1 JUVENILE JUSTICE IN HISTORICAL PERSPECTIVE

LEARNING OBJECTIVES

On completion of this chapter, students should be able to do the following:

1. Describe the history of juvenile justice in the United States
2. Analyze the controversy between due process and informality in juvenile justice
3. Discuss contemporary challenges to the juvenile justice system
4. Evaluate discrepancies between the ideal and real juvenile justice systems

WHAT WOULD YOU DO?

Marco is a 10-year-old boy from a family of eight siblings. He is the youngest child in the family. His older siblings have been associated with known gang members and have been arrested for drug possession and distribution. They also have a number of weapons charges against them. Marco has been arrested several times for law violations in the past but, last night, was brought to detention by the police for a firearms charge. He discharged a firearm in his front yard after threatening a neighborhood boy. It appears that the two boys had been arguing earlier in the day over a hoverboard. Marco claimed the hoverboard was his while the other youth also claimed ownership. Marco went to his house, retrieved a gun, and went outside. He yelled at the other boy and then fired a shot into the air. The neighbor boy ran home without the hoverboard and his mother called the police. When the police arrived, Marco had both the hoverboard and the gun. You are a probation officer in Missouri and the on-call officer this week. You are familiar with this family but according to the Missouri Juvenile Court Act, only youth aged 12 and over fall within the guidelines of the juvenile court. What to do with this juvenile rests on your shoulders and within the Missouri Juvenile Court Act.

What Would You Do?

1. Knowing that the Missouri Juvenile Court Act does not allow for youth younger than age 12 to be prosecuted, what options do you have for handling Marco's case? What social, familial, psychological, or biological factors may be influencing Marco's behaviors?
2. If you were the prosecutor in this case, how would you handle the case?
3. Is Marco's ability to easily access guns an issue? If so, how should this be handled? If not, why not?

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The juvenile justice network in the United States grew out of, and remains embroiled in, controversy. More than a century after the creation of the first family court in Illinois (1899), the debate continues as to the goals to be pursued and the procedures to be employed within the network, and a considerable gap between theory and practice remains. During the early part of the 21st century, concern over delinquency in general—and violent delinquents in particular—grew while confidence in the juvenile justice system was eroding, as indicated by increasing demands for accountability on the part of system participants. In fact, as the 21st century began, Bilchik (1999a) indicated, "The reduction of juvenile crime, violence, and victimization constitutes one of the most crucial challenges of the new millennium" (p. 1). As the public continues to challenge the system and to question practices, such as confidentiality, it appears that numerous jurisdictions in the United States are reviewing the basic operations of juvenile justice and the effectiveness of system reforms.

The juvenile court is supposed to provide due process protections along with care, treatment, and rehabilitation for juveniles while protecting society. Violence committed by juveniles, which some suggest occurs in cycles (Johnson, 2006), has attracted nationwide attention and raised a host of questions concerning the juvenile court. These questions continue even though such violence has actually declined significantly. Arrest statistics from 2018 as compared to 2008 showed a 60% decline in police arrests of persons under the age of 18 (OJJDP Statistical Briefing Book, 2019). Yet the public continues to ask if a court designed to protect and care for juveniles can deal successfully with those who, seemingly without reason, kill their peers and parents? Is the juvenile justice network too "soft" in its dealings with such juveniles? Is the "get-tough" approach what is needed to deal with violent adolescents? Was the juvenile court really designed to deal with the types of offenders we see today?

Although due process for juveniles (discussed in detail later but consisting of things such as the right to counsel and the right to remain silent), protection of society, and rehabilitation of youthful offenders remain elusive goals, frustration and dissatisfaction among those who work in the juvenile justice system, as well as among those who assess its effectiveness, remain the reality. Some observers have called for an end to juvenile justice as a separate system in the United States. Others maintain that the juvenile court and associated agencies and programs have a good deal to offer juveniles in trouble.

The Juvenile Court Building, at Ewing and Halsted in Chicago in 1907, is shown. As noted in this chapter, the first family court in the United States was in Cook County, Illinois.

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During the 1990s, fear of juvenile crime led the public to demand that legislators enact increasingly severe penalties for young offenders. Fanton (2006), in discussing the juvenile justice network in Illinois, concluded that "by the end of the 20th century the line between the Illinois juvenile justice and criminal justice systems was hopelessly blurred, reflecting a national trend" (p. A5). As Snyder and Sickmund (2006) pointed out, however, America's youth face a constantly changing set of problems and barriers to successful lives. As a result, juvenile justice practitioners are constantly challenged to develop enlightened policies and programs based on facts, not fears. With this in mind, Brown (2012) noted that over the past decade, juvenile crime rates have actually declined, and she found that state legislatures are reexamining and frequently revising juvenile justice policies and approaches. Sickmund and Puzzanchera (2014) noted similar findings with juvenile arrest rates falling proportionately more than adult arrest rates from 2001 to 2010, across most offenses. As a result of falling crime rates, the National District Attorneys Association (2016) stated in the third edition of its *National Prosecution Standards* that the transfer of cases to criminal court should be reserved for the most serious, violent, and chronic offenders. It also found that states are responding to Supreme Court rulings on life imprisonment, the death penalty, and other issues.

The questions remain: Can what actually occurs and what ideally should occur in the juvenile justice system be made more consistent? What can be done to bring about such consistency? What are the consequences of a lack of consistency? A brief look at the history of juvenile justice and a detailed look at the system as it currently operates should help us answer these questions.

JUVENILE JUSTICE HISTORICALLY

The distinction between youthful and adult offenders coincides with the beginning of recorded history. Some 4,000 years ago, the Code of Hammurabi (2270 BC) discussed runaways, children who disowned their parents, and sons who cursed their fathers. Approximately 2,000 years ago, both Roman civil law and later canon (church) law made distinctions between juveniles and adults based on the notion of **age of responsibility**. In ancient Jewish law, the Talmud specified conditions under which immaturity was to be considered in imposing punishment. There was no corporal punishment prior to puberty, which was considered to be the age of 12 years for females and 13 years for males. No capital punishment was to be imposed for those under 20 years of age. Similar leniency was found among Muslims, where children under the age of 17 years were typically exempt from the death penalty (Bernard, 1992).

By the 5th century BC, codification of Roman law resulted in the Twelve Tables, which made it clear that children were criminally responsible for violations of law and were to be dealt with by the criminal justice system (Nyquist, 1960). Punishment for some offenses, however, was less severe for children than for adults. For example, theft of crops by night was a capital offense for adults, but offenders under the age of puberty were only to be flogged. Adults caught in the act of theft were subject to flogging and enslavement to the victims, but children received only corporal punishment at the discretion of a magistrate and were required to make restitution (Ludwig, 1955). Originally, only those children who were incapable of speech were spared under Roman law, but eventually immunity was afforded to all children under the age of 7 as the law came to reflect an increasing recognition of the stages of life. Children came to be classified as *infans, proximus infantia*, and *proximus pubertati*. In general, infants were not held criminally responsible, but those approaching puberty who knew the difference between right and wrong were held accountable. In the 5th century AD, the age of *infantia* was fixed at 7 years, and children under that age were exempt from criminal liability. The legal age of puberty was fixed at 14

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years for boys and 12 years for girls, and older children were held criminally liable. For children age 7 through puberty, liability was based on the capacity to understand the difference between right and wrong (Bernard, 1992).

Roman and canon law undoubtedly influenced early Anglo-Saxon **common law** (law based on custom or use), which emerged in England during the 11th and 12th centuries. For our purposes, the distinctions made between adult and juvenile offenders in England at this time are most significant. Under common law, children under the age of 7 were presumed to be incapable of forming criminal intent and, therefore, were not subject to criminal sanctions. Children aged 7 to 14 years were not subject to criminal sanctions unless it could be demonstrated that they had formed criminal intent, understood the consequences of their actions, and could distinguish right from wrong (Blackstone, 1803, pp. 22–24). Children over the age of 14 were treated much the same as adults.

The question of when and under what circumstances children are capable of forming criminal intent (**mens rea**, or "guilty mind") remains a point of contention in juvenile justice proceedings today. For an adult to commit criminal homicide, for instance, it must be shown not only that the adult took the life of another human being without justification but also that he or she *intended* to take the life of that individual. One may take the life of another accidentally (without intending to do so), and such an act is not regarded as criminal homicide. In other words, it takes more than the commission of an illegal act to produce a crime. Intent is also required (and, in fact, in some cases it is assumed as a result of the seriousness of the act, e.g., felony murder statutes).

But at what age is a child capable of understanding the differences between right and wrong or of comprehending the consequences of his or her acts before they occur? For example, most of us would not regard a 4-year-old who pocketed some money found at a neighbor's house as a criminal because we are confident that the child cannot understand the consequences of this act. But what about an 8-, 9-, or 12-year-old?

Another important step in the history of juvenile justice occurred during the 15th century when chancery, or equity, courts were created by the king of England. **Chancery courts**, under the guidance of the king's chancellor, were created to consider petitions of those who were in need of special aid or intervention, such as women and children left in need of protection and aid by reason of divorce, death of a spouse, or abandonment, and to grant relief to such persons. Through the chancery courts, the king exercised the right of **parens patriae** ("parent of the country") by enabling these courts to act **in loco parentis** ("in the place of parents") to provide necessary services for the benefit of women and children (Bynum & Thompson, 1992). In other words, the king, as ruler of his country, was to assume responsibility for all of those under his rule, to provide parental care for children who had no parents, and to assist women who required aid for any of the reasons just mentioned. Although chancery courts did not normally deal with youthful offenders, they did deal with dependent or neglected children, as do juvenile courts in the United States today. The principle of parens patriae later became central to the development of the juvenile court in America and today generally refers to the fact that the state (government) has ultimate parental authority over juveniles in need of protection or guidance. In certain cases, then, the state may act in loco parentis and make decisions concerning the best interests of children. This includes removing children from the home of their parents when circumstances warrant.

In 1562, parliament passed the Statute of Artificers, which stated that children of paupers could be involuntarily separated from their parents and apprenticed to others (Rendleman, 1974, p. 77). Similarly, the Poor Relief Act of 1601 provided for involuntary separation of children

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from impoverished parents, and these children were then placed in bondage to local residents as apprentices. Both statutes were based on the belief that the state has a primary interest in the welfare of children and the right to ensure such welfare. At the same time, a system known as the City Custom of Apprentices operated in London. The system was established to settle disputes involving apprentices who were unruly or abused by their masters in an attempt to punish the appropriate parties. When an apprentice was found to be at fault and required confinement, he or she was segregated from adult offenders. Those in charge of the City Custom of Apprentices attempted to settle disputes in a confidential fashion so that the juveniles involved were not subjected to public shame or stigma (Sanders, 1974, pp. 46–47).

Throughout the 1600s and most of the 1700s, juvenile offenders in England were sent to adult prisons—although they were at times kept separate from adult offenders. The Hospital of St. Michael's, the first institution for the treatment of juvenile offenders, was established in Rome in 1704 by Pope Clement XI. The stated purpose of the hospital was to correct and instruct unruly juveniles so that they might become useful citizens (Griffin & Griffin, 1978, p. 7).

The first private separate institution for youthful offenders in England was established by Robert Young in 1788. The goal of this institution was "to educate and instruct in some useful trade or occupation the children of convicts or such other infant poor as [were] engaged in a vagrant and criminal course of life" (Sanders, 1974, p. 48).

During the early 1800s, changes in the criminal code that would have allowed English magistrates to hear cases of youthful offenders without the necessity of long delays were recommended. In addition, dependent or neglected children were to be appointed legal guardians who were to aid the children through care and education (Sanders, 1974, p. 49). These changes were rejected by the House of Lords due to opposition to the magistrates becoming "judges, juries, and executioners" and to suspicion concerning the recommended confidentiality of the proceedings, which would have excluded the public and the press (pp. 50–51).

Meanwhile in the United States, dissatisfaction with the way young offenders were being handled was increasing. As early as 1825, the Society for the Prevention of Juvenile Delinquency advocated separating juvenile and adult offenders (Snyder & Sickmund, 1999). Up to this point, youthful offenders generally had been subjected to the same penalties as adults, with little or no attempt being made to separate juveniles from adults in jails or prisons. This caused a good deal of concern among reformers who feared that criminal attitudes and knowledge would be passed from the adults to the juveniles. Another concern centered on the possibility of brutality directed by the adults toward juveniles. Although many juveniles were being imprisoned, few appeared to benefit from the experience. Others simply appealed to the sympathy of jurors to escape the consequences of their acts entirely. With no alternative to imprisonment, juries and juvenile justice officials were inclined to respond emotionally and sympathetically to the plight of children, often causing them to overlook juvenile misdeeds or render lenient verdicts (Dorne & Gewerth, 1998, p. 4).

In 1818, a New York City committee on pauperism gave the term *juvenile delinquency* its first public recognition by referring to it as a major cause of pauperism (Drowns & Hess, 1990, p. 9). As a result of this increasing recognition of the problem of delinquency, several institutions for juveniles were established from 1824 to 1828. These institutions were oriented toward education and treatment rather than punishment, although whippings, long periods of silence, and loss of rewards were used to punish the uncooperative. In addition, strict regimentation and a strong work ethic philosophy were common.

Under the concept of in loco parentis, institutional custodians acted as parental substitutes with far-reaching powers over their charges. In doing so, the **house of refuge** became

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common, as a charitable effort to provide shelter and safety to destitute youth. For example, the staff members of the New York House of Refuge, established in 1825, were able to bind out wards as apprentices, although the consent of the child involved was required. Whether such consent was voluntary is questionable, given that the alternatives were likely unpleasant. The New York House of Refuge was soon followed by others in Boston and Philadelphia (Abadinsky & Winfree, 1992).

"By the mid-1800s, houses of refuge were enthusiastically declared a great success. Managers even advertised their houses in magazines for youth. Managers took great pride in seemingly turning total misfits into productive, hard-working members of society" (Simonsen & Gordon, 1982, p. 23). However, these claims of success were not undisputed, and by 1850 it was widely recognized that houses of refuge were largely failures when it came to rehabilitating delinquents and had become much like prisons. Simonsen and Gordon (1982) stated, "In 1849 the New York City police chief publicly warned that the numbers of vicious and vagrant youth were increasing and that something must be done. And done it was. America moved from a time of houses of refuge into a time of preventive agencies and reform schools" (p. 23).

Founded in 1843 in Hampstead Road, Birmingham, and known as the Brook-Street Ragged and Industrial School, this was an early reform school.

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In Illinois, the Chicago Reform School Act was passed in 1855, followed in 1879 by the establishment of industrial schools for dependent children. These schools were not unanimously approved, as indicated by the fact that in 1870 the Illinois Supreme Court declared unconstitutional the commitment of a child to the Chicago Reform School as a restraint on liberty without proof of crime and without conviction for an offense (*People ex rel. O'Connell v. Turner, 1870*). In 1888, the provisions of the Illinois Industrial School Act were also held to be unconstitutional, although the courts had ruled previously (1882) that the state had the right, under parens

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patriae, to "divest a child of liberty" by sending him or her to an industrial school if no other "lawful protector" could be found (*Petition of Ferrier, 1882*). In spite of good intentions, the new **reform schools**, existing in both England and the United States by the 1850s, were not effective in reducing the incidence of delinquency. Despite early enthusiasm among reformers, there was little evidence that rehabilitation was being accomplished. Piscotta's (1982) investigation of the effects of the 19th-century parens patriae doctrine led him to conclude that, although inmates sometimes benefited from their incarceration and reformatories were not complete failures in achieving their objectives (whatever those were), the available evidence showed that the state was not a benevolent parent. In short, there was significant disparity between the promise and practice of parens patriae.

Discipline was seldom "parental" in nature; inmate workers were exploited under the contract labor system, religious instruction was often disguised proselytization, and the indenture system generally failed to provide inmates with a home in the country. The frequency of escapes, assaults, incendiary incidents, and homosexual relations suggests that the children were not separated from the corrupting influence of improper associates (Piscotta, 1982, pp. 424–425).

The failures of reform schools increased interest in the legality of the proceedings that allowed juveniles to be placed in such institutions. During the last half of the 19th century, there were a number of court challenges concerning the legality of failure to provide due process for youthful offenders. Some indicated that due process was required before incarceration (imprisonment) could occur, and others argued that due process was unnecessary because the intent of the proceedings was not punishment but rather treatment. In other words, juveniles were presumably being processed by the courts in their own "best interests."

During the post–Civil War period, an era of humanitarian concern emerged, focusing on children laboring in sweatshops, coal mines, and factories. These children, and others who were abandoned, orphaned, or viewed as criminally responsible, were a cause of alarm to reformist "child savers." The **child-savers movement**, which emerged in the United States in the 19th century, included philanthropists, middle-class reformers, and professionals who exhibited a genuine concern for the welfare of children and who stressed the value of rehabilitation and prevention through education and training. In the 20th century, these reformers continued to seek ways to mitigate the roots of delinquency and were largely responsible for the creation of the first juvenile court in the United States. During the late 1800s, several states (Massachusetts in 1874 and New York in 1892) passed laws providing for separate trials for juveniles, but the first juvenile or family court did not appear until 1899 in Cook County, Illinois. "The delinquent child had ceased to be a criminal and had the status of a child in need of care, protection, and discipline directed toward rehabilitation" (Cavan, 1969, p. 362).

The **Progressive Era** in the United States from 1900 to 1918 was a time of extensive social reform. Reforms included the growth of the women's suffrage movement, the campaign against child labor, and the fight for the 8-hour workday, among others. Concurrent with this era and extending was the **era of socialized juvenile justice** in the United States (Faust & Brantingham, 1974). During this era, children were considered not as miniature adults but rather as persons with less than fully developed morality and cognition (Snyder & Sickmund, 1999). Emphasis on the legal rights of the juvenile declined, and emphasis on determining how and why the juvenile came to the attention of the authorities and how best to treat and rehabilitate the juvenile became primary. The focus was clearly on offenders rather than the offenses they committed. Prevention

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and removal of the juvenile from undesirable social situations were the major concerns of the court. Faust and Brantingham (1974) noted the following:

> The blindfold was, therefore, purposefully removed from the eyes of "justice" so that the total picture of the child's past experiences and existing circumstances could be judicially perceived and weighed against the projected outcomes of alternative courses of legal intervention. (p. 145)

By incorporating the doctrine of parens patriae, the juvenile court was to act in the best interests of children through the use of noncriminal proceedings. The basic philosophy contained in the first juvenile court act reinforced the right of the state to act in loco parentis in cases involving children who had violated the law or were neglected, dependent, or otherwise in need of intervention or supervision. This philosophy changed the nature of the relationship between juveniles and the state by recognizing that juveniles were not simply miniature adults but rather children who could perhaps be served best through education and treatment. By 1917, juvenile court legislation had been passed in all but three states, and by 1932, there were more than 600 independent juvenile courts in the United States. By 1945, all states had passed legislation creating separate juvenile courts.

It seems likely that the developers of the juvenile justice network in the United States intended legal intervention to be provided under the rules of civil law rather than criminal law. Clearly, they intended legal proceedings to be as informal as possible given that only through suspending the prohibition against hearsay and relying on the preponderance of evidence could the "total picture" of the juvenile be developed. The juvenile court exercised considerable discretion in dealing with the problems of youth and moved further and further from the ideas of legality, corrections, and punishment and toward the ideas of prevention, treatment, and rehabilitation. This movement was, however, not unopposed. There were those who felt that the notion of informality was greatly abused and that any semblance of legality had been lost. The trial-and-error methods often employed during this era made guinea pigs out of juveniles who were placed in rehabilitation programs, which were often based on inadequately tested sociological and psychological theories (Faust & Brantingham, 1974, p. 149).

Nonetheless, in 1955, the U.S. Supreme Court reaffirmed the desirability of the informal procedures employed in juvenile courts. In deciding not to hear the **Holmes case**, the Court stated that because juvenile courts are not criminal courts, the constitutional rights guaranteed to accused adults do not apply to juveniles (*In re Holmes, 1955*).

Then, in the **Kent case** of 1961, 16-year-old Morris Kent Jr. was charged with rape and robbery. Kent confessed, and the judge waived his case to criminal court based on what he verbally described as a "full investigation." Kent was found guilty and sentenced to 30 to 90 years in prison. His lawyer argued that the waiver was invalid, but appellate courts rejected the argument. He then appealed to the U.S. Supreme Court, arguing that the judge had not made a complete investigation and that Kent was denied his constitutional rights because he was a juvenile. The Court ruled that the waiver was invalid and that Kent was entitled to a hearing that included the essentials of due process or fair treatment required by the 14th Amendment. In other words, Kent or his counsel should have had access to all records involved in making the decision to waive the case, and the judge should have provided written reasons for the waiver. Although the decision involved only District of Columbia courts, its implications were far-reaching by referring to the fact that juveniles might be receiving the worst of both worlds—less legal protection than adults and less treatment and rehabilitation than that promised by the juvenile courts (*Kent v. United States, 1966*).

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Life in the reform schools of the 19th century was not easy.

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DUE PROCESS AND THE JUVENILE JUSTICE SYSTEM

In 1967, forces opposing the extreme informality of the juvenile court won a major victory when the U.S. Supreme Court handed down a decision in the case of Gerald Gault, a juvenile from Arizona. The extreme license taken by members of the juvenile justice network became abundantly clear in the **Gault case**. Gault, while a 15-year-old in 1964, was accused of making an obscene phone call to a neighbor who identified him. The neighbor did not appear at the adjudicatory hearing, and it was never demonstrated that Gault had, in fact, made the obscene comments. Still, Gault was sentenced to spend the remainder of his minority in a training school. Neither Gault nor his parents were notified properly of the charges against the juvenile. They were not made aware of their right to counsel, their right to confront and cross-examine witnesses, their right to remain silent, their right to a transcript of the proceedings, or their right to appeal. The Court ruled that in hearings that may result in institutional commitment, juveniles have all of these rights (*In re Gault, 1967*). The Supreme Court's decision in this case left little doubt that juvenile offenders are as entitled to the protection of constitutional guarantees as their adult counterparts, with the exception of participation in a public jury trial. In this case and in the *Kent* case, the Court raised serious questions about the concept of parens patriae, or the right of the state to informally determine the best interests of juveniles. In addition, the Court noted that the handling of both Gault and Kent raised serious issues of 14th Amendment (due process) violations. The free rein of socialized juvenile justice had come to an end, at least in theory.

During the years that followed, the U.S. Supreme Court continued the trend toward requiring due process rights for juveniles. In 1970, in the **Winship case**, the Court decided that in juvenile court proceedings involving delinquency, the standard of proof for conviction should be the same as that for adults in criminal court—proof beyond a reasonable doubt (*In re Winship,*

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1970). In the case of ***Breed v. Jones*** (1975), the Court decided that trying a juvenile who had previously been adjudicated delinquent in juvenile court for the same crime as an adult in criminal court violates the double jeopardy clause of the Fifth Amendment when the adjudication involves violation of a criminal statute. The Court did not, however, go so far as to guarantee juveniles all of the same rights as adults. In 1971, in the case of ***McKeiver v. Pennsylvania***, the Court held that the due process clause of the 14th Amendment did not require jury trials in juvenile court. Nonetheless, some states have extended this right to juveniles through state law. In 2011, in the case of ***J. D. B. v. North Carolina***, a special education student was questioned in school by an administrator, an assistant principal, and a police investigator, not in the presence of his parents. He was not provided his Miranda rights, nor told he was free to leave, until after he had incriminated himself. The Court decided age matters with regard to custody and Miranda rights. Justice Sonia Sotomayor stated that children are less mature and responsible than adults. Thus, they may not recognize or avoid choices that may be detrimental to them. In situations such as police interrogations, children may be overwhelmed, so age should be considered a factor in determining whether an individual is in custody. This case referenced *Roper v. Simmons (2005*) and reaffirmed the Court's assertions that children as a class will act differently than adults and are more susceptible to outside pressures than adults (*J. D. B. v. North Carolina, 2011*).

In March 2005, in the case of ***Roper v. Simmons***, the U.S. Supreme Court reversed a 1989 precedent and struck down the death penalty for crimes committed by people under the age of 18. Christopher Simmons started talking about wanting to murder someone when he was 17 years old. On more than one occasion, he discussed with friends a plan to commit a burglary, tie up the victim, and push him or her from a bridge. Based on the specified plan, he and a younger friend broke into the home of Shirley Crook. They bound and blindfolded her and then drove her to a state park, where they tied her hands and feet with electrical wire, covered her whole face with duct tape, walked her to a railroad trestle, and threw her into the river. Crook drowned as a result of the juveniles' actions. Simmons later bragged about the murder, and the crime was not difficult to solve. On being taken into custody, he confessed, and the guilt phase of the trial in Missouri state court was uncontested (Bradley, 2006). The U.S. Supreme Court held that "evolving standards of decency" govern the prohibition of cruel and unusual punishment and found that "capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution" (Death Penalty Information Center, n.d.). The Court further found that there is a scientific consensus that teenagers have "an underdeveloped sense of responsibility" and that, therefore, it is unreasonable to classify them among the most culpable offenders: "From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed" (Death Penalty Information Center, n.d.). In addition, the Court concluded that it would be extremely difficult for jurors to distinguish between juveniles whose crimes reflect immaturity and those whose crimes reflect "irreparable corruption" (Bradley, 2006). Finally, the Court pointed out that only seven countries in the world have executed juveniles since 1990, and even those countries now disallow the juvenile death penalty. Thus, the United States was the only country to still permit it.

The U.S. Supreme Court also determined in ***Graham v. Florida*** (2010) that it is unconstitutionally cruel and unusual punishment to lock up teenagers for life without any chance of parole for nonhomicidal crimes. The Court went on to strike down mandatory life sentences without the possibility of parole for juvenile offenders in ***Jackson v. Hobbs*** (2011) and reaffirmed

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this decision in *Miller v. Alabama* (2012). Most recently, in *Montgomery v. Louisiana* (2016), the Court held that its previous ruling in *Miller v. Alabama* should be applied retroactively. This decision potentially affected up to 2,300 cases nationwide. States have responded to these rulings by allowing individuals who were sentenced as juveniles to life without parole new sentencing hearings based on certain criteria (California Senate Bill 9, 2012); by commuting sentences (Iowa); and by providing for a presentencing hearing discussing aggravating and mitigating circumstances in front of a judge before a life sentence without parole can be determined (South Dakota Senate Bill 39, 2013), among other actions in other states (Sickmund & Puzzanchera, 2014). Suffice it to say that these rulings have furthered the considerable controversy that has characterized the juvenile justice network since its inception.

CONTINUING DILEMMAS IN JUVENILE JUSTICE

Several important points need to be made concerning the contemporary juvenile justice network. First, most of the issues that led to the debates over juvenile justice were evident by the 1850s, although the violent nature of some juvenile crimes, like school shootings, over the past quarter-century has raised serious questions about the juvenile court's ability to handle such cases. The issue of protection and treatment rather than punishment had been clearly raised under the 15th-century chancery court system in England. The issues of criminal responsibility and separate facilities for youthful offenders were apparent in the City Custom of Apprentices in 17th-century England and again in the development of reform schools in England and the United States during the 19th century.

Second, attempts were made to develop and reform the juvenile justice network along with other changes that occurred during the 18th, 19th, and early 20th centuries. Immigration, industrialization, and urbanization had changed the face of American society. Parents working long hours left children with little supervision, child labor was an important part of economic life, and child labor laws were routinely disregarded. At the same time, however, treatment of the mentally ill was undergoing humanitarian reforms as the result of efforts by Phillipe Pinel in France and Dorothea Dix and others in the United States. The Poor Law Amendment Act had been passed in England in 1834, providing relief and medical services for the poor and needy. Later in the same century, Jane Addams sought reform for the poor in the United States. Thus, the latter part of the 18th century and all of the 19th century may be viewed as a period of transition toward humanitarianism in many areas of social life, including the reform of the juvenile justice network. It is important to note that during the second decade of the 21st century the issue of juvenile justice reform has once again become a focal point. Recent legislative trends attempt once again to distinguish juveniles from adult offenders, restore the jurisdiction of the juvenile court, and seek to adopt scientific screening and assessment tools to aid in decision making and identifying the needs of juvenile offenders. Current legislative actions attempt to increase due process protections for juveniles, reform detention policies, and address age and racial disparities. The U.S. Supreme Court has also played a role in recent reforms in *Roper v. Simmons (2005)*, *Graham v. Florida (2010)*, *Jackson v. Hobbs (2011)*, *Miller v. Alabama (2012)*, and *Montgomery v. Louisiana (2016)*, as previously mentioned.

Third, the bases for most of the accepted attempts at explaining causes of delinquency and treating delinquents were apparent by the end of the 19th century. We discuss these attempts at explanation and treatment later in the book. At this point, it is important to note that those concerned with juvenile offenders had, by the early part of the 20th century, clearly indicated the

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potentially harmful effects of public exposure and were aware that association with adult offenders in prisons and jails could lead to careers in crime.

Fourth, the *Gault* decision obviated the existence of two major, and more or less competing, groups of juvenile justice practitioners and scholars. One group favors the informal, unofficial, treatment-oriented approach, referred to as a casework or **therapeutic approach**; the other group favors a more formal, more official, more constitutional approach, referred to as a formalistic or **legalistic approach**. The *Gault* decision made it clear that the legalists were on firm ground, but it did not deny the legitimacy of the casework approach. Rather, it indicated that the casework approach may be employed, but only within a constitutional framework. For example, a child might be adjudicated delinquent (by proving his or her guilt beyond a reasonable doubt) but ordered to participate in psychological counseling (as a result of a presentence investigation that disclosed psychological problems).

Fifth, is the issue of girls and crime. Statistics from 2015 show that female crime is declining (Ehrmann, Hyland, & Puzzanchera, 2019). However, this wasn't always the case. Females accounted for nearly 28% of the delinquency caseload in 2010, and female delinquency was rising at an average rate of 2% per year between 1985–2010. Juvenile court quickly worked to manage cases involving girls (Puzzanchera & Hockenberry, 2013) and to identify why female youth commit crimes. Richie et al. (2000) argued that females enter the juvenile justice network because of distinctly different circumstances than males. Thus, the network cannot "promote unalloyed equity" (p. iii) in the handling of cases involving males and females. Instead, the juvenile justice network ought to tailor to the specific characteristics and circumstances of individual offenders and acknowledge the link between the victimization of girls and their offending behavior (p. iv). How to individualize justice without allowing bias into the network, however, is a challenge, and one that is not easily overcome.

Finally, there is the issue of technology and juvenile crime. The first juvenile computer crime was prosecuted in 1998 in Massachusetts (Bowker, 1999). Since then, the growth of computer usage for personal and schoolwork has exploded, with almost all American students currently completing schoolwork fully online as a result of the COVID-19 global pandemic. Additionally, children carry around mobile computers in their cell phones and, often, have 24/7 access to the Internet and other social media outlets. In many cases, juveniles are much more savvy with technology than their parents or juvenile justice practitioners. With this expanded freedom, however, has also come a decreased understanding of computer dangers and an ethical deficit with regard to the appropriate use of the Internet, cell phone, and computer (Bowker, 1999). More than ever in history, children have experienced expanded anonymity and social networks that may include people outside of their schools, families, and neighborhoods—sometimes communicating with individuals from around the globe. The direct consequences of technology have created challenges that include computer crimes and victimization; exposure to social plagues such as pedophilia, cyberbullying, sexual predators, and drugs; and hate and racist group websites, among others. While indirect consequences have included the costs of increased security for companies to avoid juvenile computer crime, increased victimization from both known and unknown computer perpetrators, addictions to the computer or social media, and a decreased respect for others, their property, ownership, and the right to privacy, to mention a few (Bowker, 1999), preventing youth from using technology is not a viable response, since so much of society depends on technological skills. Yet the network has to create legislative and judicial responses to those who decide to use technology for crime.

All of these issues are very much alive today. Caseworkers continue to argue that more formal proceedings result in greater stigmatization of juveniles, possibly resulting in more negative

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self-concepts and eventually in careers as adult offenders. Legalists contend that innocent juveniles may be found delinquent if formal procedures are not followed and that ensuring constitutional rights does not necessarily result in greater stigmatization, even if juveniles are found to be delinquent.

Similarly, the debate over treatment versus punishment continues. On the one hand, status offenders (those committing acts that would not be violations if they were committed by adults) have been removed from the category of delinquency, in part as a result of the passage of the Juvenile Justice and Delinquency Prevention Act of 1974 (Snyder & Sickmund, 1999). Whereas severe punishments for certain violent offenses were enacted in the 1980s and 1990s and waivers to adult court for such offenses were made easier, the U.S. Supreme Court's decisions in *Roper v. Simmons, Graham v. Florida, Jackson v. Hobbs, Miller v. Alabama*, and *Montgomery v. Louisiana* have denied the possibility of the ultimate punishment—death—and lifetime incarceration terms for those who do not commit homicide. The perceived increase in the number of violent offenses perpetrated by juveniles led many to ponder whether the juvenile court, originally established to protect and treat juveniles, is adequate to the task of dealing with modern-day offenders. Simultaneously, the concepts of restorative justice, which involves an attempt to make victims whole through interaction with and restitution by their offenders, and juvenile detention alternatives, which reduce reliance on secure confinements, have become popular in juvenile justice (see Chapter 10). These approaches emphasize treatment philosophies as opposed to the "get-tough" philosophy so popular during past years. Both of these approaches lead observers to believe that if the juvenile court survives as a separate court system, major changes in its underlying philosophy are likely to occur (Cohn, 2004; Ellis & Sowers, 2001; Schwartz, Weiner, & Enosh, 1998). Treatment and rehabilitation may become a stronghold in juvenile court reactions to crime as well as handling issues and providing services to **emerging adults**. Emerging adults are those persons between the ages of 18–25 who still face issues from adolescence while trying to find their way into independence and adulthood. Some states, as discussed in In Practice 1.1, are exploring the possibility of retaining jurisdiction of individuals aged 18, 19, and 20 within the juvenile justice system to potentially manage issues that arise from the negative outcomes associated with emerging adulthood (i.e., failing to acquire financial, emotional, or work-related skills; also risky behaviors, suicide attempts, mental health issues, poor relationships with peers and parents, etc.).

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IN PRACTICE 1.1
SHOULD JUVENILE COURTS RETAIN JURISDICTION OF "EMERGING ADULTS"?

Researchers have suggested the path individuals take between adolescence and adult independence is longer and more complicated than ever in history. A stagnation of wages for low-skilled workers, a lack of opportunities for work, and increased cost of education and housing have resulted in greater numbers of young adults seeking post–high school education and delaying entry into the workforce, marriage, and housing markets.

Emerging adulthood is the term used to describe individuals in the stage between adolescence and adulthood. "At the beginning of this stage, 17–18 years of age, emerging adults are generally dependent, living with their parents or caretakers, beginning to engage in romantic relationships, and attending high school. At the end of this stage, mid-to late 20s, most emerging adults live independently, are in long-term relationships, and have clear career paths ahead of them" (Wood et al., 2017, p. 123). How they traverse through this stage is strongly dependent on their personal, family, and social resources when they enter the stage and the supports they receive during this stage (Wood et al., 2017).

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Emerging adulthood is often referred to as the volitional years when individuals experience dynamic and complex changes all while undergoing emotional, neurodevelopmental, and social development (Wood et al., 2017). They may engage in risky behaviors such as drug use and criminal activity. "These experiences can have a lasting, if not, lifetime, detrimental impact on the development and mental health trajectory of the emerging adult (Wood et al., 2017, p. 134).

With current service and treatment models focused on either children aged 0–18 or adults, the unique biobehavioral and sociocultural factors experienced by emerging adults may be overlooked. "For example, an adult-centered medical doctor may regularly treat patients with fixed habits and lifestyles, who may already suffer from a variety of chronic health conditions" (Wood et al., 2017, p. 136). But these conditions, which may develop over an individual's adult experiences, may not yet be present in an emerging adult. Therefore, treatment measurements that would be successful with the adult population may not work with the emerging adult population.

To address some of the unique characteristics presented by emerging adults, legislatures in some states, like Vermont and California, have considered expanding the juvenile court's jurisdiction to include those aged 18 and 19. Vermont was the first state to raise the age of juveniles in criminal court to over 18 (phasing the change in over a 2-year period), except for those charged with a serious violent felony (Vermont S.234 [Act 201], 2018). As a result, Vermont's adult system will handle primarily individuals 21 years of age or older. A new bill proposed in California, spearheaded by Senator Nancy Skinner, would reclassify 18- and 19-year-old Californians as juveniles or "emerging adults" in the state's criminal justice system. This approach would allow them to receive support from more appropriate youth-focused services. It appears that the bill has support from the California Probation Officer's Association, which proposed raising the adult prosecution age to 20 back in November of 2019 (Skinner, 2020).

Questions to Consider

1. What intended and unintended consequences may result from inclusion of emerging adults in the juvenile justice network?
2. True or False: At no other time in development besides infancy are individuals experiencing as many dynamic changes as during emerging adulthood.
3. Which of the following is not an issue facing emerging adults?
   a. Living independently
   b. Exercising more freedom in decision making
   c. Having a high-paying job
   d. Completing post–high school education

Sources: Adapted from Skinner, N. (2020). *Sen. Nancy Skinner Announces Bill to Raise the Age to Be Tried as an Adult*. Available from https://sd09.senate.ca.gov/news/20200128-sen-nancy-skinner-announces-bill-raise-age-be-tried-adult; Wood, D., Crapnell, T., Lau, L., Bennett, A., Lotstein, D., Ferris, M., & Kuo, A. (2017). Emerging Adulthood as a Critical Stage in the Life Course. In N. Halfon, C. B. Forrest, R. M. Lerner, & E. Faustman (Eds.), *Handbook of Life Course Health-Development* (pp. 123–143). New York: Springer; Vermont; Act No. 201 (S.234). Judiciary; human services; juvenile delinquency; youthful offending. Available at legislature.vermont.gov/documents/2018/docs/acts/act201/act201%20act%20summary.pdf

RETHINKING JUVENILE JUSTICE

For a number of years, the trend was to hold younger and younger juveniles accountable for their offenses, to exclude certain offenses from the jurisdiction of the juvenile court, and to establish mandatory or automatic waiver provisions for certain offenses. But the U.S. Supreme Court has made clear in landmark cases that expectations for youth should include commonsense conclusions that children will act differently and perceive situations in another way than their adult

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counterparts (*Roper v. Simmons,* 2005; *J. D. B. v. North Carolina*, 2011). Additionally, neuroscientists have concluded that brain development—particularly the prefrontal cortex, which manages rational thinking—is ongoing during early adulthood. Thus, there is a "continuous unfolding and acquisition of specific neurodevelopmental capacities" (Wood et al., 2017, p. 128) during adolescence and early adulthood that guides a person's cognitions, emotions, actions, and control. As this development emerges, the individual is better able to "influence their environment and internal states, regulate their emotions, and use problem-solving skills effectively" (Wood et al., 2017, p. 129). Considering all of this, the juvenile court is left with the same question that has plagued the court for years: When is a person responsible for delinquent acts?

There are a number of practical implications of the various dilemmas that characterize the juvenile justice system. Juvenile codes in many states were changed during the 1990s to reflect expanded eligibility for criminal court processing and adult correctional sanctions. All states now allow juveniles to be tried as adults under certain circumstances. According to Benekos and Merlo (2008), Brown (2012), and others, the impact of policies from the 1990s resulting in the adultification of juveniles through the use of punitive and exclusionary sanctions continues in spite of declining juvenile crime rates. At the same time, however, there are signs of more enlightened approaches on the horizon as attempts to reduce criminalization of juveniles are occurring in an increasing number of jurisdictions. These two conflicting approaches illustrate the continuing ambiguity in the juvenile justice system.

Because the juvenile justice system does not exist in a vacuum, laws dealing with juveniles change with changing political climates—whether or not such changes are logical or supported by evidence. Furthermore, new and modified theories emerge as we attempt to better understand and deal with juveniles in the justice system. Thus, the cycle of juvenile justice is constantly in motion. Disputes between those who represent competing camps are common and difficult to resolve. Finally, the discrepancy between the ideal (theory) and practice (reality) remains considerable. What should be done to, with, and for juveniles and what is possible based on the available resources and political climate may be quite different things. Two decades ago, Bilchik (1999b) asked the following:

As a society that strives to raise productive, healthy, and safe children, how can we be certain that our responses to juvenile crime are effective? Do we know if our efforts at delinquency prevention and intervention are really making a difference in the lives of youth and their families and in their communities? How can we strengthen and better target our delinquency and crime prevention strategies? Can we modify these strategies as needed to respond to the ever-changing needs of our nation's youth? (p. iii)

At the beginning of the second decade of the 21st century, the Coordinating Council on Juvenile Justice and Delinquency Prevention approved a 2010 work plan that identified priority issues for interagency collaboration in the coming year. The four issues the council planned to focus on—(1) education and at-risk youth, (2) tribal youth and juvenile justice, (3) juvenile reentry, and (4) racial and/or ethnic disparities in the juvenile justice system and related systems—suggest that many of the questions raised at the end of the 20th century have yet to be answered (OJJDP News at a Glance, 2010). A further attempt to answer such questions is the movement toward accountability of the juvenile justice system. The juvenile justice network has traditionally exercised two accountability models—rehabilitation and system accountability. The system's traditional rehabilitative ideals were displaced by system accountability emphasizing punishment and victim interests under get-tough approaches (Ward & Kupchik, 2009). But as discussed throughout this chapter, the pendulum seems to be swaying the other way again. Which of the two accountability models will emerge as the network continues to grow and evolve is anyone's guess.

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CAREER OPPORTUNITIES IN JUVENILE JUSTICE

In the following chapters, look for the Career Opportunity box, which provides you with information concerning specific occupations, typical duties, and job requirements within or related to the juvenile justice network. Keep in mind that different jurisdictions have different requirements, so we are presenting you with information that is typical of the occupations discussed. We encourage you to discuss career options with faculty and advisers and to contact the placement office at your university or college for further information. You might also seek out individuals currently practicing in the juvenile justice field to discuss your interest and concerns. Good hunting!

SUMMARY

Although the belief that juveniles should be dealt with in a justice system different from that of adults is not new, serious questions are now being raised about the ability of the juvenile justice system to deal successfully with contemporary offenders. The debate continues concerning whether to get increasingly tough on youthful offenders or to retain the more treatment- or rehabilitation-centered approach of the traditional juvenile court. The belief that the state has both the right and responsibility to act on behalf of juveniles was the key element of juvenile justice in 12th-century England and remains central to the juvenile justice system in the United States today.

Age of responsibility and the ability to form criminal intent have also been, and remain, important issues in juvenile justice. The concepts of parens patriae and in loco parentis remain cornerstones of contemporary juvenile justice, although not without challenge. Those who favor a more formal approach to juvenile justice continue to debate those who are oriented toward more informal procedures, although decisions in the *Kent, Gault*, and *Winship* cases made it clear, in theory at least, that juveniles charged with delinquency have most of the same rights as adults.

Although some (e.g., Hirschi & Gottfredson, 1993) have argued that the juvenile court rests on faulty assumptions, it appears that the goals of the original juvenile court (1899) are still being pursued (OJJDP News at a Glance, 2010). It remains apparent that the political climate of the time is extremely influential in dictating changing, and sometimes contradictory, responses to juvenile delinquency, as indicated by Benekos and Merlo (2008). It also remains apparent that youth deserve consideration that relies on different expectations than adults. What role the juvenile court should play in servicing children from birth to early adulthood remains controversial. As noted by Ward and Kupchik (2009), a coherent accountability orientation is nonexistent in the juvenile justice network, even though the implementation of performance measures is increasingly being demanded by observers of the network (Mears & Butts, 2008).

KEY TERMS

age of responsibility
Breed v. Jones
chancery courts
child-savers movement
common law
emerging adults
era of socialized juvenile justice
Gault case

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Graham v. Florida
Holmes case
house of refuge
in loco parentis
Jackson v. Hobbs
J. D. B. v. North Carolina
Kent case
legalistic approach
McKeiver v. Pennsylvania
mens rea
Miller v. Alabama
Montgomery v. Louisiana
parens patriae
Progressive Era
reform schools
Roper v. Simmons
therapeutic approach
Winship case

CRITICAL THINKING QUESTIONS

1. What do the terms *parens patriae* and *in loco parentis* mean? Why are these terms important in understanding the current juvenile justice network?
2. What is the significance of each of the following Court decisions?
   a. *Kent*
   b. *Gault*
   c. *Winship*
   d. *Roper v. Simmons*
   e. *Jackson v. Hobbs* and *Miller v. Alabama*
   f. *Graham v. Florida*
   g. *J. D. B. v. North Carolina*
3. Should the juvenile court be therapeutic or punitive? Explain your answer.
4. Consider the In Practice 1.1 information. Should juvenile court jurisdiction include emerging adults aged 18, 19, or 20? Why or why not?

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