



The Kids are Alright: Making a Case for Abolition of the Juvenile Justice System

Scott Wm. Bowman¹

Published online: 12 July 2018
© Springer Nature B.V. 2018

Abstract

When considering abolition of the criminal justice system, there is no greater or more impactful relevance than for juveniles that find themselves inextricably linked to the juvenile justice system. From its inception, the philosophical foundation of juvenile care was to provide individualized, compassionate assistance to young men and women perceived to be in need of emotional care and/or social control. With the establishment of the Cook County Juvenile Court in 1899, the American juvenile justice system has endured a 118-year odyssey that has produced progressively rational, largely unsympathetic, and increasingly punitive practices. With happenings such as the ‘school-to-prison pipeline’, ‘juvenile life without the possibility of parole’, ‘teen courts’, and ‘deferred prosecution probation’, current juveniles that make unassuming mistakes and errors in judgment are adjoined to a system that sustains and reinforces itself through these mistakes and errors. The charge of this article is to recommend the abolition of the contemporary juvenile justice system, with safeguards for the protection from serious offenders and a return to the compassionate care that is warranted for the majority of juveniles that currently bolster the system.

Introduction

In an attempt to establish a legitimized, juvenile justice system that addressed the unique needs and issues that children faced, legislation was passed in 1899 that established a separate and distinct juvenile system that was designed to regulate the treatment and control of dependent, neglected, and delinquent children (Schultz 1973). This undertaking largely took place because industrialized, metropolitan city youth were constructed as “unique”, compared to their adult counterparts, yet were often treated *identically* to their adult counterparts in the criminal justice system—from arrest proceedings to incarceration outcomes and placements (Ferdinand 1991). Prior to the 1899, organizations such as the “Child Savers” (Platt 1977) and the “Society for the Prevention of Pauperism” (Mohl 1970), as well as facilities such as “Houses of Refuge” and “Reform Schools” (Pickett 1969), attempted to address the changing climate for youth in the United States. However, these attempts were largely unregulated and produced contrasting outcomes.

✉ Scott Wm. Bowman
scott.bowman@txstate.edu

¹ School of Criminal Justice, Texas State University, San Marcos, USA

Once the Cook County Juvenile Court initiated in 1899, other agencies throughout the United States embarked on loosely establishing the American juvenile justice system. Since that time, politicians, activists, and organizations have attempted to improve the juvenile justice system by protecting the public from dangerous, delinquent youth and providing needed assistance to neglected and dependent children. However, within the confines of “promoting theories of ‘crime’ (Criminology) and responses to it (Criminal Justice)” (Coyle and Schept 2017, p. 399), the praxis of the aforementioned, principle ideologies of protection and assistance been inextricably (*and unfortunately*) linked to the construction of a juvenile, carceral state. As the researchers and practitioners of Criminology and Criminal Justice examine systems and practices—often without applied consideration or consequence—there are generations of juveniles that perpetually continue through the carceral state under the guise of “formality”, “necessity”, “efficiency” and/or “optimality.” Moreover, this is increasingly problematic for the marginalized juvenile, as the carceral juvenile system is structurally synonymous with other social forms of discrimination, inequality, and social control that they will experience in most aspects of their juvenile (and adult) lives. Yet, unlike aforementioned, general ideologies and forces, the actors and agencies within the juvenile-carceral state—including not only traditional juvenile justice agencies, but also government-based family services, public education, and other social services—continue to construct, reproduce and reinforce the contemporary, carceral {juvenile justice} system (Bernstein 2014; Goldson 2005; Meiners 2015; Wacquant 2009). These issues constitute a viable justification for the abolition of the juvenile justice system.

Specifically, three considerations that are paramount to the argument of abolishing the juvenile justice system are: (a) the careful re-establishment of what constitutes a “juvenile”, (b) what is the harm that juveniles face—particularly vulnerable juveniles—entering a system that is promoted as providing “protection and assistance”, and (c) what the absence of a juvenile justice system resembles.

The purpose of this article is to call for the *full abolition of the entire juvenile justice system*. This undertaking is neither lightly regarded, nor is it presented without the careful consideration of the *parens patriae* philosophy. Much as the origins of the juvenile justice and juvenile court systems were established with the primary intention of maintaining the best interests of the child, the argument for the abolition of the juvenile justice system will be presented with the same intentions.

The Establishment of a “Formal, Rational” Juvenile Justice System

Under the philosophical directive of *parens patriae*, the establishment of the Cook County Juvenile Court symbolized a paradigmatic shift towards the social construction of a socio-legal “juvenile” that deserved separate treatment, protection, and regulation, compared to an adult counterpart. Prior to the early establishment of a formal juvenile system, the attempts were being made by reformers—both private organizations and larger government agencies within major US cities—to independently create social spaces where children were treated as “different” than adults and where parent/child relationship issues could be addressed. These locales included the establishment of schools, reformatories, houses of refuge, and civil courts (Ferdinand 1991; Ryerson 1978). Ironically, these entities could only address the civil issues that juveniles faced (e.g. incorrigible juveniles), as all juvenile criminal activity remained the responsibility of the criminal court system. Ferdinand

(1991) indicates that there were “several important facts” that were analogous to the juvenile justice system during this period (pp. 207–208).

First, he states that the system of juvenile justice was a “diverse collection of private and public institutions and community programs including probation for minor delinquents and status offenders, all served by the court and its doctrine of *parens patriae*” (p. 207). He further describes the uncoordinated heterogeneity of the “system”, by which the type of juveniles accepted in reform schools varied greatly. Second, he explained that, while the civil court provided moral leadership to the various entities (e.g. reform schools) involved in the larger system, they maintained a limited authority over the manner in which the judgments were administered. Finally, Ferdinand maintains that the civil court system and the criminal justice system were separate, where “juvenile miscreants who warranted a criminal court hearing by virtue of serious offending were handled as adults” and “the rest were handled by the civil court and sent to juvenile facilities” (p. 208). Prior to the turn of the 19th century, a troubled American child would face one of two outcomes; they were either treated as a child within a civil system or treated as an adult in a criminal system.

After the establishment of the Cook County Juvenile Court, essentially all juveniles were to be concentrated in a single locale that upheld a unique, juvenile-centered approach. Specific to this establishment were rules that included: cases being heard in a special, separate courtroom, a less-formal summary proceeding, a separation of children from adults within the same institutions, the prohibition of committing children under 12 to a jail or police station, and the utilization of probation officers (not paid or directly affiliated with the state) who would investigate juvenile cases (Schultz 1973). More important, juvenile judges were given considerable discretion to determine the best course of action to restore and rehabilitate the juvenile (Ainsworth 1990). The concluding section of the 1899 Act presented the core responsibility of the court:

This act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done the child be placed in an improved family home and become a member of the family by legal adoption or otherwise (Illinois Juvenile Court Act 1899, p. 137).

While there were numerous outcomes that were produced through the establishment of the Cook County Juvenile Justice System, the particular foundation of a formal process was perhaps the most noteworthy guidepost for the remainder of the 19th century. Rather than enduring in an informal, fragmented civil court system where juveniles were placed in locations with limited scope and oversight, troubled juveniles were to be rooted in a formal, logical, and bureaucratic juvenile court system (and ensuing juvenile justice system). It is argued that this ongoing transformation of the juvenile justice system produced the need for its contemporary abolition.

Max Weber and Formal, Rational Institutions

According to Schlossman (1983), every state except Maine and Wyoming had established a juvenile court by 1925. With the transition from the informal, civil court system to the formal juvenile court system, all aspects of the juvenile justice system were replicated to fit a more formal, bureaucratic system. During the remainder of the 19th century, the primary

functions that are affiliated with the juvenile justice system such as policing, probation, detention, and treatment become formalized and bureaucratic. For example, while the framers of the Illinois Juvenile Court Act of 1899 indicated the importance of the function of probation, they did not initially fund that aspect of the Act (Ryerson 1978; Schulz 1973). However, the National Probation Officers' Association was established by 1907 (National Probation Officers Association 1910) and every state except Wyoming established a formal juvenile probation system by 1927 (Schulz 1973). Similarly, the policing function for juveniles evolved at the turn of the century from similar juvenile/adult interactions to the adopting of juvenile specific programs and officers. By the early 1920s "youth bureaus" (youth-specific policing departments) had been established in various American cities and by 1924, the 90% of the largest cities in the United States has established some type of juvenile policing program (Fogelson 1977). Moreover, the International Juvenile Officers' Association was founded in 1957, with the primary intention of helping juveniles and preventing delinquency (Fogelson 1977). In addition, juvenile institutions, community-based programs, and treatment facilities relatedly became increasing bureaucratic and formalized their affiliation with the larger juvenile court and juvenile justice system. Overall, within a 25-year period, the juvenile justice system experienced a definitive shift from an inefficient, splintered set of varying agencies with varying intentions to a well-oiled, bureaucratic machine. The growth of the contemporary juvenile justice system is structurally synonymous with the theoretical foundations of Max Weber.

Max Weber

In examining the contemporary emergence of the juvenile justice system, no theoretical foundation is arguably more applicable than the sociologist Max Weber (1864–1920), as he is a pre-eminent scholar on the subject of organizational development, legal decision making and the formation and expansion of bureaucracy. Weber's far-reaching knowledge can be exemplified by the positions he held during his earliest teaching experiences as professor of law, political economics and economics (Gerth and Mills 1946; Greenwood and Lawrence 2005). Though his canonization in the field of sociology (he is often referred to as "the father of modern sociology") came posthumously, he clearly provided the foundation for not only the direct study of law, politics and economics, but also the interpretive study of fields such as criminal justice and punishment. For the purposes of this article, the primary focus is on Weber's construction of formal, rational, efficient and bureaucratic decision-making.

According to Sterling and Moore (1987), "Weber was the first modern social theorist to develop a comprehensive approach to sociology of law through an analysis of the 'internal' forms of legal thought, rather than the actual content of the law and the efficacy of law in assuring order and predictability in social behavior" (pp. 67–68). Weber contends that a decision and/or a decision-making outcome can be regarded as "rational" as either "instrumentally rational" or "value-rational" (Callinicos, 1999). While "instrumental rationalization" is determined by the expectations of *means* for the attainment of rationally calculated actions, "value rationalization" is determined by a conscious belief in the ethical or aesthetic *ends* of actions, regardless of the outcome (Callinicos 1999). Specifically, Weber argues that the shift away from traditionally emotional and sentimental determinants precipitates the modern transfer towards a more calculated and "instrumental" decision-making process (Garland 2012). The result, as suggested by Garland (2012), is that even

the most personalized and individualized aspects of ‘people-processing’ justice systems are now managed from within the bureaucratic agencies.

Max Weber signified six elements that were necessary in a bureaucratic system: (1) a clearly defined division of labor and authority, (2) hierarchical structures of offices, (3) written guidelines prescribing various performance criteria, (4) specialized, expert organizational foundation, (5) vocational establishment, and (6) the establishment of duties according to a position, rather than a person (Jaffe 2001). The effective incorporation of these elements produce a bureaucratic system that is rooted in rationality and efficiency. Accordingly, the same agents and agencies that held a measure of “case-by-case” assessment over the lives of troubled juveniles prior to the turn of the 19th century were now producing what they perceived as rational, efficient, and consistent decision-making from within bureaucracies. As a result, Garland (2012) specifies four outcomes regarding the implementation of punishment within the criminal justice system that are produced from rationalization and bureaucratization: (a) The funding of penal measures shifted from private sources of finance and volunteerism to a public burden generated through tax revenues, (b) hierarchical chains of command are established that link various staffs and agencies, in turn forming centralized policy-making and enforcement spaces, (c) uniformity replaces autonomy in the actions and interactions associated with the process, and (d) an overall growth in the scale of the penal infrastructure. These outcomes not only indicate an increased order within a system (Trieber 2012), but also imply the notion of a juvenile justice system that has demonstrated “progress” since 1899.

The “Myth of Progress” and the Necessity of Abolition

In the discussion of a Weber’s theory of rationalization, bureaucratization, and formalization, as well as the general examination of the juvenile justice system, there is a shared, underlying discourse that the socio-historical advancement of the bureaucratic system is a fundamental indication of suitable and advantageous progression. A basic review any contemporary juvenile justice textbook reveals a functional undertone of “progress.” Most introductory chapters describe the antiquated regulations of the 5th century, where we start with laws that govern juveniles by age and gender, narratives of children receiving death penalty sentences, and the historical shift towards a more “youth-centered” system. Comparably the description of the juvenile court illustrates the beginnings of a system that was largely informal and rooted in a preponderance of evidence that transforms to a system based on due process and the description of policing illustrates the shift from the youth bureau’s general assistance and prevention to the rights and formal processing in the schools by Safety/School Resource Officers. Even non-traditional forms of assistance such as treatment and community-based programs are described as increasingly logical, appropriate, and formalized—while strictly sanctioned by the formal juvenile justice system. Consistent among each of these presentations is the underlying notion of progress (e.g. the “_____” aspect of the juvenile justice system, while flawed, is progressively better than what came before it).

While the common Weberian ideology presumes that a formal, rational, efficient, and bureaucratic system is fundamentally more progressive than its previous iteration(s), it is clear that it does not equate to a successful, equitable or maximizing system—particularly as it pertains to the historical treatment of juveniles. According to Shay (1957), “for approximately 250 years, Western society has generally believed that progress has taken

place, that we are experiencing the results of past progress, and that there is a strong possibility, if not inevitability, that progress will continue in the future” (p. 5). The social construction of “progress” suggests that individuals (predominantly in the West) perceive a perpetual, linear improvement and/or growth from within their social, economic, and political institutions (Juss 2015). The idea of a “progressing/progressive system” is propagandized—articulated by those with a vested interest in their particular contribution to the system itself; however, the actual authenticity of a progressive system is fictional. Because the social construction of “progress” cannot simply be measured, quantified, or scrutinized, Criminology and Criminal Justice (and specifically Juvenile Justice) have constructed a narrative of empirical progress that is rooted in a “myth”. Therefore, this “myth of progress” symbolizes a misguided knowledge of current place and standing, where dissonant outcomes and ignored, longstanding effects become supplement exceptions to the “progressive” narrative. Moreover, once the shroud of a mythical progress is removed from the carceral juvenile justice system, a more earnest examination of the value, cost, and justification can be scrutinized—including a discourse that includes the eradication of the system itself.

What is a Juvenile?

Much like the “myth of progress”, the contemporary construction of a “juvenile” is largely a myth that is often utilized to reinforce the juvenile carceral state. According to Meiners (2015), “jobs and a better future for ‘our children’ are cited in arguments for new prisons and against closures, and these same children, both real and anticipated, surface repeatedly in anti-prison messages” (p. 120). Several decades ago, the common measure for “adulthood” within the juvenile justice system was 18 years old. Juvenile records were often “sealed” to protect the juveniles that had committed deviant or delinquent offenses (usually without regard to severity), recognizing the naivety of youthful decision-making and ensuring the juvenile could start “adulthood” with a clean slate. In addition, many of the other social indicators of the transition to adulthood have remained constant during this decades, such as obtaining a driver’s license, legal employment, gun ownership, movie ratings for “restricted” (“R”) movies, and military service. Occasionally, other social phenomena such as epidemic drunk driving rates have influenced the transition to adulthood, moving the legal drinking age from 18 to 21 years old. Nevertheless, no single American system has impacted the collective understanding of “what it means to be a juvenile” than the criminal/juvenile justice system.

Essentially, the contemporary carceral system consistently determines that the age of a juvenile is whatever the system itself determines it to be—on a case-by-case basis. Meiners (2015) explains, “...the parameters of childhood, always elastic, are contracted and elongated” (p. 121). Instituted through racist, patriarchal, and class-based “neutral” legislation and imposed through the policing and court structures, juvenile’s marginality, demographics and circumstance are better predictors of their juvenile status than their age, maturity, or actions. The problematic result of this carceral construction of a “juvenile” is the racialized and hetero-normative reproduction of “youthful innocence” that further conceals the myth of progress (Bernstein 2011; Reiman and Leighton 2015). On the one hand, we have an “operational” carceral juvenile system that thrives on the construction of “juvenile” when the privilege of youth is deemed appropriate (e.g. being assigned to a juvenile court for killing four people while drunk behind the wheel of a truck, determining “affluenza” is an appropriate defense for a youth that “didn’t know better”, and sentencing him to treatment).

On the other hand, we have a carceral juvenile system that regularly detains “superpredators”, “girls in need of protection from themselves”, and lower-income adults that need a “structure” that their lives do not currently comprise. The growth of the carceral juvenile system is built, reinforced, and legislated for the latter group, while those receiving the privileged construction as a true, legal “juvenile” often circumvent the impact of the same carceral juvenile system.

What Harm do Juveniles Face?

While there are clear overrepresentations of certain groups, demographics, and categories of those that are trapped in the carceral juvenile system (and many of the other social systems that accompany the larger juvenile experience), there is minimal, empirical support indicating the juvenile justice system is producing individuals that are “better” for their experience within the system itself. Specifically, the juvenile carceral system functions without oversight of outcomes and of {long-term} effects—guaranteeing neither a needed protection from the juveniles that are placed, nor demonstrating provided assistance to juveniles in need (Bernstein 2014; Goldson 2005). Conversely, there has been ample evidence that the growth of the juvenile carceral state is built upon the back of marginalized youth. It is recognized that unique examples do not overturn the larger notions of progress; however, issues of corruption, abuse, mistreatment, misdiagnosis, contradiction, and inconsistency remain a steadfast of the carceral juvenile system in various stages and various parts of the country.

Whether the change comes through improvement or prohibition, the elimination of a previously problematic issue is interpreted as “progress” in the juvenile justice system, as indicated by the plan to minimize the issues that challenges the very notions of progress. The expansion of the policing and probation function, treatment possibilities, and the utilization of juvenile court waivers has been presented (and empirically analyzed by researchers and practitioners) as improvements to the system. Ironically, the overall expansion of the carceral juvenile system, through the use of solitary confinement of juveniles (Rademacher 2015; Whitley and Rozel 2016), the expansion of School/Safety Resource Officers in public schools (Bowman 2014; Fisher and Hennessy 2016; Na and Gottfredson 2013), or the expansion of alternative programs such as teen courts and drug courts (Gase et al. 2016; Voss and Vannon 2013) are designed to specifically maintain a formal, rational, and bureaucratic system that reinforces its own existence. These actions are directly oppositional to the spirit of *parens patriae*, where the protection of the juvenile is supposed to be primary. This imbalance between a formal, bureaucratic system that efficiently processes (largely marginalized) juveniles through the carceral juvenile system are frequently lost in the discourse of effectiveness, outcomes, and impact. As Hertzler (1928) suggests, “All ideological criteria (of progress) have little practical value. We need tests more tangible and comprehensive which embody concrete social values” (p. 86). The analysis of the contemporary juvenile justice system has been neither tangible nor comprehensive, nor has it embodied the concrete social values associated with the principle ideology of *parens patriae*.

The “Iron Cage” of the Carceal Juvenile System

According to a Weberian analysis, the “iron cage of modern rationalism” indicates that once formal, rational policies and punishments originate, it is considerably difficult to

return to a decision-making process that is individualized, emotive, and specialized (Garland 2012). The “iron cage” further suggests that there will be ongoing formal, rational laws and punishments that youth will face. Not only does the “iron cage of modern rationalism” propose that the various juvenile justice systems transition into collective formal, rational system of policies, laws and punishments, but also the subsequent growth of the system must be forged in perpetual laws and punishments, while making adjustments through more policies, laws and punishments. More specifically, the “iron cage” system is efficiently created where policies, laws and punishments feeds upon themselves, with little regard to an inefficient, individualized cases where emotion, compassion, or restoration would prove more effective. While there may be subtle nuances amongst various aspects of the juvenile justice system (e.g. teen court v. a traditional juvenile court, various stages of juvenile probation), they remain rooted within both a macro- and micro-level rational bureaucracy.

The larger effects of this “iron cage” on the carceral juvenile system is demonstrated in several ways. First, the juvenile justice system has become increasingly punitive—particularly against marginalized juveniles (Goshe 2015; Ogletree and Dowd 2015). The formal, rational decision-making process, particularly over the past 35 years, has involved increased punitive sanctions and an increased form of juvenile social control for those that find themselves at the societal margins. Second, the “community” (e.g. parents, teachers, community members) have been largely removed from the process of determining juvenile outcomes. Unlike the various bureaucracies within the juvenile justice system, marginalized community members that hold minimal power cannot call for non-bureaucratic, non-punitive solutions. Finally, marginalized juveniles (and parents) that in need of an emotional, compassionate response are met with a formal, rigid system of bureaucratic decision-making and punishments. This is not to suggest that every juvenile that enters the system is met with uncaring professionals and volunteers that ultimately want the best outcome for a juvenile. Instead, it suggests (as indicative of the “iron cage of modern rationalism”) that they are constrained within a rational, bureaucratic system that is designed more for efficiency than for *parens patriae*. This is significant, as it relies upon changes within the carceral juvenile system to come from those that find sustainable labor, wealth (in the example of privatized program and facilities), and scholarly notoriety.

While it is widely recognized that there are unmistakable crises associated with various aspects of the juvenile justice system, there are several examples of this “iron cage” of the carceral juvenile system that are seen within juvenile policing, the juvenile law system, and juvenile detention. For example, the juvenile policing function has changed dramatically over the past 100 years. One of the biggest changes to take place was the shift towards adversarial policing. This is seen both in the streets and in the school setting, where practices such as stop and frisk (Anthony 2014; Johnson 2015), school-to-prison pipeline enforcement (Curtis 2013; McKenna et al. 2016), and interrogation and confession tactics (Cleary 2014). Each of these instances, as well as other juvenile policing practices, demonstrate the growth of increasingly formal, rational policies and processes.

Similarly, the juvenile court became increasingly formal and rational during the 1960s. Despite the expansion of the juvenile court systems between the 1900s and 1930s, the formal legal foundations were not instituted until the 1960s. Prior to *In re Gault* (1967), the juvenile courts were producing informal and inconsistent outcomes to mixed results. The Gault case shifted the juvenile court system to more formal procedures, the most important of which being fundamental due process rights (1967). However, many of the post *In re Gault* precedents, such as *Roper v. Simmons* (2005) and *Graham v. Florida* (2010) were designed to establish an increasingly more formal system. Since the model of the juvenile

court increasingly mirrored the formality of the adult criminal court, further constraining the possibility for compassion alternatives in the system.

In addition, the 1990s saw the instituting of juveniles being tried as adults and being subjected to mandatory minimums. While some states began using judicial waivers for processing juveniles into the adult court, others established prosecutorial discretion or statutory exclusion. Both prosecutorial discretion and statutory exclusion were formal processing, as well as procedures that were implemented largely outside of the juvenile justice system. Finally, the detention system for juveniles was arguably the most challenging, as juveniles were often housed with adults in detention facilities. Once juvenile detention centers were established, they became the primary housing units for delinquent juveniles. Throughout the remainder of the late 20th century, boot camps, wilderness camps, residential treatment centers, and group homes became alternative locations for long-term confinement. While they presented unique alternatives to detention centers/training schools, they were still required to maintain formal, bureaucratic ties with the juvenile court.

The (limited) examples indicate complications that are significantly greater than the containment of an “iron cage”, which exacerbate racial/ethnic, gender, socioeconomic, or other demographic disparities and overrepresentations. Once considerations are made for the possibility that the juvenile justice system has not “progressed” as it has become a more rationalized, formalized and bureaucratic system, the larger merits of its existence and the potential abolishment of the juvenile justice system can be contemplated. To this point, Wessels (2013) questions, “But what if this paradigm of progress, one that was forged long before our understanding of how complex systems function, is flawed? What if it is an ill-founded belief—a myth?” (p. 4).

What Does an Absence of a Juvenile Justice System Resemble? A Praxis Statement

Questioning the “myth of progress” of a long-forged ideology of a necessary, carceral juvenile system within the American society is the primary question addressed to this point; however, the recognition of the limitations should be cause for considering the establishment of a more effective system.

When considering the genuine likelihood that the carceral juvenile system can remove the racism, sexism, classism, inconsistency, and inequality upon which the system itself is built, the current juvenile carceral system’s inherent value is fundamentally questionable. Moreover, the determination that the consistently stated goals of the juvenile justice system (“protection and assistance”) can be realized without (and in clear contradiction to) a carceral juvenile system should be examined as a viable possibility. Accordingly, a return to the basic tenets of the juvenile justice system, as well as a clearly defined notion of “protection” and “assistance” *for all juveniles*, should be the basis for dismantling the current carceral juvenile system in exchange for something that is accurately representative of the aforementioned goals.

First and foremost, it is argued that “protection” for juveniles should be against a racist, sexist, classist, imperialist carceral juvenile system and not despite it (Saleh-Hanna 2017). A system that is overrepresented and mistreated by marginalized groups cannot simultaneously be constructed as “protecting” these groups. Moreover, there is serious question regarding whether a community is “protected” by removing “problem juveniles”—most of which return from the carceral juvenile system with little preparation and opportunity to succeed (Reiman and Leighton 2015; Walker et al. 2018). Next, “assistance” as delivered by the contemporary carceral juvenile system has significant complications—including

limited access to treatment, minimal interactions with family, and fundamentally contrary practices, compared to ideology (Bernstein 2014; Feld 2017). “Assistance” in the contemporary carceral juvenile system is often limited in availability and delivery, with inadequate specialization for the marginalized groups that are most in need. Despite the general reluctance for an abolitionist approach (Coyle and Schept 2017; Saleh-Hanna 2008), if the contemporary carceral juvenile system provides neither “protection” nor “assistance”, its valued existence should be called into question. Unlike broader arguments for penal abolition, this consideration is increasingly paramount, as the decisions are made for those that lack the requisite legal decision-making to influence the system designed to house them. If the dialogue on “juvenile justice” is rooted in the ideology of juveniles and devoid of the racist, sexist, classist, imperialist, imperialist tenets that have formed it for more than a century, then the contemporary carceral juvenile system would arguably be understood as counter-intuitive and counter-productive.

Finally, the more pertinent question is whether the existing juvenile justice system can transform into a system that establishes a baseline for mutually beneficial interaction and then ensures the “protection” and “assistance”, as consistently described within the carceral juvenile system. Since the contention being made is that an “iron cage” of a modern rational carceral juvenile system reinforces formal, rational, and bureaucratic practices that are engrained in a system that further marginalizes and exacerbates the most vulnerable, abolition of the system is the outcomes the best minimizes a criminogenic construction. Unmistakably, the assertion is that the carceral juvenile system cannot sustain itself and simultaneously improve the lives of the juveniles it touches and there has been no substantiated “progress” that suggests that the existing system is worth saving.

It would be negligent to suggest the abolition of the juvenile justice system without offering an alternative proposition. First, it is believed that juveniles that are accused of index I crimes should enter the adult criminal justice system (without the juvenile justice system, it would simply be the “criminal justice system”). This is not in contradiction to the larger penal abolition movement—rather, the suggestion is made as a function of the existence of a penal system. Ultimately, there are numerous alternatives to the current penal system that can provide juveniles a better opportunity for success than being incarcerated in *any* system. However, the placement for violent offenders outside of the penal industrial complex is beyond the scope of this paper. Next, status offenses should be decriminalized. There is an irony in lowering the age of culpability of juveniles in most states for crimes deemed “too adult” for the juvenile justice system, while maintaining status offenses for the same group, deemed too immature for adult-like behavior. Third, those employed in the carceral juvenile system should partner with early-intervention prevention programs (leaving the carceral juvenile system behind) and case-specific, non-punitive, regulation. Crimes like petty theft, shoplifting would be addressed between the parents and the victims through an informal, non-punitive, restorative justice model. Fourth, all Safety/School Resource Officers would remain in schools with different titles and objectives and would not be able to write tickets or make arrests. Fifth, the family courts would become responsible for addressing issues of incorrigibility, rather than the carceral juvenile system. Finally, prevention and treatment programs (there would be no diversion programs, as they would not be “diverted” from a formal juvenile justice system) would be coordinated directly with the families, schools, and other entities in the juvenile’s life. This alternative process allows juveniles to make simple mistakes without formally processing them through a bureaucratic, carceral system that cares more about efficiency and self-sustainability than restoration. These changes would provide the opportunity to not only remove an ineffective structure, but also restore the philosophy of *parens patriae* to the juveniles

that are in need of “protection” and “assistance.” Lastly, it is recognized that these changes will not eliminate the racism, sexism, classism, and imperialism that exist in the society; however, it will limit the ability of the state to reinforce and reproduce these factors against those in need of safeguarding. It is more practical to address micro-level interactions than to eliminate structural factors.

Abolishing the Juvenile Justice System: Concluding Remarks

For more than 100 years, we have attempted to create clear distinctions between juveniles and adults. It is paradoxical that a major catalyst that led to the establishment of the Cook County Juvenile Court was the desire to establish a separate system for juveniles and adults, yet we have spent much of the remainder of the time attempting to treat them as adults. Within the past 25 years alone, police have interrogated and arrested them like adults, lowered the age of juvenile culpability for adult crimes so that they could be tried as adults, and placed them in adult detention facilities—often in solitary confinement. Moreover, this has taken place against marginalized groups that are the most vulnerable to these actions. For all of these actions, as well as the others that produce racist, sexist, classist, imperialist, and imperialist disproportionalities, the juvenile justice system has been cloaked in the American idealism of progress, assuming that our criminal justice tactics, technologies, and innovative prevention, diversion, and treatment programs are better and more effective than those of previous generations. Aside from minimal social and technological advances, there is little to suggest that juveniles entering into courtrooms are paradigmatically better off than those that entered the Cook County courthouse in 1899. We share a responsibility to improve the lives of those that are most vulnerable—at any cost.

References

- Ainsworth, J. E. (1990). Re-imagining childhood and reconstructing the legal order: The case for abolishing the juvenile court. *North Carolina Law Review*, 69, 1083–1133.
- Anthony, K. (2014). Stop, children, what’s that sound? The unintended consequences of police contact on juveniles. *Chicago Policy Review (Online)*.
- Bernstein, R. (2011). *Racial innocence: Performing American childhood from slavery to civil rights*. New York, NY: New York University Press.
- Bernstein, N. (2014). *Burning down the house: The end of juvenile prison*. New York, NY: The New Press.
- Bowman, S. W. (2014). The school-to-prison pipeline and the ‘death of deviance’ in the American public school system. In Michael Dwelling, Joseph Kotarba, & Nathan Pino (Eds.), *The death and resurrection of deviance: Current ideas and research* (pp. 192–213). New York, NY: Palgrave MacMillan.
- Callinicos, A. T. (1999). *Social theory: A historical introduction*. New York, NY: New York University Press.
- Cleary, H. (2014). Police interviewing and interrogation of juvenile suspects: A descriptive examination of actual cases. *Law and Human Behavior*, 38(3), 271.
- Coyle, M., & Schept, J. (2017). Penal abolition and the state: Colonial, racial, and gender violences. *Contemporary Justice Review*, 20(4), 399–403.
- Curtis, A. J. (2013). Tracing the school-to-prison pipeline from zero-tolerance policies to juvenile justice dispositions. *Georgetown Law Journal*, 102, 1251–1277.
- Feld, B. C. (2017). *The evolution of the Juvenile Court: Race, politics, and the criminalizing of juvenile justice*. New York, NY: New York University Press.
- Ferdinand, T. N. (1991). History overtakes the juvenile justice system. *Crime and Delinquency*, 37(2), 204–224.
- Fisher, B. W., & Hennessy, E. A. (2016). School resource officers and exclusionary discipline in US high schools: A systematic review and meta-analysis. *Adolescent Research Review*, 1(3), 217–233.

- Fogelson, R. M. (1977). *Big-city police* (p. 23367). Cambridge, MA: Harvard University Press.
- Garland, D. (2012). *Punishment and modern society: A study in social theory*. Chicago: University of Chicago Press.
- Gase, L. N., Kuo, T., Lai, E. S., Stoll, M. A., & Ponce, N. A. (2016). The impact of two Los Angeles County Teen Courts on youth recidivism: comparing two informal probation programs. *Journal of Experimental Criminology*, *12*(1), 105–126.
- Gerth, H. H., & Mills, C. W. (1946). *From Max Weber: Essays in sociology*. New York, NY: Oxford University Press.
- Goldson, B. (2005). Child imprisonment: A case for abolition. *Youth Justice*, *5*(2), 77–90.
- Goshe, S. (2015). Moving beyond the punitive legacy: Taking stock of persistent problems in juvenile justice. *Youth Justice*, *15*(1), 42–56.
- Graham v. Florida*, 560 U.S. 48 (2010).
- Greenwood, R., & Lawrence, T. B. (2005). The iron cage in the information age: The legacy and relevance of Max Weber for organizational studies. *Editorial, Organization Studies*, *26*(4), 493–499.
- Hertzler, J. O. (1928). *Social progress: A theoretical survey and analysis*. New York, NY: Century Company.
- Illinois Juvenile Court Act, Ill. Laws 131 (Ill. Stat. 1899).
- In re Gault*, 387 U.S. 1, 20 (1967).
- Jaffe, D. (2001). *Organizational theory: Tension and change*. New York, NY: McGraw-Hill Publishing Co.
- Johnson, R. N. (2015). How students became criminals: The similarities between stop and frisk and school searches and the effect on delinquency rates. *Boston University's Public Interest Law Journal*, *24*(1), 1–25.
- Juss, S. S. (2015). Recognizing refugee status for victims of trafficking and the myth of progress. *Refugee Survey Quarterly*, *34*(2), 107–123.
- McKenna, J. M., Martinez-Prather, K., & Bowman, S. W. (2016). The roles of school-based law enforcement officers and how these roles are established: A qualitative study. *Criminal Justice Policy Review*, *27*(4), 420–443.
- Meiners, E. R. (2015). Trouble with the child in the carceral state. *Social Justice*, *41*(3), 120–144.
- Mohl, R. A. (1970). Humanitarianism in the preindustrial city: The New York Society for the Prevention of Pauperism, 1817–1823. *The Journal of American History*, *57*(3), 576–599.
- Na, C., & Gottfredson, D. C. (2013). Police officers in schools: Effects on school crime and the processing of offending behaviors. *Justice Quarterly*, *30*(4), 619–650.
- National Probation Officers' Association. (1910). *Journal of the American Institute of Criminal Law and Criminology*, *1*(3), 461–463.
- Ogletree, C. J., Jr., & Dowd, N. E. (2015). *A new juvenile justice system: Total reform for a broken system*. New York, NY: New York University Press.
- Pickett, R. S. (1969). *House of refuge: Origins of juvenile reform in New York State, 1815–1857*. New York, NY: Syracuse University Press.
- Platt, A. M. (1977). *The child savers: The invention of delinquency*. Chicago, Ill: University of Chicago Press.
- Rademacher, E. M. (2015). Beginning of the end: Using Ohio's plan to eliminate juvenile solitary confinement as a model for statutory elimination of juvenile solitary confinement. *The William and Mary Law Review*, *57*, 1019.
- Reiman, J., & Leighton, P. (2015). *The rich get richer and the poor get prison: Ideology, class, and criminal justice*. New York, NY: Routledge.
- Roper v. Simmons*, 543 U.S.551 (2005).
- Ryerson, E. (1978). *The best laid plans: America's juvenile justice system*. New York, NY: Hill and Wang.
- Saleh-Hanna, V. (2008). Penal abolitionist theories and ideologues. In V. Saleh-Hanna (Ed.), *Colonial systems of control: Criminal justice in Nigeria* (pp. 417–456). Ottawa: University of Ottawa Press.
- Saleh-Hanna, V. (2017). An abolitionist theory in crime: Ending the abusive relationship with racist-imperialist-patriarchy. *Contemporary Justice Review*, *20*(4), 419–441.
- Schlossman, S. (1983). The Chicago area project revisited. *Crime & Delinquency*, *29*(3), 398–462.
- Schultz, J. L. (1973). The cycle of juvenile court history. *Crime and Delinquency*, *19*(4), 457–476.
- Shay, T. L. (1957). The myth of progress. *The Indian Journal of Political Science*, *18*(1), 5–9.
- Sterling, J. S., & Moore, W. E. (1987). Weber's analysis of legal rationalization: A critique and constructive modification. *Sociological Forum*, *2*(1), 67–89.
- Treiber, H. (2012). On Max Weber's sociology of law, now known as the developmental conditions of the law. A review essay on MWG I/22-3: Recht. *Max Weber Studies*, *12*(1), 121–138.
- Vose, B., & Vannan, K. (2013). A jury of your peers: Recidivism among teen court participants. *Journal of Juvenile Justice*, *3*(1), 97.

- Wacquant, L. (2009). *Punishing the poor: The neoliberal government of social insecurity*. Durham, NC: Duke University Press.
- Walker, S., Spohn, C., & DeLone, M. (2018). *The color of justice: Race, ethnicity, and crime in America*. Boston, MA: Cengage Learning.
- Wessels, T. (2013). *The myth of progress: Toward a sustainable future*. Lebanon, NH: University Press of New England.
- Whitley, K., & Rozel, J. S. (2016). Mental health care of detained youth and solitary confinement and restraint within juvenile detention facilities. *Child and Adolescent Psychiatric Clinics of North America*, 25(1), 71–80.