

Child Savers and Unchildlike Youth: Class, Race, and Juvenile Justice in the Early Twentieth Century

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- PLATT, ANTHONY. *The Child Savers: The Invention of Delinquency*. Chicago: University of Chicago Press, 1969.
- WARD, GEOFF. *The Black Child-Savers: Racial Democracy and Juvenile Justice*. Chicago: University of Chicago Press, 2012.
- AGYEPONG, TERA. *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899-1945*. Chapel Hill, NC: University of North Carolina Press, 2018.

*This essay analyzes inequality and the construction of childhood in the early US juvenile justice system. Although the juvenile justice movement's best intentions focused on protecting children from neglect and the criminal justice system, historians have argued that protective juvenile justice was unequal and ephemeral. I critically summarize three histories of juvenile justice: Anthony Platt's *The Child Savers: The Invention of Delinquency* (1969), Geoff Ward's *The Black Child-Savers: Racial Democracy and Juvenile Justice* (2012), and Tera Agyepong's *The Criminalization of Black Children: Race, Gender, and Delinquency in Chicago's Juvenile Justice System, 1899–1945* (2018). I argue that the common thread in these studies is the construction of poor and black youth as unchildlike. Because the juvenile court arose in a context where not all youth were considered children, it never treated all youth as innocent or in need of protection.*

From one perspective, the juvenile court appears to be one of the most popular American legal innovations: from their origins in Illinois in 1899, juvenile courts proliferated across most of the United States by 1925, and were in all fifty states twenty years later (Mennel 1973, 132). Shortly after, juvenile courts spread beyond the US border as a global export. Even in the era of mass incarceration and tough-on-crime politics, no state has completely scrapped its juvenile justice system. For more than a century since their inception, the story of juvenile courts has been a story of adoption.

And yet, juvenile courts have been the focus of criticism since their inception. As early as 1912, a pair of progressive-minded social reformers and academics who surveyed the work of the Chicago juvenile court declared their optimism about future

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improvements, but lamented the frequent lack of resources for the court to adequately perform its tasks (Breckinridge and Abbott 1912). In 1967, the United States Supreme Court rendered its first decision on the juvenile court, holding in the landmark case of *In re Gault* that juveniles needed due process protection, given that “in practice,” juvenile justice had “not been entirely satisfactory.”¹ Historians have long described juvenile courts as falling short of their intended mission, arguing that they were destined to fail in the face of entrenched institutional interests (Rothman 1980) or that they were not intended to protect youth in the first place (Platt 1969). Politically, in the post-*Gault* years, juvenile courts have come under attack from the right as soft on crime, allowing serious offenders to avoid punishment (Simon 2006; for an example, see Gardner 1981).² Over time and under political pressure, many states have narrowed the jurisdiction of juvenile courts by making it easier to try juveniles as adults.

I argue that one reason commentators have been dissatisfied is that our society does not see all young people as children, and does not see all children as equally childlike. The US juvenile court movement arose in part to protect childhood, which by the late nineteenth century was understood as a period of development and innocence. But as Stuart Aitken has argued, some young people are seen as “unchildlike children” (Aitken 2001; Brown 2011) who are precocious, mature, and threatening. In the early twentieth century, the construction of unchildlike children was informed by a wave of research on childhood and child development (for example, Brace 1872; Hall 1904; Breckinridge and Abbott 1912), and this Progressive-era social science was deeply influenced by eugenics advocates and their concept of racial degeneration³ (Willrich 1998; Lesko 2012). The movement to establish the juvenile court was contextualized by the belief that childhood was the site of struggles either to advance the race or to control dangerous races and classes. Eugenic frames constructed many poor youth and youth of color as social problems, rather than as saveable children. I argue that scholars of the history of juvenile justice have exposed different ways in which young people have been seen as unchildlike and thus inappropriate subjects for rehabilitative justice. Fears of uncontrollable and unchildlike young criminals who cannot be contained in juvenile courts (for example, DiIulio 1995) have motivated restrictions on juvenile justice, and these fears have roots in the early juvenile court. The juvenile court has been an inconsistent and dissatisfying institution because of the unequal and fractured social construction of childhood.

1. *In re Gault*, 387 U.S. 1, 18 (1967).

2. “Soft on crime” is an old line of attack: in 1927, the Chief Probation Officer in New York complained that opponents of the juvenile court saw it as “a monster of social injustice and blundering . . . a stalwart opponent of society and the law, a sort of behemoth figure standing between the crime and its punishment” (Cooley 1927, 19).

3. Degeneration, a “term imbued with both scientific and moral meaning,” was a central concept in the early twentieth-century eugenics movement (Stern 2005, 21–22). A misuse of evolutionary theory, degeneration was the idea that humans could revert to more primitive and animal-like evolutionary stages. In the Progressive era, common “racial taxonomies . . . placed whites and Europeans at the apex of civilization, blacks and Africans on the bottom rungs,” and others in various middle stages (Stern 2005, 22). Degeneration thus signaled both the risk presented by a less-evolved person who was incapable of controlling their animal impulses and the risk that degenerate heredity could be passed on and potentially dilute the white race.

I begin with scholarship on the stated purposes and politics of the juvenile court movement, a charitable movement intended to divert children from the stigma and harm of adult criminal courts. On the terms of its advocates, this movement applied to all children equally. Scholars who take this equality seriously, focusing on what David Rothman has termed the progressive “conscience,” tend to explain the failures of the court in terms of institutional constraints and the unforeseen consequences of political compromises. I then introduce Anthony Platt’s *The Child Savers* (1969), which argued that the juvenile court movement was a conservative reform aimed at class-based social control. However, Platt’s work also shows how poor, white, immigrant youth were seen as more dangerous, less childlike, and thus less saveable. I then turn to two major studies of black youth in the juvenile justice system, Geoff Ward’s *The Black Child Savers* (2012) and Tera Agyepong’s *The Criminalization of Black Children* (2018), which both argue that the juvenile court mainly protected the interests of white children while treating black children as incorrigible criminals. These latter books underscore how race has historically been a key factor in the construction of childlikeness and saveability. Black youth were seen as insensate, inferior, more dangerous, and more similar to adult criminals—features that justified their exclusion from the court’s protective possibilities.

As a whole, these works reveal that unchildlikeness has been constructed in many ways. Youth have been seen as precocious, adult, responsible, and dangerous for reasons relating to gender, sexual expression, nationality, class, and race. This essay focuses on two of those dimensions, class and race, which intersect to produce stratifications of unchildlikeness. Poor whites have historically been seen as a dangerous and possibly degenerate class of being (Isenberg 2017), and so poor white children do not always fit neatly into the mold of innocent childhood. However, poor white youth have also been seen as saveable and redeemable, particularly by charity and welfare advocates who were involved in the early juvenile court movement. Poor white youth thus traverse the social construction of childhood, moving back and forth between childlike and unchildlike. Black youth have more categorically been excluded from the protective ambit of juvenile justice; racism has drawn stronger lines than class. But the ways that the juvenile court has excluded black and poor youth from its welfarist vision have also affected how the courts have dealt with all youth, shaping institutional attitudes and orientations. The history of unchildlike youth is also a history of youth in general and of the risks of welfare-oriented justice.

THE VISION AND STRUCTURE OF EARLY JUVENILE JUSTICE

The vision of the early juvenile court was cast in terms of saving all children, rather than saving particular types of children. Advocates of the court emphasized the distinctive innocence of childhood as something to be protected. The idea that young people are sometimes less guilty than adults is an old one, as evidenced by the English common law doctrine of *parens patriae*, which dates back to Chancery courts in the fourteenth century (Rendleman 1971). However, the stronger version of that idea, that *all* young people are less criminally responsible than adults, emerged in the United States and Britain only in the last few centuries. Enlightenment conceptions of childhood and development, along with transformations in ideas about the nature of authority and the

importance of education in the formation of a competent person, produced a modern understanding of childhood as a time of diminished responsibility (Brewer 2007). Accordingly, the special treatment of young offenders in the United States predates the formal establishment of the juvenile justice system. The first separate reformatory facility for juveniles was the New York House of Refuge, which was opened in the 1820s, and various charitable and aid societies operated homes for “wayward children” throughout the nineteenth century (Schlossman 1977; Schneider 1992).

However, the broad movement to legally treat all youthful offenders in a separate system of justice did not emerge until near the end of that century. A myriad of intellectual, cultural, and political shifts coalesced after the Civil War to lay the conditions. First, the continued refinement of cultural ideas about children and childhood increasingly emphasized innocence, malleability, and the importance of education and youthful development, the flip side of which was the recognition that children’s development could go badly wrong if the processes of maturation were derailed (Brown 2011). Second, government in the United States had increasingly assumed the paternalistic power to intervene in family life and structure (Grossberg 1988) and in particular had assumed power to see to the welfare of children in the nineteenth century (Katz 1986), which created a recognizable legal context for something like juvenile justice. Finally, Progressive-era transformations and upheavals resulting from immigration, urbanization, and economic shifts increasingly led “respectable” people to fear the disorder of inner-city youth and the potential of a poorly raised child who was not “pulled up” to “pull us down” (Grossberg 2002, 22).

It is important to remember that these broad changing conditions structured only the possibilities and horizons of the juvenile court movement—they did not determine its contours. Set against these transformations, social reformers were moved by what seems to be a genuine social conscience to carry forward the same familiar moral impulse of the separate punishment of youth that had been embodied in the Houses of Refuge. Indeed, the juvenile court movement tended to consolidate and work with pre-existing charitable and church agencies (Schneider 1992).

Early advocates of juvenile justice in Chicago, such as Jane Addams and Julia Lathrop, expressed several concerns about the treatment of young people in the adult criminal justice system (Zimring 2002; Scott 2002). First, from a legal-philosophical perspective, the diminished capacity of children arguably meant that adult court punishments were inherently disproportionate and unjustifiable. Second, from an enlightened child-development perspective, adult punishments might stunt or interfere with the proper growth of the child instead of aiding it, throwing away an opportunity to raise a law-abiding citizen. Finally, from a perspective focused on postcourt treatment, there were concerns about housing children in institutions with adult offenders, some arguing that separate systems were needed to keep children safe from corrupting or predatory influences, and about the detrimental effects of the stigmatizing label of “criminal” (Hurley 1907).

The juvenile court movement thus emerged at the intersection of new fears, new institutional challenges, new social conditions, and new beliefs and concerns about the proper and moral treatment of children. One important result of this mixture of ideas and motives was that the juvenile court was founded as a continually evolving and experimenting institution, with a sense of mission but no concrete plan for institutional

development (Tanenhaus 2004). Built on a set of compromises rather than a particular grand plan, juvenile courts quickly found themselves facing resource strain and uncertainty over their future. For example, as a condition of supporting the first juvenile court bill in Chicago, Catholic charities insisted that children be placed in care of “persons of like religious faith,” while industrial school managers, afraid of going out of business, successfully lobbied for legislation to give industrial schools rather than juvenile court judges control over institutional treatments and conditions (Tanenhaus 2004, 14–22). Because of the different agendas and personalities involved, early twentieth-century juvenile courts were often dissimilar in style, depending on the priorities of the judge and any local welfare or social work groups involved in the court (Schneider 1992, 154–56). The relatively sophisticated and urbane juvenile court of a major city, with a probation department and a staff welfare worker, might bear little resemblance to a rural juvenile court staffed by a volunteer judge (Mennel 1973, 131–32). Even the legal status of juvenile courts often varied; some states established separate court systems, while others created a special juvenile procedure within existing courts.⁴

But despite the variation among juvenile courts, it is fair to say that the centerpiece of early juvenile justice was probation (Mennel 1973). The central rehabilitative theory was that diverting children from the formal criminal justice system into an informal and flexible system of court oversight through probation would avoid stigmatization and allow for more flexible and constructive judicial interventions. The probation officer, often a social worker, police officer, or community member acting in a volunteer capacity, was intended to act as the eyes, ears, and hand of the juvenile court. Probation officers could make home visits and make recommendations to the court on changes in parenting or home conditions, provide follow-up reports on whether court orders had been followed, collect life histories for social workers, and so on.

The juvenile court was thus a flexible, nominally therapeutic system of justice constrained by few procedural limits with the life and home investigation and oversight of a probation officer. The juvenile court certainly concerned itself with a far broader range of conduct than acts that would be criminal if committed by adults; they exercised jurisdiction over cases of dependency and neglect and thus supervised cases involving school attendance, improper nutrition, and the like. However, as Bernardine Dohrn (2002) notes, the court’s available toolkit to confront these problems often meant an overreliance on detention. In some sense, the juvenile court faced the familiar problem that law requires backing by force at its bottom (Cover 1986). Judges could not force children to eat better or go to school, so instead they threatened the punishments that the court had intended to avoid. And even this framing of the problem obscures the juvenile court’s attempt to order individual responses to systemic problems. In the case of a family that eats poorly because of a lack of money to buy food, a judge can hardly order the parents to become wealthier, and any punishment for failure to comply with a relevant court order might seem to primarily punish class status.

4. For example, see *Commonwealth v. Fisher*, 27 Pa. 175 (1905), discussed in more detail below, which examines the difference and concludes that the attempted creation of separate courts for juveniles was unconstitutional, but that a special juvenile jurisdiction and set of procedures in the common courts was permissible.

It is thus unsurprising that parents developed complex and tangled relationships with the juvenile court. Parents did sometimes actively seek state intervention in their families, as commitment to a juvenile reformatory could help with job training for poor boys, or moral control and supervision for girls, or help to alleviate the financial stress of caring for a child (Schneider 1992, 64–75). Juvenile court intervention may have thus appeared to some parents as a lifeline. On the other hand, some parents strenuously objected to court intervention, which could detain their children without any of the protections of due process that ordinarily serve to limit capricious government action (148–50).

For example, in *Commonwealth v. Fisher*, a 1905 Pennsylvania case that was widely cited by other state courts justifying juvenile court powers, Frank Fisher, aged fourteen, was given an indeterminate sentence until his twenty-first birthday in the House of Refuge. Fisher's father objected, both because Fisher's crime of larceny would have received significantly less time in the adult criminal justice system and because the flexibility of juvenile court proceedings meant that Frank had never had anything like conventional due process before his conviction. The Pennsylvania Supreme Court had little trouble justifying Frank's commitment, as the purpose of juvenile court legislation was "to save, not to punish; it is to rescue, not to imprison . . ." And as much as some reformers likely believed this reasoning, Frank and his father certainly felt differently about whether seven years in a locked facility for larceny was a punishment.

The fact that juvenile court resulted in *more* severe confinements was ironic, and eventually became concerning both to the United States Supreme Court in *In re Gault* and to scholars who began to critically interrogate the underlying motivations and effects of the juvenile justice movement.

CHILD SAVING AND CHILD MAKING

The myriad intersections of moral sentiments, cultural fears, and political compromises at play in the juvenile court have been fruitful ground for scholarship exploring how the reality of juvenile justice deviated from its stated mission. One such deviation is the way that poor immigrant children were excluded from the court's rehabilitative mission. In *The Child Savers* (1969), Anthony Platt argued that rather than being a radical reform aimed at social justice and charitable amelioration of tough conditions, the juvenile court movement was a fundamentally conservative movement, largely continuous with past practice, that served to broaden the scope of punitive social control of youth, particularly immigrant and lower-class youth. Positioning the juvenile court movement within a linked ideological framework of class, morality, and criminological constructions of deviance, Platt argued that what others had seen as the failures of juvenile justice might actually have been at its heart.

For Platt, the social turbulence and transformations of the late nineteenth century and the Progressive era were particularly significant in their effect on criminological imagination at the time. Drawing from formal proto-criminological texts in sociology (for example, Brace 1872, Henderson 1901), conference reports, and also more popular accounts of welfare societies and newspapers, Platt argues that the concept of delinquency was constructed in reference to the "popular illegalisms" (Harcourt

2015) of poor and immigrant children and families. Conduct that violated a particular set of Anglo class norms, such as open expressions of sexuality, or begging openly on the street, was interpreted by sociologists as an expression of vice and crime in the making. For a straightforward and visual example of how these connections operated, consider Jacob Riis's dramatic 1880s photographs of poor youths on the street, including *A Growler Gang in Session (Robbing a Lush)*, in which he had the boys stage a depiction of a mugging. Interspersed with photographs of the boys idling and drinking in alleys, the pictures of the mock mugging suggested that idle and dissolute youth might turn to crime (Riis 1890, 223).⁵

Of course, Platt was also quite aware of the stated goals of juvenile justice reformers, such as protecting children from the "moral plague spots" (Platt 1969, 119) of adult jails. However, Platt largely interpreted such remarks not as evidence of a crisis of conscience, but of the concrete crime-control orientation of the juvenile justice movement. Although labeling theory⁶ did not yet have a formal name when juvenile courts emerged, Platt points out that the concern of reformers here is very much one of labeling theory in the making, and thus the concern may not be so much for the welfare and happiness of the youths themselves as with protecting society from their future depredations if they are shaped into criminals.

Platt concludes that the child-saving and juvenile court movements were not radical breaks with past practice, but rather relatively conservative reforms that were contiguous with middle- and upper-class thinking on crime-control policies. From this perspective, the juvenile court's broad jurisdiction to bring together dependency, neglect, and delinquency under its shared judicial ambit reflected a form of net-widening, covering previously noncriminal conduct that was "primarily attributable to the children of lower class migrant and immigrant families" (139). Thus, for example, probation supervision visits to homes searching for evidence of deficient nutrition were not in Platt's eyes a flawed attempt at a social welfare program, but rather a way to expand the reach of middle-class social control in poor homes. In the "anti-legal" (139) system of the juvenile court, with the pre-*Gault* absence of lawyers, objections, jury trials, rules of evidence, or requirements of written judgments or even parental notice, those observations could easily be turned into court adjudications that brought poor youth more firmly under the system's control.

The institutional conduct of the reform schools that children were sent to is one of Platt's strongest examples for evaluating the juvenile court as consistency rather than as a break. In fact, although there is some disagreement as to the reason for and the meaning of punitive treatment in reform schools, Platt's basic observation about harsh treatment in child-saving institutions is fairly well accepted (see, for example, Rothman 1980, Chávez-García 2015). Platt notes that the early Houses of Refuge were unsatisfying, but he also shows how many of the same militaristic officers and programs

5. Riis, who lived from 1849 to 1914, rose to prominence as an activist and reporter in the late nineteenth century. His book *How the Other Half Lives* was a widely read and enduringly influential work of photojournalism documenting alleys and tenements in New York. Riis's images were well-known to the child savers (see Yochelson and Czitrom 2008).

6. Labeling theory is the view that the external imposition of negative labels shapes individual self-identity and leads to deviant behavior. In this context, labeling a child as a "criminal" might cause them to develop a self-identity as a criminal, leading to later offending (see Becker 1963).

made their way into reform schools. For example, looking at records from the St. Charles School in Illinois, Platt shows how a military officer was brought in as a superintendent in the 1920s to replace a lax disciplinarian. The juvenile court system, reforms aside, demanded discipline and control. The forms of discipline, however, involved whippings with leather straps, month-long terms of solitary confinement in the “hole,” long-term chaining with manacles, and so on (150). It takes fairly little analysis to argue that whatever the stated goals might be, sending children to such an institution does not count as a nonpunitive moral refuge from the horrors of real punishment.

In Platt’s view, the juvenile court failed to be a welfare-oriented reform in two ways. The first is that out-of-court diversions such as probation were actually forms of net-widening that broadened the scope of social control, and the second is that when institutional commitments did happen, institutional treatments were not significantly different from the pre-juvenile court world. The reason that the juvenile court appears more as a consolidation and expansion of existing practices than a reform in Platt’s view is that it is a middle-class compromise of social control and sectarian interest groups driven by concerns with crime more than by concerns with treatment.

However, Platt does tend to characterize the juvenile court as concerned with poor and immigrant children, and the experiences of treatment within that system as relatively homogenous. As a number of historians have observed, there are good reasons to question both of these characterizations. For example, although Cheryl Hicks’s (2010) study of the experiences of black women in New York with Progressive-era legal and urban reform campaigns is not really a study of the juvenile court movement—her focus is on larger Progressive urban reform—she does encounter young girls experiencing New York’s wayward minor statute and their subsequent commitments to reformatories. There was a range of different sites for possible “moral rehabilitation” (184), of increasing severity, and the choice of which women were deemed most incorrigible was shaped by the belief of white reformers that blacks were inherently criminal and uncivilized.⁷ But Hicks also encounters cases of black families who themselves petitioned to have their daughters adjudicated delinquent under the law, as a way of enforcing their own expectations of respectable conduct, of attempting to enforce social norms in the absence of functional social support from white city leadership, or for other reasons.

Hicks reminds us of the texture and complexity of the juvenile court movement. Experiences of juvenile justice were widely stratified, as for example along lines of race and gender rather than just class and immigration status. Some parents sought out and used the juvenile court system in surprising ways to police their own families, while others objected and became the court’s targets. Further emphasizing the messy and often contradictory reality of the day-to-day uses and operations of the court, social historians have shown how the juvenile court movement could often be ineffectual in its commitments due to mistakes, internal professional struggles, or even the resistance practices of juvenile court subjects (Schlossman 1977; Schneider 1992).

7. Hicks’s empirical work focuses on the experiences of black women, as revealed by their writings and court case files. She makes comparative claims using both case notes from white reformers and secondary sources.

Elizabeth Brown's (2011) argument that the juvenile court movement was concerned with both the construction and deconstruction of childhood, drawn from her case study of the early Seattle juvenile court, helps shed light on the variegated treatments and experiences of differing youth under the juvenile court system. Brown notes that childhood is a socially constructed category with unclear and arguable boundaries (for other works emphasizing this point, see, for example, Brewer 2007; Schmidt 2010; Lesko 2012), and draws on Stuart Aitken's term the "unchildlike child" to describe those young people who cross cultural lines between childhood and adulthood and are treated as older than they seem. For Brown, the juvenile court was both about constructing a natural and healthy vision of childhood and about identifying and marking off the unchildlike children who threatened normative expectations. The normal and accidental delinquent, the young person who erred but was truly a child, was an appropriate target for care, forgiveness, and understanding. But recidivist delinquents, unchildlike children who were out of control and signaled dangerousness, received punishment.

Brown shows us that we understand the juvenile court better if we do not think of childhood as a singular, unified concept. After all, expectations of appropriate childhood are stratified by identity. For boys, experts saw some interest in sex as a natural phase of development, and even some minimal delinquent behavior might be a normal instance of "the natural precocity of masculinity" (Brown 2011, 365). Boys, after all, will be boys. But for girls, being a child meant being virginal and pure, and any sexual interest was a sign not of mere sex delinquency but of a child who was unchildlike. Other bodily markers, such as race and size, also became part of how the juvenile court constructed the lines between childhood and unchildhood. For example, in one 1916 case, court experts remarked on a fifteen-year-old boy's "strikingly primitive [] physiognomy and physique," and described his resistance to control as "a type of insensate animalism" (Brown, quoting Dykeman et al., 366). The body of the boy, in its strength and sexual maturity, signaled that he was not only not a child, but potentially not fully human.

Platt's study illustrates the court's emergence in the context of Progressive-era constructions of innocent childhood as a characteristic of white middle-class youth. Influenced by eugenic studies of the purportedly degenerate lower classes—such as Robert Dugdale's infamous study of the "Juke" family (Dugdale 1877)⁸—many Progressive reformers saw the white lower classes as atavistic and dangerous (Isenberg 2017; Brown and Barganier 2018, 98–101). This belief shaped reformers' concept of childhood: poor children had inherited defective genes and were likely to grow up into defective adults (Platt 2019, 169–70). Many progressives saw poor

8. Richard Dugdale was a sociologist who claimed to have studied a New York "hill family" and found that they were overwhelmingly mentally delayed, unhealthy, and criminal. Dugdale attributed the failings of the Juke family to a variety of causes, including their degenerate stock, which he traced back to a hard-drinking Dutch immigrant named Max. Dugdale claimed Max's stock was responsible for hundreds of criminals, and advocates of the American eugenics movement seized on Dugdale's discussion of inherited mental illness and criminality to use the study "to encourage compulsory sterilization laws" through the 1930s (Carlson 1980).

delinquents as genetically “defective” (Willrich 1998; Willrich 2003)⁹ and poor rural families as failing to attend to the proper developmental education of their children (Schmidt 2010). Poor and immigrant youth were not treated as childlike because they were instead seen as animalistic and degenerate evolutionary throwbacks.

However, being seen as childlike and innocent came with its own drawbacks. In her study of how social workers used the “delinquency” of young unmarried mothers to professionalize themselves in the early twentieth century, Regina Kunzel observes how young women were constructed as more childlike—innocent, lacking volition or sexual desire—while men demonstrated the “lowest kind of animal indulgence” (1993, 22). On the one hand, the childlike lack of agency and responsibility of young women meant they might be placed in maternal care homes, rather than more punitive institutions. But at the same time, precisely because of that presumed lack of agency, these homes became total institutions that supervised everything from letters written to family to clothing and job training, shunting young women into a particular domestic life path. In other cases, assumptions about the agency and sexuality of girl delinquents justified procedures such as extensive and lengthy physical examinations for venereal disease in an effort to discern chastity. The length of these examinations, as well as the need to procure appropriate staff, resulted in longer periods of custody and observation for girl delinquents (Schneider 1992, 160–62).

BLACK YOUTH, JUVENILE JUSTICE, AND RACIAL DEMOCRACY

Race was intimately tied to the construction of childhood and saveability in the early twentieth century. Scholarship on the experiences of black youth in the early juvenile court has emphasized racialization as a way that youth have been rendered unchildlike and dangerous. Two major studies, Geoff Ward’s *The Black Child Savers* (2012) and Tera Agyepong’s *The Criminalization of Black Children* (2018), have argued that the juvenile justice system was not designed to care for black youth. Building on scholarship that has problematized imaginations of early juvenile justice as thoroughly rehabilitative or welfare-oriented, these books both emphasize the racial gap in determining who was eligible for the softer side of juvenile justice. Juvenile justice may have been coercive for white youth, as Platt argued, but black youth were often ineligible for even the velvet glove, and instead simply received the iron fist.¹⁰ Ward and Agyepong’s accounts are complementary, historically unpacking the racial disparity and punitiveness of juvenile

9. Willrich focuses on both the municipal and juvenile court systems in Chicago. Due to the difficulty of nationwide generalizations in the United States, most juvenile court scholarship focuses on a particular region. For example, Brown (2011) reads cases from Seattle, Schneider (1992) focuses on Boston reform movements, and Chávez-García (2009) studies California reformatories. There was likely regional variation in the politics and beliefs of juvenile court reformers, although analyzing that variation is beyond the scope of this essay. For interested readers, major studies of regional juvenile justice have also been conducted for Texas (Bush 2010) and Tennessee (Trost 2005).

10. Platt recognized this point, but somewhat briefly, in an appendix showing that black youth who entered the juvenile justice system were removed to adult court far more frequently than white youth. Platt has separately agreed that the main text of *The Child Savers* lacked an intersectional lens on how race and gender interplay with the book’s main story, embracing further advances in the field (Platt 2008). Some of these reflections were the basis for a 2009 revised edition of *The Child Savers* with critical commentary by Platt, Miroslava Chávez-García, and others (Platt 2009).

justice from two different perspectives. Ward's focus is on the racial-political economics of both the white and black child-saving movements, exploring how political aspirations and material realities shaped a racially bifurcated system. Agyepong's detailed study of the experiences of black youth in Chicago's juvenile justice system explores the legal, criminological, and institutional construction of racial disparities at the ground level.

Ward's history centers the juvenile court movement in a struggle over "racial democracy," a liberal democracy where "the ideas and practices of justice become intertwined with racial ideologies and structures" (2012, 15), producing a politics of racial interests, inclusion, and exclusion. Within the context of white political interests attempting to reproduce and maintain power, Ward notes that the emerging post-eighteenth century view of children as malleable adults-in-the-making meant white children were seen as future citizens (he quotes Theodore Roosevelt's description of the juvenile justice system as a "manufactory of citizens," Ward 2012, 3). Saving children was not just about enforcing norms of class decency and propriety, but rather about fundamentally taking people who might become criminals or idle vagabonds and shaping them into useful citizens. In this sense, juvenile justice reformers continued the long tradition of seeking civic institutions that would create, as Benjamin Rush famously put it, "republican machines" (Rush [1798] 1947).

But black children were not envisioned as potential future citizens to be saved, because citizenship was at first denied completely under chattel slavery, and even after emancipation, remained highly variegated and restricted (Welke 2010). Black Americans certainly did not have full democratic inclusion in the early twentieth century; it remains a matter of debate whether that has occurred today. Under slavery, black youth were instead imagined as future valuable commodities; commodification became less overt after emancipation, but black youth were still thought of as inferior, less malleable, and not suitable for the civic-educational function of rehabilitative juvenile justice. The eugenic scientists who declared that poor whites were defective argued even more strongly that blacks were less intelligent and less evolved than poor whites (Stern 2005; Brown and Barganier 2018, 103–05). Drawing on techniques ranging from skull measurements to early literacy and IQ tests, researchers claimed that the white race was a more capable and intelligent subspecies of human, and that other races were further down the evolutionary tree. Progressive-era studies of childhood drew on these ideas to equate children and colonized savages, emphasizing that children of color were particularly uncontrollable and unintelligent, as they were undeveloped small savages (Lesko 2012, 34, 22–36). In this way, Ward affirms Platt's claim that the juvenile court was more of a continuation of past practice than a radical reform: eugenic science justified the continued treatment of black children as inferior and dangerous.

For example, Ward points out that the same white reformers who ushered in the juvenile court system were also deeply concerned with the "Negro question" (2012, 79), wondering what the place of black Americans could and should be after emancipation. Black Americans who observed the resistance of white reformers to black efforts and civic inclusion were subsequently concerned that the juvenile court system would harm rather than help their children (81–86). Statistics bore out those fears: black youth were heavily overrepresented in the caseloads of juvenile courts, but were also more likely than white youth to be sent to jails and adult prisons. Looking at data from the Chicago juvenile court in 1927, Ward notes that blacks were 7 percent of the

population of Chicago, but 22 percent of the juvenile caseload, and that a disproportionate number of these children were sent to the very correctional institutions juvenile justice had ostensibly been intended to guard against (84).

Considering Platt's and Ward's accounts of the effects of the juvenile court movement together, a clear picture of stratification as a form of racial politics emerges. The diversionary rationale for protective juvenile justice, using the label of "delinquent" and nonjail institutions to avoid the stigma of criminality, was aimed at white children—because criminality is opposed to citizenship (McLennan 2011), and the effect was to save white children for future citizenship. Black children received no such saving. Indeed, despite the coercion involved in the rehabilitative institutions of juvenile justice, black youth did not receive even that level of protection and were consistently and disproportionately sent to adult prisons (Ward 2012, 100–01). Further, it is easy to imagine how the net-widening of juvenile courts that Platt described enabled the discretion that could support the overrepresentation of black children that Ward observes. If poor nutrition can be an object of concern for the juvenile court, for example, then poor families are more likely to come under the court's supervision. In a country where class and race are as tightly connected as they are in the United States, it is unsurprising that the juvenile court was racially disproportionate even in its early years.

Ward also emphasizes the resistance by the black community, noting the efforts of black child savers to secure reformatory protections and diversions for black children (2012, 129). Building on a long tradition of black social activism, black clubwomen, social reformers, and other leaders appealed to charities for equal protection, sought to convince juvenile court judges to support programs for black youth, and fundraised to construct reform homes and industrial schools for black children—much as the white child savers had successfully done in the network of charity and political reform groups that later created the juvenile court system. And, as Ward notes, the black child-saving movement did achieve some of these goals in the short term, successfully opening several reformatories for black children.

However, the black child-saving movement was constrained by its material conditions. Although they were relatively elite within the black community, "their black elite status did not compare favorably with that of their white child saving counterparts" (Ward 2012, 132). On the one hand, the relatively flatter class structure of the black community may have opened possibilities in child saving, as it meant that black clubwomen were far closer to the lives of the poor families they targeted than their white counterparts were to theirs (150). However, Ward argues, this self-help movement of racial uplift was incapable of achieving the same scope of success as the white movement because of the lack of material resources. Black reformatories remained scarce, small, and underfunded, when they avoided closing entirely.

For Ward, the shortfalls of the black child-saving movement are most productively understood as material rather than ideological. Other scholars have argued that the movement was ideologically structured to reinforce white supremacy, because the goal was essentially to replicate the white child-saving movement and conform to white models of citizenship (see, for example, Pisciotta 1983). For Ward, this criticism is beside the point; the black child-saving movement emerged at the distinct historical intersection of an aspirational promise of inclusive citizenship in the wake of reconstruction and "reflected the limits of agency in a particular time and place" (152). But ultimately,

whether constrained by economics, ideology, both, or something else entirely, the black child-saving movement did not succeed in creating paths for black youth to receive protection and nurturing into citizenship comparable to that of white youth.

For Ward, the juvenile court movement is thus a story about the intersection of personal agency and reform with cultural beliefs and economic structures. Racist ideas in white culture imagined black children as unchildlike compared to white children; white children were future citizens, while black children were future problems. That exclusionary ideology, combined with white political and economic control, meant that the dominant political reform movement in juvenile justice served white interests, privileged white citizenship, and was racially disproportionate in its harsh treatment and lack of protection of black youth. Indeed, Ward began writing his study as an examination of present-day racial disparities in juvenile justice, but he discovered that those disparities were rooted in the system's early years.

Agyepong's study of the juvenile justice system in Progressive-era Chicago echoes many of Ward's conclusions, finding that the early juvenile justice system largely treated black youth as hardened criminals rather than children. Agyepong approaches this story from a new direction; where Ward is largely interested in national political movements and interests, Agyepong focuses on the details of a local story about social science expertise and particular institutions. In this way, Agyepong's work shows how Ward's overarching political narrative could play out at the local level. But Agyepong also shows how the juvenile court did not simply draw on Progressive-era constructions of childhood, but also reaffirmed and rearticulated those ideas. In treating black youth as dangerous and unchildlike, and thus labeling and studying them as such, juvenile courts also contributed to beliefs about the criminality and unsaveability of black youth.

Agyepong studied unsealed case files from the Cook County juvenile court system from 1899 to 1945, as well as Chicago newspaper and magazine accounts of juvenile justice from this period. Based on these sources, Agyepong advances three central arguments. First, drawing in part on the work of cultural historians, she argues that both criminology and popular culture constructed black youth as unchildlike by virtue of their deemed insensate obliviousness to pain. Second, she argues that the rehabilitative discourse and flexible probationary approach of the court lead to an overrepresentation of black youth in the Cook County juvenile justice system. Third, she argues that the unchildlike construction of black youth excluded them from any pretense of welfare-oriented treatment, and instead they received severe punishments. Black youth were thus more likely to be in the juvenile justice system, while also being less likely to benefit from it.

Agyepong's first argument draws on tropes such as "pickaninny" images (2018, 12) that were common in white newspapers, literature, and theater in the early twentieth century (Bernstein 2011). Pickaninny imagery depicted black children suffering maulings or accidents and responding by "laughing or yelping," but never by expressing "a realistic amount of pain" (Agyepong 2018, 14). In Chicago, major white newspapers "reflected and shaped public opinion" around a tide of black immigration from the south with references to pickaninnies, as well as references to the threat of black crime (12–14). Agyepong argues that this imagery served to distinguish black youth from the evolving cultural conception of childhood as a time of innocence and development. Social scientists' attempts to explain racial differences among children reinforced the

notion of black youth's inferiority, as white researchers often concluded that blacks had inferior reasoning and moral capabilities. For example, echoing the eugenic studies of youth mentioned earlier, child psychologist William Pyle concluded around 1917 that "negro children have three fifths to three fourths the learning capacity of white children" (15, quoting Pyle).

Agyepong's second argument is that the flexible and capacious approach of the juvenile court, operating within a social context where black youth were seen as unchildlike and dangerous, produced heightened policing of black youth. This, in turn, led to the overrepresentation of black youth in the juvenile justice system, which further entrenched the belief that black youth were inclined toward delinquency. Agyepong's argument relies on both the statistical bias toward black criminality among Progressive-era elites (Muhammad 2010), and also on the idea that crime statistics are reflections of where police choose to look for crime rather than reflections of objective rates of crime (see Harcourt 2007). Observing the broad jurisdiction of the juvenile court over matters ranging from delinquency to poor home conditions, Agyepong argues that one effect of the court's wide reach was that police had more freedom and discretion to detect delinquency. Unsurprisingly, "[t]he highest rates of arrest were in the poorest black neighborhoods" (Agyepong 2018, 46). Drawing on a 1920s report of the Chicago Crime Commission, Agyepong cautions that because many arrests for juvenile delinquency were "for petty offenses that are not serious enough to be called 'crimes' at all," these high rates of arrest should be taken to reflect the interests of police in controlling blacks who were moving to Chicago in large numbers, rather than actual crime (46).

Agyepong reinforces this point by drawing on juvenile court files to show the types of underlying conduct the delinquency label was applied to. For example, in one case a fourteen-year-old black girl who had recently moved to Chicago with her extended family was raped by an adult, taken to the juvenile court by her aunt "to secure care," and then "labeled a 'sex delinquent'" by the court and sentenced to a home for girls (Agyepong 2018, 45). Agyepong argues that the disproportionate rate of confinement of black girls in the Illinois State Training School, intended to cure the "girl problem" of sexual immorality, shows that black girls were particularly susceptible to such gendered constructions of delinquency (73–74). For example, in 1937, when blacks were 4.7 percent of the population of Illinois, 89 percent of girls sent to the State Training School were black (107).

Finally, Agyepong argues that the belief that black youth were insensate and unchildlike, along with their overrepresentation in juvenile justice facilities, combined to produce dramatic and severe institutional treatments. As Ward also noted, black youth were subject both to harsher conditions in juvenile institutions and to a higher risk of transfer to more secure adult institutions. To study the institutional conditions of black youth, Agyepong looks at case records from the Illinois Training School for Girls at Geneva and the Illinois Training School for Boys at St. Charles. These institutions housed both black and white youth, but segregated them by race. Institutional staff observed the high share of black youth with concern; in an early 1930s report, St. Charles superintendent William Harmon expressed fear that the "radical changes in the population of Illinois in the last half of the century" had given rise to more youth of "racial stocks which mature more quickly," who were "unruly and tough criminals" but

nonetheless sent to the training school (Agyepong 2018, 118, quoting William Harmon). Another superintendent observed that “whipping is the only remedy” for the “young criminals” sent to St. Charles (114).

Beatings at St. Charles became most publicly notable in 1941, when sixteen-year-old James Williams was extensively beaten by two staff members with a wooden paddle and a brass hose nozzle until he died (Agyepong 2018, 126–27). Although the governor called for an investigation and a member of the state welfare department opined that “there is no doubt it is a murder” (127, quoting Frank Wipp), there were no prosecutions or policy changes as a result of Williams’s death. Agyepong concludes that although Williams’s death was the most widely publicized incident of physical abuse of black youth at St. Charles, the statements of administrators and lack of any changes afterward suggest that the Williams case reflects a larger culture of institutional abuse.

For Agyepong, the story of juvenile justice is the story of how the fear of unchildlike black youth undid the original mission of juvenile justice. She concludes that childhood, mediated by race and gender, was split up by “a dividing line between ‘saveable’ and ‘unsalvageable’ children” (2018, 132). In 1945, several years after the Williams case, 98 percent of boys committed to St. Charles were black (134). White youth were more likely to be constructed as saveable and thus diverted from the system, while black youth generally ended up in coercive and abusive institutions designed to control rather than rehabilitate. The ideals of juvenile justice were never made manifest for unchildlike black youth.¹¹

REFLECTIONS ON CONTEMPORARY JUVENILE JUSTICE

In light of the many ways that youth have been seen as ineligible or inappropriate for the rehabilitative, welfare-oriented aspirations of juvenile justice, the critiques and dissatisfaction I mentioned at the outset of this essay are less surprising. Although the juvenile court was founded on an ideal of childhood as a time of development and innocence, the social experience of childhood rarely fits the ideal. Further, the Progressive-era ideal of childhood was shaped by an emerging body of classist and racist studies of child development that treated white, middle-class youth as the only truly innocent and saveable children. The identity of the truly innocent, saveable child turns out to be historically narrow, accessible to relatively few youth. The juvenile court emerged in a context of discriminatory ideas about children, and unsurprisingly, it treated children with discrimination. Through disparately labeling black and poor children as delinquents, the juvenile court also reaffirmed these ideas, and contemporary studies suggest that the juvenile court has remained embedded in inequality (for example, Rodriguez 2013; Fader, Kurlycheck, and Morgan 2014; Claus, Vidal, and Harmon 2018).

11. Although this essay focuses on black youth as an example of unchildlike youth, the study of disparities in juvenile justice should not be confined to a black/white dichotomy (Ward 2012, 6). Miroslava Chávez-García has studied the experiences of Chicano youth in California’s early juvenile reformatories and found that ideas of the eugenics movement were deployed and scientifically affirmed in those settings (Chávez-García 2009, 2012, 2015).

Given the dismal picture painted here, it is significant that few if any of the scholars I have discussed advocate abandoning juvenile courts. Of course, some scholars have called for abolition, most notably Barry Feld (1997), who argues that the attempted merger of welfare and crime-control functions in juvenile courts is inherently troubled, and that juvenile courts should be replaced by a legal rule of age as a mitigating factor in punishment. But, as even he later recognized (Feld 2017), abolition would not address the underlying reasons for disparities and discrimination in the juvenile court, and may not be a tenable position in this country.

Feld's later realization highlights an important point: the numerous failings and compromises of the juvenile justice system are not obviously intrinsic to the juvenile court. We have no counterfactual. If racist constructions of black children shaped their treatment in the juvenile court and compromised the mission of that institution, it does not follow that things would have been better for those children in adult court. As Agyepong notes, "juvenile and criminal justice systems have never existed as islands unto themselves" (2018, 137). Juvenile courts were—and are—embedded in a system of racist and classist beliefs about childhood. Juvenile justice did not create the dilemma of the unchildlike child, and I do not think it is likely that juvenile justice can resolve it.

In *Society Must Be Defended*, Foucault argued that during the nineteenth century, state racism had become a fundamental element of the exercise of modern state power. His conclusion rests on several historical-political developments: the rise of colonialism and political discourses that treated politics as a conflict of races (Foucault 2003, 65–67), the increasing interest of modern states in governing populations rather than simply individuals (239–40), and the rise of a political misappropriation of evolutionary thinking that combined with racism to claim that racial dominance and hierarchy was a just and natural outcome of racial progress (257). The resultant grim vision of modern politics centers state efforts at racial domination. Despite the sweeping nature of Foucault's argument, it resonates strikingly with the scholarship I have discussed, from Ward's conception of democracy as a struggle of racial interests, to Agyepong's argument that the juvenile court system was embedded in racist science, to Lesko's point that racial hierarchy was the dominant conceptual metaphor of the Progressive era for thinking about social problems.

The juvenile court arose as part of a broader Progressive reform movement aimed at uplifting and improving the population through public health, compulsory schooling, legal modernization, and so on—a movement that began to build much of the familiar regulatory framework of our world today. The dark side of this movement was its reliance on notions of racial superiority and regeneration, informed by Progressive commitments to popular eugenic thought (Platt 2019, 164–66). Progressivism was not only a reform movement, but a Foucaultian racial struggle. As Platt, Ward, Agyepong, and others have shown, the juvenile court's troubled history stems from its emergence as a child-saving institution at a moment when childhood was politically understood by white reformers in racist and classist ways. History shows that the juvenile court has never been able to escape that context.

The almost painful complexity of the juvenile court is that despite its embedded context, the court and its advocates do bespeak a genuine ideal of second chances and diversion. For those who are concerned about the severity and scope of modern

punishment—a sizeable group in which I include myself—diversion is deeply appealing. As with many of the founders of the juvenile court movement, I consider keeping young people out of adult prisons a nearly unqualified good. But facing the history of the juvenile court head-on forces us to confront that the ideal is, to some extent, a mirage. Diversion has generally been uplifting for white and upper-class children, at the expense of poor youth—especially poor youth of color—who have generally not received second chances. I do not think Agyepong gives up on juvenile justice, and neither do I, but she ends her study by reminding us that “an exhortation for true justice and equality must necessarily look beyond the walls of juvenile justice institutions.” It is difficult to disagree, and the history of juvenile justice reveals that the juvenile court we aspire to could only exist in a world where the racist and classist construction of childhood and innocence had been dismantled.

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