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SPARE THE CELL, SPOIL THE CHILD:

EARLY HISTORY AND PHILOSOPHY OF AMERICAN JUVENILE JUSTICE



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Cover Art: A stylized depiction of a reformatory, based on Whittier State School, California.
Artist: Tonia Beglari

Table of Contents

<u>Acknowledgments</u>	iii
<u>Abstract</u>	iv
<u>Introduction</u>	1
<u>Methodology</u>	3
<u>Reason and Religion: The Creation Era, 1899-1915</u>	7
The Enlightenment and Creation Era Criminology	8
Puritans, Good Society, and Punishment	14
Moral Force and Juvenile Governmentality	24
Summary: Benevolent Punishment	27
<u>Sciences and Society: The Transitional Era, 1916-1945</u>	28
Revised Science of Man: Psychology, Sociology, Individuation	29
Juvenile Governmentality and Social Defense	35
The Social Gospel	37
Summary: Puritans Exit, Professionals Expand	38
<u>Due Process Revisited: The <i>Gault</i> Era, 1946-1967</u>	38
Social Tension and Criminology	39
Reason, Religion, and the Judge	43
Legalism and the Threat of Judicial Tyranny	46
Summary: <i>Gault</i> in Context	48
<u>Conclusions and Further Questions</u>	49
<u>Appendix: Parameters, Indicators, Justifications</u>	51
<u>Works Cited</u>	54

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Abstract

Scholarship has long recognized that the juvenile justice system was founded with a tension between the benevolent welfare concern for youth and its harsh, punitive realities – a system born out of and shaped by contradiction. The system is usually described as dominated by the benevolent *parens patriae* philosophy in its early years, transitioning over time to a more punitive orientation. Against this backdrop, courts generally denied that there was a punitive facet of juvenile justice and treated it as characterized entirely by *parens patriae*, until the Supreme Court suddenly acknowledged the system's punitive underpinnings in *In re Gault*.

I explore the 'how' and 'why' of the early history of juvenile justice from a philosophical and structural standpoint. The self-representations of early juvenile courts and other juvenile justice practitioners reveal that the system modern scholars describe as having both benevolent and punitive facets was understood instead as harmonious, or at least, not in direct tension. Juvenile justice practitioners in the early years were aware of the similarities between industrial schools and prisons, but that relationship did not pose a serious problem to the philosophy of juvenile justice. Courts repeatedly designated the system as non-punitive, almost universally shutting down legal resistance movements against juvenile justice. How did juvenile justice emerge carrying these tensions, and why was that state of affairs accepted as consistently benevolent? Furthermore, why did courts go so far as to deny that there were punitive aspects to juvenile justice, and why was this position revised seventy years later?

I draw upon court cases, institutional records, and sociolegal texts on delinquency to construct a story of American juvenile justice and its changes from 1899 to 1967. I argue there are three mentalités at work in early juvenile justice: Puritanical philosophy, Enlightenment concepts of criminology and rationality, and an expansion of governmental rationality and authority. These ideas, as well as their interaction and relative shifts over time, help explain the seemingly contradictory juvenile justice system and the rise of a legalistic rights concern after the 1940s, which created a tension resolved by *Gault*.

Introduction: Paternalism and Punishment

In 1899, Illinois created the first formal juvenile court, marking a major development in the state's involvement with youth. The new judges and practitioners felt that in juvenile courts and treatment institutions, "the idea of punishment is eliminated" (Tuthill 1904:3). Juvenile justice was "benignant, paternal, salvatory," in contrast to the "punishment and repression" (Barrows 1904:ix) that had characterized the previous treatment of youth under the criminal justice system.

Accounts of the reform and industrial training schools where youth were committed tell a different story. The superintendent of Elmira, one of the first reformatories and a model for many reformatories around the U.S. (Vincent 1899:9), believed that "sentimentalism in a reformatory is what dry rot is to the beams of a building" (Vincent 1899:11-12). Sentimentalism was so far removed from the Elmira reformatory that it was "a common thing for inmates to express a preference for the State Prison" (Vincent 1899:11). The early youth reform schools frequently employed "corporal punishment, solitary confinement, and various devices for humiliation" as elements of a set of "means of procuring not only control, but also moral development" (Snedden 1907:17).

What kind of a system, then, was early juvenile justice? Formal self-representations of the system by prominent institutional actors are at odds with the reality of unsentimental corporal punishment. Early practitioners of juvenile justice, seemingly in contradiction, merged punishment and welfare. Commitment to the reformatory was rehabilitative – spare the cell, spoil the child.

Scholarship has recognized tension in the “two disparate philosophical themes” of juvenile justice, philosophies encapsulated in the questions “Should we punish?” or “Should we treat?” (Reader 1996:447). The myth of immaculate conception (Tanenhaus 2002) has been critiqued. Nonetheless, the tension inherent in the system is treated as a logistical and legal problem rather than something that points towards the presence of guiding philosophies other than punishment and *parens patriae*. The early juvenile justice system is still described as “not punitive” in its goals, attempting to “protect, rehabilitate, and heal” as would be expected from “the *parens patriae* doctrine” (Markman 2007:125)¹. Presumably, some decline or change in this ideal caused punitiveness to emerge more clearly, and by 1967, in *In re Gault*², the Supreme Court recognized the punitive realities of juvenile justice and extended due process protections to youth in the system (Zimring 2005:141).

There are explanations at-hand on the conventional view for the how and why of such tension. Perhaps practitioners were either unaware of the system’s realities, or they were simply unconcerned with the contradiction. Similarly, perhaps courts were simply presenting an idealized vision of state institutions, which became untenable over time. However, given the preponderance of benignant self-representations and the clear reports detailing the punitive reality of the early years of juvenile justice³, as well as the great extent to which courts were willing to overlook or even fabricate the system’s functions, I

¹ For similar descriptions of early juvenile justice, see, e.g. Birkhead (2009), Burns (1996), Thorson (1999)

² 387 U.S. 1, 1967

³ In addition to the materials above, see Greenly (1906) and Newlin et. al. (1906) for a Superintendent’s and Board of Trustee’s report of harsh military discipline and life-threatening conditions in Whittier, a California reformatory. Fenton (1935:16) shows the known use of strapping down and lashing, as well as Oregon boots (iron chains cold-welded around the leg of the youth) as means of punishment.

do not find these explanations satisfactory. I do not believe that we understand the apparent contradictions of early juvenile justice.

Scholarship has developed a full history of the legal changes and institutional developments of juvenile justice. I suggest what is missing is an understanding of *mentalité*. A *mentalité* consists of “a *concrete psychological reality*: moral framework, social ideology, affinities and allegiances, worldview, emotions, norms and values” (Little 2010:199, emphasis original). Is there some *mentalité* or idea structure that could explain why the juvenile justice system was created, seemingly in tension, and why these tensions were overlooked? Could changes in *mentalité* help explain why after seven decades, the legal conception of juvenile justice was dramatically revised?

I will attempt to show that rather than a completely contradictory and inconsistent system fragmented by a sudden break in the 1960s, an examination of *mentalité* beyond the philosophies of *parens patriae* and punishment can reveal how and why juvenile justice was treated as consistent, as well as offering a new understanding of the institutional operation of juvenile justice facilities. Furthermore, I believe tracing these ideas over time will help construct a new explanation of the timing of *Gault*.

Methodology

History “reflects agency,” as well as “constraining structures and circumstances” (Little 2010:14). Historical phenomena display complex interactions between people and the conditions in which people exist. Writing history requires picking and choosing from within this complex set of agents and events, and so “‘history’ depends partly on ‘what occurred’ and partly on ‘what we are interested in’” (Little 2010:14-15). My background has produced an interest in philosophical and sociological questions, and my experience

in these fields acts as a frame for the guiding philosophies I consider at the outset. I will not devote much attention to the 'agent' side of history (for example, a full history of juvenile justice might well demand a biography of Ben Lindsey or Zebulon Brockway). I will be telling a story of the structural side of events.

Much of the evidence for the conventional view appears to draw on representations of the court by prominent institutional actors.⁴ Such statements are taken to represent the intent of authoritative actors and therefore explain the character and operation of juvenile justice institutions. Given the disconnect between representation and practice in the juvenile court, “actor-centered functionalism” (Pierson 2004:104) cannot tell the entire story here. As Hall and Taylor explain,

“Many of the institutional forms and procedures used by modern organizations were not adopted simply because they were the most efficient for the tasks at hand, in line with some transcendent ‘rationality.’ Instead they should be seen as culturally specific practices, akin to the myths and ceremonies devised by many societies, and assimilated into organizations...as a result of the kind of processes associated with the transmission of cultural practices more generally” (1996:946-947).

I will draw heavily on the discursive fields that I believe represent such cultural organizational practices. If formal legal self-representations cannot tell the full story, perhaps searching conference records and treatises on youth criminology can help fill in the gaps. I therefore give great attention to early sociolegal texts and compare them with institutional records⁵ and formal law. Where texts across these types converge, or where there is a strong preponderance of consistent indication or representation within a single

⁴ See, e.g., Mack (1909:120) and Scott (2000: 1414-5) for examples of benevolent institutional representation transition to punitive representation from authoritative actors

⁵ When possible, I use institutional records directly, or make inferences from texts that report on them. Unfortunately, there are large chunks of history where no records exist that are accessible to me within the

type of source, I regard this as a finding of some structural reality. There is inevitably some element of subjectivity as to what ideas I select, but I have done my best to scan a wide variety of sources and follow references in order to thoroughly ground my findings.

I will attempt to move from “snapshots to moving pictures” (Pierson 2004:2) by starting at the moment of creation, building an expansive picture of juvenile justice during that time (a snapshot), and then tracing the system's development through other eras. There are still limits to moving pictures (it would obviously be impractical to treat every year in detail), and I will have to limit my discussion of later periods for logistical reasons, but I will try to motivate a picture of change over time from 1899 to 1967. I have divided my discussion into three ‘eras,’ bookended by transformative events. Between the creation of the juvenile justice system and *Gault*, there were three major social upheavals: the World Wars, and the Great Depression. I have chosen to group these upheavals under the heading of a single transitional era, in order to enable a focused discussion of the juvenile justice system before and after those upheavals. Therefore, I frame my analysis around the following periodization: the creation era, 1899-1915, the transitional era, 1916-1945, and the *Gault* era, 1946-1967.⁶

I make use of path dependence, the idea that "new institutions...involve considerable learning effects, coordination effects, and adaptive expectations (Pierson 2000:255). Institutions gain particular methodologies, expertise, professional networks, and other ways of functioning over time. The "entrenchments" of such "institutional arrangements obstruct an easy reversal" (Levi 1997:28). I will therefore assume continuation of mentalités as a baseline, established in the creation era, and attempt to

constraints of this project.

search for difference and change in order to test this assumption.

My search for change will make use of Weber's concept of elective affinity, “long-cyclical movements produced by the discursive interaction of all the actors involved...crucially facilitated by changing representations” (Melossi 2008:7). Rather than a relationship of strict determination, the relationship between idea and structure is conceived of as always in motion and development depending on the dominant social and political representations and conditions at any particular time. On this view, the influence of ideology on structures is real and substantial, not static or fixed. Rather, as various social and political actors engage each other, “particular representations tend to dominate within given cyclical periods” (Melossi 2008:7). Therefore, I will proceed by attempting to search out factors that might cause a shift in the expression of *mentalité* during a particular era, and then I will attempt to confirm or disconfirm such a shift through analysis of texts and institutional records.

Based on a preliminary reading of early texts on juvenile justice and various secondary literature on the history of youth criminology, I developed a set of *mentalités* as theories to test in this project: Puritanical philosophy, Enlightenment rationality, and a Foucauldian account I term juvenile governmentality. The Puritanical idea is developed from sociological accounts of the influence of Puritan philosophy on American values and institutions, notably the work of Weber (2009) and Morone (2003). I use the term Puritanism because of particular dualistic and authoritarian ideas that emerge, but the idea also serves to encapsulate a general religiosity. The Enlightenment idea is drawn from accounts of the effect of Enlightenment-era theories of the state, rationality, and

⁶ In the absence of any constraints of time or space, a decade-by-decade periodization would have been appealing. However, this approach was far from feasible.

criminology on modern punishment practices (Melossi 2008; Beirne 1993), makes great analytic use of the various scientific and academic techniques used to study delinquency. The juvenile governmentality theory is drawn primarily from Donzelot's (1979) analysis of the purpose juvenile justice institutions served for state authority, in legitimizing state encroachment upon the family. Each of these ideas is introduced in more detail and with specific reference when it is used in the text. To enable a more rigorous analysis on my own part, I used a coding system marking key indicators of these idea structures. Codes are listed in the appendix.

I will now turn to the creation era of juvenile justice to develop an account of the mentalités that provided for a seemingly compatible practice of benevolence and malevolence in the system's early years.

Reason and Religion: The Creation Era, 1899-1915

The early years of juvenile justice were saturated with a youth-phobic criminology that held youth culpable for the problem of crime in society. Youth-phobic criminology drew heavily on ideas from the Classical and Positivist schools of criminology, as well as Enlightenment philosophies of rationality and subjectivity. After examining creation era criminology, I will develop an account of the Puritan philosophies that were influential in the foundation of juvenile justice. Puritan philosophy held affinity with criminologists on key issues of rationality and responsibility, while also treating punishment as a corollary to benevolence and offering authoritarian justifications of such punishments. I close with an account of the institutional practices that emerged from the synthesis of calculative criminology and harsh yet humanitarian religiosity.

The Enlightenment and Creation Era Criminology

For early 20th-century criminologists, "logically, as well as bio-genetically, the youth stands at the inception of the criminological problem" (Drähms 1900:270). Within the context of the general Progressive-era focus on youth (such as labor laws, school attendance laws, and so on), youth delinquency⁷ was the progenitor of all future deviant behavior. If youthful offending could be controlled and removed from society, the criminological task would be complete.

As a result, the question of who youth were – and in particular, who delinquent youth were – became central. The juvenile justice system emerged in a historical context when massive disciplinary interest and expertise was being brought to bear on youth as the center of a problem that spanned all of human society. However, the tools and techniques used to study youth were not new. Youth-phobic criminology developed from the context of earlier attempts to establish a scientific understanding of behavior.

The Classical School of criminology, represented by Cesare Beccaria and Jeremy Bentham, placed “emphasis on the individual criminal as a person who is capable of calculating what he or she wants to do” (Lilly, Cullen & Ball 1989:22). The Classical School was produced in the context of the Enlightenment, which “affirmed the primacy of...rationality...the light of reason was to inspect all forms of associated life” (Melossi 2008:29). Enlightenment rationality inculcated a particular view of subjectivity: humans ideally should exhibit “predictable behavior based on work and ascetic virtues, the habits of a methodical life, discipline” (Melossi 2008:19). From these principles of free will and

⁷ The terms used at the time were often along the lines of “child delinquency” (Snedden 1907:51). Because the subjects of the juvenile justice system were sometimes as old as the early or mid-20s, I use the term ‘youth’ rather than ‘child,’ but I intend to refer to the same set of subjects.

rational calculation, Beccaria aimed at a ‘science of man’⁸ – an understanding of how and why crime occurred, and how it could be deterred. This science incorporated “the doctrines of utilitarianism, probablism, associationism, and sensationalism” (Beirne 1993:29). Curiously, alongside the free-will conception of human subjectivity, the classical science of man endorsed a near-deterministic view of biology. Sensationalism – the doctrine that criminals were pulled towards certain actions in order to achieve pleasurable sensations or fulfill desires – was “seemingly hostile” to free will, yet maintained simultaneously with the other doctrines (Beirne 1993:41).

Cesare Lombroso and the Positivist School developed another dimension of biologism. Lombroso’s medical training developed his belief that biological sciences could provide answers to deep questions about human nature (Lilly, Cullen & Ball 1989:27). This belief, in turn, structured the types of facts and evidence for which Lombroso and his disciples searched. Lombroso’s biologism was about the search for the criminal *type* of man – physical features, heredity, and so on. Lombroso and Beccaria provide the heritage of criminology for the creation era.

In the youth-phobic criminology of the creation era, the search for the criminal man became the search for the criminal youth. A prison chaplain’s early systematization of progressive-era criminology displays the extent to which youth was emphasized as a criminological target. In a mixture of Beccarian sensationalism and Lombrosian biologism, "biological conditions" associated with youth were said to have "a great influence upon the mental and emotional natures," natures that were exacerbated by "the

⁸ I’ve kept the term science of man in its original, gendered form to make clear its connection to Beccaria. Criminologists, unsurprisingly, also treated women, – although female delinquency was often treated in highly gendered ways (e.g., the emphasis on sex delinquency for female youth), particularly in the creation era.

budding season of the sexual and functional activities" (Drähms 1900:282). Perhaps prototypical of modern psychological discourse concerning youth and 'hormonal imbalance,' progressive criminologists treated youth as subjects to a series of biological impulses that created unique criminological problems. These biological impulses reaffirmed the need for particular criminological attention for youth, as it placed their criminality beyond their own control. Youth, particularly bracketed in the developmental stages we call adolescence and early adulthood, were seen to be "least capable of earning an honest living, or qualified to resist temptations" (Boies 1901:247)⁹.

As one judge explained, where the old system asked "did [the offender] do the act," the new school of thought asked "what his history was, what his heredity, what his environment, how he had come to do the particular act" (Mack 1907:3). Mack's speech, delivered to an audience of lawyers at a state bar meeting, reveals that history and heredity were associated in a causal manner with the youth coming to 'do the act.' Similarly, a text on the educational problems of juvenile reform schools discussed "the causes which lie at the roots of the social order known as child delinquency," including "imperfect heredity from parents who should not be parents" (Snedden 1907:51). The text also emphasizes the importance of various "economic conditions" (*ibid*), which might lead to youth crime, such as alleviation of hunger. Therefore, both sensationalism (hunger) and biologism (heredity, genetics) are doing work to frame delinquency. Criminology at large was explicitly biologicistic – for example, "criminals in general, tested anthropometrically, have smaller brains, larger jaws, less facial expression," and other biological markers (Hall 1904:335). However, youth biology also underscored

⁹ Boies worked on Progressive concerns, e.g. delinquency or poverty, and treatments in confinement. I quote *The Science of Penology*, in which he systematizes contemporary science of prisons and criminality.

certain markers of criminality. Criminals, for example, were held to “love sententious phrases or obscene images, to which adolescents have a special predilection” (*ibid*).

Much early criminology of youth was concerned with classifications of youth (biological types, delinquent and non-delinquent types, and so on). The act of classification itself was seen as beneficial to effective reformation. Even when there was disagreement about the appropriate scheme of classification – “sometimes along lines of age and physical development, sometimes on the basis of the offense... sometimes on the basis of moral or intellectual development after entering the institution,” there was widespread agreement that “extensive classification” had bolstered “effectiveness of the institution” (Snedden 1907:19). In an era of great faith in rational typification of criminals and youth, the very act of creating, classifying, and segregating types was productive.

Drähms’ work reveals how biology and rationality as components of the science of man produce a particular understanding and bracketing of youth delinquency:

“It requires but a glance to perceive the importance this feature of juvenile criminalism sustains to the general problem. The original material that composes it is unmistakable when taken in conjunction with its origin and environment and traced to bio-genetic and organic sources. These moral anomalies, it must be remembered, are the legitimate and logical outcome of preconditions over which the juvenile subjects themselves have but little control, and to which they are subject with all the pertinacity of an inviolable law” (Drähms 1900:292).

A particular biosocial science and faith in rational classification are combined in the modern practice of the ‘science of man,’ which in many respects was a science of youth. Youth are, on one hand, rationally fulfilling certain drives and sensation, such as hunger or predispositions towards certain pleasures. On the other hand, youth are

deterministically acting out their biology both in terms of their developmental status and their criminal heredity. Both Classical and Positivist criminology are in play.

Another example of the general influence of Enlightenment theory on the early practice of juvenile justice can be seen in the emphasis on the inculcation of rationality. An early report on American reformatories emphasizes that “intellectual training, i.e. from the Grammar School of the illiterates to advanced lectures” were part of “the methods of reform” (Vincent 1899:11).¹⁰ Reports from Whittier explicitly connect education to social utility, as the board “proposed to operate the school...to correct the faults of mind and body; instill a vision of the well-rounded and useful life” (McVay et al. 1912:1). The juvenile court itself was praised as the “rational method” (Beitler 1904:194) of approaching youth delinquency.

Such a focus on rationality, both inculcating it in institutional subjects and using it as a criterion of institutional evaluation, reflects the Enlightenment theory of the state, which “set for itself, as its fundamental task, the molding of its own subjects, i.e. furnishing them with ‘rationality’ that would undoubtedly help them appreciate the rationality of the State” (Melossi 2008:19). It was from this drive that a particular sort of Enlightenment subjectivity was inculcated (the concepts of work, virtues, habits, and discipline referenced above). Education, in itself, was a tool for producing rational, reasoning subjects in the juvenile justice system. However, juvenile justice practices went beyond teaching mere reason and habituated specific practices of work and discipline to create productive and desirable subjects. The British report notes “one cannot fail to be

¹⁰ Similarly, one justification for overriding parental rights as *parens patriae* was if “the natural parents” were “unequal to the task of education, or unworthy of it” (Mack 1907:7). The reform schools were to take “not the normal child, but the abnormal, the neglected, the perverted; and, by educative

struck by the relation existing between the ideas of a large school of American penologists and the social doctrines of the French revolutionary period” (Vincent 1899:10). The claim that Enlightenment theories of subjectivity and politics shaped creation era American penal institutions dates back to the beginnings of juvenile justice.

In light of the presence of an Enlightenment mentalité, it is directly relevant to ask how Enlightenment criminology might have pressed towards benignant self-representation of a punitive system. The liberal humanism of the Enlightenment was critical of “arbitrariness and irrationality” in harsh punishments (Melossi 2008:30)¹¹ Humanism concerned itself with the fair and benevolent treatment of criminals. Since Enlightenment humanism was a structuring guiding philosophy of the juvenile justice system, humanistic benevolence is a probable source of the idea of care over punitiveness.

However, this does not resolve the tension of the research question. The legacy of the science of man explains why youth criminality was treated as such a pressing problem and why there was a push to present the reform of youth criminality in beneficent terms. What is not explained is the punitive reality underlying such reforms. I believe the answer is found in an elective affinity in the creation era between the Enlightenment view and a deep Puritanical religiosity. These ideas had affinity concerning the importance of rationality and reform, and the harsh dualism of the Puritanical elements introduced an idea of punishment as the natural corollary to reform. If such an affinity existed, a clear picture emerges as to how the benevolent representations and punitive operations of early

efforts...measurably reshape the warped character and mind” to reflect proper rational functioning (Snedden 1907:8).

¹¹ Beccaria himself rejected “the cruel physical pain inflicted by the judiciary” in certain cases (Biers 1993:22).

juvenile justice could have seemed consistent.

Puritans, Good Society, and Punishment

It is far from novel to suggest particular religious ideas have had important influences on American society and institutions. Protestantism, and Puritanism in particular, have been more than theological forces. Puritanism contributed to the formation of “social, political, ethical” (Kang 2009:148) ideas and ideals in the United States. Puritanism can be seen as a mentalité, “a combination of life styles with living values” (Kang 2009:149).¹² Weber famously described Puritanism as “what is the most characteristic of the social ethic of capitalistic culture” (2009:25),¹³ and “the background of ideas” (2009:37) against which American individualism developed. The capitalist work ethic and individualist spirit manifested themselves in America's industrious, free market capitalist society.

The early reformatories adopted these values and attempted to instill them in inmates. A few years after the close of the creation era, a retrospective survey of American punishment practices described a much-praised program at Elmira where idle time was transformed into labor. The program used a "marking system" to account for conduct, school work, behavior, performance at learning trades, and so on, then giving out “a small daily wage" in order to create in "each prisoner a sense of responsibility for his own actions" (Robinson 1923:124). The marking system went beyond mere

¹² I want to emphasize a distinction drawn by Kang: I am interested in the influence of Puritanical philosophy, in the sense of a worldview or outlook shaped by the Puritan heritage of the United States. I am not interested in the exact denominational status of those involved in the administration of juvenile justice.

¹³ Weber's title refers to Protestantism generally rather than Puritanism specifically, but Puritanism is referenced in the text and has had a direct influence on some American institutions. Weber appears to identify Puritanism with one of his four typifications of ascetic Protestantism, as the type with the greatest direct influence on capitalist values. I will generally refer to the more specific ideas of Puritanism in order to make clearer some of the threads of influence I want to draw out, but general Protestant religiosity is important.

productivity, and good behavior itself was turned into a form of wage labor. Good behavior was tied through marking with trades and wage labor. The reformatory thus morally organized the lives of inmates around work. The hope of all this was "reformation of the offender through bringing constantly to bear on him positive influences for good" (Robinson 1923:125). The Puritan ethic was inculcated in reformatory subjects.¹⁴

Industry is one way of revealing the influence of Puritan ethics in reformatories. However, before deepening my account of Puritanism and the punishment of youth, I want to establish affinity between the Enlightenment mentalité and Puritanism, as this affinity underpins my conclusions about Puritanism's significance. Revealing this affinity requires a sketch of the Puritan conception of good society, which overlaps considerably with Enlightenment accounts. Puritan political theory told the story of a government dependent on consent of the people (Hall 2004:161), an account reminiscent of social contract theories. The standards for participation in church and government were high, and well-educated citizens were desirable. The first Puritan governments in the American colonies mandated certain educational programs, notably, literacy (Hall 2004:159). Therefore, an affinity emerges between the inculcation of Enlightenment rationality described by Melossi, and practiced by early juvenile justice institutions¹⁵, and certain features of the Puritanical vision of good governance and society. Literate and rational people could read the Bible and participate in political processes in a contract-based

¹⁴ A potential objection is that the reformatories were simply reflecting the values of the American industrial age. However, I am working from the Weber (2009) thesis, which ties Puritanism to American industry. If Weber was wrong, it would be compelling counter-evidence against several of my claims, but an in-depth critique of Weber is beyond my scope here.

¹⁵ I am referring specifically to practices at Elmira and Whittier described above (see p. 12), but given the evidence that these reformatories were models for other institutions, the claim appears to have

society.

The Puritan conception of subjectivity goes beyond the Enlightenment account. People are not merely rational, but “inherently sinful and corrupt, and only by severe and unremitting discipline could they achieve good” (Kang 2009:149). Sin, if not corrected and opposed with sufficient speed and strength, could become a cancer eating away the “moral and social health of a community” (Hall 2004:162). Indeed, early Puritanical leaders were deeply concerned about social “declension” (Hall 2004:193), a slow rotting and collapse of social values and righteousness. The drive to reform American society emerges not long after American society itself was formed. Puritanism therefore extends beyond mere affinity with Enlightenment political theory and introduces a pessimism and intolerance about humanity, wherein the necessary corollary to rational, literate, good society is severe discipline and intolerance of error.

As it was for criminologists, youth is central in the Puritan vision of both social decline and social reform. Youth are born sinful, but might be saved through hard work and redemption, a salvation that adds a humanitarian side to Puritan pessimism. Youth is therefore the target of education and of authoritative control. A synod on social declension presents the following version of concern over youth and authority:

“As to what concerns families and the government thereof, there is much amiss. There are many families that do not pray to God constantly morning and evening, and many more wherein the Scriptures are not daily read.... Some...houses that are full of ignorance and profaneness.... And many householders who profess religion, do not cause all that are within their gates to become subject unto good order as ought to be.... Nay, children and servants that are not kept in due subjection; their masters, and parents especially, being

generalizability. Furthermore, courts appear to have had such purposes in mind for juvenile justice institutions – see my later discussion of *Commonwealth v. Fisher*, 213 Pa. 48 (1905)

sinfully indulgent towards them. This is a sin which brings great judgments, as we see in Eli's and David's family. In this respect, Christians in this land, have become too like unto the Indians, and then we need not wonder if the Lord hath afflicted us by them.... Most of the evils that abound amongst us, proceed from defects as to family government."

-Mather [1679]2004:197

The importance of civil government institutions, in this context, is to enforce these same rules: righteousness instead of profaneness, proper subjection, and in so doing avoid God's afflictions and vengeance against society. Even before the United States had been brought into being as a nation, a national character had taken hold with regards to the treatment of children.

For the criminologists who were so concerned with the rational categorization and study of youth, the same moralized framing of youth as a social threat posed by Mather did a great amount of work framing youth as targets of criminology. One account was that "vice and immorality are so very pervasively corrupting the social fabric," that "there has grown up in the country a generation almost without moral education in the public schools that skepticism, infidelity, irreligion, atheism, and anarchy are obtruding themselves" (Boies 1901:367). Mather saw youth in 'ignorance and profaneness,' a condition of disorder. Boies observes essentially the same conditions. Youth, and the condition in which they are raised, is intimately tied to a set of ailments that includes explicitly religious as well as social and secular elements. There was a concern that the "Bible and the teaching of morality and religion" (Boies 1901:368) had been removed from schools. Boies' work is framed in terms of "the defence of society against crime,"¹⁶

¹⁶ The phrase comes from the subtitle of his book.

and so the irreligiosity of youth is a social and specifically criminological problem.¹⁷

As one juvenile court judge wrote, juvenile justice from this mindset was a means of "formation" of the child (Hurley 1904:8), a weapon in the war against social decay. Reform schools were a means to stitch together the torn social fabric. In the Whittier curriculum, "the value of an individual to himself and society is largely conditioned on the extent of his self-respect; and the highest motive for this self-respect is reverence for God, in whose image he is formed. An important factor in the formation of character, is such religious training as gives a standard for the conscience...and as demands an accounting to God. Such instruction will be part of the regular School education, and attendance upon it will be required" (McVay et. al. 1912:3).

A key point previously implied, but important to make explicit, is that Puritanism is not solely a punitive force. Puritanism involves a dualistic approach to human nature, and to youth in particular. Puritans can be described as "black browed witchhunters [who] so darkened the national visage...how narrow and cold was their prison," or alternately as "a courageous, humane, brave and significant people" (Morone 2003:34). One side is hostile, harsh, intolerant. The other is redemptive, striving, hopeful. This dualism reflects fundamental Puritan metaphysics; humans have the potential for salvation and elevation through works and God's grace, but are born sinful and fallen.

Puritanism also has a special concern with the upbringing and discipline of youth,

¹⁷ Similar accounts were common in the creation era, and echo the early Puritanical sermons to a great degree. Consider a juvenile court judge's argument for the importance of the court's focus on youth: "reformers throughout the United States realized that the worm in the bud, the poison that was destroying the life of good citizenship, the moth that was gnawing at the fabric of human society until it was becoming tattered and disreputable was the fact that the rising generation was growing up surrounded by seasoned vice and hardened criminality...If the crime disease should ever be destroyed the work of fumigation must begin in the homes and with the children" (Hurley 1904:7). Reform schools also echoed these arguments: youth criminality was the result of, among other things, "a deficient realization of responsibility and accountability to self, the law, and God" (McVay et. al. 1912:1)

as youth are seen as “the bottom of all our troubles...each generation frets about delinquents running wild...if virtue makes us special...poor parenting bodes big trouble down the line” (Morone 2003:17). In other words, the general duality of Puritanism reproduces itself in the particular context of youth. On the one hand, youth are to be raised up through education programs and good upbringing, on the other hand youth are potentially dangerous, ‘sinful’ criminals (Ning 2009:149).

Early Puritan writings in the United States display the dualistic treatment of youth in its early incarnation. Sarah Goodhue, a Puritan mother who believed she had a premonition of her death and wanted to leave advice for her children, wrote a letter in which she warned them to “be sure to set the fear of God before your eyes; consider what you are by nature, miserable sinners, utterly lost and undone; and that there is no way and means whereby you can come out of this miserable estate; but by the meditation of the Lord Jesus Christ.... yet God is a merciful keeper of covenant. Endeavor...to improve all the advantages that God is pleased to afford you” (Goodhue 2004[1681]:184). Youth, here, contain simultaneous and contradictory possibilities: they may be hard workers elevated by a merciful God, or wretched sinners condemned by a vengeful one.

The same dualism is reproduced in the early texts on youth and juvenile justice. A psychologist who developed one of the first uses of the concept of adolescence and age bracketing of youth wrote that youth merited particular attention because “no age is so responsive to all the best and wisest adult endeavor. In no psychic soil, too, does seed, bad as well as good, strike such deep root, grow so rankly or bear fruit so quickly or so surely” (Hall 1901:xviii-xix). Youth is understood almost from the moment of its

conceptual creation as susceptible to either great good or great evil, saved or fallen.¹⁸ The good seed is juxtaposed in a binary to serious depravity, the bad seed, which requires immediate punishment. There is not a middle ground or gradation. Youth are either not criminals, or they are terribly dangerous ones. In the dualistic mode of thinking, delinquency is an innocent in need of aid due to dependency, or it is indicative of some deep “moral depravity” (Boies 1901:248). The notion that a good person could willfully do a bad thing is one that does not fit into this conceptual framework.¹⁹

Another instance of the distinctively religious framings of juvenile justice occurs in the introduction of a report to Congress authored by an organization involved in the evaluation and spread of juvenile courts overseas.²⁰ Juvenile justice is described as the fulfillment of a Biblical prophecy from Isaiah²¹ (Barrows 1904:xvii). Isaiah was a book of particular importance to Protestant theology (Sawyer 1996:142), and the prophecy cited plays directly into the theme of dualism between punishment and salvation. Isaiah was a religious hero who could save Jerusalem from its “great sin,” but before salvation occurred there would have to be a punishment to “demonstrate YHWH’s power to Israel” (Sweeney 2006:257). The image of a child leading the Israelites was a reference to what would occur after punishment had subsided, when a new (and saved) society would be

¹⁸ Boies offers a more subtle presentation of the same idea: youth “should never be held or dealt with as real criminals,” except for when their “great crimes, indicative of serious moral depravity, require serious and certain repression” (Boies 1901:246). The justification for not treating youth as criminals is not that they cannot perform acts we would call criminal if done by adults, but rather a presumption of youthful innocence and purity – in other words, youth are pure except for when they’re fallen (or ‘morally depraved).

¹⁹ For the sake of brevity and clarity, I have tried to focus on good representations of what I see as the dominant strain of thought. There were certainly professionals who broke from this mold. For example, one psychologist lamented dualistic rigidity: “one reason why the girl problem has been considered so much harder...is that we have over-looked the fact of individual variation and have tried to fit them all into one mold,” a procedure that leads to unfortunately “unscientific” results (Fernald 1914:13). As Fernald saw individual variation in delinquents, there was also individual variation in juvenile justice professionals.

²⁰ The organization is the International Prison Commission, although this group no longer exists. It changed its name several times in the early 1900s and was eventually subsumed into a subcomponent of the UN.

constructed. Punishment, therefore, was “not simply to penalize the people but to draw them closer to himself [Yahweh/God]” (Schmitt 1986:109). Barrows’ invocation of Biblical prophecy describes the juvenile justice system as a means of punishment that is deserved but serves to bring its subjects closer to righteous authority. Punishment is the other side of salvation.

The concept of salvation does a great amount of work in early legal thinking about juvenile justice to justify the lack of due process. In response to one of the first legal challenges to juvenile justice, when a youth challenged his commitment to a state reformatory by a juvenile court on grounds that there had been no due process of law, the Pennsylvania Supreme Court explained why due process was unnecessary:

“The act...is not for the punishment of offenders, but for the salvation of children, and points out the way by which the state undertakes to save...all children under a certain age, whose salvation may become the duty of the state....The legislature surely may provide for the salvation of such a child...when the child gets there and the court, with the power to save it, determines on its salvation, and not its punishment, it is immaterial how it got there. The act simply provides how children who ought to be saved may reach the court to be saved...the object of the charity is reformation, by training its inmates to industry...imbuing their minds with the principles of morality and religion;... It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members”

-*Commonwealth v. Fisher*²², 213 Pa. 48, 1905: 50-55

What it means to save a child is understood in a certain way; the *parens patriae* has a purpose informed by a very particular viewpoint which has plenty of room within its

²¹ Specifically, Isa 11:6 – “a little child shall lead them”

²² *Fisher* was cited by other courts in creating justifications for other states’ systems, and similar discourse was employed. See, e.g. *Ex Parte Sharpe*, 15 Idaho 120, 1908, p.127-9, *Pugh v. Bowden*, 54 Fla. 302, 1907, p. 310; *Mill v. Brown*, 31 Utah 473, 1907, p. 612 (cited approvingly in conjunction with numerous other

ideological scope for harsh treatment of fallen offenders. That is, the Pennsylvania court describes the system as salvatory and not punitive, but the institutional reality of the system was incredibly punitive, and well known. The court is not simply presenting an idealized view of punishment, as courts might be accused of doing on a routine basis. Rather, the court is denying that punishment could have occurred at all, and the salvation of the soul is a key piece of internal logic to reach this conclusion. Within the dualistic treatment of youth in Puritan philosophy, punishment is a necessary corollary to salvation. Some of the particular institutional practices mentioned by the Pennsylvania court are training in Puritan values, such as the importance of training in industry.²³ The Enlightenment-informed framings of benignance find plenty of affinity with the harshness of Puritanism if such harshness is, in the long run, a means of helping.

Therefore, rather than treating the benignant representations and punitive realities of juvenile justice as contradictory, understanding the influence of Puritanical philosophy and Enlightenment theory offers an understanding of how such a system could have emerged and been treated as consistent and sensible by its progenitors. Entrenched idea structures, visible in many aspects of criminology and institutional practice, created an understanding of punishment and benevolence wherein the two were directly tied.

Punishment was a means to benevolent ends.

In order to provide useful context for a later discussion of historical shift, I will briefly discuss the authority to apply punishment, and its relation to Puritan philosophy. God, in the Puritan framing, has the authority to punish sinners. Representations of the

state court justifications of similar systems)

²³ I am relying here on Weber's previously mentioned idea that the American industrial spirit is heavily indebted to the distinct religious philosophy that is "characteristic of the social ethic of capitalistic culture" (Weber 2009:25)

juvenile court judge's authority in the creation era, curiously, trend towards divinity. As summarized in a judge's address on the topic to a state bar association, to be a juvenile court judge "requires a man of broad mind, of almost infinite patience, and one who is the possessor of great faith in humanity....Those who come, and are intended to be brought, before juvenile courts, must be reached through love, not fear. The purpose in bringing them before the court is to lead them away from, and to destroy their propensities to, vice; to elevate, not degrade..." (Mack 1907:11). In Goodhue's description, God is described as a merciful authority figure who would elevate the deserving. In Mack's speech, the judge is described in similar terms. The representation of the benevolent and fatherly judge, possessed of qualities far beyond ordinary people, was common. In the account of a sociologist involved with several rehabilitative and reformatory organizations, the juvenile court judge "should be chosen for his learning, his kindness, fairness, tact, and experience with children. No position calls for higher qualities and finer judgment" (Henderson 1901:324). Furthermore, if the judge had these characteristics, then his very authority would be a curative. Mere contact with the judge would impart "a dignified, impressive, and fatherly lesson, delivered from a position of power and authority, charged with wisdom and kindness," making a "profound impression on a young person" (Henderson 1901:325-6).²⁴

It is possible that the Puritan conception of authority is related to the presence of punishment, as the judge must have the legitimate authority to punish those undeserving

²⁴ In fact, "defiance of authority" (Tuthill 1904:2) was sometimes seem as causative of juvenile delinquency – the notion that defying authority figures leads to crime/sin is incredibly Puritanical. Ben Lindsey, a Colorado judge who would be thought of as someone who "exemplifies a typical humanitarian stance" (Bennet 1981:104), grounded a great deal of his practice in such ideas – delinquency occurred because "these children do not know how to obey," and the court's intervention should be to "teach them how and why....To respect authority" (Lindsey 1904:29).

of elevation. However, the dualistic treatment seems more central to the question of punishment and I do not wish to foreground authority in relation to punitiveness. I mention the question of authority now because a later change in conceptions of the judge's authority will become essential to understanding the story of *Gault*.

Moral Force and Juvenile Governmentality

I have laid out an explanation of what may seem to be contradictory representations and practices of early juvenile justice, unified through a discussion of Enlightenment theory and Puritanical philosophy. I will close my discussion of the creation era by developing a theoretical explanation of particular institutional practices as a result of the intersection and affinity of these philosophies. That is, I have already addressed the punitiveness of institutions, and some specific practices (such as industrial training) seem to be markers of a Puritan ethic. However, there were a variety of other institutional practices that merit investigation.

Puritanism and the science of man often ran through and in the same texts, authors, and institutions. A survey of the relation between juvenile courts and other social institutions (schools, prisons, and so on) describes juvenile justice as a "practical synthesis" (Eliot 1914:121) between the "humanitarian motive" and the scientific application of "social defense" (Eliot 1914:119). The probation officer, on this view, was a "social physician" (Eliot 1914:70) for "the body social" (Eliot 1914:71). The essential point is that scientific presentations of expertise - such as a criminologist's description of juvenile justice practitioners as "physician[s] most skilled" treating a "serious illness" (Schoff 1915A:3) - are framed around religious concepts of "immortal souls" (Webster, in Schoff 1915B:np).

I draw upon critical theory to describe the institutional effects of synthesis between religious humanitarianism and social defense through a view I term juvenile governmentality. On this view, modern states in the early 20th century were confronting an "unbreachable point of resistance" (Donzelot 1979:83) to their power: the family. The categories of "children in danger" and "dangerous children," which the juvenile court and juvenile justice system treated jointly, provided a rationale for intervening in families (Donzelot 1979:82). Criminologists such as Boies, representing both religious and Enlightenment strains of thought, ended up justifying such an approach to the family, as society needs "good parental care and training," and only the state has "the requisite authority.... The State alone has the ability to comprehend the whole mass in its care everywhere" (Boies 1901:334).

Salvatory aims set by religious discourse and the targeting of framing of youth provided by Enlightenment discourse produce a justification of State power overriding family institutions and expanding its care of the population. In some sense, the very application of the concept of *parens patriae* captures this shift. However, religious morality and science produce a large set of indicators ripe for Foucauldian analysis. For example, the reform school was concerned with "building and maintaining of sound bodies" in order to produce "the life of the good citizen everywhere" and encourage "useful work" (Hill 1921:5). The Puritan ethic of hard work and production, combined with a set of procedures informed by Enlightenment rationality and classification, created a system geared to the production of docile bodies. For example, the particular techniques involved in building sound bodies involve high levels of regimentation. There was a "highly elaborate" system of military organization at many reformatories, wherein "the

whole population is divided into 16 military companies, constituting 4 battalions, and a regiment, the object being to inculcate manliness of bearing and movement and feeling, incident to good military training. The movements were perfectly executed and I do not hesitate to say that a battalion of Guards might envy the precision of the manual drill." (Vincent 1899:12)²⁵ Beyond the physical use of military regimentation, bodies were undoubtedly shaped to a certain standard by the early system. Physical programs that would produce desirable bodies were, for example, "a course of Turkish baths, fitted in a most costly and elaborate manner. Thence they [the inmates] are taken to a shower bath and given a cold douche, and then put through a course of gymnastic exercise, the purpose being to repair and fit the organism for its normal and healthful functions, increasing the amount of nervous energy, and by this means strengthening character." (Vincent 1899:12).²⁶ The creation of a specific sort of physicality is clearly at work here, a type of body that is presumably healthy and productive in society. Rationality and morality have produced a focused concern with even the smallest bodily motions.

This mixture of productive bodily control with labor and incarceration predates the juvenile justice system. Foucault locates this workhouse model in the 17th century, and notes it was not "solely a result of economic conditions: a moral perception underpinned it and provided its force" (Foucault [1972]2006:72). In the later context of juvenile justice, a Puritanical mentalité appears to provide the moral force and direction

²⁵ This description is specific to Elmira, but as noted, Elmira served as a model for many other reformatories. Furthermore, there are explicit depictions of military models of discipline in other records, such as Whittier's. There is an access constraint on how many early records I can see, so although I think this regimentation was widespread, that is somewhat speculative on my part.

²⁶ Compare the military regimentation and physical training system, for example, with Foucault's general description of bodily discipline: "the disciplinary controls of activity belonged to a whole series of researches, theoretical or practical, into the natural machinery of bodies...behavior and its organized requirements gradually replaced the simple physics of movement. The body, required to be docile in its

of the labor model of confinement.

The workhouse was concerned with the general “interests and prosperity of all” (Foucault [1972]2006:66), as labor was treated as “an infallible panacea” for social ills (Foucault [1972]2006:69). The juvenile court has already been described as an institution concerned with “social scourges, from alcoholism to drugs...social maladjustments...character disorders” (Deleuze 1979:ix), or generally speaking, social decline. It is therefore significant that the creation era youth criminologists drew upon “the entire range of social science, in all its physical, psychical, ethical, and religious branches” (Boies 1901:246) to confront the “disastrous consequences of juvenile delinquency, mental deficiency, and other forms of maladjustment to the requirements which civilization places upon the human race” (California Bureau of Juvenile Research 1921:13)²⁷. Youth were constructed as representative of a social ill impacting the entire community; the metaphor of a ‘social physician’ for the juvenile court officer had great traction. Such broad concerns for the defense of society itself against youth strongly imply that the synthesis of Puritanical and Enlightenment views can be explained at the level of institutional practice by a Foucauldian account of modern punishment and social science.

Summary: Benevolent Punishment

In the creation era, Enlightenment scientific and political ideas formed the backdrop to a criminological phobia of youth. Puritanical philosophy reinforced key

minutest operations, opposes and shows the conditions of functioning proper to an organism” (Foucault [1977]1995:156).

²⁷ Similarly, “the existence and activities of paupers and criminals affect the physical and spiritual welfare of every member of the entire people” (Henderson 1901:7). Some went so far as to suggest entirely new societies for “defectives” who could “become profitable contributors to a colony of their own kind under kindly and constant direction” (Weymann 1916:7).

Enlightenment ideas regarding rationality and civic responsibility, while introducing a harsh and dualistic dynamic of authoritarian punishment. These ideas together formed a distinctive mentalité wherein punishment and benevolence were not in contradiction. Rather, punishment was an appropriate corollary to benevolence. Punishment expressed concern for the soul; it was salvatory. The competing philosophies we identify as punishment and *parens patriae* were perceived as consistent and complimentary. In addition to enabling the punishment-salvation dynamic, this merger of ideas produced a set of institutional practices targeting both the morality and physique of youth, and these practices as well as self-conceptualizations of criminologists reveal that the juvenile justice system functioned both to expand state authority against family resistance and to discipline subjects to produce particular types of bodies.

The Puritan and Enlightenment idea structures explain the tension of benevolence and punitiveness, and the juvenile governmentality theory describes particular institutional practices that result from that merger. With my picture of the creation era complete, I now turn to the transitional era and trace these mentalités forward.

Sciences and Society: The Transitional Era, 1916-1945

The transitional era saw a great deal of uncertainty and tension in the United States. The Great Depression and both World Wars contributed to social anxieties and fears, and posed unique challenges for criminologists and society at large. Criminology developed new tools and framings of the relationship between youth and society, while religious sentiment softened the dualistic and authoritarian elements found in the creation era. I will order my discussion of this era first by reviewing the changes in criminological study of youth, then the analysis of these changes the juvenile governmentality view

provides, and close by discussing the rise of a new religious sentiment.

Revised Science of Man: Psychology, Sociology, Individuation

The general thematic of Enlightenment criminology – rational scientific principles applied to human behavior in an effort to show the cures and causes of crime – continued into the transitional era. The tools available to study humanity, however, changed substantially, and the tenor of studies shifted from describing youth as a threat to society, to society as a threat to youth.

Both World Wars lead to a criminological foregrounding of the study of delinquency. Youth had already been placed at the center of criminological concern in the creation era, and this treatment continued. The delinquency committee of the White House conference on children emphasized that youth delinquency contained the “manifestations of all our problems of crime” (Cabot et. al. 1932:19).²⁸ Delinquency, already an object of concern, was “intensified by war conditions” (Stephens et. al. 1918:3). Whatever the particular causes of delinquency were held to be, it was generally agreed that war produced those causes in greater and more intense manifestations throughout society.²⁹

Rather than simply highlighting the importance of youth criminology, though, the

²⁸ A review of delinquency research noted that “the study of juvenile delinquency in America has taken precedence over the investigation of adult crime,” as research on youth was felt to be more “significant” and more productive in terms of “treatment” (Reckless & Smith 1932:v), confirming the continuation of youth’s centrality to criminology. Some descriptions were particularly sensationalized – “youth plays such an outstanding role in the gruesome drama” of crime in society (Cooley 1927:3). In the Second World War, controlling youth delinquency became “part of the political and economic reconstruction now slowly taking place and likely to gain momentum in the parlous postwar period in the years to come” (Cantor 1941:163). The centrality of youth to criminology was an enduring feature of the transitional era.

²⁹ Evidence of this claim is found in the extraordinary volume of publications on delinquency and wartime that emerge from both World Wars. For examples from the First World War, see Abbot (1918), Aitken (1916), Hunter (1917). For examples from the Second World War, see Castendyck (1942), Evjen (1943), Sherman (1942:5), Overholser (1940), Schram (1942), Towle (1943), United States Office of Education (1943). See Cabot (1946) for a bibliography of publications on delinquency in the creation and transitional eras, containing these and other examples.

wars also produced changes in the means of studying youth. The First World War gave a “marked impetus...to the study of mental disorders...the medical profession and the public had become cognizant of the fact that not only a good physique but also a stable mind was essential.... Psychiatry from this time on has progressed from the field of state hospital practice to concern itself with the manifold avenues of human activity” (Garvin 1929:661). One avenue of activity that psychiatry and psychology came to bear on directly was delinquency. Psychological explanations of delinquency predate the First World War, but the dominant explanations in the creation era relied on the observation of bodies and superficial³⁰ traits. The war changed the boundaries of scientific observation of the body. New needs were brought to attention; the best bodies had not only certain physical and mental traits but also psychological³¹ ones. The change initiated in the context of soldiers, but the psychological and psychiatric study of delinquency exploded from being one small sub-component of the criminological toolbox to a respected field with its own institutions by the mid-1920s. A psychological criminologist with an interest in youth noted the “demand for psychiatric clinics to serve juvenile courts and other agencies that handle delinquent and pre-delinquent children” (Anderson 1924:439).³² The metaphor of the social physician from the creation era was extended to mental studies: “the only difference between the psychiatrist and any other physician is that the former concerns himself with the whole individual...as an integrated piece of machinery

³⁰ In the sense not of being meaningless, but of being expressed on the surface. Behavior, appearance, etc.

³¹ The distinction is nuanced. The creation era emphasized non-physical traits of rationality and morality. I call these ‘mental’ traits, differentiated from ‘psychological’ traits such as emotional balance and trauma, which emerge in the transitional era.

³² See Haynes (1928:73), or Blanton (1925), for illustrative descriptions of such institutions and mental hygiene clinics

adjusting itself to its environment” (Anderson 1924:417).³³

Some earlier aspects of the science of man became areas of struggle. A foundational text on individual psychology, written by the progenitor of the psychological clinic treatment system, challenged Beccarian sensationalism on the grounds that “so far as we can learn, the impulse arising from mental conflict has no penumbra whatever of delight” (Healy 1936:17).³⁴ Henderson’s idea that delinquent youth were simply seeking to satisfy deep biological drives toward physical pleasures and sensations, made irresistible by their stage of development, was replaced by the idea that delinquent youth had been traumatized in their childhoods, and were joylessly and helplessly acting out the results of such trauma. Delinquency was “the escape of energy along undesirable channels, the outcome in misconduct truly represents mental strife, mental conflict” (Healy 1936:3).

Individuation, practiced mostly through means of the clinical case study³⁵, emerged as the dominant method of studying delinquency. Texts displayed biographical accounts of delinquents, rather than the grand claims of causation and bracketing that emerged in the creation era. Rather, the clinical case studies themselves reveal particular bracketing and ideas as applied to individuals. For example, the clinical case study of a male youth adjudicated delinquent for theft starts with the story of his friend showing him an “innocent picture of a young girl in the nude,” and telling the youth that “it made him feel like masturbating” (Healy 1936:91). The boy had recently “heard the pastor warn a

³³ Similarly, psychological theories would emerge to “serve to the present as models of case history work” (Gault 1927:692). Healy’s text on the individual delinquent (1936), first printed in 1915, became a predominant and frequently cited authority on delinquency after the First World War.

³⁴ Challenged, however, does not mean destroyed. Sensationalism and biologism would continue to re-emerge in various instantiations for some time. See, for example, Bingham (1923:500-2) for a case study that draws extensive attention to physical appearance, development, and desire for pleasure.

class of boys against the evils of bad sex habits,” but nonetheless “began practicing masturbation often in his study periods when alone in the daytime. It occurred directly in connection with his thought and imagery about this picture; in fact, the picture became like a vision to him” (*ibid*). When the boy confessed his masturbation habits to his mother, the family responded by keeping him “closely guarded” at all times (Healy 1936:92). Not long after, the boy began stealing, and the delinquent behavior is treated as an outburst of suppressed mental energy from his sex conduct, left over after the boy began “resist[ing] his sex impulses” (*ibid*). The study offers a practical example of the psychological approach to delinquency, as well as highlighting the way that moralistic conceptions and non-psychological perspectives express themselves through case studies. The idea of bad sex behavior, for example, is still in play. It is also important that the individuation of case studies appears more formal than substantive. Between the case studies, there were always held to be “constant factors” in delinquency: “serious mental conflicts, mental maladjustments, emotional complexes, unhealthy mental imagery” and so on (Anderson 1924:415).³⁶

Institutions followed changes in academic discourse, at least to some degree. The California Bureau of Juvenile Research established a travelling clinic to visit communities and survey youth habits (producing detailed biographies and investigations of sexual behavior, mental attitudes, and so on). The Bureau’s research journal describes the uses of authority figures in the youth’s life (teachers, parents) to develop these comprehensive and intrusive profiles (Brinker 1929; Fenton 1933). Healy’s psychological

³⁵ The term ‘clinical case study’ is intended to make clear the difference between studies of individuals by criminological professionals and my study of court cases. The texts themselves simply use ‘case study.’

clinics emerged as a psychological non-governmental institution, operating mostly at universities. Psychology as a field of youth criminology expanded and professionalized during the course of the transitional era.

As the First World War marks a psychological turn, the Second World War marks a sociological turn. And as was the case with psychology, the sociological study of youth delinquency predates the war that gave the field a boost. Society was discussed in creation era criminology, but in that context delinquent youth were seen as a threat to society, tearing apart the delicate social fabric. In the transitional era, there was a shift from youth as a threat to society, to society as a threat to youth. A clinical case study recounted in a casebook for juvenile justice professionals offers an example of this turn. A female youth named Nora stole clothes from a store with the help of two boys she had start a fight as a distraction. Nora and the boys were quickly apprehended by store employees, and Nora gave a statement to the police in which she admitted to having run away from a home with a father, possibly alcoholic, whom she despised (Young 1937:3-4). In the framing of psychological criminology, it seems likely that the death of Nora's mother and her resentment towards her father and stepmother would have been said to have created maladjustment or psychological trauma, the excess energy of which expressed itself through theft behavior. The sociological model offers a different analysis:

“Nora, however, is not the only delinquent in this case. Anna Stagg contributed to her delinquency; the woman who claimed to be her aunt and into whose custody the girl was released perjured herself in court by false testimony; the employer for whom Nora works engaged a minor without a work permit and birth certificate; ‘the friend at the theater’

³⁶ A contemporary wrote that juvenile courts had an “individualized attitude” (Cooley 1927:55), but still maintained there could be “illustrative cases” (Cooley 1927:207). In practice, these ‘illustrative cases’ form the delinquency bracketing of the transitional era.

who engaged in sex relations with Nora contributed to a serious delinquency of a minor; the parents, who did not report the girl as missing when she ran away and who for two years did not bother to locate her, contributed to the delinquency of their minor child....What are the social relationships which Nora maintains with her parents, friends, lover, employer, roommate, and the urban community at large?....What of all those who are indirectly responsible for the delinquency of this minor? What are the forces leading to her father's reputed drinking and to her stepmother's sloppiness and irritability? What is contributing to a poverty-stricken home? Why does a quick-witted girl, capable of making her way in the world alone and under difficult circumstances, able to remain at one job for two years, find the school dull and uninteresting?"

(Young 1937:5-6)

Social relations and social conditions are objects of study, and society and social relations are directly implicated in delinquency.³⁷ A Children's Bureau report captures the social crisis feeling, as it demands "greater emphasis" on "areas of special need" in a context of rising delinquency rates which made professionals feel like they were "trying to stem the tide with a teaspoon" (Bradbury 1960:12). The context of the war caused fears of a total "social breakdown" (Glueck 1943:129) if delinquency rates were not halted.³⁸ Youth, already subjects of phobic criminological attention, were socially central as the Second World War put the social order itself into question. America was felt to be fighting a "total war against the aggressor nations" (Commission on Children in Wartime 1942:7), and they were nations that were commonly seen to put forth threatening social forms (Nazism, Communism, and so on). The question of society and its relation to youth was

³⁷ Shulman (1935) offers another early example of the sociological view.

³⁸ As it was put at a conference on delinquency prevention, held under the theme 'Onward With Youth to Good Citizenship in Our Present Crisis,' "what doth it profit a nation to win a war if in the interim its future citizens, the boys and girls of today, shall not have been trained in the American way of life?" (Ryerson 1942:xv). There was a feeling that "children must be safeguarded" (Commission on Children in Wartime 1942:7).

foregrounded by the war.

The science of man as a thematic continued in the transitional era. The faith in rational classification and typification persevered. However, criminology of youth also expanded and developed new tools and areas of expertise. This expansion of youth criminology sets the stage for professional conflicts in the *Gault* era.

Juvenile Governmentality and Social Defense

In light of the rather explicit trend towards youth criminology as a way of defending society in the context of perceived worldwide social threats, it is worth revisiting the juvenile governmentality theory, which had been partly characterized by the concept of social defense. Essential context for the continued use of juvenile justice in relation to state authority is found in transitional era programs and agencies.

The expansion of state welfare programs in the New Deal had an impact on and connection to sociological youth criminology. The passage of the Social Security Act in 1936 “brought new responsibilities to the [U.S. Children’s Bureau] in the area of juvenile delinquency” by creating “child welfare programs,” so states had to turn “to the Bureau for advice on the adequacy of care provided juvenile delinquents and for planning community programs for the prevention, treatment, and control of delinquency” (Bradbury 1960:11). A side effect of the New Deal programs was centralization and standardization of juvenile delinquency programs by the Federal Government. The Children’s Bureau created a training schools committee to create standards for juvenile institutions and courts, which were then drawn upon by various professional organizations such as the National Probation and Parole Association (Bradbury 1960:10-11). The federal government entered a relationship with state and local juvenile courts,

with prosecutors given the authority to divert federal cases into local systems (Cummings 1938:4). The White House Conference on Youth developed plans to spread agencies throughout communities using state and federal coordination, to create a complete social work net around delinquent children and children in danger of delinquency (Cabot et. al. 1932:15). A “network of social agents and agencies devoted to the study and treatment of the problem child” (Shulman 1935:217) had emerged: psychological clinics, visiting clinics, research arms of industrial schools and professional institutions, etc.

The new tools obtained by the science of man adopted an interdisciplinary and professional character. A research director at a training school offered the common framing of delinquency as “a social problem that cannot be ameliorated without the combined effort of all branches of social science and social administration” (Doll 1937:203). Donzelot describes a system of teachers and social workers as witnesses and assessors, expanding the surveillance and treatment power of the new judicial institution. The framing discourse from various professionals and conference introductions in the transitional era confirms his account:

“The handling of the child...is no longer the task of a specialized group.... It is the task of the entire social group.... It is no longer the matter of haling the parent, the teacher, the employer into court, just to give information. It is now the matter of bringing them into cooperation with us in handling the problem and developing the wholesome nature in which the child is to live”

(Plant 1939:9)

In the creation era, juvenile governmentality was a theory to interpret particular institutional practices and programs stemming from affinity between religiosity and reason. In the transitional era, the theory describes the wide-scale conception of

institutional operations in juvenile justice. That is, rather than particular practices (such as Turkish baths), it offers an account of how the purpose of the system and the relationships between various actors was understood and expanded.

The Social Gospel

The religiosity that had been at work in the creation era did not disappear from the practice of juvenile justice, but its distinctly Puritanical manifestations did. That is to say, general religious concerns over, for example, the “religious atmosphere of the home” (Anderson 1924:415) were present, but the intolerance and duality of the creation era faded into the background. The fiscal collapse of the Great Depression produced questions about why God would deprive America of its material wealth, and the socially preferred expressions of religious views changed. The strict and uncompromising “evangelical hellfire had become embarrassing. A new age pushed aside the biblical inerrancy, Catholic bashing, Puritan thou shalt nots....the 1930s version of [the Social Gospel] brimmed with social...commandments.... The Social Gospel sprang back to life” (Morone 2003:348). I use Morone’s phrase Social Gospel to describe the softening of religious character in the United States.

In a marked change from the science of man and juvenile governmentality, where the initial investment and institutional character continues, Puritanism begins to rapidly scale back. Although general religious framings and references persevered, the particular denominational markers and philosophies that structured the creation era did not survive the transitional era intact. The science of man and juvenile governmentality, on the elective affinities view, were able to change the boundaries of their expression in response to changing social conditions. The boundaries of expression of religiosity

moved so far as to be almost unrecognizable.

Summary: Puritans Exit, Professions Expand

At the close of the transitional era, the mentalité of juvenile justice had undergone considerable change. The World Wars had made delinquency even more central to criminology, and the increased impetus to study delinquency combined with the development of various disciplines expanded the psychological and sociological study of youth. Both of these developments strengthen some aspects of the juvenile governmentality account. The psychological expansion produced a massive network of surveillance and interrogation of youth, while the sociological expansion served to preserve the authority of specialists and simultaneously extend responsibility for delinquency prevention to the entire social group. The changes in the science of man contributed to the development of new professional and power relations. As these idea structures expanded, the Puritanical idea structure faded away in the wake of the Great Depression, when rigid religiosity became socially embarrassing. The result was an enduring but softer and more generalized religiosity. Puritanism ceased performing the particular philosophical work seen in the creation era, and its affinity with criminology faded. These changes set the stage for the conflicts of the *Gault* era, to which I will now turn.

Due Process Revisited: The *Gault* Era, 1946-1967

As criminology continued to develop in the mid-20th century, sociological explanations were foregrounded and formalized. Criminology began to perform functions described by the juvenile governmentality theory, and to great extent there was a merger between the two idea structures. At the same time, the decline of the Puritanical mentalité

created a crisis of judicial authority. In the absence of entrenched religious authoritarianism, the science of man was forced to stand on its own. Its practitioners reacted with attempts to direct judicial authority, concerned that a juvenile court judge who implemented due process would impede their own curative authority. In opposition, a legalistic group of thinkers reacted to the crisis of authority by attempting to constrain juvenile court judges with due process, fearing that unchecked curative authority amounted to judicially sanctioned tyranny over youth. In the rights-focused atmosphere of the 1960s, the legalists prevailed.

Social Tension and Criminology

After 1945, the immediate social crisis had passed, but tension did not disappear. The Cold War and all its attendant fears of communism and political subversion, as well as continuing military conflicts (most notably the Korean War and the early stages of the Vietnam War) meant that long-term social anxieties were still present. In years past, youth-phobic criminology had played into a feeling of social panic (for example, the creation era descriptions of hormonally imbalanced and uncontrollably aggressive youth as the source of America's criminal problems). The social panic application of youth criminology intensified in the *Gault* era. The director of the Children's Bureau's Youth Development Unit described youth delinquency as "social dynamite" with "the potency to blast many vested political interests into oblivion....The social causes of deviancy contain a serious threat to some fundamentals of the American system of politics and economics" (Granger 1965:620). The militant nature of the metaphor makes clear the extent to which the delinquency-as-threat framing not only persevered but also intensified in the mid-20th century. In the context of the Cold War, not only the social order but also

democracy and capitalism were in jeopardy. As in years past, youth were placed at the center of criminology, underscoring the threat framing. The rise in delinquency rates that occurred in the Second World War reinforced the idea amongst sociological criminologists that “juvenile delinquency is a most important phase of the subject matter of criminology” (Tappan 1949:vii).³⁹

One commentator argued that the end of the Second World War saw “a return to the original interest of sociologists in the actual problems of society” (Wirth, in Geis 1964:290). Of course, criminological sociologists continued to focus on youth, who had been and continued to be framed as one of the great problems of society. Nonetheless, the remark implies a reduction in what was seen as abstract theorizing and instead a more concrete engagement with real social issues. The sociological imperatives changed slightly. The transitional era had seen the social concern transform from youth as threat to society to society as threat to youth. In the *Gault* era, both are held, and every member of society is individually implicated in delinquency:

Fable? Once there was a peaceful village, 'Stupidville,' at the base of a high mountain down which a very crooked, dangerous motor road ran. The winter ice, the summer rains, the falling rock, all made the road hazardous and many bad accidents happened. From out of the kindness of their hearts the good villagers built a beautiful hospital to care well for the victims and maintained it at great expense. No one thought to repair the road, to build safeguards along the way.

Stupid, wasn't it?

WHAT ARE YOU DOING ABOUT DELINQUENCY IN YOUR COMMUNITY?

³⁹ In fact, the centrality of youth to criminology might have reached its high point here. By the late 1950s, youth were responsible for “more than half of all major crimes” (Roucek 1958:np), rather than merely being a progenitor of future serious criminality. It was widely believed to be “exceptional for a criminal career to start late in life” (Friedlander 1951:11), but the criminal careers in question no longer were

-Title page, Solomon (1947), emphasis original

Solomon's epigraph frames delinquency in a deliberate and meaningful manner. Delinquency is likened to a sort of dangerous natural force that acts as a chaotic threat to order, but one which can be controlled with proper social engineering, if only society would awake to its need. Solomon's book claims that there were known to experts "one hundred and seventy different causes" of youth delinquency (Solomon 1947:3), but he ultimately reduces the multitude to a social causation argument: "we have juvenile delinquents today because they are children of a delinquent society; because they are born of highly delinquent parents and grow up in atrocious neighborhoods under a faulty economic system which practically prevents some of them from going straight" (Solomon 1947:3). Aside from the continued faith in a scientific understanding of human behavior, the expansion of delinquency to the community takes a new step here. It is not new to assert that responsibility for delinquent behavior is shared, but the forceful opening question seems to contain an imperative for everyone to get out on the streets and join the fight. Everyone, presumably, should act like a social worker.

In terms of my framing of *mentalité*, then, the Enlightenment view and the juvenile governmentality view are difficult to distinguish. The juvenile governmentality view developed from the discourse of social defense and social guardianship in the creation era. In the *Gault* era, the intensification and weaponization (youth are 'dynamite' about to blast society apart) of youth-phobic criminology appear to merge the study of youth to great extent with the social role of juvenile governmentality. Sociological criminology can be described as another stage of the science of man – the social panic

confined to theft, vandalism, and status offenses. Major crimes included violent offenses and other serious acts of delinquency.

claims are made to provide causative understandings of human behavior. However, the element of a defense of the social is clearly present and appears more deeply mixed than ever before with criminology. Rationality and juvenile governmentality are each performing work for the other in *Gault* era youth sociology. Although a mixture of the two can be seen in earlier years, the 1960s reveal a particularly strong effort by the social sciences to bring an expansive set of non-state actors in to active participation in the juvenile justice system. To take Donzelot's description, many of the social effects Solomon's framing are similar to the effort to involve educators, parents, and others as formal figures in early juvenile justice. In the transitional era, these figures were witnesses and culpable objects of study for criminologists. In *Gault* era criminology, they are deputized social workers.

A new subtype of criminological subject that emerged in the 1960s provides another example of such a mixture. Gangs had been discussed in earlier eras, but the individual youth was generally the focus of criminological arguments (and fields such as psychological criminology nearly required it). The emphasis on clinical case studies and individuation in the transitional era makes this distinction clear. In the later years of the *Gault* era, however, gangs become central. From the sociological idea that "most social problems are in effect deviations from established systems" (Neumeyer 1964:7) came a series of arguments and interpretations about delinquent subculture. Sociologists described delinquency as "a value-judgment applied to the forms of conduct in terms of the norms of law and society" (Neumeyer 1964:26). However, the negative value judgment is seen to endorse the values of another group.⁴⁰ The gang, in this context,

⁴⁰ This idea has been referred to as the "cultural transmission theory" of juvenile delinquency" (Downes 1966:25).

becomes a focus of the delinquent subculture, a particular youth social organization that points to “patterns of conduct and disorganized conditions in the community” such as adult criminality (Neumeyer 1964:207). Decades earlier, gangs were said to come “later on,” a result of earlier individual delinquency (Banay 1948:89). By the late 50s and early 60s, the gang itself was a marker of delinquency. The scientific approach to human behavior becomes deeply enmeshed in a defense of social values and cohesion against youth groups that are perceived as deviant or delinquent.⁴¹

Sociology appears to have seen the most change in the *Gault* era, but other fields of the science of man persevered. Criminologists still offered psychological trauma, family issues, and environment as explanations (MacIver 1967:27-30). The classification and typification of delinquency along a variety of lines continued.⁴²

Reason, Religion, and the Judge

The elective affinity that had existed between Enlightenment criminology and Puritanism in the creation era was nearly reversed in the *Gault* era. In the creation era, judicial authority and curative authority were merged. Possibly as a result of the rise of the Social Gospel, or the ever-developing scientific imperative to “intensively and objectively” systematize behavior (Tappan 1949:57), came critiques of the

⁴¹ It is possible that federal involvement contributed to the development of this type of sociological criminology. The executive order which established the federal Committee on Juvenile Delinquency gave the Department of Health, Education and Welfare the authority to “make grants for demonstration and training projects aimed at discovering new methods of combating youth crime and delinquency” (Granger 1965:624). The research grants had qualifications attached, including that the project “demonstrate methods of transferability of the program to other areas” (Granger 1965:624-5). Examples of resulting sociological research are, possibly as a result of this requirement, fairly generalized descriptions of “pathologies or disturbances in the socialization process” (Granger 1965:625), the sort of theory that by virtue of generalizability does not leave much room for differentiation. This program is one example of the way in which federal involvement in funding may have had particular formative effects on research.

⁴² See Glaser (1958:23) for an example of lists of categorizations that were employed. See Redl & Wineman (1952) for an interesting turn taken in psychological criminology that was not dominant enough for me to give it extensive treatment here. The idea is that delinquency is the result of hatred, in a deep

“oversimplified thinking” of the creation era, typified in “the common inclination toward logical division of paired opposites.... This logical dualism was metaphysically slanted in the assumption that the delinquent was possessed of the devil and required scourging...or, similarly, though in somewhat more modern garb, that he was ‘sinful’ and should be subjected to the moral, penitential, and reformatory influences of the church” (Tappan 1949:58). The science of man began to produce explicit critiques of the Puritanical dualism that had structured the creation era; rather than affinity, there was opposition.

The church was therefore no longer the corrective in the eyes of the science of man. Private parochial institutions still existed with religious practices, but the dominant criminological thought was no longer about teaching the youth submission to God. A research criminologist described the field of contemporary criminological research as the “‘The Age of Revolution’ – the periods which have been described as the Reformation, the Renaissance, etc. are humbled by an age which one day may be referred to as the ‘Vrai-naissance.’...With respect to man’s knowledge of himself....We gradually come to comprehend ‘objective reality’” (Fisher 1964:609). Such a statement in the context of delinquency and law reveals a deeply entrenched faith in the comprehensive power of the science of man in the *Gault* era. Non-formal legal actors (sociologists, psychologists, social workers) believed that just as “physical science can prevent disease and other disasters to man’s physical nature,” the “social scientists have the knowledge and techniques” that can prevent “delinquent behavior in childhood” (Winters 1959:9).⁴³

emotional sense, and an extensive amount of effort is given in describing an institutional school setting that would teach youth how not to hate.

⁴³ See also the idea of “greater specialization” in youth corrections as an example of such beliefs (Overholser 1959:24). Larson (1958:309) offers a psychological version of the argument.

The faith in effective interventions was, by itself, nothing new. What had changed, however, was that the judge - still a central figure to the administration of the system - was no longer the center of effective interventions. There was a concern that "judges who sit in these cases will usually have little except their judicial experience to draw upon, and their legal education will be devoid of any behavioral or other science....Enlightened views are very rare" (Watson 1962:75).⁴⁴ In other words, judges did not sufficiently partake of the science of man, and there was a concern of how to most effectively communicative psychiatric truths to the unenlightened judge (Watson 1962:81). A contrast was drawn between "the authority put upon the practitioner like a robe upon a judge," a sort of authority which was useful in administering the system but ultimately not "what makes change possible" (Winters 1959:6). The authority that led to cures and reform was "the authority which is part of the personality of the helping person. It is the authority of greater experience than the one to be helped, the authority of wisdom and learning which enables the client to trust and take help" (*ibid*). For social workers and criminologists, then, the judge is an essential ally in implementing their own authoritative and effective interventions. The challenge becomes how to get the judge to use their vast power in the appropriate manner. Judicial authority was no longer curative authority on its own, as it had been for Henderson and his contemporaries – it required input from the curative experts, the social workers and sociologists. Forced to implement itself without the assistance of Puritan conceptions of authority, the science of man found itself confronted with the problem of the judge.

The discourse of social worker authority is nearly identical to the creation era's

⁴⁴ Watson (1962:81) offers advice to professionals on how to communicate psychiatric and criminological truths effectively to an unenlightened judge. The existence of such texts reveals the struggles of

discourse of judicial authority, when judges were the wise father figures, mere contact with whom would cause behavioral reform. The representation of the judge was wrapped up in Puritanical conceptions of authority, and as Puritanism ceased to serve as a guiding philosophy, the Enlightenment ideal of the science of man rose to take its place. From this point of view, the emerging worry that "the child's constitutional rights might easily be violated, due to the informality of procedure" (Vedder 1958:267) revealed a lack of adherence to "the philosophy of the juvenile court" (Vedder 1958:270). The idea of "*parens patriae*...runs into sharp conflict with the competing view that courts should not manipulate a family or its members unless asked to do so by the parties themselves, or unless there is overwhelming evidence" (Watson 1962:72). If effective treatment and interventions are possible - if behavioral sciences have been perfected to that degree - than any procedural requirements in the juvenile court are simply obstacles to effective intervention. If a judge did decide to enforce some sort of due process requirement, judicial authority would be interfering with curative authority.

Legalism and the Threat of Judicial Tyranny

The social worker critique of the judge emerged from the attempt to justify the authority of interventions when the judge's authority no longer sufficed to do so. However, a separate group of thinkers produced a new idea that I had not foreseen or predicted at the beginning of this project. Legal professionals and thinkers produced a critique that reacted to the judge's authority not by attempting to re-merge it with curative authority, but by questioning and attempting to limit the judge's authority. The Advisory Council of Judges of the National Council on Crime and Delinquency produced a guidebook for juvenile court judges, which noted that the "eagerness to learn" of a new

judge, "coupled with an admiration which few judges fail to feel for the tremendous contribution which the behavioral sciences can bring...may and on occasion has, led to an unfortunate result, an upsetting of that precise and delicate balance between its legal and social services" in the juvenile court (Advisory Council 1962:2). The report appears to be a diplomatic approach to chastising judges who were perceived by legalists to be over-eager in endorsing treatment plans and social service interventions. Similarly, there were concerns that in juvenile court the "hearing is informal.... The judge is relatively uncontrolled" (Note [Colum. L. Rev.] 1958:716).

Legalists believed that an uncontrolled judge might not require specific evidence of specific crimes, but rather endorse plans to intervene on the child's personality and environment. Criminologists, psychologists, sociologists, and others desired such interventions, shaped by their expertise. From the legalist perspective, these interventions represented the possibility of an unjust or dangerous denial of freedom. For legalists, often writing from the field of law as opposed to sociolegal or criminological studies, there was "no doubt that the Constitution requires 'due process of law' to be observed in juvenile courts" (Paulsen 1965:608), and a series of lower court rulings emerged well before *Gault* to this effect⁴⁵. The legalist mentalité that emerged in the space left by the decline of Puritanism was in sharp conflict with the goals of the science of man. *Gault* resolved the conflict in favor of the legalists.

⁴⁵ "The minor is taken away from his family, deprived of his liberty and confined in a state institution. True, the design of the Juvenile Court Act is intended to be salutary...but never should it be made an instrument for the denial to a minor of a constitutional right or of a guarantee afforded by law to an adult." *In re Contreras* 109 Cal. App. 2d 787 (1952), p. 790. See also *Shioutakon v. D.C.* 230 F. 2d 666 (1956). Note that the lower court rulings on the matter were far from consistent; many lower courts maintained the status quo until *Gault* (e.g., *In re Holmes* 109 A.2d 523, 1954)

Summary: *Gault* in Context

In the *Gault* era, a major factor in change was the space opened up by the decline of Puritan philosophy. In the absence of an idea structure that merged judicial and curative authority into the same object, the question of how to deal with the massive authority of juvenile court judges was pressing. Intervention-minded experts, aided by the development of sociological criminology, had great faith in their understanding and rationalization of youth delinquency, and therefore in the capacity to design rational curative plans. The interventionist solution was to have the judge use his authority as they desired, believing that this would rehabilitate the delinquent youth brought before the court. On the other side, legal-minded thinkers developed a critique of the judge's authority as capricious, arbitrary, and dangerous. The legalist response to the problem of the judge was to rein the judge in with due process, establishing a protective framework for youth before the court. *Gault* emerges as the triumph of legalism.

Why the victory of legalism, when years before, the creation era appeals for due process failed? Perhaps the dislodging of the Puritanical mentalité alone was enough, but that seems tenuous. The decline of the entrenched Puritan idea structure explains why challenges were able to emerge, but the success of those challenges does not necessarily follow from their possibility. I propose that another essential factor was the social context of the 1960s. Fundamental to my argument is the theory that idea structures shift and change with political and social conditions over time. In the 1960s, America had developed a liberal faith in law as a curative for social injustice. In one sense, *Gault* was such a curative – the longstanding claims of injustice from the creation era⁴⁶ were finally addressed. *Gault* emerged from the confluence of a society concerned with legal

remedies to injustice, and the space to challenge judicial authority opened up by the decline of the Puritanical mentalité.

Conclusion and Further Questions

The juvenile court system is conventionally described as a system founded on internal conflict and tensions, which the law has dealt with by emphasizing non-punitive or punitive aspects of the system at different moments in time. I have tried to show how a system that may seem contradictory was understood as unified by its progenitors, who worked in a historical context when available idea structures enabled the merger of punishment and benevolence. Creation era criminologists had faith that scientific rationalizations of youth delinquency could and would complete the criminological task of removing crime from society, a task that had taken youth as its central object. Puritan philosophy emphasized certain rationality-focused aspects of the criminological approach, and went on to add an authoritative justification of punishment as rehabilitative. As these ideas merged, they produced a set of institutional practices that targeted the morality and physique of youth, and later expanded the sphere of experts and actors involved in juvenile justice. Parents, teachers, neighbors, and others were implicated and involved. The juvenile justice system therefore also served the role of strengthening and expanding state rationality at a critical historical juncture when the power of the family confronted the power of the liberal state.

As changing social conditions strengthened the scientific approach to human nature and youth criminology but weakened the prevalence of Puritanical philosophy, the science of man was forced to stand on its own. Interventionist-minded experts – social workers, sociologists, psychologists, and others – attempted to justify and direct the

⁴⁶ See p. 21, and note 22

authority of the judge. In opposition, legalism emerged as a stronger perspective than in past eras, voicing concerns that unrestrained judicial authority over youth amounted to despotism. In the liberal legal context of the 1960s, legalists triumphed.

In closing, I want to draw attention to a few questions I have not addressed. The first is that I had not foreseen the influence of psychology when I began this project, and dealt with it by interpreting it in line with the science of man. There might very well be particular stories yet written about the role of psychology and psychiatry in early juvenile justice. Similarly, I had not predicted the rise of a discourse and idea-structure of legalism before *Gault*, but legalism is prevalent by the early 1950s. I have attempted to account for that development by reference to changes in other idea structures, but a specific history of legalism and legal resistance to juvenile justice is missing. In all cases, my research was constrained by the resources I had access to, and there is plenty of room for confirmatory or disconfirmatory inquiry at other archives.

Finally, there is a project that naturally arises from mine: tracing these ideas to the modern period. With *Roper*⁴⁷ and *Graham*,⁴⁸ the Supreme Court appears to have revisited fundamental questions of juvenile justice and youth responsibility. Do such changes come out of another shift in the elective affinities I have identified? Did some new mentalité emerge? Is another type of analysis needed to explain recent events? I submit all of these questions as directions for additional research.

⁴⁷ 543 U.S. 551 (2005)

⁴⁸ 130 S. Ct. 2011 (2010)

Appendix Parameters, Indicators, Justifications

This section contains a sketch of the analytical framework used in this thesis. It is intended not for any detailed exposition or explanation on my part, as I have laid out the relevant materials in my writing, but rather to show the mechanics of my coding system for those interested in more precise information as to how my conclusions were reached. Some of this material is replicated in the body of the thesis. Codes are named and introduced in the following format:

Idea_indicator: brief description

This is the format I used in my own notes and software when doing my work.

Puritanism

Puritanism_Weber: the importance of hard work, particularly connected to a good/moral life

The Puritan work ethic is one of the aspects of Puritan thought that has most deeply been explored by sociologists. Weber famously described the Puritan work ethic as "characteristic of the social ethic of capitalistic culture" (2009:25).

Puritanism_duality: the dualism concerning people, in particular, youth

There are two dominant and competing strands in Puritan philosophy and history. On the one hand, we have the Puritans as "black browed witchhunters [who] so darkened the national visage...how narrow and cold was their prison," on the other we have Puritans as "a courageous, humane, brave and significant people" (Morone 2003:34). These two pictures represent Puritanism as hostile, harsh, judgmental, and intolerant of difference, while the other side is redemptive, striving, and hopeful. Puritanism also has a special concern with the upbringing and discipline of youth, as youth are "the bottom of all our troubles...each generation frets about delinquents running wild...if virtue makes us special...poor parenting bodes big trouble down the line" (Morone 2003:17).

Puritanism_society-family: Puritanical conceptions of the purpose of society and the family

Early Puritan "civil governments...enacted social policies that were features of the Puritan movement – mandating literacy...requiring strict observance of the Sabbath, prohibiting card playing.... These governments also wanted to regulate the consumption of alcohol and prevent illicit...relations between the sexes. Creating a viable economy once the influx of immigrants ceased by 1640 was another goal" (Hall 2004:159). Early Puritans saw society as founded on a covenant with God, an agreement that had a place for "the godly magistrate" (Hall 2004:161), but also divided church and state in order to prevent a practical abuse of authority. Government institutions were not Puritanical in terms of codes or specific operations, but there was a governing assumption resulting from the covenant theory that societies "were obliged to repent if they faltered in their obedience. Sin was a disease that infected the moral and social health of a community" (Hall 2004:162).

Puritanism_authority: Puritanical conceptions of authority

God's authority, and proper submission to it, is essential in Puritan philosophy. Early Puritan texts

show that this relationship is reproduced in the family. Humans are God's children and owe him subjection; youth are the children of their parents and owe them subjection. An influential sermon at a synod on social decline argued, "Some...houses that are full of ignorance and profaneness.... And many householders who profess religion, do not cause all that are within their gates to become subject unto good order as ought to be.... Nay, children and servants that are not kept in due subjection; their masters, and parents especially, being sinfully indulgent towards them. This is a sin which brings great judgments, as we see in Eli's and David's family. In this respect, Christians in this land, have become too like unto the Indians, and then we need not wonder if the Lord hath afflicted us by them.... Most of the evils that abound amongst us, proceed from defects as to family government." -Mather (2004[1679]:197)

Puritanism_allusion: alludes to Biblical text/story

Given the emphasis on Biblical literacy in Puritan conceptions of good education (Ning 2009, Sawyer 1996), it seems important to have category for the frequent allusions to Biblical text, prophecy, characters, etc. These sometimes emerge in very strange and offhanded ways, such as Barrows' declaration at the end of the 1904 IPC report that the juvenile court system is a fulfillment of Isaiah's prophecy that "a little child shall lead them" (Barrows 1904:xvii). The indicators in text for this category are quite simply reference, quotation, allusion, and other direct uses of the Bible.

Puritanism_diction: makes use of religious diction

A general category I use to track religious discourse, wrapped in with the Puritanism idea for logistical ease although my writing attempts to acknowledge a distinction between generalized religiosity and particular denominational aspects of Puritanism.

Enlightenment / The Science of Man

Enlightenment_subjectivity - text represents Enlightenment conceptions of subjectivity in a philosophical sense, or rationality as a method of investigation

"The 'State' that supposedly was constituted by the power of a contract among its subjects - subjects who could express such power by virtue of their 'rationality' - set for itself, as its fundamental task, the molding of its own subjects, i.e. furnishing them with the 'rationality' that would undoubtedly help them appreciate the rationality of the State. What kind of 'rationality' was here at stake, however? It meant predictable behavior based on work and ascetic virtues, the habit of a methodical life, discipline measured by the 'artificial' time of the clock" (Melossi 2008: 19)

Enlightenment_benignance - humanistic concern for 'soft' punishments

Liberal humanist conceptions of punishment deriving from Enlightenment rationality criticized the "arbitrariness and irrationality" of prior criminal law for being too brutal "torture and capital punishment" and turn instead to "the principles of legality and the prohibition of retroactivity that were to become two mainstays of modern criminal law....Beccaria's concept of man is that of a human being who is endowed with free will, able to make the 'wrong' choices, sanctioned as such by criminal law." Important starting point is "the State's right to punish" grounded in the "social compact" which "implies that citizens yield a part of their freedom to the State" (Melossi 2008:30)

Enlightenment_calc - enlightenment calculative rationality with regards to penology and

criminology; the approach to punishment and justifications

"Some of the arguments of Dei delitti employed a deterministic discourse which....seem decidedly at odds with the classical dependence on free will [of Beccaria, the K enlightenment figure being discussed here]...Among enlightenment thinkers this discourse was denominated loosely and signified by such terms as Pascal's esprit geometrique and, after midcentury, the Scottish civic tradition's "science of man." Key features of the science of man: "the doctrines of utilitarianism, probablism, associationism, and sensationalism" (Beirne 1993:29).

Juvenile Governmentality (JG)

JG_family - interactions with family authority that find ways for the government to breach family control over youth

An important project for modern states at the turn of the 20th century was finding a way to deal with an "unbreachable point of resistance" (Donzelot 1979:83) to state power: the family. By merging "children in danger" and "dangerous children" (Donzelot 1979:82) into the targets of the same institutions and laws (the juvenile court and juvenile justice system), the state found a rational for declaring certain children 'in danger' and intervening in families.

JG_expertise - creation of new disciplines/expertise fields as a mode of justifying and legitimating changes in state authority / the juvenile justice

The overriding of the family was also accomplished by the expansion of disciplinary fields of expertise. Amidst the medicalization of the early 20th century, the juvenile court saw "notables as assessors, educators as witnesses, a whole circle of tutors and technicians who press closely in upon the shattered or 'liberalized' family" (Deleuze 1979:ix-x).

JG_social - reference to concerns of 'the social,' cohesion, social defense, etc.

The target of many of the new progressive programs and fields of expertise was an idea of the "social" (Donezlot 1979:83). Social assistants, social workers, social planners, to deal with "social scourges, from alcoholism to drugs...social maladjustments...character disorders" (Deleuze 1979:ix). "The social" (*ibid*) emerged as an object of governmental concern, care, and analysis.

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