

# Rediscovering the Juvenile Justice Ideal in the United States

# 1

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## **An idea that changed the world**

In the early 1990s I attended a conference in Bremen, Germany, that involved judges from around the world. I learned that the American juvenile court ideal was the dominant legal paradigm for handling wayward children in many nations in Africa, Asia, Europe, and Latin America. Most of the speakers talked about efforts in their countries to achieve a justice system for young people that emphasized compassionate and enlightened care for vulnerable children. Privately, many of the conference participants wanted me to explain to them why it appeared that the United States was abandoning this ennobling ideal and jumping on the bandwagon of more incarceration and more frequent prosecution of children in the adult criminal courts. Many of the judges from across the globe could not comprehend why the United States clung to the barbaric policy of executing people who had committed their crimes as minors. Some wanted to know why several US judges, especially representatives of the National Council of Juvenile and Family Court Judges, seemed to embrace new laws designed to 'get tough' on juveniles. These were very profound and disturbing questions.

At the dawn of the twentieth century, legislatures in Illinois and Colorado established a new 'Children's Court'. This new legal entity built on many earlier

progressive developments and established an innovative justice system that sought to substitute treatment and care in lieu of a stark regimen of punishment for wayward youths. Law reform was pursued by a broad range of child advocates such as the famous American social activist, Jane Addams, crusading judges such as Ben Lindsey of Denver, Colorado, women's groups, and local bar associations (Platt, 1968; Krisberg, 2005). Over the next two decades, the new paradigm of justice for children spread throughout the nation. Although the new children's court never possessed adequate resources to fulfill its lofty mission, the intellectual promise of the juvenile court was virtually unchallenged for two-thirds of the twentieth century. America's leading legal philosopher, Roscoe Pound, proclaimed that '[T]he American juvenile court was the greatest step forward in Anglo-American law since the Magna Carta' (Pound, 1957). Equally important, although it escaped the myopic attention of many US scholars, the American juvenile court ideal was adopted by many other nations (Stewart, 1978).

### **The American juvenile court evolves**

Beginning in the 1960s, the legal hegemony of the juvenile court faced some significant challenges. A series of legal decisions culminated in the landmark US Supreme Court decision, *In re Gault* (1968), which profoundly challenged juvenile justice in America. Writing for the Court, Justice Abe Fortis proclaimed that being a minor should not subject one to a 'kangaroo court'. The *Gault* case demanded that states provide guarantees of due process and equal protection in juvenile court proceedings. Later court decisions stopped short of requiring jury trials for juveniles (*McKiever v. Pennsylvania*, 1971) and continued to endorse preventive detention of juveniles (*Schall v. Martin*, 1984), but the movement towards a 'constitutionalized' juvenile court was ineluctable. The conception of a benign Children's Court that always acted in 'the best interests of the child' was replaced with new attention to the legal rights of minors.

Concurrent with the new legalistic focus in the juvenile court was a growing skepticism about the ability of the juvenile court to effectively respond to a variety of youth issues. The popularity of Labeling Theory (Becker, 1963) in academia brought new questions about whether the juvenile justice system did more harm than good. Sociologist Edwin Schur (1973) advanced the policy of 'radical non-intervention' - whenever possible, the state should not intervene into the lives of families and children. Within the juvenile justice profession there were proposals to divert as many youths as possible from the formal court system, and to decriminalize those behaviors known as juvenile status offenses such as truancy, running away, curfew violations, and incorrigibility (Krisberg, 2005). In the early 1970s there also were widespread efforts to deinstitutionalize youths, moving them from secure detention centers and youth training schools to community-based programs (Scull, 1977). The most dramatic manifestation of this trend was the closing of all of the state juvenile facilities in Massachusetts in 1972 (Miller, 1991).

California was a national leader in attempting to decarcerate its juvenile offenders. The Youth Authority established a program in which counties were paid to keep youngsters in local programs and out of state facilities (Lemert and Dill, 1978). At the national level, these forces led to the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA).

### **The federal juvenile justice program**

The JJDPA was considered landmark child welfare legislation and was passed by an overwhelmingly bipartisan vote. The JJDPA established a federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) that had authority to conduct research, to provide training, and to make grants to states and jurisdictions that wanted to voluntarily comply with the JJDPA mandates. The new federal law required that participating states remove status offenders and dependency cases from secure confinement, and that juveniles be separated from adults by 'sight and sound' in correctional facilities. Four years later the JJDPA was amended to require that participating states remove minors from jails. Despite some expressed concerns that these major reforms would be too difficult for many locales, all but a very small number of states declared their intention to join the JJDPA.

Over the next several years, the OJJDP became the focal point for reforms of the American juvenile justice system. There was substantial progress made on all three major mandates of the JJDPA (Krisberg, 1996). Further, OJJDP launched a number of research efforts that substantially advanced the science of delinquency prevention and pointed the way to evidence-based juvenile justice programs (Krisberg, 2005). The annual appropriation of OJJDP grew from \$5 million under President Gerald Ford to over \$600 million during the Administrations of President Bill Clinton. In its early years, the OJJDP grew in its influence and stature under President Jimmy Carter and US Attorney General Benjamin Civiletti.

OJJDP's history was not without its trouble spots. President Ford actually wanted to veto the JJDPA, but in the aftermath of the Watergate scandals, he had little ability to overturn Congressional opinion. Presidents Ronald Reagan and George Herbert Walker Bush sought to eliminate funding for OJJDP, but the agency budget was restored by Congress. Both Presidents Reagan and Bush (the elder) appointed very conservative people to head OJJDP, several with limited or no qualifications for the job. One Reagan appointee proudly displayed a bumper sticker on his car that asked 'Have you slugged your kid today?'. A Bush appointee to OJJDP had a background in bible sales to religious schools, hardly a professional qualification. During these years there were highly questionable grants given to a former scriptwriter of the children's television program 'Captain Kangaroo' to study the link between cartoons in *Playboy* magazine and juvenile crime. Another dubious grant set up a center on school safety at Pepperdine University to be headed by a recently defeated Republican candidate for California

Attorney General. This center was plagued with questions about improper expenditures of federal funds on fancy furniture, inflated staff salaries, and limited examples of work products. Other grants were given to conservative legislative groups and other organizations that wished to eliminate the juvenile court. Federal monies were used to establish a center to find missing and exploited children. This center has not found a single missing child in over 20 years, although its budget continues to grow.

This period was a low point in terms of OJJDP's prestige in the juvenile justice community. Despite these problems, Congress tried to reign in the worst abuses in the federal juvenile justice program and required that most of the dollars be spent consistently with the goals of the JJDPA. Efforts in Congress to weaken the reform mandates of the JJDPA met with very limited success.

The appointment by President Bill Clinton of Janet Reno as US Attorney General brought a renaissance to the federal juvenile justice program. Guided by Reno's vision that delinquency prevention was the key component of combating youth crime, the OJJDP turned its attention to promoting research and programming to advance the Attorney General's goal to 'reweave the fabric of society' around vulnerable children and families. She was remarkably successful in persuading the law enforcement community that early childhood education programs and the prevention of child maltreatment were more important crime fighting tools than more prison beds.

The Congress substantially increased the budget of OJJDP via the Title V program that offered funding for improved prevention efforts and the Juvenile Accountability Incentive Block Grants (JAIBG) that funded a broad range of juvenile justice activities. While some of the purposes envisioned by the JAIBG legislation pointed to trying more children in criminal courts and ensuring more certain 'accountability' (the code word for punishment) for juvenile offenders, the leadership of OJJDP, with support of the Attorney General, encouraged jurisdictions to implement programs of 'proven effectiveness' that were in keeping with a more progressive than conservative view of juvenile justice.

Under Attorney General Reno, OJJDP was led by Reno's chief aide at the Dade County State Attorney's Office, Shay Bilchik. He brought an added focus on reducing the disproportionate presence of minority youth in the juvenile justice system, improving the conditions of confinement in juvenile corrections facilities, increasing delinquency prevention services, and strengthening the key linkages between juvenile justice and child welfare services. On leaving OJJDP, Bilchik took over the leadership of the Child Welfare League of America, a leading professional association in the child welfare field.

President George W. Bush returned to the earlier practice of appointing a head of OJJDP with virtually no experience on juvenile justice. Its new Administrator, Robert Flores, was a prosecutor and a legal advocate to punish child pornographers. The policy thrust of OJJDP moved more in the direction of programs involving missing and exploited children, faith-based programs, and mentoring. The OJJDP was no longer a high priority of the Attorney

General, as the national focus turned to preventing and responding to international terrorism after the attacks on the Pentagon and the World Trade Center. The administration proposed dramatic cutbacks in the OJJDP budget, and the Republican-dominated Congress was inclined to support these reductions. Concurrently, there was an increase in the amount of federal juvenile justice dollars earmarked by Congress to particular grantees. Thus, the discretionary ability of the OJJDP to set a policy agenda and to support reforms was severely restrained. The role of OJJDP in sponsoring research, disseminating statistics and other information, or providing technical assistance to juvenile justice agencies was sharply curtailed.

### **The Massachusetts revolution**

Starting in the early 1970s, the state of Massachusetts shocked the world of juvenile justice by closing all of its secure congregate juvenile corrections facilities. In a gesture of historical symbolism, the first institution to be closed was the Thomas Lyman School, which was the first state-run juvenile correctional facility in the United States.

The commissioner of the Department of Youth Services (DYS), Jerome Miller, was initially brought in to clean up a range of scandals and abuses in the Massachusetts juvenile facilities. He attempted to implement new policies and practices consistent with 'therapeutic communities.' However, Miller soon discovered that the corrections officers were adamantly opposed to even modest reforms such as letting the youth wear normal clothing instead of prison uniforms, or not requiring that their heads be completely shaven. He decided to close the training schools completely and transferred nearly 1,000 youngsters to a newly created network of small community-based programs. As the young inmates of the Lyman School were loaded onto a bus that would take them to dormitories at the University of Massachusetts, where they were housed temporarily until being reassigned to community programs, one top Miller deputy proclaimed to the shocked guards, 'You can have the institutions, we are taking the kids' (Bakal, 1973; Miller, 1991).

Although Miller left Massachusetts after just two years as the commissioner of DHS, the Bay State continued to expand community-based programming and never reopened large juvenile institutions. Research by Harvard and the National Council on Crime and Delinquency (NCCD) showed that the Miller reforms had been successful (Coates et al., 1978; Krisberg et al., 1991).

Miller went on to implement more limited versions of his Massachusetts reforms in Pennsylvania and Illinois. Other states followed the new Massachusetts model. States as politically diverse as Utah, Missouri, and Vermont closed their training schools, expanding community-based programs. In the 1980s and early 1990s a number of states closed some of their larger congregate youth facilities, including Colorado, Indiana, Oklahoma, Maryland, Louisiana, Florida, Georgia, Rhode Island, and New Jersey. For a time it appeared that the Miller reforms

would become the 'gold standard' for juvenile corrections. The federal OJJDP provided training and support to jurisdictions exploring the replication of the Massachusetts approach.

### **The barbarians at the gates**

Then something happened. Rates of serious violent juvenile crime as measured by the National Crime Survey were relatively constant between 1973 and 1989, but these rates rose by over one-third and peaked in 1993. Arrests of juveniles for violent crimes and weapons offenses also climbed during this period (Snyder and Sickmund, 1999). This rise in violent crime among juveniles led some to predict that a new wave of 'super-predators' were reaching their teen years and would drive up rates of juvenile crime for the foreseeable future (Elikann, 1999). Conservative academics such as James Q. Wilson (1995) and John DiIulio (1995) led a small band of hysterical criminologists to predict the worst. Wilson suggested that there would be 30,000 more 'juvenile muggers, killers, and thieves'. DiIulio upped the ante claiming that there would be more than 270,000 more violent juveniles by 2010 compared with 1990. Other more mainstream criminologists such as Alfred Blumstein (1996) and James Fox (1996) joined in the youth crime jeremiad. DiIulio used the most incendiary language, warning of a 'Crime Bomb' created by a generation of 'fatherless, Godless, and jobless' juvenile 'super-predators' that would flood the streets of urban America (DiIulio, 1996: 25).

The media and the politicians jumped on the fear bandwagon. The public was warned about a generation of babies, born to 'crack addicted' mothers, who would possess permanent neurological damage including the inability to feel empathy with others. The scientific evidence supporting this claim was non-existent. However, America was in the grips of a 'moral panic' that seemed to demand decisive action.

In over 40 states, legislation was introduced to toughen penalties against juvenile offenders and to make it easier to try children in criminal courts (Torbert et al., 1996). This resulted in a significant growth in the number of minors in adult prisons and jails. At the local level, school districts enacted 'zero tolerance policies' designed to make it easier to expel youngsters from school, and communities attempted to reintroduce curfews for juveniles, harsher penalties for truancy, and a range of measures designed to discourage gangs. Many urban schools required students to pass through metal detectors to attend classes. Some school districts began random searches of school lockers and increased the presence of police on campus groups. Passing a drug test was required for students who wished to participate in team sports or other school activities. The value of mandatory school uniforms was a subject of widespread public debate. National leaders of both political parties, including President Clinton, endorsed these stringent new policies. Every crime bill discussed during the Clinton Administrations included new federal laws against juvenile crime. Ironically, as

the United States Attorney General sought to promote a wider and stronger social safety net for vulnerable families, the White House joined the chorus demanding a crackdown on juvenile felons that included more incarceration in both the adult and juvenile correctional systems.

Political leaders embraced the unproven value of 'boot camp' correctional programs for youths. The US Congress allocated tens of millions of federal dollars to encourage the expansion of 'boot camps' for juveniles and adults. Despite the reservations about these 'get tough' programs and the overwhelmingly negative evaluation findings, the 'boot camp' movement grew (Krisberg, 2005). But, as the media began reporting on young people dying in these programs due to harsh treatment and abuse, there was a slowing of the politicians' enthusiasm for military-style juvenile correctional programs. There was a rise in litigation against states that placed young people in these cruel and dangerous programs.

Another popular program involved bringing at-risk youngsters to visit prisons. These programs, known as 'Scared Straight', assumed that prison inmates would frighten the youth into law-abiding behavior by threatening them with the personal consequences of being in prison. These programs tried to extract a positive result out of the rampant physical violence and rape that occurs in US prisons. Once again, the careful research showed that 'Scared Straight' programs were completely ineffective. Still, the popular media and the politicians embraced these foolish programs as part of their posture of 'getting tough' with youthful offenders.

The much-feared generation of super-predators never showed up. After the peak year of 1993, rates of serious juvenile crime continued to plummet to historically low levels over the next decade. These declines occurred long before the tougher juvenile penalties were actually implemented. The mountebanks such as James Q. Wilson, John DiIulio, and Charles Murray had based their predictions on bad science, but they dominated and won the public policy battle throughout most of the 1990s. By the 100th anniversary of the founding of the juvenile court in the US, it looked like the famed children's court was near death and that the celebration would be more like a wake than a birthday party.

## **The American juvenile court ideal abides**

Despite dire political circumstances, the American juvenile court experienced new life as the nation entered the 21st century. Several developments helped buoy the spirits of the defenders of the juvenile justice ideal. At the national level, the OJJDP helped sponsor two new ideas that helped many communities 'reinvent' the ideal of juvenile justice.

### ***Balanced and restorative justice***

The first of these conceptual frameworks was known as Balanced and Restorative Justice (BARJ). It envisioned a merger of the traditional focus on

individual rehabilitation with increased involvement of the community and of victims in the juvenile justice process (Bazemore and Maloney, 1994). BARJ was initially proposed as a new paradigm to guide juvenile probation services, but it grew in appeal and was embraced by many jurisdictions and enacted into law in some states.

BARJ placed a renewed value on involving victims in the rehabilitative process. The aim of BARJ was to restore the victim and the community that had been changed due to the criminal behavior. By coming to terms with those who had been harmed, the youthful offender was also offered a way to restore his or her role in the community. Under the conceptual tent of BARJ were programs involving victim restitution, community service, peer and community panels to hear cases and choose dispositions, and programs designed to promote reconciliation between victims and offenders.

There is no body of research in the US that demonstrates the efficacy of BARJ in reducing youthful criminal behavior. However, this new approach represented a significant move away from the ideology of deterrence and incapacitation that had dominated American juvenile justice policy in the 1980s and 1990s. BARJ has also been tried by other countries, most notably the United Kingdom. Some in the UK suggest that balanced and restorative programs have merely been tacked on to systems that are primarily focused on punishment.

The expansion of BARJ in the US was greatly assisted by funding and training offered by OJJDP. As the federal juvenile justice program has shrunk, it remains to be seen if the rapid diffusion of BARJ will continue. Still, this new conceptual framework for the juvenile court has many adherents and is likely to be a feature of the American juvenile justice system for the foreseeable future.

### ***The OJJDP Comprehensive Strategy***

The second significant development in American juvenile justice as it entered the 21st century was the OJJDP Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The Comprehensive Strategy (CS) began as a modest policy proposal written by two top OJJDP officials, John J. Wilson and James C. Howell (1993). These federal officials sought to refute the dominant US Department of Justice policy that valued incarceration as the best approach to youth crime. Wilson and Howell briefly summarized a substantial body of research on pathways to serious, violent, and chronic juvenile offending, as well as studies on effective prevention and intervention programs. The CS asserted that prevention was the most cost-effective response to youth crime. Further, it held that strengthening the family and other core institutions was the most important goal for a youth crime-control strategy. They noted that there were a very small number of offenders who committed the largest number of serious juvenile crimes, and that the identification and control of these 'dangerous few' was key to reducing youth crime. The CS envisioned a complete continuum of services including prevention, early intervention, community-based programs

for middle-level offenders, residential programs for the more serious offenders, and appropriate re-entry services. These services needed to be effectively linked using good case-management techniques and interagency collaborative approaches. The basic idea was to help communities build their youth service systems to provide 'the right service, for the right youth, at the right time'. Good community planning that involved data-driven and research-based programs and policies was viewed as key to the success of CS.

The CS was enthusiastically embraced by Attorney General Janet Reno and became the official policy position of the Department of Justice in all matters relating to youth crime. OJJDP supported NCCD and Developmental Research and Programs (DRP) to translate the original policy paper into a detailed guide for implementing the CS (Howell, 1995). Next OJJDP, in partnership with the Jessie Ball duPont Fund, created a pilot test of the CS in three communities. Over the next several years, the CS was implemented in nearly 50 communities across the United States with very positive results (Krisberg et al., 2004).

### ***The Juvenile Detention Alternatives Initiative (JDAI)***

A third major reform movement was launched by The Annie E. Casey Foundation in 1994. The goal of this effort was to reduce the overuse of juvenile detention facilities and to redirect funding toward more pertinent youth services for at-risk youngsters. The Casey Foundation also sought to improve the conditions of confinement for youths who were detained and to reduce the overrepresentation of minority youths in detention centers.

To accomplish these goals, the Foundation required that each community form a multi-agency task force to plan for better detention policies and practices. Similar to the OJJDP Comprehensive Strategy, the JDAI approach assumed that getting good data about youth being processed by the juvenile justice system, and building awareness of evidence-based practices, would lead to meaningful reforms of the juvenile justice system.

The JDAI approach included the development of improved risk screening for detention, expansion of non-secure detention options for most detained youths, and efforts to expedite the processing of cases through the juvenile justice process. The initial demonstration of JDAI took place in four urban areas, Cook County, IL; Multnomah County, OR; Sacramento County, CA; and New York City. Excellent results were obtained in Cook and Multnomah Counties in terms of reducing local detention populations, improving conditions of confinement, and reducing the proportions of minority youth in secure confinement. Measures of public safety showed that the JDAI did not compromise public safety, and may have actually reduced the numbers of youths that missed court hearings or committed subsequent crimes (Krisberg et al., 2001; Krisberg and Lubow, 2005). In the cases of Sacramento County and New York City, the JDAI reforms also produced the predicted positive outcomes, but changes in the political leadership of these sites led to a retraction of the JDAI programs.

The Annie E. Casey Foundation has expanded the JDAI program to scores of communities across the nation over the past ten years. Whereas the initial sites received seed funding from the Foundation to start the alternative programs, the later JDAI locales only received modest support to assist the local multi-agency collaboratives. The Foundation also offers some technical assistance and convenes annual meetings for the later JDAI sites. At the last such meeting in San Francisco, over 700 people from across the nation gathered to discuss ways to further reduce unnecessary juvenile detention. The original demonstration project has led to a vibrant national movement that continues despite little or no support from the United States Department of Justice. The Casey Foundation has produced high-quality replication manuals, a documentary on how JDAI can help communities, as well as a number of academic and professional publications.

The JDAI is an excellent example of how the core values of the American juvenile court continue to flourish despite an often hostile political and media environment. At its core, the JDAI reaffirms the basic commitment of the juvenile court to prioritize the best interests of the child, to strengthen family and community solutions to youth misconduct, and to emphasize humane treatment of the young rather than harsh punishment.

## Conclusion

Despite regular examples of abusive practices that continue to plague American juvenile corrections facilities in many states, the juvenile court ideal continues to recover from the moral panic over 'super-predators'. The chorus is growing that rejects 'tough love' approaches such as juvenile correctional boot camps or 'Scared Straight' programs that use prison visits to allegedly frighten youngsters away from criminal lives (National Institutes of Health, 2005). Although these programs continue to exist, many jurisdictions have shut them down. Litigation on behalf of incarcerated youths is gaining headway in the courts, and even the conservative United States Department of Justice is pursuing civil rights violations against abusive juvenile facilities in many states. There is both the growing awareness of the mental health needs of youth in the juvenile justice system, and the beginning of efforts to better meet those needs. The most dramatic and positive development in 2005 was a decision of the US Supreme Court to end the practice of executing persons under the age of 18 at the time of their offense (*Roper v. Simmons*, 2005).

This good news does not minimize the severe problems of the American juvenile justice system. The juvenile court is, as always, underfunded and understaffed to provide quality care for the large numbers of troubled youngsters that cross its portals. Young people still do not have anything resembling adequate legal representation in the juvenile court system. Too many young people are transferred to the criminal court system and languish in adult prisons. Services for young women and for children of immigrant families are inferior. Most

important, children of color continue to dominate the lock-up facilities of the juvenile court system, and they receive harsh and discriminatory treatment. While the population of juvenile corrections facilities has not seen the explosive growth of the US prison system, the number of incarcerated youngsters continued to grow slightly, even as the numbers of juvenile arrests declined significantly over the past decade.

It is also troubling that the US is only one of two nations (with Somalia) that have failed to ratify the United Nations Convention on the Rights of the Child. President George Herbert Walker Bush opposed the international treaty based on the arguments of religious conservatives that the Convention would infringe on parental rights. Some wanted to continue to recruit minors for military service – a practice prohibited by the Convention. Further, there were concerns that the goal of reducing child hunger would create a new legal entitlement for impoverished children in this country.

President William Clinton signed the UN Convention, but under the US Constitution, the treaty must be ratified by two-thirds of the Senate to become law. Given the current majority of political conservatives in the Senate, ratifying the Convention is unlikely. Further, President George W. Bush has expressed a blanket opposition to signing onto international legal treaties in areas such as the environment, war crime tribunals, arms control, and some international trade agreements. It is highly unlikely that the UN Convention on the Rights of the Child will become part of US law in the near future.

The original development of the American juvenile court illustrated to the world the brilliant insight of British philosopher, Aldous Huxley, that improvements in civilization are more tied to advances in charity than in advances in justice (Huxley, 1937). Despite some hopeful new policy directions reflected by BARJ, the CS, and the JDAI, the future of American juvenile justice ideal is by no means a settled matter. Racial and class antagonisms, fear of immigrants, and ambivalence over the societal role for the young in the post-industrial world, will continue to fuel calls for 'crackdowns' on young offenders. Yet the ideals set forth by American reformers Jane Addams and Judge Ben Lindsey at the dawn of the 20th century are needed now more than ever as the United States faces the challenges of the new millennium.

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