H. Ted Rubin

Juveniles in Justice

A Book of Readings

JUVENILES IN JUSTICE
A BOOK OF READINGS

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Preface

This book centers on a changing American institution, the juvenile court. The book encompasses issues and practices that precede the court's function and extend beyond it. It also considers legislative policy, police procedures, and programmatic alternatives to juvenile detention, juvenile court, and juvenile institutionalization. It presents a reassessment of the court's workload and rationale for intervention. Its emphasis is the front end and what might be called the middle of the juvenile justice system, although certain policy aspects and legal dimensions of institutionalization are considered. This work also concerns children, the more than a million youngsters who experience one or more stages of the juvenile justice process each year.

The readings included here, all of them products of the 1970s, begin with the juvenile court and its past, present, and uncertain future. Considerations follow as to policy concerns and practices on the continuum of the court's workload from serious offenses and repetitive delinquency to status offenses or noncriminal misbehaviors, leading to an examination of the system from the arrest stage to the entry door of the fenced-in state institution.

The evolving policies which affect the court and influence the system's capability and motivation within the community are stressed. While the percentage of juvenile offenders who are dispatched to state institutions or enter the criminal justice system is comparatively small, these young people constitute an extremely important group who have been given up on for now by judges and policy makers. Policies that influence the number and type of such youths, some of whom have caused significant harm and others of whom hold an insufficiently tapped potential for community-based rehabilitation, are reviewed. The institutional experience does not receive substantial portrayal due to space limitations and the community-level emphasis.

The issues addressed are those at the cutting edge of the juvenile justice process. Some of the directions presented would disturb the status quo and disrupt the homeostatic balance of the juvenile justice world. Other articles represent evaluations of present juvenile justice practices: reporting critically on the juvenile court promise, assessing more neutrally what is happening out there, or researching the degree to which certain hopeful schemes are faring.

The impactful decision *In re Gault*, issued by the United States Supreme Court on May 15, 1967, incorporated social science data and evaluations to support a revisionist foundation to compel constitutional protections for juvenile offenders. This book draws on more recent data and reports to enrich our understanding of contemporary juvenile justice practice.

What is right about juvenile justice and also what is wrong receive ample attention. Traditional arguments in support of the court are excluded; the swiftly changing juvenile justice picture merits searching analysis rather than blind defense.

Introductory notes to each of the five sections and the several subsections construct a background for the articles or comment on the writings, most of which are by authors trained in law or social science. The editor's objective, for the student, professional, and general readership of this book, is to promote a deeper understanding of critical issues and developments in juvenile justice. The dominant value is constitutional fairness. A justice perspective compels accountability and enlightenment from those granted the authority to deal with youths who have been less than just in their actions toward others. Beyond delivering due process, juvenile justice agents must deliver themselves from the temptations of moralistic judgments and rhetorical promises.

CROSS-REFERENCE TABLE: Using *Juveniles in Justice: A Book of Readings* with Juvenile Justice Texts (Reading Number for *Juveniles in Justice)*

TEXT, CHAPTER	RUBIN *Juvenile Justice: Policy, Practice, and Law* Goodyear, 1978	COX & CONRAD *Juvenile Justice* Brown, 1978	JOHNSON *Introduction to the Juvenile Justice System* West, 1975	KATKIN, HYMAN & KRAMER *Juvenile Delinquency and the Juvenile Justice System* Duxbury, 1976
1	5-7, 26	1, 4	1	—
2	8-10	21	3, 8-10	—
3	11-13	3	25	1, 2
4	14-16	7	14-16, 18, 19, 20	19
5	17-19	8-10	3	8
6	3, 21, 23, 24, 26	14-16, 18-20	18, 23-26	11, 13
7	22	11-13	11-13	14-16
8	4	2	—	4, 20, 21
9	2	17	17	3, 18
10	—	—	5, 22	5-7, 9, 10, 22-26
11	1-4, 25	5, 6, 22-26	2	—
12	20	4	4, 6, 7, 21	12, 17
13	—	—	—	—
14	—	—	—	—
15	—	—	—	—
16	—	—	—	—
17	—	—	—	—
18	—	—	—	—
19	—	—	—	—

CROSS-REFERENCE TABLE: Using *Juveniles in Justice: A Book of Readings* with Juvenile Justice Texts (Reading Number for *Juveniles in Justice)*

TEXT CHAPTER	BARTOLLAS & MILLER *The Juvenile Offender: Control, Correction, and Treatment* Holbrook, 1978	EMPEY *American Delinquency: Its Meaning and Construction* Dorsey, 1978	PHELPS *Juvenile Delinquency* Goodyear, 1976	SENNA & SIEGEL *Juvenile Law* West, 1976
1	5	—	1, 2	1-4, 8-10
2	8-10	—	3, 8-10	11-13
3	11-13	—	—	14-19
4	1, 2, 18, 20	1	12, 17, 19	5-7
5	3	2	11-13	2, 20
6	23, 24, 25	3, 7	14-16	21, 23-26
7	17, 19	—	3, 4, 18, 20, 23-26	22
8	14-16	—	5-7, 21, 22	—
9	22	—	—	—
10	22	—	—	—
11	—	—	—	—
12	—	—	—	—
13	7, 21	17, 19	—	—
14	6	—	—	—
15	—	11-13	—	—
16	4, 26	14-16, 18, 20, 25	—	—
17	—	5, 6, 22	—	—
18	—	9, 10, 23, 24, 26	—	—
19	—	4, 8, 21	—	—

JUVENILES IN JUSTICE

A BOOK OF READINGS

About the Editor

H. Ted Rubin is one of the nation's leading authorities on juvenile justice. As judge of the Denver Juvenile Court, 1965–71, he pioneered due process reforms and community-based rehabilitation programs during that period. He architected the major provisions of the model Colorado Children's Code enacted in early 1967. Previously, as a Colorado state legislator, Rubin developed forestry camp programs for delinquent youths and mental health/retardation legislation.

Director for Juvenile Justice for the Institute for Court Management, Denver, since 1971, he is currently Senior Associate for Juvenile and Criminal Justice for the Institute. He has taught at the University of Colorado, Boulder, and has served as Visiting Professor, School of Criminal Justice, State University of New York at Albany. Rubin has been a consultant to the President's Commission on Law Enforcement and Administration of Justice, the Joint Commission on Correctional Manpower and Training, the Institute of Judicial Administration-American Bar Association Juvenile Justice Standards Project, and the National Advisory Committee on Criminal Justice Standards and Goals.

He holds graduate degrees in both law and social work, earlier worked in children's agencies, and has published over thirty articles, mostly focused on juvenile justice, court, and rehabilitation issues. He is the author of *The Courts: Fulcrum of the Justice System* (Goodyear, 1976) and *Juvenile Justice: Policy, Practice, and Law* (Goodyear, 1979).

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Perspectives of the Juvenile Court

INTRODUCTION

American society has never lacked divergent opinions as to how children should be disciplined, both within and outside the family unit. Even dominant child care philosophies shift and are reshaped with changing social conditions. The consensus which long supported the juvenile court construct has yielded to contemporary skepticism and proposals to substantially modify or even terminate specialized judicial processing for juvenile offenders.

More than eight decades ago, a reconsideration of how the judicial system should deal with youngsters who offended criminal laws and children who needed protection through the law led the Illinois legislature to create the nation's first statutory children's court, the Juvenile Division of the Circuit Court of Cook County, Illinois, in 1899. A separate judge was assigned to officiate over juvenile hearings; the housing of juvenile with adult offenders was to be eliminated; probation officers were authorized to represent children's best interests and to facilitate the achievement of court objectives; and a broad purpose to do better for children was promulgated. The juvenile court concept caught on, and in time juvenile court acts were approved in all states. The laws differed as to the particular court structure, jurisdictional age, delinquency definition, and other matters. But common to all were liberal entry criteria, a strong treatment rationale, wide latitude in decision making, and the casting of the judge in a very powerful role.

The 1960s began an intensified review of juvenile court procedures and attainments. A blanket of constitutional protections was mandated for youngsters brought into this forum. The rising incidence of serious and repetitive delinquent offenses, part of the disturbing crime problem of the 1960s and 1970s, precipitated significant changes in official response to offending juveniles and troubled youngsters and to the purposes and practices of juvenile courts and juvenile justice systems. The treatment rationale was wounded, though not mortally; a punishment rationale found increased acceptance; the differentiation of sanction, based on offense severity, achieved new support; the movement to curb court intervention with juvenile noncriminal misbehavior accelerated sharply.

The four articles which follow chart the inheritance of the juvenile court past, mark contemporary directions, and ponder an uncertain juvenile court future.

The Schultz article affirms the humanism of the original legislation as utilitarian to present day objectives. Director of the Institute of Judicial Administration-American Bar Association Juvenile Justice Standards Project for one cycle of its lengthy enterprise, Schultz challenges the revisionist critique that juvenile court origins were conceptually flawed and were motivated by a wish to straightjacket immigrant children. He suggests that the probation function, born in Massachusetts but ensconced by the Illinois Juvenile Act, was a notable invention which provided a vehicle for a community-based corrections, a high value in a humanistic juvenile rehabilitation enterprise. He finds commonality between early and more contemporary reforms in

strengthening the family unit and in dealing with youngsters within their own homes or substitute community facilities. While the first cycle of reformers failed to appreciate current concerns about coercive intervention and procedural irregularity, Schultz applauds the initial conceptualization of a separate juvenile system, finds that the system's flexibility continues to provide benefits for its clientele, and observes that the statutory objectives for juvenile court acts have been translated into a standard from which "right to treatment" cases have brought more suitable conditions for institutionalized youths.

The Rubin article describes different organizational models for juvenile courts and reviews the juvenile caseflow process. The movement in a number of states to eliminate limited purpose trial courts and to unify all trial courts into either a single level or two-tier trial court system predicts that juvenile courts which are separately organized and administered will merge into lower or upper trial courts as specialized divisions. The Massachusetts model charted in the article has become outmoded by legislation which took effect in January, 1979. The historic, separate Boston Juvenile Court is now the Boston Division of the Juvenile Court Department of the Trial Court of the Commonwealth of Massachusetts. Further, the Connecticut separate statewide juvenile court system was transformed in 1978 into the juvenile division of the superior court.

Juvenile intake systems, designed over many years to restrict formal court processing to the more needful youngsters, is undergoing very rapid change. Legislative distrust of decision making by probation intake officers has triggered increased participation by the prosecutor at this vital stage. California amendments effective January, 1977 converted the California process described in the article to a model resembling Florida's second level prosecutor screening approach, although the California prosecutor does not review complaints rejected by the intake officer unless the complainant appeals.

This article sketches certain of the major trends of juvenile justice: a more legalistic and lawyer dominated court; the shift away from coercive intervention with status offense youths; the extension of community-based programming; and a more professional and accountable court.

These directions and others are reflected in the 1977 annual report of the Juvenile Division of the Superior Court for Pima County, Tucson, Arizona. The report describes how one juvenile court backed boldly away from locking up youngsters at local detention and state institutional levels, effectuated the goal to retain the child in his own family wherever possible, an objective which has been underemphasized by many juvenile courts, and found the funds and citizen and professional support to fulfill a community's responsibility to its youngsters. In a fast growing county, a changed philosophy and skilled leadership reduced state commitments from 280 in 1969 to 37 in 1977, slashed the detention of status offenders from 979 in 1974 to 16 in 1977, expanded the purchase of private residential placements, and innovated projects such as Mobile Diversion and the Street Program. This reformulation of what a juvenile court is all about did not occur without conflict or backlash. The local prosecutor expressed severe opposition to the community-based approach. At the end of 1978, the juvenile court judge was reassigned by his colleagues to the criminal division of the general court, following the rupture of the relationship between the judge and his court services director, who accepted a position elsewhere. Under different judicial leadership, the Tucson court soon began "locking them up" again.

The final article in this section, also by the editor, reviews the basic principles and describes certain of the major directions set forth by the Institute of Judicial

Administration-American Bar Association Juvenile Justice Standards Project. Several of these — proportionality in sanctions, determinate sentences, and repeal of status offense jurisdiction — would radically change the juvenile court we have known. The article reviews and analyzes five published papers which, because of the reach of these standards or because these standards have not gone far enough, argue that delinquent youths should be processed in criminal courts, and that juvenile courts, as such, should be abolished. These writers argue that due process safeguards can better be accorded by criminal courts, and that the substitution of a punishment for a treatment rationale removes the underpinnings of a specialized juvenile forum. The author rejects these arguments, preferring IJA-ABA reform directions and a juvenile court organized as a division of the general trial court; he cites the substantial deficiencies in adult misdemeanor courts that would inherit the bulk of the current juvenile court workload. Yet the abolitionist perspective is a haunting one which may influence policy makers of the future.

1 *The Cycle of Juvenile Court History*

J. Lawrence Schultz

Until recently there has been little challenge to the consensus that, at least for historical purposes, juvenile courts can be discussed as a group and that their collective birth date is April 21, 1899, when "an Act to regulate the treatment and control of dependent, neglected, and delinquent children"[1] was passed in Illinois. The rapid proliferation of legislated juvenile courts immediately after 1899 nourished that consensus.[2] Until recently, when sociologist Anthony M. Platt, in *The Child Savers: The Invention of Delinquency,*[3] and law professor Sanford J. Fox, in "Juvenile Justice Reform: An Historical Perspective,"[4] challenged many of the traditional assumptions about the "first juvenile court," the circumstances of the passage of the Illinois Act were not examined in detail.

THE 1899 JUVENILE COURT ACT

Although popularized and widely identified today as the "Juvenile Court Act," the germinal 1899 legislation in Illinois included other provisions, in addition to those establishing special court proceedings, for protecting children.[5] The provisions that

From *The Serious Juvenile Offender,* Proceedings of a National Symposium, September 19 and 20, 1977, Minneapolis, Minnesota. Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Department of Justice (Washington, D.C.: Government Printing Office, 1978), pp. 32–50. Reprinted by permission.

Reprinted, with permission of the National Council on Crime and Delinquency, from J. Lawrence Schultz, "The Cycle of Juvenile Court History," *Crime and Delinquency,* October 1973, pp. 457-76.

stirred national interest, however, were those governing the hearing and disposition of cases involving children under the age of sixteen alleged to be either "dependent and neglected" or "delinquent," the latter category defined in 1899 as including any child "who violates any law of this state or any city or village ordinance."[6]

The innovative (for Illinois) provisions designated one circuit judge in Cook County to hear all cases under the Act, decreed that all these cases would be heard in a special separate courtroom, established a "summary" proceeding, mandated the separation of children from adults whenever both were confined in the same institution, and prohibited committing a child under twelve to a jail or a police station. Perhaps most significant, the Act vested authority in the new court to appoint probation officers (not paid by the state[7]), who would investigate cases when required by the court, "represent the interests of the child when the case [was] heard," provide any information the judge might request, and, following disposition, supervise children placed on probation.[8]

Finally, more important to this Act than purpose clauses usually are was its concluding section:

> This act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done the child be placed in an improved family home and become a member of the family by legal adoption or otherwise.[9]

Significant amendments in 1901,[10] 1905,[11] and 1907[12] reveal a pattern of (1) expansion of the definition of juvenile deliquency,[13] (2) progressively greater concern with regulating the quality of treatment accorded juveniles confined in institutions by the juvenile court,[14] and (3) increasing public funding for the probation system.[15]

REVISIONISM: PLATT AND FOX

Earlier writers, while recognizing that the Illinois Act did not spring full-grown from the shores of Lake Michigan, have extolled the combination of elements incorporated in it or the central "philosophy" embodied in it as "revolutionary"[16] or "radically new."[17] Both Platt and Fox disagree. Although their interpretations are dissimilar in other ways, each concludes that the 1899 legislation served primarily conservative, middle-class interests and resulted in no important innovations, either in concept or in detail.

Although both writers share the view that the Act was essentially conservative and not innovative, the evidence each relies upon differs in some important respects. Fox's approach is to trace specific precedents for practices and concepts incorporated in the 1899 legislation, demonstrating that many of these were neither new nor liberal. Platt tends more toward bringing to the surface the conservative intellectual concepts and characteristics of the social structure of the late nineteenth century that influenced the shape of the Act.

Fox concentrates primarily on three themes. First, he contends that two important provisions of the Act — summary proceedings for children and a bias in favor of treatment as similar as possible to family life — were common in the nineteenth century. Second, he demonstrates, as Platt does, that in important respects the 1899

Act represented a failure in attempted reform, because the would-be reformers were defeated by vested interests in important causes: improving conditions of incarceration for children and severing public handling of children from the influence of sectarian organizations. The failure of the attempt to reform prison conditions is represented, according to Fox, by the defeat of a provision that would have removed children from the poorhouse and by the refusal of the legislature to appropriate any money to build a juvenile detention center, thus apparently pulling the teeth of the new prohibition against putting children younger than twelve in jails used by adults.

The third leg of Fox's argument is that the Act was not even progressive in concept. Far from being anything unusual, he argues, the *parens patriae* concept was at least as old as the House of Refuge, incorporated in 1824 by the New York legislature to care for both delinquent and wayward children. Most crucial, "the 1899 Illinois Act . . . restated the belief in the value of coercive predictions."[18] That is, the legislation approached the problems of delinquency, dependency, and neglect by assuming, as had all legislatures before, that government must devise methods to identify "predelinquent" children and force them to accept treatments designed by the state to correct their wayward tendencies.

Platt complements Fox's analysis by exploring currents of thought, reflected in the 1899 Act, which had come to dominate criminal and penological reform in the nineteenth century. He argues that these concepts were old hat by 1899 and that many of them served the interests of middle-class groups in maintaining their established institutions and their value systems. Paramount among these ideas (or biases) was *hostility* — hostility to the cities, to the new waves of East European immigrants, and even to their children, whom the reformers professedly wished to save from criminality and immorality.

According to Platt, the Social Darwinist conception that lower classes were inherently inferior and thus doomed to a life of poverty and license had been successfully resisted, but the identification of poverty with crime, and of both with immorality, remained. The corollary of attributing poor children's difficulties to an evil city environment was that they would best be treated if they were removed from their homes and placed in the more healthful countryside, preferably in a western state, where they would be exposed to the virtues of middle-class life: sobriety, thrift, industry, prudence, and piety. Training in agricultural and industrial pursuits would be imparted in small institutions approximating family structures, or in foster homes. Thus the unfortunate immigrant child would be assimilated to the American way of life. Prominent among the reformers were "middle-class women who extended their housewifely roles into public service and used their extensive political contacts and economic resources to advance the cause of child welfare."[19]

To summarize:

> Child saving may be understood as a crusade which served symbolic and ceremonial functions for native, middle-class Americans. The movement was not so much a break with the past as an affirmation of faith in traditional institutions. Parental authority, home education, rural life, and the independence of the family as a social unit were emphasized because they seemed threatened at this time by urbanism and industrialism. The child savers elevated the nuclear family, especially women as stalwarts of the family, and defended the family's right to supervise the socialization of youth.[20]