Steven M. Cox ◆ John J. Conrad

Juvenile Justice

fourth edition

A Guide to Practice and Theory

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Steven M. Cox
Western Illinois University

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John J. Conrad
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Preface

As practitioners in both the juvenile justice network and instructors in criminology, criminal justice, and sociology courses, we have become painfully aware of the often-repeated plea, "That's great in theory, but what about in practice?" We are convinced that a basic understanding of the interrelationships among philosophy, notions of causation, and procedural requirements is a must if one is to be a successful practitioner in the juvenile justice network.

In this text, we integrate juvenile law, so-called theories of causation, and procedural requirements while examining their interrelationships. We have attempted to make our treatment of these issues both relevant and comprehensible to those actively employed in the juvenile justice network, to those who desire to become so employed, and to those whose interest in juvenile justice is more or less academic.

To accomplish these goals, we include in chapter 1 a brief discussion of the historical antecedents of the current juvenile justice network, with an emphasis on the relevance of these antecedents to recent developments and current dilemmas.

In chapter 2, some of the difficulties in defining and measuring delinquency, abuse, and neglect and the consequences of such difficulties for practitioners are discussed.

Chapter 3 deals with the social and physical characteristics of juvenile offenders and victims and the implications of family ties, social class, and education for practitioners.

Chapter 4 discusses some of these so-called theories of causation as they relate to delinquency and abuse/neglect. Analyses of the relationships among theory, philosophy, and practice are discussed in this chapter.

In chapter 5, the purpose and scope of juvenile court acts are discussed using comparisons between the Uniform Juvenile Court Act and juvenile codes enacted by a variety of states.

Chapter 6 discusses in some detail the procedures required by juvenile court acts and the importance of these procedures to juveniles and practitioners.

Chapters 7 and 8 deal with different components of the juvenile justice network, from police through probation officers and from prosecutors to juvenile court judges. Assessments are made of the training, competence, and discretionary powers of personnel at each level in the juvenile justice system.

In chapters 9 and 10, a variety of agencies that relate to the juvenile justice system are discussed, and material on prevention, treatment, and corrections is presented. Examples are presented along with critiques that relate potential for success to theories of causation and juvenile justice philosophy.

In chapter 11, violence by and against youth is discussed. Programs aimed at reducing the incidence of violence involving youth are also discussed.

Chapter 12 contains material on street gangs, their involvement with drugs and violence, and attempts by the justice system to deal with them.

The final chapter briefly summarizes the interrelationships among philosophy, procedure, and theory and comments on both the current and future state of the juvenile justice network.

In the appendices, we present the Uniform Juvenile Court Act and some of the landmark cases decided by the Supreme Court which have had great impact on the juvenile justice system.

Although the chapters are arranged in what we consider to be logical order, they may be rearranged to suit the needs of students and instructors.

Throughout the text we have taken a critical approach to the juvenile justice system, pointing out problem areas. We believe that improvement in the system depends on better understanding and greater emphasis on these problem areas.

In this edition, we have greatly increased the amount of coverage on abused and neglected children. In part, this is due to the increasing focus on victims of abuse and neglect and in part due to our belief that the association between abuse/neglect and delinquency is not accidental. It seems likely that children who learn, by being victims of abuse, that violence is an appropriate response in social situations are more likely to respond with violence themselves.

We have also updated all legal and statistical information, added "Highlights" boxes focusing on current issues in juvenile justice, and updated the selected readings list at the end of each chapter and the references.

At the end of each chapter a summary and a number of discussion questions highlight the key issues raised in the chapter. We have provided highlights throughout the book to illustrate key points addressed. Relevant sample documents have been included in the chapter on juvenile justice procedures, and we have discussed the implications of each chapter for practitioners. A number of selected readings are included at the end of each chapter and an extensive reference list can be found at the end of the book.

An instructor's manual containing chapter outlines and test items for each chapter is also available. Please call your Brown & Benchmark Publishers Sales Representative to get a copy.

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To the friends of our youth, with whom we shared firsthand many of the trials and tribulations described in these pages, a fond thanks for the experiences and memories.

Our appreciation to the staff of Brown & Benchmark Publishers for providing us the opportunity to improve upon the book.

For continued support and encouragement, thanks to Nalda Fava Conrad. This book is dedicated to Craig and Curt Conrad and Matthew and Melissa Cox.

JJC/SMC

The children now love luxury. They have bad manners, contempt for authority, they show disrespect for adults and love to talk rather than work or exercise. They no longer rise when adults enter the room. They contradict their parents, chatter in front of company, gobble down food at the table, and intimidate their teachers.

—Socrates (469–399 B.C.)

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Chapter 1

Juvenile Justice in Historical Perspective

The juvenile justice network in the United States grew out of and remains embroiled in controversy. Almost a century after the creation of the first family court in Illinois in 1899, the debate continues about what goals should be pursued and what procedures should be employed within the network, and a considerable gap between theory and practice remains (see highlight 1.1). Meanwhile, delinquency rates remain high and the various components of the juvenile justice system continue to operate largely independently, with little confidence in and often little interaction with each other.

The Bush Administration, for example, recommended phasing out federal aid to states for juvenile justice programs, contending that the objectives of the federal Juvenile Justice and Delinquency Prevention Act had largely been met. Congressman Matthew G. Martinez, Chairman of the House Education and Labor Subcommittee on Human Resources, rejected the idea of cutting funding for the Office of Juvenile Justice and Delinquency Prevention (OJJDP), however, noting that juvenile arrest rates were continuing to increase and that many "at-risk" youth had needs that had not been addressed (*Criminal Justice Newsletter* 1992:6–7).

Due process for juveniles, protection of society, and rehabilitation of youthful offenders remain elusive goals. Frustration and dissatisfaction among those who work in the juvenile justice network remain the reality. Can the reality and the ideal of the juvenile justice network be made more consistent? What would have to occur before such consistency could be realized? Why does the disparity exist and why is it so difficult to remedy? A brief look at the history of juvenile justice and a detailed look at the network as it now 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 four thousand years ago, the Code of Hammurabi (2270 B.C.) discussed runaways, children who disowned their parents, and sons who

Highlight 1.1

Due Process and Treatment Remain Elusive Goals for Juveniles

The new constitutional juvenile court was supposed to have the "best of both worlds": due process protections in the adjudication hearing along with care and treatment in the disposition hearing. . . . But for various practical reasons, adjudication hearings are rarely held. In the few that take place, judges are free to ignore or "bend" due process requirements because there is no right to a jury trial and because appeal of juvenile court adjudication is almost non-existent. . . . The "best" of the original juvenile court was care and treatment in the disposition hearing. But the Supreme Court pointed out that juveniles did not actually receive this care and treatment before the Gault decision due to a lack of financial resources. While they claimed to preserve this "best" aspect of the juvenile court in their decision, the Supreme Court did nothing to ensure that juveniles would actually receive it. In practice, juveniles did not receive any more treatment after the Gault decision than they had before it. (Bernard 1992, 135)

cursed their fathers (Drowns and Hess 1990, 5–6). Approximately two thousand 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 twelve for females and thirteen for males. No capital punishment was to be imposed on those offenders under twenty years of age. Similar leniency was found among Moslems, where children under the age of seventeen were typically exempt from the death penalty (Bernard 1992).

By the fifth century B.C., 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 same criminal justice system as adults (Nyquist 1960). Punishment for some offenses, however, was less severe for young people than for adults. Thus, theft of crops by night was a capital offense for adults, but offenders under the age of puberty were to be flogged. Adults caught in the act of theft were subject to flogging and enslavement to the victim, but youth received 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 seven as the law came to reflect an increasing recognition of the stages of life. Children came to be classified as "infans," "proximus infantiae," 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.

For much of Roman history, "infantia" meant the inability to speak, but in the fifth century A.D. this age was fixed at seven years and children under that age were exempt from criminal liability. The legal age of puberty was fixed at fourteen for boys and twelve for girls; youth above these ages were held criminally liable. For children between the ages of seven and puberty, liability was

based on their capacity to understand the difference between right and wrong (Jolowicz 1957; Buckland 1963; Bernard 1992).

Roman and canon law undoubtedly influenced early Anglo-Saxon common law (law based on custom or usage), which emerged in England during the eleventh and twelfth 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 seven were presumed incapable of forming criminal intent and therefore were not subject to criminal sanctions. Children between seven and fourteen 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, 22–24). Children over fourteen were treated much the same as adults.

The question of when and under what circumstances children are capable of forming criminal intent (*mens rea*) remains a point of contention in juvenile justice proceedings today. For example, for the courts to determine that an adult has committed criminal homicide, it must be shown not only that the adult took the life of another human being without justification, but that he or she *intended* to take the life of that individual. One may take the life of another accidentally (without intending to), 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 intent 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 four-year-old who pocketed some money found at a neighbor's house as a criminal because we are confident that the child cannot understand the consequences of this act. But what about an eight- or nine- or twelve-year-old?

Another important step in the history of juvenile justice occurred in the fifteenth century when chancery or equity courts were created by the King of England. Under the guidance of the king's chancellor, chancery courts were created to consider petitions of those who needed special aid or intervention, such as women and children who needed protection and aid because of divorce, the 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 and Thompson 1992, 371–72). In other words, the king, as ruler of his country, was to assume responsibility for all 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 mentioned above. Although chancery courts did not normally deal with youthful offenders, they did deal with dependent or neglected youth 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.

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 1974, 77). Similarly, the Poor Law Act of 1601 provided for involuntary separation of children from their impoverished parents, and these children were then placed in bondage to local residents as apprentices (Rendleman 1974, 77). Both statutes were based on the beliefs 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. This 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 confidentially so the juveniles involved were not subjected to public shame or stigma (Sanders 1974, 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 youth so that they might become useful citizens (Griffin and Griffin 1978, 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, 48).

In 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, 49). These changes were rejected by the House of Lords because of opposition to the magistrates becoming "judges, juries, and executioners" and because of suspicion concerning the recommended confidentiality of the proceedings, which would have excluded the public and the press (Sanders 1974, 50–51).

Meanwhile in the United States, dissatisfaction with the way young offenders were being handled was increasing. Many juveniles were being imprisoned, but few appeared to benefit from the experience. Others simply appealed to the sympathy of jurors and escaped the consequences of their acts entirely (Mennel 1972, 70). 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 and Hess 1990, 9). As a result of this increasing recognition of the problem of delinquency, several institutions for juveniles were established in the East between 1824 and 1828. These institutions were oriented toward education and treatment rather than punishment, though whippings, long periods of silence, and loss of rewards were used to punish the uncooperative (Mennel 1972; Drowns and Hess 1990).

Under the concept of *in loco parentis,* institutional custodians acted as parental substitutes with far-reaching powers over their charges. For example, the