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Defending Liberty Pursuing Justice

The Juvenile Court: Changes and Challenges

by Barry C. Feld

The juvenile court is a byproduct of changes in two cultural ideas that accompanied industrialization and modernization a century ago–childhood and social control. Social structural changes associated with the shift from an agricultural to an urban society and the separation of work from the home produced a new perception of children as innocent, dependent, and vulnerable.

Political progressives lobbied for and won a number of reforms in the legal system to protect and control youth: compulsory school attendance, restrictions on child labor in sweatshops, and welfare benefits for children of indigent parents. Legal changes also led to reform in the arena of juvenile crime to change youths' behavior through rehabilitation rather than punishment. The juvenile court combined the new conception of children with new strategies of social control to produce an alternative to criminal justice, to remove children from the adult judicial system, to enforce the dependency of children, and to substitute the state as parent for children whose inadequate families failed in their child-rearing responsibilities.

Procedure and substance intertwined in juvenile courts. Procedurally, juvenile courts used informal processes, conducted confidential hearings, and used euphemisms and clinical language to obscure the reality of social control. Substantively, juvenile courts emphasized treatment and supervision rather than punishment and focused on children's future welfare rather than their past offenses. Despite their rehabilitative rhetoric, however, the reformers who created the juvenile court system actually designed it to discriminate–to Americanize immigrant children, to control the poor, and to provide a means with which to distinguish between "our children" and "other people's children"–an orientation that persists today.

There remains a gap between the law on the books and the law in action in juvenile courts. States manipulate the fluid concepts of children and adults or treatment and punishment to maximize the social control of young people. On the one hand, states' laws and policies treat juveniles just like adults when formal equality results in practical inequality. For example, almost all states use the adult standard to gauge juveniles' waivers of rights–"knowing, intelligent, and voluntary under the totality of the circumstances"–even though research clearly demonstrates that juveniles lack the legal competence of adults. On the other hand, even as juvenile courts have become more punitive, most states continue to deny juveniles access to jury trials and to other procedural rights guaranteed to adults because juvenile courts supposedly treat them rather than punish them.

During the last 30 years, judicial decisions, legislative amendments, and administrative changes have transformed juvenile courts from nominally rehabilitative social welfare agencies into scaled-down, second-class criminal courts that provide youngsters with neither therapy nor justice. Today, juvenile courts are a wholly owned subsidiary of the criminal justice system. Legislators and judges have manipulated the competing views of innocence and responsibility to maximize the control of young people who violate the law. At the "soft end" of juvenile courts' jurisdiction, state laws and courts have developed new strategies to deal with status offenses–the prohibited conduct of juveniles that would not be a crime if committed by an adult, such as truancy, runaway, curfew, and use of tobacco or alcohol. Many of these non-criminal minor offenders have been shifted out of the juvenile justice system into a hidden system of social control in private-sector mental health and chemical-dependency industries. At the "hard end," states transfer more juveniles to criminal courts for prosecution as adults, and they punish more severely those delinquent offenders who remain within the jurisdiction of the juvenile court. As a result of this "triage," juvenile courts have been transformed from a social welfare agency into deficient criminal courts for young offenders.

Getting Tougher

Social changes and race during the past thirty years account for the greater punitiveness of current juvenile justice policies. The migration of whites to the suburbs, the growth of information and service jobs in the suburbs, and the decline of industrial employment in the urban core increased racial segregation and the concentration of poverty among African Americans in major cities.

In the mid-1980s, the emergence of an urban underclass, the introduction of "crack" cocaine into inner cities, and the proliferation of guns among the young produced a sharp escalation in homicide rates among African American youth. This age-race-offense-specific increase provided

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politicians with the political incentive to "get tough" on "youth crime," which became code for referring to young African American men. This "crackdown" resulted in an increased use of waiver to the adult criminal courts and a broader change in attitude about juvenile justice policies, from rehabilitation to retribution.

As a result of legal changes in the late 1980s and early 1990s, juvenile and criminal courts began to sentence more harshly juveniles who were convicted of serious offenses. Juvenile justice and criminal punishment partially merged when laws enabled judges or prosecutors to transfer juveniles to criminal court for prosecution as adults. In an effort to crack down on youth crime, legislators have made it easier for judges to transfer juveniles or simply excluded various combinations of age and offenses from juvenile courts' jurisdiction. Other states allow prosecutors to charge some youths in either criminal court or juvenile court; as a result of these charging decisions, prosecutors in Florida, for example, waive more juveniles to criminal courts than do all of the juvenile court judges in the country combined.

Evaluation studies of juvenile court judges' sentencing practices report two general conclusions. First, juvenile court judges apparently use the same factors that criminal court judges look at when they sentence offenders–the seriousness of the present offense and the length of the prior record. The other general finding is that apart from the legal and offense variables, the individualized justice of juvenile courts produces racial disparities in the sentencing of minority offenders. Virtually every study of sentencing to detention facilities and institutions reports that judges confine minority youths at a much higher rate than they do white juveniles with the same offenses and prior records. In part, juvenile court sentencing laws still instruct judges to consider juveniles' "real needs." In a discretionary justice system, youths from single-parent families or who appear more threatening are more likely to be confined. In a society like ours with great social and economic inequality, those most "in need" are also those most "at risk" for more severe juvenile court sentences.

Although both the rate and seriousness of juvenile crime have dropped dramatically in the past few years, the recent spate of school shootings has contributed to a growing fear of youth crime, which the public incorrectly perceives as having significantly increased. Sensational media coverage of young people as a different breed of "superpredators" only heightens the public's concerns about the ability of juvenile courts to rehabilitate chronic and violent youth offenders and at the same time to protect public safety. Some politicians' desire to demonstrate their toughness and to not appear to be "soft on crime" leads them to propose policies to transfer even more youths to adult court or to impose more severe penalties for delinquents in juvenile courts even though no evidence supports these public policies as effective or sensible.

The creators of the juvenile court envisioned a social service agency set in a judicial forum, and they attempted to combine social welfare and social control into one forum. This has proven to be an unworkable idea in practice because juvenile courts tend to subordinate welfare considerations to crime-control concerns and to punish rather than treat youthful offenders.

Integrate the Juvenile and Criminal Justice Systems?

Some people suggest that if states separated social-welfare goals from crime-control policies, then there would be no need for a separate juvenile court system. States could try all offenders–juveniles and adults–in one integrated criminal justice system. But states would need to modify their procedures and sentences to take account of the fact that some of these offenders are younger. They would need to sentence younger offenders differently and more leniently than adults because their youthfulness mitigates the seriousness of their crimes. They also would need to provide them with additional procedural safeguards to offset youths' disadvantage in the justice system. Combining enhanced procedural safeguards with shorter sentences could give youths greater protections and justice than they now receive in either the juvenile or the criminal justice system.

Some politicians argue that children are just as responsible for their criminal behavior as any adult "old enough to do the crime, old enough to do the time." But most other laws recognize that children do not have the same level of maturity of judgment or responsibility as adults, and that's why they don't have the right to vote, to drink, or even to enter into a binding contract. So, even when young people commit serious crimes, states must recognize youthfulness as a mitigating factor when they sentence them.

The seriousness of a crime is based on two factors–the harm and the intent. While an offender's age does not change the nature of the injury caused, it does affect the quality of the person's choice to engage in the conduct that caused that harm. To some degree, young people differ socially, physically, and psychologically from adults. They don't have the same appreciation of consequences, the same experience and knowledge, or the same degree of self-control. Even when young people commit serious crimes, they are not as blameworthy as adults and don't deserve as severe a punishment.

Shorter sentences for reduced responsibility provide a more modest and attainable reason to treat younger offenders differently from adults than do the treatment claims advanced by progressive child savers. Such an approach holds young offenders accountable for their acts because they possess some culpability but reduces the severity of the consequences because youths' choices are less blameworthy than those of

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Researching a Law: "Stubborn Children" Then and Now

by Harriet Miller

When I visited a halfway house in Framingham, Massachusetts, in 1973, a group of boys and girls brought me a book called *A History of Boys.* The director of this home had brought this book with him when he was transferred from the closed-down Lyman School, the boys' reformatory in Westborough. They wanted me to read the case of 10-year-old Albert Deane, "untruthful and profane," "a Sabbath breaker," neglected by his mother, his father dead. He was sentenced to two years in the state reform school or one month in the house of correction, committed on October 22, 1856. Under the heading "General Character Since Commitment," the statement read: "He was not a bad boy."

Albert died at the reformatory on December 28, 1856, probably of spinal meningitis. Mrs. Bailey, the nurse, had asked Albert if he had some message to send his mother. He replied, "Yes, but I have no time."

At the service for the other boys after Deane's death, Chaplain W.T. Sleeper presented a poem, in part as follows:

A little boy with tongue profane,
Who often took God's name in vain.
From home and friends was far away,
When on his dying bed he lay.

Have you no word, that I may hear,
Of blessing to your Mother dear?
"I have no time–though much to say,
My days are past–I cannot stay."

Let wicked boys,
Who've learned to swear
Take heed,
God will not always spare.
O leave this vile and fearful crime,
Ere you must say, "I have no time."

The Prison Discipline Society Record of 1852 states that the boys in reformatory, under the supervision of Protestant chaplains, collectively memorized 114,870 verses of Scripture in the previous year.

I discovered that a 6-year-old boy was committed in 1960 to another reformatory for "lewd and lascivious behavior." Some years later this West Boylston institution for 7–11-year-old boys was closed down after the *Worcester Telegram* revealed that some of the guards there were sexually abusing the boys.

In 1977, while reading case histories of young women incarcerated for stubbornness in an adult correctional facility that, since 1877, had been providing "certain women" with vocational skills, moral guidance, and medical care, I met a young woman who came in search of information about herself. In her arms she carried her 3-month-old son. She knew only the name of her biological mother. I held her son while she read the record that the social service director retrieved for her. There she discovered that she had a brother and learned that she had been a colicky baby similar to her own son, as well as other medical facts about herself. She cried as she looked at a photograph of her mother, who resembled the woman in front of me. We talked about the pros and cons of contacting this woman who had given birth to her in prison 21 years earlier.

Many of the young women incarcerated for "stubbornness" were unmarried and pregnant.

I could not stop gathering data. I sat in cellars of courthouses, in vaults of now closed-up reformatories, and in youth service offices, reading and documenting. After five years, my thesis advisor said, "You have enough here for six dissertations."

It all began in 1971, my first year as a Ph.D. student in sociology at Brandeis University. I was sitting in a district court as part of a requirement for a research methods course. The assignment was to observe a social setting unfamiliar to me. I listened to complaints brought against school-age youth in juvenile sessions. Most of the charges were for truancy, breaking and entering, idle and disorderly behavior, or running away. Occasionally, the charge of stubbornness or being a stubborn child was invoked, not by police or other public officials, but by parents or guardians of children ages 7–17. When I questioned probation officers, they tried to discourage me from focusing on this law, claiming it was "too complicated." They referred to it as an "umbrella law," "a catch-all kind of law."

Only in 1971, after 300 years of administration in lower courts, did the Supreme Judicial Court of Massachusetts provide guidelines for declaring a child legally stubborn. Until then, Massachusetts General Law, Chapter 277 s79, stated only that a stubborn child was one who "stubbornly refused to submit to the lawful and reasonable commands of a parent or guardian." In all the history of the stubborn-child law, there were only three appeals to a court of record: in 1967, 1970, and 1971. Consequently, it was not apparent how the interpretation of the law differed from court to court and from case to case. In 1971, after 17-year-old Diane Brasher refused to obey the orders of an employee in a foster care facility and was found guilty in a district court, her case was appealed. The Supreme Judicial Court rejected her claim that the law was unconstitutional, but it added a new section to the criminal law explaining the law's validity.

I became so curious about this law and its use that I decided to make it the subject of a dissertation (see Harriet Skillern, "A Socio-Legal Analysis of the Massachusetts Stubborn Child Law," Doctoral Dissertation, Department of Sociology, Brandeis University, 1977). During the next five years, I learned of its long history, which dates to 700 B.C. The colonists had copied into Province Land law, from the Book of Deuteronomy, a "Stubborn and Rebellious Son Law." If a man and wife had a son aged 16 or older, and both parents and the community agreed that he had been stubborn and rebellious, he could be stoned to death. Many restrictions were placed in the commentaries on the law that prevented its implementation, however. To my surprise, there was no "stubborn and rebellious daughter law." I learned that such a law was unnecessary because the patriarch retained rights of life and death over his wife and daughters–no need to check with the community first. Thus, the Stubborn and Re-

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Gangs, Crime, and Social Deviance: A Dialogue

[Editor's Note: In the Fall of 1999, the ABA Division for Public Education conducted a national online youth summit involving 50 high school classrooms nationwide. The topic was "After City of Chicago v. Morales," *an examination of the U.S. Supreme Court case in June of 1999 that struck down Chicago's anti-gang loitering ordinance. A diverse panel of experts participated in a dialogue with the students about the case and the related issues of gangs, gang violence, and community safety: Alejandro Alonso, a social geographer at the University of Southern California who has studied gangs in Los Angeles; Catherine Coles, a researcher at the Kennedy School of Government at Harvard University; and Rita Fry, the Public Defender for Cook County (Chicago), Illinois, whose office initially challenged the constitutionality of Chicago's anti-gang loitering ordinance. Excerpts from this dialogue follow.]*

STUDENTS: What is a gang? How is a gang distinct from any other group of people?

ALEJANDRO ALONSO: The question of "what is a gang" is a heavily debated issue among academic scholars and law enforcement officials. The problem is that gangs operate differently in different locales, and within different ethnic backgrounds. Therefore, constructing a definition is often problematic and not representative of all types of gangs.

In my research on "Bloods and Crips" in Los Angeles, I found that gangs are a collective group of individuals with a common ethnic and/or geographic identity that collectively and/or individually engage regularly in a variety of activities, legal or illegal; that claim to be the dominant group in their locale, exercising territoriality either fixed or fluid; and that engage in at least one rivalry and/or competition with another organization.

CATHERINE COLES: In my experience, I have found gangs to be groups of individuals, usually in their teens or early twenties, whose association is based upon a common ethnic or cultural identity, and/or identification with a particular neighborhood or geographical area. While gang members may carry out specific activities together (both legal and illegal), in many cases they join together initially because they believe that membership offers some protection against predatory behavior by others in the urban area in which they live and/or move about.

STUDENTS: How do the police identify gang members and gang-related activity?

ALEJANDRO ALONSO: In Los Angeles, the Police Department and Sheriff's Department use tattoos and graffiti to identify gang members. Often, however, many are labeled gang members through association, which can inflate the statistics of the actual number of gang members countywide. In 1998, Los Angeles County claimed to have 150,000 gang members active, but many have suggested that these numbers are inflated or inaccurate because they have no consistent method for counting gang membership.

In Los Angeles a crime is identified as gang related whether the victim is a gang member or not. For example, if a gang member kills another person over a dispute that had nothing to do with his/her gang affiliation, it is still identified as a gang-related homicide. That is one reason why Los Angeles reports the highest number of gang-related homicides every year. In Chicago this same incident would *not* have been identified as a gang-related homicide.

There are differences and similarities between gang identification and racial profiling.

[ALEJANDRO ALONSO]

CATHERINE COLES: Police identify gangs through distinguishing characteristics such as colors, signs or symbols, gestures, association with a neighborhood or locale, and other features. But police in many cities also learn the individual identities of gang members, and some are fairly knowledgeable about whether individual incidents represent personal conflicts between individuals who may be gang members but where the incidents are not likely to involve entire gang involvement, or incidents that could escalate to involve entire gangs in opposition to each other.

STUDENTS: Does the Chicago ordinance ["Gang-Related Congregations," passed in 1992] violate the First Amendment guarantee to free speech, the right to peacefully assemble, the right to associate, and/or the right to travel freely? Was this type of defense ever argued on the bealf of the defendants charged under the ordinance?

RITA FRY: Yes, besides being too vague, the City of Chicago's gang-loitering ordinance violated the right of citizens to free speech, to assembly, to association, and to travel. The Constitution protects your right to talk to others, to associate with your friends and family, and to move around in public. Otherwise, we would live in a "police state."

The Cook County Public Defender's Office argued all of those grounds in the lower courts and obtained favorable rulings, including a unanimous decision in 1997 from the Illinois Supreme Court.

The Supreme Court [in *City of Chicago v. Morales*, No. 97-1121 (June 10, 1999)] did not address many of those issues. This is because appeals courts often apply what is called "judicial economy." If a case can be decided on a narrower ground, the appellate court will rule only on that issue and wait to decide the other issues in another case.

STUDENTS: Why did Chicago fight to keep this law, when the evidence about its effectiveness was inconclusive?

RITA FRY: In all of its public statements, the City of Chicago stated that its main concern was for the safety of citizens. There had been a number of complaints within neighborhoods about young people and gang members hanging on the street corners. In order to satisfy the residents of the community, the police often would cruise by and order everyone off the corner.

There is no law against belonging to a gang. The law is against persons' engaging in unlawful activity. Gangs and groups of young people gathered together in public places make people nervous and

fearful and, therefore, residents asked the City of Chicago to prevent such gatherings.

The solution to the problems of gangs has to do with finding available activities for young people, which allow them to enjoy being together for lawful purposes. Also, adults and young people need to work together for lawful and beneficial purposes for the entire community.

STUDENTS: Have journalists or the media in general influenced public attitudes about gang activity and gangs?

ALEJANDRO ALONSO: I believe that the media are partly responsible for promoting the negative stereotypes associated with youths and gangs, by focusing on and sensationalizing specific events, usually homicides and drug sales. These events typically portray a bleak picture of gang culture, when many of the activities surrounding gang life are completely legal. In addition, the images represented through gangsta' rap lyrics and videos further exacerbate the negative notion of gangs.

STUDENTS: Are police strategies for determining who belongs to gangs different from racial profiling, or are they similar in any way?

CATHERINE COLES: Racial profiling and police interaction with gangs are quite distinct, although they may overlap. But we need to recognize that race is a status; in contrast, while gangs may be associated with a particular ethnic identity and age, membership requires an action, that is, choosing to join the gang. Not every youth of a particular ethnic group will choose to join an active gang in his or her community.

Racial profiling assumes that police will make decisions based upon the race of individuals. But in determining who belongs to gangs, police must look beyond race or cultural identity alone to some of the symbols adopted by gangs (colors, clothing, certain gestures), to the territory within which gangs tend to operate, to the behavioral characteristics of particular gangs, and to known patterns of behavior and conflict between gangs.

With the development of gang task forces and community-oriented policing in which officers work intensively in a local neighborhood, police often know who is a member of what gang. They know members individually, even by name. So there is a big difference between police making traffic stops or stopping people on a street to do a search on the basis of race–which activities lend themselves to potential practices and criticisms of racial profiling–and police learning who belongs to a gang and then taking action against illegal behavior by gang members.

ALEJANDRO ALONSO: There are two major differences between racial profiling and gang identification. First, profiling can be used against any age cohort in a particular population, while gang identification techniques usually affect minors and young adults. Second, racial profiling is usually associated with police officers singling out minorities during traffic incidents, but it can also occur with people of color that are shopping or boarding a plane at the airport. Gang identification usually occurs when individuals are observed in public and a claim is made (usually by a police officer) that a person is a gang member.

But there are also similarities between profiling and gang identification. Both strategies are inherently racialized, usually leading to false generalizations and misidentification. For example, black and Hispanic youths may dress, talk, and gesture in a particular way that will often identify them as a gang member based solely on appearance. Black women in airports are usually singled out by airport security as drug runners, when in fact they rarely are. Also, both strategies can, and often do, lead to a traumatic experience for the person involved because a certain amount of humiliation and embarrassment is associated with being falsely identified.

The purpose of curfews is not just to control youth but also to protect youth.

[CATHERINE COLES]

STUDENTS: Are curfew ordinances similar to the Chicago gang ordinance since they target a particular group of people? Why are curfew ordinances upheld?

CATHERINE COLES: Curfew ordinances actually target a much larger group of individuals than gang ordinances since they are age based. I am not especially in favor of curfews since they restrict the activities of a great many young people who can handle themselves safely and appropriately. Furthermore, they are difficult for police to enforce because virtually every ordinance contains a multitude of exceptions–where it is permissible for a youth to be out after the curfew when returning from a job or school-related activity; where she or he is acting on behalf of a parent or other adult; or when there is some critical need for the travel.

However, the purpose of curfews is not solely to control youth or prevent illegal behavior but also to *protect* youth. In certain areas, at certain times, the streets are simply so dangerous for youth below a certain age that they become, in effect, vulnerable prey.

The courts have not uniformly agreed as to whether curfews are legal–a number of ordinances have been struck down. In some situations, however, where legislation is clearly aimed at safeguarding young people from clearly documented threats to their welfare, where there appears to be no less-restrictive means for doing so, and where there are adequate exceptions for permissible travel available, the courts have found such curfews legal.

Generally speaking, those loitering laws that have been upheld by courts around the country have tended to be written in the form of "loitering for the purpose of [some illegal activity]…" and aimed at prostitution, lewd acts, or drug dealing, rather than loitering alone. Many, though not all, courts have held that "loitering for the purpose of…" laws overcome constitutional challenges based upon vagueness and over-breadth.

STUDENTS: Have other cities used loitering laws to reduce gang-related crime? If you compare cities with and without loitering laws, is there any measurable difference in gang-related crime?

ALEJANDRO ALONSO: Milwaukee and Los Angeles, in addition to Chicago, have used anti-loitering legislation to control and suppress gangs. But I am unaware of any studies that have compared gang activity between cities with anti-loitering laws and those without such laws. There are some ongoing research projects that are examining the effectiveness of these laws within particular locales. Presently, I am conducting a study that is looking at gang injunctions in Los Angeles County, California, so it is too early to see if there

is any measurable difference between these types of places.

CATHERINE COLES: I do not know whether other cities have specifically used loitering laws to reduce gang-related crime. However, the city of San Jose, California, was able to obtain an injunction under its public nuisance statutes prohibiting gang members from knowingly associating ("sitting, standing, walking, driving, gathering, or appearing anywhere in public view") with other gang members within a narrowly defined territory. The injunction withstood a legal challenge (see *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 1997). The California Supreme Court recognized that the injunction's purpose was to prevent collective conduct by "gang members loitering in a specific … neighborhood." The court spoke at length in this opinion about the rights of those in the community itself to peace, safety, and security. This was a small neighborhood that had been literally terrorized by gangs taking over people's yards and the streets. When residents made calls to the police to report illegal activity, the action by gang members would always stop by the time police arrived on the scene. It took a prohibition on *association itself* to break the hold of the gangs on this neighborhood.

STUDENTS: How can communities effectively address gang problems? When gangs are already firmly rooted, what are the first steps a community can take? How can communities without gangs keep them from moving in?

CATHERINE COLES: The most important step a community can take to address gang problems is to prevent them from developing. There are many ways of doing this–through early intervention programs in schools that identify youth who are truant, or showing signs of violent or disruptive behavior, and getting them assistance early on; through street workers, youth programs, and police working closely with youth outside of schools, gaining their trust, and thereby being in a position to help defuse situations before they get out of control. In Boston, when the police saw new Asian gangs forming among middle school students this past year, they visited the homes and parents of the youth and brought clergy and leaders of local faith-based institutions into the discussions. When everyone works together–police, prosecutors, courts and probation offices, schools, service providers, business (coming out to offer jobs to youth), health services, local government–there is much that can be done.

If gangs are already operating, a community needs to develop both a strong law-enforcement effort to reduce violent gang activity, and opportunities for gang members to pursue productive activities through education and employment. In Boston, Operation Ceasefire developed in the mid-1990s, in which police joined with state and federal prosecutors, probation and corrections offices, representatives of the faith community, and service providers in the local community. As a result of these efforts, gang violence stopped, and no youth were killed in Boston with guns for almost two years. But these efforts were paralleled by the efforts of many in the community to create increased job opportunities and training for youth, including gang members; to hire new street workers who could work in the language of newly forming gangs; to offer self-esteem classes to middle school girls; and to create many other alternatives to life in a gang.

Chicago's anti-gang ordinance violated the right to free speech and association.

[RITA FRY]

STUDENTS: Has the strong economy and low unemployment helped to reduce gang activity?

ALEJANDRO ALONSO: Gang activity has not declined in many American cities, but gang crime has. Gang membership has actually increased in the last few years, while gang-related crime has dropped. Although the increase in police officers on the street and new anti-crime legislation may have had some impact, I believe, as do many other researchers, that the booming economy has had the biggest impact on crime. With more jobs, there are more opportunities, more people off the streets, more people at work, and less crime. It's that simple.

STUDENTS: What kinds of sanctions are most effective in preventing social deviance?

CATHERINE COLES: The predominant approach by prosecutors and police today is early intervention: that is, when a youth commits some offense, particularly if it is a nonviolent and/or first offense (such as shoplifting, truancy, or a curfew violation), this may provide an opportunity to intervene in the individual's life and turn him or her away from a course of reoffending. In some cases, diversion programs are available. The youth may be offered the following: an alternative to processing through the courts if she or he (and the family) participates in counseling; programs that teach anger management or other skills; requirements for school attendance and achievement; or even substance-abuse treatment. If the offender fails to complete the program, she or he must return to court and face formal adjudication. In other locations, postadjudication programs are available that involve similar types of sanctions, and also community service and restitution. An important part of these programs is creating positive mentoring relationships for the youth with adults in the local community–relationships that will support and assist the youth in the future, after the court-mandated activity is completed.

Increasingly, however, attempts are being made to prevent rather than respond to offenses once they have been committed–that is, to reach youths before they offend, before new victims are affected. These include efforts to reduce school tru-

Morales Resource Guide

A new resource guide, *After City of Chicago v. Morales*, provides teachers with background about the case in Chicago and in the lower courts, an analysis of the Supreme Court decision, and a discussion of related policy issues, such as racial profiling, community policing, and controversies about freedom of assembly in previous times.

Developed in conjunction with the national online youth summit, this 43-page guide is a useful resource for high school and college teachers alike. Teaching activities, research projects, and discussion questions accompany each section. An extensive annotated bibliography of print, video, and Web resources is also included.

For single copies, the resource guide is $10.00, plus shipping and handling charges. To order, contact the American Bar Association Service Center at 1-800-285-2221 and request PC#4970102.

ancy, one of the factors most highly correlated with offending and subsequent court involvement of youth.

One other type of sanction is also used to reduce offending–imposing very stiff sentences on violent repeat offenders. Federal prosecutors are assisting local district attorneys in conducting "priority prosecutions" of these individuals, who are being sent away to prison or jail for long sentences–often far from home, in other states. The idea is to show others (the "wannabes" or minor offenders) that the violence and destructiveness of those who persist in moving toward more frequent and violent offending will not be tolerated.

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adults. Adolescent development psychology, criminal law doctrines, and sentencing policy all provide reasons for judges to give youthful offenders shorter sentences. Adolescence and criminal careers may develop in tandem, and a sliding scale of criminal sentences based on an offender's age would simply accomplish directly what the blended jurisdiction statutes have indirectly attempted to do for years. Because children do not have the same degree of criminal responsibility as adults, they could receive shorter sentences for reduced blame based simply on their age. For example, a 14-year-old offender might receive 25 percent of the adult penalty, a 16-year-old defendant 50 percent, and an 18-year-old adult the regular penalty as currently occurs.

An integrated system in which to try and sentence younger offenders would not require integrated prisons. States should still maintain age-segregated youth correctional facilities in order to protect young offenders from adults and also to protect older prisoners from young toughs. Because all young offenders eventually will return to society, the state should provide them with resources and opportunities for self-improvement. A youth correctional policy should facilitate offenders' constructive use of the time they spend in the justice system and offer them room to reform.

The original idea of the juvenile court characterized delinquents as victims rather than as criminals and sent them to state-run farms or training schools to control and treat them. This ideology denied youths' personal responsibility, reduced their duty to exercise self-control, and eroded their obligations to change. If there is any silver lining in the current cloud of get-tough policies, it is the affirmation of responsibility. A culture that values autonomous individuals must emphasize both freedom and responsibility. A criminal law that bases sentences on blameworthiness and responsibility must recognize the physical, psychological, and social differences between youths and adults. The real reason states now bring young offenders to juvenile courts is not to deliver social services but because they committed a crime. While youths should assume some responsibility for their actions, criminal justice policies also must honestly recognize that these offenders are children and not the equals of adults. Affirming youth's partial responsibility requires politicians to be honest when a kid is a criminal–and a criminal is a kid. Once people recognize that simple truth, then justice can follow.

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References

Ainsworth, Janet E. "Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court." *North Carolina Law Review* 69 (1991).

Bishop, Donna M., and Charles S. Frazier. "Race Effects in Juvenile-Justice Decision-Making: Findings of a Statewide Analysis." *Journal of Criminal Law and Criminology* 86 (1996).

Blumstein, Alfred. "Youth Violence, Guns, and the Illicit-Drug Industry." *Journal of Criminal Law and Criminology* 86 (1995).

Cauffman, Elizabeth, and Laurence Steinberg. "The Cognitive and Affective Influence on Adolescent Decision-Making." *Temple Law Review* 68 (1995).

Feld, Barry C. *Bad Kids: Race and the Transformation of the Juvenile Court.* New York: Oxford University Press, 1999.

—. "Criminalizing the American Juvenile Court." Michael Tonry, ed., *Crime & Justice: An Annual Review of Research.* Chicago: University of Chicago, 1993.

—. *Justice for Children: The Right to Counsel and the Juvenile Courts.* Boston: Northeastern University Press, 1993.

—. "The Transformation of the Juvenile Court–Part II: Race and the 'Crack Down' on Youth Crime." *Minnesota Law Review* 84 (1999).

Grisso, Thomas. "Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis." *California Law Review* 68 (1980).

Platt, Anthony M. *The Child Savers: The Invention of Delinquency.* 2d ed. Chicago: University of Chicago Press, 1977.

Podkopacz, Marcy Rasmussen, and Barry C. Feld. "The End of the Line: An Empirical Study of Judicial Waiver." *Journal of Criminal Law and Criminology* 86 (1996).

Snyder, Howard N., and Melissa Sickmund. *Juvenile Offenders and Victims: A National Report*. Washington, D.C.: U.S. Government Printing Office, 1999.

Streib, Victor L. *Death Penalty for Juveniles*. Bloomington: Indiana University Press, 1987.

Zimring, Franklin E. *American Youth Violence*. New York: Oxford University Press, 1998.

Beyond Film Studies: Using Crime Movies to Study Society

by Nicole Rafter

Film studies began as a way of analyzing an art form, examining movies as literature, painting, and music. That approach made sense through much of the second half of the 20th century. Meanwhile, the relationship of films to culture changed, so now we see a nearly complete interpenetration–a seamless overlapping–of medium and message, of movies and the lives we lead. No longer an art form divorced from the rest of life, movies are now virtually everywhere–in theaters, on television, on VCRs, on airplanes, in schools. Our experience of the world is permeated by movies, and movies increasingly both reflect and shape that experience. Movies and our lives, films and society, now relate to one another in a kind of cybernetic feedback loop.

As a result of these changes–and a sign of them as well–instructors have started using film as an analytical tool in certain courses in criminology and criminal justice, legal studies, and sociology. For example, legal studies electives today often include the listing Law Films. Moreover, these law-films courses, far from limiting themselves to courtroom dramas, cover movies such as "Do the Right Thing," "The Godfather" trilogy, "Malcolm X," and "The Untouchables," which raise fundamental questions about the nature and functions of law.

My work on the relations of society and film began simply enough several years ago, when I designed a criminal justice course, Crime Films and Society, centered on Hollywood feature movies. The course grew out of misgivings about the way my colleagues and I were teaching criminology. We concentrated on the criminological literature, ignoring almost every other source of information on crime and criminals. We were missing an important reality about our students: As children of the late 20th century, they were living lives completely saturated by visual media. Their experience of movies was vast, while their experience of books was minimal. I felt that we should adjust, to some extent, to that experience.

With growing frequency, I noticed that after inquiring about an exam grade, a student might ask, as though getting to the *real* question, "Did you see 'American History X'? Yeah, well I was wondering if there really are a lot of racial fights in prisons." Or after class a student might come up and remark, half apologetically, "I'm Irish, and I saw this film 'Michael Collins,' and I was wondering if that's what you mean by political crime." Films were clearly a wellhead of students' ideas about legality and illegality, the volume of various types of crime, and the motives of law-breakers. While I struggled to explain anomie theory and differential association, students were anxious to learn whether major drug dealers act like Wesley Snipes in "New Jack City."

Rather than dismissing such concerns as superficial or peripheral, I decided to use them as a platform on which to build an alternative approach to the study of crime. I soon realized that if I were to use movies for the study of this social problem, I also needed, at the same time, to teach about movies themselves–their properties and techniques. As a result, Crime Films and Society developed with two goals in mind.

Films are a wellhead of students' ideas about legality, illegality, and the motives of law-breakers.

The first goal was to improve visual literacy. While it is overwhelmingly the case that young people today receive information primarily through images, instructors seldom train students to analyze what comes to them visually. Few if any of my students had time for an introductory film course, which could have exposed them to concepts for thinking critically about movies. Therefore, under the aegis of a course that "counted" in terms of departmental requirements, I introduced them to concepts such as diagesis, genre, narrative, and point of view.

Since my primary field was criminology, my second goal was to get students thinking about the ways we form stereotypes of crime and criminals. My students tended to be conservative and strongly opinionated about offenders and what they deserve. I wanted them to question their stereotypes and become sensitive to ways in which mainstream films (among other media) construct our worlds, ideals, and norms of acceptable behavior.

When I went looking for a good text for my course, I found several books on crime and media, but most of these concentrated on the inaccuracies of media representations of crime and justice processes. (I came to think of these as "gap studies" because they identify gaps between media images and "the real world.") I wanted to take a different approach.

Instead of comparing crime films to social realities and measuring the distance between them, I conceived their relationship as a two-way street, with traffic heavy in both directions. Crime films draw from, and in turn shape, social thought about crime and its players. Thus, the study of crime films can profit from an approach less concerned with the realism of representations and more with their ideological messages–the assumptions about the nature of reality that are embedded in film narratives and imagery. Unable to locate a text with this approach, I finally wrote one.

I began with a group of fifteen films, including "Boyz N the Hood," "Psycho," "Silence of the Lambs," and "Taxi Driver," that constituted the core of films for required

Film Resources

The fifteen films I required for viewing were:

- "Bonnie and Clyde" (1967)
- "Boyz N the Hood" (1991)
- "Brubaker" (1980)
- "Dead Man Walking" (1995)
- "I Want to Live!" (1958)
- "In the Name of the Father" (1993)
- "Kiss Me Deadly" (1955)
- "Magnum Force" (1973)
- "Music Box, The" (1990)
- "Natural Born Killers" (1994)
- "Psycho" (1960)
- "RoboCop" (1987)
- "Silence of the Lambs" (1991)
- "Silkwood" (1983)
- "Taxi Driver" (1976)

At first, I used Graeme Turner's *Film as Social Practice* (Routledge, 1993 ed.) as my key text. Recently, I have produced my own book, *Shots in the Mirror: Crime Films and Society* (Oxford University Press, 2000), a work that grew out of the course described here.

viewing in the course. Some students disliked the older films, but a movie's very strangeness could make it easier to analyze. For instance, one student, after watching the noir classic "Kiss Me Deadly," indignantly inquired how I could assign such a sexist and racist film. From there we moved easily into a discussion of the characteristics of Hollywood heroes and how these heroes are constructed. Other students, surprised by my ignorance of contemporary youth-market films that they considered excellent, insisted that I view certain movies that I wouldn't have watched on my own. This led me to a much deeper sense of the role played by movies in my students' lives.

Movies are a major source of stereotypes of ethnicity, gender, race, and sexuality. Both through what they depict and through what they ignore, films help define which groups are culturally valuable and which are deviant. Although films often reinforce prejudices, they can also serve as tools for remapping boundaries so that our cultural categories become more inclusive. As American society embraces the goal of diversity and becomes increasingly heterogeneous in the years ahead, campuses need to find vehicles to promote understanding of the dynamics of prejudice and intolerance. Crime films provide rich materials for such discussions.

The study of crime films–or the use of crime movies to study what these movies depict–opens doors onto a nearly endless series of specific issues. One on which I concentrated was what movies say about the causes of crime. Students wrote three short papers analyzing the criminological themes of "Boyz N the Hood," "Bonnie and Clyde," and "Taxi Driver," respectively. To illustrate how some movies echo Cesare Lombroso's biological explanation of criminal behavior, I showed clips from "The Bad Seed" and "Born to Kill." Oliver Stone's "Natural Born Killers," which traces the causes of crime to the mass media, including movies themselves, proved to be a particularly stimulating (if not notably coherent) film for deconstructing movie messages about crime.

At the start of the course, I spent three or four classes on the history of movie making and the evolution of crime films. Later we used this material as a basis for speculating about ways in which broad social currents may affect the rise and fall of specific crime genres. For example, after students had viewed a series of detective/cop films, starting with "Kiss Me Deadly" (1955) and continuing through "Magnum Force" (a 1973 Dirty Harry), "RoboCop," and "Silence of the Lambs," we were able to discuss historical continuities as well as changes in the sleuth-hero's character, relating the changes to shifts in the broader society.

Comparisons of "real crime" with "movie crime" sometimes reach a dead end in the empty conclusion that movies distort or at least misrepresent "reality." However, my students were determined to compare some historical crimes with their movie representations, and in this case, too, a series of the course's required films provided fertile discussion material: "I Want to Live!", a 1958 movie about a woman framed by criminal justice officials and executed in San Quentin's gas chamber; "In the Name of the Father," director Jim Sheridan's account of a 1970s frame-up of Irish men and women by the British government; and "Dead Man Walking," director Tim Robbins' movie about Sister Helen Prejean's work with death row prisoners. In a lecture, I supplemented this series with a comparison of "Compulsion" (1959), "Rope" (1948), and "Swoon" (1991), three films based on the notorious Leopold and Loeb murder case of the 1920s.

As I taught my course, I became aware of similar electives at other universities. These courses reflect not only the potential of crime films as teaching tools but also the ongoing expansion of film studies. As an area of inquiry, film studies is becoming less rarified and more egalitarian–a development befitting movies, the most democratic form of popular entertainment.

New courses on vampire films, women directors, the sociology of popular culture, and crime films will be found in traditional film studies departments, as they should be. Many, however, will turn up in departments of anthropology, criminal justice, history, psychology, and sociology. In these courses, students will learn simultaneously about one of the most pervasive forms of media–the history, style, and structure of movies–and they will also use film as an analytical tool with which to study society.

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Researching a Law: "Stubborn Children" Then and Now

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bellious Son Law was actually a restriction on the power of the patriarch.

In 1661, John Porter Jr., age 40, brought to trial by the complaints of his parents, was convicted and sentenced to "stand upon the gallows with a rope around his neck for one hour." He was then to be severely whipped and sent to the house of correction "to work and eat as was the manner in jail, not to be released until the court so ordered." Also, he was fined.

His stepmother saved his life.

> … If the mother of the said Porter had not been over moved by hir tender and motherly affections to forebeare but had joined with his father in complaining and craving justice the court must necessarily have proceeded with him as a capital offender, according to our law being grounded upon and expressed in the Word of God, in Deut. 22:20,21 (Record of the Court of Assistants 1660–68).

Had it been left to John Porter Sr., his son would have swung. The records showed that John Jr. had squandered his father's money, had beaten his father's servant, had tried to stab one of his brothers, and had threatened to burn down his father's house. From his own point of view, John Jr. had been cheated out of his inheritance when his father disowned him. John Jr. escaped from jail and outlived his father.

This 1646 law that carried the death penalty was repealed in 1681. In 1654 a provision was made for whipping or binding over for court appearance disobedient children and servants of any age. In 1699 stubborn children were included with "rogues, vagabonds, common beggars and other lewd, idle and disorderly as well as the poor, to be set to work."

During the 19th century, with the development of reformatories, use of the stubborn-child law increased. The law came to be used to remove children, male and fe-

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"Well-Founded Fear"—A Documentary Feature Film

Reviewed by Susan Will

"Well-Founded Fear" [2000, 119 mins.]
A Documentary Feature Film by
Shari Robertson and Michael Camerini
Distributed by The Epidavros Project
141 West 28th Street, Suite 6-B
New York, NY 10001
(Tel) 212/594–2522;
(Fax) 212/594–0101
info@wellfoundedfear.org
$48.50 purchase (individuals);
$165 purchase (institutions, including a facilitator's guide)

This two-hour video provides a rare opportunity to observe part of the asylum application process and learn something about how asylum officers make their decisions. This is indeed a rare event because the process is supposed to be closed and confidential.

Each year the United States offers asylum and refugee protection to qualified applicants who are unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution. To determine whether the petitioner is qualified, specially trained INS asylum officers conduct interviews to assess whether the applicants have a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . ." (Immigration and Naturalization Act §101a (42)(A)). Clearly, it is not an easy task to determine who, from among the thousands of applicants, deserves and should be granted asylum.

To tell the story about the asylum process, the filmmakers weave together two separate but related strands. One strand consists of a multitude of stories about hardship, torture, and fear, as told by refugees from Russia, Romania, Albania, China, Nigeria, and El Salvador. These individuals are hoping that, in the short time allotted, they can convince an asylum officer that they have a "well-founded" fear of persecution if forced to return to their native country. The other strand focuses on how asylum officers arrive at their decisions.

To place the viewer in the shoes of the applicants, the filmmakers record the cacophony of background noises, along with INS workers mispronouncing applicants' names, as the camera focuses in on various parts of the waiting room. Occupying the seats are individuals waiting to be called for their interview, along with individuals who were interviewed two weeks earlier and now are waiting to hear the agency's decision. The camera eavesdrops on a few conversations and follows select applicants through the waiting room door, down the long corridor to an asylum officer's office. The viewer listens to the interviews and eventually finds out which applicants were recommended for asylum and which were not.

Interesting as their stories are, the real strength and richness of this video are found in the segments that focus on the discretionary powers of the asylum officers who hear and process the cases. Rarely do we have an opportunity to learn how public servants react to their clients' stories, how they judge the veracity of those stories, and how they make decisions. This video permits the viewer to see how a few officers judge whether an individual has a "well-founded fear" or has just had an incredibly difficult life that is no different from anyone else's from his or her country of origin. While officers' interviews with the applicants provide the bulk of the "facts" upon which decisions are made, the filmmakers' interviews with asylum officers and the officers' conversations with coworkers and supervisors provide the real insights into how decisions are derived.

The film shows that law is a human system that relies upon the personal judgments of its agents.

In 1930 Jerome Frank wrote that to "understand what goes into the creating a judgement, we must observe how ordinary men dealing with ordinary affairs arrive at their decision." Ordinary men, according to him, begin with a conclusion more or less vaguely formed and then try to find premises that substantiate it. The video offers an opportunity to test Frank's hypothesis.

By the end of the video, the viewer can understand why an officer referred to the process as "asylum officer roulette." Whether a person is granted asylum often depends upon which officer is assigned the case. Each officer has his or her own interpretation of the law, thresholds, biases, and willingness to believe or suspend belief. Newer officers were more gullible and more likely to grant asylum. Officers become more suspicious or cynical after hearing the same story time after time, with very little variation, in a word, boilerplate. Learning that a petitioner had asylum revoked because his or her fingerprints did not match and had two or three other names tends to harden an agent. Some officers develop biases about the petitioner's social class or ethnic background. A highly educated individual may have a more difficult time with some agents, less with others.

Agents use many aids to arrive at their decisions. For example, when asked if he liked getting a file that was more than five inches thick, Gerald responded that he did, but that he could not let the other agents know that. To him, a file that thick meant that there was sufficient documentation and that a nongovernmental organization (NGO) had taken interest in the case, which he interpreted to mean that it was a valid claim. Ascertaining the truth is one of the most difficult tasks confronting agents.

References

Frank, Jerome. *Law and the Modern Mind.* New York: Brentano's Publishers, 1930.

Heilbroner, David. *Rough Justice: Days and Nights of a Young D.A.*. New York: Pantheon Books, 1990.

McCleary, Richard. *Dangerous Men: The Sociology of Parole*. Beverly Hills: Sage, 1978.

McIntyre, Lisa J. *The Public Defender: The Practice of Law in the Shadows of Repute.* Chicago: University of Chicago Press, 1987.

They look for inconsistencies in the applicant's story as a way of determining whether he or she has been truthful. Yet, they know that fabricated stories can be tighter–that is, have fewer inconsistencies than truthful ones. Some officers conduct their own tests to determine the veracity of a claim. For example, one officer asked an applicant who claimed that she was persecuted because she was an Anglican: who is the head of the Anglican Church? The officer denied asylum because he thought that the petitioner incorrectly answered the question. At the end of the video, we learned that the petitioner was correct and the officer was wrong. Listening to officers explain why they concluded a petitioner was or was not truthful seems to support Frank's contention that the decisions are made first, and then the officer looks for substantiation.

The video has a few minor weaknesses. Between segments, the filmmakers show scenes of water, an attempt at an artistic metaphor that I found annoying. Another was a prolonged focus on a baptism. Depending on the age and sophistication of the viewers, some may find the filmmakers' interview with Huang Xiang overly long. Some students had difficulty following the subtitles and the long poetic speech.

While the subtitles are white lettering and a bit too small, they are informative. At times, there is a great disjuncture between the words of the applicant and what the translator tells the asylum officer. One cannot help wondering if the inaccurate translation may affect the applicant's chances for asylum.

The video is unclear about the role of lawyers in the asylum process. The viewer is never sure whether the people who are questioning and advising applicants, and who accompany them to the interview with asylum officers, are lawyers, paralegals, asylum application preparers, or simply friends who know and understand the process. Uncertainty about the identity of these individuals increases, after one asylum officer explains that many applicants are victims of poor "coaching" by preparers who provide them with boilerplate statements. Whoever these individuals are, they were silent observers during the interview. The only individuals who spoke then were the asylum officer, the applicant, and if present, the interpreter.

"Well-Founded Fear" clearly shows how our system of law is a human system that relies on the personal judgments of its agents and helps students understand what goes into making legal decisions that affect the lives of others. While McCleary (1978) and McIntrye (1987) provide interpretations of how parole officers and public defenders make decisions, and Heilbroner (1990) writes of his indoctrination as a young district attorney, they are not as successful as this video in making the clients real. Viewers of "Well-Founded Fear" are not allowed to be passive observers; instead, they are drawn into the stories and the decision-making process.

More Resources on Political Asylum

BOOKS:

Schrag, Philip G. *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in America*. New York: Routledge, 2000.
This book provides an excellent first-hand account of the debates in Congress that led to the Illegal Immigration Reform and Immigrant Responsibility Act, passed by Congress and signed into law by President Clinton in 1996. Schrag, a law professor who helped organize a coalition to preserve key elements of political asylum in the United States, offers an insider's detailed account into the legislative hearings, committee work, and organized groups that helped shape the new omnibus legislation. The book is particularly good at revealing how Congress really works, including how interest groups influence the shaping of legislation, what happens when the House and Senate pass different bills on the same subject, the influence of committees and their chairs, and the importance of key individuals inside and outside of Congress. Schrag also provides a thorough overview of America's responses to refugees in the 20th century and an intriguing discussion of the ways in which the INS implemented the 1996 legislation. This compellingly written case study, available in paperback, can be used in undergraduate courses on law and society, immigration, administrative law, and public policy, as well as on Congress.

WEB SITES:

The "Well-Founded Fear" Site
www.pbs.org/pov/wellfoundedfear
A rich Web site that accompanies and expands upon the two-hour feature film by Shari Robertson and Michael Camerini. The site includes additional resources on asylum, information about refugees in communities across the United States, and an interactive game that situates the visitor in the role of asylum hearing officer.

The Epidavros Project
wellfoundedfear.org
This is the Web site of "Well-Founded Fear" filmmakers Michael Camerini and Shari Robertson. Among the features of the site are a summary of the film, brief biographies of the filmmakers and their personal comments about the film, and information about how to purchase the film online and by mail.

The ABA Division for Public Education
www.abanet.org/publiced/povhome.html
This Web site provides a resource guide to accompany "Well Founded Fear," as part of a partnership between the ABA and P.O.V. The online guide includes discussion questions, teaching activities designed especially for college and university classrooms, books, and Web resources on political asylum.

The Immigration and Naturalization Service
www.ins.usdoj.gov
This is the official Web site of the INS. The Statistical Reports section contains detailed annual reports of immigration to the United States, as well as similar reports on refugees and asylees. The annual reports on asylees, for example, contain data on the number of cases filed and pending and the rate of success of asylum petitioners, all broken down by the nationality of the asylum-seekers.

The United Nations High Commissioner for Refugees
www.unhcr.ch
This Web site provides extensive information on the status of refugees around the world, statistics on refugees and asylum seekers, and country-specific information. The site also contains information on human rights internships available for college students, as well as a section for K–12 teachers on how to incorporate the study of refugees into the teaching of history, geography, and civic education.

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Researching a Law: "Stubborn Children" Then and Now

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male, from home and community, a part of the machinery known as the juvenile justice system.

During the 20th century, the law was invoked in courts throughout the state of Massachusetts. The law was used as a scare tactic and a tool to bring a child under the influence of helping agencies, or as a masking device to protect a child from having a more serious crime on his or her record. The law continued to be used as a device to transfer the custody of children to an institution or other residence. The law was also used to incarcerate young women in an adult reformatory. Many of the 300 young women incarcerated at the Framingham Women's Reformatory for stubbornness between 1877 and 1971 were there because they were unmarried and pregnant. Their histories during the late 19th century described working-class white women, immigrants, or children of immigrants trying to alter their life circumstances.

Mary C., 18, attended school until age 14; she then worked as a dressmaker, at housework and at the candy factory and "was very disobedient at home." Bessie M., 17, worked in the mill, stayed out late, "a very pretty pleasant girl." Some of the young women must have been victims. Barbara, 18, was sentenced to the Women's Reformatory for stubbornness during the 1960s. She had no record except for the stubborn-child adjudication. The records states that at 13, referred by the school to the child-guidance department because she had accused her stepfather of molesting her, she was placed in a home for wayward girls. Diagnosis: "an adjustment reaction of adolescence." Diane, 17, of the Greek Orthodox faith, had no previous police record but was illegitimately pregnant. The record states: "acted out to hurt mother."

Indeed, the use of this law was complicated. When I was granted permission to read the history of inmate books at the women's reformatory, a director in charge of records stated that no one under 17 could have been sentenced to this institution. Yet, I found a number of girls as young as 15 committed here, probably because juvenile facilities could not accommodate pregnant girls.

In 1973 the law was "decriminalized." Instead of being adjudicated a delinquent, a child brought to court for stubbornness could be adjudicated "a child in need of services." Also, young women could no longer be sentenced in adult courts as stubborn.

One function of the sociology of law is to interpret the contradictions and conflicts that arise from incompatibility between formal or legal aspects and substantive or equity aspects of law. Changes in the application of a law often reflect the tension or discrepancy that exists between a legal form and social reality. It appears that legislators are often aware of this discrepancy and intentionally create or keep laws that are vague so that law-applying agencies can exercise discretion in their application.

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Frontline Resources on Juvenile Justice

In early February 2001, *Frontline* aired a 90-minute program on juvenile justice, focusing on whether teens who commit serious crimes should be tried and sentenced as juveniles or adults. The program explored this issue through the eyes of four youths and their families, judges, prosecutors, defense attorneys, and other representatives of the juvenile and criminal justice systems. The film is available for purchase for $19.98 from PBS; call 1-877-PBS-SHOP or go to the Web site at: www.shop.pbs.org

A rich companion Web site for this *Frontline* program (www.pbs.org/wgbh/pages/frontline/shows/juvenile/) examines differences between the two systems of justice, provides an overview of state practices on treating juveniles as adults, and addresses related issues such as sentencing, rehabilitation, and racial bias in the juvenile courts.

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