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The Early History of the Court

Sanford J. Fox

Abstract

The history of the juvenile court precedes its formal beginnings in the Illinois Juvenile Court Act of 1899. This article traces key trends in the early history of the court, beginning with the founding of separate penal institutions for children in the 1820s and ending with the development of critical analyses of court practice in the 1930s.

The Illinois statute distinguished between delinquent and dependent youths. However, early nineteenth-century intervention typically did not make such a distinction: children convicted of crimes and children who were abandoned, abused, or simply very poor were often housed in the same institutions. Both criminal behavior and poverty were viewed as threats to the social order. In the second half of the nineteenth century, efforts were made to treat dependent and delinquent children differently. Private sectarian agencies were founded to remove noncriminal youths from their homes or the almshouses and "place them out," often either with families in other states or in industrial schools.

The reform efforts behind the passage of the Illinois statute were intended to create improvements in the institutions that intervened on behalf of children. Reformers showed little concern for the procedures used in these interventions, and the resulting statutory language provides few procedural guidelines. Nineteenth-century practice had focused on assessing the children who came before the court for their fitness for rehabilitation and de-emphasized the adjudication of the offense itself. This practice continued after the development of the juvenile court at the turn of the century.

The model for ideal juvenile court judicial practice—epitomized by Judge Ben Lindsey of the Denver, Colorado, court—called for a rapport between judge and child and the personal involvement of the judge in the child's reformation. This personal treatment, though popular, came at the expense of the child's due process rights. The movement in the early twentieth century to involve mental health professionals in this rehabilitation diminished the court's direct involvement but did nothing to address procedural inadequacies. These were finally resolved in the due process cases of the 1960s and 1970s.

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The origins of the juvenile court have been subject to a number of historical interpretations. For example, the juvenile court has traditionally been viewed as originating with the Illinois Juvenile Court Act of 1899,¹ the statute that first formalized the creation of the court and defined its jurisdiction. However, an alternative view portrays the juvenile court as the result of the evolution during the nineteenth century and before of a variety of systems for handling juvenile justice and child welfare matters.

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The traditional view of juvenile court origins has already been challenged to some extent.² This article goes further than extant revisionist writing in arguing that the traditional portrayal of juvenile court history is inaccurate. To do so, it first reviews key precourt trends in the handling of juvenile justice and child welfare matters, analyzing early forms of intervention and some of the institutions that served as placement options. It also reviews nineteenth-century statutes and case law that defined the limits of this intervention.

Second, this article examines the founding principles of the Illinois court and compares Chicago court practice with that of the early Denver, Colorado, juvenile court. It then traces court history through the adoption of the court model by the states in the early twentieth century to the beginning of critical analyses of court practices in the 1930s.

Finally, the article presents an alternative interpretation of early historical events in an effort to provide a better basis for understanding subsequent juvenile court developments.

The Nineteenth Century

As part of the postrevolutionary movement to differentiate the new country from the old, early American reformers sought to discard the widespread use of capital punishment, which they saw as one of the worst aspects of their British inheritance. In both Pennsylvania and New York, Quaker reformers succeeded in sharply reducing the number of offenses that warranted the death penalty and introduced as an alternative periods of long-term incarceration in newly established penitentiaries. The reformers hoped that stays in these institutions would also provide the opportunity for using religious penitence as a means of rehabilitating the inhabitants.³

Soon, however, miscalculations of the effectiveness of this philosophy became manifest. For example, the solitary confinement thought necessary to accomplish the penitence led to riots by the prisoners. Among the most serious charges leveled against the new penitentiaries was the absence of any system for classifying prisoners. As a result, the youngest offenders were mingled indiscriminately with older and more experienced ones, turning what was to be a rehabilitative experience into a classroom for crime.⁴

Juvenile Corrections Institutions

New York reformers developed the idea of establishing a separate institution for juvenile offenders in which the rehabilitative

enterprise could proceed without the perceived "contamination of incorrigible adults." In 1824, the New York legislature passed a law authorizing the opening of a House of Refuge for young offenders *deemed still to be reformable*.⁵ The citizen-managers of the house were to provide these children such instruction and employment "as in their judgment will be most for the reformation and amendment, and the future benefit and advantage of such children."⁶

Similar institutions soon began to appear in major cities in other states. The Philadelphia House of Refuge opened in 1828. By 1850, eight cities had houses of refuge, with many more being founded in other cities throughout the 1850s.⁷ They all shared the following basic principles of operation: (1) the segregation of youthful from adult offenders; (2) the centrality of rehabilitation as a goal in the treatment of those in the segregated juvenile justice system; and (3) the restriction of this system to children who were deemed amenable to treatment.⁸

The earliest institutions resembled the New York House of Refuge prototype—a small building at the edge of the city housing a small number of children in a relatively intimate atmosphere. But by the 1850s, as the number of incarcerated children swelled and the seriousness of their offenses escalated, these institutions were replaced by bigger ones well-removed from the urban environment. For example, in New York the number of inmates expanded from

9 at the outset to more than 1,000 housed on an island in the East River in an institution indistinguishable from an adult prison.⁹ The inability of such places to do more than maintain order within their walls led to a brief return to small cottages and farms. The larger institutions then reemerged, this time in the form of industrial and reform schools.

The succession of institutions was influenced by conflicting views as to how child offenders should be treated. These children were seen as needing not only kindly care with rehabilitative goals, but also stern discipline to remind them that laws had been broken. Fear of offenders created an impetus to punish that never gave way completely to rehabilitative purposes. This ambivalence manifested itself in at least two distinct ways. The first was in the rigid sternness in the institutions for children. The second was the fact that, from the very beginning of juvenile corrections, the adult penal institution was never completely off-limits for children. It remained available and was used as a sentencing option in children's cases, both before and after the advent of the juvenile court.¹⁰

Criminal Trials

The judicial component of juvenile justice in the first quarter of the nineteenth century was little different from an adult criminal trial. Beyond recognition of the common law's substantive infancy defense, which relieved minors below a certain age of culpability, neither statute nor court decision provided for treating children charged with crimes differently from adults, substantively or procedurally.¹¹

But with the advent of the houses of refuge, a new element was considered in children's cases, that is, their amenability to the reform program offered by these juvenile institutions. For a child to be committed to the New York House of Refuge, the court had to determine that he or she was a "proper object." Strict conformity with legal principles should have required that this determination be made by the court or the jury only after there had been a factual determination that the child had engaged in the prohibited conduct that brought him to official notice in the first place. Unfortunately, no historical research has

shown the extent to which such judicial decision making in the first half of the century included a factual determination of guilt.

However, there is some evidence to show that, by the second half of the century, at least in Illinois, judicial decision making regarding juvenile offenders was dominated by a determination of the juvenile's fitness for treatment, to the near exclusion of a concern for adjudicating innocence or guilt. Legislation in 1857 and 1863 restricted placement in the Chicago Reform School (established in 1856) to those who, "in the opinion of the court, would be a fit and

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proper subject for commitment to said reform school."¹² In addition, very few children at the school—about one in ten—had committed offenses serious enough for them to have been tried in a court of general criminal jurisdiction where formal adjudication of the offense would more likely precede sentencing.¹³ Finally, the testimony of a Chicago Reform School superintendent reveals that courts considered what was best for the welfare of the children and made orders to that effect, often with no formal charge against these children and regardless of the severity of the crimes for which they had been arrested.¹⁴

By the late 1860s, this system was proving unworkable. In 1870, the Illinois Supreme Court held it to be unconstitutional to confine to the Chicago Reform School a child who had not been charged with criminal conduct and not accorded due process at trial.¹⁵ In 1872, the Chicago Reform School closed. Juveniles convicted of criminal offenses were committed to the reformatory in Pontiac, Illinois, a prison in all but name.

Thus, for the last quarter of the nineteenth century Illinois had no judicial component of a juvenile justice system at all.

Jurisdiction over Noncriminal Youths

As mentioned above, many of these same nineteenth-century institutions also housed noncriminal youths. For example, the New York House of Refuge was intended as "an asylum, in which boys under a certain age, who become subject to the notice of the Police, either as vagrants, or houseless or charged with petty crimes, may be received."¹⁶ It was also authorized by state statute to receive children who had been residents of the almshouses.¹⁷

In addition to the houses of refuge created with public funds, "placing-out" agencies and orphan asylums were established, largely under private auspices, to provide alternative placements for destitute and neglected children.¹⁸ In the early 1850s, New York reformers began finding the houses of refuge inadequate as a placement for both delinquent and neglected children. In 1853,

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the New York Children's Aid Society was established by Reverend Charles Loring Brace to place vagrant, homeless, and abused children in foster care-like settings in the farms and rural communities of the western states. In 1854, the publicly funded New York Juvenile Asylum opened its doors to neglected children. From that point on, only delinquent children were sent to the New York houses of refuge.¹⁹

Despite this separation of delinquent and neglected children in the New York institutions, the typical practice of this era was to treat poor and/or neglected children and young criminals as a homogeneous group. It was believed that all of these children needed to be controlled and reformed to prevent them from eroding the social order as adult criminals. Criminal behavior and poverty were seen as synonymous in terms of the threat they posed. Nineteenth-century reformers considered parental shortcomings to be one of the leading causes of the deviancy that brought children to the institutions. They removed poor and

neglected children who were not yet criminals from the harmful influences of their depraved home environments so that they would not become criminals.²⁰

Throughout the country state legislation authorizing the commitment of children to institutions reflected this belief that delinquent juveniles, minor offenders, and abused and neglected children could all benefit from similar institutional placements. For example, in 1875, the Wisconsin legislature authorized commitment to its industrial schools of any boy under age 12 and any girl under age 16 who begged or received alms, wandered the streets without a home or "proper" guardianship, was an orphan or had one or both parents in prison, frequented the company of thieves, resided in a poor house (with or without parents), or was abandoned by the parents.²¹

The institutional placement of children who had committed no crimes did not go unchallenged. The leading case upholding the involuntary commitment of these children to institutions, without the formal proceedings of a criminal trial, was *Ex parte Crouse* decided in Pennsylvania in 1838.²² The court relied on the *parens patriae* doctrine, allowing the state to intervene when deemed necessary to fill the role of parent of a minor.²³ (For more on the *parens patriae* doctrine, see the article by Ainsworth in this journal issue.) This case became the precedent for twentieth-century cases holding that the juvenile court could similarly commit children without the traditional legal formalities.²⁴

When the states acted in this *parens patriae* capacity, however, the custody decisions relied on ad hoc placements because there was no official child protection agency responsible for moving children from their homes and into placements. In 1875, the New York Society for the Prevention of Cruelty to Children was organized to seek out and rescue neglected and abused children.²⁵ Agents of the society were given the power to remove children from their homes and arrest anyone who interfered with their work. They also assisted the court in making placement decisions. By 1890, the society controlled the intake and disposition of an annual average of 15,000 poor and neglected children. Similar societies were estab-

lished in other cities during the last quarter of the century. Some of these societies rejected New York's law enforcement approach and relied on the emerging profession of social work and its efforts to keep families intact.²⁶

In the second half of the nineteenth century, noncriminal Illinois youths could also be committed to institutional care, primarily industrial schools run by private sectarian child welfare agencies. Some private societies like the Illinois Visitation and Aid Society served as child placement brokers, maintaining custody of children only long enough to find foster families for them.

A commissioner oversaw these commitment proceedings until 1867, when this function was transferred to judges.¹⁴ However, in 1870 in *O'Connell v. Turner*, the Illinois Supreme Court held that the state could interfere with parental custody only upon proof of "gross misconduct or almost total unfitness on the part of the parent."²⁷ In 1873, the legislature repealed all jurisdiction over noncriminal misconduct.²⁸ In 1888, the Illinois Supreme Court decided that the county court had no authority to commit children to private agencies like the Visitation and Aid Society which did not operate their own institutions.

The Chicago Juvenile Court

The Chicago Juvenile Court, established by the "Act to regulate the treatment and control of dependent, neglected and delinquent children,"²⁹ cleared the legislature in 1899 as the result of a long and determined campaign by reformers. Their efforts focused primarily on improving the variety and quality of court commitment options by securing institutional reform.³⁰

In addition to concerns about the conditions in the publicly funded institutions,³¹ criticisms were raised regarding the privately run, gender-specific, and religiously segregated industrial schools. Many believed that the state should have a monopoly when it came to caring for and finding homes for needy children and that private enterprise had no place in such a system.

The crusade for change was thus formed around several issues: the role of private enterprise in the care of needy children, reli-

gious institutional segregation, the legitimacy of private child placement brokers, and the amelioration of institutional conditions. There is little, if anything, in the literature to indicate that the agenda the reformers developed in the 1890s included a significant concern for improving court procedures and practices.

The Content of the 1899 Act

The Illinois Juvenile Court Act did not create a new court in the sense of providing for a new entity in the judicial structure of the state. Instead, it articulated rules to be followed by the county court when it was considering children's cases, at which time, as the legislation put it, "[the court] may, for convenience, be called the 'Juvenile Court.'"³²

The substance of these rules settled some of the placement issues raised by the reform campaign. The act validated the role of private agencies in the care of children. It accepted the brokerage function of private organizations like the Visitation and Aid Society and religious institutional segregation. It also proscribed detention of children

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in local jails or police stations but provided for no alternative facilities. It did not include any provision to prohibit placing children in the almshouses. As an effort to obtain significant change in institutional conditions for Illinois children, the Juvenile Court Act was a failure.

Procedural Changes

With little evidence that the reformers who brought about the Chicago juvenile court were concerned with changing judicial procedures, one must turn to the text of the 1899 act to determine whether any such changes were, nonetheless, mandated by the legislature. In the only part of the law that addresses the issue, the act provides: "the court shall proceed to hear and dispose of the case in a summary manner."³³ If the 1899 legislature intended to make radical changes in juvenile trial arrangements, it did not choose very powerful language for its purpose.

Examination of the practices adopted by the early juvenile court judges in Chicago suggests that they may have interpreted their mandate to act in a "summary manner" to require a reinstatement of the pre-1872 Illinois inquiry into character and fitness for rehabilitation. During the first year after the passage of the Illinois Juvenile Court Act, the presiding judge, Judge Richard S. Tuthill, sent 37 boys to the grand jury as not fit subjects for juvenile court treatment.³³ More significantly, Judge Tuthill engaged in a kind of interpersonal exchange with the children who came before the court. The initial part of the hearing had little, if anything, to do with adjudicating the facts. Instead it was a game of gaining the trust of the child. Once the trust had been won, Judge Tuthill would ask the child directly about the alleged offenses. Witnesses were seldom called into court.³⁴

Judge Tuthill's successor on the Chicago bench, Julian W. Mack, also interpreted the mandate to proceed in a "summary manner" as requiring character assessments of the

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children not unlike the focus on fitness of pre-*O'Connell* procedures. Like Judge Tuthill, Judge Mack made these determinations by cultivating an intimacy with the child.³⁵

Though the assessment of fitness for treatment was similar to pre-*O'Connell* practice, the cultivation of intimacy and trust between judge and child was a new phenomenon. This aspect of court practice may have originated with this court or it may have been the result of the influence of the court practice of Judge Ben B. Lindsey in Denver, Colorado.

The Denver Juvenile Court

Shortly after the reform movement in Illinois produced the 1899 Juvenile Court Act, Ben B. Lindsey was appointed to the county court bench in Denver, a position he was to hold from 1901 to 1927. His pre-judicial experience had included no connections with the activities in Illinois leading

to its juvenile court law, and he had played no role in any efforts to reform the Colorado juvenile corrections system.

Lindsey's attentions soon focused on the plight of the young offenders he was required by law to sentence to the Colorado reform schools. Within a year of his appointment, Lindsey came across an 1899 Colorado compulsory school statute designed to deal with children who had become school disciplinary problems. This statute permitted the courts to classify such children as "juvenile disorderly persons" without making a reform school commitment. He convinced the district attorney to proceed against *all* children under this law, a development which led him later to say: "Thus our 'juvenile court' was begun informally, anonymously, so to speak, but effectively."³⁶

In 1903, after examining the laws in Illinois and Massachusetts, Judge Lindsey succeeded in having passed "An Act Concerning Delinquent Children" which contained several provisions based on parts of the Illinois 1899 Juvenile Court Act and other provisions that codified his use of the Colorado juvenile disorderly persons statute.

The Colorado juvenile court statute was broader than the 1899 Illinois act in several important aspects. It included jurisdiction over adults who "contributed" to the delinquency of minors, and it permitted county courts to place convicted youths between the ages of 16 and 21 on the same probation terms as those applied to younger children.³⁷

Under Judge Lindsey's aegis, the Denver court uniquely embodied a deeply personal judicial involvement in the lives of the juvenile court children. His juvenile court was a vigorous machine for social engineering, reaching out to reform everything that adversely affected children, from the corruption of the police to the need for playgrounds. But reaching out to foster a close relationship with each individual child was the quintessence of Lindsey's juvenile court.

Judge Lindsey's "methods were irregular, but they were practical and produced hundreds of picturesque episodes which greatly aided the popularity of the juvenile court



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movement.”³⁸ Children who came to the Denver court were “his boys” and were seen by him as fundamentally good human beings whose going astray was largely attributable to their social and psychological environment. According to Lindsey, the role of the juvenile court judge was to strengthen the child’s belief in himself and make available to him all of the support and encouragement from outside the court that the judge could harness on his behalf.

In pursuing these methods, Lindsey had no specific statutory authority to adopt his social worker-friend approach to the children who came before the court. In his scheme of things, formal adjudication of the charges was of minimal importance, and rehabilitation was everything. Whereas the judges in Chicago saw the philosophy and practices of the criminal courts as merely irrelevant to their work, Judge Lindsey condemned the whole criminal justice system, which he saw operating as a “medieval torture chamber” that victimized children. He called for a juvenile court completely severed conceptually and operationally from the criminal law.³⁹

It is unclear whether this judicial role was developed by Judge Lindsey and then followed by Judge Tuthill and others, was initi-

ated in Chicago, or derived from mutual interactions between Chicago and Denver. What is clear is that the leading juvenile court judges of the times proclaimed the new judicial role the standard to be emulated. The social responsibility for reforming children that had been given to the houses of refuge became, nearly a century later, the quintessential function of juvenile courts.

In discharging that responsibility, Ben Lindsey set the standard. Though few could reach Ben Lindsey’s level of achievement in the matter of an intimate relationship with the children, the striving for it persisted. As late as 1945, a Pittsburgh juvenile court judge wrote: “Often it is only necessary to say to a child who seems to be withholding the truth: ‘When you are sick and therefore see your doctor, you don’t fool him, do you?’ He quickly replies, ‘Of course not.’ I then point out, ‘Well, it’s the same with us. If you tell us all you know and don’t try to fool us, we can help you more than if you attempt to get around the truth.’ He looks me over carefully. Can he trust me? If I pass the test, if he really believes in me, there is imminent one of the most humbling experiences vouchsafed to man: to have a child open his heart and put out what has been troubling him, what he has hesitated to reveal to anyone, even to his mother and father.”⁴⁰

This practice, so finely developed and epitomized by Judge Lindsey, had obvious legal flaws. *O'Connell* had suggested decades earlier that deprivations of liberty without legal formalities fell short of providing the due process of law required by state constitutions. After surveying the state juvenile court laws that had been enacted by 1909, a Pennsylvania lawyer noted that "there is much less that is entirely new about them than is generally supposed."⁴¹ What did appear to be novel to this attorney was "the

What was truly new in the juvenile court was the development of a personal rapport between the judge and child before the court.

entire disregard, as far as the statutes themselves go, of established legal principles and the absence from them of any limitations on the arbitrary powers of the court, which always involves dangerous possibilities." He also took note of the "dangerous possibilities" in the Ben Lindsey approach to juvenile court practice—having the effectiveness of the court depend so much on the personality of the judge.⁴¹

These kinds of legal caveats largely fell on deaf ears, and the substitution of personal judicial involvement for formal trial procedures in juvenile courts was upheld by one appellate court after another.^{42,43}

Despite these potential shortcomings in the juvenile court model, it soon gained widespread acceptance. By 1905, some 10 states had enacted some sort of juvenile court law. By 1915, a total of 46 states, 3 territories, and the District of Columbia had done so.⁴⁴

This enthusiasm for enacting juvenile court statutes far outstripped changes in actual adjudication of the cases. In 1920, a U.S. Children's Bureau survey found that only 16% of these new courts held separate calendars or hearings for children's cases, had an officially established probation service, and recorded social information about the children coming through the court.⁴⁵ In 1926, it was reported that five out of six of these courts in the United States failed to meet the minimum standards of the

Children's Bureau and were declared by one observer to be juvenile courts in name only.⁴⁶ This failure to incorporate important change was due, in part, to the fact that the statutes themselves contained few, if any, procedural requirements.

The Shift Away from the Lindsey Model

Most juvenile court judges could rely only on the existing institutional programs to change the children who came before the court. This was particularly true for the judges who could not follow Judge Lindsey's standard of using personal charisma to engage and change the youths who came before him. In addition to the institutions already in place, community-based intervention began through the use of probation. Even Lindsey relied to some extent on his probation staff to carry on his work of shepherding the court's children along the right path. In the other juvenile courts, probation officers were seen from the outset as critical to the success of the juvenile court's reformative enterprise.⁴⁷ Securing funding for a paid probation staff became a top priority for courts.⁴⁸

However, expanding caseloads and the increasing severity of the offenses committed by the juveniles made clear the limitations of relying on untrained probation officers.⁴⁹ For example, Jane Addams in Chicago recalled that it was becoming apparent that "many of these children were psychopathic cases and they and other borderline cases needed more skilled care than the most devoted probation officer could give them."⁴⁹ In 1908, the women's volunteer organization in Chicago raised funds to hire Dr. William A. Healy to undertake a scientific investigation of individual delinquents. Healy became director of the newly established Juvenile Psychopathic Institute in Chicago. There was much hope that the work of the institute would be the key to the court's success.⁴⁹

With this development in Chicago, the reform of delinquents that was the core of the juvenile court moved a large step farther away from the judge and into the hands of other professionals. Volunteer probation officers evolved into college-trained personnel and graduate social workers. Over time, to

this basic staff were added professional psychologists and psychiatric consultants. As a result, it became more and more difficult for judges to participate in the individual reform of the children who came before the court.

Healy's work at first supported the reform responsibilities taken on by the initial cohort of juvenile court judges. To Healy, institutions and their rehabilitative programs had little significance compared with a psychological understanding of each particular child's development. To the extent that such goals of individualized understanding had been generally adopted by judges, Healy's emphasis on the individual psychological life of children fell on fertile soil. His work gave rise to a child guidance movement that promised to raise considerably the efficiency of juvenile courts in their rehabilitation efforts. Dr. Healy and his wife and colleague, Dr. Augusta Bronner, were soon recruited to direct a child guidance clinic attached to the Boston juvenile court. Individualized dispositions, based on a scientific understanding of each child, would be the key.

Faith in the help from child guidance clinics was not to last. In 1934, criminologists Sheldon and Eleanor Glueck published the results of a follow-up study of delinquents from the Boston juvenile court who had had the benefit of clinic procedures. This study revealed a recidivism rate of nearly 90%.⁵⁰ Court clinics continued to exist following the Gluecks' disclosures, but belief in the ability of the clinics to rehabilitate diminished.

Conclusion

What was unique about the juvenile court and set it apart from other courts that had tried children's cases in earlier periods of American history was not its philosophy of protecting children from the rigors of the

criminal justice system. That philosophy had long been adopted by earlier institutions, if not fully implemented. And, as unfair and impersonal as the criminal justice process was for children in the inferior criminal courts, the available historical evidence does not support the view that the juvenile court acts were directed at curing that evil.

Similarly, the focus of juvenile court procedures on an assessment of character to the detriment of adjudicating the facts of delinquent behavior was not a novelty introduced by the juvenile court. It had been common practice in the nineteenth century in Illinois and other states where a commitment to a juvenile facility was conditioned on a judicial determination of fitness and character, rather than guilt or innocence.

The *parens patriae* justification for juvenile court procedures that ignored legal formalities was early recognized to be weak and fragile. Arguments to support this theory failed to acknowledge that *parens patriae* had never been applied to enforce penal law. Furthermore, it was used as a justification for state power without implying anything about the procedures to be followed in exercising that power.

What was truly new in the juvenile court was the development of a personal rapport between the judge and child before the court. This innovation of the juvenile court faded when Ben B. Lindsey's tenure on the Denver juvenile court bench concluded. It diminished further as the responsibility for rehabilitating the children who came before the court passed from the judiciary into the hands of mental health professionals. From then on, the juvenile court became purely a court of law. Inevitably, later statutes and case law would demand that it act like a court of law.

1. Illinois Juvenile Court Act (1899), Ill. Laws 133.
2. See, for example, Platt, A. *The child savers*. Chicago, IL: University of Chicago Press, 1968; Fox, S. The reform of juvenile justice: An historical perspective. *Stanford Law Review* (1970) 22:1187-1239.
3. Lewis, O. *The development of American prisons and prison customs, 1776-1845*. Criminology, law enforcement and social problems series. Publication No. 1. Montclair, NJ: Patterson Smith, 1967, pp. 14-15; see also Morris, N., and Rothman, D., eds. *The Oxford history of the prison: The practice of punishment in western society*. New York: Oxford University Press, 1995, pp. 95-97.
4. The critique was accepted by the reformers. In 1821, Mayor Cadwallader D. Colden of New York wrote: "Shall it in future times be said of New York, that she has educated a portion of

her native youth with a gang of felons in the penitentiary; and this, too, because these youths have in their infancy been abandoned by the hand that should have protected them? Under the present state of things, the penitentiary cannot but be a fruitful source of pauperism, a nursery of new vices and crimes, a college for the perfection of adepts to guilt." Quoted in Peirce, B. *A half-century with juvenile delinquents*. Reprint. Montclair, NJ: Patterson Smith, 1969, p. 40.

5. The law authorized the commitment of convicted youths "as may in the judgment of the Court of General Sessions of the Peace, or the Court of Oyer and Terminer, . . . or of the Jury before whom any such offender shall be tried, or of the Police Magistrates or of the Commissioners of the Alms-House and Bridewell . . . be proper objects." See Acts of Mar. 29, 1824, ch. 126 § 4 (1824) N.Y. Laws 111.
6. Pickett, R. *House of refuge: Origins of juvenile reform in New York State 1815-1857*. Syracuse, NY: Syracuse University Press, 1969.
7. See note no. 6, Pickett, pp. 100-102.
8. See note no. 2, Fox, pp. 1193-95.
9. See note no. 2, Fox, p. 1191, note 29.
10. See note no. 2, Fox, p. 1213.
11. See Fox, S. Responsibility in the juvenile court. *William and Mary Law Review* (1970) 11:659-84.
12. See note no. 2, Fox, p. 1214.
13. Act of Feb. 22, 1861, Ill. Private Laws 149.
14. Laws of Mar. 5, 1867, § 4, 3 Ill. Private Laws 32.
15. *People ex re. O'Connell v. Turner*, 55 Ill. 280 (1870).
16. See note no. 6, Pickett, p. 55.
17. Almshouses housed the poor, adults and children alike, who failed to qualify for public assistance in the home. By the beginning of the nineteenth century, the poor-law system of child care relied primarily on almshouses, "outdoor relief" (public assistance in the home), or apprenticeships, whichever made the least demands on public funds. See Mason, T. Child abuse and neglect. Part I: Historical overview, legal matrix, and social perspectives. *North Carolina Law Review* (1972) 50:302; see also Folks, H. *The care of destitute, neglected, and delinquent children*. Albany, NY: J.B. Lyons, 1900, pp. 11-18.
18. Thurston, H. *The dependent child*. New York: Columbia University Press, 1930, p. 87.
19. Hawes, J. *Children in urban society*. New York: Oxford University Press, 1971, p. 134.
20. See, for example, note no. 6, Pickett, p. 191.
21. Ch. 325, § 5 (1875) Wisc. Laws 633, quoted in *Milwaukee Industrial School v. Supervisors of Milwaukee County*, 40 Wis. 328, 334-35 (1876).
22. See 4 Whart. 9 (PA 1838).
23. Chancellor Kent states that, in the exercise of the state's *parens patriae* power, "the courts of justice may, in their sound discretion, and when the morals, or safety, or interests of the children strongly require it, withdraw the infants from the custody of the father or mother, and place the care and custody of them elsewhere." Kent, J. *Commentaries on American law* 203-205. 11th ed. Boston: Little, Brown, 1867. Quoted in note no. 17, Mason, p. 300.
24. See *Commonwealth v. Fisher*, 213 Pa. 48, 62 Atl. 198 (1905).
25. See note no. 17, Mason, p. 310.
26. See note no. 17, Mason, p. 312.
27. See 55 Ill. 280 (1870).
28. Act of May 3, 1873, §§ 12, 17 (1873) Ill. Laws 147-48.
29. This is the actual title of the legislation, not the Juvenile Court Act.
30. See note no. 2, Fox, p. 1221.
31. In Illinois conditions in juvenile corrections institutions had deteriorated following the closing of the Chicago Reform School. Institutions were grossly underfinanced, and overcrowded.
32. Illinois Juvenile Court Act § 5 (1899) Ill. Laws 133.
33. See note no. 2, Fox, p. 1191, note 29.

34. Tuthill, R. History of the children's court in Chicago. In *Children's courts in the United States: Their origin, development, and results*. International Penal and Prison Commission. New York: AMS Press, 1973, p. 3.
35. Mack, J. The juvenile court. *Harvard Law Review* (1909) 23:104–22.
36. Larsen, C. *The good fight: The life and times of Ben B. Lindsey*. Chicago, IL: Quadrangle Books, 1972, p. 29.
37. See note no. 36, Larsen, p. 37.
38. See note no. 19, Hawes, p. 245.
39. See Colomy, P., and Frutzmann, M. Projects and institution building: Judge Ben B. Lindsey and the juvenile court movement. *Social Problems* (1995) 42:191–213.
40. Schramm, G. The judge meets the boy and his family. In *1945 Yearbook*. National Probation Association. New York: National Probation Association, 1945, p. 192.
41. Lindsey, E. The juvenile court movement from a lawyer's standpoint. *The Annals of the American Academy of Political and Social Science* (1914) 52:140–48.
42. See, for example, note no. 24, *Commonwealth v. Fisher*; see also *Ex parte Sharpe*, 15 Idaho 120, 90 Pac. 565 (1908).
43. The *parens patriae* doctrine was the justification given in these cases for the court's powers, using as precedent *Ex parte Crouse*. See note no. 18, Kent.
44. Lenroot, K., and Lundberg, E. *Juvenile courts at work*. United States Children's Bureau Publication No. 141. Washington, DC: United States Children's Bureau, 1925, p. 1.
45. President's Commission on Law Enforcement and Administration of Justice. *Task force report: Juvenile delinquency and youth crime*. Washington, DC: U.S. Government Printing Office, 1967, p. 3.
46. Glueck, S., and Glueck, E. *Crime and justice*. Boston: Little, Brown, 1936, p. 289, note no. 24.
47. Schulz, J.L. The cycle of juvenile court history. *Crime & Delinquency* (October 1973) 19:457–76.
48. See note no. 47, Schulz, pp. 463–66.
49. See note no. 19, Hawes, p. 248.
50. Glueck, S., and Glueck, E. *One thousand juvenile delinquents*. Cambridge, MA: Harvard University Press, 1934, p. 151.