child pornography, which were problems allegedly created by the liberal response to status offenders. Substantial amounts of federal funds were spent on police intelligence programs and enhanced prosecution of juvenile offenders.

Changes in federal policy were also reflected in the actions of many state legislatures. Beginning in 1976, more than half the states made it easier to transfer youths to adult courts. Other states stiffened penalties for juvenile offenders via mandatory minimum sentencing guidelines.

The most obvious impact of the conservative reform movement was a significant increase in the number of youths in juvenile correctional facilities. In addition, from 1979 to 1984, the number of juveniles sent to adult prisons rose by 48%. By 1985 the Bureau of Justice Statistics reported that two-thirds of the nation's training schools were chronically overcrowded.

Another ominous sign was the growing proportion of minority youth in public correctional facilities. In 1982 more than one half of those in public facilities were minority youths, whereas two thirds of those in private juvenile facilities were white. Between 1979 and 1982, when the number of incarcerated youth grew by 6,178, minority youth accounted for 93% of the increase. The sharp rise in incarceration occurred even though the number of arrests of minority youth declined.

Summary

We have traced the history of the juvenile justice system in the United States in relation to significant population migrations/rapid urbanization, race conflicts, and transformation in the economy. These factors continue to influence the treatment of children. The juvenile justice system traditionally has focused on the alleged pathological nature of delinquents, ignoring how the problems of youths relate to larger political and economic issues. Both institutional and community-based efforts to rehabilitate delinquents have been largely unsuccessful. Those with authority for reforming the juvenile justice system have traditionally supported and defended the values and interests of the well-to-do. Not surprisingly, juvenile justice reforms have inexorably increased state control over the lives of the poor and their children. The central implication of this historical analysis is that the future of delinquency prevention and control will be determined largely by ways in which the social structure evolves.[22] It is possible that this future belongs to those who wish to advance social justice on behalf of young people rather than to accommodate the class interests that have dominated this history (Krisberg, 1975; Liazos, 1974). However, one must be cautious about drawing direct inferences for specific social reforms from this historical summary. William Appleman Williams (1973) reminds us, "History offers no answers per se, it only offers a way of encouraging people to use their own minds to make their own history."

Notes

1. Thorsten Sellin, *Pioneering in Penology,* provides an excellent description of the Amsterdam House of Corrections.

2. This issue is well treated by Winthrop Jordan in *The White Man's Burden.*

3. Sources of primary material are N. R. Yetman, *Voices from Slavery,* and Gerda Lerner, *Black Women in White America.* Another fascinating source of data is Margaret Walker's historical novel, *Jubilee.*

4. Historical data on the 19th century rely on the scholarship of Robert Mennel, *Thorns and Thistles;* Anthony Platt, *The Child Savers: The Invention of Delinquency;* Joseph Hawes, *Children in Urban Society: Juvenile Delinquency in Nineteenth Century America;* and the document collection of Robert Bremner et al. in *Children and Youth in America: A Documentary History.*

5. *Delinquent children* are those in violation of criminal codes, statutes, and ordinances. *Dependent*

children are those in need of proper and effective parental care or control but having no parent or guardian to provide such care. *Neglected children* are destitute, are unable to secure the basic necessities of life, or have unfit homes due to neglect or cruelty.

6. A good description of anti-Irish feeling during this time is provided by John Higham, *Strangers in the Land.*

7. The preoccupation with the sexuality of female delinquents continues today. See Meda Chesney-Lind, "Juvenile Delinquency: The Sexualization of Female Crime."

8. This routine is reminiscent of the style of 18th-century American Indian schools. It represents an attempt to re-create the ideal of colonial family life, which was being replaced by living patterns accommodated to industrial growth and development.

9. The term *dangerous classes* was coined by Charles Loring Brace in his widely read *The Dangerous Classes of New York and Twenty Years Among Them.*

10. The classic of these studies is that of E. C. Wines, *The State of Prisons and Child-Saving Institutions in the Civilized World,* first printed in 1880.

11. Platt, *The Child Savers: The Invention of Delinquency,* pp. 101–136, and Hawes, *Children in Urban Society: Juvenile Delinquency in Nineteenth Century America,* pp. 158–190, provide the most thorough discussions of the origins of the first juvenile court law.

12. Roy Lubove, *The Professional Altruist,* is a good discussion of the rise of social work as a career.

13. A few earlier clinics specialized in care of juveniles, but these mostly dealt with feeble-minded youngsters.

14. Anthropometric measurements assess human body measurements on a comparative basis. A popular theory of the day was that criminals have distinctive physical traits that can be scientifically measured.

15. Longitudinal studies analyze a group of subjects over time.

16. By comparison, the Chicago Area Project operated on about $283,000 a year.

17. John Ellingston, *Protecting Our Children from Criminal Careers,* provides an extensive discussion of the development of the California Youth Authority.

18. California originally set the maximum jurisdictional age at 23 years, but later reduced it to 21. Some states used an age limit of 18 years, so that they dealt strictly with juveniles. In California, both juveniles and adults were included in the Youth Authority model.

19. Paul Takagi, in "The Correctional System," cites Edgar Schein, "Man Against Man: Brainwashing," and James McConnell, "Criminals Can Be Brainwashed—Now," for candid discussions of this direction in correctional policy.

20. Paul Lerman, *Community Treatment and Social Control,* is a provocative evaluation of the Community Treatment Project and Probation Subsidy.

21. See James O'Connor, *The Fiscal Crisis of the State,* for a discussion of the causes of this fiscal crunch.

22. This perspective is similar to that of Rusche and Kirchheimer in their criminological classic, *Punishment and Social Structure.*

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DISCUSSION QUESTIONS

1. What groups of youth were ignored or treated poorly by the early juvenile justice system?
2. What were some of the types of behavior that were punished in the colonial juvenile justice system, and what types of punishment were proposed?
3. What were the Houses of Refuge and what was their purpose?
4. Who were the "child savers" and what did they propose for dealing with delinquent youth?
5. What was the Progressive Era and what were some developments in juvenile justice during that period?
6. What were the changes in juvenile justice that began in the 1970s and 1980s?

READING

Juvenile rehabilitation has been criticized in recent years, and some have questioned whether the public continues to support the correctional policy of saving youthful offenders. The authors of this article administered a statewide survey to Tennessee residents to assess the degree of public support for juvenile rehabilitation. Results showed that survey respondents indicated that rehabilitation should be an integral goal of the juvenile correctional system. They also support a range of community-based treatment interventions and favor early intervention programs over imprisonment as a response to crime. The findings of the survey revealed that the public's belief in "child saving" remains firm, and indicated that citizens do not support an exclusively punitive response to juvenile offenders.

Is Child Saving Dead?

Public Support for Juvenile Rehabilitation

Melissa M. Moon, Jody L. Sundt, Francis T. Cullen, John Paul Wright

At the close of the nineteenth century, the United States witnessed an unprecedented movement to save its children from physical and moral harm. The "child savers," as champions of this movement have come to be known, sought wide-reaching reforms and advocated for such diverse policies as child labor laws, compulsory schooling, the establishment of kindergartens and play grounds, and the development of bureaus of child health and hygiene (Platt 1969; Rothman 1980). Among the

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most ambitious reforms that the progressive child savers supported, however, was the establishment of a system of juvenile justice. Now, a century after its creation, the juvenile court has experienced a period of sustained criticism. In this context, the question emerges as to whether the public continues to endorse the rehabilitation of juvenile offenders. The current study thus investigated whether child saving has indeed lost the public's faith or remains a policy that citizens believe should be an integral feature of the state's correctional response to juvenile offenders.

Attacking Juvenile Rehabilitation

The juvenile court was based on the novel idea that a separate system of justice should be established for delinquent youths. The progressives argued that the punishment of juveniles in the adult criminal justice system was damaging and inappropriate. Compared with adult criminals, wayward youngsters were believed to be less responsible for their actions, less likely to benefit from punishment, and more amenable to change. Moreover, the progressives maintained that because delinquents were vulnerable, the state, acting as a kindly parent (*parens patriae*), should be given wide discretion to ensure the best interests of the youths under their supervision. Thus, the child savers proposed a system that would accomplish the dual goals of protecting the child and the community. The foundation of this system of justice was an overriding belief that juvenile delinquents could be saved; that is, it was thought that youthful offenders could be rehabilitated and brought back into the folds of society (Rothman 1980).

Beginning in the late 1960s, however, faith in the progressive system of juvenile justice began to erode, and the system, along with the rehabilitative ideal, was attacked on numerous grounds. The promise of rehabilitation had gone largely unrealized. The benevolent principles on which the system was based stood in stark and ironic contrast to the punitive reality of the juvenile justice system (Feld 1993). Among liberals, the juvenile justice system was looked on as a coercive instrument of social control and was attacked on the basis that the rehabilitative ideal, with its emphasis on individualized treatment, had resulted in the abuse of discretion and in the arbitrary, differential treatment of delinquent youths; conservatives agreed that the juvenile justice system was flawed but viewed the system in a vastly different light: Child saving, it was argued, had led to the lenient treatment of dangerous youths and to the victimization of the public (Cullen, Golden, and Cullen 1983).

In the 100-year anniversary of the juvenile court, serious concerns remain about the viability of this system. Under scrutiny from a diverse group of critics, the juvenile justice system has undergone several significant changes in the past 30 years. For instance, in Illinois (the home of the first juvenile court) the juvenile system has been altered to reflect a balanced and restorative model of justice. This model purports to give equal attention to the rights and needs of the juvenile, to the rights and needs of the victim, and to the protection of the community (see, e.g., Bazemore and Day 1996). Consistent with this shift in philosophy, Illinois has enacted legislation that increases the length of time that juveniles may be held in custody and detention, has provided for more extensive fingerprinting of youths, has created a statewide database to track young offenders, has placed limits on the number of station adjustments allowed for delinquents who are not officially cited by the police, and has removed special protective language from the juvenile court process (e.g., an "adjudicatory hearing" will now be referred to as a trial) (Dighton 1999).

The changes initiated in Illinois are not unique or isolated. At the end of 1997, 17 states had redefined their juvenile court purpose clauses to emphasize public safety, certain sanctions, and/or offender accountability (Torbet and Szymanski 1998). Furthermore, between 1992 and 1995, 40 states modified their traditional juvenile court confidentiality provisions to open juvenile court

records and to make proceedings more public (Sickmund, Snyder, and Poe-Yamagata 1997). Similarly, during this same time period, 40 states and the District of Columbia passed laws making it easier to transfer juveniles to adult court by lowering the minimum age at which a youth may be waived and by expanding the number of offenses that qualify for transfer (Torbet and Szymanski 1998). As a result, the United States experienced a 33 percent increase in the total number of juvenile cases waived to adult criminal courts between 1986 and 1995. During this same time period, waivers for personal crimes and drug offense cases increased 100 percent and 180 percent, respectively (Sickmund, Stahl, Finnegan, Snyder, Poole, and Butts 1998). Correctional programs for juveniles also are becoming more punitive in nature, focusing on public safety and offender accountability (Torbet and Szymanski 1998).

It is frequently suggested that the changes in the juvenile court have been precipitated by two factors: high rates of serious juvenile crime and a shift in public attitudes toward youthful offenders. Between 1988 and 1994, for example, the United States experienced more than a 100 percent increase in the number of murders committed by juveniles (Snyder 1998a). This trend, coupled with the commission of a number of disturbing and highly publicized crimes involving youths, seemed to signal that a new generation of highly violent, young "super-predators" was lurking in our future (see, e.g., DiIulio 1995; cf. Snyder 1998b).

Although juveniles accounted for only 12 percent of the total arrests for violent crimes in 1997, and although juvenile arrests for murder have declined by 39 percent since 1993 (Snyder 1998a), juvenile crime continues to evoke fear and concern among the public. For example, a 1998 survey found that Texans were nearly unanimous in the belief that juvenile crime is a serious problem today (Gonzalez 1998). Similar results have been obtained in national surveys. A 1996 poll found that more than 80 percent of the public felt that "teenage violence is a big problem" in most of the country, although only 33 percent believed that teen violence was a "big problem" in their own communities (*The Public Perspective* 1997).

Contemporary discussions about youthful offenders also have taken on a decidedly punitive flavor in the past 10 years. Public reaction to the caning of teenager Michael Faye stands out as a stark example of the public's recent punitiveness toward young offenders. After being found guilty of vandalism in Singapore, Faye was punished by caning. Rather than being outraged, however, the majority of the American public expressed support for the sanction, even when they were informed that the beating was likely to physically scar the youth for life (Pettinico 1994).

There also is evidence that the public supports getting tough with youthful offenders in this country (*The Public Perspective* 1997). A 1994 poll found, for example, that 52 percent of the public thought that society should deal with juvenile crime by giving juveniles the same punishment as adults. In contrast, only 31 percent supported placing less emphasis on punishment and more emphasis on trying to rehabilitate youths. In a comparable survey, more than 70 percent of a national sample reported that "toughening penalties for juvenile offenders so young people know there are severe consequences to crime" would make a major difference in the reduction of violent crime (only 6 percent of the sample felt that such a policy would make no difference). High levels of public support for the death penalty for juveniles are also regularly reported. A 1994 Gallup poll found, for example, that 72 percent of the public favored the death penalty for "a teenager who commits a murder and is found guilty by a jury" (Moore 1994).

Although it is apparent that the public is worried about juvenile crime and holds punitive attitudes toward youths, most discussions about reforming the juvenile justice system have failed to consider whether the public continues to view the rehabilitation of young offenders as a legitimate correctional goal. As is frequently the case in general discussions about public attitudes toward crime, it is assumed that increased support for punishing juveniles has also signaled a commensurate decline in support for treatment, but this may not be the case. Indeed, despite sweeping reforms aimed at altering the juvenile court to reflect

retributive and punitive goals, it is uncertain that the public wants a juvenile justice system based exclusively, or even primarily, on punishment. This oversight is particularly notable given the centrality of the goal of rehabilitation to the traditional juvenile justice system. Again, the objective of our research was to explore these issues and to assess whether the public continues to support the rehabilitation of juveniles.

Support for Juvenile Rehabilitation

As previously discussed, recent public opinion polls suggest that the public supports getting tough with youthful offenders (see also Roberts and Stalans 1997; Triplett 1996). A handful of polls and research findings, however, challenge the idea that citizens have relinquished their faith in child saving. Indeed, survey research suggests three conclusions. First, findings reveal that the public continues to believe that rehabilitation is a core goal of juvenile corrections. Second, existing research indicates that the public not only embraces the rehabilitation of juveniles, but also that it is more supportive of treating juveniles than adults. Third, juveniles are generally thought to be more amenable to change than are adults; and similarly, the public believes that the rehabilitation of juveniles is effective.

Two recent studies have specifically questioned the public about their views on the main purpose of the juvenile court. When respondents in a national survey were asked whether the main purpose of the juvenile court should be to "treat and rehabilitate" or "punish" young offenders, Schwartz, Kerbs, Hogston, and Guillean (1992) found that more than three out of four citizens—78.4 percent—said that the juvenile court should treat and rehabilitate juveniles, whereas fewer than 12 percent said punish; 10 percent reported that both goals should be pursued equally. Likewise, in a 1995 national poll, survey participants were asked "which goals should be the most important in sentencing juveniles." Half of the respondents answered rehabilitation, 31 percent selected retribution, 15 percent favored deterrence, and 4 percent supported incapacitation (Gerber and Engelhardt-Greer 1996). Thus, in both studies rehabilitation was the preferred goal of the juvenile court by a substantial margin.

Survey research also indicates that the public is more supportive of treating youthful offenders than they are of treating adults. A 1994 poll of Texans found, for instance, that although only 39 percent of the respondents endorsed trying to rehabilitate adult criminals, 70 percent favored rehabilitation for juveniles. Furthermore, nearly two-thirds of the respondents in this poll were willing to pay for juvenile programs to keep kids out of trouble, and 81 percent strongly or "mostly" agreed that removing children from bad environments and teaching them moral values and skills could help them become law-abiding (Makeig 1994). Likewise, more Oregon residents in a 1995 poll reported that they preferred that money be spent to rehabilitate juvenile offenders (92 percent) than to rehabilitate adult offenders (73 percent) and to punish juvenile offenders (77 percent) (Doble Research Associates 1995). Applegate, Cullen, and Fisher (1997) report similar findings. In their 1996 survey of Ohio residents, more than 95 percent of survey participants agreed that it is important to try to rehabilitate juveniles who have committed crimes and are now in the correctional system; for adult offenders, close to 86 percent agreed with a comparable question. Finally, 79 percent of San Francisco residents reported that they preferred that a 16-year-old boy convicted of selling crack cocaine, with a prior record, an abusive mother, and an absentee father, be placed in a residential treatment facility rather than be detained at the California Youth Authority (Moore 1996).

The public also believes that juveniles are promising candidates for treatment. A 1994 poll of Texas residents found that 76 percent of survey participants strongly or mostly agreed that juveniles have a better chance of being rehabilitated than adults (Makeig 1994). In a related line of inquiry, research has found that the public believes in the efficacy of juvenile

treatment. Cullen et al. (1983) found, for instance, that although 20 percent of a sample from an Illinois community agreed that the rehabilitation of adults just does not work, only 10 percent felt that the treatment of juveniles is ineffective. A 1988 poll also found that more than two out of three Californians disagreed that youth who commit serious crime cannot be rehabilitated and should be locked up without any attempt at rehabilitation for as long as the law allows (Steinhart 1988). Similarly, a 1985 survey of Cincinnati and Columbus, Ohio, residents found that three of four respondents believed that rehabilitation programs were very helpful or helpful for juveniles. The comparable figure for adults was about 6 of 10. A replication of this research conducted in 1995 found that 8 of 10 Cincinnati residents believed that juvenile rehabilitation was very helpful or helpful; in contrast, for adults the figure was again 6 of 10 respondents (Sundt, Cullen, Applegate, and Turner 1998).

Together these findings indicate that the public continues to support the correctional treatment of juveniles. It should be noted, however, that the public is less willing to support rehabilitation when this option is portrayed as a lenient response to crime or when it is suggested that an emphasis on rehabilitation will lessen the punishment given to youths (see, e.g., *The Public Perspective* 1997). Finally, support for rehabilitation declines when questions ask about treating chronic or violent offenders and when questions specifically use the word rehabilitation (Gerber and Engelhardt-Greer 1996).

Although illuminating, the existing research is limited in an important way. Most of the polls and studies reviewed above have asked respondents only one or two questions about the issue of juvenile rehabilitation. Accordingly, they stop short of providing a systematic investigation of whether the public continues to believe in the rehabilitative ideal. In contrast, in the present study, we advanced our understanding of the public's attitudes toward the treatment of youthful offenders by having assessed a broad range of attitudes toward juvenile rehabilitation.

Method

Sample

The data for this article were drawn from a larger survey conducted in 1998, which examined citizens' attitudes on various juvenile justice policy issues. Using a statewide database of residents' addresses, a questionnaire was mailed to a random sample of 1,500 people living in Tennessee. After the initial mailing, 217 surveys were returned as undeliverable. Subsequently, a replacement sample of 217 randomly selected residents were mailed a copy of the questionnaire.[1] Using an amended version of Dillman's (1978) Total Design Method, both groups were sent a reminder postcard, and two additional copies of the questionnaire were sent to increase the response rate.[2] A total of 539 usable surveys were returned, or a 40 percent response rate.

The modest response rate raises questions about the generalizability of the results. There are two reasons, however, why the findings reported here are unlikely to be affected by sample bias. First, to check for potential biases, a sample of 50 nonrespondents was contacted by telephone and asked a subsample of the questions from the survey. Their responses were then compared with those of sample participants to determine if any differences existed between these groups. Statistical analyses revealed no significant differences in the answers provided by the survey respondents as opposed to those provided by the nonrespondents polled by telephone. Accordingly, there was no evidence that respondents and nonrespondents varied in their attitudes toward juvenile justice policy issues.

Second, a major finding of this study was the public's consistent support for rehabilitation. This finding is unlikely to be an artifact of the sample's demographic composition because the study was conducted in a southern state and the respondents were primarily White and tended to be politically conservative. To the extent that these characteristics affect correctional attitudes, they should presumably increase expressions of punitiveness and decrease protreatment

sentiments (see, e.g., Applegate 1997). Thus, if anything, the composition of our sample would likely slant the opinion data we report against finding support for rehabilitation.

The sample consisted of 272 (51.4 percent) males and 257 females (48.6 percent). The respondents were predominately White (91.8 percent) and their average age was 53. Of the sample, 50 percent had postsecondary education, whereas more than one-third had received a high school diploma or GED. Only 10 percent of the sample did not have a high school education. The respondents were asked to rank their general political views and how religious they would describe themselves using a Likert-type scale of 1 to 6, where 1 was *very liberal* (or *not very religious*) and 6 was *very conservative* (*or very religious*). The respondents' mean response for political views was 4.24, indicating a more conservative sample. With a mean of 4.73, the respondents also professed to be religious. The respondents were fairly evenly distributed over the income categories, although almost 30 percent reported an income above $50,000.

Measures

This survey contained a number of measures that assessed the public's views on the goals of juvenile institutions, the justifications for intervening with juveniles, and what community-based treatment options should be available for juveniles. Following each question, respondents were provided either with a closed-ended set of choices or with a Likert-type scale that was used to express their level of agreement.

Previous research on correctional attitudes has most often focused on the goals of corrections

Table 1 Respondents' Views on What Is and What Should Be the Main Emphasis in Juvenile Prisons and the Amount of Importance Placed on Each (in percentages)

A. Main Emphasis of Juvenile Prisons

Goals of Imprisonment	*Is*	*Should Be*
Rehabilitation: Do you think the main emphasis in juvenile prison is [should be] to try and rehabilitate the adolescent so that he [sic] might return to society as a productive citizen?	29.4	63.3
Punishment: Do you think the main emphasis in juvenile prison is [should be] to punish the adolescent convicted of a crime?	16.8	18.7
Protection: Do you think the main emphasis in juvenile prison is [should be] to protect society from future crime he might commit?	17.6	11.2
Not sure	36.1	6.7

B. Importance of Goals of Juvenile Institutions

Goals of Imprisonment	*Very Important*	*Important*	*A Little Important*	*Not Very Important*
Rehabilitation	64.5	30.0	4.3	1.1
Punishment	42.5	52.1	4.3	1.1
Protection	43.2	47.0	8.4	1.3

(Cullen, Clark, and Wosniak 1985; Cullen, Skovron, Scott, and Burton 1990; Gottfredson and Taylor 1984; Gottfredson, Warner, and Taylor 1988; Harris 1968; Schwartz et al. 1992). Thus, for the first set of questions, we used the global questions posed by Harris (1968). The respondents were first asked what they thought was the main emphasis in juvenile prisons. This question was then repeated, except that the respondents were asked what should be the main emphasis of juvenile prisons. They were instructed to choose only one of the following four options: punish, rehabilitate, protect society, and not sure (see Table 1 for the wording of these choices). These questions were employed to determine the level of consistency between what citizens thought should be the main emphasis in juvenile prisons as opposed to and what goal they believed was actually being pursued by these institutions.

Using the same three goals—rehabilitation, punishment, and protection of society—the respondents were next asked to rank the level of importance of each of these goals of juvenile prisons (Applegate 1997). A Likert-type scale was provided where 1 = *not important,* 2 = *a little important,* 3 = *important,* and 4 = *very important.* In the previous questions, the respondents were only asked to choose one option; in this question, however, they were instructed to rate the level of importance they placed on each of the goals presented.

Second, to investigate further the public's support for various justifications for intervening with juvenile offenders, we relied largely on a set of 10 items used previously by Applegate et al. (1997) and Cullen et al. (1985). These statements asked the sample members what they thought should be done with juvenile offenders. The respondents were provided with a Likert-type scale where 1 = *strongly disagree,* 2 = *disagree,* 3 = *slightly disagree,* 4 = *slightly agree,* 5 = *agree,* and 6 = *agree strongly.* The responses to these items allowed us to assess the support given to rehabilitation as opposed to retribution, deterrence, and incapacitation. The actual statements for each of these categories are listed in Table 2.

Third, to explore what citizens believe is the most successful type of rehabilitation efforts the respondents were asked to reply to three statements about what they thought was the best way to rehabilitate juvenile offenders. These measures were slightly modified from those used by Applegate et al. (1997). Using the 6-point, agree-disagree Likert-type scale previously discussed, the respondents were asked to report their level of agreement or disagreement with each of the following statements:

> The best way to rehabilitate juvenile offenders is: (1) to teach them a skill that they can use to get a job when they are released from prison, (2) to try to help these offenders change their values and to help them with the emotional problems that caused them to break the law, and (3) to give them good education.

Fourth, because many juvenile offenders are given sentences that include supervision by the courts in the community and that require participation in treatment programs, we wanted to determine which community-based options were most and least likely to be supported by the public. The sample members were asked to indicate whether they do not support at all, slightly support, moderately support, or fully support a variety of local programs and supervision options. These options fell into one of six main categories: counseling, drug/alcohol, education/vocational, restorative, "tough love," and monitor. To ensure that each program or supervision option was fully understood, a definition was provided for each option. The correctional options, including their definitions, are presented in Table 3.

Finally, we included two questions used previously in a telephone survey conducted by Fairbank, Maslin, Maullin, & Associates (1998). First, we asked respondents to indicate which of the following two statements was closest to their opinion. (1) "Our main priority should be to build more prisons and youth facilities to lock-up as many juvenile offenders as possible," or (2) "our main priority should be to invest in ways to prevent kids from committing crimes and

ending up in gangs or prison."[3] These responses were employed to determine whether citizens believe that youths should be saved or that society should give up on youths and build more prisons where they can be locked away.

The second question asked was whether "there is an age at which [they] believe it is too late to help a young person." A simple dichotomy of either yes or no was provided. If the respondent answered yes, he or she was asked to write down the specific age at which he or she estimated that youths could no longer be helped. Once again this question attempted to measure whether citizens believe that youths can be changed and at what age rehabilitative efforts will no longer be beneficial to these youths.

Results

The Goals of Corrections

In public opinion research, one of the most common ways of exploring correctional ideology is to ask what citizens endorse as the goal of imprisonment. Consistent with this literature, Panel A in Table 2 presents the respondents' views on what is and should be the main emphasis in most juvenile prisons. When asked what the purpose of imprisoning wayward youths is, more than one-third of the sample was not sure. Among the remaining goals, rehabilitation had the most support, with almost one in three citizens choosing this option. Taken together, the punish- and protect-society options were only slightly more often selected than offender treatment (34.4 percent to 29.4 percent).

The data on what should be the goal of juvenile incarceration is even more salient because they revealed the respondents' correctional preferences. Recall that this was a forced-choice question, and thus it measured which goal the citizens most strongly endorsed. It is noteworthy, therefore, that nearly two-thirds of Tennessee residents embraced rehabilitation as their preferred correctional goal. The support for treatment was 33.4 percentage points higher than for the protect society and punish responses combined. These findings suggest that the public wishes rehabilitation to remain an integral purpose of the juvenile justice system.

This conclusion received additional credence from the data presented in Panel B of Table 1. Consistent with previous research, the respondents believed that juvenile prisons should serve multiple correctional goals. Thus, more than 9 in 10 sample members stated that it was important or very important to use imprisonment to rehabilitate, punish, and incapacitate youthful offenders. Note, however, that in the "very important" category, the percentage of the sample selecting rehabilitation (64.5 percent) was more than 20 points higher than the comparable percentage for the punish and protect society options.

We also explored public support for the various goals of corrections through 10 statements that the respondents rated, using a 6-point, agree-disagree Likert-type scale. Table 2 presents these data, combining the agree responses (*strongly agree, agree, agree a little*) and the disagree responses (*strongly disagree, disagree, disagree a little*). Again, we see that the respondents endorsed multiple correctional goals but were especially supportive of juvenile treatment.

As seen in Table 2, almost 95 percent of the respondents agreed that it is important to rehabilitate juvenile offenders who have committed crimes and are now in the correctional system. Items 2 and 3 revealed that Tennessee citizens also supported rehabilitation both in the community and in prisons. Finally, three-fourths of the sample favored treating even juveniles who have been involved in a lot of crime in their lives (see Item 4).

Table 2 also shows that support for retribution or just deserts were strong; more than 9 in 10 respondents agreed that young offenders deserve to be punished because they have harmed society. A clear majority—nearly two-thirds—supported punishing juveniles as a specific deterrent (Item 6). Note, however, that 40.4 percent of respondents believed that prisons might increase crime because prisons are schools of crime, and 57.6 percent agreed that sending young offenders to jail will not stop them from committing crimes (Items 7 and 8). The sample's ambivalence about the utility of incarcerating youthful offenders was

Table 2 Respondents' Level of Agreement for Various Goals of Imprisonment (in percentages)

Correctional Goal	*Agree*[a]	*Disagree*[b]
Rehabilitation		
1. It is a good idea to provide treatment for juvenile offenders who are supervised by the courts and live in the community.	89.0	11.0
2. It is a good idea to provide treatment for juvenile offenders who are in prison.	94.8	5.4
3. It is important to try to rehabilitate juvenile offenders who have committed crimes and are now in the correctional system.	94.6	5.4
4. Rehabilitation programs should be available even for juvenile offenders who have been involved in a lot of crime in their lives.	76.4	23.6
Retribution		
5. Young offenders deserve to be punished because they have harmed society.	91.5	8.5
Deterrence		
6. Punishing juvenile offenders is the only way to stop them from engaging in more crimes in the future.	63.3	36.7
7. Putting young people in prison does not make much sense because it will only increase crime because prisons are schools of crime.	40.4	59.6
8. Sending young offenders to jail will not stop them from committing crimes.	57.6	42.4
Incapacitation		
9. We should put juvenile offenders in jail so that innocent citizens will be protected from people who victimize them—rob or hurt them—if given the chance.	13.7	86.3
10. Since most juvenile offenders will commit crimes over and over again, the only way to protect society is to put the offenders in jail when they are young and throw away the key.	20.8	79.2

a. Agree combines the responses of those who said they strongly agreed, agreed, and slightly agreed.

b. Disagree includes those who strongly disagreed, disagreed, and slightly disagreed.

even more pronounced in the responses to Items 9 and 10 in Table 2. About 8 in 10 sample members disagreed that incapacitating juvenile delinquents— "throwing away the keys"—was a prudent correctional policy.

Support for Types of Correctional Intervention

The respondents were also asked how they wished juvenile lawbreakers to be dealt with when they are not sent to prison, but instead are placed back into the community under the supervision of the court. Table 4 presents the extent to which the sample supported various correctional options. Again, the Tennessee public appeared to endorse multiple approaches to intervening with youths under court supervision. Of the 14 options presented, 9 were fully supported by a majority of the sample, and all 14 were fully or moderately supported. Even so, some variations in responses warrant attention.

Table 3 Respondents' Levels of Support for Various Community Corrections Options (in percentages)

Correctional Option	*Fully Support*	*Moderately Support*	*Slightly Support*	*Do Not Support*
1. Counseling				
Individual: Having the youth meet with a counselor who would try to solve the emotional problems that caused the youth to get into trouble in the first place.	55.4	26.4	14.3	13.9
Family: Having a counselor meet with the entire family and the juvenile to attempt to uncover any issues within the family itself that could be affecting why the juvenile is committing crimes.	61.3	25.9	10.1	2.7
Group: Having a counselor meet with a group of delinquent youths to try to solve the emotional problems that caused them to get into trouble in the first place.	43.8	29.7	18.4	8.1
Anger management: A program designed to teach youths how to recognize and control their anger.	49.7	30.0	15.4	4.9
2. Drug/alcohol				
Drug/alcohol treatment: Having youths enter a program to eliminate their addiction to drugs and or alcohol.	67.6	21.3	8.9	2.1
Drug testing: Having youths give a urine sample to test if they are using alcohol and drugs.	80.3	11.8	5.4	2.5
3. Educational/vocational				
Educational programs: Having youths participate in a program to get their high school diploma if they have not finished high school.	71.9	18.4	7.0	2.7
Vocational programs: Teaching youths a skill (such as plumbing, air conditioning repair, or secretarial skills) so they can get a job.	64.9	23.5	9.2	2.3
4. Restorative				
Victim restitution. Having the youth work in order to pay back the victim for any damages that the youth caused.	82.9	12.6	3.3	1.2
Community service: Having the youth work in the community (without pay) on such projects as restoring or painting old houses, cleaning up trash on highways, or planting trees in public parks.	77.9	14.7	5.2	2.1
5. Tough love				
Boot camp: Having youths go through a program that is similar to basic training in the military	54.8	24.1	14.5	6.6
Scared straight: Having youths visit an adult prison where inmates yell, insult, and scare youths to deter them from committing any future crimes.	41.5	20.3	23.1	15.1

(Continued)

Table 3 (Continued)

Correctional Option	*Fully Support*	*Moderately Support*	*Slightly Support*	*Do Not Support*
6. Monitor				
Electronic monitoring: Requires that the juvenile wear a bracelet that tells the probation officer whether he or she is at home.	48.2	24.3	17.5	10.0
Home incarceration: Having youths stay in their homes rather than staying in prison. Youths on home incarceration would only be allowed to leave their houses for certain reasons, such as meeting with their probation officer, attending a treatment program, or going to the doctor.	22.7	23.2	31.1	23.0

First, although the respondents supported all forms of counseling, the level of support was most pronounced for counseling that involved the entire family. Second, the sample endorsed drug treatment, but they especially favored drug testing. Third, both victim restitution and community service were highly embraced. This finding is noteworthy because these correctional interventions are integral to the emerging movement of restorative justice. Fourth, the approach of tough love—using boot camps and, particularly, "scared straight" programs to build character—were supported, although this support was lower than that given to most other correctional interventions. Fifth and relatedly, the approach of home incarceration was the least supported option. In fact, a majority of the sample either did not support or only slightly supported this option.

Taken together, these results suggest that the respondents did not believe that there is an inherent conflict between interventions that emphasize treatment and those that emphasize control. They did not see such approaches as incompatible but as complementary. Thus, Tennessee residents believed that youthful offenders should be monitored, drug tested, compelled to repair the harm they caused, and even subjected to some tough love—programs that used intrusive, if not harsh, measures to instill character. At the same time, the public was committed to exposing wayward youths to a range of traditional treatment interventions, including counseling, education, vocational training, and drug/alcohol treatment.

The survey also contained three items, rated with an agree-disagree Likert-type scale that asked the respondents what would be the best way to rehabilitate juvenile offenders: a good education, teaching them a skill, and helping these offenders change their values and helping them with the emotional problems that caused them to break the law. A high percentage of the sample agreed with each item. Notably, however, the support for changing values and dealing with emotional problems was particularly pronounced. Thus, 93 percent of the respondents strongly agreed with this statement. This finding suggests that the public believes that rehabilitating youthful offenders involves more than equipping them with job and educational skills and must also seek to change the values they hold and to help them with the emotional struggles they experience.

Belief in Child Saving

Finally, the survey contained data that have implications for the degree to which the respondents embraced the goal of saving children from a life in crime. First, we asked the sample members whether the main priority in the time ahead should be to build more prisons and youth facilities to lock up as many juvenile offenders as possible or to invest in ways to prevent kids from

Table 4 Respondents' Perceptions on the Best Way to Rehabilitate Juvenile Offenders (in percentages)

Method of Intervention	*Agree*[a]	*Disagree*[b]
Values-problems		
The best way to rehabilitate juvenile offenders is to try to help these offenders change their values and to help them with the emotional problems that caused them to break the law.	92.9	10.7
Job skills		
The best way to rehabilitate juvenile offenders is to teach them a skill that they can use to get a job when they are released from prison.	89.3	10.7
Good education		
The best way to rehabilitate a juvenile is to give them a good education.	76.5	23.5

a. Agree combines the responses of those who said they strongly agreed, agreed, and slightly agreed.

b. Disagree includes those who strongly disagreed, disagreed, and slightly disagreed.

committing crimes and ending up in gangs or prisons. Most significant, Tennessee citizens not only favored the prevention option over the imprisonment option but also did so by a wide margin: 93.5 percent chose prevention—a figure that is almost 14 times higher than the number who favored building more prisons.

Second, we asked the respondents if they thought there is an age at which it is too late to help a young person who has gotten involved in violence and crime. Again, the faith in the ability to turn around the lives of wayward youths was high. Three-fourths of the sample answered no to this question. Even among those who answered yes, most of them believed that it became too late to help a youthful offender only at age 16.

Policy Implications

The data presented here do not mean that most Americans oppose punishing youthful offenders. As the attitudes of Tennessee citizens revealed, punishment and societal protection were seen as important goals of the correctional process. Furthermore, we should note that when questioned elsewhere on the survey as to whether the courts were dealing harshly enough with juvenile offenders, more than 70 percent of our sample chose the option of "not harshly enough." It is likely as well that if asked to sentence juveniles who had committed particularly egregious crimes (e.g., murder, forcible rape, or a shooting) our respondents might well have tempered their enthusiasm for treatment and recommended transferring these violent juveniles to adult court where lengthy prison terms could be imposed. In this regard, although not uniformly supporting the transfer policy, previous research suggests that, under certain circumstances, the public will accept the waiver of violent offenders to adult court (Sprott 1998). In studies of public preferences for sentencing, moreover, youthfulness has been found to mitigate the severity of the sentences that respondents choose; however, this effect is limited and does not prevent respondents from prescribing prison terms to juveniles (Applegate et al. 1997; Jacoby and Cullen 1998).

Although it would be inadvisable to underestimate the pool of punitive sentiment that exists toward offenders of any age, it would be equally misguided to assume that juvenile rehabilitation is dead. The results from our survey show clearly that the public does not simply wish to warehouse juvenile offenders and throw away the keys. Consistent with previous research, the respondents were not convinced that sending youths to jail would stop their offending. Nearly

two in five citizens also felt that juvenile institution were schools of crime. Even home confinement was viewed skeptically by the sample members. In contrast, the Tennessee public displayed a strong preference that rehabilitation should be the purpose of juvenile institutions.

By substantial majorities, they also endorsed the rehabilitation of juveniles in the community and embraced attempting to treat even those who were repeat offenders. Although under court supervision in the community, the public supported—often fully—a multimodal approach to intervention that included counseling, drug treatment, skill building, restoration of harm done to the community, and some degree of monitoring. Finally, given the choice between spending money to build prisons or to fund prevention-oriented programs, more than 9 in 10 respondents chose prevention. Again, this finding is consistent with existing research (Cullen, Wright, Brown, Moon, Blankenship, and Applegate 1998; Fairbank et al. 1998).

Taken together, these findings lend support to the broad policy implication that the public wants the legal system to intervene in ways that save children from a life in crime.[4] Previous research has shown that, in general, citizens favor retaining rehabilitation as a goal of the adult criminal justice system, but that this preference may be particularly pronounced for the juvenile system (Applegate et al. 1997; Sundt et al. 1998). Although we do not have comparative data on adults, the absolute level of support for juvenile treatment in our study reinforces this view. Furthermore, nearly three-fourths of the sample stated that it was never too late to attempt to help a young person turn away from crime. This perspective likely is based on subsidiary assumptions about youths: they are malleable, are not fully responsible for their decisions, and have enough of their life ahead of them that not to save them would be morally wrong. In any case, residents from Tennessee—hardly a bellwether state known for its liberal approach to social issues—are firm in their belief that criminal justice officials should make a concerted effort to reform wayward adolescents.

This finding in turn has three specific policy implications. First it should give pause to commentators who are now arguing in favor not only of the abolition of the juvenile court but also of processing youths according to guidelines based on principles of just deserts and societal protection (Feld 1998; cf. Zimring 1998). Much like the progressive founders of the juvenile court a century ago, respondents in our study believed that intervention with juveniles should do more than exact just deserts and impose punishment in hopes of preventing crime (Cullen and Gilbert 1982; Rothman 1980). Instead, they favored state interventions that seek to invest in, and positively influence the lives of, delinquents. They wanted these interventions not simply to do justice but also to do good.

Second, these public opinion results suggest that punitive thinking is not hegemonic. Although the penal harm movement—as Clear (1994) appropriately calls it—has dominated American corrections for nearly three decades, its influence is not complete. At times, the belief that the public is exclusively punitive has helped to construct a reality that is self-fulfilling: There is no use to proposing liberal policies because citizens, and thus policy makers, will not support them In contrast, our data indicated that policies that offer a balanced approach to dealing with juvenile offenders—that do not ignore just deserts and societal protection, but that do vigorously seek to rehabilitate youngsters—will not give rise to a hostile public reaction. Instead, it appears that the public will endorse an array of policies that are fairly progressive in orientation; given, it seems, that these initiatives do not irresponsibly endanger public safety.

The Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM) Ohio initiative is one example of a juvenile justice initiative that seeks to balance public safety with the rehabilitation of offenders (Moon, Applegate, and Latessa 1997). This program distributes money to all counties based on the number of youths with felony adjudications. Counties can use these funds to pay to send any given youth to a state institution. However, to reduce institutional crowding and to encourage counties to send only serious offenders to state

facilities, Ohio also allows counties that do not incarcerate youths to keep the funds so as to establish or contract for local community-based programs. In short, the state is giving counties an incentive not to send youthful offenders to prison but rather to treat them in the community. The collateral goal is to reduce the inmate population at state juvenile facilities. Imprisonment is to be used to incapacitate truly serious offenders and, at the same time, to provide these youths with special treatment services. It is noteworthy that this program was an initiative of a Republican governor.

Third the public opinion data suggest that the empirical inroads now being made in showing what works in rehabilitating offenders may potentially find a receptive audience in the public. In an important way, citizens appear to want the correctional system to intervene effectively with youthful offenders. As our data show, they are not always certain that rehabilitation is the main goal of the system, but they clearly believe that it should be. It is noteworthy, therefore, that there is increasing empirical evidence that punishment-oriented interventions have virtually no effect on recidivism, but that treatment-oriented interventions diminish criminal participation (Andrews, Zinger, Hoge, Bonta, Gendreau, and Cullen 1990; Gibbons 1999; Henggeler 1997; Lipsey 1992; Lipsey and Wilson 1998). These interventions, moreover, achieve substantial reductions in recidivism (25 percent or higher) when targeted on high-risk offenders and when employing cognitive-behavioral and skill-building treatment modalities. There is also a collateral literature outlining an array of early prevention programs that have proven effective in protecting children from staying on or entering a criminal life course (Farrington 1994; Loeber and Farrington 1998; Yoshikawa 1994). Contrary to outdated notions that nothing works, the empirical basis for building effective programming is growing markedly. Again, this message—that there are programs that work to save wayward children—is likely to be welcome news to most Tennesseans, if not to most of their fellow Americans.

Finally, we should take notice of the remarkable tenacity of the public's belief that rehabilitation should remain an integral goal of juvenile corrections. Although noteworthy exceptions exist (see, e.g, Currie 1998), many criminologists have argued that rehabilitation does not work, leads to net widening, fosters the exercise of discretion that is arbitrary, and ultimately is coercive. These efforts at delegitimizing treatment have reinforced the cry from conservative quarters that juvenile criminals are "super-predators" who may be beyond redemption. Despite this sustained attack on rehabilitation, the nation's citizens are not prepared to relinquish the hope that kids who get in trouble can be saved. To do so, perhaps, would be to accept a vision of our children and of our society that is inconsistent with what Bellah, Madsen, Sullivan, Swidler, and Tipton (1985, 1991) have called our habits of the heart and our vision of the good society. Anderson (1998) has captured this issue with words that are a fitting end to our work:

> That suggests the ultimate reason for holding onto the rehabilitative ideal, and it is profoundly moral. America's founding fathers may have been naïve about the possibility of rehabilitating people in prison, but they were not naïve about the importance of rehabilitation. An ethical society can choose to use criminal justice for more than maintaining domestic peace and reinforcing values codified in law. It may also . . . use criminal justice to acknowledge a belief that good lurks in the hearts of people who act bad; that even the worst-seeming criminals have the capacity, in time and with help, to change for the better. The: process is as imperfect and unpredictable as humanity itself: some are helped by programs; some find salvation on their own; and some never find it at all. But it is unenlightened in the extreme to deny the capacity for change or prohibit the chance to exercise it. . . . [Rehabilitation programs] send a powerful positive message about a society's

deepest values, to criminals and to everyone else. (Pp. 16–17)

Notes

1. During the remainder of the mailings, an additional 125 surveys were returned as undeliverable and were not replaced.

2. For the initial mailing, respondents were sent a second copy of the survey at three weeks and a third copy at seven and a half weeks. The replacement respondents were sent a second copy at three weeks and, due to time constraints, a third copy at five and a half weeks.

3. These statements were changed somewhat from the statements in the original survey conducted by Resources For Youth.

4. Notably, it appears that juvenile court judges and other juvenile justice personnel also continue to support the treatment of youthful offenders (see Bazemore and Feder 1997; Leiber, Roth, Streeter, and Federspeil 1997).

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DISCUSSION QUESTIONS

1. What are some reasons why juvenile rehabilitation was attacked and criticized by a variety of groups? Give examples of persons or groups you have known, who have voiced some criticisms.
2. Give examples from your experience or observations of support for rehabilitation such as the authors give from previous research.
3. How would you respond to the questions reported in Table 2? Give some reasons to support your answers.
4. Considering the various community corrections options, what do you think are the most and the least important options? Explain why.
5. Suggest one or two correctional programs that would address juvenile offenders' values and problems, job skills, and educational needs.