

The Social History of Crime and Punishment in America: An Encyclopedia

Juvenile Justice, History of

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The history of juvenile justice in the United States can be divided into distinct periods, and each can be viewed in relation to a fundamental question: To what extent should the American system of justice view juveniles differently than adult offenders? That question has been resolutely and inexorably tied to how American society has throughout its history viewed “infants,” “children,” “youth,” and “juveniles.”

Child-Saving Movement

American justice has long been influenced by the English common law, which, until the colonies and states passed their own laws, was the law that governed the thirteen colonies. In his *Commentaries on the Laws of England*, Sir William Blackstone, a British jurist, judge, and politician, much admired and read in American judicial circles, wrote that “infants” were incapable of being classified as criminals because they lacked what Blackstone described as “a vicious will.” Blackstone differentiated between “infants” and “adults” and their liability at law on the basis that children were too young to understand their actions and therefore lacked the necessary “intent” to commit unlawful acts. According to the social and legal conventions of Blackstone's time (he died in 1780), an infant was a person under 7 years of age, while a child over 14 was punished as an adult if convicted of a crime. Exceptions were made for children between the ages of 7 and 14 who were judged to understand the nature of their actions; these unfortunate youths could and were punished as adults, including for capital crimes permitting execution.

This eight-year-old boy was brought to the juvenile court in St. Louis, Missouri, on May 5, 1910, to answer charges of stealing a bicycle. Judges at that time were making an attempt to keep the courtroom imposing, but also a place of “care and solicitude.”



Ideological shifts in American culture's conception of youth and children, however, at the end of the 19th and early 20th century, saw distinct changes in how the American society and its justice system viewed the rowdy and sometimes unlawful acts of youth. In Manhattan, the Society for the Prevention of Juvenile Delinquency founded the New York House of Refuge for juvenile delinquents [p. 930 ↓] in 1825. Chicago opened the doors of its Reform School in 1855. The country's first juvenile court was established in 1899 in Cook County, Illinois. Soon, other jurisdictions created their own juvenile justice systems where the focus was on understanding the root causes of offending juvenile behavior, rehabilitation, and helping juveniles avoid a life of crime. A social movement took root that did not separate youth from the economic and social conditions that produced them. The establishment of juvenile courts was a crucial component of the rise of the “child-saving movement” of the late 19th century and early 1900s. The activists and reformers who backed these institutions with their time and finances subscribed to a model that protected juveniles by separating them from adult offenders upon incarceration and viewed their offenses in context.

Young people who ran afoul of the law were considered victims of their circumstances and perceived to be delinquents whose offenses were the result of neglect and poverty; these unfortunate youths were guilty of acts contrary to the public interest, but certainly, they were not guilty at law of criminal acts. At this time in American history, focus on the “indiscretions of youth” was on the root causes of offending behavior, usually indicting

parents for inefficiently rearing their children. Middle-class women who believed that the future of society was crucially bound to instilling “proper values” in youth were in large part responsible for promoting these views.

Doctrine of in Loco Parentis

At the same time, the doctrine of in loco parentis, an invention of 19th century patriarchy, governed the relationship between the state and youth, both in the justice system and in schools. The doctrine of in loco parentis was cultivated in various contexts, including the law of wills and estates as well as the law of tort. Derived from the Latin and meaning “in the place of the parent,” in loco parentis, both in the context of juvenile courts and schools, served as the doctrinal basis and source of the state's legal authority for many decades and underscored the paternal approaches taken by the state institutions and policies. As Judge Julian Mack, an early judge of the juvenile court of Cook County, observed in 1909 of the juvenile court in the United States, the juvenile justice system was vital to ensuring that errant youth was treated in such a way as to ensure that he or she did not return to the justice system as an adult. Judge Mack's description of the workings of juvenile court from that time:

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

These kinds of reforms were also taking root in Canada. In 1908, the Juvenile Delinquents Act was passed by the federal parliament to deal with the offenses committed by youth, also emphasizing reform and rehabilitation, not punishment. Nonetheless, many commentators have pointed out that the “child saving” origins of early judicial responses to juvenile “delinquents” represented merely one of two contrary lines of thought respecting how best to deal with young people when they engage in

criminal behavior that have percolated for decades. The ongoing tensions persist today: Should the emphasis in response favor the protection of youth from the cruelties of culture or the protection of society from the disruptions of antisocial youth? A survey of the historical development of the juvenile justice system reveals this ongoing tension and its persistence today.

While the doctrine of *in loco parentis* had dominated the development of American law and policy in the early 1900s, its prominence had nearly disappeared toward the last half of the 20th century. Youths were no longer conceived merely as juvenile delinquents not responsible for their own behaviors but as potential threats and possible sources of danger. They were focused targets of “tough on crime” efforts of legislators and politicians.

[p. 931 ↓]

Juvenile Court System

By the 1960s, juvenile courts across the U.S. Supreme Court adjudicated almost all criminal cases involving young people under the age of 18. Young offenders were rarely transferred to the adult criminal justice system, and only when the juvenile court agreed to waive its jurisdiction. A 1967 decision by the Supreme Court, *In re Gault*, 387 U.S. 1 (1967), made a significant impact on how juvenile cases were administered. The decision of the Supreme Court affirmed that juvenile courts had to respect the due process of law rights of juveniles guaranteed under the Fifth and Fourteenth Amendments to the U.S. Constitution. The ruling was the result of a consideration of Arizona's decision to place 15-year-old Gerald Francis Gault in detention for violating probation by making an obscene call to one of his neighbors.

The Arizona juvenile court ordered that Gault be confined in a state industrial school until he turned 21 or was “discharged by due process of law.” The Supreme Court ruled that young offenders had a right to receive fair treatment under the law, including the right to receive notice of charges, the right to legal counsel, the right to confront and to cross-examine their accusers, and the right to the privilege against self-incrimination. When Gault had been apprehended, his parents had not been notified of the charges

against their son. In a dissenting judgment, Justice Potter Stewart warned that the court's decision would “convert a juvenile proceeding into a criminal prosecution,” preferring the historical purposes of the juvenile justice system, which had up until the *Gault* decision followed a looser model styled after civil proceedings. Justice Stewart presaged that by assuring youth were extended the same due process rights and guarantees in juvenile court as adults in adult criminal court, the majority might very well be transforming juvenile court into criminal courts.

In 1968, Congress passed the Juvenile Delinquency Prevention and Control Act intended to encourage states to develop community-level programs aimed at curtailing juvenile delinquency. In 1974, the Juvenile Justice and Delinquency Prevention Act replaced the 1968 legislation, underscoring the prevention of juvenile delinquency. To qualify for federal funding, states were obliged to maintain a separation between juvenile and adult offenders.

Threats to Society and Superpredators

However, the perception of appreciably rising crime rates among juvenile offenders in the 1980s and 1990s, and the perception that offences committed by youth were becoming increasingly violent, significantly impacted conceptions of juvenile justice. This shift in conception would influence the discussions of juvenile justice in the coming decades and refigure the “hunker down” mentality that would come to inform discussions of juvenile justice ever since. In public consciousness, rehabilitation ceased to be a priority associated with offending youth and the emphasis shifted to “get tough on crime” approaches in which young offenders were no longer perceived as juvenile delinquents free from responsibility for their own actions, but situated young offenders as potential threats and possible sources of danger to the rest of the society.

Discussions about juvenile justice have unfolded in a context of extreme violence. In the late 1990s, a highly publicized series of school shootings and other incidents of extreme violence committed by youths have given rise to a moral panic and a fear of offending youths. No longer portrayed as “juvenile delinquents,” some researchers described the rise of the “superpredator” generation in the new millennium. Distinguished from previous generations by the Office of Juvenile Justice and Delinquency Prevention as

a generation for whom brutal responses and violence were a way of life, the myth of the superpredator has taken root and will be difficult to turn aside. Recent research disputes these depictions and suggests that youth violence and delinquency was greatly exaggerated in the 1990s; however, the fear experienced at the time resulted in significant changes to the United States' approach to juvenile crime.

As the emphasis on extreme violence and the rise of the superpredator was based in large measure on fear and repeated images in popular culture of youth as perpetrators of ongoing extreme violence, it may be deflected by reference to data that indicate that in the 21st century, youth crime is on the decline and less punitive, and more contextualized measures are needed when it occurs.

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See Also:

- 1921 to 1940 Primary Documents
- [Children, Abandoned](#)
- [Children's Rights](#)
- [Juvenile Corrections, History of](#)
- [Juvenile Courts, History of](#)
- [Juvenile Delinquency, History of](#)
- [School Shootings](#)

Further Readings

Biscontini, Tracey Vasil, ed. *Youth Violence* . Detroit, MI: Greenhaven Press, 2007.

Doob, Anthony N. and CarlaCesaroni. *Responding to Youth Crime* . Toronto: University of Toronto Press, 2004.

Leverich, Jean, ed. *Issues on Trial: Juvenile Justice* . Detroit, MI: Greenhaven Press, 2009.

Mack, Julian. "The Juvenile Court." *Harvard Law Review*, v.23 (1909). <http://dx.doi.org/10.2307/1325042>

MacKay, A. Wayne and Lyle(Chip) Sutherland. *Teachers and the Law*. Toronto: Emond Montgomery Publications, 2006.

McShane, Marilyn D., ed. and Frank P. Williams, eds. *Encyclopedia of Juvenile Justice*. Thousand Oaks, CA: Sage, 2003. <http://dx.doi.org/10.4135/9781412950640>

Platt, Anthony. "The Rise of the Child Saving Movement: A Study in Social Policy and Correctional Reform." *Annals of the American Academy of Political and Social Science*, v.21 (1969).

Scott, Elizabeth S. and Laurence Steinberg. *Rethinking Juvenile Justice*. Cambridge, MA: Harvard University Press, 2008.

Snyder, Howard N. and Melissa Stickmund. *Juvenile Offenders and Victims: 1999 National Report*. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

Zimring, Franklin E. *American Youth Violence*. New York: Oxford University Press, 1998.