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The contemporary American juvenile justice system: Revisiting *parens patriae*

Współczesny amerykański wymiar sprawiedliwości dla nieletnich. Ponowne spojrzenie na *parens patriae*

Abstract: The American juvenile justice system has undergone significant transformations since its inception in the late 19th century. In this paper, the authors seek to analyze the historical context of and subsequent reforms to the juvenile system and process in order to determine whether they remain true to their origins of the legal doctrine of *parens patriae*. Specifically, the authors contrast rehabilitative notions of *parens patriae* with the “tough on crime” perspective that developed in the 1990s in response to rising crime rates. This debate is illustrated by landmark Supreme Court cases, waivers to the adult system, increases in the use of detention, and the use of “evidence-based programs” to curb further delinquency and prevent violence. The discussion also focuses on the prevalence of systemic racial, ethnic, and gender discrimination, which calls into question the utility of *parens patriae* and the overall effectiveness of the juvenile justice system.

Keywords: juvenile justice system, *parens patriae*, getting tough on crime, discrimination in the juvenile justice system, juvenile process, the Supreme Court cases

Abstrakt: Od końca XIX wieku w amerykańskim wymiarze sprawiedliwości dla nieletnich zaszły ważne zmiany. W artykule autorki analizują kontekst historyczny oraz reformy postępowania z nieletnimi, by sprawdzić, czy są one spójne z ideą, jaka pod koniec XIX wieku przyswiewiała powstaniu wymiaru sprawiedliwości dla nieletnich opartego na doktrynie *parens patriae*. Autorki porównują podejście resocjalizacyjne *parens patriae* z podejściem punitywnym, które rozwinęło się w latach dziewięćdziesiątych XX wieku w odpowiedzi na wzrost poziomu przestępczości. Podjęta przez autorki

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debata została zilustrowana przełomowymi orzeczeniami Sądu Najwyższego Stanów Zjednoczonych dotyczącymi: rozpoznawania spraw nieletnich przez sądy dla sprawców dorosłych, wzrostu orzekanych kar izolacyjnych oraz wdrażania programów opartych na wynikach badań, których celem jest ograniczenie powrotności do przestępstwa i zapobieganie przestępczości. Dyskusja podjęta przez autorki skupia się także na coraz powszechniejszej w wymiarze dla nieletnich systemowej dyskryminacji rasowej, etnicznej oraz opartej na płci, co stawia pod znakiem zapytania zarówno użyteczność samej idei *parens patriae*, jak i generalnie kwestię efektywności wymiaru sprawiedliwości dla nieletnich.

Słowa kluczowe: wymiar sprawiedliwości dla nieletnich, *parens patriae*, punitaryzm, dyskryminacja w wymiarze sprawiedliwości dla nieletnich, postępowanie z nieletnimi, orzeczenia Sądu Najwyższego USA

Introduction

The first juvenile court was established in Chicago in 1899, marking the beginning of the juvenile justice system in the United States. This system handles juvenile cases and is separate from the criminal justice system for adults. While the theoretical foundations of the adult system are punishment, incarceration, retribution, and deterrence, the juvenile justice system was founded on the legal doctrine of *parens patriae*. This doctrine, translated as “parent of the country,” promulgated the treatment, care, and rehabilitation of delinquents (Macaluso, Soler 2021). Since its inception, the juvenile justice system has been significantly transformed and eventually moved towards a punitive structure and process. In this paper, the authors contrast the origins of the system with its current structure and functions. Understanding the nature and underlying approach to the juvenile justice system is crucial, since the way youths are treated may influence the trajectory of their lives and potential criminality.

In 2019, U.S. law enforcement made nearly 700,000 arrests of juveniles, primarily for larceny/theft, simple assault, and drug offenses. Though the number of arrests declined substantially since 1996, when nearly 2.7 million arrests were made, juvenile offending remains a prominent concern for practitioners and scholars (Puzzanchera 2021). At present, there are more than 48,000 confined adolescents, with around two thirds being held in detention centers, long-term secure facilities, or adult prisons and jails (Sawyer 2019). Over 8,000—or nearly one fifth of them—are held in detention centers and long-term secure facilities for minor offenses, including status offenses (1,700) and technical violations (6,700) (Sawyer 2019).

Youths can be arrested or taken into custody for delinquent acts (equivalent to a criminal act by an adult) or for status offenses, which are illegal solely due to the perpetrator’s age. Examples of status offenses include alcohol and tobacco consumption, curfew violations, truancy, running away from home, being unruly, or being a person in need of supervision (OJJDP 2015). Nonviolent and low-risk

youths are still confined despite the lack of research indicating that imprisonment reduces delinquency. For instance, research has found that juveniles are more likely to recidivate if they are placed in secure facilities rather than community settings, or if they serve longer sentences (Loughran et al. 2010; Ryan et al. 2014).

Like the system for adults, the juvenile justice system is beset with gender, racial, and ethnic discrimination. In fact, nearly 10 percent of the girls are confined for status offenses such as running away from home or school absenteeism. Although the arrest rates for girls follow trends of arrest rates for boys, they have been decreasing more slowly. Girls made up 18 percent of all juvenile arrests in 1980, but today they account for 31 percent of them (Parrish 2020; Puzzanchera 2021). Another trend that parallels that of the adult system is racial and ethnic discrepancies in arrest and confinement rates. The arrest rate for non-minority youths declined by almost 50 percent between 2003 and 2013, but for Black youths it declined only by 31 percent (Rovner 2016). Although Black youths make up 15 percent of the overall youth population, they account for 34 percent of juvenile arrests and 41 percent of confined youths (OJJDP 2020b; OJJDP 2021). These data are important in understanding the unequal involvement and discriminatory practices in the juvenile justice system.

This paper examines the foundations and characteristics of the American juvenile justice system. First, we discuss the history and development of the separate U.S. juvenile justice system. Then, we explore the impact of landmark Supreme Court cases on the juvenile justice process and investigate the punitive approaches of the 1990s, including waivers to adult court. Finally, we conclude our discussion with a call for redefining *parens patriae* and for revising the current vision of the juvenile justice system.

1. Development of the juvenile justice system

With the expansion of industrialization and urbanization in the 19th century, youth delinquency became a growing concern. There was no separate legal status of “juvenile” or “child,” as children were treated as property and adolescents were treated as adults. They were processed through the criminal courts and placed in adult confinement facilities with adult offenders (Ferdinand 1991). The development of cities, rising crime rates, and fear of crime led to the formation of the Child Savers Movement and the emergence of the *parens patriae* doctrine. This doctrine was first established in the Middle Ages by the English Chancery Court and was part of English common law. *Parens patriae* assumes that the state should intervene in cases of delinquency and function as the juvenile’s parent (Madison 2012). The belief was that youths are inherently different from adults and are more likely to be receptive to rehabilitative efforts. Rather than punishment, they

require education, nurturing, protection, and care. In short, the state is a parent and will act in the best interest of the child. In practice, the doctrine translated into creating a separate legal and control system for juveniles (Ferdinand 1991).

The Child Savers were social reformers who advocated for the creation of a juvenile court that functioned separately from the criminal court. These reformers were concerned with the inadequate support and supervision being provided for delinquent and neglected youth, and the potentially detrimental consequences of exposing them to the adult system (Applegate, Davis, Cullen 2009). They argued that delinquent youths were not at fault for their actions, but rather that their actions were the consequences of a disorderly community and poor family life, and that they could be successfully rehabilitated and helped (Thorson 1999; Applegate, Davis, Cullen 2009). However, it has been argued that the Child Savers and the juvenile court fulfilled the interests of the middle class and were guided by fear of crime, poverty, disorder, and the need to protect their neighborhoods (Platt 1969; McNally 1982). The influx of youth delinquency cases toward the end of the 1800s made it clear that the criminal courts could not handle the large number of juvenile cases (Ferdinand 1991; Macaluso, Soler 2021).

In his significant work, Anthony Platt (1969) claimed that the movement was an act of self-preservation for middle- and upper-class men and women. He indicated that white middle-class women were interested in sustaining their personal status and that their involvement in the movement fulfilled the needs for labor for a manufacturing economy. In addition, he looked beyond the rational presentation and organization of the system. He suggested that the new policies were created to control juveniles, which led to labeling – and in fact established new categories of adolescents’ “misbehaviors.” It is also important to note that the Child Savers Movement developed before the introduction of child labor laws and mandatory schooling (Bartollas, Schmalleger, Turner 2019).

However, Geoff K. Ward claimed that Anthony Platt and others ignored the issues of race and ethnicity in their depiction of the early juvenile system. The historical perceptions and democratic exclusion of Black people as racially inferior clearly manifested in the development of the juvenile justice system. Black youths were seen as incapable of redemption by the parental state due to the idea that Black adolescents were a “lost cause.” Chase Burton (2019) argued also that the juvenile justice system has historically categorized certain youths as “unchildlike,” thus deeming them “inappropriate subjects” for rehabilitative services. This primarily impacted ethnic and racial minority youths and those from working-class families.

This approach to youths and youth behavior culminated in the separate and unequal juvenile justice system, which persisted throughout the Progressive Era (1890–1920). Finally, the lack of inclusion led to the establishment of the Black Child Savers, who fought for equal consideration and treatment for Black juveniles and for Black participation in juvenile justice decision-making.

In fact, according to Michael Willrich (2003), the development of a separate juvenile justice system in Progressive Era Chicago caused a redefinition of how

urban youths are viewed, changing the laws and treatment of juveniles. While the view on criminality was transformed from an individual approach to a social one, the consequences for adolescents were significant. He suggested that this development led to the creation of new coercive forms of social regulation and control. The new municipal court had aspects of three modes – a court, a ministry, and a welfare agency–suggesting a complex interplay between the judicial, the administrative and the pursuit of justice for the poor.

There were also concerns regarding the detention of youths in adult facilities, which led to the creation of separate institutions. The first youth confinement facility, the New York House of Refuge, was established and officially opened in New York City in 1825, followed by other cities (Madison 2012). Parents no longer had rights over their child once they were committed, and the House of Refuge manager would become the child's caregiver (Madison 2012).

However, despite its rehabilitative purpose, there were problems with the New York House of Refuge, including claims of inmate abuse and labor exploitation (Pisciotta 1985). Similarly, the Elmira Reformatory, created for young first-time offenders, exposed them to adult offenders and to physical punishment (Pisciotta 1983). Although those institutions had the goal of treating young offenders, in reality, they were often not rehabilitative for troubled adolescents.

This approach was enforced by the 1838 *Ex parte Crouse* case, in which the Pennsylvania Supreme Court applied the doctrine of *parens patriae*. This was one of the first “endorsements” of *parens patriae* in the U.S. and it contributed significantly to the subsequent evolution of *parens patriae* from theory to doctrine throughout the country (Curtis 1976). This procedural change paved the way for other states to handle cases of delinquent and neglected youths without parental consent (Madison 2012). Similarly, in *Commonwealth v. Fisher* (1905), the appellant argued that he was placed into custody without due process of law, but the court maintained that “the state required no process whatsoever” when protecting youths from criminal pathways. This further enforced the juvenile court's *parens patriae* function, as it served as a caregiver rather than a criminal court. The Supreme Court cases of the 1960s and 1970s aligned with the doctrine of *parens patriae* and helped to further enforce certain protections for juveniles.

In the mid-1880s, cottage system facilities were established to place youths under the care of host families and to engage them in rural life (Bartollas, Schmalleger, Turner 2019). These facilities differed in many ways, but their primary focus was to care for and rehabilitate young offenders.

The reforms culminated in the enactment of the 1899 Juvenile Court Act and the creation of the first juvenile justice court in Chicago, Illinois. The objective was to ensure that youths aged 17 and younger were properly cared for by prioritizing their needs, while still addressing public safety concerns (Beger 1994). The juvenile justice process was informal, as no due process rights were followed, and such informal processes persisted throughout the first half of the 20th century (Ferdinand 1991; Beger 1994).

2. The landmark Supreme Court cases

The legal doctrine of *parens patriae* and the juvenile justice process were considerably modified in the 1960s and 1970s when Supreme Court justices expressed concerns regarding flexibility and discretion being overused in juvenile justice proceedings. In addition, undermining discretion and informality in the juvenile justice system meant confronting the core values of *parens patriae*.

In the landmark case *Kent v. United States* (1966), 16-year-old Kent was waived to adult court without being given a hearing or access to counsel. In his decision, Justice Abe Fortas stated that

there is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.

Thus, the Supreme Court determined that, when charged with a felony, a juvenile has a right to counsel and a hearing with basic due process rights and fair treatment and that the juvenile's attorney should have access to their probation records (*Kent v. United States* 1966).

Arguably, *In re Gault* (1967) was the most influential case for the juvenile justice system and process. Fifteen-year-old Gerald Gault and his friend were taken into custody for making lewd and indecent remarks over the phone to a neighbor, but Gault's parents were not notified about his arrest and the complainant was not present at the hearing. The Judge committed Gault to the State Industrial School until the age of 21. However, the U.S. Supreme Court overturned the Arizona Supreme Court's decision and ruled that (a) parents must be notified of their child's arrest, (b) juveniles have the right to be notified of their charges, and (c) juveniles have the right to counsel and an attorney should be appointed if they cannot afford one. The court also ruled that, as with adult cases, the juvenile process must include the constitutional privilege against self-incrimination and the right to confront and cross-examine witnesses (*In re Gault* 1967).

This case directly contradicted the informality of the juvenile justice process, therefore questioning its principal foundations of *parens patriae* standards. Henceforth, juveniles were given their basic due rights by the Supreme Court; this decision initiated a move from the informal nature of the doctrine toward formality and the criminal justice standards afforded to adults. However, research indicates that not all jurisdictions instantaneously complied with *In re Gault* (1967). Two decades later, Barry C. Feld (1988) found that among six states, only half provided counsel to at least 85 percent of juveniles. In addition, no more than 50 percent of juveniles in Minnesota, Nebraska, and North Dakota were afforded counsel. Moreover, juveniles who were afforded counsel in the six states were more likely to receive harsher sentences than those without counsel. More recent data indicate that this theme has persisted. For example, the National Juvenile Defender Center

(2017) indicated that only 11 states provide youth with counsel automatically based on their age and financial status.

The landmark cases of the 1970s included such cases as *In re Winship* (1970), *McKeiver v. Pennsylvania* (1971), and *Breed v. Jones* (1975). In the first case, the U.S. Supreme Court determined that the evidence in juvenile cases should meet the standard of proving beyond a reasonable doubt, rather than the standard of a preponderance of the evidence used in civil cases, as this would better assist and protect juveniles. In *McKeiver v. Pennsylvania* (1971), the Supreme Court ultimately determined that the Fourteenth Amendment—which guarantees trials by jury for adults in a criminal court—does not apply to youths in a juvenile court. Finally, in *Breed v. Jones* (1975), the U.S. Supreme Court decided that double jeopardy applies to juvenile cases and that the juvenile court cannot adjudicate a youth and then transfer their case to an adult court. It was another crucial decision in ensuring that although juveniles have a separate system and process from adults, they are not treated more harshly than adults in criminal court.

The early understanding and application of the doctrine of *parens patriae* assumed informality, which ultimately led in some cases to unequal treatment and harsher outcomes for juveniles as compared to adults, as well as discrimination against minorities. The Supreme Court cases of the 1960s and 1970s established new procedural rules in the juvenile justice process, introducing more formality and structure, consequently mirroring the adult criminal justice system's processes and providing important protection against discretion and unequal treatment.

3. Tough on crime, tough on juveniles

The end the 20th century became known as the “tough on crime” era, during which the treatment of juvenile offenders shifted from being primarily rehabilitative to increasingly punitive. This trend was explained by rising crime and delinquency rates, which incited public fear and concern, and by the limited evidence of the effectiveness of rehabilitative interventions (Applegate, Davis, Cullen 2009; Lee, Kraus 2016; Feld 2018). There were 1.9 million delinquency cases referred to juvenile courts in 1997—an estimated 48 percent increase over 1988 (Puzzanchera et al. 2000; Ehrmann, Hyland, Puzzanchera 2019). Youth violence became a significant social problem, since juvenile arrests for robbery, aggravated assault, and weapons law violations peaked in 1994 (Puzzanchera 2021).

Due to the aforementioned factors, this period saw a shift in the juvenile justice system, as it moved from the concept of *parens patriae* to a system that operated on the principles of the classical school of criminology. The classical school maintains that people are rational actors with free will who make decisions based on a cost-benefit analysis, so one's punishment should be retributive and should fit their

crime. States began enacting determinate sentencing laws and expanding eligibility criteria for transfers to adult court. Detention facilities became overcrowded as the rates of youth confinement rose. Over 100,000 youths were confined in the late 1980s and 1990s (as compared to 36,479 in 2019). Black youths were particularly affected by the punitive measures. The detention of youths became a part of the American mass incarceration phenomenon.

4. A case of transfer to the adult system

A notable change within the juvenile justice system in the late 1990s was the increased use of transfers to the adult system. The objective of transfers was to reduce juvenile offending by increasing punishment and removing serious offenders from the juvenile justice system, which is geared toward rehabilitation (Mears 2003; Lee, Kraus 2016). This process further shifted the juvenile justice system toward the adult system's goals of deterrence and retribution.

A juvenile can be waived to adult court through judicial, legislative, or prosecutorial waivers. Historically, the primary mechanism used to transfer youths to adult court was the judicial waiver, about which the juvenile court judge makes the final decision (Lee, Kraus 2016). The Supreme Court case *Kent v. United States* (1966) established numerous factors for deciding whether a juvenile should be transferred, such as their maturity, their prior criminal record, the type of offense, and the likelihood of their successful rehabilitation (Jordan, Myers 2011; Lee, Kraus 2016). Since judges were able to analyze each case on an individual basis, this waiver was perceived to align best with the courts' fundamental *parens patriae* philosophy (Thorson 1999).

Judicial waivers have garnered criticism despite the establishment of the *Kent* factors. Interestingly, Dia N. Brannen et al. (2006) found that juvenile court judges weighted the *Kent* factors differently. For instance, "dangerousness" (i.e., a history of violence and aggression) was the most heavily considered factor, followed by "maturity and sophistication" (i.e., decision-making or capacity for reasoning) and "amenability to treatment" (i.e., the likelihood of rehabilitation). The scholars explain that these processes contradict the philosophy of *parens patriae*, as less consideration is put toward treatment and rehabilitation.

Legislative waivers, also known as statutory exclusion, became more common during the 1990s as legislators enacted policies that lifted age restrictions and expanded eligibility criteria for transfers to adult court (Loughran et al. 2010). Juvenile cases were automatically filed in criminal court without any involvement from judges or any formal examination of the juvenile (Brannen et al. 2006). By the end of the 1990s, over 50 percent of U.S. states had enacted laws that automatically sent certain juveniles to adult court based on their age and the offense;

today, 28 states have legislative waivers in place (Burrow 2008; OJJDP 2020a; Hockenberry 2021). These waivers have been criticized for contradicting *parens patriae* because they do not examine youths or their cases on an individual basis (Thorson 1999; Weston 2016).

Prosecutorial waivers also became more common in the 1990s when states passed laws which allowed prosecutors to determine whether certain cases would be filed in juvenile or adult court (Burrow 2008; Lee, Kraus 2016). These waivers, used in 14 states today, have been critiqued for going against the original, rehabilitative purpose of the juvenile justice system and providing unrestricted power to prosecutors who prioritize public safety (Thorson 1999; Burrow 2008). With the development of prosecutorial and legislative waivers, the focus shifted from the adolescent to the offense.

It is difficult to ascertain the exact number of youths waived to the adult system because of inadequate data. More recent estimates suggest that in 2019, out of 53,000 juvenile cases, around 3,300 were judicially waived and 8,900 were transferred due to statutory discretion or prosecutorial waivers (Puzzanchera et al. 2021).

Juvenile transfers to criminal court can result in imprisonment in adult or juvenile facilities, probation, intensive supervision, diversion, or placement in community-based programs (Mears 2003). Research found that judicial and prosecutorial waivers were more likely to result in confinement, while legislative waivers more often led to non-criminal outcomes (Zane 2017). Transferred youths tend to receive longer sentences than non-transferred youths and adults for comparable crimes (Jordan, Myers 2011; Lehmann, Chiricos, Bales 2018). Finally, some research has found that juveniles transferred to the adult system are more likely to recidivate (Lanza-Kaduce et al. 2005; Feld 2018). It seems that transfers and severe sanctions overall do not reduce subsequent delinquency among youths, and this finding highlights the importance of treatment and rehabilitation for young offenders.

5. Current issues in the American juvenile justice system

The juvenile justice system today faces critical challenges, in part because many juvenile justice policies undermine the primary goals of *parens patriae*. The use of detention can be detrimental to many youths, separating them from family, friends, and community. Although juvenile confinement has declined by 60 percent since 2000, there is still a need for improvement seeing that approximately 25 percent of youths in juvenile facilities have not been convicted of a crime (Sawyer 2019). In addition, according to 2016 statistical data, almost 12,000 youths were serving life sentences, with 20 percent serving life sentences without parole (The Sentencing Project 2019). The detention of and long sentences for youths contribute to

the American problem of mass incarceration and remain proof that the juvenile justice system has moved toward punishment and retribution.

The juvenile justice system exhibits gender-specific trends similar to those in the adult system. While there has been an overall decline in juvenile arrests, this decline has been more significant for males than for females. For example, in 1997 there were 14,284 girls and 90,771 boys in residential placement; in 2019 there were 5,414 girls and 31,064 boys. The confined female population declined by 62.1 percent between 1997 and 2019, while the share of confined girls increased during the same period, from 14.8 percent to 13.6 percent. In contrast, the confinement rate for boys declined by 65.8 percent, but the proportion of them among confined juveniles decreased from 86.4 percent to 85.2 percent (Sickmund et al. 2022).

Similarly, although the juvenile arrest rate for girls declined by 65.85 percent, the proportion of girls increased from 23.7 to 30.5 percent in 2019. On the other hand, the juvenile arrest rate declined by 75.79 percent for boys, while boys made up 76.3 percent of juveniles in detention in 1997 and 69.5 percent in 2019 (OJJPD 2020b).

This trend is concerning, as many girls involved in the system have experienced victimization. Indeed, Cathy Spatz Widom (1992) found that abused and neglected girls were significantly more likely to engage in delinquency. The unequal treatment of girls and the enforcement of status offenses indicate the presence of patriarchal standards within the juvenile justice system and the need for gender-responsive solutions.

Discrimination against ethnic and racial minority youths has also persisted within the juvenile justice system. While juvenile confinement rates have declined significantly in recent decades, minority youths are still confined at disproportionately higher rates. Data indicate that 14 percent of all youths under 18 in America are Black, yet 42 percent of the boys and 35 percent of the girls in juvenile facilities are Black. Indigenous youths make up 3 percent of the girls and 1.5 percent of the boys in juvenile facilities, despite comprising less than 1 percent of all youths nationwide. These disparities exist among transferred youths as well. For instance, 2017 data show that Black youths account for 35 percent of delinquency cases, but over 54 percent of juveniles who were judicially transferred to adult court. In comparison, white youths account for 44 percent of delinquency cases and only 31 percent of judicially transferred juveniles (Sawyer 2019). Racial disparities are evident in every stage of the juvenile justice process.

The racial disparities continue to impact female adolescents. Non-minority girls make up 55 percent of the female population and account for 46 percent of the female delinquency cases, whereas Black girls make up 15 percent of the female population and represent 35 percent of the female delinquency caseload (Ehrmann, Hyland, Puzzanchera 2019). The detention rate for non-minority girls is 17.6 per 100 cases, while for Black girls it is 20.9 per 100 and for Hispanic girls 26.3 per 100. In contrast, diversion rates are the highest among non-minority girls and the lowest among Black girls (Ehrmann, Hyland, Puzzanchera 2019). Diversion programs redirect offenders from conventional juvenile justice sanctions to

provide treatment that addresses their needs. Not only are minority girls arrested and confined at higher rates, but they are also less likely to participate in rehabilitative diversion programs (Bartollas, Schmalleger, Turner 2019).

In fact, the discriminatory practices are present in all types of dispositions. For example, Black youths are more likely to have their cases referred to a juvenile court instead being handled informally, as in the case of White youths. They are also more likely to be placed in confinement and less likely to receive probation (Rovner 2016). Finally, ethnic and racial minorities account for 77 percent of life sentences without parole and 63 percent of those sentences were handed down to Black youths (The Sentencing Project 2019). While Black youths commit violent offenses at higher rates, violent crimes account for only 6 percent of juvenile arrests (OJJDP 2020b), so they do not explain the sentencing disparities.

By focusing on retribution rather than rehabilitation, the system neglects to consider any potential deeper, traumatic events that some delinquent youths experience. As Joshua Rovner (2021) explains, those given life sentences tend to encounter a plethora of adversities, including exposure to violence and victimization. Thus, these data are even more troublesome considering the detrimental effects that confinement can have on youths who may be dealing with the repercussions of trauma. The system continues to punish marginalized and vulnerable populations more often and more severely, which may further traumatize them. This is a widespread issue, as these racial disparities exist in states with significant minority populations, as well as those with small minority populations (Rovner 2016).

6. Violence and delinquency prevention programs

There are still many aspects of the juvenile justice system that suggest an emphasis on rehabilitation, such as programs and interventions that are designed to prevent delinquency and recidivism. According to Franklin Zimring (2005), being a juvenile encompasses often limited cognitive capacities and underdeveloped social control. If those characteristics are not present, as Franklin Zimring indicated, immaturity should remain a mitigating factor when considering a punishment for a juvenile. This way of thinking about juveniles and their punishment is aligned with propagating delinquency prevention interventions for youths.

In general, meta-analyses show that not only are there overall reductions in recidivism for juvenile offenders who participate in intervention programs compared to those who do not, but also that participating in any programs is beneficial to adolescents (e.g., Bouchard, Wong 2018). As Jennifer L. Matjasko et al. (2012) indicated: "It makes sense to invest in effective violence prevention programs."

The evidence-based programs are especially important for the juvenile justice system, as they are backed by scholarly research and they are strongly recommended by various governmental and non-governmental institutions. Researchers often

categorize these programs as “effective,” “promising,” or showing “no effects.” The Blueprints for Healthy Youth Development, created by the Institute of Behavioral Science at the University of Colorado, promotes so-called “model” and “model plus” programs, which are evaluated using a rigorous experimental design and are supported by evidence showing their effectiveness. However, implementing evidence-based programs is a slow process and only 5 percent of eligible youths participate in them (Henggeler, Schoenwald 2011).

One of the first meta-analyses was conducted by Mark W. Lipsey (2008), who reviewed over 361 research studies and found that the most effective interventions for juveniles are those in the surveillance category (e.g., intensive probation and parole), restorative programs (e.g., community service), and counseling programs. Overall, the most effective interventions were group counseling programs led by a therapist (a 25 percent decrease in reoffending) and mentoring from a volunteer or paraprofessional (a 21 percent decrease in reoffending).

While we could not locate any more recent or equally comprehensive meta-analyses, we found several more specific ones that are relevant to the discussion on violence prevention programs. For example, Trudy van der Stouwe et al. (2014) examined the effectiveness of multisystemic therapy and found that it was most effective for White youths younger than 15 at reducing general delinquency. Craig S. Schwalbe et al. (2012) indicated that among diversion programs, only family treatment significantly reduced juvenile recidivism. Finally, findings from the meta-analysis by Wong et al. (2016) showed that restorative diversion programs significantly reduced recidivism among White youths but were ineffective among ethnic minority youths.

The most recent meta-review conducted by Lacey N. Pappas and Amy L. Dent (2021) indicates that participating in the intervention programs is effective overall at reducing delinquency among youths, but their effectiveness varies by a number of factors, including the type and seriousness of the committed offense and whether the adolescent is institutionalized. The program modalities that showed the strongest positive outcomes were multisystemic treatment, family-based treatment, wilderness therapy, cognitive behavioral treatment, and restorative justice. According to researchers, those interventions worked in part because of their rehabilitative approach.

David P. Farrington (2017) recommended that juvenile correctional facilities should provide more rehabilitative and evidence-based programs such as cognitive behavioral therapy, drug treatment, restorative justice, mentoring, education, and vocational training. Cognitive behavioral therapy seeks to address and improve dysfunctional thoughts and deviant behavior and has been backed by copious amounts of research (e.g., Greenwood, Turner 2019). In addition, mentoring, education, and vocational programs can help adolescents identify and achieve goals and can teach them the necessary skills for rejoining society.

One program that has been deemed “effective” according to OJJDP’s standards is Project BUILD, a program that addresses a range of issues among confined youths, including violence, substance abuse, and gang activity. This program has

a curriculum which focuses on building their self-esteem and improving their ability to communicate, address problems, establish goals, and make decisions (Lurigio, Bensiger, Thompson 2000). Other programs have been categorized as “promising” by the OJJDP. For example, the program Juvenile Justice Anger Management Treatment for Girls focuses on improving anger management, aggression, and other cognitive-behavioral issues among confined girls (Goldstein et al. 2018).

Mental health and substance use problems are not uncommon among justice-involved youths, and some programs have sought to address these issues among confined juveniles (Caldwell, Van Rybroek 2005; Caldwell et al. 2006). Unfortunately, despite research suggesting that justice-involved youth have disproportionately high rates of mental health and substance use problems as well as higher recidivism rates, only a small percentage of this population receives treatment (OJJDP 2017). As mentioned previously, though many adolescents may benefit from these interventions, they are not widely accessible.

Discussion and conclusions

The history of the American juvenile justice system is the history of a struggle between two approaches to crime and justice: rehabilitation and punishment. In 1899, a separate juvenile justice court and system were founded on the legal doctrine of *parens patriae*. The underlying assumption was that youth can be helped and rehabilitated and the state is obliged to act as a parent when young people do not flourish, whether it is due to neglect or juvenile delinquency. This early approach, with its informality and judicial discretion, was modified by the U.S. Supreme Court cases of the 1960s and 1970s. The landmark cases granted youth important due rights in order to offer some of the same legal protections provided to adults. Juveniles were granted the right against self-incrimination as well as the rights to be represented by a counsel, to have a separate transfer hearing, and to require evidence that proves their guilt beyond a reasonable doubt in the court proceedings. However, the rehabilitative and due right approach was undermined during the “tough on crime” period. The treatment and processing of juveniles began to mirror that of adults. The new approach to delinquent juveniles was geared more toward individual responsibility and punishment than their protection.

It is important to note that relatively recent neuroscience research has shown that the human brain continues to develop throughout childhood and adolescence, until one’s mid-20s. Unlike adults, adolescents do not have a solid sense of judgment or impulse control, which influences their behavior (Bartollas, Schmallegger, Turner 2019). Maltreatment can cause problems with an individual’s brain development and cognitive functions, leading to issues with learning, attentiveness, memory, self-control, and cognitive flexibility (Bick, Nelson 2016; Kavanaugh et al. 2017). These issues may be exacerbated when youth are placed in confinement facilities.

Rather than receiving proper treatment and being allowed to grow and develop, they are separated from any prosocial contacts (e.g., family, friends). Essentially, neuroscience research supports the concept of *parens patriae* that youth are inherently different from adults and must therefore be treated differently. These scientific findings were reflected in the U.S. Supreme Court decision in *Roper v. Simmons* (2005), in which the judges reaffirmed that children are distinguished by their diminished criminal responsibility and should therefore not receive the harshest possible punishment: the death penalty (Feld 2018).

The contemporary juvenile justice system affords due rights to juveniles and continues juvenile justice procedural methods representative of *parens patriae* (e.g., sealed juvenile records and informality during court proceedings); however, it also propagates retributive punishment as the harsh legacy of the “adult crime, adult time” approach of the 1980s and 1990s (Feld 2018). The current juvenile justice process includes various punitive methods, such as transfers to the adult system, blended sentences, extended control over juveniles via parole, overuse of pre-trial detention, imprisonment in adult jails and prisons, and limited access to rehabilitative programs in detention facilities. These punitive methods impact some groups more than others since gender, racial, and ethnic disparities in the juvenile justice system are still prevalent today.

Lisa Macaluso and Mark Soler (2021) called for redefining *parens patriae* to address the structural racism in the juvenile justice system that has existed since its inception. They argue that the Child Savers represented white, middle-class values and culture, which limits its application to youth of color who are socioeconomically disadvantaged and over-represented in the system. In addition, *parens patriae* assumes that parents might not be capable of caring for their children and that the state can better fulfill that role. Consequently, many children who are detained are separated from their families; the system nonetheless experiences high juvenile recidivism rates. The doctrine of *parens patriae*—and specifically the practice of the state assuming the role of a parent—has been questioned since *In re Gault* (1967) (Macaluso, Soler 2021). According to the federal Adoption Assistance and Child Welfare Act of 1980 and the effectiveness of such evidence-based programs as functional family therapy (FFT) and multisystemic therapy (MST), parental involvement is critical to the development and success of juveniles involved in the justice system (see also Celinska et al. 2019). These arguments are extremely important to consider when determining the applicability and efficacy of the doctrine of *parens patriae* today. We suggest that it is necessary to either redefine *parens patriae* or propose an alternative procedural approach in order to build an inclusive system without racial, ethnic, and gender disparities that provides increased equity and rehabilitative efforts to youth through evidence-based programs.

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