

CHAPTER

1

JUVENILE JUSTICE IN HISTORICAL PERSPECTIVE

CHAPTER LEARNING OBJECTIVES

On completion of this chapter, students should be able to

- ❖ *Understand the history of juvenile justice in the United States*
- ❖ *Understand contemporary challenges to the juvenile justice network*
- ❖ *Discuss the controversy between due process and informality in juvenile justice*
- ❖ *Recognize discrepancies between the ideal and real juvenile justice networks*

KEY TERMS

Age of responsibility

Common law

Mens rea

Chancery courts

Parens patriae

In loco parentis

Houses of refuge

Reform schools

Era of socialized juvenile justice

Holmes case

Kent case

Gault case

Winship case

Breed v. Jones

McKeiver v. Pennsylvania

Roper v. Simmons

Therapeutic approach

Legalistic approach

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The juvenile justice network in the United States grew out of, and remains embroiled in, controversy (see In Practice 1.1). More than a century after the creation of the first family court in Illinois (1899), the debate continues as to the goals to be pursued and the procedures to be employed within the network, and a considerable gap between theory and practice remains. Meanwhile, concern over delinquency in general, and violent delinquents in particular, continues to grow while confidence in the juvenile justice network continues to erode. As Bilchik (1999a) indicated, “The reduction of juvenile crime, violence, and victimization constitutes one of the most crucial challenges of the new millennium” (p. 1). Ironically, however, as Johnson (2006b) noted, “Police across the nation are linking the recent jump in the nation’s violent-crime rate to an increasing number of juveniles involved in armed robberies, assaults, and other incidents” (p. 1A).

In Practice 1.1

Cops Zero in on City’s “Wolf Packs”

There are predators on Jersey City streets that run in packs to bring down their prey. Police say these “wolf packs” of young people are responsible for up to 20 criminal incidents a week.

They are youth gangs, and there is nothing new under the sun about them since the 1950s except they have more firepower, have better transportation, and have expanded their sphere of influence beyond the traditional “neighborhood turf.”

In Jersey City, police will have to determine if these wolf packs are just a small group of loosely structured, like-minded young toughs or a more sophisticated organization in the tradition of MS-13, the notorious gang founded in Los Angeles by Salvadorans.

In any case, street gangs are nearly 10 times more likely to use a gun in a crime than is the regular juvenile offender, according to the National Youth Gang Center (NYGC), a national law enforcement research and training organization.

Gangs are usually a factor in crime being on the rise in a city, and organizations like the NYGC provide surveys that suggest that gang crimes are cyclical and that a flare-up of gang violence in a year is typically local and not a national trend. This is bad news for Jersey City, where law enforcement officials suggest as much as 40 percent of the city crime is committed by juveniles.

One interesting study made available by the NYGC shows that gangs exist because they are accepted in some communities as a way of life. Gangs require a “safe haven” and an ability to draw members from a “recruitment pool.” Gangs also have a psychological tie, a bond, with a community because its members may be children of residents or a neighborhood can relate to the economic conditions that help gangs to flourish. This is not to say that these communities may be in fear of gangs and want more police protection.

There are a dizzying number of state and federally funded programs out there addressing prevention and ways of dealing with youth gangs. There are many service providers competing for this money.

Jersey City police have their work cut out for them. It does not help that many of the city’s youth are without summer jobs, have few recreational opportunities, and have too much time on their hands. It may take more than just one city department to battle the influence of gangs in poorer sections of the city that boasts an area called the Gold Coast.

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The juvenile court was supposed to have provided due process protections along with care, treatment, and rehabilitation for juveniles while protecting society. Yet there is increasing doubt as to whether the juvenile justice network can meet any of these goals. Violence committed by juveniles, which some suggest occurs in cycles (Johnson, 2006b), has again attracted nationwide attention and raised a host of questions concerning the juvenile court, even though such violence had actually declined significantly during the prior decade. Can a court designed to protect and care for juveniles deal successfully with those who, seemingly without reason, kill their peers and parents? Is the juvenile justice network too “soft” in its dealings with such juveniles? Isn’t the “get tough” approach adopted over the past two decades what is needed to deal with violent adolescents? Was the juvenile court really designed to deal with the types of offenders we see today?



▲ The Juvenile Court Building, at Ewing and Halsted in Chicago in 1907, is shown. As noted in this chapter, the first family court in the United States was in Cook County, Illinois.

While due process for juveniles (discussed in detail later, but consisting of things such as the right to counsel and the right to remain silent), protection of society, and rehabilitation of youthful offenders remain elusive goals, frustration and dissatisfaction among those who work in the juvenile justice network, as well as among those who assess its effectiveness, remain the reality. Some observers have called for an end to juvenile justice as a separate system in the United States. Others maintain that the juvenile court and associated agencies and programs have a good deal to offer juveniles in trouble. For example, evidence from a survey of Tennessee residents indicates that, in that state at least, the public believes that rehabilitation should still be an integral goal of the juvenile justice network (Moon, Sundt, Cullen, & Wright, 2000). In a similar vein, in the 1997 legislative session in Maryland, the legislature

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revised the Juvenile Causes Act with a focus on balanced, restorative, and victim-centered justice. The revised act emphasizes prevention through development of programs for at-risk juveniles and also focuses on improving the network's response to offenders by providing a continuum of sanctions and treatment alternatives (Simms, 1997, p. 94). Yet during the 1990s, public fear of juvenile crime led the public to demand that legislators enact increasingly severe penalties for young offenders. Fanton (2006), in discussing the juvenile justice network in Illinois, concluded that "by the end of the 20th century the line between the Illinois juvenile justice and criminal justice systems was hopelessly blurred, reflecting a national trend" (p. A5). As Snyder and Sickmund (2006) pointed out, however, "America's youth are facing an ever-changing set of problems and barriers to successful lives. As a result, we are constantly challenged to develop enlightened policies and programs to address the needs and risks of those youth who enter our juvenile justice system. The policies and programs we create must be based on facts, not fears."

Can the reality and the ideal of the juvenile justice network be made more consistent? What can be done to bring about such consistency? What are the consequences of lack of consistency? A brief look at the history of juvenile justice and a detailed look at the network as it currently operates should help us answer these questions.

Juvenile Justice Historically

The distinction between youthful and adult offenders coincides with the beginning of recorded history. Some 4,000 years ago, the Code of Hammurabi (2270 BC) discussed runaways, children who disowned their parents, and sons who cursed their fathers. Approximately 2,000 years ago, both Roman civil law and later canon (church) law made distinctions between juveniles and adults based on the notion of **age of responsibility**. In ancient Jewish law, the Talmud specified conditions under which immaturity was to be considered in imposing punishment. There was no corporal punishment prior to puberty, which was considered to be the age of 12 years for females and 13 years for males. No capital punishment was to be imposed for those under 20 years of age. Similar leniency was found among Muslims, where children under the age of 17 years were typically exempt from the death penalty (Bernard, 1992).

By the 5th century BC, codification of Roman law resulted in the Twelve Tables, which made it clear that children were criminally responsible for violations of law and were to be dealt with by the criminal justice system (Nyquist, 1960). Punishment for some offenses, however, was less severe for children than for adults. For example, theft of crops by night was a capital offense for adults, but offenders under the age of puberty were only to be flogged. Adults caught in the act of theft were subject to flogging and enslavement to the victims, but children received only corporal punishment at the discretion of a magistrate and were required to make restitution (Ludwig, 1955). Originally, only those children who were incapable of speech were spared under Roman law, but eventually immunity was afforded to all children under the age of 7 years as the law came to reflect an increasing recognition of the stages of life. Children came to be classified as *infans*, *proximus infantia*, and *proximus pubertati*. In general, *infans* were not held criminally responsible, but those approaching puberty who knew the difference between right and wrong were held accountable. In the 5th century AD, the age of *infantia* was fixed at 7 years and children under that age were exempt from criminal liability. The legal age of puberty was

fixed at 14 years for boys and 12 years for girls, and older children were held criminally liable. For children between the ages of 7 years and puberty, liability was based on capacity to understand the difference between right and wrong (Bernard, 1992).

Roman and canon law undoubtedly influenced early Anglo-Saxon **common law** (law based on custom or use), which emerged in England during the 11th and 12th centuries. For our purposes, the distinctions made between adult and juvenile offenders in England at this time are most significant. Under common law, children under the age of 7 years were presumed to be incapable of forming criminal intent and, therefore, were not subject to criminal sanctions. Children between the ages of 7 and 14 years were not subject to criminal sanctions unless it could be demonstrated that they had formed criminal intent, understood the consequences of their actions, and could distinguish right from wrong (Blackstone, 1803, pp. 22–24). Children over the age of 14 years were treated much the same as adults.

The question of when and under what circumstances children are capable of forming criminal intent (*mens rea* or “guilty mind”) remains a point of contention in juvenile justice proceedings today. For an adult to commit criminal homicide, for instance, it must be shown not only that the adult took the life of another human without justification but also that he or she *intended* to take the life of that individual. One may take the life of another accidentally (without intending to do so), and such an act is not regarded as criminal homicide. In other words, it takes more than the commission of an illegal act to produce a crime. Intent is also required (and, in fact, in some cases it is assumed as a result of the seriousness of the act, e.g., felony murder statutes).

But at what age is a child capable of understanding the differences between right and wrong or of comprehending the consequences of his or her acts before they occur? For example, most of us would not regard a 4-year-old who pocketed some money found at a neighbor’s house as a criminal act because we are confident that the child cannot understand the consequences of this act. But what about an 8- or 9- or 12-year-old?

Another important step in the history of juvenile justice occurred during the 15th century when chancery or equity courts were created by the King of England. **Chancery courts**, under the guidance of the king’s chancellor, were created to consider petitions of those who were in need of special aid or intervention, such as women and children left in need of protection and aid by reason of divorce, death of a spouse, or abandonment, and to grant relief to such persons. Through the chancery courts, the king exercised the right of *parens patriae* (“parent of the country”) by enabling these courts to act *in loco parentis* (“in the place of parents”) to provide necessary services for the benefit of women and children (Bynum & Thompson, 1992). In other words, the king, as ruler of his country, was to assume responsibility for all of those under his rule, to provide parental care for children who had no parents, and to assist women who required aid for any of the reasons just mentioned. Although chancery courts did not normally deal with youthful offenders, they did deal with dependent or neglected children, as do juvenile courts in the United States today. The principle of *parens patriae* later became central to the development of the juvenile court in America and today generally refers to the fact that the state (government) has ultimate parental authority over juveniles in need of protection or guidance. In certain cases, then, the state may act *in loco parentis* and make decisions concerning the best interests of children. This includes removing children from the home of their parents when circumstances warrant.

In 1562, Parliament passed the Statute of Artificers, which stated that children of paupers could be involuntarily separated from their parents and apprenticed to others (Rendleman,

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1974, p. 77). Similarly, the Poor Law Act of 1601 provided for involuntary separation of children from impoverished parents, and these children were then placed in bondage to local residents as apprentices. Both statutes were based on the belief that the state has a primary interest in the welfare of children and the right to ensure such welfare. At the same time, a system known as the “City Custom of Apprentices” operated in London. The system was established to settle disputes involving apprentices who were unruly or abused by their masters in an attempt to punish the appropriate parties. When an apprentice was found to be at fault and required confinement, he or she was segregated from adult offenders. Those in charge of the City Custom of Apprentices attempted to settle disputes in a confidential fashion so that the juveniles involved were not subjected to public shame or stigma (Sanders, 1974, pp. 46–47).

Throughout the 1600s and most of the 1700s, juvenile offenders in England were sent to adult prisons, although they were at times kept separate from adult offenders. The Hospital of St. Michael’s, the first institution for the treatment of juvenile offenders, was established in Rome in 1704 by Pope Clement XI. The stated purpose of the hospital was to correct and instruct unruly juveniles so that they might become useful citizens (Griffin & Griffin, 1978, p. 7).

The first private separate institution for youthful offenders in England was established by Robert Young in 1788. The goal of this institution was “to educate and instruct in some useful trade or occupation the children of convicts or such other infant poor as [were] engaged in a vagrant and criminal course of life” (Sanders, 1974, p. 48).

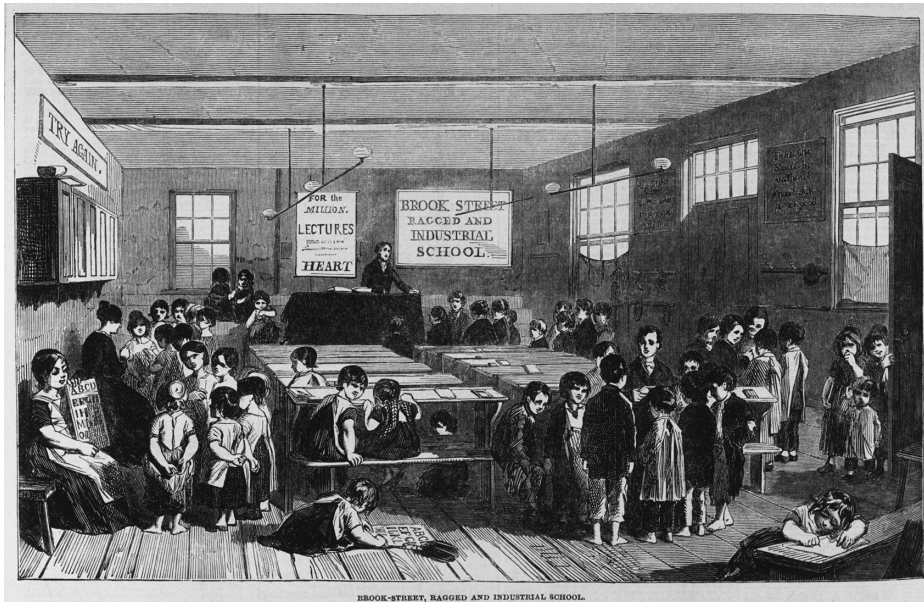
During the early 1800s, changes in the criminal code that would have allowed English magistrates to hear cases of youthful offenders without the necessity of long delays were recommended. In addition, dependent or neglected children were to be appointed legal guardians who were to aid the children through care and education (Sanders, 1974, p. 49). These changes were rejected by the House of Lords due to the opposition to the magistrate’s becoming “judges, juries, and executioners” and due to suspicion concerning the recommended confidentiality of the proceedings, which would have excluded the public and the press (pp. 50–51).

Meanwhile in the United States, dissatisfaction with the way young offenders were being handled was increasing. As early as 1825, the Society for the Prevention of Juvenile Delinquency advocated separating juvenile and adult offenders (Snyder & Sickmund, 1999). Up to this point in time, youthful offenders had been generally subjected to the same penalties as adults, and little or no attempt was made to separate juveniles from adults in jails or prisons. This caused a good deal of concern among reformers who feared that criminal attitudes and knowledge would be passed from the adults to the juveniles. Another concern centered on the possibility of brutality directed by the adults toward juveniles. Although many juveniles were being imprisoned, few appeared to benefit from the experience. Others simply appealed to the sympathy of jurors to escape the consequences of their acts entirely. With no alternative to imprisonment, juries and juvenile justice officials were inclined to respond emotionally and sympathetically to the plight of children, often causing them to overlook juvenile misdeeds or render lenient verdicts (Dorne & Gewerth, 1998, p. 4).

In 1818, a New York City committee on pauperism gave the term *juvenile delinquency* its first public recognition by referring to it as a major cause of pauperism (Drowns & Hess, 1990, p. 9). As a result of this increasing recognition of the problem of delinquency, several institutions for juveniles were established between 1824 and 1828. These institutions were oriented toward education and treatment rather than punishment, although whippings, long periods of silence,

and loss of rewards were used to punish the uncooperative. In addition, strict regimentation and a strong work ethic philosophy were common.

Under the concept of *in loco parentis*, institutional custodians acted as parental substitutes with far-reaching powers over their charges. For example, the staff members of the New York House of Refuge, established in 1825, were able to bind out wards as apprentices, although the consent of the child involved was required. Whether or not such consent was voluntary is questionable given that the alternatives were likely unpleasant. The New York House of Refuge was soon followed by others in Boston and Philadelphia (Abadinsky & Winfree, 1992).



▲ Founded in 1843 in Hampstead Road, Birmingham, and known as the Brook-Street Ragged and Industrial school, this was an early reform school.

“By the mid-1800s, **houses of refuge** were enthusiastically declared a great success. Managers even advertised their houses in magazines for youth. Managers took great pride in seemingly turning total misfits into productive, hard-working members of society” (Simonsen & Gordon, 1982, p. 23, boldface added). However, these claims of success were not undisputed, and by 1850 it was widely recognized that houses of refuge were largely failures when it came to rehabilitating delinquents and had become much like prisons. As Simonsen and Gordon (1982) stated, “In 1849 the New York City police chief publicly warned that the numbers of vicious and vagrant youth were increasing and that something must be done. And done it was. America moved from a time of houses of refuge into a time of preventive agencies and reform schools” (p. 23).

In Illinois, the Chicago Reform School Act was passed in 1855, followed in 1879 by the establishment of Industrial Schools for dependent children. These schools were not

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unanimously approved, as indicated by the fact that in 1870 the Illinois Supreme Court declared unconstitutional the commitment of a child to the Chicago Reform School as a restraint on liberty without proof of crime and without conviction for an offense (*People ex rel. O'Connell v. Turner*, 1870). In 1888, the provisions of the Illinois Industrial School Act were also held to be unconstitutional, although the courts had ruled previously (1882) that the state had the right, under *parens patriae*, to “divest a child of liberty” by sending him or her to an industrial school if no other “lawful protector” could be found (*Petition of Ferrier*, 1882). In spite of good intentions, the new reform schools, existing in both England and the United States by the 1850s, were not effective in reducing the incidence of delinquency. Despite early enthusiasm among reformers, there was little evidence that rehabilitation was being accomplished. Piscotta’s (1982) investigation of the effects of the 19th-century *parens patriae* doctrine led him to conclude that although inmates sometimes benefited from their incarceration and reformatories were not complete failures in achieving their objectives (whatever those were), the available evidence showed that the state was not a benevolent parent. In short, there was significant disparity between the promise and practice of *parens patriae*.

Discipline was seldom “parental” in nature; inmate workers were exploited under the contract labor system, religious instruction was often disguised proselytization, and the indenture system generally failed to provide inmates with a home in the country. The frequency of escapes, assaults, incendiary incidents, and homosexual relations suggests that the children were not separated from the corrupting influence of improper associates. (Piscotta, 1982, pp. 424–425)

The failures of reform schools increased interest in the legality of the proceedings that allowed juveniles to be placed in such institutions. During the last half of the 19th century, there were a number of court challenges concerning the legality of failure to provide due process for youthful offenders. Some indicated that due process was required before incarceration (imprisonment) could occur, and others argued that due process was unnecessary because the intent of the proceedings was not punishment but rather treatment. In other words, juveniles were presumably being processed by the courts in their own “best interests.”

During the post–Civil War period, an era of humanitarian concern emerged, focusing on children laboring in sweat shops, coal mines, and factories. These children, and others who were abandoned, orphaned, or viewed as criminally responsible, were a cause of alarm to reformist “child savers.” The child savers movement included philanthropists, middle-class reformers, and professionals who exhibited a genuine concern for the welfare of children.

One of the outcomes of the *Zeitgeist* (“spirit of the times”) of the late 19th century was the development of the first juvenile court in the United States. During the 1870s, several states (Massachusetts in 1874 and New York in 1892) had passed laws providing for separate trials for juveniles, but the first juvenile or family court did not appear until 1899 in Cook County, Illinois. “The delinquent child had ceased to be a criminal and had the status of a child in need of care, protection, and discipline directed toward rehabilitation” (Cavan, 1969, p. 362).

By incorporating the doctrine of *parens patriae*, the juvenile court was to act in the best interests of children through the use of noncriminal proceedings. The basic philosophy contained in the first juvenile court act reinforced the right of the state to act *in loco parentis* in



▲ Life in the reform schools of the 19th century was not easy.

cases involving children who had violated the law or were neglected, dependent, or otherwise in need of intervention or supervision. This philosophy changed the nature of the relationship between juveniles and the state by recognizing that juveniles were not simply miniature adults but rather children who could perhaps be served best through education and treatment. By 1917, juvenile court legislation had been passed in all but three states, and by 1932 there were more than 600 independent juvenile courts in the United States. By 1945, all states had passed legislation creating separate juvenile courts.

The period between 1899 and 1967 has been referred to as the **era of socialized juvenile justice** in the United States (Faust & Brantingham, 1974). During this era, children were considered not as miniature adults but rather as persons with less than fully developed morality and cognition (Snyder & Sickmund, 1999). Emphasis on the legal rights of the juvenile declined, and emphasis on determining how and why the juvenile came to the attention of the authorities and how best to treat and rehabilitate the juvenile became primary. The focus was clearly on offenders rather than the offenses they committed. Prevention and removal of the juvenile from undesirable social situations were the major concerns of the court. As Faust and Brantingham (1974) noted, “The blindfold was, therefore, purposefully removed from the eyes of ‘justice’ so that the total picture of the child’s past experiences and existing circumstances could be judicially perceived and weighed against the projected outcomes of alternative courses of legal intervention” (p. 145).

It seems likely that the developers of the juvenile justice network in the United States intended legal intervention to be provided under the rules of civil law rather than criminal

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law. Clearly, they intended legal proceedings to be as informal as possible given that only through suspending the prohibition against hearsay and relying on the preponderance of evidence could the “total picture” of the juvenile be developed. The juvenile court exercised considerable discretion in dealing with the problems of youth and moved further and further from the ideas of legality, corrections, and punishment toward the ideas of prevention, treatment, and rehabilitation. This movement was, however, not unopposed. There were those who felt that the notion of informality was greatly abused and that any semblance of legality had been lost. The trial-and-error methods often employed during this era made guinea pigs out of juveniles who were placed in rehabilitation programs, which were often based on inadequately tested sociological and psychological theories (Faust & Brantingham, 1974, p. 149).

Nonetheless, in 1955, the U.S. Supreme Court reaffirmed the desirability of the informal procedures employed in juvenile courts. In deciding not to hear the *Holmes case*, the Court stated that because juvenile courts are not criminal courts, the constitutional rights guaranteed to accused adults do not apply to juveniles (*in re Holmes*, 1955).

Then, in the *Kent case* of 1961, 16-year-old Morris Kent, Jr., was charged with rape and robbery. Kent confessed, and the judge waived his case to criminal court based on what he verbally described as a “full investigation.” Kent was found guilty and sentenced to 30 to 90 years in prison. His lawyer argued that the waiver was invalid, but appellate courts rejected the argument. He then appealed to the U.S. Supreme Court, arguing that the judge had not made a complete investigation and that Kent was denied his constitutional rights because he was a juvenile. The Court ruled that the waiver was invalid and that Kent was entitled to a hearing that included the essentials of due process or fair treatment required by the Fourteenth Amendment. In other words, Kent or his counsel should have had access to all records involved in making the decision to waive the case, and the judge should have provided written reasons for the waiver. Although the decision involved only District of Columbia courts, its implications were far-reaching by referring to the fact that juveniles might be receiving the worst of both worlds—less legal protection than adults and less treatment and rehabilitation than that promised by the juvenile courts (*Kent v. United States*, 1966).

In 1967, forces opposing the extreme informality of the juvenile court won a major victory when the U.S. Supreme Court handed down a decision in the case of Gerald Gault, a juvenile from Arizona. The extreme license taken by members of the juvenile justice network became abundantly clear in the *Gault case*. Gault, while a 15-year-old in 1964, was accused of making an obscene phone call to a neighbor who identified him. The neighbor did not appear at the adjudicatory hearing, and it was never demonstrated that Gault had, in fact, made the obscene comments. Still, Gault was sentenced to spend the remainder of his minority in a training school. Neither Gault nor his parents were notified properly of the charges against the juvenile. They were not made aware of their right to counsel, their right to confront and cross-examine witnesses, their right to remain silent, their right to a transcript of the proceedings, or their right to appeal. The Court ruled that in hearings that may result in institutional commitment, juveniles have all of these rights (*in re Gault*, 1967). The Supreme Court’s decision in this case left little doubt that juvenile offenders are as entitled to the protection of constitutional guarantees as their adult counterparts, with the exception of participation in a public jury trial. In this case and in the *Kent case*, the Court raised serious questions about the concept of *parens patriae* or the right of the state to informally determine the best interests of juveniles. In addition, the Court noted that the handling of both Gault and Kent raised serious issues of Fourteenth Amendment (due process) violations. The free reign of socialized juvenile justice had come to an end, at least in theory.

During the years that followed, the U.S. Supreme Court continued the trend toward requiring due process rights for juveniles. In 1970, in the *Winship* case, the Court decided that in juvenile court proceedings involving delinquency, the standard of proof for conviction should be the same as that for adults in criminal court—proof beyond a reasonable doubt (*in re Winship*, 1970). In the case of *Breed v. Jones* (1975), the Court decided that trying a juvenile who had previously been adjudicated delinquent in juvenile court for the same crime as an adult in criminal court violates the double jeopardy clause of the Fifth Amendment when the adjudication involves violation of a criminal statute. The Court did not, however, go so far as to guarantee juveniles all of the same rights as adults. In 1971, in the case of *McKeiver v. Pennsylvania*, the Court held that the due process clause of the Fourteenth Amendment did not require jury trials in juvenile court. Nonetheless, some states have extended this right to juveniles through state law.

In March 2005, in the case of *Roper v. Simmons*, the U.S. Supreme Court reversed a 1989 precedent and struck down the death penalty for crimes committed by people under the age of 18 years. Christopher Simmons started talking about wanting to murder someone when he was 17 years old. On more than one occasion, he discussed with friends a plan to commit a burglary, tie up the victim, and push him or her from a bridge. Based on the specified plan, he and a younger friend broke into the home of Shirley Crook. They bound and blindfolded her and then drove her to a state park, where they tied her hands and feet with electrical wire, covered her whole face with duct tape, walked her to a railroad trestle, and threw her into the river. Crook drowned as a result of the juveniles' actions. Simmons later bragged about the murder, and the crime was not difficult to solve. On being taken into custody, he confessed, and the guilt phase of the trial in Missouri state court was uncontested (Bradley, 2006). The U.S. Supreme Court held that "evolving standards of decency" govern the prohibition of cruel and unusual punishment and found that "capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution" (Death Penalty Information Center, n.d.). The Court further found that there is a scientific consensus that teenagers have "an underdeveloped sense of responsibility" and that, therefore, it is unreasonable to classify them among the most culpable offenders: "From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed" (Death Penalty Information Center, n.d.). In addition, the Court concluded that it would be extremely difficult for jurors to distinguish between juveniles whose crimes reflect immaturity and those whose crimes reflect "irreparable corruption." (Bradley, 2006). Finally, the Court pointed out that only seven countries in the world have executed juveniles since 1990, and even those countries now disallow the juvenile death penalty. Thus, the United States was the only country to still permit it. The pros and cons of this decision are discussed in Chapter 10, but suffice it to say now that the decision in this case furthered the considerable controversy that has characterized the juvenile justice network since its inception.

Continuing Dilemmas in Juvenile Justice

Several important points need to be made concerning the contemporary juvenile justice network. First, most of the issues that led to the debates over juvenile justice were evident by the 1850s, although the violent nature of some juvenile crimes over the past quarter century has raised serious questions about the juvenile court's ability to handle such cases. The issue of

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protection and treatment rather than punishment had been clearly raised under the 15th-century chancery court system in England. The issues of criminal responsibility and separate facilities for youthful offenders were apparent in the City Custom of Apprentices in 17th-century England and again in the development of reform schools in England and the United States during the 19th century.

Second, attempts were made to develop and reform the juvenile justice network along with other changes that occurred during the 18th, 19th, and early 20th centuries. Immigration, industrialization, and urbanization had changed the face of American society. Parents working long hours left children with little supervision, child labor was an important part of economic life, and child labor laws were routinely disregarded. At the same time, however, treatment of the mentally ill was undergoing humanitarian reforms as the result of efforts by Phillipe Pinel in France and Dorothea Dix and others in the United States. The Poor Law Amendment Act had been passed in England in 1834, providing relief and medical services for the poor and needy. Later in the same century, Jane Addams sought reform for the poor in the United States. Thus, the latter part of the 18th century and all of the 19th century may be viewed as a period of transition toward humanitarianism in many areas of social life, including the reform of the juvenile justice network.

Third, the bases for most of the accepted attempts at explaining causes of delinquency and treating delinquents were apparent by the end of the 19th century. We discuss these attempts at explanation and treatment later in the book. At this point, it is important to note that those concerned with juvenile offenders had, by the early part of the 20th century, clearly indicated the potentially harmful effects of public exposure and were aware that association with adult offenders in prisons and jails could lead to careers in crime.

Fourth, the *Gault* decision obviated the existence of two major, and more or less competing, groups of juvenile justice practitioners and scholars. One group favors the informal, unofficial, treatment-oriented approach, referred to as a casework or **therapeutic approach**; the other group favors a more formal, more official, more constitutional approach, referred to as a formalistic or **legalistic approach**. The *Gault* decision made it clear that the legalists were on firm ground, but it did not deny the legitimacy of the casework approach. Rather, it indicated that the casework approach may be employed, but only within a constitutional framework. For example, a child might be adjudicated delinquent (by proving his or her guilt beyond a reasonable doubt) but ordered to participate in psychological counseling (as a result of a presentence investigation that disclosed psychological problems).

All of these issues are very much alive today. Caseworkers continue to argue that more formal proceedings result in greater stigmatization of juveniles, possibly resulting in more negative self-concepts and eventually in careers as adult offenders. Legalists contend that innocent juveniles may be found to be delinquent if formal procedures are not followed and that ensuring constitutional rights does not necessarily result in greater stigmatization, even if juveniles are found to be delinquent.

Similarly, the debate over treatment versus punishment continues. On the one hand, status offenders (those committing acts that would not be violations if they were committed by adults) have been removed from the category of delinquency, in part as a result of the passage of the Juvenile Justice and Delinquency Act of 1974 (Snyder & Sickmund, 1999). On the other hand, beginning in the 1980s and continuing to the present, more severe punishments for certain violent offenses have been legislated, and waiver to adult court for such offenses has been made easier. At the same time, the U.S. Supreme Court's decision in *Roper v. Simmons* has

denied the possibility of the ultimate punishment—death. The perceived increase in the number of violent offenses perpetrated by juveniles has led many to ponder whether the juvenile court, originally established to protect and treat juveniles, is adequate to the task of dealing with modern-day offenders. Simultaneously, the concept of restorative justice, which involves an attempt to make victims whole through interaction with and restitution by their offenders, has become popular in juvenile justice (see Chapter 10). This approach emphasizes a treatment philosophy as opposed to the “get tough” philosophy so popular during recent years. Both of these approaches lead observers to believe that if the juvenile court survives, major changes in its underlying philosophy (see In Practice 1.2) are likely to occur (Cohn, 2004b; Ellis & Sowers, 2001; Schwartz, Weiner, & Enosh, 1998).

In Practice 1.2

Cutting Crime’s Roots: New Initiatives Aim to Reach Young Offenders Before They Become Violent—and to Stay on Their Cases if They Do

The caravan of five vehicles rolled up to the northeast Minneapolis house quietly. Out jumped police, probation officers, and U.S. marshals wearing bulletproof vests, some with guns drawn.

“Police, open up!” Sgt. Ron Stenerson shouted through the front door as officers surrounded the house. They had come looking for a 17-year-old with a long rap sheet who had violated probation.

Stenerson banged on the door with a flashlight. No answer. Finally, the teen’s grandmother, Rosie McKnight, appeared and said he had not been there for weeks. But as officers returned to their cars, she burst back into view. Her grandson was on the phone, ready to turn himself in.

Minutes later, he was in the middle of an empty street, hands in the air. “Why am I being arrested?” he muttered.

The answer, in part, is because Minneapolis and Hennepin County are making extensive, unusual changes in how they deal with juvenile criminals, who figure prominently in the city’s 19 percent increase in violent crime this year.

McKnight’s grandson is among 155 chronic, sometimes violent, teen offenders who have been arrested in the seven months since Minneapolis police formed a juvenile criminal apprehension unit, one of the first of its kind in the nation.

Police also have arrested 2,559 juveniles since May over truancy, petty crimes, and curfew violations—more than double the tally last year.

Mike Freeman, just elected Hennepin County attorney, said the issue will be a priority when he takes office in January. “We must focus on truancy and curfew violations if we want to keep juvenile crime down,” he said.

Even before crime spiked, local officials were searching for new ways to deal with troubled teens. Some are studying juvenile justice makeovers in Portland, Chicago, and elsewhere—places that now lock up fewer kids by figuring out which ones pose risks to society.

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"It is bigger than the Police Department," said Minneapolis Police Chief Tim Dolan.

On Friday, the Minneapolis City Council declared youth violence a public health crisis requiring an ambitious community effort to steer kids away from gangs, guns, and crime.

In another recent change, Hennepin County's Juvenile Detention Center has begun housing violent offenders apart from low-level offenders. Previously, the youths were assigned to living units based on age. That practice created "almost a little mini-criminal school," said Fred LaFleur, director of the county's community corrections.

Also, youths who commit petty crimes such as vandalism soon will report to caseworkers at youth programs instead of to probation officers, who had little time to see them.

"Everyone would agree, let's get those really crazy violent offenders off the street," said Rebecca Saito, a youth development consultant working to steer kids into youth programs. "But the clear majority of young people are open to a whole bunch of positive experiences and opportunities if they are presented in a way that is attractive to them."

Some Youth Crime Surging

Robberies by juvenile suspects jumped nearly 80 percent this summer—with 311 reported from June through September compared with 174 last year, police say. Arrests of juveniles in assault cases also rose and followed increases in violent crime last year in Minneapolis and many other cities nationwide.

Teens have been charged in fatal holdups of a man leaving an Uptown restaurant and a 15-year-old boy robbed of his football jersey on the North Side.

Yet not all crime is up, and court and police data suggest a late-summer ebb in serious juvenile cases. It's unclear whether a decade-long decline in juvenile crime is headed toward the alarming levels of the early 1990s.

"We won't really know for several years," said Melissa Sickmund, co-author of reports on juvenile crime for the U.S. Justice Department. "It is so frustrating. It's like driving and looking in your rear-view mirror."

In St. Paul, police believe juvenile crime is down but lack data to confirm that trend. Crime reports from the past year are being recounted by hand because computer counts had "anomalies," said department spokesman Tom Walsh.

Pete Cahill, chief deputy of the Hennepin County Attorney's Office, said prosecutors urged former Minneapolis Police Chief Bill McManus to restore the department's juvenile crime investigations unit in 2004. The unit was cut during the 2003 state budget crisis. McManus resigned to become San Antonio police chief in April.

"We dropped the ball," said Dolan, McManus's second-in-command at the time.

After Dolan was named interim chief, he assigned nine detectives to the new unit to focus on armed robberies and aggravated assaults. Lt. Bryan Schafer, who leads the unit, said it is tracking new criminal trends, including a rise in purse snatchings and armed robberies near light-rail stations.

Wake Up, You're Under Arrest

It's 5 a.m. on a chilly October day, and the new unit is hoping to catch some kids—in bed.

Sgt. Stenerson, flanked by unit members in a north Minneapolis house used as a probation office, pages through a clipboard with more than a dozen arrest warrants for juvenile felons. Some of the juveniles are violent; most violated probation.

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"It takes a concerted effort," he said. "You have to do research on the juvenile's associates, addresses, where they might go to school. Even when we do hit the right address, they may not be there. Juveniles are very mobile."

Today, the top priority is a teenager who ran away months ago from a group home in Shakopee. Other teens are wanted because they tested positive for marijuana, ignored their probation officer, or skipped required antiviolence classes.

Knocking on doors for four hours, officers kept striking out. They talked to the 13-year-old sister of one suspect and the grandmother of another; neither knew where the kids were. At another stop, Stenerson greeted a mother he has visited repeatedly in search of her 16-year-old son, who's wanted on a gun conviction. She told him he ran away to Las Vegas.

But the team's luck changed after it approached a mother who couldn't speak English. She showed officers a certificate indicating her son attended Roosevelt High School. They arrested him there an hour later. The intensive effort has prompted some parents to get their children to turn themselves in, Stenerson said.

"We need to send a message that they will be held accountable," he said.

Alternatives to Lockup

As police strive to round up juveniles who commit violence, some corrections officials are rethinking how they deal with teen offenders who have not—yet.

Low-level offenders, including some picked up for missing a court appearance, often end up in juvenile detention centers, sometimes filling them. Corrections officials say that is costly and unnecessary and that home monitoring, secure shelters, and community-based programs can better steer low-risk kids away from crime.

That's how it's done now in juvenile centers in Cook County, Ill., and Multnomah County, Ore., whose new intervention efforts are admired by juvenile justice officials nationwide.

Corrections officials, police, and judges from Hennepin, Ramsey, and Dakota counties visited those places this year in the hope of developing similar plans. The Annie E. Casey Foundation, which funds research into detention alternatives, paid for the travel.

"To keep locking them up doesn't cut crime," said Robert Hargesheimer, head of youth investigations for the Chicago Police Department. He and other officers now team up with social and mental health workers, probation officers, school officials, and faith-based mentors at a neighborhood center for low-level offenders. "You have to intervene when they are younger and help the families as well," Hargesheimer added.

In Minnesota, officials also hope such efforts might reduce racial disparities in Hennepin, Ramsey, and Dakota counties' juvenile detention centers. Hennepin detains black juveniles at 15 times the rate of white kids, a March 2005 state Department of Public Safety report found.

Focusing Attention and Money

By declaring juvenile violence a public health crisis, Minneapolis officials are hoping to focus attention and money on what some supporters call an effort to "outrecruit the gangs." A 15-member panel is being formed to oversee the effort.

"The low-level offenders who are living in the community where the negative influences are 24/7, we want to get them involved," said Jan Fondell, a city youth specialist working on the effort.

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On a recent weeknight, two teens sat behind a video camera in a North Side church basement as another adjusted a spotlight. A few minutes later, they began filming an interview for their seventh documentary, this one about a peace rally. It is one of the youth-led "positive peer group" efforts overseen by Edwin Irwin, executive director of the Kwanzaa Community Church's Nia Imani Youth and Family Development Center.

"Most of these youth are A students, but some have made bad choices," he said.

Fondell and others would like to replicate such efforts for troubled kids ages 10 to 15 years. In a small step, the city is proposing to spend \$120,000 to focus on 60 to 80 at-risk children next year, she said. A separate city effort is mapping existing youth programs by neighborhood, hoping to attract more kids.

It is hard and can be risky to approach troubled youth on the street. New Age Urban Development, run out of the north Minneapolis house of Craig Bell, offers a boxing program, jobs with the group's construction company, and résumé and homework help. Bell and others walk high-crime neighborhoods to find teens in need.

"Sometimes I have to pull drugs and guns out of their hands," he said.

SOURCE: David Chanen and David Shaffer, November 19, 2006, p. 1A. Copyright 2006. *Star Tribune: Newspaper of the Twin Cities.*

Rethinking Juvenile Justice

Finally, the issue of responsibility for delinquent acts continues to surface. The trend has been to hold younger and younger juveniles accountable for their offenses, to exclude certain offenses from the jurisdiction of the juvenile court, and to establish mandatory or automatic waiver provisions for certain offenses.

There are a number of practical implications of the various dilemmas that characterize the juvenile justice network. Juvenile codes in many states were changed during the 1990s to reflect expanded eligibility for criminal court processing and adult correctional sanctions. All states now allow juveniles to be tried as adults under certain circumstances. Because the juvenile justice network does not exist in a vacuum, laws dealing with juveniles change with changing political climates, whether or not such changes are logical or supported by evidence. Thus the cycle of juvenile justice is constantly in motion. Disputes between those who represent the two competing camps are common and difficult to resolve. Finally, the discrepancy between the ideal (theory) and practice (reality) remains considerable. What should be done to, with, and for juveniles, and what is possible based on the available resources and political climate, may be quite different things. Bilchik (1999b) asked,

As a society that strives to raise productive, healthy, and safe children, how can we be certain that our responses to juvenile crime are effective? Do we know if our efforts at delinquency prevention and intervention are really making a difference in the lives of youth and their families and in their communities? How can we strengthen and better target our delinquency and crime prevention strategies? Can we modify these strategies as needed to respond to the ever-changing needs of our nation's youth? (p. iii)

As we enter the 21st century, these are among the questions that remain unanswered in the field of juvenile justice.

Career Opportunities in Juvenile Justice

In each of the following chapters, look for the Career Opportunities Box, which provides you with information concerning specific occupations, typical duties, and job requirements within or related to the juvenile justice network. Keep in mind that different jurisdictions have different requirements, so we are presenting you with information that is typical of the occupations discussed. We encourage you to discuss career options with faculty and advisers and to contact the placement office at your university or college for further information. You might also seek out individuals currently practicing in the juvenile justice field to discuss your interest and concerns. Good hunting!

SUMMARY

Although the belief that juveniles should be dealt with in a justice system different from that of adults is not new, serious questions are now being raised about the ability of the juvenile justice network to deal with contemporary offenders, particularly those who engage in violent conduct. The debate rages concerning whether to get increasingly tough on youthful offenders or to retain the more treatment/rehabilitation-centered approach of the traditional juvenile court. The belief that the state has both the right and responsibility to act on behalf of juveniles was the key element of juvenile justice in 12th-century England and remains central to the juvenile justice network in the United States today.

Age of responsibility and the ability to form criminal intent have also been, and remain, important issues in juvenile justice. The concepts of *parens patriae* and *in loco parentis* remain cornerstones of contemporary juvenile justice, although not without challenge. Those who favor a more formal approach to juvenile justice continue to debate those who are oriented toward more informal procedures, although decisions in the *Kent*, *Gault*, and *Winship* cases made it clear, in theory at least, that juveniles charged with delinquency have most of the same rights as adults.

Although some (e.g., Hirschi & Gottfredson, 1993) have argued that the juvenile court rests on faulty assumptions, it appears that the goals of the original juvenile court (1899) are still worth pursuing. It is becoming increasingly apparent that the political climate of the time is extremely influential in dictating changing, and sometimes contradictory, responses to juvenile delinquency.



Note: Please see the Companion Study Site for Internet exercises and Web resources. Go to www.sagepub.com/juvenilejustice6study.

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Critical Thinking Questions

1. What do the terms *parens patriae* and *in loco parentis* mean? Why are these terms important in understanding the current juvenile justice network?
2. List and discuss three of the major issues confronting the juvenile justice network in the United States today. Are these new issues, or do they have historical roots? If the latter, can you trace these roots?
3. What is the significance of each of the following court decisions?
 - a. *Kent*
 - b. *Winship*
 - c. *Gault*
 - d. *Roper v. Simmons*
4. Discuss some of the historical events that have had an impact on the contemporary juvenile justice network in the United States. What do you think the long-term effects of these events will be on the juvenile justice network?

Suggested Readings

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