2 Defining Juvenile Delinquency

Chapter Outline

- The social construction of "juvenile delinquency"
- Invention of the juvenile court
- The second revolution: transformation of juvenile justice thought and practice
- Legal definitions of "juvenile delinquency"

Chapter Objectives

After completing this chapter, students should be able to:

- Identify the major historical developments that led to the social construction of "juvenile delinquency" as a social and legal concept.
- Describe the roots of the juvenile court in nineteenth-century developments such as poor laws, houses of refuge, placing-out, reform schools, and the child-saving movement.
- Describe the character of the original juvenile court—its philosophy, jurisdiction, and procedures.
- Distinguish four legal categories of juvenile delinquency.
- Understand key terms:

  social constructionist perspective

  parens patriae

  poor laws

  pauperism

  houses of refuge

placing-out
reform schools
child-saving movement
rehabilitative ideal
"best interests of the child"
due process of law
status offender
balanced and restorative justice
status offense

Juvenile delinquency, as we know it today, is a relatively recent concept. This does not mean, however, that young people in the past were more compliant than they are today. In fact, Socrates (470–399 BCE) offered a critique that

CASE IN POINT

The "Stubborn Child Law"

Deuteronomy 21:18–21

> [18] If a man has a stubborn and rebellious son who does not obey his father and mother and will not listen to them when they discipline him, [19] his father and mother shall take hold of him and bring him to the elders at the gate of his town. [20] They shall say to the elders, "This son of ours is stubborn and rebellious. He will not obey us. He is a profligate and a drunkard." [21] Then all the men of his town shall stone him to death. You must purge the evil from among you. All Israel will hear of it and be afraid.

In November 1646, the governing body of Massachusetts Bay Colony took these verses almost verbatim and made them into law. The colonial codes of Connecticut, Rhode Island, and New Hampshire followed suit. Though substantially amended, the Massachusetts law remained in effect until 1973.

In his book, *Stubborn Children: Controlling Delinquency in the United States, 1640–1981,* John Sutton points out that "the 'stubborn child law' was legally distinctive in three ways: (1) It defined a special legal obligation that pertained to children, but not to adults; (2) it defined the child's parents as the focus of that obligation; and (3) it established rules to govern when public officials could intervene in the family and what actions they could take." While the "bare words" of these stubborn child laws made it a capital offense for a child to disobey parents, they also "established rules to govern when public officials could intervene in the family and what actions they could take." We will explore this new approach to child misconduct in this chapter.

Source: Sutton, *Stubborn Children,* 11–12, numbers added.

sounds amazingly contemporary: "The children now love luxury. They have bad manners, contempt for authority, they show disrespect for adults and love to talk rather than work or exercise. They no longer rise when adults enter the room. They contradict their parents, chatter in front of company, gobble down food at the table, and intimidate teachers."[1] So it seems that a concern over the "next generation" is perennial.[2]

Scholars say that juvenile delinquency was "invented" or socially constructed in order to indicate that the concept is a product of a great many social, political, economic, and religious changes. With regard to juvenile delinquency, these changes began in the Renaissance (roughly 1300–1600), but were most pronounced during the Enlightenment (mid-1600s–late 1700s) and the Industrial Revolution (1760–mid 1900s).[3] This transformation of thought and practice eventually led to a series of legal changes at the end of the nineteenth century that created the legal status of "juvenile delinquent" and a separate legal system that included juvenile courts and reformatories.[4] The use of a separate legal status and legal system for juveniles spread rapidly throughout the United States in the early twentieth century. It was not long, however, before the legal philosophy of the juvenile court began to be seriously questioned. Beginning in the 1960s, a "second revolution" significantly altered contemporary definitions of juvenile delinquency and practices of juvenile justice.[5]

social constructionist perspective An attempt to understand the many social, political, and economic factors that lead to the development of an idea, concept, or view.

Using a **social constructionist perspective**, this chapter traces the historical origins and recent transformations of juvenile delinquency as a legal concept. We also consider the associated changes in juvenile justice practices. As our perspectives toward juvenile delinquency have changed, so too has our legal response to it. Focusing on this correspondence, this chapter covers four areas: (1) the social construction of "juvenile delinquency," (2) the invention of the juvenile court, (3) the transformation of juvenile justice systems, and (4) the legal definitions of "juvenile delinquency."

The Social Construction of "Juvenile Delinquency"

At least three historical developments led to the social construction of "juvenile delinquency": the "discovery" of childhood and adolescence, the English common law doctrine of *parens patriae,* and the rise of positivist criminology. As a result, the concept of juvenile delinquency came to signify a separate and distinct status for young people, both socially and legally. Sociologists use the concept *status* to refer to the position or rank of a person or group within society, with the position being determined by certain individual or group traits.[6] Juvenile delinquency is a status determined both by age (less than the legal age of majority) and behavior (actions that violate the law).

The Discovery of Childhood and Adolescence

Today, we take for granted that childhood and adolescence are separate stages in life, unique from other stages. As Socrates' critique of youth indicated, the Greeks also considered this age group distinctive. Both Plato (about 427–347 BCE) and

Aristotle (384–322 BCE) offered commentary that distinguished and categorized the behaviors, attitudes, and emotions of young people as different from those of people at other ages. While their characterizations suggest that the Greeks considered adolescence a separate stage of life, they advance a rather negative view toward youth, suggesting that, by modern standards, the Greeks were not very understanding of the trials and tribulations of adolescence.[7]

Throughout the Middle Ages (476–1450 CE), European literature made frequent reference to the "ages of life." This literary theme included seven stages, beginning with infancy and ending with old age; the third stage was adolescence. Shakespeare, for example, refers to the seven stages of life in his famous passage:

> *All the world's a stage*
> *And all the men and women merely players;*
> *They have their exits and their entrances;*
> *And one man in his time plays many parts;*
> *His acts being seven ages. . . .*
> *(As You Like It, II, vii, 139).*[8]

However, these age categories lacked distinction and were not used outside of literature.[9]

In his widely cited book, *Centuries of Childhood,* Philippe Aries argues that the idea of childhood did not exist in medieval society.[10] Basing his argument on a variety of historical records, he contends that during the Middle Ages, few distinctions were made between young people and adults. In fact, the only culturally prescribed age distinction was that of infancy. Young people beyond the age of five were viewed as adults "on a smaller scale."[11]

Aries contends that during the late sixteenth and seventeenth centuries noticeable social distinctions associated with childhood began to emerge. "For instance, a special type of dress for children appeared. Moreover, it was not until the sixteenth and seventeenth centuries that fables, fairy stories, and nursery rhymes became the property of children."[12] Renaissance culture, however, failed to differentiate adolescence from childhood.[13] Thus, while childhood was established as a separate age category by the seventeenth century, it was not distinguished from adolescence until the late eighteenth century.[14]

The slowness with which the companion concepts of childhood and adolescence emerged during the Renaissance was most likely a result of the harsh living conditions of medieval Europe. As LaMar Empey and Mark Stafford write, "under conditions like these, the cultural prescriptions we consider important today were lacking, especially those provisions for close ties between parent and child, that stress the importance of the nuclear family, that take delight in the innocence and beauty of children, and that provide long years of total economic support for a phase of the life cycle known as childhood."[15]

Aries claims that the slow development of childhood and adolescence does *not* suggest that "children were neglected, forsaken, or despised."[16] Rather, it simply signifies a lack of awareness of the special needs of childhood. He acknowledges, however, that attitudes toward children during the Middle Ages were largely "indifferent" and treatment of children was often harsh and punitive.[17] Empey and Stafford expand on this, referring to the pre-Renaissance pe-

riod as the "history of indifference to children," characterized by infanticide, abandonment, poor care of infants, disease and death, and harsh and punitive discipline.[18] Their portrayal of the history of childhood is consistent with the observations of historian Lloyd deMause, who writes, "The history of childhood is a nightmare from which we are only beginning to awaken. The further back one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorized, and sexually abused."[19]

Family life and child-rearing emerged as matters of great importance in Renaissance society.[20] Numerous treatises and manuals were written in the sixteenth and seventeenth centuries, and many remained popular until the eighteenth century.[21] These manuals instructed parents on how to train their children in the "new morality," involving etiquette, obedience, respect for others, self-control, and modesty.[22] The training tools emphasized in these manuals included supervision, strict discipline, and insistence on decency and modesty. Parents were instructed that they must control what their children read, hear, and do.

These manuals were clear expressions of a new view of children, childhood, and child-rearing: children began to be viewed as innocent and vulnerable. It was the responsibility of parents to protect their children from the evils of a corrupt world and to train them so that they developed moral character and religious faith and devotion.[23] Aries summarizes, "The family ceased to be simply an institution for the transmission of a name and an estate—it assumed a moral and spiritual function, it moulded bodies and souls. The care expended on children inspired new feelings, a new emotional attitude. . . ."[24]

While the Renaissance is often described as an awakening from the darkness of the Middle Ages, the Enlightenment of the eighteenth century constitutes another sharp departure from traditional thinking. Building on the importance of training and education stressed in treatises and manuals popular at the close of the Renaissance, Enlightenment philosophers elaborated on the newly "discovered" stages of childhood and adolescence.

In 1693, John Locke (1632–1704), a physician, wrote *Some Thoughts Concerning Education,* a treatise on child-rearing that went through twenty-six editions before 1800.[25] Because he believed that children are born morally neutral (blank slates) and mature into a product of the influences of experience, Locke stressed the importance of parents in a child's life, especially for purposes of supervision, discipline, and moral training. In many ways, Locke's work represents a culmination of Renaissance views toward childhood and youth as periods of vulnerability and dependency, requiring protection and training. He used the term "education" not to refer to the importance of schools, but to stress the importance of training by parents in the form of child-rearing practices.

Another Enlightenment philosopher, Jean-Jacques Rousseau (1712–1778), provided a clear departure from Renaissance views. He argued that people were inherently good, but that social and political institutions corrupted this good and caused all sorts of trouble for them: "The Author of Nature makes all things good; man meddles with them and they become evil."[26] As a result, he argued for permissiveness in child-rearing, so that parents and schools would not corrupt the innocence of children.

Rousseau also pointed to the "distinctive human plight" confronted by adolescents during the transition from childhood to adulthood—a plight characterized by moral and sexual tensions.[27] Adolescence is actually one of five stages of development that Rousseau advanced in his controversial book, *Emile* (1762). In this work, Rousseau provided the first systematic consideration of the stages of development, emphasizing how these stages differ and how these differences influence learning and necessitate appropriate educational methods.[28]

The slow discovery of childhood and adolescence was not complete until the Enlightenment, when Rousseau's idea of developmental stages capped a growing awareness of age distinctions across the life course. The awareness of developmental stages and differentiation based on age had important implications for the structure of family life, for child-rearing, and for education. Ideas about the innocence, vulnerability, and dependence of childhood, as well as the moral and sexual tensions of adolescence, resulted in an increasing emphasis on the family and school as institutions of socialization. Gradually, the view developed that young people require protection, nurture, supervision, discipline, training, and education in order to grow and mature into healthy and productive adults.[29] This point of view culminated in the late 1800s, when it was widely held that youngsters needed to be "excused from participation in the larger society while they concentrated on personal growth."[30] This was a significant departure from the harsh lives of children in Medieval Europe and colonial America and their often forced involvement in the labor force during most of the early Industrial Revolution (beginning about 1760).[31] The slow discovery of childhood and adolescence is depicted in a timeline in **Figure 2-1.**

The *Parens Patriae* Doctrine

The development of the English legal doctrine of *parens patriae* coincides with the discovery of childhood and adolescence. This far-reaching legal doctrine emerged slowly in the late fourteenth and early fifteenth centuries in response to a series of cases heard before the English chancery courts.[32] *Parens patriae* became a central tenet of the equity law that was derived from chancery court decisions. Adopted in the United States as a part of the Anglo-Saxon legal tradition

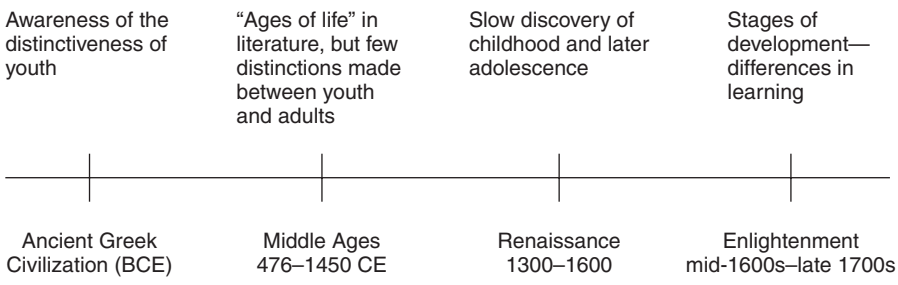

Figure 2-1 The Discovery of Childhood and Adolescence. While the ancient Greeks were aware that the age of youth was distinctive, characterized by distinctive behaviors, attitudes, and emotions, the conception of developmental stages and social differentiation based upon age was "discovered" very slowly beginning in the Renaissance. Childhood and adolescence, as we know the companion concepts today, were not given full expression as developmental stages in the life course until the late nineteenth century.

of England, *parens patriae* provided the fundamental legal authority for the idea of juvenile delinquency and the early juvenile court.

The Latin phrase ***parens patriae*** means literally "parent of the country."[33] As a Renaissance legal doctrine, *parens patriae* vested far-reaching power in the king as sovereign and supreme guardian over his land and people—the "king's prerogative."[34] Chancery courts were established to provide just settlements to disputes but to do so in a way that maintained the king's prerogative. These disputes arose mainly with regard to property rights and inheritance. Chancery court decisions sought the orderly transfer of property interests and feudal duties, especially when the "crown's interests" were at stake economically and politically.[35]

parens patriae Literally means "parent of the country." The legal authority of courts to assume parental responsibilities when the natural parents fail to fulfill their duties.

Parens patriae provided the king with considerable legal authority to support and protect the social and political order of English feudal society.[36] Attached to this authority, however, was a duty that the king had to his subjects in return for the allegiance paid to him. In practice, this duty was concerned primarily with the social welfare of certain dependent groups. Chancery court cases centered on three dependent groups: children, those who were mentally incompetent, and those in need of charity.[37] Under *parens patriae,* the king was established as protector and guardian of these dependent classes.

With regard to children, *parens patriae* was applied most extensively to cases in which the wardship or guardianship of young children was at issue.[38] In medieval England, though all infants were considered wards of the king because of the king's prerogative, cases involving the wardship of children of the landed gentry were of primary legal concern.[39] These children were heirs to an estate or had already inherited an estate from a deceased father. Gaining custody and control of these children and their estates through wardship could prove profitable for relatives.

Gradually, the chancery courts extended the doctrine of *parens patriae* to include the general welfare of children; the proper care, custody, and control of children was to the "crown's interests."[40] This included the ability of the courts to assume and exercise parental duties—to act *in loco parentis*—when parents failed to provide for the child's welfare.[41] Implicit in this doctrine are the developmental concepts of childhood and adolescence in which it is the parents' responsibility to protect, nurture, supervise, discipline, train, and educate children. Insuring the general welfare of children was a means to maintain the power of the monarchy and the feudal structure of English society.[42] It is important to note that the chancery courts did not have jurisdiction over children charged with criminal offenses. Juvenile offenders were handled within the framework of the regular court system. As a result, the *parens patriae* doctrine of equity law "embraced the dependent and not the delinquent child."[43]

Positivist Criminology

To say that juvenile delinquency is socially constructed means that it is a product of prevailing thoughts and perspectives. The two historical developments we have considered so far correspond closely in time and perspective. A third historical development took root somewhat later but had an equally strong influence on the idea of juvenile delinquency.

Positivist criminology is an approach or school of thought that emerged in the last half of the nineteenth century and flourished to such a degree that it came to dominate the field of study for most of the twentieth century. While positivist criminology will be discussed more fully in Chapter 7, we want to point out here some of its basic tenets, which have influenced conceptions of juvenile delinquency.

First and foremost, positivist criminology is based on *positivism*—the use of scientific methods to study crime and delinquency.[44] The scientific method involves systematic observation, measurement, description, and analysis so that scientists can look for, uncover, and draw conclusions about the regularities and patterns of crime and delinquency. The prospect of a scientific approach to crime and delinquency quickly became popular because of the hope it offered to better understand and respond to the problem of crime through individual and social improvement.

The scientific approach advanced by positivism assumes that crime and delinquency are caused or determined by identifiable factors. This cause-and-effect relationship is referred to as *determinism*. Determinism holds that, given the presence or occurrence of certain causal factors, crime and delinquency invariably follow. According to positivism, causal factors can be systematically observed and measured, and causal processes can be analyzed and described.

The patterns and regularities of crime that early positivist criminologists observed led them to conclude that some people are more likely to commit crime than others. A number of individual and social characteristics were explored to differentiate criminals from noncriminals. Public fear of crime in rapidly growing cities also centered on differentiation, and public opinion was often driven by the belief that immigrant groups who were poor, uneducated, unemployed, and lived according to a foreign culture constituted a "dangerous class."[45]

Early positivist criminologists often contended that the degree of difference between criminals and noncriminals was so great that it was most accurately portrayed as a pathology.[46] Early versions of positivist thought emphasized biological and psychological differences between criminals and noncriminals, claiming that criminals suffered from individual pathologies such as physiological defects, mental inferiority, insanity, and a tendency to give in to passion. These individual pathologies were usually thought to have biological roots.

The rise of sociology as a discipline in the late 1800s was associated with differentiation that emphasized social pathologies related to rapid urbanization and industrialization. Rapid social change was thought to dissolve the organization of social life, resulting in lack of social control. Accordingly, young people who experienced social pathologies (such as divorce and family disruption, lack of parental supervision, poverty, cultural heterogeneity, and residential instability) were considered more likely to engage in delinquent acts and become adult criminals, destined for a life of crime.

Armed with scientific methods to discover the causes of crime and delinquency, positivist criminologists seek to use this understanding to bring about change in individual criminals and their social environment. Using a medical analogy, criminologists in the early 1900s sought effective treatment and rehabilitation, directed at the individual and the social pathologies that caused

crime. While the pathological emphasis of positivist criminology gives the impression that criminality is determined and therefore unchangeable, the use of the scientific method to uncover the causes of crime gave hope that these pathologies could be understood and treated. The *rehabilitative ideal* emerged and prospered, especially with regard to children and adolescents.[47] Charles Cooley, a well-known sociologist, writing in 1896, declared: "when an individual actually enters upon a criminal career, let us try to catch him at a tender age, and subject him to rational social discipline, such as is already successful in enough cases to show that it might be greatly extended."[48]

Invention of The Juvenile Court

The concept of "juvenile delinquency" is a clear expression of the three historical developments we described: the discovery of childhood and adolescence, the English equity law doctrine of *parens patriae,* and the growing dominance of positivist thought in criminology. The legal designation of a "delinquent child" is an important part of the legislation that created the first juvenile court in the United States in 1899. In this section, we trace the evolution of thought and practice that led to the origins of the juvenile court.

Poor Laws, Charities, and Pauperism

Colonial America widely accepted the Christian theology of original sin, and many people believed that poverty and crime were expressions of this natural depraved state. Based on this view, three social institutions were emphasized in colonial times: family, church, and community. David Rothman writes, "Families were to raise their children to respect law and authority, the church was to oversee not only family discipline but adult behavior, and the members of the community were to supervise one another, to detect and correct first signs of deviancy."[49] When these institutions functioned well, towns were "spared the turbulence of vice and crime" and "enjoyed a high degree of order and stability."[50] However, when these institutions were unable to change the "sin nature" of children, a strong, uncompromising response was thought to be necessary. As we have already seen, "stubborn child laws" were developed in colonial America to "establish rules to govern when public officials could intervene in the family and what actions they could take."

In accordance with the Enlightenment concepts of childhood and adolescence, colonial Americans took family life and parenting very seriously. Benjamin Wadsworth, a minister and author of the popular child-rearing booklet, *The Well-Ordered Family* (1712), charged parents to "train up a child in the way wherein he should go" (Proverbs 22:6). Parents were to "govern their children well, restrain, reprove, correct them as there is occasion," and in so doing, instill moral integrity, self-reliance, and civic responsibility.[51]

Civic responsibility was a strong obligation in colonial America. It generated individual and social obligation to the poor, first informally, and then through formal provisions of law. In fact, the first colonial poor laws, legislated in the latter part of the seventeenth century, stipulated a community obligation to support

and "relieve" the poor. However, these local statutes merely stated the obligation, without specifying who should be considered "poor" or what provisions were to be provided to the poor.[52]

poor laws Laws enacted in colonial America that established a civic duty of private citizens to "relieve" the poor. These laws usually provided a definition of residence so that outsiders could not benefit from private relief. Legal authority was also granted for governmental agencies or private relief societies to separate poor children from their "undeserving" parents.

Colonial **poor laws** mirrored, but did not merely duplicate, those that had developed earlier in sixteenth-century England.[53] Sharing similar philosophy and purpose with the *parens patriae* doctrine, colonial communities (and later cities and states) developed a system for protecting poor children and, if necessary, separating them from their "undeserving parents."[54] This system grew to include laws, passed by local legislative bodies, regulating the poor; the creation of charitable organizations and relief societies; and, especially in urban places, government-sponsored institutions. Poor laws provided legal authority for governmental entities and authorized private philanthropic agencies to separate poor children from their parents and to apprentice these children to local residents. The apprenticeship system kept relief costs down because the child's labor paid for care, education, and training. However, the overall quality of the care and training was questionable, and in many cases, apprenticeship was merely a "business proposition" in which the child provided slave labor for a term.[55]

pauperism The view, popularly held throughout the nineteenth century, that children growing up in poverty, surrounded by depravity in their neighborhood and family, are destined to lives of crime and degradation.

Gradually, the view developed that poverty, if left unchecked, will lead children to "a future of crime and degradation," a process known throughout much of the nineteenth century as **pauperism**.[56] This point of view contrasted sharply from the doctrine of original sin, widely accepted in earlier times. Instead of focusing on the sinful nature of individuals, pauperism emphasizes a breakdown in social order.[57]

The working assumption of pauperism led to the creation of various institutions to help the poor. Institutional charity was thought to be superior to physical and nutritional care offered in the home, or financial support paid to the poor, because these noninstitutional forms of relief were thought to have " 'pauperized' the poor by creating habits of idleness and dependency."[58] Institutional relief efforts included the almshouse, workhouse, and poor house, which sought to motivate the poor out of poverty by hard work and strict discipline.[59] However, reformers soon realized that these institutional settings could similarly pauperize children by exposing them to adults "addicted to idleness and intemperance."[60]

Houses of Refuge and Moral Reform

In the first quarter of the nineteenth century, the state's parental authority derived from poor laws, and institutional efforts to respond to pauperism became increasingly focused on the plight of urban poor children. Because of the fear of pauperism, reformers were most concerned about the placement of poor children into pauper institutions, such as the municipal almshouse, "where they are liable to acquire bad habits and principles, and lay the foundation for the career of worthlessness and improvidence."[61] In fact, these reformers were more concerned about the placement of children into pauper institutions than about the mixing of delinquent children with adult criminals in jails and prisons. It was believed that children placed in adult penal facilities were already beyond the potential for reform.[62]

As an expression of this perspective, the New York House of Refuge was established in 1824 by the Society for the Reformation of Juvenile Delinquents, the successor to the Society for the Prevention of Pauperism. The House of Refuge dealt both with children who were convicted of crimes and those who were vagrant, but in practice almost all of its children were vagrants from pauper families.[63] State legislation gave the Society authority to manage the institution and the children under its custody.[64] **Houses of refuge** followed soon in Boston (1825) and Philadelphia (1828), and "for a quarter of a century the activities of these three institutions defined institutional treatment of juvenile delinquents."[65]

houses of refuge The first institutional facilities in the United States for poor, vagrant children. Both private and public refuges sought to protect and reform the "predelinquent."

David Rothman characterizes house of refuge reformers as conservative Protestants who desired to prevent pauperism and to protect and reform children, thereby sustaining order and stability in society.[66] Through legislation, "they widened the scope of permissible state intercession," and their emphasis on prevention, reform, and protection proved to be the "seeds of what came to be called the juvenile court."[67]

Not every vagrant or delinquent child was committed to a house of refuge, however; only those that could still be "rescued" and were not too far down the road of crime were admitted.[68] The focus of houses of refuge was to protect the "predelinquent." Little distinction was made between "pauper, vagrant, or criminal children"—all required protection and reform.[69] Reformers were convinced that these children were victims rather than offenders and that they needed to be removed from evil influences of urban poverty: "Pauperism then was the enemy; juvenile delinquency, like intemperance, ignorance, and gambling, was the symptom."[70] Reformers intended the house of refuge to be a sanctuary or haven, where children could be isolated from the wickedness of the world and where moral reform could take place.[71]

Assuming parental responsibility in an institutional setting proved to be a difficult task for houses of refuge. Though reformers firmly believed that parental neglect was the single greatest cause of delinquency, houses of refuge were not intended literally to replace parents by providing a surrogate home environment. Instead, houses of refuge were intended to provide moral reform.[72] John Sutton refers to houses of refuge as "moral institutions."[73] Moral reform involved four basic elements: a daily regimen, strict discipline, education, and work. David Rothman's provocative book, *The Discovery of the Asylum,* speaks of the house of refuge as a "well-ordered asylum."[74] Discipline was strictly enforced, based largely on solitary confinement and corporal punishment. Despite humanitarian and religious intentions, houses of refuge frequently became sites of physical abuse.[75]

As Case in Point, "A Typical Day at the New York House of Refuge" reveals, education and work consumed the daily life of children in houses of refuge. School in the early mornings and late at night, both before and after work, was intended not only to provide academic skills and achievement, but also to promote self-discipline and to instill morality and religion. Children in houses of refuge were also expected to work long and hard, doing physical labor and repetitive tasks such as making brass nails, finishing shoes, and wicker work.[76] The labor of children was sometimes contracted to manufacturers to provide revenue for houses of refuge. The apprenticeship system was also used, justified as a

CASE IN POINT

A Typical Day at the New York House of Refuge

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 dinner. At one, they again commence work and continue at it until five in the afternoon, when the labor of the day terminated. 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 variation during stormy weather, and the short days in winter.

Source: Quoted in Mennel, *Thorns & Thistles,* 18–19.

means for children to develop occupational skills. Apprenticeships accounted for about 90% of the children released each year from houses of refuge.[77] The most common apprenticeship placement for boys was with farmers, whereas for girls, maid service was the only socially acceptable form of indenture.[78]

The enthusiasm of house of refuge reformers was contagious, and numerous institutions of similar design opened across the United States during the 1840s and 1850s.[79] The philosophy and authority for placing children in houses of refuge was derived from the English equity law doctrine of *parens patriae*. In fact, the *parens patriae* doctrine was introduced into American law in an 1838 Pennsylvania Supreme Court case called *Ex parte Crouse,* in which the commitment of a young girl to a house of refuge was contested. While this case makes only brief mention of the doctrine, the intent and meaning appears deliberate: under the philosophy and purpose of the *parens patriae* doctrine, the government is granted legal authority to assume custody (guardianship) and parental responsibility.[80]

Based on her mother's petition, Mary Ann Crouse was committed by a justice of the peace to the Philadelphia House of Refuge for being incorrigible. The girl's father sought her release through a writ of habeas corpus, arguing that she had been deprived of the right to trial by jury guaranteed under the state con-

stitution. The Pennsylvania Supreme Court denied the motion, holding that parental custody and control of children is a natural, but not inalienable right, and if the parents fail to properly supervise, train, and educate their children, their rights as parents can be taken over by the state.[81] As one legal scholar noted: the judicial reasoning in *Ex Parte Crouse* authorized state government to "invade the home, replace the parents, and take custody of the child."[82]

Placing-Out and Orphan Trains

Even though houses of refuge continued to open during the 1850s, critics began to argue that "not only the discipline, but every detail of the routine made the houses of refuge indistinguishable from prisons."[83] Rather than becoming models of care, houses of refuge had become juvenile prisons, unable to nurture and reform children through an institutional approach.[84]

Beginning in the 1850s, reformers returned to the traditional belief that family homes, not institutions, were the best places for reform.[85] After leaving training for the ministry at Yale University, Charles Loring Brace (1826–1890) founded the New York Children's Aid Society in 1853. With the fervor of an evangelist, he argued that urban poverty bred a "dangerous class," prone to crime and violence, and the "poison" of society. Fueled by this fear, the New York Children's Aid Society sought to "drain the city" of poor and delinquent children through a practice called **placing-out**.[86] Placing-out involved taking groups of vagrant children, sometimes referred to as "urban waifs" or "street urchins," west by railroad, on "orphan trains," for placement with farming families. Brace believed that "the best of all Asylums for the outcast child is the farmer's home . . . the cultivators of the soil are in America our most solid and intelligent class."[87]

placing-out The practice, begun in the mid-1800s, in which philanthropic groups took vagrant and wayward urban children west by railroad to be placed in farm families.

Placing-out was apparently well received in many communities. Reports indicate that community members were excited and willing to take these youths into their homes, whether because of the prospect of free farm labor or a sense of civic obligation.[88] Placing-out programs were soon implemented by other organizations, but they were not without critics. Some saw Brace's unabashed faith in the reforming powers of rural family life as naive. Critics contended that it is next to impossible to take a poor, vagrant child off the streets and expect him or her to adjust to rural family life. The solution, according to these critics, was not to do away with the placing-out program, but to use the institutional setting beforehand for discipline and reform.[89] The New York Juvenile Asylum and the Pine Farm facility operated by the Boston Children's Aid Society were based upon this more formal placing-out model.

Reform Schools

The development of **reform schools**, beginning in the mid-nineteenth century, represents another way in which institutions were used to respond to the problem of dependency and juvenile crime. As the name implies, reform schools emphasized formal schooling. Instead of sandwiching school around a full day of work as houses of refuge did, reform school operated on a traditional school schedule.[90]

reform schools In the mid-1800s a new form of institution began to replace houses of refuge. These institutions emphasized education and operated with traditional school schedules. Many reform schools also used a cottage or family system in which children were grouped into "families" of forty or fewer.

Many reform schools used a cottage or family system in which children were divided into small "families" of forty or fewer. Each family had its own

cottage, matron and/or patron (mother or father), and schedule. Cottages were used to make the facility more like a family and less like a prison. Affectional discipline, rather than physical discipline, was used in an effort to generate conformity and instill good citizenship.[91] Some reform schools embraced Brace's conviction of reform through rural family and farm life and were therefore located in rural areas.[92]

Cottage reform schools spread widely across the United States in the latter half of the 1800s, but the degree of emphasis on the family ideal and the roles of schooling and work varied greatly. Some reform schools provided only large congregate housing of children, with little resemblance to family units.[93] Contract labor of children to manufacturers was a part of most reform schools, but after the Civil War, child labor became more exploitative in some schools.[94] In addition, as farming opportunities diminished, training in agriculture provided in some rural reform schools became less marketable as a learned trade. Similarly, changes in the nature of work brought on by the Industrial Revolution meant a significant reduction in apprenticeship opportunities—the means by which most children were released from reform schools. In response to this, some reform schools, especially those in the west, began to emphasize vocational education and deemphasize a family environment. These programs were oriented toward vocational education and often included military drill and organization.[95]

Placement or commitment to reform schools was based on the legal authority of the state, under *parens patriae,* to take over parental custody and control. The reform school, however, provided the context for the first significant legal challenges to the *parens patriae* doctrine, in the Illinois Supreme Court case *O'Connell v. Turner* (1870).[96]

Michael O'Connell was sent to the Illinois State Reform School under a state statute that authorized youths between the ages of six and seventeen to be committed based upon the charge of being "a vagrant, or destitute of proper parental care, wandering about the streets, or committing mischief or growing up in mendicancy, ignorance, idleness and vice."[97] A writ of habeas corpus challenged this commitment power when the decision was based solely on the dependency and neglect of the child, without criminal conviction. The Illinois Supreme Court agreed, ruling that a general consideration of the child's "moral welfare and the good of society" are not sufficient reasons for commitment to a reform school. The state law allowing this was ruled unconstitutional, and officials were ordered to discharge Michael O'Connell.[98]

The state Supreme Court's opinion questioned the state's *parens patriae* authority when protective custody was ordered based on the subjective consideration of parental care and supervision. The court's opinion stressed that parents have a right and responsibility to rear and educate their children that cannot be preempted by the government except under "gross misconduct [by the child] or almost total unfitness on the part of the parents."[99]

While the O'Connell decision focused on Illinois law and procedure and had considerable impact in that state, reformers continued their efforts to allow and encourage governmental intervention in the lives of dependent, neglected, and delinquent children. The Chicago Reform School closed in 1872, two years af-

ter the court's decision, and legislation repealed jurisdiction over "misfortune" (dependency and neglect) cases.[100]

The Child-Saving Movement

The O'Connell decision and the closure of the Chicago Reform School were signs of changing societal attitudes. By the end of the Civil War, juvenile institutions had become increasingly custodial and repressive: "Those who sought to reform juvenile delinquents in mid-19th century America spoke the lofty language of nurture and environmentalism. Reform schools, they claimed, were not prisons but home-like institutions, veritable founts of generous sentiment. In fact, they were prisons, often brutal and disorderly ones."[101] By the late nineteenth century, little enthusiasm and hope remained for the institutions that had once been heralded as places of protection and reform for vagrant and delinquent children.[102]

Despite these concerns, the problems of urban poverty and delinquency persisted and, in fact, grew worse. Forces of industrialization, urbanization, and immigration weakened the cohesiveness of communities and the abilities of communities and families to socialize and control children effectively.[103] The Illinois Board of State Commissioners of Public Charities expressed grave concern in an 1898 report: "There are at the present moment in the State of Illinois, especially in the city of Chicago, thousands of children in need of active intervention for their preservation from physical, mental and moral destruction. Such intervention is demanded, not only by sympathetic consideration for their well-being, but also in the name of the commonwealth, for the preservation of the State. If the child is the material out of which men and women are made, the neglected child is the material out of which paupers and criminals are made."[104]

The Board of Charity lamented the lack of resources for juveniles. Dependent children were left to charity institutions that housed both adults and children. Delinquent children were incarcerated in adult jails, with adult criminals, and they were adjudicated in adult courts, without special consideration. The few juvenile institutions that did exist were largely private and often sponsored by religious denominations. Reformers felt that the state had shirked its responsibility for the care and protection of children.[105]

Despite these problems, the late nineteenth century was a time of optimism, not pessimism. The period between 1880 and 1920 is known as the Progressive Era in US history. The government's role in reform was reassessed, especially in terms of program and policy delivery, administration, and government structure.[106] In the late 1800s, these progressive principles were applied to the problem of juvenile delinquency by the **child-saving movement**. The child-saving movement was a loose collection of women across the United States from middle- and upper-class backgrounds who exercised considerable influence in mobilizing change in how government dealt with dependent, neglected, and delinquent children.

Scholars have long debated the motives behind the child savers' reform efforts. Traditional explanations of the child-saving movement emphasize the "noble sentiments and tireless energy of middle class philanthropists."[107] Another point of view holds that child savers were progressive reformers seeking

child-saving movement A loose collection of women from middle- and upper-class backgrounds who exercised considerable influence in mobilizing change in how government dealt with dependent, neglected, and delinquent children. One particular child-saving group, the Chicago Women's Club, is largely responsible for the creation of the first juvenile court in Chicago.

to "alleviate the miseries of urban life and to solve social problems by rational enlightenment and scientific methods."[108] Still others argue that the child-saving movement was an effort by the ruling class to repress newly arriving immigrants and the urban poor and to preserve its own way of life.[109] Regardless of which explanation is correct, leading child savers were prominent, influential, philanthropic women, who were "generally well educated, widely traveled, and had access to political and financial resources."[110] Additionally, child savers viewed their work as a humanitarian "moral enterprise," seeking to "strengthen and rebuild the moral fabric of society."[111]

Child-saving was largely women's work. Middle-class women "extended their housewifely roles into public service and used their extensive political contacts and economic resources to advance the cause of child welfare."[112] The child savers argued that women were uniquely suited to work with dependent and delinquent children.[113] Women involved in the child-saving movement proclaimed that the domestic role of women made them better equipped to take on the task of child-saving: "the child savers... vigorously defended the virtue of traditional family life and emphasized the dependence of the social order on the proper socialization of children. They promoted the view that women were more ethical and genteel than men, better equipped to protect the innocence of children, and more capable of regulating their education and recreations."[114]

Creation of the Juvenile Court (1899)

The child savers realized that "child-welfare reform could only be accomplished with the support of political and professional organizations."[115] At the 1898 annual meeting of the Chicago Bar Association, a resolution was introduced calling for the appointment of a committee to "investigate existing conditions relative to delinquent and dependent children" and to develop legislation for reform.[116] One month later, the Illinois Conference of Charities devoted most of its program to child-saving issues. Frederick Wine's closing speech expressed the sentiment of the conference (see the Case in Point feature on this topic). His words closely agreed with those of the Chicago Bar Association's resolution calling for "a separate system" for juveniles. The Conference of Charities, like the Bar Association, concluded its meeting by appointing a committee to cooperate with other child-saving agencies to draft a juvenile court bill.[117]

A collaborative effort between the Chicago Women's Club, the Chicago Bar Association, and the Illinois Conference of Charities resulted in a bill that was introduced to the House of Representatives in February 1899 and shortly thereafter to the Senate. The bill was passed on April 14th, the last day of the session.[118] See Case in Point, "Excerpts from *An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children* (The Illinois Juvenile Court Act of 1899)," for particularly relevant sections of the act.

The Juvenile Court Act did not represent radical reform; rather, it consolidated existing practices.[119] In fact, in the years before the bill was drafted, a number of other states already practiced some of the innovations advanced in the Juvenile Court Act. For example, Massachusetts, in 1874, and New York, in 1892, passed laws that provided for separate trials of minors, apart from adults, and Massachusetts developed a system of probation in 1846.[120] Anthony Platt, author of *The Child Savers: The Invention of Delinquency,* observes that "special

CASE IN POINT

Excerpt from Frederick Wine's Closing Speech to the Illinois Conference of Charities, 1898

We make criminals out of children who are not criminals by treating them as if they were criminals. That ought to be stopped. What we should have, in our system of criminal jurisprudence, is an entirely separate system of courts for children, in large cities, 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. We want some place of detention for those children other than prison. . . . No child ought to be tried unless he has a friend in court to look after his real interest. There should be someone there who has the confidence of the judge, and who can say to the court, "Will you allow me to make an investigation of this case? Will you allow me to make a suggestion to the court?"

Source: Platt, *Child Savers,* 132.

provisions for the protection and custody of 'delinquent' children apart from adult offenders existed in the United States long before the enactment of the juvenile court in 1899."[121]

Nonetheless, the creation of the juvenile court culminated a century-long evolution of thought and practice by which juveniles were differentiated from adults both in terms of development and control.[122] The new juvenile court established a separate system that is noteworthy in terms of (1) structure and jurisdiction, (2) legal authority under the expansion of *parens patriae,* and (3) legal philosophy and process.

Structure and Jurisdiction of the Juvenile Court

The Illinois Juvenile Court Act was the "first legislation in the United States to specifically provide for a separate system of juvenile justice."[123] As described in Section 3 of the act, the juvenile court was made up of a designated judge of the circuit court, a "special courtroom," and separate records ("Juvenile Record"). The act specifically refers to this court as the "Juvenile Court." The personnel that made up the first juvenile court were separate and distinct from the personnel that made up the adult court (see Case in Point, "Personnel of the Original Chicago Juvenile Court," page 34).

This new court structure was designed to remove children from the adult criminal justice system, and create special programs for delinquent, dependent, and neglected children.[124] As the US Supreme Court observed in the groundbreaking case, *In re Gault* (1967): "The early reformers were appalled by the adult procedures and penalties and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals."[125] The child savers' goal was first to create a separate system of justice for juveniles, and then to distinguish that system from the adult criminal justice system in terms of legal philosophy and process.

CASE IN POINT

Excerpts from *An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children* (The Illinois Juvenile Court Act of 1899)

Section 1. Definitions. This act shall apply only to children under the age of sixteen (16) years. . . . For the purposes of this act the words **dependent child** and **neglected child** shall mean any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame or with a vicious or disreputable person; or whose home, by reason of neglect, or cruelty or depravity on the part of parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of eight (8) years who is found peddling or selling any article or singing or playing any musical instrument upon the streets or giving any public entertainment. The words **delinquent child** shall include any child under the age of sixteen (16) who violates any law of the State or any city or village ordinance. . . .

Section 3. Juvenile Court. In counties having over 500,000 population the **judges** of the circuit court shall, at such times as they shall determine, designate one or more of their number whose duty it shall be to hear all cases coming under this act. A special courtroom, to be designated as the **juvenile courtroom,** shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books to be kept for that purpose and known as the **"Juvenile Record,"** and the court may, for convenience, be called the "**Juvenile Court**. . . ."

Section 6. Probation Officers. The court shall have authority to appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court; said probation officers to receive no compensation from the public treasury. In case a probation officer shall be appointed by any court, it shall be the duty of the clerk of the court, if practical, to notify the said probation officer in advance when any child is to be brought before the said court; it shall be the duty of the said probation officer to make such investigation as may be required by the court; to be present in court in order to represent the interests of the child when the case is heard; to furnish the court such information and assistance as the judge may require; and to take such charge of any child before and after trial as may be directed by the court.

Section 7. Dependent and Neglected Children. When any child under the age of sixteen (16) years shall be found to be dependent or neglected within the meaning of this act, the court may make an order **committing the child** to the care of some suitable State institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or an industrial school, as provided by law, or to the care of some association willing to receive it embracing in its objects the purpose of caring or obtaining homes for dependent or neglected children, which association shall have been accredited as hereinafter provided. . . .

Section 9. Disposition of Delinquent Children. In the case of a delinquent child the court may continue the hearing from time to time and may **commit the child** to the care and guardianship of a probation officer duly appointed by the court and may allow said child to remain in its own home, subject to the visitation of the probation officer; such child to report to the probation officer as often as may be required and subject to be returned to the court for further proceeding, whenever such action may appear to be necessary, or the court may commit the child to the care and guardianship of the probation officer, to be placed in a suitable family home, subject to the friendly supervision of such probation officer, or it may authorize the said probation officer to board out the said child in some suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until a suitable provision may be made for the child in a home without such payment; or the court may commit the child, if a boy, to a training school for boys, or if a girl, to an industrial school for girls. Or, if the child is found guilty of any criminal offense, and the judge is of the opinion that the best interest requires it, the court may commit the child to any institution within said county incorporated under the laws of this State for the care of delinquent children, or provided by a city for the care of such offenders, or may commit the child, if a boy over the age of ten (10) years, to the State reformatory, or if a girl over the age of ten (10) years, to the State Home for Juvenile Female Offenders. In no case shall a child be committed beyond his or her minority. A child committed to such institution shall be subject to the control of the board of managers thereof, and the said board shall have power to parole such child on such conditions as it may prescribe, and the court shall, on the recommendation of the board, have power to discharge such child from custody whenever in the judgement of the court his or her reformation shall be complete; or the court may commit the child to the care and custody of some association that will receive it, embracing in its objects the care of neglected and dependent children and that has been duly accredited as hereinafter provided. . . .

Source: Illinois Statute 1899, Section 131 (emphasis added).

CASE IN POINT

Personnel of the Original Chicago Juvenile Court

Descriptions of the procedures of the early juvenile court indicate that it was informal and family-like. The image conjured up is of a kindly judge, sitting in a big chair at a table next to a frightened youth (in a much smaller chair). The judge dispenses fatherly wisdom to a repentant and receptive lad. When one looks at the positions that made up the original juvenile court, however, a very different picture emerges. The early juvenile court was composed primarily of law enforcement personnel, not judicial personnel. In his study of the first juvenile court in Chicago, Anthony Platt provides a roster of the original court's personnel.

The personnel of Cook County juvenile court consisted of

1. **six probation officers** paid from private sources, particularly the Chicago Woman's Club,
2. "**one colored woman** who devoted her entire time to the work, free of charge, and whose services are invaluable to the court as she takes charge of all the colored children,"
3. **twenty-one truant officers** paid by and responsible to the Board of Education,
4. **sixteen police officers,** paid by the Chicago police department, assigned to "assist the general probation officers in their visitation work," and
5. **thirty-six private citizens** who were occasionally responsible for supervising children on probation.

In effect, the court staff was primarily composed of police and truant officers, thus facilitating the arrest and disposition of delinquent youth. The juvenile court provided its own policing machinery and removed many distinctions between the enforcement and adjudication of laws.

Source: Platt, *Child Savers,* 139–140.

The full title of the legislation that created the juvenile court indicates that the new court was granted jurisdiction over both juvenile delinquents and dependent and neglected children. As such, the juvenile court was deliberately created to have broad jurisdiction over almost all juvenile matters. The act defined a *delinquent child* as "any child under the age of sixteen (16) who violates any law of the State or any city or village ordinance" (see Case in Point, "Excerpts").[126] The definition of a *dependent* and *neglected child* was much longer and far more sweeping, covering a wide range of conditions from which children must be protected, including homelessness, lack of parental care or guardianship, and parental neglect and abuse. Notice too that dependency and neglect includes a child who "habitually begs or receives alms" or "any child under eight

(8) years who is found peddling or selling any article or singing or playing any musical instrument upon the streets or giving any public entertainment." Taken together, the newly established juvenile court was given broad jurisdiction in all matters of dependency, neglect, and delinquency.

Such broad jurisdiction, however, blurred the distinctions among dependent, neglected, and delinquent children. Regardless of the reason for referral, the early juvenile court was ready and willing to step in if natural parents failed to fulfill their proper function.[127]

Legal Authority: *Parens Patriae*

Robert Mennel observes that "the creation of the juvenile court represented both a restatement and an expansion of the *parens patriae* doctrine."[128] A 1905 Pennsylvania Supreme Court case, *Commonwealth v. Fisher,* expressed the legal authority of the new juvenile court under *parens patriae:* "To save a child from becoming a criminal, or from 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 unable or unwilling 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."[129]

Sections 7 and 9 of the Illinois Juvenile Court Act of 1899 prescribe the authority of the juvenile court in dealing with dependent and neglected children, and providing "disposition of delinquent children" (see Case in Point, "Excerpts"). For dependent and neglected children, the court was granted the authority to "make an order committing the child to the care . . . of some reputable citizen of good moral character," or to a public or private agency or institution. For delinquent children, the act stated that the juvenile court "may commit the child to the care and guardianship of the probation officer." This "care and guardianship" authorized the probation officer to allow the child to remain at home under probation supervision, or to place the child in "a suitable family home" or institution. In either case, the duty of probation officers, as specified in this law (Sections 6 and 9), was to conduct investigations into the social background of youths, "represent the interests of the child" in court, and provide "friendly supervision" when the child was committed to them by the court. Section 6 of the act points out that probation officers were "to receive no compensation from the public treasury." They worked as volunteers or were paid by private philanthropic organizations, such as the Chicago Women's Club.

The act also identified a variety of institutional commitments, including training and industrial schools, the State Home for Juvenile Female Offenders, and the boys' State Reformatory. As an indication of the blurred distinction between delinquent and dependent children, the act stated that a juvenile found guilty of a criminal offense could be placed with a philanthropic association that provided "care of neglected and dependent children." It is important to recognize that the original juvenile court statute allowed for commitment to a wide variety of private and public institutions and agencies.[130]

Although the spirit of the Illinois Juvenile Court Act affirmed the value of home and family life, the variety of commitment options stipulated in the act allowed the juvenile court to assume parental responsibility, either through a probation officer,

an institution, or a philanthropic association. This authority clearly reflects the *parens patriae* doctrine.[131] The closing passage of the act reaffirms this:

> *This act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody, and discipline of a child shall approximate... that which should be given by its parents and in all cases where it can properly be done the child placed in an improved family home and become a member of the family by legal adoption or otherwise.*[132]

Legal Philosophy and Process: The "Rehabilitative Ideal"

In advocating for the juvenile court, the child savers sought not only a separate legal system for juveniles, but also a legal philosophy and process that distinguished juvenile courts from adult criminal courts. In a 1909 article in the *Harvard Law Review,* Judge Julian Mack, the second judge of the Chicago Juvenile Court, declared:

> *Why is it not just and proper to treat these juvenile offenders as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the State, instead of asking merely whether a boy or a girl has committed the specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.*[133]

rehabilitative ideal The traditional legal philosophy of the juvenile court, which emphasizes assessment of the youth and individualized treatment, rather than determination of guilt and punishment.

This distinctive legal philosophy of the original juvenile court has been called the **rehabilitative ideal** because of its emphasis on assessment and reform, rather than the determination of guilt and punishment as in criminal courts.[134] The rehabilitative ideal is clearly founded on the *parens patriae* doctrine, giving the state, through the juvenile courts, the authority and obligation to assume parental responsibility. Rehabilitation became the focus of the new juvenile court, and procedures were developed to reflect and facilitate this ideal. In the same article, Judge Mack characterized the judicial procedures that should accompany this distinctive legal philosophy:

> *The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of the work.*[135]

The *parens patriae* doctrine was adopted from the English chancery courts, which did not have criminal jurisdiction. Thus, the juvenile court was created

as a civil court, not as a criminal court.[136] The civil law tradition of *parens patriae,* together with the rehabilitative ideal, resulted in at least three important implications for the legal procedures of the early juvenile court: (1) diminished criminal responsibility of juveniles, (2) a child welfare approach operating on the concept of the "best interests of the child" and (3) informal and family-like procedures.

1. **Diminished criminal responsibility of juveniles**: Drawn from the developmental concepts of childhood and adolescence, the early juvenile court held that children and adolescents less than sixteen years of age lacked the capacity to commit crime. This presumption of incapacity acknowledged that young people could not be held legally responsible for their offenses because they lacked physical and mental maturity.[137] Viewed in this way, juveniles were not charged with or convicted of criminal offenses, and rehabilitation, not punishment, was the appropriate outcome of the juvenile court process. Judge Mack states, "children were no longer to be dealt with as criminals, but rather through the *parens patriae* power of the state were to be treated as wards of the state, not fully responsible for their conduct and capable of being rehabilitated."[138]
2. **A child welfare approach—the "best interests of the child"**: The child savers envisioned the juvenile court as a welfare system, rather than a judicial system.[139] As a result, the prevailing goal of the juvenile court was to protect, nurture, reform, and regulate the dependent, neglected, and delinquent child. The role of the juvenile court was not to determine guilt or innocence, but to ascertain the character and needs of an offender by analyzing his or her social background so that the court could make a full determination of what was in the "**best interests of the child**."[140]

   The early juvenile court's intense focus on the individual juvenile offender, rather than the offense, coincides with the rise of positivist criminology in the late nineteenth and early twentieth centuries. Using detailed social histories, the juvenile court sought to uncover the causes of a youth's delinquent behavior and thereby provide a "proper diagnosis."[141] The identification of pathological traits and conditions was then used to develop a treatment program that was individualized to the child.[142]

   Because the juvenile court was primarily interested in determining the "best interests of the child," based upon a scientific assessment of the "total child," it gave little consideration to the reason for referral—dependency, neglect, or delinquency.[143] The referral offense was merely a symptom that the juvenile court had to assess more thoroughly in order to uncover the "real needs" of the child.[144] According to Harvey Baker, judge of the early Boston juvenile court, "The court does not confine its attention to just the particular offense which brought the child to its notice. For example, a boy who comes to court for some trifle as failing to wear a badge when selling papers may be held on probation for months because of difficulties at school; and a boy who comes in for playing ball on the street may . . . be committed to a reform school because he is found to have habits of loafing, stealing or gambling which can not be corrected outside."[145]

"best interests of the child" The overarching interest of the traditional juvenile court to assess the needs of the youth and then to seek physical, emotional, mental, and social well-being for that youth through court intervention.

3. **Informal and family-like procedures**: In an effort to bring about the rehabilitative ideal, the original juvenile court discarded the rules of criminal procedure. Anthony Platt observes that "the administration of juvenile justice differed in many important respects from the criminal court process. A child was not accused of a crime but offered assistance and guidance; intervention in his life was not supposed to carry the stigma of a criminal record; judicial records were not generally available to the press or public, and hearings were conducted in relative privacy; proceedings were informal and due process safeguards were not applicable due to the court's civil jurisdiction."[146]

   In place of due process of law, the juvenile court developed an informal process in which the judge, much like a parent, tried to find out all about the child.[147] Judge Tuthill, the first judge of the Chicago Juvenile Court described his approach as follows: "I have always felt, and endeavored to act in each case, as I would were it my own son who was before me in the library at home, charged with some misconduct."[148]

   The physical setting of the juvenile court was intended to facilitate the rehabilitative ideal. The new juvenile court building that opened in Chicago in 1907 was designed to provide an informal, family-like setting for juvenile court hearings: "The hearings will be held in a room fitted up as a parlor rather than a court, around a table instead of a bench.... The hearing will be in the nature of a family conference, in which the endeavor will be to impress the child with the fact that his own good is sought alone."[149]

   Juvenile court reformers also introduced euphemistic legal terminology in order to avoid reference to the harsh, adversarial process of adult criminal courts.[150] To initiate the juvenile court process, a *petition* is filed *"in the welfare of the child,"* whereas the formal legal document that initiates the adult criminal process is an *indictment* or an *information.* The proceedings of juvenile courts are referred to as *hearings,* instead of *trials,* as in adult courts. Juvenile courts find youths to be *delinquent,* rather than *guilty of an offense.* Finally, juvenile delinquents are given a *disposition,* instead of a *sentence,* as in adult criminal courts.

The juvenile court was clearly an idea ripe for its time. The Illinois Juvenile Court Act of 1899 was "a prototype for legislation in other states and juvenile courts were quickly established in Wisconsin (1901), New York (1901), Ohio (1902), Maryland (1902), and Colorado (1903)."[151] By 1925, all but two states, Maine and Wyoming, had juvenile court laws.[152] The juvenile justice systems that emerged from legislation were composed of newly created juvenile courts together with a collection of private and public institutions and community programs, all embracing the rehabilitative ideal and empowered by *parens patriae.*[153]

The Second Revolution: Transformation of Juvenile Justice Thought and Practice

Although the new juvenile court system proved wildly popular and spread rapidly, it was not without critics. Some scholars questioned the intent of child-

saving reformers, arguing that they were self-serving, middle- and upper-class women whose sole goal was to maintain the status quo by implementing new and powerful control strategies through the creation of the juvenile court.[154] Other scholars claimed that, while reformers may have been well-intended, the rhetoric of reform was never really achieved in the newly created juvenile justice systems. From their point of view the resulting systems were even more punitive and authoritarian than the earlier child welfare systems that were used in combination with adult criminal courts. In addition, the new juvenile justice systems were given extensive, almost unbridled, authority under the rehabilitative ideal and expanded *parens patriae*.[155]

Despite occasional criticism, juvenile courts across the United States achieved high regard in the decades following their creation. The few reports of problems were viewed as "minor imperfections soon to be corrected by a continually improving system."[156] The confidential records and closed hearings of juvenile courts made them inaccessible and effectively above reproof.

Challenges to the Traditional Juvenile Court

Shortly after World War II, criticism of the juvenile court began to mount. In 1946, criminologist Paul Tappan wrote a widely read and influential article entitled "Treatment without Trial?"[157] In this article, Tappan criticized the juvenile court's failure to provide due process of law. **Due process of law** refers to the procedural rights established in the Constitution (especially the Bill of Rights) and extended through appellate court decisions. Under the guise of the rehabilitative ideal, and empowered by *parens patriae,* the procedures of the original juvenile court were informal and family-like, making the rules of criminal procedure inapplicable. In a 1966 ruling, the Supreme Court observed, "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."[158]

due process of law Procedural rights established in the Constitution (including the Bill of Rights) and extended through appellate court decisions that are based upon individual freedoms and limitation of governmental powers.

Beginning in the 1960s and persisting until the 1980s, legal challenges were mounted against the informalities of the juvenile justice system.[159] This movement involved a series of Supreme Court cases that radically altered juvenile justice procedures.

The 1960s also ushered in empirical challenges to the juvenile justice system.[160] Most actively in the 1970s, evaluation research seriously questioned the effectiveness of individualized treatment, rehabilitation, and community control.[161] While this research considered both juvenile and adult correctional methods, it directed significant attention at the rehabilitative ideal of the juvenile court. In his book, *Radical Non-Intervention,* Edwin Schur argued for a drastic reduction in the juvenile justice system's reliance on treatment and rehabilitation. Instead, he advocated a "return to the rule of law," involving the reduction of discretionary powers of the juvenile court, diversion of less serious offenders, and intervention for only the most serious crimes.[162]

In the years following these challenges, the juvenile justice system was altered dramatically. Prevailing views of juvenile delinquency and the proper approach of the juvenile justice system changed significantly. A number of criminologists have argued that these changes were so consequential as to constitute a revolution comparable to the one that first created the juvenile court—

a "second revolution."[163] Three areas of change have been most pronounced: (1) the due process revolution, (2) enactment of the Juvenile Justice and Delinquency Prevention Act of 1974, and (3) contemporary initiatives for punishment and accountability.

The Due Process Revolution in Juvenile Justice

Since its inception, the juvenile court has been described as civil, rather than criminal. With the express purpose of protection and reform, the rehabilitative ideal of the juvenile court made the due process protections afforded criminal defendants unnecessary.[164] In the ten-year period from 1966 to 1975, however, the US Supreme Court took an activist stand in establishing due process requirements for the juvenile justice system. Five cases handed down during this period dramatically altered the procedures of the traditional juvenile justice system. The following case summaries are drawn from an overview of significant Supreme Court cases offered by Howard Snyder and Melissa Sickmund from the National Center for Juvenile Justice.[165] The case details provide insight into the dynamics of legal change occurring during the juvenile due process revolution.

Kent v. United States (1966)[166]

While on probation for an earlier offense, Morris Kent, age 16, was charged with rape and robbery for an incident in which he broke into a woman's apartment, raped her, and stole her wallet. Kent confessed to these offenses, as well as to several similar incidents. The judge of the juvenile court waived the case to adult court after making a "full investigation." Without a waiver hearing, the juvenile court judge did not describe the investigation or the grounds for the waiver. Kent was subsequently found guilty in criminal court on 6 counts of breaking and entering and robbery and sentenced to 30 to 90 years in prison. Kent's attorney appealed the waiver, arguing that it was invalid. He also filed a writ of habeas corpus asking the State to justify Kent's detention. Appellate courts rejected both the appeal and the writ. In appealing to the US Supreme Court, Kent's attorney argued that the judge had not made a complete investigation and that Kent was denied constitutional rights simply because he was a minor. The Court ruled the waiver invalid, stating that Kent was entitled to a hearing that measured up to "the essentials of due process and fair treatment." The opinion of the Court stated that Kent should have been granted a formal hearing on the motion of waiver, with representation, and that his attorney must be given access to all records involved in the waiver. The ruling also stated that the juvenile court must provide a written statement of the reasons for waiver.

In re Gault (1967)[167]

Gerald Gault, age 15, was on probation in Arizona for a minor property offense when he and a friend made a crank telephone call to an adult neighbor, asking her, "Are your cherries ripe today?" and "Do you have big bombers?" Identified by the neighbor, the youths were arrested and detained. The victim did not appear at the adjudication hearing, and the court never resolved the issue of whether Gault made the "obscene" remarks. Nonetheless, Gault was committed to a training school. The maximum sentence for an adult would have been a $50 fine or 2 months in jail. An attorney obtained for Gault after the trial filed a writ

of habeas corpus that was eventually heard by the US Supreme Court. The issue presented in the case was the denial of Gault's constitutional rights for due process of law, including notice of charges, counsel, questioning of witnesses, protection against self-incrimination, transcript of the proceedings, and appellate review. The Court ruled that, in hearings that could result in commitment to an institution, juveniles have the right to notice and counsel, the right to question witnesses, and the right to protection against self-incrimination. The Court did not rule on a juvenile's right to appellate review or transcripts, but it encouraged the States to provide those rights. The Court based its ruling on the fact that Gault was being punished rather than helped by the juvenile court. The Court explicitly rejected the doctrine of *parens patriae* as the founding principle of juvenile justice, describing the concept as "murky" and of "dubious historical relevance." The Court concluded that the handling of Gault's case violated the due process clause of the Fourteenth Amendment: "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."

In re Winship (1970)[168]

Samuel Winship, age 12, was charged with stealing $112 from a woman's purse in a store. A store employee claimed to have seen Winship running from the scene just before the woman noticed the money was missing; others in the store stated that the employee was not in a position to see the money being taken. Winship was adjudicated delinquent and committed to a training school. New York juvenile courts operated under the civil court standard of "preponderance of evidence." The court agreed with Winship's attorney that there was "reasonable doubt" of Winship's guilt, but based its ruling on the "preponderance of evidence." Upon appeal to the Supreme Court, the central issue in the case was whether "proof beyond a reasonable doubt" should be considered among the "essentials of due process and fair treatment" required during the adjudicatory stage of the juvenile court process. The Court rejected lower court arguments that juvenile courts were not required to operate on the same standards as adult courts because juvenile courts were designed to "save" rather than to "punish" children. The Court ruled that the "reasonable doubt" standard should be required in all delinquency adjudications.

McKeiver v. Pennsylvania (1971)[169]

Joseph McKeiver, age 16, was charged with robbery, larceny, and receiving stolen goods. He and 20 to 30 other youths allegedly chased 3 youths and took 25 cents from them. McKeiver met with his attorney for only a few minutes before his adjudicatory hearing. At the hearing, the attorney's request for a jury trial was denied by the court. McKeiver was subsequently adjudicated and placed on probation. His case was appealed to the Pennsylvania State Supreme Court, which cited recent decisions of the US Supreme Court that attempted to include more due process in juvenile court proceedings without eroding the essential benefits of the juvenile court. The State Supreme Court affirmed the lower court, arguing that of all due process rights, trial by jury is most likely to "destroy the traditional character of juvenile proceedings." The US Supreme Court found that the due process clause of the Fourteenth Amendment did not require jury

trials in juvenile court. The impact of the Court's *Gault* and *Winship* decisions was to enhance the accuracy of the juvenile court process in the fact-finding stage. In *McKeiver,* the Court argued that juries are not known to be more accurate than judges in the adjudication stage and could be disruptive to the informal atmosphere of the juvenile court by tending to make it more adversarial.

Breed v. Jones (1975)[170]

In 1970, Gary Jones, age 17, was charged with armed robbery. Jones appeared in Los Angeles juvenile court and was adjudicated delinquent on the original charge and two other robberies. At the dispositional hearing, the judge waived jurisdiction over the case to criminal court. Counsel for Jones filed a writ of habeas corpus, arguing that the waiver to criminal court violated the double jeopardy clause of the Fifth Amendment. The court denied this petition, saying that Jones had not been tried twice because juvenile adjudication is not a "trial" and does not place a youth in jeopardy. Upon appeal, the US Supreme Court ruled that an adjudication in juvenile court, in which a juvenile is found to have violated a criminal statute, is equivalent to a trial in criminal court. Thus, Jones *had* been placed in double jeopardy. The Court also specified that jeopardy applies at the adjudication hearing when evidence is first presented. Waiver cannot occur after jeopardy attaches.[171]

In the years that followed these cases, the US Supreme Court continued to hear cases that had impact on the proceedings of the juvenile justice system, but the number and scope of these cases diminished. Taken together, however, these five cases dramatically changed the character and procedures of the juvenile justice system. The rehabilitative ideal of the traditional juvenile court, together with its *parens patriae* authority, was diminished drastically, making juvenile courts more like criminal courts.

The Juvenile Justice and Delinquency Prevention Act of 1974

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 embodied a series of reforms to redefine juvenile delinquency and redirect the legal philosophy, authority, and procedures of the juvenile justice system. Three groups directly influenced these reform efforts: the President's Commission on Law Enforcement and Administration of Justice, the National Council on Crime and Delinquency, and the National Advisory Commission on Criminal Justice Standards and Goals.[172]

President's Commission on Law Enforcement and Administration of Justice

Established in 1965 by executive order of President Johnson, the President's Commission on Law Enforcement and Administration of Justice was charged with the task of examining the extent and nature of crime and what could be done about it. As part of this task, the Commission was directed to conduct an analysis of juvenile crime and the workings of the juvenile justice system and then to make recommendations based on the analysis. The Commission drew attention to the widening gap between the rehabilitative ideal of the original juvenile court and the actual juvenile justice practices: "The great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded

significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender."[173] In particular, the Commission expressed grave concern about the juvenile court's power over children with regard to noncriminal conduct, suggesting that perhaps this facet of the juvenile court's authority over children should be eliminated.[174]

Based on its inquiry, the Commission recommended handling minor offenders in the community instead of juvenile court (diversion). The Commission advocated the development of community resources (especially neighborhood centers, called "youth service bureaus") that would provide a wide variety of services to youth and families and make referrals to community-based programs.[175] These community-based efforts were justified in terms of delinquency prevention: "What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, or psychiatrist."[176]

Several recommendations of the Commission were noteworthy: narrowing the jurisdiction of the juvenile court to youth who violated the criminal law, limiting the use of detention and incarceration, expanding use of informal dispositions at prejudicial screenings, and developing community alternatives to formal court proceedings.[177] For serious offenders, however, the Commission envisioned a more formal, punitive system: "Court adjudication and disposition of those offenders should no longer be viewed solely as a diagnosis and prescription for cure, but should be frankly recognized as an authoritative court judgment expressing society's claim to protection. . . . Accordingly, the adjudicatory hearing should be consistent with basic principles of due process."[178]

National Council on Crime and Delinquency

In 1966, the President's Commission requested that the National Council on Crime and Delinquency (NCCD) survey state and local correctional agencies and institutions across the United States. The survey showed widespread use of detention facilities for juveniles accused of noncriminal conduct (status offenses, dependency, and neglect), often without court petitions. As a result of the survey, the NCCD recommended that "no child be placed in any detention facility unless he is a delinquent or alleged delinquent and there is substantial probability that he will commit an offense dangerous to himself or the community."[179] The NCCD additionally recommended that noncriminal youths, including dependent and neglected children, should not be placed in detention facilities or committed to institutions with delinquent offenders.

National Advisory Commission on Criminal Justice Standards and Goals

The third group to marshal reform of the juvenile justice system through the JJDP Act was the National Advisory Commission on Criminal Justice Standards and Goals. Established in 1971, the National Advisory Commission was created to formulate model criminal and juvenile justice standards, goals, and practices. After extensive study, the National Advisory Commission concluded that "first priority should be given to preventing juvenile delinquency, to minimizing the involvement of young offenders in the juvenile and criminal justice system, and

to reintegrating delinquent and young offenders into the community."[180] The National Advisory Commission also recommended that "the delinquency jurisdiction of the court should be limited to those juveniles who commit acts that if committed by an adult would be criminal, and that juveniles accused of delinquent conduct would not under any circumstances be detained in facilities for housing adults accused or convicted of crime."[181]

The message coming from these three groups was consistent: the juvenile justice system is not the panacea the child savers hoped it would be. The findings and recommendations of these three groups formed the basis for the JJDP Act of 1974. This act was the first major federal initiative to address juvenile delinquency in a comprehensive manner.[182] Primary responsibility for juvenile justice had historically existed at the state and local levels; the JJDP Act established a leadership role for the federal government through the creation of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The JJDP Act established juvenile justice goals and policies and committed ongoing financial assistance to aid their implementation at the state and local levels.[183] The most assertive parts of the JJDP Act were four "system reform mandates," which attorney Kathleen Kositzky Crank summarizes as follows.

status offender A juvenile who has committed an act that would *not* be a crime if committed by an adult.

1. **Deinstitutionalization of status offenders.** The deinstitutionalization of status offenders mandate provides, as a general rule, that no **status offender** (a juvenile who has committed an act that would not be a crime if committed by an adult) or non-offender [a dependent and neglected child] may be held in secure detention or confinement. . . .
2. **Sight and sound separation.** The separation mandate provides that juveniles shall not be detained or confined in a secure institution in which they may have contact with incarcerated adults, including inmate trustees. This requires complete separation such that there is no sight or sound contact with adult offenders in the facility. . . .
3. **Jail and lockup removal.** The jail and lockup removal mandate establishes as a general rule that all juveniles who may be subject to the original jurisdiction of the juvenile court based on age and offense limitations established by State law cannot be held in jails and law enforcement lockups in which adults may be detained or confined. [Several exceptions to this mandate are specified in law.] . . .
4. **Disproportionate minority confinement.** The disproportionate minority confinement (DMC) mandate requires States to address efforts to reduce the number of minority youth in secure facilities where the proportion of minority youth in confinement exceeds the proportion such groups represent in the general population. In order to meet the DMC mandate, States go through stages of data gathering, analysis and problem identification, assessment, program development, and systems improvement initiatives.[184]

In addition to these mandates, the JJDP Act called for a preventive approach to the problem of delinquency. OJJDP established a formula grant program for states and communities to develop policies, practices, and programs directed at

crime prevention in local areas. In addition, communities were encouraged to develop alternatives to the juvenile justice system. "Community-based programs, diversion, and deinstitutionalization became the banners of juvenile justice policy in the 1970s."[185]

The juvenile justice reforms initiated by the JJDP Act of 1974 and carried out by the OJJDP are, in many ways, consistent with the juvenile due process revolution that occurred between 1966 and 1975.[186] Both reform efforts questioned the rehabilitative ideal and the *parens patriae* authority of the traditional juvenile justice system. The due process changes made the juvenile justice system more like the adult justice system while still acknowledging the need for a separate system. The JJDP Act refined this separation by establishing certain mandates to deinstitutionalize status offenders and non-offenders and to keep juveniles out of the adult criminal justice system, especially jails. In addition, the Act authorized federal initiatives for a preventive, community-based approach to juvenile delinquency.

Getting Tough: Initiatives for Punishment and Accountability

The 1980s saw a dramatic shift in juvenile justice law and practice at both the federal and state levels. A 1984 report by the National Advisory Committee for Juvenile Justice and Delinquency Prevention states, "federal effort in the area of juvenile delinquency should focus primarily on the serious, violent, or chronic offender."[187] Soon after, OJJDP began to devote attention to the identification and control of serious juvenile offenders.[188] It liberally sponsored research on chronic, violent offenders and funded state and local programs designed to prevent and control violence and the use of drugs.[189]

At the state level, legislatures passed laws to crack down on juvenile crime, reflecting a widespread reconsideration of juvenile justice philosophy, jurisdiction, and authority and a more punitive approach to juvenile delinquency.[190] Four areas of legal change have been most pronounced: (1) transfer provisions in state law, (2) enhanced sentencing authority for juvenile courts, (3) reduction in juvenile court confidentiality, and (4) balanced and restorative justice efforts.

Transfer Provisions

All states have enacted laws that allow juveniles to be tried in adult criminal courts. While these laws vary from state to state, transfer provisions fall into three main categories: judicial waiver, concurrent jurisdiction, and statutory exclusion.[191]

1. **Judicial waiver**: Juvenile court judges are granted statutory authority to waive juvenile court jurisdiction and transfer cases to criminal court. Waiver decisions are discretionary and therefore subject to due process review. While judicial waiver statutes vary from state to state, the basic idea is that certain types of offenses and offenders, especially violent ones, are beyond the scope of the juvenile court. States may use terms other than judicial waiver, including *certification, remand,* or *bind over* for criminal prosecution. States may also *transfer* or *decline,* rather than waive, jurisdiction.

2. **Concurrent jurisdiction**: Under this statutory provision, prosecutors are granted authority to file certain types of cases in either juvenile or criminal court. Some states, for example, allow prosecutors, at their discretion, to file felony offenses directly in adult criminal courts. State appellate courts have usually taken the view that prosecutor discretion is equivalent to a charging decision made in criminal cases; therefore, it is not subject to judicial review for due process. Transfer under concurrent jurisdiction provisions is also known as *prosecutor waiver, prosecutor discretion,* or *direct file.*
3. **Statutory exclusion**: With statutory exclusion, state statutes exclude certain juvenile offenders and offenses from juvenile court jurisdiction. Under statutory exclusion provisions, cases originate in criminal rather than juvenile court. State statutes usually set age and offense limits for excluded offenses.

While judicial waiver is the oldest and most common transfer provision, almost all states have expanded their statutory provisions for transferring juvenile cases to adult court.[192] In an effort to reduce discretion in the transfer decision, many state legislatures have since the 1970s moved toward mechanisms that are based on age or seriousness of offense or both, without case-specific considerations. According to Melissa Sickmund, "Although not typically thought of as transfers, large numbers of youth younger than 18 are tried in criminal court in the 13 states where the upper age of juvenile court is set at 15 or 16."[193]

Sentencing Authority

A second area of transformation in the 1980s was the enactment of state laws that give both criminal and juvenile courts expanded sentencing options in juvenile cases. This change resulted in a more punitive approach to juvenile delinquency. Traditionally, juvenile court dispositions were individualized and based on the background characteristics of the offender. Indeterminate sentencing laws allowed the juvenile court judge to customize the disposition to fit the offender's needs and situation, with rehabilitation as the clear primary goal. As states shifted the purpose of their juvenile justice systems away from rehabilitation and toward punishment, accountability, and public safety, juvenile case dispositions began to be based more on the offense than the offender. "Offense-based dispositions tend to be determinate and proportional to the offense; retribution and deterrence replace rehabilitation as the primary goal."[194]

Beginning in the mid-1970s, a number of states changed their statutes to allow for punishment in juvenile court disposition. New York's Juvenile Justice Reform Act of 1976 provided for secure confinement and mandatory treatment of serious juvenile offenders, followed by strict parole standards and intensive supervision upon release. By 1997, at least 16 states had followed New York's lead by adding or modifying laws to require minimum periods of incarceration for certain violent or serious offenders.[195]

A number of states have also raised the maximum age of the juvenile court's continuing jurisdiction over juvenile offenders. In these states, the dispositional order may extend the juvenile court's jurisdiction beyond the upper age of original jurisdiction (usually 18 years old).[196] Illinois's habitual juvenile offender

law, for example, allows the juvenile court to commit juvenile offenders who meet the law's criteria of habitual offender to the Department of Corrections until these offenders are 21 years old.[197]

Confidentiality

A third area of juvenile justice transformation concerns the traditional confidentiality of juvenile justice proceedings and records. In almost every state, "legislatures have recently made significant changes in how information about juvenile offenders is treated by the justice system."[198] Laws allowing for the release of court records to other justice agencies, schools, victims, and the public have been enacted in most states. These laws also establish the circumstances under which media access is allowed. A number of states also permit or even require the juvenile court to notify school districts about juveniles charged with or convicted of serious or violent crimes.[199]

Balanced and Restorative Justice

These initiatives for punishment and accountability have replaced the rehabilitative ideal and *parens patriae* authority of the original juvenile court. Sections of state law that declare the purpose of the juvenile court now speak of holding juveniles accountable to victims and communities, having juveniles accept responsibility for their criminal actions, promoting public safety, and deterring potential offenders. Instead of a primary emphasis on rehabilitation, these declarations of purpose now promote competency development so that delinquent youth can become responsible citizens. This new orientation of the juvenile court is referred to as **balanced and restorative justice**, and it emphasizes offender accountability, community safety, and offender competency development.[200]

balanced and restorative justice A contemporary orientation in juvenile justice that emphasizes offender accountability, community safety, and offender competency development.

In the mid-1990s, one leg of this "balanced" approach began to receive more emphasis than the other two: offender accountability. This increasing emphasis on accountability was spearheaded by federal legislation that endorsed a more punitive approach to juvenile justice. In 1996, Congress passed the Balanced Juvenile Justice and Crime Prevention Act of 1996, which announced the serious need for change in the operating philosophy and procedures of state juvenile justice systems. In late 1997, OJJDP began to administer a large federal grant incentive program enacted in law: the Juvenile Accountability Incentive Block Grants Program (JAIBG). The Act appropriated $250 million for the program, including $232 million for state block grants. States requesting funding were required to demonstrate that their laws, policies, and procedures fulfilled several expectations: (1) juveniles, age 15 years or over, who are alleged to have committed a "serious violent crime" must be criminally prosecuted in adult court; (2) sanctions should be imposed for every delinquency act, including probation violations, and sanctions must escalate for each subsequent, more serious offense or probation violation; (3) records of juvenile felony offenders who have a prior delinquency adjudication are to be treated in a manner equivalent to that of adult records, including submission of such records to the FBI; and (4) state law must not prohibit juvenile court judges from issuing court orders that require parental supervision of juvenile offenders.[201]

Grant funds from the JAIBG were used by states in twelve "program purpose areas" stipulated by OJJDP. These twelve program purpose areas have

CASE IN POINT

Purpose Clause of the Montana Youth Court Act

41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

- **(1)** to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;
- **(2)** to prevent and reduce youth delinquency through a system that does not seek retribution but that provides:
  - **(a)** immediate, consistent, enforceable, and avoidable consequences of youth's actions;
  - **(b)** a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders;
  - **(c)** in appropriate cases, restitution as ordered by the youth court; and
  - **(d)** that whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate.
- **(3)** to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;
- **(4)** to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

Source: Montana Code Annotated 2005.

since been expanded to sixteen.[202] Among the program areas are the construction and staffing of juvenile detention or correctional facilities; the hiring of judges, prosecutors, defense attorneys, and probation officers; accountability-based sanctions programs; graduated sanctions; restorative justice programs; gun courts; and drug courts.[203]

The wording of "purpose clauses" in many state juvenile court acts was changed to adopt balanced and restorative language, in order to demonstrate an operating philosophy consistent with the requirements of JAIBG, thus making these states eligible for block grants.[204] The wording of the "Declaration of Purpose" of the Montana Youth Court Act reflects this balanced and restorative justice orientation (see Case in Point, "Purpose Clause of the Montana Youth Court Act").

Legal Definitions of "Juvenile Delinquency"

In its zeal to save children, the original juvenile court showed little interest in distinguishing the different types of children that came under its jurisdiction.[205] Based on the state law that created the first juvenile court—*An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children*—the original juvenile court assumed broad jurisdiction over not only delinquent offenders, but also dependent and neglected children. While the Juvenile Court Act provided definitions of delinquent and dependent and neglected children, the primary interest of the early court was to act in the "best interests of the child," regardless of the reason the child came before the court. An early English reformer, Mary Carpenter, captured this sentiment when she said, "there is no distinction between pauper, vagrant, and criminal children, which would require a different system of treatment."[206] In fact, the original juvenile court was founded on the premise that the poor, neglected child, as a "predelinquent," must be protected from criminal influences.[207] Dependency, neglect, and delinquency are all stops on the road to crime.

Reformers soon realized, however, that restricting the new juvenile court's definition of delinquency to violations of criminal law might make it function much as a criminal court does.[208] Within two years, amendments to the original act broadened the definition of delinquent to include a youth "who is *incorrigible*; or who knowingly associates with thieves, vicious or immoral persons; or who is growing up in idleness and crime; or who knowingly frequents a house of ill-fame; or who knowingly patronizes any policy shop or place where any gaming device is, or shall be operated."[209] Barry Feld observes that this undefined term, *incorrigible,* "introduced a major element of vagueness, imprecision, and subjectivity into the court's inquiry into a youth's 'condition of delinquency.' "[210] This broadened definition of juvenile delinquency now included behavior that was defined by law as illegal only for juveniles—those individuals under the legal age. Such noncriminal but illegal acts by juveniles are commonly called **status offenses**. Status offenses include acts like running away, truancy, ungovernability, and liquor law violations.

status offense An act that is illegal for a juvenile but would *not* be a crime if committed by an adult.

Traditionally, juvenile courts have had two primary areas of jurisdiction: (1) juvenile delinquency, which includes violations of criminal law and status offenses; and (2) dependency, neglect, and child abuse.[211] The working assumption behind both areas of jurisdiction has been the rehabilitative ideal and the *parens patriae* authority of the juvenile court: if parents are unable or have failed to provide proper care for their children, then the court can assume parental responsibility in the best interests of the child.

In the early 1960s, criticism began to mount over the juvenile court's broad jurisdiction and its failure to distinguish different types of cases. This criticism was most pronounced with regard to the court's failure to distinguish status and criminal law offenders. Don Gibbons and Marvin Krohn summarize the argument:

> *Critics have suggested that these categories of behavior (status offenses) are so vaguely defined that nearly all youngsters could be made the subject of court attention. What is a "vicious or immoral person"?*

> *What is "incorrigibility"? These are highly subjective characterizations of persons or situations. Further, considerable doubt has been expressed about whether these kinds of acts are predictive of serious antisocial conduct. Perhaps courts would be better off not to concern themselves with these relatively benign activities and conditions, and, at the very least, youngsters who have not been charged with criminal offenses should not be processed in the juvenile court with those who have engaged in criminal law violations.*[212]

In 1961, the California legislature created a separate section of the juvenile code to specify three different areas of jurisdiction for the juvenile court: (1) dependent and neglected children (nondelinquents), (2) juveniles who violate the state criminal code, and (3) juveniles who are beyond parental control or who engage in conduct harmful to themselves (i.e., status offenders).[213] The following year, New York passed legislation that established a family court system with jurisdiction over all areas of family life. In addition, the legislation established a person in need of supervision (PINS) classification to provide a separate designation for status offenders. This legal separation of status and criminal law offenders allowed the juvenile justice system to approach these two groups differently. Following the lead of New York, statutory law in many states soon provided a separate legal category for status offenders. Various acronyms were used: YINS (youth in need of supervision), MINS (minor in need of supervision), CHINS (children in need of supervision), and JINS (juveniles in need of supervision).

This differentiation between status offenders and juvenile criminal law offenders plays an important role in contemporary trends in juvenile justice. The juvenile due process revolution has been applied most extensively to juvenile criminal offenders. Status offenses are normally handled like dependency and neglect cases in terms of both civil-like procedures and dispositional provisions for social services. Alternatives to the juvenile justice system, in the form of diversion and deinstitutionalization, have been developed most extensively for use with status offenders. The more punitive approach to juvenile justice has been applied most frequently to serious, violent juvenile offenders.

The state statutes that define juvenile delinquency are similar in form throughout the United States. Contemporary statutes typically use four legal categories, often with varying names but with similar legal conceptualization: serious delinquent youth, delinquent youth, youth in need of supervision, and dependent and neglected youth. The statutory definitions for these categories under the Montana Youth Court Act illustrate this legal categorization (see Case in Point, "Adjudication Classifications in the Montana Youth Court Act").

CASE IN POINT

Adjudication Classifications in the Montana Youth Court Act

Delinquent youth means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

- **(a)** who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
- **(b)** who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

Serious juvenile offender means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

Youth in need of intervention means a youth who is adjudicated as a youth and who:

- **(a)** commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who: (1) violates any Montana municipal or state law regarding alcoholic beverages; (2) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or
- **(b)** has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.

Youth in need of care means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

Source: Montana Code Annotated 2005. 41-5-103. Definitions. (11), (38), and (51). 41-3-102. Definitions (34).

Summary and Conclusions

Juvenile delinquency is a concept that was *socially constructed*—a product of myriad social, political, economic, and religious changes. Three historical developments laid the foundation for the idea of juvenile delinquency: (1) the discovery of childhood and adolescence as separate and distinct stages of life; (2) the emergence of *parens patriae* in English equity law, which gave legal authority to the state for protective control of children when parents failed to fulfill child-rearing responsibilities; and (3) the rise of positivist criminology, which introduced scientific methods to the study and control of crime and delinquency.

The creation of the juvenile court in Chicago in 1899 clearly reflected these historical developments. Reformers envisioned a child welfare system, rather than a judicial system. As a result, the prevailing goal of the early juvenile court was to protect, nurture, reform, and regulate the dependent, neglected, and delinquent child. Since the court was pursuing the "best interests of the child," little distinction was made between types of offenders. The civil law tradition of *parens patriae,* together with the *rehabilitative ideal,* provided the new juvenile court with a distinctive legal philosophy, structure, and process.

The traditional juvenile court came under attack shortly after World War II. Criticism centered on its disregard of due process and its failure to provide effective rehabilitation through individualized treatment. Beginning in the 1960s, at least three forces dramatically changed the character of juvenile justice systems across the United States: (1) the juvenile due process revolution from 1966 to 1975, (2) the Juvenile Justice and Delinquency Prevention Act of 1974, and (3) a growing emphasis on punishment and accountability in the 1980s and 1990s. Instead of an intense focus on the individual offender, contemporary juvenile justice systems emphasize offender accountability, public safety, and offender competency development, an approach called *balanced and restorative justice.*

Contemporary legal definitions of juvenile delinquency continue to distinguish juvenile offenders from adult criminals and to provide for a separate system and process of justice. Legal definitions continue to emphasize the dependency of children and adolescents and their need for protection and nurture. In addition, the family unit is affirmed as the key institution of socialization, providing "care, protection, and wholesome mental and physical development of a youth."[214] However, contemporary legal definitions of juvenile delinquency commonly specify at least four different legal classifications of juveniles over which the juvenile court maintains jurisdiction: (1) dependent and neglected children; (2) status offenders, sometimes called "youth in need of intervention" or some variant of that term; (3) delinquent youth who violate the criminal code; and (4) serious delinquent offenders who have committed felony offenses.

CRITICAL THINKING QUESTIONS

1. How does the "invention" of juvenile delinquency and the juvenile court reflect legal innovations suggested in the stubborn child laws of colonial America? (Refer back to the case that opened the chapter.)
2. What does it mean to say that juvenile delinquency was *socially constructed?*
3. How was the creation of the juvenile court a culmination of earlier reforms, such as houses of refuge, placing-out, and reform schools?
4. How did the due process revolution change the character of the juvenile justice system?
5. In what ways does contemporary juvenile justice emphasize accountability?
6. Distinguish the legal categories: "youth in need of care," "youth in need of intervention," "delinquent youth," and "serious delinquent offender."

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GLOSSARY

balanced and restorative justice: A contemporary orientation in juvenile justice that emphasizes offender accountability, community safety, and offender competency development.

"best interests of the child": The overarching interest of the traditional juvenile court to assess the needs of the youth and then to seek physical, emotional, mental, and social well-being for that youth through court intervention.

child-saving movement: A loose collection of women from middle- and upper-class backgrounds who exercised considerable influence in mobilizing change in how governments dealt with dependent, neglected, and delinquent children. One particular child-saving group, the Chicago Women's Club, is largely responsible for the creation of the first juvenile court in Chicago.

due process of law: Procedural rights established in the Constitution (including the Bill of Rights) and extended through appellate court decisions that are based upon individual freedoms and limitation of governmental powers.

houses of refuge: The first institutional facilities in the United States for poor, vagrant children. Both private and public refuges sought to protect and reform the "predelinquent."

parens patriae: Literally means "parent of the country." The legal authority of courts to assume parental responsibilities when the natural parents fail to fulfill their duties.

pauperism: The view, popularly held throughout the nineteenth century, that children growing up in poverty, surrounded by depravity in their neighborhood and family, are destined to lives of crime and degradation.

placing-out: The practice, begun in the mid-1800s, in which philanthropic groups took vagrant and wayward urban children west by railroad to be placed in farm families.

poor laws: Laws enacted in colonial America that established a civic duty of private citizens to "relieve" the poor. These laws usually provided a definition of residence so that outsiders could not benefit from private relief. Legal authority was also granted for governmental agencies or private relief societies to separate poor children from their "undeserving" parents.

reform schools: In the mid-1800s a new form of institution began to replace houses of refuge. These institutions emphasized education and operated with traditional school schedules. Many reform schools also used a cottage or family system in which children were grouped into "families" of forty or fewer.

rehabilitative ideal: The traditional legal philosophy of the juvenile court, which emphasizes assessment of the youth and individualized treatment, rather than determination of guilt and punishment.

social constructionist perspective: An attempt to understand the many social, political, and economic factors that lead to the development of an idea, concept, or view.

status offender: A juvenile who has committed an act that would *not* be a crime if committed by an adult. See **status offense.**

status offense: An act that is illegal for a juvenile but would *not* be a crime if committed by an adult.

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2. Sommerville, *Rise and Fall.*
3. Berger and Luckman, *Social Construction of Reality*; Empey, Stafford, and Hay, *American Delinquency*; Feld, *Bad Kids*; Platt, *Child Savers.*

4. Sutton, *Stubborn Children.*
5. Hellum, "Juvenile Justice."
6. Stark, *Sociology,* 33, 228.
7. Hall, *Adolescence,* 522–523; and Sommerville, *Rise and Fall,* 29.
8. Thornton, Voigt, and Doerner, *Delinquency and Justice,* 4.
9. Aries, *Centuries of Childhood,* 19.
10. Ibid.
11. Ibid., 10.
12. Thornton, Voigt, and Doerner, *Delinquency and Justice,* 5; these observations are based on Aries, *Centuries of Childhood.*
13. Aries, *Centuries of Childhood,* 29.
14. Kett, *Rites of Passage.*
15. Empey and Stafford, *American Delinquency,* 30.
16. Aries, *Centuries of Childhood,* 128.
17. Ibid., 130.
18. Empey and Stafford, *American Delinquency,* 30.
19. deMause, "Evolution," 1. See also Illick, "Child-Rearing."
20. Illick, "Child-Rearing."
21. Aries, *Centuries of Childhood,* 381–390, especially 389–390; Illick, "Child-Rearing," 311–313; and Sommerville, *Rise and Fall,* 109–115.
22. Aries, *Centuries of Childhood,* 114–119.
23. Aries, *Centuries of Childhood,* 119–121; deMause, "Evolution;" Empey and Stafford, *American Delinquency,* 36; Illick, "Child-Rearing;" Robertson, "Home as a Nest;" and Sommerville, *Rise and Fall.*
24. Aries, *Centuries of Childhood,* 412–413.
25. Illick, "Child-Rearing," 318–320; and Sommerville, *Rise and Fall,* 121–124.
26. Cited in Sommerville, *Rise and Fall,* 127, also 127–133. See also Thornton, Voigt, and Doerner, *Delinquency and Justice,* 6.
27. Kaplan, *Adolescence,* 51.
28. Thornton, Voigt, and Doerner, *Delinquency and Justice,* 6; Kaplan, *Adolescence,* 63.
29. Degler, *At Odds,* 66.
30. Sommerville, *Rise and Fall,* 179, also 177.
31. Ibid., 160–178.
32. Cogan, "Juvenile Law," 148; Rendleman, "Parens Patriae," 208.
33. *Oxford English Dictionary,* http://dictionary.oed.com/.
34. The sovereignty of the king and his extensive power to accomplish his interests are referred to as the "king's prerogative," or *prerogative regis* (Curtis, "Checkered Career," 896; see also Cogan, "Juvenile Law," 155–156).
35. Feld, *Bad Kids,* 52; Rendelman, "Parens Patriae," 208–209. See also Cogan, "Juvenile Law," 155–156, and Curtis, "Checkered Career," 896.
36. Curtis, "Checkered Career," 896; and Rendelman, "Parens Patriae," 209.
37. Curtis, "Checkered Career," 896–898; and Cogan, "Juvenile Law," 156.
38. Curtis, "Checkered Career," 897–898.
39. Cogan, "Juvenile Law," 174; and Curtis, "Checkered Career," 897. Curtis refers to this practical limitation of applying *parens patriae* only to cases involving property as the "property nexus" (897); see also Cogan, 148–151.
40. Cogan, "Juvenile Law," 149–152,181. See also Rendleman, "Parens Patriae," 207–209.
41. Feld, *Bad Kids,* 52.
42. Curtis, "Checkered Career," 899. See also Rendleman, "Parens Patriae," 223–224.
43. Curtis, "Checkered Career," 899. See also Fox, "Juvenile Justice Reform," 1193, and Rendleman, "Parens Patriae."
44. Beirne and Messerschmidt, *Criminology,* 72–82.
45. Beirne, "Adolphe Quetelet," 1145–1146.
46. Matza, *Delinquency and Drift,* 11.
47. Allen, *Borderland*; Platt, *Child Savers*; and Feld, *Bad Kids.*
48. Cooley, "Nature v. Nurture," 405.
49. Rothman, *Discovery,* 16.
50. Ibid.

51. Quoted in Rothman, *Discovery,* 16.
52. Rothman, *Discovery.*
53. Ibid., 20.
54. Rendleman, "Parens Patriae," 233, also 212. See also Rothman, *Discovery,* 20.
55. Rendleman, "Parens Patriae," 212.
56. Fox, "Juvenile Justice Reform," 1189.
57. Rothman, *Discovery,* 17–18.
58. Rendleman, "Parens Patriae," 213.
59. Fox, "Juvenile Justice Reform," 1200.
60. Rendleman, "Parens Patriae," 214.
61. Quoted in Mennel, *Thorns & Thistles,* 8.
62. Mennel, *Thorns & Thistles,* 9.
63. Rendleman, "Parens Patriae," 215; and Rothman, *Discovery,* 207.
64. Fox, "Juvenile Justice Reform," 1190; and Rendleman, "Parens Patriae," 216.
65. Mennel, *Thorns & Thistles,* 4.
66. Ibid., 5.
67. Rendleman, "Parens Patriae," 217. See also Feld, *Bad Kids,* 48.
68. Fox, "Juvenile Justice Reform," 1190–1191; and Pickett, *House of Refuge,* 56.
69. Quoting Mary Carpenter, an English penal reformer (Fox, "Juvenile Justice Reform," 1193).
70. Mennel, *Thorns & Thistles,* 10. See also Fox, "Juvenile Justice Reform," 1191.
71. Mennel, *Thorns & Thistles,* 18. See also Feld, *Bad Kids,* 51.
72. Pickett, *House of Refuge,* 52, 55–57.
73. Sutton, *Stubborn Children.*
74. Rothman, *Discovery,* Chapter 9, especially 210–216.
75. Rothman, *Discovery,* 231–234; and Mennel, *Thorns & Thistles,* 19–20.
76. Mennel, *Thorns & Thistles,* 20–21.
77. Ibid., 22–23.
78. Ibid., 21–23.
79. Rothman, *Discovery,* 209.
80. Rendleman, "Parens Patriae," 219, 237; Curtis, 901–902; and Fox, "Juvenile Justice Reform," 1193.
81. *Ex parte Crouse,* 4, Wharton (PA) 9 (1838) at 11. Fox, "Juvenile Justice Reform," 1205–1206; Krisberg and Austin, "America," 16; Krisberg and Austin, "United States," 18; Pisciotta, "Saving the Children," 410–412; and Rendleman, "Parens Patriae," 218–219.
82. Curtis, "Checkered Career," 258–259.
83. Rothman, *Discovery,* 258–259.
84. Empey, Stafford, and Hay, *American Delinquency,* 40–41.
85. Mennel, *Thorns & Thistles,* 35.
86. Ibid., 37.
87. Ibid.
88. Ibid., 39.
89. Ibid., 43–48.
90. Ibid., 49.
91. Schlossman, *Love.*
92. Mennel, *Thorns & Thistles,* 52–55.
93. Ibid., 52.
94. Ibid., 59.
95. Ibid., 74.
96. *People ex rel. O'Connell v. Turner,* 55 Ill. (1870). The discussion here is drawn from Rendleman, "Parens Patriae," 233–236, and Fox, "Juvenile Justice Reform," 1216–1221.
97. The Illinois statute is quoted in Fox, "Juvenile Justice Reform," 1214.
98. Rendleman, "Parens Patriae," 234.
99. Quoted in Fox, "Juvenile Justice Reform," 1219.
100. Fox, "Juvenile Justice Reform," 1220.
101. Kett, *Rites of Passage,* 132. See also Rothman, *Discovery.*
102. Mennel, *Thorns & Thistles,* 124.
103. Feld, *Bad Kids,* 47, see also 24–28.

104. Quoted in Mennel, *Thorns & Thistles,* 129. See also Platt, *Child Savers,* 132.
105. Fox, "Juvenile Justice Reform;" Mennel, *Thorns & Thistles*; and Platt, *Child Savers.*
106. Sutton, *Stubborn Children,* 125–132. See also Feld, *Bad Kids,* 34–36; Krisberg and Austin, "America," 24; and Krisberg and Austin, "United States," 27.
107. Platt, *Child Savers,* 10. See Hawes, *Children in Urban Society,* for this point of view.
108. Platt, *Child Savers,* 10.
109. For this critical–revisionist point of view, see Platt, *Child Savers*; Rothman, *Discovery*; Schlossman, *Love*; and Sutton, *Stubborn Children.*
110. Platt, *Child Savers,* 77.
111. Ibid., 75, also 3.
112. Ibid., 83.
113. Ibid., 79.
114. Ibid., 7; see also the quotation of Christopher Lasch on page 76.
115. Platt, *Child Savers,* 130–131.
116. Ibid., 131.
117. Platt, *Child Savers,* 131–132; and Mennel, *Thorns & Thistles,* 130.
118. Platt, *Child Savers,* 133–134; and Krisberg and Austin, "United States," 29.
119. Feld, *Bad Kids,* 55–56, 75; Hellum, "Juvenile Justice," 299; Platt, *Child Savers,* 135; and Sutton, *Stubborn Children,* 132.
120. Mennel, *Thorns & Thistles,* 43–44, 131; and Platt, *Child Savers,* 9.
121. Platt, *Child Savers,* 101.
122. Feld, *Bad Kids,* 56, 75.
123. Taylor, Fritsch, and Caeti, *Juvenile Justice,* 89.
124. Feld, *Bad Kids,* 56; Platt, *Child Savers,* 10; and Sutton, *Stubborn Children,* 121.
125. *In re Gault,* 387 U.S. 1, 87 S. Ct. 1428 (1967).
126. Illinois Statute 1899, Section 131.
127. Platt, *Child Savers,* 135; and Feld, *Bad Kids,* 62.
128. Mennel, *Thorns & Thistles,* 132. See also Platt, *Child Savers,* 137.
129. *Commonwealth v. Fisher,* 213 Pennsylvania 48 (1905).
130. Ferdinand, "History," 207; and Fox, "Juvenile Justice Reform," 1229.
131. Feld, *Bad Kids,* 62; and Platt, *Child Savers,* 135.
132. *Revised Statutes of Illinois,* 1899, Sec. 21. Quoted in Hawes, *Children in Urban Society,* 170.
133. Mack, "Juvenile Court," in Feld, *Bad Kids,* 4.
134. Allen, *Borderland*; Feld, *Bad Kids*; and Platt, *Child Savers,* 43, 45.
135. Mack, "Juvenile Court," in Feld, *Bad Kids,* 7.
136. Feld, *Bad Kids,* 68.
137. Brummer, "Extended Juvenile Jurisdiction," 777.
138. Mack, "Juvenile Court," 109.
139. Feld, *Bad Kids,* 66.
140. Feld, *Bad Kids,* 65–69; and Platt, *Child Savers,* 141.
141. Feld, *Bad Kids,* 66.
142. Feld, *Bad Kids,* 60; and Rothman, *Discovery,* 43.
143. Feld, *Bad Kids,* 66.
144. Ibid.
145. Quoted in Platt, *Child Savers,* 142.
146. Platt, *Child Savers,* 137–138.
147. Feld, *Bad Kids,* 66.
148. Quoted in Platt, *Child Savers,* 144.
149. Quoted in Platt, *Child Savers,* 143.
150. Feld, *Bad Kids,* 68; and Schlossman, *Love.*
151. Platt, *Child Savers,* 139.
152. Mennel, *Thorns & Thistles,* 132.
153. Ferdinand, "History," 207.
154. Platt, *Child Savers*; Krisberg and Austin, "America;" and Krisberg and Austin, "United States."
155. Feld, *Bad Kids*; Fox, "Juvenile Justice Reform;" and Schlossman, *Love.*
156. Hellum, "Juvenile Justice," 301.
157. Tappan, "Treatment Without Trial?"; and Ferdinand, "History," 210.

158. *Kent v. United States,* 383 U.S. 541, 86 S. Ct. 1045 (1966).
159. Hellum, "Juvenile Justice," 301–302.
160. Ibid., 302–303.
161. Feld, *Bad Kids,* 92–94; Ferdinand, "History," 212–213; Hellum, "Juvenile Justice," 302–303; Lerman, *Community Treatment and Control*; Lipton, Martinson, and Wilks, *Effectiveness*; and Martinson, "What Works?"
162. Schur, *Radical Non-Intervention.*
163. Ferdinand, "History;" Hellum, "Juvenile Justice;" and Howell, *Juvenile Justice.*
164. *In re Gault,* 387 U.S. 1, 87 S.Ct. 1428 (1967); Feld, *Bad Kids*; Ferdinand, "History;" Snyder and Sickmund, *Juvenile Offenders,* 87.
165. These case summaries are taken verbatim or paraphrased from the work of Snyder and Sickmund, *Juvenile Offenders,* 90–92.
166. *Kent v. United States,* 383 U.S. 541, 86 S.Ct. 1045 (1966).
167. *In re Gault,* 387 U.S. 1, 87 S.Ct. 1428 (1967).
168. *In re Winship,* 397 U.S. 358, 90 S.Ct. 1068 (1970).
169. *McKeiver v. Pennsylvania,* 403 U.S. 528, 91 S.Ct. 1976 (1971).
170. *Breed v. Jones,* 421 U.S. 519, 95 S.Ct. 1779 (1975).
171. End of excerpted case summaries from Snyder and Sickmund, *Juvenile Offenders,* 90–92.
172. Crank, "JJDP Mandates;" and Howell, *Juvenile Justice,* 15–19.
173. President's Commission on Law Enforcement and Administration of Justice, *Challenge,* 80.
174. President's Commission on Law Enforcement and Administration of Justice, *Juvenile Delinquency,* 27; and Crank, "JJDP Mandates," 1.
175. President's Commission on Law Enforcement and Administration of Justice, *Challenge,* 83.
176. Ibid., 80.
177. Ibid., 81.
178. Ibid.
179. National Council on Crime and Delinquency, "Corrections," 211, as cited in Howell *Juvenile Justice,* 17.
180. National Advisory Commission on Criminal Justice Standards and Goals, *Task Force,* 23, as cited in Howell, *Juvenile Justice,* 18.
181. National Advisory Commission on Criminal Justice Standards and Goals, *Task Force,* 259, as cited in Howell, *Juvenile Justice,* 18.
182. Raley, "JJDP Act."
183. Shepherd, "Look Back," 20.
184. Excerpted from Crank, "JJDP Mandates," 2–4. See also Snyder and Sickmund, *Juvenile Offenders,* 88.
185. Snyder and Sickmund, *Juvenile Offenders,* 88. See also Krisberg et al., "Watershed."
186. Feld, *Bad Kids,* 97–106.
187. National Advisory Committee for Juvenile Justice and Delinquency Prevention (1984:9), cited in Krisberg et al., "Watershed," 7.
188. Wilson and Howell, *Comprehensive Strategy.*
189. Krisberg et al., "Watershed," 7–9.
190. Snyder and Sickmund, *Juvenile Offenders,* 88–89.
191. The following is drawn extensively from Sickmund, "Juveniles in Court," 6. See also DeFrances and Strom, "Juveniles Prosecuted;" Griffin, Torbet, and Szymanski, *Trying Juveniles*; Puzzanchera, "Cases Waived;" Rainville and Smith, "Juvenile Felony Defendants;" Strom, Smith, and Snyder, "Juvenile Felony Defendants;" and Snyder, Sickmund, and Poe-Yamagata, *Juvenile Transfers.*
192. Sickmund, "Juveniles in Court," 7.
193. Ibid., 10.
194. Snyder and Sickmund, *Juvenile Offenders,* 108.
195. Rubin, *Juvenile Justice,* 35.
196. Snyder and Sickmund, *Juvenile Offenders,* 108.
197. 705 ILCS 405/5-815.
198. Snyder and Sickmund, *Juvenile Offenders,* 101.
199. Ibid.
200. Snyder and Sickmund, *Juvenile Offenders,* 87, 89; Bazemore, *Balanced*; Freivalds, "BARJ;" and Bazemore and Umbreit, *Balanced.*
201. Albert, "Juvenile Accountability," 1.

202. Andrew and Marble, "Changes."
203. Albert, "Juvenile Accountability," 1. See also Danegger et al., *Juvenile Accountability,* series published by OJJDP called *JAIBG Bulletin.*
204. Snyder and Sickmund, *Juvenile Offenders,* 89.
205. Platt, *Child Savers,* 135.
206. Quoted in Binder, Geis, and Bruce, *Juvenile Delinquency,* 201.
207. Platt, *Child Savers,* Chapter 5.
208. Feld, *Bad Kids,* 64; and Sutton, *Stubborn Children.*
209. Hawes, *Children in Urban Society,* 186, emphasis added; and Feld, *Bad Kids,* 64.
210. Feld, *Bad Kids,* 64.
211. Rubin, "Nature," 40–41.
212. Gibbons and Krohn, *Delinquent Behavior.*
213. Ibid., 15–16.
214. *Montana Code Annotated, 2005,* 41-5-102.