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“The reclaiming hand of sympathetic benevolence”: The Juvenile Justice Reform Movements in the United States and England, c. 1815 to c. 1910

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“The reclaiming hand of sympathetic benevolence”: The Juvenile Justice Reform Movements in
the United States and England, c. 1815 to c. 1910

An Honors Thesis
Presented by
Jennifer Lauren Parry

To
The Department of History
In partial fulfillment of the requirements for
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INTRODUCTION

Early in the nineteenth century the juvenile justice reform movement began in the United States and England, with activists dedicating themselves to reforming youth offenders. In both countries, pursuit of this cause began with a call to remove youth from prisons, where reformers believed adult criminals negatively influenced young offenders, thus reducing the likelihood of society reclaiming the child. Despite the movements beginning at relatively the same time, the United States established its first separate juvenile court in 1899, while England took another nine years to establish its own children's court. Why, at the turn of the twentieth century, did the United States lead the way in juvenile justice policy while England lagged behind? Was this development a result of the differing governments – *i.e.*, did the decentralized system of state governments in the United States allow reformers the opportunity of experimenting and discovering the most effective (and coincidentally some of the most progressive) juvenile justice policies, whereas the English system of passing legislation only through Parliament impeded the rate at which England could advance juvenile justice legislation? Or did social factors, such as a more present bias against the lower classes and differing views on how best to address youth crime, play a greater role?

This thesis explores the debates that occurred among juvenile justice reformers in the United States and England during the nineteenth and early twentieth centuries and argues that each country's respective societal values, more than any other factor, resulted in the United States taking the lead in establishing a juvenile court system. More specifically, it argues that while reformers in both countries shared a moral drive to reform youth offenders and also wished to instill middle-class values among the lower classes, reformers in England held deeper prejudices against the lower and working classes. Whereas from the very beginning of their movement American reformers focused primarily on reforming youth offenders, until the end of the nineteenth century

English reformers straddled the line between their desire to reform and their inclination to punish delinquent youth, which resulted in youth offenders continuing to be placed in prisons. Thus, by the turn of the twentieth century the juvenile justice reform movement in the United States already had turned its attention to removing youth offenders from juvenile institutions and transitioning them into a more community-based system that individualized their sentences (through the creation of a juvenile court and a probation system). Around this same time, however, the reform movement in England still had to address the brief imprisonment of youth prior to their assignment to a reformatory school. Furthermore, English reformers also turned to education policy to decrease youth crime. Their belief that compulsory education, rather than policies affecting the criminal justice system, was the best approach to lowering youth crime rates further delayed the progress of juvenile justice legislation in England.

While research and analysis of the differences and similarities between the juvenile justice systems and policies in the U.S. and England do exist, they focus almost exclusively on the present day, reaching no further back than the 1990s.¹ Despite the influence each country has exerted on the other over the past four hundred years, little research exists comparing the overarching history of juvenile justice in both countries. Phyllida Parsloe authored a book, *Juvenile Justice in Britain and the United States: The Balance of Needs and Rights*, which compares the two systems, including their respective histories. She wrote her book, however, in 1978, when the juvenile/youth justice systems in the U.S. and England were just starting to resemble each other. Furthermore, the book appeared prior to the introduction of “tough on crime” ideology and the resulting regressive juvenile justice policies adopted in both countries at the conclusion of the twentieth century. And while her book devotes a chapter each to juvenile/youth justice in the U.S. and England in the

¹For one example, see John Muncie’s “Policy Transfers and ‘What Works’: Some Reflections on Comparative Youth Justice,” *Youth Justice* 1, no. 3 (2001): SAGE Journals Online.

nineteenth and early twentieth centuries, she focuses on the development of policies rather than on the movement itself and the related discussions taking place both within society at large and among reformers. Thus, the field remains in need of a fuller comparative analysis of the juvenile justice reform movements in the U.S. and England in the nineteenth and early twentieth centuries.

World War I greatly altered the way in which England viewed youth crime – youth crime rates rose during this period, resulting in the public doubting the efficacy of the children’s courts – while in the United States the 1930s led to a wave of new policies with regard to child welfare, which impacted American society’s view of the juvenile justice system.² Thus, covering the entirety of the nineteenth and twentieth centuries in an undergraduate thesis would result in a shallow historical exploration. Consequently, this thesis focuses on the period between 1815 and 1910. This approach allows for a narrative that begins with both countries recognizing the differences between youth offenders and adult criminals, and culminates with the establishment of an entirely separate system for youth offenders in both the United States and England.

A close examination of juvenile justice discussions occurring between 1815 and 1910 provides insight into the changing societal attitudes and cultures of both countries during this period as well as facilitates an understanding of the trends in public opinion that led to the establishment of a juvenile court. As John R. Sutton writes, “Policies concerning deviant children have been at the moral center of debates over crime, poverty, and education – indeed, over the political growth of the nation.”³ A historical, comparative study of the treatment of delinquent

² Kate Bradley, “Inside the Inner London Juvenile Court, c. 1909-1953,” in “Centennial Reflections on the Children Act 1908,” special issue, *Crimes and Misdemeanours* 3, no. 2 (November 2009): 41, <http://www.pbs.plymouth.ac.uk/solon/JournalVol3Issue2.htm>; Andrew L. Yarrow, “History of U.S. Children’s Policy, 1900-Present,” *First Focus*, April 2009, 5, <http://www.pcyo.org/Pages/EmergingIssues.aspx>.

³ John R. Sutton, *Stubborn Child: Controlling Delinquency in the United States, 1640-1981*, ed. Andrew Scull, Medicine and Society (Berkeley: University of California Press, 1988), 1.

youth in both countries provides an improved and more nuanced comprehension of the relevant political changes within each nation during the nineteenth and early twentieth centuries.

The primary sources used in crafting this thesis include newspapers, magazines, and journals. This variety of source material allows for the pinpointing of the social contexts responsible for specific juvenile justice policies. For the United States, the majority of sources derive from middle-class, progressive newspapers and journals. Newspapers range from the well-known *New York Times* and *Washington Post* to smaller, more local papers such as *The Vincennes Weekly Western Sun*. Also included are the slightly more radical abolitionist newspapers from the Baltimore and Washington, D.C. areas, such as *The National Era*. During the nineteenth and early twentieth centuries, juvenile justice reform in the United States developed state-by-state rather than at the federal level (save for congressional establishment of juvenile justice policies in Washington, D.C. at the turn of the twentieth century, such as the creation of a juvenile court in 1906). As such, this thesis focuses on the Northeast and Midwest, regions that contained the most progressive states with regard to juvenile justice reform (for example, during the period when reformers in Illinois fought for a separate juvenile court, those in Atlanta and California were still trying to establish reform schools).

With respect to England, access to relevant nineteenth-century articles was much more limited. *The Manchester Guardian* (known today as *The Guardian*) thus serves as the source for the majority of research. Manchester often led the way in juvenile justice reform (although, of course, its policies and legislation changed at the same rate as the rest of England and Wales, as Parliament determines all English and Welsh laws), which made it the logical counterpart to the American Northeast and Midwest. Founded in 1821, on the heels of the police shutting down the radical *Manchester Observer*, *The Manchester Guardian* was a liberal paper, reaching chiefly a

local audience throughout the nineteenth and early twentieth centuries (although it started to receive national acclaim in the later nineteenth century). The paper usually opposed labor movements, betraying a middle-class bias similar to that of the U.S. sources used for the American sections of this thesis. In 1872, C. P. Scott took over the paper, and between then and 1907 it grew more radical.⁴ Thus, while hostile to the lower classes, *The Manchester Guardian* had an established interest in many reform movements, including (based on a survey of over 100 articles from the time period) that of juvenile justice. The newspaper also covered many national events, thus providing insight into the opinions of members of Parliament and even various Home Secretaries. One also should note that “England” technically refers to England and Wales, as the two countries share a legislating body when it comes to juvenile justice policy (Scotland and Northern Ireland have their own youth justice boards). This thesis, however, focuses on discussions taking place in England, and thus it will refer to England alone despite policy affecting *both* England and Wales.

Chapter One discusses the current debates within the field of American and English juvenile justice history. Chapter Two explores the juvenile justice reform movement in the United States between 1815 and 1875. Early in this period, members of middle-class society began to recognize the ineffectiveness of treating children as adults, and throughout this time reformers throughout the country called for and in some cases even established separate juvenile institutions. It is argued that moral reasons – such as a desire to save delinquent children – motivated the majority of juvenile reformers, who simultaneously pointed to the more practical benefits – such as decreasing crime and saving money – to appeal to a broader audience. The chapter also explores how, despite their seemingly good intentions, reformers demonstrated a

⁴ “History of the Guardian: A brief history of the Guardian newspaper,” *The Guardian*, last modified October 28, 2011, <http://www.guardian.co.uk/gnm-archive/2002/jun/06/1>.

scorn for the lower classes and used juvenile justice reform to try to instill middle-class values among lower- and working-class citizens. Finally, the chapter establishes how fears of urbanization and industrialization as well as a longing for an agrarian lifestyle drove many of the policies of juvenile justice reformers.

Chapter Three focuses on the period of juvenile justice reform in the United States between 1880 and 1910. Like Chapter Two, it explores the moral and practical motivations of the middle-class reformers as well as their continued loathing of lower-class values. Also, recounted are the dramatic changes in the juvenile justice reform movement during this period, particularly how reformers came to oppose institutions and place their faith in more community-based methods, which led to the establishment of juvenile court and probation systems. The chapter also argues that this new era in the reform movement corresponded with an expansion of the role of government, with many courts exercising the concept of *parens patriae*, which was established in the 1838 Pennsylvania case, *Ex parte Crouse*.

Chapter Four examines the history of juvenile justice reform in England between 1815 and 1910. While evidence exists that a fear of urbanization and industrialization, as well as a longing for an agrarian society, drove juvenile justice reform (several articles focus on “crime in the metropolitan districts” while others specify that parents of delinquent children usually are laborers in large factories), this theme is much less prevalent in English primary sources than in American documents.⁵ Consequently, this chapter focuses on the split between juvenile justice reformers inspired by moral outcomes and those motivated by the practical benefits; a desire among some reformers to continue punishing youth offenders; the agreement among the majority of reformers that youth offenders did not belong in prisons and that parents should pay the costs

⁵ “Prevention of Juvenile Depravity,” *The Manchester Guardian*, September 12, 1846, Proquest Historical Newspapers The Guardian and The Observer; W. D. Morrison, “The Juvenile Offender, and the Conditions Which Produce Him,” *International Journal of Ethics* 5, no. 2 (January 1895): 175, JSTOR.

of housing their children in reform institutions; and the belief among reformers that compulsory education could instill in lower-class youth the values that would prevent them from becoming delinquent. While reformers rehashed these same debates well into the late nineteenth century, at the conclusion of the century they finally turned their primary focus to the complete reformation of youth offenders, a development also explored in this chapter. The chapter as a whole demonstrates that a heightened loathing of the lower classes among English middle-class society (in comparison to the more muted level of distaste that existed in the United States) as well as a desire to address youth crime through education policy were in large part responsible for England's comparatively delayed progress in juvenile justice legislation.

The concluding chapter briefly summarizes the arguments explored in chapters Two through Four and reasserts how societal values influenced the rate at which the United States and England enacted juvenile justice legislation. Finally, the afterword draws comparisons between the present-day American juvenile justice system and that of the nineteenth and twentieth centuries in the U.S, which goes beyond the focus of the thesis itself. The afterword explores how the American system has yet to accomplish its goals and the ways in which it in fact regressed during the 1980s and 1990s. It concludes by exploring current juvenile justice trends and how an understanding of the history of the juvenile justice reform movement can aid present-day policymakers in their quest to improve policy in this important arena.

CHAPTER ONE

Current Debates Among Juvenile Justice Historians

I. Historiography: The United States, 1815-1910

There seems to exist little debate regarding the factors that resulted in a call for greater government involvement in the disciplining of youth. In fact, historians have discussed the main factors leading to the creation of a juvenile justice system *ad nauseum*. Thus, this thesis will only provide a brief overview of this discussion before delving into the current historiographical debate. One can find the standard survey of this debate in the following works: Robert M. Mennel's "Attitudes and Policies toward Juvenile Delinquency in the United States" and Donald J. Shoemaker and Timothy W. Wolfe's *Juvenile Justice: A Reference Handbook*. While the latter work lacks the analysis of Mennel's article, it includes a chapter dedicated to the chronology of juvenile justice in the United States.

Juvenile justice as a concept did not exist until the nineteenth century – and indeed, there was no reason for it. Prior to the nineteenth century, colonial laws called on families to “correct or at least contain children who misbehaved or committed crimes,” thus excluding courts from this process. With urbanization (the development of “commercial towns and cities”), however, the apprenticeships that had previously occupied youth began to erode.⁶ Additionally, with work leaving “the home for the shop and factory,” many members of the middle class felt that adults belonging to the lower classes could no longer keep an eye on their own children. Middle-class society viewed this development as responsible for poor youth seeking out opportunities in the city after their families had evicted them or they had left on their own. According to this

⁶ Robert M. Mennel, “Attitudes and Policies toward Juvenile Delinquency in the United States: A Historiographical Review,” *Crime and Justice* 4 (1983): 198, accessed October 19, 2012, JSTOR; Harold Finestone, *Victims of Change: Juvenile Delinquency in American Society*, ed. Don Martindale, Contributions in Sociology 20 (Westport, CT: Greenwood Press, 1976), 11.

narrative, many of these youth turned to crime to support themselves, either because they could not find a job or because they discovered that theft provided greater financial stability than steady work.⁷

Coinciding with urbanization and industrialization was an increase in the immigrant population from Europe, the majority of whom did not hail from an Anglo-Saxon background and were poor. Urbanization, immigration, and the industrial revolution led to increased poverty, slums, and the exploitation of children, which in turn led to urban youth crime.⁸ Middle-class society considered poor delinquent youth a particular problem given the belief that their (non-middle class) environment *caused* them to misbehave. In contrast, they viewed misbehavior among middle- and upper-class children as an anomaly.⁹ Thus, the middle class came to view youth crime as a pressing issue in need of immediate redress, a challenge that the judicial system – created with only adults in mind – could not meet.¹⁰ In their view, the system in place either exposed delinquent children to adult criminals or resulted in “sympathetic judges and juries” releasing delinquent youth back into society, where they continued to commit crimes. Reformers called for separate institutions, resulting in houses of refuge (New York’s Society for the Reformation of Juvenile Delinquents opened the first U.S. house of refuge in 1825).¹¹

The 1850s saw the establishment of the Children’s Aid Society, which sent youth to rural areas rather than institutionalizing them, a practice that lasted until the agrarian depression in the

⁷ Mennel, “Attitudes and Policies,” 198.

⁸ Margaret C. Jasper, *Juvenile Justice and Children's Law*, 2nd ed., Legal Almanac Series: Law for the Layperson (Dobbs Ferry, NY: Oceana Publications, Inc., 2001), 2.

⁹ Mennel, “Attitudes and Policies,” 198.

¹⁰ Finestone, *Victims of Change*, xii.

¹¹ Mennel, “Attitudes and Policies,” 198; “C. Institutional Records,” New York State Archives, accessed November 26, 2012, http://www.archives.nysed.gov/a/research/res_topics_legal_corrections_inst_refuge.shtml. Private organizations established houses of refuge to reform youth offenders. Eventually, however, they regressed into institutions that focused on discipline rather than reformation. See: Elizabeth J. Clapp, *Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive Era America* (University Park, PA: The Pennsylvania State University Press, 1998), 15.

1880s.¹² In the 1860s, John Augustus instituted the first probation program, and in 1869 the Massachusetts legislature authorized children's aid societies to act as probation officers for juveniles.¹³ The concept of probation was integrated into the Illinois Juvenile Court Act, which established the first juvenile court in the United States and a probation system run by a circuit court judge.¹⁴ The establishment of both a separate court dedicated solely to youth offenders and an official probation system decreased the role of reformatory schools, as more and more judges opted for youth probation rather than incarceration. The 1905 Pennsylvania case, *Commonwealth v. Fisher*, reaffirmed the concept of *parens patriae* and a court's authority to remove children from their parents or guardians if they determined that the parents or guardians had failed to care for their children.¹⁵ *Fisher* confirmed a state's right to place delinquent youth in institutions, and thus legitimized the existence of juvenile court laws.¹⁶

While historians agree upon the basic causes and timeline of the introduction of juvenile justice, debates persist among scholars. In the past few decades, scholars have established a compromise between the early twentieth century view of altruistic reformers and the post-1950s perception of reformers bent on inculcating middle-class values through various forms of social control. A related point of contention is the role that reformatories played versus that of the juvenile court. In recent years, the issue of who was largely responsible for reform – men or women – has come into focus, as well as the question of the agency exercised by working-class men and women and whether such agency negates the more selfish motivations of middle-class reformers. Finally, in the last decade, scholars have begun to address the influence (or lack

¹² Mennel, "Attitudes and Policies," 199; Donald J. Shoemaker and Timothy W. Wolfe, *Juvenile Justice: A Reference Handbook*, Contemporary World Issues (Santa Barbara, CA: ABC-CLIO, 2005), 93-94.

¹³ Mennel, "Attitudes and Policies," 208; Shoemaker and Wolfe, *Juvenile Justice*, 93-94.

¹⁴ Shoemaker and Wolfe, *Juvenile Justice*, 95.

¹⁵ Mennel, "Attitudes and Policies," 208.

¹⁶ Shoemaker and Wolfe, *Juvenile Justice*, 99.

thereof) of race on the juvenile justice reform movement in the nineteenth century and beginning of the twentieth century.

Much of the relevant recent scholarship engages with Anthony Platt's 1969 work, *The Child Savers: The Invention of Delinquency*, which argues that in the nineteenth century a group of American middle-class reformers invented the concept of juvenile delinquency by bringing attention to new types of youthful misbehaviors.¹⁷ By trying to fix the problem of delinquency, Platt contends, reformers actually exacerbated the situation for youth. He argues that these reformers were not "libertarians" or "humanists," and that they accelerated the conservative policies that lawmakers had developed during the nineteenth century and dedicated a significant portion of their reforms to inculcating impoverished youth with middle-class values (with many poor youth being imprisoned "for their own good"). Rather than promoting progressive policy change, Platt asserts, these reformers actually tried to save the middle-class values that they saw threatened by urbanization and industrialization, such as relationships that were "wholesome, honest, and free from depravity and corruption," including parent-child relationships, strict child control, the innocence of youth, and evangelical Protestantism.¹⁸

Platt writes that in the late nineteenth century, middle-class society viewed cities as "innumerable haunts of misery throughout the land' ... a place of scarcity, disease, neglect, ignorance, and 'dangerous influences ... the 'last resort of the penniless and the criminal;' here humanity reached the lowest level of degradation and misery." Middle-class men and women held up the agrarian lifestyle as the ideal, and believed that the city was "a parasitical growth of

¹⁷ Platt has taught at several colleges, including University of California Berkeley, the University of Chicago, and California State University Sacramento. He has written several books on social policy as well as on history and issues of race.

¹⁸ Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: The University of Chicago Press, 1969), 37-40; Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Alfred A. Knopf, 1955), 175.

the country,” with immigrants and foreigners from these areas “denigrat[ing] ... a traditional and highly idealized way of life.”¹⁹

While concentrating on Illinois at the turn of the twentieth century, in his 1985 article, “The Juvenile Court and Social Welfare: Dynamics of Progressive Reform,” John R. Sutton initially embraces Platt’s claims. Sutton writes that the establishment of juvenile courts simply continued conservative nineteenth-century policies: “the ideology of the child savers was just a more professionalized version of the preventive ideology [*i.e.*, the notion that environmental factors result in delinquent youth and by transforming or reforming youth from this environment society can reduce juvenile crime rates] that had sustained the reformatories throughout the previous century.”²⁰ In furthering his argument, however, Sutton comes into conflict with Platt. He claims that aspects such as “‘preventative’ jurisdiction over noncriminal juveniles” and robbing youth of their due process developed *earlier* in the nineteenth century, with the establishment of state reformatories, rather than as a result of the juvenile court, as Platt put forth.²¹

While Sutton argues that the establishment of a juvenile court was not revolutionary, he acknowledges that it played an important role by “provid[ing] a setting in which the routine practices of child-saving established in the nineteenth century could be continued in a more legitimate form.”²² Thus, the movement was able to survive in an era that demanded legitimacy through the increased questioning at the end of the nineteenth century of the reliability and motivations of the existing privatized child welfare system established by reformers.

¹⁹ Platt, *The Child Savers*, 41-42.

²⁰ John R. Sutton, “The Juvenile Court and Social Welfare: Dynamics of Progressive Reform,” *Law & Society Review* 19, no. 1 (1985): 108, JSTOR.

²¹ Sutton, “The Juvenile Court and Social Welfare,” 116.

²² Sutton, “Juvenile Court and Social Welfare,” 108.

In Sutton's opinion, the establishment of a separate juvenile court in 1899 benefited the Illinois judicial system, as it enabled judges to respond to the public's concerns without "any real alteration in routine decision-making practices."²³ Separate courts required little additional human or financial resources and did not significantly alter the way in which the law treated delinquents.²⁴ Thus, the juvenile court did not place a toll on the government or society: it was an "exemplar of the least controversial aspects of the general Progressive reform agenda."²⁵ The turn of the twentieth century bore witness both to the expansion of government power and the transfer of legal authority from "regular courts" to other areas of the government.²⁶ A separate juvenile court gave the government greater control over youth, and society could see the court as a separate entity from the traditional judicial system, playing nicely into the wider Progressive Era trend. Sutton backs up this claim by pointing to the call around that same time for "boards, commissions, and agencies" that addressed "a specific social ill" and exercised "quasi-judicial power."²⁷ Thus, he establishes a tension in the nineteenth century between the public and courts that initially refused to or could not "become instruments of social reform," demonstrating that the public was calling for increased government involvement in social welfare issues.

Some other scholars argue that juvenile courts served as more than simply instruments of social control. Writing in 2005, Donald J. Shoemaker and Timothy W. Wolfe state that while "some of the child savers may have been patronizing, many of them seemed to have genuine interest and concern for the poor and disadvantaged."²⁸ Elizabeth J. Clapp agrees with this assertion. In her 1998 book, *Mothers of All Children: Women Reformers and the Rise of Juvenile*

²³ Sutton, "The Juvenile Court and Social Welfare," 108.

²⁴ Sutton, "The Juvenile Court and Social Welfare," 142

²⁵ Sutton, "The Juvenile Court and Social Welfare," 109.

²⁶ Sutton, "The Juvenile Court and Social Welfare," 125.

²⁷ Sutton, "The Juvenile Court and Social Welfare," 111.

²⁸ Shoemaker and Wolfe, *Juvenile Justice*, 14.

Courts in Progressive Era America, she writes that although many middle-class reformers viewed juvenile courts as a tool to accomplish such control, they truly believed that by addressing the issue of crime among impoverished youth they were aiding all levels of society.²⁹ Rather than paint the reformers as simply “good” or “evil,” the view put forth by Shoemaker, Wolfe, and Clapp adopts a perspective that embraces mankind’s more ambiguous nature. This view argues that while social control was the sole motivation for some reformers, most were unconsciously motivated by a fear that youth crime and misbehavior threatened their social order, as seen in Shoemaker and Wolfe’s explanation that while almost all of the children placed in institutions hailed from poor backgrounds, “treatment of children was one of their [the child savers’] main goals.”³⁰

Writing in the mid-1990s, Clapp changed the focus of the conversation by positing that women were largely responsible for the creation and policies of juvenile courts. She challenges the traditional perspective put forth by scholars such as Sutton that men had led the way in juvenile justice reform. In direct contrast to the traditional scholarship, Clapp argues that while men often supported women’s efforts, rarely did they themselves instigate new policies. While many other authors touch on the role of women, they do so only briefly and in a simplified fashion. Rather than assuming that all women held the same ideas when it came to juvenile justice reform, Clapp presents a more complex history. While acknowledging that most of these reformers hailed from the middle class, she identifies two perspectives on the issue: that of the “traditional maternalists” and that of the “professional maternalists.” The former operated “within [the] ideals of motherhood and domesticity,” while the latter utilized a social science perspective and drew on their knowledge of poor neighborhoods to address social issues that

²⁹ Clapp, *Mothers of All Children*, 205.

³⁰ Shoemaker and Wolfe, *Juvenile Justice*, 24.

affected impoverished children.³¹ Maternalism, a concept that emerged in the late nineteenth century, encouraged women to apply their “female skills” to the non-domestic world, as during this period society viewed women as experts on children and as the morally superior gender, responsible for raising proper men who would contribute to the country in the future.³²

In contrast, Platt dedicates a chapter of *The Child Savers* to the role of women, but while he acknowledges that society viewed women as responsible for child welfare and that maternal values greatly influenced the movement, he still relegates women to a supporting role. Sutton goes even further, arguing that creation of the first juvenile court was an “unintended consequence” of the desire by local governments to please Progressive Era reformers. Sutton presents the reform as a male effort, declaring that women were responsible for *spreading* juvenile court laws but not for establishing them.³³ Clapp’s evidence directly refutes such a claim, however. She points to the strenuous efforts by the women of the Chicago Women’s Club and Hull House to legally sanction their child welfare efforts: as early as 1895, they “tried ... to secure a law which would introduce separate court hearings for children's cases and probation.” While the government rebuffed their efforts in the belief that any such law “would be unconstitutional,” only two years later they “redouble[d] their efforts,” convinced that the current system “was having a detrimental effect on the children involved in it and, therefore, ultimately on society.”³⁴ Platt, on the other hand, writes that the Chicago Women’s Club “supported the juvenile court legislation,” but Clapp demonstrates otherwise through her use of the 1898 *Proceedings of the Illinois Conference of Charities*.³⁵ During this conference, women reformers

³¹ Clapp, *Mothers of All Children*, 4-5.

³² Clapp, *Mothers of All Children*, 7.

³³ Sutton, “The Juvenile Court and Social Welfare,” 108.

³⁴ Elizabeth J. Clapp, “Welfare and the Role of Women: The Juvenile Court Movement,” *Journal of American Studies* 28, no. 3 (December 1994): 377.

³⁵ Platt, *The Child Savers*, 78.

lobbied the Chicago Bar Association to introduce a juvenile court bill – a great deal more than “supporting” legislation. Clapp does acknowledge that such a bill could not have come into being without the support of males – indeed, with women’s complete lack of direct political representation, passage of the bill required male involvement. She also states, however, that the “resulting law was very clearly the result of female concerns and embodied female values,” and her evidence speaks to this as well.³⁶

Writing a decade later, Shoemaker and Wolfe echo Clapp’s statement that society considered child welfare a “woman’s issue,” pointing to a statement made by an administrator of the State Industrial School for Girls in Michigan: “A reformatory without a woman ... [is] like a home without a mother – a place of desolation.” In the same paragraph, they go on to discuss the “child savers,” conflating this term with women reformers.³⁷ Also in agreement with Clapp are David W. Springer and Albert R. Roberts: in their 2011 work they note that the Illinois juvenile court came about because of “efforts initiated by the Chicago Women’s Club.” Reflecting on the demand for an expansion of services offered to juvenile offenders, they write that the Chicago Hull House was “at center stage for these efforts.”³⁸

Only Clapp’s claim that women in Chicago invented the probation system is up for debate. Mennel and Gayle Olson-Raymer establish that a non-state run probation system existed in Massachusetts as early as 1869, while Shoemaker and Wolfe point to the Massachusetts probation program established by John Augustus in 1841.³⁹ That said, Mennel states only that the

³⁶ Clapp, “Welfare and the Role of Women,” 377.

³⁷ Shoemaker and Wolfe, *Juvenile Justice*, 13-14.

³⁸ David W. Springer and Albert R. Roberts, *Juvenile Justice and Delinquency* (Sudbury, MA: Jones & Bartlett Publishers, 2011), 4-5.

³⁹ Gayle Olson-Raymer, “The Role of the Federal Government in Juvenile Delinquency Prevention: Historical and Contemporary Perspectives,” *The Journal of Criminal Law and Criminology* 74, no. 2 (Summer 1983): 584, JSTOR; Shoemaker and Wolfe, *Juvenile Justice*, 93.

children's aid societies supervised children, and women were active in such societies.⁴⁰ Thus, it is quite possible that the development of the probation system in Massachusetts significantly involved women. Regardless, there is no evidence to dismiss the role of women in creating the first probation system in Chicago, the focus of Clapp's articles and site of the first juvenile court. Olson-Raymer claims that some states followed the Massachusetts example when it came to probation systems, but he does not specify which ones.⁴¹ Clapp demonstrates that women in Midwestern states such as Wisconsin and Missouri noticed the developments in Chicago and followed its example. It seems likely that the Chicago system had greater influence over local governments throughout the Midwest than did Massachusetts.⁴² Thus, one can argue that women made a significant contribution to the development of probation, regardless of their level of involvement in the Massachusetts system.

While the majority of scholars seem to agree that urbanization, industrialism, and a fear of immigrants played a significant role in the development of juvenile justice, there remains some disagreement over whether it was a movement driven solely by a middle class interested in social control or if those of the lower and working classes exercised their agency as well. In addition to addressing the role of middle-class women, Clapp attempts to return agency to the lower-class women, whom she claims used the juvenile court to their own advantage. She argues that these women were not "passive and actively fought those areas of welfare reform [including juvenile justice policy] they disliked." It is important to note, however, that Clapp's 1994 article does not deny that a middle-class desire for social control played a role, as evidenced by her mention of women concerned with the detrimental effects of youth crime on society and upholding of middle-class values. It seems unlikely that lower-class women – the group on

⁴⁰ Mennel, "Attitudes and Policies," 208.

⁴¹ Olson-Raymer, "The Role of the Federal Government in Juvenile Delinquency Prevention," 584.

⁴² Clapp, "Welfare and the Role of Women," 379.

which Clapp's discussion of agency focuses – never objected to policies with which they disagreed, but the continuation and expansion of the juvenile court demonstrates that they were ineffective, continuing to find themselves at the mercy of the middle class. Shoemaker and Wolfe note that lower- and working-class parents rarely had the opportunity to fight the institutionalization of their children.⁴³ While it is important to recognize the actions taken by lower-class women and the lower class in general, it is equally important not to assume that their assertions of agency (or their desire to assert agency) negated the social control and power exerted by the middle class.

While today's juvenile justice system disproportionately incarcerates Blacks and Latinos, scholars suggest that during the period of 1815 to 1910 race played a negligible role in inspiring juvenile justice policy and reform. Rather, during this period police singled out immigrants, particularly those of Irish descent. This focus grew out of not only societal wariness of immigrants, but also the lack of deviant behavior exhibited by African Americans in comparison to ethnic whites. As Christopher M. Span writes in his 2002 article, in the nineteenth century it was white youth from poor neighborhoods who committed crimes and/or misbehaved, and the majority of poor urban whites were immigrants. Throughout this period, Anglo-Saxon middle-class Americans viewed the Irish as “unruly” and “uncivilized,” causing them to commit large numbers of Irish youth to houses of refuge. The high rates of institutionalization, in turn, reinforced middle-class perceptions of the Irish.⁴⁴

The relative lack of crime committed by African American youth at the time likely is due to the majority of African Americans residing in the South during that period, away from urban

⁴³ Shoemaker and Wolfe, *Juvenile Justice*, 17.

⁴⁴ Christopher M. Span, “Educational and Social Reforms for African American Juvenile Delinquents in nineteenth Century New York City and Philadelphia,” in “Juvenile Justice: Children of Color in the United States,” special issue, *The Journal of Negro Education* 71, no. 3 (Summer 2002): 110 and 112, JSTOR.

centers. It was not until the period between 1916 and 1930, the time of the Great Migration, that they began populating urban centers such as New York and Chicago in great numbers (a migration spurred, among other factors, by economic opportunities in the north and increased racism in the south).⁴⁵ Of those who did live in urban centers, Span argues that “unskilled, low wage, manual labor was available,” ensuring employment of the majority of African American youth – thus they were not viewed as vagrant or idle.⁴⁶ Indeed, Clapp notes that in the second half of the nineteenth century the rise in Southern and Eastern European immigrants resulted in middle-class reformers targeting immigrant children through educational reform.⁴⁷ Shoemaker and Wolfe note that facilities segregated black youth, but there is no evidence to suggest that the system targeted youth of African descent as it does today. It is true that previous scholarship ignored the experiences of African Americans due, as Span explains, to the lack of “historical inquiries ... made” until very recently, but the evidence demonstrates that African American youth were not present in sufficient numbers in urban centers or involved in any significant level of deviant behavior to concern juvenile justice reformers of the nineteenth and early twentieth centuries.⁴⁸

In recent decades, scholars of juvenile justice history have struggled to establish a balance between the narratives of middle-class reformers bent on social control and those who were truly intent on aiding youth in need. What has resulted is a narrative of well-intentioned reformers driven by both their negative perception of the lower classes and what they saw as a higher calling. The scholarship has started to recognize the important and oftentimes leading role that women played in the juvenile justice reform movement. Some historians, such as Clapp,

⁴⁵ Michael A. Gomez, *Reversing Sail: A History of the African Diaspora*, New Approaches to African History, ed. Martin Klein (Cambridge, UK: Cambridge University Press, 2005), 166.

⁴⁶ Span, “Educational and Social Reforms,” 112.

⁴⁷ Clapp, *Mother of All Children*, 13.

⁴⁸ Span, “Educational and Social Reforms,” 109.

have tried to return to the lower classes their agency, recognizing their role within the movement and treating them as more than objects manipulated by the middle and upper classes. Finally, despite the realities of today's juvenile justice system, scholarship asserts that the system in place in the nineteenth and turn of the twentieth centuries targeted ethnically white immigrants rather than blacks and Latinos.

II. Historiography: England, 1815-1910

The current juvenile justice debates among English historians are slightly less varied than those among American scholars, although equally interesting. English scholars of the field often focus on the causes of an increased rate of arrests for youth offenders in the first half of the nineteenth century. Meanwhile, many historians also discuss who was responsible for juvenile justice reforms and policies, with some arguing that the government played the major role and others insisting that reform resulted from private initiatives. Related to this discussion is an exploration of the tension that existed between members of society who supported increased government authority in the name of juvenile justice and those who wanted the movement to remain within the hands of private organizations.

Unlike in the United States, a major debate among historians in England concerns the causes of an increase in arrests of juvenile offenders (specifically those involved in property crime) in the first half of the nineteenth century. Margaret May, writing in 1973, argues that debates and discussion concerning juvenile crime resulted in recognition of juvenile delinquency as a social issue and thus an increase in arrests and indictments. In the early nineteenth century, the Home Office revealed “a more precise insight into the extent and changing pattern of crime,”

which established an increase in crime. Members of Select Committees asserted that juvenile offenders contributed to this increase, which led to local inquiries in 1816 and 1828. These inquiries were repeated, and with more force, in the 1830s and 40s, and “both confirmed national trends and paved the way for social action.” Thus, by inquiring into “patterns of criminal behavior,” investigators established “the first clear concept of juvenile delinquency.”⁴⁹

In 1978, Susan Magarey claimed that the government had “legislated” juvenile delinquency into existence. She points to three changes that occurred in the second quarter of the nineteenth century. First, courts increasingly ignored the concept of *doli incapax*, instead viewing youth under fourteen as capable of fully understanding their actions. This viewpoint, Magarey writes, was possibly a result of an increased number of working-class youth in the workforce. With the rising number of youth laborers, society came to view this population as independent and adult, and the courts may have felt “helplessness before the destitution from which many offences clearly proceeded” (a result of urbanization and industrialization).

Second, Magarey argues that the central government enacted laws that criminalized certain behaviors common among youth, including the Vagrant Act of 1824, the Malicious Trespass Act of 1827, and the Metropolitan Police Act of 1829. The Vagrant Act made it illegal to “be a ‘suspected Person or reputed Thief,’” while the Malicious Trespass Act criminalized the act of damaging fruit or vegetables growing in private gardens. The Vagrant and Malicious Trespass Acts resulted in criminalization of behaviors that society previously had viewed as minor or as merely youthful indiscretions. In addition, the Metropolitan Police Act permitted the

⁴⁹ Margaret May, “Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century,” in “The Victorian Child,” special issue, *Victorian Studies* 17, no. 1 (September 1973):14-17, JSTOR.

police to apprehend suspects “under broad definitions,” consequently increasing the number of youth they could arrest.⁵⁰

Third, Magarey argues that these various statutes altered the way in which courts tried youth: the statutes deprived those accused of delinquency of their due process rights, making it easier to indict them. In support of her claim, Magarey points to the fifty percent of the newly imprisoned in this period who were indicted under these “new crime labels.” May writes that society desired to place children “in a position of ‘dependence’ within a properly organized family system,” which led to an increase in indictments, allowing courts to place poor youth in institutions.⁵¹

The desire to make children dependent on their families grew out of fears of urbanization. In her discussion of the transport of juvenile offenders to English colonies, Elaine Hadley argues that the increasing urban population of England became an obsessive societal concern in the 1830s. Children represented “human multiplication” and thus overpopulation, which many felt threatened the social order.⁵² Additionally, industrialization and urbanization contributed to the breakdown of lower- and working-class families, with parents working in factories instead of at home, depriving their children of strong family ties.⁵³ Middle-class reformers, Hadley claims, grew nostalgic for pre-industrial society and the “strong societal order” that they viewed as inherent to that era. Anxious to relocate children to their “appropriate age” and to rid England’s cities of overwhelming populations of children, reformers endeavored to send poor and unemployed youth to rural colonies that resembled pre-industrial England.

⁵⁰ Susan Magarey, “The Invention of Juvenile Delinquency in Early Nineteenth-Century England,” *Labour History* 34 (May 1978): 19-20, JSTOR.

⁵¹ May, “Innocence and Experience,” 22.

⁵² Elaine Hadley, “Natives in a Strange Land: The Philanthropic Discourse of Juvenile Emigration in Mid-Nineteenth-Century England,” *Victorian Studies* 33, no. 3 (Spring 1990): 416, JSTOR.

⁵³ Hadley, “Natives in a Strange Land,” 419.

In the 1990s, Peter King and Joan Noel asserted a completely new argument, based on records between 1790 and 1820 from the Old Bailey, a court in London. King and Noel point out that historians previously developed their arguments concerning the emergence of juvenile delinquency in the early nineteenth century “without any understanding of what was happening in the courts of the time” due to a lack of systematic statistics. The Old Bailey, however, kept records of the ages of those arrested as early as the late eighteenth century.⁵⁴ King and Noel acknowledge that the records focus solely on “property offenders,” but the majority of concerns regarding juvenile crime focused on this same group, making these statistics relevant to an analysis of the emergence of juvenile delinquency concerns and crime rates. According to King and Noel, a study of the Old Bailey records reveals that the commonly proposed role of urbanization and industrialization did not directly influence either the emergence of juvenile delinquency as a social issue or increased juvenile crime rates. They write that London was an urban center by 1791 and had attracted an influx of youth for centuries prior. Thus, increasing awareness and occurrences of juvenile crime would have existed by the end of the eighteenth century given the factors other historians point to as responsible for this trend in the early parts of the nineteenth century.⁵⁵

Most historians also have blamed the decrease in apprenticeships – a result of urbanization and industrialization – for an increase in juvenile crime or fears of juvenile crime, but King and Noel point out that the shrinking of the apprenticeship system was far along by then, falling most dramatically between 1750 and 1790. If a decrease in apprenticeships truly was a direct cause of juvenile crime, juvenile arrest rates would have risen earlier, in the

⁵⁴ Peter King and Joan Noel, “The Origins of ‘The Problem of Juvenile Delinquency’: The Growth of Juvenile Prosecutions in London in the Late Eighteenth and Early Nineteenth Century,” *Criminal Justice History* 14 (January 1, 1993): 19.

⁵⁵ King and Noel, “The Origins of ‘The Problem of Juvenile Delinquency,’” 23.

eighteenth century. Furthermore, in contradiction to the claim that the early nineteenth century bore witness to “stresses . . . caused by urbanization or industrialization,” King and Noel assert that London remained relatively the same during this time. They write that the economy was stable during this period (despite a short-term post-war dip in 1814), with London continuing to hold the role of the “largest manufacturing center in the country” and real wages rising.⁵⁶ This stability, King and Noel argue, renders it unlikely that urbanization and industrialization caused increases in commission of or concern about juvenile crime.

As for Magarey’s claim that juvenile delinquency was “legislated into existence,” the Old Bailey records demonstrate a large increase in juvenile offenders prior to passage of relevant laws in the 1820s, thus undermining Magarey’s claim. While the youth population aged ten to nineteen rose by only 2.5 percent between the late 1780s and 1821, the number of arrests for this same age range increased by almost sixteen percent during that period. Whereas in the early 1790s the number of juveniles coming before the Old Bailey was proportional “to their numbers in the general population,” by the early 1820s this number was fifty percent higher than their proportion to the overall population.⁵⁷ Noel and King also use this evidence to counter May’s argument that the debates taking place in the 1830s and 1840s led to a recognition of juvenile delinquency as an issue. With juvenile arrest numbers already increasing significantly by the early 1820s, they assert that it is much more likely that other causes resulted in society viewing juvenile delinquency as a “feared social problem.”⁵⁸

King and Noel argue that one such major factor was a change in the views of both victims of crime and the police. This shift consequently resulted in a change in responses to crime. They first point to the impact of the “abandonment of capital punishment for property

⁵⁶ King and Noel, “The Origins of ‘The Problem of Juvenile Delinquency,’” 24-25.

⁵⁷ King and Noel, “The Origins of ‘The Problem of Juvenile Delinquency,’” 22.

⁵⁸ King and Noel, “The Origins of ‘The Problem of Juvenile Delinquency,’” 35.

offenders” in the early nineteenth century, which, they write, could have encouraged victims to pursue the option of taking child criminals to court. King and Noel argue that earlier, many victims of crime had declined to prosecute child criminals for fear that the accused would face capital charges. By the 1820s, however, Parliament had “repealed almost all the capital statutes relating to property offenses.” Noel and King argue that, no longer fearing that juveniles would face the death penalty, not only did victims become more willing to prosecute, but society grew more focused on the notion of a rise in youth crime, regardless of any actual increase. The evidence certainly supports the claim regarding victims, as Old Bailey records show that indictments against youth increased dramatically in the wake of repeal, with “a doubling in the proportion of those offenders who were under 20” (a handful in the early 1790s compared to nearly 200 in the 1820s).⁵⁹

Turning to the role of the police, King and Noel examine the role of “blood money.” Prior to 1818, police accepted money in return for ignoring a crime, with the cost being proportional to the extent of the crime. Because most juvenile crimes were minor, the police tended to refrain from arresting this population, knowing that they would make little if any money from the venture. In 1818, however, an act repealed this practice, and police “no longer had any incentive to ignore juvenile thieves.” The statistics demonstrating an increase in juvenile property offender arrests between the 1790s and early 1820s certainly reflect such a change. They also support King and Noel’s claim that the introduction of new policing units – part of small improvements enacted in the early nineteenth century – also contributed to an increase in arrests, as newer units were more likely to apprehend juveniles, who were easier targets.⁶⁰

⁵⁹ King and Noel, “The Origins of ‘The Problem of Juvenile Delinquency,’” 31-32.

⁶⁰ King and Noel, “The Origins of ‘The Problem of Juvenile Delinquency,’” 33-34.

King and Noel's argument raises several issues, however. If society viewed juvenile crime as a serious social issue by the early 1820s, why did it take so long for groups to advocate for relevant legislation? Is it instead possible that their explanation for increased juvenile arrest rates is correct, but that the causes they dismiss, specifically urbanization and industrialization, were responsible for a manifestation of anxiety within middle-class society regarding the state of poor youth? Juvenile crime rates did increase rapidly by the early 1820s, but according to King and Noel, that development reflected merely on those who were directly involved in crime (victims and police). The only evidence supporting their argument regarding society is circumstantial at best. The opinions held by the public as a whole, in particular the middle class, are explained more accurately by Hadley and May's accounts of fears related to urbanization and industrialization. King and Noel may be correct in asserting that London remained relatively unaffected by this early nineteenth-century development, but the perceptions held by a society do not always reflect reality. While towns long had existed in England, Phyllida Parsloe writes of their rapid growth in the nineteenth century "as the country changed from a largely agricultural to an industrial society."⁶¹

Even if London remained the same, the changing make-up of England elsewhere no doubt greatly affected society. Starting in the 1820s, the language men and women used in referring to youth certainly suggests that the effects of urbanization and industrialization weighed on their minds. The middle class called poor youth "Street Arabs," thus presenting them as "foreign," separate from proper English society.⁶² They also referred to juvenile delinquents as "human vermin ... reflect[ing] fears that ... [they] might infect ... the whole social fabric." Furthermore, they denounced the child-rearing practices of the lower classes, which they felt

⁶¹ Phyllida Parsloe, *Juvenile Justice in Britain and the United States: The Balance of Needs and Rights* (London: Routledge & Kegan Paul, 1978), 106.

⁶² Hadley, "Natives in a Strange Land," 420.

resulted in uncontrollable children and consequently challenged the foundation of “ordered society.”⁶³ In the previous century, society had not voiced such concerns – worries clearly driven by a fear of an industrial, urban, “unordered” world that threatened the pervasiveness of middle-class values and was miles away from the agricultural upbringing to which middle-class men and women were accustomed. In nineteenth-century news articles, a concern for the impact of industrialization and urbanization was not as prevalent as other issues, but the topic still arises in several articles during that period. Thus, industrialization and urbanization may not have played as influential a role as some scholars claim, but it still contributed to discussions of juvenile justice reform.

Debate also surrounds the issue of who was responsible for juvenile justice reforms and policies. May references the role played by reformers, but when it comes to legislation she places agency firmly with the central government. “State recognition of Reformatory and Industrial Schools in 1854 and 1857 ... marked a radical change in penal policy,” she writes.⁶⁴ She does not mention any philanthropic or private groups influencing the introduction or passage of this legislation, something which Heather Shore mimics in her own article, written nearly thirty years later in 2011. Shore does argue that in the early nineteenth century, “much of the momentum for change” regarding treatment of youth offenders came from philanthropic groups. Like May, however, in discussing the juvenile justice policy that emerged later in the nineteenth century, Shore appears to suggest that the *government* played the more significant role. In discussing the Youthful Offenders Act of 1854 (which recognized reformatory schools and allowed judges to send youth offenders to these institutions rather than sentence them to lengthy prison stays) and the Industrial Schools Act in 1857, Shore writes that these pieces of legislation “establish[ed] the

⁶³ May, “Innocence and Experience,” 18-19.

⁶⁴ May, “Innocence and Experience,” 7.

roots of the future juvenile courts” that the Children and Young Persons Act of 1908 would introduce.⁶⁵

May’s argument is even more explicit than Shore’s. In the first paragraph of her article she claims that “Parliament recognized juvenile delinquency as a distinct social phenomenon and accepted responsibility . . . for young offenders,” writing that this recognition led to the “introduction of reformatory rather than punitive treatment.”⁶⁶ She later notes that the new generation of prison governors and chaplains held different views on juvenile reform from the “inefficient eighteenth-century gaoler,” shifting focus to the juvenile offender rather than the nature of the crime. This new generation of prison personnel “dedicated [themselves] to proving the value of their reforms,” and were mortified by the ineffectiveness of the improved prison system (*i.e.*, the practice of placing youth offenders and adult criminals in separate areas of prisons). May writes that by 1850 the Surveyor-General of Prisons acknowledged that the prison system was not “at all adapted to juveniles.” She argues that prison officials, magistrates, and “a small group of well-informed outsiders” shared this view, which in turn “stimulated a search for new policies.”⁶⁷

While the inclusion of “outsiders” appears to place part of the responsibility in the hands of members of the private and philanthropic communities, May later argues that “it was the new awareness among prison officials of children’s reactions to confinement which engendered reform.” She notes that a proposal made by Mary Carpenter, the well-known philanthropist and reformer, eventually came into being as legislative compromise.⁶⁸ But the role of an outsider seems to be an exception rather than a rule. Indeed, when discussing the debate that led to

⁶⁵ Heather Shore, “Reforming the Juvenile in Nineteenth and Early Twentieth Century England,” *Prison Service Journal*, no. 197 (September 1, 2011): 4.

⁶⁶ May, “Innocence and Experience,” 7-8.

⁶⁷ May, “Innocence and Experience,” 11.

⁶⁸ May, “Innocence and Experience,” 25-26.

passage of this legislation, May focuses on the disagreements among members of Parliament, with one group believing that children were capable of *mens rea* – or possessing a guilty mind – and the other group disagreeing. Other than Mary Carpenter’s proposal, May does not mention the involvement of anyone outside of the central government, nor does she mention their influence. Thus, she supports the notion that the central government, more so than reformers and critics, was responsible for the introduction of reformatory and industrial schools.⁶⁹

Once again, Shore echoes May’s argument. While describing the establishment of reformatory schools, Shore notes that Parliament’s Select Committee on Criminal and Destitute Children questioned the effectiveness of Parkhurst Prison – which held convicted male youth offenders awaiting transportation – “as a reformatory model.” Through these discussions, Shore argues, the “first of the Reformatory Schools Acts” came into being in 1854, which led to reformatory schools taking precedence over Parkhurst.⁷⁰ While she acknowledges that non-parliamentarian critics of Parkhurst influenced the Select Committee’s actions, her account suggests that Parliament was almost wholly responsible for the increasing presence and role of reformatory schools.

In a 1979 article, John Stack, on the other hand, posits that the central government surrendered authority to private institutions.⁷¹ He explains that in the first quarter of the nineteenth century only “public officials in public institutions ... corrected ... convicted juvenile offenders,” but by 1875 private institutions had taken over this responsibility.⁷² While some private reformatories in the early nineteenth century pressured government authorities to increase the role of the private sector, the government viewed the private sector as “too indulgent” and

⁶⁹ May, “Innocence and Experience,” 12.

⁷⁰ Shore, “Reforming the Juvenile,” 5.

⁷¹ John A. Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government’, 1825-1875,” *The Historian* 42, no. 1 (November 1979): 57, Periodicals Archive Online.

⁷² Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 42.

questioned the legality of sending youth offenders to private institutions. By the mid-nineteenth century, however, by which time an increase in juvenile crime was firmly established as a social concern, critics had grown increasingly dissatisfied with the system in place and called for the building of reformatories. They argued that juveniles needed “systematic education, care, and industrial occupation,” not simply punishment, as was currently the case.⁷³ The call for action was powerful, and in 1854 the government passed the Youthful Offenders Act. Rather than transforming government institutions, however, the Act simply “permitted magistrates to send convicted juveniles to private institutions that were licensed and partially aided by the central government.” Stack argues that through this legislation the government had “rejected the opportunity for government growth and had broken its own monopoly.”⁷⁴ Indeed, between 1854 and 1860, the government certified fifty-two private reformatories, thirty-eight of which had not existed prior to the Youthful Offenders Act (a fact that Shore mentions in her article as well). Given the increasing number of juveniles in private reformatories and the decreasing numbers sent to central government prisons, in 1864 the government turned Parkhurst prison into a woman’s prison.⁷⁵ All of this, according to Stack, is clear evidence of the increasing scope of the private sector and the dominance of their reformatories.

In addressing why the government did not expand its control, Stack claims that at this time the Crimean War occupied the central government’s attention and budget (as stated in an 1854 article published in *The Justice of the Peace*). Thus, the government was unwilling to set aside funds for social reforms. Additionally, members of the government were reluctant to embrace reformatories. Unwilling to give their full support to the initiative in case the

⁷³ Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 45-47.

⁷⁴ Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 50.

⁷⁵ Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 52-53.

experiment failed and reflected badly on the Administration, they instead felt “advance[ing] by degrees” was the preferable method.⁷⁶

Despite the central government’s semi-forfeit of power through the Youthful Offenders Act, Stack asserts that tension developed between those desiring public control versus those preferring private jurisdiction. In 1857, Sir George Grey, under pressure from backbenchers and magistrates, introduced a bill that would permit counties and boroughs to use funds to establish public reformatories. The private sector opposed this bill, however, and not only did it fail to pass, but a month later Grey introduced a new bill that “permitted counties to ... contribute to private institutions.” Once again, Stack argues, the government “diluted” public control, and this bill confirmed that private reformatories were “part of the criminal establishments of the country.”⁷⁷

Stack claims that these developments align with the growing Victorian concept of “private ownership with public regulation,” pointing to parallel developments in the government’s treatment of “factories, mines, schools, charities, and poor relief” – “[the government] left these institutions and functions in private or local government hands but regulated them to ensure greater efficiency.” Victorians, Stack writes, saw the state as a “blunt instrument,” incapable of dealing with such a fragile matter as juvenile reformation. Reformation required “humanity” and “selfless devotion,” traits which critics argued could be found only among volunteers, which automatically excluded those employed by the central government.⁷⁸ While the government did play a role in the establishment of juvenile institutions through legislation, Stack clearly sees private and philanthropic groups as chiefly responsible for the

⁷⁶ Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 50.

⁷⁷ Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 55.

⁷⁸ Stack, “The Juvenile Delinquent and England’s ‘Revolution in Government,’” 51, 56-57.

creation of separate juvenile institutions and for pressing the government to hand over control to private reformatories.

Current scholarship regarding the English juvenile justice reform movement focuses on two main debates. The first and most present debate concerns what led to increased arrests of youth offenders in the first half of the nineteenth century. May, Magarey, and Hadley assert that discussion, legislation, and urbanization resulted in members of society recognizing juvenile delinquency as a problem, while King and Noel assert that legislation, urbanization, and industrialization played no role whatsoever, with the development instead due to the changing views of victims of crime and the police. The time it took for groups to advocate for juvenile justice reform and the presence of references to industrialization and urbanization in newspaper articles from the era suggest that while industrialization, urbanization, and legislation may not have been as influential as some scholars claim, they also did not play nearly as negligible a role as King and Noel argue. The second debate examines who was responsible for juvenile justice policy, with some believing it was a government initiative and others asserting that private organizations were chiefly responsible. By extension, this debate relates to the issue of government authority during the Victorian era, with historians such as Stack arguing that during this period government “surrendered” much of its power to private institutions. Nonetheless, while private institutions certainly played a significant role in the reform movement, so too did government, as the reform movement could not have moved forward without legislation from Parliament, and members of Parliament and even Home Secretaries, as seen in Chapter Four, often doubled as reformers.

CHAPTER TWO
The United States, c. 1815 to c. 1875:
The Establishment of Juvenile Institutions

I. The Policeman and the Pastor

On April 1, 1850, the monthly magazine *Prisoner's Friend* published an article that contained both the semi-annual police report of George W. Matsell, the then New York City Chief of Police, and a sermon by Reverend Thomas L. Harris, Pastor of the Independent Christian Congregation located in New York.⁷⁹ In their respective pieces, both men provided their perspectives on juvenile crime in New York City. What resulted was two dramatically different takes on an issue that had risen to prominence starting in the first quarter of the nineteenth century.

Matsell addresses his report to the Honorable Caleb S. Woodhull, Mayor of New York City. While Woodhull was the chief target of Matsell's report, which argued in favor of changing drastically the way in which society dealt with juvenile crime, the public also could access the contents of the report (as evidenced by the magazine republishing segments of it). Thus, Matsell likely also kept the general public in mind when writing his report. Furthermore, he clearly considered juvenile crime a pressing concern. While the mayor tasked him only with submitting a report on the police department's activities during the period between May 1 and October 31, 1849, Matsell chose to dedicate an additional five pages to an analysis of the state of juvenile

⁷⁹ "Obituary, Death of George W. Matsell. Sketch of the Career of the Ex-Superintendent of Police -- His Connection With the Riots of 1857," *The New York Times*, July 26, 1877, <http://select.nytimes.com/gst/abstract.html?res=F70E15FD3D5A1A7B93C4AB178CD85F438784F9>; "Juvenile Depravity in New York: Article I Report of the Police Report to Hon. Caleb S. Woodhull, Mayor of the City of New York," *Prisoner's Friend: A Monthly Magazine Devoted to Criminal Reform, Philosophy, Science, Literature, and Art* 2, no. 8 (April 1, 1850): 339, <http://search.proquest.com/docview/127963119?accountid=10255>. Matsell eventually became the first New York City Police Commissioner. Matsell's implementation of new methods of police patrolling, along with other police reforms, influenced the formation of the first municipal police force, more commonly known as the "Night Watch."

crime in the city, the inability of the police force to deal with such crime, and potential ways to address the issue.

At the beginning of the excerpt presented in the *Prisoner's Friend*, Matsell writes that it is his duty to “call the attention of your Honor to a deplorable and growing evil which exists amid this community,” stressing that this “evil” currently has “no adequate [legal] remedy.” It is possible that, given society’s growing concern over juvenile delinquency, Matsell believed it was in his best interest to discuss this issue. The extent to which he explores juvenile delinquency, however – he goes so far as to analyze the different *types* of juvenile delinquents – and the number of pages he dedicates to the topic suggest that juvenile crime was an issue about which he felt strongly. Furthermore, his position as a leading figure in police reform suggests his deep investment in the eradication of crime. During the mid-nineteenth century, a major topic of discussion among juvenile justice reformers concerned the correlation between juvenile delinquency and the amount of overall crime within communities, with many believing that obliterating juvenile crime would lead to an eradication of a future generation of adult criminals. Given Matsell’s background, it is unsurprising that his report addendum focuses on purging the city of crime rather than protecting the innocence and morality of delinquent youth.

Matsell’s portrayal of juvenile delinquents, nonetheless, is rather extreme. At the beginning of his report, he describes juvenile delinquents almost as evil: “I allude to the constantly increasing numbers of vagrant, idle, and *vicious* children of both sexes, who *infest* our public thoroughfares, hotels, docks, &c” [emphasis added].⁸⁰ Matsell’s use of “infest” suggests that these children are not human beings but *vermin* in need of extermination, while his use of “vicious” suggests something inherently evil or violent about their natures. Regarding immigrants, prominent members of the lower and working classes (and whom Matsell asserts

⁸⁰ “Juvenile Depravity in New York,” *Prisoner's Friend*, 340.

comprise most of the juvenile delinquents who steal for their “inebriate parents”), Matsell makes his distaste for them clear: while acknowledging that there are “honorable exceptions,” he writes that “the majority [of these children] are vicious.”⁸¹

It is not only the children, however, of whom Matsell seems to hold a negative opinion. In his addendum, he writes that “astounding as it may seem, there are many hundreds of parents in this city who absolutely drive their offspring forth to practices of theft.”⁸² His claim suggests that the parents are to blame for the delinquent actions of their children. In what would seem like a direct contradiction of the assertion that parents push their children into crime, however, in almost every description of the different types of delinquents, Matsell utilizes language that indicates that the children, not the parents, are responsible for their behavior:

1st [class]. Those who congregate around the piers ... [are] *cunning and adroit* in their operations.... The Second Class ... the ‘Crossings Sweepers’ ... are entirely different from [the first class] ... and in regard to moral degradation, they occupy a still lower position ... one looks in vain for a single attribute of *innocent childhood*.... The Fourth Class ... congregate around steamboat landings, and railroad depots ... they will not hesitate to *steal when opportunity offers*, and live *idle and dissolute* lives ... there is *more method* in their evil propensities.⁸³ [Emphasis added]

The above passage suggests a conscious decision by the children to steal and choose a “lazy” method of living. While this assertion does seem at odds with Matsell’s previous assertion regarding the influence of parents, it seems more likely that it reflects his view of the lower and

⁸¹ “Juvenile Depravity in New York,” *Prisoner’s Friend*, 344.

⁸² “Juvenile Depravity in New York,” *Prisoner’s Friend*, 340.

⁸³ “Juvenile Depravity in New York,” *Prisoner’s Friend*, 341-344.

working classes – that crime is an inherent trait among these groups. The parents are responsible for failing to stop their children and even for driving them to crime. Simultaneously, however, crime is an inherent trait among the lower- and working-class youth; perhaps middle-class parents could prevent lower-class children from giving in to their criminal desires, but not so with lower and working-class parents.

Matsell does include what appears to be middle-class youth in one of his five juvenile delinquent descriptions – “[5th class] boys ... [who] *have homes*, and many ... children of respectable parents” [emphasis author’s] – but he is much more forgiving of this juvenile class’s actions. As with the previously listed classes, Matsell places blame on the parents, arguing that their children become vagrants through the “criminal carelessness” of their parents. He also argues, however, that crime occurs due to “mistaken leniency,” suggesting that this group’s delinquency flows from naïve parental mistakes rather than from parents’ intentionally negligent treatment of their children. Furthermore, whereas morally degraded youth comprise the other classes, the children of the fifth class are *exposed* to vile youth and take part in “juvenile rowdies.” Matsell’s characterization of the actions of this class as merely disorderly is far more understanding than his description of the lower- and working-class children. It is also interesting to note that he chooses to present this group last, following the descriptions of the “cunning and adroit” juvenile delinquents and the youth lacking “a single attribute of innocent childhood.” Consequently, this fifth class of juvenile delinquents seems far less threatening to society in comparison.⁸⁴

Matsell’s proposed solution further attests to his middle-class perspective. He recommends compelling delinquent children to attend school regularly or to “[apprentice them]

⁸⁴ “Juvenile Depravity in New York,” *Prisoner’s Friend*, 343-344.

to some suitable occupation.”⁸⁵ The latter suggestion reflects a desire to return to a pre-industrial society, when apprenticeships defined the economy and youth’s role in society. Given how often members of the middle class blamed industrialization for urbanization (which, in turn, they blamed for the advent of crime-ridden cities), Matsell’s preference for the apprentice system is unsurprising. Returning to his focus on delivering the city from crime rather than saving children, as well as his use of a practical rather than a moral perspective, Matsell concludes his recommendation by stating that his proposed solution would “prevent crime and relieve the city from its onerous burden of expenses for the Alms-House and Penitentiary.” He makes no mention of how his proposal will help children; the closest he comes to a moral motivation is that these solutions eventually would “improve the morals of the community,” which suggests that juvenile delinquents are a plague on society and not innocent victims.⁸⁶

Reverend Harris, on the other hand, while also adopting a middle-class perspective, addresses the issue from the *other* extreme: the need to save children. He presents juvenile delinquency as a moral issue, and one which demands that society rise to the occasion to save these unfortunate youths. In describing the situation that faces the city, Harris writes:

Those whom God has made helpless that their helplessness might defend them,— those whom God has made innocent, that *their innocence might reach man’s heart* and make him the *guardian of their purity*,—these, in the midst of that innocence, and because of that *defencelessness*, are remorselessly destroyed. They are led like young lambs to the slaughter. They are *despoiled of their divine birthright* and their rich inheritance. They are robbed of their strength, their light, their love, their destiny. They are cast not into the

⁸⁵ “Juvenile Depravity in New York,” *Prisoner’s Friend*, 344.

⁸⁶ “Juvenile Depravity in New York,” *Prisoner’s Friend*, 344.

grave,— that were a mercy,—but into a hell of wrong, that they may pass a lifetime of self-consuming agonies. [Emphasis added]

Harris's assessment of juvenile crime portrays juvenile delinquents as victims whom society has failed to protect. Unlike Matsell, Harris views these children as born with goodness, going so far as to describe their futures as a "divine birthright," with circumstances robbing them of this bright future. Harris likens society's ill treatment of youth, which results in their delinquency, to the behavior of various societies throughout history that Americans view as barbaric. He includes the "old Spartans," who "exposed their newly-born to the mountain cold that the weaklings might perish." He then comments that the United States has "cast [children who become juvenile delinquents] out to the wolves of a moral wilderness," indicating that U.S. society is just as barbaric as the "old Spartans," whom they disparage.⁸⁷

Harris goes on to paint a heart-rending picture of juvenile delinquents: "The children ... call to us ... each child as dear to God, as sacred, as divine ... they say, 'We are orphans alike to the love of man and the knowledge of God.... Oh, hear us, pity us, save us; hear us in mercy.'"⁸⁸ Harris thus presses adult members of society to feel responsible for the fates of these children. He effectively argues that intervention (likely middle-class intervention, as demonstrated by his support of a "Home for Children," an institution in the same vein as the middle-class reform-supported houses of refuge) would save these children from a life of crime, and urges the community to join together and reform the children. His comment that delinquents are "orphans ... to the love of man and the knowledge of God" reflects his view that delinquent youth need not only parental guidance but also a moral education. Specifically, the use of the word "orphan"

⁸⁷ "Juvenile Depravity in New York," *Prisoner's Friend*, 345.

⁸⁸ "Juvenile Depravity in New York," *Prisoner's Friend*, 345-346.

indicates that youth offenders are not at fault; that their situation was imposed on them rather than resulting from their own actions (after all, rarely does one become an orphan by choice). Additionally, in a more literal sense, Harris's use of "orphan" suggests that many youth offenders are without parents, and that they have entered into crime because of a lack of parental and societal guidance and protection.

Unlike Matsell, Harris speaks not of saving the city from crime but of rescuing delinquent and vagrant children. He posits the need for a Home for Children. (Harris notes that operators would open the Home to "all children wishing through compliance with its rules to secure its [the Home's] advantages," but that they also would forcibly commit all children found on the streets or committing delinquent acts.) At this Home, children would experience "kindness, education, [and] remunerative labor." His suggestion of opening a Home for Children and forcing delinquent and vagrant children to attend is strikingly similar to Matsell's, but Harris frames his as a way to expose vagrant youth (and those children who elect to attend) to "an atmosphere of love," where "their faculties of mind and heart ... [can be] properly cultivated." Thus, his proposal is not a solution to *crime* but rather a means to address parental and even societal abandonment of children. Continuing in that vein, Harris presents the Home for Children as a "shelter" for children. This descriptor reflects his view of the institution as a safe place of residence for youth. Harris consequently once again stresses that the chief concern is not crime but protection of the vagrant children.⁸⁹

In his plea to the public to publicize this issue and the proposed solution, Harris writes, "I know of no duty so incumbent, so pressing, so immediate, so fruitful of private and public good." By presenting this "duty" as the most important one of society, Harris once again emphasizes society's moral responsibility to its children. Turning to society's collective *Christian* morals, he

⁸⁹ "Juvenile Depravity in New York," *Prisoner's Friend*, 346.

continues, “He who would win a blessing, let him take the little child in his arms, and in purity, virtue, and consecration, lift it up to God.” Harris frames the saving of children as a basic tenet of Christianity and as the will of God. His comment further emphasizes the virtuous nature of children. Harris not only uses words such as “purity” and “virtue” to describe the act of saving these children, but his assertion that this is God’s will indicates that innocence persists in delinquent youth. His subsequent warning that “he who would draw upon his head the lightnings and thunders of retribution, let him set his heel on the child’s heart and trample it into ruin, opposing himself to Him” demonstrates his fierce opposition to a solution that promotes punishment of children, and thus a view of delinquent youth as victims.⁹⁰

II. “Oh for a house of refuge!”: Morality, Practicality, and the Reform Movement

Matsell and Harris represent the opposite extreme views on juvenile justice. Most reformers in the second and third quarters of the nineteenth century, however, found themselves in the middle of these two perspectives, often advocating from a moral standpoint while using practical reasons to appeal to general society. Like Matsell, most reformers blamed juvenile crime on urbanization, industrialization, and the lifestyle of the lower and working classes, but like Harris, they advocated for policies that “saved” children from their unfortunate circumstances. Moral motivations promoted the desire to rescue vulnerable children from unfortunate situations. This often corresponded with a wish to remove youth offenders from penitentiaries, and thus from the influence of adult criminals, and instead place them in separate juvenile institutions. Morally-driven reformers also tended to encourage courts and juvenile institutions to prioritize the reformation of youth offenders over their punishment.

⁹⁰ “Juvenile Depravity in New York,” *Prisoner’s Friend*, 347.

Financial benefits and decreased crime rates, on the other hand, comprised the incentives of more practical reformers. These reformers also feared that overly harsh sentences for juvenile crime were *causing* crime: juries, reluctant to condemn children to the same punishments and fates as adult criminals, often would acquit juvenile delinquents and return them to society, allowing the wayward youth to recommit crimes. Simultaneously, fears of urbanization and industrialization, as well as a longing for an increasingly disappearing agrarian lifestyle, often fueled movements to remove youth offenders to country settings. Finally, regardless of whether they held moral or practical motivations, the majority of juvenile justice reformers also attempted to use reforms to impose middle-class values on the lower classes of society.

As early as the 1820s one sees a desire among reformers to protect youth offenders, whom they viewed as innocent rather than responsible for their pitiable situations. In an 1824 address given by the managers of the Society for the Reformation of Juvenile Delinquents in the City of New-York, the speakers, like Harris, present young delinquents as victims. While they acknowledge the positives accruing from a big city (such as “facilities of business” and “intellectual activity and improvement”), like Matsell they also stress the negatives that result in crime, particularly abject poverty, a circumstance characteristic of the lower classes. Unlike Matsell, who presents most juvenile delinquents as expert criminals, however, the managers describe juvenile delinquents as “young *novices* in crime” [emphasis added] and argue that it is the “indiscriminate mixture of [this population] ... with veterans in wickedness” which results in the “deplorable consequences” that plague the city. They also refer to juvenile offenders as neglected, consequently placing responsibility for their actions on the parents. Furthermore, they urge society to “reach forth an arm of deliverance” to delinquent children, who are merely

“victims of poverty and corrupt example.”⁹¹ Thus, while they view the lower and working classes as responsible for crime, like Harris they still see children as innocent victims who cannot help the class into which, nor the parents to whom, they were born.

The managers’ account seems characteristic of the middle-class perception of the lower classes. A loathing for the lower classes is present throughout the second and third quarters of the nineteenth century. This attitude is evident both in comments made by denizens of the middle class concerning the involvement of the lower and working classes in crime and in the middle-class longing for a world that existed prior to industrialization (and thus prior to urbanization, which gave birth to “slums”). Article after article calls for the creation of a school for youth offenders located in an agricultural setting. An 1844 piece details a Connecticut Legislature committee’s recommendation to establish an institution called “the Connecticut Farm School, for the Reformation of Juvenile Offenders,” which would sit on fifty acres of land. The article notes that the committee specifically decided to recommend occupying juvenile delinquents in agricultural labor rather than in mechanical labor, a type of work directly connected to industrialization. The name of the school itself, “The Connecticut Farm School,” speaks to a desire to return youth to an agrarian lifestyle.⁹²

Continuing in this vein, a *National Era* article published five years later mentions the establishment of a reform school “located ... on a fine farm of two hundred acres,” and notes that the “site is happily chosen.”⁹³ An article printed in 1865 reports that a New York asylum sends orphaned vagrant children or vagrant children whose parents the asylum deems inappropriate “off into the country ... [where they are] provided with excellent homes far away from the city.”

⁹¹ *To the Inhabitants of the City of New-York*. Broadside 1824. America’s Historical Imprints. American Broad-sides and Ephemera, Series 1, no. 3090.

⁹² “Juvenile Offenders,” *Hartford Daily Courant*, May 17, 1844, ProQuest Historical Newspapers.

⁹³ “The Reform School of Massachusetts,” *The National Era* (Washington, D.C.), February 22, 1849, Accessible Archives.

The author of the article frames this development as progressive, commenting that “benevolent friends” founded the asylum, and emphasizing the expertise of the agents who place reformed children in a home in the country. In continued contempt for city life and industrialization, the article argues that one of the asylum’s most important duties is “prevent[ing] the spread of city vices.”⁹⁴ Thus, reformers such as the author of this piece view the city as synonymous with vice, while simultaneously considering the countryside as synonymous with virtue.

While it appears in neither Matsell’s nor Harris’s discussions of juvenile delinquency, another moral issue associated with juvenile crime was the role that prisons played in further exposing youth to criminal tendencies. Leading up to the establishment of reformatories or houses of refuge, one of the more common concerns of the nineteenth century was the mixing of young criminals with more experienced offenders. This concern dated to as early as 1817, as evidenced by an article printed in that year: “In these establishments [prisons], the youth committed for his first offence has been placed indiscriminately with hardened criminals. In these abodes emulation is excited only to excel in crime ... the ferocious inspire others with their ferocity, the cunning with their cunning, and the debauched with their libertinism.”⁹⁵ Although this statement refers to the condition of juveniles in London, the article appeared in an American journal and was intended for American readers, consequently indicating that the issue also concerned the U.S. public. Indeed, only seven years later, the managers of the Society for the Reformation of Juvenile Delinquents in the City of New-York point to the negative consequences of mixing experienced criminals with novices. They then ask their audience whether it is appropriate for juvenile delinquents “to be abandoned to the terrors of a sentence

⁹⁴ “Juvenile Vagrancy,” *New York Evangelist* 36, no. 12 (March 23, 1865), American Periodicals Series Online.

⁹⁵ “Society for Investigating the Causes of Juvenile Delinquency,” *Christian Disciple* 5, no. 12 (December 5, 1817): 381, <http://search.proquest.com/docview/124031233?accountid=10255>. The *Christian Disciple* was a Boston-Based liberal Christian journal and edited by Noah Worcester, a Unitarian clergyman and a pacifist.

which consigns them to almost irremediable and hopeless depravity.” They argue for the relinquishment of this practice and ask those listening to help fund a house of refuge between the walls of which adult criminals cannot negatively influence delinquent youth.⁹⁶ Other articles published in the second quarter of the century mention how prisons produce “a stronger growth of vicious principle” in juvenile delinquents, and that the “most serious evils arise from the indiscriminate imprisonment of boys in the common jail.”⁹⁷

The protest against imprisoning youth with adults continued into the third quarter of the nineteenth century, although there is simultaneously evidence of the public’s decreased enthusiasm for juvenile justice reform as a whole. In an article published in November of 1853, nearly three decades after the address given by the Society for the Reformation of Juvenile Delinquents in the City of New-York, the author demands whether society is “really anxious to breed criminals?” He follows this question with the claim that “the law that sends children to jail is brutal,” thus drawing a direct connection between increasing criminal tendencies in youth and the practice of locking them up in penitentiaries with adult criminals. His article is in response to the absence of a House of Corrections and Employment. The author notes that while enthusiasm was high for the project a year earlier, when a Mr. Corcoran had pledged ten thousand dollars to help fund it, interest has since waned (“What has become of the zeal of our citizens temporarily awakened in regard to this subject?”).⁹⁸

The author then asserts that it is time for society to reinvest in the project. While the article confirms that members of society still entertained concerns regarding the intermingling of adult and youth offenders, it is clear that in the late 1840s and early 1850s the public no longer

⁹⁶ *To the Inhabitants of the City of New-York.*

⁹⁷ N.C. Hart, “House of Refuge for Juvenile Offenders,” *Philadelphia Recorder*, August 4, 1827, American Periodicals Series Online; “City Police - Juvenile Crime,” *Christian Watchman and Reflector* (Boston), January 30, 1851, American Periodicals Series Online.

⁹⁸ “Juvenile Offenders,” *The National Era* (Washington, D.C.), November 24, 1853, Accessible Archives.

prioritized or was overly concerned with building separate juvenile institutions. The article effectively functions as a call to action, which would not have been necessary if the public had remained actively involved in the effort to erect a House of Corrections and Employment. Nonetheless, the author relies heavily on the argument that incarceration of youth with adult criminals only furthers youth offenders' criminal tendencies: throughout the article he makes claims such as "that brutal punishment ... made him a child of hell. He was thrown in a den of hardened criminals" and "the poor boy ... goes to the same school of crime [prison], to be perfected in wickedness!"⁹⁹ This method of appeal indicates that despite the decrease in "zeal" for this issue, the thought of further exposing children to crime continued to serve as the most effective tool to encourage involvement in the reform movement.

A set of three articles discussing the need for a house of refuge in Indiana also reflects a struggle to rouse public support for the juvenile justice reform movement. All three point to the dangers of placing youth in the penitentiary: "the chances are ten to one in favor of his leading a life of dissipation and crime after his release," comments the first article in 1858.¹⁰⁰ Seven months later, the same newspaper writes that the youth's "habits will be deformed under the effects of prison discipline."¹⁰¹ When the state legislature took up the issue again seven-and-a-half years later, another publication from the area argues that sending youth to a state prison condemns them to "infamy forever," noting that a house of refuge would allow society to hold out "hope ... for the poor inmates in the future."¹⁰²

⁹⁹ "Juvenile Offenders," *The National Era*, 1853.

¹⁰⁰ "House of Refuge," *Weekly Vincennes Gazette* (Vincennes, IN), December 25, 1858, Accessible Archives.

¹⁰¹ "Houses of Refuge for Juvenile Offenders," *Weekly Vincennes Gazette* (Vincennes, IN), July 16, 1859, Accessible Archives.

¹⁰² "House of Refuge," *The Vincennes Weekly Western Sun* (Vincennes, IN), February 23, 1867, Accessible Archives.

The consequences of mixing youth offenders and adult criminals is the only issue to span all three articles, and one of only two issues to span more than one article, reflecting its important role in driving reformers to the establishment of a house of refuge. The number of years that it took to establish a house of refuge in Indiana, nonetheless, suggests that the state also was plagued by a decreasing general interest in juvenile reformation. It stands to reason that the Civil War overrode interest between 1861 and 1865, and that post-war stresses and concerns then further delayed founding of a house of refuge by two years. That said, two and a half years passed between the publication of the first article and the advent of the Civil War, suggesting that the late 1850s saw insufficient public support or interest for the Indiana government to establish the institution. Just like the author of *The National Era* article, however, this author also believed that the most compelling argument to garner public interest was the consequence of exposing youth offenders to the influence and example of adult criminals. This viewpoint reflects a conviction that members of society remained concerned about the practice, even if they did not necessarily join the reform effort or continued to prioritize other issues over juvenile justice reform.

While a desire to prevent adult criminals from negatively influencing juvenile delinquents resulted in a push for the introduction of separate institutions, reformers also pressed for this change out of a concern that the severity of the penal system resulted in higher crime rates. In the 1827 article, “House of Refuge for Juvenile Offenders,” the author notes that juries “prefer discharging to having them [juveniles] committed to the pernicious instruction and examples of old and hardened offenders.” While this comment relates to the concern over the influence of hardened criminals, it also reflects a belief that such a sentence – *i.e.*, condemning youth to a life of crime by placing them in vicinity of adult criminals – was too harsh a

punishment. The tendency to discharge juvenile delinquents, the article argues, backfires, as it endorses youth crime. Delinquent youth, the author claims, leave the trial believing that crime is not “abhorrent to public feelings” and continue to “renew it [their criminal activities] with impunity.”¹⁰³

A *Hartford Daily Courant* article written seventeen years later echoes the assertion put forth in “House of Refuge for Juvenile Offenders,” noting that many juveniles are “permitted to escape, (although guilty of crimes,) through the clemency of tribunals.”¹⁰⁴ The article does not state that severe laws *resulted* in this tribunals’ behavior, but the specific use of the word “clemency” suggests that the juries consciously decided to save juvenile delinquents from what they believed were particularly brutal sentences. A simple desire to forgive the youth their sins could have motivated acquittals, but it seems more likely that instead jurors morally opposed assigning youth the same sentence as that of adults. After all, in response to this phenomenon the article encourages the construction of a “School for the Reformation of Juvenile Offenders.” If the author of the article thought that juries only wished to forgive the youth, then he or she would not have considered a reform school a viable solution to the tendency of juries to acquit youth offenders.

Relating to the desire to remove youth from adult prisons was the movement to reform rather than punish youth. As society came to realize that youth were capable of rehabilitation and eventual reintegration into society, reformers began to encourage policies that focused on reforming youth offenders. An 1817 article published in a U.S. journal concerning the issue of juvenile delinquency in England demonstrates how public opinion had shifted in favor of rehabilitating juvenile delinquents rather than punishing them. Quoting a report from the London

¹⁰³ Hart, “House of Refuge for Juvenile Offenders.”

¹⁰⁴ “Juvenile Offenders,” *Hartford Daily Courant*, 1844.

society for “Investigating the Causes of the alarming Increase of Juvenile Delinquency,” the article writes, “Dreadful ... is the situation of the young offender: he becomes the *victim of circumstances* over which he has no control. The laws of his country operate not to restrain, but to punish him” [emphasis added]. The article goes on to quote, “Small indeed is the number of those in whom the sense of virtue is wholly extinct ... some latent seed, which, if judiciously cherished, would expand and flourish.” By quoting the report, the article presents the argument that not only are juvenile delinquents capable of becoming moral members of society, but also that the justice system should directly involve itself in the reformation of youth offenders. One clearly sees this view in the comment made by the article’s author: “Cruelty on the part of those who govern, whether in a family or a nation, always tends to harden the hearts of the governed, and to produce crimes rather than prevent them.”¹⁰⁵ Thus, the article endorses – to its American audience – exchanging punitive methods for rehabilitative ones.

Seven years later, in 1824, the Society for the Reformation of Juvenile Delinquents in the City of New-York encouraged the adoption of the “untried path” of establishing a house of refuge. They argued that “to such vortices of criminality [that exist in the city], hundreds, and perhaps thousands of innocent and helpless children in this city, are hourly exposed.” They directly follow this claim with the question, “And when impelled by such temptations to the commission of actual crime, ought they, in their very incipency of guilt, to be abandoned [to the penitentiary]?”¹⁰⁶ The emphasis on the innocence of juvenile offenders – further stressed by the use of the term “helpless children” and the suggestion that society has “abandoned” this group – speaks to the vulnerability of this class of youth. By stressing vulnerability, the Society for the Reformation of Juvenile Delinquents highlights why young criminals are better suited to a house

¹⁰⁵ “Society for Investigating the Causes of Juvenile Delinquency,” 380-381.

¹⁰⁶ *To the Inhabitants of the City of New-York*.

of refuge rather than to a penitentiary – and, by extension, why a house of refuge is necessary.

Furthermore, near the end of the Society’s address, they make clear the proposed roles that the house of refuge will play in reforming juvenile delinquents: “Shall no effort be made worthy of the occasion to ... cheer them [youth offenders] with the hopes of a restoration to virtuous society, and with the prospects of enduring happiness in the life to come?”¹⁰⁷ In those words, the Society presents the house of refuge as a way to reintegrate youth offenders into society and provide them with a brighter future. As a result, they prioritize rehabilitation and reintegration of youth offenders over punishment. As the city established a house of refuge at the beginning of the following year, it stands to reason that the public at large shared the Society’s sentiments.

Indeed, three years after the Society’s address, in 1827, the *Philadelphia Recorder* published an article commending the house of refuge. The article proclaims that “among all the institution which the wisdom of men have invented ... for meliorating the condition of the unfortunate of the human family, we know of none which promises more immediate and lasting benefit than the [house of refuge created by the] ‘Society for the Reformation of Juvenile Delinquents.’” It notes that the Society easily raised fifteen thousand dollars to establish the institution, which further supports the claim that members of the public (specifically those with disposable incomes – namely, the middle and upper classes) agreed with the Society’s position. The article also reflects the popularity of juvenile rehabilitation at this time, stating that “the profligate youth of our metropolis, needed only the reclaiming hand of sympathetic benevolence, to snatch them from the vortex of criminality,” which echoes the language of the Society’s earlier address.¹⁰⁸

¹⁰⁷ *To the Inhabitants of the City of New-York.*

¹⁰⁸ Hart, “House of Refuge for Juveniles.”

In the same year in which the *Philadelphia Recorder* article appeared, architect Charles Bulfinch submitted a report on prisons to the U.S. House of Representatives. While his report focused mainly on the architecture of specific prisons, he touched briefly on the New York House of Refuge. Bulfinch expresses his gratification at seeing that “the young prisoners are taught various trades in the workshops, and are schooled at regular hours of each day ... and religious observances are attended to on Sundays.”¹⁰⁹ He makes no mention of the ways in which the house of refuge exacts punishment, nor does he use any language that suggests that the establishment existed to exert punishment. Instead, he focuses solely on how it attempts to rehabilitate: by teaching the inmates trade skills, exposing them to an education, and inculcating them with religious-based morality.

“Baltimore Correspondence,” a *National Era* article written in 1847, demonstrates that the concern with saving children from crime remained an issue twenty years after Bulfinch submitted his report. The article laments how newspapers “teem, daily, with instances of juvenile depravity.” Instead of focusing on the crimes, however, the author instead chooses to focus on the situations that have led to crime. He presents as an example a “boy about thirteen years of age ... [who was] found by the watch lying in the Fell’s Point market house, *without a home!*” [emphasis author’s]. The issue is not that the child loitered on the street or was a “vagrant” but that he was homeless, a situation outside of his control. By choosing this example to represent youth crime rather than a more controversial offense, such as stealing, the author stresses the victimization of youth offenders. After creating a connection between youth crime and unfortunate circumstances, the author then demands, “How long shall we have to repeat the old exclamation of ‘Oh for a house of refuge!’ When will the authorities of Baltimore be alive to the

¹⁰⁹ House of Representatives, Bulfinch on Penitentiaries. Report of Charles Bulfinch on the Subject of Penitentiaries, Rep. No. 19-98, 2d Sess, p. 7 (1827) (NewsBank, U.S. Congressional Serial Set).

best feeling of humanity, and urge the erection of a refuge for the young and destitute? The amount of benefit that would be realized in rescuing the young from the paths of vice and crime, can scarcely be imagined.”¹¹⁰ Thus, through his presentation and characterization of juvenile delinquents, the author encourages his audience to share in his rage at the city’s lack of a house of refuge. His focus on helping juvenile delinquents further encourages readers to call for methods that center on saving youth rather than simply preventing crime. It of course stands to reason that the “benefit” he mentions includes preventing crime, but rather than presenting this as a chief motivation, the author depicts it as a positive resulting from the establishment of a house of refuge.

Also of note is that, within the same article, the author reports on a complaint regarding the loitering of “evil-disposed boys” in front of a theatre. The police, the author writes, promised to “put a stop to it,” but the author questions, “Which is mot [sic] to blame – these ignorant, vice-school urchins, or the state of society which placed in their way such peculiar temptations as this very theatre? To my mind, the answer is ready: They are objects of pity, rather than of punishment.”¹¹¹ These two reports clearly demonstrate the author’s commitment to the rehabilitation of youth. In both examples, he advocates for reformation of juvenile delinquents rather than methods that involve punishment, and he encourages society to take pity on youth offenders rather than blame them for their situations.

Morality – both the desire to save children and to inculcate the lower class with middle-class values – was not society’s only concern, however. There existed a practical element to many reformists’ arguments – sometimes as the chief reason for reform, other times as an additional benefit. In 1861, *The Christian Recorder* published an article discussing the report of

¹¹⁰ “Baltimore Correspondence,” *The National Era* (Washington, D.C.), August 12, 1847, Accessible Archives.

¹¹¹ “Baltimore Correspondence,” *The National Era*, 1847.

the annual meeting of the contributors to Philadelphia's House of Refuge. Quoting the report, the article states, "The money laid out in its [the House of Refuge's] support is an investment destined to yield a *rich return* in industrious citizens, *paying taxes and increasing the public wealth*" [emphasis added].¹¹² The article does mention children attending the House of Refuge, but they are presented more as subjects – or even products – rather than as a group of children in need of moral guidance or a safe place to reside. The article gives a precise account of the number of residents, and then goes on to discuss the cost of maintaining the various departments. It is unsurprising that the chief concern of contributors would be financial, as they are investing their own money and do not want to see it go to waste. The focus on the financial benefits of their contributions, however, and the way in which the report, and by extension article, present the youth, indicate that saving youth from crime was not a strong enough motivator for the potential contributors.

Another practical concern of the time was one Matsell had expressed: the need to prevent crime. While an 1847 article from *The National Era*, "Domestic Correspondence – Baltimore Letter," also endorses the reformation of juvenile delinquents, the author, like Matsell, seems more concerned with preventing crime than with saving children. The author writes that "the very *boys* of our city [Baltimore] are organizing themselves into bands of highway robbers!" [emphasis author's]. Thus, he claims, society needs a house of correction because "with such an institution in our city, there would assuredly be less of juvenile crime. And far better it would be, to go upon the principle that an ounce of prevention is better than a pound of cure."¹¹³

¹¹² "The House of Refuge - Annual Meeting of Contributors," *The Christian Recorder* (Philadelphia, PA), January 19, 1861, Accessible Archives.

¹¹³ "Domestic Correspondence -- Baltimore Letter," *The National Era* (Washington, D.C.), May 13, 1847, Accessible Archives.

While the author emphasizes the word “boys,” he seems to stress not their defenselessness but rather the shocking notion that children are committing crimes. His proposal makes no reference to how this institution would benefit delinquent youth. The author instead focuses solely on how it would eradicate crime. That said, as seen through his recommendation of a juvenile house of correction (rather than the still-in-use penitentiary), the author clearly believes that pure punishment does not effectively address youth crime. Furthermore, his use of the phrase “an ounce of prevention is better than a pound of cure” demonstrates that he believes that the city should focus on efforts that prevent crime – which includes rehabilitation of youth who already have committed crime and those who are on a path towards delinquency – rather than those which inflict punishment, a method he sees as far less effective.

An article published in a journal in 1853 holds a sentiment similar to that of the author of the second 1847 *National Era* article. Discussing the possible establishment of juvenile reform schools in St. Louis, M. Tarver, a lawyer and senior editor of the journal, argues, “A wise policy would seem to demand an appropriation of a sufficient quantity of the public domain to establish and support institutions calculated to prevent the growth and accumulation of pauperism and crime in the city of St. Louis, and in other cities affected by similar causes.” Like the second *National Era* article, Tarver’s argument for the establishment of a separate juvenile institution relies almost solely on how it will eradicate crime; he neglects its potential role to save and rehabilitate delinquent youth. The few times he mentions youth offenders, it is in the context of how juvenile delinquents, without the intervention of a juvenile reform school, will become “pests to society.” The use of “pests,” like the earlier used “infests,” does not suggest that juvenile offenders are vulnerable or innocent. Instead, it paints this group as nothing more than a scourge on society. Tarver also refers to the juvenile institution as a way to separate the

delinquent “from his *associate* in crime” [emphasis added].¹¹⁴ Such a comment portrays juvenile delinquents as criminals themselves. Thus, the juvenile reform school might “educate and train them,” but Tarver’s language suggests that he does not believe that they are “nursing” the delinquent’s inherent, latent, or corrupted innocence – instead, a juvenile delinquent is a criminal through and through. While Tarver seems to believe that incarcerating juvenile delinquents with adult criminals would enhance their criminal tendencies, it is clear that he also views juvenile delinquents as criminals in their own right.

The focus on preventing crime rather than saving children *from* crime reflects the middle-class belief that the lower classes were directly responsible for juvenile crime. Indeed, while a desire to rehabilitate juvenile delinquents acted as a chief motivation for reformers, articles suggest that they also used juvenile justice reform to instill middle-class values within the lower classes. In 1861, *The Christian Recorder* reported on a conference held in Birmingham, England. The article notes how those in attendance commended Scotland’s use of “Ragged Schools” because they reached “the very lowest class ... from which the criminal population is chiefly supplied.”¹¹⁵ Ragged Schools provided the poorest of the poor with an education – otherwise unavailable to them thanks to the lack of a free public education – but while providing lower-class youth with educational opportunities, the Ragged Schools simultaneously inculcated them with middle-class morals.¹¹⁶

Additionally, one of the goals of the Ragged Schools included transforming these lower-class youth into middle-class approved members of society, as reflected in the comment that

¹¹⁴ Micajah Tarver, “Article V: Juvenile Reform Schools. - Petition of M. Tarver to the Congress of the United States,” *The Western Journal and Civilian: Devoted to Agriculture, Manufactures, Mechanic Arts, Internal Improvement, Commerce, Public Policy, and Polite Literature* 11, no. 3 (December 1853): 187-188, American Periodicals Series Online.

¹¹⁵ “Ragged Schools. – England.” *The Christian Recorder* (Philadelphia, PA), March 9, 1861, Accessible Archives.

¹¹⁶ “Ragged Schools, Industrial Schools and Reformatories,” Hidden Lives Revealed A Virtual Archive - Children in Care 1881-1981, accessed March 3, 2013, <http://www.hiddenlives.org.uk/articles/raggedschool.html>.

“this system might ... be adopted with advantage in English cities,” in the context of reducing the population of “children of dissolute, drunken parents.” Indeed, the biography of the Ragged School founder, Dr. Thomas Guthrie, published in 1900, notes that in addition to educating the lower classes, Guthrie also wanted to prevent them from “prey[ing] on society.”¹¹⁷ Guthrie was actually in attendance at the Birmingham Conference. While his claim that Ragged Schools led to a decrease in juvenile crime might have been true, within the conference report there also is a clear suggestion that crime is inherent in the lower classes, and thus only the introduction of middle-class values to lower-class youth could address the prevalence of crime.¹¹⁸ While the article does not mention the United States, *The Christian Recorder*’s decision to publish it indicates that this view of the lower classes as inherently criminal was relevant to the interests of its reading public.

An article published only four years later in an American journal, *New York Evangelist*, adopts a tone similar to the Birmingham Conference report. The author bases his piece on a report on the New York Juvenile Asylum sent to the journal. The journal quotes that the chief goal of the juvenile asylum was “to *relieve the community* expeditiously of the *evils*, and burden of support of as large a number as possible, by a quick and thorough educational discipline, to the extent of justifying their return to their parents, or placing them in families where the work of reformation and improvement may go on, at the same time that they become measurably self supporting” [emphasis added]. The article goes on to explain that “the means relied upon to secure this reformation are mental and moral training,” and that the children also devote “a portion of the Sabbath ... to the systematic study of the Bible.” While the author states that the

¹¹⁷ William Henry Oliphant Smeaton, *Thomas Guthrie*, Famous Scots Series (Edinburgh: Oliphant, Anderson & Ferrier, 1900), 77-78.

¹¹⁸ Guthrie was a preacher, philanthropist, and founder of the Scottish Ragged Schools. According to the National Galleries of Scotland, he supported education for all and opposed alcohol abuse. For more information, see: Smeaton, *Thomas Guthrie*, 144-157.

courts try to return reformed youth to their parents, outside placements remained an option for families that did not meet the middle-class standards expected by the courts. Furthermore, the tone of the article echoes that of the second 1847 *National Era* article and Tarver's piece. The author of the 1865 New York Juvenile Asylum piece focuses on the way in which the institution has reduced crime within the community (even going so far as saying that the asylum has reduced society's "burden"). In quoting the report, the author refers to juvenile criminals as a collective "evil," consequently presenting them as perpetrators rather than as victims.¹¹⁹

Additionally, its focus on the moral education of the children – including their "systematic study of the Bible" – reflects and endorses a system that attempts to instill middle-class morals within the lower and working classes. Indeed, the article reports that the asylum prevents reformed youth from returning to their families if their parents are "abandoned to intemperate or vicious habits" – *i.e.*, habits that the asylum, by middle-class standards, defines as intemperate or vicious. The author further argues that society needs to teach lower-class parents their "duty ... to set a good example before [their] child and set him aright" and that they "also [put] in peril the general safety, the order and happiness of society at large." This claim depicts lower-class families as a *threat* to society, and posits that the "failure" of these parents to "properly" raise their children has negatively affected the community. In this way, the author places the blame for juvenile crime on the lower classes, while conveniently ignoring larger societal issues, such as the lack of governmental support for poor families or the financial exploitation of immigrants.¹²⁰

The author also encourages the punishment of parents who fail to live up to middle-class standards of parenting, arguing that "debased and unworthy parents who fail to discharge their

¹¹⁹ "Juvenile Vagrancy," *New York Evangelist*, 1865.

¹²⁰ "Juvenile Vagrancy," *New York Evangelist*, 1865.

moral duties to their offspring, should be compelled to support their children, now a public charge in reformatory institutions.”¹²¹ One should note that usually the *government*, not the parents, sent the youth to reformatory institutions. Indeed, it was a common enough occurrence that in October of the same year, *The New York Times* published an article discussing “the rights of charitable institutions to send children out of the state” without the consent of the children’s parents.¹²² Thus, the author of the New York Juvenile Asylum article would have lower-class parents pay for a decision that was made without their consent.

An 1866 article regarding a Boston Convention on the reformation of juvenile offenders goes even further, saying that crime is *inherent* in the lower class: “the juvenile is mainly the result of inherited tendencies to vagrancy, of public neglect, and of parental incapacity and vice.” This author provides three reasons for juvenile crime, two of which (the first and third on his list) directly relate to the lack of morals and the natural criminal tendencies of the lower class, while one could easily construe his second stated reason as parental neglect. The author even notes that everyone in attendance at the Convention admitted that these causes were “fundamental axiom[s]” and that there was “no doubt either expressed or implied that these constitutional biases may be overpowered, the opposite inclinations to a virtuous life implanted in their stead.” The statement implies that this population was not *born* with an “inclination” to a “virtuous life,” and that it required the middle class to intervene actively to create the preferred reality.¹²³

The second and third quarters of the nineteenth century marked, for the most part, a dynamic time in the history of juvenile justice reform. It was during this period that many states

¹²¹ “Juvenile Vagrancy,” *New York Evangelist*, 1865.

¹²² “The Right of Charitable Institutions to Send Children Out of the State – An Interesting Habeas Corpus Case – No Religious Dogmas Taught in the Juvenile Asylum,” *The New York Times*, October 25, 1865, ProQuest Historical Newspapers.

¹²³ J.R., “Reformation of Juvenile Offenders,” *The Independent: Devoted to the Consideration of Politics, Social and Economic Tendencies, History, Literature, and the Arts* 18, no. 916 (June 21, 1866): American Periodicals Series Online.

established their first house of refuge, house of correction, juvenile asylum, or industrial school, thus providing youth offenders with a place where they could not only avoid contact with adult criminals but also (in theory) rehabilitate. A variety of motivations drove the reform movement, with some spurred on by a moral impetus to protect a group that they viewed as vulnerable and inherently innocent, and others moved simply by the financial benefits as well as the potential to decrease crime rates. While some reformers were driven solely by practical or moral motivations, the majority tended to adopt moral perspectives while employing practical concerns to appeal to and gain the support of a wider audience. The most common philosophy during this period included the separation of youth offenders and adult criminals through the removal of youth offenders to separate juvenile institutions (often located on farmland), and placement of a priority on rehabilitating rather than punishing youth offenders. The more practical reformers, on the other hand, rallied against the overly harsh laws that sentenced juvenile delinquents to the same punishments as adults, a practice that they believed led to a high rate of acquittal of juvenile delinquents and returned them to society without any punishment or rehabilitation, thus allowing them to continue to commit crime.

Fear of the consequences of industrialization and urbanization, as well as a longing for a quickly disappearing agrarian society, seemed to inspire reformers as a whole, as did a desire to inculcate the lower classes with middle-class values. The late 1850s and most of the 1860s witnessed a decrease in support for juvenile justice reform, most likely due to the Civil War and its aftermath, but by the late 1860s and the 1870s, the juvenile justice reform movement once again rose to prominence, with states such as Indiana finally establishing their first house of refuge. This enthusiasm continued in subsequent decades, but by the 1880s, new concerns in the field of juvenile justice came to occupy the attention of reformers. While some nineteenth-

century trends and struggles continued into the turn of the twentieth century, the later years also would witness the birth of completely new debates and perspectives – and with it a new era in the United States juvenile justice reform movement.

CHAPTER THREE
The United States, c. 1880 to c. 1910:
The Establishment of Juvenile Court and Probation Systems

The second and third quarters of the nineteenth century witnessed the establishment and rise of various juvenile institutions, including reform schools, houses of refuge, and industrial schools. By the turn of the twentieth century, however, public opinion, as it had once turned against placing youth in penitentiaries, turned against placing youth in institutions altogether. During the late nineteenth century, this emerging trend coincided with the call for a separate juvenile court and the creation of a probation system, which would allow youth to receive individualized sentences and return to a family setting. Turn-of-the-century reformers began to worry that older youth offenders were negatively influencing the younger, more innocent ones, and also started questioning the effectiveness of institutions such as reformatories and industrial schools. Now reformers wanted courts to send youth to institutions only when they had exhausted all other options, and encouraged courts to return youth offenders to their families or place them with foster parents, where they could receive the individualized love and attention needed to facilitate reform. This movement corresponded with a developing belief that youth delinquency was a “moral illness,” with children needing treatment to address their moral failings – *i.e.*, judges needed to address each youth’s individual circumstances and the underlying causes of his or her delinquency. The turn of the twentieth century also marked an embracing of increased government authority, with judges invoking *parens patriae* to intervene in the lives of and on behalf of youth offenders.

While the turn of the twentieth century bore witness to drastic changes in the philosophies of juvenile justice reformers, certain nineteenth-century philosophies and struggles continued into the later years. Reformers continued to express scorn for the lower class and to

use juvenile justice reform to attempt to instill in this group middle-class values. Meanwhile, they continued to strike a balance between moral and practical motivations, with the majority continuing to argue from a moral standpoint while recognizing the appeal of the practical benefits of juvenile justice reform. Nevertheless, within only thirty years the United States witnessed rapid change and development in its juvenile justice system: while in the 1880s reformers had only just begun discussing the drawbacks of juvenile institutions and expressing interest in individualizing the treatment of youth offenders, by 1910 thirty-two states had established a separate juvenile court system.¹²⁴

While in the second and third quarters of the nineteenth century the exposure of youth offenders to adult criminals constituted one of the major concerns of U.S. reformers, by the end of the century they began to express disquiet over the exposure of *young* juvenile delinquents to older juvenile delinquents. In 1891, a New York state senator, Lispenard Stewart, sponsored a bill that prevented children “under the age of twelve [from being] sentenced or committed to the State Industrial School ... or to the House of Refuge ... on a conviction for any crime or offense less than a felony.” A *New York Times* article discussing this development commented that the major argument in support of this bill was that “children guilty only of such minor offenses as vagrancy, truancy, and begging ought not to be exposed to the dangers of contact with the really *vicious juvenile delinquents* who have been sent to the reformatories for crimes” [emphasis added], which oftentimes resulted in these older juvenile delinquents “stain[ing]” the younger, more innocent youth offenders.¹²⁵

¹²⁴ “Bulletin: Juvenile Justice: A Century of Change,” National Criminal Justice Reference Services, last modified 1999, https://www.ncjrs.gov/html/ojjdp/9912_2/juv1.html.

¹²⁵ “The Juvenile Delinquent Bill,” *The New York Times*, March 29, 1891, ProQuest Historical Newspapers; Edgar L. Murlin, *The New York Red Book: An Illustrated Legislative Manual* (Albany, NY: James B. Lyon, 1897), 403, <http://archive.org/stream/newyorkredbook00unkngoog#page/n6/mode/1up>.

Those in support of this bill consequently felt that “the more innocent class of juvenile offenders should be sent elsewhere.” While the author of the article opposed the bill, writing that he believed that the industrial school and house of refuge *did* successfully separate the two groups, his piece makes clear that a significant proportion of the public, including state legislators, held the opposite view.¹²⁶ Furthermore, the author’s argument against the bill – that the two institutions separated the more “vicious” juveniles from the more “innocent” ones – reflects his concurrence that the intermingling of the two groups posed a problem. The debate set out in the article is not whether the mixture of younger and older youth offenders is an issue, but rather whether this mixture *does* occur in the state’s house of refuge and its industrial school. This article thus demonstrates that by the 1890s, separating juvenile delinquents from adult criminals was no longer sufficient. The public now demanded the further separation of older, presumably more experienced juveniles from the younger, less experienced ones. For many, removing the latter group from the current juvenile institutions seemed the best solution.

Ten years later, in 1901, an article published in the *Annals of the American Academy of Political and Social Science* echoed the sentiment of Senator Stewart and much of the New York public. The author, Carl Kelsey, writes that society had recognized that sending juvenile delinquents to institutions led to “evil associations.”¹²⁷ Kelsey does not specify what these evil associations are, but, given who comprised the population of the juvenile institution, the only logical answer is other juvenile delinquents, specifically those who had committed more serious crimes and thus could exert an ill effect on the more innocent youth. The contents of Samuel J. Barrows’s 1904 report to the House of Representatives for the International Prison Commission supports this claim. The document includes reports written by reformers from throughout the

¹²⁶ “The Juvenile Delinquent Bill,” *The New York Times*, 1891.

¹²⁷ Carl Kelsey, “The Juvenile Court of Chicago and Its Work,” *Annals of the American Academy of Political and Social Science* 17 (March 1901): 119, JSTOR.

country, including Hannah Kent Schoff. In Schoff's report on the establishment of the juvenile court in Pennsylvania, she reflects on how the separate juvenile court resulted from public uproar over the sentencing of an eight-year-old girl to the House of Refuge. Schoff writes, "Branded as a criminal, sentenced to the companionship of girls steeped in crimes of far greater menace to her character, what hope did the future hold for her?" Using language eerily similar to that of the nineteenth-century reformers who had pressed for establishment of juvenile institutions so as to remove juveniles from the influence of adult criminals, Schoff explains that "the horror ... of that poor child's treatment led me to the determination to rescue her."¹²⁸

For most of the nineteenth century, reformers hoped to rescue youth from penitentiaries; now they desired to rescue them from the institutions established by reformers only decades earlier. A report by Buffalo, New York judge, Thomas Murphy, affirms this view. Murphy states that probation officers often "save him [the delinquent child] from the reformatory."¹²⁹ Schoff also later makes a more general lament – "There were over 800 children in each [Pennsylvania] reformatory, and no distinction was made as to the children committed there. Waifs, homeless little ones, children steeped in crime, were indiscriminately sent to the same institution" – demonstrating that her concern is for all young youth offenders rather than the specific eight-year-old girl.¹³⁰

In 1909, a *Harvard Law Review* article reflected on the effectiveness of nineteenth-century reformatories. The author, Julian Mack, comments that placing youth in reformatories was superior to the older practice of consigning them to penitentiaries, and that the reformatories

¹²⁸ Schoff, Hannah Kent, "Pennsylvania: A Campaign for Childhood" in *Comm. on the Judiciary, Children's Courts in the United States: Their Origin, Development, and Results*, H.R. Doc. No. 58th-701, 2d Sess. (1904), 133. Hannah Kent Schoff was the president of the National Congress of Mothers and largely responsible for the establishment of the separate juvenile court in Pennsylvania. She also helped establish separate juvenile courts in other states and even in Canada.

¹²⁹ Thomas Murphy, "History of the Juvenile Court of Buffalo," in *Comm. on the Judiciary, Children's Courts in the United States*, 13.

¹³⁰ Schoff, "Pennsylvania: A Campaign for Childhood," 134.

“endeavor[ed] ... while punishing, to reform.” Mack goes on to note, nonetheless, that “the two classes [younger and older youth offenders] were huddled together. The result of it all was that instead of the state’s training its bad boys so as to make of them decent citizens, it *permitted them to become the outlaws and outcasts of society*; it *criminalized them* by the very methods that it used in dealing with them” [emphasis added].¹³¹ Thus, Mack asserts that while reformers had good intentions in establishing reformatories, these institutions failed to achieve the reformers’ goals due to the practice of mixing younger and older juvenile delinquents.

Mack later comments that the government cannot “furnish the proper care [to delinquent children]” by placing them “in one great building,” such as reform schools and houses of refuge, “in which there will be no possibility of classification along the lines of age or degrees of delinquency.”¹³² In other words, in Mack’s view, placing together juvenile delinquents regardless of their innocence or degree of crime directly results in the government failing to give the youth the care they deserve – specifically, an opportunity to reform. Finally, the article begins with the claim that “the past decade marks a revolution in the attitude of the state towards its offending children,” referring to the establishment of separate juvenile courts and the decreased practice of institutionalizing youth offenders.¹³³ By placing the argument against institutions in the context of a new philosophy, Mack firmly illustrates the public’s view of juvenile institutions as dated and mostly ineffective. His reference to this change taking place only in the last decade also reflects how quickly opinion had altered.

¹³¹ Julian W. Mack, “The Juvenile Court,” *Harvard Law Review* 23, no. 2 (December 1909): 106-107, JSTOR. Mack was the second presiding judge of the Chicago Juvenile Court, a federal judge, and a social reformer. See: Sanford J. Fox, “The Early History of the Court,” in “Juvenile Court,” special issue, *The Future of Children* 6, no. 3 (November 1996): 34.

http://futureofchildren.org/futureofchildren/publications/journals/journal_details/index.xml?journalid=55 and “Biographical Directory of Federal Judges: Mack, Julian Williams,” Federal Judicial Center, accessed April 19, 2013, <http://www.fjc.gov/servlet/nGetInfo?jid=1453&cid=999&ctype=na&instat=na>.

¹³² Mack, “The Juvenile Court,” 114.

¹³³ Mack, “The Juvenile Court,” 104.

The separation of older and younger juvenile delinquents did not comprise the public's only concern. More and more reformers came to oppose institutionalization as anything but a last-resort option for only those juvenile delinquents incapable of reform (due either to the severity of their crime or their high rate of recidivism). Public opinion instead trended in favor of family-oriented sentences – *i.e.*, returning youth offenders to their families and placing them on probation, or placing them with foster families if the parent(s) proved unfit according to the standards of the court. In an article written in 1901, the author reports that at a Conference of Charities and Correction, Reverend Alexander P. Doyle voiced his concern that “there was too much of a tendency nowadays to institutionalize, to cast the weaker elements into institutions,” adding that those placed in institutions “should never have been taken from their families.”¹³⁴ Just like the reformers of the nineteenth century, Reverend Doyle saw youth offenders as vulnerable. Instead of viewing the institution as a safe haven, however, he, like many reformers at the turn of the twentieth century, considered inadequate the care and protection that the institution could offer. The youth offender instead belonged with his or her family, where he or she could receive the care and attention that his or her vulnerability demanded.

Indeed, Kelsey echoes Reverend Doyle's thinking: his article argues against institutions not only in view of the indiscriminate mixture of older and younger juvenile offenders, but also because “the lessons of home life and individual responsibility cannot well be taught to children *en masse*.” His article demonstrates his view that the various institutions failed to give youth the individual attention they needed to reform and that sending children to institutions resulted in nothing more than “shutting them up.” He remarks positively on the “gradual adoption [by states] of the policy of placing children in family homes,” which he believes indicates that the

¹³⁴ “Rabbi Radin Protests Against Juvenile Asylum: Causes Excitement at Conference of Charities and Correction,” *The New York Times*, November 21, 1901, ProQuest Historical Newspapers.

government is properly caring for its children. In his summary of the 1899 Illinois Juvenile Court Law, Kelsey claims that the legislation's final section epitomizes the philosophy of the law: "Its purpose may be carried out, to-wit, that the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases when it can properly be done, the child be placed in an approved family home and become a member of the family by adoption or otherwise."¹³⁵ Kelsey consequently believes that the act's defining philosophy, and by extension the most important aspect, is its emphasis on maintaining or creating a family environment for the child – an environment that he believes cannot exist within an institution.

Kelsey and Reverend Doyle's view persisted among reformers four years later, as evidenced by a report given to the United States House of Representatives on the "care of delinquent and dependent children in the District of Columbia." One aspect of child care that author Mr. Gamble discusses is the Board of Children's Guardians, the agency Congress established in 1892 to care for delinquent and dependent children. He writes that the policy of the Board should constitute "provid[ing] homes in families for all its infant wards, and for all others who are fitted for home life and for whom fitting homes ... can be found. In general ... the board should place in institutions *only those who are not fitted for home life* or for whom suitable homes can not be immediately provided" [emphasis added].¹³⁶ Once again we see the desire for what Judge Richard S. Tuthill of Cook County, Illinois called the parental-care method, with institutions acting only as a last-resort option for those juvenile delinquents who were least likely to reform and as a temporary holding place for those youth offenders whose

¹³⁵ Kelsey, "The Juvenile Court of Chicago," 119-120.

¹³⁶ Committee on the District of Columbia, Juvenile Court, H.R. Rep. No. 58th-3812, 3d Sess. (1905) (Archive of Americana, U.S. Congressional Serial Set), 8.

parents did not meet the court's standards (with the hope that the court eventually would find a foster family for the latter group).¹³⁷

In his 1904 report to Congress on the development of the juvenile court, Samuel J. Barrows echoes Tuthill's view.¹³⁸ He writes that the juvenile court "appeals to the reform school not as the first, but only as the last resort." He adds that the juvenile court treats the child as a child, suggesting that within institutions men and women treat children more like adult criminals. He also suggests that previously the court sent delinquent youth to institutions merely to "[make] an example of" rather than to reform them, once again emphasizing the ineffectiveness of institutions as centers for rehabilitation. Echoing Kelsey, Barrows writes that the court should not "turn over to any other institution the work that it can do and should do itself" – in other words, the court fails to fulfill its responsibility (protecting and seeing to the best interest of its children) when it sentences youth to institutions.¹³⁹ By placing youth offenders in familial settings, however, the court can take on an active and substantial role in ensuring the well-being of the children who pass through its system.

Mack was another reformer who viewed familial care and influence as the most effective approach to reform youth offenders. Writing in 1909, he commends juvenile court judges for recognizing "that the lack of proper home care can best be supplied by the true foster parent."¹⁴⁰

Nineteenth-century reformers had held a similar view of the cause of juvenile crime – that

¹³⁷ Richard S. Tuthill, "History of the Children's Court in Chicago," in *Comm. on the Judiciary, Children's Courts in the United States*, 6. Tuthill served as the presiding judge over the Illinois Juvenile Court in its initial years. He is famous for using "a kind of interpersonal exchange with the children who came before the court" to earn their trust, after which he would "ask the child directly about the alleged offenses." See: Sanford J. Fox, "The Early History of the Court," in "Juvenile Court," special issue, *The Future of Children* 6, no. 3 (November 1996): 34. http://futureofchildren.org/futureofchildren/publications/journals/journal_details/index.xml?journalid=55.

¹³⁸ Samuel J. Barrows served as a U.S. Representative for Massachusetts from 1897 to 1899 and as the U.S. representative to the International Prison Congress on 1895, 1900, and 1905. He was Secretary of the New York Prison Association from 1899 to 1909, and in 1910 he was elected President of the International Prison Congress. A Unitarian preacher, he was heavily involved in social justice efforts, including women's suffrage, African American rights, equality for Native Americans, and prison reform.

¹³⁹ *Comm. on the Judiciary, Children's Courts in the United States*, ix-x.

¹⁴⁰ Mack, "The Juvenile Court," 105.

environment, or “lack of proper home care,” resulted in delinquency. They believed that the answer to this problem was the strict regimen, education, and training offered in institutions. Based on the articles by Mack and other reformers such as Kelsey and Barrows, it is clear that by the turn of the century, many reformers saw *parents* as the best solution to this “lack of proper home care,” either by placing children with “appropriate” foster parents or by having those parents deemed appropriate made aware of their child’s issues and instructed on how to properly care for their son or daughter. Indeed, regarding the latter option, while discussing the introduction of a juvenile court bill in the United Kingdom House of Commons, Mack writes that two vital principles missing from the bill are 1) that the court should avoid, “as far as possible ... taking a child away from its parents and sending it even to an industrial school,” and 2) “when it [the youth offender] is allowed to return home, it must be under probation, subject to the guidance and friendly interest of the probation officer,” who will ensure that the child receives the care and discipline necessary to his or her reformation and well being, and who will “help them [the family] to train the child right.”¹⁴¹ Keeping to this perspective, earlier in the article Mack writes, “Human love supplemented by human interest and vigilance, must replace ... locks and bars and other indicia of prisons.” Further reflecting his disapproval of juvenile institutions, Mack refers to them as “prison[s] in disguise” and not real schools or centers for reform.¹⁴² Nineteenth-century reformers established juvenile institutions in an attempt to educate juvenile offenders and rescue them from the dangerous atmosphere of the penitentiary, but Mack’s comment makes clear his opinion that these institutions failed to accomplish the intent of the previous generation of reformers.

¹⁴¹ Mack, “The Juvenile Court,” 116-117.

¹⁴² Mack, “The Juvenile Court,” 114.

Mack's view appears connected to the belief that child offenders deserved individualized treatment rather than punishment. His article argues that every juvenile court should have attached to it "a child study department, where every child, before hearing, shall be subjected to a thorough psycho-physical examination," commenting that physical discoveries could "effectuate a complete change in the character of the lad." It is not only physical issues that Mack believes need treating, however; his article demonstrates his belief that courts also must address psychological issues. This is evidenced by his inclusion of "psycho" (psychological) in "psycho-physical examination" and his earlier comment that a juvenile court judge "must be a student of and deeply interested in the problems of ... child life ... he must be willing and patient enough to search out the underlying causes of the trouble and to formulate the place by which ... the cure may be effected."¹⁴³ In previous decades, "underlying causes" referred to a youth's environment, but the demand that a judge understand the "problems of child life" suggests that psychological issues also comprised "underlying causes." Thus, according to Mack, one cannot effectively "cure" a youth offender by sending him or her to a juvenile institution with hundreds of other youth offenders. A youth offender's cure instead is discovered through a judge's careful consideration of the child's background and circumstances, which enables the judge to determine the best method to most effectively "cure" a youth offender's specific case of delinquency.

The desire for a treatment model dates to the beginning of the decade. Referring to changes within the "modern scientific study of pauperism and crime," Kelsey comments that "it is now clearly seen that it is worse than folly to ... attempt ... to remedy matters [a child's delinquent actions] by repressive and punitive measures." Given the context of his article, it is evident that the "repressive and punitive measures" to which Kelsey refers include the practice of institutionalizing child offenders. Like Mack, Kelsey later notes that the *correct* "treatment of the

¹⁴³ Mack, "The Juvenile Court," 119-120.

delinquent and neglected child ... requires expert service and expert knowledge of the conditions affecting child life,” a perspective that recently had resulted in the trend of some states establishing “a children’s court presided over by a judge specially fitted for the task.”¹⁴⁴ Armed with expert knowledge of the child’s situation and an understanding of child life, the judge could tailor treatment to the specific circumstances, thus increasing the effectiveness of the child’s sentence (or “treatment,” as Kelsey likely would prefer to call it).

A year after Kelsey published his article, in 1902 New Jersey probation officer Emily E. Williamson authored an article about her probation experience. Much of her article mirrors Kelsey’s comments. She writes, “Penological science lays down general rules for the treatment of juveniles ... [including] absolutely prohibiting imprisonment except for those convicted of flagrant crimes, as it breaks down self-respect, placing a stigma on character that is never removed.” In Williamson’s statement one sees that by the turn of the twentieth century society had started to embrace scientific studies that cautioned against institutionalizing youth offenders – a sentence that painted them as criminal – and instead encouraged treating the causes of a child’s delinquency through love and firm parenting (whether through the actual parents, court-appointed foster parents, or probation officers). Indeed, within the same paragraph Williamson argues that the “main object in the sentence of the convicted juvenile ... should be his rescue from a criminal life.”¹⁴⁵ Thus, she sees individual treatment and family-oriented sentences as the path to the juvenile offender’s rescue.

By 1904, judges such as the Honorable Julius M. Mayer of New York City refer to the current philosophy of the juvenile court as a “system of treatment.” This system takes into account “the child itself, the home surroundings, the nature of the offense, and all the

¹⁴⁴ Kelsey, “The Juvenile Court of Chicago,” 118-119.

¹⁴⁵ Emily E. Williamson, “Probation and Juvenile Courts,” *Annals of the American Academy of Political and Social Science* 20 (July 1902): 259, JSTOR.

circumstances,” and encourages the practice of placing children on parole and returning them to their families. Mayer concludes by commenting that he believes this system would save many children in the future, thus demonstrating his firm commitment to and preference for the individualized treatment model.¹⁴⁶ Judge Ben Lindsey, considered one of the founding fathers of the juvenile court, goes as far as to compare youth offenders to ill patients. Also writing in 1904, he comments, “We try to study that boy as a skilled physician would study his patient. The child is sick – not physically, but morally,” adding that in the past “moral ailments have not only been neglected, but brutally treated.” He then compares the juvenile court to a hospital or operating room, thus presenting the juvenile court as a method of treatment. He also echoes Judge Mayer’s assertion that physical ailments often result in delinquency and that treatment of such ailments often are the cure to a child’s moral failings.¹⁴⁷

In addition to changing perspectives on the best way to “cure” juvenile delinquency, the turn of the twentieth century marked a decidedly new perspective on government authority, with reformers encouraging direct government intervention in the lives of families and children. Through the doctrine of *parens patriae*, the government could act as the child’s ultimate parent in cases when the child had no legal guardian or the court felt the legal guardian had failed to see to the child’s best interest. While *parens patriae* dates back to English common law, it first took root in the United States after the 1838 Pennsylvania case, *Ex parte Crouse*. During the turn of the century, reformers turned to the precedent set by this case to argue for the constitutionality of the juvenile court and probation system, consequently strengthening the government’s authority. Writing in 1901, Kelsey comments that “the state has a vital interest in the welfare of its

¹⁴⁶ Julius M. Mayer, “The Child of the Large City,” in Comm. on the Judiciary, Children's Courts in the United States, 23.

¹⁴⁷ Ben B. Lindsey, “Additional Report on Methods and Results,” in Comm. on the Judiciary, Children's Courts in the United States, 87.

children” because their outcome would affect “the future of the state.”¹⁴⁸ In that context, it was the government’s right to ensure that its children would become adults who were responsible members of society. Kelsey further argues that the probation system is a “keystone of the court” because probation officers “represent the interests of the child at court,” consequently suggesting that parents will not necessarily do the same.¹⁴⁹ Thus, he argues that it is necessary to allow the government to intervene on behalf of the child – and by extension in the life of the child – because the child’s interests might not otherwise be represented to the court.

In his report on the history of children’s courts, Barrows mentions society’s questioning of the constitutionality of the courts, specifically the concern that court intervention constituted government overreach. He turns to English chancery law to argue that the government is in its right to expand its authority in this manner, and later quotes a Mr. Hurley of the Illinois court, who states that “the parental authority of the State should be exercised instead of the criminal power.” Through Mr. Hurley’s words, Barrows suggests that the state can represent either a child’s parent or his jailer, consequently presenting the former choice as superior. Barrows also comments that it is through probation that the state exerts “parental care,” thus simultaneously asserting the necessity of the probation system and the government’s increased authority.¹⁵⁰ He further adds that the judge acts as a “friend and ally, who even protects the boy against the nagging policeman when necessary,” thus painting the increased reach of government as a positive development that only *benefits* one of society’s most vulnerable populations: delinquent children. To drive his point home, Barrows writes that “parents, guardians, or teachers have concluded that the juvenile court could accomplish what they had not been able to effect

¹⁴⁸ Kelsey, “The Juvenile Court of Chicago,” 119.

¹⁴⁹ Kelsey, “The Juvenile Court of Chicago,” 121.

¹⁵⁰ Comm. on the Judiciary, *Children’s Courts in the United States*, x-xii.

themselves,” reflecting that even parents, whose authority the government overpowers, appreciate the more direct involvement of the courts.¹⁵¹

In the same report, Judge Tuthill commends *parens patriae*. He argues, “The principle feature of the juvenile court law ... is to transfer the care and custody of the person of the child to a court of original and unlimited jurisdiction, so that the court shall have sufficient power to deal with the difficulties that surround the particular child.”¹⁵² Tuthill interprets increased government authority as necessary to individualizing a delinquent child’s treatment – a development that reformers as a whole endorsed and greatly desired.

Mr. Gamble’s report to the Senate regarding the establishment of a juvenile court in the District of Columbia mirrors the report presented by Barrows. Writing of the Board of Children’s Guardians, an official congressional agency, Gamble asserts that the Board should receive “whatever additional authority and enlargement of its administrative force are necessary.”¹⁵³ Continuing in this vein, he explains how an act of Congress “enlarged ... the functions of the board of Children’s Guardians ... so as to provide for investigation of cases of alleged delinquency ... and also for the supervision of children placed on probation by the courts as the result of such investigation.”¹⁵⁴ Thus, like Barrows, Gamble presents the government’s increased authority as a positive development that is essential to determining the appropriate treatment of child offenders. Comments from endorsing charities, organizations, and influential members of society indicate the popularity of Barrows and Gamble’s philosophy: for example, the International Reform Bureau and the Washington Boys’ Club Association both state that the

¹⁵¹ Comm. on the Judiciary, *Children’s Courts in the United States*, xv.

¹⁵² Tuthill, “History of the Children’s Court in Chicago,” 8-9.

¹⁵³ Committee on the District of Columbia, *Juvenile Court*, 3.

¹⁵⁴ Committee on the District of Columbia, *Juvenile Court*, 5.

juvenile court – and thus the government expansion that accompanies it – has become an accepted and expected part of the justice system.¹⁵⁵

There did exist commentators who felt that the government had overstepped its bounds. “It would seem best to allow the father the custody of the child, and if then he should prove incapable of correcting him the state would have the right to take him in its custody,” states a 1906 article in *The Central Law Journal*.¹⁵⁶ The majority of sentiments, however, seemed to echo the opinions of Gamble and Barrows. Indeed, Mack supports this increase in government authority by using the same argument as Barrows: “For over two centuries . . . the courts of chancery in England have exercised jurisdiction over the protection of the unfortunate child.” He further quotes a finding in the U.S. case, *Cowles v. Cowles*, which states that the government’s power to interfere in the lives of minors “is a very ancient origin and cannot now be questioned. This is a power which must *necessarily* exist somewhere in every *well-regulated* society, and more especially in a *republican government*” [emphasis added].¹⁵⁷

Mack’s use of “republican government” leaves no question that he believes that the United States government must be able to invoke *parens patriae*, while his support of government intervention as essential to a “well-regulated society” suggests that without this practice the United States cannot call itself civilized. Turning to the case *Miner v. Miner*, Mack quotes the finding: “The parents’ rights are always ‘subject to control by the court of chancery when the *best interests* of the child demand it” [emphasis added], echoing earlier assertions that the increased authority of the government only helps children.¹⁵⁸ Continuing in this frame of mind, Mack later writes that through *parens patriae* courts are “sav[ing the child] from the brand

¹⁵⁵ Committee on the District of Columbia, *Juvenile Court*, 10.

¹⁵⁶ “A Bad Opinion in Regard to Constitutionality of Juvenile Court Laws of Illinois,” *The Central Law Journal* 63, no. 8 (August 24, 1906): American Periodicals Series Online

¹⁵⁷ Mack, “The Juvenile Court,” 104-105.

¹⁵⁸ Mack, “The Juvenile Court,” 104-105.

of criminality, the brand that sticks to it for life” and “protect[ing the child] from stigma.” Thus, thanks to courts, youth offenders could eventually rejoin society without the fear of society ostracizing them due to their past misbehavior. Commenting on the constitutionality of *parens patriae*, Mack quotes the 1905 case *Commonwealth v. Fisher*: “Whether the child deserves to be saved by the state is no more a question for a jury than whether the father, if able to save it, ought to save it.”¹⁵⁹ In Mack’s opinion, the government represents (and must, for the sake of the country’s children) the ultimate parent, whose duty it is to see to the best interests of its children when parents or legal guardians fail to do so.

Furthering this argument, Mack quotes the case’s determination that “every statute, which is designed to give protection, care, and training to children, as a *needed substitute for parental authority*, and performance of parental duty, is but a *recognition of the duty of the state*, as the legitimate guardian and protector of children where other guardianship fails” [emphasis added].¹⁶⁰ Through this quote, Mack simultaneously reaffirms the pre-existence of *parens patriae* – it’s “a recognition of the duty of the state,” insinuating that this duty has always existed – and suggests that the continued failing of legal guardians requires that such a protection exist, and that the government *only* exercises this authority when individuals within society fail to fulfill their responsibility to their children. Regarding the latter, Mack emphasizes that “the right of parental control is a natural, but *not an inalienable one*” [emphasis added] (as stated in *Ex parte Crouse*), reasserting the government’s right to step in when the situation calls for it.¹⁶¹ Through the reports and articles written by Barrows, Gamble, and Mack, it is clear that some of society, especially members of the legal sector, had come to view the court, and thus the

¹⁵⁹ Mack, “The Juvenile Court,” 110.

¹⁶⁰ Mack, “The Juvenile Court,” 110.

¹⁶¹ Mack, “The Juvenile Court,” 113.

government, as the “ultimate parent” – a force necessary not only to the individualizing of a child offender’s treatment but also to the protection of the child.

While the philosophy of juvenile justice reformers clearly had altered by the start of the twentieth century, in other ways it remained unchanged from the nineteenth century. Middle-class men and women continued to comprise the majority of juvenile justice reformers and organizers of the juvenile justice system. While turn-of-the-century reformers and judges began to recognize the importance of placing delinquent youth in family settings, they often placed them with foster parents, raising the question of which families could “properly” care for their children as determined by middle-class men and women. Even when the courts allowed lower-class youth to remain with their families, they still had to have a probation officer, who, as noted earlier, was expected to *teach* parents how to “properly” raise their children. Thus, it is clear that there continued a level of scorn for lower-class families and their values, especially when it came to their ability to raise their children.

In 1881, a *Washington Post* article on increased juvenile delinquency expressed surprise that “instances of youthful depravity” were occurring not only among “the children of the poor,” who were “reared in the slums of a big city, and as such open to evil influences,” but also among children of the middle class.¹⁶² While the article acknowledges the involvement of middle-class youth in instances of delinquency, the author expresses a clear disdain for lower-class life with his insinuation that living in the “slums” automatically exposed youth to “evil influences.” Furthermore, the author’s shock at seeing delinquency among middle-class youth indicates his assumption that juvenile crime was a problem solely of the lower and working classes.

A *New York Times* article published sixteen years later, in 1897, commended the New York Juvenile Asylum for directing its attentions to “the children of the poor and the degraded

¹⁶² “Juvenile Depravity,” *The Washington Post*, July 31, 1881, ProQuest Historical Newspapers.

classes, which were *infesting* the city” [emphasis added]. Here one sees the continued portrayal of the lower classes as a sort of disease, as well as a reiteration of the nineteenth-century belief that urbanization is directly responsible for juvenile crime. The article later comments that the asylum “rescued [children] from a life of poverty and degradation and made [them into] respectable, well-to-do members of society,” clearly implying that one cannot be “respectable” so long as one is a member of the lower and working classes.¹⁶³

In Barrows’s 1904 report to Congress, he too uses the disease rhetoric common in the nineteenth century, writing that juvenile courts have “reveal[ed] the sources of *contamination* of child life.”¹⁶⁴ The document also contains a report by Judge Tuthill of Cook County, who gives a fairly negative assessment of lower-class homes in general: “When one considers the squalor of the homes to which these children must return from the court, the vice, drunkenness, and criminality with which they are brought in constant contact, the evil surroundings and the natural weakness of youth, one can not but wonder that many more do not slip and fall.” By expressing surprise that *more* children of the lower classes have not become delinquent, Tuthill makes clear his low opinion of the environment in which they are raised. He also comments that Illinois needs schools and homes “in the country where children, housed in cottages, with ‘house mother’ and ‘house father’ to watch over them, can come to know family life and be brought under the elevating influences of a good home.”¹⁶⁵

Together with the context of his previous comment, it is evident that Judge Tuthill believes that lower-class families cannot provide youth with a good home. It further demonstrates his belief that until delinquent youth come under the influence of government-appointed guardians, family life will be an alien concept to them. Later, Tuthill also uses the

¹⁶³ “New York Juvenile Asylum,” *The New York Times*, December 26, 1897, ProQuest Historical Newspapers.

¹⁶⁴ Comm. on the Judiciary, *Children’s Courts in the United States*, xvi.

¹⁶⁵ Tuthill, “History of the Children’s Court in Chicago,” 4-5.

disease rhetoric, referring to “the crime disease” and how “the work of fumigation must begin in the homes and with the children,” indicating that something vile exists in lower-class households.¹⁶⁶ In a similar vein, Kelsey, writing three years earlier, explains how probation officers can influence a child’s home life by giving the parents “lessons of neatness and cleanliness,” thus raising the “tone” of the family. Kelsey’s comment suggests that without government intervention lower- and working-class families cannot meet the standards for a proper home and parenting – standards determined by middle-class society, of course.¹⁶⁷

Mack, writing in 1909, quotes an Illinois Supreme Court case to argue that the juvenile court does not target any particular class: “This law applies, with equal force, to the son of the pauper and the millionaire, to the minister’s son . . . as well as to the son of the convict and the criminal.”¹⁶⁸ Articles penned by reformers such as Carl Kelsey, however, demonstrate otherwise. In his recount of a day in a juvenile court, Kelsey mentions several cases but focuses specifically on one that paints lower-class families in a negative light: a girl accused of delinquency explains that her father is absent and her mother is ill, but it is soon discovered that both claims are a lie and “that the parents have sent the child to beg [on the streets].” Kelsey then explains how the judge “calls the parents before him, [and] tells them of the great offense they have committed.” While other cases include a mother who really *is* unable to care for her children, Kelsey chooses instead to highlight the one in which the parents force their child to commit a crime and lie about their situation, consequently emphasizing the depravity of the lower class.¹⁶⁹ Furthermore, Mack himself, in the very same 1909 article that argued that the juvenile court did not target the lower classes, writes that “most of the children who come before the court are, *naturally*, the children

¹⁶⁶ Tuthill, “History of the Children’s Court in Chicago,” 7.

¹⁶⁷ Kelsey, “The Juvenile Court of Chicago,” 122.

¹⁶⁸ Mack, “The Juvenile Court,” 113.

¹⁶⁹ Kelsey, “The Juvenile Court of Chicago,” 122-123.

of the poor” [emphasis added].¹⁷⁰ This comment could have been a simple remark based on data, but the subjective use of “naturally” points to Mack’s prejudice against the lower and working classes.

Reflecting the nineteenth-century view of the dangers inherent among immigrants, Mack also writes that “in many cases the parents are foreigners . . . without an understanding of American methods and views,” adding that the court must help them learn these views.¹⁷¹ Once again his prejudice against the lower classes is clear – he presents the “methods and views” of foreigners (most of whom are members of the lower and working classes) as inferior to those of the middle class. Perhaps reformers such as Mack *believed* that the system treated the lower and working classes equal to the middle and upper classes, but Mack’s language choice indicates that this simply was not the case. Reformers and members of the juvenile justice system may have acknowledged the existence of juvenile crime within upper levels of society, but in such a context they viewed delinquency as an exception. Within the lower classes, however, they considered it the norm – *natural*. With regard to their opinion of the lower classes, the philosophy of juvenile justice reform remained relatively the same at the turn of the twentieth century.

Unsurprisingly, the nineteenth-century struggle between moral and practical motivations for pursuing juvenile justice reform continued into the early twentieth century, with most reformers hoping to “save” children from their dire circumstances. As noted earlier, Williamson argues in her 1902 article that the main goal of a juvenile delinquent’s sentence is to “rescue [him or her] from a criminal life.”¹⁷² A year later, in 1903, an article in the Quaker publication *Friends’ Intelligencer* has readers ask themselves, “What can we do to lessen this number [of

¹⁷⁰ Mack, “The Juvenile Court,” 116.

¹⁷¹ Mack, “The Juvenile Court,” 116-117.

¹⁷² Williamson, “Probation and Juvenile Court,” 259.

delinquent children]? What can I individually do to save one child?" Like reformers of the previous century, the author of the article, Clara B. Miller, also gives her readers practical reasons to join the cause. Miller explains that arresting twenty-nine children for delinquency "in the old way ... would have amounted to \$580 more than the whole expense of maintaining our home [House of Detention] with all the attending expenses."¹⁷³ She adds, "While it is a part of wisdom and humanity to protect and rescue the children, it is far less expensive to take care of them by the juvenile court system than to try their cases in the old way and then punish them after," demonstrating her acknowledgment of the practical benefits and appeal of establishing a juvenile court and instituting a probation system.

That said, like many reformers of the nineteenth and early twentieth centuries, Miller places a greater emphasis on the moral perspective, commenting that "the saving in dollars and cents is of but little value in comparison with the saving of 67 children from a possible life of crime and putting them in the way of reaching self-respecting manhood and womanhood." She concludes with a quote by Bishop Phillip Brooks: "He who helps a child helps humanity with an immediateness which no other help given to human creatures in any other stage of human life can possibly give again."¹⁷⁴ Just like the reformers who preceded her, Miller views the saving of children as a – if not the – chief concern of society.

Similarly, while Kelsey turns to finances to demonstrate the advantages of the law, in the end he emphasizes above all else the moral benefits. Kelsey explains how "the expenses of the criminal court have materially decreased because of the operation of the [juvenile court] law,"

¹⁷³ While houses of detention were, by definition, a type of juvenile institution, turn-of-the-century reformers viewed them as a temporary placement while a child awaited his or her sentence, which usually constituted probation or placement with foster parents. It also served as an alternative to placing youth offenders in "city lockup," as Miller refers to it. As such, the Delaware County House of Detention does fall under the category of the movement away from institutionalization.

¹⁷⁴ Clara B. Miller, "The Juvenile Court in Delaware County, PA," *Friends' Intelligencer* 60, no. 15 (April 11, 1903): American Periodicals Series Online.

but he then concludes his article with the sentiment, “The child is being cared for in Cook County to-day as never before in its history.” His decision to conclude with this proclamation indicates a desire to leave his audience with a greater appreciation for the moral benefits of the new law.¹⁷⁵ Writing at the end of the decade, Mack echoes Kelsey and Miller: “Why is it not the duty of the state . . . to take him [the delinquent] in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.”¹⁷⁶ Through this statement, Mack effectively establishes the duty of society: to save children from crime and turn them into “worthy citizen[s].” Mack mentions the financial benefit to establishing a juvenile court, referring to it as a “great ultimate financial saving,” but within the same sentence he mentions the value of producing a “decent citizen,” demonstrating that the practical element comprises only a portion of his concern.¹⁷⁷

Nevertheless, there were reformers who focused primarily on the practical benefits of juvenile reform. A 1906 *Washington Post* article arguing in favor of the “bill pending in Congress providing for a Juvenile Court in Washington [D.C.]” operates chiefly in statistics. Two of its three paragraphs focus on the costs of the then-current juvenile justice system versus the new system that would exist under the juvenile court: “The saving to the government by the probation plan [rather than sending delinquent children to a reform school for a year] amounted to \$116,890 in five years,” the author writes in one paragraph. Indeed, finances constitute the subject of six of the paragraph’s seven sentences. In the third paragraph, the author concludes his story with the statement that the proposed system “is infinitely better and cheaper than punishing

¹⁷⁵ Kelsey, “The Juvenile Court of Chicago,” 123-124.

¹⁷⁶ Mack, “The Juvenile Court,” 107.

¹⁷⁷ Mack, “The Juvenile Court,” 115.

criminals.”¹⁷⁸ He makes few references to the moral advantages of pursuing a juvenile court, with all of these references presented in the same context as the financial benefits.

Writing a year earlier, Mr. Gamble’s report on the establishment of a juvenile court in the District of Columbia also focuses on the financial aspect of juvenile justice reform: “It seems reasonable to expect that if such a system should be adopted there would be a reduction in the cost of maintenance of the public dependents which would be greater than any possible increase in the cost of administration, and that the general result would be more economical.” A list of endorsements from various important members of society, many leaders of charities and organizations, follows his report. These, too, tend to focus on the financial benefits: “We ... resolve that ... juvenile courts ... are preventive of crime and therefore progressive, effective, and economic,” states one endorsement. Writes another, “Prevention is vastly better than cure, and also much less expensive. It will not only be much better, but cheaper to save youthful offenders.”¹⁷⁹ It stands to reason that Gamble chose to emphasize the more practical elements since his audience consisted of U.S. Senators; thus the amount of money the government could save constituted a major concern.

Based on Gamble’s report alone, one could assume that the U.S. legislature was concerned chiefly with the economic benefits to juvenile justice reform. Barrows’s report to the U.S. House of Representatives a year earlier, however, demonstrates that the moral implications of juvenile courts concerned Congress as well. Barrows writes that children’s courts have marked a “moral awakening of the community to a new consciousness of its duty to the child.”¹⁸⁰ Only two pages later he claims that “the [juvenile] court exists primarily ... for his [the juvenile’s] *salvation*” [emphasis added]. He does briefly mention the financial benefits – “[The

¹⁷⁸ “Probation of Juvenile Lawbreakers,” *The Washington Post*, March 5, 1906, ProQuest Historical Newspapers.

¹⁷⁹ Committee on the District of Columbia, 8-9

¹⁸⁰ Comm. on the Judiciary, *Children’s Courts in the United States*, xi.

saving of children through the juvenile court] has been done at less financial and moral expense to society than was possible under the old methods” – but he references the moral benefits in the same breath.¹⁸¹ It thus is evident that he views financial advantages as a bonus rather than as a driving motivation for supporting juvenile courts, and, as his audience is the U.S. House of Representatives and he himself had been a U.S. congressman only a few years earlier, that he believes such a focus appeals to members of the United States legislature. Based on these two reports – written within a year of each other – each focusing chiefly on either the moral or financial advantages to the juvenile court, one can conclude that they not only represented the concerns of turn-of-the-century reformers but also their legislating counterparts.

The turn of the twentieth century marked a definite change in philosophy. No longer did reformers view institutionalization as the solution to juvenile crime – in fact, they now viewed it as a *cause*, with many reformers claiming that older juvenile delinquents “tainted” the younger ones, using language that directly mirrored earlier efforts to remove child offenders from the influence of adult criminals. Reformers instead advocated for the parental care method, with institutions such as houses of refuge and industrial schools constituting a last-resort option. Related to this change of opinion was the desire to individualize juveniles’ sentences and treat them as one would treat an ill child.

Yet, while in some ways the philosophy changed, in other ways it stayed exactly the same. Reformers continued to express disdain for members of the lower class, painting crime as a natural outgrowth of their lifestyle and values. There also continued a balance between moral and practical motivations for the establishment of the juvenile court and corresponding probation system: while some advocated solely from a practical or moral standpoint, most recognized both benefits while emphasizing mainly the moral advantages. Thus, juvenile court laws grew out of

¹⁸¹ Comm. on the Judiciary, *Children's Courts in the United States*, xiii-xiv.

both old and new philosophies. Motivations remained chiefly the same, but shifts in perspective resulting from society's developing view of children, the importance of families, crime, and the role of the government altered the way in which reformers approached the issue. This blend of the old and new ultimately ushered in a new era of juvenile justice policy: the era of the juvenile court and probation.

CHAPTER FOUR

England, c. 1815 to c. 1910: A Single Era of Juvenile Justice Reform

Until the very end of the nineteenth century, the debates within the English juvenile justice reform movement remained largely consistent. Throughout the century, middle-class reformers found themselves divided between those who supported juvenile justice reform for moral reasons and those who valued only the practical benefits of such change (with a few recognizing the power of both perspectives). One also saw some reformers who wished to ensure that judges continued to punish youth offenders for their misbehavior, reflecting a view that delinquent children were somewhat responsible for their actions.

Despite a desire for punishment among some activists, many reformers did protest the sentencing of youth offenders to prisons, where they were exposed to the negative influences of adult criminals and placed in an environment that was not conducive to reform. Furthermore, while not all reformers shared a view of youth as unaccountable, the majority seemed in agreement that judges should hold parents answerable for their children's misbehavior by requiring that the parents pay part or the entire sum that the state spent to reform the delinquent child. This desire reflected a view among middle-class society that the failure of parents to instill proper values in their children resulted in delinquent behavior – a point of view that also reflected scorn for the lower classes. Reformers also turned to education policy: by introducing compulsory education, they hoped to instill middle-class values within children of the lower classes, which the reformers believed would decrease the rates of youth crime. At the very end of the nineteenth century, the English juvenile justice reform movement finally turned its almost undivided attention to the issue of reforming youth offenders, with discussions of punishment put to rest. This transformation in focus at the close of the century eventually resulted in

establishment of the country's first children's court nearly a decade after the Illinois Juvenile Court Act established the first juvenile court in the United States.

As in the United States, both moral and practical motivations drove nineteenth-century juvenile justice reformers in England. By 1825, English society viewed juveniles as victims of their circumstances rather than as purely criminal. In an untitled editorial appearing in *The Manchester Guardian*, the author writes, "Society expels him [the juvenile offender] from her bosom, and he becomes, almost of necessity, a confirmed and irreclaimable thief."¹⁸² The author sees the youth offender as *forced* to enter a life of crime due to his circumstances, for which society is responsible owing to its failure to help the child.

In this same vein, a T. Wheeler authored an article twelve years later that asks, given the circumstances of their homes and of parents who force them into crime, "Can it be wondered that they [juvenile delinquents] should have become hardy and artful thieves?" Wheeler's demand underlines the vulnerability of children: they need someone to look after them and see to their best interests; without this guiding hand they are easily molded into criminals. Further supporting Wheeler's view of children as vulnerable is his description of a trial of two youth offenders. He describes how "when placed in the dock for trial, the eyes of the younger girl were barely on a level with the top of the bar at which she stood." Wheeler's description of a girl barely tall enough to see over the bar engenders a sympathetic response from readers, while his emphasis of the girl's young age insinuates an inherent innocence that renders this trial almost inhumane. He reasserts this perspective with his quotation of the lead magistrate: "Such children as these ought not to have been brought into that court for trial." Wheeler also editorializes that "the incarceration of children of such tender years in a common gaol is, under any circumstances,

¹⁸² "Editorial Article 1 -- No Title," *The Manchester Guardian*, September 17, 1825, Proquest Historical Newspapers The Guardian and The Observer.

horrible to think of,” and then wonders whether “no friendly hand [can] be stretched forth to save these, and such as these poor children ...?” Wheeler thus repeatedly relies on pathos to argue in favor of treating juvenile offenders differently than adult criminals. He stresses the offenders’ youth through his language choice, using adjectives such as “tender years” and commenting on the judge’s remorse when sentencing the girls to prison. After successfully playing on his readers’ emotions, Wheeler then asks his audience if they will do their part by reaching out a “friendly hand” to these unfortunate souls, suggesting that by failing to help, readers are complicit in the imprisonment of innocent youth.¹⁸³

In his 1843 lecture on prison discipline, Joseph Adshead mirrors Wheeler’s concern. He states, “They [juvenile offenders] are born for the most part in misery, from infancy destitute alike of moral instruction and physical comforts, often stimulated to crime by sheer want—often instructed to perpetuate offenses by their parents or connections, compelled to endure hunger or to steal—what chance has a child under such circumstances to be honest?”¹⁸⁴ Like Wheeler, Adshead views juvenile delinquents as victims of circumstances outside of their control. Both men blame youth crime on the children’s parents and society as a whole, which has failed to look after its more unfortunate children. Both also present delinquent children as forced into crime despite their inherently better nature, and use language that encourages society to empathize with these youth. Adshead and Wheeler’s interpretation of youth offenders as vulnerable rather than responsible for their delinquent activities is one that persists throughout the nineteenth century.

¹⁸³ T. Wheeler, “National Education v. Juvenile Depravity,” *The Manchester Guardian*, November 1, 1837, Proquest Historical Newspapers The Guardian and The Observer.

¹⁸⁴ “Mr. Adshead’s Lectures on Prison Discipline,” *The Manchester Guardian*, December 20, 1843, ProQuest Historical Newspapers The Guardian and the Observer. Joseph Adshead was a prison reformer and wrote several books on the topic, including *Prisons and Prisoners*. He favored the Model Prison System seen in the Pentonville Prison, and he also opposed solitary confinement.

In an 1846 article recounting a meeting in which attendees discussed the goals of the recently established Manchester Juvenile Refuge and School of Industry, the author quotes the Archbishop of Dublin, who asserted, “It was the height of injustice and the height of impolicy, to visit with punishment *unfortunate individuals* for vices, crimes, and offences against society, which *society itself ought to have guarded against*” [emphasis added]. According to this article, those in attendance met the Archbishop’s statement with cheers, demonstrating that he voiced a popular sentiment. In the same meeting, George Dawson, a minister who often lectured on social issues, asserted that a significant number of children “[have] been neglected, [were] still neglected, but must be so no longer,” a statement that also received support.¹⁸⁵ Writing only two years later in 1848, the Philanthropic Society’s report on the reformation of juvenile offenders asserts that the majority of youth offenders *want* to be reclaimed and – mirroring the sentiments noted above – only committed crimes because they had no other choice: “It is, I believe, no exaggeration to say, that there are many scores of lads, who are anxious to forsake their evil courses, and to become useful steady members of the community, and who are, every year, literally thrown back on crime for a means of livelihood, because they have no helper.”¹⁸⁶

In the 1854 Meeting of Manchester City Magistrates, an Alderman Shuttleworth not only reiterates the argument that child offenders are victims of their circumstance, but also asserts that it is one’s religious duty to save them. He comments, “Juvenile delinquents were too young, too ignorant and mostly too unfortunately placed, through bad parents and other painful

¹⁸⁵ “Manchester Juvenile Refuge and School of Industry,” *The Manchester Guardian*, October 24, 1846, ProQuest Historical Newspapers The Guardian and the Observer. Dawson was also a leading figure of Birmingham Liberalism, which called for “interventionist policies in housing and public health.” See: James R. Moore, *The Transformation of Urban Liberalism: Party Policies and Urban Governance in Late Nineteenth-Century England*, Historical Urban Studies (Aldershot, England: Ashgate Publishing Limited, 2006), 16 and Alexander Ireland, *Recollections of George Dawson and his lectures in Manchester in 1846-7* (Manchester: A. Ireland and Co., Printers, 1882).

¹⁸⁶ Philanthropic Society, “Reformation of Juvenile Offenders: The Philanthropic Report for 1848,” *Hume Tracts*, 1848, 41, JSTOR.

circumstances, to be justly held as morally responsible for their conducts ... it was not the will of heaven that one of these little ones should perish.” He goes on to state that anyone who helps save these children can view themselves as imitating God, who “careth not alone for the ninety and nine that are in the fold, but goeth into the mountains to seek the one that went astray.”¹⁸⁷

During this same meeting, the Mayor of Salford, William Ross, comments that the imprisonment of children horrifies even judges: “No man could sit on the bench and see these young criminals brought before him, without suffering pain and remorse at being obliged to do them, as the law now compelled him, consign them to a prison without hope of reformation.” (Indeed, this statement reflects Wheeler’s account of the judge in the trial he attended.) Ross’s comment demonstrates the view that society should not condemn youth offenders to a life of crime but instead should do everything in its power to reform these children. Judges are responsible for upholding the laws of the land; by presenting these authority figures as opposed to the laws that imprison and fail to reclaim youth, Ross emphasizes the clear immorality of such laws.¹⁸⁸

Four years later, in 1858, an untitled *Manchester Guardian* article reflecting on the creation of reformatory schools claims that the development constitutes “one of those public acts of *humane* and *enlightened* justice of which England has a right to be proud” [emphasis added]. The author’s word choice emphasizes much of society’s view of reform schools (and, by extension, the effort to reform youth offenders) as progressive and moral. Throughout the article, the author uses language reminiscent of Wheeler, Adshead, and reformers writing in previous

¹⁸⁷ “Meeting of Manchester City Magistrates,” *The Manchester Guardian*, March 1, 1854, ProQuest Historical Newspapers The Guardian and The Observer.

¹⁸⁸ “Meeting of Manchester City Magistrates,” *The Manchester Guardian*, 1854.

years, as seen in his reference to reform school as “refuges for those whose fate ... has deprived them of every other hope of social redemption.”¹⁸⁹

While driven by moral reasoning, English reformers, like their American counterparts, often simultaneously turned to the practical benefits of juvenile justice reform. An 1840 *Manchester Guardian* article asserts the commonly-held belief that society, for moral reasons, must intervene on behalf of delinquent (and potentially delinquent) youth. At the same time, however, it also addresses the practical reasons for such an action. The article quotes the content of the annual report of the Lancashire Preston House of Correction chaplain, in which the chaplain discusses the prevalence of juvenile depravity. Although the words are not the reporter’s own, the report still reflects his or her view, as seen through the introductory comment that the report “direct[s] attention to the fearful evil it depicts, and to the admirable remedial and preventive means suggested by the humane and philanthropic writer.” Like the chaplain, the reporter views this issue as pressing and supports the recommendations made by the chaplain. Regarding the treatment of juvenile delinquents, the report states,

A higher law demands, that those who may be innocent should be *preserved from corruption*; and that even such as have already fallen should not be plunged into a lower deep ... the young culprits themselves are *objects of pity* rather than of anger and aversion; and ... it would be wiser, and *more becoming of a Christian state* ... to take measures for their immediate deliverance from the condition in which the neglect, or misfortunes, or vice, of their parents may have placed them. [Emphasis added.]¹⁹⁰

¹⁸⁹ “Editorial Article 1 -- No Title,” *The Manchester Guardian*, March 5, 1858, ProQuest Historical Newspapers The Guardian and The Observer.

¹⁹⁰ “Juvenile Depravity,” *The Manchester Guardian*, November 18, 1840, ProQuest Historical Newspapers The Guardian and The Observer.

Not only does the chaplain echo Wheeler's earlier comments that juvenile delinquents are vulnerable rather than at fault for their criminal behavior, and that society should do all it can to save them, but he also appeals to the religious sentiments of his audience. He presents the rescue of delinquent youth as "Christian," consequently painting anyone in opposition to this movement as un-Christian. As a member of the clergy, the chaplain's comment bears more weight than that of a layman, thus increasing the likelihood that his declaration will persuade at least some of his audience. As a result, the excerpt from the report presents readers with more than one reason to support the chaplain's proposition: to respect their societal duties and to present themselves as proper, God-abiding Christians.

Yet, despite the chaplain's focus on rescuing delinquent youth from their unfortunate circumstances, the report also comments that this "immediate deliverance" would be more economical, noting that this argument is "perhaps the weightiest." While the chaplain may believe that it is society's duty to save delinquent children, at the same time he clearly recognizes that one of the most persuasive arguments is the economic advantage attached to pursuing preventive and reformatory measures. His emphasis on the financial benefit reflects a society driven by more practical rather than emotional motivations.¹⁹¹

One sees similar nuanced argumentation throughout the century. In 1839, a year prior to the chaplain's report, a letter to the editor from an unknown reader taking the name "Humanitas" (a Latin noun meaning "human nature," "civilization," and "kindness") states, regarding the need to reform rather than merely punish juvenile delinquents, "He who desires the welfare of all mankind, and he who only seeks to arrange the movement of a community, so as to produce

¹⁹¹ "Juvenile Depravity," *The Manchester Guardian*, 1840.

security and peace, *will equally find his purpose promoted*” [emphasis author’s].¹⁹² Here “Humanitas” explains that the reform movement will please both those hoping to save children and those more focused on improving the safety of their community. The decision to appeal to both types of reasoning signifies the range of motivations that drove society in this period to pursue the reformation of juvenile offenders.

Even the Philanthropic Society’s 1848 report, which chiefly relied on morally-focused arguments, explains how placing youth offenders in reformatory institutions costs approximately half that of imprisoning them. Reflecting on the power of the proposal’s financial benefits, the society states “on the score of economy alone ... there is good reason to prefer prevention to punishment, and timely interference to ultimate retribution,” adding later, “Economy is, without doubt, one of the most important of the considerations that must be looked to in the management of such Institutions as the Philanthropic.”¹⁹³ Not only does the report address the financial benefits; it also appeals to society’s desire to rid its community of crime: “The lad, if dealt with at an early age ... can ... be rescued from his criminal habits,” indicating that the youth offender would not grow into a professional adult criminal and wreak havoc on society. That said, the report emphasizes that “the main object must be the *moral victory* itself, not the cheapness of the price at which it is purchased” [emphasis added].¹⁹⁴ The Philanthropic Society’s assertion seems to reflect the general feeling among some reformers: the ultimate goal is to help juveniles reclaim their innocence, but there remain important and persuasive practical reasons for members of society to involve themselves in this deliverance.

¹⁹² Humanitas, letter to the editor, *The Manchester Guardian*, April 3, 1839, ProQuest Historical Newspapers The Guardian and The Observer.

¹⁹³ Philanthropic Society, “Reformation of Juvenile Offenders,” 10, 24.

¹⁹⁴ Philanthropic Society, “Reformation of Juvenile Offenders,” 26.

England nevertheless had its fair share of reformers who seemed interested only in the practical benefits of reforming youth offenders. An 1828 report on a session of the House of Lords notes, “In a very able pamphlet, upon the subject, by Sir E. Wilmot, a Magistrate of that county, the Author attributed the increase of crime in some measure to the indiscriminate committing of boys.” Wilmot’s reference to the “indiscriminate committing of boys” reflects his opposition to committing youths to prison, where there was little hope of reform – a view held by many reformers of his time. Unlike previously mentioned reformers such as the chaplain and “Humanitas,” however, decreasing crime rather than saving youth constitutes the focus of Wilmot’s argument.¹⁹⁵

Echoing Wilmot, an article published in 1856 concerning the National Reformatory Union’s attempt to establish additional juvenile reformatories claims that “to wait until the children became criminals, was to wait until they became more expensive, and more difficult to deal with, than they would have been if taken beforehand.” Once again, the issue at hand is not saving youth from crime, but rather reducing the number of criminals. By reforming juveniles, the author asserts, society can rid itself of a future criminal population, suggesting that if evidence demonstrated that it was easier to reform adults, then the author would not concern him or herself with reforming youth.¹⁹⁶

In 1856, *The Manchester Guardian* published another article regarding the National Reformatory Union and its campaign for a greater number of juvenile reformatories. The article includes the inaugural address, given by Lord Stanley, who presided over the meeting.¹⁹⁷ In this

¹⁹⁵ “House of Lords, Thursday: No Business of Importance,” *The Manchester Guardian*, March 8, 1828, ProQuest Historical Newspapers The Guardian and The Observer.

¹⁹⁶ “Juvenile Reformatory Question: Meeting of City Magistrates,” *The Manchester Guardian*, March 27, 1856, ProQuest Historical Newspapers The Guardian and The Observer.

¹⁹⁷ Lord Stanley was most likely Edward John Stanley, 2nd Baron Stanley of Alderley, who was a member of the House of Commons as well as the Privy Council and belonged to the Whig Party.

address, Stanley argues in favor of reformatories in light of signs that soon England would not be able to transport its criminals to penal colonies. He proclaims,

We have for some time past had to contemplate the probable alternative of being compelled to keep all our discharged prisoners at home. It was a natural result of that position that people should begin to say, ‘Since you can’t get rid of your criminals you must reform them’ ... I answer thus—that nationally important as it is at all times, *circumstances have made it doubly important now*—we cannot dispose of our criminals, we must reclaim them—we have comparatively little hope of reclaiming adults—we deal, therefore, preferentially with the young. [Emphasis added]

The author thus proclaims that England should pursue the reformation of its juvenile delinquents because the country can no longer “export” this group overseas. Additionally, as in the 1856 article mentioned earlier, the author’s language suggests that a chief justification to reform youth offenders is because it is more difficult to reform them when they are older. The author makes no mention of how prison or transportation affects these children, or how society can save them from a dark future. In the same piece, the author *does* note that “the option of good or evil has never been placed fairly before them [juvenile offenders],” but his previous comments directly contradict his brief show of concern for youth offenders themselves (a concern that still never calls on society to protect this vulnerable class).¹⁹⁸

Three days later, *The Manchester Guardian* reported on another conference on the very same subject. During this conference, Sir J. Pakington, a Member of Parliament, echoes Lord

¹⁹⁸ “National Reformatory Union (Condensed from the *Times*),” *The Manchester Guardian*, August 22, 1856, ProQuest Historical Newspapers The Guardian and The Observer.

Stanley's argument that reformation of juvenile criminals would reduce crime overall. He proclaims that England should "at once ... strike at the root of crime by cutting off its supply," a remark that presents youth offenders as objects and blatantly ignores their humanity.¹⁹⁹

This desire to attack "the root of crime" persisted into the 1880s. In 1881, the Home Secretary stated, "If you intend really to attack crime you must attack it in its source ... the method really to deal with crime, as with disease, is to get at those *germs* which sow the fevers and ferment within the blood" [emphasis added].²⁰⁰ Reformers also appeared concerned with how England's high rate of juvenile delinquency affected the country's international reputation. Three years earlier, an article on the Manchester and Salford Boys Refuge states that "nations abroad ... regarded us now as being the only country in the world so greatly disgraced by a large ignorant and vagrant population." Once again, the author ignores how juvenile justice reform could help reclaim youths, instead focusing on how this movement can reduce an embarrassing societal group so that England can meet the standards of fellow nations and thus regain her reputation.²⁰¹

The evidence suggests a split between reformers concerned with practical advantages to juvenile justice reform and those driven by the more moral argument. This division differs from the United States, where primary documents suggest that moral motivations drove the majority of reformers, who turned to practical advantages to expand the appeal of their cause. Possibly related to this difference is that, while in the nineteenth century U.S. activists wanted to reform

¹⁹⁹ "The National Reformatory Union (from the *Times*)," *The Manchester Guardian*, August 25, 1856, ProQuest Historical Newspapers The Guardian and The Observer. J. Pakington was likely John Pakington, 1st Baron Hampton, (b)1799-(d)1880. He was chairman of the Worcestershire Quarter Sessions from 1834 until 1837, when he was elected to the House of Commons. Pakington belonged to the Conservative Party and was a member of parliament until 1874. In 1852 he served as Colonial Secretary, and in 1867 he was named Secretary of State for War, a position he held until the end of 1838. See: "Obituary: Lord Hampton," *The New York Times*, April 10, 1880.

²⁰⁰ "The Home Secretary on Juvenile Crime (From Our Own Reporter)," *The Manchester Guardian*, October 31, 1881, ProQuest Historical Newspapers The Guardian and The Observer.

²⁰¹ "Manchester and Salford Boys Refuge," *The Manchester Guardian*, January 3, 1878, ProQuest Historical Newspapers The Guardian and The Observer.

rather than punish child offenders, in England during this same period many reformers expressed a wish to reform *and* punish youth offenders. This desire by the English likely reflected a belief that juvenile delinquents, while not criminal to the same extent as adult offenders, still were partially guilty of a crime.

As seen in the discussion of moral and practical motivations, there were reformers who believed that youth were not responsible for their criminality. Quite a number of reformers, however, while still interested in reformation, were not as forgiving. In 1823, *The Monthly Magazine* published an article on the “Fourth Report of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders.” The magazine opposes the Society’s support of the punitive focus of the justice system’s treatment of juvenile offenders, stating that the Society’s dedication to punishing in addition to reforming youth does not recommend “the society ... to us, who view the Criminal Code with horror, and its indiscriminating and sweeping application with unceasing affliction.” The author of the article adds that he believes that the “Society is serving rather as an auxiliary of a bad system than an agent of those benevolent principles on those subjects which now begin to govern the world ... we doubt whether it is correct to confer plausibility on a system radically wrong, which is maintained by a cruel and stiff-necked policy, and which policy merits no respect from liberal minds.”²⁰²

While the magazine makes clear its opposition to the Society’s support of current penal legislation, it does not outright oppose punitive treatment – rather it suggests that punishment

²⁰² “Proceedings of Public Societies: Society for the Improvement of Prison Discipline, and for the Reformation of Juvenile Offenders,” *The Monthly Magazine* 55, no. 378 (February 1, 1823): 56. Sir Richard Phillips founded *The Monthly Magazine* in 1796, and it remained in print until 1825. Prior to founding the magazine, Phillips was a schoolteacher and bookseller and held rather radical political views – he was once arrested for selling Thomas Paine’s *Rights of Man*. In 1808 he became a sheriff of the city of London, a position he held until his retirement in 1823.

should be more lenient and more focused on corrective methods of treatment. Given that the magazine was founded and edited by political radicals (of the progressive persuasion), this says quite a lot about society's opinion of the treatment of juvenile offenders. Furthermore, the Society's commitment to "render its [the justice system's] penalties most effective—by administering imprisonment, so at once to deter and reclaim the offender, and impress all who contemplate a violation of the law with the dread of punishment" demonstrates the importance many juvenile justice reformers in England still placed on punishment. The magazine also notes that the Society stated "that severe punishment must form the basis of an effective system of prison-discipline. The personal suffering of the offender must be the first consideration, as well for his own interest as for the sake of example."²⁰³ This statement further supports the notion that many reformers greatly valued punishment for youth offenders. In its very name, the Society proclaims that it is dedicated to the *reformation* of youth offenders, yet in its report it professes a continued dedication to punishment. Regardless of whether the Society truly supported punitive measures or instead was governed by public opinion, this goal reflects the continued desire among many members of middle-class society to punish youth offenders.

In 1847, by which time society was quite familiar with the juvenile justice reform movement, *The Manchester Guardian* reported on the meetings of the Manchester City Council, at which a Mr. Adshead (presumably the same Joseph Adshead quoted earlier) spoke. While he acknowledges that the system of imprisoning juvenile delinquents with adult offenders is "demoralis[ing] to juvenile offenders" and that this process "contaminated" juveniles, he does not propose *removing* youth from prisons prior to their trial; rather, he recommends that judges see to juvenile trials more quickly. As such, youth offenders would remain in prison – albeit for a shorter time period – until the judge heard his or her case. Furthermore, Adshead emphasizes that

²⁰³ "Proceedings of Public Societies," *The Monthly Magazine*, 56.

while the discipline to which judges subjected youth offenders must be “correctional, educational, and industrial,” it should also be “*sufficiently penal* in its operation to deter by endurance by *example*” [emphasis added].²⁰⁴ Rather than focusing on reforming the youth offender and turning him or her into a “productive” member of society, Adshead demands punishment as a reminder to the youth and his or her peers not to commit crime. Thus, despite his earlier assertion that juvenile delinquents are *forced* into dishonesty, he appears to view juvenile delinquents as at least *somewhat* responsible – after all, what use is deterrence if the offender is not accountable for his or her crime?

Even the Philanthropic Society, in its 1848 report on the reformation of juvenile delinquents, calls for punishment. The Society states that “to punish is not sufficient,” insinuating that judges should still exact punishments, and suggests, “After punishment has done its proper work of teaching practically the painful consequences of crime and error to the criminal himself, showing him experimentally, that the way of transgressors is hard, some agency seems requisite which may step in to give him the shelter and support which he requires while better principles are developed into habits.”²⁰⁵ In other words, an institution dedicated to reforming juveniles should exist, but only in addition to and not *instead of* punishment.

One also should note that the Society, other than its claim that exposing youth only to punitive measures is ineffective, presents punishment in a rather positive light. The Society refers to the “proper work” punishment accomplishes and how it “teaches” youth offenders needed lessons. Indeed, in 1850, the Philanthropic Society introduced to Parliament the Juvenile Offenders Bill, a bill “for the reformation of that class of persons.” In it the Society recommends “the adoption of a reformatory asylum with corporal punishment.” While a Mr. Milnes, in

²⁰⁴ “Manchester Council: Mr. Adshead's Motion on Prison Discipline,” *The Manchester Guardian*, April 17, 1847, ProQuest Historical Newspapers The Guardian and The Observer.

²⁰⁵ Philanthropic Society, “Reformation of Juvenile Offenders,” 40.

commenting on the bill, explains that children under fourteen would receive corporal punishment for first offenses instead of a prison sentence, it remains that the suggested sentence for even this younger group remains punitive.²⁰⁶

Some reformers even expressed discontent with the notion that youth offenders might not receive punitive sentences. An article published in 1854 discussing a meeting concerning the establishment of a reformatory institution (in the first year that Parliament had passed legislation allowing judges to sentence youth offenders to reformatory institutions rather than lengthy stays in prison; the first reformatory institution had opened eight years earlier but had operated in a private capacity) notes how J.F. Foster, a chairman, explained that he “could not go to the extent of the idea entertained in some quarters, that such institutions [reformatories] should in no respect be places of punishment.”²⁰⁷ This statement not only reflects the chairman’s disapproval of such a recommendation, but Foster’s language also suggests that the movement against punishing youth offenders was popular among only a minority of reformers, and subsequent speakers do not object to his assertion.

Seven years earlier, during an 1847 session of the House of Lords, the Duke of Richmond, Charles Gordon-Lennox, proclaimed that “prison discipline might do much [to reclaim the youth offender], but there were other measures that were necessary.” As evidenced by his acknowledgement of what “prison discipline” could accomplish, Gordon-Lennox, like

²⁰⁶ “Parliamentary Intelligence: The Juvenile Offenders Bill,” *The Times* (London, England), April 25, 1850, The Times Digital Archive; “Juvenile Offenders’ Bill: HC Deb 24 April 1850 vol 110 cc767-83,” Hansard 1803-2005, accessed March 27, 2013, <http://hansard.millbanksystems.com/commons/1850/apr/24/juvenile-offenders-bill>. Mr. M. Milnes is likely Richard Monckton Milnes, 1st Baron Houghton and a member of the House of Commons. In the second reading of the Juvenile Offenders Bill he identified himself as connected to the Philanthropic Society and having a deep interest in the reformation of juvenile criminals. While *The Times* article states that the “Philanthropic Association” was responsible for the bill, the transcript of the second reading of the bill, provided in the second citation, verifies that it was actually the Philanthropic Society.

²⁰⁷ “Reformatory Institutions: Meeting of Magistrates of the Salford Hundred,” *The Manchester Guardian*, March 1, 1854, ProQuest Historical Newspapers The Guardian and The Observer. Chairmen presided over justices of the peace in Quarter Sessions.

Adshead and the Philanthropic Society, views reformation as a sentence that judges should give in *addition* to punishment (and, in this case, punishment through imprisonment). The Duke also notes that it is close to impossible for a convicted criminal to ever gain employment, which suggests that a significant portion of English society held severe biases against *anyone* labeled “criminal.”²⁰⁸

In an 1856 meeting discussing the establishment of a juvenile reformatory, Mr. R. M. Gladstone asserts that “it should be shown to juvenile offenders that the committal of crime *must always* result in some punishment” [emphasis added]. Gladstone’s comment comes in response to the fear that youth offenders might view their assignment to the reformatory as a positive development (Gladstone notes that the Red Hill Reformatory is “done too expensively ... in such a style as to make it rather an inducement to get into the establishment than to keep out of it”). This is in keeping with the English principle of less eligibility – the idea that criminals should not be imprisoned at a “level of luxury above the lowest class,” and is one possible explanation for reformers’ hesitance to absolve child offenders of punishment.²⁰⁹

An 1876 article assessing Home Secretary Richard Cross’s view on legislation regarding juvenile offenders demonstrates that middle-class society – especially those of the Conservative persuasion, such as Cross – often viewed as criminal those youth offenders who were older than twelve, and thus often supported punitive measures for this group. A letter written on behalf of Secretary Cross discusses his condemnation of judges who use punitive measures to deal with youth offenders younger than twelve. In it, the author (on behalf of Cross) comments, “It is in the

²⁰⁸ “House Of Lords, Thursday, Feb. 18,” *The Times* (London, England), February 19, 1847, The Times Digital Archive.

²⁰⁹ “Juvenile Reformatory Question: Meeting of City Magistrates,” *The Manchester Guardian*, 1856. The principle of less eligibility originated from the English Poor Laws and initially referred to public houses for the poor. Members of the English middle and upper classes, however, also applied this idea to criminals and juvenile delinquents, positing that criminals should not be kept in conditions superior to those of the lowest class; else they would elect to go to prison. For more information, see: Edward W. Sieh, “Less Eligibility: The Upper Limits Of Penal Policy.” Abstract. *Criminal Justice Policy Review* 3, no. 2 (June 1989): 159-83. SAGE Journals Online.

highest degree undesirable to mark a *young* child as of the *criminal* class for which the gaol and the reformatory school *are designed*” [emphasis added].²¹⁰ Thus, it appears that while the Home Secretary supports more corrective training for youth age twelve and younger, he simultaneously approves of criminalizing the older class of juvenile offenders. The decision to write that the gaol and reformatory school “are designed” for “the criminal class” indicates Secretary’s Cross’s support of punitive measures for the elder group of youth offenders.

As late as the early 1880s, one still saw evidence of English society’s continuing support for punishment, as reflected in an article recounting a meeting regarding the treatment of youth offenders. The article reports the Earl of Derby stating, “What we want to find is some punishment for boys from 10 and 11 to 14 and 15 years of age, which shall not inflict permanent disgrace, which shall not confound them in after-life with the criminal class ... which shall not create a misplaced sympathy by any appearance of over severity, and which shall on the other hand be efficient enough to act as a deterrent.” Thus, while Lord Derby firmly opposes the placement of juveniles in prisons, he still emphasizes the need for some form of punishment. His comment regarding “misplaced sympathy” due to the “appearance of over severity” also suggests that part of his concern lies not in how prison affects children but rather in society’s *perception* of its impact, which in turn causes a demand for what he perceives to be too lenient legislation. Indeed, later in his speech Lord Derby calls for establishment of “separate places of detention for young offenders, so that they shall not *escape punishment altogether* merely because it is undesirable to send them to gaol” [emphasis added]. In addition, the focus on deterrence reflects

²¹⁰ “Reformatories,” *The Manchester Guardian*, September 14, 1876, ProQuest Historical Newspapers The Guardian and The Observer.

the continued belief that society should hold youth offenders of a certain age accountable for their behavior, at least in part.²¹¹

Another man in attendance, a Mr. H. Philips, demonstrates that Lord Derby is not alone in his opinion. Following Lord Derby's speech, Philips comments, "Any boy from nine to twelve years of age and upwards knew perfectly well what he was doing when he committed a criminal act." In fact, Philips supports even greater punitive measures than does Lord Derby, stating that he opposes part of the resolution because he "believed it was quite right that before being sent to a reformatory juvenile offenders should, if need be, be sent to imprisonment for a fortnight or a month, which would have a lasting impression on them."²¹² Given the meeting's previous discussion of establishing a separate detention facility for juvenile offenders, one can only conclude that Philips opposes this suggestion and supports the imprisonment of youths within the regular prison system.

Even the Home Secretary, Sir William Vernon Harcourt, speaking in 1881, is quick to emphasize that while he opposes imprisonment of juvenile delinquents he does not oppose punitive sentences: "I have seen sometimes in the newspapers that it is attributed to me, that it is my desire and my practice, that children who commit offences should go unpunished. I desire that *as little as any man in this country*" [emphasis added].²¹³ Through the speeches made by Lord Derby, Philips, and the Home Secretary, one can clearly see that even in the 1880s society was not yet committed to the idea that the justice system should focus solely on reforming juvenile offenders, unlike in the Midwest and Northeast United States.

²¹¹ "Treatment of Juvenile Offenders: Speeches by Lord Derby, Lord Houghton, and the Bishop of Manchester," *The Manchester Guardian*, October 6, 1880, ProQuest Historical Newspapers The Guardian and The Observer.

²¹² "Treatment of Juvenile Offenders: Speeches by Lord Derby, Lord Houghton, and the Bishop of Manchester," *Manchester Guardian*, 1880.

²¹³ "The Home Secretary on Juvenile Crime," *The Manchester Guardian*, 1881.

During much of the nineteenth century there existed many middle-class reformers who did not oppose, and even supported, punitive sentences for youth. Simultaneously, however, numerous reformers still called for the removal of youth offenders from adult prisons. As in the United States, the potential negative influence of adult criminals on young offenders greatly concerned reformers. As early as 1825, one can see evidence of this worry in a *Manchester Guardian* editorial: “There would be good hope of the reformation of many a young delinquent convicted of a first offence, if he were not further contaminated in the prison, by intercourse with older and more hardened criminals.”²¹⁴

Many members of society viewed imprisonment of youth offenders with adults as an impediment to their improvement given the negative influence of adult criminals. Indeed, the 1825 editorial later notes “the importance of some institution where young offenders – those who are not thoroughly hardened in guilt – may have the means of reformation supplied to them.”²¹⁵ This claim strongly suggests that influential reformers believed that prisons could not provide such an avenue. An article published three years later expands on this notion, specifically explaining how adult prisoners “contaminate” youth offenders. The article quotes a Mr. Lawley during a House of Commons session: “Some of those youths were confined in prison for three months previous to trial ... instead of being better members of society at the expiration of their imprisonment, *the language which they had heard*, and the *example set by those whom they associated with*, made them ten thousand times worse than they were when they entered the prison” [emphasis added].²¹⁶

²¹⁴ “Editorial Article 1 -- No Title,” *The Manchester Guardian*, 1825.

²¹⁵ “Editorial Article 1 -- No Title,” *The Manchester Guardian*, 1825.

²¹⁶ “House of Lords, Thursday: No Business of Importance,” *The Manchester Guardian*, 1828. Mr. Lawley is likely Francis Lawley, who was a member of the House of Commons from 1820 until 1832.

Continuing in this vein, an 1839 editorial comments that those youth “who begin their days in a gaol most commonly become a burthen for life; subsisted by the public while in, and by plunder when out.” The editorial goes on to note that if the government placed juveniles in a house of refuge (an institution dedicated to reformation of youth) instead of prisons, then juvenile offenders would learn “to support themselves, and to contribute something to the general expenses of society.”²¹⁷ The editorial argues that only through a house of refuge – which requires removing youth from prisons – will society successfully reform youth offenders, thus mirroring the arguments put forth in the 1828 article. Subsequent articles also echo the argument presented in the 1825 editorial.

In 1843, Adshead claims, “In such places [prisons] it was impossible to prevent evil communications, and the young thief, instead of being softened and subdued, was strengthened in wickedness and hardened in vicious habits, by the terrible tuition of his senior in years and crime,” while an 1849 article argues that “once a child has been, for whatever offence, an inmate of a prison, from that moment his character in the world is irreparably injured.”²¹⁸ In 1858, more than a decade after the establishment of England’s first reformatories, a *Manchester Guardian* article commends this development, noting how “the juvenile victim of a faulty law and an infamous education is only trained by imprisonment to become, on his release, the matured and deliberate felon.”²¹⁹ The author, for the same reasons as reformers before him, clearly supports the transfer of youth offenders to now existing reformatories.

Despite the creation of reformatories, however, English courts continued to sentence youth offenders to prisons, whether for a short period prior to or instead of attending a

²¹⁷ Humanitas, letter to the editor, 1839.

²¹⁸ “Mr. Adshead’s Lectures on Prison Discipline,” *The Manchester Guardian*, 1843; “Editorial Article 1 -- No Title,” *The Manchester Guardian*, March 14, 1849, ProQuest Historical Newspapers The Guardian and The Observer.

²¹⁹ “Editorial Article 1 -- No Title,” 1858.

reformatory. Consequently, the call for the removal of youth from prisons continued into the late nineteenth century, by which time some reformers had started to extend their concerns to repeat offenders as well. In 1877, an article concerning the state of Manchester industrial schools quotes the schools' annual report: "A great portion of the juvenile crime of this country was caused by sending children to prisons. The education which they got there was of the worst kind. It was a subject of regret that in a large proportion of cases convicted children were sent to gaol instead of being committed to reformatories. It was a very prevalent mistake to suppose that children could not be sent to reformatories except after a first conviction."²²⁰

Thus, by the late 1870s, one not only sees a continued condemnation of sending youth offenders to prisons but also that this concern now applied to youth offenders who had committed successive crimes. Whereas the 1825 *Manchester Guardian* editorial encourages the removal from prisons of only first-time youth offenders, the piece in 1877 extends this suggestion to repeat offenders. Reflecting on the current law concerning juvenile offenders, an 1880 article proclaims that "children under fourteen years of age should not, under any circumstances, be sent to common gaols, or in fact be treated as convicted of crime," consequently demonstrating both the continued practice of imprisoning youth and society's continued disapproval of such an action.²²¹

In this same year the Home Secretary, Harcourt, in a letter to the Mayor of Manchester, addressed this issue. "He [the youth offender] consorts with adult and hardened offenders guilty of heinous crimes," writes Harcourt. "He leaves the prison with the gaol taint ineffaceably impressed upon him ... and he becomes an outcast doomed to a future of disgrace and crime."

²²⁰ "The Manchester Certified Industrial Schools," *The Manchester Guardian*, February 23, 1877, ProQuest Historical Newspapers The Guardian and The Observer.

²²¹ "The Law with Regard to Juvenile Offenders," *The Manchester Guardian*, September 4, 1880, ProQuest Historical Newspapers The Guardian and The Observer.

While Harcourt states that there is little in his power to address this issue “in the absence of further legislation,” his letter indicates that a) society’s concern is prominent enough to attract the attention of an important member of government and b) even members of government (including though who supported for punishment of youth offenders, such as Harcourt), not only social reformers, are invested in removing youth offenders from prisons.²²²

By the conclusion of 1880, school boards in Manchester wanted to amend the Reformatory and Industrial Schools Act to “abolish the power to imprison in common gaols children from seven to twelve years of age.”²²³ This suggested amendment excludes thirteen and fourteen year olds, which indicates that not all reformers agreed with the movement to remove this age group from prisons. That said, the school board’s effort to amend legislation to keep out of prison all youth twelve years of age and younger once again demonstrates the desire of reformers to remove at least some youth from prisons.

Seventeen years later, in 1897, an editorial published in the *Manchester Guardian* asserts that everyone “with authority on the subject [of youth crime and reformation] are agreed in condemning the imprisonment of young children.” The editorial quotes one of those authorities, Knox Wigram, who comments, “In its [imprisonment’s] result may be lasting and immeasurable wrong. You have branded a boy with prison taint.” The author of the editorial further writes that wise judges “make it a rule not to do so [send children to prison] in any except the grossest cases,” but that there remain men “unfit to be entrusted with the serious responsibility of dispensing justice” who “wreck the whole lives of young offenders who might by judicious

²²² “The Imprisonment of Children: Letter from the Home Secretary,” *The Manchester Guardian*, September 18, 1880, ProQuest Historical Newspapers The Guardian and The Observer.

²²³ “The Treatment of Juvenile Offenders: Discussion in the Manchester School Board,” *The Manchester Guardian*, November 9, 1880, ProQuest Historical Newspapers The Guardian and The Observer.

treatment be made into honest and respectable citizens” by sending them to jails.²²⁴ One should note that this same editorial supports efforts to punish (rather than just reform) youth offenders. Despite this belief, however, the author still opposes the imprisonment of youth offenders, seeing such action as ineffective and immoral. Thus, even those members of society who supported punitive measures for youth offenders did not support the “tainting” and “wrecking” of young lives through imprisonment.

In 1906, Parliament introduced proposed reforms to address the issue of youth imprisonment. In an article concerning a deputation from the Committee formed to inquire into this proposed reform, the then Home Secretary, Herbert Gladstone, states that “it was obvious that [remand] homes were superior because the prison taint did not apply to them,” and added that he wished to see children’s courts – which would completely separate youth offenders from adult criminals – “established wherever possible.”²²⁵ Consequently, one sees that a concern with the imprisonment of youth offenders occupied English society’s reform efforts from the early nineteenth century into the early twentieth century, at which point Parliament finally addressed the matter through legislation.

While in the nineteenth century there existed some debate regarding the extent to which society could hold youth responsible for its criminality, the majority of reformers seemed in agreement that society should hold *parents* accountable for their children’s misbehavior. While not a particularly prominent point of discussion throughout the century, whenever the topic of parents did arise it always included a demand that parent pay the costs (in whole or in part) of reforming their delinquent offspring. An 1846 *Manchester Guardian* article reports on a

²²⁴ “Editorial Article 1 -- No Title,” *The Manchester Guardian*, January 29, 1897, ProQuest Historical Newspapers The Guardian and The Observer.

²²⁵ “Young Offenders: The Home Secretary and Proposed Reforms,” *The Manchester Guardian*, January 25, 1907, ProQuest Historical Newspapers The Guardian and The Observer. Remand homes served as temporary places of detention for youth offenders.

pamphlet by magistrate Benjamin Rotch, which is entitled, “Suggestions for the Prevention of Juvenile Depravity.” Among his recommendations, including the founding of an asylum for “unprotected and destitute children” by the government, Rotch recommends that “if [the parents of a child sent to the asylum are] found able to support, or to contribute to the support of the said child, the justices sending the said child to the asylum, may make orders from time to time for any amount of contribution to be paid, for or towards the support of the said child in the said asylum.”²²⁶

Published only six years later, in 1852, an article concerning reformatory schools makes very clear the author’s opinion of parents as responsible for juvenile delinquency: “The parents being in reality the guilty parties rather than the children ... should be chargeable for the maintenance of a child thrown by crime on the care of the state.”²²⁷ In the author’s comments, one almost senses a resentment that the state (and the taxpayers by extension) must often pay for what he or she sees as the failures of the parents. Meanwhile, an article appearing in 1854 states “that there should be some provision for making the parents chargeable for the expenses incurred in the proper training of the [delinquent] child.”²²⁸ This statement seems to indicate that reformatories introduce to youth offenders behavior and values that their parents failed to instill in them – that the parents, most likely due to their social position, lack morality (a sentiment one sees often in the call for education, as discussed later). Thus, the government should require payments from the parents because the government is stepping in to accomplish what the parents should have done free of charge to the state: raise their children to be law-abiding and principled citizens.

²²⁶ “Prevention of Juvenile Depravity,” *The Manchester Guardian*, 1846.

²²⁷ “Reformatory Schools,” *The Manchester Guardian*, January 3, 1852, ProQuest Historical Newspapers The Guardian and The Observer.

²²⁸ “Reformatory Institutions: Meeting of Magistrates of the Salford Hundred,” *The Manchester Guardian*, 1854.

Indeed, an article published only four years later, in 1856, insists, “It is essential that parents should be made to feel that they will themselves suffer for having educated their children to crime, or not educating them at all.” The article then adds, “Unhappily, these parents generally belong to a class vagrant by disposition and by necessity,” reflecting the view that the majority of youth offenders hail from the lower classes and are criminal because of their parents.²²⁹ This view continued into the late nineteenth century, as seen by MP Mundella’s comments in early 1881: “There were parents so abandoned that they even incited their children to crime in order that they might relieve themselves of the responsibility of their maintenance ... parents were now liable to pay a certain sum for the maintenance of their children at such school. In his opinion, they ought to be liable for the payment of the whole cost.” While Mundella also states that authorities “should devise some means of bringing a sharper remedy to bear on *those* parents” [emphasis added] – that is, the parents who encourage their children to commit crimes – his suggestion that parents *in general* should “be liable for the payment of the whole cost” suggests that he views *all* parents as responsible for the criminal behavior of their children.²³⁰

At the end of the nineteenth century, reformers as a whole finally began to prioritize reformation over punishment, more-or-less putting to rest discussions of whether youth also should receive punishment or to what extent they were liable for their behavior. In an 1895 article appearing in the *International Journal of Ethics*, author W.D. Morrison asserts that “our present methods of punishment by imprisonment have exceedingly little effect on a large class of offenders, and were never more *inefficient for reformative purposes* than they are to-day.... In all such cases, imprisonment may be successful in *punishing* the offenders, but it is useless as an

²²⁹ “Editorial Article 1 -- No Title,” *The Manchester Guardian*, 1858.

²³⁰ “Mr. Mundella, M.P., on Juvenile Offenders,” *The Manchester Guardian*, January 19, 1881, ProQuest Historical Newspapers The Guardian and The Observer. Mundella was a member of the liberal party and a reformer. He served as the vice-president of the Committee of Council on Education and was deeply dedicated to education reform.

instrument for making him better in character or a better member of society” [emphasis added].²³¹ In this same article, Morrison discusses the mental and physical ailments of youth offenders, suggesting that the development of a new understanding that youth offenders need treatment (a notion also seen in the United States around this time) had influenced society’s decreasing preference for punishment.²³²

In 1900, a *Manchester Guardian* article describes the events of a meeting, during which an essay by Rose M. Barrett on the treatment of juvenile offenders around the world is read. Her essay notes that “there is ... a decrease in many countries of juvenile prisoners, owing to changes of method and to the adoption of reformatory measures.” Barrett elaborates that many countries have adopted the practice of suspended sentences, which has contributed to a decrease in vagrancy and drunkenness among youth. She then argues that “in England in the treatment of juvenile delinquents ... preventive work requires to be greatly developed, and the methods largely changed, before it can ever attain the success that has been obtained elsewhere,” such as in the United States and Canada. Barrett calls on Parliament to expand the First Offenders Act “so that, at the discretion of the judge, all first offenders may be released on probation.”²³³

While Barrett’s focus is more on decreasing crime than helping juvenile delinquents, there is a broad understanding of the negative influences that imprisonment and punitive methods exert on the reformation of youth. She presses for a system in England that suspends the punishment of a first offender, a label that applies to a majority of the delinquent population. She

²³¹ W. D. Morrison, “The Juvenile Offender,” 163. Morrison was a reverend and considered a pioneer in criminology. He authored two books, *Crime and Its Causes* and *Juvenile Offender*, and edited the *Criminology Series*. He opposed purely punitive methods for dealing with criminals, arguing that “a high percentage of them [criminals] live under anomalous biological or social conditions. And it is these conditions ... which make him what he is.” For more information, see: Gerald D. Robin, “Pioneers in Criminology: William Douglas Morrison (1852-1943),” *The Journal of Criminal Law, Criminology, and Police Science* 55, no. 1 (March 1964): JSTOR.

²³² Morrison, “The Juvenile Offender,” 164, 166-170.

²³³ “The Treatment of Juvenile Offenders: Paper Before the Royal Statistical Society,” *The Manchester Guardian*, March 21, 1900, ProQuest Historical Newspapers The Guardian and The Observer.

also emphasizes that, for this to work, England must implement a system of probation officers. Given Barrett's previous reference to the system in place in the United States, she clearly is aware of the role that probation officers play in the U.S. It stands to reason that she imagines a similar role for probation officers – namely, helping to reform children and improve their home life. Furthermore, Barrett shows support for the indeterminate sentencing of youth offenders, a practice that she says one commonly sees in the U.S. and that ensures that a youth does not return to society before he or she has been reformed. Not only does this demonstrate her knowledge of U.S. juvenile justice policy, but it also reinforces her support for a reformatory rather than punitive focus.

Demonstrating society's developing opposition to punishment at the turn of the century, Dr. J. Macdonell, a lawyer in attendance, argues that in these other countries, "The notion of crime and punishment was dismissed, and the magistrate's function was one of inquiry into the child's moral condition." He presents this view in the context of "framing a series of clauses which would give effect to Miss Barrett's suggestion [of adopting the methods used in other countries]," thus demonstrating Macdonell's support for methods that focus solely on the reformation of youth offenders.²³⁴

Seven years later, in 1907, the Home Secretary, Herbert Gladstone (son of former Prime Minister William Ewart Gladstone), met with a committee "formed to increase the efficiency and promote the reform of existing legislation for the protection of wage-earning children." During this meeting he stated that "delinquent children ... were not in any sense real criminals. The first consideration if these children got into trouble ought to be the welfare of the child and its care; the offence should occupy a secondary position as far as possible." This statement holds a striking difference to the assertion by the Home Secretary only thirty years earlier, when

²³⁴ "The Treatment of Juvenile Offenders," *The Manchester Guardian*, 1900.

Secretary Cross stated that reformatories were designed to punish the “criminal class” of youth. Secretary Gladstone viewed wage-earning children, a class that included children older than twelve, as “not in any real sense criminals,” and supported the notion that the child’s welfare should comprise a judge’s primary concern. The relegation of the “offence” to a secondary concern suggests that punishment, too, had become significantly less important – after all, punishment is a response to the offense committed. Secretary Gladstone also comments that the government “wanted to keep these children away from the police and from *all criminal taint*,” indicating that society wanted to avoid labeling youth as criminal at all costs – even if it meant requiring that police officers never took on the role of a child’s probation officer.²³⁵ While support for punitive measures is still seen as late as 1897 (an untitled *Manchester Guardian* editorial states, “Children who steal or otherwise knowingly offend against the law must be punished in some way or another”), it is apparent that by the turn of the century the majority of public opinion had turned against the use of punishment.²³⁶

Many reformers attempted to decrease juvenile crime and/or “save” juvenile delinquents through policy and legislation affecting the courts and prisons. Other reformers, however, turned to education. Much of society believed that a lack of a proper education led to crime among the youth population, an assertion tied directly into middle-class society’s negative perception of the lower classes. An 1825 *Manchester Guardian* editorial comments, “We anticipate, to be sure, much good from the wide spread of education – from the exertions which are so generally making to improve the habits of the labouring classes, by giving them a *taste* for intellectual pursuits and enjoyments; and from the knowledge which they will thus acquire, how greatly their

²³⁵ “Young Offenders: The Home Secretary and Proposed Reforms,” *The Manchester Guardian*, 1907.

²³⁶ “Editorial Article1 -- No Title,” *The Manchester Guardian*, 1897.

own happiness ... depend on their good conduct” [emphasis added].²³⁷ Not only does this statement reflect society’s emphasis on education, but it also illustrates the view that education would introduce to the laboring class – the group that middle-class society believed comprised the majority of juvenile delinquents – morality and principles of which they were otherwise ignorant. The author’s decision to write that education would give these classes “a taste for intellectual pursuits” and would help youth understand the importance of proper behavior demonstrates such a perspective.

Twelve years later, in 1837, *The Manchester Guardian* published an article discussing how national education could lead to a decrease in juvenile depravity. The comments made by the author, Wheeler, reveal that the view of education as a weapon against juvenile depravity was pervasive. At one point he comments, “Very few indeed will be found to deny that early instruction is one of the most efficacious means of preventing crime, especially in the young.” Like the author of the 1825 editorial, Wheeler clearly thinks little of the poorer classes: “They [two young female offenders] are children of parents exceedingly poor, but *as depraved and dissolute as persons in their condition well could be*; and the girls are consequently *inured to want and vice, one may say, from their birth*” [emphasis added].²³⁸ While Wheeler never explicitly states that all members of the lower and working classes are inferior, he presents the negative characteristics of the impoverished parents as unsurprising and even predictable. Placed in this context, his support of education as a solution to crime seems directly linked to the idea that those of the lower classes are naturally ignorant – of knowledge and of the morality that accrues from a proper education.

²³⁷ “Editorial Article 1 -- No Title,” *The Manchester Guardian*, 1825.

²³⁸ Wheeler, “National Education v. Juvenile Depravity,” 1837.

This notion of education as the “cure” for juvenile delinquency continued into the 1840s. In 1840, the chaplain to the Preston House of Correction comments in his annual report, “These numbers [of juvenile offenses] manifest the wide spread of juvenile depravity, and the necessity for strenuous efforts to prevent and cure it. The former, and by far the more important, task must be allotted to education; the latter must be the work of prison discipline.”²³⁹ While the chaplain perceives that improving prison discipline will lead to a decrease in crime, he presents education as the more important and thus more likely successful solution. A *Manchester Guardian* article published nine years later directly echoes the chaplain’s assertion: “The obvious remedy is education, which implies the reverse of neglect,—which removes ignorance, prevents idleness, and is a great safeguard against evil associations.”²⁴⁰

When the Education Act of 1870 passed twenty-one years later, many reformers viewed this legislation as responsible for a decrease in juvenile crime. Eleven years after the introduction of the act, an article records A.J. Mundella, a member of the House of Commons, stating,

The first thing they required under the Education Act, which he was glad was compulsory, was to get the child into the elementary school, and if they succeeded in that early enough, before he had formed vicious associations and developed willfulness of character—say at five or six years of age—they would do much to obviate the necessity of sending him to an industrial school ... there was no doubt that the wholesome discipline of the school, the habits of obedience, punctuality, and order in which he was

²³⁹ “Juvenile Depravity,” *The Manchester Guardian*, 1840.

²⁴⁰ “Manchester: Juvenile Delinquency - Prison Discipline,” *The Manchester Guardian*, March 14, 1849, ProQuest Historical Newspapers.

trained, would do much to prevent that child from falling into the ranks of vice and crime.²⁴¹

Reformers such as Mundella appear to place quite a lot of stock in education. His comments suggest a belief that once the country had firmly put in place universal education, the need for industrial schools would greatly diminish. Education, Mundella and others reformers believed, could relieve potential juvenile delinquents of their vicious and vagrant inclinations, eventually transforming them into productive members of society.

W. D. Morrison's 1895 article reiterates a connection between society's tendency to blame youth crime on a want of education and their scorn of the lower classes. Commenting on the common characteristics of juvenile offenders, he writes, "If we look a little more closely at the mental condition of the juvenile offender, we shall find, in the first place, that his intellectual capacity is on the whole of an inferior order ... he has often had no educational opportunities...."²⁴² Thus, Morrison views a lack of education as an inherent trait among youth offenders. Furthermore, he later notes, "The parents of the children in the Gateshead industrial school consisted of the refuse of the laborers in the large manufactories, men who had drifted to the very lowest class of the population ... as a class, general laborers are recruited from the *most backward, the most impoverished, the least intelligent* portion of the community" [emphasis added].²⁴³ Morrison makes clear his contempt for the laboring class. His description of this group as "the most backward, the most impoverished, [and] the least intelligent" demonstrates his opinion that its members are inherently inferior; they lack the skills, knowledge, and traits necessary for anyone to consider them civil members of society. As such, the parents pass on

²⁴¹ "Mr. Mundella, M.P., on Juvenile Offenders," *The Manchester Guardian*, 1881.

²⁴² Morrison, "The Juvenile Offender," 168-169.

²⁴³ Morrison, "The Juvenile Offender," 175, 178.

these deficiencies to their children, who become juvenile delinquents because they fail to receive an intervention in the form of a proper education.

Morrison's view was common at the turn of the twentieth century. In the same year that his article appeared, a letter to the editor on the relationship between Sunday schools and juvenile crime states, "Make our national system of education as pure and efficient as possible for the training of the young in habits of virtue, good citizenship, and secular knowledge," while another letter to the editor published two years later, in 1897, comments that "for every pound which is spent on the education of the young save many pounds in ... the absence of the necessity for further goals."²⁴⁴ Both correspondents express the view that education can imbue children with "virtue" and save them from crime – a perspective that also suggests that these classes of children will fall to the wayside without the intervention of the middle class.

Indeed, reformers had reason to express such faith in education: by the 1890s, they could report a decrease in juvenile delinquency since enactment of the Education Act in 1870. While a number of different causes could have led to this result, the public viewed the Act as the obvious one. In the same 1897 letter to the editor, the author writes, "In our own city the reduction in all forms of crime in the twenty years following the passing of the Education Act was quite phenomenal."²⁴⁵ Regardless of the legislation's success (a claim that remains in question, as does the matter of whether the increased access to education instilled "values" in otherwise wayward children or if the schools simply kept youths occupied and off the streets), it remains clear that a negative view of the lower and working classes contributed to the belief that education posed the solution to youth crime.

²⁴⁴ S. Knowles, letter to the editor, *The Manchester Guardian*, January 16, 1895, Proquest Historical Newspapers The Guardian and The Observer; James W. Southern, letter to the editor, *The Manchester Guardian*, November 8, 1897, ProQuest Historical Newspapers The Guardian and The Observer.

²⁴⁵ Southern, letter to the editor, 1897.

At the turn of the twentieth century, English juvenile justice reformers finally dedicated the majority of their efforts to creating a system focused purely on the reformation of youth offenders. Until the close of the nineteenth century, however, they found themselves debating the same topics repeatedly, thanks, in part, to a reliance on a national parliament to legislate the proposed reforms into reality – which sometimes took years if not decades to occur. The struggle between reformers motivated by a desire to rescue and help children and those only interested in the practical advantages of juvenile justice reform (such as the decrease in costs and crime) continued well into the twentieth century.

A number of factors, however, set the nineteenth-century English juvenile justice reform movement apart, both with respect to the history of the country's juvenile justice reformation and in comparison to the United States. The most prominent were the desire among some reformers to continue punishing youth offenders well into the 1880s; the effort among all reformers to hold parents financially accountable when the government sentenced their children to reform schools; the continued struggle to remove youth from prisons even at the end of the nineteenth century; and England's strong reliance on education policy to deal with juvenile justice issues. It is notable that in the late nineteenth century England struggled with many of the same juvenile justice issues that the Midwest and Northeast United States had dealt with effectively decades earlier. This delay was due in part to England's reliance on a centralized government to introduce legislation to transform the treatment of youth offenders. There was, however, also a heightened tension between socio-economic classes and what appears to be an even greater loathing for the lower classes by the middle class as compared to the U.S. Nevertheless, England's more lengthy progression allowed it to follow the American example once it became clear that its new juvenile court and probation system were much more than an experiment. In 1908, Parliament passed the

Children and Young Persons Act. With this key legislation, England established the country's first children's court and finally removed youth from prisons, thus setting the stage for juvenile justice changes throughout England.

CONCLUSION

By 1910, England and the Midwest/Northeast United States both had in place separate juvenile court and probation systems. The system that Parliament had introduced in England only two years prior, however, had existed in the United States for over a decade. The requirement to pass legislation solely through Parliament – as compared to the more decentralized state governments in the United States – no doubt delayed the rate at which England could progress its juvenile justice policy. It is clear, however, that social factors played an equally important role – if not more so – in achieving a quicker pace of progress in juvenile justice policy in the United States.

Similarities certainly existed between the English and American juvenile justice reform movements. In both countries reformers expressed interest in rescuing youth offenders from their awful circumstances and turning them into “productive” members of society. Reformers in both nations also demonstrated a clear interest in using the movement to exert social control: through the introduction of juvenile justice institutions and eventually a juvenile court and probation system, middle-class members of society could instill their values in youth offenders, who typically hailed from the lower classes. While American reformers expressed a distinct loathing for the principles (or perceived lack thereof) of the lower and working classes, English reformers, who hailed from the middle and upper classes (like their American counterparts), harbored an even more profound abhorrence of the lower classes. One sees this attitude reflected in the continued assertion by English juvenile justice reformers that parents should pay for the institutionalization of their delinquent children and, until the very end of the nineteenth century, the belief held by many reformers that youth offenders – despite their potential for rehabilitation – remained criminals and thus deserved punishment in addition to any actions taken to reform

them.

Through a comparison with the United States, one can see that for England the period between 1815 and 1910 was mostly one of continuity. While in the United States one can clearly discern two eras – that of institutionalization (c. 1815 to c. 1880) and that of the juvenile court and probation (c. 1880 to c. 1910) – there seemed to exist just a single era of juvenile justice reform in England. For almost all of those 95 years, England’s progress in juvenile justice advanced at a relatively slow rate as reformers and middle-class society in general remained mired in the same debates: the extent to which society could hold parents financially and morally responsible for the behavior of their delinquent children; the extent to which youth offenders themselves were criminal and thus deserved punishment; the importance of turning youth offenders into productive members of society through reformatory institutions; and the role of schools in intervening in the lives of lower-class children before their environment transformed them into criminals.

With their fervent desire to purge the lower classes of untraditional values and lifestyles, English juvenile justice reformers turned to education policy. Hoping to reach the lower classes *before* their environment permanently “tarnished” the children and transformed them into young criminals, many English reformers focused their efforts on creating a system of compulsory education, which they believed would rid society of youth crime. While positives certainly resulted from the increased access to education by lower- and working-class children that resulted from the Elementary Education Act of 1870, those children *already* accused of delinquency and those who continued to slip between the cracks were placed at a severe disadvantage compared to their American counterparts.

At the conclusion of the nineteenth century, English reformers ceased discussion of

education policy as a means of addressing youth delinquency (likely because the Elementary Education Acts, which began with the Elementary Education Act of 1870, had successfully introduced compulsory education). Thanks to this shift away from a focus on education and a recognition that punishment and prison were not effectively reducing youth crime, in the final years of the nineteenth century the majority of English reformers turned their full attention to reclaiming youth offenders. It was at this point that reformers began calling for the introduction of a juvenile court and probation system – a movement greatly influenced by the success of such measures in the United States (among other countries). Unlike in the Northeast and Midwest United States, however, this movement in England developed in the context of removing youth from prisons. By the 1880s, the Northeast and Midwest United States had firmly established the practice of keeping youth offenders out of adult prisons and placing them in juvenile institutions. As such, they were in a position to identify the failure of juvenile institutions to reclaim youth offenders. Consequently, during the same period in which English juvenile justice reformers were *still* fighting for legislation to remove delinquent youth from prisons, American reformers already had turned their attention to a new method – individualized treatment for youth offenders – thus recognizing the shortcomings of applying the same method of treatment to every child. As a result, by the first years of the twentieth century, institutionalization of youth offenders was quickly becoming a practice of the past in the Northeast and Midwest United States.

It is important to recognize that the introduction of juvenile court and probation systems – in *both* the United States and England – did not come without flaws. In both countries, reformers continued to exert social control by persisting in defining “proper” versus “criminal” behavior (a definition based in middle-class perceptions) and using reforms to instill middle-class values among the lower classes. One also should remember that while policy reform in the United

States did progress at a faster rate than in England, many of the same problematic motives of English reformers – specifically a desire to control the lower classes – were also present in the American reform movement. In the United States a fear of urbanization and industrialization encouraged middle-class citizens to support social reforms that they hoped would ensure the continuation of their own values and lifestyles. Viewing crime as a result of “untraditional” principles and standards of living, middle-class reformers turned their attention to saving youth offenders from the dangerous influence of their environment: first, by placing them in juvenile institutions created and run by the middle class, where youth offenders could be inculcated with “proper” attitudes, and later, by creating an individualized system of treatment through a juvenile court and probation system, which enabled the court to not only “teach” lower-class families how to raise their children but also place delinquent and even potentially delinquent youth with court-approved, middle-class guardians when the court deemed their original guardians inadequate.

An examination of the English and American juvenile justice reform movements during the nineteenth and early twentieth centuries not only reveals each country’s societal values during this time period, but it also demonstrates how trends can impact public policy, at least in democratic societies. In both the United States and England, policymakers responded to the prominent discussions taking place within society. In the United States, during the second and third quarters of the nineteenth century, reformers rallied in favor of reformation of youth offenders. Consequently, legislatures in the Midwest and Northeast introduced laws that established reformatory institutions and prevented youth offenders from entering prisons. When American reformers then turned their attention to treating youth offenders as individuals and recognized the importance of exposure to a home environment, legislators introduced separate juvenile courts and probation systems (or, in some cases, such as Massachusetts, replaced a pre-

existing private probation system with a public program).

In England, while reformers also rallied in favor of reformation of youth offenders, they simultaneously continued to emphasize the importance of punishment and “setting an example.” As a result, Parliament established reformatory schools but continued to require that youth offenders first experience prison time. As late as the beginning of the twentieth century, prison sentences for English youth offenders remained routine: even those sent to reformatory schools first had to spend a brief amount of time in prison. While at the very beginning of the twentieth century first offenders in the Northeast and Midwest United States routinely received suspended sentences and individualized treatment thanks to the presence of juvenile courts and probation systems – a practice that decreased the likelihood of recidivism – English reformers had yet to accomplish a similar feat for youth offenders in England and would not do so until nearly the end of the first decade of the new century. Thus, English society’s almost myopic emphasis on the “threat” and “unseemliness” of the lower classes – which resulted in juvenile justice reformers having to fight into the twentieth century to remove youth offenders from prisons and caused reformers in the second half of the nineteenth century to split their focus between education and juvenile justice reform – rendered England’s juvenile justice policies backwards in comparison to those in the Northeast and Midwest U.S. Once reformers abandoned their call for punishment and focused on reclaiming youth offenders, members of Parliament started to adopt this same perspective, and within a few years England finally had its own youth court and probation system.

Scrutiny of these reform movements exposes more than simply their history. It also reveals the significant role that public discourse played in shaping policy – a phenomenon that continues to this day. The treatment of youth offenders is a discussion that has persisted into the

twenty-first century in both nations, with juvenile justice policy undergoing a dramatic transformation since the early years of the juvenile and youth courts. Legislators in the U.S. and England continue to search for policies that will both successfully decrease youth crime *and* please their constituents. The comparative examination in this thesis shows that too much attention to the latter effort can impede progress. As legislators and reformers continue to rally for the reformation of juvenile justice policy, perhaps it is time to look back at the history of juvenile justice reform – not only to see how juvenile justice has developed over the past two centuries, but also to learn how biases against the “subjects” of reform can impact the discussions taking place and thus the laws and policies introduced. The history of the American and English juvenile justice reform movements between 1815 and 1910 serves not only as a tale of progress; it also offers a reminder that the ways in which society debates issues can greatly influence a country’s policy and its rate of progress – for better or for worse.

AFTERWORD
Forgotten History, Repeated Mistakes:
The Juvenile Justice System in the United States and the Lessons Left Unlearned

Research into the nineteenth-century and present-day juvenile justice reform movements demonstrates how little society's perspective on youth crime has changed over time. Articles from the 1800s blamed books ("dime novels") for youth crime, just as today's society blames youth crime on violent television and film.²⁴⁶ As far back as 1826, reformers in the U.S. agitated for the separation of youth offenders and adult criminals in light of the negative influence of adult criminals on youth offenders. This issue remains prominent nearly two hundred years later: according to a 2011 U.S. Department of Justice National Institute of Justice (NIJ) report, youth transferred to adult prisons are "34% more likely than youth retained in the juvenile court system to be re-arrested for a violent or other crimes."²⁴⁷

Additionally, in the nineteenth century much of the blame for delinquency was placed on "untraditional" and impoverished families, whose values did not match those of the middle and upper classes. One still sees this today, specifically with the disproportionate amount of contact minorities have with the juvenile justice system: minorities comprise one-third of the youth population but two-thirds of the youth held in juvenile justice facilities.²⁴⁸ In 2005 in Arlington, Virginia, for example, of the cases referred to the juvenile court for delinquent offenses, 35.65 percent of the youth were black, 29.67 percent were Hispanic, and 31.58 percent were white

²⁴⁶ "Juvenile Education," *The New York Times*, July 25, 1882, ProQuest Historical Newspapers.

²⁴⁷ U.S. Department of Justice National Institute of Corrections, *You're an Adult Now: Youth in Adult Criminal Justice Systems*, by Jason Ziedenberg (Washington, D.C.: 2011), 5, <http://static.nicic.gov/Library/025555.pdf>.

²⁴⁸ Jeff Armour and Sarah Hammond, *Minority Youth in the Juvenile Justice System: Disproportionate Minority Contact* (Denver, CO: National Conference of State Legislatures, 2009), 4, <http://www.ncsl.org/print/cj/minoritiesinjj.pdf>.

(2.87 percent were Asian/Pacific Islander while 0.24 percent were “unknown”).²⁴⁹ While the breakdown of youth arrested in Minnesota in 2010 does not perfectly reflect the NIJ statistic, one clearly can see the disproportionate number of minority arrests: while whites comprised seventy-eight percent of Minnesota’s youth population, they constituted only fifty-three percent of delinquent arrests; meanwhile, blacks comprised *eight* percent of the population and *thirty-four percent* of delinquent arrests.²⁵⁰ Furthermore, lower-class minority youth tend to face arrest for their misbehavior while middle or upper-class white youth are more likely to receive opportunities to address their misbehavior outside of the justice system. As California Superior Court Judge Kurt Kumli once said, “You can't go into any courtroom in this state and take a look at the kids that are in custody and the kids that are out of custody and deny that there is racial disparity in the juvenile justice system.”²⁵¹

Since the introduction of “tough on crime” policies in the 1980s, American society apparently has also experienced amnesia about the goals of the juvenile justice system. In the early nineteenth century, reformers realized that placing youth offenders and adult criminals in the same facilities negatively impacted youth, disposing them more towards future criminal acts. Today, however, many states automatically transfer youth of a certain age to the adult system. As a result, courts often send youth offenders hundreds of miles away from their families, where they lack both the support they need in order to reform as well as the necessary resources that are denied to them because they are held in an adult prison rather than a juvenile institution. Yet at the turn of the twentieth century, state legislatures established juvenile courts to reform, not

²⁴⁹ “Juvenile Justice System Disproportionate Minority Contact,” Virginia Department of Criminal Justice Services, last modified 2005, <https://www.dcjs.virginia.gov/juvenile/dmc/>.

²⁵⁰ Minnesota Department of Public Safety Office of Justice Programs, *On the Level: Disproportionate Minority Contact in Minnesota's Juvenile Justice System*, by D. Swayze and D. Buskovich (St. Paul, MN: 2012), 20, https://dps.mn.gov/divisions/ojp/forms-documents/Documents/On%20The%20Level_FINAL.pdf.

²⁵¹ “Juvenile Justice: Is the System Racially Biased?,” Frontline, last modified 2013, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/bench/race.html>;

punish, youth offenders, and to ensure that youth offenders received the care and attention that a child needed. Through the individualization of sentencing youth on a case-by-case basis, judges could create what was more or less a treatment plan for youth offenders. Furthermore, reformers and judges aimed to return as many juveniles to their homes as possible and to turn to institutions only as a last resort. In 1902, New Jersey probation officer Emily E. Williamson wrote, “Imprisonment [of youth offenders] breaks down self-respect, placing a stigma on character that is never removed.”²⁵² Yet in 2008, over one hundred years later, the United States incarcerated 336 youth for every 100,000 youth in its population, compared to 69 in South Africa, 46.8 in England and Wales, and 18.6 in France.²⁵³

While the current trend in juvenile justice policy is to rely on institutions to both punish and treat delinquent youth, promising alternatives are growing in popularity. One example is “reintegrating juvenile offenders back into the community” through efforts like restorative justice, which requires the offender to meet with various members of the “community’s juvenile justice system.” Massachusetts has enjoyed particular success with alternative methods. Its juvenile justice system consists of community-based residential programs through which youth receive more individualized care and are at less risk of other youth offenders negatively impacting their rehabilitation, not to mention they are also completely separated from adult offenders. Case managers ensure that the youth follows a particular rehabilitation plan and receive counseling that will facilitate an easier reintegration into society. Massachusetts thus

²⁵² Williamson, “Probation and Juvenile Courts,” 259.

²⁵³ Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (Baltimore, MD: The Annie E. Casey Foundation, 2011), 3, <http://www.aecf.org/KnowledgeCenter/Publications.aspx?pubguid={017F0783-0900-4699-89C9-061BE79BAD74}>.

prioritizes rehabilitation over punishment, which was a chief goal of juvenile justice reformers in the nineteenth century.²⁵⁴

Another positive development in the twenty-first century is the growing understanding of adolescent brain development. In the 1980s and 1990s, “tough on crime” policies led states throughout the country to enact legislation requiring that (depending on the state) a youth sixteen or older or seventeen or older be processed, tried, and sentenced in the adult system. Recognition that the frontal lobe, which affects one’s decision-making abilities, does not fully develop until one reaches the mid-twenties has motivated many states to expand the jurisdiction of juvenile courts so that sixteen and seventeen year olds once again are sent to the juvenile rather than the adult system. That said, as of 2012, twelve states *still* operate under laws that automatically transfer youth aged sixteen or older to the adult system regardless of the crime they have committed. For example, a sixteen year old in North Carolina who is arrested for committing a crime that is illegal only because he or she is a minor, such as underage drinking, will end up in the adult system.²⁵⁵

The more nuanced understanding of brain development also has led to an evolving view of the culpability of youth offenders. In 2005, the United States Supreme Court case, *Roper v. Simmons*, banned the death penalty for anyone aged seventeen or younger, thus recognizing that “the extent to which youths can comprehend the consequences of their actions even in cases of murder or forcible rape” is not the same as adults.²⁵⁶ Just last summer, the Supreme Court ruled unconstitutional laws that automatically sentence minors guilty of murder to life without parole, although life without parole remains a possible sentencing option. It appears that the United

²⁵⁴ Shoemaker and Wolfe, *Juvenile Justice*, 92 and 98.

²⁵⁵ Sarah Alice Brown, Trends in Juvenile Justice State Legislation 2001 – 2011 (Denver, CO: National Conference of State Legislatures, 2012), 3-4, <http://www.ncsl.org/documents/cj/TrendsInJuvenileJustice.pdf>.

²⁵⁶ Shoemaker and Wolfe, *Juvenile Justice*, 102-103.

States is gradually – very slowly but surely – moving towards a system that recognizes the difference between adult criminals and youth offenders.

It is clear that at the close of the twentieth century the United States adopted highly regressive policies by both today's global standards and those of our nation at the turn of the twentieth century. In the 1980s and 1990s, the public perceived a rise in youth crime and blamed “too lenient” policies for that development. Rather than holistically consider the central goals of the juvenile justice system – *i.e.*, preventing youth crime *and* protecting youth offenders – legislators, hoping to appeal to the public, passed laws that called for punitive measures. A quick glance at documents relating to the history of our juvenile justice system would have shown these policymakers that early nineteenth-century reformers already had determined that prioritizing punishment over rehabilitation was an ineffective method for decreasing youth crime. Thus, in a broad sense, examining what reformers hoped to accomplish in the nineteenth century that our system has yet to achieve, or the ways in which our policies have regressed from those of the early twentieth century, can help inform both the direction that legislators take and policymakers' and reformers' evaluations of whether our juvenile justice system truly is effective – both for reducing crime and rehabilitating youth.

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