

JUVENILE JUSTICE

YOUTH AND CRIME IN AUSTRALIA

FIFTH EDITION

Chris Cunneen Rob White Kelly Richards



OXFORD

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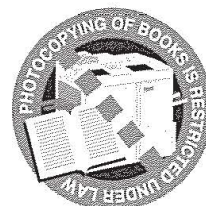
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INTRODUCTION

This book is about youth and crime in Australia, and the institutions and agencies associated with the administration of juvenile justice. It provides an overview and introduction to the main concepts and issues of juvenile justice in a way that is accessible yet critical. The intention is to provide basic information across a broad range of areas, and in so doing raise a number of questions about the institutions of juvenile justice and, indeed, how we think about issues of juvenile justice.

Depictions of young offenders and juvenile justice agencies are all too often based upon exaggeration, stereotype, and conjecture. Politicians and the media constantly bemoan the present youth generation's lack of discipline and respect. We are frequently told that many of these young people, especially certain 'ethnic' youth, are beyond redemption. For every story about a youth gang, there is a simultaneous demand for an even bigger stick to keep young people in line.

Young people, it seems, should not be seen or heard. They should not be allowed in the street or be visible in city centres or local neighbourhoods. To grow up 'good', they need to be restricted in where they can go and what they can do. To protect society, young people need to be under control and under surveillance.

When young people act up, when they commit crimes or engage in antisocial behaviour, then they must be held responsible for their actions. They must pay for their transgressions. They must make amends for the harm they have caused. They must be made to change their ways.

The distorted outlooks on and punitive approaches to youth behaviour that are so prominent in the media and in the political arena are made manifest in many different ways in the juvenile justice system. Simultaneously, however, non-coercive alternatives are also being developed, as many practitioners and theorists in the field of juvenile justice appreciate more fully than others in the community the complexities and difficulties of life for young people in the twenty-first century. Ongoing debate and discussion surround how people think about the problems of 'youth crime' and also how best to respond to it. Competing opinions indicate both the highly political nature of juvenile justice and important differences in basic philosophies.

It is more than two decades since the first edition of *Juvenile Justice* was published by Oxford University Press. Since then we have seen at various times heightened public concern and moral panics about ethnic minority youth, the increase in young women in the juvenile justice system, about young refugees and about youth gangs; we have seen the development of mandatory sentencing regimes for juvenile offenders in the Northern Territory (since repealed) and Western Australia (still in place); the apparent acceptance of zero tolerance policing, especially in public spaces; the persistent over-representation of Indigenous young people within the juvenile justice system (which has grown worse in some jurisdictions);

and intensification of intervention in the lives of young offenders and non-offenders alike. Inequality and social polarisation are growing, accompanied by the racialisation of criminal justice and the criminalisation of the poor—exacerbated by those federal governments that do not exhibit a strong commitment to social inclusion and social justice. With the demise of the welfare state and the rise of the repressive state, discussion has often centred on how best to control, manage, and contain those youth suffering most from the disadvantages of social, economic, and political exclusion. In practical terms these changes manifest themselves in growing remand populations as more young people are refused bail, and the introduction of more punitive legislative measures such as move-on powers for police and court orders prohibiting antisocial behaviour.

On the positive side, greater attention is now being given to the basic rights and wellbeing of young people. In particular, there has been a growth in the human rights perspective as a critical perspective by which to evaluate policing practices, the operation of courts and youth conferences, and the conditions under which young people are detained or sentenced to community work. Renewed emphasis on crime prevention has likewise been used to challenge explicitly the coercive ‘law and order’ approaches. Meanwhile, the practices of ‘restorative justice’, with an emphasis on repairing social harm, can serve as an important counterweight to traditional retributive methods that emphasise punishment. All Australian states and territories have some diversionary processes in place, including police cautioning and youth conferences. Decreasing crime rates during the last decade may yet provide an opportunity to lower our levels of youth incarceration and expand non-punitive, socially supportive youth justice policies.

Analysis of the principles, policies, and practices of juvenile justice is never a politically neutral exercise: that is, it always involves value judgments of some kind. In our view, such review and evaluation ought to be guided by a vision of society, and of young people, in which human rights and dignity are respected, and social equality and human liberation are the goals. This means that issues of class division, racism, sexism, homophobia, and colonialism can never be far from the centre of analysis. The marginalisation of specific groups of young people (and their families and communities), and their criminalisation by the mainstream criminal justice system, reflect substantive inequalities and the oppressive structures that shape everyday life in Australian society.

This book is divided into three parts. Part I, ‘History, Theory, and Institutions’, provides a historical and theoretical overview of the development of juvenile justice, its main institutions, and the nature of contemporary juvenile crime as determined by the actions of official state agencies. Part II, ‘The Social Dynamics of Juvenile Justice’, provides an analysis of how class, ethnicity, race, and gender impinge upon the processes and institutions of juvenile justice, and how particular groups of young people are dealt with by the system in ways that reflect their specific social location and status in society. Part III, ‘The State, Punishment, and Community’, examines the operation of various parts of the juvenile justice system, from police and courts through to detention, crime prevention, and juvenile

conferencing. Each section of the book provides a wide-ranging survey of relevant facts and figures, literature, and concepts, while raising issues and perspectives necessary to a critical appraisal of key questions in the juvenile justice area.

If we are to comprehend the situation of young people adequately, and to interpret their position within the field of criminal justice, then analysis must be informed theoretically as well as validated empirically. A critical criminology is one that builds upon the knowledge and conceptual contributions of socially progressive perspectives and approaches. In so doing, the objective is to provide a clear, unambiguous picture of the existing field, while retaining a critical edge.

The misrepresentation of youth on the one hand and the intrusiveness of the state on the other, demand that issues of young people and crime be considered carefully and in a wider social and political context. We hope that, in its own modest way, this book will assist those who wish to create a more humane and socially just system of juvenile justice in Australia.

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PART I

HISTORY, THEORY, AND INSTITUTIONS

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1

THE DEVELOPMENT OF JUVENILE JUSTICE

CHAPTER HIGHLIGHTS

- Introduction
- Early nineteenth-century developments
- Poor or criminal?
- Reformatories and industrial schools
- The reality of life in the schools
- The juvenile court
- Judicial therapists
- Gendered approaches
- Police, law, and juvenile delinquency
- Explaining change
- Conclusion

INTRODUCTION

To understand the contemporary debates about juvenile justice and the nature of juvenile crime, it is important to think about issues relating to history and theory. Have juveniles always been involved in crime, or is it a modern phenomenon? How have our thoughts about young people and crime changed? Has the place of young people in society changed? The aim of this chapter is to consider these questions in more detail through an understanding of the historical development of a separate juvenile justice system. To begin with, it is worth considering the terms we use. First, it is necessary to realise that the categories 'youth', 'adolescent', and 'juvenile' are not universal, nor are they necessarily used consistently within a society. It is important to know where particular ideas about young people came from and how these developed. The social construction of youth is neither a natural nor a neutral process, nor is it divorced from wider social, political, and economic developments (see Bernard & Kurlychek 2010; Coster 2007).

Second, notions of juvenile delinquency depend on and recreate particular ideas about young people as a separate and socially definable group. Put simply, there can be no theory of juvenile offending without a concept of 'juvenile'. For example, in public usage and academic study, the word 'youth' has often implicitly (if not explicitly) been used to refer primarily

to young men. Much of the concern with youth has consistently ignored the experiences of young women, or relegated these to secondary importance because of sexist definitions and conceptions of the 'real world' (see Chapter 8).

Third, the systems developed for dealing with juvenile delinquency and crime are created and developed in particular historical contexts. A considered understanding of the historical development of juvenile justice is important because of the level of mythology surrounding juvenile offending.

The common themes of loss of authority in the key institutions—the family, education, and law enforcement—constantly re-emerge, along with claims that permissiveness has increased levels of juvenile violence and lowered standards of public behaviour. Within this scenario, the solutions proposed are often equally simple: greater levels of intervention by state agencies armed with more punitive powers.

The concept of juvenile delinquency dates from the early nineteenth century. According to Bernard (1992), one of the first uses of the term was in the *Report of the Committee for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis*, published in London in 1816. The concept of juvenile delinquency is historically contingent (that is, the concept developed at a particular moment in history). Several commentators have also argued that the *phenomenon* of juvenile crime is also contingent (Bernard & Kurlychek 2010). Indeed, Ferdinand (1989) provocatively asked: 'Which came first: juvenile delinquency or juvenile justice?' In other words, what are the origins of and relationship between the behaviours that are characterised as juvenile offending, and the institutions and practices of the criminal justice system developed specifically to deal with youth? In our view, they arose simultaneously. The phenomenon of juvenile delinquency appears to be specifically modern. Some commentators have argued that it occurred with the transition from rural to urban societies and is associated with five factors, these being the breakdown of traditional mechanisms of social control, urbanisation, industrialisation, population growth, and juvenile justice mechanisms that systematically detect juvenile offending (Bernard & Kurlychek 2010:34–40). While these five factors are important, it is our view that the class-based nature of juvenile justice needs to be recognised (see Chapter 5). The transformations to which Bernard and Kurlychek refer occurred with the development of industrial capitalism, which created an urbanised working class. New systems of dealing with young people targeted the youth of this newly formed class. In addition, the systems of control that were introduced into colonies such as Australia were imposed in a society that was also in the process of dispossessing an Indigenous minority. The treatment of Indigenous young people became an important component in the development of juvenile justice in Australia, although as we note in Chapter 6 it was to take somewhat different forms from the treatment of non-Indigenous children.

The key period in understanding the development of a separate system for dealing with juvenile offenders is the second half of the nineteenth century. This was an important period in the construction of other age-based differences involving young people, including restrictions on child labour and the introduction of compulsory schooling. The state began to intervene actively in the provision of 'welfare' for the children of the 'perishing classes'.

In practice, these various measures were linked closely. For example, in the same year that the *Public Schools Act 1866* (NSW) was passed the Reformatory Schools Act (for young people convicted of criminal offences) and the Industrial Schools Act and Workhouse Act (for vagrant children) were passed in the United Kingdom. Specifically, in Australia the first moves to identify and recognise the category of 'young offenders' occurred with the development of institutions for dealing with neglected and destitute children. The major legal change in Australia during the period was the modification of court procedures to allow for juveniles to be dealt with summarily (that is, to have their less serious charges determined by a magistrate) (Seymour 1988:3). More broadly, juvenile justice was an element in the expansion of state control and regulation that occurred during the later part of the nineteenth and the early twentieth centuries.

EARLY NINETEENTH-CENTURY DEVELOPMENTS

There are a number of similarities in the methods that were developed for dealing with juveniles across various nations, including Australia, New Zealand, the USA, Canada, and the United Kingdom. One reason for these similarities was the economic, social, and political transformations already mentioned that were occurring at the time.

Until the early nineteenth century, children were expected to enter the adult world at a young age. Child labour was still regarded as universal. For example, in the early part of the nineteenth century, some 80 per cent of workers in English cotton mills were children (Morris & Giller 1987:4). Similarly, the criminal justice system did little to formally separate children from adults. There was no separate legal category of 'juvenile offender'.

At common law, the age of criminal responsibility was seven years old. For children between the ages of seven and 14 years, there was a presumption that they were incapable of committing an offence (*doli incapax*). However, this presumption could be rebutted in court by showing that the child knew the difference between right and wrong, and knew the act in question to be wrong. It is not clear whether rules relating to the age of criminal responsibility were effective in practice: accurate knowledge of children's ages might not have been available, or magistrates might have been ignorant of the law. In any case, children under the age of seven were incarcerated, and in Victoria in the mid-1860s, children as young as six could be found in Pentridge Gaol (Seymour 1988:6).

In terms of punishment, adults and juveniles were treated the same: deterrence was the main object. An English judge, after sentencing a 10 year old to death, stated that the child was a 'proper subject for capital punishment and ought to suffer'. On one day in 1815, five children between eight and 12 years old were hanged in England for petty larceny (theft) (Morris & Giller 1987:6). Similarly, in Australia, youths were executed, flogged, and sentenced to road gangs, transportation, and imprisonment (Seymour 1988:8–9).

There is some argument, however, over the extent to which children were treated the same as adults. The age of the offender was sometimes held to be a mitigating factor in sentencing. For example, in *R v. Ross* [1832] New South Wales Supreme Court 58 the judge imposed

the death penalty against a 14 year old, but because of the jury's recommendation for mercy the case was sent to the Governor for consideration of clemency (Boersig 2003:130). Platt (1977) suggests that in cases relating to capital punishment, the prosecution refused to charge, juries refused to convict, and pardons were given more frequently than for adults. Notions of 'contamination' were also important in arguments concerning the separation of juveniles from adult offenders in prison. In 1836 in England, the report of the Inspector of Prisons noted that: 'the boy [sic] is thrown among veterans in guilt ... and his vicious propensities cherished and inflamed ... He enters the prison a child in years, and not infrequently also in crime; but he leaves it with a knowledge in the ways of wickedness' (cited in Morris & Giller 1987:8). In Australia, there were attempts to keep children separate from adults, even where they were held in the same jail (Darian-Smith 2010:3). Some magistrates attempted to avoid imprisoning young people by discharging first offenders, using conditional discharges by placing children in the care of parents or institutions, or using conditional pardons (Seymour 1988:9). Boersig (2003) suggests that in *some* cases consideration was given to the youth of the offender when sentencing. These practices modified an otherwise draconian code. The increasing prison population in the United Kingdom during the mid-nineteenth century also prompted reform (May 1981).

In the USA, the first juvenile institutions were houses of refuge such as the New York House of Refuge. This refuge was established in 1825 after numerous reports drew attention to the fact that penitentiaries contained no separate facilities for juveniles. However, it appears that few of the youth sent to the refuge would have gone to the penitentiary in any case. Many were there for vagrancy (that is, being penniless and unemployed in a public place). The 'placing out' system for juveniles, whereby youth were sent to work on farms (Bernard 1992), developed at about the same time.

There was a sense of crisis in the early nineteenth century concerning social issues such as urbanisation, industrialisation, and the growth of trade unions and working-class militancy, along with concerns about pauperism, vagrancy, and juvenile crime. There were also changes in the way crime was being conceptualised. As we discuss in Chapter 2, classical criminology saw crime as an outcome of free will, and the role of punishment as deterrence. However, by the early nineteenth century there was a growth in classificatory systems of criminal causation related to the rise of positivist criminology. For example, the 1816 report into juvenile delinquency in London, mentioned earlier, states the main causes of juvenile delinquency to be the improper conduct of parents, the want of education, and the want of suitable employment. The same report also identifies problems with the severity of the criminal code, and the poor and deficient state of policing. In other words, the responsibility for juvenile offending was not necessarily seen as solely that of the young person (Morris & Giller 1987:16).

Growth in the collection of criminal statistics facilitated a focus on juveniles. By the mid-nineteenth century, criminal statistics in England and Wales were showing that the 15- to 20-year-old age group was over-represented in offending figures

(Morris & Giller 1987:7). Thus, the development of statistics, combined with that of other disciplines, allowed for the discovery of a 'new problem'.

Contemporary religious views also fitted well with the notion that delinquency was the result of social and moral conditions rather than innate depravity. The focus on the physical conditions of the poor increased, as did the view that working-class families were ineffective and unreliable in their parenting.

POOR OR CRIMINAL?

In Australia, the first steps towards creating a separate system for juveniles occurred as a result of the problem of dealing with young people who were arriving as transported convicts. Approximately 15 per cent of all transported convicts sent to Australia were under the age of 18 years (Darian-Smith 2010:3). From the late eighteenth century, various schemes involving apprenticeships were utilised, and by the beginning of the nineteenth century there were attempts to separate child convicts from the contamination of adults. By 1819 a juvenile section of the Carter Barracks was established for convict boys, while girl convicts were detained in the Parramatta Female Factory (Darian-Smith 2010:3–4).

Orphan schools were established from the early 1800s to deal with destitute children. The origins of the child welfare system in Australia include the establishment of the Female Orphan School (1801); the Male Orphan School (1819); the Benevolent Asylum (1821) for 'destitute, unfortunate, needy families'; the Female School of Industry (1826); the Roman Catholic Orphan School (1837); and the Randwick Asylum for Destitute Children (1858). By the 1880s the Randwick Asylum alone held 800 neglected or orphaned children (Darian-Smith 2010:5). Both the female and male orphan schools adopted the policy of apprenticing children out to work. Legislative changes in New South Wales beginning in 1828 and 1834 enabled magistrates to place orphans as apprentices. Further legislative changes occurred until the late 1850s that expanded the category of children who could be bound over as apprentices (Seymour 1988:21–3).

There was overlap between the processes of criminalisation and the development of specific welfare institutions. A child in poverty could be dealt with under vagrancy laws and potentially imprisoned, or the child could be treated as destitute and kept in a welfare institution. Thus, it is possible to see the development of different strategies for dealing with issues essentially related to poverty and young people, which raises important questions about discretion and decision-making powers. Certainly, part of the method of dealing with poverty was reflected in middle- and upper-class notions of the 'deserving' and 'undeserving' poor (Donzelot 1979). Although all poor people shared similar material conditions, a distinction was made between the deserving and undeserving on the basis of their behaviour, attitudes, and respectability. Welfare and charitable institutions were there to assist those defined as the deserving poor, while the 'others' were treated as criminal. It appears that many children sent to jail in Australia were there as a result of vagrancy charges. A large proportion of the 230 children under 14 years of age sent to prison in Victoria during

1860 and 1861 had been sentenced for vagrancy (Seymour 1988:18–19). Thus, they were imprisoned for the crime of poverty rather than for committing any substantive offence.

REFORMATORIES AND INDUSTRIAL SCHOOLS

During the mid-nineteenth century, there were two fundamental moves towards establishing a separate system for dealing with juveniles. One was to change the role of the magistrate's court in relation to hearing offences against juveniles; the other was to establish reformatories and industrial schools.

In the United Kingdom, the first parliamentary bills to alter procedures for dealing with juveniles were debated in 1821, 1829, and 1837. However, it was not until 1847 that the Juvenile Offenders Act was passed. This legislation increased the powers of magistrates to hear summarily larceny and theft offences committed by those under 14 years of age. In Australia, the method of dealing with 'young offenders' began to change in 1849 with the introduction of an 'Act to provide for the care and education of infants who may be convicted of felony or misdemeanour' (13 Vict. No. 21). The legislation dealt with young people up to 19 years old, and allowed the court to apprentice young offenders. A more significant legislative change was the introduction of an 'Act for the more speedy trial and punishment of Juvenile Offenders' (14 Vict. No. 2) in 1850. The Act extended the summary jurisdiction to young people under 14 years old who were charged with larceny and associated offences. The legislation also allowed for different and lesser penalties to be applied to juveniles convicted of larceny than were applied to adults for the same crimes, and began the process of development of children's courts in Australia. It created not only different procedures for dealing with young people than for dealing with adults who had committed the same crimes, but also different penalties for different offences.

The establishment of reformatories (now known as juvenile detention centres) represented a major change in dealing with young people. In the United Kingdom, the statutory recognition of reformatory and industrial schools for the 'dangerous' and 'perishing' classes occurred with the *Youthful Offenders Act 1854* and the *Industrial Schools Act 1857*. Similarly, reformatories appeared in the USA in the mid-nineteenth century. In Australia, industrial and reformatory school Acts were passed in most states between 1863 and 1874 amid concern about destitute children and criticism of the lack of alternatives to imprisonment for young offenders.

English reformers such as Mary Carpenter were influential in developing new methods of dealing with young people. They saw discipline through punishment as ineffective: rather, they sought fundamental and lasting rehabilitation through change within the young person. The issue of training and reform was essentially one of effectiveness rather than benevolence. It demonstrated a fundamental shift away from deterrence as a rationale for punishment. Carpenter noted that reform occurred 'only when the child's soul is touched, when he yields from the heart'. Carpenter played a leading role in the reform movement, particularly with her book *Reformatory Schools for the Children of the Perishing and Dangerous Classes and*

for *Juvenile Offenders*, published in 1851. Carpenter's work made a distinction between the establishment of reformatory schools for delinquents (of the 'dangerous classes') and industrial schools for the poor (the pre-delinquents of the 'perishing classes'). However, both regimes stressed religious instruction, elementary education, and industrial training.

The Australian legislation contained definitions of the situations in which 'neglected' children could be placed in institutions. For example, the *Neglected and Criminal Children's Act 1864* (Vic), s 13, defined a neglected child as any child found begging or receiving alms; 'wandering about', or having no home or visible means of subsistence; or any child 'whose parent represents that he is unable to control such child'. In some cases, the legislation simply recast the existing vagrancy definitions as being applicable to children, but it also added new definitions that were the forerunner of modern notions of 'uncontrollability'. The legislation in Victoria, Queensland, and New South Wales also provided for the establishment of industrial schools for those young people defined as neglected (Seymour 1988:37–43).

In addition, the new legislation provided for special procedures for dealing with young offenders. In Victoria, Queensland, and South Australia, a child convicted of an offence could be sent to a reformatory school regardless of the seriousness of the offence. In New South Wales, a young person who had been convicted of an offence that was punishable by 14 or more days of imprisonment could be committed to a reformatory. These changes represented an important shift in the sentencing of young people through the separation of the nature of the offence from the penalty imposed, and a new focus on the offender rather than the offence.

Although the system established two groups—neglected children and young offenders—in reality there was a blurring of distinctions. In most Australian states, young offenders could be sent to industrial schools by the court under certain circumstances. Amendments to legislation during the 1870s further blurred the distinction between the two groups, when courts were empowered to send neglected children to reformatories if they had been leading an 'immoral or depraved life'. In addition, neglected children could be transferred administratively to the reformatory system if they proved difficult to manage.

The new legislation also empowered courts to commit young people for extended periods. This power expressed the notion that young people were being committed for training and education. Offenders were to be committed for lengthy periods, regardless of whether the crime was serious. As a result, the normal sentencing consideration that a punishment should be proportional to the seriousness of the crime was not seen as part of the law governing juveniles (Seymour 1988:48–9).

A further factor that was important in the development of the juvenile justice system was that release was determined by the institution's administration rather than by the court. Additionally, the conditions of release (on 'licence', for example) were also determined by the institution's administration. This administrative discretion was legitimated by an ideology that assumed the state was acting in the best interests of the child.

The use of reformatories and industrial schools in the United Kingdom was similar to that in Australia. The offence was often irrelevant to committal. Reformatories encouraged

early intervention unrelated to the nature of the juvenile's offence, and about half the juveniles sent to reformatories were sent there on their first conviction. In addition, reform was based on discipline through work. Yet the 'work' was not training or skills acquisition, but laborious and monotonous work designed to produce individuals who would be suitable for any menial job (Morris & Giller 1987:24–7).

In the USA, there were important legal challenges concerning the placement of young people in houses of refuge, reformatories, and industrial schools. The Pennsylvania Supreme Court determined the Crouse case in 1838, in which Mary Anne Crouse had not committed a criminal offence but was seen to be in danger of growing up to be a pauper. She was committed to a house of refuge, the court deciding that holding her there was legal because she was being helped and not punished. The state assumed the role of *parens patriae*, whereby it acted in the role of the child's parents, who were seen as incapable of fulfilling the task. Further, because Crouse was being helped and not punished, there was seen to be no need for the protection of formal due process (such as presumption of innocence, or guilt proven beyond reasonable doubt) (for more details, see Bernard 1992:68–70). The Crouse case was important as the first US legal challenge to the practice of committing young people to houses of refuge and reformatories even where they had committed no criminal offence.

The O'Connell case (for details, see Bernard 1992), which was determined in the Illinois Supreme Court in 1870, saw the court reject the *parens patriae* argument (the court acting in the best interests of the child and protecting the child) and order the release of O'Connell from the Chicago Reform School. The court heard of the harsh conditions in the school, and found that O'Connell was being punished, not helped. The court was of the view that O'Connell was being imprisoned, although he had not committed a criminal offence. The O'Connell decision influenced the establishment of the juvenile court in Chicago in 1899, and led to such challenges being circumvented by new definitions of delinquency (Bernard 1992:70–3).

The rationale for the establishment of reformatories was that they would provide a special form of prison discipline for young people and transform delinquents into law-abiding citizens. According to Platt (1977), reformatory life was designed to teach the value of adjustment, private enterprise, thrift, and self-reliance. Like Mary Carpenter's aim to 'touch the soul', the reformatory masters sought to 'revolutionise ... the entire being' (Platt 1977:52). This transformation involved a different mode of punishment, and can be contextualised within broader changes occurring in punishment during the second half of the nineteenth century. By the end of that century, the focus had shifted from the belief that a criminal should be punished according to the severity of the offence to a view that the offender should receive treatment. Treatment was to be based on the diagnosis of the person's pathological condition, and also enabled the expansion and diversification of penal sanctions. According to Garland, this development marked the beginning of a new mode of sentencing that claimed to treat offenders according to their specific characteristics or needs, and not equally on the basis of the seriousness or nature of the offence (Garland 1985:28, Foucault 1977).

THE REALITY OF LIFE IN THE SCHOOLS

If so much faith was placed in the development of the new methods of control and reformation, it is fair to ask what the outcomes were. Although a separate penal system had been established for young people, in some areas children were still imprisoned with adults. In the USA, the reformatories were described as 'overcrowded, poorly equipped, badly situated and more like a prison than a school' (Platt 1977:146). In the United Kingdom, the reality of the schools was similarly far from the rhetoric. According to Harris and Webb (1987:14), there were serious problems in the recruitment of suitable staff, and punishments were severe, including solitary confinement, whipping, and diets of bread and water. Such punishments mirrored those in the adult system. In addition, early attempts to separate juvenile offenders from adult offenders were not successful. The prison boats used for young people were in worse condition than those used for adults.

In Australia, prison boats were used as reformatories in Victoria, South Australia, Queensland, and New South Wales during the latter part of the nineteenth century. There was a series of official investigations into conditions in the reformatories and industrial schools during the 1870s and 1880s. The inquiries in South Australia, New South Wales, Victoria, and Tasmania painted a picture of the institutions as brutal jails (Seymour 1988:58–61).

Reformatories and industrial schools were often combined, thus further undermining the distinction between 'neglected' young people and young offenders. Indeed, the criteria for referral to reformatory and industrial schools were vague:

- *The perishing classes:* Regarded as pre-delinquent, they were seen as the legitimate object of the state's intervention. The so-called perishing classes consisted of young people who had 'not yet fallen' into crime, but who were likely to do so because of poverty.
- *The dangerous classes:* These consisted of young people who had already committed offences and who had received the 'prison brand'.

The mixing of welfare and criminal cases within the systems of detention became a hallmark of dealing with young people in the juvenile justice system until well into the contemporary period. Many young people were sent to reformatories for minor offences. Seymour provides examples of young people being given long committals, such as a nine-year-old boy in South Australia being sent to a reformatory for six years for stealing six apples (Seymour 1988:56). One outcome was that such institutions provided for the detention of young people who would not previously have been imprisoned.

It has been suggested that in the United Kingdom the 'institutions constituted a major extension of control over the young, while simultaneously offering the apparent possibility of mass reformation and the near elimination of juvenile crime' (Harris & Webb 1987:11). Certainly, it appears the reformatories attracted a new clientele. More juveniles were brought into the juvenile justice system and were sent to reformatories. In England between 1865 and 1873, some 26 326 juveniles were sent to reformatories or industrial schools. In addition, juveniles were incarcerated longer than their adult counterparts: instead of an

average three months imprisonment, they spent two to five years in reformatories (Morris & Giller 1987:24–7).

We can summarise the effects of changes brought about by the introduction of reformatories and industrial schools as:

- separate procedures for dealing with young people for some offences
- different penalties for some offences for juveniles when compared with penalties for adults
- a different and separate penal regime for juveniles
- different criteria for intervention between juveniles and adults
- overlap between welfare and criminal intervention
- high levels of administrative discretion over those young people within the juvenile penal regime
- extended and indeterminate periods of detention
- adult sentencing tariffs no longer seen as relevant to juveniles
- earlier committal to detention for minor offences
- more young people incarcerated than previously.

It was within the context of these changes that the development of specialist children's courts took place. We deal with this issue in the following section.

THE JUVENILE COURT

The new juvenile courts that developed at the end of the nineteenth century were based on the notion of *parens patriae*. The concept had originally referred to the protection of property rights of juveniles and others who were legally incompetent; however, it came to refer to the responsibility of the juvenile courts and the state to act in the best interests of the child.

As one early twentieth-century British commentator put it, the doctrine of *parens patriae* allowed the court 'to get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life' (cited in Morris & Giller 1987:12).

Children's courts were established at roughly the same time in the United Kingdom, the USA, Canada, and Australia, this being during the last decades of the nineteenth century and the early years of the twentieth century. The powers of the court varied from state to state and country to country.

In the USA, the *Illinois Juvenile Court Act 1899* established the juvenile court with the power to determine the legal status of 'troublesome' or 'pre-delinquent' children. Such courts were able to investigate a variety of behaviour. Statutory definitions of delinquency included acts that would be criminal if committed by adults; acts that violated country, town, or municipal ordinances; and violations of vaguely defined catch-alls, such as vicious or immoral behaviour, incorrigibility, truancy, profane or indecent language, growing up in idleness, or living with any vicious or disreputable person (Platt 1977:138).

The concept of *parens patriae* authorised the courts to use wide discretion in resolving the problems of young people. A child was not accused of a crime, but offered assistance and guidance. Intervention was not supposed to carry the stigma of a criminal record, and hearings were conducted in relative privacy with informal proceedings.

The legislation introduced in Illinois was well received by the judiciary and legal profession, and became the foundation for other US states. Juvenile courts were established in Wisconsin and New York in 1901, and in Ohio and Maryland in 1902. By 1928, all but two US states had adopted a juvenile court system. Canada adopted legislation in 1908.

The first annual reports from the Cook County juvenile court in Chicago indicated that public-order offences and school truancy made up the majority of charges that led to the 'delinquency' cases dealt with by the court (Platt 1977:140). Failure to conform to new forms of social control (such as compulsory education) was clearly an important source of delinquency classifications.

In England by the end of the nineteenth century, some towns, such as Manchester and Birmingham, had begun to operate separate juvenile courts. Separate courts were established throughout England and Wales after the Children Act 1908 was introduced. The legislation gave the courts criminal jurisdiction over criminal matters and civil jurisdiction in relation to welfare matters. According to Harris and Webb, 'it made the juvenile court itself a locus for conflict and confusion, a vehicle for the simultaneous welfarization of delinquency and the juridicization of need' (1987:9). The legislation also contained a variety of provisions, of which those dealing with a separate juvenile court were only a part. Other sections dealt with the prevention of cruelty to children, and prohibitions on begging and prostitution. At around the same time, the statutory creation of probation and preventive detention occurred.

In Australia, the major reason given for establishing children's courts was that they ensured that young people were tried separately from adults and were not subject to the harmful effects of contamination and stigma—particularly where the young person was before the court on neglect matters. Australian legislation establishing separate children's courts was introduced as follows:

- South Australia—*State Children Act 1895*
- New South Wales—*Neglected Children and Juvenile Offenders Act 1905*
- Victoria—*Children's Court Act 1906*
- Queensland—*Children's Court Act 1907*
- Western Australia—*State Children Act 1907*
- Tasmania—*Children's Charter 1918*

The Australian legislation was based on child-saving rhetoric similar to that used in the USA. The courts were to be parental and informal, with correction administered in a 'fatherly manner' (Seymour 1988:70–1). Magistrates were to be specially selected, trained, and qualified to deal with young people; probation officers were to play a special role in supervising young people and preparing background reports.

The legislation establishing children's courts in Australia gave jurisdiction to the courts over criminal matters (juvenile offending) and welfare matters (neglected children and young people). The children's courts also had exclusive jurisdiction, which meant that other, lower courts could not hear cases involving children. The legislation also stipulated that the children's court had to sit separately from the other courts, and that special magistrates had to be appointed. In practice, most magistrates were simply designated as children's magistrates, and only in the major cities did anything like special courts exist (Seymour 1988:96).

There were important variations among jurisdictions concerning the extent to which the juvenile court differed from the adult criminal courts. For instance, the children's court in Australia was not as different from the adult courts as it was in the USA. In the USA, the young person appeared in the court as a result of a delinquency petition, and the court had to determine whether the child was delinquent, not whether they had committed a particular offence. In contrast, in Australia the court had to determine whether the young person had committed an offence, at least in regard to criminal matters. In relation to welfare matters, the court had to be shown that the child or young person was neglected within the terms of the legislation (although this was not the case in relation to Indigenous children).

With the increasing separation of children from adults in the judicial system, the provision of information to the court about the young person increased in importance. The development of probation was an important adjunct to the new children's courts. Charity workers filled a need by providing special knowledge to court about the young person (McCallum 2009:121). Probation predated the children's courts and had arisen from voluntary charitable and religious work. In the USA, members of the Board of State Charities had attended court hearings involving children, and as a result about one-third of such children were placed on probation under the members' supervision. In the United Kingdom, the First Offenders Act, passed in 1887, had allowed the supervision of minor first offenders by 'missionaries' and voluntary workers. Similarly, in Australia the courts had offered conditional discharges to offenders, and this had been referred to as probation. The development of separate courts for young people led to a more systematic use of probation, and in various parts of Australia the children's court legislation allowed for juvenile offenders to be released on probation.

Initially, honorary probation officers were attached to the children's courts, with the function of preparing background reports and conducting supervision. The use of probation became an important sentencing option for the children's courts. By 1908, there were 211 honorary officers appointed to the children's courts in Victoria, and by 1909 there were 250 officers in New South Wales (Seymour 1988:100–1). Outcomes for the Sydney Children's Court for a 12-month period ending in April 1911 revealed that 873 children had been found guilty of an offence, of whom 46 per cent were released on probation (Seymour 1988:104).

JUDICIAL THERAPISTS

The children's courts encouraged minimum procedural formality and greater dependency on new personnel such as probation officers. Judges were encouraged to look at the character and social background of the 'delinquents'. In this sense, the movement has been described as anti-legal (Platt 1977:141). Furthermore, the court's intervention was justified where no offence had actually been committed but where the young person was causing problems for someone in authority, be that a parent, teacher, or social worker. In Australian jurisdictions, such matters could come before the courts in the form of a range of welfare complaints or status offences, such as uncontrollability, exposure to moral danger, or truancy.

One way of conceptualising the relationship between the children's court, its ancillary staff, and the young person has been through notions of the 'therapeutic' state. Some commentators have argued that the 'role model for juvenile court judges was doctor-counselor rather than lawyer. Judicial therapists were expected to establish a one-to-one relationship with delinquents' (Platt 1977:142). Donzelot (1979) has also argued that the advent of the juvenile court changed the relationship of the family to outside agencies. He argues that the family became subject to a 'tutelary complex', whereby a number of agencies, including juvenile justice, reduced the family's autonomy and instead established the family as a site of intervention.

In Donzelot's terms, the transition has been from government *of* the family to government *through* the family. The term 'government' in this context refers to the process of social and legal regulation. With the development of a separate system for dealing with young people, families can be more closely policed (in the broadest sense of the term), and recalcitrant children removed.

During the late nineteenth century, there were specific intellectual developments that had an impact on the construction of juvenile delinquency and that facilitated specific forms of intervention. These new forms of knowledge gave the promise of scientific neutrality, which also provided legitimacy to the benevolent intentions of the court. The discourse of reformation included a range of new disciplines, such as child psychiatry, psychology, and paediatrics. The forms of intervention were also connected to the new categorisation of young people as 'adolescent'—a term thought to have been created by G. Stanley Hall in his book *Adolescence*, published in the late nineteenth century (Morris & Giller 1987:4). Developing social and psychological theories began to identify the developmental stages of children and adolescents. These intellectual developments saw children and youth as vulnerable, and were linked to—and justified the introduction of—'a deluge of protective legislation' in areas such as child welfare, education, and labour (Gillis 1981:133).

There was also a shift in attitudes towards penalty. The 'scientific' discourses on behaviour supported the move to impose long-term 'training' through indeterminate (open-ended, with no fixed term) sentences for young people. The growth of positivist criminology in the later part of the nineteenth century also provided an intellectual framework that facilitated separate treatment for juveniles, with the emphasis on classification by age and the psychological attributes of each offender (Morris & Giller 1987:18).

Views on the therapeutic nature of intervention are also reflected in the development of the notion that justice is to be personalised in terms of its style as well as its outcomes. At the time the new juvenile court buildings were opened in Chicago in 1907, it was claimed that 'the hearings will be held in a room fitted up as a parlour rather than a court, around a table instead of a bench ... The hearings will be in the nature of a family conference, in which the endeavour will be to impress the child with the fact that his own good is sought alone' (cited in Platt 1977:143).

Similar arguments were put forward in Australia for the construction of separate facilities for children's court hearings. In reality, though, most matters were determined in the physical surroundings of the local magistrate's court.

GENDERED APPROACHES

Because in its development juvenile justice was concerned with questions of youth behaviour, it is not surprising that this interest had a special meaning for young women. From the earliest developments of separate systems for dealing with youth, there appear to have been specific gender-based differences in the treatment of young people (see Chapter 8). Schlossman and Wallace (1978) note that in the USA young women were focused upon because of their sexuality. The 'immoral conduct' of girls was broadly defined, and they were subjected to physical examinations to determine whether they had been sexually active. Schlossman and Wallace also found that girls were given longer reformatory sentences. In Canada, it has also been noted that, historically, females received more severe forms of intervention from the juvenile courts than males (Schissel 1993:11).

The situation for girls in Australia was similar, with longer periods of incarceration being given to young women. In her study in Western Australia, Kerr notes that 'boys were generally committed for crimes against property. Controlling the behaviour of girls included moral policing as well as dealing with civil and criminal misdemeanours' (1998:1). Jaggs (1986:62) noted that, in Victoria, 'girls' larceny and other offences gave cause for concern, but general "wildness" and sexual misbehaviour gave more, since they breached strongly held views on female purity'. Girls who misbehaved were thought to be worse than boys and more difficult to reform.

Similarly, a study of Parramatta Industrial School for Girls argued that the school's focus was on moral reconstruction of the young women sent there. Training focused on domestic skills and moral purity, and at least until the early twentieth century the regime was harsh, with no personal possessions allowed, no privacy, two outside visits per year, and no outside authority to whom the girls could appeal. Punishments included caning ('thrashing' or 'whipping'), head shaving, 'standing out' (standing outside perfectly still for a number of hours), and isolation (Willis 1980:184–8).

By the early twentieth century, legislation also began to refer specifically to young women and their behaviour. Thus, the *Neglected Children and Juvenile Offenders Act 1905* (NSW) neglect category had specific provisions that related to girls and young women.

Girls and young women could be charged with being neglected if they were found soliciting men or otherwise behaving in an indecent manner (Willis 1980:185). There were no equivalent provisions relating to males.

Young women were also punished when they were the victims of serious crime. As Van Krieken (1991:93) has noted, the entry books to Parramatta Industrial School for Girls showed that girls who were raped or the victims of incest often found themselves committed to the institution, while the perpetrators remained free. Parramatta was to remain the main institution for girls in New South Wales until the late 1970s (see Franklin 2014). A senate inquiry into institutional care in Australia noted that:

Parramatta Girls' Industrial School ... became renowned for extreme cruelty, was the subject of many inquiries which were scathing of its activities and achieved notoriety in the 1960s when many of the girls rioted against its conditions. (Senate Community Affairs References Committee 2004a:55)

The inquiry received many submissions from women who had been in the Parramatta institution, such as the following.

When I got to Parramatta I was told that they would break my spirit at that time I didn't know what they meant. A Mr Gordon punched me in the face several times, my nose bled. (Sub 39)

I did not know what cruelty was like until I went into Parramatta Girls Home ... no child should have endured the neglect, the cruelty, the brutality, malice and immorality that were shown by many of the staff to many of the girls in the home. (Sub 110)

I was involved in the Parramatta riots. Myself and other girls were the first to get on the roof at Parramatta which was to escape the brutal bashing we knew we would get for leaving the laundry. Mr Johnson was then in charge, he was a brutal man and within that week I had seen him bash and kick a girl that he had been molesting to try and induce a miscarriage. (Sub 250) (Senate Community Affairs References Committee 2004a:56; see further Franklin 2014, and Box 1.1)

BOX 1.1 FURTHER RESOURCES ON GIRLS' INDUSTRIAL SCHOOLS

In recent years, increased media attention has been paid to the shocking treatment of girls in reformatories in Australia. Two plays—*Parramatta Girls* and *Eyes to the Floor* by Alana Valentine—have been written and performed to showcase the experiences of 'Parramatta Girls'. For more information on the Parramatta Girls' Home, see the following ABC Stateline five-part series:

- *Reliving the Horror*, ABC Stateline, 30/5/03 <<http://www.abc.net.au/stateline/nsw/content/2003/s869514.htm>>.
- *More Victims of Parramatta Girls Home*, ABC Stateline, 6/6/03 <<http://www.abc.net.au/stateline/nsw/content/2003/s875163.htm>>.

- *The Reunion*, ABC Stateline, 27/06/03 <<http://www.abc.net.au/stateline/nsw/content/2003/s890893.htm>>.
- *The 'Girls' Get Together*, ABC Stateline, 24/10/03 <<http://www.abc.net.au/stateline/nsw/content/2003/s975547.htm>>.
- *The 'Girls' Re-unite*, ABC Stateline 7/11/03 <<http://www.abc.net.au/stateline/nsw/content/2003/s985548.htm>>.

See also:

- *Exposed to Moral Danger*, ABC Radio National, Hindsight, <<http://www.abc.net.au/radionational/programs/hindsight/exposed-to-moral-danger/3069882>>.

[A radio program about Parramatta Girls' Home, which was highly commended in the 'radio' category of the 2008 Human Rights Commission Awards.]

For further information and resources, see <www.parragirls.org.au>.

POLICE, LAW, AND JUVENILE DELINQUENCY

The development of new methods of dealing with young people went hand in hand with developments in the recorded incidence of essentially new categories of minor juvenile crime. An analysis by Gillis (1975) of Oxford Police Court records between 1895 and 1914 shows that juvenile crime was apparently increasing at a faster rate than adult crime in this period. These figures would seem to support fears at that time about rising juvenile crime, but a closer examination of the pattern of offending shows uneven distribution across various offences. The major increases were in minor summary and public-order offences such as drunkenness, gambling, malicious mischief, loitering, wilful damage, begging, dangerous play, and discharge of fireworks. The analysis of a more serious offence, theft, shows that this was associated with minor items (fruit, vegetables, toys, sweets, cigarettes, and so on).

It would appear that two broad categories of offences were important. Young people were brought before the courts for public-order offences related to leisure activities in public, and for property offences associated with economic need. Humphries (1981) has argued, on the basis of oral histories, that many offences can be viewed as expressions of 'social crime'. The concept of social crime encompasses 'the innumerable minor crimes against property committed by working-class children and youth that were condoned by large sections of both the youth and parent cultures as legitimate despite their illegality' (Humphries 1981:151). Many property crimes were necessitated and justified by extreme poverty and the struggle for survival. The most common form of property theft, which was seen as a customary right among working-class communities, involved supplementing the family's food and fuel supplies. In England, the single most important category of juvenile crime during the early twentieth century was 'simple and minor larceny', which 'comprised taking coal from pitheads, chumps of wood from timber yards and vegetables from farmer's fields, poaching rabbits and so on' (Humphries 1981:151). The actual nature of social crime was complex, and varied significantly among different areas, depending on opportunities offered by the local economy and the nature of local traditions.

Various government studies at the time suggested that petty crime was most common among unskilled, unemployed, and sole-parent families, and that older children in the family were more likely to be delinquent. The dominant criminological classifications of juvenile delinquency during the late nineteenth and early twentieth centuries saw juvenile crime as associated with weakness of character, ignorance, irrationality, or some other form of pathology. The associated explanations relied on biological and psychological interpretations such as 'primitive impulses'. However, Humphries has argued that such explanations ignored the significance of poverty, inequality, and class conflict as significant factors in crime. The domestic economy of the working-class household provided a rational set of motives, whereby the eldest children committed offences to help support the family. In other words, there was a moral economy operating that valued family support more than compliance with the law.

Offences related to public order tended to involve arrests of young people in groups of two or more, and sometimes in groups of as many as 10 or 15. Charges relating to property damage, mischief, and dangerous play could involve many young people and derive from particular policing activities. Gillis states: 'Sliding on bridges, throwing rocks and playing street football were typical activities which led to the arrest of large groups. This would seem to suggest that there was a tendency on the part of the public and the police to attribute antisocial intents to boys collectively, thus raising the rate of recorded offences ...' (1975:103).

The surveillance of public space and the ability of police to arrest young people raise the issue of developments in policing—particularly with a focus on the economic and leisure activities of working-class young people. Gillis (1975) argues that, ironically, the collective behaviour of youth had actually improved by the later part of the nineteenth century. Thus, increased arrest rates were likely to have been a function of a number of factors, including law-enforcement practices, new legislation, and the growth of a range of organisations (such as the Boy Scouts) whose intent was to modify young people's behaviour.

Police functions and practices were altering. The late nineteenth century saw expanded, reorganised, and increasingly professional police forces. Police had responsibilities in relation to young people that extended beyond the notion of criminality to one of monitoring young people's social life. Police were involved as welfare agents, truant officers, and moral guardians (Finnane 1994:7). In New South Wales in the 1890s, the police took on the role of regulating truants. Official arrest figures from the nineteenth century in Australia show a primary concern with petty crime and public order; however, welfare complaints such as neglect or uncontrollability were also important. Girls were increasingly represented in welfare complaints such as complaints of uncontrollability (Finnane 1994).

The different sentencing regimes for juveniles convicted of larceny, and the extension of the magistrates' jurisdiction, resulted in more juveniles being prosecuted by police. In other words, the net was made wider because more juveniles were brought before the courts as a result of the seemingly beneficial reforms (Seymour 1988:33). Special laws were developed during the 1870s and 1880s that were aimed specifically at young people's behaviour. In legislation such as the *Juvenile Offenders Act 1875* (Tas), specific juvenile behaviour, such

as indecent exposure, assault, obscene language, throwing stones, obstructing a railway, and vandalism, could be dealt with in the magistrate's court.

There was also a move away from the old police practice of dealing with juvenile offenders on the spot. Corporal punishment by police was viewed as inappropriate, particularly by organisations such as the National Society for the Prevention of Cruelty to Children. One effect of reducing the use of arbitrary punishment was that the police made more use of the courts (Gillis 1975). Indeed, in New South Wales the establishment of the children's court and legislation relating to neglected children was recognised by its architects as facilitating police intervention (Finnane 1994:17). Information available from the Sydney Children's Court was seen to support greater intervention, particularly in relation to public behaviour. In 1911, about one-third of all the offences determined in the Sydney Children's Court related to riotous behaviour, throwing stones, playing games, 'boarding or quitting tram in motion', and 'bathing in view' (Seymour 1988:104). Similar evidence from Western Australia also suggests prosecutions for very minor offences, such as breaking branches from trees and kicking footballs in a park. Seymour argues that minor incidents such as these would probably not have been brought before magistrates prior to the advent of the children's court, and it seems likely that the net was widened, with a greater level of prosecutions for minor offences (Seymour 1988:109). Research in the USA suggests that the exercise of discretionary authority by police shaped the operations of juvenile justice during this period of the late nineteenth and early twentieth centuries (Wolcott 2001).

Schools and youth organisations also had the indirect effect of causing more young people to appear before the courts as they defined and attempted to control the public behaviour, work activities, and leisure of young people. Such organisations' influence was extended through social changes, such as the provision of compulsory education; and legislation, such as the English *Prevention of Cruelty and Protection of Children Act 1889*. There was also a range of reformatory organisations, such as the Salvation Army, Boy Scouts, Boys' Brigades, Young Men's Christian Associations (YMCA), and Young Women's Christian Associations (YWCA). These organisations were engaged in activities aimed at altering young people's public and private behaviour. 'Keeping them off the streets' became a shorthand way of describing this function (Maunder 1984; Gillis 1975). Schools also became sites of discipline and the law. One school's punishment book for 1905 showed that almost one-third of the punishments related to extracurricular activities (Gillis 1975:118).

One outcome of the changes in legislation and of the spread of schooling and youth organisations was that clearer distinctions between 'rough' and 'respectable' working-class youth were established. Certainly, police perceptions of male youth were defined in terms of class and sex. 'Such perceptions did not necessarily mean that police would deferentially side with the wishes of social elites against the alleged depredations of working-class youth. But they did work with social distinctions which pitted the respectable against the rough.' (Finnane 1994:13).

The new and expanding jurisdiction dealing specifically with young people allowed greater regulation. New offences were created and welfare provisions were developed.

There were new methods of surveillance and new bureaucratic structures for enforcing social regulation. There is widespread empirical evidence to suggest that increased numbers of young people were dealt with formally by the juvenile justice system.

EXPLAINING CHANGE

Historians and criminologists have debated how to conceptualise the effects of the establishment of a separate legal regime for dealing with young people. These debates are not of purely academic interest because they also illuminate current issues relevant to juvenile justice. Different conceptual approaches are shown in Box 1.2.

As can be seen in Box 1.2, one way of conceptualising the period of changing policy is to view it in terms of progress. A separate children's court and separate penal system can be seen as a humanitarian advance over former methods of dealing with young people. They can be seen as necessarily good. Liberal (or 'Whig') histories are often criticised for their teleological or evolutionary view of the past: that is, for seeing the past as inevitably and progressively leading to the present. An implicit assumption is that because the present is the outcome of progressive steps in the past, then the present system is the best and most advanced. This view of history sees the main source of change in juvenile justice as deriving from enlightened and humane individuals who care about the plight and welfare of working-class children. The state is seen as a neutral institution towards which reform activity can be directed.

In the 1960s and early 1970s, these views of the past were subjected to intense criticism. The institutions of juvenile justice were seen as a mechanism of social control, and criticised for being inefficient, brutal, mismanaged, and corrupt. A key component of the critique was that the new systems of regulation increased levels of surveillance and 'subjected more and more juveniles to arbitrary and degrading punishments' (Platt 1977:xvii). In some of these 'social control' approaches, the issue of class is seen as important. Social control mechanisms are seen as extending control over the working class, particularly young people. Implicit in these approaches is the view that state institutions are a form of regulation by one class over another.

Some writers have stressed the importance of incorporating a political economy approach, which argues that the nineteenth- and early twentieth-century developments in juvenile justice were neither isolated nor autonomous, since broader economic and social reforms were occurring that were opposed to *laissez-faire* capitalism, and there was an increased role for state institutions in economic regulation. The new political economy at this time was characterised by long-range planning and bureaucratic routine (Platt 1977:xix). Conceptual changes related to scientific management in industry, intelligence testing in education, and classifications and treatment in criminal justice. Developments within industrial capitalism demanded a greater role for the state in preparing potential workers for the labour market while ensuring the maintenance of public order and protection of property.

BOX 1.2 HISTORICAL INTERPRETATIONS

LIBERAL ANALYSIS (PROGRESS AND HUMANITARIANISM)

Focus: Individual moral reformation and training for respectable work and life

Central ideas	Key players	Source of change
Progress	Middle-class reformers	Humane individuals
Humanitarianism	Child-savers' movement	Neutral state
Benevolent intentions according to bourgeois ideals	Charities	Enlightenment ideals
Salvation of children		

CRITICAL ANALYSIS (SOCIAL CONTROL AND POLITICAL ECONOMY)

Focus: The policing and regulation of the lives of working-class families and children to ensure social order and capitalist economic relations

Central ideas	Key players	Source of change
Social divisions	State	Structural changes associated with capitalist development
Maintenance of bourgeois social order	Ruling class	Resocialisation of working class
Structural need for disciplined and hard-working labour	New professions	Increased state intervention
Effects of policies on working-class children	Police	
	Juvenile courts and institutions	

SITUATIONAL ANALYSIS (SOCIAL ACTORS AND DIVERSE INTERESTS)

Focus: The complexity of change reflects active responses from diverse actors with different interests

Central ideas	Key players	Source of change
Power is dispersed throughout social interactions	Middle-class reformers	Self-conscious actions and attitudes of people
Emphasis on how reforms translated into practical situations	Working-class parents and organisations who used the system to their advantage	Unintended effects
Actual processes of implementation in relation to child's circumstances versus seriousness of offences	Police and institutional staff	Institutional dynamics shape activity/policy
Agency or role of working class, as well as middle class, in reform period		

Australian historians of child welfare and juvenile justice, such as Van Krieken (1991), have argued that it is important to understand how the working class used the new institutions to their own advantage. Depending on their situation, different social actors had different interests in how the juvenile justice system developed and was used. Class was important, but the new institutions were not merely repressive of working-class youth. Complaints about young people might arise from family members, neighbours, or the public, and did not simply derive from police or institutional surveillance (see also Finnane 1994). Platt (2008:125) notes in his reconsideration of social control arguments that it is important not to overemphasise the role of the state at the expense of understanding issues of agency, resistance, and engagement.

Van Krieken (1991) argues that there was a division between the 'respectable' and 'non-respectable' sections of the working class. The respectable working class and sections of the labour movement supported some aspects of the new institutions, such as compulsory education. They might well have supported new standards of public propriety and morality against what they saw to be the behaviour of the non-respectable urban poor. Indeed, Finnane (1994:10–15) notes that police used distinctions between the respectable and the 'rough' working class when deciding whether to enforce particular public-order laws. According to Van Krieken, we need to consider how working-class people accepted certain standards in their own interests and were not simply passive victims of new levels of state intervention.

CONCLUSION

The changes that occurred in the last half of the nineteenth and early part of the twentieth centuries with the introduction of specific measures to deal with young people brought before the courts can be understood within the context of broad changes occurring in the forms of state intervention. Education Acts compelled children between certain ages to attend school. Legislation regulating labour prohibited children of certain ages from working. The period of dependency of children was extended. In relation to welfare, reliance on private philanthropic organisations was transformed so that the state assumed responsibility for welfare provision.

State intervention changed the overall position of young people in Australia during this time. New forms of regulation related to education, work, and leisure. Increased police surveillance, the development of the children's court, alterations to the penal regime for young people, and the growth of new professions were all part of this broader change. There was also greater regulation of family relations, including guardianship laws. It is clear that the law was used to enforce standards and obligations on parents. Compulsory education is one example. In England, there were 86 149 prosecutions of parents under the 1870 Education Act in one year alone (Morris & Giller 1987:22).

However we conceptualise the changes, it is clear there were fundamental shifts during the late nineteenth and early twentieth centuries in the relationship between young people and the law. There was a separate method of punishment for young people, including new penal institutions and greater surveillance at home and in the community through probation officers. Separate sentencing regimes were established, including the use of indeterminate sentencing. Separate children's courts were established, not only to determine criminal matters but also to assess neglect and welfare matters. Particular practices were also seen as appropriate in dealing with young people who came before the courts, particularly the use of social-background reports. Partly as a response to changes in legislation and developments in policing, and partly as a result of the existence of separate children's courts, there was an increase in the number of young people prosecuted and brought formally into the justice system. Finally, there were gendered approaches to the application of the new forms of controlling young people. Understanding the foundation and historical development of juvenile justice is particularly important at a time when much of the contemporary literature focuses on narrow empirical studies of crime causation and particular programs (Platt 2008:126).

The developments in juvenile justice can be further understood by the theoretical developments in criminology. We have referred on a number of occasions in this chapter to developments in classification, new disciplines, and changes in thinking about young people. In the following chapter, we explore the developments of criminological theory and various explanations for juvenile offending.