

**From Rehabilitation to "Just Deserts":
A History of Juvenile Justice in the United States**

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The year 1999 marked the 100th anniversary of the founding of the first juvenile court in the United States, in Chicago, Illinois. Over the last one hundred years, the juvenile justice system has grown and is now firmly entrenched in the United States. The founding of juvenile courts in 1899 represented the culmination of decades of change in criminology and the handling of juveniles who came into contact with the law because of delinquency or dependence. Today there exists a juvenile court in every state, and it is nearly impossible to envision the legal system of the United States without envisioning a special forum that addresses the legal problems of children.

Since its inception, this unique legal institution has relied heavily upon a cultural concept of childhood that sees children as passive, innocent, and dependent (O'Neil 50-52). This concept of childhood manifests itself in the commitment of the juvenile court to the ideals of rehabilitation. For most of its existence the juvenile justice system in the United States has understood children as essentially good though perhaps gone astray, and thus in need of rehabilitation. Of late, however, this understanding is beginning to wane as more and more people begin to see some children as unsaveable and simply in need of punishment rather than rehabilitation. Currently, the juvenile justice system in America embodies both concepts of children as each view, with its supporters, vie for dominance. This article traces the development of the juvenile justice system in the United States and the competing conceptions of childhood underlying the administration of justice for young people.

Although the idea of a justice system for juveniles is deeply embedded in the United States today, this was not always the case. Until well into the nineteenth century, if children committed crimes the law treated them largely in the same manner as adults. Age, however, has always existed as a mitigating factor. Adopting its legal tradition from English common law, early colonial American jurisprudence, assumed children under the age of seven as unequivocally incapable of committing crimes (Feld, *Bad Kids* 37). Children purportedly lacked a guilty mind. For children between ages seven

and fourteen the presumption of incapability was rebuttable and, if a prosecutor could demonstrate that a youth knew the consequences of her actions, she could be held accountable. Young persons fourteen and older were considered fully adult and could be held responsible for their deeds (Feld, *Bad Kids* 37).

During the colonial period, when children did commit crimes, ordinarily the community in which they lived meted out any necessary punishment. There existed a largely informal approach to juvenile misbehavior. Virginia, for example, maintained no separate laws for juveniles (Hawes 12). Nor did the Quakers appear to enact any specific rules for children, instead relying on the family or the Quaker meeting to solve any problems (Hawes 12). In contrast, Massachusetts retained although never enforced a "stubborn child" law which made cursing or "smiting" one's parents a capital crime (Chesney-Lind and Sheldon 126). Corporal punishment was also a prevalent means of coping with juvenile misdeeds. Poor children and others deemed troublesome often found themselves bound out as indentured servants or forced into compulsory apprenticeships (Hawes 14). Servitude and apprenticeship can be viewed as early forerunners of the current practices of confining juvenile delinquents to training schools and correctional institutions or of assigning them community service hours.

In the event that children did come under the jurisdiction of the colonial criminal court, they were prosecuted as if they were adults. Trials took place in the same venue and no special procedures existed simply because the person on trial was a child. Juries, however, often prescribed less severe punishment for children or simply refused to convict (Streib 44). If children were convicted of a crime which required a prison sentence they were committed to the same jails and prisons as adults. British colonial America also followed the English penal tradition of holding many different kinds of offenders in the same facilities. Debtors, murderers, men, women and children were all confined to the same institutions.

With the legal treatment of children largely mirroring that of adults, most Anglo-American colonists did not see a need for a separate set of institutions to manage juvenile misbehavior. The colonies comprised sets of relatively small, cohesive communities which enforced conformity and appropriate behavior largely through informal mechanisms. Rather than institute and then rely solely on legal mechanisms, communities employed family, work, corporal punishment, servitude, the church and various forms of social disapproval to reinforce the appropriate behavior in their children.

In the eighteenth and nineteenth centuries, the United States began to shift from a rural agrarian society to one of urban industrial centers, and the

A History of Juvenile Justice in the United States

informal social controls used to ensure that children passed safely and appropriately into adulthood began to weaken. In the late nineteenth century, industrial centers were plagued by strikes and riots and the economy was unstable. The city was considered a dangerous place, “no place for the innocence of a young child, it (the city) debilitated, corrupted, misled and tarnished youth” (Platt 40). Reacting to these changes Progressive Era reformers, many of whom came from the middle and upper classes, sought to “rescue and regulate capitalism” in order to create a more stable society which was one that would protect their “power and privilege” (Platt xix-xx). This rescue effort included saving children. By the end of the nineteenth century, ideas of childhood had also radically shifted to embrace the concept of the innocent and dependent child (O’Neil 51). This type of child needed to be protected particularly from the growing threats purportedly found in the country's developing urban, industrial centers.

As the idea of the child changed so too did the length of childhood. Childhood in the United States has grown much longer over the course of the last three centuries, and the age at which someone is considered a child has increased. As stated earlier, children in colonial America were considered fully adult at age 14. Today, children do not receive all their rights until sometime between 18 and 21. In the majority of states, children remain under the jurisdiction of the juvenile court until they are 17 years of age while a few states use 15 and 16 years of age to mark the upper age limit for juvenile court (<http://ojjdp.ncjrs.org/ojstatbb/html/qa085.html>). In the case of abuse, neglect and dependency, however, many states extend the court’s jurisdiction to age 20. In contrast, many states either exclude specific violent crimes from the purview of the juvenile court or provide for concurrent jurisdiction between juvenile and criminal courts (<http://ojjdp.ncjrs.org/ojstatbb/html/qa085.html>). This allows for a prosecutor to choose which court to use for prosecution. There does not exist and has never existed a bright line establishing at what age someone moves from child to adult. What does seem clear, however, is that in order to be considered a child one must act like a child and, for the most part, that does not include the commission of crimes.

THE FOUNDING OF THE JUVENILE COURT

The passage of the 1899 Juvenile Court Act by the Illinois State Legislature brought together in a single institution many of the reform efforts and ideals launched during the nineteenth century. Chicago, with its history of progressive reform and institutions such as the settlement house Hull House founded by the pioneering social workers Jane Adams and Ellen

Gates Star, proved a likely place for the nation's first juvenile court. Witnessing the failures of houses of refuge¹, reform schools and other efforts to halt juvenile delinquency and help dependent youth, prison reformers like the Chicago Women's Club, focused their attention on the creation of a separate court for young criminals. Gathering support from such powerful allies as the Chicago Bar Association, the Women's Club drafted a proposal that would eventually create the country's first juvenile court (Empey and Stafford, 58).

The court in Chicago represented a fundamental departure from previous efforts at curbing and preventing juvenile crime. The intention of the court was to "treat wayward youth first as children, and second as offenders" (Howell 12). Taking a rather literal interpretation of the doctrine of *parens patriae*², the Illinois Juvenile Court Act mandated in those cases where a child was removed from her home that she be provided with "care, custody and discipline as shall approximate as nearly as possible that which should be given them by their parents" (Manfredi 28). In its approach, the original juvenile court fully embodied reformers' commitments to a concept of a child rooted in innocence and dependence, and to positivist theories of crime that emphasized the social causes of crime. For many Progressive Era reformers, criminals were made and not born, particularly young criminals (Platt 43). Finally, the court espoused an ideal of rehabilitation that maintained children could be redeemed by being exposed to the appropriate environment. More than anything else the mission of the juvenile court was to "guide juvenile delinquents toward responsible and productive adulthood, not punish them" (Howell 13).

The original juvenile court in Cook County, Chicago, was not a separate facility but a place that offered special rules for existing courts to follow when children appeared before them. The original jurisdiction of the court covered children who committed crimes, and children who were abused and neglected. Amendments to the originating legislation, passed in 1901, extended the court's jurisdiction to cover status offenses, i.e., those crimes which specifically applied to children, such as truancy, running away, and incorrigibility. Similar to the house of refuge, the court's predecessor, children entered the court either through arrest or referral. Once they were in the system, informality characterized the procedures of the juvenile court. Juvenile courts are considered civil courts and until the 1960's few saw the need to provide children with the safeguards now associated with criminal prosecutions. In part, this conforms to the founders' belief that the "juvenile court did not blame children but helped them" (Feld, *Bad Kids*, 50). Formal criminal procedure would inhibit such benevolent intentions and impede the

A History of Juvenile Justice in the United States

rehabilitation process, as those involved with the court believed that children were children and therefore not criminals.

The actual establishment of juvenile courts varied from state to state, but they all rejected the formal processes used in adult criminal prosecutions. Generally, when a child came under the purview of a juvenile court, she and her parent(s) or guardian met with a judge, whereupon a discussion of the situation took place and some conclusion as to how to handle the child was reached. In hearings, judges attempted to address the "whole child", focusing on the offender rather than merely on the offense (Feld, *Bad Kids* 67). Influenced by beliefs in environmental causes of crime, court personnel believed "analysis of the social facts and a 'full understanding' of a youth's character and lifestyle would reveal the proper diagnosis and prescribe the cure" (Feld, *Bad Kids*, 66). In determining cures, the Progressives supported probation as the sentence of choice but were not unwilling to confine a child if it proved necessary for her rehabilitation (Platt 145). Children were viewed as good and thus curable rather than as potentially hardened criminals.

The Illinois Juvenile Court Act clearly outlined conditions for the incarceration of children. The Act finally ended the practice of housing child and adult convicts together. If a child was sentenced to an institution which housed adults, she or he had to be kept in a separate building and use different outdoor facilities. Moreover, the Act allowed for children over the age of ten to be sent to a state reformatory and stated that children under twelve could no longer be kept in a jail or police station. Juvenile courts did, however, confine juveniles for indeterminate periods, releasing them when they reached the age of majority or were judged rehabilitated. The professed ideal of the juvenile court may have been the rehabilitation and protection of children but the court also clearly engaged in the social control of youth through confinement. These twin functions of the court created a tension in the system which has yet to be resolved.

Legally, the founding of juvenile courts severed childhood from adulthood. Reformers who advocated the juvenile court idea remained so concerned about protecting children that they sought to disguise parts of the legal process. Unless reclassified as an adult, children were no longer prosecuted in adult courts and when confined they found themselves separated from adult offenders. Supplementing this effort at separation and disguise, a euphemistic vocabulary emerged for use in juvenile courts. When children were required to appear in court, it was a "petition" which was issued rather than a criminal complaint (Bynum and Thompson 375). Juvenile courts held "initial hearings" as opposed to arraignments and a child was deemed delinquent instead of guilty (Bynum and Thompson 375; Feld,

Bad Kids 67). If found delinquent a youth was not sentenced but received the purportedly "more informal and less threatening" disposition (Bynum and Thompson 377). The need to maintain the image of children as ultimately dependent and in need of protection was so great as to warrant masking the aspects of the court that resembled adult criminal courts even in those cases when children engaged in what appeared to be very unchildlike behavior. This practice continues largely uninterrupted today.

The approach employed in the juvenile court set the pace for the rest of the country. Between 1900 and 1910 thirty-two states passed legislation providing for juvenile probation. By 1912, twenty-two states had established full-fledged juvenile courts and by 1915 every state except two had instituted some kind of separate court for children (Howell 13). Juvenile courts spread rapidly, largely as a "social response to the threat that lower class youth posed to the security of middle-class society" (Howell 13). As immigration changed after the turn of the century from those mainly from Northern Europe and the British Isles to those from Eastern and Southern Europe and Asia, a number of Americans, and the federal government, perceived growing immigration and the difficulties of assimilating such large numbers of immigrants as a threat to American culture and values.³ This threat appeared to manifest itself, in part, in juvenile delinquency, particularly in growing industrial centers. If the juvenile court could intervene in the acculturation process that produced delinquents, then both the child and society could be saved. In this respect, juvenile courts, like houses of refuge before them, represented an attempt on the part of the "native elite" to impose their values on the rest of society and ensure the reproduction of adults who would uphold the reigning social order (Feld, *Bad Kids* 75, Platt xx).

"CONSTITUTIONAL DOMESTICATION" OF THE JUVENILE COURTS

The juvenile courts of the United States continued their work relatively unimpeded until the 1960s. As the baby-boom generation began to approach adolescence, youth crime rates also increased substantially, owing at least in part, to larger numbers of youth. This increase, paired with growing concern over the juvenile courts' perceived inability to affect crime rates, led to an erosion of support for the rehabilitative ideal (Feld, *Bad Kids* 63). Houses of Refuge, reform schools and juvenile courts, with their belief in reform and the distinct treatment of children, appeared unable to slow juvenile crime, let alone solve the problem. A more punitive approach emerged alongside the rehabilitative ideal as more people questioned not just the effectiveness of previous juvenile justice approaches but the very idea that children who

A History of Juvenile Justice in the United States

commit crimes should be treated differently from adults. At this time a number of important Supreme Court cases mandated changes in the adjudication process used in juvenile courts. These changes moved the court away from its foundation as an institution dedicated to the rehabilitation of children gone astray. Today the juvenile court has grown more and more to resemble adult criminal court calling into question the need for that court's very existence.

The turn away from the treatment model that sustained the juvenile court through the first half of the twentieth century also occurred during a time in which many Americans came to question the benevolence of the state (Manfredi 74). In the face of possible state coercion, calls came to extend procedural safeguards to juveniles who found themselves in the justice system. The number of protections available to children in the form of rights grew substantially as the Warren Court engaged in its "due process revolution" (Manfredi 74). As the issue of race, the Civil Rights Movement, and growing social unrest in the U.S. focused attention on the disadvantages faced by people of color and poor people, the Supreme Court radically redefined the relationship between individuals and the state, extending far more protection to individuals' civil rights.

What Barry Feld terms the "constitutional domestication" of the juvenile court began with the case of *Kent v. United States* (1966) (Feld, *Bad Kids* 79; *Kent v. United States* 380 U.S. 581). The case concerned the waiver of juvenile court jurisdiction and the subsequent transfer of a juvenile to adult court for prosecution. Despite a provision in the Juvenile Court Act of the District of Columbia that required a "full investigation" prior to waiver, the judge in the *Kent* case did not rule on any motions brought by Kent's attorney, held no hearing and gave no reasons or justifications for his granting of the transfer (Kfoury 76). On appeal, the Supreme Court ruled that a decision of "such tremendous consequences could not take place without ceremony, without hearing, without effective assistance of counsel, without a statement of reasons" (Kfoury 76). As a result of the case, juveniles subject to transfer to adult court gained the right to a full hearing, access to all information and files germane to the transfer decision, and the judge's justification for any transfer granted. The juvenile court could no longer arbitrarily impose its will upon a child and summarily reclassify him or her as an adult simply for purposes of prosecution.

The greatest expansion in legal rights for juveniles came as a result of an alleged obscene phone call. In June 1964, local police took Gerald Gault and a friend into custody and questioned them regarding suspected obscene calls made to a neighbor. Gault's parents were away at the time and therefore

not notified of his detention. He was referred to juvenile court, where he was judged delinquent and sentenced to six years (the remainder of his minority) in the Arizona State Industrial School (Bynum and Thompson 377). Gault's adjudication took place without his being advised of any kind of rights or being allowed to question the one witness against him.

The Supreme Court in *In re Gault* (1967) found the proceedings used against Gault severely lacking in due process (*In re Gault* 387 U.S. 1). To assure that juveniles are accorded due process in juvenile court adjudications, the Court ruled that minors retain the right to a notice of the charges against them, the right to an attorney, the right both to face and cross-examine any witnesses against them, the right against self-incrimination, the right to a transcript of the proceedings, and the right to an appeal (Bynum and Thompson 377). With this decision the Supreme Court granted unprecedented legal protections to minors; at the same time, it also erased much of what distinguished the juvenile court from adult criminal court. No longer could juvenile courts operate in the informal manner that had characterized their proceedings and the individualized "treatment" they attempted to deliver. This moved the juvenile court farther away from the rehabilitative ideal and the concept of the child that ideal presumed, a result that continues to plague juvenile justice systems today. The closing of the gap between juvenile and adult criminal courts also fuels criticism of the juvenile courts by those who view young people who commit crimes not as children in need of help but as unsalvageable and deserving of their "just deserts" (Howell 19).

Four other important cases complete the constitutional domestication of the juvenile court. *In re Winship* (1970) forced juvenile courts to adhere to the "beyond a reasonable doubt" standard of guilt in criminal cases (*In re Winship* 397 U.S. 358). The Supreme Court viewed this as a necessary component of ensuring minors the protection of due process. The case of *Breed v. Jones* (1975) completed the due process revolution for minors, when the Supreme Court decided that protection against double jeopardy must be extended to minors (*Breed v. Jones* 421 U.S. 519). This meant that minors could not be tried in adult court for an offense already adjudicated in juvenile court. The cases of *McKeiver v. Pennsylvania* (1971) and *Schall v. Martin* (1984) mark the limits of due process protection for minors (*McKeiver v. Pennsylvania* 403 U.S. 528; *Schall v. Martin* 467 U.S. 253). In its ruling in *McKeiver v. Pennsylvania*, the Court found that juveniles do not have the constitutional right to a trial by jury in juvenile court. Nearly three-quarters of the states abide by this ruling and do not extend this right to minors (Bynum and Thompson 380). The lack of jury trials remains one of the few significant differences separating

A History of Juvenile Justice in the United States

juvenile courts and adult criminal courts. Finally, *Schall v. Martin* allows detention without bail for minors if they are considered a danger to themselves or the community. The rulings in *Schall* and *McKeiver* represent a revisiting of the juvenile court's original informal and rehabilitative approach as opposed to the more punitive just-deserts philosophies that have dominated juvenile justice approaches in recent years. With the exception of the *Schall* and *McKeiver* decisions, the "constitutional domestication" of juvenile courts has largely erased any distinctions between the juvenile courts and criminal courts giving fuel to those who believe young people who commit crime need punishment above all else.

THE FEDERAL GOVERNMENT AND JUVENILE JUSTICE

The federal government played no significant role in the administration of juvenile justice until the mid-1960s. Despite a continued concern with juvenile crime and its prevention and control, juvenile justice remains primarily an effort controlled by individual states. With the passage of the landmark Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) the federal government began to assert itself on the issue of juvenile justice. The JJDP represents the most important federal initiative in this area and continues to guide the administration of juvenile justice today. After three years of hearings on the legislation, Congress passed the Act, and the JJDP went into effect. The JJDP, in many respects, harkens back to the founding of the juvenile court as the legislation embodies the rehabilitative ideal, with an emphasis on prevention and alternatives to the court system. After a preamble which outlines the many failures Congress found in the overall provision of juvenile justice at that time, the JJDP outlines four major requirements: "deinstitutionalization of status offenders, separation of juveniles from adults in confinement, jail and lockup removal and reduction in the disproportionate confinement of minorities" (Howell 33).

Concerned over the number of minors held in detention for non-criminal offenses, the JJDP mandated that states receiving federal funds must remove from detention facilities, or deinstitutionalize, status offenders. "Status offenders" are those who commit offenses that would not be considered a crime if committed by an adult. The motivation for this requirement arose partially in an effort to ease the overcrowding of jails, but also reflected continued concerns over the possible corruption of status offenders by other more-criminal offenders. Many places did not possess separate jail facilities for the detention of minors and they were housed in adult jails (Howell 34). Amendments to the JJDP in 1980 altered the deinstitutionalization mandate to allow the confinement of status offenders

and non-offenders if they violate a valid court order. The rationale for this exception centers on runaways and the desire to prevent them from continuing to run, but the exception can only be enforced after all due process procedures have been fulfilled. This provision provides for the detention of juveniles who violate valid court orders, but juveniles cannot be judged delinquent and removed from the mandate to deinstitutionalize status offenders and non-offenders.

Although the Illinois Juvenile Court Act of 1899 required the physical separation of children from adults in confinement, the continuation of housing them together well into the twentieth century spawned the JJDP's second and third requirement of separating confined juveniles and adults and removing children from adult jails and police lock-ups. Juveniles could still be held in adult jails, but minors were to have "no sight or sound contact with adult offenders in the facility" (Howell 35). The mandate for removing children from jails arose from the difficulties the Office of Juvenile Justice and Delinquency Prevention (OJJDP) experienced in implementing the separation of juveniles and adults in correctional facilities. This lack of success, combined with the financial burden on state and local officials in ensuring complete physical separation, motivated Congress to amend the JJDP in 1980 to simply mandate the removal of juveniles from adult institutions (Howell 35). Separating children from adults in confinement and/or altogether removing juveniles to facilities of their own continues the commitment begun in the nineteenth century of trying to shield children, even those who commit crime, from the further corrupting influence of adult convicts. The JJDP's embrace of such provisions indicates the extent to which juvenile justice remains attached to the ideal, if not the practice, of rehabilitation and its attendant conception of children as passive and pure.

The final and most troublesome of the JJDP's requirements focuses on the disproportionate rates of confinement of minority youth. Finding the number of young people of color incarcerated rising steadily since 1979, Congress amended the JJDP in 1988 to bring attention to this problem (Howell 37). Finally, in 1992, Congress began requiring states receiving federal funds under the JJDP to create and implement plans to reduce the disproportionate numbers of minority youth in their juvenile justice systems. This requirement is triggered when the percentage of minority youth in confinement exceeds the percentage of those groups in the population at large. There are three phases of the provision to reduce the large numbers of young people of color in confinement. These are "problem identification, problem assessment, and program intervention" and each of them includes timelines (Howell 37). In 2002 Congress once again revised the Juvenile

A History of Juvenile Justice in the United States

Justice Delinquency Prevention Act. The core issues remained the same, but Congress broadened the provisions concerning the disproportionate confinement of minority youth to “reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system” (<http://ojjdp.ncjrs.org/dmc/about/index.html>). This changed the issue from one of concern over confinement to one of concern for the disproportionate contact of young people of color with all aspects of the juvenile justice system. This concern over the large numbers of young people of color in the juvenile justice system is long overdue. Juvenile courts, houses of refuge, and reform schools were founded largely to combat what was perceived as the threat to the social order posed by immigrant and poor children, namely “other people’s” children. Today, the “other” has been defined to include young African American men who also, not coincidentally, happen to be some of the poorest of America’s people. The perception of these young people as a threat as led people such as Former Secretary of Education William Bennett to describe juveniles who commit crimes as “morally impoverished juvenile superpredators” (<http://home.earthlink.net/~mmales/ythviol.html>). Such labeling merely provides the current rationalization for the continued use of the juvenile courts in targeting disadvantaged youth for social control.

To return to the JJDP. Today, it operates as a voluntary program funded by grants from the federal government to the states. States that wish to receive federal funds under the JJDP must submit three-year plans outlining their programs for meeting the mandates of the JJDP. These plans are updated annually and tailored to the needs of the individual state’s juvenile justice systems. Currently 54 of 57 eligible states and territories participate in JJDP grant programs (http://www.ncjrs.org/html/ojjdp/annualreport99/ch5_a.html). Continued eligibility is determined by compliance. Data is collected on each participant and verification is required. As of 1998, fifty-three participants were in compliance with the requirement to deinstitutionalize status offenders, 53 met the requirement for separation of juveniles and adults in confinement, and 49 met the requirements for removal of minors from adult jails and police lockups (http://www.ncjrs.org/html/ojjdp/annualreport99/ch5_chart4.html).

However, with regard to the disproportionate confinement of minority youth, the results are not so positive. According to the most recent data, forty-one states have completed the initial phase of problem identification and are now entering the intervention stage. Two states are in the process of submitting plans for intervention with only one state having completed the intervention phase (<http://www.ncjrs.org/html/ojjdp/annualreport99/>

[ch5_chart4.html](#)). The inability of states to move more quickly through the stages of the disproportionate minority confinement provision demonstrates the continued difficulties American society has with the issue of race. Yet, the JJDP represents the most successful effort since the inception of a separate justice system for juveniles in affecting the way the law deals with children.

"JUST DESERTS" AND JUVENILE JUSTICE TODAY

Today the juvenile court converges substantially with adult courts. The radical changes in court procedure wrought by the Gault and Winship cases have led the juvenile court away from the rehabilitative ideal to one which much more closely resembles a criminal court. The 1980s and 1990s also witnessed more calls for a wholesale abandonment of the rehabilitative ideal for a "just deserts" philosophy (Howell 19-22). This orientation views punishment as a deterrent to future crime and as the "just deserts" for those who commit crime. It also forsakes individualized treatment for "mechanized justice" and would effectively end the commitment to official delinquency prevention efforts (Howell 20). Clearly, those who embrace a just-deserts approach do not view children, at least not children who commit crimes, as substantially different from adults. Under this ideology, children who commit crime are not dependent, passive innocents corrupted by a bad environment, they are individuals who have broken society's rules and must be held accountable for their actions. Moreover, according to this philosophy, society has the right to exact retribution, thus demonstrating its disapproval of crime and helping to maintain the existing order by providing some kind of catharsis.

The just-deserts philosophy represents a decided departure from the original ideals of the juvenile justice system begun in Chicago, and brings the United States closer to its colonial roots, when it allowed the adult prosecution of anyone over the age of seven. As rising crime rates and the perceived failure of the juvenile justice system fuel the popularity of the just-deserts approach, more states are beginning to adopt this philosophy. Approximately one quarter of the states have revised the "purpose clauses" of their juvenile court legislation to reflect this reorientation (Feld, "Criminalizing the Juvenile Court" 71 -72). The changes "elevate the importance of public safety, punishment and individual and juvenile justice system accountability" while moving away from considerations of rehabilitation and "the child's best interest" (Feld, "Criminalizing the Juvenile Court" 72). The willingness to prosecute more and more children as adults at younger and younger ages indicates that for some the punishment

A History of Juvenile Justice in the United States

rather than the treatment of children is far more popular in today's juvenile courts.

The juvenile justice system of today embodies the legacy of the original juvenile court and that first court's attempts to provide treatment and more recent calls for punishment of those young people who commit crimes. Recent initiatives attempt a kind of balance between these two apparently disparate goals. "Blended sentences" seek to fashion a middle ground between tradition juvenile sanctions and adult penalties. In 1997, twenty states allowed the use of blended sentences. These take a variety of different forms but all essentially provide courts the option of a "juvenile and/or adult correctional sanction" (Office of Juvenile Justice and Delinquency Prevention 108). Some states simply allow juvenile court the discretion to impose either an adult or juvenile penalty, while others provide for an adult penalty to remain suspended unless the juvenile reoffends. Perhaps the most aggressive of these blended sentencing approaches employs both the juvenile and adult systems one after another, whereby a minor serves time until the end of the juvenile court's jurisdiction at which time she is transferred to the adult system for further potential punishment (Office of Juvenile Justice and Delinquency Prevention 108).

Today's court is still characterized by these two general approaches of rehabilitation and punishment, each struggling for dominance. One basic difference remains: historically the juvenile court and its supporters subscribed to a singular ideal of childhood. Children were not viewed as responsible for the crimes they committed. They did not act with evil intent. Instead, children who committed crimes represented innocence gone astray, and thus, with intervention and the appropriate surroundings they could be saved from a life of future crime.

Today, it seems to many that the children the juvenile court attempts to rehabilitate cannot, be saved. In part, this attitude stems from the kind of crimes committed but also from a different conception of childhood. For many who subscribe to the just-deserts theory of juvenile justice, children who commit crime are not substantially different from adults. They see children as responsible actors who can and should be held accountable for any wrongdoing in which they engage. As children continue to commit crime, American society is faced with competing conceptions of childhood to guide its decisions about treatment or punishment and to explain what often seems inexplicable.

O'Neil

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Notes

¹ Houses of refuge, the first founded in New York in 1825, represented the first reform facility designed solely for children. Children who committed crimes as well as those children who were vagrant, neglected, abused, disobedient or unsupervised could be sent to a house of refuge.

² *Parens patriae* is the legal doctrine for when the state acts on behalf of a minor child assuming the role of the parent.

³ In 1882 a ten year restriction on Chinese immigration was introduced and in 1902 it was made permanent. In 1907, President Roosevelt concluded the "gentleman's agreement" which barred Japanese immigration to the U.S. Finally in 1924 under the National Origins Act the government instituted a quota system which openly discriminated against immigrants from Eastern and Southern Europe.