

# GIRL TALK—EXAMINING RACIAL AND GENDER LINES IN JUVENILE JUSTICE

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## I. INTRODUCTION

Much of the talk about juvenile justice in the United States centers on the plight of young men of color: for good reason. Their disproportionate presence in the system warrants, at a minimum, close examination and candid conversation. As critical as that discussion remains, it may be deflecting attention from the fastest growing segment of the juvenile justice population—girls. It is hard to argue against boys' claims of primacy in the ongoing juvenile justice policy debate when their overall numbers in the system vastly exceed those for girls. Still, a focus on raw numbers alone—rather than on rates of involvement—can skew the discussion. Between 1980 and 2000, the arrest rates for girls for all offenses rose thirty-five percent, while arrest rates for boys during the same period actually declined.<sup>1</sup> Like boys, girls' involvement in the delinquency system begins at young ages. The first adjudication for girls occurs at a median age of fourteen to fifteen.<sup>2</sup> One recent study in California showed an even more alarming entry point: Twenty-two percent of the girls in the juvenile justice system in California entered it at age thirteen or younger.<sup>3</sup>

When we add race to the text, the story about girls becomes even bleaker. The greatest spike in arrest rates has been among African American girls.<sup>4</sup> In a system built on the exercise of discretion at virtually every stage, girls of color tend to benefit the least from opportunities for diversion from or lenient treatment within the system. Prosecutors dismiss seven out of every ten cases involving white girls as opposed to three out of every ten cases for African American girls.<sup>5</sup> Although white girls make up sixty-five percent of the popula-

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<sup>1</sup> HOWARD SNYDER, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION JUVENILE JUSTICE BULLETIN, JUVENILE ARRESTS 2000 at 9 (2000); Alecia Humphrey, *The Criminalization of Survival Attempts: Locking up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN'S L.J. 165, 173 (2004).

<sup>2</sup> LESLIE ACOCA & KELLY DEDEL, NAT'L COUNCIL ON CRIME AND DELINQUENCY, NO PLACE TO HIDE: UNDERSTANDING AND MEETING THE NEEDS OF GIRLS IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM 35, 102 (1998).

<sup>3</sup> *Id.*

<sup>4</sup> See American Bar Association & National Bar Association, *Justice by Gender: The Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System*, 9 WM. & MARY J. WOMEN & L. 73, 79 (2002).

<sup>5</sup> *Id.*

tion at risk, they account for only thirty-four percent of girls in secure detention.<sup>6</sup> Girls of color make up nearly two-thirds of the female juvenile justice population,<sup>7</sup> and they tend to receive the most severe sentences.<sup>8</sup> Indeed, like their African American male counterparts, African American girls can lay claim to a troubling distinction in the system: over-representation.<sup>9</sup> But these figures only allow us to scan the outlines of a much more complex story.

As is too often the case, the complexity of the issue sends us scurrying for the simplest explanations. A typical temptation would be to cast blame on the girls themselves. Perhaps, one might assume, these figures indicate an increasing problem with girls' behavior that now calls for more intensive correctional intervention. However, the assumption is as inaccurate as it is alluring. A closer look at the back-story of girls' involvement in the delinquency process reveals that gender bias in the system's operation is a principal culprit in girls' continued and growing presence. Police, prosecutors, judges and parents may be inclined to grant boys—particularly affluent white boys—some latitude in their misbehavior, subscribing to the notion that "boys will be boys." However, they do not ordinarily extend the same margin for error to girls. Those moments when girls engage in aggressive, anti-social conduct are rarely accepted as within the bounds of normalcy. Rather, parents and juvenile authorities too often react to girls' delinquent conduct as though they have glimpsed the contours of a deeper pathology. Given this perception, the coercive power of the juvenile justice system becomes all the more attractive because it purports to provide the sort of discipline and control that parental figures find more difficult to enforce as teenage girls exhibit more confrontational behavior.

Obviously, heightened parental anxiety over girls' behavior, at times, seems quite sensible. Sexual activity in young girls, for example, can wield a devastating blow to a girl's health, to the health of a child should she become pregnant, and to her future opportunities. Some steps to prevent harm to the girl may of course be in order. Still, acknowledging that need does not lead inexorably to the conclusion that the juvenile court rather than a public health agency should be the system we seek to engage. But the history of the juvenile court reveals society's almost insatiable appetite to use the juvenile justice system as the site where we engage in largely unchecked and curiously intrusive social control strategies. Under the guise of addressing criminal conduct, we have subjected girls to justice decisions that at once reflect—and reinforce—traditional notions of appropriate behavior. Ultimately, whether our biased judgments flow from a protective impulse or from a desire to punish the bad girl who fails to live up to our expectations, girls face a double standard in the juvenile justice system. We reserve our harshest judgment for the girls who

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> A study in San Francisco, California, revealed that approximately sixty-five percent of all girls sentenced to secure confinement are girls of color. Fifty percent of the girls in secure detention were black and fifteen percent were Latina. REBECCA MANIGLIA & ALISON KAYE TEMPLE, STATUS OF THE STATES 2 (1998).

<sup>9</sup> American Bar Association & National Bar Association *supra* note 4 at 79 (reporting that between 1988 and 1997, delinquency cases involving girls increased by 83% with a 106% rise in the delinquency rate of black girls).

stray from the feminine ideal and whom we can, thereafter, censure for failing to live up to our expectations.

In our rush to blame girls for their “aberrant” behavior, we may be missing the real factors that trigger their involvement in juvenile delinquency. Researchers have discovered that the girls most often involved in the delinquency system tend to have been the victims of physical, sexual or psychological abuse.<sup>10</sup> Studies reveal that seventy percent of girls in the justice system have histories of physical abuse as opposed to twenty percent of the general teenage girl population.<sup>11</sup> Rather than being a refuge or mainspring of affection, the family of girls in the delinquency system more often serves as a source of contradictory messages and a site of trauma. The families of delinquent girls exhibit more dysfunction and experience higher rates of intra-family conflict than, for example, the families of delinquent boys.<sup>12</sup> The average girl in the delinquency system tends to have previously been the subject of a dependency proceeding or to have been removed from her parents and placed in the foster care system.<sup>13</sup> In many instances, what appears to be self-destructive, delinquent behavior by girls—running away from home or engaging in prostitution—may in fact be understandable responses to traumatizing home environments.

Ignoring these causal factors has become all too commonplace. We mindlessly usher girls into the delinquency system, embracing the fiction that these girls bear the entire responsibility for their delinquent conduct. We rarely question our almost reflexive reliance on the justice system to “straighten them out.” But this policy choice is anchored in our history. Reformers in the late nineteenth and early twentieth centuries openly acknowledged their intention to use justice institutions to patrol gender norms as a means of exercising social control.<sup>14</sup> As we compare today’s justice decisions about girls’ delinquency with our approaches in the nineteenth and twentieth centuries, we see a pattern of gender- and racially-driven power plays designed to enforce a code of conduct with little, if any, attention to the underlying reasons for girls’ deviation from the norm.

The problem is that this pattern occurs largely beneath the public radar. Policymakers and juvenile justice decision makers no longer openly claim that the delinquency system should enforce traditional gender norms as a means of

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<sup>10</sup> *Id.* at 79.

<sup>11</sup> Humphrey, *supra* note 1, at 173; Laurie Schaffner, *Female Juvenile Delinquency: Sexual Solutions, Gender Bias, and Juvenile Justice*, 9 HASTINGS WOMEN’S L.J. 1, 4 (1998).

<sup>12</sup> Marty Beyer, *Delinquent Girls: A Developmental Perspective*, 9 KY. CHILD. RTS. J. 17, 18 (2001); Scott Henggeler, James Edwards & Charles Borduin, *The Family Relations of Female Juvenile Delinquents*, 15 J. OF ABNORMAL CHILD PSYCHOL. 199 (1987).

<sup>13</sup> See ANNE MARIE AMBROSE & SANDRA SIMPKINS, JUVENILE LAW CENTER, IMPROVING CONDITIONS FOR GIRLS IN THE JUSTICE SYSTEM: THE FEMALE DETENTION PROJECT (2001), <http://www.abanet.org/crimjust/juvjus/gji.html>; Myrna S. Raeder, *Primer on Gender-Related Issues that Affect Female Offenders*, 20 Crim. Just. 4 (2005); Joseph R. Biden, *What About the Girls? The Role of the Federal Government in Addressing the Rise in Female Juvenile Offenders*, 14 STAN. L. & POL’Y REV. 29, 35-36 (2003).

<sup>14</sup> See MARY E. ODEM, *DELINQUENT DAUGHTERS* 2, 96 (1995) (discussing nineteenth century reform efforts and twentieth century efforts to monitor and regulate sexual misconduct among young women and girls).

exercising social control. Nevertheless, the practices that take place in the delinquency system demonstrate a troubling adherence to that objective. If we examine who tends to feel the weight of the state's power and who does not—who becomes the example and who does not—familiar patterns emerge. The girl who is different by virtue of race and/or sexual experience continues to be the focus of our intervention. To put a halt to justice practices that target girls, and specifically girls of color, for acting in ways that do not fit our views of how girls should behave, advocates for children in the delinquency system need to add their voices to the public debate about juvenile justice. Juvenile defenders and other advocates for girls must convey with clarity and methodical intensity the delinquency system's tendency to misinterpret girls' delinquent behavior and, in the process, to mistreat girls under the guise of correcting their misconduct. Until advocates shine a light on issues facing girls, their presence and plight in the delinquency system will remain but a whispering annotation in the greater public debate about kids and crime.

## II. UNCOVERING THE ROOT CAUSES OF FEMALE DELINQUENCY

### A. *Enduring the Double Oppression of Race and Gender*

The battles to define place and propriety have quite often been fiercely fought. For women, the struggle for definition has centered on a woman's role in a changing society. In the midst of considerable economic, political and social change, this country has grudgingly accommodated some changes in women's roles, while clinging to certain characteristics of the traditional conception of feminine behavior. We have continued to prize chastity in young girls; mothers have continued to encourage their daughters to assume social roles where they would subordinate their self-interest to the needs of others; and girls have learned through actions and reactions that society often prizes docile behavior over assertive conduct. Institutions, such as family, school and church, have worked to reinforce these concepts of femininity. Each has exerted considerable pressure on girls to adhere to socially prescribed roles.

The girl who at any point has had the temerity to challenge expected modes of behavior—or who has attempted to bend the rules rather than bow to them—has tended to stand out from others. The farther that any girl has diverged from the feminine ideal, the more likely she has encountered anxiety and resistance from parents, guardians, school officials and even governmental authorities. As importantly, society has typically seen the girl who has chosen to engage in such conduct as exhibiting a deeper set of problems requiring intervention.

Intervention seems all the more urgent when race is at play. When we look beneath the rehabilitative rhetoric that nostalgically envelops the juvenile court and its practices, we see that the core business of the juvenile delinquency system—its DNA—is to bring adolescent conduct in line with dominant values. Since its inception, the juvenile court has functioned as a system of social control that reflects and sustains this country's economic, racial and gender divides. By administering justice selectively, exercising control over some, but not all, children who may have violated laws and social norms, the juvenile court has played a central role in subordinating difference in the United States.

Those individuals who have gained dominance in society as we tend to measure it—through economic status, political power and race—not only manage to keep their children away from the jurisdiction of juvenile authorities, but effectively use the juvenile system to impose their views about what constitutes acceptable behavior on everyone else.

This is not to suggest that the kids against whom the system operates may not be engaging in anti-social or even criminal conduct. Rather, in choosing to exercise this state power unevenly, we as a society are making the normative choice to engage the formal system of justice against a select group of those children who are engaging in this behavior. The children we choose tend to be those who exhibit differences from the dominant society. To the extent that wealthier children encounter the system, they more often are extended the opportunity to enjoy the benefits of preventive mechanisms or less formal processes to address their delinquent behavior. Thus, we may speak of equality under law and publicly insist that our justice system adheres to those values, but inequality runs rampant in the delinquency system. It is perhaps not surprising that we see an over-representation of children of color, girls and children from economically subordinated backgrounds in the system. Difference marks the boundary between the dominant society and everyone else. The differences that these children demonstrate make them prime targets for society's mechanisms to bring them into conformity with dominant social mores.

The twin forces of race and gender drive justice decisions. Indeed, the profile that emerges of the typical female offender alerts us to the fact that race is a risk factor for involvement in the juvenile system. Beginning with a study in 1989, researchers concluded that the average girl in the juvenile justice system had a history of physical or sexual abuse.<sup>15</sup> She was sixteen years old, living in an urban environment with one parent, and had a history of school failure.<sup>16</sup> In 1998, changes in the female offender population required some adjustment to the profile. Now, the average female offender is likely to be younger—under fifteen years of age—and is most often a girl of color.<sup>17</sup>

A 1999 study conducted by the Philadelphia Defender Association reveals a remarkably similar set of characteristics in the average female juvenile offender. There, the typical female juvenile offender was African American, had a history of involvement in dependency court, had been placed in foster care five or more times, had at least one parent with a substance abuse history, had a history of running away, and had suffered some form of abuse.<sup>18</sup> This profile suggests that girls' involvement in the system not only reflects different underlying motivations from boys, but also presents more complex issues to be addressed by the system. Unfortunately, the juvenile justice system has proved ill equipped to handle these complexities.

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<sup>15</sup> See Ilene Bergmann, *The Forgotten Few: Juvenile Female Offenders*, 53 FED. PROBATION 73, 73-75 (1989); Robert E. Shepherd, *Girls in the Juvenile Justice System*, 9 WM. & MARY J. WOMEN & L. 31, 34 n.22 (2003).

<sup>16</sup> REBECCA MANIGLIA, JUVENILE FEMALE OFFENDERS: A STATUS OF THE STATES REPORT 2 (1998), <http://ojjdp.ncjrs.org/pubs/gender/contents.html>; Shepherd, *supra* note 15, at 34.

<sup>17</sup> MANIGLIA, *supra* note 16, at 2.

<sup>18</sup> AMBROSE & SIMPKINS, *supra* note 13.

Despite a stunning lack of attention to the real reasons that girls end up in the delinquency system, juvenile judges have continued to expose girls of color to harsher treatment than their white counterparts in the system. In a study of girls' delinquency cases in Los Angeles during 1992 and 1993, a review of the probation investigation reports, which juvenile court judges use in determining the appropriate sentence and placement for juvenile offenders, revealed the influence of race and ethnicity.<sup>19</sup> Specifically, the study found a significant effect of race and ethnicity on the depiction of the girls' conduct and in the recommended disposition of their cases. Sixty-four percent of the girls in the juvenile justice population were girls of color (forty-three percent of the girls were Latina; twenty-three percent were African American).<sup>20</sup> Probation reports would attribute the misbehavior of white girls to problems of low self-esteem and feelings of abandonment, while they would characterize the same sorts of behavior of black girls as flowing from "inappropriate 'lifestyle' choices."<sup>21</sup> Similarly, the probation reports were more likely to recommend a detention-oriented placement for girls of color.<sup>22</sup> Seventy-five percent of the white girls in the system received reports favoring placement in a treatment-oriented facility as opposed to thirty-four percent of Latinas and twenty percent of African American girls.<sup>23</sup>

So, what are the real reasons that girls, and specifically girls of color, end up in the juvenile justice system? For all the professed concern about discovering the underlying reasons for the conduct that results in girls' placement in the juvenile justice system, girls were not much studied before the mid-1960s. The prevailing thinking was that by studying boys—what motivated them to engage in misconduct and what caused them to desist—researchers and policymakers could extrapolate the information they needed about girls. Frankly, authorities seemed to presume that they knew what was best for girls. By failing to compile pertinent data, they did nothing to check their assumptions or test their ideas. Little, if anything, took place within the juvenile system to refine practices to meet the real needs that girls presented. Instead, with unexplained confidence and often-brisk efficiency, juvenile authorities simply dispensed their own sense of justice.

Once researchers directed their attention specifically to girls, the enormity of authorities' previous misconceptions about girls began to unfold. Starting in the mid-1960s and carrying through to the end of the twentieth century, some researchers began to examine the conduct and the precipitating factors that led to girls' involvement in delinquency. What they detected were cultural, social and psychological dimensions to girls' offending that differed from boys' misbehavior. Not so coincidentally, researchers discovered that girls' delinquent conduct tends to be linked to conflicts that they experience in their family and

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<sup>19</sup> Jody Miller, *Race, Gender and Juvenile Justice: An Examination of Disposition Decision-Making for Delinquent Girls*, in *THE INTERSECTION OF RACE, GENDER AND CLASS IN CRIMINOLOGY* 219 (Martin D. Schwartz and Dragan Milovanovic eds., 1994).

<sup>20</sup> *Id.* at 226.

<sup>21</sup> *Id.* at 235-36.

<sup>22</sup> *Id.* at 232-33.

<sup>23</sup> *Id.*

social relationships.<sup>24</sup> For girls, social relationships are key. More so than for boys, making and maintaining relationships figures centrally in girls' development.

Disruptions in peer and nurturing relationships, derailment in school and traumatizing home lives correlate with depression and anxiety in girls. As importantly, those same factors tend to correlate with girls' involvement in the delinquency system. In a study that compared girls who had been abused and neglected in childhood with girls who had not, researchers discovered an increased risk of delinquency among the former. Abused and neglected girls are nearly two times more likely to face arrests as juveniles and as adults, and 2.4 times more likely to face arrest for violent crimes.<sup>25</sup> Unlike abused and neglected males, girls who have been victims of physical and sexual abuse and neglect are at increased risk of arrest for violent offenses.<sup>26</sup> Other researchers have found significantly higher rates of post-traumatic stress disorder among girls serving time than among the general adolescent female population (sixty-five percent compared to eleven percent).<sup>27</sup> About two thirds of the girls who suffered from this disorder were serving time for having committed a violent offense and forty-three percent were identified as gang members.<sup>28</sup>

Perhaps the most common—and most shocking—trait among female juvenile offenders is that nearly all are survivors of sexual or physical abuse. Ninety-two percent of the girls interviewed for the 1998 National Council on Crime and Delinquency ("NCCD") study of girls in the California juvenile justice system reported having experienced one or more forms of physical, sexual, or emotional abuse, sometimes on multiple occasions.<sup>29</sup> A 1995 study of adult women in state prisons in California, Florida and Connecticut revealed similar histories.<sup>30</sup> Significantly, when these female inmates were asked about the impact of their childhood victimizations, a majority identified their abuse as the factor that led them into offending as juveniles.<sup>31</sup> The fact that violent victimization has emerged as the primary precursor of girls' involvement in delinquency<sup>32</sup> raises questions about the appropriateness of our juvenile justice response to girls' behavior and demands equally that we examine the dramatically different psychological and emotional needs that girls present within the justice system.

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<sup>24</sup> American Bar Association & National Bar Association, *supra* note 4, at 4;

<sup>25</sup> Cathy Spatz Widom, *Childhood Victimization and the Derailement of Girls and Women to the Criminal Justice System*, in 3 RESEARCH ON WOMEN AND GIRLS IN THE JUSTICE SYSTEM: PLENARY PAPERS OF THE 1999 CONFERENCE ON CRIMINAL JUSTICE RESEARCH AND EVALUATION—ENHANCING POLICY AND PRACTICE THROUGH RESEARCH 27, 29 (2000).

Widom, *supra* note 24, at 29.

<sup>26</sup> *Id.*

<sup>27</sup> Elizabeth Cauffman et al. *Post-traumatic Stress Disorder Among Female Juvenile Offenders*, 31 J. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 1209 (1998).

<sup>28</sup> *Id.*

<sup>29</sup> Leslie Acoca, *Outside/Inside: The Violation of American Girls at Home, on the Streets, and in the Juvenile Justice System*, 44 CRIME & DELINQUENCY 561, 565 (1998).

<sup>30</sup> *Id.* at 565.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 564.

As shocking as early abuse is in itself, close examination of the nature of the abuse is even more telling. Study after study reveals alarmingly high percentages of girls reporting having experienced physical or sexual abuse. In the NCCD girls study in California, eighty-one percent had experienced physical or sexual abuse.<sup>33</sup> Fifty-six percent of the girls reported having been abused sexually, with more than one third of these girls reporting that they had been fondled or molested.<sup>34</sup> Forty percent of the girls reported that they had been raped or sodomized at least once.<sup>35</sup> The typical age at which this abuse occurred was between twelve and fifteen years old.<sup>36</sup> One third of the girls reported having to leave home at least once between ages of twelve and fifteen.<sup>37</sup> The physical abuse also tends to be violent. Forty-five percent of the girls in this study reported having been beaten or burned at least once.<sup>38</sup> Examination of the identity of the abuser makes this situation even more troubling. The individuals inflicting these injuries tended to be family members, family friends or boyfriends.<sup>39</sup>

### *B. Examining Girls' Pathways into the Delinquency System*

How does the typical female juvenile offender end up in the justice system? Status offenses make up the bulk of charges against girls.<sup>40</sup> A status offense covers conduct that is not a violation of the penal code, but is unacceptable solely because of the age of the actor. Status offense statutes typically contain broad language and catchall sections that permit broad discretion in enforcement. For example, running away from home, truancy, curfew violations and the broad category of "persons in need of supervision," comprise the bulk of offenses for which girls enter the system.<sup>41</sup> Interestingly, although adolescent boys commit an equal number of status offenses as girls,<sup>42</sup> girls are 170% more likely to face arrest for these acts.<sup>43</sup>

Discriminatory and arbitrary application of these laws occurs easily. The resulting double standard has drawn its share of criticism. For example, one court has observed:

[S]tatus offender legislation discriminates invidiously against females. It is apparent that status offense petitions can easily be used to bring under control young women suspected by their parents or by other authorities of promiscuous behavior. Our society tends to condemn female promiscuity more severely than male promiscuity, and

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<sup>33</sup> *Id.* at 567.

<sup>34</sup> *Id.* at 567.

<sup>35</sup> *Id.* at 567.

<sup>36</sup> *Id.* at 566.

<sup>37</sup> *Id.* at 566.

<sup>38</sup> *Id.* at 566.

<sup>39</sup> *Id.* at 567.

<sup>40</sup> See generally MEDA CHESNEY-LIND & RANDALL G. SHELDEN, *GIRLS, DELINQUENCY, AND JUVENILE JUSTICE* 7-16 (2d ed. 1998).

<sup>41</sup> See Cheryl Dalby, *Gender Bias Toward Status Offenders: A Paternalistic Agenda Carried Out Through the JJDP*, 12 L. & INEQUALITY 429, 437 (1994); Alecia Humphrey, *Girls in the Juvenile Justice System: The Intersection of Gender, Age and Crime*, 18 WIS. WOMEN'S L.J. 1, 2 (2003).

<sup>42</sup> CHESNEY-LIND & SHELDEN, *supra* note 40, at 19.

<sup>43</sup> *Id.* at 32.



this tendency may explain why females often are unfairly classified and treated as status offenders.<sup>44</sup>

The behavior that invokes status offense jurisdiction typically springs from conflict within the child's family. Parents will often seek assistance from the coercive power of the juvenile justice system to provide the kind of discipline and control that they find more difficult as their teenage girls exhibit more confrontational behavior. Girls' independent and anti-social behavior tends to trigger anxiety about their "aberrant" behavior and often leads parental and governmental authorities to resort to official mechanisms to enforce changes in their conduct.

While status offenses themselves are not technically delinquency offenses, girls' involvement in family court for these minor infractions tends to be little more than a prelude to the girls' entry into the court's more serious delinquency arena. The Juvenile Justice and Delinquency Protection Act, which Congress enacted in 1974, specifically provided that states receiving federal block grants must remove status offenders from secure confinement.<sup>45</sup> But, in 1980, Congress amended the Act to permit state juvenile courts to incarcerate status offenders who violated a valid court order.<sup>46</sup> Judges now could use their contempt power to transform a status offender into a juvenile delinquent.

Here is an illustration of how this power has unfolded. A girl, who has consistently run away from home, comes before the court on a petition that alleges that she is a person in need of supervision ("PINS"). The court orders counseling and a temporary placement in a foster care home. The girl, who has a history of intra-family conflict, does not adjust well to her new placement and again resorts to running away. Although she has never committed a crime, the decision to run away—no matter what the motivation—has now exposed her to a contempt citation for violating the court's directive to reside in the foster home. If the judge chooses to hold her in contempt, she can then be reclassified as a delinquent and face secure detention with other children who have been convicted of delinquency offenses. Although this bootstrapping practice raises considerable question,<sup>47</sup> it offers a principal vehicle through which girls will fall within a court's delinquency jurisdiction.<sup>48</sup>

Discretion in charging allows state authorities to determine whether a child's case should proceed in the delinquency system. The facts that bring the child to the court's attention are routinely open to a variety of interpretations. For example, if a child is arrested for having run away from home and, upon arrest, the police discover that she is carrying a box cutter, possibly for her protection against sexual assault on the street, she could easily come before the

<sup>44</sup> State v. Calendine, 233 S.E.2d 318, 326 (W. Va. 1977).

<sup>45</sup> 42 U.S.C. §§ 5601-5780 (1994).

<sup>46</sup> 42 U.S.C. § 5633(a)(12)(A).

<sup>47</sup> Some states have adopted a middle ground position permitting their courts to hold status offenders in contempt, but not allowing courts to use the contempt finding as the sole basis for converting the status offender to a delinquent. See Jan C. Costello & Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. REV. 41, 59 n.77 (1981).

<sup>48</sup> See, e.g., *In re Jennifer G.*, 764 N.Y.S.2d 503 (N.Y. Fam. Ct. 2003) (striking down as unconstitutional a Family Court provision that prohibits judges from detaining PINS kids in secure detention facilities).

court in either the PINS or in the delinquency context. The prosecuting authority can choose to treat this as a runaway case, or, in the exercise of its discretion, can choose to charge her with possession of a prohibited weapon and expose her to the delinquency system. The prosecutor's personal judgments both about the needs of the child and about the system that will best meet the needs of the young offender will inevitably influence the exercise of discretion. But there is considerable evidence that racial biases also affect these discretionary decisions in ways that disadvantage girls of color.<sup>49</sup>

Our typical response has been to lock up first, ask questions later. For example, running away from home is often a survival mechanism to escape an abusive environment, yet we arrest the girl and place her in the juvenile system. We would applaud and encourage the identical behavior in an adult woman who left home to avoid an abusive partner, but the young girl who makes this choice can expect our punishment. Labeling the girl a delinquent fails to acknowledge her victimization. The victimization that girls experience can lead them to various forms of delinquent conduct such as substance abuse as a form of self-medication and escape.<sup>50</sup> Treating her as a delinquent can prove isolating and only serves to confirm an already negative self-image. Moreover, confining girls in youth facilities may expose them to further victimization. Studies reveal disturbing patterns of abuse by some correctional authorities in youth facilities.<sup>51</sup> Alternatively, given the girls' family dynamics, it may not be safe to return them home without some form of intervention and counseling.

A high percentage of girls face arrest for intra-family disputes.<sup>52</sup> With the advent and proliferation of mandatory arrest laws for domestic disputes, girls more frequently are facing arrest for engaging in aggressive conduct within their families. Where a parent reports to the police that her daughter has engaged in assaultive behavior, the police in many jurisdictions may be under an obligation to place the girl under arrest. Even in a mutual combat situation in which a mother and daughter hit each other or in an instance where the girl strikes back in defense against abuse, the girl can typically expect to be arrested and detained.

Our standard approaches may in fact encourage the precise sort of acting out authorities would like to stop. Predictably, the childhood abuse that delinquent girls experience and report will affect them into adulthood unless addressed. Abuse can lead to the onset of Post Traumatic Stress Disorder and Depression.<sup>53</sup> As a mechanism to combat feelings of helplessness, a girl who has suffered trauma may engage in aggressive behavior and may react negatively to efforts to exert control over her behavior.<sup>54</sup> Girls who experience mild to moderate depression have an increased likelihood of engaging in crimes

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<sup>49</sup> In 1990, researchers conducted a study in Massachusetts and concluded that the actions of African American girls were more likely to be treated as criminal than the conduct of white girls. See CHESNEY-LIND & SHELDEN, *supra* note 40, at 162.

<sup>50</sup> ACOCA, *supra* note 29, at 570.

<sup>51</sup> *Id.* at 576-79.

<sup>52</sup> See ACOCA & DEDEL, *supra* note 2, at 7-8; Marty Beyer, *Delinquent Girls: A Developmental Perspective*, 9 KY. CHILD. RTS. J. 17, 20 (2001).

<sup>53</sup> Beyer, *supra* note 52, at 17 (noting that delinquent girls who have been exposed to violence such as sexual abuse are more likely to develop post-traumatic stress disorder).

<sup>54</sup> *Id.* at 20.

against other persons and in property crimes.<sup>55</sup> Researchers have discovered a strong correlation between victimization and high risk behaviors such as drug use, sex with multiple partners, and gang membership.<sup>56</sup>

Effectively addressing the girls' behavior tends to call for more than a focus on their symptoms. It requires successfully pinpointing the source of the psychological and emotional trauma and a continuity of services that recognizes the depth of the damage that an abusive environment may have caused. But this demands a fundamental rethinking of how we currently address girls' delinquent conduct.

Indeed, we cannot sort out the problems with the justice system's treatment of girls today until we recognize the degree to which the current system is an outgrowth of deep-rooted systemic assumptions that were highly questionable even at the time they were originally made. The next part of this article offers a brief archaeological dig to locate the roots of the current system.

### III. DRAWING LINES BASED ON DIFFERENCE

#### A. Preventing "Wantonness"—the Historical Roots

The nineteenth century public institutions that preceded the first juvenile court expressly set out to reinforce the prevailing moral codes of the society.<sup>57</sup> Fulfilling that mission required the creation of charitable establishments and state institutions that engaged in practices that tended to force conformity on anyone or anything that seemed new or different. In the midst of unprecedented industrial, economic, and social change, this was no small task. Still, nineteenth century and early twentieth century reformers clung to the dream that they could maintain the constancy and invariability of social roles and behavior even as urbanization, technological advances and changes in the ethnic and cultural make-up of the nation worked to undercut their efforts.<sup>58</sup>

For nineteenth century reformers, the family would emerge as the key to social stability.<sup>59</sup> The virtuous woman who, as wife, mother and caretaker of the family, could inculcate society's values in her children filled out the family photo.<sup>60</sup> Without the young woman's acceptance of her "natural" domestic role, the family would lose cohesion, with the social order doomed to follow. Eastern cities, such as New York, offered prime examples of the consequences flowing from a lack of family cohesion as these urban centers teemed with large numbers of desperately poor and seemingly ungoverned immigrant children.<sup>61</sup> Authorities needed a conscious social policy to get a handle on the

<sup>55</sup> See Dawn A. Obeidallah & Felton J. Earls, NATIONAL INSTITUTE OF JUSTICE, *ADOLESCENT GIRLS: THE ROLE OF DEPRESSION IN THE DEVELOPMENT OF DELINQUENCY* (1999).

<sup>56</sup> Acoca, *supra* note 29, at 569.

<sup>57</sup> See ODEM, *supra* note 14, at 2.

<sup>58</sup> See generally Barbara M. Brenzel, *DAUGHTERS OF THE STATE: A SOCIAL PORTRAIT OF THE FIRST REFORM SCHOOL FOR GIRLS IN NORTH AMERICA, 1856-1905* 16-17 (1983).

<sup>59</sup> See W. NORTON GRUBB & MARVIN LAZERSON, *BROKEN PROMISES: HOW AMERICANS FAIL THEIR CHILDREN* (1982).

<sup>60</sup> *Id.* at 16.

<sup>61</sup> CHESNEY-LIND & SHELDEN, *supra* note 40, at 127.

influences that they believed were bringing about unwanted changes and impending social disorder.<sup>62</sup>

The problem was that change was already upon them by 1850. All around the nation, businesses, cities and the people in them were redefining themselves for this new world. Adding to the turmoil was the fact that women outnumbered men. Although this had been the case since colonial times, the large numbers of women became particularly noticeable in urban areas along the eastern seaboard.<sup>63</sup> Foreign women, wanton women and growing numbers of single women, who had to support themselves without the assistance of a husband, posed a direct challenge to conventional gender roles.<sup>64</sup> The conduct of women now seemed to demand special scrutiny, particularly in the view of those individuals who had a stake in the status quo. So, by the middle of the nineteenth century, social reformers would single out young women and girls, casting the mold for future juvenile justice choices and decisions that would similarly play out along gender lines in our society.<sup>65</sup>

Previously, gender fault lines had produced a different sort of double standard. Until the middle of the nineteenth century, policymakers largely ignored girls' misconduct.<sup>66</sup> This may have been occasioned by the misbehavior of male delinquents that even then tended to overshadow that of girls. Or, perhaps, girls may have seemed too difficult, since they were seen as prone to psychiatric disorders such as hysteria and "feeble-mindedness."<sup>67</sup> It was far easier to dismiss the behavior of girls as something mysteriously linked to some gender-specific, emotional defect than it was to invest the care, time or resources in determining the real factors driving girls' aberrational conduct. These girls were seen as not worth the effort. Indeed, girls in the first half of the nineteenth century who engaged in immoral conduct were simply written off as fallen women and were, consequently, deemed beyond redemption.<sup>68</sup>

But, eventually, even fallen girls needed to be saved. In the middle of the nineteenth century, several schools of intellectual thought would converge to place girls—and particularly immigrant and working class girls—squarely in the sights of reformers.<sup>69</sup> The evangelist fervor to save the poor and sinners during this period served as a strong undercurrent in the establishment of Houses of Refuge.<sup>70</sup> This evangelism was accompanied and buoyed by an emerging belief that environments shaped individuals' behavior and character.<sup>71</sup> Removing children, now seen as pliable and capable of change, from harmful environs that exposed them to sin and temptation emerged as an important prerequisite to moral redemption.<sup>72</sup> Then, by affirmatively creating a

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<sup>62</sup> BRENZEL, *supra* note 58, at 17.

<sup>63</sup> *Id.* at 16.

<sup>64</sup> *Id.* at 17.

<sup>65</sup> See ODEM, *supra* note 14, at 3.

<sup>66</sup> BRENZEL, *supra* note 58, at 38.

<sup>67</sup> See ODEM, *supra* note 14, at 98.

<sup>68</sup> *Id.* at 38.

<sup>69</sup> *Id.* at 21.

<sup>70</sup> *Id.* at 22-23.

<sup>71</sup> GRUBB & LAZERSON, *supra* note 59, at 18.

<sup>72</sup> *Id.*

healthy environment particularly for them, reformers expected to be able to save and elevate these deviant children.

Redemption came in the form of new public institutions, such as Houses of Refuge and residential reform schools.<sup>73</sup> These institutions were expected to fill the void created by “deficient” families and to provide a strong counterbalance to a child’s poor environment.<sup>74</sup> By instilling proper and useful social values, these institutions looked to stave off the social disintegration that the culture and practices of the new, diverse lower classes seemed to portend. Reformers’ express goal was to take “incorrigible” children who congregated on street corners or spent time engaged in “vulgar amusement”<sup>75</sup> and to instill in them more appropriate values. Reformers hoped the Houses of Refuge would facilitate this transformation by providing a structured setting with careful instruction that might block out the percussive beat of negative influences in these children’s environments. At a minimum, reformers believed that children accepted into these Houses of Refuge would be exposed to more wholesome basics: religious instruction, training for employment, and a disciplined home.

Reformers’ concern about unsupervised children crossed cultural and racial lines. African American children were deemed capable of benefiting from such intervention as well—although in separate public facilities. In 1849, Philadelphia opened the “Colored Department of the House of Refuge.” Like its counterparts designed for white and immigrant children, the rhetoric surrounding its opening promised that African American children would now be able to enjoy the comforts of “a well-made bed and . . . [would] find themselves for the first time, at a table well-ordered, supplied with wholesome food, and presided over by the head of a family.”<sup>76</sup> Interestingly, the judge who delivered the dedication speech at the opening of the Colored Department noted the different challenges facing African Americans at the time.<sup>77</sup> Many were fugitive slaves who lived in constant fear of being returned to a master. And, he acknowledged, white citizens tended to treat African American children with disdain because they happened to be the descendants of slaves.<sup>78</sup> He further noted that although African Americans did not enjoy citizenship rights at the time, they were expected to abide by the laws like every other citizen.<sup>79</sup> So, he argued, African Americans should not be neglected.<sup>80</sup> Although African Americans constituted one-twelfth of the population,<sup>81</sup> Philadelphia set aside one hundred beds in its Colored Department of the House of Refuge to address their needs, reserving one-third for girls.<sup>82</sup>

Ultimately, the Houses of Refuge did not live up to their billing. The reality of children’s experience within them was, at best, a severely pared-

<sup>73</sup> *Id.* at 17-18; CHESNEY-LIND & SHELDEN, *supra* note 40, at 127.

<sup>74</sup> GRUBB & LAZERSON, *supra* note 59 at 18.

<sup>75</sup> Hon. William D. Kelley, *Address Delivered at the Colored Department of the House of Refuge* 13 (Philadelphia, 1850).

<sup>76</sup> *Id.* at 12.

<sup>77</sup> *Id.* at 20.

<sup>78</sup> *Id.* at 20.

<sup>79</sup> *Id.* at 20.

<sup>80</sup> *Id.* at 20.

<sup>81</sup> *Id.* at 20.

<sup>82</sup> *Id.* at 12.

down, almost malevolent version of what had been promised. Abuse, corporal punishment, and solitary confinement became common features within these supposedly healthier institutions.<sup>83</sup> The promises of training and education were more often honored in the breach.<sup>84</sup> And the religious instruction, seen as necessary for the child's moral development and inculcation of dominant values, attracted criticism as offering nothing more than Protestant indoctrination.<sup>85</sup> The Houses of Refuge devolved into punitive placements rather than nurturing shelters for poor children despite the glowing public oratory about their rehabilitative mission.

Still, the child-saving rhetoric of the era persisted. Social reformers continued their expansion of public institutions to promote and maintain social order. Education would become one of the principal vehicles through which reformers could emphasize and impose their concepts of respectability on children.<sup>86</sup> The "family-style" reform school promised loving guidance for the children whom they accepted.<sup>87</sup> The residential placement, at least in theory, would provide children with an improved family environment. However, in practice, these reform institutions simply looked to remove children from the "offending" influences of parents and peers. Immigrant and working class girls tended more often to merit this removal and would eventually come to populate these schools. Even at the opening of the first reform school for girls in North America, the Lancaster Industrial School for Girls, in 1856, forty-seven percent of the first inmates were not American-born.<sup>88</sup> But it was believed that all of these so-called wayward girls could receive what they were missing—the stability of Christian family life. The reform school would, in turn, contain the girls' immoral behavior as it led them on a more virtuous path toward womanhood.<sup>89</sup>

The first step on that path apparently involved obedience to parental authority. Again, at the Lancaster School, almost half of the girls admitted to the school during its first fifty years of operation entered as a result of complaints lodged by their parents.<sup>90</sup> "Stubbornness," the most frequent parental complaint, functioned as a catchall category for a host of behaviors ranging from staying out nights to frequenting liquor halls.<sup>91</sup> An examination of the records of girls admitted to the school reveals that they tended to come to reside at Lancaster for one of five reasons: to be punished for petty theft; to have a home when they lacked one; to receive religious salvation; to receive shelter from physical abuse; and to stop and prevent their "wanton" behavior.<sup>92</sup>

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<sup>83</sup> See CHESNEY-LIND & SHELDEN, *supra* note 40, at 128.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*; Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 MINN. L. REV. 327, 332-34 (2000); Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1195 (1970).

<sup>86</sup> CHESNEY-LIND & SHELDEN, *supra* note 40, at 129.

<sup>87</sup> BRENZEL, *supra* note 58, at 69-70.

<sup>88</sup> *Id.* at 76.

<sup>89</sup> *Id.* at 130.

<sup>90</sup> *Id.* at 7.

<sup>91</sup> *Id.* at 123.

<sup>92</sup> *Id.* at 130.

"Wantonness" preoccupied nineteenth century reformers. Exercising control over girls' sexual expression would become a principal reform concern.<sup>93</sup> At the start of the century, Americans readily discarded girls whom they perceived to be tainted by sexual activity. But gradually, as nineteenth century thinking gravitated toward the view that a woman's role as mother and wife provided the cornerstone to the family, the desire to rescue young women gained momentum. Controlling sexual behavior by insisting that both women and men alike adhere to a single standard of sexual purity became the method to eliminate prostitution and to glorify motherhood. Personal purity—particularly for women—meant chastity until marriage and faithfulness during marriage.<sup>94</sup> The plan among reformers involved isolating girls from boys, often for lengthy periods, and preparing them for domestic pursuits as wives or indentured servants in suitable homes.<sup>95</sup> Still, not all girls could be saved. As a girl grew older, she could sink to social depths from which society deemed her beyond rescue. Younger girls retained some measure of innocence and, consequently, were considered more capable of redemption. In similar fashion, the voluntary nature of a girl's sexual involvement became an equally important consideration. Girls who willingly chose to engage in sexual activity shattered any hope of help, while "unwilling" girls who became sexually active merited a different response.<sup>96</sup> Society still viewed girls in the latter category as morally damaged, but worthy of rescue.<sup>97</sup> Their reform, though, needed to occur in isolation from chaste girls to avert any undue influence by the sexually active girl over the pure girl.<sup>98</sup>

The denial of a girl's sexual expression may have seemed reasonable and appropriate given the social stakes. Chastity was highly prized such that even suspicion of sexual activity could precipitate a rapid plunge in social status for the nineteenth century young woman. Consequently, parents across social classes were often quite concerned about controlling their daughters' sexual behavior to preserve their daughters' futures.<sup>99</sup> Since many reform schools would not openly accept "fallen" girls, parents often used the complaint of stubbornness to place them in these institutions.<sup>100</sup> Reform schools acquiesced in this subterfuge to control the sexuality of these "stubborn" girls. Parents benefited by being able to acquire state aid in their efforts to raise their daughters or to have the child taken off their hands. At the same time, parents could feel some

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<sup>93</sup> See ODEM, *supra* note 14, at 2-4.

<sup>94</sup> NICOLE HAHN RAFTER, *PARTIAL JUSTICE: WOMEN IN PRISONS AND SOCIAL CONTROL* 159 (2d ed. 1990).

<sup>95</sup> BRENZEL, *supra* note 58, at 72-73 (noting that a girl's tenure at the Lancaster School for Girls culminated in indentured service under the aegis of the state. Initially, the founders were adamant that no girl should enter indenture service before having completed her religious and vocational training at the school, but they also knew that indentured service was often a path for girls to find later employment.).

<sup>96</sup> See *id.* at 48.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Working class families shared the concern that an unwed daughter's sexual conduct could threaten the family's social standing and reputation. See ODEM, *supra* note 14, at 51-52.

<sup>100</sup> See BRENZEL, *supra* note 58, at 123.

level of assurance that their daughters would receive shelter, training and future employment.

By the century's close, reform schools were a far cry from the promised nurturing family-like environment.<sup>101</sup> Over the latter half of the nineteenth century, social thinking had abandoned the view that reforming a child's environment could lead to fundamental changes in character. Instead, the prevailing thought at the end of the century blamed waywardness on inherited tendencies.<sup>102</sup> This ideological shift may have been influenced by the enormity of the changes that Americans were experiencing at the end of the nineteenth century. Eighteen million immigrants came to the United States between 1890 and 1920, bringing a diversity that signaled massive changes in the society that nineteenth century American-born natives had come to know.<sup>103</sup> The belief in the inevitability of heredity meant that benevolent reform was essentially useless in the face of an innate and weak character; instead, the vehicle for controlling deviance and restoring social order involved rigid training, custodial care and containment.

The emphasis shifted away from familial care and education toward hard work. By century's end, there was nothing mild about the reform school setting.<sup>104</sup> Reform schools denied girls conveniences and imposed strict discipline as a means of exercising greater control over them. These schools adhered to the view that a labor-filled existence would at least tire girls' bodies, leaving them little idle time for trouble or improper activities. This approach exhibited a more pessimistic view of human nature and the girls who ended up in these schools bore the brunt of this harsher view.<sup>105</sup>

### *B. Laying the Foundation: Transforming Female Sexual Expression into Delinquency*

As the twentieth century turned, Progressive Reformers took up the challenge of promoting the ideals of feminine modesty and sexual restraint. The Progressive approach was decidedly less accusatory than nineteenth century practices, but no less fervent. Progressive Reformers did not perceive delinquent girls as inherently wicked. Rather, they looked to external conditions as the cause for moral decay.<sup>106</sup> Consequently, they labored to identify and eradicate the social forces that shaped and dominated young women's poor moral choices. As importantly, they looked to separate girls from the environmental conditions that posed particular moral dangers. To that end, Progressive Reformers concentrated their efforts on—and enlisted state support for—the protection of girls from the many temptations that existed in a changing society. By redirecting girls' energies into appropriate channels such as religion, athletics, and education until marriage, reformers believed that they could help

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<sup>101</sup> *Id.* at 160; CHESNEY-LIND & SHELDEN, *supra* note 40, at 128.

<sup>102</sup> See BRENZEL, *supra* note 58, at 5.

<sup>103</sup> See GRUBB & LAZERSON, *supra* note 59, at 19.

<sup>104</sup> See CHESNEY-LIND & SHELDEN, *supra* note 40, at 128.

<sup>105</sup> See BRENZEL, *supra* note 58, at 5 (noting that reform institutions underwent changes as reformist vision devolved from one of optimism about the ability to change human behavior to one of disillusionment that human behavior was predetermined or inherited).

<sup>106</sup> See ODEM, *supra* note 14, at 104-05.



girls adhere to middle class domestic ideals regarding womanhood and morality. Firm direction by vigilant parents would keep girls on an appropriate path, Progressive Reformers urged. But, in the absence of solid familial controls, Progressives advocated state assumption of the guidance function.

Industrialization and urbanization had begun to take a toll on children, in general, and girls, in particular. The demands of a rapidly expanding industrial economy translated into demands for younger, cheaper labor. Progressive activists turned their attention to the ways that employers utilized children in the labor market and condemned the all too common practice of placing children in exploitative, often physically dangerous, environments. Because young women were particularly vulnerable in this new industrial environment, they became a prime target for Progressive reform efforts. Young girls were often thrust into work environments at early ages, facing situations in which older men could easily take advantage of their youth and innocence.<sup>107</sup> Reformers warned that such conditions would inexorably lead to moral decay and threatened not only the individual safety of children but also the moral fiber of society.

Reformers' message would resonate throughout American society. Middle class white women, who made up a large part of the Progressive Reform movement, were to take an active interest in the operations of the justice system, particularly as it related to children. Involvement with juvenile justice issues allowed many college educated women to fill a larger social role than they might otherwise have filled. Women reformers would capitalize on the presumption that children and the family fell within women's sphere of responsibility, thus enabling women reformers throughout the Progressive era to extend their maternal role and influence into a more public sphere. Their interest in saving children allowed them to break free of the strict confines of the domestic sphere. Aiding these activist women were black women reformers who looked to "uplift" their race from the depraved masses evident in the country's "infested centres" through their example and through social reform.<sup>108</sup>

Interestingly, the reformers' initial efforts to protect girls took the form of setting controls on male behavior. The evils of prostitution and "white slavery" had captured reformers' attention, such that they were intent on developing tools that might aid in the prosecution of men who participated in these activities. Unlike their nineteenth century predecessors, these women did not perceive the girls who became involved in these activities as depraved, "fallen" women. Rather, they considered them victims of male sexual privilege and exploitation. Progressive reformers cast their hopes and efforts into the legal system, hoping to devise an approach that would at once shine a light on these practices and reduce the likelihood of continued victimization of these young girls. To that end, women reformers set out to raise the age of consent, which in many parts of the country tended to be around ten or twelve years old. Statu-

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<sup>107</sup> *Id.* at 106-07.

<sup>108</sup> See Cheryl D. Hicks, "In Danger of Becoming Morally Depraved": Single Black Women, Working Class Black Families, and New York State's Wayward Minor Laws, 1917-1928, 151 U. PA. L. REV. 2077, 2085-86 nn.42-43 (2003) (quoting Victoria Earle Matthews, *Some of the Dangers Confronting Southern Girls in the North*, Speech at the Hampton Negro Conference (July 1898)).

tory rape legislation, they hoped, would ultimately regulate and curb the sexual appetites and practices of older men.

Although African American women reformers were to participate in other parts of the progressive reform movement,<sup>109</sup> they played less of a role in pursuing this particular strategy. Given that state authorities tended to use statutory rape laws to prosecute black men for alleged violations of white women, this strategy proved an awkward fit for African American women who accurately perceived that this approach certainly would not benefit young African American women. But reformers would ultimately draw broader and more diverse support as they extended their agenda to address working conditions. Progressives advocated employment bureaus to protect girls from dangerous work by directing them to safer jobs.<sup>110</sup> Women reformers also lobbied successfully for the enactment of child labor laws to protect children from harsh labor conditions and to keep them within the home during their early development, thereby shoring up family life.<sup>111</sup>

In their efforts to protect girls, reformers' focus soon returned to female morality.

Many of the Progressive reformers grew alarmed at changes in girls' behavior that seemed a direct challenge to the values of propriety and chastity that upper middle class women thought all girls should embrace. Reformers sought to exert influence over shifting conceptions of social and sexual mores, particularly evident in the urban centers, by transforming female sexual interest and activity into female delinquency. Girls who did not fit the mold of sexual propriety were readily deemed wayward and in need of greater control. Much like their nineteenth century predecessors, twentieth century Progressives wanted desperately to stop what they perceived to be a girl's moral downfall by regulating her sexual expression. But unlike in the nineteenth century, these reformers did not rely principally on private or charitable institutions to exercise control over girls' misconduct. They now looked to enlist the power of the state to enforce their norms.

In focusing on the state, Progressive activists examined the methods that the state employed to address delinquent behavior by children.<sup>112</sup> The Progressive reformers' observations helped to surface, and ultimately condemn, the cluster of punitive impulses that defined the justice system's approach to juvenile crime. They questioned the wisdom and utility of exposing young children to adult trials, convictions and the imposition of long prison sentences in the company of hardened criminals.<sup>113</sup> But more than just highlighting horrific

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<sup>109</sup> See generally DOROTHY C. SALEM, *TO BETTER OUR WORLD: BLACK WOMEN IN ORGANIZED REFORM, 1890-1920* (1990) (giving a history of the unique contribution of African American women in early twentieth century social reform); Christina Simmons, *African Americans and Sexual Victorianism in the Social Hygiene Movement, 1910-1940*, 4 J. HIST. SEXUALITY 51, 51-75 (1993) (discussing how race, class, and gender affected social and political stances).

<sup>110</sup> ODEM, *supra* note 14, at 108.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> See Richard S. Tuthill, *History of the Children's Court in Chicago*, in *CHILDREN'S COURTS IN THE U.S.: THEIR ORIGIN, DEVELOPMENT, AND RESULTS 1-9* (Richard H. Ward & Austin Fowlers eds., AMS Press 1973) (1904).

images of abuse, the Progressives recognized and set out to change the underlying culture of such treatment as incompatible with the proper role of a justice system. Still, while well intended, their protective efforts ultimately took the form of legal coercion as they began to use the newly formed juvenile courts to push their reforms.

Even then, women reformers recognized the limitations of a male controlled legal system. All too often, gender bias in the justice system manifested as unfair treatment of girls in the system. Women reformers openly expressed concern that legal officials were either unable, or unwilling, to understand the needs and problems facing girls, and they maintained that women could handle these functions better. They therefore advocated the appointment of women as police officers, juvenile court judges, probation officers, and heads of correctional facilities for girls. They hoped to replace a gender-biased system of justice with a more maternal state by charging trained women professionals with the task of handling the reform of young female sex offenders. In so doing, they spearheaded a wave of reforms that dramatically expanded the scope of the justice system in monitoring and regulating the sexual conduct of girls. Ironically, as these women expanded their own roles to patrol the borders of morality, they became the principal players in a system designed to keep girls locked within prescribed bounds and in step with more traditional domestic ideals.

Still, keeping younger women in check was consistent with emerging thinking about the period of adolescence. G. Stanley Hall, author of the influential *Adolescence: Its Psychology and Its relation to Physiology, Anthropology, Sex, Crime, Religion and Education*, published in 1906, was the first to define adolescence as a distinct period.<sup>114</sup> He explained that adolescence was in essence a "new birth" during which the child stood poised over a precipice between childhood and adulthood.<sup>115</sup> This transitional period was a precarious space where perverse temptations could lure the developing but unsuspecting teen toward dangerous excesses, he contended.<sup>116</sup> For girls, adolescence was a particularly difficult time because it was a period in which the young girl would gain an acute awareness of her own sexuality. Primitive impulses would preoccupy and overwhelm girls unless they were directed toward more acceptable modes of behavior and thought.<sup>117</sup> By channeling girls' energy toward more appropriate pastimes and by providing proper guidance, girls could successfully navigate this dangerous period.

Hall's ideas strongly influenced the ideas and work of Progressive Reformers, although his influence was not without limitations.<sup>118</sup> Women reformers tended to reject some of his more conservative views. For example, he argued that higher education for women would interfere with their reproductive roles. Still, reformers allowed many of his other views to govern their efforts, particularly regarding the proper approach to reforming an adolescent

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<sup>114</sup> See ODEM, *supra* note 14, at 101.

<sup>115</sup> G. STANLEY HALL, *ADOLESCENCE: ITS PSYCHOLOGY AND ITS RELATIONS TO PHYSIOLOGY, ANTHROPOLOGY, SOCIOLOGY, SEX, CRIME, RELIGION AND EDUCATION* xiii (1904).

<sup>116</sup> *Id.* at xv.

<sup>117</sup> See ODEM, *supra* note 14, at 101.

<sup>118</sup> *Id.*

girl's conduct. Reformers embraced the notion that girls required careful observation, intervention, and guidance throughout adolescence. Wholesome recreation, athletics and education were keys to the successful diversion of girls away from dangerous sexual activity. For middle class youth, this meant that their sexual excesses could be addressed by less formal mechanisms such as youth organizations, school programs, and advice literature. For daughters who otherwise might have been on a path toward social disaster, middle and upper class parents were seen as fully capable of regaining control.

Working-class and immigrant parents were viewed less favorably.<sup>119</sup> Part of the problem was, as some reformers soon observed, that the sorts of informal diversions necessary for a girl's healthy moral development were not a regular part of the working-class environment. Complicating matters more, reformers did not have the confidence that working-class and immigrant parents could provide the necessary controls or guidance without state support and intervention. Thus, the measures to be used to regulate the conduct of girls were affected by class. Fears over the dangers of adolescence were similarly class-differentiated. Working class and immigrant children were deemed in need of more direct intervention through the use of legal coercion. As Progressive reformers reasserted the nineteenth century view of the primacy of the family's responsibilities in child rearing and inculcating appropriate moral values, they simultaneously expanded the scope of public responsibility to intercede in the otherwise private family choices of lower-class families.

Perhaps the differences that working class families exhibited alarmed the reformers. Economic conditions and cultural practices often meant that immigrant families would have more than the two children that had constituted the norm for upper and middle class white American families. Given the size of families, children often lived in overcrowded conditions, which raised concern about the ability of parents to supervise all of their children closely.<sup>120</sup> The inclusion of extended family members—grandparents, uncles, and cousins—and the disorder that at times accompanied such crowded conditions caused reformers to see these arrangements as “confused family groupings.” Mothers in working class and immigrant families often could not afford the luxury of remaining at home with younger children because their family's survival depended on the income that they could earn in addition to the father's income. But in the first two decades of the twentieth century, reformers and social workers pointed the finger of blame for the delinquent behavior of children on working mothers.

Not only did parents have their hands full dealing with the hardships associated with poverty, but urbanization brought its share of dangers to which they needed to remain alert. Reformers concluded, though, that many working-class and immigrant mothers were wholly unprepared to help their daughters understand and navigate the more modern experience of their current environments.<sup>121</sup> The move to an urban existence offered enticements and vices that girls and their families had not previously encountered. When moving from a foreign country, immigrant parents often left the security of a community with

<sup>119</sup> See Hicks, *supra* note 108, at 2084-85.

<sup>120</sup> ODEM, *supra* note 14, at 106.

<sup>121</sup> *Id.* at 107.

which they were familiar, which had dangers that they could anticipate and protect against based on their own experiences. In urban America, the changes were rapid and foreign. In some ways, many parents were less prepared to guide their children as they might otherwise have been because they lacked the tools to predict the experiences and the dangers their children would encounter. For some immigrant families, this simply pushed them to engage in strict discipline in an effort to force their children to adhere to traditional ways of behaving. Often, their efforts to impose limits caused their children to engage in greater rebellion. As their children began to embrace the American culture and to experience the excitement of a new world with fewer restrictions and boundaries, they began to reject their parents' guidance. Ironically, the choice to be more "American"—to exercise their individuality rather than conforming to traditional roles—made them stand out.

The state remained poised to step up and step in to exercise its own form of control. Buttressing the efforts to bring girls under more direct control—and confirming their suspicions about the peril facing girls—were emerging psychiatric and sociological claims at the turn of the century. Psychiatrists contended at the time that overwhelming sexual urges of the "hypersexual female" rendered her psychopathic.<sup>122</sup> Sociologists provided the perspective that girls' misbehavior flowed from the "unwholesome" influence of the working-class neighborhood.<sup>123</sup> Although the new scientific approach was intended to benefit girls, girls would lose in the end. The psychiatric and sociological claims did little more than add a scientific veneer to reformers' social engineering policies. Under the guise of science, a fundamental contest between social classes over that behavior which would be considered appropriate for young women was permitted to play out in the juvenile justice system where upper and middle class women had the power to enforce their views.

The juvenile court became the battleground for another equally important power struggle: the battle of parental clout and state authority. While parents often fought the battle quite vehemently, more often than not, the state declared victory. Working class and immigrant parents lost much of their autonomy in their parenting decisions. The state interpreted its authority broadly and saw its role as deciding what would be in the best interest of the child—even when the court's views diverged from the parents.

It was not uncommon for parents to turn to the court hoping for it to underscore their authority and to teach their daughters an object lesson.<sup>124</sup> But, often, when the parents believed that their child had learned the lesson and, therefore, should be returned to her home and family, the court disagreed. Particularly, when the court considered the parents to be a negative influence on the child, it was reluctant to release the daughter back into their care. As a result, what at times began as the parents' efforts to enlist the support of the

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<sup>122</sup> See Elizabeth Lunbeck, "A New Generation of Women": *Progressive Psychiatrists and the Hypersexual Female*, 13 *FEMINIST STUD.* 513, 513-39 (1987).

<sup>123</sup> See Rachel Devlin, *Female Juvenile Delinquency and the Problem of Sexual Authority in America, 1945-1965*, 9 *YALE J.L. & HUMAN.* 147, 153 (1997).

<sup>124</sup> See RUTH M. ALEXANDER, *THE "GIRL PROBLEM": FEMALE SEXUAL DELINQUENCY IN NEW YORK, 1900-1930*, 49-50 (1995).

state in regaining control over a headstrong daughter all too often turned into surrendering parental authority to the state.<sup>125</sup>

New ways of conceptualizing girls' behavioral problems led to new methods to regulate girls' behavior. What emerged in this period was an emphasis on state intervention, which, in turn, led to a proliferation of state institutions. The period immediately preceding this era (between 1850 and 1910) experienced only an average of five new reformatories per decade. However, between 1910 and 1920, there was an explosion in state institutions. Twenty-three reformatories were opened throughout the nation.<sup>126</sup>

In the early operations of the juvenile court in Chicago, girls were less likely to be placed on probation and more likely to face institutional confinement in these reformatories than their male counterparts.<sup>127</sup> Large numbers of girls came under the control of the justice system for engaging in sexual relationships with young men whom they would eventually marry. But because of rigid constraints on girls, even eighteen-year-old girls in relationships could expect the justice system to intervene. When girls became enmeshed in this system, authorities felt at liberty to examine their lives in detail, given the juvenile court mission to save and protect children. Court officials interrogated girls about the intimate details of their sexual histories and pressed them for information about the identities of their partners.<sup>128</sup> Girls who refused to cooperate could face longer periods of confinement.

### C. *Tracking and Widening Racial Default Lines*

The girls who faced the most frequent confinement and the system's harshest judgments were those girls who diverged from the "norm" based on race. Throughout the juvenile court's history, African American girls have proved to be an irresistible target. Wayward minor laws adopted across the country at the end of the nineteenth and beginning of the twentieth centuries did little to put too fine a point on what constituted proper behavior and what did not. These statutes instead gave state authorities wide discretion in both defining and addressing "incorrigible" female behavior. They permitted the arrest and detention of girls whose conduct ranged from regularly being in the company of "thieves or prostitutes" to willfully disobeying their parents and thus being in danger of becoming "morally depraved."<sup>129</sup> In the absence of precise definitions of delinquent conduct, state authorities were free to make determinations about conduct according to their own sense of propriety. Too often, the judgments state authorities made in the quest to domesticate wayward girls incorporated racial and gender biases.

<sup>125</sup> See Devlin, *supra* note 123, at 180.

<sup>126</sup> CHESNEY-LIND & SHELDEN, *supra* note 40, at 132.

<sup>127</sup> BRENZEL, *supra* note 58, at 115 (citing a study covering the first ten years of the juvenile court in Chicago finding that among boys, fifty-nine percent were returned to their homes under probation supervision while only thirty-seven percent of the girls received probation with fifty-one percent being committed to institutions).

<sup>128</sup> *Id.* at 143-44.

<sup>129</sup> See Hicks, *supra* note 108, at 2082 n. 24 (citing the Act of May 13, 1886, ch. 353, §1, 1886 N.Y. Laws 559 at 560).

The sort of behavior that gave rise to court intervention for black girls did not differ markedly from that of white girls. As single, young, African American women migrated from the South, they often lived with northern relatives. In return for a place to stay, girls worked to help support themselves and to contribute to the family. Urban life offered more chances and ways to enjoy leisure time.<sup>130</sup> Life in northern cities often exposed these girls to a greater degree of freedom than they had experienced in the South and the wages they earned enabled them to take advantage of these opportunities.<sup>131</sup> But their extended families often worried about this newfound independence, setting restrictions on young women's movements in an effort to harness their experience of freedom. As one might expect, friction often developed between the young women and their families as these young women found it harder to resist the lure of a changing environment. When the taste of freedom awakened a rebellious desire for more independence, families sometimes turned to the state for help in discipline.<sup>132</sup> The problem was that reaching out for assistance tended to be perceived by the state as an indication that the parent or guardian could not exercise the necessary controls without state assumption of the responsibility.

Families would once again come out on the losing end in the contest with the state.<sup>133</sup> The state was often quite willing to assume control, particularly in African American families. Rather than acknowledging that despite the worst conditions, including slavery, blacks had somehow managed to maintain a sense of family and social cohesion, white Americans tended to view blacks as inferior parents and guardians.<sup>134</sup> And these views were not confined to the South. African Americans had difficulty escaping the vestiges of slavery in the North as well. The presumption—even among Progressive reformers—was that black families could not be counted on to exercise the sorts of controls over their children that white families could.<sup>135</sup> Although immigrant parents were still considered in need of guidance and help in governing their children, reformers believed that immigrant parents could draw on social traditions with which reformers were familiar and to which they ascribed—traditions born out of European backgrounds.<sup>136</sup> White reformers made no secret of the fact that they viewed black families more negatively. Black parents and guardians may have been well meaning, but they lacked the social organization to provide guidance and set appropriate examples.<sup>137</sup> This racial bias—which at times was openly acknowledged—may have been responsible for the more punitive

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<sup>130</sup> See ALEXANDER, *supra* note 124, at 20.

<sup>131</sup> See ODEM, *supra* note 14, at 2.

<sup>132</sup> See ALEXANDER, *supra* note 124, at 49.

<sup>133</sup> *Id.* at 104.

<sup>134</sup> Hicks, *supra* note 108, at 2086.

<sup>135</sup> *Id.* at 2087 (quoting Progressive reformer Jane Addams who asserted that “[o]ne could easily illustrate [Blacks’] lack of inherited control” especially when contrasting the experiences of Black girls against those of the “daughters of Italian immigrants, or of any other South European peoples”); Jane Addams, *Social Control, CRISIS: A RECORD OF THE DARKER RACES*, Jan. 1911, at 22, available at [http://www.uic.edu/jaddams/hull/Addams\\_SocialControl.html](http://www.uic.edu/jaddams/hull/Addams_SocialControl.html).

<sup>136</sup> Addams, *supra* note 135; Hicks, *supra* note 108, at 2087.

<sup>137</sup> Hicks, *supra* note 108, at 2091.

approach that the state employed when addressing the misbehavior of black girls in the justice system.

Certainly, the nature of the misconduct by black girls did not warrant more punitive treatment. For the most part, African American girls, like their white peers, tended to be involved in minor transgressions. Indeed, white girls tended to receive sentences for these offenses that at least tacitly acknowledged the lack of seriousness of the conduct. The typical sentence involved a suspended sentence with release to their homes on probation with a period of minimal supervision by a probation officer. But in the early twentieth century, black girls received far fewer placements on probation than either their white counterparts received or their conduct warranted.<sup>138</sup> For African American girls, minor offenses meant that they would likely face a sentence in secure confinement far from their homes. A 1920 study of female delinquency in New York revealed several impediments to placing black girls on probation including "meager facilities [available] for supervising colored girls" and the refusal of several of New York's private institutions to accept black girls.<sup>139</sup> Probation officers reportedly devoted more attention to white girls under their supervision and barely engaged in any preventive or reformatory work with black girls.<sup>140</sup> And those probation officers who worked exclusively with black girls were often over-extended as they tried to handle an overload of cases.

Local reformatories made available only a limited number of beds for black girls. While these reformatories were by no means models of intervention and reform, they were at least local to the neighborhoods from which the girls came. But the vast majority of institutions that operated for girls in local communities typically would not accept black girls. The racial segregation that existed in these institutions was premised on the view that mingling girls of all races would needlessly expose the white girls to corrupting influences.<sup>141</sup> Of particular concern was what many white Americans perceived as the sexually charged "nature" of black girls.<sup>142</sup> Some superintendents of reform schools during this period expressed an unwillingness to admit black girls because they feared that the Black girls would aggressively pursue homosexual relations with otherwise unsuspecting white girls. Thus, the protection of white girls' virtue became a justification for segregated policies.<sup>143</sup>

Of course, some institutions did exist for black girls. Black reformers within the Progressive movement pushed for state and local support of homes that would provide the same care and rehabilitation to black girls as white girls received.<sup>144</sup> But, the reform institutions were far more limited in number. And

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<sup>138</sup> *Id.* at 2093-94.

<sup>139</sup> *Id.* at 2094.

<sup>140</sup> *Id.* at 2093.

<sup>141</sup> *Id.* at 2094.

<sup>142</sup> See ALEXANDER, *supra* note 124, at 92 (noting that whites often described African American women as "unnaturally libidinous").

<sup>143</sup> *Id.* at 92 (citing an investigation of Bedford Hills women's prison conducted by the Board of Charities which warned that interracial homosexual relations between women would lead to "race suicide," described as white women declining marriage, motherhood and embracing "colored neighborhoods" upon release from prison).

<sup>144</sup> See generally, EVELYN BROOKS HIGGINBOTHAM, *RIGHTEOUS DISCONTENT: THE WOMEN'S MOVEMENT IN THE BLACK BAPTIST CHURCH 1880-1920*, 180-84 (1993).



those that existed were severely under funded.<sup>145</sup> Thus, they were unable to provide the same level of service that institutions that focused on white girls could deliver.

Ultimately, many black girls served prison terms for their minor offenses. In New York, for example, black girls in the beginning of the twentieth century typically received sentences in Bedford Hills women's prison in upstate New York for conduct ranging from breaking curfews to becoming pregnant out of wedlock.<sup>146</sup> For white and immigrant girls, Bedford usually represented the final step in the reform continuum after all else had failed.<sup>147</sup> The juvenile system that was set in place for girls involved a series of graduated sanctions, beginning with probation, increasing to placement in a local group home or reformatory. Confinement in prison marked the ultimate step in the process. For a white girl to reach this final stage, she had to exhibit considerable problems at the intermediary stages.<sup>148</sup> A black girl simply had to be black. The black girl who found herself at Bedford Hills typically had not received the benefit of rehabilitative services or other sorts of preventive intervention. She just skipped the preliminaries and advanced automatically to the end game.

The families of black girls often looked to the state for help in controlling their wayward daughters.<sup>149</sup> Believing that their daughters would benefit from the rules and the rigidly controlled environment of the juvenile institutions, parents turned to the state to get their daughters back in line. Black parents did not typically make the choice to seek state help lightly. The choice to issue a complaint was often one of last resort when all else failed. Parents often hoped that this involvement in the state system would be just enough to frighten their daughters back into conformity with the family's values.<sup>150</sup> To a lesser extent, some working class black parents sought state intervention as a way to relieve themselves of sometimes overwhelming financial burdens.<sup>151</sup> For example, if their daughter was pregnant, the new baby would mean additional costs that poor families could not always absorb. With nowhere else to go for financial help, parents did refer their daughters to the state where at least the girl and her child would receive care. What they did not realize was that once they made the referral, they would relinquish control over their children.<sup>152</sup>

State authorities and advocates for children in the early part of the twentieth century made no secret of the fact that the juvenile court needed to exercise control over those individuals and families within society that engaged in conduct at odds with prevailing white protestant attitudes and values. Indeed, these Reformers did not appear to question their own assessments that their intervention would ultimately improve the lives of the children. Reformers targeted individuals who seemed to defy the conventions that the white middle class

<sup>145</sup> See BARRY KRISBERG, *JUVENILE JUSTICE: REDEEMING OUR CHILDREN* 29 (2005).

<sup>146</sup> Hicks, *supra* note 108, at 2103.

<sup>147</sup> *Id.* at 2101.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 2079.

<sup>150</sup> *Id.* at 2114-15.

<sup>151</sup> *Id.* at 2109.

<sup>152</sup> *Id.* at 2114-15 (noting that when African American families sought release of their relatives believing that the young woman had learned her lesson, the state typically did not accede to the family's request).

held dear and then brought the full weight of the state to bear on those girls and their families to redirect their conduct. They did not see any value or necessity in inviting debate or discussion with those individuals or families against whom they exercised state power. They simply engaged in intrusive strategies, all the while presuming the virtues and correctness of their approaches. And girls of color endured the brunt of those choices.

#### IV. CONCLUSION

History reveals a juvenile justice system designed, at least in part, to bring girls in line with white middle class standards for appropriate feminine behavior. The differences that girls exhibited by virtue of their sexual expression, ethnicity or race permitted the state to target them in an effort to assimilate them into dominant culture. Sadly, these practices are not confined to the past. Today's juvenile justice system comes encrusted with local meanings and values that more often tend to track white middle class attitudes about acceptable conduct. The system that results stubbornly reflects, and then acts on, race-based conceptions of deviance and gender-based perceptions of appropriate behavior that all too often reinforce racial, economic and social hierarchies. The treatment that children receive when they come into contact with the juvenile justice system roughly correlates with both their status and prevailing attitudes about them in the society.<sup>153</sup> Still, knowledge of, and reflection on, the history of the delinquency system should enable those advocates who care about girls and justice to learn from the mistakes of the past.

What lessons might this brief historical excavation teach? First, advocates must remain alert to the ways the juvenile justice system can co-opt even the most dedicated advocates and place them in positions where their own actions contribute to the suppression of girls' differences. They must also resist the juvenile system's efforts to label as delinquent conduct that may merely be adaptation or reaction to dangerous environments that girls have managed to escape and survive. Women reformers in the Progressive era readily acknowledged that their efforts were motivated by a sincere desire to help girls and their families gain access to services and systems of support that they might otherwise lack. Despite their professed intentions and their criticism of the paternalism and sexism of men in the system, these women consciously or unconsciously turned a blind eye toward their own participation in the subordination of girls and girls of color. Their complicity should serve as a powerful warning for today's advocates.

Girls' advocates in the delinquency system tend to be public defenders. Given their role, defenders offer an important point of study if we take seriously the notion that the nature of our interactions with girls and advocacy on their behalf could benefit from an attention to these historical trends. Today,

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<sup>153</sup> See YOUTHFORCE & WE INTERRUPT THIS MESSAGE, IN *BETWEEN THE LINES: HOW THE NEW YORK TIMES FRAMES YOUTH* (2001) (offering a comprehensive analysis of news stories showing the ways that the New York Times reinforced negative images and distorted the public perception of teenagers of color by devoting so many of its stories to the characterization of teenagers as the perpetrators of violence), <http://www.whatkidscando.org/images/whatslearned/NYTimesstudy.pdf>.

more often than not, the public defender serves as a pivotal point of contact for girls entering and navigating the system. As a group, public defenders hold various normative conceptions of both the role that they should play and the nature of the representation they should provide in the justice system. Some defenders articulate a role as singular in focus—fighting on behalf of the individual rights of their clients against the state's efforts to convict.<sup>154</sup> Others agree that their primary role is to advocate for their individual clients, but see that role as more collaborative and client-centered than lawyer driven.<sup>155</sup> Still others consciously add a community dimension to their roles. These community-oriented defenders still fight fiercely for their individual clients, but they also look beyond the immediate case that may have brought the client to court to learn whether there are recurring issues in the community that might have contributed to this involvement.<sup>156</sup> Whether the defender embraces a conventional role or a more progressive, community-oriented role, she stands in a unique position to provide advocacy and intervention tailored to the needs of girls.

Today, as was the case at the turn of the twentieth century, women, more frequently than men, choose to work with—and on behalf of—children in the justice system. Perhaps women defenders choose this work because they are more willing to engage in practice that extends beyond technical legal work in a courtroom and involves addressing the underlying social relations that may contribute to a young person's involvement. Perhaps what draws women to this practice is identification with the young women they represent. Whatever the motivations, women advocates may need to reflect consciously on their interactions with and representation of girls to take care that they do not fall prey to the habits and practices of their predecessors.

One such habit is distancing oneself from the girls they represent. The walls that lawyers and other professionals erect between themselves and their clients may flow from class, educational, racial and cultural differences. When professionals ignore or tolerate the distance that those differences can create, they can then more easily make and maintain negative judgments about their clients.<sup>157</sup> Casting girls as "other" can be quite simple since they are often doing everything in their power to show that they are different and will not conform to expectations. However, it is at this point where the risk of subordi-

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<sup>154</sup> See, e.g., Abbe Smith, *The Difference in Criminal Defense and the Difference It Makes*, 11 WASH. U. J.L. & POL'Y 83 (2003).

<sup>155</sup> See, e.g., Charles J. Ogletree, *Beyond Justification: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239 (1993).

<sup>156</sup> See, e.g., Cait Clarke & Christopher Stone, *Bolder Management for Public Defense: Leadership in Three Dimensions*, 29 N.Y.U. REV. L. & SOC. CHANGE 113 (2004); Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender's Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123 (2004); Kim Taylor-Thompson, *Taking it to the Streets*, 29 N.Y.U. REV. L. & SOC. CHANGE 153 (2004).

<sup>157</sup> See, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 51-52, 64-68 (2001) (discussing the ways that the degrees of separation or connection that a lawyer experiences can influence a lawyer's approach to representation and judgments about a client's conduct and case); see also Ogletree, *supra* note 155 (discussing the degree to which empathy in representation can motivate and sustain the public defender).

nation becomes acute. From the point at which the advocate perceives her client's judgment as flawed, it is but a short step to substituting the advocate's judgment for the client's, making strategic choices for the girl's "own good" and silencing her voice.

Another habit that might interfere with an advocate's ability to give girls voices in the system may emanate from the exact opposite impulse: a strong identification with the young women they represent. While the benefits of empathetic representation should not be understated,<sup>158</sup> women advocates must also take care not to allow that identification to substitute for careful attention to the girl's own assessment of both her conduct and the goals of the representation. Particularly when we, as advocates, feel the strong pull of identity with our clients, we need to remain vigilant that we do not then attempt to impose our own values because we believe that we understand the young woman's background and choices and can make better decisions for her.<sup>159</sup> Still, whether identification with or distance from the girls whom they represent influences the advocates' representation of the girls, advocates must begin to engage in conscious reflection on the choices they make in representing their clients, being sensitive to age, racial and cultural differences. Without such conscious reflection on their role and the ways that they treat girls in the system, they may engage in the precise sort of oppressive and demeaning conduct of their Progressive era predecessors who, in the end, helped the system to subordinate difference and silence the individual expression of girls.

Once advocates consciously assess their role and representation models, they should then turn their attention to the nature of the advocacy they provide girls. History reveals a tendency to transform female sexual expression into delinquency. The juvenile system will be able to continue this practice until advocates expose the practices and align themselves with other professionals—such as public health officials—in properly identifying this behavior as a public health concern rather than a criminal justice problem. Similarly, advocates need to acknowledge and publicly disclose the ways that the delinquency system tracks and broadens racial divides. By challenging publicly the tendency to treat girls of color more harshly, advocates may begin to change the conversation around delinquency and expose the real reasons that we choose to engage the justice system against certain girls. Finally, girls' advocates need to bring the light of modern thinking into the system so that we do not blame girls for behavior that may be survival conduct. However, advocates define their role as lawyers; they should work with their clients to challenge a system intent on making changes in children's lives without the requisite expertise. Unless girls' advocates see these trends and surface them publicly, the system is destined to repeat them.

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<sup>158</sup> See generally Ogletree, *supra* note 155.

<sup>159</sup> See Bryant, *supra* note 157.