

## ABSTRACT

### THE DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM IN THE UNITED STATES: A TEXAS CASE STUDY

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This thesis analyzes the evolution of the juvenile justice system in America tracing its developments, reforms, and failures from the Progressive Era into the Kids are Different Era. The transformation of the juvenile justice system can be examined sociologically, politically, economically, and legally, yet the purpose of this work is to consider the history of the system itself and the role that mainstream media has had in the perception of juvenile delinquency throughout the system's lifetime. To further examine the impact of the system on a particular demographic from the nineteenth century into the twenty-first, this thesis considers and evaluates public discourse surrounding female juvenile delinquency in Texas, uncovering the pervasiveness and danger of attaching lifetime labels to young women. Throughout this survey it is apparent that the difficulty in defining and explaining "juvenile delinquency" combined with the diverse definitions of "childhood" complicated the system's effectiveness and further contributed to the perpetuation of myths describing "killer kids" and "wild girls" to the public. The erosive power possessed by the media is evident in this evaluation of the system's history and although it has been detrimental to the rights of children and the portrayal of young females in the past, moving forward it maintains the influence to deconstruct these narratives of child "super-predators" and educate the public about the importance of trauma-based therapy for juvenile offenders.

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The Development and Transformation of the Juvenile Justice System in the United States: A Texas Case Study

A Thesis Submitted to the Faculty of

Baylor University

In Partial Fulfillment of the Requirements for the

Honors Program

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Waco, Texas

May, 2020

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## CHAPTER ONE

### Introduction

The evolution of the juvenile justice system in the United States is a narrative of good-will rhetoric hindered by the flaws, prejudices, and ignorance of the individuals trusted to operate the mission of rehabilitation. The juvenile justice system often reflects its national context and conflicts, while unfortunately revealing the too-gradual process of understanding the complexities of childhood. The system has struggled with the myth that “childhood is the same for all children” and it has been slow to recognize that ethnicity, gender, geography, religion, historical era, economic status, home life, education and access to opportunities all impact the rate and manner of a child’s development.<sup>1</sup> The United States allocates far more resources towards the swift prosecution of a criminal than it does on effectively treating a victim of abuse. This is exemplified in the case of a young girl who, after being assaulted by her father, immediately provided a testimony that succeeded in the conviction of her father yet she had not received any type of therapy more than a year after the case ended.<sup>2</sup> Although the juvenile arrest rate is at the lowest level for both genders since 1980, articles such as the one titled “Bad Girls Go Wild” published by *Newsweek* in 2005 communicate only the most horrendous accounts of violent crimes committed by teenage girls to the public,

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<sup>1</sup> Steven Mintz, *Huck's Raft: A History of American Childhood* (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 2004), 2.

<sup>2</sup> Barbara Bennett Woodhouse, *Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate*, The Public Square Book Series (Princeton: Princeton University Press, 2008), 273.

perpetuating a narrative of blood-thirsty killers.<sup>3</sup> Steven Mintz describes the phenomenon of moral panic in his groundbreaking work, *Huck's Raft*.<sup>4</sup> He argues that in the 1990s “adults believed that young people accounted for 40 percent of the nation’s violent crime, three times the actual rate. Adults wrongly assumed that young people were more violent than their parents’ generation had been...in fact by most measures young people were healthier and more responsible than their baby-boom parents’ generation.”<sup>5</sup> Yet the use of children as the focal point for inciting policy change is not a creation of the twenty-first century in the United States; rather, it is a consequence of the system’s origins and the contorted perception of adolescence possessed by the reformers responsible for its creation.

Anthony Platt’s work *The Child Savers: The Invention of Delinquency*, originally published in 1969, sparked a wide-ranging and multi-dimensional controversy in the scholarship relating to juvenile justice, particularly regarding its history and the evolution of the American system since its creation.<sup>6</sup> For the first time, scholars started to consider the motivations behind the establishment of a separate criminal court for children, and the wave of legislative reforms enacted by the “Child Savers.” This label is used as a broad term to describe “a highly disparate group” ranging from evangelical Protestants to wealthy philanthropists who were committed to establishing government institutions to

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<sup>3</sup> Julie Scelfo, “Bad Girls Go Wild,” *Newsweek*, June 12, 2005, <https://www.newsweek.com/bad-girls-go-wild-119637>.

<sup>4</sup> Mintz, *Huck's Raft*.

<sup>5</sup> Mintz, *Huck's Raft*, 340.

<sup>6</sup> Anthony M. Platt and Mirosława Chávez-García, *The Child Savers: The Invention of Delinquency*, Expanded 40th anniversary ed, Critical Issues in Crime and Society (New Brunswick, N.J.: Rutgers University Press, 2009).

care for children in the United States.<sup>7</sup> A historiographical debate exists in which some individuals maintain that the reformers were motivated by benevolence and a desire to shield children and adolescents from the flaws of the adult criminal justice system, while others suspect that an eagerness to exercise control in the wake of societal, cultural, and economic change contributed to the targeting of children as the ideal demographic to exert Progressive influence and values upon.<sup>8</sup> The academic discussion is intimately connected to the ramifications that the original narrative has had on the evolution of the juvenile justice system in the United States, namely recognizing the prejudices of the Child Savers and deconstructing these legacies of paternalism, xenophobia, and racial bias.<sup>9</sup> The abundance of historical interpretations is a testament to the range of sources, sociological and political perspectives of the period, and geographical scope employed since Platt's work in 1969.<sup>10</sup>

A significant aspect of Platt's overall argument—and one that would be dissected, reexamined, and either validated or rejected later on in the scholarship— involves the

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<sup>7</sup> Mintz, *Huck's Raft*, 155.

<sup>8</sup> Barry C. Feld, *The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice*, Youth, Crime, and Justice Series (New York: New York University Press, 2017).

<sup>9</sup> Mintz, *Huck's Raft*, 155.

<sup>10</sup> See, for example, Sanford J. Fox, "Juvenile Justice Reform: An Historical Perspective," *Stanford Law Review* 22, no. 6 (June 1970): 1187–1239, <https://doi.org/10.2307/1227960>; Ellen Ryerson, *The Best-Laid Plans: America's Juvenile Court Experiment* (New York: Hill and Wang, 1978); David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*, 1st ed (Boston: Little, Brown, 1980); Eric C Schneider, *In the Web of Class: Delinquents and Reformers in Boston, 1810s-1930s* (New York: New York University Press, 1992); Randall G. Shelden, "Gender Bias in the Juvenile Justice System," *Juvenile and Family Court Journal* 49, no. 1 (1998): 11–26; Jennifer Trost, *Gateway to Justice: The Juvenile Court and Progressive Child Welfare in a Southern City*, Studies in the Legal History of the South (Athens [Ga.]: University of Georgia Press, 2005); Steven L. Schlossman, *Transforming Juvenile Justice: Reform Ideals and Institutional Realities, 1825-1920* (DeKalb: Northern Illinois University Press, 2005); Geoff K. Ward, "The 'Other' Child Savers: Racial Politics of the Parental State," in *The Child Savers: The Invention of Delinquency*, ed. Anthony M. Platt (New Brunswick, N.J.: Rutgers University Press, 2009), 225–41.

identities of the individuals classified as the “Child-Savers.” He contends that they were generally women who had been “well educated, widely traveled, and had access to political and financial resources” through familial connections and that they viewed the campaign for legislation protecting children as an extension of public service well suited for the role of women.<sup>11</sup> In addition to shared socioeconomic status and biographical similarities, Platt argues that the Child Savers were also united in the emphasis that they placed on white middle-class values, as demonstrated by the most prominent figures associated with the movement such as Jane Addams, Louise DeKoven Bowen, Ellen Martin Henrotin, and Julia Lathrop.<sup>12</sup> Overall, Platt presented a United States juvenile justice system designed to institutionalize the Progressive values of white middle class women, extend the influence of the parent state to include various aspects of youth that had previously been unregulated, and create a more personalized system of reform that ultimately resulted in a loss of due process protections for juveniles.<sup>13</sup> Despite the limitations of Platt’s argument as it pertains to specific cases involving juveniles and his exclusion of the African American Child Savers in his discussion of the early nineteenth and early twentieth century, *The Child-Savers: The Invention of Delinquency* created a starting point for the critical conversation of the origins and goals of the juvenile justice system. Platt’s work serves as a foundational read for those interested in considering and acknowledging the outside factors that resulted in the legal structure relating to juvenile

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<sup>11</sup> Platt and Chávez-García, *The Child Savers*, 77.

<sup>12</sup> Platt and Chávez-García, *The Child Savers*, 77.

<sup>13</sup> Platt and Chávez-García, *The Child Savers*, 176.

defendants in the U.S. and recognizing both the altruistic motivations and desire for power possessed by the Child Savers.

Providing a definition of “childhood” has been a challenge and the source of scholarly debate tracing back to Jean Piaget’s argument in the early nineteenth century that children experienced the same sequential stages of cognitive development, albeit at different rates.<sup>14</sup> This discussion has continued into the twenty-first century and its vitality is partly due to the fact that “childhood and adolescence as biological phases of human development have always existed. But the ways in which [they] are conceptualized and experienced are social and cultural constructions that have changed over time.”<sup>15</sup> The United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) in 1989 defining childhood “as a separate space from adulthood” and acknowledging that “children are the holders of their own rights and are therefore not passive recipients.”<sup>16</sup> The United States signed the Children’s Rights Convention, but it was not ratified by Congress due to concerns ranging from the claim that it was an attack on the traditional American family, to those who believed it was an international conspiracy to intervene in domestic affairs, and others who argued that it was unnecessary.<sup>17</sup> The criminal justice system has determined that legally, an individual is considered a juvenile until they are eighteen years old and the juvenile court has

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<sup>14</sup> Woodhouse, *Hidden in Plain Sight*, 19.

<sup>15</sup> Mintz, *Huck’s Raft*, 4.

<sup>16</sup> The United Nations Child Fund, “Childhood Defined,” 2004, <https://www.unicef.org/sowc05/english/childhooddefined.html>.

<sup>17</sup> Woodhouse, *Hidden in Plain Sight*, 2.

original jurisdiction over the individual prior to their eighteenth birthday.<sup>18</sup> The Supreme Court's decision in *Roper v. Simmons* (2005) cited diminished culpability as grounds for banning the application of the death penalty for those convicted under the age of eighteen.<sup>19</sup> Defining "childhood" has been a fluid and complex task, but the Supreme Court confirmed in 2005 that legally, adulthood begins at eighteen years old.

The purpose of this thesis is to primarily consider the history of the system itself and secondly to question the role that the early reformers and the mainstream media have had in the perception of juvenile delinquency throughout the system's lifetime. To further examine the impact of the system on a particular demographic from the nineteenth century into the twenty-first, this thesis considers and evaluates individual examples from state and local press archives to investigate public discourse surrounding female juvenile delinquency in Texas.

Chapter One is a broad overview of the foundational philosophies adopted by the Child Savers (1900-1920s), the contributions and impediments of the reformers, the judicial rulings of the Due Process Revolution (1950s-1960s), and a brief comparison of the international systems created to address juvenile delinquency in the world (1999). This survey of the juvenile justice system synthesizes secondary sources produced by historians and legal scholars pertaining to the reformers responsible for its creation and includes a brief discussion of the landmark Supreme Court Cases that served to modernize the system. Chapter Two centers around the complexity and challenges

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<sup>18</sup> Office of Juvenile Justice and Delinquency Prevention, "Upper and Lower Age of Juvenile Court Delinquency and Status Offense Jurisdiction, August 5, 2013," [https://www.ojjdp.gov/ojstatbb/structure\\_process/qa04102.asp?qaDate=2012](https://www.ojjdp.gov/ojstatbb/structure_process/qa04102.asp?qaDate=2012).

<sup>19</sup> Woodhouse, *Hidden in Plain Sight*, 27.

involved in defining “childhood” as it pertains to the prosecution of juveniles and the realities of its implementation. The national narrative of the four phases in the juvenile justice system outlined by legal scholar Barry Feld—Progressive Era, Due Process Revolution, Get Tough, and Kids are Different—is considered and applied specifically to the state of Texas. Utilizing historian William Bush’s seminal work on juvenile justice in Texas and his research regarding the evolution of the legal system on a state level, it is possible to map Feld’s four national trends onto a specific state. Chapter Three attempts to integrate nationwide trends and broad descriptions of the system with individual legal cases involving children in Texas, specifically girls, demonstrating how the legacies of the Child Savers live on throughout the transformation of the system. This process involved the collection and analysis of newspaper publications and magazine articles from Texas spanning 1915-2015, a vast survey that provided a glimpse into the general patterns associated with Feld’s developmental stages. Throughout this process I considered approximately 50 publications for each era, ranging from stories that discussed juvenile delinquency in general to individual cases involving young women. From this collection, I chose stories that I believed to be representative and symbolic of the characteristics associated with Feld’s stages, yet I realize that it is imperative to consider that there are undoubtedly cases and examples that are the exception. In his work, Bush emphasized the differing rates at which juvenile courts, juvenile detention centers, and juvenile probation offices developed in Texas arguing that this modernization varied drastically depending on whether the area was urban or rural.<sup>20</sup> In order to fully understand the lack of uniformity that afflicted different counties in the

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<sup>20</sup> Bush, 16.

state, it is critical to consider the media coverage from cities such as Houston and El Paso as well as smaller communities such as Waco, Corpus Christi, Kerrville, and McKinney. From this survey of publications it is apparent that there is evidence to substantiate the transformations described by Feld's stages and that the justice system has been plagued by both the inability of professionals to categorize "childhood" and the public's predisposition to paranoia. My analysis of Texas print publications over the span of one century confirms Platt's findings regarding the pivotal role of the Child Savers in creating a narrative of delinquency and the legacies of paternalism, discrimination, and profiling within the juvenile justice system are evident in the rhetoric of the Texas press coverage. Armed with idealistic goals and individual biases, the Child Savers instituted a cycle of reform and punishment that is evident in the evolution of the juvenile justice system.

## CHAPTER TWO

### The Origins of the Juvenile Justice System

#### *Introduction*

The first court in the United States created with the sole purpose of accommodating juvenile defendants in a system separate from their adult counterparts was established by the Illinois Juvenile Court Act in Cook County, Chicago in 1899.<sup>21</sup> Rather than mirroring the features of the criminal justice system designed for adult offenders, the purpose of the division was intervention in the newly identified and highly valued period of adolescence, as well as diversion from the prison pipeline and protection from the corrupting influences of adult perpetrators.<sup>22</sup> Due to the sociological theories adopted by the Child Savers and the emphasis placed on structuring the juvenile justice on ideals of reformation and rehabilitation, the origin of the juvenile justice system in the United States lacked the constitutional safeguards associated with the criminal indictment process including the right to an attorney, the right to be aware of the charges against oneself, the right to a trial by jury, and the right to confront one's accuser.<sup>23</sup> The evolution of the juvenile justice since the creation of the first court in Chicago in 1899 is a narrative that demands the analysis and investigation of the past traditions of crime involving children prior to the nineteenth and early twentieth centuries, consideration of the convoluted motivations of the advocates who would become known as the Child

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<sup>21</sup> Joan McCord et al., eds., *Juvenile Crime, Juvenile Justice* (Washington, DC: National Academy Press, 2001).

<sup>22</sup> Feld, *The Evolution of the Juvenile Court*, 9.

<sup>23</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 154.

Savers, and the interdisciplinary developments and political perspectives held by those who would be instrumental in formulating and reforming this separate sphere of government involvement in the early development of America's youth.

### *The Application of Criminal Law Prior to the Progressive Era*

English common law served as the precedent for American interpretation and understanding of the culpability of juvenile offenders and many scholars such as Anthony Platt consider William Blackstone's *Commentaries on the Laws of England* to be the foundation for the United States recognition and adoption of the policy that children could not be considered fully responsible for crimes they might commit.<sup>24</sup> Alongside the work of Blackstone, E. Chitty's *A Practical Treatise on the Criminal Law* and William Russell's *A Treatise on Crimes and Misdemeanors* formalized and articulated the prevalent belief, recognition, and acceptance that children under the age of seven were incapable of committing a crime and the United States followed in the tradition of common law principles.<sup>25</sup> Despite the glamorization of horrific executions of young adults under the age of eighteen particularly in England during the eighteenth and nineteenth centuries, Platt focuses on the most popular of these five and the analysis done by B.E.F. Knell which found that four out of the most well-known five cases include discrepancies in their recording, and evidence exists that refutes the claim that all five defendants were executed in the nineteenth century.<sup>26</sup> Rather, it appears that they might

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<sup>24</sup> Platt and Chávez-García, *The Child Savers: The Invention of Delinquency*, 248.

<sup>25</sup> Platt and Chávez-García, 248.

<sup>26</sup> Platt and Chávez-García, 245.

have been transferred to a different township; as was the case with one adolescent who, despite records of his hanging, was actually transferred to New South Wales for the remainder of his life. In regards to the one case that definitively did result in the execution of the thirteen year old, that of John Andy Bird Bell, it was bizarre in that it involved the robbery and murder of another young boy and in that the sentence was followed through. In a study performed by Knell investigating the criminal practices in Old Bailey, London from 1801 to 1836, he found that despite the fact that the reports for a hundred and three children indicate that the death sentence was delivered, not one child was convicted on murder charges and none were executed.<sup>27</sup> Knell's study and Platt's introduction of it into his time-honored analysis and survey of the juvenile justice system as it has developed in the United States is useful for providing context to the realities of the implementation of English criminal common law into American society. Similar to the lack of evidence suggesting that the practice of child executions was widespread and a regular custom in eighteenth century England, the concept of protecting the defendant was prevalent in the United States in most cases involving minors prior to the creation of the formalized juvenile justice system in the United States.

A brief survey of criminal cases involving minors in the United States during the early nineteenth century demonstrates that there is no conclusive or convincing record of an informal criminal justice system dedicated to executing children.<sup>28</sup> Rather in fourteen cases from 1806 to 1882 ranging from manslaughter, homicide, larceny, or trespassing, ten of the minors were found not guilty, one's sentence was unreported, one was

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<sup>27</sup> Platt and Chávez-García, 247.

<sup>28</sup> Platt and Chávez-García, 262.

sentenced to three years, and two were executed. The two who were executed—both under fourteen and both African American slaves—arguably highlight the early disparity of criminal sentencing directed towards minorities, as well as demonstrate that exceptions existed in this early system that proved to be relatively hesitant to execute those defendants under fourteen.<sup>29</sup>

Focusing on the early traditions of juvenile justice and the origins of thought that differentiated children as their own demographic worthy of individualized attention, David Tanenhaus investigates the ideological influences that emerged during the seventeenth and eighteenth centuries and their role on the treatises of Blackstone and others. Like Platt, Tanenhaus identifies William Blackstone's treatises on common criminal law practices and the rationality of legal processes as the foundation for legal structures in the United States and beyond, focusing on the influence of the philosopher, John Locke.<sup>30</sup> In regards to the role and function of minors in a democratic state, Locke posited that “children lacked reason and thus should not be allowed to participate in self-government, have a voice in legal proceedings, or make binding contracts. Instead, it was the responsibility of their parents and/or the state to educate them.”<sup>31</sup> The concept of the state fulfilling the role of the parent abstractly referenced by Locke is known as the *parens patriae* doctrine. This doctrine traces back to medieval English law with the original purpose of ensuring property interests and feudal succession, yet it would later

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<sup>29</sup> Platt and Chávez-García, 262.

<sup>30</sup> David S. Tanenhaus, *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, ed. Barry C. Feld and Donna M. Bishop, The Oxford Handbooks in Criminology and Criminal Justice (New York: Oxford Univ. Press, 2012), 420.

<sup>31</sup> Tanenhaus, 421.

become a key component of the Progressive Child Savers movement that would emerge in the United States in the nineteenth and early twentieth centuries.<sup>32</sup>

Alongside the philosophical role of a democratic government in reference to dependents and the *parens patriae* doctrine, Barry Feld focuses on the contribution of Philippe Aries to the sphere of understanding childhood and the significance of recognizing the shift away from viewing children as miniature adults and the development of a protective child ideology that would come to dominate modern society. Aries argued that the modern conception of children as growing individuals who required attention, protection, and individualized care developed during the sixteenth and seventeenth centuries in Western Europe within the upper classes and nobility.<sup>33</sup> According to Aries, this concept of childhood slowly diffused downward into the lower social classes until it became relatively standard for society to recognize that various developmental stages existed in an individual's life from infancy to functioning adulthood.<sup>34</sup> In addition to recognizing the importance of this cultural construction of childhood in the later campaign of the Child Savers, Feld explains that this idea would repeatedly prove to be difficult to transmit to immigrant families and those of a lower socioeconomic level who could not support "prolonged child dependency."<sup>35</sup>

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<sup>32</sup> Feld, *The Evolution of the Juvenile Court*, 24.

<sup>33</sup> Feld, 22.

<sup>34</sup> Feld, 21-22.

<sup>35</sup> Feld, 21.

### *Who are the Child Savers?*

The Child Savers are credited with campaigning for the juvenile justice system during the nineteenth and early twentieth centuries in America and it is critical to examine the realities of the system that they instituted and the motives that supported their concentrated efforts. Before considering the legal system that these individuals are credited with creating, it is imperative to understand that the league of Child Savers was a “highly disparate group, they included elite philanthropists, evangelical Protestants, benevolent middle-class women, urban missionaries, penologists, amateur and professional charity and youth workers, attorneys, physicians, educators, and social workers with diverse motives and agendas.”<sup>36</sup> Understanding the context and societal circumstances that cultivated the philosophical and political inspirations of the Child Savers is paramount in interpreting the origins of the America’s modern legal structure as it pertained to minors. The end of the nineteenth century, what is commonly referred to as the Progressive Era, was defined by a surge of immigration to the United States related to urbanization, industrialization, and diversification of the population.<sup>37</sup> To quantify the change that the nation experienced, the population “nearly doubled between 1885 and 1915 and by 1920, immigrants of their children comprised about half the residents of the larger cities.”<sup>38</sup> This influx of immigrants and advancements in technological and manufacturing capabilities was a component of the era of industrialization and

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<sup>36</sup> Mintz, *Huck's Raft*, 155.

<sup>37</sup> Feld, *The Evolution of the Juvenile Court*, 8.

<sup>38</sup> Feld, 20.

accompanied by undeniable societal and cultural changes in regards to race, customs, and religion.

In addition to the logistical reshaping of American society, the field of sociology also experienced a transformation in the way that crime was perceived and understood by criminologists. The shift away from classical theories of criminology that had fully embraced a free-will paradigm in which the perpetrator was aware of the difference between right and wrong and fully responsible for their offenses, the emergence of positivist criminology at the end of the nineteenth century advocated for a more holistic understanding of external and internal influences.<sup>39</sup> In addition to psychological, social, and environmental forces, arguably the most dangerous factor that was considered in the positivist ideology of crime was biological.<sup>40</sup> The theories presented by European sociologists such as Lombroso, Lacassagne, Garofolo, and Ferri emphasized various hereditary characteristics that produced crime in human beings, and the Child Savers adopted the foundations of this ideology and combined it with the *parens patriae* doctrine to support their argument that children could not be assigned fully responsibility of their actions and it was the role of the government to intervene to provide rehabilitation.<sup>41</sup>

### *The Protected Childhood Movement in Action*

Historian William Bush argues that the origins of the “protected childhood” movement in the United States can be traced back as early as the 1820’s with the creation

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<sup>39</sup> Feld, 28.

<sup>40</sup> Feld, 28.

<sup>41</sup> Platt and Chávez-García, *The Child Savers*, 27.

of houses of refuge, reformatories, and Sunday schools.<sup>42</sup> These refuge houses were particularly prevalent in the northeastern region of the country and their mission of reforming troublesome youth and providing shelter for the destitute were upheld by the 1838 Pennsylvania Supreme Court decision *Ex parte Crouse*, which recognized the legitimacy and constitutionality of the *parens patriae* doctrine as it pertained to the “confinement of troublesome youths.”<sup>43</sup> The work of these reformers expanded the sphere of institutional involvement in the lives of America’s childhood population based on the *parens patriae* doctrine and the most prominent of the Child Savers include women such as Jane Addams, Louise DeKoven Bowen, Ellen Martin Henrotin, Julia Lathrop, and many others.<sup>44</sup>

In Platt’s analysis of the juvenile justice system in the United States, he contends that the Child Savers are similar to one another in that their ranks were generally “well educated, widely traveled, and had access to political and financial resources” through familial connections.<sup>45</sup> In addition to shared socioeconomic status and biographical similarities, the Child Savers that Platt and others refer to were also united in the emphasis that they placed on middle-class values and it is apparent that their “Victorian sensibilities and concerns about female sexuality encouraged regulation of teenage girls for waywardness, incorrigibility, and sexual precocity.”<sup>46</sup> Utilizing the *parens patriae*

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<sup>42</sup> William S. Bush, *Who Gets a Childhood? Race and Juvenile Justice in Twentieth-Century Texas*, (Athens, Ga: University of Georgia Press, 2010), 4.

<sup>43</sup> Feld, *The Evolution of the Juvenile Court*, 27.

<sup>44</sup> Platt and Chávez-García, *The Child Savers*, 77.

<sup>45</sup> Platt and Chávez-García, 77.

<sup>46</sup> Feld, *The Evolution of the Juvenile Court*, 7.

doctrine that had been solidified in the 1838 Pennsylvania decision, the Child Savers extended their sphere of influence to include the young girls who they believed were susceptible to “immoralities of the most loathsome descriptions” by creating orphan asylums, houses or refuge, and reform schools.<sup>47</sup>

The Midnight Mission Campaign (1915-1918) in Philadelphia provides an example of the way that the Child Savers utilized religious teachings and moral principles to diagnose and rehabilitate those who they believed to be submerged in a lifestyle of sin and corruption.<sup>48</sup> The Midnight Mission was designed to target young women—primarily from an ethnic, working-class background—who would be housed and given an opportunity to gain tangible skills that would allow them to acquire a position of respectable employment. This effort reflects the argument of both Platt and Mintz regarding the importance of Protestant values within efforts of Progressive Era reformers, particularly as they were directed towards young females. The goal of the Midnight Mission Campaign was alleviating the source of female desperation and replacing a woman’s past sins with a life that contributed to and was approved by mainstream society.<sup>49</sup> According to the historian David Rothman, the reforms “linked different facilities and organizations into a massive reform web” to ensure that tendencies towards deviance were eradicated through a combination of physical discipline, religious education, and moral guidance.<sup>50</sup> The Midnight Mission Campaign is an example of both

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<sup>47</sup> Mintz, *Huck's Raft*, 154-157.

<sup>48</sup> James Adams, “Taming Wild Girls: The Midnight Mission and the Campaign to Reform Philadelphia’s Moral Fabric, 1915-1918,” *The Pennsylvania Magazine of History and Biography* 135, no. 2 (2011): 125, <https://doi.org/10.5215/pennmaghistbio.135.2.0125>, 125-149.

<sup>49</sup> Adams, “Taming Wild Girls,” 127-130.

<sup>50</sup> Adams, 128.

the benevolence and the shortcomings of the Child Savers. Motivated by a humanitarian spirit and the virtuous impulse to remove young females from a dangerous environment, this house of refuge also fell victim to a simplified view in which middle-class women were saviors and poor girls were individuals who could be saved and rehabilitated through typing courses, a disciplined schedule, and religious instruction.

The *parens patriae* doctrine was the foundation for the organization of the juvenile justice system and the intended goal of diverting children away from the adult prison system manifested in the absence of constitutional safeguards as they pertained to juvenile defendants. Platt contends that the Child Savers were not solely focused on criminal procedure, rather they embraced a diverse and expansive campaign that sought to implement legislation banning child labor, creating institutions such as kindergartens, allocating resources to supporting child-welfare services, and bringing about compulsory school attendance.<sup>51</sup> Historiographical debate exists regarding the motivations supporting the establishment of a separate criminal court and the wave of legislative reforms enacted by the Child Savers. While some maintain that the reformers were motivated by benevolence and a desire to shield children and adolescents from the flaws of the adult criminal justice system, others suspect that an eagerness to exercise control in the wake of societal, cultural, and economic change contributed to the targeting of children as the ideal demographic upon whom to exert progressive influence and values.<sup>52</sup>

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<sup>51</sup> Feld, *The Evolution of the Juvenile Court*, 22-25.

<sup>52</sup> Feld, 31.

### *The Due Process Revolution*

The absence of constitutional safeguards in the juvenile justice system was not addressed by the Supreme Court until the Due Process revolution of the 1960s and 1970s. Despite the fact that by 1925 every state besides Wyoming and Maine had a separate court designated for juveniles, the constitutional protections promised to all defendants were not applied to juveniles within the legal framework of the United States.<sup>53</sup> The Warren Court is typically considered to be an agent of Progressive change and judicial reform, and the Supreme Court's decisions in *Kent v. United States*, *In re Gault*, *In re Winship*, and *Breed v. Jones* modernized the juvenile justice system from a “social welfare agency”<sup>54</sup> into an institution that acknowledged the rights and protections that must be extended to all individuals.<sup>55</sup> *Kent v. US* (1966) established a juvenile defendant’s right “to a hearing on the issue of transfer to adult court,” mandated access to capable council, required the releasement of records pertaining to the transfer, and demanded that the court produce a written statement defending their decision. *In re Gault* (1967) formalized the rights of juvenile defendants including the right to “receive notice of charges against them, right to legal counsel, to confront and cross-examine witnesses, protection from self-incrimination, right to receive a transcript of the court hearing, and to appeal the judge’s decision.” *In re Winship* (1970) raised the burden of proof to the level of scrutiny employed in adult cases (“beyond a reasonable doubt”) for juvenile indictments. *Breed v. Jones* (1975) upheld that the double jeopardy clause of the fifth

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<sup>53</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 157.

<sup>54</sup> Feld, *The Evolution of the Juvenile Court*, 34.

<sup>55</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 159.

amendment forbid charging an individual as both a juvenile and an adult, in doing so, it “recognized juvenile court proceedings as criminal proceedings, not social welfare ones.”<sup>56</sup> These court cases symbolize the advancement of the juvenile court as it evolved to extend the protective measurements provided to adults defendants to their juvenile counterparts, yet these decisions did not single-handedly remove discrimination and injustice from the system. Rather additional cases such as *Major v. Sowers* (1969) and *Crumm v. State Training School for Girls* (1971) had to be filed within the court system to extend the ruling of *In re Gault* 1967 to African American youths and formalize the ruling that separate institutions for minorities were unconstitutional.<sup>57</sup>

### *Deconstructing the Legacy of the Child Savers*

Although the traditional narrative of the Child Savers revolves around women such as Jane Addams, Geoff Ward challenges Platt’s sole focus on the efforts of the “white child-saving movements” and counters that the existence of reformers who advocated for juvenile rights for all races must be considered in an analysis of this nineteenth century movement.<sup>58</sup> Ward’s qualification is important and it is imperative to include the work of individuals like Judge Jane Matilda Bolin, the first African American woman to graduate from Yale Law School and first to serve as a judge in the United States. As a judge in the Domestic Relations Court of New York from 1939 until 1979 Bolin dedicated her career to addressing the discrimination that had been integrated into

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<sup>56</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 159-160.

<sup>57</sup> McCord et al., 159-160.

<sup>58</sup> Ward, “The ‘Other’ Child Savers: Racial Politics of the Parental State,” 225–41.

the juvenile justice system, particularly in the “denial of services to black and Puerto Rican youth and families and the lack of representation among court officers.”<sup>59</sup>

Legal scholars contend that although the institutions created by the progressive movement were primarily designed with the purpose of rehabilitating the dependents of the state, this classification was primarily limited to “white youth deemed salvageable in part because of their racial stock.”<sup>60</sup> Lawyers specializing in juvenile justice and child advocacy further argue that the realities of the system instituted by the Child Savers largely reflect the ideology and preconceptions held by the women who dominated the sphere of influence and exerted control over its formation due to familial and financial connections. These legacies include the fact that “Black children were often excluded on the grounds that their presence would degrade white youth and undermine their salvation,” a ramification that child advocates are still challenging and fighting against in the modern-day legal system of the United States.<sup>61</sup>

These antiquated stereotypes were held by the majority of the reformers during the Progressive Era, including Jane Addams who, despite advocating for the abolishment of segregation, suggested that “colored girls did not have mothers who could serve as true women and moral instructors.”<sup>62</sup> The prevalence of social Darwinism and rhetoric justifying racial discrimination manifested itself in all spheres of the Child Saver movement and this is demonstrated by both Sarah Cooper—the architect of the

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<sup>59</sup> Ward, 236-237.

<sup>60</sup> Laura Cohen, Kristin Henning, and Ellen Marrus, eds., *Rights, Race, and Reform: 50 Years of Child Advocacy in the Juvenile Justice System* (New York, NY: Routledge, 2018), 35.

<sup>61</sup> Cohen, Henning, and Marrus, *Rights, Race, and Reform*, 36.

<sup>62</sup> Cohen, Henning, and Marrus, *Rights, Race, and Reform*, 36.

kindergarten system in California—who internalized positivist criminology believing that certain children were “handicapped in the race of life” and Louise Wardner—a leader of the Illinois Industrial School for Girls—who proposed that if left without guidance, “impure girls will increase her kind three to five fold.”<sup>63</sup>

*Survey of International Juvenile Legal Systems*

The 1999 international examination of the formal legal structures that developed in fifteen countries—Australia, Austria, Belgium, Denmark, England/Wales, France, Germany, Hungary, Italy, Japan, The Netherlands, New Zealand, Russia, Sweden and Switzerland—was conducted by Elmar Weitekamp, Hans-Juergen Kerner, and Gernot Trueg for the purpose of submitting the findings to the National Research Council Panel on Juvenile Crime: Prevention, Treatment, and Control.<sup>64</sup> This global perspective provides an interesting comparative and contrasting image of the various approaches and institutions designed to accommodate juvenile offenders. Out of the fifteen countries examined in this survey only Denmark, Russia, and Sweden are without a formalized court system designated for the purpose of specializing in juvenile crime, yet all have special provisions for criminals who are not considered adult perpetrators.<sup>65</sup> Weitekamp’s study provides insight into the diversity of international legal practices and this is demonstrated when considering maximum sentence lengths for juveniles; in England the maximum sentence is set at two years, whereas the Netherlands and Japan allow the

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<sup>63</sup> Platt and Chávez-García, *The Child Savers*, 27.

<sup>64</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 17.

<sup>65</sup> McCord et al., 18-21.

imposition of lifetime sentences, and in Denmark—where there is not a formalized court that specifically caters to juveniles—juvenile defendants under fifteen are not sentenced to prison terms, but referred to a social welfare agency.<sup>66</sup> The lowest minimum age of criminal responsibility in these fifteen countries is found in Switzerland and Tasmania where the age of reason is defined as seven, in comparison to Belgium and Russia with the highest age of criminal responsibility being sixteen.<sup>67</sup> In regards to the United States, it is crucial to consider the reality that variation in statutes from state to state results in difficulty for those attempting to conclusively study ‘the juvenile court’ as the practices of the legal system are individualized according to state laws and regulations.<sup>68</sup> This leads to relativity in regards to defining the age of criminal responsibility in America, yet despite the fact that most states lack a minimum age, children under the age of ten are rarely seen in criminal court proceedings in the juvenile system.<sup>69</sup> According to this international comparison of the previously mentioned fifteen countries, the United States reported the second highest incarceration rate behind only Russia and although the death penalty has since been abolished since Weitekamp’s findings for the Panel on Juvenile Crime, in 1999 it was the only nation out of the fifteen surveyed where the practice remained legal in regards to juvenile defendants.<sup>70</sup> It was not until March of 2005 that the Supreme Court of the United States abolished the death penalty as it pertained to

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<sup>66</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 18-21.

<sup>67</sup> McCord et al., 18-21.

<sup>68</sup> Tanenhaus, *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, 420.

<sup>69</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 20.

<sup>70</sup> McCord et al., 21.

juveniles based on scientific findings that definitively proved the incomplete formation of the adolescent brain and the inability of people under eighteen to demonstrate complete rationality and awareness of their actions.<sup>71</sup> The *Roper v. Simmons* decision focused on an individual's ability to differentiate between right and wrong to the extent that they were able to "act independently of external influences" and advancements in scientific technology and data led the justices to believe that defendants under the age of eighteen "lack full capacity to understand the gravity of their conduct or to control their influences."<sup>72</sup>

### *Conclusion*

The survey performed by the National Research Council Panel on Juvenile Crime: Prevention, Treatment, and Control emphasizes the fact that the juvenile legal system is fluid and the logistics of each court will vary according to year, country, and state; yet the standardized practice of differentiating between a fully responsible adult and a maturing child is shared by all fifty states of the United States and the fourteen other countries considered in this study. The evolution of the juvenile justice system in the United States reflects the complexities that plagued its origin, as well as the varying intentions that motivated its creators. The transformation of a rehabilitative structure in which early juvenile court judges envisioned themselves as parental figures to the 1990s paranoia of "super-predators" and the perpetuation of an image of "killer-kids" is a convoluted narrative that demonstrates the continued restructuring of the system and its susceptibility

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<sup>71</sup> Woodhouse, *Hidden in Plain Sight: The Tragedy of Children's Right*, 27.

<sup>72</sup> Woodhouse, 27.

to the ideals of those who exercise influence over it at various moments of American history.<sup>73</sup>

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<sup>73</sup> Bush, *Who Gets a Childhood?*, 3.

## CHAPTER THREE

### A Cycle of Reform and Punishment: The Four Stages of the Juvenile Justice System

#### *Introduction*

Since the juvenile court's inception in 1899 the system has been subject to the opinions of the academic and political professionals of its time, while remaining aware that its functionality and effectiveness is closely intertwined with public perception. It has developed alongside with scholarly advancements in the sphere of children's studies and an increased understanding of human maturation, yet it has also endured the ramifications of media and its tendency to incite paranoia and fear within communities across the nation. Although the juvenile justice system has developed differently in individual states, a national narrative exists that can be helpful in understanding the cycle of reform and regression that has defined the fight for constitutional safeguards to be implemented for all offenders, not just adults. The Texas system reflected this trend as the interaction and influence of federal policy, scientific breakthroughs, and community perception all contributed to the development of the court system as it pertained to juvenile offenders.

#### *Defining Childhood and Adolescence*

Understanding the term "childhood" has been a challenging concept throughout the history of the juvenile justice system and the task of translating this convoluted and complex word into a set of judicial regulations has incited contention and debate. The definition of "juvenile" is not a description that remains static throughout the court's history, but reflects the fate of the system itself and its exposure to—and frequent manipulation by—the political and social situation of the time. Barbara Bennett

Woodhouse, a law professor and the codirector of Barton Child Law and Policy Clinic at Emory Law School, elaborated on the nuances of the word and described that “Childhood has many meanings. To physicians and psychologists it is a stage of human development to be studied and analyzed. To historians it is a term whose meaning varies from epoch to epoch and according to race, class, and region. To anthropologists it is a social phenomenon to be observed in a cultural context. To lawyers it is a time for involving age-based legal protections and imposing age-based legal disabilities.”<sup>74</sup> Woodhouse argued that developmentally, a universal moment of reason does not exist because of variables such as race, gender, upbringing, socioeconomic status, and access to education.<sup>75</sup> The difficulty in establishing a legal guideline that equates a number with an individual’s competence is a foundational debate that ensued throughout the late nineteenth century well into the twenty-first century.

Prior to the creation of the juvenile court, the “infancy defense” existed as the separate standard of judgement utilized in the case of children accused of criminal actions.<sup>76</sup> This doctrine deemed that children under the age of seven were not of the age of reason, those fourteen or older were capable of committing crimes and being held accountable for their consequences, and those between the ages of seven and thirteen “lacked criminal capacity.”<sup>77</sup> As bizarre as the gap between seven and thirteen appears, this chasm represents the struggle between the consideration of the development aspects

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<sup>74</sup> Woodhouse, *Hidden in Plain Sight: The Tragedy of Children’s Rights*, 15.

<sup>75</sup> Woodhouse, 26.

<sup>76</sup> Barry C. Feld, *The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice*, 26.

<sup>77</sup> Feld, 26.

of maturation and the importance placed by the system on the principle of accountability. The National Research Council's *Juvenile Crime, Juvenile Justice* discusses the twenty-first century dispute between an age of reason and the age of culpability and the difficulty in creating juvenile justice policy that effectively addresses the complications of sentencing defendants who range from ten years old to seventeen.<sup>78</sup> The term "adolescence," which appeared at the end of the nineteenth century, describes the period of one's life in which they are not a child nor an adult.<sup>79</sup> Stanley Hall—a pioneer in the field of child psychology—described that this life stage was defined by tumultuous self-discovery and a sense of rebellion that if left unchecked, had the potential to spiral into the disintegration of societal control and social values.<sup>80</sup> In addition to articulating this development period of quasi-adulthood defined by child-like impulses, Hall presented his thoughts within the pseudo-science of eugenics and cited the wave of immigrants as the root of promiscuity in the larger U.S. cities.<sup>81</sup> Unfortunately, it is the reality that the juvenile justice system was created by and evolved with the limited understanding of children and adolescents in the realm of psychological, sociological, and developmental studies. The dangerous ramifications of flawed scientific theories and the simplified association made by early reformers regarding promiscuity and juvenile delinquency have left an indelible mark on the juvenile justice system. The eradication of these

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<sup>78</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 14.

<sup>79</sup> Sarah E. Chinn, *Inventing Modern Adolescence: The Children of Immigrants in Turn-of-the-Century America*, The Rutgers Series in Childhood Studies (New Brunswick, N.J: Rutgers University Press, 2009), 6.

<sup>80</sup> Chinn, 16.

<sup>81</sup> Chinn, 17-18.

misconceptions and the importance of interdisciplinary coordination in legal policy are continuously cited by legal scholars and child advocates such as Woodhouse.<sup>82</sup>

#### *Varying Interpretations of Juvenile Justice throughout the System's History*

It is helpful to consider the opinion of Judge Ben B. Lindsey—a judge who specialized in empathizing with his young defendants and who advocated for the firm but caring enactment of the law as it is applied to juveniles during his time on the bench from 1900 to 1927—to understand how early definitions of childhood and adolescence was implemented within the newfound juvenile court.<sup>83</sup> In response to questions posed in 1908 by a New England superintendent regarding the intersection between the public school system, juvenile crime and immigration, Judge Lindsey responded in *The Houston Post* dismissing the dangerous sentiment of assigning blame to immigration and instead focusing on the centrality of socioeconomic inequality in understanding juvenile crime.<sup>84</sup> Briefly mentioning the importance of trade schools and providing students with tangible skills that could equip them for the workforce as he believed that poverty was the primary motivation for crime, the judge emphasized the importance of a child's home environment in his or her future decisions. Judge Lindsey argued that if parents avoided their responsibility of instilling the intrinsic values of an education and moral virtue within their student, issues such as truancy could escalate within a child's life. In response to the interviewer's question connecting immigration to the "unfortunate

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<sup>82</sup> Woodhouse, *Hidden in Plain Sight*. 15.

<sup>83</sup> Bush, *Who Gets a Childhood? Race and Juvenile Justice in Twentieth-Century Texas*, 4.

<sup>84</sup> Judge Ben B. Lindsey, "Denver's Favorite 'Kid' Judge Finds the Home Most to Blame for Youthful Delinquency," *The Houston Post*, July 19, 1908, <https://newscomwc.newspapers.com/image/95182533>.

condition” of juvenile crime, Judge Lindsey responded that after scouring the police records for nearly all large cities and in his own personal experience, the numbers demonstrated “how few of our juvenile criminals are of foreign parentage. Perhaps more children of immigrants get into court, but my judgement is that this is largely because of poverty and ignorance.” In conclusion, Lindsey focused on the importance of religious training and contended that “the causes of crime must be searched for among those evils that afflict our social, economic, industrial and political conditions.”<sup>85</sup>

The transformation from Judge Lindsey’s paradigm of a justice system structured around paternal guidance and rehabilitation in 1908 to the construction of the label “super predator” to describe “kids who kill” in 1995 is a national narrative that can be better understood through the case-study of a particular state’s juvenile justice system’s evolution.<sup>86</sup> Barry Feld breaks the history of the juvenile justice system in the United States into four main periods: the Progressive Era, the Due Process Revolution, the Get Tough Era, and the Kids are Different Era.<sup>87</sup>

#### *National Overview of the Progressive Era and the Child Savers*

Anthony Platt’s cornerstone work on juvenile justice, *The Child Savers: The Invention of Delinquency* presented a general overview and analysis of the creation and legacy of the system arguing that the juvenile court could be understood as a manifestation of the motives of the Child Savers.<sup>88</sup> Platt’s thesis contended that the Child

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<sup>85</sup> Judge Ben B. Lindsey, "Denver's Favorite 'Kid' Judge."

<sup>86</sup> Bush, *Who Gets a Childhood?*, 3.

<sup>87</sup> Feld, *The Evolution of the Juvenile Court*, 1.

<sup>88</sup> Platt and Chávez-García, *The Child Savers: The Invention of Delinquency*, 176.

Savers were primarily middle class white women with resources, educational training, and political connections that utilized their influence to institutionalize Progressive values, extend the influence of the parent state to include various aspects of youth that had previously been unregulated, and create a more personalized system of reform that ultimately resulted in a loss of due process protections for juveniles.<sup>89</sup> The original agenda of social and political reforms pioneered by the Child Savers quickly developed into an expansive array of government agencies that were created to enact and enforce regulations pertaining to children such as child labor laws, age of consent statutes, and mandatory educational requirements. Eric Schneider contended that these early efforts manifested in private and non-profit entities funded through religious or secular funding that were incapable of success due to the “cultural myth” that equated the origin of crime as the ignorance and choice of the poor to voluntarily choose a life of law-breaking.<sup>90</sup> This bureaucratic “web” described by Schneider provides a helpful framework for articulating the tendency of the reformers to misidentify the solution for juvenile delinquency as a moral campaign against deviance and their limited understanding of defendants as “passive” beings that could be shaped according to the values of their saviors.<sup>91</sup>

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<sup>89</sup> Platt and Chávez-García, 77; 176.

<sup>90</sup> Schneider, *In the Web of Class: Delinquents and Reformers in Boston, 1810s-1930s*, 190-191.

<sup>91</sup> Schneider, 1-2.

### *The Work of the Child Savers in Texas*

During the U.S. Progressive Era (1890s to 1920s), the creation of the statewide reformatory for boys in 1889 can be credited to female reformers in Texas. The demographic background of these architects supports Platt's thesis as it pertained to the identity of the Child Savers and their role in shaping juvenile justice systems across the country.<sup>92</sup> These reformers were members of the Texas chapter of the Women's Christian Temperance Union who, after being horrified while visiting a penitentiary in which juveniles shared facilities with adult offenders, utilized political avenues and their position in society to advocate for legislative change that ultimately resulted in the creation of the Texas State Juvenile Training School in Gatesville, Texas in 1889.<sup>93</sup> The opening of Gatesville mirrored advancements in legal policy as it applied to juveniles—Alabama opened a reformatory school in 1900—yet the Southern states incorporated a longstanding history of segregation into the training schools.<sup>94</sup> Although it is undeniable that racism of all types seeped into the foundation of the juvenile justice system across state lines and bled into legal proceedings, the Northern states embraced an agenda of “assimilationist and citizen-building,” whereas Southern states applied the tradition of Jim Crow to the state reformatories and juvenile courts.<sup>95</sup> The systems created in northeastern cities clearly differentiated between “our kids” and “other people’s children”—usually the children of immigrants—who were in need of rehabilitation and

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<sup>92</sup> Bush, *Who Gets a Childhood?*, 5.

<sup>93</sup> Bush, 10.

<sup>94</sup> Bush, 11-12.

<sup>95</sup> Feld, *The Evolution of the Juvenile Court*, 37.

assimilation,<sup>96</sup> but the Texas enactment of this doctrine resulted in the disproportionate siphoning of African American and Hispanic boys from the poor neighborhoods of Houston into Gatesville Training School.<sup>97</sup> Though the age at which an individual can be charged with a crime and tried as an adult varies by state, the 1907 *Juvenile Delinquency Court Act* in Texas ruled that the juvenile courts would be responsible for those under the age of sixteen and that these would be classified as criminal proceedings.<sup>98</sup> Mirroring the absence of federal constitutional safeguards codified for juvenile defendants during the Progressive Era—such as the right to counsel, right to know the charges against oneself, and the right to a trial by jury,<sup>99</sup> definitive guidelines outlining court procedure, detailing probation, or limiting sentencing were not included in the 1907 act.<sup>100</sup>

Despite the lofty rhetoric of the Child Savers and their success in diverting juveniles from the adult prison system, training schools like Gatesville were plagued by discrimination and institutional inequality. The future of the training schools in Texas—like many states—were heavily entangled with the ebbs and flows of politics and unfortunately, frequent corruption and public manipulation. One example of this is the Governor of Texas, James Ferguson (1915-1917) who would be removed for charges of corruption, yet succeeded in appointing his loyal supporters to the Gatesville Board of Trustees and ensuring that Charles E. King, a man only qualified by his allegiance to

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<sup>96</sup> Feld, 38.

<sup>97</sup> Bush, *Who Gets a Childhood?*, 13.

<sup>98</sup> Bush, 13.

<sup>99</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 154.

<sup>100</sup> Bush, *Who Gets a Childhood?*, 14.

Ferguson, would be named superintendent.<sup>101</sup> Superintendent King was temporarily forced to resign in 1921 after the death of a fifteen-year-old inmate and an investigation into reports of physical abuse revealed that between 1900 and 1920 sixteen boys had died while in the school's custody and the boys—all between the ages of thirteen and twenty—had been buried at the institution's cemetery.<sup>102</sup> King was shortly reappointed by Governor Miriam Ferguson in 1925, in 1927 he explained to the chairman of the Texas State Board of Control the value of convict leasing—which had been illegal for adult prisoners for over a decade—and farm labor, especially for African Americans as he described that they were “grown in size...[and] if these boys are not taken care of in this way, they must be kept at the institution and taught to play games, but I must confess that a buck negro looks better to me with a goose-necked hoe in his hand than he does with a baseball bat or golf club.”<sup>103</sup> The racism, ignorance, and concern solely with the lucrativeness of the training schools that defined the leadership of Superintendent King were not without objection. The election of Governor Dan Moody in 1927 ultimately resulted in his removal and the call for reform concerning convict leasing.<sup>104</sup>

#### *National Overview of the Due Process Revolution*

The Due Process Revolution in the United States (1950s to 1960s) is defined by a wave of landmark Supreme Court cases decided under the purview of Chief Justice Earl

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<sup>101</sup> Bush, 25.

<sup>102</sup> Bush, 28.

<sup>103</sup> Bush, 34.

<sup>104</sup> Bush, 35.

Warren that extended legal freedoms to groups of people who had been excluded from their constitutional right of equality and extended constitutional safeguards to juveniles.<sup>105</sup> The Rights Revolution of the post-war era that reached its height in the 1960s traced its platform of championing the rights of minority citizens to the “Double V” campaign which called for victory over fascism abroad and victory over racism at home.<sup>106</sup> *Brown v. Board of Education* (1954) ushered in a new era in the federal justice system in which “many members of the Warren Court took upon themselves a more activist role at a time when other branches of government either refused to constructively deal with the social crises of the period or were thwarted in their efforts.”<sup>107</sup> Juvenile justice became a national issue during the Due Process Revolution and the Supreme Court’s decision to extend constitutional safeguards to juvenile defendants in *In re Gault* (1967) represented the transformation of the system from the social welfare agency instituted by the Child Savers into a formal legal system.<sup>108</sup>

#### *The Due Process Revolution in Texas*

Advocates for children’s rights joined this platform to focus the public’s attention on the importance of instituting protections for children within the criminal system and ensuring that professional care was provided by administrators, judges, psychologists,

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<sup>105</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 159-160.

<sup>106</sup> Bush, *Who Gets a Childhood?*, 52.

<sup>107</sup> Gray A. Debele, “The Due Process Revolution and the Juvenile Court: The Matter of Race in the Historical Evolution of Doctrine,” *University of Minnesota Libraries Publishing* vol. 5, no. 3 (1987): 541.

<sup>108</sup> Debele, 517.

and social workers within the state system of Texas.<sup>109</sup> Prior to the unveiling of the School of Social Work at The University of Texas, Austin in 1950, the individuals within the Texas juvenile court system who were educated and prepared for the difficulties of interacting with and rehabilitating juvenile offenders had received their training from schools in the Northeast.<sup>110</sup> During the early 1950s and supported by the increased awareness of children's mental health and the importance of community-based intervention, Governor Beauford H. Jester unveiled Texas's plan to develop "the most extensive youth program ever developed" in the United States as they sought to reduce the number of juveniles in the training schools through the creation of the Texas State Youth Development Council (TSYDC).<sup>111</sup> The Texas Youth Council (TYC) would be created in 1957 as a subdivision of this agency responsible for overseeing the juvenile training schools and it would later become a tool utilized for the implementation of "get tough" policies.<sup>112</sup> The limitations of the Due Process Revolution are evident in a close examination of the policies enacted in Texas during this time. Due to public perception and budgetary restrictions, the vision of the TSYDC would be short-lived and only minimally effective at instituting the changes it imagined for the Texas juvenile justice.<sup>113</sup> Despite efforts to modernize the system and implement community-based rehabilitation programs, the TSYDC's official narrative depicted the juvenile delinquent as a white,

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<sup>109</sup> Bush, 52.

<sup>110</sup> Bush, 53.

<sup>111</sup> Bush, 93.

<sup>112</sup> Bush, 122.

<sup>113</sup> Bush, 96.

middle-class child, choosing to exclude African American and Mexican American juveniles from this salvageable generation.<sup>114</sup> Whereas the TSYDC considered the low psychological and mental capacity scores of white boys a result of their poor upbringing, low economic status, and “lack of opportunity and parental love and guidance,” the same consideration was not given to African American boys who were instead transferred from mental hospitals to prisons during the 1950s.<sup>115</sup>

Although Texas leaders such as Governor Daniel and District Attorney Frank Briscoe argued that harsher sentences were the solution to the rise in the juvenile arrest rate from 1955 to 1960,<sup>116</sup> the national reaction was to develop a response utilizing the foundations of President Lyndon B. Johnson’s “Great Society” program. The President’s Commission on Law Enforcement and Administration of Justice released in 1967 reflected the ideals of President Johnson’s “War on Poverty” and reported that “once a juvenile is apprehended by the police and referred to the Juvenile Court, the community has already failed.”<sup>117</sup> The Commission did not cite an exponential growth of “baby criminals” or rampant violence that had pervaded adolescent culture, rather they diagnosed the issue as being disparity between the opportunities, living conditions, and educational training that ultimately culminated in teenagers who were isolated from mainstream culture and had little interest in investing in a society that had betrayed

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<sup>114</sup> Bush, 104-108.

<sup>115</sup> Bush, 115-116.

<sup>116</sup> Bush, 131.

<sup>117</sup> Jack D. Douglas, “The Challenge of Crime in a Free Society: A Report by the President’s Commission on Law Enforcement and Administration of Justice.,” *American Sociological Review* 32, no. 4 (August 1967): 58, <https://doi.org/10.2307/2091056>.

them.<sup>118</sup> Furthermore, the ignorance that pervaded the juvenile court system and the lack of trained professionals active within the process were cited by the President's Commission as debilitating factors hindering the effectiveness of the legal system. This was evident through the results of a study revealing that a fifth of the judges overseeing juvenile court proceedings were not members of the bar, while a fifth "had received no college education at all."<sup>119</sup> The conclusions drawn by the Commission's report of 1967 articulated the core of the Due Process Revolution: systematic oppression of marginalized group created a chasm between those who were motivated in adopting mainstream values and the accepted avenues for achieving and accomplishing these goals and those who had been isolated, subjugated, and therefore did not trust the prescribed structure of society. Economic inequality and decades of structured racism created neighborhoods which funneled adolescents into the criminal justice system at a much higher rate than their affluent, suburban counterparts, and this destructive cycle resulted not in rehabilitation but repeated exposure to a flawed system that ascribed lasting labels rather than professionalized care.<sup>120</sup> The findings of the President's Commission on Law Enforcement and Administration of Justice as they related to juvenile justice was a recommendation of increased funding for educational improvement in inner-cities, the importance of emphasizing community coordination and local involvement to avoid stigmatization, the use of the formalized proceedings as a last resort, and the

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<sup>118</sup> Douglas, 58.

<sup>119</sup> Douglas, 80.

<sup>120</sup> Douglas, 81-88.

professionalization in all aspects of the system—from case workers, social workers, and judges.<sup>121</sup>

### *The National Narrative of “Get Tough” Politics*

Johnson’s “War on Poverty” was replaced by Nixon’s “War on Drugs” in the late 1970s and the legacies of these “get-tough” policies and public perception have extended well into the twenty-first century. The crack cocaine epidemic and the relationship that this had on the increase of firearms, particularly in inner cities, created mass paranoia that was only perpetuated by the introduction of labels such as “super-predators” and “kids who kill” into everyday vernacular.<sup>122</sup> The result of this fear was the politicization of judicial guidelines, legal practices, and incarceration rates with politicians, of both political persuasions, advocating for cracking down on “youth crimes.” This translated into heavier policing within urban centers and the escalation of prosecuting young African American males who lived in the inner-cities.<sup>123</sup>

Feld describes that the “get tough” policies enacted across the United States included the proliferation of life without parole (LWOP) sentences, which previously had rarely been enforced by the states, and the elimination of parole boards and the consideration of judges’ discretion.<sup>124</sup> During the Get Tough Era, mandatory LWOP sentences were applied to all defendants convicted of murder, adults and juveniles,

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<sup>121</sup> Douglas, 88.

<sup>122</sup> Feld, *The Evolution of the Juvenile Court*, 80.

<sup>123</sup> Feld, 80.

<sup>124</sup> Feld, 210.

effectively eliminating the judge's consideration of an offender's culpability, level of involvement, or diminished responsibility or understanding of their actions.<sup>125</sup>

### *“Get Tough” in Texas*

An increase of violent crimes in the 1950s dramatically reduced the willingness of Texas communities to embrace the social implications and economic demands of the reforms advocated by the newborn Texas State Youth Development Council and marked the existence of “get tough” sentiment during the Due Process Revolution. The murder of a fifteen year old Houston resident by four Gatesville parolees in 1957 sparked intensified rhetoric across the state calling for longer sentences and the increased accountability of teenage offenders.<sup>126</sup> Published after the “Christmas murder” of Jay Evans, *The Waco Citizen* discussed the controversy that had arisen in the wake of the tragedy. W.S. Foster commented on the causation between the perceived leniency of juvenile Judge J.W. Mills, his indulgence of dangerous behavior in juvenile offenders, and the death of fifteen-year-old Jay Evans.<sup>127</sup> Furthermore, the reporter characterized Governor Price Daniel as a man who “wants to send the Baby-Criminals to the State Penitentiary, when prosecuted on certain major crimes.”<sup>128</sup> Governor Daniel was not the only voice calling for harsher guidelines; the Houston district attorney Frank Briscoe “declared war on juvenile offenders” in 1961 and reformers such as Houston Judge J.W.

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<sup>125</sup> Feld, 210.

<sup>126</sup> Bush, *Who Gets a Childhood?*, 122-123.

<sup>127</sup> W. S. Foster, “Observations,” *The Waco Citizen*, January 09, 1958, <https://newscomwc.newspapers.com/image/43608810>.

<sup>128</sup> W. S. Foster, “Observations.”

Mills—who had advocated for increased social welfare services and warned against extreme punishments for juvenile offenders—were challenged in the arena of societal opinion.<sup>129</sup>

In Texas this paranoia and heightened rhetoric reached its pinnacle when the state convicted three African American seventeen-year-old males of murder and sentenced Napoleon Beazley, T.J. Jones, and Toronto Patterson to the death penalty, carried out in 2002.<sup>130</sup> Bush pointed to Napoleon Beazley to illustrate the myth of “super-predators” who want to kill; Beazley had been a star student and athlete who was class president, highly admired by his classmates and teachers, and whose middle-class upbringing had instilled within him a desire to eventually attend Stanford Law School.<sup>131</sup> Beazley’s acceptance by and popularity with his white peers at Grapeland High created tension with the predominantly black neighborhood called “The Quarters” and, in order to avoid the racially-focused jeering of his African-American peers, he turned to his older cousin and achieved “street-cred” by selling and using drugs.<sup>132</sup> Beazley’s desperation to survive in both worlds tragically resulted in the murder of an unarmed white man, John Luttig, and eventually Beazley’s own death by lethal injection in the summer of 2002.<sup>133</sup> The outrage and fear following this murder mirror the social construct of the “Get-Tough” era that

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<sup>129</sup> Bush, *Who Gets a Childhood?*, 134-145

<sup>130</sup> Bush., 203.

<sup>131</sup> Bush, 203.

<sup>132</sup> Bush, 203.

<sup>133</sup> Bush, 204.

perpetuates the myth that a generation of “thrill-killers” had emerged who had forfeited their right to childhood and life.

In the wake of a renewed national demand for deinstitutionalization and the call for reinforcing the legal rights of juveniles during the Get Tough Era, the *Morales v. Turman* decision (1973) succeeded in establishing mandated reform in Texas. After discovering a conspiracy in which parents recommended that their children be sent to a training school for short-term discipline without courtroom procedure or the official ruling of a judge—both constitutional safeguards guaranteed by *In re Gault*—Steven Bercu, a Legal Aid attorney from El Paso, represented former inmates in their case against the Director James A. Turman of the Texas Youth Council (TYC).<sup>134</sup> Horrific accounts of physical, psychological, and mental abuse were revealed during the testimonies of the inmates and Judge Justice’s approval for the appearance of expert witnesses from the American Psychiatric Association and the American Psychological Association reflected the increased attention given to children’s mental health and the importance of interdisciplinary judicial and legislative policy.<sup>135</sup> The ruling in *Morales v. Turman* effectively closed Mountain View and Gatesville Training schools, banned the use of mace on inmates, prohibited racial segregation within reformatories, restricted the use of corporal punishment and solitary confinement, and created the Morales Consultant Committee to ensure that these guidelines were followed.<sup>136</sup> Although Judge Justice’s ruling extended the national narrative of equality and constitutional protections under the

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<sup>134</sup> Bush., 166-173.

<sup>135</sup> Bush, 180.

<sup>136</sup> Bush, 200-202.

law for all to the state system of Texas, the power of fear and paranoia would continue to cast a shadow over Texas's treatment of juvenile offenders.

### *Kids are Different*

Sociological studies and advanced neurological research both indicate other explanations for increased juvenile violence during the 1970s and 1980, and provide evidence-based alternatives counteracting the idea that the death penalty and maximum life sentences are the solution to increased crime rates. Elijah Anderson, a professor of sociology at Yale University, argued that the “code of the street” developed in urban cities as a “cultural adaptation to a profound lack of faith in the police and judicial system.”<sup>137</sup> This code emphasizes the acquisition and protection of respect above all else and the use of violence to ensure one’s own protection and safety within the community. Anderson’s study uses the terms “decent” and “street” to reiterate the fact that the majority of the families who live in these poor inner-city communities adopt mainstream values and attempt to instill a value for education and hope for their future into their children; yet Anderson emphasized that a child might belong to a decent family but to survive, they must ascribe to the code of the street. His explanation for the creation of the code lies in the economic disparity that divides poor African American communities from the endless opportunities offered to the affluent members of society. Therefore in a neighborhood where jobs are lacking and drug use is uncontrolled, the only commonly valued currency is respect of the streets—a zero sum trade that operates through violence.

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<sup>137</sup> Elijah Anderson, “The Code of the Streets,” *The Atlantic*, May 1, 1994, <https://www.theatlantic.com/magazine/archive/1994/05/the-code-of-the-streets/306601/>.

Anderson described that “the sense of power that attends the ability to deter others can be alluring even to those who know the code without being heavily invested in it—the decent inner-city youths. Thus a boy who has been leading a basically decent life can, in trying circumstances, suddenly resort to deadly force.”<sup>138</sup>

The death penalty’s application to juveniles was deemed illegal in *Roper v. Simmons* (2005) after the Supreme Court considered neurological research demonstrating that the brain function of adolescents was underdeveloped resulting in the juvenile’s susceptibility to negative influence of peers, lack of self-control, and immature judgement.<sup>139</sup> This data revealed that those under eighteen lack the ability to “understand the gravity of their conduct or to control their impulses,” and therefore the execution of adolescents was unconstitutional under the eighth amendment’s protection against “cruel and unusual punishments.”<sup>140</sup>

The “kids are different” perspective of the court resulted in the *Miller v. Alabama* decision (2012) banning mandatory LWOP sentences for youths convicted of murder.<sup>141</sup> Ruling against mandatory LWOP sentences for convicted murderers, this decision required the “individualized culpability assessment” of a judge, in order to ensure that proper consideration was given to the circumstances of the crime and the inherent differences between an adult and juvenile perpetrators.<sup>142</sup>

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<sup>138</sup> Anderson, "The Code of the Streets."

<sup>139</sup> Feld, *The Evolution of the Juvenile Court*, 196.

<sup>140</sup> Woodhouse, *Hidden in Plain Sight*, 27.

<sup>141</sup> Feld, *The Evolution of the Juvenile Court*, 211.

<sup>142</sup> Feld, 211.

### *Kids Are Different—Reconsidering the actions of Napoleon Beazley*

Napoleon Beazley, one of the three teenage boys convicted for the murder of John Luttig, was from a middle-class, two parent household in the small town of Grapeland, Texas.<sup>143</sup> He was an excellent student, president of his senior class, runner up for “Mr. Grapeland High,” and described by *Texas Monthly* as the “first black kid ever to be accepted by the whites” in a town with rigid racial lines that were usually left unchallenged.<sup>144</sup> Anderson’s “code of the streets” perspective is interesting to apply to the case of Napoleon Beazley who, raised in a middle-class home and devoted to opportunities usually reserved for the affluent such as law school, turned to using and selling drugs to avoid verbal assaults from his African American peers. During his interview prior to his execution Beazley did not try to excuse his actions or claim that he was not responsible for the murder of John Luttig, but his immense remorse contradicts the insidious narrative of “kids who kill” without feeling and without explanation.<sup>145</sup> Despite appeals from his former schoolteachers, the original prosecutor, and even the judge who presided over his trial, Beazley was executed three years prior to the *Roper v. Simmons* decision (2005).<sup>146</sup> Napoleon Beazley, who challenged every preconception of “thrill-killers” died before the Supreme Court’s formal recognition that “children are different” and there are mitigating circumstances that must be taken into account during the sentencing of an adolescent.<sup>147</sup>

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<sup>143</sup> Bush, *Who Gets a Childhood?*, 203.

<sup>144</sup> Bush, 204.

<sup>145</sup> Bush, 204

<sup>146</sup> Bush, 204.

<sup>147</sup> Feld, *The Evolution of the Juvenile Court*, 195.

## *Conclusion*

The cycle of failed reforms and the politicization of juvenile justice policy is not solely a Texas narrative, but a national history of the criminal justice system. Increased professionalization and specialization repeatedly recommended community action, deinstitutionalization, and the negative consequences of ascribing a label of “deviant” or “criminal” to an individual during their development years. Yet, increased violent crimes sparked national outcry for protection and the reinstitution of law and order. Scholars of public policy administration and social work recognized that the importance of garnering public support and alleviating fear and panic were necessary components in the successful implementation of federal guidelines and community-based alternative programs.<sup>148</sup> The shock-factor of headlines reiterating the “kids who kill” narrative created a paradigm in which there is terror hidden in the faces of children and this further complicated the efforts to reform the system on both the federal and state level.

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<sup>148</sup> Frederic G. Reamer and Charles H. Shireman, “Alternatives to the Juvenile Justice System: Their Development and the Current State of the Art,” *Juvenile & Family Court Journal* 32, no. 2 (1981): 38.

## CHAPTER FOUR

### Examining Feld's Four Development Stages through Public Discourse in Texas

#### *Introduction*

The juvenile justice system has been plagued by its inability to understand juvenile delinquency. This flaw is evident in the way that reformers have tried to rehabilitate young girls throughout its lifetime. Progressive era reformers responsible for constructing the system focused on reducing promiscuity in adolescent females.

Individuals like Mary M. Barthelme, a judge in Chicago, worked within the court system to curb “the precocious sexuality of working-class girls, whose families were often recent arrivals to American industrial cities.”<sup>149</sup> The limited understanding of the reformers and their preconceived assumption that young females chose prostitution led the system to criminally charge young girls under the age of eighteen with committing a crime. Sexual deviancy was viewed as a choice by these early reformers, and their perception of female delinquency would attempt to remedy the situation without considering the underlying causes.

#### *Early Efforts to Eliminate Female Juvenile Delinquency*

Philadelphia Midnight Mission campaign, founded in 1868, reflected the Progressive Era ideal that rehabilitating an individual’s moral character was the best method of reforming juveniles, particularly females.<sup>150</sup> The staffers of the Midnight

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<sup>149</sup> Bush, *Who Gets a Childhood*, 4.

<sup>150</sup> Adams, “Taming Wild Girls: The Midnight Mission and the Campaign to Reform Philadelphia’s Moral Fabric, 1915-1918,” 126-128.

Mission prescribed a strict regimen of Episcopalian faith training accompanied by stenography and typing lessons in an effort to provide the young girls both with moral virtue and the tangible skills necessary in socially acceptable employment.<sup>151</sup> James Addams described the primary demographic of young girls identified by the reformers as “at-risk” youth were from “ethnic, working-class backgrounds.” Who often displayed public behaviors almost diametrically opposed to those that Progressive Era moralists considered wholesome. Staying out all night, stealing, lying, and (worst of all) mingling with members of the opposite sex in unsupervised settings were, in the eyes of the Progressives, sure signs that a teenager was on a slippery slope towards an immoral, degenerate adulthood.<sup>152</sup>

The historical analysis of the Midnight Mission campaign by James Adams culminates in his argument that nineteenth and early twentieth century reformers identified any type of behavior they perceived as sinful as an indicator that a young girl might be on the verge of a criminal lifestyle and therefore must be rescued. Barry Feld, a legal scholar who has studied the evolution of the juvenile justice system, described that “Progressives did not distinguish between children who committed crimes and those who engaged in noncriminal misconduct or whose parents neglected them—all required support and moral guidance.”<sup>153</sup> In her conversation on the creation of the adolescent identity at the end of the nineteenth and beginning of the twentieth centuries, Sarah Chinn claimed that “the sexual freedom that seemed part and parcel of this new identity was particularly threatening for those who saw themselves as the protectors of young women:

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<sup>151</sup> Adams, "Taming Wild Girls," 127-134.

<sup>152</sup> Adams, 127.

<sup>153</sup> Feld, *The Evolution of the Juvenile Court*, 32.

reformers, anti-prostitution activists, vice commissions, and, of course, parents and immigrant community leaders.”<sup>154</sup>

Further highlighting the inequality and misconceptions that dominated the early formative years of the juvenile justice system, segregation defined the male training schools in Texas. Gainesville was created in 1916 for housing and rehabilitating delinquent girls in Texas, but African American girls were excluded entirely from the state’s first training school.<sup>155</sup> They were either forced to return home after their court appearance or transferred to the local jail and held with adult inmates.<sup>156</sup> Racial discrimination became a long-standing feature of the state training schools in Texas. The first training school for African American girls would not open until 1947 and the schools would not be integrated until 1966.<sup>157</sup>

#### *Analyzing the Four Stages of the Juvenile Justice System in Texas Public Discourse*

Tracing the developmental stages of the juvenile justice system in the United States, as presented by Barry Feld, includes moving beyond the scope of landmark court cases and legislative acts and considering the manner through which the defining themes of these phases are evident in public discourse. As a reminder, Feld’s four stages for understanding the evolution of the juvenile justice system in the United States are 1. The Progressive Era 2. The Due Process Revolution 3. The Get Tough Era 4. Kids are

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<sup>154</sup> Chinn, *Inventing Modern Adolescence: The Children of Immigrants in Turn-of-the-Century America*, 11.

<sup>155</sup> Bush, *Who Gets a Childhood?*, 22; 71.

<sup>156</sup> Bush, 12.

<sup>157</sup> Bush, 22; 71; 92.

Different.<sup>158</sup> Female juvenile delinquency has carried its own set of unique issues from the inception of the system, and the transformation of the public's perception regarding proper rehabilitation measures have evolved slowly due to the limited understanding of the extenuating circumstances that surround female juveniles. Examining newspaper articles and news stories published between 1915 and 2015 is one method of exploring public discourse surrounding juvenile justice. Further, it provides opportunity for an analysis of public pronouncements about juvenile delinquency, its existences, causes and cures, and the ramifications of developing scientific findings. While searching the Texas historical record for articles discussing juvenile crime, particularly as it pertained to female juvenile delinquents, it is critical to incorporate newspaper publications from both major city centers and small towns throughout the state. By the 1930's, major urban centers in Texas such as Houston, Dallas, and Galveston had each "established a separate juvenile court with an elected judge, a juvenile probation department, and a separate juvenile detention center...By contrast, smaller towns typically offered few if any services."<sup>159</sup> In order to fully understand the lack of uniformity that plagued different counties in the state and their diverse reactions and approach in addressing juvenile crime, it is critical to consider the media coverage from cities such as Houston and El Paso as well as smaller communities such as Waco, Corpus Christi, Kerrville, and McKinney. This brief survey of newspaper publications demonstrates the defining qualities of Feld's four stages, while also revealing how widespread misunderstanding and a limited awareness of developmental psychology often culminated in a societal fear

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<sup>158</sup> Feld, *The Evolution of the Juvenile Court*.

<sup>159</sup> Bush, *Who Gets a Childhood?*, 16.

of the unknown and reactionary policies that frequently undermined the principle of rehabilitation. These shortcomings particularly affected the way that female juveniles have been perceived and treated by the system, and reveals the stigma attached to them by the public throughout the history of the criminal justice system in the United States.

### *The Progressive Era*

The Progressive reformers in the early era of the juvenile justice system (1890s to 1920s) were not only concerned with establishing a separate court entity for children, but the Child Savers sought to actively expand the role of the state and government in encompassing all aspects of juvenile development.<sup>160</sup> This overarching concern system with ensuring that a child's home environment was a place of support and stability is evident in a number of newspaper articles from Texas in the 1910s.<sup>161</sup> An article titled "Judge Henry Neil, Father of Mother Pension Law, is Here" published in the *Houston Post* on May 27, 1915 discussed the agenda of Judge Henry Neil as it pertained to welfare for mothers and the responsibility of the state to alleviate economic and societal burdens that could culminate in crimes of desperation.<sup>162</sup> While serving as a judge in Illinois, Judge Neil had realized the importance of the family unit as an effective control capable of preventing juvenile crime. He advocated for avoiding removing children from their home unless it was absolutely necessary. After time spent on the bench overseeing

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<sup>160</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 157.

<sup>161</sup> "News Of Federated Women's Clubs," *The Houston Post*, January 31, 1915, [https://newscomwc.newspapers.com/image/95048814/?terms=child%27s%2Bhome&pqid=ZX\\_VZqwgumPb7EBoORNzQ:25000:977002504](https://newscomwc.newspapers.com/image/95048814/?terms=child%27s%2Bhome&pqid=ZX_VZqwgumPb7EBoORNzQ:25000:977002504).

<sup>162</sup> "Judge Henry Neil, Father of Mother Pension Law, is Here," *The Houston Post*, May 27, 1915, <https://newscomwc.newspapers.com/image/95058356/>.

juvenile and family cases, the judge relayed that he had realized the need for legislative action and commenced on a campaign promoting the mother's pension law—which would provide every widow with \$15 a month per child—with his target audience in Texas being the Houston women's clubs. A component of Judge Neil's argument emphasized that “wherever the pension system has been tried its results have satisfied all classes. Juvenile crime...decreased at once because the pensioned mothers are allowed to remain at home and take care of their children. If children have a good home with a good mother juvenile crime decreases.” Judge Neil's promotion of the pension act did not merely incorporate the moral rational, rather he contended that investing money in the pension plan would inevitably save the taxpayers “\$109,000,000” by spending “\$10,000,000” because of the “cost of courts, prisons and asylums.” This publication highlights many of the points argued by Anthony Platt regarding the Child Savers, supporting his main thesis that the Progressive reformers were not concerned with “a break with the past...Parental authority, home education, domesticity, and rural values were emphasized because they were in decline as institutions at this time.”<sup>163</sup> Following this argument Judge Neil's mission should not be seen as a radical deviation from past tradition. Rather he valued the nuclear family and the domestic environment greatly and viewed these as the foundation necessary for cultivating a productive member of society.

Although it appears that ideas and practices were implemented more slowly in communities removed from the urban centers, the focus on keeping children in the home and ensuring that every option was explored locally before removing juveniles from their parents was widespread throughout the state of Texas. This is evident in an article

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<sup>163</sup> Platt and Chávez-García, *The Child Savers: The Invention of Delinquency*, 176.

published in *The Waco News-Tribune* on October 4, 1925 discussing the autonomy of the county probation office in deciding when and if juvenile delinquents were sent to state institutions. The publication described that under the purview of Country Probation Officer I. Mack Wood, only ten percent of the offenders who he came into contact with him were taken into juvenile court and out of these 25, he chose to only send eight to the state reformatory institution—seven males and one female.<sup>164</sup> The article goes on to further discuss that Judge Jenkins typically provided the juveniles with another opportunity to take advantage of local resources ensuring that only those who were “incorrigible as far as local efforts are concerned” were sent away from their families and home. Mr. Wood’s opinion towards the juvenile offenders and their ability to be rehabilitated is notable in such pronouncements as these: “in the cases of these juveniles, we do not speak of crimes. We term them mistakes. By the time most of my delinquents grow up, they will be straightened out. Look at the record. Only 10 percent are repeaters.” It is interesting to consider the ratio of girls to boys (1 to 7) sent to these state institutions from McLennan County and to note the authority given to Mr. Wood as a probation officer and Judge Jenkins to decide on a case by case basis which juvenile defendants had made mistakes and which were “incorrigible.” This calls attention to the absence of constitutional safeguards within the early juvenile justice system. Children’s fates remained dependent upon figures such as Judge Ben Linsey and others who were charged with the complicated task of treating wayward children and unilaterally deciding if they could be rehabilitated utilizing community resources. Although figures like Judge

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<sup>164</sup> “Only Eight Juvenile Offenders Out of 202 in McLennan Co. Are Sent to State Reform School,” *The Waco News-Tribune*, October 4, 1925,  
<https://newscomwc.newspapers.com/image/51393573/>.

Jenkins in Texas and Judge Ben Linsey in Denver took the task of differentiating between repeat offenders and immature children very seriously, it is undeniable that “poor and immigrant children...were more likely to come into contact with police, social welfare agencies, and schools who identified them for intervention and less able to defend themselves.”<sup>165</sup> This created room for error in the identification process of whether a child’s actions truly demanded he or she be sent to a state institution or if they had simply made a mistake and needed to be ‘straightened out.’ The practice of issuing individualized justice created an environment subject to discrimination and the absence of formalization within the juvenile justice system allowed for varying responses dependent on the evaluation of an individual authorized with deciding a juvenile’s future.<sup>166</sup>

Intertwined with this narrative of individualized justice and because of the way that a juvenile’s identity impacted the sentence recommended by a judge or probation officer, the cure for female juvenile delinquency varied dramatically from the prescribed antidote for the male deviancy. The article “Fingers that Itch for Feel of Silk Often Set Girls Out on Life of Crime” published in *The Waco News-Tribune* (1929) cited the ten year experiences and expertise of a Waco police matron, Mrs. Ruth Walker, who claimed that “desire for silk underwear and stockings drives many a girl to crime and the start on the downward path” and that the rate of juvenile crime was not nearly as high as many would believe from reading the news.<sup>167</sup> Mrs. Walker’s solution for rehabilitating young

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<sup>165</sup> Feld, *The Evolution of the Juvenile Court*, 37.

<sup>166</sup> Feld, 37.

<sup>167</sup> “Fingers That Itch for Feel of Silk Often Set Girls Out On Life of Crime,” *The Waco News-Tribune*, October 7, 1929, <https://newscomwc.newspapers.com/image/58636150>.

girls included keeping them busy with chores and responsibilities, providing them with autonomy within their lives, and implementing a wardrobe of uniformity and equality. The article concluded with the police matron's optimism regarding her line of work and that "despite contact with the dregs of society in her work and associations with women and girls of all types, Mrs. Walker has not become cynical."<sup>168</sup> The addition of this comment and Mrs. Walker's reference to the sensationalism of juvenile crime in the news reflected the reality that crime dominated the American media even during its early years. Despite the author's problematic depiction of juvenile offenders as the "dregs of society," the incorporation of the police matron's faith in rehabilitation and the good in people, specifically the girls that she came in contact with, reflected one of the core values of the Child Savers. The belief that children posed potential for positive change harkened back to a child's natural state of innocence—albeit particularly the white youth who were deemed to be salvable—and an emphasis on normalizing and assimilating children of immigrants and lower class juveniles by emphasizing a doctrine of faith, work, and discipline.<sup>169</sup> For young girls during this era, modesty and chastity were the primary values emphasized to those who came in contact with the system. Leading reformers, such as Jane Addams, founder of Hull House, contended that "colored girls did not have mothers who could serve as 'true women' and 'moral instructors.'"<sup>170</sup> This type of discriminatory rhetoric justified the intervention of government officials and early reformers in the lives of children during the Progressive era, and contributed to a

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<sup>168</sup> "Fingers That Itch," *The Waco News-Tribune*.

<sup>169</sup> Cohen, Henning, Ellen Marrus, *Rights, Race, and Reform: 50 Years of Child Advocacy in the Juvenile Justice System*, 35.

<sup>170</sup> Cohen, Henning, and Marrus, 36.

distorted understanding of how and why a young female might find herself charged with a crime at a young age. The juvenile justice system in the United States was rooted in both the beneficial realization that juveniles lacked the developmental maturity necessary to be charged as an adult and the unsettling doctrines of racial and socioeconomic discrimination held by Progressive era reformers. This juxtaposition created a foundation that blurred the boundaries between rehabilitation and profiling, particularly as it pertained to young girls who came in contact with the system.

### *The Due Process Revolution*

The Due Process Revolution (1950s to 1960s) was characterized by landmark Supreme Court Cases responsible for extending constitutional rights to children within a criminal court proceeding and the implementation of certain safeguards designed to protect children from being placed in detention facilities for non-criminal acts.<sup>171</sup> A national trend of professionalization and specialization within the sphere of the juvenile justice system spread across the nation during the Due Process Revolution marked by the creation of programs such as, Mobilization for Youth, designed to increase the opportunities and aid available to adolescents.<sup>172</sup> This manifested in Texas with the creation of The University of Texas School of Social Work in 1950 and a shift towards local facilities equipped with the budget and resources to create an environment that would reflect the new discoveries emerging in the new field of children's mental

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<sup>171</sup> McCord et al., *Juvenile Crime, Juvenile Justice*, 160-161.

<sup>172</sup> Mintz, *Huck's Raft*, 294

health.<sup>173</sup> The President's Commission Report on Law Enforcement and Administrations of Justice, released in 1967, indicated that statistics provided by the Children's Bureau "reveal that more than half of the girls referred to juvenile court in 1965 were referred for conduct that would not be criminal if committed by adults; only one-fifth of the boys were referred for such conduct."<sup>174</sup> The Report also criticized the system's underdeveloped understanding of juvenile crime concluding that "delinquency is not so much an act of individual deviance as a pattern of behavior produced by a multitude of pervasive societal influences...[and] the formal sanctioning system and pronouncement of delinquency should be used only as a last resort" as a means of avoiding attaching a lifelong label to a child.<sup>175</sup> Congress passed legislation such as the Juvenile Justice and Delinquency Prevention Act in 1974 that decreased the government's scope of influence as it pertained to placing children who had been neglected or abused into secure correctional institutions based on the precedent of the Child Savers.

The new emphasis on rehabilitation and professional services for juvenile offenders found its way even into the press of smaller communities. In a 1955 *Waco News-Tribune* article, Virgil Walker, the chairman of the Citizen's Committee on Youth Problems, contended that without properly trained individuals, better facilities, and adequate staffing, the opportunity for intervention in the lives of young individuals would be lost. Walker further emphasized that rather than housing juveniles in adult jails,

Waco needs a detention home where these offenders can be taken away from the environment that started them on the wrong path. They should stay in the

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<sup>173</sup> Bush, *Who Gets a Childhood?*, 43-53.

<sup>174</sup> Douglas, "The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice," 56.

<sup>175</sup> Douglas, "The Challenge of Crime in a Free Society," 80-81.

detention home until they can be counselled, their case thoroughly investigated and some plan of rehabilitation initiated. The people who are designated to deal with these juveniles must be trained and must have an understanding of young people and their problems.<sup>176</sup>

The advancements of the Due Process Revolution and the manner in which it was hindered by the rhetoric of the media became evident in public discourse in 1950s Texas.

*The El Paso Herald-Post* reported in 1955 that Patricia Arthur, a seventeen year old female, had been accused of killing an El Paso policeman, Albert J. Arreola, with whom she was allegedly engaged in an extramarital relationship.<sup>177</sup> Describing the night of Albert's death, Patricia claimed that she did retrieve a gun for the policeman because he had business to attend to in Juarez, but when she went to hand it to him she decided against it because he had been drinking heavily and it went off when he reached for it. Since the crime took place in Juarez, the courts of Mexico had jurisdiction and Patricia Arthur was tried and convicted following her arrest. A year later another newspaper noted that Patricia Arthur's sentence had been rescinded by the Supreme Court of Mexico where the justices ruled that her imprisonment was unlawful because she was a minor when she was tried in a court of law.<sup>178</sup> Regarding legal action in the U.S. for the murder of an El Paso policeman, the U.S. District Attorney William E. Clayton expressed that Patricia Arthur would not be prosecuted in the United States because of a defendant's protection against double jeopardy. Charging Patricia Arthur in the United States after

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<sup>176</sup> "Need Cited on Juvenile Work Here," *The Waco News-Tribune*, August 26, 1955, <https://newscomwc.newspapers.com/image/49099633/>.

<sup>177</sup> "Patricia Arthur Says She and Arreola Planned to Wed," *El Paso Herald-Post*, August 9, 1955, <https://newscomwc.newspapers.com/image/12525112/>.

<sup>178</sup> "Girl Freed By Mexicans Gets Offer to Wed," *The Waco News-Tribune*, December 6, 1956, <https://newscomwc.newspapers.com/image/40638506/?terms=fort%2Bbliss%2Bsoldier&pqid=jK83ERtq7akpG-JjFvnPA:101000:1417871261>.

she had been prosecuted in Mexico would have violated the constitutional provision protecting a defendant from being charged twice for the same crime.<sup>179</sup>

It is important to note the way the articles characterized Patricia Arthur's personal life, either to plea for leniency or to call for her imprisonment. She was first married to a serviceman when she was only fifteen and this marriage ended in a divorce after he went overseas with the Army and found someone else. Patricia then married a man named Bud Arthur, who she was trying to obtain a divorce from so that she could marry Albert.<sup>180</sup> The accusations made by Officer Arreola's friends and family criticized the media's "soft" depiction of Patricia Arthur and called into question her past relationships contending that

Patricia may be young in age, but old in experience. Being married twice, divorced from her first husband, still married and running around with married men is now the picture of innocence. If she is using her age to avoid punishment for killing Albert Arreola, why did she not conduct herself as a juvenile?<sup>181</sup>

Juxtaposing these accusatory statements, Patricia is depicted as a "little girl," her mother and father are repeatedly quoted as wanting to protect their daughter, and her father claimed that she would have never done something like this without being provoked or pushed beyond her breaking point.<sup>182</sup> It is important to note that by 1920, the age of consent for the state of Texas was eighteen, but marriages for women sixteen and

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<sup>179</sup> "Patricia Arthur Says She and Arreola Planned to Wed," *El Paso Herald-Post*.

<sup>180</sup> "Patricia Arthur Says She and Arreola Planned to Wed," *El Paso Herald-Post*.

<sup>181</sup> "Arreola and Divorced Wife Had Talked Reconciliation," *El Paso Herald-Post*, August 10, 1955, <https://newscomwc.newspapers.com/image/12525968/>.

<sup>182</sup> "Patricia Arthur Says She and Arreola Planned to Wed," *El Paso Herald-Post*.

seventeen years of age were not uncommon.<sup>183</sup> Although young marriages took place during the 1950s and 1960s, Patricia Arthur's two marriages before she turned seventeen were unusual. This awareness and contextual evidence calls into question the relationship between Patricia Arthur and her second husband Bud, in which she claimed that "he caused me a lot of trouble. I don't know where he is now. I don't want to hear from him. I don't want his help."<sup>184</sup> Yet the absence of consideration for the defendant's emotional and mental state after being involved in adult relationships as a young adolescent is unsettling. In an advice column centering around issues such as race and womanhood, juvenile responsibility, and the proper manner of raising and educating young girls published in *The El Paso Herald-Post* in 1955, female subscribers discussed their rising anxieties over the connection of young adolescent females and violent crime.<sup>185</sup> A woman named Connie pronounced that there was no difference in proper etiquette advocated for in Anglo-American women and Mexican-American women and that all "girls should act their age. They should always lend an ear to what a fellow says and show understanding even if he is not a steady boyfriend."<sup>186</sup> The second snippet, from M.B.B., argued that the sympathy shown to Patricia Arthur baffled her and that "if people would only stop encouraging these young girls, saying that because of their age and background they can get away with anything, even crime, the teenagers would be better off...stop encouraging teenagers to be wild, and stop being sympathetic, or else we will

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<sup>183</sup> Stephen Robertson, "Children and Youth in History | Age of Consent Laws," accessed April 16, 2020, <http://chmm.gmu.edu/cyh/teaching-modules/230?section=primarysources&source=24>.

<sup>184</sup> "Patricia Arthur Says She and Arreola Planned to Wed," *El Paso Herald-Post*.

<sup>185</sup> Ann Carroll, "Ask Mrs. Carroll," *El Paso Herald-Post*, September 15, 1955, <https://newscomwc.newspapers.com/image/10678362/>.

<sup>186</sup> Carroll, "Ask Mrs. Carroll," *El Paso Herald-Post*.

have more and more of the same headlines.” A response to M.B.B by Ann Carroll emphasized her personal belief that “teenagers should be blamed and censured and punished for crimes, just as adults should be blamed and censured and punished by society through its laws.” Carroll’s argument concluded with her personal belief that the sympathy of society mentioned by M.B.B. is “interpreted by other youngsters (and even grown people) as condoning the crime or wrong actions.” Connie’s contribution reflected the legacy of the Child Savers in their belief that the perceived solution to juvenile crime and delinquency was the assimilation and the cultivation of acceptable behavior in young children prior to their transformation into hardened, criminally inclined adults.<sup>187</sup> M.B.B and Carrol, on the other hand, predated yet foreshadowed themes of the Get Tough Era. The decision by the district attorney to refrain from charging Patricia Arthur again in the United States after she was prosecuted in Mexico demonstrated the gradual application of formal legal protection to juvenile defendants during the Due Process Revolution. The varying depictions of Patricia Arthur in the media ranging from portrayals of an ‘innocent girl’ to an ‘experienced deviant’ highlighted the fear and paranoia that would eventually come to dominate the mainstream media during the Get Tough period in the future.

### *The Get Tough Era*

The Get Tough Era (1970s to 1990s) impacted all juveniles within the criminal justice system, yet evidence suggests its actions affected girls disproportionately. Statistics purported to demonstrate rapidly escalating violent crimes perpetrated by girls and the “popular media amplified public perceptions of increased girl-on-girl violence

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<sup>187</sup> Feld, *The Evolution of the Juvenile Court*, 26-27.

with features on ‘bad girls gone wild,’ ‘fear and savage’ girls, and girl-gang violence.”<sup>188</sup> *The El Paso Herald-Post* in 1972 described the statistical findings of a government report released in 1970 that revealed “juvenile delinquency among girls aged 10-17 rose twice as fast as crime involving boys from 1969 to 1970.”<sup>189</sup> Although the Health, Education and Welfare Department published a study demonstrating that overall the increase rate of delinquency cases had slowed for the first time in five years, the government report claimed that the “the rise in girl’s delinquency has generally been attributed to their changing attitude towards society and society’s changing attitude towards them...Instead of the passive role assumed by girls in the past and society’s protective role towards them, girls are becoming more aggressive and more independent in their day-to-day activities.” The argument that young women became more deviant because they were less passive demonstrates a certain level of unease and regional reluctance to accept the new demands of second wave feminism, the national call for gender equity, and the consequences of the Due Process and Rights Revolution of the 1960s. The article concluded by stating that despite the increase in crimes committed by young females, the ratio of delinquency demonstrated by court referrals remained 3 to 1 and that out of 1,052,000 case sample nationwide, only 252,500 were girls. Although Feld contended that the investigation of official arrest rates, victimization records, and individual report surveys results prove that the spike in female juvenile delinquency was “more likely a social construction than an empirical reality,”<sup>190</sup> the newspaper publications from this

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<sup>188</sup> Feld, 156.

<sup>189</sup> “Delinquency Among Girls Rises Faster Than Boys,” *El Paso Herald-Post*, April 12, 1972, <https://newscomwc.newspapers.com/image/12557523/>.

<sup>190</sup> Feld, *The Evolution of the Juvenile Court*, 156.

time in Texas report a dramatic escalation in gruesome crimes committed by female delinquents.

The most shocking stories from this period not only communicate statistics to the public, but they were narratives designed to ignite fear and paranoia within the general public about the rise of killer kids, specifically young girls. The most heinous experiences of Judge Hal Gaither in juvenile court were utilized in a story in *The Kerrville Times* in 1987 in order to shock the reader with the horrors of juvenile crime and the urgent need to revamp the juvenile justice system.<sup>191</sup> The first is the story of a young woman, fourteen years-old, who was sent to the Texas Youth Commission for stabbing an elderly woman with hedge clippers, yet in a year she was released and stabbed her mother and attacked another elderly woman.<sup>192</sup> The gruesome crime of three youths who viciously tortured and killed a man because they thought he was homosexual was also used as evidence by the Judge Gaither that the “juvenile justice system must be tougher.”<sup>193</sup> He faulted the TYC for trying to return juveniles to their families so quickly in the name of rehabilitation. He made clear that any child or adolescent referred to the TYC was beyond hope of being reintegrated into family life. Judge Gaither advocated for change because of the TYC’s inability to handle “dangerous” offenders, due to overcrowding.<sup>194</sup> Contrary to the pronouncements of reformers working within the system such as Judge Denver and Judge Neil, both of whom had advocated for child rehabilitation, press in the

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<sup>191</sup> Walter Putnam, “Juvenile Court Judge Wants Tougher Laws,” *The Kerrville Times*, October 2, 1987, <https://newscomwc.newspapers.com/image/9583497/>.

<sup>192</sup> Putnam, "Juvenile Judge Wants Tougher Laws, *The Kerville Times*.

<sup>193</sup> Putnam, "Juvenile Judge Wants Tougher Laws, *The Kerville Times*.

<sup>194</sup> Putnam, "Juvenile Judge Wants Tougher Laws, *The Kerville Times*.

Get Tough Era publicized many opinions similar to Judge Gaither's and reflective of his cynicism about juvenile offenders. Judge Dulany Foster, for example, argued that "juvenile crime is a war against society and one of the most desperate battles we are waging today."<sup>195</sup> The appearance of militarized rhetoric regarding the actions of youths, in combination with the intensification of police practices, were defining characteristics of Get Tough reforms and consistent topics in Texas news stories.

In response to these fear tactics and the reported rise in violent crimes committed by female adolescents, certain programs emerged reflecting the techniques of the Child Savers in their mission of preaching propriety and sexual chastity amongst young girls. McKinney, Texas in 1973 provided an example of this with the creation of a nursery school staffed by delinquent girls who were responsible for caring for pre-school children from the community.<sup>196</sup> It was the belief of administrators that because many delinquent girls came from backgrounds defined by a broken home, witnessing and interacting within a stable home setting would cultivate an appreciation for the "home setting." The project recruited staffers from high school classes offering the participants elective credit and a certificate licensing them to be teacher aides following their completion of the semester. Hubbard emphasized the importance of treating the staff with respect by referring to them as "Miss" emphasizing that "status and a feeling of being needed are very important tools in the program."<sup>197</sup> Yet stories like this one were accompanied by announcements that federal funding was at risk of being cut by local leaders and state

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<sup>195</sup> W.S. Foster, "Observations," *The Waco Citizen*, June 12, 1979, <https://newscomwc.newspapers.com/image/59177107/>.

<sup>196</sup> "Unique Nursery School Helps Delinquent Girls," *The Courier-Gazette*, January 25, 1973, <https://newscomwc.newspapers.com/image/89331403/>.

<sup>197</sup> "Unique Nursery School Helps Delinquent Girls," *The Courier-Gazette*.

representatives. This was the case in 1976 when Governor Dolph Briscoe announced his decision to block three million dollars that had been allocated to the Young Women's Christian Association (TWCA) by the Texas Youth Council for the purpose of funding community programs.<sup>198</sup> *The Corpus Christi Caller-Times* described that the center helped "girls like Reina, who had been on the run since she was 10 and was involved in some burglaries; like Patricia, who slashed a girl with a knife; like Joan, who was into drugs; like Mary, who was becoming a 14-year-old prostitute. There are no foster home for girls like that and no other facility here which will take them."<sup>199</sup> Although sympathetic to the organizational mission of the YWCA, this article arbitrarily reduced girls like Joan, Reina, Patricia, and Mary to labels that left an indelible stigma and failed to consider the circumstances that each of these young women survived and the trauma that they endured. The myth describing the violent rise of crimes committed by girls due to their increasing incarceration rates was called into question by a 1987 report citing that only 43 percent of boys were confined by the state for committing misdemeanors, whereas over half the girls—56 percent—were being detained for misdemeanors. In Texas, it appears that the legacy of the Progressive Era reformers and their desire to influence the behavior of young females evolved over four decades into the Get Tough Era's policies and the disproportionate effect that policing changes, the elimination of status offenses (which eventually became criminal offenses), and the intensification of state prosecution had on female juvenile delinquents.

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<sup>198</sup> Anne Dodson, "Briscoe Blocks Funds for Delinquent Girls," *The Corpus Christi Caller-Times*, January 19, 1976, <https://newscomwc.newspapers.com/image/31179791/>.

<sup>199</sup> Dodson, "Briscoe Blocks Funds," *The Corpus Christi Caller-Times*.

### *The Kids are Different Era*

The 2005 Supreme Court decision banning the death penalty for those convicted under the age of eighteen represented the justice system's gradual shift towards recognizing the importance of integrating neurological studies and psychological development into the court's consideration and sentencing as it pertained to juveniles.<sup>200</sup> These scientific findings confirmed the differences in adolescent brain function and the definitive diminished capacity of juvenile defendants. It was through this lens that the Kids are Different Era (2005 to present) would be marked by attempts to reform the system and transform the punitive laws of the past into rehabilitative guidelines.

Nationwide efforts to understand the cause of juvenile crime, particularly female delinquency, represented a shift towards interdisciplinary study reemphasizing rehabilitation rather than unmitigated blame and punishment. A *PBS NewsHour* special released in 2015 described the creation of “girls court” which began in 2014 with the mission of understanding the entirety of a young girl’s situation and background, rather than arbitrarily charging her with a crime that would impact the remainder of her life.<sup>201</sup> Judge David Gooding discussed in the PBS program the much higher rate of trauma endured by girls and a 2014 study conducted by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Journal of Juvenile Justice revealed that 31 percent of girls who came in contact with the Florida juvenile justice system experienced sexual abuse and 41 percent had experienced physical abuse. The “girls court” initiative was

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<sup>200</sup> Woodhouse, *Hidden in Plain Sight: The Tragedy of Children’s Right*, 27.

<sup>201</sup> PBS, “To Help Delinquent Girls, Programs Aim to Rehabilitate Rather than Incarcerate,” *PBS NewsHour*, September 12, 2015, <https://www.pbs.org/newshour/show/treat-trauma-delinquent-girls-programs-aim-rehabilitate-rather-incarcerate>.

launched by Judge Gooding, a judge of the Fourth Judicial Circuit Court in Florida, in conjunction with child advocacy agencies like the Delores Barr Weaver Policy Center. Gooding's court was a national example of the trends in juvenile justice attempting to alleviate the inequality built into the system particularly in the way that it criminalized victims of trauma. The repercussions of the previous decades became evident in a 2015 publication in *The Texas Observer* discussing the detention rates in Texas. "More Girls are Locked Up Longer in Texas Juvenile Justice System" described that "gender balance is shifting. Nationwide, girls are entering the system at a higher rate than before, even though overall youth delinquency has gone down over the last twenty years. A recent study suggested that once they are in the systems, girls remain locked up for much longer than boys."<sup>202</sup> Co-produced by Erin Espinosa, a researcher at The University of Texas at Austin and a former youth probation officer, the report detailed the background and fate of over 5,000 youths over a two year period from 2013 to 2015. The study found that "before their cases are even heard, girls are locked up for an average of five days more than boys. Girls with a history of trauma...were especially likely to be locked up far longer than boys for violating probation." In an interview with *The Texas Observer*, Espinosa described that "girls are just harder for the system to respond to...when they act out, they act out differently than boys...the coping mechanisms that they use are termed 'delinquent behavior.'"<sup>203</sup> An example of the system's misinterpretation of delinquent behavior occurs when young girls runaway to escape an abusive environment or a

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<sup>202</sup> Patrick Michels, "In Texas, Girls Serve Longer Sentences Than Boys in Juvenile Justice System," *The Texas Observer*, September 25, 2015, <https://www.texasobserver.org/study-finds-girls-face-longer-sentences-than-boys-in-texas/>.

<sup>203</sup> Michels, "In Texas, Girls Serve Longer Sentences," *The Texas Observer*.

neglectful home, yet they are immediately arrested and siphoned into the juvenile justice system where their past traumas remain untreated and ignored.<sup>204</sup> Espinosa's recommendation for reforming the system begins with its transformation into a "trauma-informed juvenile justice system" that would include a web of professionals ranging from the juvenile probation officers to the judges who are equipped to respond to the situation in an intelligent and compassionate manner.

According to Espinosa and the underlying explanations for Judge Gooding's "girl court", the proper measure of an effective trauma-based system would be its ability to intervene prior to a juvenile's final sentencing and incarceration.<sup>205</sup> This argument partially reflected the sentiment of the Child Savers and their claim that the government was responsible for identifying at-risk youth, yet Espinosa's modern application of this doctrine strived to eliminate the stigmatization associated with government involvement. Rather than arbitrarily labeling children as high risk because of their race or socioeconomic background, the trauma-based system emphasized the importance of educating the police officers, schools officials, lawyers, and judges. This education sought to equip the individuals who represented the juvenile justice system in action with the tools and understanding necessary in investigating and treating the underlying causes of delinquency. In the case of Patricia Arthur, this type of individualized evaluation might have led to the consideration of the impact that her two prior marriages had on her personal development. The language of the media varied in its depiction of Patricia Arthur, sometimes referring to her as a little girl in need protection and other times

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<sup>204</sup> Michels, "In Texas, Girls Serve Longer Sentences," *The Texas Observer*.

<sup>205</sup> Michels, "In Texas, Girls Serve Longer Sentences," *The Texas Observer*.

condemning her as a promiscuous woman intent on ruining Officer Areola's marriage.

This polarization reflects the power of the media, yet both descriptions simplify the complexities and struggles of young females within the juvenile justice system.

### *Conclusion*

Recommendations from experts in the field of juvenile justice, such as Bush and Feld, urgently convey that in order for the system to protect the rights of children, it is imperative that certain safeguards be implemented that would serve to guard juveniles from "punitive delinquency adjudications and their own limitations."<sup>206</sup> The Due Process Revolution witnessed the extension of safeguards and constitutional protections utilized within an adult criminal proceeding to juvenile courts, yet the difference in the development and mental capacity of an adult and a child necessitate additional protection features. Legislative policies such as a "mandatory non-waivable appointment of counsel or pre-waiver consultation with a lawyer" would help in protecting juvenile defendants from the system and from their own immaturity and access to professional mental and psychological health experts is imperative in acknowledging the crippling consequences of child abuse and neglect.<sup>207</sup>

It is evident through the examination of popular media sources that the juvenile justice system in Texas has evolved and transformed according to and mirroring the national stages of development articulated by Barry Feld. The Progressive Era witnessed the Child Savers' association of promiscuity and female juvenile delinquency, and they

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<sup>206</sup> Feld, *The Evolution of the Juvenile Court*, 252.

<sup>207</sup> Feld, 252.

sought to curb such tendencies through religious training and moral virtue. The Due Process Revolution introduced the rights of the defendant into the sphere of juvenile justice, yet rhetoric began to appear describing an increase in juvenile female deviancy marking the struggle between acknowledging the limited culpability of youth and protecting the public from violent offenders. News stories emphasizing the existence of “killer girls” and the rise of violence perpetuated a cycle of misunderstanding during the Get Tough Era, increasing paranoia and the demand for harsher sentences. Progress in enacting science-based policy created a system better equipped to address the underlying issues of female juvenile delinquency during the Kids are Different Era, yet it is apparent that public perception and political clout are closely intertwined with paranoia perpetuated by the media. The rhetoric promoting the prevalence of violent crime contributed to the creation of a hardened society in which young females were denied access to the resources and professionalized services that would adequately address the trauma they had experienced or alleviate the long-lasting issues associated with their childhood background. This is not an argument in favor of removing accountability from juvenile offenders, rather it is through the enactment of constitutional safeguards and the advocacy of competent attorneys, judges, parole officers, psychologists, social work experts that the system would be capable of differentiating between a petty offender and an individual who requires further intervention and treatment.

## CHAPTER FIVE

### Conclusion

Providing an extensive and thorough history of the juvenile justice system is a complex and convoluted task; far beyond the goal of this thesis. The system can be examined sociologically, psychologically, legally, economically, politically, or historically and these differing lenses will create new questions and varying arguments. Yet all methods of analysis will result in the conclusion that the juvenile justice system is not a static entity nor is it a uniform structure that can be reassembled in exactly the same in each state. Rather it is flawed and limited because it is subject to the knowledge and agency of its creators and its operators. Throughout its history the system has been restricted in its goal of rehabilitation because of the biases and stigmas that were, sometimes unintentionally, imbedded into its apparatus by the same individuals who were its creators and reformers. Anthony Platt's work *The Child Savers: The Invention of Delinquency* sparked this conversation of analyzing the Progressive Era Child Savers, daring to criticize their motivations for creating the separate juvenile court and involving the government in the affairs of the family.<sup>208</sup> Platt decided not to focus upon the crimes of the individuals themselves or the sociological and psychological fields of thought surrounding the causes of juvenile delinquency, rather he examined the "rule-makers" and the "social processes by which formal organizations define persons as delinquent."<sup>209</sup>

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<sup>208</sup> Platt and Chávez-García, *The Child Savers: The Invention of Delinquency*.

<sup>209</sup> Platt and Chávez-García, 8-9.

This work was the starting point for developing the questions that would spark a dynamic academic dialogue, and served as the foundation for this thesis. The legacy of the Child Savers is evident in the system's development since its creation in 1899 and pertinent in recognizing its failures, as well as its successes in American history. The preconceptions held by these reformers and their limited understanding of concepts such as femininity, sexuality, and deviance have become intertwined with and influential in the public's understanding of juvenile crime over time.

What are the legacies, good and bad, of the Child Savers and how has the media's portrayal of juvenile crime—specifically the depiction of young female delinquents—been shaped by the beliefs of these early reformers? This is a large question and one that was difficult to narrow down for the purpose of an undergraduate thesis. Before it was possible to delve into the media's portrayal of juvenile crime and adolescent female delinquency, it was imperative to research the system's transformation from its origin in 1899 in Cook County, Illinois to its present-day status. After considering the national trends of the system and learning about Barry Feld's four developmental phases, incorporating the individualized history of Texas into the national patterns set forth by historians and legal scholars aided in a more comprehensive appreciation for the complexities of the system.<sup>210</sup> Secondary sources were critical in achieving the goal of providing a brief yet vast overview of the juvenile justice system in the United States and this task resulted in more questions to be considered in further research. Ultimately, the main finding of this research culminated in the realization that unveiling the motivations of the Child Savers is paramount in understanding the evolution of the juvenile justice

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<sup>210</sup> Feld, *The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice*.

system, as well as assessing and correcting the damage inflicted upon juveniles, specifically young women, by the perpetuation of aged stereotypes and outdated labels.

The impact of the legal system on female juveniles and the manner in which the media portrays these young women is a pressing issue that supersedes the sphere of research and is instrumental in formulating today's policy. It is not a new phenomenon to use the existence of violent offenders for political clout or to campaign on a "tough on crime" platform, and the concerns of the public are not without some substantiation. Thus making the appeal for tougher sanctions and longer sentences all the more attractive. Yet it is imperative to consider the dangers of attaching labels to individuals at a young age and critical to factor in the diminished mental responsibility of children and adolescents into the legal structure of the juvenile system. The trauma-based treatment approach and the creation of institutions such as "girls court" highlight the advancements being made in the system. This modernization is only possible by recognizing and identifying the archaic stereotypes imbedded into the juvenile justice system as a result of the heavily flawed crusade of the Child Savers.<sup>211</sup>

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<sup>211</sup> PBS, "To Help Delinquent Girls, Programs Aim to Rehabilitate Rather than Incarcerate," PBS NewsHour, September 12, 2015, <https://www.pbs.org/newshour/show/treat-trauma-delinquent-girls-programs-aim-rehabilitate-rather-incarcerate>.

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