

Chapter One

Juvenile Justice In Change

In June 1978, a fifteen-year-old youth gained notoriety in New York State when he was sentenced to the maximum allowable five-year sentence for murdering two subway passengers and attempting to murder a third. The case had ramifications beyond the effect on those directly involved, as it was considered to have acted as a “triggering event” in subsequent legislative changes. As discussed in Chapter Six, the sentence was announced during a gubernatorial campaign during which Governor Hugh Carey was being criticized as soft on crime because of his stands against capital punishment and against criminal court jurisdiction for juveniles. While on a campaign flight, the governor was handed a newspaper with a front page article highlighting the above case. The governor reportedly slammed down the newspaper and announced plans to submit legislation that would permanently keep such a youth off the streets. The governor stuck to his pledge and the state passed what some experts called the toughest juvenile statute in the country (Smith et al., 1980).

One reason for the governor’s response was his dissatisfaction with the maximum five year sentence. It is interesting to note, however, that if the case had occurred just two years prior, the youth would have faced an eighteen-month indeterminate placement (although the law did include a rarely used provision for a three-year sentence). Further, a youth committing a similar offense several months later could face a minimum five- to nine-year sentence with a maximum sentence of life.

This case, while certainly atypical, is interesting both because of its historical significance and because it raises a number of questions concerning

public policy towards juvenile crime. The recognition that a juvenile committing the same act could, within a three-year span, face either an eighteen-month, five-year, or life sentence, raises fundamental questions about juvenile policy. At the very least, one must ask why these policies changed.

In addition to, and as a partial consequence of these policy changes, New York State's juvenile corrections system changed during these years. The policy changes that produced these shifts in available sentences followed a period in which the juvenile corrections system moved from a primary reliance on large institutions to a near-equal mix of institutional and community-based programming. Since the late 1970s, however, a renewed emphasis has been placed on institutions and particularly the development of secure facilities.

These changes in juvenile justice policy are not unique to New York State. Indeed, since the 1960s, American juvenile justice systems increasingly have been called into question. Perhaps more than at any time since the creation of the juvenile court at the turn of the twentieth century, the idea that the state acts as the benevolent guardian of delinquents has been questioned. Demands for reform ranged from complete deinstitutionalization to "cracking down" on serious juvenile crime (Ohlin, 1983). In order to understand these pressures for reform and the consequent effects on juvenile justice practice, both the historical development of the juvenile justice system and the changes in juvenile justice that have occurred on a national level since the 1960s must be examined.

Historical Development

Although the origins extended to European common law and the early American colonial era (Empey, 1979; Rendleman, 1971), the major development of a separate juvenile justice system occurred during the nineteenth and early twentieth centuries. An early development was establishing houses of refuge in the 1820s, facilities intended to house juveniles who otherwise would be sent to adult jails or penitentiaries. During the second half of the nineteenth century the houses of refuge grew into disfavor and were replaced by the newly developed reformatories and industrial schools. The reformatory and industrial school movement proved popular and by the turn of the century most non-Southern states had built such institutions. These years also witnessed the expansion of probation and of placing out practices, the latter referring to practices whereby troublesome urban youths were sent

to live with farm families. The culmination of the trend toward a separate system of justice for youths was the development of the juvenile court in Chicago in 1899 and the subsequent spread of the juvenile court model to the rest of the country.

A rich body of historical literature has developed tracing the evolution of the penitentiary, house of refuge, asylum, reformatory, and the juvenile court. Some of this literature focuses on the development of total institutions and deals with the growth of a separate juvenile justice system as part of this broader development (Foucault, 1979; Rothman, 1971, 1980; Ignatieff, 1978); while other studies focus more directly on the development of the juvenile justice system in particular (Mennel, 1973; Platt, 1969, 1974; Schlossman, 1977; Hawes, 1971; Fox, 1970; Pickett, 1969). This literature provides not only historical documentation of these institutions' emergence and growth, but also insights into the social and political forces behind the process.

Traditional or orthodox explanations for developing these total institutions, and juvenile institutions in particular, emphasize the evolutionary progression from traditional forms of corporal punishment to the development of correctional institutions, separate juvenile institutions, and eventually a separate juvenile justice system (Hawes, 1971; Pickett, 1969; Mack, 1909). This process was brought about through the efforts of humanitarian philanthropic and religious reformers, concerned first with the use of barbarous corporal punishment and later with conditions of the jails, penitentiaries, and juvenile institutions. Along with concern for the conditions of legal punishment, the reformers were concerned with the plight of poor children growing up in the disorganized large cities during this period of increasing immigration, urbanization, and industrialization. Reformers became interested in developing institutions and programs to remove children from inadequate families and provide proper educational and moral training. Such a response was necessary to save these children from a life of poverty and crime. The reform agenda was influenced in the late eighteenth and early nineteenth centuries by the Enlightenment philosophers such as Beccaria and Bentham, and later in the nineteenth century by the tenets of Social Darwinism and positivistic criminology's emphasis on both hereditary and environmental causes of crime. The development of the separate juvenile justice system, similar to parallel reforms in the areas of adult corrections, education, and social welfare, is thus seen as a humanitarian, consensual, and functional response to the problems of rising juvenile crime and youth misconduct precipitated by the disorganized character of life in the rapidly growing urban centers.

In the 1960s and 1970s, several historical analyses of the rise and development of juvenile justice institutions questioned traditional, orthodox explanations of this development (Platt, 1969, 1974; Rendleman, 1971; Fox, 1970; and in relation to the development of the penitentiary in England and France, see Ignatieff, 1978; Foucault, 1979). These revisionist historians also saw this process as evolutionary, but rather than as a progressive movement from corporal punishment to humanitarian reform institutions, this process was seen as the further extension of social and legal control over subordinate classes. The revisionist account also stresses the importance of social structural changes caused by immigration, urbanization, and industrialization, but interprets the reform movement as the effort of the social and political elite to control the poor, urban, "dangerous" classes. Rather than portraying reformers as humanitarians, they are seen either as elite oppressors or as tools of the dominant classes.

Later writings criticized the revisionist interpretation as reductionist (Ignatieff, 1981; Mennel, 1983; Hagan and Leon, 1977). The assertion that the development of the penitentiary and the juvenile justice system was the product of a rational conspiracy fails to recognize the actual complexity of the process (Ignatieff, 1981; Mennel, 1983; Schlossman, 1977; Empey, 1979). Speaking of accounts regarding the development of the penitentiary system, Ignatieff (1981:156) scored revisionist portrayals for ". . . overschematizing a complex story and for reducing the intentions behind the new institution to conspiratorial class strategies of divide and rule." While control intentions are not denied, the process is best understood as the result of complex social structural changes occurring at the political, economic, cultural, and religious levels. Furthermore, rather than being the sole product of either humanitarian or elite efforts, the development of the penitentiary, house of refuge, reformatory, and juvenile court, was the product of compromise and political and legal debate revolving around basic issues of both humanitarian reform and security and order.¹

Despite the debate among orthodox, revisionist, and antirevisionist accounts over the motives and functions of these new institutions, several insights of relevance to the study of change in the juvenile justice system can be noted. First, the development of the separate juvenile justice system clearly cannot be understood apart from the broad social structural changes brought about by the processes of immigration, urbanization, and industrialization. Second, while revisionist historians interpret the role of social science as merely providing legitimacy to control activities (Platt, 1969, 1974), changes in social thought and theory, ranging from the Enlightenment philosophers

of the eighteenth century to the theories of Social Darwinism and positivistic criminology of the late nineteenth century, definitely played a role in the process of change occurring in the developing correctional and juvenile justice systems. Third, the reform process was driven by the involvement of several interest groups including philanthropists, religious activists, women's organizations, and newly emerging child care and social welfare professionals. Fourth, this development reflected a process of conflict, debate, and compromise. While orthodox accounts emphasize the consensual nature of reform and revisionist accounts emphasize conspiratorial domination, case studies from both frameworks provide evidence of such debate and conflict (Hawes, 1971; Pickett, 1969; Platt, 1969). Thus, a review of the historical literature indicates that the separate juvenile justice system was the product of a complex of social forces that led to this new legal apparatus for the control of delinquency and youth misconduct.

1900–1960

Following the 1899 creation of the juvenile court in Chicago, the juvenile court movement quickly spread throughout the nation. By 1910, twenty-two states had created juvenile courts. By 1925, all but two states had juvenile courts; by 1945, all the states had juvenile courts (President's Commission on Law Enforcement and the Administration of Justice, 1967a; Mennel, 1973). During the early years of the juvenile courts, a number of challenges to the lack of constitutional safeguards in the new courts were initiated through the appellate process. However, the informality of the juvenile courts was upheld as the appellate courts in forty states denied these constitutional challenges (Faust and Brantingham, 1979; see also Lemert, 1970). Not until the 1960s were procedural dilemmas resolved in favor of requiring more safeguards (Empey, 1982). Support for the juvenile court model was evidenced by the findings of the Wickersham Commission in the early 1930s (National Commission on Law Observance and Enforcement, 1931). The commission found that although the juvenile court suffered from inadequate resources, the basic model was clearly the solution to the problem of juvenile delinquency and misconduct. Indeed, the "awesome superparent" that was the juvenile court, continued to enjoy widespread support until the 1960s (Empey, 1982).

The 1900–1960 period also witnessed the growth of juvenile corrections institutions, particularly training schools utilizing the cottage plan. Unfortunately, in contrast to the rich historical accounts of the development of juvenile and other total institutions in the nineteenth century, much less

has been written on the development of juvenile institutions during the first half of the twentieth century.² Despite this lack of research on the dynamics behind the development of juvenile correctional institutions, several relevant points can be noted. First, while such institutions grew throughout the period, growth was particularly significant in the post-World War II period (National Advisory Committee on Criminal Justice Standards and Goals, 1976). Second, these institutions were developed according to a rehabilitation model characterized by indeterminate sentences, diagnostic centers, and specialized treatment personnel (Empey, 1982). Third, the treatment technologies adopted by these institutions reflected the thinking of the social and behavioral sciences of the times. In the early twentieth century, the works of psychiatrists such as Healy and Bronner were particularly influential (Mennel, 1973). Psychotherapy was adopted, at least symbolically, in many juvenile institutions. During the post World War II period, influenced by Edwin Sutherland's emphasis on differential association and group delinquency, as well as by the group oriented work of Kurt Lewin, a number of well-known experimental treatment programs were developed utilizing group therapy approaches (Shichor, 1980; Duffee, 1980a).³ This period also witnessed the development of differentiated services, including rural camps and farms, vocational and educational programs, and home visitation programs. Despite these changes, the general consensus appears to be that the change that occurred in juvenile correctional institutions during 1900 and 1960 reflected a growth pattern to meet the demands of an expanding population and that very little change actually occurred in the basic structure or functioning of these institutions (Bartollas, Miller, and Dinitz, 1976; Empey, 1982; Mennel, 1973).

This period also witnessed several developments reflecting a basic community orientation. Although probation preceded the creation of the juvenile court, it was probation's link to the juvenile court that actually legitimized and provided impetus for the further development of probation (Mennel, 1973; Empey, 1982). Additionally, Shaw, McKay, and their colleagues at the University of Chicago stressed the importance of the community as both the source of juvenile delinquency and the proper locus of delinquency prevention efforts (Shaw and McKay, 1942). The outgrowth of their work was the Chicago Area Project (Kobrin, 1959). The theoretical underpinning of this project was similar to that of the nineteenth-century reformers in that it, too, attributed delinquency to the social disorganization of urban communities. However, rather than preventing delinquency by removing children from these communities, the Chicago Area Project's prevention efforts emphasized community organization and development.

Thus, the juvenile justice system became firmly established as the legitimate institution for responding to juvenile delinquency and misconduct during 1900 and 1960. Challenges to the informality of the court were unsuccessful. Perceived limitations of the juvenile court and correctional institutions were attributed to insufficient resources, not concept. Juvenile corrections institutions grew and, as was the case in the nineteenth century, adopted the technology of the dominant belief systems of the day (Street, Vinter, and Perrow, 1966). Finally, probation services and the idea of community-oriented prevention efforts took hold during these years.

1960–mid–1970s

The first signs of change for the traditional juvenile justice system arose during the early 1960s with developments at both the state and federal levels. During these years, several states, including California and New York, substantially revised their juvenile codes to provide many of the procedural safeguards later guaranteed in the Supreme Court cases of *Kent*, *Gault*, and *Winship*.⁴ In both states, the revisions followed a period that witnessed an increase in appellate court cases involving the juvenile court, criticism of the lack of procedure of the juvenile courts, and special commissions established to study the problems of the juvenile court (Lemert, 1970; Paulsen, 1963; Schinitzky, 1962).

At the federal level, “the advent of the 1960s marked a historic watershed in the federal role in the delinquency control problem” (Kobrin and Klein, 1983:24). Increased juvenile arrests and juvenile court cases, increased public concern over crime, and criticism of the juvenile justice system combined with the Kennedy Administration’s activist approach to elevate juvenile delinquency and juvenile justice to a national concern. Early in the administration’s tenure, the President’s Committee on Juvenile Delinquency and Youth Crime was created. The committee was heavily influenced by *strain theory*, which placed the cause of delinquency on a defective social structure that failed to provide youth with sufficient legitimate opportunities (Cloward and Ohlin, 1960). The policy implications of this perspective downplayed the importance of traditional individual casework approaches and emphasized the need to reintegrate youth into the community. The initial effort to implement these ideas was embodied in the Juvenile Delinquency and Youth Offenses Control Act of 1961.⁵ The Act identified school dropout, unemployment, and family problems as the major sources of delinquency, called for intensive and coordinated private and government efforts to deal with delinquency, and provided grant money and technical assistance to state and

local service providers. An early project that served as a model for these federal initiatives was the Mobilization for Youth program in New York City, which attempted to prevent delinquency through the coordination and mobilization of youth services and welfare institutions. These efforts, which located the delinquency problem in the broader problem of poverty, were later subsumed under the more general Great Society and War on Poverty programs (Miller and Ohlin, 1985).

Despite these efforts, reported offenses and arrests continued to rise during the 1960s. President Johnson appointed the President's Commission on Law Enforcement and the Administration of Justice in 1965 to examine the problem of crime and delinquency. The commission issued its report in 1967 (President's Commission on Law Enforcement and the Administration of Justice, 1967b). The report dealing with juvenile delinquency continued to emphasize the need to deal with the social structural sources of delinquency (President's Commission on Law Enforcement and the Administration of Justice, 1967a). Furthermore, the commission voiced concern over the limitations of rehabilitation efforts and noted the gap between the ideal juvenile justice system envisioned by its founders and the actual system in operation. The commission, therefore, recommended additional resources for the juvenile justice system. However, unlike earlier national crime commissions (National Commission on Law Observance and Enforcement, 1931) and traditional calls for reform, the additional resources were not offered as a panacea to cure the delinquency problem. Rather, only with reform of basic political, economic, and social structures could progress be made in the effort to combat delinquency.

The commission also expressed the additional concern that the juvenile justice system actually may be contributing to the delinquency problem. Drawing on the tenets of *labelling theory* (Lemert, 1967), the commission warned that the stigmatizing effects of official processing may actually intensify delinquent behavior. Thus, in addition to addressing the primary, root causes of delinquency, the commission recommended that juvenile justice systems adopt a noninterventionist, or hands-off approach. Specifically, the commission urged policies of decriminalization, diversion, and deinstitutionalization. Furthermore, the commission recommended providing due process safeguards for those juveniles processed in the system.

The commission's due process concerns were concurrently supported by the Supreme Court in the *Gault* case, and later in the *Winship* case. The commission's emphasis on nonintervention was given further credence with the 1973 report of the Nixon Administration's National Advisory Commission

on Criminal Justice Standards and Goals (1973). The National Advisory Commission questioned the utility of the juvenile justice system and stressed the need for diversion. As with the 1967 commission, the National Advisory Commission viewed large training schools as ineffective, if not harmful, and criticized correctional systems for failing to reintegrate offenders into the community.

The policy proposals of the 1967 commission, and later of the 1973 National Advisory Commission, were given impetus through the federal government's Youth Development and Delinquency Prevention Administration (YDDPA) created in 1968. YDDPA's mandate was to provide funds to develop local youth programs and to encourage diversion through the development of Youth Service Bureaus (Kobrin and Klein, 1983).

Federal efforts in the delinquency area were expanded in 1974 with passage of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP). The Act created the Office of Juvenile Justice and Delinquency Prevention (OJJDP) as the single federal agency with responsibility in the delinquency area and created a program of formula grants designed to encourage deinstitutionalization of status offenders and to eliminate the commingling of juveniles and adults in local jails. The Act clearly demarcated the federal resolve to encourage the states to implement the major policy initiatives urged by the national commissions (Kobrin and Klein, 1983).

State and local implementation of the commission recommendations appears uneven. To a significant extent, status offenders have been removed from secure detention centers and institutions (Handler and Zatz, 1982; Kobrin and Klein, 1983; Krisberg and Schwartz, 1983). On the other hand, evidence suggests that status offenders have been encapsulated in other control systems (Austin and Krisberg, 1981; Klein, 1979; Spergel, 1976; Coates, Miller, and Ohlin, 1978), and that status offenders have been relabelled as juvenile delinquents (Klein, 1979; Schneider, 1984). While the number of diversion programs have proliferated, to a large extent they have continued to be administered by the justice system (Dunford, 1977; Lemert, 1981). Furthermore, as with the deinstitutionalization of status offenders, critics have maintained that diversion programs have merely widened the net of social control (Austin and Krisberg, 1981; Cohen, 1979; Klein, 1979). Finally, despite notable exceptions,⁶ most states have limited deinstitutionalization to status offenders, large noncommunity-based institutions have remained the dominant type of juvenile correctional facility, and most states have retained juvenile court jurisdiction over status offenders (Vinter, Downs, and Hall, 1975; Empey, 1982).

The specific nature of the federal policy initiatives of the 1960s and early 1970s was clearly influenced by the emerging theories and empirical findings of social science. The influence of strain or opportunity theory (Cloward and Ohlin, 1960; see also Cohen, 1955), was clearly reflected in the approach of the Kennedy and Johnson Administrations to the problems of juvenile delinquency and poverty. Likewise, labelling theory (Lemert, 1967; Becker, 1963; Schur, 1971) clearly influenced the national commission reports (President's Commission on Law Enforcement and the Administration of Justice, 1967b; National Advisory Commission on Criminal Justice Standards and Goals, 1973).

In addition to these theoretical developments, empirical studies of juvenile and adult correctional institutions and treatment programs raised serious questions about the effectiveness of these institutions and programs. Numerous studies of the internal workings of both adult (Clemmer, 1958; Sykes, 1958; Schrag, 1954; Sykes and Messinger, 1960) and juvenile correctional institutions (Polsky, 1962; Rose, 1959; Ohlin and Lawrence, 1959) demonstrated the presence of an apparent ubiquitous inmate subculture in opposition to the staff and evidence of widespread exploitation. Such findings raised fundamental questions about the rehabilitative potential of traditional institutions. Furthermore, actual studies of the effectiveness of various treatment programs failed to demonstrate an effective treatment approach (Robison and Smith, 1971; Kassebaum, Ward, and Wilner, 1971; Bailey, 1966).

Such findings raised serious questions about the traditional reliance on correctional institutions for the rehabilitation of offenders. These findings were particularly critical for the juvenile corrections system, which symbolically represented the treatment approach. These studies not only highlighted the gap between the ideal and actual systems, but raised fundamental questions about the actual potential of the traditional juvenile justice model. The lack of effectiveness findings were also highly congruent with the dominant theoretical paradigms of the day. Strain theory's emphasis on root causes and labelling theory's focus on the negative effects of official processing, both could lead to predictions of either no effect or a negative effect of traditional correctional approaches. While the "nothing works" argument seems to have been influential in the policy proposals of deinstitutionalization and diversion emanating from the 1967 and 1973 national commissions, they would also lie behind very different proposals influential in the 1970s.

Mid-1970s–early 1980s

The criticism of the juvenile justice system expressed in the Supreme Court cases and the presidential commission reports did not abate in the 1970s. Juvenile arrest rates continued to rise through the 1960s and early 1970s despite the seemingly massive federal efforts to control juvenile delinquency. The “nothing works” conclusion received further support with the findings of Lipton, Martinson, and Wilks (1975; see also, Martinson, 1974).⁷ While the sources of disillusionment remained much the same as in the 1960s, the policy proposals changed.

The theoretical basis for these policy proposals was found in the writings of so-called Neoclassical theorists who argued for a return to the classical principles of deserts based proportionality and a utilitarian emphasis on deterrence. One group of Neoclassical theorists, typically labelled as proponents of the deserts or justice model, urged that in light of the abuses perpetuated under the guise of the rehabilitative model and in light of the inability to rehabilitate, the state should abandon the therapeutic paradigm and focus instead on administering justice in a fair manner (American Friends Service Committee, 1971; Morris, 1974; Fox, 1974; Fogel, 1975; Von Hirsch, 1976). The essential point of the deserts model is that in view of our inability to treat, the only defensible policy is to administer justice in an equitable manner. Key elements of reform based on the justice model include sharp restrictions on discretion and the use of proportionate sentencing based on the seriousness of the offense and the prior record of the offender. Of course, such proposals are incompatible with the juvenile justice system and could seemingly only be implemented through major overhaul of the system.

A second group of theorists, falling under the rubric of the Neoclassical school also rejected the rehabilitative model; but instead of focusing on deserts, placed primary emphasis on the need to prevent crime through punishment. This work, often associated with van den Haag (1975) and Wilson (1975), focused on rising crime rates and the perceived leniency of the criminal and juvenile justice systems and urged that the main goal of the justice system should be to promote order and community protection through deterrence and incapacitation (see also Boland and Wilson, 1978). As with the deserts model, the policy implications of this crime control model are apparently incompatible with traditional juvenile justice. Punishment is intended to meet society's need to deter and incapacitate, not to address the offender's individual needs. Once again, implementing such reforms seems to require major modifications in juvenile justice philosophy and practice.

While at first glance the two models may appear incompatible (deserts theorists seeking to restrict state control, crime control theorists seeking to expand state control), elements from each model have been combined in a number of policy proposals that, if implemented, would significantly alter the traditional juvenile justice system. Several of the recommendations associated with the Neoclassical school include the following: (1) lowering the age of accountability; (2) abolishing or radically changing the juvenile court; (3) making punishment proportionate to the seriousness of the offense and seriousness of the prior record; (4) uniform/determinate sentences; (5) harsher penalties; (6) removing status offenders from the court's jurisdiction (Empey, 1982; Erickson, 1979).

The policy proposals were reflected to varying degrees in the recommendations of three prestigious advisory groups, the National Advisory Committee on Criminal Justice Standards and Goals (1976); the Juvenile Justice Standards Project of the Institute of Judicial Administration–American Bar Association Joint Commission (1977a, b); and the Twentieth Century Fund Task Force (1978) on youth crime. While differences are found among the three reports, several common features are representative of a new approach to juvenile justice and mark a significant departure from the traditional philosophy of the juvenile justice system. Of most significance is the fact that all three reports consider the seriousness of the offense and prior record as prime considerations in reaching an appropriate disposition. This marks a significant shift from the long-held belief of an individualized disposition based on the needs of the youth with little regard to the actual act committed. No longer is the state's response based on youths' needs; now it is based wholly, or at least significantly, on the basis of present offense and prior record. This change in philosophy is indicative of the thinking of both deserts based and punishment based theorists of the Neoclassical school.

On other issues, however, the advisory groups were less willing to abandon the basic tenets of a separate juvenile justice system. This is particularly true of the National Advisory Committee (1976) which stressed the need for a family court model that would meet youth's needs by focusing on such problems within the context of the family. The Committee followed that suggestions of the earlier Presidential Commissions (President's Commission on Law Enforcement and the Administration of Justice, 1967a; National Advisory Commission on Criminal Justice Standards and Goals, 1973) by retaining the basic juvenile court but emphasizing the need for procedural safeguards. The National Advisory Committee also stressed community-based

dispositions, with absolute restrictions on institutional placements of status offenders and institutionalization considered as a last resort placement.

The reports of the Institute of Judicial Administration–American Bar Association (1977a, b) and the Twentieth Century Fund Task Force (1978) place less emphasis on youth's needs and more fully reflect the writings of Neoclassical theorists, particularly the deserts model. The rehabilitation model is rejected and doing justice is offered as the ascendant goal of the juvenile justice system. Recommendations include eliminating jurisdiction over status offenders and adopting determinate sentences proportionate to the offense and prior record.

The writings of the Neoclassical theorists and the National Advisory Committee reports were apparently influential as legislation was passed in a number of states in the late 1970s and early 1980s seemingly reflective of these recommendations. Perhaps most faithful to the deserts model was the revised code of the state of Washington (Serrill, 1980; Castellano, 1986). With its revisions, Washington eliminated juvenile court jurisdiction over status offenders and created a determinate sentencing scheme featuring sentences proportionate to the offense and prior record. Other elements of the Washington code seemed to reflect the punishment model, as community protection was prioritized as the top goal of the juvenile justice system and prescribed periods of incarceration were increased.

The Washington legislation seems to be indicative of trends in a number of states. Although eliminating jurisdiction over status offenders appears to be atypical (Empey, 1982), several states have passed legislation that, to varying degrees, reflect deserts-based concerns of determinacy and proportionality and utilitarian concerns of deterrence and incapacitation. For example, California and Florida have made it easier to waive juvenile cases to adult court by enacting presumptive waiver provisions. Tennessee, Kentucky, and South Carolina have lowered the age of waiver, while Illinois, Indiana, Louisiana, and Oklahoma have created lists of offenses excluded from the jurisdiction of the juvenile court (Krisberg et al., 1986). A similar approach is evident in the statutory provisions of New York State and Vermont, which provide automatic transfer of targeted offenses to adult court. In addition to increased reliance on the adult criminal courts, several states have sought to provide criminal court provisions in the juvenile courts. Thus, Colorado, Idaho, and New York State have provided mandatory minimum periods of incarceration for juveniles. Furthermore, prosecutors, traditionally absent from the juvenile court, have become increasingly involved in juvenile court proceedings (Krisberg et al., 1986; Rubin, 1985). Increased prosecutorial

involvement is not merely found at the adjudication and disposition stages, but in states such as Colorado, Florida, North Carolina, and Washington, it is found as early as the intake stage. Juvenile court scholar H. Ted Rubin notes, "The future appears clear: the prosecutor is becoming the most powerful functionary in the juvenile justice system" (Rubin, 1985:246).

In addition to these policy changes at the state level, changing views toward juvenile justice are clearly evident at the federal level. With the 1980 election of Ronald Reagan, discussion of the desirability of the four Ds—decriminalization, diversion, due process, and deinstitutionalization—disappeared. Rather, the argument emanating from the executive branch was that the proper focus of the juvenile justice system should be on isolating and punishing the repeat or violent juvenile offender. Alfred Regnery, OJJDP administrator under the Reagan Administration, states "Chronic offenders pose the greatest threat to society and the greatest challenge to juvenile justice programs across the country" (1985:2). Regnery continues, "Criminals should be treated as criminals. . . there is no reason that society should be more lenient with a sixteen-year-old first offender than a thirty-year-old first offender" (1985:4). In its effort to influence state juvenile policy, Attorney General Edwin Meese recently announced the development of an OJJDP-sponsored model juvenile code. Among the key provisions of the deserts-based code is the recommendation of mandatory determinate sentences based on the seriousness of the offense and prior record ("OJJDP Project Offers States 'Just Deserts' Juvenile Code," *Criminal Justice Newsletter*, 1986:1-3).

Clearly, both federal executive branch recommendations and state legislation lowering the age of criminal responsibility and increasing available sentencing lengths reflect the punishment concerns of retribution, deterrence, and incapacitation. As such, juvenile justice policy has tended to move away from the limiting principles of the Advisory Commissions (see, for example, Institute of Judicial Administration—American Bar Association, 1977a). Overall the tendency in the late 1970s and early 1980s with respect to juvenile delinquents, particularly serious juvenile delinquents, has been to extend state control over juveniles who violate the law (Hamparian *et al.*, 1982; Smith *et al.*, 1980; Ohlin, 1983; Empey, 1982).

Summary and Contemporary Assessment

The history of corrections, and juvenile corrections in particular, is a history of successive reforms (Empey, 1982; Platt, 1969; Duffee, 1980a).⁸ Dissatisfaction with dominant correctional philosophy and practice leads to new ideologies and technologies that, in turn, fall into disfavor. Thus,

dissatisfaction with corporal punishment led to the development of the penitentiary, dissatisfaction with housing juveniles with adults led to development of the house of refuge and training school, dissatisfaction with traditional court processing led to the creation of the juvenile court, dissatisfaction with the once-heralded correctional technologies of psychotherapy and group therapy led to a movement away from institutions and toward the community, and finally, dissatisfaction with the community movement led to a return to institutionalization, at least for some youths.

Several lessons of importance to this study of change can be taken from this history of reform. First, the process of change in juvenile corrections cannot be understood in isolation from broader social changes. For example, the processes of immigration, urbanization, and industrialization in the nineteenth century and the social and legal activism of the 1960s clearly influenced correctional reform in these eras. Furthermore, correctional ideology and technology seems reflective of the dominant belief system of the day and the writings of the social and behavioral sciences—witness the solitary and the congregate system of the early penitentiaries, placing-out practices, psychotherapeutic approaches, community organization, diversion and deinstitutionalization, and deterrence and incapacitation. Unfortunately, with the exception of the historical accounts of the origins and early development of correctional institutions and the juvenile court, little is known about the sociopolitical dynamics underlying these change processes. From the historical studies, several interest groups, including child care professionals, philanthropists, organized women's groups, and religious groups become involved. In addition, early developments seemed to be the products of political conflict and debate. To move beyond these limited observations, however, an intensive analysis of the way these broad social and political forces impact at the state and local level is needed. For instance, while recognition of the general conservative swing in the mid-1970s might lead one to expect more "adult-like" handling of juvenile offenders, it provides no understanding of why the state of Washington adopted a determinate juvenile code while other states retained traditional indeterminate schemes. Additionally, recognizing the prominence of the deinstitutionalization goal in the 1960s and 1970s tells little of why California adopted the probation subsidy or why Massachusetts closed its training schools while juvenile corrections systems in many states remained largely unchanged. The key point is that while attention to broad social and political shifts can suggest likely directions of juvenile justice reform, it provides little understanding of the variation among states in juvenile justice reform. Unfortunately, few studies exist that provide insight into these issues.

One exception to this statement is the work of Lloyd Ohlin and his colleagues at Harvard Law School's Center for Criminal Justice. These researchers engaged in a twelve-year intensive analysis of the Massachusetts juvenile corrections system. A key focus of the study was analysis of the political dynamics behind Jerome Miller's closing of the Massachusetts training schools in the early 1970s (Miller, Ohlin, and Coates, 1977). Closing the training schools and developing a community-based system of youth corrections was, perhaps, the most radical reform of a correctional system ever undertaken in the United States. As will be discussed in Chapter Three, Ohlin and his colleagues developed a theory of social reform based on their study of the Massachusetts reform. The theory provides one of the first comprehensive models for explaining how and why systems like a juvenile corrections system change and resist change.

The present study represents an attempt to build upon and move beyond the Massachusetts studies. The study focuses on the process of reform and counterreform in the New York State juvenile corrections system from the late 1960s to the mid-1980s. New York State juvenile corrections provides a fascinating site for such study because the state's juvenile justice system can be seen as both reflecting nationwide trends and being a forerunner of such trends. For example, New York State's Family Court Act of 1962 presaged the U. S. Supreme Court by providing due process safeguards to juveniles later mandated by the court. Furthermore, as will be seen in Chapter Four, New York State was at the forefront of the deinstitutionalization movement as a number of training schools were closed and community-based settings opened in the 1970s. Finally, New York State has led the way toward the focus on serious juvenile crime by adopting provisions for automatic transfer of juveniles to adult court and stiffer penalties within the juvenile court. Thus, because New York State has undergone both liberal and conservative reform, it provides an excellent opportunity to update the pioneering work of the Harvard research team.

The need for this type of intensive analysis of the change process in juvenile corrections seems particularly strong at this time in the ongoing development of American juvenile justice. The debate between advocates of the reform agenda of the early 1970s (i.e., decriminalization, diversion, and deinstitutionalization) and advocates of the reform agenda of the 1980s (i.e., determinacy, deterrence, and incapacitation) "rages" (Krisberg *et al.*, 1986:34). This study offers insight into how this debate is likely to be played out at the state level. As such, we can begin to learn of the relationship between national-level debate and state-level policy and practice. Such insights are

crucial for the correctional administrator, legislator, or youth rights advocate hoping to influence juvenile corrections policy and practice. Finally, for the scholar interested in the dynamics of social reform, this study provides an initial step in testing the Massachusetts theory in another state and in relation to conservative as well as liberal reform.