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Juvenile Justice in Global Perspective:

From Chicago to Shanghai and Back to First Principles

»»» by David S. Tanenhaus

From their bones to their brains, as forensic anthropologists and neuroscientists remind us, children are physiologically different from adults. But has the law in the United States and elsewhere treated child suspects and defendants differently?

Although the idea that criminal law for the purposes of punishment should treat children as less culpable than adults predates the American Revolution, the establishment of a distinct and separate court system for juvenile offenders is a relatively recent invention. In 1898, for example, the clergyman and sociologist Frederick Wines could only imagine the benefits that would flow from creating such a court. As he explained, “What we should have, in our system of criminal justice, is an entirely separate system of courts for children, in large cities, who commit offenses which could be criminal in

adults.” The following year this vision for a separate children’s court became an institutional reality, when the world’s first juvenile court, located in Chicago, opened its doors on July 3, 1899. Remarkably, within a generation, juvenile courts became a basic feature of urban governance in the United States, and the juvenile court idea spread globally. Such courts now operate in almost every nation in the world.

Juvenile courts have worked differently across time and space. Yet, whether in Chicago in 1915, Paris in 1965, or Shanghai in 2015, they share two critically important features. First, their jurisdiction is age-based. These courts hear only the cases of persons below a prescribed age. The international norm is a person’s eighteenth birthday. Second, juvenile courts practice the theory that criminal charges for young offenders should be heard in a separate court.

To understand the history and development of juvenile justice systems in this country and abroad, we must remember that birth order makes a difference. The criminal justice system is centuries older than its much younger sibling, the juvenile court. Before the juvenile court was even conceived, criminal courts already had a long history of handling cases of youth crime. Progressive reformers in the United States, such as the philanthropist Lucy Flower, argued that the criminal justice system harmed children, turning them into hardened criminals instead of productive and law-abiding citizens. The leaders of the juvenile court movement, spearheaded by Flower and the first generation of college-educated women in American history that included such luminaries as Jane Addams and Julia Lathrop, had to convince male lawmakers in Illinois and



The juvenile court system in the United States has been replicated in countries around the world. Photo by Richard Ross, *Juveniles in Justice*.

elsewhere that children did not belong in criminal court. They faced the same question that subsequent generations of juvenile justice advocates have had to answer: Why shouldn't the cases of young offenders, especially those who commit serious crimes, be tried in criminal court? Flower, Addams, and Lathrop not only had to answer this question but also had to explain how their proposed children's court would fit into the existing legal landscape. From the beginning, the juvenile court has been defined by its relationship to the criminal justice system.

For centuries, the Anglo-American criminal justice system has been based on competing theories of punishment that included forms of utilitarianism and retribution. Judges in England and America had constructed the overarching principles and rules for this common law system that addressed

fundamental questions about who should be held criminally responsible for their acts and omissions. The common law tradition also developed limits, such as the principle of proportionality, for how much the state should punish a culpable individual for wrongdoing.

The leaders of the juvenile court movement belonged to a new generation that searched for sociological answers and governmental solutions to interrelated social problems such as poverty and crime. They argued that *treatment*, not punishment, should serve as the rationale for a separate justice system for juveniles. They worked with influential stakeholders to lobby Illinois state lawmakers to pass legislation that would divert children's cases from the criminal court. For example, in November 1898, the members of the Cook County Grand Jury issued a detailed report on the "Treatment of

Law-Offending and Homeless Boys by the City, County, and State." The grand jury devoted the first two days of each session to hearing the cases of boys aged 10 to 16, "for various offenses, some of them serious, but most of them almost frivolous." They objected to the fact that the criminal justice system "recognizes no difference between this child offender and the most hardened



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Juvenile Court by the Numbers

- In 2013, courts with juvenile jurisdiction handled an estimated 1,058,500 delinquency cases. That amounts to about 2,900 delinquency cases per day.
- More than 31 million youth were under juvenile court jurisdiction in 2013. Of these youth, 79% were between the ages of 10 and 15, 12% were age 16, and 9% were age 17. The small proportion of 16- and 17-year-olds among the juvenile court population is related to the upper age of juvenile court jurisdiction, which varies by state. In 2013, youth age 16 in 2 states were under the original jurisdiction of the criminal court, as were youth age 17 in an additional 9 states.
- Males were involved in 72% (764,800) of the delinquency cases handled by juvenile courts in 2013.
- In 2013, the total delinquency case rate for black juveniles (74.3) was more than double the rate for white juveniles (27.4) and for American Indian youth (29.6); the delinquency case rate for Asian youth was 7.3.
- The delinquency case rate for white juveniles peaked in 1996 (54.7) and then fell 50% by 2013; for black juveniles, the rate in 2013 was down 41% from its 1995 peak (126.4). The delinquency case rate for American Indian youth peaked in 1992 (86.1) and then declined 66% by 2013; for Asian youth, the peak occurred in 1994 (21.9) and fell 67% by 2013.

Juvenile Offenses

In the last ten years (2004–2013), the number of cases handled by juvenile courts has decreased for almost all offenses.

Offense	Number of cases 2013	Percent total	Percent change 10 Years 2004–2013
Total delinquency	1,058,500	100%	-37%
Person-related offenses <i>Includes homicide, rape, robbery, assault, other sex offenses.</i>	278,300	26%	-34%
Property-related offenses <i>Includes burglary, theft, motor vehicle theft, arson, vandalism, trespassing, and stolen property.</i>	366,600	35%	-42%
Drug law violations	141,700	14%	-23%
Public order offenses <i>Includes obstruction of justice, disorderly conduct, weapons offenses, liquor law violations, and nonviolent sex offenses.</i>	271,800	25%	-38%

Source: Hockenberry, Sarah, and Puzanchera, Charles, *Juvenile Court Statistics 2013*, National Center for Juvenile Justice, 2015.

criminals. All go the same route, and together.” This approach, they reported, destroyed children.

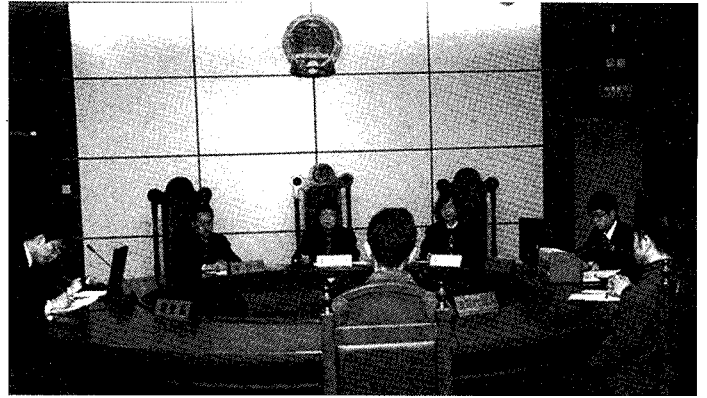
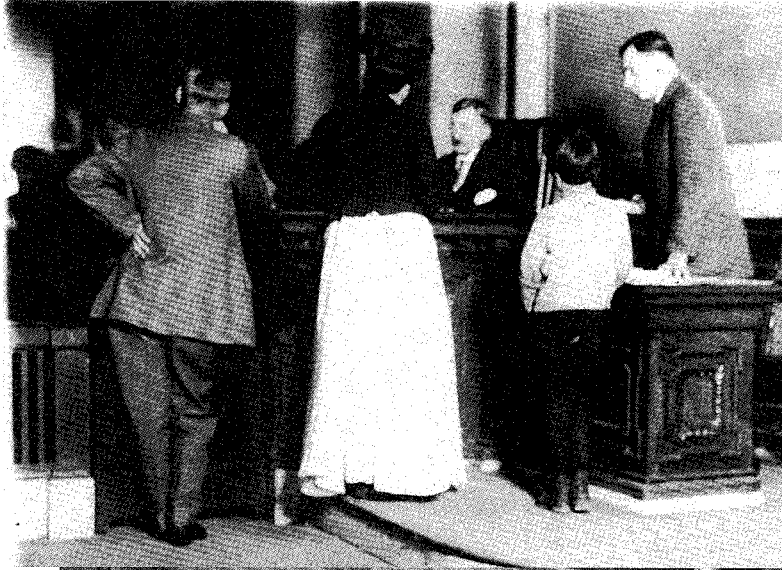
The architects of the Illinois Juvenile Court Act of 1899 purposefully

designed the new court to be sensitive to the developmental needs of children. As the court’s first probation officer, Timothy Hurley, emphasized, “a child should be treated as a child.” To

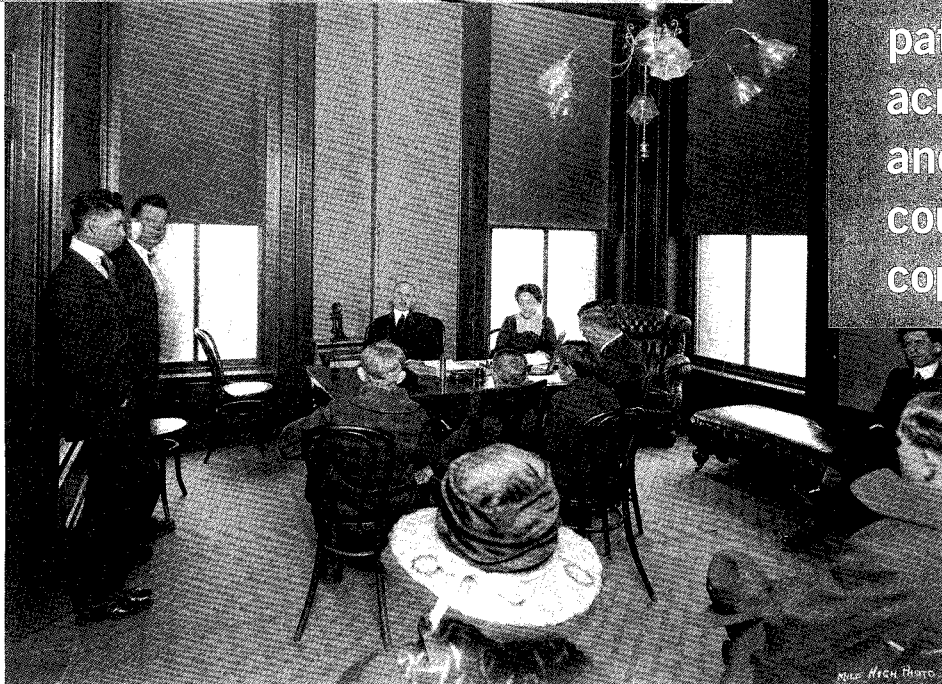
create such an environment, its architects stripped away the distinguishing features of a criminal court. As Jane Addams later explained, “There was almost a change in *mores* when the Juvenile Court was established. The child was brought before the judge with no one to prosecute him and with no one to defend him—the judge and all concerned were merely trying to find out what could be done on his behalf.” Juvenile court personnel made intake decisions, filed delinquency petitions, presented evidence in court, and supervised children on probation. Until the late 1960s, defense and prosecuting attorneys appeared only occasionally in juvenile courts in the United States.

Widespread dissatisfaction with the criminal justice system’s punishment of young offenders, whether they had committed serious or frivolous offenses, served as a necessary condition for the creation of a separate justice system for juveniles. And the Chicago experience, as it turned out, was only the first example of how dissatisfaction with the criminal justice system’s handling of youth crime paved the way for the establishment of a separate juvenile court. This historical pattern repeated itself across the world over the course of the twentieth century and made the juvenile court America’s most copied legal innovation.

Comparative research suggests that the mission of juvenile courts may transcend political theory, religion, and national politics. Most systems rely on probation and community supervision as their first response to juvenile crime and attempt to keep children at home and in their communities. In comparison to criminal courts, the initial empirical research suggests that juvenile courts use lower levels of confinement and for shorter durations. This approach provides children the opportunity to grow up and out of delinquency. Yet it should be noted that comparative empirical scholarship that compares juvenile



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From bottom left, clockwise: Juvenile courtroom in Denver, 1910; an eight-year-old appears before a judge in juvenile court in St. Louis, 1910; and recent juvenile court proceedings in China. Photos courtesy of the Library of Congress and Wikimedia Commons.

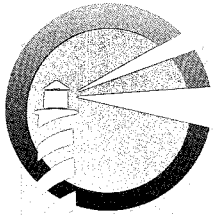
courts to their local criminal courts as well as juvenile courts in other countries is still in its infancy.

Several features of the American experience, which has been extensively studied, are historically significant. First, American juvenile courts were works-in-progress whose mission (to protect and help kids) preceded the development of institutional capacity. For example, in Chicago, a charitable organization ran the juvenile detention home for years before the county later built a facility. Second, juvenile courts developed most rapidly in urban areas

because rapid demographic change, connected to rise of large-scale industrialization, provided the impetus to establish such court systems. Third, the structure of American federalism ensured the local and state actors in concert with professional associations would be primarily responsible for the development and administration of juvenile justice systems in the first half of the twentieth century. The federal Children's Bureau, for example, worked with local experts and national organizations in the 1920s to develop model legislation and best practices

for juvenile courts, but these were only guidelines.

The federal government became more involved in juvenile justice during the second half of the twentieth century. In the 1960s, as part of its Due Process Revolution, the U.S. Supreme Court sought to create more uniform procedures in criminal and juvenile courts. This included the Court's *In re Gault* decision, which held that children during the adjudicatory stage of a juvenile court hearing had the right to notice, counsel, confrontation, cross-examination of witnesses, and



Juveniles and Due Process: *In re Gault*

Students discuss the opinions, including a dissenting opinion, in the 1967 Supreme Court case, *In re Gault*, which set due process protocols for juvenile courts.

Background

Gerald Gault was 15 years old when he was arrested in Phoenix, Arizona. He and a friend, Ronald Lewis, were accused of making an obscene phone call to a neighbor, Mrs. Cook, on June 8, 1964. At the time of the arrest related to the phone call, Gault's parents were at work, and the arresting officer did not contact them, or tell them that their son was being taken to a nearby Detention Home.

A hearing was held in juvenile court the next day. The neighbor, Mrs. Cook, who had reported the phone call, was not present in court. There was no transcript or recording made during the proceedings, there were no lawyers present in court, and no one was sworn in prior to testifying. Gault was questioned by the judge and there are conflicting accounts as to what, if anything, Gault admitted. After the hearing, Gault was taken back to the Detention Home. He was detained for another two or three days before being released, and another juvenile court hearing was scheduled for the following week.

At this hearing, the probation officers filed a report listing the charge as lewd phone calls. An adult charged with the same crime would have received a maximum sentence of a \$50 fine and two months in jail. Gault, however, was sentenced, by the juvenile court judge, to six years in juvenile detention, until he turned 21.

The Gaults challenged the constitutionality of these proceedings, and Gerald's case worked its way up to the Supreme Court. In an 8-1 decision, the Court ruled that what happened to Gerald was "fundamentally unfair." The Court held that certain protections needed to be in place in juvenile delinquency hearings. The Court ruled that at a minimum, juveniles are entitled to assistance of counsel, notice of the charges against them, the right to confront witnesses against them, and the protection against self-incrimination.

the privilege against self-incrimination. In 1974, Congress passed and President Gerald Ford signed the landmark Juvenile Justice and Delinquency Prevention Act. This national legislation created a framework and mandatory guidelines for providing federal funds to the states and led to the establishment of the Office of Juvenile Justice and Delinquency Prevention. Yet the

daily administration of juvenile justice largely remained a local matter.

There are intriguing parallels between the American history of juvenile justice and the more recent creation of thousands of juvenile courts in the largest cities of Mainland China during the 1980s and 1990s. Due to the size of the People's Republic of China (PRC), it now has the largest system

of juvenile courts operating in the world. This system developed in a similar fashion to what happened in the United States. Local Chinese actors, beginning in Changning District, Shanghai, responded to the social problems resulting from rapid urbanization by establishing a separate court to process juvenile criminal cases. This local initiative, much like the Chicago Juvenile

Discussion Questions:

1. Do you think anything about Gerald Gault's case seems unfair? What? Why?
2. Can you identify rights in the Bill of Rights that might be relevant to Gault's case? Do you think his rights were respected as they are outlined?
3. If Gault had been tried as an adult he would have received a maximum sentence of a \$50 fine and two months in jail. Do you think his sentence as a juvenile was fair? Should he have been tried as an adult? Why or why not?

Consider this excerpt from a dissenting opinion in the case:

Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act... And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era, there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the trappings of a conventional criminal trial.

4. What is the justice's concern? Do you think it is appropriate? Why?
5. Should "correction of a condition," or rehabilitation, be a goal of the juvenile justice system? Why?

»»» [“Get Smart” policies based on scientific research into child and adolescent development] call for a return to using juvenile courts instead of criminal courts and for substituting community-based alternatives for prisons.

Court at the turn of the twentieth century, quickly attracted national attention and the support of professional associations such as the National Courts Work Conference. In the early 1990s, the central Chinese government established national standards for juvenile criminal case procedures and endorsed the principle of juvenile protection. This national legislation was similar to what the Children’s Bureau had done in the United States during the 1920s. In both cases, the standards emphasized the first principles of a separate juvenile justice system and were primarily guidelines. For example, the 1991 Chinese legislation declared that juvenile courts should embrace a policy to “educate, rehabilitate, and save” children.

At the same time that Chinese cities opened their first juvenile courts, the United States experienced a moral panic about youth crime. Criminologists in America such as John DiIulio warned the public about a new breed of “superpredators” who were “radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys ... who do not fear the stigma of arrest, the pains of imprisonment, or the pangs of conscience.” They predicted a coming tidal wave of youth violence in the twenty-first century. In response, during the early 1990s, almost every state adopted “Get Tough” policies to make it easier to prosecute minors in adult court and to incarcerate adolescents in adult prisons. These laws often gave prosecutors the

authority to determine which court system would handle a particular youth’s case. This dramatic departure from historical practices threatened to undermine the foundational principle that children are different. By the end of the century, some critics in the United States even called for the abolition of the juvenile court.

Yet youth crime rates had already begun to drop precipitously and the “Get Tough” era in the United States ended about the same time that the twentieth century concluded. Since then, juvenile justice experts have proposed “Get Smart” policies based on scientific research into child and adolescent development. They call for a return to using juvenile courts instead of criminal courts and for substituting community-based alternatives for prisons.

The U.S. Supreme Court has also repudiated the “Get Tough Era.” In a series of recent decisions culminating in *Miller v. Alabama* (2012), the Court established as constitutional doctrine that “children are different from adults” for purposes of criminal punishment. The Court did so in the context of life without the possibility of parole sentences. The justices held that such sentences violated the Eighth Amendment’s prohibition of cruel and unusual punishments. By doing so, they rediscovered and reaffirmed a long-standing principle. Thus, we can now say that from their bones to their brains to their Eighth Amendment rights, children are different from adults.



Discussion Questions

1. Why do you think advocates thought it best to create a separate court for juveniles? What are the advantages and disadvantages to creating a separate court?
2. What effects do you think the “Get Tough” policies of the 1990s had on the juvenile and criminal justice systems? How are “Get Smart” policies different, and channeling the nineteenth century writings of juvenile court proponents?
3. Do you think it is significant that China and other countries outside of the United States have developed juvenile court systems? Why?
4. What concepts did the decision in the *Miller* case (2012) have in common with nineteenth-century writings about the need for a juvenile court?



Suggested Resources

- David Tanenhaus et al., eds., *Juvenile Justice in Global Perspective*, New York University Press, 2015.
- “Comparing International Policies and Practices in Youth Justice,” John Jay College of Criminal Justice Research and Evaluation Center, 2015. Available: <http://jjcompare.org>
- Nell Bernstein, *Burning Down the House: The End of Juvenile Prison*, The New Press, 2014.
- Office of Juvenile Justice and Delinquency Prevention, U.S Department of Justice, 2015. Available: <http://www.oddjp.gov>

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