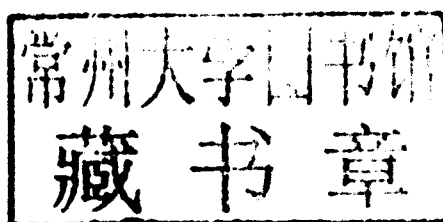


# Youth, Crime and Justice

Cyndi Banks

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*Cyndi Banks*



First published 2013  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Simultaneously published in the USA and Canada  
by Routledge  
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

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*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloging in Publication Data*

Banks, Cyndi.

Youth, crime and justice / Cyndi Banks.

p. cm.

Includes bibliographical references and index.

1. Juvenile delinquency. 2. Juvenile justice, Administration of. I. Title.

HV9069.B294 2013

364.36—dc23

2012035850

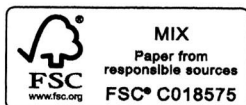
ISBN: 978-0-415-78123-7 (hbk)

ISBN: 978-0-415-78124-4 (pbk)

ISBN: 978-0-203-58396-8 (ebk)

Typeset in ScalaSans

by Keystroke, Station Road, Codsall, Wolverhampton



Printed and bound in Great Britain by MPG Printgroup

*For James*

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# Introduction

This is a book about current debates and issues in juvenile delinquency that takes a critical issues approach. It is aimed at senior undergraduates in criminology, criminal justice and sociology, and encourages readers to adopt an analytical understanding that encompasses not only juvenile crime but also the broader context within which the conditions of juvenile criminality occur. In articulating the connections between social, political, economic and cultural conditions and juvenile crime, this book goes beyond the conventional approaches to juvenile delinquency commonly found in such texts. Also, and rarely found in this field, the book makes significant use of appropriate qualitative studies to contextualize, provide explanations and meaning, and to convey a powerful sense of the experience of juvenile justice.

While this book surveys topics like juvenile institutions and delinquency theories that are ordinarily found in juvenile justice textbooks, it also broadens and deepens the debate about juvenile justice and delinquency by engaging with the topics of youth and moral panic, restorative justice and youth culture and delinquency. Augmenting the customary field of subject areas in this way enhances teaching approaches that combine issues in youth culture with more conventional subject matter such as the juvenile justice system and delinquency theories. The text offers a contemporary perspective on each topic that takes account of all important research studies, and engages with relevant comparative and transnational research studies.

This chapter provides a historical perspective of the development of the concept of juvenile delinquency and examines how the discourse of delinquency has changed over the historical record. It sets a foundation and context within which the subject matter of the book is located.

Fundamental transformative events and conditions in the development of delinquency have been: the social construction of delinquency over time; the *parens patriae* doctrine; the child-saving movement; and the creation of the Juvenile Court as a specialist court for adjudicating both juvenile criminality and cases of non-criminal dependency known as status offenses. These issues are reviewed in the following sections.

## Constructing juvenile delinquency

Discourses concerning juvenile delinquency relate to specific sociohistorical periods. Understanding how those discourses originated and developed and the social forces and movements that prompted those discourses is central to comprehending juvenile justice development. For example, an understanding of the concept of juvenile delinquency is incomplete without first appreciating how the concept originated, who originated it and how modern definitions depend so much on outdated assumptions about youth. As Muncie (2009: 45) notes, the historical account of juvenile justice up until the 1970s was an idealist history that focused on individual acts of prominent persons which suggested that juvenile justice followed a trajectory from savagery to reformation. Delinquency was defined by reference to poverty and neglect rather than by reference to actual acts of delinquency which would ordinarily constitute crimes.

From the 1970s revisionist histories challenged these accounts, and focused on a wide range of social, economic and political factors that are now seen as critical elements in the development of juvenile justice policy. The humanitarian and reformist child savers are now seen less as saviors of children in trouble with the law and more as a distinct class of individuals pursuing a broad range of goals, including the transmission of middle-class values, racist thinking about immigrants and idealizations of the family and rural life.

According to Bernard (1992), the term “juvenile delinquency” was created more than 200 years ago. In 1816 the term appears in a report of a society in London which investigated “the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis” (p. 42). The Society found the main causes of delinquency to be the “improper conduct of parents,” “want of education,” “want of suitable employment” and “violation of the Sabbath” (Muncie 2009: 52–53). In 1819 the Society for the Reformation of Juvenile Delinquents was formed in New York City and the term “delinquency” began to gain wide currency (Bernard 1992: 42).

In America before 1760, crime was not a serious issue and parents were responsible for controlling their children. However, after about 1700, laws began to be passed regulating parents who failed to control their children

(Bernard 1992: 44). Initially, uncontrollable children were sent to other families considered to be better at parenting. While corporal and capital punishments were used for controlling juvenile offenders, by 1800 these punishments were falling out of favor and by the end of the 1700s juvenile offenders were being boarded out or detained in adult prisons (p. 45). After industrialization, crime increased, especially property crime. With industrialization came urbanization, and people moved from the land into the cities to work in factories (p. 47). In transitioning to life in the city, many families disintegrated and youth began to collect together in groups in public areas and to engage in petty theft. This constituted a new issue in crime control and the label “delinquency” was applied.

King (1998) argues that the perceived problem of juvenile delinquency was not related so much to increased criminal activity but rather to changing attitudes to childhood and the poor. While some suggest that the origins of delinquency can be located back to 16th-century England (Muncie 2009: 63), it seems clear that the creation of institutions for juveniles and legislation and social activity directed at juveniles in the early 19th century marked a significant turning point in defining and managing juvenile disorder.

## Child savers

In the second half of the 19th century, a group of reformers became concerned about juvenile delinquency and founded societies to prevent children from leading depraved and criminal lives (Krisberg 2005: 31). According to Krisberg, the child savers “viewed the urban masses as a potentially dangerous class that could rise up if misery and impoverishment were *not* alleviated” (p. 31). In response, Charles Loring Brace and the Children’s Aid Society of 1853 decided that vagrant and poverty-stricken children should be “placed out” with farm families on the Western frontier. This had the effect of idealizing the family as a kind of reformatory for wayward youth. It was believed that the city corrupted children and that country life would ensure children were kept away from criminality and safeguard their socialization as good citizens. Midway through the 19th century, state and municipal governments took over the administration of institutions for children, and by 1876, of the 51 houses of refuge or reform schools, nearly three-quarters were operated by state or local governments (Krisberg 2005: 33–34).

According to Platt (1977: xx), the child-saving movement was directed primarily by the middle and upper classes which devised new forms of social control to protect their powers and privileges. This movement should be seen within the context of the massive changes that took place in society including changes in forms of social control (p. xx).

Platt (1977: xxiv) argues that it was the professionals and special interest groups as well as the conservative elements of the feminist movement that carried out the mission of the child savers. Although made up of women coming from a range of class backgrounds, the conservative wives of the new industrialists and the daughters of landed gentry comprised the majority. For Platt, the child savers combined class attitudes of an earlier period with the social control imperatives of the industrial era (p. xxiv). Nevertheless, Platt concedes that many child savers were concerned about the living conditions of the poor even though they accepted the basic structure of the new industrial society.

The child savers believed that children who revealed their criminal tendencies through acts such as truancy needed to be regulated in the interests of society because they would otherwise become criminals (Platt 1977: 32). Platt (1977: 43) suggests that by the end of the 19th century conceptions of criminality focused on: marginalizing and dehumanizing "criminals" as a subclass of human beings; on the development of professionalism in the correctional response to deal with this subclass; and on the medical model and the approach of rehabilitation as the "right" approaches to employ in correcting delinquent children.

The motives of child savers have been questioned on the basis that their intent was fundamentally to control the children of the poor – the so-called dangerous classes (in other words, fear of the young), composed largely of immigrant groups. Green and Parton (1990: 24) suggest that large groups of Irish immigrants were viewed as corrupt and as unsuitable parents, and that in England the Irish were considered "wild and uncivilized." According to Schlossman (1998: 327), the label "juvenile delinquency" was applied to the activities of lower class, often immigrant children, living in the cities without adult supervision or with neglectful parents. Platt (1977: 36) suggests that the city environment was seen as turning unskilled and uneducated immigrants into criminals while immigrants of the 1880s and 1890s were considered less than human and incapable of adjusting to the American way of life.

The child savers' emphasis on the authority of parents in the home, the attractions of rural life and the independence of the nuclear family was intended to counteract the influence of urbanism and the new industrialization. Drawing on their middle-class values, child savers were not very interested in criminal acts as such, but rather in creating norms to regulate youthful behavior in terms of education, recreation, attitudes to family and personal morality (Platt 1977: 99). As Platt (1977: 99) notes, the child savers:

were most active and successful in extending governmental control over a wide range of youthful activities that had been previously ignored

or dealt with informally. Their reforms were aimed at defining and regulating the dependent status of youth.

Their aim was to intervene in children's lives to prevent delinquency. These interventions therefore had the effect of blurring the distinction between delinquency and dependency (Platt 1977: 135) so that formal legal distinctions were not made between those who were delinquent and those who were either dependent or neglected (p. 138). As Sutton (1988: 65) notes, it was believed that parental neglect caused a child to become unruly, "and unruly children turn into adult paupers and criminals who in turn neglect their children." According to Bernard (1992: 26), since the time of the puritans, social movements and policy makers have attempted to control the behaviors of children perceived to be offensive even though not criminal. Status offenses apply only to juveniles by virtue of their status as juveniles. They include laws against truancy, disobedience to parents, running away from home, drinking alcohol and violating curfews (pp. 17–18). Some have argued that status offenses should be decriminalized and that social services should be responsible for such cases. Others accept that status offenses should be dealt with in the juvenile court but do not see them as necessitating incarceration. They therefore favor deinstitutionalization of status offenses (p. 26).

## ***Parens patriae***

This doctrine was adopted by the U.S. Courts and became the principal foundation for the development of juvenile courts. The doctrine of *parens patriae* originated in the English High Court of Chancery as a means of protecting children's welfare (Mennel 1972: 69). It can be traced back to medieval times where it was applied to cases concerning property and guardianship (Rendleman 1979: 60). Some have questioned the scope and legitimacy of employing the doctrine to adjudicate juvenile delinquency. For example, Roscoe Pound in 1923 noted that the foundation of the juvenile court was actually in criminal law rather than in Chancery Court proceedings because the latter were concerned principally with neglected and dependent children (Mennel 1972: 69).

In the U.S., *Ex parte Crouse* established the right of the courts to remove infants from their parents by applying the *parens patriae* doctrine. In 1838, Mary Ann Crouse's father tried to secure her release from the Philadelphia House of Refuge under a writ of habeas corpus. The Pennsylvania Supreme Court decided that "the right of parental control is a natural, but not an unalienable one" and asked whether "the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*

or common guardian of the community?” (*Ex parte Crouse*, 4 WHART.9 [PA. 1838]). The Pennsylvania Supreme Court denied the claim for habeas corpus. As Rendleman notes (1979: 69), in *Crouse* the Court adopted the doctrine of *parens patriae* and, in effect, used it to justify schemes that parted poor or incompetent parents from their children. Rendleman argues that *parens patriae* served as a convenient mechanism under which the state, through the courts, was enabled to act against the poor rather than punish delinquency (p. 70). Under the doctrine the courts permitted delinquent children to be separated from their natural parents, most commonly by sending them to houses of refuge where the protection of the criminal law ceased to apply (Mennel 1972: 73).

The courts adopted the *parens patriae* doctrine as a way of legitimizing legislation that allowed children to be separated from their parents for reasons of poverty and neglect. As the Supreme Court noted in *Crouse*, the fact that children could be sent to a house of refuge for reformation rather than punishment and that a refuge was not a prison but a “school” formed the basis for this ruling (Pisciotta 1982: 411). Reformatories were intended to reform and not punish, and did not require rules of due process. In fact, as Pisciotta’s research indicates, many institutions failed to provide the beneficial environment that the court accepted so easily in *Crouse* (1982: 413). An example of this divergence is that throughout most of the 19th century reformatory managers used a system of contract labor under which the institutions provided child labor to private businesses. The institution managers were paid for that labor with the children receiving only a minor payment or no compensation at all (p. 416).

Another example of how the systems used by the New York House of Refuge served as models for other institutions is that of apprenticeships (Pisciotta 1982: 420). In 1824 the New York House of Refuge was established, allowing the Society for the Reformation of Juvenile Delinquents to establish an institution where children convicted of crimes or “taken up or committed as vagrants” could be detained (Rendleman 1979: 66). The refuge managers had the power to contract the children as apprentices. Most of the detainees were vagrants and petty thieves (p. 67). Muncie (2009: 61) argues that in England the establishment of reformatories and industrial schools actually aided in the formation of juvenile delinquency as a distinct social problem.

Thus, children were committed to apprenticeships for indeterminate terms under which they received a nominal payment until they reached the age of majority. Boys generally worked for farmers and girls were always placed as domestics (Pisciotta 1982: 420). However, citing a sample of 210 case histories between 1857 and 1862 from the New York House of Refuge, Pisciotta shows that 72 percent of the apprentices ran away, returned voluntarily to the institution or were returned by their masters. Similar

experiences occurred with other institutions where children complained of being whipped and abused (p. 421).

In the Illinois *O'Connell* case, Daniel O'Connell had not committed a felony but was institutionalized in a house of refuge until his 21st birthday because he was in danger of becoming a pauper when he grew up (Bernard 1992: 70). The Supreme Court ordered the release of Daniel O'Connell, applying reasoning directly contrary to *Crouse* (p. 70). First, the Court believed that O'Connell was being punished by being sent to reform school; second, the Court investigated the actual performance of the reform school; and third, the Court rejected the *parens patriae* doctrine and decided that due process ought to be applied where a child was detained in a house of refuge for between one and 15 years (p. 71).

As a result of the *O'Connell* case in 1899, the first juvenile court was established because *O'Connell* ruled that it was illegal to place children in reform schools unless they had committed a felony (Bernard 1992: 73). Establishing the juvenile court meant that Illinois was able to again commit poor children who had not committed a criminal offense to a juvenile institution (p. 73). Thus, the juvenile court developed not as a means of punishing delinquency but more as a mechanism to punish the poor for being poor.

In the *Gault* case, the U.S. Supreme Court ruled that where an adjudication hearing could result in a juvenile being sent to an institution, a juvenile had due process rights comprising: notice of the allegations, right to counsel, right to cross-examine witnesses and the privilege against self-incrimination (Bernard 1992: 115). The Court found, based on an assessment of the juvenile justice system, that *Gault* was being punished and not helped. It rejected the *parens patriae* doctrine and ruled that there was a need for due process protections (p. 116).

Up until 1899 when the first juvenile court was established, the juvenile justice system was represented by a varied collection of private and public institutions and programs including probation for minor delinquents and status offenders. Juvenile offenders whose actions necessitated a criminal court hearing were handled as adults. The fundamental effect of the doctrine of *parens patriae* was that the civil court acted to legitimize the entire system (Pisciotta 1982: 57).

## Education

The introduction of compulsory education for children in the late 1700s created another forum where it was considered necessary to discipline and control children. Just as children who roamed the streets needed to be brought under control, children who broke school rules or played truant were



also seen as requiring discipline (Pisciotta 1982: 56). As Pisciotta notes, "The juvenile was expected to be both obedient to both parents and teachers, and if he refused, he was held liable by the courts" (p. 56). Platt (1977: xxi) suggests that compulsory education with its forms of discipline and training was an extension of the corporate workplace and was intended to train children to become obedient workers.

Writing about the value of compulsory education, Charles Loring Brace noted the need for "a strict and careful law, which shall compel every minor to learn to read and write, under severe penalties in case of disobedience" (1880: 352, quoted in Platt 1977: xxi). Brace considered education as essential in the interests of public order and safety. Michael Katz (quoted in Platt 1977: xxviii) suggests that the reformatory represented the first mode of compulsory schooling in the U.S., indicating a link between the discipline of the reformatory and the discipline demanded by schools. According to Platt (p. 69), reformatories taught lower class skills and middle-class values. Life in a reformatory was tough and discipline in the form of military drill, hours of tedious labor and "character building" was part of the treatment (p. 73).

## **Juvenile court**

According to Platt (1977: 3, 137), the child savers, and later the juvenile court system, called attention to and thus "invented" new categories of youthful misbehavior and reduced the civil liberties and privacy of youth. Platt relies largely on the insights of Howard Becker (1963) in making this statement and on Becker's contention that "deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied" (Platt 1977: 8).

Why, therefore, have a juvenile court at all? The reason is that the juvenile court was established with criminal jurisdiction over children when it became clear that the civil courts could no longer process the number of juvenile cases entering the system (Ferdinand 1991: 207). In 1899, the first juvenile court was established in Chicago with jurisdiction covering all categories of juvenile "delinquency" including criminality, status offenders and neglected and dependent children (p. 209). By 1920, 30 states had established juvenile courts and by 1945 all states had juvenile courts.

## **Organization of the book**

As mentioned earlier, this book reviews topics like juvenile institutions and delinquency theories normally found in juvenile justice textbooks, and also



attempts to broaden and deepen the debate about juvenile justice and delinquency by exploring in the following chapters the topics of youth and moral panic, restorative justice and youth culture and delinquency.

*Chapter 2*, entitled “Theories Associated with Juvenile Delinquency,” looks at the principal, mainstream theories associated with delinquency, namely: strain, social learning, control, and labeling. This chapter also explores criminology and gender, and, in light of the overrepresentation of men in criminal behavior, asks and examines the question of the extent to which gender constitutes a key explanatory variable.

*Chapter 3*, entitled “Juvenile Institutions,” traces the history and development of juvenile corrections into their contemporary form and explores policy making on juvenile punishment. Drawing on insightful qualitative studies of the experience of juvenile detention the chapter reveals how juvenile detainees learn how to “play the game” and master the language of treatment to secure release from confinement. Molding the detainees for a life outside the institution means imprinting modes of behavior that are appropriate and fitting for the facility but lack relevance in the social world to which a resident will return. Treatment and detention approaches reviewed include the “tough love” applied to break down students in a “resocialization course.”

*Chapter 4*, entitled “Gender and Juvenile Justice,” examines how gendered laws punished girls who violated expectations of proper conduct by, for example, running away from home because of ill-treatment or sexual abuse, and how the juvenile justice system created a framework of status offenses that empowered the courts to control girls’ sexuality. Understanding girls’ delinquency means investigating gender stratification and mapping the social control exercised by the juvenile justice system, noting how that system continually reinforces female subordination by labeling girls as deviant. Explanations for the apparent increase in girls’ violence are reviewed, including relabeling status offenses as criminal conduct and girls’ involvement in domestic violence incidents during which police may make presumptive arrests of all or any family members. Qualitative studies again provide a rich source for understanding how girls experience violence, and the need for gender-specific treatment programs is addressed.

In *Chapter 5*, entitled “Race and Juvenile Justice,” the social construct of race can be tracked through racial disparities in the juvenile justice system. This chapter examines how race effects may be direct or indirect, may be felt at various decision points within the system, and may accumulate as youth move through the system. A detailed review of studies examining decision points for racial disparities is provided. It is argued that gaining an understanding of the social, cultural, political and economic history and the contemporary circumstances relevant to minorities is crucial. A discussion of African Americans as an urban underclass explores the