Note

Vicious Streets: The Crisis of the Industrial City and the Invention of Juvenile Justice

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> In the country or in the country town, if the boy invades the watermelon patch or the apple orchard, the neighbor can inform the father and the father can deal with the boy in the cellar or the barn in his own peculiar way. In the city the situation is entirely different.
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> —Juvenile Court Judge Ben B. Lindsay[1]

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1. Ben B. Lindsey, *Additional Report on Methods and Results*, *in* INT'L PRISON COMM'N, CHILDREN'S COURTS IN THE UNITED STATES: THEIR ORIGIN, DEVELOPMENT, AND RESULTS 47, 93 (Samuel J. Barrows ed., 1904).

I. INTRODUCTION: CRISIS IN THE STREETS

At the end of the nineteenth century, Chicago, like many American cities, was experiencing a crisis in the streets. During the nineteenth century, Chicago grew more rapidly than any other city.[2] Chicago in the 1840s was a village of about 5000 people; by 1900 it was a booming metropolis of 1,500,000.[3] Foreign immigrants fueled this wave of growth, accounting for seventy percent of Chicago's population by 1890.[4] An ever-increasing social divide formed between a small group of wealthy, native-born citizens who controlled the political and business establishment in the city and the vast majority of poor, immigrant families.[5] Due to the labor demands of the industrial economy, overcrowding, and changes in household composition, youth were increasingly displaced from the domestic sphere.[6] No longer confined to the home, urban youth took to the streets for employment, recreation, and social interaction.

Chicago in the nineteenth century experienced what historian John Kasson has termed a "semiotic breakdown,"[7] with poor children epitomizing the failure of the industrial city to sustain traditional, idealized forms, such as the pastoral family. As a contemporary child-saver declared, "[c]hildren should deal with elemental things of the world—earth, stones, trees, animals, running water, fire, open spaces—instead of pavements, signboards, subdivided lots, apartment houses, and electric percolators."[8] According to Jane Addams, the 882,000 children in Chicago at the turn of the century constituted "a huge city in themselves."[9] Addams observed that these youth were no longer governed by the traditional authority of the family or other social institutions: "[T]he present disordered situation demonstrates that adequate protection is not secured through the solicitude of parent, the sectional activity of educators, the self-interest of employers nor the profit-seeking of pleasure purveyors."[10] Nor did existing legal

2. *See* ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 37 (2d ed. 1977).

3. *See* THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 84 (1992).

4. *See id.*

5. *See id* at 84-85.

6. *See* ELIZABETH J. CLAPP, MOTHERS OF ALL CHILDREN: WOMEN REFORMERS AND THE RISE OF JUVENILE COURTS IN PROGRESSIVE ERA AMERICA 31 (1998).

7. JOHN F. KASSON, RUDENESS AND CIVILITY: MANNERS IN NINETEENTH-CENTURY URBAN AMERICA 70 (1991).

8. Miriam Van Waters, *The Juvenile Court from the Child's Viewpoint, in* THE CHILD, THE CLINIC, AND THE COURT 217, 221 (Jane Addams ed., 1925).

9. Jane Addams, *Preface to* LOUISE DE KOVEN BOWEN, SAFEGUARDS FOR CITY YOUTH AT WORK AND AT PLAY, at vii, viii (1914).

10. *Id.*

institutions, grounded in English common law and ripe for modernization, adequately serve this city of children in the industrial era.[11]

Out of this crisis emerged a hope for change. The juvenile court movement was launched in the 1890s in order to address the "problem" of urban youth. The perceived breakdown of the traditional family and rise of the "broken home" required a redefinition of the role of the courts in shaping the behavior of the city's street children; indeed, it was considered "impossible to obtain any possible standards of public morals unless there [were] well-considered legal provisions."[12] In response to this crisis, the Illinois legislature passed the Juvenile Court Act of 1899,[13] establishing the nation's first juvenile court in Cook County. The philosophy espoused in the original juvenile court was that a child who broke the law was to be dealt with by the state, not as a criminal, but as a child needing care, education, and protection. The logic of the court was apparently simple: "[I]t is wiser and less expensive to save children than to punish criminals."[14] (See Figure 1). The Cook County juvenile court provided the "adequate protection" that Jane Addams and other progressive reformers insisted was lacking in the "modern city."

Much of the literature on the early juvenile courts suggests that this new institution was created as a necessary reform that effectively removed children from the adult criminal justice system and treated youth in a more humane and holistic manner.[15] Under the rule of law ideal, this innovation can be read as a progressive refinement of the legal authority of the state, a careful delineation

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11. *See* Preston Elrod, *Similarities in Conservative and Liberal Juvenile Justice Policies: Is There a Critical Alternative?*, *in* CUTTING THE EDGE: CURRENT PERSPECTIVES IN RADICAL/CRITICAL CRIMINOLOGY AND CRIMINAL JUSTICE 165, 174 (Jeffrey Ian Ross ed., 1998).

12. BOWEN, *supra* note 9, at 8.

13. Illinois Juvenile Court Act, 1899 Ill. Laws 131. The Act contained the following key features: 1) It established distinct procedures and developed a separate court for children under age sixteen who were alleged to be delinquent, neglected, or dependent; 2) it gave probation officers investigatory and supervisory powers over juveniles; 3) it prohibited detention of a child under age twelve; and 4) it required that adults and juveniles be separated when housed in the same facility. *See* WILLIAM A. KURTZ & PAUL C. GIANELLI, OHIO JUVENILE LAW 9 (3d ed. 1994).

14. T.D. HURLEY, JUVENILE COURTS AND WHAT THEY HAVE ACCOMPLISHED, at cover (2d ed. 1904). This slogan was previously adopted as the motto of the Boys and Girls Aid Society, founded in 1874. *See* James Flamant, "Child-Saving Charities in This Big Town," S.F. MORNING CALL, May 28, 1893 *at* www.zpub.com/sf50/sf/hgcsc.htm.

15. *See, e.g.*, PLATT, *supra* note 2, at xv (arguing that Progressive Era reform movements, such as the juvenile court movement, are typically treated by historians and criminologists as "fundamentally benevolent, humanitarian, and gradualist"). For a traditional account, see HERBERT LOU, JUVENILE COURTS IN THE UNITED STATES 1-2 (1927). For a more modern account, see Lawrence L. Koontz, Jr., *Reassessment Should Not Lead to Wholesale Rejection of the Juvenile Justice System*, 31 U. RICH. L. REV. 179 (1997).

between criminal law and family law, youth and adult, punishment and rehabilitation.[16] And while many academics,[17] policymakers,[18] and even judges[19] have recently called for the reform or dismantling of the juvenile justice system, even the harshest critics often suggest that the court originated as a benign, pro-family, and pro-child intervention that has somehow degenerated over time into a dangerous anachronism, a humanitarian dream unfulfilled. Feminist historians and legal scholars who decry the juvenile court's current gendered biases simultaneously celebrate the court's origins as a victory for female reformers in the nineteenth century.[20]

Closer analysis of the historical record reveals that these views are misguided. The juvenile court was never particularly benign, especially for working class women and children. As this Note argues, it was invented precisely—although perhaps not explicitly—as a means of surveillance and control over the lives of working class and immigrant families. The juvenile court system re-entrenched social and class difference and reinforced middle-class fears about a burgeoning lower-class population in the industrial

16. The concept of a separate judicial system for juvenile offenders has taken root in the late twentieth century as a critical component of international "rule of law" reforms. *See generally* Roger J.R. Levesque, *Future Visions of Juvenile Justice: Lessons from International and Comparative Law*, 29 CREIGHTON L. REV. 1563 (1996) (describing the various international mandates regarding juvenile justice). The International Covenant on Civil and Political Rights, adopted in 1966, urges states to separate juvenile offenders from their adult counterparts, adopt different trial procedures for juveniles, consider the juvenile's age, and promote rehabilitation for youthful offenders. International Covenant on Civil and Political Rights, Dec. 19, 1966, arts. 10(2)(b) & 14(4), 999 U.N.T.S. 171, 176-77 (entered into force Mar. 23, 1976). *See also United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, G.A. Res 40/33, U.N. GAOR, 40th Sess., Supp. No. 53, at 207, U.N. Doc. A/40/53 (1985) [hereinafter Beijing Rules], (offering principles to guide the development of juvenile justice systems); *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (incorporating the Beijing Rules into treaty form and obliging nations to consider children's best interests and take into account an individual child's evolving capacity in developing independent juvenile justice systems). At the same time, the heightened judicial discretion and "individualized" sentencing central to the original juvenile court model has been criticized as contrary to the rule of law ideals of stability and transparency. *See infra* notes 76-80 and accompanying text.

17. *See, e.g.*, Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C.L. REV. 1083 (1991); Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68 (1997).

18. *See, e.g.*, Naftali Bendavid, *Congress Poised to Mandate That More Youths Be Charged—and Punished—as Adults*, LEGAL TIMES, Apr. 14, 1997, at 1 (describing several proposals to radically alter the juvenile court system to allow more youth to be tried in adult courts).

19. *See, e.g.*, Gordon A. Martin, Jr., *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57 (1992) (proposing extended commitment laws that would keep dangerous juveniles off the street until rehabilitated, regardless of age, and a reduction of the shield of confidentiality that has traditionally surrounded the juvenile justice system).

20. *See, e.g.*, CLAPP, *supra* note 6.

city. This "innovation" utilized a scientific discourse on "delinquency" and "adolescence" emerging at the end of the nineteenth century, and codified the social hierarchies contained in this discourse. The goals of "rehabilitation" so lauded by contemporary reformers merely provided a cover for the state to expand its jurisdiction over poor families, demonstrating how the "rule of law" can function in unspoken ways to patrol the existing social order at the expense of equality, due process, and privacy rights.

In order to examine critically the construction of juvenile justice in late nineteenth-century Chicago, this paper utilizes Michel Foucault's notion of "power-knowledge" and the strategies of surveillance and discipline that produce the categories of "normalcy" and "delinquency."[21] This Note situates the juvenile court as a mechanism of power-knowledge that undermined family autonomy, or, using the terminology of Jacques Donzelot, constituted a "gradual 'transfer of sovereignty' from the 'morally deficient' family to the body of philanthropic notables."[22] I contend that in order to understand why the juvenile court has failed to live up to its progressive ideals, it is necessary to look at how the ideal itself was flawed from the outset. Rather than furthering the seemingly benign goal of "treating the child as a child,"[23] the juvenile court movement was driven by an obsessive desire to monitor, regulate, and discipline working-class and immigrant communities in the industrial city.

The ways in which the juvenile courts sought to order the industrial city are considered here by looking at three interlocking themes: law, gender, and science. In Part II, I consider the shifts in family law that occurred simultaneously with the increasing breakdown of the pastoral home as a realizable ideal. In Part III, I consider how gendered notions of charity enabled the expansion of the juvenile courts into the homes and neighborhoods of working-class and immigrant families. In Part IV, I examine the scientific underpinnings of the court's jurisdiction over delinquent youth. Finally, in Part V, I discuss how this historical analysis of the juvenile court can inform current debates over the legitimacy of the court and destabilize some of the assumptions underlying contemporary forms of social control over urban youth. In order to illustrate these points, I rely on academic and legal literature

21. MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 27-28 (Alan Sheridan trans., Pantheon Books 1st ed. 1977)

22. JACQUES DONZELOT, THE POLICING OF FAMILIES 83 (Robert Hurley trans., Pantheon Books 1st ed. 1979).

23. *See infra* notes 52-57 and accompanying text.

produced during the early years of the juvenile court system, a period in which the court was "old enough to have an experience and young enough to have a future."[24]

II. DOCTRINAL CONTEXT: THE TRANSFORMATION OF PARENS PATRIAE

The urban crisis of the late nineteenth century occurred at the same time that courts in the United States were grappling with the extent of their jurisdiction over youth and families. In particular, conflicting decisions regarding the limits of state intervention into family affairs created anxiety over the ability of the existing court structure to remedy juvenile delinquency. Contemporary case law had restricted the nineteenth-century criminal court's jurisdiction over non-offending urban youth on due process grounds. Such case law conflicted with widespread middle-class fears about the breakdown of the pastoral family ideal. The juvenile court was devised largely as a legislative means of bypassing these judicially recognized due process rights for children and, thus, constituted a radical expansion of the court's ability to intervene in the lives of working-class and immigrant urban families.

In order to trace the origins of the juvenile court system and the particular legal context in which it emerged, it is necessary to begin with the case of Mary Ann Crouse. In 1838, Crouse, the child of working-class parents, was committed by a Philadelphia justice of the peace to the Philadelphia House of Refuge,[25] not because she had committed any offense, but because she "appeared to be in danger of growing up to become a pauper."[26] Her father objected to the court's action, raising the question: Can a criminal court intervene in domestic affairs when no crime has been committed? In its landmark ruling in 1839, *Ex parte Crouse*,[27] the Pennsylvania Supreme Court responded that, in fact, it could:

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24. Samuel J. Barrows, *Introduction* to INT'L PRISON COMM'N, *supra* note 1, at ix, x.

25. The "house of refuge" was a nineteenth-century institution that provided residential "treatment" for both delinquent and impoverished youth. Children committed to houses of refuge were either convicted of crimes or simply "pauper children" who were "committed as vagrants." *See* Douglas R. Rendleman, *Parens Patriae: From Chancery to the Juvenile Court, in* JUVENILE JUSTICE PHILOSOPHY 58, 66 (Frederic L. Faust & Paul J. Brantingham eds., 1979). Although a discussion of the house of refuge movement is outside the scope of this paper, it is worth noting that the house of refuge was seen as an "alternative to the poorhouse" and was among a spectrum of state responses to juvenile poverty. *See id.* at 70-74. For a detailed history of the house of refuge movement and its links to the juvenile court movement, see generally ROBERT S. PICKETT, HOUSE OF REFUGE: ORIGINS OF JUVENILE REFORM IN NEW YORK STATE, 1815-1857 (1969).

26. BERNARD, *supra* note 3, at 68.

27. *Ex parte* Crouse, 4 Whart. 9 (Pa. 1839).

> The House of Refuge is not a prison, but a school.... The object of the charity is reformation... by separating [the child] from the corrupting influence of improper associates. To this end, may not 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?... The infant has been snatched from a course which must have ended in confirmed depravity; and, not only is the restraint on her person lawful, but it would be an act of extreme cruelty to release her from it.[28]

The court maintained the legality of Crouse's detention by asserting that she was being helped, not punished, and by utilizing the state's role as parens patriae, or "father of the country."

The concept of parens patriae was established in the chancery courts of sixteenth-century England and was originally applied in cases where parents had died intestate, leaving an estate that the court managed until the child turned twenty-one.[29] In the absence of natural parents, the state, acting as the parent of the country, could claim parental authority. The *Crouse* case was the first time that the concept of parens patriae was extended to justify statutory commitments.[30] Ironically, the *Crouse* decision made poverty a central concern: The issue was not how to deal with the estate of deceased parents, but how to deal with the *lack* of estate of living parents. As Judge Lawrence Koontz recently remarked, the only "crime" for which Mary Ann Crouse was committed was "being poor."[31] Courts in the nineteenth century, like the one in *Ex parte Crouse*, consistently held that the state does not need to provide procedural safeguards when it is acting as parens patriae.[32]

Thirty years later, the Illinois Supreme Court considered a similar case, but reached a contrary conclusion, in *People ex rel. O'Connell v. Turner*.[33] In *Turner*, the court found that the state exceeded its power as parens patriae when it committed a fourteen-year-old boy to a reform school without specific allegations of

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28. *Id.* at 11-12.

29. *See* BERNARD, *supra* note 3, at 69.

30. *See* Rendleman, *supra* note 25, at 68.

31. *See* Koontz, *supra* note 15, at 183.

32. *See* Sacha M. Coupet, *What To Do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality About Youth Offenders in the Constructive Dismantling of the Juvenile Justice System*, 148 U. PA. L. REV. 1303, 1309 (2000); Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1205 (1970); *see also* Kathleen S. Bean, *Changing the Rules: Public Access to Dependency Court*, 79 DENV. U. L. REV. 1, 25 (2001) (describing *Crouse* as the doctrinal source for later decisions upholding the reach of the Poor Laws and the juvenile courts into the lives of poor families).

33. People *ex rel.* O'Connell v. Turner, 55 Ill. 280 (1870).

misconduct.[34] The court asked, "why should minors be imprisoned for misfortune?,"[35] and held that statutory commitments of children, absent criminal conduct, violated formal due process protections, regardless of the benevolent goals of the court.[36] Justice Thorton, writing the opinion of the court, observed that "[t]he parent has the right to the care, custody, and assistance of his child. The duty to maintain and protect it is a principle of natural law. . . . The municipal law should not disturb this relation, except for the strongest reasons."[37] The court found that the ability to confine a child for a period of many years to be "tyranny and oppression. If, without crime, without the conviction of any offense, the children of the State are to be thus confined for the 'good of society,' then society had better be reduced to its original elements, and free government acknowledged a failure."[38]

The *Turner* case stands as "one of the first judicial recognitions of the constitutional due process rights of status offenders subject to loss of liberty."[39] At the same time, the court's holding in *Turner* severely restricted the power of the courts to detain poor children, and halted the expansion of the parens patriae doctrine in Illinois. By the 1890s, the "child-savers" of Chicago's women's clubs, aid societies, and religious organizations were anxious to find a way around this decision and to reinstate parens patriae in their crisis-ridden city.[40] Creative solutions were needed.

In response to widespread lobbying from middle-class women,[41] the Illinois legislature passed the Juvenile Court Act in 1899, establishing the nation's first juvenile court system in Cook County.[42] Under the Act, the juvenile court retained jurisdiction over all neglected, dependent, and delinquent children.[43] In order to circumvent the objections raised in the *Turner* case, the juvenile court was established as a chancery, rather than criminal, court and defined itself as a reformatory, non-punitive institution.[44] This solution proved to be incredibly popular, and through a nationwide crusade led by the Visitation and Aid Society, soon spread to

34. *Id.* at 286.
35. *Id.* at 287.
36. *Id.* at 286-87.
37. *Id.* at 284.
38. *Id.* at 286.
39. Mary Kay Lanthier, *Children's Right to Be Heard*, 2 NU F.1, 7 (1997).
40. *See* PLATT, *supra* note 2, at 104.
41. *See infra* notes 82-84 and accompanying text.
42. Illinois Juvenile Court Act, 1899 Ill. Laws 131.
43. *Id.* §§ 1, 2.
44. *See* BERNARD, *supra* note 3, at 88.

jurisdictions throughout the United States. By 1928, all but two states had established juvenile court systems.[45]

Before proceeding, it is important to highlight the tension between the Illinois Supreme Court's concern for preserving the "natural" affinity between parent and child,[46] and the rhetoric of the child-savers, who condemned the deficiencies of the urban, working-class family and insisted that the state serve as the "parent to every child within its borders."[47] The court's presumption in *Turner* is that the home still functioned to discipline the child and provide the "natural" support necessary for the child's development into a productive citizen. The child-savers, however, had lost faith in the ability of the home in the industrial era to guarantee a child's lawfulness and well-being. As Miriam Van Waters wrote in her paper honoring the twenty-fifth anniversary of the founding of the juvenile court:

> It is significant that it was in America that the first juvenile court arose, for from America at about the same time the civilized world received its first warning that all was not well within that ancient institution, the home. The first decade of the juvenile court marks the beginning of the rise of the curve of the broken home . . . .[48]

Concern with the breakdown of the urban American family pervaded the early literature on the juvenile court.[49] Against such popular anxiety over the capacity of the domestic sphere to surmount urban, industrial hazards, the *Turner* court's logic could not prevail. As Waters indicates, "natural parenthood itself" was beginning to weaken "at the very time the juvenile court enunciated the principle of the Parenthood of the State."[50]

In order to reassert the principle of parens patriae, the juvenile court had to establish itself as a non-punitive institution—a paternal, rather than penal, response to the urban crisis of the broken home. The court had to combine the "father's strong right arm" with "the mother's gentle influence."[51] As T.D. Hurley, the President of the Visitation and Aid Society of Chicago, wrote, "a child shall be treated as a child. Instead of reformation, the thought

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45. PLATT, *supra* note 2, at 139.

46. *See Turner*, 55 Ill. at 285.

47. *See* HURLEY, *supra* note 14, at 8.

48. Waters, *supra* note 8, at 219.

49. *See* PLATT, *supra* note 2, at 31; David S. Tanenhaus, *Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago*, 19 LAW & HIST. REV. 547, 554 (2001).

50. Waters, *supra* note 8, at 220.

51. Mabel Carter Rhoades, *A Case Study of Delinquent Boys in the Juvenile Court of Chicago*, 13 AMER. J. SOC. 56, 64 (1907).

and idea in the judge's mind should always be formation."[52] In order to treat the child as a formative being rather than a hardened criminal, the juvenile court defined itself as a new form of chancery court rather than a criminal one.[53]

In order to revive the doctrine of parens patriae, the juvenile court also had to reconceptualize childhood. Early juvenile court officials proclaimed that the court "discovered that the child is a child."[54] This discovery occurred within the context of contemporary theories of adolescence. The theories of G. Stanley Hall, synthesized in his extensive work *Adolescence: Its Psychology and its Relation to Physiology, Anthropology, Sociology, Sex, Crime, Religion, and Education*,[55] were instrumental in the "discovery of adolescence" at the end of the nineteenth century.[56] Responding to rapid industrialization, urbanization, and immigration, Hall redefined the meaning of dependency and delinquency, positing "white middle-class values as normal" and situating working-class youth as deviant and dependent on society for reformation.[57] The ways in which contemporary social scientists like Hall utilized a proto-eugenic model of social order will be discussed in Part IV; here, however, it is important to highlight how changing notions of adolescence allowed the court to assume the role of parent to urban youth.

Under the revived doctrine of parens patriae, the state (as it exercised its power through the court) was not seen as the *substitute* parent of urban youth, but was actually described as the original, *primary* parental authority. The early literature on the court did not question this authority. As Judge Julian Mack wrote in his classic article, *The Juvenile Court*, "the state is the higher or ultimate parent of all the dependents within its borders."[58] Similarly, Hurley indicated that "the principle feature of the juvenile court . . . is to transfer the care and custody of the person of the child to a court of original and unlimited jurisdiction."[59]

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52. T.D. Hurley, *Development of the Juvenile Court Idea*, in INT'L PRISON COMM'N, *supra* note 1, at 7, 8. *See also* Richard Tuthill, *History of the Children's Court in Chicago*, *in* INT'L PRISON COMM'N, *supra* note 1, at 1, 1 (citing the treatment of a child as a child rather than a criminal as the "basic principle" of the Juvenile Court Act of 1899).

53. *See* BERNARD, *supra* note 3, at 88.

54. *See, e.g.*, Barrows, *supra* note 24, at ix.

55. G. STANLEY HALL, ADOLESCENCE: ITS PSYCHOLOGY AND ITS RELATION TO PHYSIOLOGY, ANTHROPOLOGY, SOCIOLOGY, SEX, CRIME, RELIGION, AND EDUCATION (1904).

56. CHRISTINE GRIFFIN, REPRESENTATIONS OF YOUTH: THE STUDY OF YOUTH AND ADOLESCENCE IN BRITAIN AND AMERICA 11 (1993).

57. *Id.* at 11-15.

58. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 104 (1909).

59. Hurley, *supra* note 52, at 8-9.

Helen Rankin Jeter, in her 1922 study of the Chicago juvenile court system, discusses the court's "original and exclusive jurisdiction" over "delinquent children [and] dependent or neglected children."[60] For such children, she writes, "the jurisdiction is technically exercised over the child. Actually, however, the entire family is brought under supervision."[61]

Whereas working-class parents had to prove their worth to juvenile judges and parole officers, it was assumed that the judge was righteous in his parental role and that his authority superceded the authority of the actual parents in raising their children. As the first Cook County juvenile court judge announced, "I have always felt and endeavored to act in each case as I would were it my own son that was before me in my library at home charged with some misconduct."[62] Samuel Barrows, the Commissioner for the United States on the International Prison Commission, asserted that by 1904, "parents, guardians, or teachers have concluded that the juvenile court could accomplish what they had not been able to effect themselves."[63] The judge essentially became the "good" father to the city's wayward youth.

This paternalistic philosophy allowed the juvenile courts to deny procedural protections and retain jurisdiction over children who had not committed any criminal acts. In the early years of the juvenile courts, state legislatures and juvenile court judges insisted that the child offender was not being deprived of any right to liberty, because she did not have such a right in the first place. Instead, under the parens patriae doctrine, the juvenile court "provided the child with the one right to which she was entitled—the right to custody."[64] The majority of youth brought before the Cook County juvenile court in its earliest years were summoned for non-criminal, status-based offenses.[65] Despite the formal classification of the juvenile court as a chancery court, juvenile court judges exercised unlimited discretion to imprison non-criminal youth.[66] Status offenders were detained in the same facilities that were used for juveniles who had committed criminal acts.[67] No formal procedural protections were established for youth summoned to the juvenile courts since such protections would

60. HELEN RANKIN JETER, THE CHICAGO JUVENILE COURT 11 (U.S. Dep't of Labor, Children's Bureau, Bureau Pub. No. 104, 1922).

61. *Id.* at 12.

62. Tuthill, *supra* note 52, at 3.

63. Barrows, *supra* note 24, at xv.

64. Lanthier, *supra* note 39, at 9.

65. *See id.*

66. *See id.*

67. *See id. at 9-10.*

impede a judge's ability to act in a child's best interests,[68] or rather, to fulfill his role as the "good father."

Legal critiques of the early juvenile courts have largely been limited to the fact that procedural due process was denied to offenders tried in juvenile courts, which continued to operate under the parens patriae doctrine until the 1960s. At that time, the juvenile court system was compelled to abandon the parens patriae doctrine—and the exemptions from procedural due process that accompanied it—as a result of a series of Supreme Court decisions beginning with *Kent v. United States*.[69] The *Kent* decision held that juveniles could not be transferred to criminal court without a hearing, assistance of counsel, and a statement describing the reasons for transfer.[70] In *In re Gault*, the Supreme Court conferred upon juveniles the rights to notice,[71] confrontation and cross-examination of witnesses,[72] and protection against self-incrimination.[73] The Supreme Court's holding in *In re Winship* established a "beyond a reasonable doubt" standard in juvenile adjudicatory hearings,[74] and *Breed v. Jones* granted juvenile offenders protection against double jeopardy.[75] This line of cases initiated a re-examination of the juvenile system's philosophy and procedure and afforded juveniles most of the constitutional rights granted to adult offenders. Therefore, critiques made on due process grounds have largely lost their potency after *Kent* and its progeny.

The broad discretion permitted juvenile court judges under the parens patriae doctrine has also been the subject of much controversy and condemnation from legal academics. Several scholars have pointed out that such broad discretion unfairly introduces subjective considerations and inconsistencies into judicial proceedings. As Professor Barry Feld writes, "the individualized justice of a rehabilitative juvenile court fosters lawlessness and thus detracts from its utility as a court of law .... Despite statutes and rules, juvenile court judges make discretionary decisions effectively unconstrained by the rule of law."[76] Such

68. *See id.*

69. Kent v. United States, 383 U.S. 541 (1966).

70. *See id.* at 554.

71. *In re* Gault, 387 U.S. 1, 33-34 (1967).

72. *Id.* at 56.

73. *Id.* at 55. *Gault* significantly transformed juvenile court proceedings and is considered the leading U.S. case dealing with the constitutionality of juvenile courts. *See* JOSEPH J. SENNA & LARRY J. SIEGEL, JUVENILE LAW: CASES AND COMMENTS 270 (1976).

74. *In re* Winship, 397 U.S. 358, 368 (1970).

75. Breed v. Jones, 421 U.S. 519, 537 (1975).

76. Feld, *supra* note 17, at 91.

individualized law-making defies what F. A. Hayek has deemed the "rule of law ideal": "Government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances . . . ."[77] However, statutory reforms in the past several decades, including mandatory transfers to criminal court based on enumerated criteria[78] and offense-based sentencing,[79] combined with the procedural protections *Kent* and its progeny afforded,[80] have largely removed the judge's discretionary powers. Hence these critiques also lack force in evaluating the modern juvenile court.

While the paucity of procedural protections and abuses of judicial discretion evident in early juvenile court cases have been remedied, even the court's harshest critics typically accept its underlying rehabilitative aspirations. Contemporary youth advocates, lamenting the "get tough" strategies juvenile courts adopted in the latter half of the twentieth century, clamor for a reinvigoration of these original rehabilitative goals.[81] However, as will be discussed in Part III, it is precisely this rehabilitative aspect that led to a more insidious, and never fully remedied, outcome for the courts. Under the guise of charity and rehabilitation, the juvenile court constituted an unprecedented expansion of the state's power to intervene into the private lives of immigrant and working class families.

III. MAPPING THE CRIMINAL CITY

If the judge acted as the good father in the parens patriae system resurrected by the juvenile court, the charitable matrons of middle-class reform movements were the ersatz mothers of Chicago's

77. FRIEDRICH A. HAYEK, THE ROAD TO SERFDOM 54 (1944), *quoted in* JOSEPH RAZ, THE AUTHORITY OF LAW 210 (1979).

78. *See* Susan A. Burns, *Is Ohio Juvenile Justice Still Serving Its Purpose?*, 29 AKRON L. REV. 335, 361-66 (1996) (discussing recent amendments to Ohio's juvenile court law that restrain the juvenile judge's transfer power); Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 CRIME & JUST. 189, 205-06 (1998) (discussing recent changes in waiver statutes nationwide that limit judicial discretion to waive jurisdiction or that automatically exclude certain youths from juvenile court jurisdiction).

79. *See* Feld, *supra* note 78, at 223-27 (surveying various offense-based and mandatory sentencing statutes and finding that nearly half of the states use some type of offense-based guidelines to regulate judicial sentencing discretion).

80. *See supra* notes 69-75 and accompanying text.

81. *See, e.g.*, Jonathan Simon, *Law and the Postmodern Mind: Power Without Parents: Juvenile Justice in a Postmodern Society*, 16 CARDOZO L. REV. 1363, 1424-25 (1995) ("[T]he juvenile court must be defended as a check on the drive to mark youthful offenders as subjects for punishment and criminalization. . . . The juvenile court continues to offer shorter and more therapeutically oriented sentences that promise to do at least less damage.").

delinquent children. After succeeding in establishing the juvenile court system, these "child-saving" women became the agents of surveillance who investigated the conditions under which delinquent children lived. These reformers effectively mapped out the "criminal city" in their zealous attempts to create order in the industrial urban landscape.

Virtually all of the literature produced at the time recognized the central role women played in the passage of the 1899 Juvenile Court Act and its subsequent implementation.[82] The Juvenile Court Committee, which lobbied successfully for the passage of the Act, was led by legendary female reformers Jane Addams and Julia Lanthrop, and its membership was comprised primarily of upper-middle-class women from the Hull House social settlement and the Chicago Women's Club.[83] An article in the *Charities Review* in 1899 commented on the "women's clubs taking a prominent role . . . in the movement under way on behalf of the delinquents."[84]

The protection of youth was widely considered a feminine domain, and many bourgeois women eagerly embraced their role as moral defenders of the city's dispossessed youth. In the early years of the court, the state did not fund probation officers and relied instead on the female reformers who led the juvenile court movement to serve this function.[85] The women who volunteered as probation officers were given the responsibility of enabling the court to "maintain its hold upon the children"[86] and they were considered "the cord upon which all the pearls of the Juvenile Court are strung."[87]

The role of middle-class women in facilitating the administration of the juvenile court was not limited to these positions of volunteer probation officers. Within days after the passage of the Juvenile Court Act, "requests for copies of the law began to pour in from all directions."[88] A widely-distributed booklet produced by the Visitation and Aid Society included blank forms and user-friendly instructions for filing court papers,[89] and the Juvenile Court Act provided that any "reputable person" who has "knowledge of child

82. *See* CLAPP, *supra* note 6, at 41-43, 72-73.

83. *See* Michael Willrich, *The Two Percent Solution: Eugenic Jurisprudence and the Socialization of American Law, 1900-1930*, 16 LAW & HIST. REV. 63, 78 (1998).

84. Carl Kelsey, *Proposed Child Legislation in Illinois*, CHARITIES REV., Jan. 1899, at 511, 513.

85. *See* CLAPP, *supra* note 6, at 171.

86. Carl Kelsey, *The Juvenile Court of Chicago and Its Work*, 17 ANNALS AM. ACAD. POL. & SOC. SCI. 298, 301 (1901).

87. HURLEY, *supra* note 14, at 14.

88. Hurley, *supra* note 52, at 7.

89. *See* HURLEY, *supra* note 14, at 75-100.

in his county who appears to be either neglected, dependent or delinquent" can file a petition that set in motion court proceedings.[90] (See Figure 2). The Juvenile Protective Association (JPA), a "voluntary committee supplementing the work of a public court" comprised almost entirely of "public-spirited women,"[91] divided the city into fourteen districts and assigned each a privately-funded officer to "safeguard and protect the children."[92] Commissioner Barrows described these women as the agents of "watchcare" over the children brought before the court.[93] In fact, Judge Tuthill frequently invited female JPA members to sit on the bench with him during court proceedings to advise him on treatment and sentencing decisions.[94]

Apparently, these women did their job too well. As early as 1911, the Chicago press criticized the probations officers and female volunteers for being "child-snatchers" instead of "child-savers," triggering an investigation by the County Civil Service Commission into the more dubious practices employed.[95] As a result of this investigation, the state legislature restructured the appointment procedures for probation officers and created paid positions that were filled mostly by men.[96]

The court system extended and justified extra-legal investigative power and provided a mechanism through which an emerging "science" of urban social ecology could obtain valuable "data" on juvenile delinquency. The court gave reformers "legitimate" access to working-class homes. The women who worked with the court, either as probation officers or as members of the affiliated charitable societies, compiled extensive reports backed by the authority of the court. Mabel Rhoades, a sociologist at the University of Chicago, conducted a *Case Study of Delinquent Boys* in 1907 that described the court's endeavor to discover scientifically the causes of delinquency: "The general thesis . . . . is simply that the particular abnormal conditions, easily discoverable in each case and of obviously desocializing tendency, are sufficient to account

90. Illinois Juvenile Court Act, § 4, 1899 Ill. Laws 131. *See also* HURLEY, *supra* note 14, at 76; Kelsey, *supra* note 86, at 300; Rendelman, *supra* note 25, at 94.

91. BOWEN, *supra* note 9, at xii.

92. CLAPP, *supra* note 6, at 187.

93. Barrows, *supra* note 24, at xii.

94. *See* CLAPP, *supra* note 6, at 172.

95. JETER, *supra* note 60, at 6-7.

96. *See id.* For the results of the Commission's investigation, see CITIZEN'S INVESTIGATING COMMITTEE, THE JUVENILE COURT OF COOK COUNTY, ILLINOIS: REPORT OF A COMMITTEE APPOINTED UNDER RESOLUTION OF THE BOARD OF COMMISSIONERS OF COOK COUNTY, BEARING DATE AUGUST 8, 1911 (1912).

for a great bulk of our juvenile delinquency, leaving the inference that such conditions, on closer study, account for it all."[97]

Rhoades went on to chart the various "data tabulated" and classify the various neighborhoods of the city according to their "general character": from "vicious streets" to "poor but decent streets" to "comfortable streets."[98] Similarly, Louise de Koven Bowen, in her influential book *Safeguards for City Youth at Work and Play*, described the Juvenile Court Committee's success in discovering the "dangerous spots" of Chicago.[99] New York Juvenile Court Judge Julius Mayer published a study in 1904 describing "eight classes" of children "in the large city," which "open[ed] up a whole range of preventive and educational influences and of parental and social responsibility as to juvenile delinquency."[100]

In 1929, Clifford Shaw, a sociologist at the Institute for Juvenile Research and Behavior Research Fund, published a study of the geographic distribution of delinquents processed by the juvenile court, drawing extensively from the work of probation officers and court records.[101] His book, *Delinquency Areas*, contains elaborate maps representing data on several thousand youth brought before the court in the years 1900-1906,[102] a period during which the court's probation officers were unpaid and predominantly female.[103] (See Figure 3). Shaw stated that "the study of such problems as juvenile delinquency necessarily begins with the study of its geographic location. The first step reveals the areas in which delinquency occurs most frequently, and therefore marks off the communities which should be studied intensively for factors related to delinquent behavior."[104] Interestingly, he found that the highest rates of delinquency are "restricted to the areas more immediate to the industrial centers"[105] and concluded that, "with the process of growth of the city, the invasion of residential communities by business and industry causes a disintegration of the community as a unit of social control."[106] These findings relied heavily on the earlier work of female court officers and volunteers who conducted the

97. Rhoades, *supra* note 51, at 62.

98. *Id.* at 71-73.

99. BOWEN, *supra* note 9, at 4.

100. *See* Barrows, *supra* note 24, at xiv.

101. CLIFFORD R. SHAW, DELINQUENCY AREAS: A STUDY OF THE GEOGRAPHIC DISTRIBUTION OF SCHOOL TRUANTS, JUVENILE DELINQUENTS, AND ADULT OFFENDERS IN CHICAGO (1929).

102. *Id.* at 22.

103. *Id.* at 23.

104. *Id.* at 10.

105. *Id.* at 95, 169, 204.

106. *Id.* at 205.

"home visits" and interviews that Shaw utilized to flesh out his data.[107]

The juvenile court movement, like the women's prison movement occurring at the same time, was a new avenue through which "middle-class women gained both valuable personal skills and greater public authority."[108] Through their child-saving enterprises, middle-class women found new recognition as effective agents of social change in the public sphere, and in doing so, made great strides in securing equal citizenship. Bowen attributed the success of the juvenile court to civic-minded Chicago women and insisted that "whatever men may believe about the propriety of the vote for women, those with the ability to see the social changes which are daily going on about us, are almost in unanimous opinion that it is highly proper for women to engage in philanthropy."[109]

What often remains unspoken in feminist accounts is the extent to which the affirmation of middle-class women in the public sphere happened at the expense of the privacy and domestic autonomy of working-class women and their families. Unlike the movement towards greater freedom and equality that Estelle Freedman associates with late nineteenth-century feminist struggles,[110] the juvenile court movement allowed the state to appropriate and constrain the "parental authority" of working-class and immigrant women, utilizing bourgeois women as a vehicle of control. Freedman describes how women's prison reformers "attempted to dismiss class difference and emphasized a common bond of an innate womanly spirit."[111] However, in the literature on the early juvenile courts, class difference is reinforced, and the charitable reformers acutely perceived their moral superiority as women who had the means to maintain a healthy—that is, nonimmigrant and bourgeois—home. The female-dominated probation system was the "arm of the state" backing "every person interested in studying [the] conditions" of poor families.[112]

Women became the functional arm of the court that went into the homes of children processed in the juvenile courts, scrupulously documenting instances of delinquency. They produced elaborate maps and attempted to link environmental conditions, such as proximity to industrial sites, to behavioral patterns and

107. *See id.* at 24.

108. ESTELLE B. FREEDMAN, THEIR SISTER'S KEEPERS: WOMEN'S PRISON REFORM IN AMERICA, 1830-1930, at 47 (1981).

109. BOWEN, *supra* note 9, at 203.

110. *See* FREEDMAN, *supra* note 108.

111. *Id.* at 33.

112. Hurley, *supra* note 52, at 7.

delinquency. As British sociologist John Muncie explains, "the birth of the concept of 'juvenile delinquency' did not so much engender a humanitarian attitude towards youthful offenders, as justify an increased surveillance and regulation of both themselves and their working-class families."[113] This obsessive surveillance and regulation of working-class households and communities was extolled as one of the key virtues of the juvenile court. According to Commissioner Barrows, one of the greatest successes of the juvenile court was to "reveal the sources of contamination of child life as they were never revealed before."[114]

Foucault writes that "the delinquent is to be distinguished from the offender by the fact that it is not so much his act as his life that is relevant in characterizing him."[115] In order to remedy the problem of juvenile delinquency, the entire life of the delinquent became part of the court's jurisdiction. Similarly, Sacha Coupet describes how "[a]t hearings and dispositions, the [juvenile] court directed its attention first and foremost to the child's character and lifestyle."[116] No longer confined to weighing the offense (since no "offense" per se was committed), more diffuse technologies were required to meet the rehabilitative demands of the juvenile court. Middle-class women, through their charitable efforts, enabled the creation of what Foucault describes as the "the carceral network," which transports disciplinary mechanisms "from the penal institution to the entire social body."[117] As Foucault writes, one critical result of the carceral network is the diffusion of judicial functions: "The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the 'social worker'-judge; it is on them that the universal reign of the normative is based . . . ."[118] The child-savers became an instrument for dislodging the judicial process from the confines of formal judicial institutions, taking the process of diagnosing and correcting delinquency to the streets.

IV. SCIENTIFIC DISCOURSE: THE ECOLOGY OF DELINQUENCY

Despite the confidence of probation officers and reform-minded researchers in the juvenile court's ability to discover the causes of delinquency with scientific precision, no consensus emerged in the

113. JOHN MUNCIE, THE TROUBLE WITH KIDS TODAY: YOUTH AND CRIME IN POST-WAR BRITAIN 40 (1984).

114. Barrows, *supra* note 24, at xvi.

115. FOUCAULT, *supra* note 21, at 251.

116. Coupet, *supra* note 32, at 1313.

117. FOUCAULT, *supra* note 21, at 298.

118. *Id.* at 304.

literature of the time. As anthropologist Franz Boas presented the question in *The Child, the Clinic, and the Court,* "[t]he fundamental difficulty that besets us is that of differentiating between what is inherent in bodily structure, and what is acquired by the cultural medium in which each individual is set, or, to express it in biological terms, what is determined by hereditary and what is environmental causes?"[119]

In 1899, the same year as the founding of the Cook County Juvenile Court, the *Charities Review* could not resolve this fundamental question in its article *Environment Versus Heredity*?[120] Twenty-five years later, anthropologists, zoologists, and juvenile court judges were still debating this question at a conference commemorating the founding of the juvenile court.[121] Ultimately, however, the two sides of the scientific debate about the origins of delinquency were not as opposed as they might appear, and both reinforced race and class hierarchy by situating the white bourgeois norm as "natural" and working-class and immigrant families as "defective" or "deviant."

Biological and physiological theories that emphasized the hereditary causes of delinquency more blatantly supported this hierarchy. In 1876, Italian physician Cesare Lombroso introduced his famous theories of criminal causation based on evolution and physical differences discoverable on the body of the criminal. Lombroso believed that criminals were "atavistic," throwbacks to "less civilized" evolutionary states, and were therefore more prone to criminal acts.[122] These "degenerate" characteristics supposedly manifested themselves in anatomical defects such as "facial asymmetry."[123] Lombroso's theories were popular among many American social reformers at the end of the nineteenth century. "America . . . gave a warm and sympathetic reception to [my] ideas . . . which they speedily put into practice with brilliant results shown by . . . the Probation System and Juvenile Courts."[124] In Chicago, his eugenic model was embraced by the white bourgeois society whose superior status over the great majority of poor

119. Franz Boas, *Growth and Development, Bodily and Mental, as Determined by Hereditary and by Social Environment, in* THE CHILD, THE CLINIC, AND THE COURT, *supra* note 8, at 178, 178.

120. Elizabeth Kerr, *Environment Versus Heredity*, CHARITIES REV., May 1899, at 116.

121. *See* Boas, *supra* note 119; C.M. Child, *The Individual and Environment from a Physiological Viewpoint, in* THE CHILD, THE CLINIC, AND THE COURT, *supra* note 8, at 126.

122. Cesare Lombroso, *Introduction to Criminal Man, in* THE PROBLEM OF DELINQUENCY 44, 46 (Sheldon Glueck ed., 1959).

123. *Id.*

124. *Id.* at 47.

immigrants appeared to be scientifically justified.[125] Lombroso's theories were replicated almost verbatim in studies such as Rhoades's *Case Study of Delinquent Boys*, which described how "head and face anomalies . . . show a tendency in favor of the well-to-do."[126] Similarly, Bowen concluded that about eighty-one percent of dependent children brought into the juvenile court were "sub-normal," exhibiting some physical defect.[127]

Despite the popularity of Lombroso's theories and his claim that the juvenile court embraced them, progressive reformers largely spurned physiological accounts, adopting instead "environmental" theories of delinquency.[128] During the late nineteenth century, a group of social reformers known as the "environmentalists" posited that social ills had roots in the urban environment.[129] The "positive environmentalism" movement, which held that improving urban physical environments would improve social behavior, dominated a significant segment of the progressive reform community at the turn of the century.[130] The popularity of positive environmentalism led to a broad range of urban reforms, including the widespread adoption of tenement house regulations and zoning enabling statutes.[131] However, the child-savers at the JPA and Visitation and Aid Society, the agencies at the forefront of the juvenile court movement, most forcefully advanced these environmental theories.[132] At the center of each of these reforms, even those such as zoning that were ostensibly geared toward reshaping urban space, was a concern for the protection of children.[133] As Professor Richard Chused notes, between the Civil War and the 1920s, urban reform efforts "revolved around creating 'positive' environments for children," and "children became the linchpin of efforts to

125. *See* BERNARD, *supra* note 3, at 85; *see also* Willrich, *supra* note 83, at 83-93 (discussing the entrenchment of "eugenic jurisprudence" in the early juvenile courts).

126. Rhoades, *supra* note 51, at 68.

127. BOWEN, *supra* note 9, at 96.

128. *See* Kelsey, *supra* note 84, at 298-99 (describing the juvenile court as indicative of "a clearer appreciation of the wonderful susceptibility of the child to impressions of all sorts and a decided reaction from the extreme emphasis laid formerly upon heredity"); Willrich, *supra* note 83, at 79 (describing the juvenile court as embracing an "environmentalist" view of crime and vice).

129. *See* Willrich, *supra* note 83, at 71.

130. *See* PAUL BOYER, URBAN MASSES AND MORAL ORDER IN AMERICA, 1820-1920, at 221-23 (1978) (describing positive environmentalism as a strategy to discourage urban vice by providing healthy social substitutes).

131. *See* Richard Chused, Euclid's *Historical Imagery*, 51 CASE W. RES. L. REV. 597, 600-02 (2001).

132. *See* Willrich, *supra* note 83, at 71.

133. *See* Chused, *supra* note 131, at 612-13 (discussing how zoning reforms were defended as a lawful exertion of the government's "police power" since they were geared toward protecting children from the moral risk associated with urban slums).

reform society."[134] Hence, urban youth became the primary vehicle for environmentalists to articulate positive scientific discourse relating social behavior to physical conditions in the industrial city.

While hereditary theories of criminality explicitly validated race and class hierarchy, environmental theories operated in subtler ways to perpetuate the same social ordering. Environmental arguments stressed the conditions in which a child was raised; almost exclusively, this implicated the ethnic background and socio-economic class of the family. The "broken home" thesis, originally proposed by Cyril Burt, relied in part on data the juvenile court produced.[135] This thesis was a forerunner to modern "deprivation theory," which maintains that delinquency arises as a result of a "deprived" family and cultural background. As Christine Griffin writes: "'Deprivation' was synonymous in this context with working-class (or non-white middle class) culture. The cause(s) of 'delinquency' . . . could be attributed to such 'deprivation,' which was then transmitted from generation to generation through 'inadequate' family forms and cultural practices."[136]

Hence, despite the seeming divergence of these two scientific theories ("nature" and "nurture") as explanatory models for juvenile delinquency, the distinction between them in practice was ambiguous. Under either theory, the working-class and immigrant family became the breeding ground for delinquency. Reformers assumed that the dominant bourgeois family structure and the amenities of a hearth and home were the "normal" and "natural" structure. They posited the "broken home" as the "abnormal" response to the "unnatural" city. The child it produced was not wholly human:

> Better than all these [attempts at reforming the delinquent child] is undoubtedly a good home with two good parents; but where that is impossible, let us not despair. If the natural prop is gone, the normal limb removed, we have always to make the best possible substitute, thankful that . . . though the artificial limb can never be a sound leg, yet with it the patient may get about to do his share of the great world's work.[137]

The notion that the degraded environment of the industrial city corrupted urban youth inspired two popular responses to juvenile delinquency. Beginning in the mid-nineteenth century, Charles Loring Brace and the Children's Aid Society initiated the Urban

134. *Id.* at 613.
135. CYRIL BURT, THE YOUNG DELINQUENT 11-27 (1925).
136. GRIFFIN, *supra* note 56, at 105.
137. Rhoades, *supra* note 51, at 78.

Train Movement to "place-out" at-risk urban youth, taking them from the city and placing them with families living in rural America in order to expose them to the "great advantages" of nature.[138] The goal of the Urban Train Movement was to save children from delinquency and crime by removing them from the city (conceived as a dirty, contaminated place) to the countryside (a place of purity and order).[139] For example, the 1857 Annual Report of the New York Children's Aid Society describes the benefits of placing-out with vivid imagery:

> The poor vagabond boy, or the child whom misfortune has made wretched and homeless, goes to a quiet country home.... The poor lad remembering the dirty cellars, and the alleys piled with garbage and the filthy holes of the great city, wonders with delight at the orchards and lilacs and the green grass and the pure air of his new home.[140]

However, placing-out at-risk urban youth only proved viable for a limited time.[141] Since it was not possible to expose enough urban children to the healing virtues of the countryside, more homegrown urban solutions were necessary. The juvenile court system sought to remedy the causes of delinquency *within* the communities that allegedly bred delinquents.

The process of rectifying disorder in the industrial city through the juvenile courts relied heavily on the expertise of social scientists, who became indispensable to the administration of justice among newly "socialized" courts.[142] As legal historians have noted, the Progressive Era was a period in which jurists reconfigured the relationship between the modern industrialized state and its citizens.[143] Progressive reformers challenged the individualistic tenets of the common law and "placed a new premium on social context and experimentalism."[144] Roscoe Pound, the renowned Harvard Law professor and leading progressive legal reformer at the time, called this transformation the "socialization of

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138. *See* PLATT, *supra* note 2, at 65-66; Coupet, *supra* note 32, at 1311; Martha Grace Duncan, *In Slime and Darkness: The Metaphor of Filth in Criminal Justice*, 68 TUL. L. REV. 725, 791-92 (1994).

139. *See* Duncan, *supra* note 138, at 791.

140. *Id.* As Professor Duncan points out, "[t]his passage recalls Dickens's *Oliver Twist*, in which Oliver oscillates between a filthy city environment, where he is a captive of Fagin's thieving gang, and an idyllic country home, where he is, temporarily at least, safe from the corrupting influence of criminals." *Id.* at 791 n.336.

141. Coupet, *supra* note 32, at 1311.

142. *See* Willrich, *supra* note 83, at 77-78.

143. *See, e.g.*, *id.* at 66.

144. *Id.* at 76.

the law."[145] Critical to this process was the creation of specialized courts, such as the juvenile court, that relied on a rising class of professionals—psychologists, psychiatrists, and social workers—to assist in the administration of justice. Pound articulated the goal of the specialized courts as one of individual classification: "Criminals must be classified as well as crimes."[146] Criminological clinics were soon created in urban juvenile courts as a "logical outgrowth of socialized law and its rhetoric of scientific investigation, professional expertise, and individual treatment."[147] Motivated by new scientific theories of adolescence, wealthy Chicago feminist and JPA member Ethel Sturges Dummer funded the first court-affiliated clinic at the Cook County Juvenile Court in 1909.[148]

White, bourgeois society in Chicago considered it rightfully within the domain of the juvenile court to diagnose the "nature" of "defective" urban youth and to correct their disfigurations, caused either by biology, background, or exposure to unsavory elements. Unlike the pastoral scene of apple orchards and watermelon patches invoked by Judge Lindsay that opened this Note, the ecology of the urban environment bred a different form of delinquency and demanded that the juvenile court system, acting as the ersatz parent, cultivate a different order.

V. LESSONS FOR REFORM

Legal scholars often describe the perilous conditions of the early industrial city as the source of our contemporary systems of zoning and land use regulation. In his classic work *The City in History*, Lewis Mumford observed that "[i]ndustrialism, the main creative force in the nineteenth century . . . produced the most degraded human environment the world had yet seen."[149] The hazards that the industrial city created exceeded the capacity of existing nuisance laws to regulate urban uses and spaces.[150] In response, zoning laws were created to give order to the chaotic growth of the city. Underlying these innovations in planning law was the deeply

145. Roscoe Pound, *Administration of Justice in the Modern City*, 26 HARV. L. REV. 302 (1913).

146. Roscoe Pound, *Criminal Justice in the American City—A Summary*, *in* CRIMINAL JUSTICE IN CLEVELAND: REPORTS OF THE CLEVELAND FOUNDATION SURVEY OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN CLEVELAND, OHIO 559, 586-87 (Roscoe Pound & Felix Frankfurter eds., 1922), *discussed in* A.L. Jacoby, *The Psychopathic Clinic in Criminal Court, Its Uses and Possibilities*, 7 J. AM. JUDICATURE SOC'Y 22, 21-25 (1923)

147. Willrich, *supra* note 83, at 82.

148. *Id.*

149. JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 941 (4th ed. 1998) (quoting LEWIS MUMFORD, THE CITY IN HISTORY 433 (1961)).

150. *See id.*

entrenched ideal of the pastoral home, a rapidly disappearing but increasingly venerated form.[151] Contemporary urban planners like Ebenezer Howard attempted to develop model communities, such as the "Garden City," in which urban residents could readily access the healing attributes of the countryside and spatial segregation immunized children from the corrupting influences of modern industry.[152]

While the effects of the semiotic crisis of the industrial city on planning law are well documented, the intersection of urbanism and family law is rarely explored. Nonetheless, I argue that it is precisely this crisis of meaning that fueled the development of the juvenile courts. The zoning laws that emerged at the time, while innovative in many ways, were later subject to critique for reinforcing racial and class segregation. I argue that the juvenile courts had a similar effect. Just as zoning laws have been revised to incorporate changing civil rights norms in the United States, the juvenile court system must respond to changing privacy and equality norms.

Several legal academics have criticized the juvenile court's failure to adapt to changing notions of childhood and criminal culpability. Most notably, Professor Janet Ainsworth has called for the dismantling of the juvenile court system due to the transformation of social understandings of adolescence over the past century: "Because our interpretive construct of childhood and adolescence has changed, and we no longer view young people as essentially and uniformly different from adults, we can no longer justify maintaining a procedurally and practically inferior justice system for juveniles . . . ."[153] Since, we (or rather, the social constructivists with whom Ainsworth aligns herself) no longer believe in a discrete category of "juveniles," she argues that the juvenile court as an autonomous legal system has lost its legitimacy and should therefore be abolished.[154]

I contend that Ainsworth, in examining the transformations in our conception of childhood over the past century, has asked only half the question. Since the juvenile court was invented specifically to address the problem of urban youth, we must ask also whether our notions of urbanism have changed. Does the post-industrial city

151. *See id.* at 942-43.

152. *See id.* As Dukeminier and Krier note, "[i]t is not surprising that Ebenezer Howard's Garden City ideal found fertile ground in the United States. From the beginning . . . a strong current projecting pastoral life as the ideal has run through American culture." *Id.* at 943.

153. Ainsworth, *supra* note 17, at 1132.

154. *Id.*

resemble the industrial one in a manner that mandates a separate juvenile justice system? While juvenile courts are no longer a strictly urban phenomenon, the crisis of the industrial city that inspired the invention of juvenile justice may help explain the resiliency of the juvenile courts despite widespread calls for reform or abolition. Environmental theories translating supposedly degraded urban environments into juvenile criminality persist in the popular imagination, even though social scientists have largely discredited them. As Professor Martha Grace Duncan writes:

> [O]ne of the driving assumptions behind the [Urban Train] Movement remains embedded in our culture: to wit, the assumption that criminality is natural to the cities and alien to the suburbs and the country. That we associate criminality with cities is a commonplace, but this idea is usually thought to spring from the actual correlation between high crime rates and urban concentration. I suggest that the roots of the idea lie deeper, that criminality and cities are linked by their common association with filth. If this is so, then our nation's inability to fight crime effectively may stem partly from a belief that the affinity between crime and cities is deep-seated and inexorable.[155]

Understanding the relationship between urbanity and juvenile delinquency as constructed at the birth of the juvenile justice system may help untangle the reasons why the juvenile court failed to live up to its progressive aspirations. As recent studies by legal scholars and sociologists have argued, "place" matters in the administration of juvenile justice.[156] For instance, Feld and others have demonstrated that "similarly-situated offenders may be treated differently based on their locale and that differential processing is more prevalent in rural settings and declines with urbanization and bureaucraticization."[157]

Ironically, the paternalistic ideology that characterized the early urban juvenile courts has survived most readily in rural and suburban settings, rather than large cities. Feld points out that the judicial discretion and procedural informality that characterized the court under the parens patriae doctrine is more prevalent in rural and suburban juvenile courts than in urban courts.[158] After

155. Duncan, *supra* note 138, at 792.

156. *See, e.g.*, Simon I. Singer, *The Significance of Place in Bringing Juveniles into Criminal Court*, 18 QUINNIPIAC L. REV. 643 (1999).

157. Barry C. Feld, *Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration*, 82 J. CRIM. L. & CRIMINOLOGY 156, 159 (1991).

158. *Id.* at 156.

analyzing extensive juvenile court data from the state of Minnesota, he concludes:

> In urban counties, which are more heterogeneous and diverse, juvenile justice intervention is more formal, bureaucratized, and due-process oriented. Formality is associated with greater severity in pre-trial detention and sentencing practices. By contrast, in more homogeneous and stable rural counties, juvenile courts are procedurally less formal and sentence youths more leniently.[159]

The logic of the original juvenile court has been inverted over the course of a century: In the city, stricter formal mechanisms for maintaining social order (mechanisms that more closely resemble the criminal court from which the original juvenile courts so desperately sought to distance themselves) have become entrenched, while in country, the benevolent, paternal judge seems to live on.

Meanwhile, academic interpretations of the origins of the juvenile court have vacillated along with diverse reform agendas over the past century. In the early 1900s, legal academics applauded the court's treatment of the "child as a child" as a refined response to the growing problems of juvenile delinquency and clamored for its importation into jurisdictions beyond large cities.[160] However, by the late 1960s and early 1970s, when youth advocates were demanding greater procedural protections for juvenile offenders, the origins of the court were reread through a more distrustful lens.[161] The rehabilitative ideal of the Progressive founders of the juvenile courts came under attack as commentators began to recognize that "the sensitive paternalism of the juvenile court movement had an ugly statist face."[162] Commentators such as Anthony Platt began to describe how the juvenile court system gave officials "the power to reach more juveniles and to commit them in increasing numbers to penal institutions" without providing even basis due process protections.[163]

On a theoretical level, critics condemned the juvenile court for severing punishment from criminal responsibility. In the post-Nazi era, the cold war generation became increasing wary of such

159. *Id.* Singer reaches a similar conclusion analyzing data on juvenile courts in New York State and nationwide. *See* Singer, *supra* note 156, at 656-57.

160. *See, e.g.*, Mack, *supra* note 58.

161. *See, e.g.*, PLATT, *supra* note 2.

162. Morris B. Hoffman, *Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous*, 29 FORDHAM URB. L.J. 2063, 2078 (2002).

163. PLATT, *supra* note 2, at 172.

arbitrary use of state power.[164] On a practical level, empirical studies revealed that rehabilitation "simply did not work."[165] As Janet Ainsworth points out, "[d]espite several decades of experience with rehabilitative penology in the adult and juvenile systems . . . criminal recidivism stubbornly refused to whither away."[166] By the end of the 1970s, the rehabilitative ideal was replaced with "neo-retributionism,"[167] which translated into "a world in which the juveniles are to be held strictly accountable for their crimes" through harsh "just desserts" sentencing practices.[168] The original justification for the juvenile courts, that of "treating the child as a child," was replaced by a new mantra of "treating criminals as criminals."[169]

Today, as critics condemn the increasingly punitive functions of the juvenile court, the rehabilitative roots of the court are once again being endorsed.[170] Contemporary critics long for the return of the benevolent father to the juvenile court bench. This is a dangerous trend, which fails to recognize that the rhetoric of rehabilitation may have been only a strategic response to the constraints on parens patriae imposed by the *Turner* decision. Even more ominously, the rehabilitation model constituted a massive expansion of the state's power to intrude into the private lives of immigrant and working-class families. Instead of clamoring for a return to a dubious past, I would argue for two main principles to guide reform efforts.

First, reforms must seek to uncouple social control from social welfare. I agree with Feld when he writes that "the juvenile court's fundamental flaw is not simply a century-long failure of implementation, but a failure of conception. The juvenile court's effort to combine social welfare and criminal social control in one agency simply ensures that it pursues both missions badly."[171] As early as 1971, the American Friends Service Committee recognized the dangers of a judicial system in which defendants are simultaneously treated and punished. In its influential report on American penology, the Committee wrote: "When we punish the person and simultaneously try to treat him, we hurt the individual

164. *See* Hoffman, *supra* note 162, at 2079.

165. *Id.*

166. Ainsworth, *supra* note 17, at 1104.

167. Hoffman, *supra* note 162, at 2081.

168. Ainsworth, *supra* note 17, at 1105.

169. *See* Elrod, *supra* note 11, at 170.

170. *See, e.g.*, CHARLES H. SHIREMAN & FREDERIC G. REAMER, REHABILITATING JUVENILE JUSTICE 108-130 (1986); Simon, *supra* note 81, at 1424-25.

171. Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 MINN. L. REV. 327, 331 (1999).

more profoundly and more permanently than if we merely imprison him for specific length of time."[172] The fact that these aims do not cohere is as true today as it was at the turn of the century, when unwarranted social control was exerted over youthful status offenders and working-class families under the guise of social welfare.

As an alternative to the rehabilitation/retribution dichotomy with which the juvenile court has struggled over the past century, recent scholars from disparate ideological camps have argued that contemporary juvenile courts must respond to structural conditions placing inner-city youth at risk for crime, without replicating the empty paternalism of the early juvenile courts. Radical criminologists, such as Preston Elrod, insist that "[n]either conservative nor liberal juvenile justice policies address the social, cultural, economic, political, and institutional conditions that both produce delinquency and block the implementation of innovative approaches to youth crime."[173] Instead, Elrod argues, juvenile justice programs should "work to ensure that basic physical needs such as food, shelter, and clothing are met"; "maintain a healthy skepticism about the ability of traditional correctional interventions to reduce delinquency"; and "ensure the protection of juvenile rights within the system."[174] Similarly, proponents of "restorative justice" programs emphasize victim-offender mediations, community service, and an increased role for educational and vocational programs to promote productive opportunities for juvenile offenders.[175] Recognizing that there is a lack of educational resources and social skills development for children growing up in marginalized urban communities, restorative justice programs seek to target "the larger social conditions that [give] rise to [juvenile crime] . . . in the first place."[176] Restorative justice prioritizes both family autonomy and community-based responses to juvenile justice. If, as this Note argues, the juvenile court constituted an unprecedented expansion of state power into immigrant and working-class urban communities, reforms must seek to redress these violations.

A second goal to guide reform efforts is to re-democratize urban space by removing the stigma of vice from public streets and places. This Note suggests a deeper logic was at play in the establishment

172. AM. FRIENDS SERVICE COMM., STRUGGLE FOR JUSTICE: A REPORT ON CRIME AND PUNISHMENT IN AMERICA 147-48 (1971).

173. Elrod, *supra* note 11, at 177.

174. *Id.* at 179.

175. *See* Coupet, *supra* note 32, at 1342-43.

176. BERNARD, *supra* note 3, at 186.

of the juvenile courts; namely, when urban youth go out into the street, they expose themselves not only to vice, but also to the jurisdiction of the court (and its agents of "watchcare"), thereby risking discipline and, potentially, legal commitment. This decidedly undemocratic notion disproportionately impacts low-income urban households, whose children were more likely to spend time "in the street" as a result of residential overcrowding and exclusion from private social institutions. It is also hostile to the use of public space as a legitimate form of social interaction.[177] Although not always explicitly linked to juvenile courts, the trend in juvenile justice has been to restrict the access of urban youth to public spaces through citywide curfews,[178] anti-loitering laws that give police broad discretion to order suspect youth to disperse,[179] and ordinances that broadly define "gangs" as any gathering of three of more youth that includes at least one with a criminal record.[180] Public housing and its surroundings, in particular, have become the locus of the most intensive youth criminalization efforts in recent years.[181] As many scholars have argued, such

177. *Cf.* Richard T. Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994) ("If individuals and groups are to determine their own destiny—the ultimate promise of democracy—they must control the spaces in which they live and interact.").

178. *See, e.g.*, Note, *Juvenile Curfews and Gang Violence: Exiled on Main Street*, 107 HARV. L. REV. 1693 (1993) (situating youth curfews as a community response to the problems of gang violence and summarizing the ongoing policy debate regarding the effectiveness of curfews); *see also* MIKE DAVIS, CITY OF QUARTZ 284-89 (1992) (describing the use of curfews and "virtually unlimited police discretion" to arrest inner city youth in Los Angeles).

179. *See, e.g.*, Chicago v. Morales, 527 U.S. 41, 64 (1999) (invalidating Chicago's Gang Congregation Ordinance since "it affords too much discretion to police and too little notice to citizens who wish to use the public streets").

180. *See, e.g.*, California Street Terrorism Enforcement and Prevention Act, CAL. PENAL CODE § 186.20 (West 1995) (defining a gang as "any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity"); Georgia Street Gang Terrorism and Prevention Act, 1992 Ga. Laws 3236 (defining "gangs" as any public gathering of three of more individuals which includes at least one individual with a criminal record). *See generally* DAVIS, *supra* note 178, at 278-84 (describing City Attorney James Hahn's unprecedented attempts to criminalize gang members and their families in Los Angeles); Beth Bjerregaard, *The Constitutionality of Anti-Gang Legislation*, 21 CAMPBELL L. REV. 31 (1998) (surveying anti-gang ordinances nationwide and applying the doctrines of vagueness and overbreadth and the related issue of freedom of association to statutory provisions which criminalize gang participation); Terence R. Boga, Note, *Turf Wars: Street Gangs, Local Governments, and the Battle for Public Space*, 29 HARV. C.R.-C.L. L. REV. 477 (1993) (analyzing the constitutionality of public congregation provisions of gang abatement laws).

181. *See* Note, *Is It a Crime To Live in Public Housing? A Proposal To the Illinois General Assembly to Amend the Automatic Transfer Statute*, 27 J. MARSHALL L. REV. 855 (1994) (describing the automatic transfer of juveniles to criminal court in cases involving the sale of drugs near public housing property in Illinois); *cf.* Pratt v. Chicago Hous. Auth., 848 F. Supp. 792 (N.D. Ill. 1994) (granting an injunction halting police sweeps of public housing

ordinances should be subjected to heightened scrutiny for their disproportionate impact on low-income and minority youth, as well as their infringement on the freedom of association guaranteed by the First Amendment.[182]

An examination of the origins of juvenile justice can also help destabilize some of the assumptions underlying the policy of order-maintenance policing that in recent years has become an increasingly popular response to urban crime, especially urban youth crime.[183] Order-maintenance policing is based on the "broken windows" theory of deterrence James Q. Wilson and George L. Kelling first articulated in 1982 in their oft-cited *Atlantic Monthly* article, *Broken Windows*.[184] Under this theory, minor symptoms of disorder in a neighborhood, such as broken windows, will escalate into pervasive crime if left unchecked. The theory suggests that police can promote order and deter serious criminal activity by aggressively enforcing laws against minor misdemeanors, such as public drunkenness, loitering, vandalism, littering, public urination, panhandling, prostitution, and youth gangs.[185] After crime rates plummeted in major cities such as New York City and Chicago that had adopted such policies, order-maintenance policing was touted as the "Holy Grail of the 90's"[186] and was soon replicated in cities across the nation.[187]

Like the juvenile court, order-maintenance policing emerged in

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in Chicago). In *Pratt*, Judge Andersen seemed to embrace a community-based response to juvenile violence:

> [T]his Court has faith that parents and grandparents living in and around CHA housing will reclaim their families and restore to their children self respect and respect for other human beings. If they do, government efforts will succeed; if they do not, all efforts of government, whether within or without constitutional restraints, will fail.

Id. at 797.

182. *See, e.g.*, Boga, *supra* note 180 (advocating strict scrutiny of the public congregation provisions of gang abatement laws on freedom of association grounds); Note, *supra* note 181 (advocating strict scrutiny of automatic transfers of juveniles selling drugs in or near public housing on equal protection grounds). *But see* Dan M. Kahan & Tracey L. Meares, *The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153, 1154, 1167-69 (1998) (attacking strict scrutiny of the "new community policing" techniques as improper judicial second-guessing).

183. *See* Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 292-95 (1998) (describing the tremendous popularity of order-maintenance policing).

184. James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29; *see also* GEORGE L. KELLING & KATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES (1996) (further developing the broken windows thesis).

185. *See* Harcourt, *supra* note 183, at 301.

186. *Id.* at 292 (quoting Robert Jones, *The Puzzle Waiting for the New Chief*, L.A. TIMES, Aug. 10, 1997, at B1).

187. *See* Joshua Chaffin, *Giuliani Returns to His Trademark Policy on Crime: To the Surprise of New Yorkers, Their Mayor Has Revived His Crackdown on Petty Offences*, FIN. TIMES, Nov. 30, 2000, at 4.

response to a perceived rise in crime that is described as the product of decaying, unmanageable urban environments.[188] It similarly seeks to remedy this urban deterioration by transforming public spaces into sites of increased surveillance and control. As Richard Schragger observes:

> Order maintenance policing targets street crime and the indications of street crime—unruliness in public, loitering, graffiti, abandoned cars. It is less concerned with lawbreaking in private spaces, and thus, by definition, it is less concerned with those places in which street disorder is controlled by other means, such as in suburban neighborhoods.[189]

Moreover, like the early juvenile court reformers, proponents of order-maintenance policing are quick to label youth in the streets as deviant. The broken windows story, as told by Wilson and Kelling, evokes familiar, but critically modified, imagery:

> A stable neighborhood of families who care for their homes, mind each other's children, and confidently frown on unwanted intruders can change, in a few years or even a few months, to an inhospitable and frightening jungle. A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. The merchant asks them to move; they refuse. Fights occur. Litter accumulates. . . . Such an area is vulnerable to criminal invasion.[190]

Similar to the "city of children" that Jane Addams described,[191] the contemporary urban neighborhood is seen as populated by unruly youth, dislocated from the home by adults who fail to provide adequate discipline.

However, unlike the early child-savers who saw urban youth as *victims* of disorder in the industrial city, proponents of order-maintenance policing situate urban youth in the post-industrial city as the *culprits* of disorder. As a result of this conceptual shift, as well the broader rejection of rehabilitative ideals in the juvenile justice system, order-maintenance policing constructs this category of youth as "disorderly" in ways that differ importantly from youth as "delinquent." While order-maintenance policing focuses on "disorderly" youth as a sort of vanguard for neighborhood decay, it

188. *See generally* WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS (1990)

189. Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 454 (2001).

190. Wilson & Kelling, *supra* note 184, at 31-32.

191. *See supra* note 9 and accompanying text.

effectively transfers the discretion and enhanced surveillance techniques of the juvenile court judge and his maternal agents of "watchcare" to the law enforcement officer. Bernard Harcourt explains that "[w]hat makes the system work is the availability of broad criminal laws that allow the police to take someone off the streets because they look suspicious. . . . [R]egularity on the streets rests on irregularity in police practice . . . ."[192] And while this new model of policing the "disorderly" heavily relies on discretion, it is devoid of the elements of "benign" categorization and treatment that characterized the early juvenile courts. As Harcourt remarks, the "disorderly" is "not coddled, he is not reformed, he is not part of the psychotherapeutic project of rehabilitation."[193] Rather, order-maintenance policing is more closely associated with "a militaristic method of rectification."[194] As a result, while juvenile courts have become increasingly discredited and bureaucratic under the weight of burgeoning dockets, law enforcement officers are increasingly endowed with the discretionary powers seen as necessary to stem urban disorder.[195]

While the movement for order-maintenance policing diverges from the early juvenile court movement in its emphasis on punishment rather than rehabilitation, it shares a common compulsion to remedy urban disorder by disciplining wayward youth dislocated from the domestic sphere. Without decontextualizing the ideological climate out of which the juvenile justice system arose, it should be noted that there are alternative ways of conceiving of youth and crime that are only recently being explored. Various theorists of critical criminology are interrogating the ways in which the juvenile justice system has constructed "juvenile delinquency" as a category to marginalize young people, particularly working-class and non-white youth.[196] Under this framework, many acts of delinquency can be seen as forms of creative resistance to cultural hegemony.[197] In particular, theorists

192. *See* Harcourt, *supra* note 183, at 344-45.

193. *Id.* at 298.

194. *Id.* at 356.

195. However, like the zealous volunteers at the Juvenile Protective Association, it appears that some order-maintaining police officers are doing their job too well. As the *Financial Times* recently reported, citizen complaints filed against the police have risen almost inversely in proportion to the drop in crime in New York City, jumping from about 3600 in 1993 to more than 4800 in 1999. *See* Chaffin, *supra* note 187. The broad discretion granted police under the quality-of-life initiative has also been widely criticized as leading to disproportionate arrests of immigrants and people of color. *See* BERNARD HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 168-69 (2001).

196. *See, e.g.*, Elrod, *supra* note 11, 176-79.

197. This notion clearly has its parallels in critical race theory. As Randall Kennedy points out, there is "a distinctive racial critique of the criminal justice system according to which the legal order is pervasively infected by a systematic racial bias that nullifies

of subcultural studies, such as Christine Griffin,[198] John Muncie,[199] and Michael Brake,[200] challenge the "overwhelmingly negative stance of researchers operating within the mainstream perspective" in order to reconstruct a more "positive, supportive" definition of delinquent youth.[201]

Perhaps one could argue that the juvenile court system did not *solve* the problem of youth delinquency, but rather reinforced the marginality of urban youth and engendered a legal system in which resistance to the naturalized norm could only be seen as criminal. As Howard S. Becker writes, "[t]reating a person as though he were generally rather than specifically deviant produces a self-fulfilling prophecy. It sets in motion several mechanisms which conspire to shape the person in the image people have of him."[202] Bernard Harcourt picks up on this notion of subject formation in his critique of order maintenance policing when he asks: "But what if order maintenance policing, instead of merely influencing these categories of individuals, actually helps shape or create these categories?"[203]

Although it is impossible to "read back" into history discourses that are being articulated over a century later, it is clear that the issues and challenges driving the creation of the juvenile court continue to confront us. The ongoing criminalization of urban youth through quality-of-life initiatives, repressive gang ordinances, and the reinstatement of curfews in many U.S. cities are signs that

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its legitimacy." RANDALL KENNEDY, RACE, CRIME, AND THE LAW 27 (1997). Under such a critique, criminality is equated with admirable defiance. *See id.* at 26-27; *see also* Regina Austin, *"The Black Community," Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769, 1776-77 (1992) ("[T]here has historically been a subtle admiration of criminals who are bold and brazen in their defiance of the legal regime of the external enemy.").

198. GRIFFIN, *supra* note 56.

199. MUNCIE, *supra* note 113.

200. MICHAEL BRAKE, COMPARATIVE YOUTH CULTURES: THE SOCIOLOGY OF YOUTH CULTURE AND SUBCULTURES IN AMERICA, BRITAIN, AND CANADA (1984).

201. GRIFFIN, *supra* note 56, at 108.

202. HOWARD S. BECKER, OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE 34 (1963).

203. Harcourt, *supra* note 183, at 353. However, it is worth noting that Harcourt does not adopt Becker's causality. Harcourt points out that "[t]o say that the quality-of-life initiative shapes the disorderly subject is not to say that it promotes more disorderly conduct by labeling the individual as disorderly—whether or not that is true." *Id.* at 365. Rather, he distinguishes between subject creation theory and labeling theory in his discussion of the norm-producing functions of order-maintenance policing:

> [S]ubject creation theory, in contrast to labeling theory, does not necessarily suggest that the category of the disorderly creates more disorderly behavior on the part of the disorderly persons. The focus of my deployment of subject creation theory . . . is instead on the apparatuses of punishment and discipline that naturally flow from the category of the disorderly.

Id. at 365 n.299 (citations omitted).

we still exist in a state of urban crisis. Perhaps a critical interrogation of the historical moment that produced our juvenile court system can provide insights into the questions with which we continue to struggle and a finer understanding of the interplay between urban youth and contemporary forms of state power and social control.

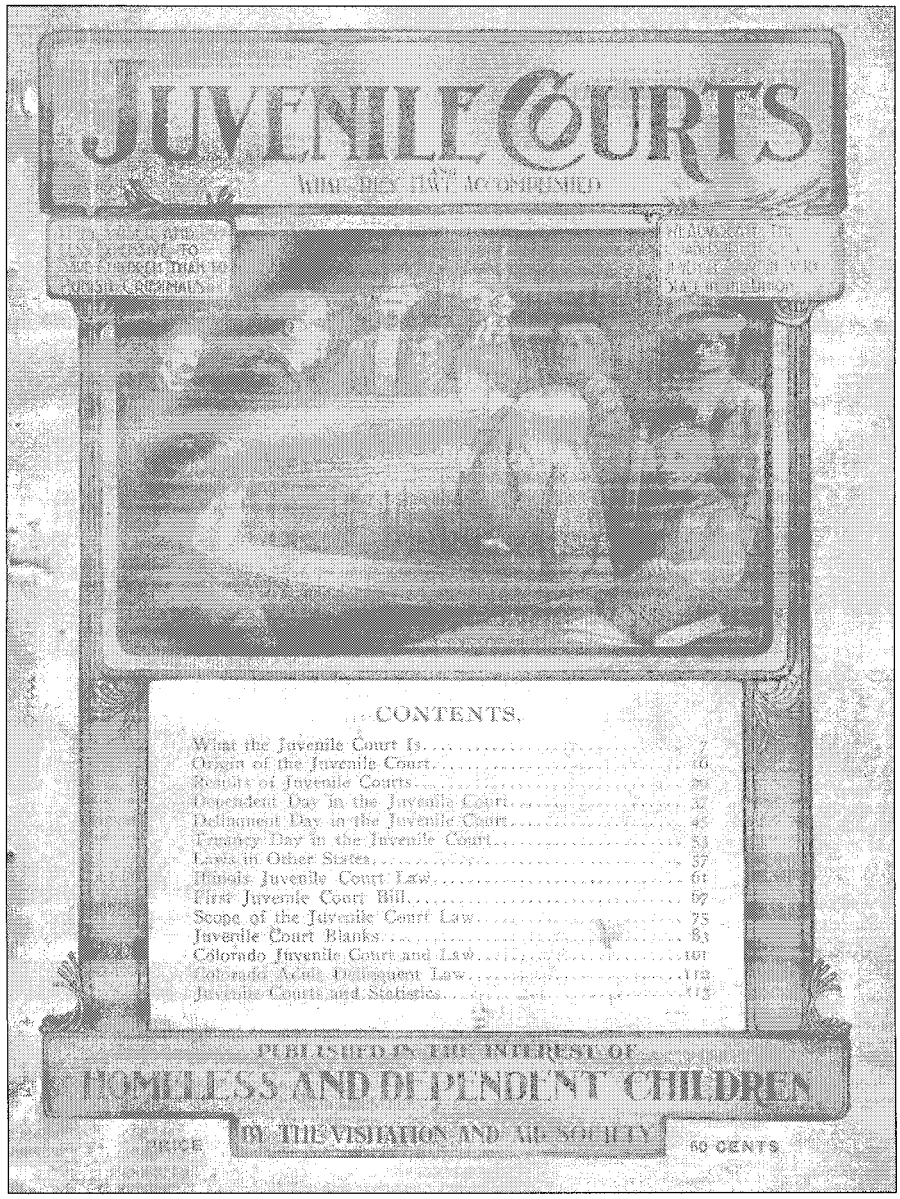

Figure 1. Charitable organizations, such as the Visitation and Aid Society, endorsed the simple logic the early juvenile courts: "It is wiser and less expensive to save children than to punish criminals."
source: T.D. HURLEY, JUVENILE COURTS AND WHAT THEY HAVE ACCOMPLISHED, at cover (2d ed. 1904)

(Juvenile Court Blank No. 2.)

PETITION—DELINQUENT CHILD.

.....

STATE OF ILLINOIS,
..... COUNTY. ss.

IN CIRCUIT COURT OF.....COUNTY.

.....Term, 190..

To the Honorable .....

Judge of the Circuit Court of.....County.

Your petitioner, ..., a reputable person and resident of said County, respectfully represents unto your Honor that *a* ....., a *b* ....., born on or about *c* ....., now being within said County, is a Delinquent Child, in this; that *d* ..... the said a .....

e .....

.....

.....

.....

.....

and that *f*.....

.....

.....

Therefore your petitioner humbly prays this Honorable Court to inquire into the alleged delinquency of said child, and into the truth of the matters herein contained, in pursuance of the Statute in such cases made and provided; and to make such orders in the premises as to this Honorable Court may seem meet and proper; and as in duty bound your petitioner will ever pray. etc.

.....

Petitioner.

.....

Attorney for Petitioner.

STATE OF ILLINOIS,
County of ..... ss.

....., being duly sworn, says that *d* .....has read the above petition, by *g* ..... signed, and knows the contents thereof, and that the same is true, according to the best of *h* ..... knowledge and belief.

.....

Petitioner.

Subscribed and sworn to before me this
..... day of ..... 190..

.....

Clerk.

.....

a. Insert the name of the child. Spell accurately. *b* Insert "boy" or "girl." *c* Insert date of birth as nearly as known. *d* Insert "he" or "she." *e* Insert one or more facts constituting delinquency in exact words of Section 1 of the Statutes, e. g., "has violated a law of the State, and what law;" or "has violated a city ordinance, and what ordinance;" or "is incorrigible;" or "knowingly associates with thieves, vicious or immoral persons;" or "is growing up in idleness;" or "knowingly patronizes a place where a gaming device is operated." Then insert particular facts, explaining the cause of delinquency as stated in the foregoing. *f* Insert facts as to parentage or guardianship, accounting fully for each of the parents of said child; giving address, if living, or, if dead, stating that fact; also stating reasons as to each of the parents, why he or she is unable or unfit to care for the child. *g* Insert "him" or "her." *h* Insert "his" or "her."

Figure 2. The Juvenile Court Act of 1899 allowed "[a]ny reputable person . . . having knowledge of a child in his county who appears to be either neglected, dependent or delinquent" to file a petition, such as this one, which set in motion court proceedings.
source: T.D. HURLEY, JUVENILE COURTS AND WHAT THEY HAVE ACCOMPLISHED85 (2d ed. 1904)

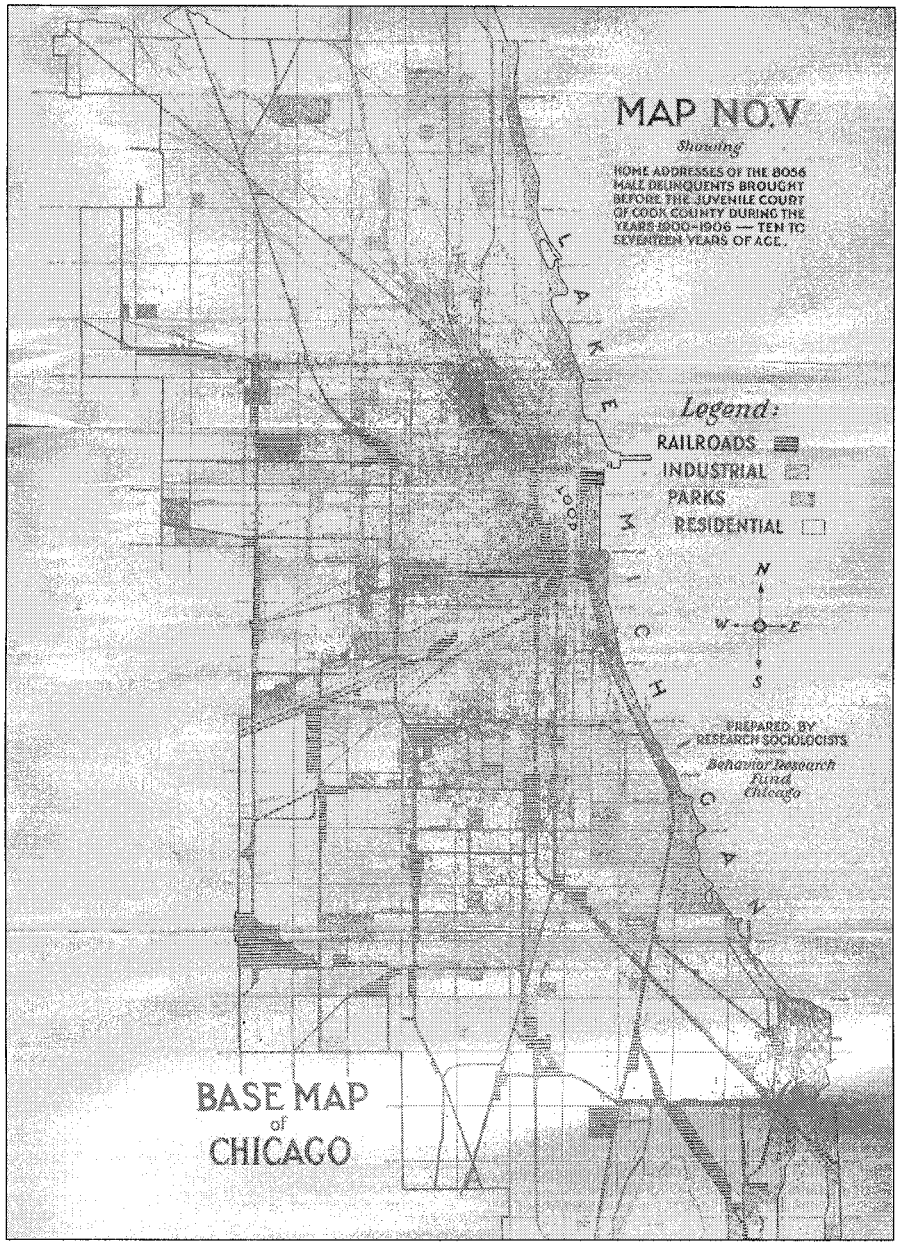

Figure 3. Utilizing data drawn from early juvenile court records, social scientists such as Clifford Shaw developed elaborate maps linking juvenile delinquency to unwholesome features of the industrial city.
source: CLIFFORD R. SHAW, DELINQUENCY AREAS: A STUDY OF THE GEOGRAPHIC DISTRIBUTION OF SCHOOL TRUANTS, JUVENILE DELINQUENTS, AND ADULT OFFENDERS IN CHICAGO__ (1929)