MAINE'S NEW JUVENILE CODE: A CASE STUDY IN JUVENILE JUSTICE REFORM

DENNIS WILLIAM MACDONALD

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Maine's New Juvenile Code: A Case Study in Juvenile Justice Reform

by

Dennis William MacDonald
B.S., University of Wisconsin, Stevens Point, 1972
M.A., University of New Hampshire, 1976

DISSERTATION

Submitted to the University of New Hampshire in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy in Sociology

December, 1985
This dissertation has been examined and approved.

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Date
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I wish to thank the members of my committee for their guidance, their support, and, especially, their patience. The Director of the Dissertation, Stuart Palmer, provided time and assistance despite the tremendous demands that accompany his duties as Dean of the College of Liberal Arts. Professor Bobick, my advisor for many years, merits special thanks.

I owe a great debt to my family, especially my brother, Tom MacDonald, whose work on behalf of Maine's children first peaked my interest in this issue; and my wife, Nancy, whose support and encouragement made this possible.
The history of juvenile justice in the United States is largely a history of failed reform efforts. The most significant of these efforts was the establishment of the juvenile court at the turn of the century and the idea of "socialized" juvenile justice on which it was based. Because the objective was rehabilitation rather than punishment, constitutional rights applicable in criminal justice proceedings were deemed unnecessary. In response to a wave of criticism of "socialized justice," the "post-Gault era" of juvenile justice reform emerged in the early 1960's. These reforms promised both justice and help to juveniles in trouble.
The major question this dissertation seeks to answer is whether this most recent reform era fulfills its promises or shares the fate of earlier efforts. Using a case study approach, this dissertation examines post-Gault reform in Maine. The revision of the Maine Juvenile Code in 1977 exemplifies these reform efforts. An assessment of the juvenile justice system which emerged from the revision of the Code suggests strongly that post-Gault reform continues the pattern of failure.

Various explanations of the failure of juvenile justice reform are examined. Explanations most consistent with the evidence suggest that the reformist approach is fundamentally flawed.
ABBREVIATIONS

The following abbreviations are used in the text.

CJDS...Comprehensive Juvenile Delinquency Study

CPS.....Maine Commission to Revise the Statutes Relating to Juveniles

CYSPP...Children and Youth Services Planning Project

DMHC....Department of Mental Health and Corrections

GCCY....Governor's Committee on Children and Youth

GTF.....Governor's Task Force on Corrections

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Chapter I
INTRODUCTION

In the mid-1960's a long simmering concern with juvenile justice in the United States swelled into a national movement to reform juvenile justice. A number of events spurred this reform movement. Among the most significant was a series of U.S. Supreme Court decisions, most notably, In Re Gault. In Gault and related cases, the Supreme Court called into question the constitutionality of the prevailing "socialized" justice of the juvenile court for its failure to provide due process of law.

At about the same time, the President's Commission on Law Enforcement and the Administration of Justice, a response by the executive branch of government to the apparently growing concern with the ineffectiveness of the criminal and juvenile justice systems, recommended major changes in society's approaches to the problem of juvenile delinquency. (1967a, 1967b) These recommendations, backed up with federal funds for States which undertook reform efforts, further contributed to the move to reform juvenile justice systems.

In general terms, the move to reform juvenile justice urged that juveniles be accorded constitutional protections normally guaranteed to adults in criminal proceedings and
that they be provided with the services necessary to rehabilitation.

The purpose of this research is to assess the efficacy of post-Gault reform through the analysis of one typical instance of it, the revision of the juvenile justice system in the State of Maine. Such an approach is necessary because juvenile justice is largely a matter that falls within state, rather than federal, jurisdiction. Consequently, while it is possible to discuss "American juvenile justice" in general in a meaningful way, there is considerable variation from state to state in the details of juvenile justice systems. On the other hand, a particular juvenile justice system cannot be fully understood apart from the larger historical and national context out of which it emerges. This research then, of necessity, must look in several directions in attempting to understand post-Gault juvenile justice.

In the early 1970's, the State of Maine began a series of studies of its juvenile justice system with a view toward developing reform recommendations. Such efforts appear to have resulted both from attempts to bring its system in line with federal requirements and from concerns within the State over the apparent ineffectiveness of the system. In 1975, the State Legislature appointed a "Commission to Revise the Statutes Relating to Juveniles" for the express purpose of proposing statutory changes in juvenile justice and related areas. Their efforts culminated in the enactment of a new
Juvenile Code in 1977, bringing about perhaps the most dramatic change in juvenile justice in Maine since the establishment of the juvenile court in 1931.

The changes brought about in juvenile justice in Maine as a result of this effort are best summarized in the words of the Commission to Revise the Statutes in their Final Report.

Essentially the proposed code would reorganize Maine's juvenile justice system so that juveniles who commit acts which would be felonies...if they were adults will be handled in almost all respects as if they were adults. Juveniles who commit acts which would be misdemeanors...or "juvenile crimes" - i.e., possession of marijuana, alcohol or prostitution will be handled in some, but not all, respects as if they were adults. For example, under the proposed code a hearing on a delinquency petition that alleges felony conduct will be open to the public; a hearing about alleged misdemeanor conduct will not. On the other hand, once a juvenile is adjudicated delinquent for a "juvenile crime" or misdemeanor, the juvenile court judge will have a full spectrum of dispositional alternatives available to him -- not simply a fine as is the case under Maine's criminal code for certain drug and alcohol related offenses.

The proposed code would decriminalize behavior that is not delinquent -- e.g., "incorrigibility", running away from home, and truancy. Instead, it mandates the provision of services to these children and their families....

Under the proposed code, hearings in juvenile court would be conducted in all procedural respects, except jury trials, as are adult criminal proceedings. (1977:1-2)

Thus, the reforms attempted to provide "the best of both worlds" for juveniles before the law, due process and rehabilitative services rather than what Justice Fortas called the "worst of both worlds" in Kent v. U.S. (U.S. Supreme Court, 1967:1054) Although the Legislature made a number of
substantial changes in the code as proposed by the Commission, the above statement of the Commission accurately reflects the intent of the Legislature in its enactment of a new Juvenile Code.

The extent to which Maine’s juvenile justice reform and post-Gault reform more generally have succeeded in addressing these concerns is open to question. It has been suggested that these reforms have failed or are likely to fail as have so many similar efforts in the past. While promising the “best of both worlds” (the constitutional guarantees accorded adults in the criminal justice process and the rehabilitative services traditionally promised by the juvenile justice system), post-Gault reforms are criticized as a return to the criminal prosecution of children, as providing formal due process rights without the substance of due process, and as promising services without providing resources necessary for them. In the words of critics of Maine’s new Code, “the due process problem...has simply been shifted...from the courtroom to the intake process,” and the promised rehabilitative service system is one “whose substance is a collection of lofty philosophical statements” because of the failure of the Legislature to back up its rhetoric with resources. (MacDonald and Biskup, 1979:18) Faust and Brantingham (1979:456) have noted the prophetic nature of Justice Stewart’s dissent in Gault in which he expressed fear that juveniles would be returned to criminal prosecu-
tion. Empey (1979:296) expressed concern that post-Gault reform was "freeing children from the jurisdiction of the juvenile court" without "indicating what new institutional devices are more suitable for them." Early in the post-Gault era, Fox (1970:1236) pointed to fundamental problems in both due process and rehabilitative services. Referring to due process, he writes, "Central among the reasons for the failure of the revolution is the role of counsel....As a practical matter, there are indications that defense lawyers do not defend." Further, he notes "the disquieting thought that historical continuities...may extend to the resource starvation that has characterized both juvenile and adult justice."

At present, the reform era that began with Gault appears to be drawing to a close. The reaction that so often follows reform is setting in and criticism of "Post-Gault" juvenile justice and calls for its abandonment are on the rise. The Reagan Administration, for example, has engaged in extensive efforts to dismantle the Office of Juvenile Justice and Delinquency Prevention in favor of more punitive measures for addressing "serious juvenile crime." (Washington Post, 1984:A21; Thornton, 1983:A5) Such a reform-reaction cycle is not unique to the "Post-Gault" era. The history of juvenile justice in the United States seems in many respects to be characterized by such cycles. In other words, the history of juvenile justice may be seen as a long series
of reforms that failed engendering yet further reforms that in turn failed. With each such reform and its perceived failure comes a cry for a different approach. The assumption that accompanies such an effort is that the prevailing juvenile justice system is in fact an objectification of the reform ideals, that the approach as articulated by reformers was tried and failed, and that a new approach is thus required. Statements of the current Director of the Office of Juvenile Justice and Delinquency Prevention exemplifies the argument.

We have done a good deal of work with delinquency prevention. It's a nice idea, but no one has really been able to figure out how to do it. We've spent tens, maybe hundreds of millions of dollars on delinquency prevention programs. [Put] none are in the least bit effective. (quoted in Thornton, 1983:A5)

History reveals, however, that such assumptions may be problematic. Historically, changes in juvenile justice have often resulted from reform efforts. But such changes have more often than not embodied the rhetoric of reform ideals without the substance. If a just and effective system of juvenile justice is genuinely desired, it is appropriate and necessary that the assumption that post-Gault reform ideals have been tried and were found to have failed be put to the test. This is the central purpose of the present research. To what extent have the ideals of post-Gault juvenile justice reform been embodied in the resulting juvenile justice systems?
The answers to such a question have important implications for public policy, for social change, and for the sociology of juvenile justice. If in fact the system of juvenile justice that has developed does not substantially reflect the approach envisioned by its proponents, the prudent public policy course might well be to attempt to implement such an approach in substance as well as in theory, rather than to abandon the approach for another. If social change is more apparent than real in this case, might it be appropriate to examine our assumptions of reform in others? For all of our concern with "data", social scientists all too often work on the basis of assumption rather than fact. In his insightful history of the so-called "Progressive Era," Kolko alerts us to this penchant of historians for assuming rather than discovering "what really happened" (emphasis in original; Kolko:1963:1). Quite obviously, such a question has direct relevance to the sociological understanding juvenile justice which, as the societal reactionists have pointed out, is crucial to our understanding of the problem of juvenile delinquency.

**Methodology**

The nature of the research question and the nature of the object of our investigation requires that a variety of methods be utilized in this research. The fact that juvenile
justice in Maine today is intimately bound up with the historical development of juvenile justice requires that this research be in part historical. The process of reform is not one of "causally related variables" but rather one of evolutionary development involving numerous institutions, ideas, ideals, and organizations. Thus, the documentary evidence must be examined in order to understand the reform process. More rigid statistical techniques are of some use in attempting to determine the differences -- in terms of the actual processing of juvenile offenders -- between the old and new juvenile justice systems in Maine. Furthermore, interviewing and related techniques are necessary to discover some aspects of the reform process as well as to arrive at some determination of present views of the efficacy of the new system from the points of view of participants.

Perhaps the most fundamental methodological issue is the question of the "generalizability" of finding in Maine to post-Gault reform in the United States more generally. A number of points can be made here.

First, Maine is not in fact particularly unique. It is our contention that the differences among states and localities, and, indeed, among nations, are frequently exaggerated. In point of fact, Maine shares in a common socio-cultural system with the nation as a whole. It does not have a unique system of government, a different economic system, or peculiarly distinctive values from its neighbors. In other
words, the institutional network out of which juvenile justice reform emerged in Maine is not altogether different from that of Massachusetts, California, Kansas, or Wisconsin. Indeed, there are some differences. These, however, appear to be largely differences in detail, not in fundamentals. Thus, it is our view, that one could fruitfully study the reform process by examining its operation in any state. In our case, Maine is convenient.

At the same time, juvenile justice is legally a matter of state, not federal, jurisdiction. Thus, while what happens in Maine may not be particularly unique, juvenile laws and juvenile justice systems are products of legislation at the state level. In order to examine such systems and changes in such systems in concrete detail it is necessary to examine them in the context of an actual system in some state. Juvenile justice systems in various states have historically shared a common philosophical orientation, but the practice of juvenile justice requires examination of how this philosophy gets translated in actuality. One cannot then fully understand juvenile justice in exclusively general terms. Neither can it be understood in exclusively particular terms.

Finally, the reform process in Maine reflects the ideals of the post-Gault era nationally. The Juvenile Code the resulted from this process is based largely on standards and models developed nationally. (Commission to Revise the Statutes Relating to Juveniles, 1976a:Appendix XVI)
Organization

The dissertation begins with a discussion of the history of juvenile justice in the United States with particular emphasis on those aspects of its history related to reform. Through this discussion, the historical failure of reform in juvenile justice is documented and an attempt is made to explain this failure. This is a prerequisite for understanding the nature of post-Gault reform and assessing its prospects.

Chapter Three discusses the history of juvenile justice in Maine from the establishment of the juvenile court to post-Gault reform. Chapters Four and Five examine the major documents of the post-Gault movement in Maine in an attempt to ascertain the ideals or goals to which the reform efforts were directed. Chapter Four focuses on "due process" and "fairness" more generally as post-Gault ideals and Chapter Five focuses on the rehabilitative ideal in post-Gault reform. Chapter Six is an assessment of the extent to which the ideals of post-Gault reform are embodied in the system of juvenile justice which emerges from the reform effort.

The final chapter is a discussion of the findings, some explanation of them, and speculation on the implications of such findings for the future of juvenile justice in Maine and the United States.
Chapter II

JUVENILE JUSTICE REFORM: THE HISTORICAL CONTEXT

An assessment of post-Gault reform generally and in Maine in particular necessarily entails an understanding of the history of juvenile justice in the United States, particularly those aspects of its history revolving around attempts to reform American juvenile justice.

In reviewing the history of American juvenile justice, one of the more striking lessons is that so many of the "burning" issues in juvenile justice in the post-Gault era have been "burning" issues for many decades, many originating at least as far back as the early eighteenth century. As Rothman (1979:34) puts it, "One vital function that a historian concerned with social policy performs is to remind his contemporaries that their particular concerns are not particularly novel." Clearly, this is the case with so many of the "concerns" of students, practitioners, and critics of juvenile justice today. One such concern which illustrates this point is the practice of incarcerating juveniles in adult jails. Despite attempts of Maine's new Juvenile Code to address this concern, the issue has once again become the subject of considerable controversy in Maine, one sparked by publicity surrounding the decision of a judge to jail two
boys, ages 11 and 14. (Associated Press, 1982:1) This was, of course, a major consideration in the founding of the houses of refuge in the early nineteenth century and again was a major concern of the "child savers" who were instrumental in the establishment of the first juvenile courts at the beginning of this century. Although not all of our concerns have such exact historical parallels, they all have a history, a history from which would-be reformers might learn of the pitfalls of reform.

The issues, problems, and concerns which entered into the efforts to revise Maine's Juvenile Code as well as as the system of juvenile justice which ultimately emerged from these efforts are properly understood only in the context of history and the national debate on juvenile justice.

The history of American juvenile justice being largely a history of failed reforms, examination of post-Gault reform in the historical context is of even greater importance. In so doing, we may be better able to understand why reform so often fails and how these problems might be overcome in order to allow for the emergence of a just and effective system of juvenile justice.

**Juvenile Justice Defined**

In the present context, we use the term "juvenile justice" not in any larger philosophical sense, but merely as a label
denoting the organized response of society to what it regards as crime and misbehavior of young people. It is an important point to keep in mind because juvenile justice in this somewhat arbitrary and relative sense may have nothing or little to do with "justice" in any ideal sense. Indeed, the lack of a close connection between the actual and ideal meanings may have a great deal to do with what so many see as the perpetual failure of juvenile justice systems. As Sarri (in Bartollas and Miller, 1978:xv) writes,

We speak of the juvenile justice system in a glib manner as if such really existed, but from the perspective of thousands or perhaps millions of youths in many countries, the system is viewed as one only for control and punishment, not "justice!"

Our concern here is primarily with describing American juvenile justice in its own terms. The extent to which it might approximate genuine juvenile justice for juveniles will be addressed later.

While as Mennel (1972:xvii) notes, "children have always misbehaved and committed crimes," a special, distinct system for societal response to these problems is of relatively recent origin, dating to the early nineteenth century. Prior to that time, such problems were generally handled by existing institutions, most often the family, but in the case of serious juvenile crime, the criminal legal system. The emergence of an urban, industrial America combined with massive immigration resulted in, among other things, if not an intensification of the problems of juvenile delinquency, at
least a greater visibility of the problem and a greater awareness of the problem and its seriousness. What emerged in response to these perceptions over the course of the century from roughly 1825 to 1925 was "socialized juvenile justice", epitomized by the juvenile court.

Faust and Brantingham (1979:1-25) detail the controversy surrounding the question of the origin of socialized juvenile justice, and, in particular, the socialized juvenile court. There are two major opposing interpretations of its history as well as their own which is essentially a synthesis of the two. Proponents of the socialized system argue that it was essentially the result of a humanitarian effort to end the harsh treatment of juveniles at the hands of the criminal justice system. It was, they claim, invented for the purpose of saving, helping, protecting, guiding, and treating children in trouble, not for the purpose of punishing them for crimes. Critics of socialized juvenile justice, on the other hand, tend to subscribe to the revisionist interpretation which argues that allegations of harsh treatment are exaggerated and, in Empey's (1979:5) words, viewed juvenile justice, particularly the juvenile court, as nothing more than a device for protecting the capitalist class from the unruly children of the working class. Indeed, as Faust and Brantingham (1979:1-25) suggest, both positions reflect aspects of the reality from which the socialized juvenile justice system emerged.
Despite differences of interpretation with respect to the motivations behind the emergence of the socialized system and differences with respect to the appropriateness of socialized juvenile justice principles and the extent to which these were actually implemented, there is general agreement as to what the socialized system claimed as its basic principles, assumptions, and ideals.

Since the turn of the century, socialized juvenile justice, in the form of the socialized juvenile court, has been the dominant socio-legal institution in the United States for preventing, controlling, and correcting juvenile crime and misbehavior. The hallmarks of its approach, notes Ryerson (1979:3),

were relatively few and simple: children -- even children who broke the criminal law -- differed from adults. They required not only separate but different treatment before the law. The state, acting through the juvenile court, must treat children not as responsible moral agents subject to the condemnations of the community but as wards in need of care. A special court for children should be of civil jurisdiction, with flexible procedures adapted to diagnosing and preventing as well as to curing delinquency.

Socialized juvenile justice, then, differs rather dramatically from criminal justice in philosophy, procedures, and aims. The juvenile court, according to Brantingham (1979:37-48), was philosophically rooted in the "Positive School" of criminological thought which assumed a deterministic view of human behavior, rejecting the free will assumptions and the consequent legalisms of the "Classical
School" in favor of "treatment" of the "sick" criminal or delinquent. Such "treatment" was to proceed on the basis of scientific rather than legal principles. Instead of a criminal proceeding, the juvenile justice process was viewed as a vehicle for protecting the juvenile from the ordeal of the criminal justice process. As Evelina Belden found in her 1920 survey of juvenile courts in the United States,

The fundamental purpose of juvenile court proceedings is not to determine whether or not a child has committed a specific offense, but to discover whether he is in a condition requiring the special care of the State....(in Ryerson, 1978:43)

Clearly, the aim of juvenile justice, at least in theory, was not to punish the offender, but to rehabilitate the defective child.

The basic assumptions of socialized juvenile justice can be summarized as follows:

1. Children are sufficiently different from adults as to require separate and distinct processing.

2. Behavior, criminal or otherwise, is caused as opposed to being the result of reasoned decision of an individual actor.

3. The family is the central, most significant social institution in shaping individual behavior.

4. The State is the ultimate and benevolent parent.

From these assumptions about the nature of the child, action, the family, and the State, implications for the operation of juvenile justice in the form of operating principles logically follow.
The Nature of the Child

The fundamental difference between children and adults is seen to be a matter of maturation, not only with respect to the obvious physical immaturity of children, but also their incomplete emotional, psychological, rational, and moral development. Children through the teens are referred to as in their "formative" years, the years in which their "characters" or personalities develop. Implicit in this view are both the notion that children do not possess all of the capacities of adults and that children are somewhat more "plastic", more susceptible to influences from the world about them, than are mature adults. Both aspects have important implications for the development of socialized juvenile justice.

A major aspect of the child's immaturity is the lack of the full capacity to reason, to judge, to decide as would, presumably, a mature person in acting. This notion has been incorporated into law in some form for centuries. Faust and Brantingham (1979:457) describe the legal doctrine as it existed in American criminal justice prior to the emergence of the juvenile court.

Delinquents were entitled to criminal procedural protections and to the substantive law doctrine of doli incapax which denied the possibility of mens rea to children under the age of seven, and so prevented their prosecution and conviction for crime, and presumed that children aged seven to fourteen could not form mens rea, thus requiring the show of evidence of the capacity to form mens rea before a prosecution could go forward.
In some respects the juvenile court expanded this notion such that the juvenile court had jurisdiction in all cases (with few exceptions) involving children under a certain age (typically 13 years). Thus, in theory, if not in practice, no juvenile could be prosecuted or convicted for any criminal offense.

The susceptibility of children to influences, good and bad, during their formative years also had major implications for juvenile justice. Among the many problems perceived in the processing of juveniles in the criminal justice system was the contact that juveniles had with adult criminals, in the courts and particularly in jails and prisons. Such contact was considered as almost a guarantee that such juveniles would subsequently enter into criminal careers. There was also concern with the possible effects on the child of the stigma attached to the "criminal" label.

Finally, as Empey (1979:33) writes, the view of the nature of childhood was considerably different from previous views. The difference had important implications for juvenile justice.

Though we now find ourselves intellectually at odds with, if not morally repulsed by, the beneficent presumptuousness of nineteenth century child savers, we must also ask whether that presumptuousness was somehow worse than the practices of infanticide, abandonment, sexual exploitation, and indifference to children in the Middle Ages. As recently as a century or two ago American colonists were inclined to blame the innate depravity of the child for sins, and to punish him severely. Later, reformers tended to externalize blame and to seek "treatment" rather than punishment. Indeed, given the whole history of punishment, one
of the most significant elements of the first juvenile court act may be its justification on the grounds that its principal purpose was child care, not retribution. Such changes in perspective were considerable.

Thus, from assumptions about the nature of childhood and changes in the predominant view of it come four key operating principles of socialized juvenile justice:

1. Children should not be subject to criminal prosecution and conviction.

2. Children accused of criminal or other misbehavior should never be confined with or allowed contact with adult criminals. Separate facilities and procedures are called for.

3. There should be no stigma attached to those coming into contact with juvenile justice.

4. Juvenile justice systems should be in the business of caring for children, not punishing them.

The Nature of Human Behavior

A detailed discussion of the changes in views of the nature of human behavior is obviously beyond the scope of this paper. Nevertheless, at the risk of oversimplification, the significance of these views to the development of socialized justice necessitates comment. Of the many factors involved in the change of perspective, the most important was the emergence of social science and its application to criminal-
ogy by the so-called "Positive School" in the work of Gabriel Tarde, Cesare Lombroso, and others. The underlying principle of positivism, particularly as stated by Auguste Comte and Herbert Spencer (see Lenzer, 1975; Carneiro, 1967), was that human society operates like the objects of other sciences on the basis of natural laws, or laws similar to natural laws. In other words, the principle of causality underlies human social life as well as it does purely natural life. Stated most simply (perhaps too simply), human behavior is determined. This is in sharp contrast to the "classical" view of human action as the result of conscious, rational decision based in free will. The implications for criminal justice are radical indeed.

The American system of criminal justice, based as it is on "classical" views, adheres to the basic tenets of utilitarian social theory. At base is rationality, free will, and the social contract. In committing criminal acts, we are violating the contract into which we freely entered. We freely choose to so violate it, presumably because of an ex-


2 This is by no means the clear and consistent position assumed throughout the social sciences. While it is the position taken by most early sociologists, there is clear evidence of discomfort with its implications as evidenced by inconsistency. Emile Durkheim and Lester Ward exemplify the struggle on this issue in their efforts to "have it both ways." Human social life is and is not determined. (Durkheim, 1933; Commager, 1967)
pectation of increased personal gain, happiness, pleasure, etc. Positive theory, on the other hand, regards such acts as "caused" by some physical defect, by poor upbringing, by environmental factors, and the like. Without free will, rational choice, there is, obviously, no blame. Using the medical analogy which figured heavily in the positivist approach, we generally do not "blame" a person for being ill.

Criminal law from the classical (utilitarian) perspective is an elaboration of the social contract. In the absence of any blame and punishment, there would be no deterrent to proscribed behavior and the contract, society itself, would presumably disintegrate. On the basis of the utilitarian view of human nature as hedonistic, the deterrent prescribed is punishment (pain) proportional to the presumed pleasure gained in violating the social contract. If, however, the positivist view of crime as caused is adhered to, punishment is clearly inappropriate because there can be no deterring of action not freely, rationally chosen.

A number of other features of criminal justice are implicit in the classical view. The law must be unambiguous and understandable (in Bentham's term, "cognoscible"). Clearly, people cannot choose to refrain from illegal behavior when they do not know what it is. The utilitarian view also mandates equality before the law and certainty of punishment if it is to guarantee the greatest happiness for the greatest number and deter threats to that aim. Again, be-
cause of the inapplicability of deterrence to the positivist view of justice, such features of law are not only unnecessary, but perhaps even counterproductive. While if classical law is to have its intended effect, it is essential that extraordinary efforts be undertaken to ensure that punishment is not inflicted upon the innocent, in "treating" the "sick" it is perhaps better to err in the opposite direction.

The positivist perspective has had some influence on criminal justice in the United States. Certainly, the "corrections" end of the criminal justice system claims adherence to this perspective in theory, if not in practice. Nevertheless, as Faust and Brantingham (1979:1) note, juvenile justice is "the most important example of socialized justice developed from the infant social sciences of the late 19th Century." In adopting the positivist assumptions, juvenile justice replaces the principles of classical criminal law with the following:

1. The task of the juvenile court is not to determine blame, but to diagnose problems.
2. The appropriate response of the juvenile justice system to illicit behavior is not punishment, but treatment.
3. "Legalisms" (i.e. due process of law) stand in the way of proper scientific diagnosis and treatment and are inappropriate where no punishment is involved.
4. Different diagnoses require different treatment. Individualized treatment replaces equality before the law.

5. As in physical disease, the earlier the detection and treatment, the better. Thus, it is unnecessary and, indeed, irresponsible, to act only after an offense has been committed (the disease has become acute). The pre-delinquent should be a primary focus of the juvenile justice system.

The Nature of the "Cause"

The third assumption, that the family is the primary cause of delinquency, is not as clear-cut as the other assumptions, largely because of the variety of "causes" indicated in the literature. Despite the lack of unanimity on this point, there is sufficient evidence that socialized juvenile justice has assumed a strong connection between the family and delinquency. There were, of course, those like Jane Addams (1925), Shaw and McKay (1942), and others who saw larger problems as causing delinquency as well as family disorganization. And there were those at the other end of the spectrum, such as William Healy, who saw psychological defect as the most immediate cause (Mennel, 1972:166-167). Rothman (1979:40) makes a distinction between the "environmentalism" of the Jacksonian era reformers and that of the
Progressives. While the former located "the roots of delinquency in the very structure and organization of their society," the Progressives "trace delinquency to more limited and specific causes," namely, the lower class, immigrant family. As Sophonisba Breckenridge and Edith Abbott wrote in their book, *The Delinquent Child and the Home*, delinquency quite naturally results in children raised in homes

in which they have been accustomed from their earliest infancy to drunkenness, immorality, obscene and vulgar language, filthy and degraded conditions of living. (quoted in Pothman, 1979:41)

As Rothman seems to imply, the family provided a convenient "cause" that avoided the obvious problems of a purely psychological approach while at the same time avoided blaming the problem on any "inherent failings in the organization of American society" (1979:42).

Perhaps the most significant indication of the role of the family assumed by socialized juvenile justice is found in the law itself, in the doctrine of parens patriae which saw the role of the State in juvenile justice as a substitute for defective parents. The legal justification of the juvenile court implied that the State had the obligation to provide a proper "family" for delinquent, dependent, and neglected children who by definition lacked such.

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3 The controversy over the actual role of the parens patriae doctrine in the evolution of juvenile law is noted. Even those who argue that it was largely superfluous, e.g., Schlossman (1977) and Fox (1979), recognize that family intervention was the objective and that parens patriae was not necessary to justify it, that the law already offered sufficient rationale for such action.
Several operating principles of juvenile justice follow from the assumption that the family is the major influence in delinquency, among them, the following:

1. The juvenile justice system has the responsibility to intervene into family affairs to ensure that proper child rearing occurs. This is accomplished through "social investigations", probation supervision, etc.

2. The State is the ultimate parent and must assume the burdens of child rearing when natural parents abdicate their responsibilities. The State accomplishes this function through institutions, placement of children with foster parents, etc.

3. State intervention into "good" families is unjustified.

Implicit in the doctrine of parens patriae is the fourth assumption of socialized juvenile justice, the benevolence of the State.

The Nature of the State

The State through the instrument of the juvenile court is seen as the savior of troubled youth (i.e. those from inadequate families). It was assumed that "individual welfare coincided with the well-being of the state" (Bernard Flexner quoted in Rothman, 1979:36) and that the state reflected the consensus of all segments of society. This is in sharp con-
trast to earlier and subsequent views of the State as worthy of suspicion. As Rothman (1979:37) writes,

the rhetoric of benevolence, more than any single element, legitimated the [juvenile court] movement, giving it public standing as a reform deserving enactment.

The implications of this view of the State for the operation of the juvenile justice system include:

1. The State must assume its protective role whenever it believes children are in jeopardy, providing them with care, guidance, treatment, etc.

2. Because of the State's benevolence, there is no need for protection from it in the form of formal procedures and other "legalisms".

3. As the ultimate protective and benevolent parent, the State has the obligation to protect not only juvenile offenders, but all juveniles in need of its solicitous care.

Throughout its history, juvenile justice as ideally defined has experienced considerable difficulty in being actualized as a working system. The wide gulf that has historically separated the ideal and the actual has been the basis for more than a century of reform efforts.
Socialized Juvenile Justice as Reform

The central debate in juvenile justice revolves around whether and to what extent the socialized juvenile justice system as above defined represents substantial reform in the way society responds to juvenile crime and misbehavior. The term "reform" implies both change and progress; the socialized system has been said by critics to represent neither. If the dominance of the juvenile court for much of the twentieth century bears testimony to the effectiveness of the progressive rhetoric and to popular support, the vehemence of post-Gault era reform testifies to the rigor of its critics.

Criticisms of socialized juvenile justice have taken a number of forms, among them:

1. That the much hailed reforms of the nineteenth and early twentieth century, particularly the juvenile court, represented not so much change as continuity. (Fox, 1970)

2. That the ideals of socialized juvenile justice were ill-conceived. They are hopelessly flawed, based as they are on naive assumptions of official benevolence and blindness to the classist nature of American society. (Platt, 1973; Rothman, 1979)

3. That the motive of the self-styled reformers are suspect. Whatever humanitarian impulses they might have had, their overriding purpose was to make socie-
ty safe for the middle class. (Platt, 1973; Empey, 1979)

4. That the particular ideals of the reformers were compromised, co-opted, and subverted by the establishment, thus ensuring failure. (Fox, 1970; Senna and Siegel, 1981)

5. That when and to the extent that reform ideals did get embodied in policy, the policies failed to bring about the desired results. (Ryerson, 1978)

6. That for all the progressive reforms, crime and delinquency continues unchecked. (Ryerson, 1978)

As Sanford Fox (1970:1187) points out, there have been "three claims of major reform in the means for dealing with juvenile deviants."

The opening of the New York House of Refuge in 1825 has been denominated 'the first great event in child welfare' in the period before the Civil War. The second reform, probably the better known of the two, was the institution of the juvenile court by the Illinois legislature in 1899. Gault appears to mark a third great humanitarian effort.

These three major reforms may also be viewed as three phases in the development of socialized juvenile justice: the era of its emergence (1825-1899), the era of its domination (1900-1967), and the era of its refinement (1967-present). In this chapter, we will examine each of these developments in light of criticisms leveled against socialized juvenile justice.
The House of Refuge and the Emergence of Juvenile Justice

The opening of the New York House of Refuge by the Society for the Reformation of Juvenile Delinquents in 1825 marks the beginnings of socialized juvenile justice in the United States. It, in effect, represented the recognition of delinquency as a special problem that required a special response, distinct from that of the criminal justice system which responded to similar behavior on the part of adults.

The period from 1825 to the turn of the century may be viewed as the era of the emergence of socialized juvenile justice. The primary vehicle for its emergence was the specialized correctional institution for juveniles, including houses of refuge, reform schools, juvenile reformatories, industrial schools, juvenile asylums, and the like. Not surprisingly, given the variety of institutions involved and their development under different auspices in different jurisdictions over a relatively long period of time, it is difficult to characterize these institutions in general terms. Indeed, many of the later institutions were developed in direct response to the perceived failure of the earlier ones. Among the differences between institutions were those with respect to treatment orientation, some, particularly the earlier ones assuming a more authoritarian approach which emphasized military drill and stern discipline, while many of the later institutions assumed a family style approach, particularly those which adopted the so-called cot-
tage system. Some of the institutions were operated under private auspices while others were publicly funded and operated. Some concentrated their efforts on the "unfortunate" while others focused on the youthful criminal. Some viewed their major responsibility as the protection of society and the discipline of the youth in their care, while others viewed themselves as primarily the protectors and educators of their charges. The difficulty in characterizing these institutions in general terms is further complicated by the seemingly inconsistent objectives of the reformers and the institutions they helped to establish.

There are, nevertheless, a number of ideals, goals, and objectives common to most, if not all, of the reformers and institutions of the era. Against these the actual operation of juvenile justice in the nineteenth century may be judged. In this process, we make no effort to read the minds of the reformers, assuming as does Platt their "benign motives." (1969:4) We focus on their statements and their institutions.

The first and most obvious concern of juvenile justice reformers throughout the century was the persistence and apparent increase in juvenile crime and other troublesome be-

* Despite his condemnation of juvenile justice reformers, Platt writes that they viewed themselves "as altruists and humanitarians dedicated to rescuing those who were less fortunately placed in the social order." He further suggests benign motives in writing of his attempt "to reconcile the intentions of the child savers with the institutions they created." (1973:3-4)
behavior. In 1823, James Gerard of the Society for the Prevention of Pauperism in the City of New York, the organization most influential in the establishment of the New York House of Refuge, claimed that juvenile crime had doubled in the previous five or six years. (Ryerson, 1978:16) In 1854, Charles Loring Brace of the New York Children's Aid Society described "the outcast, vicious, reckless multitude of New York boys, swarming now in every foul alley and low street," and expressed the fear that the day might come when "they come to know their power and use it." (quoted in Ryerson, 1978:16) Clearly, the perception, whatever its basis in fact, that juvenile crime was constantly on the rise and, in any case, there was just too much of it, encouraged reformers in their view that the status quo approach to the problem was inadequate and that something new and different was needed. Special institutions for these juvenile criminals would make of them productive members of society and would, presumably, result ultimately in a decrease in crime, juvenile and adult.

Closely linked to this concern with a perpetually rising wave of juvenile crime was a similar and, in the view of the early reformers, related rise in pauperism. In discussing the relation of pauperism and delinquency in the views of early nineteenth century reformers, Fox (1970:1199) writes, "These two social ills had come to be virtually synonymous." Both problems were laid to the moral defects of the individ-
ual. Exemplifying this view is the statement by the Quaker reformer Thomas Eddy, chairman of the Humane Society's committee on pauperism, who wrote in an 1810 report of the "just and inflexible law of providence [whereby] misery is ordained to be the companion and punishment of vice." (quoted in Fox, 1970:1199) Pauperism, on the other hand, was also viewed as a cause of crime. As another Quaker reformer wrote in 1824, the state had over 9,000 children under 14 years of age living in poverty and

that this mass of pauperism, will at no distant day form a fruitful nursery for crime, unless prevented by the watchful superintendence of the legislature. (quoted in Fox, 1970:1200)

To adequately combat the problem of juvenile crime, it was necessary also to combat the problem of juvenile pauperism. The reformers associated with the establishment of juvenile institutions later in the century were less likely to share these views, at least in their particulars. While many were no less religiously moralistic in their approaches to the problem, they were less inclined to view poverty and criminality, especially in children, in terms of individual defect. Mennel (1972:33) writes of the tendency of later reformers to view delinquents "as victims not of their own sinfulness but of slum life." Nevertheless, it is important to note the tendency throughout the century toward what Matza (1969:94) refers to as the "favored affinity" of sociologists in the positing of a relation between crime and poverty. With respect to both the early and later nineteenth
century reformers, it provided a rationale for "saving" all "unfortunate" and/or "wicked" children. Whether they were considered as victims or victimizers, they were the proper objects of institutional efforts.

Although somewhat inconsistent with other views, particularly of the early reformers, there was considerable concern throughout the century (and, in fact, to the present day) with the presumed contagious nature of pauperism and criminality. Central to efforts to establish separate institutions for juveniles were the problems of juveniles being housed with adult paupers and criminals in jails, prisons, and almshouses. According to Mennel (1972:9-10), the presence of children in almshouses concerned the philanthropists even more than did their presence in jails. In their view, the practice would "guarantee a future supply of paupers and deviants." Confining children in jails and prisons with adult criminals was also, of course, a major preoccupation. The 1822 Report on the Penitentiary System in the United States submitted by the Society for the Prevention of Pauperism "called public attention to the corruptive results of locking up children with mature criminals, citing this contamination of innocence as one of the major evils that had resulted from prison reform." (Fox, 1970:1189) One reformer, John Pintard, characterized the state prisons as places of promiscuous intercourse where little Devils are instructed to become great ones and at the expiration of their terms turn out accomplished villains. (quoted in Mennel, 1972:8)
Schlossman (1977:23) argues that this was in fact the central issue in nineteenth century juvenile justice reform.

No theme emerged with greater clarity in the correctional thought of the period than the dangers of housing children with adult offenders.... Before all else, the House of Refuge was the institutional embodiment of this line of argument.

A fourth concern was with what was considered by some to be undue severity of the criminal justice system in dealing with juveniles. The managers of the New York House of Refuge, for example, pleaded:

Never let them be made victims of the law, their years and their inexperience forbid the idea of making them the subjects of retributive justice. The vengeance of the law, when inflicted upon them as a terror to others, is altogether misplaced, and has neither vindication for its practice, nor apology for its severity. (quoted in Schlossman, 1977:26)

Of perhaps even greater concern to a number of reform advocates was what Fox (1970:1194) refers to as "nullification," the reluctance of the public and the courts to respond to juvenile offenses because of the likely severity of the outcome. Houses of refuge and other alternatives "would close the gaps through which children were escaping apprehension and conviction."

All of these concerns imply a preoccupation with delinquency prevention, not so much through the "deterrence" involved in punishment as in Classical criminology, but through moral education, reform, and rehabilitation of delinquents and, especially, predelinquents (dependent, neglected, and minor offenders). This, as well as the above
concerns, is well illustrated in the 1823 report by the Society for the Prevention of Pauperism in the City of New York.

Every person that frequents the out-streets of this city, must be forcibly struck with the ragged and uncleanly appearance, the vile language, and the idle and miserable habits of great numbers of children, most of whom are of an age suitable for schools, or for some useful employment. The parents of these children, are, in all probability, too poor, or too degenerate, to provide them with clothing fit for them to be seen in at School; and know not where to place them in order that they may find employment, or be better cared for. Accustomed, in many instances, to witness at home nothing in the way of example, but what is degrading; early taught to observe intemperance, and to hear obscene and profane language without disgust; obliged to beg, and even encouraged to acts of dishonesty, to satisfy the wants induced by the indolence of their parents—what can be expected, but that such children will, in due time, become responsible to the laws for crimes, which have thus, in a manner, been forced upon them? Can it be consistent with real justice, that delinquents of this character, should be consigned to the infamy and severity of punishments, which must inevitably tend to perfect the work of degradation, to sink them still deeper in corruption, to deprive them of their remaining sensibility to the shame of exposure, and establish them in all hardihood of daring and desperate villainy? Is it possible that a Christian community, can lend its sanction to such a process without any effort to rescue and to save? (quoted in Fox, 1970:1189)

Considering the variety of concerns to which the reformers intended the institutions to respond, it is hardly surprising that there was confusion over the proper roles of such institutions. The central theme echoed throughout the century was that refuges, reform schools, and other similar institutions had as their primary objective, not punishment for some offense, but the "rescue" or "salvation" of unfor-
tunate children. The managers of the Philadelphia House of
Refuge, for example, claimed that their institution was "an
asylum for friendless and unfortunate children, not a prison
for young culprits." (quoted in Mennel, 1972:12) In mid-
century, the International Penitentiary Congress expressed a
similar view in resolving that delinquents should be educat-
ed, not punished, so that they might "gain an honest liveli-
hood and to become of use to society instead of an injury to
it." (quoted in Platt, 1969:50) The idea of punishment, how-
ever, was never far from the surface. As Mennel (1972:12)
notes of the Philadelphia House of Refuge, the institution
with its high walls, tiny cells, and constant surveillance
"hardly resembled a schoolhouse." The New York House of
Refuge was characterized by James Dixon as "half prison and
half school." (quoted in Mennel, 1972:12) The essentially
penal nature of the New York House of Refuge is further in-
dicated in statements of its managers.

These little vagrants, whose depredations provoke
and call down upon them our indignation are yet
but children who have gone astray for want of that
very care and vigilance we exercise towards our
own. They deserve our censure, and a regard for
our property, and the good of society, requires
that they should be stopped, reproved, and pun-
ished. (quoted in Fox, 1970:1194)

At the same time, the vast majority of juveniles confined
in the New York House of Refuge were not found guilty of any
serious crime, but rather of exhibiting signs of future
criminality — "the conditions of misery, minor law break-
ing, and the habits of ignorance and vice." (Fox, 1979:1192)
As Schlossman (1977:27) writes, juvenile institutions in general "received not only convicted lawbreakers, but dependent, neglected and recalcitrant youth committed by their parents for incorrigibility."

In general, then, these institutions had dual objectives; on the one hand, the care, treatment, education, rehabilitation, etc. of juveniles, and on the other hand, the punishment of such juveniles. In other words, both the protection of juveniles and the protection of society were considered essential objectives.

The objectives of these institutions are further illuminated in their design and regimen. While, again, it is important to note that significant differences did exist among various institutions, the following descriptions and statements of institutional objectives are generally applicable, except as noted.

The structure of the Philadelphia House of Refuge as described by its managers may be considered as reasonably typical of refuges and reform schools.

The main edifice is 92 feet in length. Its centre contains convenient apartments for a library, and for the use of the managers and the families of the officers of the institution. The wings, which are of consequence this entire separate from each other, comprise the respective dormitories of the male and female pupils, and their several spacious halls for schools. Each lodging room, of which there are eighty-six in either wing, is calculated for entire solitude, being 7 feet in length, and 4 feet in breadth, furnished only with a small bedstead and shelf; but well lighted and ventilated, and exposed at all times to absolute superintendence and inspection. Workshops are constructed in the extensive area, which is surrounded by a lofty wall. (quoted in Mennel, 1972:12)
An official description of a typical day in the New York House of Refuge provides some indication of the type of "training" that took place in such institutions.

At sunrise, the children are warned, by the ringing of a bell, to rise from their beds. Each child makes his own bed, and steps forth, on a signal, into the Hall. They then proceed, in perfect order, to the Wash Room. Thence they are marched to parade in the yard, and undergo an examination as to their dress and cleanliness; after which, they attend morning prayer. The morning school then commences, where they are occupied in summer, until 7 o'clock. A short intermission is allowed, when the bell rings for breakfast; after which, they proceed to their respective workshops, where they labor until 12 o'clock, when they are called from work, and one hour allowed them for washing and eating their dinner. At one, they again commence work, and continue at it until five in the afternoon, when the labor of the day terminates. Half an hour is allowed for washing and eating their supper, and at half-past five, they are conducted to the school room where they continue their studies until 8 o'clock. Evening prayer is performed by the Superintendent; after which the children are conducted to their dormitories, which they enter, and are locked up for the night, when perfect silence reigns throughout the establishment. The foregoing is the history of a single day, and will answer for every day in the year, except Sundays, with slight variations during stormy weather, and the short days in winter. (quoted in Mennel, 1972:18-19)

While later institutions may have placed a greater emphasis on education, and viewed the refuges as "quasi-prisons", the rules of the New York Juvenile Asylum in mid-century indicate a similar outlook.

The work of the boys may consist of gardening, tailoring, shoemaking, the plaiting of straw and palm, the manufacture of brass nails...The girls shall be employed in cooking, washing, ironing, scouring, sewing, knitting....

No play or conversation shall be allowed among the children, while engaged at their work, on pa-
rade, at meals, or after they have retired to
their sleeping rooms. (quoted in Mennel, 1972:45)

In the latter part of the century, J. C. Hite of the Ohio
Boys' Industrial School, described his institution in simi-
lar terms as

a place of discipline, which means to educate, to
instruct, to correct, and in some cases to chas-
tise....The principle that labor is honorable
should be faithfully taught and upheld, but every
wayward boy in a reformatory ought to be provided
with such kinds of labor as will arouse in his
mind most and get him thinking soonest....Labor
produces muscle, and muscle produces brain. (quot-
ed in Platt, 1959:72)

The basic objectives of these institutions in general can
be summarized as follows in the context of major character-
istics of such institutions:

1. **Isolation** of juveniles from the contagious influence
   of adult criminals, paupers, deviants in general.
   These institutions provided alternatives to the in-
   carceration of juveniles in jails, prisons, and alms-
   houses. It was also an essential objective of most of
   these institutions to isolate their charges from the
   corrupting influences of city life, either through
   physical separation of the institutions from the sur-
   rounding community by means of high walls, fences,
   etc. or by actually locating such institutions in ru-
   ral areas. Finally, there was a recognition among
   many institution managers of the possible corrupting
   influences of experienced juvenile criminals on oth-
ers in the institutions. This objective would be accomplished by means of classification systems in some cases and refusal to accept juveniles charged with serious crimes in others.

2. **Regimentation** as a form of discipline was characteristically used to attain the objective of character development as well as to maintain order within the institutions. This took various forms in various institutions but nearly always involved rigorous scheduling of activities throughout the day. In some institutions, it was the regimen of the monastery, in others, that of the military or the factory. Idleness was not countenanced.

3. **Authoritarianism** characterized most of the institutions and its stated objective was to train juveniles to respect authority. There were, however, exceptional institutions in which managers subscribed to the view that genuine rehabilitation could only come about through the voluntary cooperation of the juveniles. The rule, nevertheless, seems to have been coerced respect.

4. **Training** juveniles for low level occupations was a characteristic objective of the institutions. Skills taught were generally industrial, agricultural, or domestic. Most importantly, the institutions generally felt obliged to train their charges to view menial work as having dignity.
5. Salvation of not just criminal youth, but all youth who needed it, was the overriding objective of most of the institutions. The concern was not primarily with delinquent youth, but with those defined as pre-delinquent, those living in conditions considered likely to lead to a life of crime. Thus, the institutions housed a wide variety of juveniles -- the criminal, the idle, the homeless, the incorrigible, the child lacking in proper morals, and so forth.

The Failure of Reform Schools and the Emergence of the Juvenile Court

The emergence of special, separate courts for juveniles at the turn of the century marked the full institutional development of the idea of socialized juvenile justice. This is not to say that the ideal of socialized justice was thereby realized, but simply that the institutional framework was largely in place, that the idea had attained legitimacy. While various types of "reform schools", probation, and "placing out" had provided the substantive response to delinquency and predelinquency, the juvenile court was the legal legitimation of socialized justice.

From this point of view, the emergence of the juvenile court would seem to represent the completion of the work of reformers of the nineteenth century, certainly not a repudi-
ation of their work. In this sense, the juvenile court reformers are presumed to have been primarily concerned with procedural reform in the juvenile justice process, namely, the development of an alternative to the criminal justice process for addressing the problems of delinquent, dependent, and neglected juveniles. This is, in fact, the view of the origin of the juvenile court expressed by Justice Fortas in the decision in Gault.

The early reformers were appalled by adult procedures....The child...was to be made "to feel that he is the object of [the state's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were, therefore, altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in...procedural criminal law were therefore to be discarded. (U.S. Supreme Court, 1968:1437)

Fox argues rather forcefully that "Whatever else the 1899 legislation [Illinois Juvenile Court Act] reflected, it was not a movement to change procedures." Rather, he argues, it was a movement geared primarily to the improvement of institutional treatment of juveniles. (1970:1221) While Fox may overstate the case somewhat, the evidence he presents, as well as that presented by Mennel, Schlossman, Platt, and others, provides a clear indication that the roots of the juvenile court movement lie in the failure of the reforms of the previous century. Most of the major concerns of the earlier reformers had not been met by the institutions which they helped to establish.
In 1871, the Superintendent of the Chicago Reform School "echoed the concern expressed by reformers of fifty years earlier -- children ought not to be incarcerated with adults, and when set off by themselves they should be under a system of strict classification." (Fox, 1970:1222)

In 1898, Hastings Hart, a prominent Chicago reformer, expressed concern about "the keeping of children in poorhouses" and called for legislation to forbid the practice. (quoted in Fox, 1970:1223) Despite the efforts of the earlier reformers, hundreds of children continued to be placed in the Chicago jails.

In the first six months of 1899, 332 boys under the age of 16 were sent to the city jail, usually on charges of disorderly conduct which included everything from burglary to "flipping trains" and playing ball on the streets. (Platt, 1969:127)

The contagion issue which had so concerned the philanthropists of the early 1800's continued to be the central issue for the "child savers" toward the end of the century. In 1884, Adelaide Groves, a member of the Chicago Woman's Club, described the jails as "training schools for crime inhabited by children who would soon be men, ripe for the penitentiary." (quoted in Platt, 1969:127) In 1898 the Warden of the Joliet State Penitentiary addressing the Illinois Conference on Charities argued,

You can not take a boy of tender years and lock him up with thieves, drunkards and half-crazy men of all classes and nationalities without teaching him lessons in crime. (quoted in Platt, 1969:132)
Lemert (1970:37) writing of the same period in California, points out that despite the reformatories, children were arrested and jailed along with criminals, prostitutes, and other disreputable characters, which "aroused the ire and fire of humanitarian organizations in San Francisco and Los Angeles at the turn of the century."

Even where the creation of a juvenile court was specifically proposed, the issue of contagion appears to have been the central concern. Mrs. Perry Smith of the Chicago Woman's Club, for example, proposed in 1891 that a juvenile court be established so that children "might be saved from contamination of association with older criminals." (quoted in Platt, 1969:129) Another of the prominent Chicago reformers, Lucy Flower, said, "We are struggling very hard to get a juvenile reformatory in Chicago." (quoted in Fox, 1970:1223)

The Illinois "child savers" sought the aid of the Chicago Bar Association in getting reform legislation through the legislature. Their resolution at their 1898 meeting again expresses concern not so much with procedural issues as with institutional treatment.

WHEREAS, the State of Illinois and the City of Chicago, are lamentably deficient in proper care for delinquent children, accused or convicted of violation of law, lacking many of those reformatory institutions which exist in other progressive states of the union; and WHEREAS, Children accused of crime are kept in common jails and police stations, and children convicted of misdemeanors are sentenced to the bridewell, where they are kept in immediate association with drunkards, vagabonds, and thieves; and WHEREAS, The judges having charge
of the trial of children are in our courts so overburdened with other work as to make it difficult to give due attention to the cases of children, particularly those of the dependent and neglected classes; and WHEREAS, The State of Illinois makes no provision for the care of most of the children dependent upon the public for support, other than the public almshouses—unlike many neighboring states which have long ago passed laws prohibiting the keeping of children in the public almshouses: RESOLVED, That the president of this association appoint a committee of five of its members to investigate existing conditions relative to delinquent and dependent children, and to cooperate with committees of other organizations in formulating and securing such legislation as may be necessary to cure existing evils and bring the State of Illinois and the City of Chicago up to the standard of the leading states and cities of the Union. {quoted in Platt, 1969:131}

Indeed, as indicated in the above statements, and made clear by Mennel (1972:126), Illinois was somewhat unique in the sense that at the turn of the century it had no state reform schools, owing in part to the great Chicago fire and the O'Connell decision which struck down much of Illinois juvenile procedure. Nevertheless, other aspects of the concern with institutional improvement appear to have been common to many of the states.

Considerable criticism struck at the very core of the promises on which the institutions were based. They failed to protect and they failed to rehabilitate. In Ryerson's (1978:19-20) words,

By the late nineteenth century, the artificial environments of the reformatories and even the institutions built on the cottage plan had earned reputations for both cruelty and ineffectiveness in rehabilitation. If they had ever been anything else, they had by then degenerated into custodial institutions which at best aided society by sparing it the company of criminals for a brief period.
of time, but which also served as a breeding ground for the attitudes which perpetuated crime. These institutions stood revealed not as agents of rehabilitation, but as devices of punishment, and punishment had come to seem futile as a means of controlling crime.

The ineffectiveness of these institutions is indicated in a number of ways. First, they did little to stem the apparently rising tide of criminality. In 1902, the Juvenile Record noted,

> From many sources comes the suggestion that crime, among children, is rapidly increasing. (quoted in Ryerson, 1978:16)

The general refusal of inmates to co-operate in their salvation is a further indication of the ineffectiveness of the institutions. Violent behavior of inmates and frequent attempts to escape seem to have characterized institutional life. In 1866, the main building at the Wisconsin State Reform School was burned to the ground by inmates. (Schlossman, 1977:105) In 1859, the Massachusetts Reform School for Boys had been "partially destroyed by incendiarism and rioting." (Mennel, 1972:55) The Massachusetts girls' reform school was also burned by inmates. (Mennel, 1972:61-62) In 1854, the cane shop at the New York Refuge was burned to the ground by an inmate. The foreman of the shop had been stabbed by an inmate in 1846. And again in 1872, a similar incident is reported to have occurred. (Mennel, 1972:28,61) A further indication of the refusal of inmates to cooperate in revealed in Mennel's (1972:29-30) examination of New York Refuge records for the years 1839-1841 wherein he discovered
that approximately 40% of the inmates escaped or were repeatedly returned to the institution. These dramatic incidents aside, the general non-cooperative attitude is revealed in the journal of a matron of one such institution. She writes, "Disorder and indolence, defiance of rules and authority is the rule." (quoted in Mennel, 1972:108)

The refusal of many of these institutions to admit those juveniles who presumably most needed treatment also served to make them ineffective. As Fox (1970:1189) notes,

Only 'proper objects' were to be sent to the House, not every vagrant and criminal child. This limitation was conceived as a mandate to the courts that they commit to the House only those who could still be rescued....The objects of House reform thus were seen as children who were not yet truly criminal.

The violence which characterized the institutions seems to have issued in large part from institutional management and staff. For all of the humanitarian rhetoric of the reformers, there was a growing realization that in practice the institutions engaged in a great deal of punishment, often brutal. An important rationale for the development of special institutions for juveniles in the first place was now turned against these very institutions early at the turn of the century. The refuges and reform schools had become the very types of institutions that they had established to replace. Several court decisions, beginning with O'Connell in Illinois in 1870, State v. Ray in New Hampshire in 1886, and Ex parte Bicknell in California in 1897, acknowledged
the essentially punitive nature of these reform institutions. In the words of the decision in *State v. Ray*,

The school has always been regarded as a quasi penal institution, and the detention of its inmates or scholars as involuntary and constrained.

(quoted in Mennel, 1972:125)

As previously noted, public statements by managers of some institutions admitted to their equivocation on the proper role of the institutions. As Schlossman (1977:30) writes of them,

As often as they insisted that the Refuge was a school, they insisted that it was -- and was meant to be -- a prison.

Elijah Devoe, a former assistant superintendent at the New York House of Refuge reported,

Corporal punishments are usually inflicted with the cat or a rattan. The latter punishment is applied is a great variety of places, such as the palm or the back of the hands, top and bottom of the feet, and lastly, but not rarely or sparingly, to the posteriors over the clothes, and also on the naked skin. (quoted in Schlossman, 1977:35)

Mennel (1972:107) describes the brutal treatment of a boy at the Illinois Reformatory in Pontiac who was hung by chains on a wall for nearly three days. He was then alternately beaten and given the 'water cure' until he died with his back broken in three places. The Annual Report of the Society for the Reformation of Juvenile Delinquents described the punishment inflicted on inmates who betrayed a trust.

The punishment consist in flagellation with a whip of strings, in solitary confinement to their cells, either with or without the accompaniment of a low diet, in forbidding anyone to hold communication with the offender without permission, and in extraordinary cases of flagitious conduct, in
wearing an iron on one side, fastened to the waist at the one end and to the ankle at the other. (quoted in Fox, 1970:1195)

Schlossman (1977:119-120) writes of the reign of terror at Wisconsin's reformatory under the management of William Sleep in the 1870's and 80's. For example, a boy whose father had unsuccessfully filed a habeas corpus petition was put in ball and chain, fed bread and water, and whipped regularly. He also tells of a sickly boy who was beaten until he went into a fit, and in that condition was taken down to the pump room and had cold water pumped on him to bring him out of the fit. There are also reports of Sleep personally beating boys until he fell from exhaustion. Such brutality was, apparently, not uncommon in these institutions.

The daily routine of such institutions as described previously must also be considered to have exceeded the bounds of discipline to the point of being punitive. An additional common, though not universal, practice that must be mentioned briefly is that of exploitation of the inmates in various labor contract schemes, usually under the guise of educational programs. Platt (1969:105) briefly describes one such scheme.

After land and money had been appropriated, the State Reform School was finally opened in 1871 at Pontiac, about a hundred miles from Chicago. Dr. J. D. Scoullee, who was formerly a physician and Assistant Superintendent at the St. Louis Reform School, was appointed Superintendent and immediately contracted with private industry for the cheap labor of inmates. Although the trustees of the reformatory were prevented by law from leasing the labor of inmates for more than six hours a day, a contract was made with a Chicago shoe firm
for the labor of fifty boys who were to be employed seven hours a day. A similar contract was made with Clark and Hill and Company for the manufacture of brushes. After these contracts were dissolved due to legal difficulties, many of the inmates were employed in cane-seating chairs for the Bloomington Manufacturing Company under the direction of officers of the School. Such was the main "educational" program in the new reformatory.

Mennel (1972:60-61) documents the violence and exploitation characteristic of reform school workshops. He cites one example of inmates being whipped for not completing their tasks, "so that blood ran down into their boots."

While there were numerous other problems which characterized the reform schools -- financial difficulties, unsanitary conditions, staffing problems, political attacks, and the like -- the failure of such institutions appears to have been most fundamentally rooted in their ineffectiveness and their brutality.

While institutional reform may indeed have been the top priority of many reformers in the juvenile court movement, the establishment of the juvenile court was not merely a byproduct of their concerns or the result of the efforts of others. The idea appears to have been an essential part of the solutions they proposed. Lucy Flower's "Everyday Club" and other "child saving" organizations specifically explored the juvenile court idea. The Illinois Conference of Charities' 1898 meeting gave impetus to its development. In his closing speech to the Conference, Frederick Wines articulated the point of view of participants in calling for juvenile court legislation.
We make criminals out of children who are not criminals by treating them as if they were criminals. That ought to be stopped. What we should have, in our system of criminal jurisprudence, is an entirely separate system of courts for children, in large cities, who commit offenses which would be criminal in adults. We ought to have a "children's court" in Chicago, and we ought to have a "children's judge," who should attend to no other business. We want some place of detention for those children other than a prison....No child ought to be tried unless he has a friend in court to look after his real interests. There should be someone there who has the confidence of the judge, and who can say to the court, "Will you allow me to make an investigation of this case? Will you allow me to make a suggestion to the court?"

(quoted in Platt, 1969:132)

The first juvenile court was established in Illinois in 1899 by "an act to regulate the treatment and control of dependent, neglected, and delinquent children." (Platt, 1969:133-134) The idea spread rapidly throughout the United States and throughout the world. By 1925, all states but Maine and Wyoming had established some type of special juvenile court, most modeled on the Illinois court. (Mennel, 1972:132) Maine set up a Juvenile Court in 1931 and Wyoming in 1945. (Mennel, 1972:132) In most respects, the Illinois Juvenile Court and those of other states incorporated most of the elements that would characterize the socialized juvenile court into the 1960's. 5 Faust and Brantingham (1979:14)

5 There is disagreement over whether Illinois had the first juvenile court. Massachusetts and New York laws of 1874 and 1892 respectively provided for separate proceedings for children, while Judge Lindsey claimed that Colorado's 1899 education law established the first juvenile court in the nation. (Platt, 1969:9) This illustrates that the juvenile court movement was not local, but national, in scope. It should also be noted that the Illinois Act as initially enacted did not fully implement the juvenile
summarize these characteristics (based on the Illinois law):

1. **Jurisdiction** — The juvenile court has jurisdiction not only over those accused of law or ordinance violations, but also over any juvenile (in Illinois, under 16 years of age) who is thought to be dependent, neglected, immoral, incorrigible, etc.

2. **Separation** — Separate judges are appointed to serve as juvenile court judges. Separate facilities, away from the adult court, are to be used for hearings involving juveniles.

3. **Noncriminal procedures** — Arrest warrants, indictments, pleas, rules of evidence, etc. are discarded in favor of civil summonses, petitions, and informal procedures.

4. **Probation** — The juvenile court has the authority to appoint probation officers to conduct investigations, make recommendations to the court, and supervise juveniles.

5. **Parens patriae** — The juvenile court should act as a parent rather than as a judge of guilt or innocence.

(In the Illinois law: "This act shall be liberally construed, to the end that its purposes may be car-

court idea. It contained elements of criminal procedure, provisions for notice of charges, jury trial of disputed facts, and jurisdiction only in cases of law violation. The Act was amended in 1901 and 1907 to bring it more in line with socialized justice, including provisions extending the court's jurisdiction to incorrigible, immoral, neglected, and other non-criminal juveniles. (Faust and Brantingham, 1979:14-15; Mennel, 1972:148)
ried out, to wit: that the care, trust, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents.

With the almost universal adoption of the juvenile court idea by the 1920's, the idea of socialized justice for juveniles was firmly in place. The components of systems, while not identical in all jurisdictions, generally include the following:

1. Entry into the system continued to be, for the most part, via contact with police. Ideally, however, there are specialized juvenile officers. In addition, considering that law violation is not the only basis for intervention, referrals from welfare agencies, schools, parents, etc. are appropriate.

2. Juvenile detention facilities rather than jails and police lock-ups serve as appropriate holding facilities for juveniles awaiting further processing. Under no circumstances are juveniles to be allowed contact with adult criminals by being held in adult facilities. Furthermore, detention is to be non-punitive (as it is in theory for adults also).

3. Probation officers are appointed to serve as intake agents screening juveniles for court processing or informal disposition, conduct social investigations for the court, make recommendations to the court, and
supervise juveniles placed on formal or informal probation.

4. The central component is the juvenile court itself with its separate facilities and personnel. Since its purpose is parental care and treatment rather than determination of guilt and appropriate punishment, it shall be constituted not as a trial court but as an investigative agency, determining appropriate rehabilitative programs and arranging for their provision.⁶

5. The juvenile correctional institutions developed in the nineteenth century continued to serve, along with probation, as the major dispositional options available to the court. Through such dispositions (and, ideally, a wide range of other alternatives) the juvenile was not to be punished, but provided with a treatment program tailored to his/her individual needs — educational, social, moral, psychological, etc. All such dispositions are to be determined within the principle that the family, preferably one's own if it is adequate, is the preferred treatment

⁶ Ideally, the court was to operate with a two-step hearing procedure. The first, the adjudicatory hearing, based on relevant and reliable evidence "to determine whether the youth...had done something or suffered under such conditions as to warrant some state intervention..." In the second step, the dispositional hearing, the court would act as a social agency examining anything which might be helpful in determining appropriate intervention. (Faust and Brantingham, 1979:19)
setting.

The general attitudinal orientation of the juvenile justice system was to be one of benevolent, solicitous care. In his history of "progressive" juvenile justice, Schlossman (1977) uses the term "love" to characterize this orientation. Several juvenile court judges similarly characterize their orientation in terms of the love of a father for his son. Chicago's Judge Tuthill observed in 1902,

I have always felt, and endeavored to act in each case, as if I would were it my own son who was before me in the library at home, charged with some misconduct. (quoted in Platt, 1969:144)

The editors of Survey similarly wrote in 1910, that the judge might occasionally "put his arm around [the child's] shoulder and draw the lad to him." (quoted in Platt, 1969:144) Judge Harvey Baker of the Boston Juvenile Court, in the same issue of Survey described the judge's role as analogous to that of a doctor treating his patient. "The officials of the court believe it is helpful to think of themselves as physicians in a dispensary." (Baker, 1979:147) Whether the socialized juvenile justice system is viewed as a loving parent or a caring physician, it is to act always, in the phrase used frequently throughout its history, "in the best interests of the child."
The Failure of Socialized Juvenile Justice

In much the same way as the perceived failures of juvenile justice reform of the nineteenth century paved the way for the juvenile court movement, so did the perceived failure of fully socialized juvenile justice pave the way for major reforms in the post-Gault era. Whatever other factors may have been involved in each reform in the history of American juvenile justice, each reform had its roots in the failure of previous reforms.

Socialized juvenile justice as fully defined with the emergence of the juvenile court was widely acclaimed throughout the country when it first appeared. The idea was embraced by state legislatures, legal scholars, appellate courts, social workers, and judges such as Tuthill, Mack, Lindsey, and Baker, as a humane, just, and effective approach to the problem of juvenile crime and misbehavior. The Illinois Juvenile Court Act was proclaimed as "the chief event of the year." One proponent claimed that it would "prove the dawn of a new era in our criminal history." (Platt, 1969:146) One New York Juvenile Court official concluded that,

Considering the slowness which changes in judicial procedures are brought about, the rapid extension of the children's court is extraordinary and bears witness to its social need and constructive worth.

There was in fact a general view that the idea held such promise as to be unopposable. "Only ignorance of what it re-
ally is could make anyone oppose the juvenile court." (quoted in Rothman, 1979:37) Frederick Howe predicted that as a result of the socialized juvenile court, "the budding crop of crime of the next decade will be largely diminished." (quoted in Mennel, 1972:133)

However, as Ryerson (1978:78) writes, "the ease with which the reformers secured acceptance of their promise gave no hint of the difficulty they would encounter in keeping it." She goes on to note,

The honeymoon of the juvenile court with the public was remarkably brief. With no more than a decade's experience behind it, the juvenile court became the subject of public investigation and newspaper campaigns.

Faust and Brantingham (1979:19) write that the court was subjected to a "thin stream of criticism from its very beginnings."

At the same time, it must be noted that the juvenile court and socialized juvenile justice had friends in high places, most notably, in appellate courts. The view expressed by the Supreme Court of Pennsylvania in Commonwealth v. Fisher, (in Faust and Brantingham, 1979:156-162) the first major constitutional challenge to the juvenile court, affirming the constitutionality (and the wisdom) Pennsylvania's Juvenile Court Act, remained without serious challenge until the U.S. Supreme Court's 1966 decision in Kent v. the United States. (U.S. Supreme Court, 1967) Furthermore, critics won few battles against the juvenile court prior to
the revision of California juvenile law in 1961 and similar revisions in New York in 1962. (Brantingham, 1979:259-269)

To what extent did the reforms of the juvenile court era represent genuine progress in the handling of deviant and victimized juveniles? As Empey (1979:293) points out, this requires that we ask both whether the reforms represented improvements over existing conditions and whether they were superior to other possible alternatives. We begin by reiterating the similarity of the concerns of the "child savers" at the turn of the century to their predecessors and use their criteria for judging the success of earlier efforts to judge the effectiveness of the system they helped to develop. Did the socialized justice that emerged with the juvenile court stem the apparently rising crime wave, end the practice of confining juveniles in jails, replace punishment and brutality with treatment, and address the problems of "predelinquent" and other troubled juveniles? The evidence, unfortunately, is fairly convincing that the early twentieth century reformers had at least as dismal a record as their predecessors.

While it is difficult to find reliable statistical data on juvenile crime rates, FBI and juvenile court statistics indicate a steadily rising level of juvenile crime despite the efforts of socialized juvenile justice. From the 1940's through the 1960's, official statistics indicate annual in-
creases every year with the exception of those years immediately following World War II to 1949. From 1957 to 1965, according to Children's Bureau statistics, the juvenile crime rate rose 58%. (Ryerson, 1978:146) Whatever the actual rates, there is no evidence to suggest that socialized juvenile justice did anything to curtail juvenile crime.

The practice of confining juveniles in adult facilities was a major concern of the juvenile court reformers as it was of their predecessors. The extent to which they succeeded ending that practice would then be one measure of their success. In her 1918 survey of juvenile courts for the U.S. Children's Bureau, Evelina Belden noted that few juvenile courts "had solved one of the problems that had most bothered juvenile court reformers -- the pretrial detention of children in jails where they mixed with adult offenders." [quoted in Ryerson, 1978:82] Similarly, Lemert (1970:92-94) in discussing the issues of most concern to California governor's conferences on delinquency in the 1940's and 50's, notes that the use of jails for detaining juveniles was routine, despite the fact that it was explicitly prohibited by law. According to Platt (1969:146), the situation in Illinois was the same -- that despite its prohibition, children continued to be placed in adult jails.

The continuation of punitive, and often brutal, "treatment" for juveniles, perhaps more than any other factor, is indicative of the failure of socialized juvenile justice.
Platt's (1969:146) statement with respect to Illinois seems applicable to most states.

The act...did little to change the quality of institutional life for delinquents, though it facilitated the means by which juvenile offenders could be "reached" and committed.

He goes on to describe some of the more brutal practices at the State Home for Delinquent Boys (the St. Charles School). They included whipping with a leather strap, use of manacles, boys being confined to the "hole" for up to 32 days, handcuffed to an iron pipe, without shoes, and with only boards on the floor to sleep on. (Platt, 1969:148-149) Fox (1970:1232-1233) writes that reform schools remained largely unchanged. He quotes Albert Deutsch to the effect that only the terminology had changed.

The disciplinary or punishment barracks -- sometimes these veritable cell blocks were more forbidding than adult prisons -- were known officially as "adjustment cottages," or "lost privileges cottages." Guards were "supervisors." Employees who were often little more than caretakers and custodians were called "cottage parents." Whips, paddles, blackjacks and straps were "tools of control." Isolation cells were "meditation rooms."...Catch-words of the trade -- "individualization of treatment," "rehabilitating the maladjusted" -- rolled easily off the tongues of many institutional officials who not only didn't put these principles into practice but didn't even understand their meaning.

As Rothman (1979:66) writes, "State training schools never did become places of education as opposed to places of punishment." The net result of juvenile court legislation, he claims, was to "supplement incarceration, not to substitute for it."
The failure of the institutions to "rehabilitate" and "educate" suggests that socialized juvenile justice failed in its efforts to prevent delinquency by intervention into the lives of "pre-delinquents." Juvenile court legislation had given juvenile courts extremely broad jurisdiction over delinquent, dependent, and neglected children. That the institutions to which such children were frequently committed were "heavily punitive and functioned much like adult prisons" (Fox, 1970:1234) without due process of law, that such institutions were widely viewed as schools of crime, that contact with the juvenile justice system stigmatized youth, and that the wide range of social services associated with socialized justice was largely nonexistent, suggest that the socialized juvenile justice system could only fail as a delinquency prevention agency.

There were numerous other aspects of socialized juvenile justice which were subjected to significant criticism which paved the way for Gault and post-Gault reform. Most of these are subsumed under one or more of the major lines of argument against socialized juvenile justice. Faust and Brantingham refer to them as (1) the Retributionists, (2) the Practicalists, and (3) the Constitutionalists.

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7 In the discussion of these positions, we rely heavily on Faust and Brantingham, *Juvenile Justice Philosophy* (1979: 19-25 and 139-146).
(1) **Retribution** — The retributionist argument (or, as Platt calls it, the "legal moralist" argument) was articulated by John Wigmore in 1926 and is similar to the "get tough on young criminals" arguments that have been popular in recent years. (Platt, 1973:152; Wigmore, 1979:170) While Wigmore claimed support for the juvenile court stating that he was "proud that Illinois invented it," he was clearly critical of the socialization of the court. According to his argument, socialized justice undermines the functions of criminal law which he defines as

1. Pronouncing and reaffirming moral law,
2. Threatening and thus deterring other possible offenders, and
3. Handling the individual offender so as to prevent repetition of his offense.

In failing to condemn juvenile crime, the socialized court undermines criminal law and, thus, the moral fabric of society. As Wigmore wrote,

> The courtroom is the only place in the community where the moral law is laid down to the people with the voice of authority. (1979:170)

While the retributionist argument did have some impact on subsequent reform, the practicalists and the constitutionalists had, by far, the greatest impact.

(2) **Practicality** — The disjunction between the theory and practice of socialized juvenile justice has long been a major concern of critics. Judges Julian Mack and Edward
Waite, while supporters of socialized juvenile justice, early warned of the potential for despotism inherent in the juvenile court. Mack (1979:106) warned against the possibility of the state failing to provide the services that justified its unfettered powers of intervention.

If a child must be taken away from its home, if for the natural parental care that of the state is substituted, a real school, not a prison in disguise, must be provided.

Implicit is the notion of a quid pro quo whereby the state promises care, education, etc. in exchange for procedural protections, due process. If these are empty promises, juvenile justice is nothing but despotism.

It appears that the promises of socialized justice were largely empty. A number of points have been raised. The punitive nature of the institutions has been discussed previously. Two additional components of the system require discussion -- probation departments and the courts themselves.

As previously noted, socialized juvenile justice ideally provides for a wide range of treatment alternatives tailored to individual needs. In fact, the only commonly available alternative to incarceration has been probation. The evidence suggests that not only have probation departments been unable to provide the wide range of alternatives and, perhaps should not be expected to, they have experienced difficulty even meeting minimal socialized justice functions of screening, social investigation, and supervision of probationers. Two points in particular stand out as most proble-
First, staffing seems always to have been a problem with probation officers "undertrained and overworked." (Rothman, 1979:66) In addition to their other responsibilities to the court, it is not apparently uncommon for probation officers to carry ongoing caseloads in excess of 100. Under such circumstances, it seems unlikely that the supervision and treatment offered and the investigations conducted can be much more than formalities. Secondly, the orientation of probation officers to their work has frequently been punitive and coercive rather than caring, helping, and so forth. Mennel (1972:143) quotes probation advocate Homer Folks who wrote, "Probation is a new kind of reformatory, without walls and without much coercion." However, as Mennel says,

Coercion lurked close to the surface. Probation officers emphasized the friendly aspect of visitation, but simultaneously they felt compelled to threaten the delinquent and his family. "When sterner treatment was demanded," said one officer, "the friendly adviser became the official representative of the court with the demand that certain conditions be observed or that the probationer be returned to the court."

The essence of probationary treatment is indicated as Mennel quotes Henry Thurston.

All right-minded people are willing to have boys and girls have chances to do the right thing, but after they persistently throw chances away the same people have a right to insist that these young people be really controlled, even if it takes a criminal court process to do it.

There are also indications that the ideals of socialized justice were also somewhat foreign to the courtroom. The
Lundberg and Lenroot survey of 1925, for example, "found that the atmosphere in the courtroom varied widely from the spirit reformers associated with that procedure; in almost half of these ten urban courts, they found that the conduct of hearings was 'quasi-criminal.'" A 1929 article claimed that the notion of juvenile courts as "separate and distinct from the spirit and practice of the criminal courts...with certain exceptions...[was] an observation at absolute variance with the facts." (quoted in Ryerson, 1978:94) Platt (1969:159) writes,

Informal procedures and confidentiality in juvenile court do not necessarily guard juveniles against "degradation ceremonies." The juvenile court, despite any intentions to sympathize with juvenile problems, is structurally organized to make judgements about positive and negative social behavior.

Judge Lindsey observed in 1914, "There is often a very real deprivation of liberty, nor is that fact changed by refusing to call it punishment or the good of the child is stated to be the object." The President's Commission on Law Enforcement and the Administration of Justice noting findings of the 1920 Children's Bureau survey which found juvenile courts falling far short of the ideals of socialized justice reported,

A similar survey conducted by the Children's Bureau and this Commission in 1966 revealed significant gaps still existing between the ideal and actual court structures, practices, and personnel. (quoted in Faust and Brantingham, 1979:141)
(3) **Constitutionality** -- The constitutionalist argument had by far the greatest impact on socialized juvenile justice. It should, however, be noted that their arguments were premised on the disjunction between theory and practice discussed above. Had the socialized juvenile justice system been genuinely non-punitive, non-coercive, and actually a provider of services for troubled youth, it is difficult to envision constitutionalist objections to it. The core of the constitutionalist criticism was that, despite the benevolent rhetoric, the juvenile justice process was indeed a coercive, punitive, stigmatizing process. Its functions are not very different from those of the criminal court. Juvenile courts, they argued, are in fact bona fide courts of law, "invested with the authority and coercive power of the state." (Faust and Brantingham, 1979:139) From the beginning, constitutionalists argued that the socialized juvenile court stigmatized adolescents as 'delinquents' and incarcerated them in institutions that could not be distinguished in practice from adult prisons. In so doing, the juvenile court performed as a criminal court, but did so without giving juveniles any measure of procedural protection -- the protection of 'due process of law' guaranteed by the United States Constitution. (Faust and Brantingham, 1979:20)

For many years, the appellate courts accepted the myth of socialized juvenile justice. One of the earliest constitutional challenges to the juvenile court was the case of *Commonwealth v. Fisher* (in Faust and Brantingham, 1979:156-162)
The appellant argued that, among other things, the Pennsylvania Juvenile Court Act was unconstitutional in that it provided unequal treatment, different punishments for the same offense on the basis of age, that it denied due process of law, that it denied his constitutional right to a jury trial, and so forth. In rejecting these arguments, the Supreme Court of Pennsylvania endorsed the juvenile court idea while noting that the appellant falsely assumed "that the proceedings of the act of 1903 are of a criminal nature for the punishment of offenders for crimes committed, and that the appellant was so punished." (in Faust and Brantingham, 1979:159) The Court argued that the juvenile court was, in fact, "not for the punishment of offenders but for the salvation of children..." (in Faust and Brantingham, 1979:157)

In 1946, Paul Tappan led the constitutionalists in arguing that the Constitution required certain procedures to be followed in juvenile court, among them, notice of specific charges, adjudication on the basis of evidence, the right to counsel, the right to cross-examination, and the right to appeal. (1979) By the 1960's, the constitutionalists arguments began to have an impact of the system beginning with revisions of California and New York juvenile codes in the early 60's. (Brantingham, 1979) In 1967, the President's Commission on Law Enforcement and the Administration of Justice called for an end to the socialized juvenile justice system which it considered a failure. The Commission recom-
mended that it be replaced with a social service referral system to handle minor cases and a junior criminal court to handle serious ones. (Faust and Brantingham, 1979:146) The Commission agreed essentially with the constitutionalists that "the juvenile justice system was motivated by the same purposes that characterized the adult criminal justice system -- retribution, condemnation, deterrence, and incapacitation." (Faust and Brantingham, 1979:21)

At about the same time, the U.S. Supreme Court entered the fray, largely on the side of the constitutionalists. In 1967, the Court issued its historic decision in the case of In Re Gault (1968) in which they recognized that the juvenile justice system, despite the benevolent rhetoric of socialized justice, was essentially a criminal justice system for juveniles and, as such, must operate within the constitutional requirements of due process of law. Justice Fortas wrote for the majority.

A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. (1968:1448)

In agreement with the constitutionalists, Fortas wrote,

The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional hours...." Instead of mothers and fathers and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.
In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court." (1968:1443-4)

The Court specifically required that the following constitutional rights be protected and procedures followed:

1. Notice of charges be given.
2. Right to cross-examination.
3. Privilege against self-incrimination.
4. Right to counsel when liberty is at stake.
5. Right to a transcript of the proceedings.
6. Right to appeal.

In 1970, the Court "fully recognized the criminal court qualities of juvenile justice" when it found in In Re Winship "that, where a 12-year-old boy is charged with an act of stealing which renders him liable to confinement for as long as six years, then, as a matter of due process,...the case against him must be proved beyond a reasonable doubt." (1971:1075)

It was, presumably, the beginning of the end for socialized juvenile justice as the states began to revise their juvenile codes to bring them in line with the Constitutional requirements mandated by the Supreme Court. The failure of previous "radical" reforms, however, inevitably leads to skepticism with respect to the kind of "juvenile justice" that is emerging in the post-Gault era. As Fox (1970:1235) writes, "Procedural revolution in the juvenile courts
may well be the most recent myth of juvenile justice reform."

**Historical Failure and the Emergence of Post-Gault Reform**

**The Ideals of Post-Gault Reform**

Along with the procedural reforms in the juvenile court process mandated by the U.S. Supreme Court, a number of other concerns, all rooted in specific failures of socialized juvenile justice, emerged as central issues of post-Gault reform of juvenile codes. These are perhaps best summarized by Empey (1979:292) as "the four D's:"

1. **Due Process**: The application of constitutionally guaranteed procedural safeguards in the judicial processing of juveniles, most especially the provision for legal representation in all cases.

2. **Decriminalization**: The juvenile justice process should be concerned with juveniles who violate criminal law. Offenses should be specific. Juveniles should not be punished more severely than adults and should not be punished for offenses which are not criminal for adults. Status offenses and neglect should be handled nonjudicially.
3. **Diversion:** Recognizing the negative effects of juvenile justice processing, particularly the stigma attached to it, juveniles should be diverted away from the juvenile justice system whenever possible, particularly in the cases of first offenders and/or those charged with relatively minor offenses.

4. **Deinstitutionalization:** Juvenile offenders must always receive the least restrictive alternative possible in a particular case. Recognizing the apparent inability of institutions to reform and the unnatural environment of institutions, juveniles should be treated whenever possible in the community, preferably while residing at home. Consideration should be given to the complete elimination of reform school type institutions. Furthermore, there should be a strict prohibition of the practice of confining juveniles in jails or other adult facilities. Where detention is necessary for the protection of the juvenile or the community, it should be in a special juvenile detention facility.

Post-Gault reformers by and large have envisioned a juvenile justice system that offers the procedural protections of the criminal justice system as well the solicitous care of socialized justice, the "best of both worlds," rather than what Justice Fortas called the "worst of both worlds." (U.S. Supreme Court, 1967:1054) Whether such a system has
emerged and whether it is just and effective seem to depend in part on the extent to which post-Gault reformers managed to avoid the pitfalls of their predecessors.
Chapter III

THE EMERGENCE OF POST-GAULT REFORM IN MAINE

In order to understand and assess juvenile justice reform in Maine in the 1970's, it is necessary to understand the evolution of juvenile justice in the state, the post-Gault reform process in Maine, and the principles, goals, and ideals which the reformers hoped to incorporate into Maine's juvenile justice system. To these ends, this chapter presents an overview of pre-reform juvenile justice in Maine, including an historical sketch of juvenile law up to the time of enactment of the new Juvenile Code. The history of the reform process itself is also outlined. This will provide some basis for understanding the nature of the reform. More importantly, through an examination of the documents which comprise this history, it will be possible to ascertain the ideals which informed the reform process and which constitute an important basis on which its success can be judged.

Historical Overview

The history of juvenile justice in the State of Maine does not differ substantially from the general history of juvenile justice in America as described in the previous chap-
ter. Maine was, however, one of the last states to establish a juvenile court, not doing so until the enactment of "An Act to Extend the Jurisdiction of Municipal Courts in Certain Cases" in 1931. (Maine Legislature, 1931:273-274) Prior to 1931, the law did not distinguish between juveniles over seven years of age and adults. The decision of the Law Court in Wade v. Warden of State Prison (Maine Supreme Court, 1950:128) summarizes pre-juvenile court law as it relates to juveniles.

At the common law, the same court had jurisdiction over juvenile offenders that had jurisdiction over those of mature years. Children under seven years of age were conclusively presumed to lack mental capacity to commit a crime. In the case of felonies, if the child was over seven years, he could be proceeded against by complaint and warrant before a magistrate, and if the magistrate found that a crime had been committed, and that there was probable cause that the infant was guilty, he could be held for the grand jury; or a prosecution could be instituted before the grand jury without going before the magistrate in the first instance. Such was the law in Maine until the year 1931.

While juveniles in Maine prior to 1931 were subject to the same criminal justice system as were adults, it should be noted that in practice juveniles did not always receive such treatment. As with most other states, Maine has had special reformatories for juveniles since the mid-nineteenth century. So it must be assumed that juveniles were frequently sentenced to these institutions rather than to adult facilities. Furthermore, it can be assumed that juveniles were sometimes dealt with more leniently by the criminal justice system than their adult counterparts. This has been charac-
teristic of juvenile justice generally prior to the establishment of special juvenile justice systems.

The Act of 1931, brief as it is, includes several of the key elements of the "socialized juvenile court". First, though not specifically referred to as such, in granting "exclusive original jurisdiction" to the municipal court "over all offenses committed by children under the age of fifteen years," a juvenile court is established, although in Maine it was the municipal court functioning as such. Further, the Act specified that adjudication or judgement under such proceedings does not constitute a criminal conviction. The secrecy provisions common to most juvenile court laws are similarly present in the Act of 1931, in that the general public is excluded from all proceedings, only persons having a "direct interest in the case" being admitted and all records of the municipal court in such cases are closed to the public except by permission of the court. That the primary function of the municipal court in juvenile cases is rehabilitative is implicit both in the provision that describes proceedings as non-criminal and in the provisions regarding dispositions available to the court. The judge is authorized by the law to appoint special probation officers in juvenile cases to "promote the interests of all concerned." The court is authorized to place juveniles "under

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It should also be noted that consistent with the general history of juvenile justice in the United States, little provision was made for resources to carry out the functions of probation. The law requires the reimbursement of
the supervision, care and control" of probation officers, agents of the state board of children's guardians, to place the juvenile in a "suitable family home" subject to supervision by probation or the state board, may commit the juvenile directly to the state board, may make any other disposition that seems "best for the interests of the child and for the protection of the community including commitment of such child to the state school for boys or state school for girls." This rehabilitative ideal is further implicit in a provision governing exceptions to the provision that municipal court judgments shall not be deemed criminal convictions. This provision "shall not apply to sentences under paragraph two of section four hereof." The paragraph in question appears to allow for the treatment of juveniles as "criminals" in certain cases.

Unless the offense is aggravated or the child is of a vicious or unruly disposition no court shall sentence or commit a child to jail, reformatory, or prison, or hold such child for the grand jury.

There are, of course, a number of major differences between Maine's first juvenile court law and early juvenile court legislation in other jurisdictions, the Illinois Juvenile Court Law, for example. Most noteworthy is the failure of the Law of 1931 to specify what constitutes a juvenile offense which falls within the jurisdiction of the court. One must assume that such offenses were acts in violation of the such officers for "actual expenses incurred in the performance of their duties." Implied is that these probation officers are volunteers.
State's criminal statutes. Thus, it appears that under Maine's earliest juvenile court statute, definitions of juvenile only offenses were not part of the law.

From the time of the 1931 legislation to the enactment of the new Juvenile Code in 1977, numerous changes were made in juvenile justice in the State. By 1943, for example, the upper age limit for juvenile jurisdiction of the municipal courts had been raised to 17 years. The 1943 "Act Relating to Jurisdiction of Municipal Courts in Criminal and Juvenile Cases" renames the Municipal Court in juvenile cases the "juvenile court." (Maine Legislature, 1943:397) It further refines the wording of the original legislation such that adjudication or judgements in juvenile cases "shall be that the child was guilty of juvenile delinquency and no such adjudication or judgement shall be deemed to constitute a conviction for crime." Perhaps, the most significant change is with regard to the limitations on "original and exclusive jurisdiction" of the juvenile courts in such cases. Whereas the 1931 legislation had relatively loose language allowing for criminal processing of juveniles whose offense was "aggravated" or who were "of a vicious or unruly disposition," the 1943 changes allow such proceedings against a juvenile only if the offense is "a capital, or otherwise infamous crime." (Maine Legislature, 1931:273-4) The 1944 Revised Statutes of the State of Maine reflect these changes. (Maine Legislature, 1944:1912-14) In 1947, the Legislature further
expanded the jurisdiction of the municipal court in initiating criminal proceedings against juveniles changing the wording from "capital or otherwise infamous crime" to crime the punishment for which may be imprisonment for life or any term of years." (Maine Legislature, 1947:420-21) According to the decision in Wade v. Warden of State Prison (Maine Supreme Court, 1950:120-169), the effect of the law up until this time was to prevent any juvenile being accused of a felony from being processed by the juvenile court. The 1931 legislation, while generally more vague than subsequent law, appears to have allowed criminal proceedings against juveniles in certain cases; the 1943 legislation required it in all felonies due to the interpretation of "infamous". The 1947 law more or less restored the broad jurisdiction originally enjoyed by the juvenile court in the 1931 legislation.

The decision in Wade further illuminates the nature of juvenile law in Maine up to that time in stressing the rehabilitative functions of the juvenile court. The following paragraph from the decision expresses the socialized juvenile justice philosophy in a nutshell.

The purpose of juvenile courts, and laws relating to juvenile delinquency, is to carry out a modern method of dealing with youthful offenders, so that there may be no criminal record against immature youth to cause detrimental local gossip and future handicaps because of childhood errors and indiscretions, and also that the child who is not inclined to follow legal and moral patterns, may be guided or reformed to become, in his mature years, a useful citizen.
The above calls into question the extent to which vaguely worded status offenses were in fact matters of juvenile court jurisdiction. The laws do not specify what "offenses" are involved. In the 1944 Statutes, the jurisdiction of the municipal court is said to be over "all crimes and offenses including violations of any statute, or by-law of a town, village corporation, or local health officer, or breaches of the peace...." (Maine Legislature, 1944:1912) Presumably, these are the offenses to which the following paragraph of Chapter 133 on juvenile courts refers. Presumably, the reference to "moral patterns" in Wade implies that immorality and related states and behaviors were among the offenses included in the jurisdiction of the juvenile court.

In 1959, the Legislature passed "An Act Relating to Juvenile Offenders." The passage of this statute represented major refinement of juvenile justice in Maine and remained largely unchanged until the enactment of the Maine Juvenile Code in 1977. Most significant among the refinements were the greater specificity and comprehensiveness of the juvenile law. Where the pre-1950's versions of the law were generally two or three pages in length, by the time of the 1977 reform, juvenile law had grown to about twenty-five pages. There were specific sections including provisions on

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9 A significant change in the Juvenile Law was enacted in 1973, prohibiting the commitment of a juvenile to a correctional institution for an act which was not an offense under criminal statutes, thereby greatly curtailing the jurisdiction of the juvenile court over status offenses.
purpose of the law, definitions, mentally ill juveniles, jurisdiction, offenses, bind-over proceedings, custody, appeals, disposition, to name but a few. Clearly, the development was in a direction which removed a great deal of the vagueness that had characterized the juvenile justice system in Maine previously. This is not to say that it approximated a criminal code more closely than it did a "socialized" juvenile code. It was in the final analysis a clearer and more consistent and more concise statement of the socialized philosophy. While far more detailed than what had preceded it, the details themselves outlined the essential components of this philosophy.

The Juvenile Offenders Act

Juvenile justice in Maine at the time of the reform was based largely on the Juvenile Offenders Act. (Maine Legislature, 1965) This Act, consequently, was a central object of reform and is a baseline against which the extent of statutory change can be measured.¹⁰

The purposes of Maine's "Juvenile Offenders" statutes prior to the new Code are summarized as follows:

¹⁰ This discussion is based partly on original analysis of the Juvenile Offenders Act and partly on the analysis of the Act provided by Arthur Bolton Associates, consultants to the Commission to Revise the Statutes Relating to Juveniles, in their Report on Task 3: Statutes of Maine's Juvenile Justice System. (1976c)
The care, custody and discipline of said juveniles shall approximate as nearly as possible that which they should receive from their parents or custodians; and

That as far as practicable, they shall be treated, not as criminals, but as young persons in need of aid, encouragement and guidance.

That no juvenile shall be placed or detained in any prison or jail or detained or transported in association with any criminal, vicious or dissolute person, unless and until such juvenile becomes subject...to proceedings which are criminal in nature....

The major elements of the prevailing juvenile justice philosophy are contained in this statement of purposes. The parens patriae role of the juvenile court is emphatically stated. The notion that these are not criminal proceedings and, thus, the implication that due process and formality are not required, is equally clear. The insistence on separate treatment of juveniles, keeping them from the contaminating influence of adult criminals and other "dissolute" persons is similarly emphasized. Maine's juvenile law obviously is viewed as a mechanism for the rehabilitation of unfortunates rather than for the punishment of criminals.

The provisions of the law which immediately follow, however, represent something less than a pure application of the socialized philosophy. Rather, they represent an application of that philosophy as gradually eroded by concerns such as those of the "reformers". The fact that there was some degree of procedural consideration should not, however, be taken as a negation of the socialized philosophy. As
seen in previous chapters, no juvenile justice system was completely without procedure, but rather a procedural relative to criminal justice systems.

With respect to jurisdiction, the District Court as Juvenile Court had "exclusive, original jurisdiction" over all offenses of juveniles (with the exception of traffic and ordinance violations which are misdemeanors) and over a range of behaviors generally considered "status offenses". These included:

1. Habitual truancy;
2. behaving in an incorrigible or indecent and lascivious manner;
3. knowingly and willfully associating with vicious, criminal or grossly immoral people;
4. repeatedly deserting one's home without just cause;
5. living in circumstances of manifest danger of falling into habits of vice or immorality. (1965:522)

The Post-Gault Reform Process

The process which culminated in the new Juvenile Code of 1977 was an extensive one which encompassed the entire decade of the 1970's. The reform process itself can be viewed in terms of four major phases.

In the first half of the decade, there was a series of studies which made major reform recommendations directly or
indirectly related to Maine's system of juvenile justice. These include the Comprehensive Juvenile Delinquency Study conducted by the University of Maine Cooperative Extension Service (1971) under the auspices of the Maine Law Enforcement Planning and Assistance Agency; a study of Maine's correctional system conducted by the Iowa consulting firm, Batten, Batten, Hudson, and Swab (1972), commissioned by the Maine Bureau of Corrections; the work of the Governor's Task Force on Corrections and its report, In the Public Interest (1974); and the work of the Governor's Commission on Children and Youth and its report, Children and Youth Caught in the Crunch (c1973).

The second phase is marked by the work of the Commission to Revise the Statutes Relating to Juveniles. (Maine Legislature, 1975) At about the same time, the Children's and Youth Services Planning Project was studying aspects of juvenile justice in Maine. (1977)

The third phase is the Legislative process in which the recommendations of the Commission were examined by the Legislature, debated, amended, and a new Juvenile Code enacted.

The fourth phase of the process is represented by various efforts at evaluation of the new Code, particularly the efforts of the legislatively appointed Committee to Monitor the Implementation of the New Juvenile Code which continued its work well into 1982.
Early Studies

The Comprehensive Delinquency Study. The first major effort at examining Maine's juvenile justice system was a study commissioned by the Maine Law Enforcement Planning and Assistance Agency (Maine L.E.A.A. conduit) in 1970. The study was conducted by the Cooperative Extension Service of the University of Maine at Orono. Federal funding of projects under the Juvenile Delinquency Prevention and Control Act of 1968 was contingent on such a study. The Comprehensive Juvenile Delinquency Study was designed to review Maine's juvenile justice system with a view toward making recommendations with respect to the prevention and control of delinquency in Maine. According to its Final Report, it attempted to provide an overview of delinquency in Maine, a "philosophical construct" for prevention and control, an evaluation of available resources, and recommendations for prevention and control of delinquency.

If a single theme can be said to dominate the study, it is that delinquency has its origins not exclusively within the individual, but in the relations among the individual, the community, and social institutions. Thus, attempts to prevent and control delinquency must be directed beyond the individual to the community and its institutions. Individual treatment alone is not the answer. The Final Report goes
so far as to suggest that the community is "neurotic" in its reactions to juveniles and requires therapy.

The Final Report contains more than a hundred recommendations, most rather specific proposals for increasing the effectiveness of particular components of the existing juvenile justice system. Many of these involve recommendations for increased personnel and increased training in law enforcement, probation, education, recreation, and so forth. Others involve the expansion of existing services, such as greater access of juveniles to community mental health services, vocational training, recreational programs, educational counselling, and psychiatric treatment at the State's juvenile correctional institutions (Stevens School and Boy's Training Center). Other recommendations, however, imply some fundamental reform of the system. Among these are recommendations which emphasize the role of the community in the generation of delinquency and, consequently, in its prevention and control. A number of recommendations suggest non-punitive treatment by appropriate experts of problems that are primarily medical or psychological rather than criminal. Drug and alcohol treatment, for example, might better be left to medical professionals. Truancy, likewise, should be dealt with by the schools rather than law enforcement. Several proposals aim at what might be called greater

11 The Stevens School is now closed and the Boy's Training Center is a coeducational institution now referred to as the Maine Youth Center.
rationalization of the juvenile justice system through measures which would provide greater coordination of existing and future resources such as a Department of Youth Affairs and a Governor's Juvenile Delinquency Advisory Committee. Also in this category are those recommendations which call for greater evaluation and planning capacities and uniform, comprehensive record keeping. These are themes which appear repeatedly in subsequent reports of juvenile justice in Maine during the 1970's.

Comprehensive Correctional Study. In 1971, with funding from the Maine Criminal Justice Planning and Assistance Agency, the Bureau of Corrections contracted with the Iowa consulting firm of Batten, Batten, Hudson, and Swab, for a comprehensive study of corrections in the state, including juvenile corrections, and the development of a proposal for an improved system. For the most part, the Comprehensive Correctional Study, like the Comprehensive Juvenile Delinquency Study which preceded it, submitted recommendations which called for improvements in the existing system of juvenile corrections rather than a fundamental change of the system. Batten in its recommendations on juvenile corrections seems to have relied heavily on the work done in the previous study.

There are, nevertheless, a number of themes in the Comprehensive Correctional Study which could imply significant
change in juvenile justice if fully implemented. First, the study recommends a move toward community-based corrections. Juvenile corrections and juvenile justice should be redirected to local communities by giving town and county government greater responsibility and authority and by providing the support necessary to the development of appropriate community programs. Similarly, correctional facilities would be brought closer to the local community by locating such centers (and sub-centers) throughout the state and by making juvenile correctional institutions more similar to the community through such "normalizing" measures as making them "coeducational." Secondly, a move toward deinstitutionalization is suggested in the recommendation that the number of youths for whom institutionalization is necessary be decreased by expanding half-way house and group home facilities, foster care, and emergency foster care, and through the establishment of a volunteer counselor program. Finally, the Study focuses on the problem of juvenile justice system's lack of information. Improved and uniform reporting and better collection and use of data are discussed in some detail.

Very few statutory changes were deemed necessary. Among them was a suggestion that the Juvenile Offenders Act be made clearer in distinguishing between delinquents and wayward or unruly juveniles. It is further suggested that the Act be amended to allow greater flexibility in rehabilitat-
ing juveniles by committing them to the Bureau of Corrections rather than to a specific institution. Finally, it is suggested that the pre-sentence investigations be made mandatory. So few recommendations for statutory change indicate that radical change in Maine's juvenile justice system was clearly not contemplated by the authors of the Comprehensive Correctional Study.

The Governor's Task Force on Corrections. By far the most competent and comprehensive of the early studies of juvenile justice in Maine was conducted by the Governor's Task Force on Corrections in 1973. Its analysis and recommendations are set forth in its final report, In the Public Interest. The report is noteworthy for its attempt to come to grips with the major issues in post-Gault juvenile justice reform and its familiarity with these issues as discussed nationally. It does not rely on the thinking of participants in the Maine juvenile justice system to as great an extent as do the previous studies and thus must be considered more objective. The system of juvenile justice in Maine envisioned by the Task Force is in many respects a radical departure from the existing system. There is little in subsequent studies and proposals that is not found in some form in In the Public Interest.

The Task Force argues essentially that the present system of juvenile justice (and, also, criminal justice) has failed
to accomplish its stated purposes in nearly every important respect. At best, it represents an imprudent and inefficient use of taxpayers' money. Although like previous reports, the Task Force recommendations are for the most part rather specific proposals for changing particular aspects of the juvenile justice system, they clearly embody the post-Gault reform philosophy. That philosophy is made explicit in the introduction to the report. It is consistent with the four reform principles outlined by Empey (1979:292): due process, decriminalization, deinstitutionalization, and diversion. The system must be fair, must be perceived as fair, and must be rehabilitative rather than punitive in practice as well as in theory. The Task Force report also clearly indicates its belief in the inherent limits of the juvenile justice system as a means of preventing and controlling delinquency and misbehavior. These problems, the Task Force suggests, originate in the organization of society rather than within the individual, or even the family. Thus, while juvenile justice reform is essential, it cannot be expected to solve the problems. Only a reorganization of society can accomplish that.

The proposals of the Task Force are geared toward the elimination of those aspects of the juvenile justice system which generate delinquency and toward measures which promise to mitigate some of the criminogenic consequences of socioeconomic inequality. Its detailed proposal for the estab-
lishment of Youth Services Bureaus, for example, serves both objectives. Such agencies, by providing necessary services to juveniles needing them would alleviate problems which might otherwise result in delinquency or continued delinquency. By insisting that such agencies be outside of the official juvenile justice system and by insisting that their services be accessible to all needing them (not just delinquent youth), the stigma of juvenile justice processing and the "delinquent" label which often exacerbate delinquent tendencies would thereby be avoided.

The Governor's Committee on Children and Youth. Working simultaneously with the Governor's Task Force, the Governor's Committee on Children and Youth, appointed in January of 1973, conducted a more general review of programs for children and youth and was asked to identify unmet needs and suggest methods to meet such needs. The central theme of its report, Children and Youth Caught in the Crunch, is one which is echoed in the studies which deal more specifically with juvenile justice, that resources to meet the needs of juveniles are woefully inadequate. In submitting its report to the Governor, the Committee wrote,

If we do not begin investing our money in preventive programs early in our children's lives, we surely will be spending increasing amounts to try to correct the problems which have been caused as a result of our neglect. (1973:i)
The Committee did no independent research, but relied on information provided by departments and agencies involved in serving children and youth. They also note that numerous studies have been conducted previously and that these were used in formulating their own recommendations. Their conclusions and recommendations relevant to juvenile justice reform include the following:

1. That youth services are fragmented, uncoordinated, inadequate, and inequitably distributed.

2. That the family and the community are more appropriate environments for the provision of services; institutional facilities are not the answer.

3. Youth should have a voice in policies that affect them.

4. The coercion of the juvenile justice system is an inappropriate and ineffective response to many of the problems that presently fall within its jurisdiction. Truancy, for example, is an educational problem and ought to be dealt with by the educational system.

5. Due process of law ought to be guaranteed to juveniles when they come under the jurisdiction of the juvenile court.

6. Prevention must replace crisis intervention as the dominant orientation of the system of youth services (and juvenile justice).
These studies conducted in the early 1970's set the agenda for post-Gault reform in Maine. While few of the recommendations made in the various reports required statutory change for their implementation, taken together, they set in motion a major revamping of the juvenile justice system. The criticisms of juvenile justice implied in these reports suggested that juvenile law, its general philosophy as well as its specific provisions, required serious reexamination. In 1975, the Legislature passed "An Act to Create a Commission to Revise the Statutes Relating to Juveniles," and the reform process began in earnest. (Maine Legislature, 1975)

Commission to Revise the Statutes

Maine's Legislature, in establishing the Commission to Revise the Statutes Relating to Juveniles, clearly intended the work of such Commission to focus on juvenile crime and misbehavior. On the other hand, its mandate to the Commission was a broad one involving a review of all relevant statutes, not strictly those governing the juvenile justice system and constituting the Juvenile Offenders Act. The Legislature directed that:

The Commission shall give particular weight to the needs and resources of the State of Maine and its various agencies and institutions dealing with juveniles through the areas of education, community based corrections, institutional corrections, policing agencies, and the court system.
The Commission was also given a mandate to incorporate into its proposed Juvenile Code whatever it deemed appropriate. It was not limited to a redefinition of juvenile court procedure.

The proposed code may, without limitation, incorporate all necessary repeaters, amendments, and modifications of existing laws as, in the judgment of the Commission, are necessary and appropriate to accomplish the Commission's purposes.

The Commission was composed largely of individuals involved in some aspect of juvenile justice in the state including a judge, an attorney, a district attorney, legislators, counselors, law enforcement officials, educators, a child psychiatrist, and the superintendent of the Maine Youth Center. In addition, the Commission worked closely with officials involved in juvenile justice. They met with juvenile court judges and maintained frequent contact with the Commissioners of the Departments of Mental Health and Corrections, Human Services, and Educational and Cultural Services. They also consulted members of other task forces, committees, and projects in related areas.\footnote{The extent of activity related to reform in criminal and juvenile justice and related areas is indicated by the number of independent task forces, committees, and projects mentioned by the Commission. Included are: the Children and Youth Services Planning Project, the Criminal Law Advisory Committee Project on Standards and Goals of Maine's Criminal Justice System, the Correctional Economics Project, the Child Abuse and Neglect Task Force of the Maine Human Services Council, the United Way Substitute Care Task Force, and the Community Justice Project.} The Commission staff conducted reviews of the goals, statutes, and regulations of Maine's juvenile justice system. The Commission
held public hearings, formulated proposed goals for the juvenile justice system, and drafted a new Juvenile Code for submission to the Legislature. (1977a)

The Commission's philosophy is summarized in their Final Report:

The Commission's recommendations are intended to implement its basic philosophy that —

1. youth who are accused of criminal behavior should be treated by the justice system in a manner that clearly acknowledges the gravity of their crime and that adequately protects the public and the accused; and

2. children who do not commit criminal offenses but who are "incorrigible," truant from school or run away from home should not be referred to juvenile courts but rather should be served by the social and educational agencies better equipped to deal with their behavior than are courts of law. (Commission, 1977a:9)

The Commission's proposed code would require that juveniles who commit acts which would be felonies for adults be treated as in almost all respects as if they were adults. Juveniles who commit acts which would be misdemeanors for adults or acts which are "juvenile crimes" (e.g. prostitution, or marijuana or alcohol possession) would be handled in some respects as if they were adults. For example, a hearing on a petition alleging a felony would be open to the public, but would not be heard by a jury. A hearing on a misdemeanor offense or a "juvenile crime", on the other hand, would not be open to the public. Furthermore, a wider range of dispositions would be available to the court in ju-
In both felony and misdemeanor cases, however, juveniles would be accorded most of the due process rights traditionally accorded to adults in criminal proceedings. The proposed code would also decriminalize most of the "status offenses" that had previously been grounds for juvenile court jurisdiction. Instead, such behavior would be grounds for the provision of services from appropriate agencies. Finally, the proposed code would allow juvenile courts greater discretion in waiving its jurisdiction so that in appropriate cases, juveniles may be tried in adult criminal courts.

Legislation

Although the significance of the various studies, reports, and recommendations which preceded the introduction of L.D. 1581 into the 108th Legislature is considerable, the ultimate responsibility for reform of juvenile justice in the State of Maine clearly rested with the legislative and executive branches of state government. The Legislature alone (with the consent of the Governor) had the authority to enact the proposed code, to amend it, to repeal existing statutes, and to authorize the expenditure of resources necessary to carry out its purposes.

The Code which finally emerged from the Legislature was in many respects similar to that proposed by the Commission
to Revise the Statutes. There are, however, a number of significant differences which must be noted. First, the Legislature eliminated some of the specific provisions requiring due process outside of the juvenile court hearing. Secondly, although the Legislature accepted Commission recommendations that "status offenses" be decriminalized, they eliminated sections which outline state responsibility for addressing problems implied by such behavior. Thirdly, where the Commission mandated the provision of various services, the Legislature made such services contingent on available resources. In general, however, much of the Code proposed by the Commission was enacted by the Legislature without change.

Recognizing the possibility of unanticipated consequences and bureaucratic resistance, the Legislature also enacted legislation establishing the Committee to Monitor the Implementation of the Juvenile Code. The work of this Committee and of unofficial monitoring efforts constitutes the final phase in the evolution of post-Gault juvenile justice reform in Maine.

Monitoring the New Code

There were two major efforts at monitoring and evaluating the new Juvenile Code. The first was the work of the United Way Juvenile Code Committee which issued an in depth evalua-
tion of the new Code, *The New Juvenile Code: Its First Three Months in Cumberland County*, in November, 1978. The second was the work of the Committee to Monitor the Implementation of the New Juvenile Code which spent several years reviewing the implementation of the Code and making recommendations for revisions to the Legislature. The Committee went out of existence in 1982 without issuing a final report.  

Thus, the process of reforming Maine's juvenile justice system in the post-Gault era was a long and complex one. What remains to be done is to assess the results of that process. Do the results represent genuine reform? Did the process result in a just and effective system of juvenile justice? To answer these questions, it is first necessary to ascertain the ideals thought to constitute genuine juvenile justice in the post-Gault era.

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13 Efforts to monitor/evaluate the new Juvenile Code will be discussed in some detail in the final two chapters.
Chapter IV
THE FAIRNESS IDEAL AND THE NEW CODE

The constitutionalist revision of juvenile justice represented by Gault and related decisions of the U.S. Supreme Court was motivated in large part by the criticism that juveniles were not treated fairly by the State in juvenile justice proceedings. Fairness in constitutional terms is equated with "due process of law." Although the Supreme Court decisions focused on the standard of fairness appropriate to formal juvenile court processing, fairness in juvenile justice encompasses a great deal more. There is in the various studies of Maine's juvenile justice system some recognition that the ideal of fairness must go beyond mere adherence to specifically mandated constitutional requirements in adjudication proceedings.

Fairness in Pre-reform Juvenile Law

Juvenile justice in Maine prior to post-Gault reform varied from time to time with respect to the ideal of fairness. As indicated in the previous chapter, prior to 1931, juveniles in Maine were subject to the same criminal justice process as were adults and, presumably, were entitled to the same
constitutional protections against arbitrariness. With the establishment of a rehabilitative juvenile court, these protections were severely curtailed on the grounds that juvenile proceedings were not adversary criminal proceedings and that the aim of the juvenile court was not the punishment of wrongdoers, but the salvation of children. Despite the numerous changes in Maine juvenile law over the years, there was no provision for procedural safeguards until the enactment of the Juvenile Offenders Act of 1959.

The Juvenile Offenders Act as amended was the law in effect during the 1970's when the various reform recommendations were issued. As noted by the Commission to Revise the Statutes Relating to Juveniles, the Juvenile Offenders Act provided for some, but not all, of the due process requirements mandated by the U.S. Supreme Court. (1976a:9) There are a number of the provisions of the Juvenile Offenders Act that are relevant to the specific Supreme Court requirements and the ideal of fairness more generally. The Act represents considerable improvement in procedural regularity over previous juvenile law in that there is greater precision and specificity in definition of terms, some degree of definition of minimal procedures to be followed in juvenile justice processing, and the provision of some specific rights to be accorded to juveniles in such proceedings. There is, in short, considerably greater protection against arbitrary treatment in that far more of the law is spelled out in detail.
Specifically, the Juvenile Offenders Act provides for the following. First, the form and contents of petitions and citations against juveniles are specified. Petitions must be verified on the basis of "information and belief" and must contain a "plain statement of the facts" and the name, address, etc. of the juvenile charged. Citations must contain the substance of the petition and must be delivered to the parents of the juvenile not less than 24 hours prior to a hearing. Secondly, the parents of a juvenile must be notified when a warrant is issued for the arrest of a juvenile. Thirdly, the Court may allow parents and other interested parties to view otherwise secret court records. Fourth, the Juvenile Offenders Act provides for judicial review of decisions to detain a juvenile in custody. Fifth, juveniles are accorded the right to representation by counsel or by any interested person at hearings and the right to be informed of the nature of the complaint against them. Finally, juveniles have the right to appeal to the Superior Court for de novo hearings or to the State Supreme Court on matters of law only. Bind-over decisions, adjudications, and dispositions may be appealed. The juvenile is entitled to bail unless the court finds that he represents a danger to himself or to the community. The denial of bail is also appealable.

(Maine Legislature, 1965:525-29)

There are, obviously, a number due process elements absent from the Act as well as a number of provisions which
seem to represent a denial of due process. There is, for example, no mention in the Juvenile Offenders Act of the privilege against self-incrimination, the right to cross-examine and confront witnesses, the right to a transcript of the proceedings, or the requirement that facts be proved "beyond a reasonable doubt." These are all requirements of *In Re Gault* and *In Re Winship*. The additional requirement of Gault that the juvenile be given notice of the charges against him would not appear to be satisfied by the requirements in the Juvenile Offenders Act that the judge inform the juvenile at a detention hearing of the nature of the complaint and that the citation issued to the juveniles' parents contain the substance of the petition and be delivered not less than 24 hours prior to the hearing. Gault requires notice of the charges be given to the juvenile and his parents and insists on "timely notice, in advance of the hearing, of the specific issues that must be met." (1968:1447)

There is no provision in the Act for a public trial or for trial by jury.

Several provisions in the Juvenile Offenders Act allow for the "rules of the game" to be changed at the discretion of the court. The Court may, for example, adjourn the proceedings from time to time for further investigations. It may also amend the petition at any stage of the proceedings. Dispositions may also be changed by the Court at the request of Corrections officials. (Maine Legislature, 1965:525-30)
There are no criteria governing decision making at many important stages of juvenile justice proceedings. There are, for example, no criteria specified for detention decisions, dispositions or amendments of dispositional orders. Finally, no procedures are specified for juvenile arrests, detention hearings, or disposition hearings.

Reform Recommendations and the Fairness Ideal

Of the two major ideals of juvenile justice reform in Maine, the fairness ideal received relatively less attention than the ideal of rehabilitative services. This is, on the face of it, somewhat surprising since the major thrust of post-Gault reform generally has been on constitutionalist concerns expressed in terms of "due process of law." On the other hand, there is evidence in the various reports that comprised the history of post-Gault reform in Maine that the "fairness" issue, at least in terms of due process in juvenile justice proceedings, was largely settled by rulings of the United States Supreme Court and the application of these decisions in state courts. Thus, by the time most of these studies were undertaken, juveniles were already guaranteed (legally) considerably greater fairness than in the pre-1970 period. What remained to be done in terms of ensuring the fairness of juvenile justice was largely a technical matter of incorporating these due process requirements into Maine's
At the same time, as many commentators subsequently pointed out, the rulings of the Supreme Court in Kent, Gault, McKeiver, Winship, and Breed v. Jones, while clearly rejecting a central corollary of "socialized" justice, namely that acting parens patriae, the State was not adjudicating a crime, the implications were not as clear-cut as may have been apparent at first glance. In each of the decisions in question, the Court ruled on relatively narrow grounds, specifying what rights were minimally required in the narrow context of juvenile court adjudicatory hearings. Many areas of juvenile justice remained unexamined by the Court. The Court also left decisions on other due process issues beyond the minimum to the states. Further, the Court did not rule on issues of "general fairness," but only on specific due process issues. Clearly, a great deal more remained to be said on the fairness issue. While it is true that the studies in question had relatively little to say on this issue in terms of amount of space devoted to discussions of it and number of recommendations addressing it, fairness in general and due process in particular emerge as important considerations. There is no question that fairness is a major ideal of post-Gault reform in Maine.

The extent to which the fairness ideal is a priority and the amount of discussion devoted to it vary from study to study. This is partly a function of the purpose and scope of the particular study and partly a function of the degree of importance attached to the fairness ideal.
The Comprehensive Juvenile Delinquency Study is the one study conducted during the reform process that exhibits a near insensitivity to due process considerations. Clearly, due process is within the purview of the study's objectives in formulating recommendations relative to the prevention and control of delinquency and the rehabilitation of delinquents and "pre-delinquents." The Final Report indeed gives little evidence of awareness of the due process rights mandated by the Supreme Court. Its point of view, in contrast to all of the other studies, is clearly at one with the traditional juvenile justice philosophy of rehabilitation untempered by constitutional impediments.

On the other hand, there are a number of recommendations of relevance to the fairness ideal which indicate a general concern for fair treatment for juveniles at the hands of state. Two of these are specific due process recommendations: (1) Judges should always inform juveniles of their appeal rights and (2) Juveniles must be represented by counsel, family-retained or a court-appointed full-time juvenile defense attorney. (1971:77-78) At the same time, the appeal process recommended in the Final Report raises serious due process concerns in that a three-judge appeals court would examine all areas of a juvenile's life in arriving at a judgement. This procedure, on the face of it, appears an open invitation to arbitrary decisions based not on points of law or evidence relevant to the allegation, but on family
structure, income, school performance, or whom the juvenile "hangs around with." Further insensitivity to due process is apparent in the recommendations with respect to law enforcement. Of all the due process issues involved in arrest, detention, and interrogation, the study concentrates on the importance of good police public relations, personality of juvenile officers, and manpower and training considerations. (1971:73-74) Again, with respect to dispositions from the juvenile court, indeterminate dispositions are recommended. The wide discretion left to corrections officials in such a procedure again invites arbitrariness into the juvenile justice process. (1971:65-66)

With respect to the ideal of fairness in juvenile justice more generally, the Final Report makes a number of recommendations which imply a far broader conception of the fairness ideal than contained in the decisions of the Supreme Court and the discussions of the constitutionalist critics of socialized juvenile justice. The study cites arbitrariness on the part of the State in a variety of its dealings with juveniles, each of them deemed at least indirectly relevant to juvenile delinquency and juvenile justice. Its comments and recommendations in the area of education exemplify this concern. Juveniles in general lack any input into educational decisions which so greatly affect their lives. Student participation is strongly recommended, including direct representation on school boards. Juveniles are often denied par-
participation in extracurricular activities and are denied special educational services without due process. The study recommends that the State adopt an appeals process for parents and children denied such opportunities. (1971:78-82) Furthermore, the study recommends that juveniles committed to institutions be afforded the right to privacy, including the right to receive uncensored mail. (1971:65-68) Thus, while there is little sensitivity to constitutional due process in juvenile justice proceedings, the Comprehensive Juvenile Delinquency Study does exhibit a general concern that juveniles be treated fairly by the State. What the study fails to perceive is the central place of regular, formal procedures in ensuring that this ideal of fairness become the reality of fairness.

Two additional studies paid relatively little attention to due process/fairness issues, largely, it seems, because they were primarily concerned with the assessment of youth services in Maine rather than with juvenile justice specifically. Both, however, discuss the juvenile justice system at some length, make recommendations concerning it, and place a high priority on fairness.

The first of these is the report of the Governor's Committee on Children and Youth, Children and Youth Caught in the Crunch. (c1973) This Committee was asked by the Governor to "review existing programs for children and youth, discover needs not met by such programs, and suggest methods
to satisfy such needs." Clearly, the focus is not on juvenile justice procedures and their recommendations reflect this. Nevertheless, the report briefly, but unequivocally, calls for due process in juvenile justice proceedings.

Juveniles ought to receive "due process." Juveniles ought to have right to an attorney at all times, even without parental consent. (c1973:29)

Secondly, the Committee raises an additional concern with fairness in juvenile justice proceedings in citing the problems of overloaded District Courts and judges untrained in juvenile justice. Assembly-line justice is clearly at odds with due process and fairness. The Committee recommends a separate juvenile court with specially trained juvenile court judges.

Finally, the broader conception of the fairness ideal alluded to in relation to the recommendations of the Comprehensive Juvenile Delinquency Study, is further developed in the recommendations of the Governor's Committee on Children and Youth. Several of their comments and recommendations indicate unequal treatment for juvenile justice clients in terms of a variety of social services. A number of reasons are indicated including the use of eligibility requirements to discriminate against such juveniles.¹⁴

¹⁴ The general issue of rehabilitative services will, of course, be dealt with in detail in the following chapter. Nevertheless, there are a number of points at which the two ideals merge. The unavailability of services is itself a due process issue if such services are part of the juvenile justice process and are denied arbitrarily. Secondly, recent court decisions have indicated a right to treatment in the juvenile justice system. The right to
The Children and Youth Services Planning Project (1977) similarly focused on the issue of services for juveniles. In their report, Comprehensive Blueprint, the authors note that members of the Project worked closely with the Commission to Revise the Statutes Relating to Juveniles, the chairman of the Project being in fact a member of the Commission. They further note that most issues relating directly to juvenile justice proceedings, including due process, were being addressed by the Commission and it was, consequently, unnecessary for the Project to devote much attention to these issues. Nevertheless, the Project report expressed clear support for due process and fairness. They specifically address the issue of due process in their criticisms of the "unwarranted" detentions of juveniles in the juvenile justice system. In their recommendations, a number of significant fairness issues are raised.

First, the issue of "unequal justice" is raised in this report. The wide disparity between the processing by the juvenile justice system of juveniles from "broken" families and those from "normal" families is noted as is the similar services is also clearly implied in Maine juvenile law. If such treatment is not provided, the juvenile is entitled to be released. Thirdly, the underlying assumption in all of these studies is that social services have the potential to prevent conduct which places juveniles at risk of juvenile justice processing and contributes to rehabilitation of adjudicated juveniles thus preventing subsequent contact with the juvenile justice system. If such services are not available, it can be argued that the juvenile is unfairly denied his constitutional rights by being placed at risk by the inaction of the State.
disparity between the processing of juveniles from high and low income families. The only available data consists of the composition of the populations of the Boys Training Center and the Stevens School with respect to these variables. The disparity is sharp. Only 41% of the population of the training centers is from "normal" families. Nearly half of the centers' populations are from families with incomes below $5,000 per year. Only 30% of Maine's families fall into this group. On the other hand, only 10% of Maine's families have incomes in excess of $15,000 per year while only 5% of the training centers' populations came from such families. As the study indicates, it cannot not be concluded that children from low-income and/or single-parent families commit more crime, but only that they "have a much greater chance of running the full gamut of the system, i.e. being committed." (1977:188) There is the further suggestion of inequality in juvenile justice processing on the basis of the juvenile's sex. Boys are arrested, "held for court" in institutions, committed, and placed on probation at a greater rate than are girls. Girls, on the other hand, are more likely than boys to be detained in county jails. (1977:176-77)

Secondly, the issue of equality of social services is also raised and discussed at length by the Children and Youth Services Planning Project report. A major area of concern in this regard was the preadjudicatory incarceration
of juveniles in training centers for the performance of diagnostic evaluations for the Court, evaluations which could have and should have been performed at Community Mental Health Centers. Two issues of fairness are involved:

(1) Juveniles did not receive services of community mental health centers to which they should have been entitled and

(2) The use of training centers for this purpose is tantamount to incarceration (punishment) without trial, a clear violation of due process by any standard. As noted by the Project, incarcerations for evaluation purposes were not insignificant. The average stay at the Boy's Training Center for this purpose was 17.5 days and at the Stevens School, 26.8 days in 1974-75. (1977:150-57)

The Comprehensive Blueprint at several points expresses concern that juvenile justice clients are discriminated against in the provision of scarce service resources. Related to this is a further concern with the fairness of service distribution, namely the formulation of rules governing the provision of such services, rules which have historically functioned as a bar to services for correctional (including juvenile) clients. State agencies, the study notes, frequently promulgate rules and policies which have the force of law, but which are not subject to the safeguards which normally inhere in the legislative process. The importance of procedure in ensuring fairness is recognized in the recommendation that the legislature adopt a uniform ad-
ministrative procedure governing rule making by public agencies, require advance public notice and a period for response by the public and affected parties. Such rules should also be subject to legislative review. (1977:202)
The relation between administrative rule making and due process in juvenile justice is closer than may be apparent. The rationale for the above recommendation is that government must be made accountable and responsive in meeting its statutory responsibilities and in carrying out legislative intent with respect to services for children and families at risk. As the Children and Youth Service Planning Project notes earlier in their report, the definition of "high risk" certainly includes the 10,000 Maine children arrested, the 3,500 who appeared in court, and the 1,500 incarcerated or placed on probation (1975 figures). There seems little doubt on the part of the authors of this report that the denial of effective services to such juveniles and their families is not only an abrogation of public responsibility, but also has the effect of placing juveniles at risk of further juvenile justice processing and has, consequently, constitutional implications.

Finally, the report expands on the application of the "proof beyond a reasonable doubt" standard mandated by the Supreme Court in Winship (1971) for adjudicatory hearings in cases where juveniles are charged with the commission of crimes. It is recommended that this standard of proof be
required in neglect and abuse proceedings involving the involuntary removal of a juvenile from his/her home.

(1977:225)

As previously noted, the most comprehensive of the reports on Maine's juvenile justice system during the post-Gault era were the reports of the Commission to Revise the Statutes Relating to Juveniles and In the Public Interest, the report of the Governor's Task Force on Corrections. These reports are also the most comprehensive with respect to their discussions of and recommendations on the fairness issue, particularly due process in the juvenile justice system.

The Governor's Task Force on Corrections adopted and expanded on the ideal of fairness as expressed by the U.S. Supreme Court and the constitutionalist critics of juvenile justice. Of particular note is the position of the Task Force on due process in juvenile justice proceedings. On the basis of the assumption that the loss of freedom is a possible outcome of such proceedings, In the Public Interest insists that all the due process protections available to adults in the criminal justice system, not just the minimum mandated by the Supreme Court, be accorded juveniles in all juvenile justice proceedings. This was the only series of recommendations during the course of post-Gault reform in Maine that went this far in its formulation of the requirements of fair proceedings. Among the areas specifically
covered in its recommendations are several recommendations with respect to the right to counsel and other rights of juveniles before the juvenile court, the jurisdiction of the juvenile court, preadjudicatory incarceration, due process in dispositions and corrections, as well as a number of more general recommendations. (1974)

The right to counsel was clearly regarded by the Task Force, as it was by the Supreme Court, as the most fundamental of due process rights. The right to counsel, the Task Force advised, must be provided for. The Task Force also recognized that attorneys often view their role in juvenile cases differently than in adult cases, seeing their major objective as "acting in the child's best interest," rather than providing the best plausible defense for their clients. The Task Force recommends that attorneys provide the same quality of defense for their juvenile clients as they would for their adult clients, even when they are of the opinion that a commitment to a training center would be in their client's best interest. Furthermore, the assignment of counsel should be automatic and juveniles should not be allowed, let alone encouraged, to waive this right. And, in cases where there is a conflict between the wishes of the juvenile and his parents, the obligation of the attorney should be to the wishes of the juvenile client. In addition, the Task Force suggests that the juvenile must have a sense of the fairness of the proceedings. Consequently, all due process protections must be available. (1974:10)
An additional aspect of fairness would suggest that juveniles not be convicted and punished for offenses that would not be criminal if committed by adults. The Task Force thus recommends a considerable narrowing of the jurisdiction of the juvenile court to include only criminal offenses. (1974:9)

The report notes the common practice of confining a juvenile in one of the training centers for as long as a month to conduct diagnostic evaluations that should take no longer than three days. They further suggest that the centers are being used as jails on the pretext of evaluations. They write:

We believe this practice to be a wholly unacceptable manner in which to inform some juveniles at first hand of the possible sanctions attached to the continuance of their alleged conduct, and such practices authorized by a presiding judge seem somewhat to beg the ultimate questions in the pending criminal case. (1974:11)

Further concern is expressed over the lack of criteria and the lack of due process in dispositional decisions. Determinate sentencing is recommended. Commitments to the training center should be for one year periods. This is both for the purpose of avoiding disruption to the academic progress of the juvenile and to avoid the unbridled discretion that the superintendents have over juveniles upon release on entrustment from the institutions. Aftercare services, the report claims, should be available on a continuing basis up to the age of eighteen, but must be vol-
untarily accepted by the juvenile. Along the same lines, the Task Force suggests a number of steps to increase the fairness of the correctional process, including a Bill of Rights for corrections inmates and inmate advocates outside of the control of the Department of Mental Health and Corrections. (1974:57)

The report also expresses concern for those juveniles who are not subjected to the official juvenile court process. Strong advocates of diversion of juveniles from the system whenever possible, the Task Force recommended the creation of Youth Services Bureaus which would be outside of the law enforcement establishment and which would render juveniles referred for services beyond the reach of the courts. They do not envision a shifting of arbitrary state power from the courts to the diversionary mechanism. (1974:6)

In general, In The Public Interest argues that the juvenile justice system should be made more equitable and should not be a system used exclusively for juveniles from poor and broken homes. Finally, democratic principles should guide the system, providing its clients with dignity and the right to participate in decisions affecting them. (1974:3-5)

Quite obviously, the work of the Commission to Revise the Statutes Relating to Juveniles was central to the reform of Maine's juvenile justice system, the only one of the studies of juvenile justice that had a mandate to examine the system generally, with no narrowly circumscribed subject matter.
Also, it was the only one with a mandate to propose a new system. The issue of fairness, particularly as it relates to due process, was prominent in the work of the Commission. It is discussed in several of its reports as it relates to the existing system, to various proposals for improved juvenile justice systems, and in its own proposed new Juvenile Code.

Two of the Commission reports, prepared by consultants in consultation with Commissioners, review fairness and due process in the existing system. One is a review of statutes of Maine's juvenile justice system (1976:b) and the other a review of the goals of juvenile justice in Maine based primarily on assumptions and implications of these statutes as well as on case law. (1976a) For the present purpose, the Commission's review of the goals is sufficient for ascertaining its views of the present status of due process and fairness.

First, the Commission's report, *Goals of Maine's Juvenile Justice System*, notes that existing juvenile law in Maine provides for some, but not all, of the due process rights mandated by decisions of the U.S. Supreme Court. (1976a) While the Court has required that juveniles be accorded the rights to notice of charges, counsel, against self-incrimination, confrontation and cross-examination of witnesses, and that allegations against them be proved "beyond a reasonable doubt," the Maine Juvenile Offenders Act specifical-
ly requires only that the juvenile be accorded the right to representation by counsel or an interested party and the right to notice of charges. In addition, however, as the Commission notes, appellate rulings of Maine courts have required that all procedures to insure fairness be observed and that proof be beyond reasonable doubt. (S*** v State and State v. D***) (1976a:9) There are other aspects of existing juvenile law relevant to the fairness issue that the Commission takes note of, implying that they are deserving of consideration, some violating standards of fairness and others contributing to the fairness of proceedings. Under the Juvenile Offenders Act, a juvenile's right to a hearing was not waivable. (1976a:10) Secondly, the statute allowed, until overturned in Shone v. State, the transfer of a juvenile from the training center to an adult correctional facility at the request of the superintendent of the training center without any right to a hearing. (1976a:21) Third, the Act allowed adjournment of juvenile proceedings by the Court at any time so that an investigation might be ordered. (1976a:10) Fourth, the Act does not require due process in decisions of the superintendent of a training center returning a juvenile on entrustment to the institution. The Court in Bernier v. State upheld this denial of due process. (1976a:30) Finally, the Commission review of the goals of the juvenile justice system indicates that the definition of the juvenile court's jurisdiction over non-
criminal juvenile offenses is quite broad and vague.
(1976a:5-7)

The positions ultimately taken by the Commission with respect to fairness and due process are found primarily in the Final Report of the Commission and in its draft of a proposed new Juvenile Code, both of which recommend a system of juvenile justice which adheres more strongly to ideals of fairness. (1977a, 1977b) In many respects, the Commission proposes a "junior criminal court" in which juveniles are accorded most of the due process considerations granted adults in criminal proceedings. There is an accompanying recognition that juveniles are subject to the same laws as are adults and suffer similar consequences for being found in violation of such laws. The proposed system would treat juveniles accused of Class A, B, or C crimes (felonies) in almost all respects as adults and would treat juveniles accused of misdemeanors and juvenile crimes in some, but not all, respects as adults. Specifically, juvenile proceedings would be conducted as adult criminal proceedings except that there is no right to a jury trial and only hearings and records in Class A, B, and C offenses would be open to the public. The new Code proposed by the Commission differs in a number of significant respects from the Juvenile Offenders Act. First, of course, all rights mandated by the U.S. Supreme Court are specifically granted in the proposed Code. The ideal of fairness, at least with respect to hearings, is
stated at the very beginning of the proposed Code as one of its purposes.

To provide procedures through which the provisions of the law are executed and enforced which will assure the parties a fair hearing at which their rights as citizens are recognized and protected.

(1977b)

In general, there is a recognition in the proposed Code that procedural regularity is in many respects the essence of fairness. The Code is far more detailed than anything which preceded it with respect to the procedures to be followed at all stages of the juvenile justice process. Clearly specified, either directly or by reference to the Maine Rules of Criminal Procedure or other statutes, are procedures governing detention, adjudicatory, dispositional, bindover, and appellate hearings; procedures for arrest, arrest warrants, and interrogation; procedures and criteria governing detention and disposition; record keeping requirements; and procedures to inform juveniles and other interested parties of their constitutional rights. As proposed by the Commission, the Code would seriously curtail the considerable discretion of pre-code juvenile justice, greatly decreasing the potential arbitrariness of juvenile proceedings. Procedural specificity provides an objective basis for determining fairness of the proceedings and in itself provides greater fairness in that the "rules of the game" are known in advance to both sides, giving the juvenile a more equal chance of effectively defending him/her self.
The Fairness Ideal: Summary

Although as the preceding discussion indicates a wide variety of points of view, concerns, and recommendations emerged from the reform process with respect to the ideal of fairness in the juvenile justice system, it is possible to state a number of "fairness principles" which seem common to most, if not all, of the studies reviewed.

1. Due process of law must be observed in all official proceedings of the juvenile justice system. Specific rights mandated by the U.S. Supreme Court, as well as a number which logically follow from their decisions, must be accorded juveniles in such proceedings in recognition of the similarity of these proceedings in jurisdiction and consequences to criminal proceedings.

2. Similar protections against procedural arbitrariness are required in other aspects of the juvenile justice system proper when coercion is involved and also in other dealings of the state with juveniles, particularly in the denial of services to juvenile justice clients.

3. The constitutional rights of juveniles should not cease to be operative at the entrance to the corrections system. Juveniles need protection from arbitrary treatment in the guise of rehabilitation as well as from the arbitrary denial of their basic
rights as citizens to privacy, correspondence, and so forth.

4. The juvenile justice system should provide equal justice; it should not be just for the underprivileged. Discrimination against any class of juvenile as well as discrimination against juveniles as a class (for example, in being punished for acts which are not punishable for adults) have no place in a justice system.

5. Fair treatment of juveniles by all institutions and agencies has a significant role to play in the prevention of crime and delinquency.
Chapter V

REFORM IDEALS: REHABILITATIVE SERVICES

Introduction

Rehabilitation has, of course, been the fundamental principle of juvenile justice in the United States since the turn of the century. Yet, the degree of attention that rehabilitation gets in post-Gault reform clearly implies that all was not right with pre-Gault rehabilitation. As the previous chapter makes apparent, one of the major things wrong with it from the point of view of reformers was its use as a justification of the failure to provide constitutional protections against coercion. There is, however, a more fundamental criticism which suggests that rehabilitation was rarely more than a euphemism, that it seldom made the leap from theory to practice. At best, it was an empty promise; at worst, a fraud. Thus, genuine rehabilitation becomes central to the reform effort in an attempt to finally make rehabilitative justice a reality. If rehabilitation is meaningless in the pre-Gault era, what, if anything, does it mean in post-Gault reform? The ultimate answer to this question must await an assessment of juvenile justice in the "reformed" system. First, however, the meaning of the reha-
bilitative ideal in the context of the reform documents must be examined. Although the meaning of rehabilitative juvenile justice varies from study to study, from their various comments and recommendations emerge a set of more or less common "principles of rehabilitative justice" that give some substance to the ideal, imply (and sometimes make explicit) criticism of pre-Gault socialized justice, and serve to distinguish between rehabilitation as the historical purpose of juvenile justice and rehabilitation as a principle of reform.

**Rehabilitation and Prevention**

The term "rehabilitation" does not fully encompass all that is implied in the continuing emphasis on "socialized" juvenile justice in the post-Gault era. Prevention, in fact, is preferred to rehabilitation. That is to say, "salvation" of youth before they fall into delinquency is far preferable to "rescuing" them after the fact. Thus, in the most general sense, the goal of the juvenile justice system in the post-Gault era may be more accurately described as "ensuring that all juveniles become responsible, productive, and law-abiding members of the community." Delinquency prevention and rehabilitation are two means of ensuring that this goal is achieved. Both prevention and rehabilitation are prominent in all of the post-Gault studies of Maine's juvenile justice
A general theme that underlies all of these reports (although it is rarely explicitly stated) is that despite its official status as the primary objective of juvenile justice since the turn of the century, rehabilitation has never characterized juvenile justice practice. Yet, it is the only route to an effective system of juvenile justice and must be made to work.

The rehabilitative ideal of juvenile justice is a theme that runs through the post-Gault reform literature in Maine from the Comprehensive Juvenile Delinquency Study to the Reports of the Commission to Revise the Statutes. The differences lie in the various perspectives of the appropriate balance between rehabilitative justice and due process and the specific shortcomings of the existing system and specific proposals for remediation.

The Comprehensive Juvenile Delinquency Study of the Cooperative Extension Service (1971) and the Batten, Batten, Hudson, and Shwab study commissioned by the Bureau of Corrections (1972) are alone in their nearly exclusive focus on rehabilitation and neglect of due process and fairness considerations. These studies for the most part accept the philosophy of juvenile justice articulated in the old juvenile code, wherein it is the expressed purpose of the state in its juvenile justice system to provide for the "care, custody and discipline" of juveniles approximating "as nearly as possible that which they should receive from their pa-
rents or custodians; and that as far as practicable, they shall be treated not as criminals, but as young persons in need of aid, encouragement and guidance." (Maine Legislature, 1965:519) The approach of the Comprehensive Juvenile Delinquency Study is made clear in its brief discussion of the various approaches to delinquency prevention where it rejects "punitive" and "mechanical" methods in favor of "corrective" ones, those which "eliminate the causes of delinquency." Crucial to this approach, the report argues, are social and community change and the identification and treatment of delinquent and predelinquent youth.

The Governor's Task Force on Corrections was specifically charged with, among other things, the identification of programs and services existing and needed related to the rehabilitation of juvenile offenders. Furthermore, the Task Force was to recommend to the Governor improvements in diagnostic and evaluation services to aid in sentencing and rehabilitation. In its final report, In the Public Interest, the Task Force is highly critical of the existing system for its failure to live up to the rehabilitative ideal.

Despite the efforts of juvenile court professionals to avoid references to guilt and punishment, the focus of that system today is corrective and punitive rather than preventive — that is, it aims at altering deviant behavior after it has occurred rather than preventing it from occurring in the first place. (1974:3)

The present system has not succeeded, the Task Force argues, in either correcting delinquency in juveniles nor in pre-
venting crime. Institutional rehabilitation in particular is singled out for criticism. The view of the correctional institution as a largely destructive experience for the inmate is strongly implied. The primary objectives of specific recommendations on juvenile justice is to expand the capacity of the juvenile justice system to identify the causes of delinquency and to eliminate them or reduce their potentially damaging effects.

The report of the Children and Youth Services Planning Project, Comprehensive Blueprint (1977), while it deals primarily in concrete recommendations, indicates a general concern for effective prevention and rehabilitation in juvenile justice and endorses the work of the Commission to Revise the Statutes. It specifically refers to prevention and diversion as general concerns in the area of juvenile justice and makes detailed recommendations for community-based treatment. Furthermore, the report is quite critical of the institutional treatment and the failure of the juvenile justice system to move in the direction of community treatment.

The reports of the Commission to Revise the Statutes Relating to Juveniles note that prevention and rehabilitation are the major goals of the existing system as expressed both in statutes and judicial decisions. Wade v. Warren, for example, stated that the purpose of the juvenile justice system was to aid the youth in becoming a "useful citizen." The rationale of intervention in cases where "status offen-
ses" are alleged is the assumption that such interevention is preventive of criminal behavior. (1976b:1) In S*** v. State, the Court argued that the types of non-criminal behavior constituting status offenses are likely to lead to criminal behavior if countermeasures are not taken. (1976b:25) The Commission notes that rehabilitation is the most important goal of juvenile justice in Maine and that salvation, not punishment, is its purpose. Hibbard v. Bridges, noted that the only purpose of commitment of juveniles is rehabilitation and L*** v. State, claimed that the juvenile must be assisted in "personal development and social responsibility." (1976b:113) In the process leading to the formulation of legislative proposals, the Commission formulated "Suggested Goals." While rehabilitation and prevention lose their standing as the only goals of juvenile justice, the Commission continues to emphasize prevention and rehabilitation as major goals appropriate to post-Gault juvenile justice. (1976a:57-103)

Principles of Rehabilitation in the Post-Gault Era

Although there are several important principles of rehabilitative juvenile justice that emerge from the reform literature, both state and national, the central principle upon which all the others rests is:
1. Provision of Services: A genuinely rehabilitative system requires that real rehabilitative services be provided and that such services be accessible to all who need them. If there is one central criticism that has plagued the idea of "socialized" juvenile justice from its earliest beginnings in the 19th Century, it is the failure to back up the ideal of rehabilitation with necessary resources. In effect, rehabilitation has been little more than a mask for harsh and arbitrary punishment. Additional principles of post-Gault rehabilitation are closely related to the provision of services. They may be summarized as follows:

2. Procedural Protections: The benevolent intentions of rehabilitative justice do not justify involuntary intervention into the lives of juveniles without due process.\(^\text{15}\)

3. Prevention: The most efficient and effective rehabilitative services are those which are provided prior to involvement with the juvenile justice system.

4. Community-based Treatment: Whenever possible, rehabilitative services should be provided in the local community, preferably while the juvenile continues to reside with his/her family. In any case, the principl-

\(^{15}\) This issue of essential fairness was addressed in the previous chapter. It is noted here because many believe that genuine rehabilitation is not possible if a juvenile feels that he/she has been treated unfairly. As Matza has pointed out, a sense of injustice may serve to undermine a juvenile's respect for the law. (1969)
ple of the "least restrictive alternative" is to apply for all juvenile justice dispositions.

5. Decriminalization: The jurisdiction of the juvenile court needs to be narrowed considerably. The juvenile justice system with its coercive powers is not the appropriate forum for addressing problems represented by acts which are not criminal for adults. Such problems require the provision of social services, but must be voluntary.

6. Deinstitutionalization: Institutions have been counterproductive in the rehabilitation of juvenile offenders and, consequently, should be used as a last resort for only the most dangerous offender. A corollary is that offenders who are confined to institutions receive adequate, fair, humane and effective treatment.

7. Diversion: The formal juvenile justice process tends to stigmatize youthful offenders and, consequently, is counterproductive. Whenever possible, juveniles should be diverted away from formal processing and be provided with whatever rehabilitative services might be necessary in a non-stigmatizing manner.

8. Evaluation: An effective system of rehabilitative juvenile justice requires continued monitoring, evaluation and planning in order to ensure that services are available and effective.
Not all of these require extensive discussion. Each of these "principles" will be discussed in sufficient detail to document their status as post-Gault reform ideals in Maine and to establish some objectives against which the success of the reform may be measured.

**The Provision of Services**

Central to the recommendations of the various reports on Maine's juvenile justice system in the post-Gault era is the notion that the provision of resources - social, psychological, economic, educational, and other services - is essential if rehabilitation and prevention are to represent anything more than rhetorical rationalizations for punitive treatment of juvenile offenders. If there is one characteristic that runs through the history of juvenile justice and its failure, it is the reluctance to provide these resources which are essential to genuine preventive/rehabilitative justice. All of the studies of Maine's system suggest that such a judgement is applicable to it; and the call for the provision of genuine services becomes one of the hallmarks of the post-Gault effort in Maine. The failure to provide resources for services is recognized as costly. The Governor's Committee on Children and Youth wrote:

> If we do not begin investing our money in preventive programs early in our children's lives, we surely will be spending increasing amounts to try to correct the problems which have been caused as a result of our neglect. (1973:i)
The comments of the Children and Youth Services Planning Project are typical in noting that the State is largely failing to meet its responsibilities to provide services to its youth.

It is the judgement of the C&YSPP [Children and Youth Services Planning Project] that the State of Maine has lagged behind in developing responses to changing social indicators, has offered only fragmented intervention systems to meet needs, has paid scant attention to quality control and evaluation, has fostered regional inequities in state controlled services, and has generally failed to emphasize prevention, early identification, and treatment of problems and needs. The resulting broken lives and untreated problems produce the necessity for later, much more costly, remedial efforts.

The fragmented array of State funded and regulated human services may be characterized as Duplicative, Discontinuous, and Incoherent. (1977:21)

Other reports are similarly explicit. The Governor's Committee on Children and Youth concluded that "the unmet needs of children and youth are numerous." (1975:i) The Governor's Task Force on Corrections criticizes Maine's communities for failing to provide necessary services and out of "ignorance and indifference" they have

foisted the problem off on law enforcement officials, who in turn usually have relied upon the courts and training centers to provide solutions. (1974:3)

The wide range of specific service recommendations made in the Final Report of the Comprehensive Juvenile Delinquency Study certainly implies that previously existing rehabilitative services were inadequate.
The central criticism of the previously existing juvenile justice system with respect to its rehabilitative ideals is that the State simply failed to provide the resources necessary to rehabilitation. There are, however, a number of additional points that arise in the studies that have a bearing on the provision of rehabilitative services. These areas of criticism go beyond the basic question of the quantity of resources the State allocates to the prevention and rehabilitation of juvenile offenders and those at risk of entanglement in the juvenile justice system. They concern the effectiveness of the resources that are provided. Are the resources coordinated? Are they accessible to all who need them? Are they effective? In the previously existing system, the studies suggest, the answer to each question would appear to be a resounding "no".

First, there are apparently serious discrepancies in the availability of services based largely on geographical considerations. The Children and Youth Services Planning Project directed particular attention to this issue in several instances, arguing, in general, that

Unfortunately, the geographical location of Maine children and families has a direct bearing on their access to supportive services from the State. (1977:20)

Among the examples cited are the following:

1. In spite of a State law passed four years ago mandating school lunch programs in the public schools of Maine, some 10,000 children are not provided these lunches.
2. Notwithstanding a statutory commitment to the principle of equal educational opportunity, twenty-five hundred Maine high school students residing in towns without their own high schools are not provided school buses.

3. The likelihood of parents being notified of a vision or hearing problem detected in their child varies from county to county.

4. The tendency for juveniles to be jailed at the Maine Youth Center pending trial is directly related to which county the child lives in.

5. Three Maine counties provide dental health prevention programs within their schools. (1977:20)

The Children and Youth Services Planning Project report goes on to note the general nature of the problem.

In a State of 31,000 square miles it should be obvious that access to and availability of basic support services would be a concern to State policy makers. Sadly enough, the record in human services is one in which little attention has been paid to the State's responsibility to plan for the needs of children and families in Piscataquis County as well as those in York County. The evidence contained in the data demonstrated too many instances where the State has abrogated its planning responsibility and equal obligation to all Maine residents by drifting and allowing most social planning to take place by non-governmental agencies. When the Legislature passes amendments to acts such as Priority Social Service Programs, specifying that underserved rural areas shall have priority for service, and when these programs become concentrated in the urban areas, this becomes a promissory note rather than an authentic program. CSYSPP Task Forces throughout the State from counties such as Piscataquis, Hancock, Washington, Lincoln, Sagadahoc, Oxford, Franklin, Somerset, and Waldo testified as to their inability to receive equitable levels of State funded human services programs. (1977:22)
Several years earlier, the same point had been made, though not as emphatically, in the Comprehensive Juvenile Delinquency Study. Among the examples of geographic inequality is the point that Community recreation and "drop-in" centers for juveniles are located only in the most urban areas of the State. The report went on to note that there were, in fact, recreation programs in only twenty-four of the States communities. (1971:24-5)

Several of the studies suggested a connection between a family's economic status and the accessibility of both regular and special services. The Final Report of Comprehensive Juvenile Delinquency Study, for example, suggests that various educational and recreational programs require the purchase of equipment and thus tend to be closed to those segments of the community that lacking sufficient resources to obtain such equipment. For example, the report notes the costly nature of winter recreation in Maine.

Winter recreation programs in the State are very costly and are primarily designed for either the well-to-do or the tourists. The cost in both facilities and equipment prohibits a large part of our population from taking part in these recreational pursuits. (1971:24)

Similarly, several of the studies suggest that special services that are available to children in higher income families, services that in various ways mitigate the possibility of contact with or penetration into the juvenile justice system simply are not available to those in lower income categories. For example, while noting that delinquency is
not peculiar to the disadvantaged, the Final Report of the Comprehensive Juvenile Delinquency Study points out that there is a higher rate of juvenile justice processing among the less affluent.

This is probably related to the fact that the less affluent families tend to be less educated and tend to be unable to locate adequate remedial services for their children. (1971:53)\(^\text{16}\)

The problem of access to rehabilitative services is exacerbated, according to the studies, by artificial barriers erected by institutions and agencies. *Children and Youth Caught in the Crunch*, the report of the Governor's Committee on Children and Youth, suggests the nature of the problem in their recommendations regarding the administration of mental health services. Complete control of funding and operations for clinics, community mental health centers, and other mental health facilities and programs should rest in the Bureau of Mental Health to avoid discrimination in the provision of such services to clients of other divisions, bureaus, or agencies.

We recommend that the supervision and control of facilities offering mental health related treatment be within the division [Bureau of Mental Health], unlike the present situation where several agencies are setting up group care facilities. This would facilitate more equal accessibility of treatment for all children, no matter what agency they are referred to initially. (1973:26)

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\(^{16}\) The more obvious point that the poor cannot afford the services available to the affluent was apparently lost on the researchers; but, nonetheless, the link is made.
The Children and Youth Services Planning Project in their report, Comprehensive Blueprint, suggests that a major problem in juvenile justice is recurring problem of offering services to children and youth within the confines of narrow and inflexible functional areas. (1977: 149)

In its recommendations, the Project further demonstrates its concern with this issue as the following indicate:

To reduce pressures on scarce personnel resources at the Maine Youth Center and to reduce the growing numbers of youth who are referred to the Maine Youth Center for psychological examinations, the Commissioner of the Department of Mental Health and Corrections should exercise the authority and leadership of the Department by directing and encouraging the Community Mental Health Centers to provide needed psychological assessment services to the Juvenile Courts. Therefore: It is recommended that the Department of Mental Health and Corrections, through specific contracting procedures and administrative direction increase the level of Community Mental Health Center Services to children and youth referred by the Juvenile Courts.

It is the belief of C&YSPP that all programs for children and youth require the same kinds of basic resources regardless of symptom. Coordinated services between the DHS [Department of Human Services] and the DMHC [Department of Mental Health and Corrections] could include the non-categorical aid programs now housed in welfare departments, such as foster care, adoptions, and protective services; residential programs such as open facilities for dependent and neglected youth, group residences, and secure intensive treatment units; field services which provide care and supervision in the community and aftercare following institutionalization.

To correct the separation of delinquency services from related welfare services—a separation which overemphasizes the delinquent act and implies that delinquents are basically different from other youth with problems—increases the competition for limited State funds, and makes more difficult the assignment of priorities in the development of youth services:
It is recommended that the Commissioners of Human Services and the Department of Mental Health and Corrections jointly take administrative measures which will insure that services to adjudicated juveniles provided by either department are coordinated to improve the adequacy of services and to reduce duplication of effort. (1977:244)

Availability of services is further hampered by legislative refusal to back up its commitment to services with resources through the mechanism of such escape clauses as "within practical limits" as in special education legislation cited in the Final Report of the Comprehensive Juvenile Delinquency Study. (1971:82) Furthermore, when the State does attempt to provide services, they tend to be fragmentary at best, constituting partial responses to the child's needs. As the Children and Youth Services Planning Project indicated, in an example of what it refers to as "discontinuity," "counselling" seems to be a surrogate for all service needs. (1977b:71)

To provide a runaway child with a counselor without recognizing the immediate need for shelter is discontinuous. To provide counselling for the moderately handicapped without providing for their education and training is likewise an example of discontinuity. (1977:22)

General disarray in the rehabilitative service system is strongly suggested in several of the studies. This disarray, it is claimed, generally revolves around a near total lack of coordination in the provision of services to juveniles by the various agencies and institutions which do and/or should serve them. In particular, there is insufficient cooperation between local schools and local service agencies, such
as law enforcement and mental health service providers. The Comprehensive Juvenile Delinquency Study notes this general problem in the context of its discussion of the school.

Cooperation between social agencies and schools appears to be somewhat on a hit or miss basis. There appears to be no coordinated cooperative effort on the part of many community organizations. An overall community-school-parent-police-church-social agency cooperative effort can alleviate many of the problems of each. (1971:16)

The classic example is on the level of state agencies and involves the tremendous duplication due to the failure of agencies to coordinate their efforts. This is tremendously wasteful of scarce resources. Again, the Children and Youth Services Planning Project:

The exact causes of duplication among state service systems vary in each instance. For example, children's mental health diagnostic services have been virtually unavailable to the courts and corrections system locally. Thus, a psychiatric evaluation capability was developed at our children's correctional centers which, while meeting the needs of the courts, is extremely costly. Similarly, the correction system, recognizing the need for aftercare placement of children, developed its own placement system parallel to the child welfare services of the Department of Human Services. (1977:21)

Further, there are in these reports suggestions to the effect that the resources that could and should be providing genuine rehabilitative services are being poured into the bottomless pit of correctional institutions and secure detention of juveniles. The Governor's Task Force on Corrections was critical of corrections in general, juvenile and adult, on this ground.
This is an incredible waste of public resources and human lives when, according to the actual offender characteristics of the Maine prison population, at least 75-80% of the persons presently confined at public expense are clearly not violent and could be assisted safely, and more effectively, at minimal cost, in the community. (1974:iii)

Finally, the Commission to Revise the Statutes Relating to Juveniles includes several specific provisions in its draft of a proposed new juvenile code assigning to the Department of Mental Health and Corrections responsibility for

Ensuring the provision of those services necessary to—

1. prevent children and youth from coming into contact with the juvenile court system; and

2. support and rehabilitate those children and youth who do come into contact with the juvenile court.

In addition it assigns to the Department the task of gathering appropriate information on service needs and proposing services to meet any unmet needs. (1977b:71)

Concrete service recommendations proposed by the studies constitute an extensive list. Taken together, they constitute a broad system of rehabilitative services that is deemed essential to juvenile justice in the post-Gault era. The system requires two basic types of services—general services which are theoretically available to all through the normal institutional structure of the community (i.e., education, health care, employment, etc.) and special corrective, rehabilitative and remedial services to meet special needs (i.e., meeting the needs of the disabled, crises
in the family, substance abusers, etc.). The fact that some general services are unavailable to the community or some segment of it (usually the poor or otherwise disadvantaged) is presumed to be related to delinquency. The availability of special services addressed to particular problems is presumed to have the potential of preventing such problems from escalating to serious criminality.

Educational Services. Recommendations regarding the provision of educational services are prominent in the various studies of Maine's juvenile justice system. As the Comprehensive Juvenile Delinquency Study accurately points out, "the only social institution to reach all youth, and to affect every family, is the school." (1971:13) Furthermore, the school has long been associated in various ways with the generation, control, and prevention of delinquency, and as crucial in efforts at rehabilitating the delinquent youth, making him/her a "productive citizen." The Commission to Revise the Statutes Relating to Juveniles pointed to a common theme of the studies on one of the more important connections between the school institution and delinquency.

Because of its very nature, an educational system provides an important method for preventing juveniles from becoming offenders. Thus, the Department of Educational and Cultural Services seeks to provide each person with a high quality education which will allow him to become a self-reliant, productive and satisfied citizen. (1976d:1)
Thus, the failure of some communities to provide adequate educational opportunities for all or some of their youthful population tends to exacerbate the delinquency problem and, conversely, to provide access to such educational services for all would presumably serve to prevent delinquency. The recommendations on education are aimed at making the educational system work for all juveniles, particularly those problem students who experience behavioral difficulties, learning disabilities, lack of interest in traditional programs, truancy, and the like.

1. The failure of many of the state's communities to provide educational alternatives to "college bound" curricula, specifically, vocational education, is a serious flaw which is seen as partly responsible for truancy, dropping out, as well as discipline problems and educational failure -- all of which are assumed to be related to crime and delinquency. Thus, the reports recommend the expansion of vocational education and apprenticeship programs. In addition, the schools should allow all students, regardless of academic ability, to fully participate in all school activities so that they might have some chance of success in the academic environment. (CJDS, 1971:17-20; GTF, 1974:4)

2. There is considerable variation in the availability of guidance, counselling, and social work services
among districts and schools. In general, such services are provided at an inadequate level and tend in general not to reach out to the non-middle class, non-college bound youth. (CJDS, 1971:12-20, 79-82)

3. All of the services that a child needs to be able to benefit from the right to a public education (as guaranteed by statute) must be provided. The failure of some communities to comply with the State law mandating transportation to the appropriate educational facility is an example of the kind of service that must be provided. (CYSPP, 1977:20, 308)

4. Existing law also required schools to provide Positive Action Committees and Pupil Evaluation Teams to assess school failure and related problems and develop appropriate individual programs to deal with them. (CYSPP, 1977:307; GTF, 1974:8; CRS, 1976c:13)

5. Services must be provided to truants and drop-outs in an effort to provide appropriate educational solutions to what are essentially educational problems and to lessen the likelihood that such juveniles will engage in delinquent or criminal activity. (CJDS, 1971:15-17, 79-82; CRS, 1977:8)

6. It must further be noted that educational opportunity is considered to have a crucial role to play in the rehabilitation of juvenile offenders. Among the difficulties in this area that need attention are educa-
tional services available at the juvenile correctional facilities in Maine. Of even greater importance is the need for the local school to reach out to such juveniles upon their return from institutions and make every effort to reintegrate them into the school and provide any special services that may be necessary to help make their educational experience a success. (CJDS, 1971:20,79)

7. Finally, the schools should expand their educational missions into specific problem areas that are thought to relate to delinquency. For example, there should be curricular development in the areas of substance abuse, parenting, and so forth. (CJDS, 1971:18-19, 79-82; CYSP, 1977:308)

In general, the studies suggest that rehabilitation/prevention in the context of the educational institution means essentially that the objectives of the institution be defined more broadly and that the institution function more effectively in serving these objectives.

Family Services. The family also receives a great deal of attention in the formulation of the service component of the post-Gault rehabilitative ideal. As the Comprehensive Juvenile Delinquency Study notes, "No single unit of society is more vital in the prevention and control of delinquency than is the family." (1971:40) The importance of the family
to the post-Gault reformers in Maine is similarly indicated by two of the reports in quoting from the 1909 White House Conference reference to the family as the "highest and finest product of civilization." (GCCY, 1973:11; CBS, 1976a:81) From the first of the post-Gault studies, the popular assumption of a connection between delinquency and "broken" families is accepted. There is in general a view that the community must take measures to strengthen the family and to address the difficulties of "problem" families. Nevertheless, specific recommendations with respect to family services are few. This general lack of specific recommendations may in part be understood in the context of the importance placed on the family as a more or less "private" rather than a "public" institution. Most comments on the family and its relation to delinquency involve recommendations affirming the central place of the family in the development of children and suggesting various support services to the family and suggestions that the State abandon practices that are destructive of family life. Among the types of recommendations are the following:

1. Most of the studies claim that there is a need for improved services to families. The Comprehensive Juvenile Delinquency Study, for example, recommends the

17 The Comprehensive Juvenile Delinquency Study, for example, after calling the family the most important social unit in relation to delinquency, devotes less than two pages to specific discussion of the family and recommendations on the family. (1971:40–41)
establishment of Family Resource Councils in communities to assist families in meeting their various needs. (1971:70)

2. It is suggested that one source of the delinquency problem is the lack of knowledge on the part of parents with respect to child rearing. Education in parenting is recommended as one response to the problem. (CJDS, 1971:19, 40; CYSPP, 1977:308)

3. There is also the suggestion that the single-parent family is particularly vulnerable to the emergence of delinquency and that special counselling services be offered to single-parent families. (CJDS, 1971:75)

4. The Comprehensive Juvenile Delinquency Study implies that some type of therapy may be needed by the poor family in order to overcome the poor self-image that comes with poverty. (CJDS, 1971:54)

5. The importance of the family in the rehabilitation of the juvenile offender is noted with numerous recommendations that the family be actively involved in the rehabilitative process. (GTF, 1974:4)

6. There are several recommendations that urge the State to encourage rather than discourage family cohesiveness in its policies and practices. For example, the Governor's Task Force on Corrections condemned the isolation of the correctional inmate from his/her family as unnecessary and repressive. (1974:15-16)
The Commission to Revise the Statutes indicates that one of the goals of juvenile justice in the State ought to be the improvement and support of the family. In its draft code, among the stated purposes of juvenile justice is to secure care and guidance, preferably in the home, and to preserve and strengthen the family. (1977b:1)

Mental Health Services. Mental health has, since at least the juvenile court movement, been associated with the "causes" of juvenile delinquency and the treatment of juvenile offenders. Delinquency is and has long been considered as somehow expressive of underlying psychological problems. Thus, mental health services would be considered central to both the prevention of delinquency and the rehabilitation of juvenile offenders.

As in the case of discussion of the family, specific recommendations are few, but their impact would presumably be significant if they were to be implemented. Among them are the following:

1. In general, children are not receiving their fair share of mental health resources. Several of the studies recommend that children's mental health services be drastically expanded. (GCCY, 1973:26ff; CYSPP, 1977:97-118,283)
2. In particular, juveniles are underserved by Community Mental Health Centers. The reports are nearly unanimous on the point that diagnostic evaluations of juvenile justice clients must be provided by community mental health centers rather than the juvenile correctional institutions. (GTF, 1974:11; CYSPP, 1977:98; GCCY, 1973:27)

3. There is general agreement on the need for expanded services in the mental health area. Most of the studies, however, recommend that such services should be provided through mental health care agencies rather than corrections, the exception being the Comprehensive Juvenile Delinquency Study which made several recommendations relative to upgrading such services in the correctional institutions and probation departments. (CJDS, 1971:65-66; GCCY, 1973:26-29; GTF, 1974:11; CYSPP, 1977:97-98)

4. There is some suggestion of a need for a secure psychiatric facility for juveniles as well as therapeutic foster care and other more advanced psychiatric care capacity. (CRS, 1976a:92; CYSPP, 1977:97)

10 The Comprehensive Juvenile Delinquency inaccurately asserts that community mental health services are available to all youth and adults in Maine. This is, according to others reports, at best theoretically true. (1971:52)
Special Services. While reform of the community and its institutions seems to be considered in these studies as central to delinquency control and prevention, there are limits as to what can be done; there are those who will no doubt fall through the cracks of the institutional structure, those with special problems beyond the scope of community institutions. Special services of various kinds are also necessary to rehabilitate these juveniles. Implicit in the various reports, however, is a notion that the better are the basic institutions, the less need there will be for such services.

Finally, the underlying point needs to be reemphasized. Juveniles have real needs that are not being met. The State, in carrying out its parens patriae role, is functioning as a neglectful parent, at best. If the juvenile justice system is to be a rehabilitative system, it must fulfill its promises of care, guidance, and treatment with real care, real guidance, and real treatment.19

19 There are also numerous recommendations for services in other areas. Recreational opportunities, for example, are inaccessible to many juveniles for economic or other reasons. Probation services are also considered as inadequate.
There are numerous suggestions throughout the post-Gault studies of Maine's juvenile justice system that point to prevention as the preferred approach to delinquency. Though few of the reports specify prevention strategies in great detail, the broad outlines of such strategies are implicit in all of them. In addition, they contain some concrete suggestions of elements of a juvenile justice system that would maintain such an emphasis. Preventive justice presupposes that there are alterable conditions out of which delinquency emerges, or "causes" of delinquent behavior that can be identified and altered before offending behavior has taken place. In fact, each of the studies at the very least implies such causes or conditions as generative of delinquency. All of the studies assume to a greater or lesser extent some community and/or social conditions as being linked to delinquency and subject to change as part of a strategy of prevention. Only the Comprehensive Juvenile Delinquency Study, however, discussed prevention in terms of the identification of the "predelinquent." (1971:8-9) Nevertheless, except in terms of making the traditional connection between "status offense" behavior and subsequent criminal activity, even this study places the greatest emphasis in prevention, judging by concrete recommendations, on the efforts to make community agencies and institutions more responsive to the needs of young people. However, the concept
"predelinquent" is implicit in all of the reports in that they discuss the need to respond to problems represented by "non-criminal misbehavior" in the context of delinquency prevention. Thus, for example, the juvenile who fails academically and is truant from school or a drop-out must be given access to various services at least in part to prevent this particular problem from eventually manifesting itself in criminal activity.

The Comprehensive Juvenile Delinquency Study, for example, emphasizes the removal of the "causes" of delinquency as the most economical and practical solution to the delinquency problem. (1971:8) It specifically recommends educational programs in drug and alcohol abuse; law enforcement involvement in the schools to develop an understanding and respect for law on the part of students; greater integration of youth into the community and its institutions in terms of recreational opportunities, religion, and employment; strengthening of family life; and the provision of educational, psychological, and social services to address problems before they result in delinquent behavior. (1971:65-82)

The Governor's Task Force on Corrections was charged by the Governor with recommending "a more effective and meaningful experience in the community to prevent the repetition of criminal or delinquent behavior." (1974:2) The Task Force sees the public school system as the single most im-
important community institution in delinquency prevention and recommends that it assume a broader view of its educational mission as including the vocational, social, emotional, recreational, and political needs of its students. Furthermore, other community institutions -- social, civic, religious, recreational, and political -- must become involved with and encourage the active participation of juveniles in their activities, providing opportunities for constructively channeling juveniles' energy. There is also a need for remedial efforts to address problems of juveniles before they express themselves in delinquent behavior. (1974:3-9)

The Children and Youth Services Planning Project discussed prevention in terms of "reducing risks" by providing for the social, economic, mental health, and other needs of children. (1977:149) The Governor's Committee on Children and Youth expressed the need for the supportive services for children and families in order that the present system oriented toward "crisis intervention" become a preventive one. (1973:25)

The Commission to Revise the Statutes, in emphasizing prevention as a major goal of juvenile justice reform, recommends as specific goals the reduction of truancy, dropout rates, and formal juvenile delinquency petitions, and the increase in prevention programs and participation in them, and increased use of community counselling and other forms of non-judicial intervention. The Commission dis-
cussed in detail prevention through the educational system and through the establishment of youth services bureaus. (1976b:1-24, Appendix II-no page)

The Role of the Community

A further theme that runs through these studies and which relates to the ideal of rehabilitation is the adherence to the sociological axiom that delinquency somehow emerges out of social relations in general and out of the community in particular. There are, of course, a number of variations on this theme in the various reports. However, there is unanimity on the basic point that some flaw in the organization of the community and/or its institutions, is ultimately responsible for the emergence of delinquency. Consequently, it is only in the community that the problem can ultimately be solved. In the words of the Governor's Task Force on Corrections,

[It] is the community, not the [correctional] institution, that offers the only real hope to the criminal offender. Thus, if the community is not presently motivated by compassion and fairness for fellow members who have broken the social contract, as we believe it is prepared to do with sufficient information and resources, it must act out of its own enlightened self-interest. (1974:iv)

Thus, there is a tendency in all of the reports to favor various improvements in the community and its institutions, to favor community-based treatment of the juvenile offender,
and to assume a somewhat anti-institutional stance. The role of the community and/or society is emphasized in the generation of delinquency, and in its prevention and treatment. Only the community, not the institution, can ultimately deal with the problem.

There are a number of ways in which the notion of "community" enters into the various reports and recommendations. First, there is, particularly in the Final Report of the Comprehensive Juvenile Delinquency Study and In the Public Interest, the suggestion that delinquency emerges from the community and that, consequently, the solutions to the problem must be found in the community. (CJDS, 1971:1-9, 13-41; GTP, 1974:iv) The second rationale for focusing on the community, one common to all of the reports, is that the community is what the individual juvenile must adjust to, not institutional life, and that consequently, treatment based in the community is more natural and more likely to lead to more normal development of the juvenile. Third, the community is viewed as the alternative to correctional institutions, widely regarded as incapable of rehabilitating delinquents and, in fact, more likely to encourage further delinquency and criminality. Finally, the community is seen as having the most direct interest in the rehabilitation of the juvenile offender and in the prevention of delinquency.

In the case of the Final Report of the Comprehensive Juvenile Delinquency Study, "community" refers primarily to
the local community. In the report of the Governor's Task Force, *In the Public Interest*, both the local community and the larger society and its institutions are linked to the generation of delinquent behavior. In both, the requirement that the recommendations be practical results in a focus on the local community in terms of specific recommendations.

From these major themes are derived three remaining prescriptions of post-Gault reform both nationally and in Maine: decriminalization, deinstitutionalization, and diversion. Each represents an attempt to bring these themes to bear on some particular aspect of the juvenile justice system.

**Decriminalization**

As previously noted, decriminalization in post-Gault juvenile justice generally refers to the removal of so-called "status offenses" from the jurisdiction of the juvenile justice system. Decriminalization is a curious ideal of post-Gault justice in some respects in that decriminalization was in fact one of the major rationales for the establishment of socialized juvenile justice in the first place. Juvenile Courts were established and functioned behind a veil of secrecy in order to protect the juvenile from the negative consequences to reputation and so forth as a result of what
were often seen as juvenile indiscretions. Maine's first juvenile court legislation, An Act to Extend the Jurisdiction of the Municipal Court in Certain Cases (1931), in fact, specified that convictions of juveniles under this statute were not to be construed as convictions of criminal offenses. (Maine Legislature, 1931:273) The call for decriminalization of juvenile justice in the 1960's and 1970's is testimony to the failure of this long held ideal of socialized juvenile justice.

Maine's juvenile law was typical in including the following kinds of activities within the jurisdiction of the juvenile court. Included in the statutes (1965:522) are the following status offenses:

1. Habitual truancy.
2. Being in an incorrigible or indecent and lascivious manner.
3. Knowingly and willfully associating with vicious, criminal or grossly immoral people.
4. Repeatedly deserting one's home without just cause.
5. Living in circumstances of manifest danger of falling into vice or immorality.

In establishing such special offense categories for juveniles, the State is acting parens patriae in an effort to control behavior which is presumed likely to lead to criminality if left unchecked. (S** v. State, in CRS, 1976a:2)
There are a number of grounds upon which criticism of the status offense jurisdiction rests. First, in a theme echoed by many of the studies, the Comprehensive Juvenile Delinquency Study points out that there are certain problems (behaviors constituting status offenses) which are not essentially legal in nature, but, rather, depending on the particular "offense", educational or medical problems appropriately dealt with by the educational system or the health care system. (1971:13-16,71-72) The same point is made by the Governor's Committee on Children and Youth with respect to the problem of truancy, arguing that "coercion" is an inappropriate way of dealing with such problems. (1973:19)

The second major area of criticism of the status offense jurisdiction is on the basis of the labeling perspective. (Lemert, 1951) The Governor's Task Force on Corrections makes the point that Maine juvenile justice professionals have reinforced delinquency through labeling and stigmatization which accompanies formal juvenile justice processing. There has also been a tendency for communities to foist off their problems on the juvenile justice system. School administrators are cited as an example. (1974:8-9) The Commission to Revise the Statutes noted in its analysis of the goals of Maine's juvenile justice system that the status offense jurisdiction which has prevention as its rationale, has, in fact, the opposite effect due to labeling. (1976a:80)
The Governor's Task Force implies and the Commission to Revise the Statutes makes explicit the criticism that the status offense jurisdiction tends to undermine the family. (GTF, 1974:9; CRS, 1976a:81)

A further line of criticism is that the jurisdiction of the court over status offenses tends to undermine any real responses to the problem that such behaviors presumably signify. (CRS, 1976a:81) It has long been recognized that juveniles often received the equivalent of severe penal sanctions for offenses that were not even considered criminal when committed by adults. The most obvious example is the possession of alcohol by a minor. But perhaps the most problematic of these involve the vague designations of "incorrigibility" or "immoral behavior" or "danger of falling into vice or immorality" that were included in most pre-Gault juvenile codes. (GTF, 1974:9-10) The fact that juveniles could be and in fact were incarcerated for indeterminate periods of time for such "offenses" and that they could be so incarcerated without the benefit of due process of law was clearly a major concern of juvenile justice reformers and a major factor in the instigation of the most recent juvenile justice reform movement.

Finally, there is the criticism that the status offense jurisdiction is unfair, not only because it punishes children for behavior which is not punishable for others, but because the definitions of these "offenses" are broad and
vague in the extreme. This allows for discriminatory and arbitrary enforcement. (CRS, 1976a:79-82)

Recommendations on decriminalization range from rather modest proposals to develop more appropriate responses to non-criminal misbehavior to wholesale elimination of status offenses from the jurisdiction of the juvenile court and the development of more appropriate structures where such are deemed necessary.

The Comprehensive Juvenile Delinquency Study is unique among the post-Gault studies in that it adopts a fairly traditional attitude toward status offenses. There is in the Final Report no suggestion that decriminalization take place. Furthermore, there is little indication of any sensitivity on the part of the researchers to the possible negative consequences of formal processing. There is, nonetheless, some slight move in the direction of decriminalization in the recommendations which prescribe non-judicial remedies for some of these "status offenses" such as the notion that educational problems (dropping out and truancy, for example) require educational solutions, not juvenile justice processing. The same is true of such problems as drug abuse, where the study concludes that treatment of such problems ought to be left to the professionals in mental health. (1971:13-16, 71-72)

The Governor's Task Force on Corrections recommends the complete elimination of the status offense jurisdiction,
thereby decreasing the number of youth who enter the juvenile justice system and lessening the risk of stigmatization. The Task Force goes a step further than existing law which prohibits the institutionalization of status offenders and recommends that they not be adjudicated at all. If the juvenile justice system is to deal with such youth, it must do so informally and nonjudicially and with the entire family, not just the juvenile in question. This is particularly important considering the harm generally recognized as accompanying juvenile justice processing. (1974:9)

The report makes clear that in proposing decriminalization, it does not intend that problems represented by "status offenses" be ignored. Rather, it makes strong recommendations for dealing with such problems in a more appropriate manner. For example, the educational system must be directed to address the needs of problem students. Teachers and guidance personnel must be trained to deal with aggressive behavior, poor academic performance, social pathology, and truancy. Programs tied to existing community resources must be established within the schools to deal with these problems. The report notes that existing statutes require school districts to address these problems under threat of denial of funding. Pupil Evaluation Teams apparently being developed to implement this legislation should also be used as delinquency prevention tool. For too long, the report notes, school administrators have been foisting their prob-
lems on the correctional system. In addition, there must be cooperation between schools and the youth services bureaus which the Task Force proposes. (1974:8-10) The youth services bureau is the central component of the juvenile justice system recommended by the Governor's Task Force. Clearly, such a bureau, offering services to youth, criminal and non-criminal, on a voluntary basis, would fulfill a central function with respect to those juveniles who were previously handled under the juvenile court's status offense jurisdiction. (1974:6-7)

The Governor's Committee on Children and Youth has little to say directly on the issue of decriminalization. Nevertheless, there is implicit in the report the assumption that services rendered outside of the juvenile justice system are more appropriate in many cases. Also, as does the Comprehensive Juvenile Delinquency Study, the Governor's Committee recommends that such services be provided to truants and potential truants on the grounds that coercion is an ineffective means of dealing with problems.

Laws which attempt to eliminate truancy through coercion are ineffective. Truancy is a symptom of the inadequacy of the educational institution and must be dealt with by providing services to the affected group of pupils. (1973:19)

The Children and Youth Services Planning Project endorses decriminalization by virtue of their general endorsement of the work of the Commission to Revise the Statutes. Apart from this indirect endorsement, however, there are a number
of suggestions that clearly indicate that such a goal is consistent with the thinking of the Project. In particular, the Project is quite critical of juvenile justice processing of runaways (suggesting instead that short-term shelter facilities be developed) and truants (suggesting instead that Pupil Evaluation Teams respond to such problems). Furthermore, their report quotes approvingly from a study of the Stevens School (girls correctional center) conducted by the American Correctional Association which concluded that fully one third of inmates were more appropriately child welfare cases than correctional inmates. (1977:192)

Finally, the most detailed of the discussions of decriminalization is that of the Commission to Revise the Statutes Relating to Juveniles. Quite obviously, since it was charged with the development of specific legislation, its recommendations are more detailed. However, its recommendations do not differ substantively from those previously discussed. The Commission argued that statutes relating to status offenses are vague and inappropriate for juvenile court intervention (1977b:11-22) By 1975, the Legislature had amended the Code to eliminate the possibility of incarceration for such status offenses. The Commission itself continued such a prohibition and, most importantly, completely eliminated all but a few of these status offenses from the Court's jurisdiction. The offenses retained were the possession of alcohol, the possession of marijuana (de-
criminalized in a reform of the Maine Criminal Code) and prostitution (also decriminalized for adults in Maine).

Initially, the Commission recommended that there be no incarceration for any of these offenses. However, it subsequently reversed its position to allow it for all of them.

Finally, the Commission's strong statements indicating a commitment to the idea that decriminalization is not neglect need to be emphasized. Clearly, there is no intent to allow a juvenile to destroy him/herself with alcohol or drugs simply because judicial intervention seems inappropriate. Certain actions, argues the Commission, indicate a need for assistance. Others represent a threat to the public. The latter (e.g. driving while intoxicated) justify jurisdiction. On the other hand, behavior which represents no threat to the public but which may signify a serious problem for the juvenile must be met with psychiatric, medical, or other nonjudicial services. In cases where the juvenile represents a serious threat to him/her self, temporary and limited custody may be justified. In general, however, behaviors previously defined as "status offenses" must be responded to non-coercively. Crisis-intervention centers, walk-in centers, temporary residential facilities, counselling, medical treatment, educational services, and mental health care should be available. Commissioners expressed concern about alcoholism, runaways, and sexual immorality. There was concern that the mental health problems of such juveniles were
not being met. They recommended that these be given coun­selling without removal from their families wherever possi­ble and that the school system be utilized for diagnosis and treatment. (1976a:82-85)

The Commission's views of the proper role of Maine's ju­venile justice system with respect to status offenses is noted in their "Suggested Goals of Maine's Juvenile Justice System."

- **Goal:** To decrease or eliminate the number of children about whom petitions for non-criminal be­havior are filed in juvenile courts.

- **Goal:** To provide the juvenile court with juris­diction over clearly specified and defines acts which threaten harm or which do harm to others.

- **Goal:** To increase the availability and use on non-court related treatment services to both non-criminally misbehaving children and their fami­lies. (1976a:83-85)

**Deinstitutionalization and Institutional Reform**

Deinstitutionalization in the context of juvenile justice reform has a broader connotation than the usual use of the term, referring not only to the removal of juveniles from the large, isolated, frequently punitive institutions, but also the removal of juveniles from jails and, in general, a decreasing use of secure facilities. Furthermore, in the context of post-Gault reform in Maine, it is also necessary to include some discussion of institutional reform in the
context of deinstitutionalization, for it also assumes the 
meaning of "deinstitutionalizing institutions."

There are four fundamental reasons for deinstitutionalization and decarceration. First, the historical failure of 
the juvenile correctional institution in its many forms con-
tinues into the modern era. There is simply no evidence 
that it has ever succeeded in rehabilitating its charges. 
Secondly, and related, is the widespread recognition of the 
negative consequences of institutionalization, particularly 
the likelihood of stigmatization and the history that sug-
gests that these institutions are more likely to be "training schools" in crime than "training schools" in "productive 
citizenship." Thirdly, the long held concern of juvenile 
justice reformers with the possible "contagion" of juveniles 
by housing them (in jails) with adult criminals is the major 
rationale behind the move to prohibit the incarceration of 
juveniles in adult facilities. Finally, fundamental fairness is involved. For juveniles to be incarcerated in cor-
rectional institutions for offenses that result in only a 
fine for an adult, or no penalty at all (in the case of ju-
venile status offenses), strikes many reformers as inherently unfair, particularly in light of the failure of these in-
stitutions to fulfill their promises of care, guidance, and 
rehabilitation instead of punishment.

All of the studies to some degree share in these criti-
cisms of the existing system and call for some degree of
deinstitutionalization and decarceration. Nonetheless, there is a wide range of opinion on these issues expressed in the various reports.

The Comprehensive Juvenile Delinquency Study, while somewhat critical of the institutions, does not appear to view the problem as fundamentally connected to the nature of correctional institutions. In fact, relying almost exclusively on "in house" evaluations of the training centers, the Comprehensive Juvenile Delinquency Study arrives at typical "in house" conclusions, essentially to the effect that the institutions simply do not have the resources adequate to their tasks. Additional social workers, psychiatrists, counsellors, buildings, and so forth, that is to say institutional improvement, is the answer to whatever problems do exist. Some changes in institutional policy and procedure are also recommended. In particular, the institution should be made as natural an environment as possible, including such changes as decreasing the size of the institutions, making them "coeducational," increasing the personal privacy of the inmates, eliminating the extended period of "medical isolation" upon entrance into the institution, and encouraging the education of the inmates in the community when such is possible. There is, however, a call for the establishment of halfway houses and other community-based treatment facilities, which seems to suggest that some degree of deinstitutionalization is possible. An additional recommen-
The Comprehensive Juvenile Delinquency Study is more explicit on the issue of secure detention, recommending rather strongly that juveniles awaiting court appearance should be at home with their families. As a last resort, they may be held at the training centers. They may be held in jails only if there is a separate, specially designed section exclusively for the detention of juveniles, and a separate entrance to the facility. [1971:73-74]

The Governor's Task Force on Corrections was a strong proponent of deinstitutionalization. The report argues that the largely institutional correctional systems are failing. There is, they note, a growing awareness in Maine and the nation that correctional systems are "simply not working". They neither deter nor prevent crime. There is concern over public safety, use of violence to solve problems, and over the "enormous disparity" between what the evidence suggests that we should be doing and actual correctional practices. There is also concern over the tremendous costs and failure of long-term confinement of large numbers of offenders and apparently lower cost and greater effectiveness of community based corrections. The Task Force makes numerous points in its report, In the Public Interest, on this and related issues. [1974:11]
First, the Task Force comments on the inappropriateness of the institutional approach for most of the clients of the Maine correctional system, noting that the vast majority of the population of correctional institutions in Maine were convicted of non-violent offenses — property crimes or victimless crimes in nearly 80% of cases. Most of these, the Task Force claims, could be handled more appropriately by community-based corrections if such a capacity existed. Not only is such an approach ineffective, it is also extremely wasteful of scarce resources. The Task Force writes,

[For this largely non-violent average offender population of 741 persons, Maine spent $7,839,450 in fiscal year 1973-74, the lion's share of this sum being allocated to simple institutional custodial and security requirements...[This is] an ineffective and unnecessary misallocation of public resources. (1974:vi)

In general, the Task Force opted for the establishment of a much more community-based system, geared toward preventing the repetition of non-violent crime at the local level and aimed at addressing the socio-economic problems of offenders and their successful reintegration into the community as soon as possible after they have come into contact with the criminal justice system. Ideally, the new decentralized system would embrace all the public and private resources now available and would include others not currently available. (1974:vi,4) There is also a need for a system of group homes so that juveniles who need a residential facility are not confined to institutions. The Task Force recommends the
establishment of a Group Home Advisory Board to plan and develop such a system. The intent of the Governor's Task Force was to move toward complete deinstitutionalization by the gradual transfer of resources from the institutions to community-based programs. It explicitly rejects the Massachusetts approach of closing the institutions immediately on the grounds that such an approach is "simplistic and illogical." (1974:11-12)

While the ultimate goal of the Task Force is to eventually completely replace institutions with a system of group homes across the State, a radically reduced role for the institutions is proposed for the interim. For example, the report refers to "that fraction of the offender population that must remain confined...." They must be provided with the rehabilitative services during and after institutional confinement that will make for them illogical a return to criminal activity and that will allow them to become first-class members of the community upon release. Furthermore, the Task Force calls for the creation of as natural and dignified environment as possible. The institution should both minimize stigma and prepare the juvenile for re-entry into the community. (1974:vi,11-12)

Such a program depends on willingness of Maine communities to cooperate. The Task Force recommends that the State provide incentives to encourage community cooperation in deinstitutionalization. Considering the annual per capita
cost of confinement of $14,000 to $20,000, the provision of financial incentives to the local community makes good fiscal sense to the State. (1974:12-13)

The Task Force also raises an additional issue under the broad rubric of deinstitutionalization that became important in Maine's post-Gault reform effort, that is, the practice of extended confinement of juveniles at the training centers for purposes of preadjudicatory diagnostic evaluations. The report recommends that judges be instructed to cease using the training centers for this purpose. Instead, community mental health facilities must be utilized. According to the Task Force report, juveniles were often confined for as long as a month at training centers for this purpose when in fact a complete diagnostic evaluation should take no longer than three days. The conclusion that centers were being used as preadjudicatory jails for juveniles is difficult to avoid. The Task Force writes,

We believe this practice to be a wholly unacceptable manner in which to inform some juveniles at first hand of the possible sanctions attached to the continuance of their alleged conduct, and such practices authorized by a presiding judge seem somewhat to beg the ultimate questions in the pending criminal case. (1974:11)

Not only is the practice unfair and counterproductive, it serves to divert training center resources away from institutional programs and is not a cost effective approach to diagnostic evaluation.
The report of the Children and Youth Services Planning Project, Comprehensive Blueprint, addresses three basic issues of deinstitutionalization—the high rate of commitment of juveniles to training centers for treatment, the high rate of secure detention of juveniles in Maine, and the frequent use of the training centers for diagnostic evaluations. These are, of course, issues that have been previously raised. What the Children and Youth Services Planning Project contributes to the discussion is a slightly different perspective on the appropriate path to deinstitutionalization. In contrast to the earlier Governor's Task Force on Corrections study, the Project raises the question of whether the move from institutional to community-based treatment can be implemented without closing down the institutions. 20

Can the philosophy of the juvenile justice system truly become one of community-based alternatives without implementing changes as radical as the Massachusetts experiment of closing down all juvenile institutions? (1977:149)

Furthermore, the Children and Youth Services Planning Project marshalled an impressive array of supporting data to back up its conclusions. According to the Comprehensive Blueprint, Maine far exceeded the national standard in the use of secure detention. 14% of the juveniles arrested were so detained and 30% of those who were subsequently referred

20 This difference in perspective may be the result of the experience with "deinstitutionalization" in the intervening years. As the Project report indicates, deinstitutionalization had become incorporated into Maine juvenile justice policy, and the results, as will be apparent below, were not particularly impressive.
to court. These secure detentions took place at the training centers and county jails. The point that the vast majority of these were unnecessary is illustrated with figures for fiscal year 1975. In that year, there were 1,340 secure detentions of juveniles. In the same year, only 281 juveniles were committed to the Boy's Training Center or the Stevens School. If more than a thousand juveniles represented a serious threat to themselves or the community, there presumably would have been a far greater proportion of them committed to the training centers. (1977:158) Perhaps more disturbing than than high rate of secure detentions is the dramatic increase in such detentions in recent years. For example, the number of inmates of the Boy's Training Center classified as "hold for court" in 1970 was 20; by FY1974 the number had risen to 512.21 (1977:152) The report also notes the waste of resources involved in unnecessary detentions. It estimated the cost of "unwarranted" detentions in 1975 at $129,000. The practice is, claims the report, "wasteful and potentially harmful." (1977:158) The frequent use of jails for juvenile detentions is also decried. The CYSPP indicates that it expects the practice to continue and insists that the jails that hold juveniles be inspected by the Department of Mental Health and Corrections.

21 The FY1974 figure is somewhat misleading in that it also includes those juveniles at the Center for diagnostic evaluations. These were thought to total approximately one-third of the 512 inmates. In any case, the increase remains dramatic.
Like the Governor's Task Force on Corrections, the Project condemns the practice of conducting preadjudicatory diagnostic evaluations at the training centers and recommends instead that community mental health centers provide such services to the courts. The Department of Mental Health and Corrections, the report argues, must exert leadership to see that comes about. Despite the move to the "community-based" philosophy, the courts continue to indicate a strong preference for institutional evaluations. Statistics indicate that such evaluations result in the needless lengthy confinement of juveniles at the Boy's Training Center (an average of 17.5 days per evaluation) and the Stevens School (an average stay of 26.8 days). A further problem with institutional evaluations is that they often result in transporting the juvenile a great distance from his/her home and family. Of the 196 evaluations conducted at the Boy's Training Center in FY1974, more than half involved juveniles who lived outside of a fifty mile radius of the Center. (1977:150-157)

Finally, the excessive use of commitment to training centers as a court disposition is discussed. Again, the Children and Youth Services Planning Project notes the disparity between the professed commitment to the community-based philosophy on the one hand and the ever increasing populations of the training centers. The trend in the figures over re-
cent years is disturbing." The rather steady decrease in the population of both centers from FY1971 through FY1974 (from 247 to 198) is dramatically reversed in FY1975 when it increases 41.9% to 281. The trend continues into FY1976 when an additional 14.9% is recorded (323 inmates). On the other hand, while there has been some increase in the numbers of residential placements between FY1972 and FY1975 (from 9 to 107), the ratio of placements to commitments has increased only slightly. This perhaps explains the suggestion of the report that deinstitutionalization may only be fully realized by the elimination of the juvenile correctional institution. (1977: 184-191)

The Governor's Committee on Children and Youth also comes out strongly for deinstitutionalization and an end to diagnostic evaluations at the training centers. They recommend that such evaluations be conducted by community mental health centers "unless it is absolutely necessary for protection of the community" that the juvenile be confined. (1973:29) The report emphatically recommends the provision of community-based services in place of institutionalization and recommends that such services, whenever possible, be provided in the home. (1973:25)

Finally, the Commission to Revise the Statutes makes a number of recommendations with respect to the general issue of deinstitutionalization, most importantly in its draft of a proposed new juvenile code. First, with respect to the
issue of detention of juveniles, the proposed code of the Commission would allow the detention of juveniles upon apprehension by law enforcement only as long as necessary to obtain essential information.

A child shall not be detained by law enforcement officials longer than is reasonably necessary to obtain his name, age, residence, to contact his parent, guardian, or legal custodian and an intake worker. (1977b: 20)

Secondly, when secure detention of a juvenile is deemed necessary by an intake worker, the juvenile may be detained for not more than forty-eight hours without a detention hearing and may only continue in detention if the juvenile court judge finds that detention is necessary in order to

1. to protect the person or property of others or of the juvenile; or

2. to secure the juvenile's presence at the next hearing. (1977: 26)

Further, neither the judge nor intake worker may order a juvenile detained in a jail or other adult facility except:

1. when the jurisdiction of the matter as a juvenile case has been waived...; or

2. when the judge or intake worker determines, after consultation with the superintendent of a juvenile detention center that the child is beyond the control of the detention home staff; and

3. that the receiving facility contains a separate section for juveniles and has an adequate staff to supervise and monitor the child's activities at all times. (1977: 28-29)
Finally, on the central issue of deinstitutionalization, the Commission's proposed code clearly establishes the principle that institutional dispositions should be used as a last resort, that non-institutional dispositions are the preferred dispositions. This is made clear, for example, in the provisions of the proposed code setting forth the criteria for determining dispositions.

The court shall deal with a juvenile who has been adjudicated delinquent without imposing placement in a secure institution as disposition unless, having regard to the nature and circumstances of the crime and the history, character and condition of the juvenile, it finds that confinement is necessary for protection because:

1. There is undue risk that during the period of a suspended sentence or probation the juvenile will commit another crime; or

2. The juvenile is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

3. A lesser sentence will depreciate the seriousness of the juvenile's delinquent conduct. (1977:57)

There is also a long list of additional considerations that "shall be accorded weight in favor of withholding placement in a secure institution." (1977:57) While there is no apparent intent on the part of the Commission to eliminate the correctional institution for juveniles, it is clearly their intent that such institutions be rarely used for juvenile court dispositions.
Perhaps one of the most significant developments in juvenile justice in the post-Gault era is the idea of "diversion" from the formal juvenile justice process. Although the term "diversion" is used in many ways, and in a general sense can be said to include decriminalization and deinstitutionalization, the term is used here in the narrower sense of diverting juveniles from formal juvenile justice processing entirely. Ideally, diversion implies the steering of juveniles away from the juvenile justice system prior to arrest. And there seems to be general agreement that, given the likely negative consequences of formal juvenile justice processing, juveniles should be diverted away from the juvenile justice system whenever possible. The central debate, however, is over the nature of genuine diversion and the most appropriate diversion mechanism. These issues are most thoroughly discussed in the report of the Governor's Task Force on Corrections and the reports of the Commission to Revise the Statutes Relating to Juveniles.22 In addition, the Comprehensive Blueprint of the Children and Youth Services Planning Project, raises a number of important points and contributes some concrete data to the debate over diversion.

22 The Comprehensive Juvenile Delinquency Study and the Governor's Committee on Children and Youth do not explicitly deal with the subject of diversion, but the principle is certainly consistent with the recommendations made in each report.
Official interest in diversion in Maine's juvenile justice system dates at least to 1972 when then Governor Curtis, in his charge to the Governor's Task Force on Corrections asked that they prepare recommendations "relative to the pre-trial diversion of juvenile offenders to more meaningful treatment alternatives." (1973:1) The basic point of view of these studies that informs their recommendations on diversion parallels their discussions of decriminalization and deinstitutionalization. That is to say, diversion recommendations are premised on the lessons of the labeling/societal reaction theories and the considerable historical evidence that suggest that contact with the juvenile justice system is likely to result in more rather than less delinquency. (see Lemert, 1951) Thus, it is not surprising that a major post-Gault ideal is that whenever possible, juveniles be diverted away from formal juvenile justice processing at the earliest possible point. The Governor's Task Force in its report, In the Public Interest, urges that all those whose problems could be handled by more effective and less costly methods should be so handled. (1974:4) The Commission to Revise the Statutes Relating to Juveniles suggests that the goals include to "decrease the number of children about whom petitions are filed in juvenile courts" and "increase the number of delinquency and 'status offender' children needing counseling or other intervention services in their own communities rather than referred to juvenile courts."
Furthermore, the Commission in its proposed Code gave clear preference to diversion over formal processing.

While there appears to be general agreement among the studies on the basic idea, there are a number of issues in diversion that are addressed in some of the studies that require further discussion.

Perhaps one of the most controversial issues in diversion is one raised in the Governor's Task Force report, namely, the appropriate nature and location of the diversion mechanism. The Governor's Task Force discussed it in the context of the LEAA (Law Enforcement Assistance Administration) funding of police diversion programs which it believed inappropriate largely because diversion by definition is an attempt to avoid penetration into the juvenile justice system. Obviously, penetration into the police station involves a certain degree of stigmatization. The Task Force opts instead for the Youth Services Bureau model of diversion which is located outside of the boundaries of the law enforcement system. The issue is discussed at great length by the Commission to Revise the Statutes with many of the same points being made. One of the important elements of the diversion mechanism is that it be nonstigmatizing, and the only way of accomplishing this fully is to serve a broader clientele than simply the juvenile offender population.
An additional issue that is raised particularly well by the Children and Youth Services Planning Project is the question of "diversion to what?" In other words, there is a serious question as to whether diversion will be anything more than benign neglect, a failure to respond to juvenile crime and/or misbehavior. Clearly, as the Comprehensive Blueprint and the other reports suggest, genuine diversion involves the provision of services, real alternatives to official processing, not merely the elimination of it. The Governor's Task Force suggests, for example, the establishment of community arbitration councils as a possible additional diversion tool. Rather, as the Comprehensive Blueprint points out, more important question than the diversion mechanism is the substance of diversion, "diversion to what?" (1977:149)

Finally, there are a number of serious concerns expressed with diversion, particularly with the possibility that it may not result in the intended decrease in the numbers of juveniles subjected to formal processing. The Children and Youth Services Planning Project provides data which raises serious questions. Noting that "diversion" has been juvenile justice policy for a number of years, it points to dramatic increases in the numbers of juveniles processed. That is, the net has been widened. (1977:149-174) The Commission to Revise the Statutes raises a number of similar concerns, noting for example, that while diversion was one of the most
widely supported concepts to emerge from the President's Commission on Law Enforcement and the Administration of Justice, and the one that generated the most hope, five years later fewer than 170 programs in the country were "significantly related" to the idea of diversion. (1976a:64-65)

**Evaluation and Planning**

All of the studies under consideration stressed the need for constant planning and monitoring efforts as a means of ensuring that the system operate effectively and that reforms and plans get implemented. Indeed, the impression comes through that a major reason for previous failures involve the unavailability of information necessary to maintain control over the system(s).

The *Final Report* of the Comprehensive Juvenile Delinquency Study calls for ongoing program evaluation which it considers an essential component of any effort at delinquency prevention and control. (1971:9) It also recommends standardized state-wide record keeping in all areas of juvenile justice. (1971:74) The establishment of a Governor's Advisory Committee is recommended for the purpose of monitoring all juvenile institutions and a Juvenile Delinquency Advisory Committee is recommended for the review of all programs. (1971:75) A Department of Youth Affairs is recommended to coordinate all services to youth, except public assistance
and education. (1971:93) Finally, in the section on "projects" a Juvenile Justice Association is suggested apparently as a funding conduit to assist in developing Youth Services Bureaus and other services and programs. (1971:87)

The Governor's Task Force discusses at some length the need for planning and coordination and recommends the establishment of a Youth Services Agency for this purpose. The report notes the almost complete lack of planning capability by the Bureau of Corrections and suggests that such capacity must be immediately developed. Among the more important of specific recommendations in this regard is the need to develop continued monitoring and evaluation capacity to ensure effectiveness of correctional programs. (1974:6-7)

The Children and Youth Services Planning Project notes the tremendous duplication, incoherence, and discontinuity of the youth services structure and well as the severe inequities. The implication is that remedying such problems requires better information. The section on "Improved Structures" recommends a more comprehensive approach to the problem of service provision and is relevant to evaluation, monitoring and planning on a number of points. The need for greater accountability and predictability are examples. Planning, evaluation, and monitoring capabilities are discussed in the context of procedures for developing policy. In place of the existing fragmented system, an Office of Research, Evaluation, and Planning is recommended for each department. (1977:208-215)
The issue of fragmented services is also raised in the report of the Governor's Committee on Children and Youth. Also noted is the need to coordinate services and the inequitable distribution of services. Presumably, these problems call for greater research, evaluation, planning, and monitoring. (1973:27)

The draft of the proposed code of the Commission to Revise the Statutes Relating to Juveniles also contains provisions requiring planning and evaluation capacities and procedures. Included under the rubric "Functions of the Department of Mental Health and Corrections" are planning and evaluating programs, needs, services, and agencies. (1977a:72-75)

**Summary: The Rehabilitative Ideal**

The ideals of post-Gault reform which emerge from the various studies can be summarized as follows.

1. Rehabilitation: Socialized ideals of prevention and rehabilitation are not incompatible with due process and continue to provide the philosophical basis for post-Gault juvenile justice.

2. Community: Delinquency is a problem that comes out of the community and must be solved in the community, by the community.
3. Decriminalization: Behavior which is not criminal for adults and which is not a threat to the public should not be criminal for juveniles.

4. Deinstitutionalization: Large, centralized, correctional institutions are ineffective and counterproductive. Small, decentralized community-based treatment facilities represent more appropriate settings for rehabilitating juvenile offenders.

5. Diversion: Official processing through the juvenile justice system involves negative consequences and should be avoided whenever possible.

6. Evaluation: Adequate information is necessary if the juvenile justice is to function effectively. Evaluation, research, and planning components are vital to the juvenile justice system.

Having established the principles or ideals of post-Gault reform in Maine, the question which must now be addressed is whether, and to what degree, Maine's reformed juvenile justice system measures up to these reform ideals.
Chapter VI
THE BEST OF BOTH WORLDS? THE IDEAL IN PRACTICE

To what extent has the new system of juvenile justice in Maine measured up to the vision of the best of both worlds? Does the new system provide due process protections and fairness as well as effective prevention and rehabilitation? Or, is the new system most appropriately characterized as continuous with the historical failure of reform in juvenile justice?

The answers to these questions may be discovered in examining the "reformed" juvenile justice system in light of the post-Gault ideals outlined in the previous two chapters. It is neither possible nor necessary to examine the system with respect to every recommendation made by each of the post-Gault studies. The basic issue under consideration is more fundamental: Have the most basic and most central aspects of post-Gault ideals been incorporated into the reformed system?

23 Clearly, this research is not intended as an evaluation of the new juvenile justice system in Maine. Such an evaluation would require a far more detailed analysis of all of these recommendations, as well as independent data collection and analysis. The primary purpose of the present research is to place post-Gault reform in the historical context and to shed light on the historical reform process.
This analysis is organized around four of the post-Gault ideals discussed previously. First, the new system is examined with respect to conformity to the ideal of fairness and due process. Secondly, the system will be examined with respect to the three major ideals that are subsumed under the general category of rehabilitation -- decriminalization, deinstitutionalization, and diversion. The remaining ideals discussed in the previous chapter quite obviously overlap with these and need not be addressed separately. All three, for example, require the provision of rehabilitative services. They also assume the preference for "community-based" juvenile justice. The issue of evaluation/monitoring will be addressed in the concluding chapter since it is not only an ideal of post-Gault justice, but has a great deal to do with success or failure of reform.

The assessment of post-Gault juvenile justice in Maine requires an examination of the system as embodied in the new Juvenile Code. Analysis of the provisions of the new Code in light of the reform ideals is thus an important component of this assessment. Perhaps even more important is an examination of the actual operation of aspects of the juvenile justice system. Several sources of information are used in this connection. The report of the United Way Juvenile Code Committee, The New Juvenile Code: Its First Three Months in Cumberland County, provides considerable data and analysis of the extent to which the provisions of the new
Code are being implemented in Cumberland County, the largest, most urban county in Maine. (1978) Secondly, a major assessment of the new system is found in a grant proposal submitted to the Office of Juvenile Justice and Delinquency Prevention by group intimately involved in Maine's juvenile justice system for several years. Their rather thoroughgoing assessment of the system is a large part of their rationale for funding of their youth advocacy organization. (MacDonald and Biskup, 1979)

The Department of Mental Health and Corrections annual reports called "Evaluation and Plan" provide some useful data. (1978-1983) Finally, the Legislative Committee to Monitor the Implementation of the New Juvenile Code provided data from the Department of Mental Health and Corrections on intake processing as well as data gathered by its staff on court processing.

Due Process

Nothing is more central to post-Gault reform than the requirement that juveniles be treated fairly by the juvenile justice system and that, specifically, they be granted due process protections guaranteed by the U.S. Constitution. Although fairness was clearly not the only concern of post-Gault reform, it was without doubt the moving force. The most recent reform movement in juvenile justice was born of
a concern that under the guise of rehabilitation, juveniles were being denied their constitutional rights. Central to this concern with due process is the series of U.S. Supreme Court decisions from which the present reform era takes its name.

**Court Mandated Rights**

The first of the criteria against which to assess the success of post-Gault reform must be the minimum criteria established by the Supreme Court in *Gault* and related decisions, that juveniles within the jurisdiction of the juvenile court be accorded many of the rights to due process that are accorded to adults in criminal proceedings. To what extent does the Maine Juvenile Code provide for these rights?

The new Juvenile Code as it emerged from the Legislature in 1977, specifically grants juveniles the rights that the Supreme Court requires and, in general, attempts to bring a degree of procedural regularity and fairness to the proceedings before the juvenile court. Most of these rights are explicitly granted in the new Maine Juvenile Code. For example, the Court in *Kent* ruled that juveniles have the right to counsel in waiver proceedings against them. (1967) In *Gault*, the Court expanded the requirement and ruled that juveniles must be afforded the right to counsel in hearings
which may result in their commitment to an institution.

(1968) The new Code requires that at the juvenile's first court appearance, he/she must be advised of rights, including the right to be represented by counsel at all stages of the proceedings. Further, in the event of indigence on the part of the juvenile or the parents, the court is required to appoint counsel if so requested and may appoint counsel even if not requested. (1977a:657)

The Court's decision in Kent v. U.S. requires that juveniles have the right to "examination, criticism, and refutation" of records and other information that enter into decisions by the juvenile court, in that particular case, a waiver decision. (1967:1058) Maine's new Code specifically requires that court records be made available to all parties and that in the case of indigence, they be provided at the court's expense. (1977a:662) As mandated by Winship, (1971) the new Code provides that the standard of proof in juvenile court cases must be the "beyond a reasonable doubt" standard as applied in adult criminal cases and that in cases where such evidence is lacking, the case against a juvenile must be dismissed. (1977a:666) The right to cross-examine witnesses as required by the Supreme Court in Gault, (1968) is also explicitly granted in the new Code, including the right to cross-examine those who compile the social study for the court or other information. (1977a:668-9) The requirement in Gault (1968) that juveniles be furnished with
notice of the nature of the charges against them is covered in the provisions of the new Code governing the form, content, and processing of summonses and the filing of petitions. (1977a:654,652) Finally, the procedure for the conduct of bindover hearings in the new Code are designed to avoid the problems of double-jeopardy at issue in Breed v. Jones. (U.S. Supreme Court, 1977; Maine Legislature, 1977a:625)

Before examining aspects of that reality of the juvenile justice process, a few additional aspects of the new Juvenile Code have a direct bearing on the due process and fairness issue. First, there seems to be a fairly radical shift in the underlying philosophy of the juvenile justice system away from the purely socialized conception and an effort to incorporate key provisions of the classical perspective underlying criminal law. No longer are "rights" and "salvation" taken as mutually exclusive purposes. Thus, the new Maine Juvenile Code has among its basic purposes:

To provide procedures through which the provisions of the law are executed and enforced and which will assure the parties fair hearings at which their rights as citizens are recognized and protected. (1977a:613)

In addition, and perhaps of even greater significance with respect to the issue of due process, is the fact that the new Code makes frequent reference to adult criminal procedure, such as the Maine Rules of Criminal Procedure, the Maine Rules of Evidence, and the Maine Criminal Code. In
general, except in cases where there would be a specific conflict with the Juvenile Code, procedures in juvenile cases should be identical to adult procedures. For example, the new Code states that "except where inconsistent and inapplicable, juvenile proceedings shall be in accordance with Maine District Court Criminal Rules." As the commentary indicates, this includes such areas as discovery and search and seizure. (1977a:664)

Finally, it appears that the new Code is more specific and detailed than the Maine Juvenile Offenders Act in every respect. This, obviously, has important implications for the possibility of procedural regularity; the less left to discretion, the greater the possibility of fairness or, at least, a lesser likelihood of arbitrariness without recourse.

The new Code, then, clearly articulates the court-mandated rights of juveniles in the juvenile justice process. At the same time, it must be noted that while the statutory language may have emerged from the post-Gault reform process in Maine, the rights themselves existed for Maine's juveniles prior to the enactment of the new Code. Even without having such procedures spelled out in the statutes, the law as interpreted by the U.S. Supreme Court and Maine courts required that such due process be observed and rights protected. 24 On the other hand, history shows that court deci-

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24 In 1973, for example, Maine courts ruled that juveniles were entitled to all procedures necessary to ensure fair-
sions are not self-enforcing (Faust and Brantingham, 1979:387) and, thus, the importance of detailed statutory requirements should not be underestimated. Nevertheless, the inclusion of minimum due process rights mandated by the Court is not by itself a testament to the success of post-Gault reform. There is too much evidence of a wide gulf between juvenile justice systems as formally articulated and the reality of the juvenile justice process. Nevertheless, with respect to due process and fairness, the new Juvenile Code represents a fairly substantial improvement over previous juvenile law in Maine. Juvenile proceedings are now the same as adult proceedings in many respects. However, a number of important questions remain. Among them are the differences that do remain between the juvenile justice system and adult criminal procedure.

Juvenile Court vs. Criminal Court

Although the rulings of the Supreme Court in Gault and related cases have put to rest the notion that the rehabilitative purposes of juvenile justice justified the denial of fundamental constitutional rights to juveniles, the specific mandates of the Court contained in these decisions are relatively narrow. Kent, (1967) for example, applied only to

ness (S v. State), and that the "reasonable doubt" standard of Winship was applicable for all elements of an offense (State v. D). (CRS, 1976a:9)
procedures for waiving juvenile court jurisdiction. Gault, the broadest of the decisions, applied only to the adjudicatory stage of juvenile proceedings and, then, only under certain circumstances. In the words of Gault:

We do not in this decision consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile "delinquents." For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. (1968:1436)

Thus, the Supreme Court has left to the States the question of what rights and procedures are appropriate to their juvenile justice systems apart from those specifically mandated. To what extent ought juvenile procedures and rights parallel those of adults in the criminal justice process? Does fairness require that they be identical? Or, perhaps, ought juveniles receive even greater protections?

As indicated above, the new Juvenile Code in general adopts the procedures of the adult criminal court unless otherwise indicated. While the significance of this ought not be diminished, it is important to recognize that there are, nevertheless, important differences that remain between juvenile and adult procedures in Maine, differences that may undercut the the ideal of fairness in the juvenile justice system.

The first of these distinctions is that under the new Juvenile Code juveniles have no right to jury trials. The is-
sue received little comment in the studies that led up to the new Code. However, some of the studies, for example the Governor's Task Force on Corrections, imply such a requirement in suggesting that juveniles be "afforded all appropriate due process protections." (1974:4) The Commission to Revise the Statutes specifically included a provision for jury trials in some cases in its draft of a proposed new juvenile code. Section 3308 of the draft entitled, "Hearings, Publicity, Record," reads as follows:

1. Juvenile hearings conducted as they would be for adults. Hearings shall be held before the court without a jury but in all other respects will be conducted in a formal manner as if the child were an adult accused of a crime except that juveniles accused of Class A, Class B, or Class C offenses may elect a jury trial. (emphasis added)

2. Juveniles who elect a jury trial. If a juvenile accused of a Class A, Class B, or Class C crime elects a jury trial, the juvenile court shall notify the district attorney and shall forthwith transfer the case, together with the physical custody of the juvenile and all physical evidence, papers, documents, and testimony, original and duplicate connected therewith to the appropriate superior court for a jury trial.

3. Juveniles who elect jury trials - dispositional powers of superior court. A Superior Court shall only have the same dispositional options as does a juvenile court when it hears the case of a juvenile who has elected a jury trial. (1977b:43)

The Legislature, however, deleted this provision from the new Juvenile Code prior to passage, apparently on the ground
that a provision granting the right to trial by jury only to these classes of juvenile offenders was of questionable constitutionality. (Maine Legislature, 1977b:2301) Why the Legislature chose to eliminate rather than expand the right to jury trial is not explained.

While the failure to grant the right of trial by jury to juveniles raises serious questions about the fairness of juvenile justice in Maine, of even greater concern are the consequences of the failure to provide to juveniles charged with serious crimes the opportunity to have their cases heard before the Superior Court, something which the provision on jury trials provided for. The significance of this is apparent in examining the differences between the District Court (the juvenile court) and the Superior Court. This issue is not centrally related to the issue of jury trials, but, rather, to the issue of the differences in the appellate structure for juvenile offenders and adult criminal offenders.

The appeals structure for adults in the criminal justice system in Maine allows for the automatic appeal of cases from the District Court to Superior Court for a de novo hearing. In other words, adult defendants have the right to a completely new trial if the results of the first are not satisfactory, or, they may request immediate transfer of the case to Superior Court. Juveniles, on the other hand, while they may appeal to the Superior Court, may do so only "on
the basis of the record of the proceedings in juvenile court" and with respect to "errors of law or abuses of discretion." (1977a:691) That is, there is no automatic right to a rehearing of the case, regardless of the seriousness of the offense or the consequences of an adjudication. The full significance of this discrepancy between adult and juvenile justice, and the failure of the Legislature to grant jury trials to juveniles in Superior Court, is not apparent until the nature of the two courts are compared.

The Maine Youth Advocacy proposal, in commenting on this discrepancy, attaches the label "assembly-line justice" to the juvenile justice system. This is a charge that at least one post-Gault study also leveled at the system on the grounds that juveniles lacked proper access to Superior Court. The most revealing of comparisons between the two courts is in terms of caseloads. (See Table 1 below.)

<table>
<thead>
<tr>
<th>TABLE 1</th>
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<tbody>
<tr>
<td><strong>Maine Court Caseloads: 1979</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court</th>
<th>Total Cases</th>
<th>Number of Judges</th>
<th>Cases per Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superior</td>
<td>15,464</td>
<td>14</td>
<td>1,100</td>
</tr>
<tr>
<td>District (Juvenile)</td>
<td>215,707</td>
<td>20</td>
<td>10,700</td>
</tr>
</tbody>
</table>

The Maine Youth Advocacy document cites 1978 figures from the Administrative Office of the Courts which indicate that the District Courts heard a total of 215,707 cases, an average of 10,700 for each of the 20 judges. In sharp contrast, the Superior Court with 14 judges heard a total of 15,464 cases or an average of 1,100 per judge, that is, approximately 10% of the caseload of the District Court. To exacerbate matters, the Superior Court has a higher budget than the District Court. (MacDonald and Biskup, 1979:34-35)

Clearly, juveniles under such circumstances have a strong likelihood of being subjected to assembly-line justice rather than the careful, deliberative procedures suggested in the Juvenile Code. It is difficult to imagine anything else under the circumstances. An additional factor that must be considered is that only 2.5% are juvenile cases. Thus, the degree of expertise in juvenile justice on the part of judges who can devote so little of the energy to these cases is highly questionable. Not only do juveniles fail to attain appeal rights that are afforded to adults, they lose ground in this area. Under the old Juvenile Offender’s Act, a juvenile had the right to a de novo appeal to Superior Court. (Maine Legislature, 1965:534-35)
Specific Rights in Practice

In their article on the use of attorneys in juvenile courts, Duffee and Siegel pointed out that one of the problems that arises with respect to court-mandated rights is that the decisions of the Supreme Court are not automatically put into practice; there are many ways in which they can be ignored, undermined, evaded, and so forth.

The Supreme Court historically faced the problem of finding the perspectives and values of its decisions seemingly ignored or lost by the agencies that daily dispense justice in America. (1979:387)

Indeed, it is important that the observance of the spirit and letter of Supreme Court decisions not be assumed. Perhaps the most important of the due process rights granted in Gault was the right to counsel. As the Court itself indicated, the right to counsel is central to the exercise of all rights. In Gault, the Court wrote,

The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. (1968:1448)

In other words, without the right to counsel, the juvenile would presumably be unable to exercise his/her other rights in an effective manner. There is, furthermore, no ideal on which the post-Gault studies in Maine are more unanimous than on this right to counsel, presumably for much the same reason as the Court suggested. Thus, the right to counsel seems an appropriate issue to explore in greater depth to
determine whether the guarantee of rights is more than a formality.

The post-Gault studies went beyond the mandate of the Supreme Court on this issue. The Governor's Task Force on Corrections stands out as offering the strongest recommendations in this regard.

We recommend that every juvenile subject to the court's delinquency jurisdiction have counsel automatically assigned by the court, unless the juvenile and his parents prefer to retain an attorney privately. No waiver of the right to counsel should be permitted by the court. (1974:10)

Although not explicitly stated, the rationale for such a recommendation is presumably to protect the juvenile from being encouraged to waive his right to counsel and to prevent the juvenile from underestimating the seriousness of the possible consequences of court proceedings. As the Task Force notes, the Supreme Court decision in In Re Gault suggested that juveniles need the services of counsel "at least as much as would an adult." (1974:10)

The new Code as enacted by the Legislature does not require that the right to counsel be non-waiveable. Specifically, the right to counsel is provided for in Section 3306 of the new Code as follows:

1. Notice and appointment.

   a) At his first appearance before the court, the juvenile and his parents, guardian or legal custodian shall be fully advised by the court of their constitutional right to be represented by counsel at every stage of the proceedings. At every subsequent appearance
before the court, the juvenile shall be advised of his right to be represented by counsel.

b) If the juvenile requests an attorney and if he and his parents, guardian or legal custodian are found to be without sufficient financial means, counsel shall be appointed by the court.

c) The court may appoint counsel without such a request if it deems representation by counsel necessary to protect the interests of the juvenile.

2. State's attorney. The district attorney or the attorney general shall represent the State in all proceedings under this chapter. (1977a:657)

What is the effect of the failure to require counsel on the actual utilization of counsel in the juvenile court? As can be seen from Table 2, data from FY1980 court records indicate that in many cases, juveniles continue to be unrepresented. It must be assumed that in these cases that for whatever reason, counsel was not requested. Thus, despite the insistence that juveniles ought to be represented by counsel, court supplied data indicates that nearly one in five juveniles are appearing before the court without the benefit of counsel. It might be argued that these are probably cases in which incarceration is not a possible outcome. On the contrary, more than a third (35.1%) of unrepresented juveniles had sentences involving incarceration imposed by the court and 8.1% of unrepresented juveniles actually ended up incarcerated, the sentences not having been suspended. (In addition, it must be noted that many juveniles placed on
TABLE 2

Attorney Representation in Maine Juvenile Courts (FY1980)

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>80.5%</td>
</tr>
<tr>
<td>Court Appointed</td>
<td>51.0%</td>
</tr>
<tr>
<td>Privately Retained</td>
<td>21.0%</td>
</tr>
<tr>
<td>Not Known</td>
<td>8.5%</td>
</tr>
<tr>
<td>No Attorney</td>
<td>19.5%</td>
</tr>
</tbody>
</table>

Source: Maine Juvenile Court Records. (Data on a sample of 25% of all juvenile cases in FY1980, collected by staff of Legislative Committee to Monitor the Implementation of the Juvenile Code.)

probation had probation revoked and ended up confined in the Maine Youth Center. Thus, the figures here are conservative estimates.)

In the majority of cases in which counsel is present, what is the quality of the defense? Clearly, the Supreme Court and the post-Gault studies intended that counsel be effective. To what extent are juveniles who are represented receiving an effective defense? Two central issues are raised in this connection -- the appropriate role of counsel in juvenile proceedings and the resources available to compensate counsel for providing effective representation.

The question of the appropriate role of counsel in juvenile proceedings is raised in a number of the post-Gault
studies but is not resolved in the new Code. As the Governor's Task Force recommends, the role of juvenile defense counsel should be exactly the same as defense counsel in criminal proceedings.

We recommend that the attorneys retained or appointed to represent juveniles be instructed by the court to approach their legal responsibilities precisely as they would in an adult case, keeping in mind that a juvenile adjudged delinquent faces the possibility of a significant loss of personal freedom. We further recommend that should a conflict of interest between the juvenile and the parents arise, the attorney's responsibility shall be to represent the legal interests of the juvenile, and that under such circumstances the juvenile's right to seek appeal of any action by the court shall not be subject to parental consent. (1974:10)

Although there have been no serious studies in Maine of the role of attorneys in juvenile cases, the evidence that does exist suggests that there is considerable confusion over the appropriate role of attorneys in these cases. Despite the recommendations on the national level and the state level, and despite the strong position taken by the Supreme Court on the importance of effective representation to due process, there is apparently considerable adherence to the traditional role of counsel in juvenile cases where attorneys generally construed their role as acting along with other court personnel "in the child's best interest."

The United Way Juvenile Code Committee concluded on the basis of six days of observation of the juvenile court process in Portland that with some exceptions attorneys fail to offer vigorous, effective advocacy on behalf of their juve-
nile clients, instead following the recommendations of pros-
ecution, intake worker, and judge. In this instance, the
study is referring to detention hearings.

Most of the attorneys seemed willing to abide by
the intake worker's decision, without further hav-
ing studied the situation carefully to ensure that
the court and intake worker were placing the juve-
nile in the least restrictive facility. In only
one of the hearings that the Committee's staff at-
tended did defense counsel actively oppose the in-
take worker's request for continued detention.
(1978:79)

The Maine Youth Advocacy proposal makes the same point on
the basis of the personal involvement of its staff in juve-
nile court on behalf of their clients.

A major problem of a rehabilitation oriented court
is the lack of clarity of roles. The defense at-
torney is torn between his responsibility to adv-
cate for the client's innocence and his sense of
obligation to "act in the client's best inter-
est"... Even in a rehabilitative court, it is the
position of MYA that the judge can sufficiently
safeguard the "youth's best interest", while the
defense attorney should concentrate on presenting
the best possible defense for his client. (MacDo-
nald and Biskup, 1979:37)

While this does not constitute definitive evidence, it does
raise serious questions about the effectiveness of counsel
in juvenile court. The situation is further exacerbated by
the involvement judges in the role of prosecutor. (United
Way, 1978:80)

Finally, because court appointed attorneys represent the
vast majority of juveniles (about 80%), it is particularly
important to examine the procedures for appointing counsel
in juvenile court. Both the United Way report and the Maine
Youth Advocacy proposal raise the issue of attorney fees as having a significant impact on the effectiveness of representation. The fee schedule for court appointed attorney's in Maine is a flat $50.00 regardless of the complexity of the case, the amount of time required for a competent defense, or the seriousness of the charges. Thus, both reports argue, attorneys more often than not fail to prepare adequately.\textsuperscript{25} In the words of the United Way study:

When representing a juvenile defendant, a court-appointed attorney receives a flat $50.00 fee, which most consider very low. During six days of observation in Portland, the Committee's staff was disturbed by the apparent lack of interest, with which some attorneys "represented" their juvenile clients.

Admittedly, some attorneys appeared to have spent a great deal of time mapping out a defense and argued zealously on behalf of a client in detention, adjudicatory, and dispositional hearings (even though not always successfully). However, a large percentage of attorneys had their first contact with a particular case only a brief time before they entered the courtroom or the judge's chambers. That was true whether they were seasoned attorneys or attorneys "still learning the ropes". (1978:79)

The Maine Youth Advocacy proposal makes the same point and states the problem.

The payment of inadequate fees to court-appointed attorneys severely undermines the promise of the right to counsel. (1979:36)

\textsuperscript{25} The Supreme Court also made note of the problem in McKeeiver v. Pennsylvania. In a footnote to the decision, they note that the first meeting between court-appointed attorney and the juvenile took place at the court hearing. (1972:1981)
There is, then, good reason to believe that the formal right to counsel mandated by the Supreme Court and guaranteed by the new Maine Juvenile Code is seriously undermined in practice.

Due Process Outside the Courtroom. The court, of course, is but one part of the juvenile justice system. There are components of the system that also make crucial decisions having important consequences for the juvenile and backed by the coercive power of the State. These include the police handling of the juvenile, particularly arrest, interrogation, and detention; intake worker contact with juveniles, particularly detention decisions and informal adjustments; and the correctional end of the system, particularly the Maine Youth Center. As indicated above, the U.S. Supreme Court did not rule on the applicability of due process protections to these non-adjudicatory stages of the process, leaving the matter up to the states for the time being. The post-Gault studies in Maine, however, clearly envisioned a system in which none of the components are allowed to exercise arbitrary discretion, free from constitutional constraints. Nevertheless, the charge has been made that under the new Code, the due process problem is not resolved, but merely moved from one segment of the juvenile justice system to another. According to the Maine Youth Advocacy critique of the new Code, the arbitrariness that formerly existed in
the courtroom shifted to the intake worker. (MacDonald and Biskup, 1979:18)

It is necessary, then, to examine other important parts of the system to determine the effectiveness of post-Gault reform from the point of view of fairness. The most important non-court component of the system under the new Code is Intake processing. First, however, a few observations about the arrest process and the correctional system are in order.

**Arrest and Due Process.** In general, the new Juvenile Code provides for arrest procedures in juvenile cases to be same as in adult criminal cases. Whether procedures are being followed as required in the statute is impossible to determine since no data on this issue has been collected or analyzed. However, there is one major area in which it is possible to draw some conclusion relative to the question of due process and the arrest of juvenile offenders. The Commission to Revise the Statutes was particularly sensitive to the need for procedural regularity and protection during arrest and interrogation of juvenile offenders. The Commission in its proposed Code specifically prohibited the interrogation of juveniles unless their attorneys and parents were present and prohibited the admission of any evidence obtained during the interrogation of juveniles under the age of fourteen years. Further, the proposed Code required that the police detain juveniles no longer than necessary to ob-
tain their names, contact their parents and contact an intake worker. These sections read as follows:

1. A child shall not be detained by law enforcement officials longer than is reasonably necessary to obtain his name, age, and residence, to contact his parent, guardian, or legal custodian and an intake worker.

2. Once the information described in [the above paragraph] is obtained and the parent, guardian, or legal custodian and intake worker are contacted, the law enforcement officer shall take the child directly to the intake officer or to the shelter placement or detention placement or agent of the Department of Human Services designated by the intake officer without unnecessary delay.

a) No statements, admissions, or confessions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right to the presence of an attorney during such interrogation, the right to have counsel appointed if so requested at the time of interrogation, and that, after having been so advised, the child and his parents, guardian, or legal custodian voluntarily waived them, except that, if a public defender or counsel representing the child is present at such interrogation, such statements, admissions or confessions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.
b) Notwithstanding the provisions of [the above paragraph], statements, admissions or confessions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian.

c) Notwithstanding the provisions of [the above subparagraphs], no statements, admissions or confessions of any child under the age of fourteen years made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a violation of state or federal law shall be admissible in evidence against the child. (1977:20-23)

Clearly, the Commission was responding to the concerns expressed by the Supreme Court in Gault that juveniles need greater protection than adults in interrogation because they are presumably more susceptible to undue pressure to confess whether or not they are in fact guilty of the offense with which they are charged. The Court quotes a decision of Judge Ketcham of the District of Columbia Juvenile Court.

Simply stated, the Court's decision in this case rests upon the considered opinion -- after nearly four busy years on the Juvenile Court bench during which the testimony of thousands of such juveniles has been heard -- that the statements of adolescents under 18 years of age who are arrested and charged with violation of law are frequently untrustworthy and often distort the truth. (1968:1458)

In the new Code as enacted into law, all of the above language is deleted, thereby opening the arrest and interrogation process to question on the issue of due process.
The importance of this issue is further indicated by the high rate of guilty pleas in juvenile proceedings. (See Table 3 below.) In fact, the cases of more than half of all juveniles petitioned are resolved by guilty pleas in which adjudicatory hearings are waived. Whether there is any connection between interrogation and the high rate of guilty pleas is not known. However, because the procedural protections recommended by the Commission are lacking, the possibility of undue pressure undermining fairness and due process is certainly real.

**TABLE 3**

Pleas Entered in Maine Juvenile Courts: FY1980

<table>
<thead>
<tr>
<th>No Plea</th>
<th>10.5%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>52.9%</td>
</tr>
<tr>
<td>Denied</td>
<td>19.3%</td>
</tr>
<tr>
<td>Other</td>
<td>17.3%</td>
</tr>
</tbody>
</table>

Source: Maine Juvenile Court Records. (Data on a sample of 25% of all juvenile cases in FY1980, collected by staff of Legislative Committee to Monitor the Implementation of the Juvenile Code.)

**Intake and Due Process.** One of the major innovations of the new Juvenile Code is the adoption of the so-called "intake model" screening and diversion mechanism. This is in
contrast to the so-called "youth services bureau" model which was discussed at length in the reports of the Commission to Revise the Statutes and the Governor's Task Force on Corrections. The nature of the distinctions between the two approaches and many of the implications of the choice made by the Legislature will be discussed later. There is, however, one important distinction that has important implications for due process and fairness. A major difference between the intake and youth services models is that the intake system is part of the formal juvenile justice system while the youth services bureau is typically outside of the juvenile justice system. Intake functions as an arm of the court, screens cases for court processing, and makes decisions of a judicial nature in place of the court. Unlike a youth services bureau, the intake worker has considerable discretion and is backed by the coercive power of the state. Thus, while issues of due process may be marginal for the operations of a youth services bureau, involving perhaps some procedural considerations in appealing denial of services, the intake system functions in much the same way as the court itself, and, thus, must be examined on the issues of due process and fairness. The Intake process is, in fact, as the commentary to the new Code refers to it, a "quasi-judicial" process. (1977a:650)

The new Juvenile Code describes the functions of the Intake Worker as follows:
1. Intake Workers are called upon to decide whether a juvenile shall be detained or released pending court appearance.

2. The Intake Worker conducts preliminary investigations.

3. The Intake Worker decides, on the basis of the preliminary investigation, whether further action is necessary.

4. The Intake Worker decides what further action should be taken in the case -- informal adjustment or petition.

5. The Intake Worker decides what conditions of informal adjustment are appropriate to the particular case.

6. The Intake Worker decides when, if, and under what circumstances informal adjustment will be revoked (although the Code does not appear to grant such authority to Intake Workers.) (1977a:638, 648-49)

Three major problems are identified with Intake in relation to due process and fairness, all problematic by virtue of the judicial nature of the intake process.

First, the Intake process is virtually lacking in procedural guidelines. The Intake Worker has nearly complete discretion in making the above decisions. There is virtually no guidance offered by the Code itself. The only exception is with respect to the initial detention decision made by the Intake Worker. The Code spells out the criteria that
must be used in making the detention decision and provides for a court hearing on detention within forty-eight hours of the initial decision. Furthermore, the decision of the court may be appealed by the juvenile. (1977a:638) Although this is the only decision that may directly result in the immediate incarceration of the juvenile, the other decisions are not without serious consequence to the juvenile and may even lead ultimately to incarceration. For example, the refusal of an Intake Worker to grant an informal adjustment in a particular case results in a high probability that the juvenile will be found guilty by the judge and will be subjected to some sanction, often incarceration. The decisions, then, as to whether a juvenile is to be "diverted" by means of informal adjustment and whether such an arrangement is subsequently terminated in favor of court processing is of major consequence for the juvenile. However, there are

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24 The court processing data will be discussed later. It is sufficient to note at this point that about one in five juveniles who appear in court have their cases dismissed. More than 77% of the cases are disposed of by "offense committed" verdicts or are "continued". There is, furthermore, reason to believe that these results are not related exclusively to evidence presented in these cases in that age, sex, and seriousness of offense are related to adjudication. Of perhaps greater significance is that fact that in cases where the finding is "offense committed" (the vast majority of cases), 70% receive Maine Youth Center or, in a few cases, jail, sentences. In many of these cases, the sentence is suspended. But, more than 20% of the juveniles are, in fact, sentenced to the Maine Youth Center. To these must be added the approximately 20% of cases in which probation is revoked and the Maine Youth Center sentence reimposed, which means that about a third of juveniles found guilty end up in the Maine Youth Center or jail. (MacDonald, 1982)
virtually no criteria, guidelines, standards, or procedures indicated in the new Juvenile Code for making these decisions. Specifically, what the Code has to say about these decisions is as follows:

1. The decision on disposition from Intake (dismissal, referral, petition, or informal adjustment) is to be made on the basis of the "preliminary investigation" conducted by Intake Workers.

   On the basis of the preliminary investigation, the intake worker shall choose one of the following alternatives. (1977a:648)

   There is, however, no suggestion in the Code as to the nature, form, or content of such an investigation.

2. The only criterion to guide the decision of the intake worker as to whether or not to proceed with a case is if "in his [intake worker's] judgement the interest of the juvenile and the public will best be served by providing the juvenile with services voluntarily accepted...." (1977a:648) The criterion for dismissing a case in favor of referral for services is the intake worker's judgement. Should the judgement be based on where the juvenile resides, his/her demeanor, who his/her parents are? The Code offers no guidance.

3. There are no criteria to guide the Intake Worker's decision as to whether informal adjustment is appro-
priate. There are, however, preconditions that must be met. The juvenile must not have been adjudicated or been a party to an informal adjustment in the preceding twelve months. Also, the facts of the case must establish prima facie jurisdiction. Also, the intake worker must determine that the juvenile and his/her parents have been advised of their rights. (1977a:648-49)

There is similarly nothing in the new Code specifying what constitutes appropriate conditions of informal adjustment. The only guideline offered by the Code is that the juvenile and his/her parents must agree to such conditions and must do so in writing. (1977a:649) There is nothing to suggest what might be reasonable conditions. Is meeting with the intake worker periodically an appropriate informal adjustment? Restitution to the alleged victim? What about conditions which result in publicly demeaning (and not incidentally labeling) the juvenile? Finally, as noted above, the Code has nothing whatsoever to say about the revocation of informal adjustment agreements on the part of the intake worker, whether the intake worker possesses such authority (presumably, he/she does) and under what circumstances the authority should be invoked.

As the Commentary to the new Code points out, the Legislature left it up to the Department of Mental Health and Corrections to promulgate various "administrative procedures". Also, the Code
gives the Department of Mental Health and Corrections broad discretion, within the standard of "serving the best interests of the juvenile and the public," to promulgate guidelines for not seeking a petition as well as for making voluntary referrals. (1977a:650)

In fact, no such guidelines have been promulgated. The "Juvenile Intake Procedures Manual" published by the Department of Mental Health and Corrections offers little in the way of guidance. It does specify the general form and content of the "preliminary investigation" upon which intake disposition decisions are to be made. However, it specifies no criteria other than the preconditions set by the Code itself for determining who should receive what disposition. On the most important issue of nature of informal adjustment, the Manual includes one paragraph, half of which comes directly from the Code. The rest is as follows:

The Intake Worker will establish the conditions that are appropriate for the juvenile during the period of the Informal Adjustment and include these on the consent form. Such conditions shall be designed to be conducive to the rehabilitation of the juvenile. Examples of such conditions may include, but are not limited to, the following: restitution, public service work, counseling, foster home placement, etc. The Area Intake Worker shall monitor the conditions of Informal Adjustment. The scope of Informal Adjustment, which cannot exceed six months of duration, is limited only by the ingenuity of the Intake Worker. (DMHC, 1978:11)

With respect to the decision to terminate an informal adjustment, the Manual specifies three reasons for termination. The first, the most problematic from the due process point of view, is that the Intake Worker may terminate the
agreement for "non-compliance with Informal Adjustment conditions." (DMHC, 1978:11) There is no indication of any procedure for arriving at such a determination. It would seem that such a determination is made by the Intake Worker on whatever basis he/she deems appropriate. The Code provides for the termination of an Informal Adjustment agreement at the request of the District Attorney. This is repeated in the Intake Manual. It should be noted that neither here nor in the Code is there any indication that such a determination must be made within a specified period of time, nor are any criteria specified as appropriate grounds for such a decision by the District Attorney, other than that the State must act within a six month period. Conceivably, a juvenile could have met every condition of informal adjustment perfectly and, on the last day of the adjustment period, be notified that the District Attorney has decided to bring the case to court.

Due process and fairness in our system of justice depends in large measure on procedure. This is underscored by the Supreme Court decision in Gault which quoted Justice Frankfurter on this point.

The history of American freedom is, in no small measure, the history of procedure. But, in addition, fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge.... (1966:1440)
Clearly, the argument suggested by critics of the new Code that the due process problem has been shifted from the court stage to the intake stage is affirmed by an analysis of the Code and the so-called "Procedures Manual".

The second major concern is that the juvenile has no recourse in the event that he/she believes that the decision of the Intake Worker with respect to any of these decisions, except detention, is unfair. The decision of the Intake Worker cannot be appealed. The decision to petition rather than informally adjust a case is final. Conditions of informal adjustment may be offered by the Intake Worker on a "take it or leave it" basis. In such cases, the juvenile is faced with court and, as previously noted, a high probability of being found guilty and punished.

Finally, there is some bias built into the system that seems to presume guilt rather than innocence. Or, rather, the admission of guilt is encouraged whether or not a juvenile is guilty. In the original version of the new Code enacted by the Legislature, the admission of guilt was a precondition of informal adjustment. This was repealed before the Code became effective. Nevertheless, Intake continues to operate as if the section were not repealed. The Manual reads:

If the juvenile denies having committed the offense, the investigation should cease and the case should be referred for further disposition by the

27 Telephone interview with Intake Supervisor. (October 15, 1981)
law enforcement agency and the District Attorney, using form IW-7. (DMHC, 1978:10)

The juvenile is thus placed in the position of risking prosecution and possible incarceration if he/she maintains his/her innocence. This issue is a difficult one. It is complicated by the structure of the system, wherein the court has every reason to presume that a thorough screening of cases has already taken place and only the more serious cases in which there is convincing evidence are being referred for adjudication. This one problem examined in isolation from the reality of the juvenile court in Maine, may seem trivial. But the reality of "assembly-line justice" makes injustice in such cases a more likely outcome.

Finally, the evidence necessary to determine the extent to which the rights to due process and fairness of juveniles are being observed in the Intake process is not available and would be extremely difficult to obtain. It is in part for this reason that there is in our law such emphasis on procedural safeguards. What can be said is that there is ample opportunity for Intake to trample on the rights of the juvenile. It should be further noted that Intake has not been particularly faithful to following the few procedures that are in fact mandated by the Code itself. One example is the requirement that the juvenile admit guilt as a pre-

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28 This, of course, is a completely separate issue from whether Intake Workers actually treat their charges fairly. Presumably, they are good and decent and competent people. That, however, under our system of constitutional law, is not enough.
condition of informal adjustment. Another raised in the United Way study and confirmed by our analysis is the while the Code clearly requires a "preliminary investigation" by Intake Workers in every case, and that dispositional decisions be based on such, the Department of Mental Health and Corrections and the Probation and Parole Supervisor in District I have set forth several circumstances in which the investigation is waived and prosecution is automatic. The Code itself requires prosecution only in cases where there was an informal adjustment or adjudication in the previous twelve months. The unlawful addition of five categories to the list of automatic petitions results in preliminary investigations being conducted in only half of all cases referred to Intake.\textsuperscript{29} The intent of the Code was to require that disposition from intake be made on the basis of the investigation, not that the investigation be conducted depending on the disposition determined by Intake. Thus, the only criterion for making such decisions specified by the Code is undermined by Intake procedures.

\textbf{Corrections and Due Process.} Little has changed with respect to due process and fairness in the correctional end of the juvenile justice system, particularly, the Maine Youth Center (previously two separate sex segregated institutions known as the Boy's Training Center and the Stevens School

\textsuperscript{29} Telephone interviews with Intake Supervisor and Intake Worker. (October 15, 1982)
for Girls). As noted in Chapter 4, numerous recommendations were made and criticisms offered in relation to due process and fairness in correctional institutions. The Comprehensive Juvenile Delinquency Study recommended that the "students" at the institutions be granted a greater right to privacy, particularly the right to send and receive uncensored mail. (1971:66) Greater democratization of the institutions and respect for the rights and dignity of the inmates was urged by the Governor's Task Force on Corrections. The Task Force also recommended independent advocates for inmates and an inmates "Bill of Rights." None of these things has been brought about. (1974:57)

The Children and Youth Services Planning Project drew attention to another aspect of the fairness issue, that is, the overrepresentation of disadvantaged groups among the population of the training centers. In particular, the overrepresentation of lower income groups is noted. Comparing the 1975 figures included in their report to more recent figures indicates that, if anything, the discrepancy is more pronounced. (See Table 4 below.)

There is also an indication that the emotionally disturbed are overrepresented. Juveniles from single-parent families were also considerably more likely to be among the training center population (60%) of the training center population in 1975. Unfortunately, there is no data to use for comparative purposes on these categories. There is, how-
ever, no indication of any steps taken to institute reform with respect to these inequities.\textsuperscript{30} Finally, in considering the ideal of due process and fairness in practice under the "reformed" juvenile justice system in Maine, it is appropriate to indicate one of the specific due process shortcomings at the Maine Youth Center. That is, the superintendent of the institution has unbridled power over juveniles in its care, power that is largely unchecked by any process of appeal of decisions. Maine Statutes give the Superintendent parental powers over the incarcerated juveniles.

\textsuperscript{30} As the Children and Youth Services Planning Project indicates, there is no way to determine whether juveniles in these groups commit offenses at such a drastically higher rate or simply that they are at greater risk of juvenile justice processing. (1977:187)
The superintendent shall have all the power which a guardian has to his ward, and all the power which parents have over their children, as to person, property, earnings, and the rehabilitation of every child committed to the Center. (Maine Legislature, 1980b:602)

Further, this power extends beyond the walls of the institution. Juveniles released on entrustment may be brought back to the institution whenever the superintendent shall deem it appropriate. There is no appeal.

On being satisfied at any time that the welfare of the child will be promoted by return to the Center, the superintendent may cancel such trust and resume charge of such child with the same powers as before the trust was made. (Maine Legislature, 1980b:602-603)

Clearly, whatever protections may be afforded juveniles under the new Code while they are before the judge, such protections cease once they leave the courthouse, and they become subject to the whims of the institutional personnel. Again, this is not to say that treatment at the institution is arbitrary and capricious, only that the law offers no protection against this possibility. Clearly, these are in violation of the spirit if not the letter of reform recommendations. There is virtually no change in the due process requirements for the correctional end of the juvenile justice system under the new Code.
Rehabilitative Ideals

The post-Gault ideals of decriminalization, deinstitutionalization, and diversion are most closely connected to the general goal of rehabilitation that continues to characterize juvenile justice, despite the closer alignment of juvenile justice with criminal justice. To what extent is each of these ideals incorporated into the new Juvenile Code? To what extent is each reflected in the juvenile justice process in practice?

Decriminalization

As noted in the previous chapter, decriminalization, in the context of post-Gault juvenile justice reform has two basic components. First, it refers to the elimination of the so-called "status offense" jurisdiction, that is, acts which are criminal only for juveniles, from the juvenile justice system. Secondly, it is generally taken to include the substitution of more appropriate responses to the kinds of problems presumably represented by such acts. That is to say, appropriate therapeutic services are to be provided in place of the previous judicial response. Maine's post-Gault studies generally subscribed to both of these components, most recommending the elimination or sharp reduction of status offenses from Juvenile Court jurisdiction and all recommending more appropriate non-judicial responses to the
non-criminal misbehavior of juveniles. These are, then, the two criteria on which Maine's post-Gault reform effort must be measured with respect to whether it meets the ideal of decriminalization.

On the first point, Maine's new Juvenile Code has made substantial strides in the direction of eliminating the status offense jurisdiction. None of the language of the Juvenile Offenders' Act defining delinquency to include the vaguely designated status offenses such as

- habitual truancy;
- behaving in an incorrigible or indecent and lascivious manner;
- knowingly and willfully associating with vicious, criminal or grossly immoral people;
- repeatedly deserting one's home without just cause;
- living in circumstances of manifest danger of falling into habits of vice and immorality... (Maine Legislature, 1965:522)

is included in the new Code. By and large, the Legislature has followed recommendations of the various post-Gault studies in defining "juvenile offenses" largely by reference to the Maine Criminal Code. Section 3103 of the new Juvenile Code defines juvenile crime as

Conduct which, if committed by an adult, would be defined as criminal by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code. ... (1977a:628-29)

According to a U.S. Department of Justice study, Maine thus "goes the farthest of any statutory revisions passed to date in terms of decriminalizing traditional status offenses." (Smith et al, 1980:44)

Despite Maine's position on the cutting edge with respect to decriminalization of status offenses, the reform has not
completely eliminated them from the juvenile justice system. The paragraph following the above cited description of juvenile crime makes two major exceptions to that definition. Specifically, it states that "the possession of a useable amount of marijuana" and "offenses involving intoxicating liquor" also are included in "juvenile crime." (1977a:629) the possession of a small amount of marijuana was decriminalized for adults in the reform of the Maine Criminal Code, as was drunkenness. The possession of alcoholic beverages remains as a juvenile only crime. Thus, while most of the status offenses have been eliminated, some significant exceptions remain.

A further distinction between adult and juvenile crime must be mentioned in this connection. Several years prior to the new juvenile code, the Juvenile Offenders Act was amended to prevent juveniles adjudicated as status offenders from being committed to the Maine Youth Center. (CRS, 1976b:101) Such a prohibition continues under the new Code for the above cited status offenses. However, juveniles may be committed to the Center for these offenses if they refuse to pay a fine or violate probation conditions. Also, prostitution is no longer a crime punishable by imprisonment in Maine. However, the new Code allows juveniles to be committed for the crime. (1977a:629, 632) The exceptions to the elimination of status offenses and differential definitions of crime and punishment for juve-
niles and adults are not without significance in the actual juvenile justice process in the State. Marijuana and alcohol possession accounted for 11% of charges against juveniles referred to Intake in FY1980. Something referred to as simply "status offense" in Intake records account for an additional 1% of Intake referrals. This represents a decrease from pre-Code levels. In 1970, for example, police records from major departments in Maine indicate that approximately 39% of their juvenile cases involved status offenses. However, the decrease in the proportion of status offense cases is far less dramatic if the period immediately preceding the new Code is examined. Figures prepared by the Maine Department of Mental Health and Corrections indicate that the percentage of arrests that involved status offenders decreased only slightly from pre-Code FY1978 to FY1979 and FY1980. As indicated in Table 5, the decrease in status offense arrests in FY1979 is quite small and the FY1980 figures are not what would be expected after "decriminalization."

Moreover, fewer of these juveniles are being released by the police. In FY1978, more than 82% of juveniles arrested for status offenses were released without further action. In 1980, slightly over 75% were released. This may be related to the addition of the Intake Workers as the screening component of the system. (DMHC, 1981:21)
TABLE 5

Status Offense Arrests: Pre- and Post-Code

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Arrests</th>
<th>Status Offenses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>11,104</td>
<td>1,646</td>
<td>15%</td>
</tr>
<tr>
<td>1979</td>
<td>12,235</td>
<td>1,502</td>
<td>12%</td>
</tr>
<tr>
<td>1980</td>
<td>11,642</td>
<td>1,260</td>
<td>11%</td>
</tr>
</tbody>
</table>


Perhaps the most serious of the problems with the implementation of the ideal of decriminalization is the failure of the Legislature to provide alternative responses to the problems presumably represented by such behavior. As indicated in the previous chapter, an essential part of the rationale for decriminalization is that judicial responses were inappropriate and ineffective ones. Truancy, for example, as most of the post-Gault studies pointed out, is essentially an educational problem susceptible to educational solutions, not criminal sanctions. Thus, educational solutions are the appropriate ones. The Commission to Revise the Statutes exemplified this position in the proposed Code that they submitted to the Legislature. It has, among other things, an extensive section on education, outlining the appropriate educational responses to these educational prob-
leas.\(^3\) (1977b:90-98) Unfortunately, as the Department of Justice survey points out, this is typical of the "reform" with respect to the issue of decriminalization. The alternative services promised are simply not provided for by the Legislature. Under such circumstances, decriminalization becomes little more than neglect. In their criticism of the "junior criminal court model" of post-Gault juvenile justice, Faust and Brantingham suggest,

There is no good reason to permit children to become alcoholics or to fall into the wasteland of the unskilled school dropout in a technical society.... (1979:460)

Indeed, genuine decriminalization suggests nothing of the kind. Its advocates would argue that responding to such problems with court hearings and commitments to institutions is counterproductive. Genuine decriminalization implies effective responses to juveniles' problems, not neglect.

Deinstitutionalization

The ideal of deinstitutionalization in the post-Gault studies in Maine included a number of objectives. Most fundamentally, it means the removal of juveniles from large correctional institutions. Secondly, it implies the creation of community-based correctional alternatives. Thirdly, it

\(^3\) The Commission draft includes specific requirements that truants, for example, be referred to Pupil Evaluation Teams for evaluation and specific program recommendations and special education arrangements that may be necessary.
sometimes means reform of the institutions for the few whom it will be necessary to confine. It also means the elimination of most cases of preadjudicatory incarceration at jails or at the Maine Youth Center for purposes of diagnostic evaluations. Finally, it means the creation of special juvenile detention facilities for holding juveniles who must be detained for their own protection or that of the community.

Only one of the studies of Maine's juvenile justice system suggests that the elimination of the juvenile correctional institution may be necessary for reform. (CYSPP, 1977:149) Yet, the general thrust of the studies is in the direction of gradually phasing out the use of such facilities and replacing them with community-based alternatives. In the interim, institutions are to be used only as a last resort; the principle of the "least restrictive alternative" is to be observed. Indeed, the new Code does in fact incorporate the "least restrictive" principle. It adds a substantial number of sentencing options to the traditional alternatives of incarceration and probation and indicates that the court shall always utilize the least restrictive alternative possible in a given case. Section 3313 of the new Juvenile Code entitled "Criteria for Withholding Institutional Disposition" allows institutional dispositions only when necessary "for protection of the public..."

1. Standard. The court shall enter an order of disposition for a juvenile who has been
adjudicated as having committed a juvenile crime without imposing placement in a secure institution as disposition unless, having regard to the nature and circumstances of the crime and the history, character and condition of the juvenile, it finds that his confinement is necessary for protection of the public because:

a) There is undue risk that, during the period of a suspended sentence or probation, the juvenile will commit another crime; or

b) The juvenile is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

c) A lesser sentence will depreciate the seriousness of the juvenile's conduct.

2. Additional consideration. The following grounds, while not controlling the discretion of the court, shall be accorded weight against ordering placement in a secure institution:

a) The juvenile's conduct neither caused nor threatened serious harm;

b) The juvenile did not contemplate that his conduct would cause or threaten serious harm;

c) The juvenile acted under strong provocation;

d) There were substantial grounds tending to excuse or justify the juvenile's conduct, though failing to establish a defense;

e) The victim of the juvenile's conduct induced or facilitated its commission;

f) The juvenile has made or has agreed to make restitution to the victim of his conduct for the damage or injury that the victim sustained;

g) The juvenile has not been previously adjudicated to have committed a juvenile
crime or has led a law-abiding life for a substantial period of time prior to the conduct which formed the basis for the present adjudication.

h) The juvenile's conduct was the result of circumstances unlikely to recur;

i) The character and attitudes of the juvenile indicate that he is unlikely to commit another juvenile crime;

j) The juvenile is particularly likely to respond affirmatively to probation;

k) The confinement of the juvenile would entail excessive hardship to himself or his dependents. (1977a:672-73)

The Commentary to the new Code further indicates that the purpose of this section of the Code is to implement the intent of the Commission to Revise the Statutes that juveniles be taken from parental custody "only as a last resort." (1977a:673)

The Code lists nine specific dispositional alternatives as well as probation. They include allowing the juvenile to remain in his parents custody under any conditions the court may impose, participation in work or service programs which may or may not be linked to restitution, placement in foster homes or halfway houses, the imposition of fines, commitment to the Maine Youth Center, incarceration in jails, probation, and unconditional discharge. (1977a:673-75)

However, the Legislature failed to provide funding for any additional alternatives. Consequently, the court disposition (sentencing) pattern does not significantly deviate
from that of the pre-reform period. According to available
documents, sentences in the pre-Code period almost always
were commitment to the Boys' Training Center or the Stevens
School or probation. Data on court disposition under the
new Code reveals a similar pattern. (See Table 6)

<p>| TABLE 6 |
| Maine Juvenile Court Dispositions: FY1980 |</p>
<table>
<thead>
<tr>
<th><strong>Sentence</strong></th>
<th><strong>Imposed</strong></th>
<th><strong>Actual</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>MYC</td>
<td>70.2%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Jail</td>
<td>3.2%</td>
<td>9.6%</td>
</tr>
<tr>
<td>Probation</td>
<td>7.1%</td>
<td>58.2%</td>
</tr>
<tr>
<td>Restitution</td>
<td>7.9%</td>
<td>29.5%</td>
</tr>
<tr>
<td>Fine</td>
<td>19.0%</td>
<td>19.9%</td>
</tr>
<tr>
<td>Placement</td>
<td>2.0%</td>
<td>10.4%</td>
</tr>
</tbody>
</table>

Source: Maine Juvenile Court Records. (Data on a sample of 25% of all juvenile cases in FY1980, collected by staff of Legislative Committee to Monitor the Implementation of the Juvenile Code.)

Another important indicator of deinstitutionalization is the commitment pattern pre- and post-Code to the Maine Youth Center. As evident in Table 7, if anything is obvious, it is the reverse of deinstitutionalization.

**Detentions.** The same basic principles were to apply to secure detention of juveniles, namely, that detentions were a last resort and that the "least restrictive" mandate be observed.
### TABLE 7

**Maine Youth Center Commitments**

<table>
<thead>
<tr>
<th>Pre-Code Fiscal Year</th>
<th>Post-Code Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972 225</td>
<td>1979 350</td>
</tr>
<tr>
<td>1974 200</td>
<td>1980 297</td>
</tr>
<tr>
<td>1976 325</td>
<td>1981 350</td>
</tr>
<tr>
<td>1978 315</td>
<td></td>
</tr>
</tbody>
</table>


---

C. Detention, if ordered, shall be in the least restrictive residential setting that will adequately serve the purposes of detention. Detention may be ordered only where it is necessary to:

1. Ensure the presence of the juvenile at subsequent court proceedings;

2. Provide physical care for a juvenile who cannot return home because there is no parent or other suitable person willing and able to supervise and care for him adequately;

3. Prevent the juvenile from harming or intimidating any witness, or otherwise threatening the orderly progress of court proceedings;

4. Prevent the juvenile from inflicting bodily harm on others; or

5. Protect the juvenile from an immediate threat of bodily harm. (1977a:638)

In addition, juveniles were not to be held in adult facilities, viz. jails, but were to be held, if absolutely necessary, in special juvenile detention centers.
On the basis of the State's own statistics, it is not doing a very good job on this aspect of deinstitutionalization. (Maine Department of Corrections: 1982) Immediately following the new Code, there was a substantial increase in the number of secure detentions ordered. Thereafter, the numbers returned to pre-Code levels, suggesting that nothing has changed despite the fairly strong language of the new Code in spelling out specific and narrow criteria in detention decisions. (See Table 9)

<table>
<thead>
<tr>
<th>TABLE 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Detentions: Pre- and Post-Code</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pre-Code</th>
<th>Post-Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Number</td>
</tr>
<tr>
<td>1976</td>
<td>948</td>
</tr>
<tr>
<td>1977</td>
<td>1,669</td>
</tr>
<tr>
<td>1978</td>
<td>2,254</td>
</tr>
</tbody>
</table>


Not only are more juveniles being securely detained, the special facilities for the detention of juveniles insisted on by reformers simply do not exist. County jails continue to serve as juvenile detention facilities in most cases. The strong post-Gault recommendation that such detentions be strictly prohibited was gradually eroded to an insistence
that juveniles detained in jails be kept strictly segregated from adult inmates.

Finally, the recommendations against preadjudicatory diagnostic evaluations being conducted at the Maine Youth Center have not been adhered to. According to post-Code court data, 76% of such evaluations are preadjudicatory. 78% are conducted at the Maine Youth Center.

### TABLE 9

Diagnostic Evaluations at Maine Youth Center

<table>
<thead>
<tr>
<th></th>
<th>Pre-Code*</th>
<th>Post-Code**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Number</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1975</td>
<td>221</td>
<td>1979</td>
</tr>
<tr>
<td>1980</td>
<td>212</td>
<td>1980</td>
</tr>
<tr>
<td>1981</td>
<td>211</td>
<td>1981</td>
</tr>
</tbody>
</table>

*Source: Only available pre-Code data, furnished to CYSPPP by staff of Boy's Training Center and the Stevens School.
**Source: Bureau of Corrections, 1982:31.

**Diversion**

Apart from issues of due process and fairness, there is no ideal of post-Gault reform more central than the diversion of juveniles from formal juvenile justice processing. As noted in the previous chapter, the main rationale of diver-
sion is that juvenile justice processing is likely to result in more rather than less delinquency, due largely to the stigmatization and contagion associated with criminal and juvenile justice processing. Diversion is not, however, merely a decision not to proceed against a juvenile or to do nothing. It is, rather, a decision to respond to the alleged crime or misbehavior with alternative rehabilitative services outside of the juvenile justice system. That is to say, diversion implies a non-judicial rather than a judicial response. The basic principle of diversion is that whenever possible, juveniles will be provided with access to rehabilitative services that will presumably address their needs/problems instead of being processed through the juvenile court system.

As noted in the previous chapter, diversion is a post-Gault reform ideal common to all of the post-Gault studies of Maine's juvenile justice system. The most extensive discussion of the issue is found in a report of the Commission to Revise the Statutes Relating to Juveniles, Goals of Maine's Juvenile Justice System. (1976a:64-77) In their discussion they note that diversion was one of the most promising recommendations of the President's Commission on Law Enforcement and the Administration of Justice, and, at the same time, one that has been largely unfulfilled. (1976:64) The report defines diversion, explains its rationale, discusses major issues associated with it, and
specifies some of the major prerequisites of diversion. The report takes its operational (sic.) definition from the Report of the Corrections Task Force of the National Commission on Criminal Justice Standards and Goals.

Diversion refers to formally acknowledged...efforts to utilize alternatives to...the justice system. To qualify as diversion, such efforts must be undertaken prior to adjudication and after a legally proscribed action has occurred....Diversion implies halting or suspending formal criminal or juvenile justice proceedings against a person who has violated a statute in favor of processing through a non-criminal disposition. (1976a:69)

The rationale for diversion is as follows:

Diversion, in theory, is based on policy analysis that juvenile justice processing is frequently detrimental to some youth, and such youth, who otherwise would receive such processing, should be "diverted" to youth services programs. (1976:73)

The Legislature seems to have accepted the principle of diversion and the basic rationale for it. Indeed, one of the major changes in juvenile justice in Maine as a result of the new Juvenile Code is the addition of a diversion mechanism in the form of Intake Workers. The Intake Worker, whose place in the juvenile justice system is between law enforcement and the juvenile court, has several functions, the major one being screening cases and diverting juveniles whenever possible. In screening cases and making determinations as to processing, the Intake Worker is given several options in the new Code. The Intake Worker may:

1. Decide that no further action is required either in the interest of the public or of the juvenile. If the intake worker deter-
mines that the facts in the report prepared for him by the referring officer...are sufficient to file a petition, but in his judgment the interest of the juvenile and the public will be served best by providing the juvenile with services voluntarily accepted by the juvenile and his parents, guardian or legal custodian if the juvenile is not emancipated, the intake worker may refer the juvenile for that care and treatment and not request that a petition be filed;

2. Make whatever informal adjustment is practicable without a petition. The intake worker may effect whatever informal adjustment is agreed to by the juvenile and his parents, guardian or legal custodian if the juvenile is not emancipated...[Or,]

3. If the intake worker determines that the facts are sufficient for the filing of a petition, he may request the prosecuting attorney to file a petition. (1977a:648-49)

Although referral is a form of diversion, informal adjustment is the typical form. In an informal adjustment, the Intake Worker establishes whatever arrangements seem appropriate as a rehabilitative program for a particular juvenile. If the juvenile agrees to the conditions of informal adjustment, the juvenile enters into an informal adjustment agreement and is diverted from court processing (unless the District Attorney or the Intake Worker later decide that court processing is appropriate or that the conditions of informal adjustment have been violated).

In attempting to assess the extent to which the ideal of diversion has been incorporated into the reformed juvenile justice system in Maine, it is necessary to first determine
whether juveniles are being informally adjusted and, secondly, to determine whether informal adjustment in fact constitutes diversion.

The discussion of diversion in the Commission report includes among its "Suggested Goals" for Maine's juvenile justice system, "To decrease the number of children about whom delinquency and 'status offender' petitions are filed." (1976:77) This represents one measure of diversion. More specifically, to what extent has formal court processing declined in relation to other options. Among the decisions that the Intake Worker can make with respect to disposition from the Intake process, petition and informal adjustment represent the most frequent chosen options. As Table 10 below indicates, approximately half of all juveniles referred to Intake are being "petitioned" (referred to court for formal processing). The remaining juveniles may, in the most general sense of the term, be considered as having been diverted.32

Comparisons of post-reform and pre-reform diversion rates present major difficulties. Diversion prior to the enactment of the new Juvenile Code in Maine was primarily police level diversion which may take place prior to or following arrest. That which takes place prior to arrest cannot be

32 A number of the cases included among the "diverted" likely reflect a decision to take no further action due to a lack of evidence and, thus, are not properly considered as "diverted." The percentage of cases disposed of by means of diversion is thus overstated.
measured because there are usually no records. The role of the law enforcement officer after arrest has changed considerably with the addition of Intake Workers. Decisions on post-arrest processing are left largely in the hands of the Intake Workers. What effect this has on police level decisions is impossible to assess with any accuracy. There is, nevertheless, a sharp, consistent decrease in the percentage of juveniles released by the police after arrest and a small, but steady, increase in the arrest rate.\footnote{The percentage of juvenile arrest cases handled by the police and released steadily decreased from 60.7\% in 1975 to 35.6\% in 1983. Although the number of juvenile arrests decreased, the arrest rate for juveniles, calculated on the basis of the population of 14-17 year-olds, increased from 127 per thousand in 1976 to 141 per thousand in 1981. (U.S. Bureau of Census, 1976-1981; State of Maine Department of Public Safety, 1976-1984)} Clearly, police are "diverting" fewer juveniles after arrest. Also, the rising arrest rates suggest that there is less "street-level" or pre-arrest diversion of juveniles by police. On
the other hand, there is some decrease in percentage of ar-
rested juveniles petitioned to juvenile court (from 41% in
FY1976 to 35% in FY1981) and in the rate of petitions to ju-
venile court calculated on the basis of the 14-17 year-old
population of the State (from 53 per thousand in 1976 to 49
State of Maine Department of Public Safety, 1977-1982) This
suggests that while there is a slight increase in diversion
in one part of the system, there is a decrease in diversion
in another part. And, in any case, greater numbers of juve-
niles are passing through the gates of the juvenile justice
system.

**Intake as Diversion.** Of perhaps greater significance is
the appropriateness of Intake as a diversion mechanism.
There appear to be inherent problems to the "intake model"
as well as several aspects of Maine's version of Intake
which decrease the likelihood of genuine diversion taking
place.

In their discussion of diversion, the Commission to Re-
vise the Statutes focus almost exclusively on the youth ser-
VICES bureau model as the appropriate diversion mechanism.
The only reference made to the intake model is a suggestion
that it is an inappropriate one. As noted in the report, a
major rationale of diversion is that "it permits the state
to provide services through a youth services program without
labeling the youth a delinquent or tainting the youth's identity with a stigmatizing judicial experience."

(1976a:71-3) There are, then, two major criteria of diversion specified in the report. First, diversion involves the provision of services. Secondly, in order to avoid labeling, it must be community-based, outside of and independent of the formal juvenile justice system. The long term failure of socialized juvenile justice to deliver promised services leads to a preference for an alternative service delivery system. But the avoidance of labeling provides the strongest push for a community-based diversion system. Clearly, an intake system which is part of the formal juvenile justice system, is made up of intake workers who are officers of the court and employees of the Department of Corrections, and who deal exclusively with juveniles who are referred to them on the basis of alleged juvenile crime, is incapable of avoiding labeling. The following points are noted:

1. Under the intake model, the juvenile has already penetrated the system when so-called diversion takes place.

2. Juveniles being "diverted" by Intake are not "truly" diverted as "true" diversion is defined by Cressey and McDermott and accepted in the Commission report. An essential element of "true" diversion is that the person diverted actually leaves the juvenile justice system.
If "true" diversion occurs, the juvenile is safely out of the official realm of the juvenile justice system and he is immune from incurring the delinquent label or any of its variations. Further, when he walks out the door from the person diverting him, he is technically free to tell the diverter to go to hell. (quoted in CRS, 1976a:73)

In an Intake system, a diverted juvenile remains within the grasp of the system until the diversion program is completed.

3. In an Intake system which serves only juvenile justice clients, contact with the system which is of necessity involved in "diversion" is highly likely to be stigmatizing, certainly no less so than meetings with probation officers.

It is, then, difficult to imagine how an intake system can be viewed as a genuine diversion mechanism. By definition, it fails to meet the most fundamental criteria of diversion.

Particular aspects of Maine's Intake system make it peculiarly ill-adapted to serve as a diversion mechanism. Among the points to consider are the following:

1. The Intake Worker is an employee of the Bureau of Corrections which has ultimate responsibility under the new Code for supervising the intake (diversion) function and, among other things, promulgating guidelines for informal adjustments, the most common avenue of diversion under the new Code. Corrections is, as the Maine Youth Advocacy proposal points out, at the opposite end of the juvenile justice system.
from diversion. One can penetrate no deeper into the system than Corrections. As the Maine Youth Advocacy proposal further notes, Corrections is not particularly well known as service provider. (MacDonald and Biskup, 1979:24)

2. The Commission report, having equated a youth services agency with diversion, claims that

   It is the combination of direct services and the co-ordination of existing services which serves to identify a youth service agency. (1976:70)

The failure of the Legislature to provide for any additional services makes it highly unlikely that the Intake Worker will be able to provide services to meet the juvenile's needs. Genuine diversion is thus unlikely to occur. In fact, as Table 11 indicates, Intake Workers infrequently assume the role of service broker for "diverted" juveniles. Diversion, under Maine's Intake system, seems to amount to little more than "informal probation" common in the pre-reform period. Intake Workers, instead of referring diverted youth to community agencies for appropriate rehabilitative services, are carrying ongoing caseloads to which they offer "counselling." This counselling apparently amounts to (and, considering the large caseloads and bureaucratic tasks required of the Intake Worker, it probably cannot be more) little more than periodic "checking-in" with the Intake Worker.
### TABLE 11

#### Conditions of Informal Adjustment (FY1980)

<table>
<thead>
<tr>
<th>Condition</th>
<th>Percent</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meet with Intake Worker</td>
<td>99.0</td>
<td>1,910</td>
</tr>
<tr>
<td>Cash Restitution*</td>
<td>42.9</td>
<td>828</td>
</tr>
<tr>
<td>Service Restitution*</td>
<td>29.7</td>
<td>574</td>
</tr>
<tr>
<td>School/Work Attendance</td>
<td>39.1</td>
<td>754</td>
</tr>
<tr>
<td>Curfew</td>
<td>20.5</td>
<td>395</td>
</tr>
<tr>
<td>Counselling</td>
<td>20.9</td>
<td>404</td>
</tr>
</tbody>
</table>

*10% of all cases involved both types of restitution. 61.7% of cases involved either or both types of restitution.

Source: Juvenile Intake Records data supplied by the Department of Mental Health and Corrections.

---

3. The ease with which diversion can be reversed under the new Code further disqualifies informal adjustment as a form of genuine diversion. A diverted juvenile may be "undiverted" at any time during the six month period from the time of initiation of informal adjustment. And, as noted in the previous discussion of due process, this can be accomplished without any requirement that due process be observed. The decision to "undivert" as the initial decision to divert or not to divert is not appealable to anyone.

4. Concern has been expressed that diversion ultimately might serve to increase the number juveniles subject-
ed to the juvenile justice system instead of decreasing that number.

[T]here is the concern that diversion is becoming a mechanism for increasing unwarranted state intervention into more and more young lives.... It has been suggested that diversion statistics may be bloated by thousands of youth "scooped up" into the juvenile justice system who previously were dismissed. Such figures may serve to mask the fact that those youth who traditionally were processed through to correctional institutions are still processed through without any benefit from all the diversion efforts. (CRS, 1976:74-75)

The structure of the diversion mechanism under Maine's new Code has considerable potential for widening the net of juvenile justice. The assumption that Intake Workers can provide juveniles with needed services and treatment would presumably encourage police to make referrals to Intake in cases where, under the old system, they would have practiced "street level diversion." The result would be that greater numbers of youth would be stigmatized under the system designed expressly to avoid stigmatizing youth. The available evidence suggests that there is a tendency in this direction under the new Code.

One final point that must be made with respect to Intake diversion under Maine's new Juvenile Code. Although the Code offers little guidance as to criteria for choosing one intake disposition over another, the Code's requirement that these decisions be made on the basis of the preliminary in-
TABLE 12

Numbers of Juveniles Processed Pre- and Post-Code

<table>
<thead>
<tr>
<th>Year</th>
<th>Number Arrested</th>
<th>Percent Processed Post-Arrest*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>11,027</td>
<td>39.3%</td>
</tr>
<tr>
<td>1976</td>
<td>10,921</td>
<td>41.8%</td>
</tr>
<tr>
<td>1977</td>
<td>11,166</td>
<td>42.7%</td>
</tr>
<tr>
<td>1978</td>
<td>11,329</td>
<td>45.9%</td>
</tr>
<tr>
<td>1979</td>
<td>12,377</td>
<td>51.5%</td>
</tr>
<tr>
<td>1980</td>
<td>12,040</td>
<td>57.9%</td>
</tr>
<tr>
<td>1981</td>
<td>10,605</td>
<td>60.0%</td>
</tr>
<tr>
<td>1982</td>
<td>9,745</td>
<td>63.7%</td>
</tr>
<tr>
<td>1983</td>
<td>9,516</td>
<td>64.4%</td>
</tr>
</tbody>
</table>

*Includes all cases not handled by the police and released.

Source: Maine Department of Public Safety.

Investigation conducted by the Intake Worker suggests that the Legislature expected the decision on whether to divert a juvenile to be based on a deliberative examination of a wide range of factors that would relate to the interests of the juvenile and the public. In fact, the diversion decision seems in most cases to be an automatic one based almost exclusively on seriousness of offense and prior record of contact with law enforcement or intake. (See Table 13 below)
<table>
<thead>
<tr>
<th>Table 13: Factors in Juvenile Intake Dispositions (FY1980)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL</strong></td>
</tr>
<tr>
<td>AGE*</td>
</tr>
<tr>
<td>6 to 13 Years</td>
</tr>
<tr>
<td>14 to 15 Years</td>
</tr>
<tr>
<td>16 to 18 Years</td>
</tr>
<tr>
<td>SEX*</td>
</tr>
<tr>
<td>Male</td>
</tr>
<tr>
<td>Female</td>
</tr>
<tr>
<td>SERIOUSNESS OF CHARGE*</td>
</tr>
<tr>
<td>More Serious</td>
</tr>
<tr>
<td>(A, B, C)</td>
</tr>
<tr>
<td>Less Serious</td>
</tr>
<tr>
<td>(D, E, F)</td>
</tr>
<tr>
<td>PRIOR RECORD*</td>
</tr>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>INTAKE DISTRICT*</td>
</tr>
<tr>
<td>I</td>
</tr>
<tr>
<td>II</td>
</tr>
<tr>
<td>III</td>
</tr>
<tr>
<td>IV</td>
</tr>
<tr>
<td>V</td>
</tr>
</tbody>
</table>

*Denotes that chi square is statistically significant at the .05 (95%) level.

Source: Juvenile Intake Records data supplied by the Department of Mental Health and Corrections.
Chapter VII
CONCLUSION: UNDERSTANDING THE FAILURE OF REFORM

Findings

The effort to reform Maine's juvenile justice system in the post-Gault must be judged a failure with respect to its most fundamental objectives. Post-Gault juvenile justice was to combine the best elements of the existing criminal and juvenile justice systems. From the criminal justice system established on classical legal theory would come the guarantee of fairness. From the juvenile justice system based on positive criminology would come a system of rehabilitative services. As the previous chapters indicate, the "reformed" system, at least in Maine, does not, in fact, represent the "best of both worlds." In general terms, the new system provides neither fairness nor rehabilitation in a measure significantly greater than that which existed in Maine prior to the 1978 reforms.

There have, of course, been some modest improvements in juvenile justice systems in Maine and elsewhere in the nation. With respect to fairness there are two areas of progress. First, the formal guarantee of certain constitutional rights by virtue of U.S. Supreme Court decisions and the
application of these in state courts. Secondly, reforms have brought increased formality and procedural regularity by virtue of incorporating large segments of criminal justice procedure into the juvenile justice process.

Several points, however, undermine the significance of these developments as indicators of genuine reform. First, the reform of Maine's juvenile justice system represented by the enactment of a new Maine Juvenile Code was not the vehicle by which juveniles were guaranteed their constitutional rights to due process; most of the improvements with respect to the fairness ideal of post-Gault reform were already guaranteed to juveniles in Maine due to earlier changes in juvenile statutes and applications of Gault and other Supreme Court decisions to Maine's juvenile justice system. Secondly, despite the ideals of post-Gault reformers, there continues to be substantial disparity between the rights of juveniles in the juvenile justice system and the rights of adults in the criminal justice system, particularly with respect to appeal rights and the right to a jury trial. Thirdly, the formal guarantee of rights may not be very meaningful in a system where most cases are resolved by guilty pleas, where most are represented by court-appointed attorneys -- often underpaid, inexperienced, confused about their appropriate role, and unprepared to offer a competent defense of their clients. Fourth, the failure to expand due process rights beyond the doors of the courtroom -- to the
intake and corrections systems and to arrest and interrogation phase of the juvenile justice process is to exempt most of the juvenile justice system from due process. Finally, the efforts to reform the juvenile justice system failed in the final analysis to address the extreme class bias of the system, failing even to investigate the issue in any way. The poor and those from single-parent families continue to be grossly disproportionately represented in the juvenile justice system, and especially in juvenile correctional institutions.

The situation is similar -- though progress is even less evident -- in the area of rehabilitation. The promise of a rehabilitative services system operating in accordance with post-Gault principles, is most evident in Maine's new Juvenile Code. However, this promise, as indicated previously, is nearly empty. As is the case with the ideal of fairness in Maine's reformed juvenile justice system, the ideal of rehabilitation has been incorporated into the "reformed" system largely as formal principles. The new juvenile justice system formally recognizes a number of principles of post-Gault rehabilitative justice, among them, deinstitutionalization (and the principle of the least restrictive alternative), decriminalization, and diversion. Yet, in terms of the actual operation of the system, these principles appear to be largely meaningless. Despite the concerns of reformers with the incarceration of juveniles in correc-
tional institutions and jails and the incorporation of the principles of deinstitutionalization in the new Juvenile Code, juveniles are being incarcerated in greater numbers than previously. There is little evidence of any significant expansion in community-based rehabilitative services. Despite the elimination of most status offenses, large numbers of juveniles continue to be subjected to the jurisdiction of the juvenile justice system for behavior that is not criminal for adults, and such "status offenders" continue to constitute a significant proportion of the juvenile justice system's clientele. More importantly, a central component of decriminalization -- the provision of alternative, nonjudicial services to address the problems represented by such behaviors as substance abuse, running away, truancy, and so forth -- has been ignored, thus transforming decriminalization into neglect. Finally, the principle of diversion is incorporated into the reformed system by means of a mechanism that fails to meet the fundamental criteria of genuine diversion. "Informal adjustment" takes place after the juvenile has penetrated the juvenile justice system, fails to remove the juvenile from the system, provides brief "counseling" sessions with Intake Workers instead of access to a rehabilitative services system, and fails to significantly reduce the number of juveniles who are adjudicated.

Like so many "reforms" which have gone before, the initial verdict on post-Gault juvenile justice reforms is usu-
ally that they have succeeded. The reform represented by the new Maine Juvenile Code appears to offer to Maine's delinquent youth "the best of both worlds." But, on closer examination, the gulf between the formal ideals of statutory language and the actuality of juvenile justice practice becomes ever wider.

The Continuity of Failure

The major purpose of this dissertation was to discover whether the most recent reform efforts in juvenile justice share the fate of earlier reform efforts. The answer which emerges from this case study of post-Gault reform is that these efforts seem to have met the same fate of the earlier efforts, that a just and effective juvenile justice system continues to elude reformers. Before attempting to speculate on the reasons for this failure, it is necessary to place it in the larger context. First, to what extent is the failure of post-Gault reform in Maine representative of the fate of post-Gault reform elsewhere? Secondly, how does post-Gault reform fit into the larger historical context?

On the basis of the evidence which is beginning to emerge, recent reform experiences in other parts of the country have not met with significantly greater success than Maine's. 34

34 It should be noted that such failures are not characteristic only of efforts at reform in juvenile justice.
New York and California were the pioneers in the most recent reform of juvenile justice in the early 1960's, even before Gault. Prescott's recent book, The Child Savers, is a journalistic account of the day to day juvenile justice in New York's "family court," a creation of the 1960's reform. It is a story of utter chaos, horrendous physical conditions, absence of due process, inadequate legal representation, crowded facilities, overcrowded dockets, lack of services, and so forth. (1981) The California story seems to be a similar one. Lemert (1970) presents evidence of a number of fundamental problems in the implementation of reform in California, not the least of which is the lack of effective counsel in juvenile court. (1970:20, 176-177, 182) The Massachusetts approach to post-Gault reform is perhaps the best known nationally due to the dramatic move of Jerome Miller in closing down the large juvenile correctional institutions in the Commonwealth as the only effective way of bringing about deinstitutionalization and a serious move to community-based treatment. The approach is judged a success by many in that it clearly did not result in a major youth crime wave as many had predicted. However, when judged in terms of the extent to which genuine deinstitutionalization and community-based treatment resulted, its success is questionable, at the very least. Significant numbers of juve-

Parallel developments have taken place in criminal justice and appear to have shared the fate of juvenile justice reform. See, for example, Feeley (1983). Or for Maine, see Anspach et al, on sentencing reform. (1983)
niles in Massachusetts continued to be locked up in facilities arguably worse than the institutions which they replaced long after Miller's action. (Robb, 1980) Furthermore, as Fabricant points out in his study of the Massachusetts approach, so-called "hardcore delinquents" continue to be institutionalized, but are sent to other states for this purpose. Nor, it seems, are adequate community-based services provided to replace institutional programs. (Robb, 1980; Fabricant, 1980) In Washington State, the adoption of a new juvenile code was intended to reduce institutional commitments by eliminating commitment as an disposition in non-serious, first offense cases. The new code had "a dramatic but temporary impact on commitments to state institutions. After the initial period of implementation, commitments returned to the pre-code levels." (Steiger, 1981:5)

The central debate over deinstitutionalization in recent years has involved the deinstitutionalization of the mentally ill. Rather than community-based treatment, deinstitutionalization for the mentally ill has apparently meant homelessness. The failure to substitute alternatives for institutional treatment has also apparently characterized deinstitutionalization in juvenile justice systems. Scull (1984) concluded that "the gap between promise and performance has been astonishingly wide....Here the grant of the
negative right to be free from the organized interference in one's life has all too often meant the denial of the positive right to care and attention."

One form of decriminalization in the post-Gault era has been the removal of "runaways" from the jurisdiction of the juvenile court. McKelvy (1984) reports on such an effort in the State of Washington and concludes that this decriminalization took place without the provision of sufficient services to address the problems of juvenile runaways and thus represented not genuine decriminalization, but the abrogation of the State's responsibility to its youth.

Various studies of diversion have arrived at the conclusion that there is at least as wide a gulf between true diversion and the kinds of programs that are generally labelled as such as there is between promise and practice of deinstitutionalization. Latessa, et al (1984) argue that actual diversion programs tend to be characterized by attributes the opposite of genuine diversion. They are, it is claimed, stigmatizing, incompatible with due process, ineffective, and, instead of diverting juveniles who would have otherwise been subjected to the juvenile justice system, divert those who would have been released outright without a "diversion" program. Rojek and Erickson (1984) report a similar finding with respect to net-widening. Polk (1984) points out that most diversion programs of the youth services bureau type are the result of the "grant game" and do not differ in
practice from their pre-diversion status or from non-diversionary juvenile justice agencies such as probation -- either in philosophy or practice. They pursue a largely individual therapeutic approach.

That these failures echo the earlier history of juvenile justice reforms, from the movement to establish houses of refuge and similar institutions the early nineteenth century to the juvenile court movement in the early twentieth, is beyond doubt. While there are quite clear differences between these reform eras, the similarities of "reform ideals" as well as results are indeed striking. The major rehabilitative "ideals" of post-Gault reform -- decriminalization, deinstitutionalization, and diversion -- are in most respects simply modern formulations of the main themes of "socialized" justice that lay behind the efforts of earlier reformers. The desire to remove children from the criminal justice system, particularly adult jails, on the assumption of the contagious nature of such experiences, seems to have been a major impetus for all three reform eras, each in turn a confession of the failure of the previous efforts to bring about that goal. The most recent reforms differ primarily in that the target of reform -- the system from which children are to be rescued (diverted) -- is the juvenile justice system instigated by previous reformers, rather than the criminal justice system. It had come to be characterized in a short time by the same flaws as the system which it emerged
to replace, but was worse in some respects because of a lack of procedural regularity. To make the point as directly as possible, after each reform era, the system of juvenile justice which emerged was one in which children were brutalized and punished despite the presumed inability of children to be fully responsible for their actions, a system in which children were incarcerated in adult jails, a system in which treatment and training services — the very heart of the system — were not available, a system which failed to curb juvenile crime and misbehavior and which failed to prevent adult crime through the early intervention of the juvenile justice system. In short, the result of reform in each era was a continuation of a brutal, punitive, and ineffective system.

Clearly, Maine's experience with post-Gault reform is but the latest chapter in a long history of failure in juvenile justice reform. From the presumably benevolent efforts of those who established the houses of refuge more than a century and a half ago, to the reformatories, to the socialized juvenile court, few efforts at juvenile justice reform can be judged successful by any standards.

Explaining the Failure of Reform

If, as the evidence suggests, the case of post-Gault reform in Maine is representative of the more general problem,
would-be reformers, policy-makers, and anyone with an interest in a just and effective system to deal with the delinquency problem must understand why reform fails. It is a complex question. The growing literature on reforms in criminal justice and juvenile justice since the 1960's offers a variety of answers that may be useful in explaining what went wrong.

One of the more common explanations of the failure of reform is that change is resisted, subverted, or circumvented by individuals or organizations within the system who are responsible for implementing reforms. Typically, the reforms are considered as counter to individual or organizational interests or are simply resented as externally imposed.

In his recent analysis of court reform, Feeley points to the fact that while change is frequently initiated by "outsiders," the ultimate task of implementing reforms rests with those who staff the agencies and institutions.

When they do, the original intent can be neglected or deflected. Avoidance, evasion, and delay are familiar responses to innovation. (1983:36)

The most crucial stage in reform, he goes on to point out, is not its initiation and early stages, but its routinization. If reform is to be routinized, if permanent funding and implementation are to be assured, the commitment of the institution or agency to the reform, particularly on the part of those charged with carrying out the reforms, is es-
sential. The failure to secure such commitment is frequently a reason for the failure of reform.

Two additional factors are related to institutional resistance which tend to undermine reforms. First is the need of reforms to adapt to the entrenched bureaucracies if they are to survive. In so doing, their reform ideals are frequently compromised. A second, and related, point is that in even the best of circumstances, imperatives of organizational survival gradually crowd out reformers' principles. (Peeley, 1983:201)

Fabricant (1980:5) analyzes deinstitutionalization in Massachusetts primarily in terms of organizational self-interest. He argues that frequently organizational goals are substituted for reform goals. He cites police substitution of their interests in security and control for the goals of deinstitutionalization as an example of "goal displacement."

Lemert's study of juvenile justice reform in California rests similarly on the notion of conflicting interests. He defines successful social action or reform in terms of the reprioritizing of values for satisfaction. Reform, from Lemert's view, inevitably involves advancing the interests of one group or individual, thus forcing the interests of other groups or individuals to relatively lower positions. The group which ultimately bears the burden of reform can be expected to resist such reform by means of apathy, superficial compliance, sabotage, subversion, defiance, organized conflict, and so forth. (1970:20-21)
Forms of this problem are very much in evidence in post-Gault reform in Maine. Local police, for example, are said to undermine the intent of the new Juvenile Code in a number of ways. Where the new Code requires that police contact an Intake Worker immediately after a juvenile is taken into custody, and that a juvenile may not be held in excess of six hours without a decision by the Intake Worker, police use these provisions as a license to impose a mini-jail sentences of six hours on juveniles before releasing them.\(^{35}\) Police in a small Maine community reported the practice of arresting juveniles that they suspect are potential troublemakers on trivial charges so that a prior record will exist when they believe real action is warranted. The intent of such a practice is to ensure that juveniles are not diverted at a later date due to the existence of a prior record.\(^{36}\) The failure of other sectors of the juvenile justice system to carry out provisions of the Code and the resistance to the spirit of the law in other instances represent major erosion of the reform. Among the most notorious examples is the failure of juvenile court judges to order predispositional social studies as required by the new Code.\(^{37}\)

\(^{35}\) Interview with a member of the Portland Police Department.

\(^{36}\) Interview with members of a small, Southern Maine Police Department.

\(^{37}\) The data obtained from court dockets indicates that social studies were done in only a few cases. This appeared to be a case of information simply not being recorded. In fact, according to Judge Donovan of the
The failure of Intake Workers to follow the law by refusing to conduct investigations to determine whether court or diversion is most appropriate in a particular case is but a further example of what might generally be called "institutional resistance."38

The kinds of problems explained by the above might also be explained as problems of coordination which are inevitable given the complexity of the institutional structures that the reforms are required to alter. The problems of coordination of an often fragmented system are immense and, perhaps, insurmountable. Furthermore, many of the parts of these fragmented systems are pursuing quite contradictory interests. Feeley argues that the coordination required to translate abstract goals into practical policies represents "perhaps the single largest obstacle to change." It is, he argues, difficult to coordinate a fragmented system with large numbers of participants. (1983:37) It might also be argued that much of the institutional resistance is merely institutional inertia. There may be a natural tendency for complex organizations to continue to operate in the established manner.

Portland District Court, social studies are rarely ordered. (Interview. February 20, 1985)

38 Telephone interview with Intake Supervisor. (October 15, 1981)
The need to adapt reforms to overcome the opposition of entrenched bureaucracies helps to explain the recommendations of reformers to maintain the existing correctional institution while arguing vehemently for deinstitutionalization and a move to community-based corrections on the grounds of inevitable failure of correctional institutions. The subsequent failure to make of deinstitutionalization more than a rhetorical ideal is not surprising in light of the decision to accommodate the correctional bureaucracy. This, indeed, is the issue raised by the Children and Youth Services Planning Project in asking whether gradual deinstitutionalization is possible. (1977:149)

Other explanations of failure of reform focus not on organizational and personnel resistance but on the role of reformers themselves in subverting the ideals they profess to seek. There are two major strands of this argument. First is the argument that the reforms are often ineffective because those whose agencies are the targets of reform are assigned the reformer role. Peeley points to the findings of the Wickersham Commission calling for reform and regulation in the criminal justice system and then notes, "but, as with so much regulation in general, those to be regulated themselves shaped the legislation." (1983:43)

There is in the membership of the various commissions and task forces which carried out most of the reform effort in Maine since 1970, ample evidence of this practice. Most are
constituted by what might be called the "juvenile justice establishment". The membership of the most important commission in post-Gault reform in Maine is most illustrative. The Commission to Revise the Statutes Relating to Juveniles was chaired by a District Attorney. Its membership consisted of an attorney, a child psychiatrist, three legislators, a guidance counselor, a school principal, the director of a county counselling service, the superintendent of the Maine Youth Center, the former sheriff of Cumberland County, the Director of Youth Aid for the Cumberland County Sheriff's Department, a District Court (Juvenile Court) judge, a representative of the Department of Human Services, and the head of the Maine Chiefs of Police Association. Conspicuously absent were juveniles, ordinary citizens, and juvenile advocates. Clearly, the composition of the Commission is such as to preclude radical change, but, more to the point, change that would be counter to the interests of the constituencies of the Commission membership.

A closely related argument focuses on what might be referred to in a general way as "hidden agendas." Juvenile justice reforms (and criminal justice reforms) have largely failed to achieve their stated objectives because the stated objectives were not the real objectives. Those directly or indirectly connected to reform proposals have their own purposes that are hidden within the reform proposals. These are sometimes discussed as self-interest "masquerading" as
reform, or the "latent goals" of reform, that have little to do with stated goals. Scull, for example, has argued that decarceration as a reform is useful as "ideological camouflage, allowing economy to masquerade as benevolence and neglect as tolerance." (1977:152) The only significant change in juvenile corrections during the post-Gault period, the closing of the Stevens School for Girls and combining it with the Boys Training Center at its South Portland site forming what is now called the Maine Youth Center, represented a substantial financial savings to the State. Evidence of "neglect as tolerance" is documented in the previous chapter in discussions of the failure to provide alternatives to institutional treatment. A similar point is made by Feeley in suggesting that the Nixon administration used the Law Enforcement Assistance Administration (LEAA) imposed reforms to bolster its political image and that LEAA itself found such reforms as diversion as opportunities to redeem itself from charges that it was "arming the police." (Feeley, 1983:83,194)

Frequently, ulterior motives involve the availability of funding. Olson-Raymer (1984) points out that the Office of Juvenile Justice and Delinquency Prevention forced its own priorities on the states by means of attaching strings to funding. Thus, in adopting reforms, the states' level of commitment to them is, at the least, suspect. A similar point is made by Polk in relation to a discussion of various
Youth Services Bureaus that sprung up in response to the federal government's insistence on diversion programs as a prerequisite for funding in the area of delinquency control and prevention. (1984) These programs are, according to Polk, the results of the "grant game" and amount to nothing more than old programs with new descriptions. In his discussion of the history of juvenile justice reform, Rothman (1979:57-59) cites evidence that expansion of "turf" was a motive of many reformers, quoting Healy that it was the "duty of the State to strengthen the hands of the different Child-saving Societies...."

Casper and Brereton (1984:126) point out that those whose task it is to institute reform, that is to say, legislators and others in the political arena, benefit politically from appearing to be "doing something" about a particular problem. However, the real benefits "accrue from the passage of legislation or the formal adoption of a policy rather than from its actual translation into behavioral change." Their particular example is an informative one. The California legislature apparently in response to a growing public concern about crime and a demand that government "get tough" with lawbreakers, enacted mandatory minimum sentences for certain offenses. To implement such legislation would, however, be extremely costly. Thus, in passing the legislation, the lawmakers had no intention of seeing it implemented. They were, nonetheless, able to cite their voting
records as indicative of tough stances against criminals while avoiding the political costs that would have accompanied additional public expenditures for new prison facilities.

Others have argued that the primary goal of juvenile justice reform has been the maintenance of traditional principles of juvenile justice. Latessa et al argue with respect to diversion programs that the appeal of diversion as a reform is that it is not really a reform in that it allows for the continuation of the traditional goals of the juvenile justice system while maintaining the appearance of change in the face of a constitutional onslaught. (1984:146)

Finally, Casper and Brereton (1984:126) suggest that the existence of so many "latent goals" unrelated or even contrary to the manifest goals of reform is encouraged by the reform process itself, particularly the need build coalitions of diverse groups with different and often competing interests in order to enact reforms.

Aspects of this "hidden agenda" explanation are relevant to post-Gault reform in Maine. The "rhetorical" nature of much of the new Juvenile Code, the final product of reform, is strongly suggestive of Feeley's argument that "reform" is often the product of a political process which requires the appearance of something being done without upsetting the system or expending scarce resources. Furthermore, Maine's reforms are at least in part responses to dicta from the
federal government rather than responses to real concerns about juvenile justice in the State. The Comprehensive Juvenile Delinquency Study, the first in the long series of studies that constitute the post-Gault reform process in Maine, was required by the Juvenile Delinquency Prevention and Control Act of 1968 as a prerequisite to LEAA funding. The resulting report is typical of studies conducted to satisfy some legal requirement rather than to find something out. This is, indeed, symptomatic of the problem. (Cooperative Extension Service, 1971:i)

A number of students of reform have sought to explain its failure as the inevitable result of attempting to accomplish the impossible or of expectations far in excess of what might be realistically expected. Feeley presents one form of this explanation in arguing with respect to criminal court reform that the courts cannot be expected to make up for the many failings of all other major social institutions.

What the family, community, workplace, school, and church have failed to achieve cannot be accomplished by a brief encounter in the courts, however speedy or deliberate, lenient or harsh. (1984:xiii)

Similarly, many court reform advocates do not fully appreciate the difficulty of the task before them.

At best, they suffer from trying to do too much — offering a single, simple solution for what is in fact an extremely complex problem. (Feeley, 1984:185-6)
The argument presented by Empey (1979:291) is a similar one.

The aims of preventing delinquency and the expectations of definitively treating a profusion of child and parental problems have laid an impossible burden upon the juvenile court, and they may be considered to have no proper part in its philosophy....

He goes on to suggest that perhaps the only defensible philosophy for the juvenile court is "judicious nonintervention," viewing the juvenile justice system as a last resort when all other remedies have failed. (1979:291)

The problem of permanent funding and the provision of adequate resources is one that plagues many reform efforts. As previously noted, the payoff of reform efforts for policy-makers is often in the formal enactment of reform rather than its actual implementation. Furthermore, passing legislation does not involve much expense unless the legislation mandates the provision of certain resources. Temporary funding of glamorous pilot, demonstration, or experimental programs obviously provide a high political payoff and a reformer label to policymakers. The permanent funding of programs, while perhaps contributing to the public good, may have taxpayer revolt as one of its payoffs. There are a number of related problems here.

Feeley suggests that reformers and innovators are not generally good financiers. Since programs do have costs, financial backing must come from somewhere. In the process of obtaining funding, reform goals, ideals, and objectives are often compromised.
New programs have a tendency to adapt to the interests and views of those who ultimately pay for them. This fact alone causes serious adjustments away from the original focus of some programs. (Feeley, 1983:36)

Feeley also notes that innovative programs often die for lack of permanent funding. One example of general problems in obtaining permanent funding is the Oakland ROR project, funded for two years by the Ford Foundation. Local takeover was, however, declined after the initial two years. It took ten years and LEAA assistance before it eventually got more permanent funding. Such a process is not uncommon and most programs do not survive it. (Feeley, 1983:62, 84) He also points out that funding levels are frequently unrealistically low. (1983:201)

In the early 1960's, the establishment of the Family Court placed New York on the forefront of juvenile justice reform. Yet, the problem of grossly inadequate resources continues to undermine the goals of that reform. Prescott (1981) makes it abundantly clear that even the most basic necessities -- adequate court buildings and detention facilities with heat, space, toilet facilities -- are not provided for, let alone some of the more glamorous items such as staff, legal counsel, social services, etc.

The federal government has played a major role in funding of juvenile justice reform in recent decades. The dollar flow began with the Juvenile Delinquency and Youth Offenses Act of 1961. It was followed by the Juvenile Delinquency
and Control Act of 1968, Juvenile Justice and Delinquency Prevention Act of 1974 and so forth and so on. As Decker's analysis of federal delinquency policy indicates, there are a number of difficulties associated with federal funding. First, rather than long-term funding, the federal role has usually involved providing seed money or funding demonstration projects. Secondly, most of the funding has been contingent on the development of "a wasteful bureaucratic layer," the State Planning Agencies for LEAA, which have absorbed large shares of the funds in bureaucratic maintenance. These planning agencies were also largely political. Third, actual funding was generally lower than that authorized by Congress. Fourth, funding was not generally targeted to where it was most needed. Finally, the Office of Juvenile Justice and Delinquency Prevention is criticized for forcing its priorities onto the states through strings-attached funding. Commitment to reform probably not there at the state and local levels -- commitment to funding was.

(Decker, 1984:35ff)

The issue of funding reforms is also raised by Spiro (1984) in his discussion of decriminalization of status offenses in juvenile justice systems. Alternative means to meeting the needs of these youth are not likely to receive funding. The net result of decriminalization, he predicts, will be that the juvenile justice system loses clients, and thus some of the funding which it needs.
A similar point is made by McKelvy in her report on the removal of runaways from court jurisdiction in Washington state. She quotes Justine Wise Polier's dissent before the IJA/ABA Commission to the effect that status jurisdiction should not be given up without requirements for creating alternative, accessible, and appropriate services....The premature ending of juvenile court jurisdiction before there is a growth of such services will only lead to losing sight of children and families most in need of such services. (1984:109)

Lack of adequate funding of juvenile justice reform has a long history. Lemert notes that after the establishment of state reform schools in California in the 1860's as an alternative to the practice of placing juveniles in prisons, the approach failed due largely to a refusal on the part of the state or communities to provide funding to transport juveniles to the reform schools. (1970:32) Lemert also notes that the first attempt at establishing a juvenile court in California was blocked by a cost-conscious legislature. Ryerson notes the general criticisms that historically, the juvenile justice system has not been able to fulfill its promise of rehabilitative services. (1978:138)

While the Illinois Juvenile Court Act of 1899 prohibited placing juvenile in adult facilities and required that they be detained in special facilities designed for juveniles, the Illinois Legislature failed to provide funds necessary to construct and operate such facilities. (Platt, 1969:146-7) Fox has written of the "resource starvation
that has characterized both juvenile and adult justice." (1970:1238)

With respect to post-Gault funding problems, Christina Robb's account of deinstitutionalization is a classic case. There is no element of the failure of Massachusetts' "reform" that stands out more sharply than the failure to provide a reasonable level of alternative services and facilities. Thus, children in that state are incarcerated in decrepit mental hospitals and roach infested YMCA's. (Robb, 1980)

Empey sums up the problem:

In light of society's failure to grant the juvenile court the resources necessary to fulfill its mandate, current reforms may turn out to be nothing more than an officially sanctioned form of benign neglect. (1979:293)

The failure of post-Gault reform in Maine is directly related to the failure to provide resources for the alternative services necessary to a community-based system. By failing to shift funding from institutional to community treatment, the fate of community-based alternatives was sealed. Despite the principle of the "least restrictive alternative," the preference for community facilities, the numerous references to the provision of necessary services, the State in fact failed to provide any additional resources for the "new" juvenile justice system. The approach is exemplified in sections of the new Code detailing the provision of emergency placement for referred juveniles.
Within the limits of available funding it shall be the responsibility of the Department of Human Services to provide the foster home, group care home, and other shelter and nonsecure detention placements necessary....

Within the limits of available funding it shall be the responsibility of the Department of Mental Health and Corrections to ensure the provision of the secure detention placements necessary for the emergency placements.... (Maine Legislature, 1980a:702; emphasis added)

There are a number of explanations of the failure of reform that are subsumed under the general rubric of inadequate knowledge. The most general of these argues that society in general, and reformers in particular, simply lack the necessary knowledge of the "causes" of juvenile crime and, consequently, do not know how to intervene effectively to remove those factors which generate it. (Rutter and Giller, 1984) Ryerson (1978:161) puts forth the least optimistic form of this argument. She writes,

All the changes in the juvenile court which have already occurred, and virtually all of those which may occur, confess directly or indirectly the belief that we do not know what to do about juvenile crime, and a fear that we can do nothing. This seems to be true even for the demands for harder sanctions: They represent more a desire to find symbols of community outrage than to advocate a strategy with any promise of success.

Others argue for a more limited failure of knowledge. Feeley (1983:104), for example, argues that reformers have frequently failed to understand the nature of the systems they were attempting to reform. He cites an example quite apropos to juvenile justice reform as well as criminal justice reform, that of imposing administratively organized struc-
tures on an adversary system. Diversion mechanisms, for example, become simply another weapon in the prosecutorial arsenal. Feeley also suggests that reformers tend to be so overwhelmed by their enthusiasm for reform that they neglect to think through the possible implications of their proposals. And they fail to adequately think through the nature of the problem. He writes of their "burning desire to find solutions even before problems are understood." (1983:166)

Empey (1979:296) suggests a similar point when he writes that juvenile justice reformers in the post-Gault era have been content to focus their efforts critically or negatively and have failed to define the positive content of genuine juvenile justice. Indeed, the principles of diversion, deinstitutionalization, and decriminalization are essentially negative, based on knowledge of what does not work, rather than on any sense of what does work.

Finally, there appears to be historically a tendency to neglect what knowledge is available and formulate reform proposals in such a way as to make them consistent with ideological assumptions rather than existing knowledge about the nature of the problem. Thus, for example, scholarship on delinquency has long suggested a link between social factors and juvenile crime. Yet, reforms have always proceeded as if crime were somehow generated from within the individual. Juvenile justice systems have thus always focused on changing individuals whether through punitive or therapeutic means. (Ryerson, 1978:107; Rothman, 1979:45)
The major studies of juvenile justice in Maine prior to the enactment of the new Maine Juvenile Code in 1977, reveal, at best, tremendous confusion over the "causes" of delinquency and, consequently, the solutions. One of the few such studies to attempt some theoretical understanding of delinquency prevention and treatment was the Final Report of the Comprehensive Juvenile Delinquency Study. Its theory is so confused as to defy summary. It is an eclectic theory composed of vague elements of social disorganization theory and psychotherapeutic approaches.

Since it is the action and reaction between the juvenile and his society which results in a delinquency judgment, it is obvious that an imbalance of internal and external pressures on the part of both are at the root of the misbehavior. These internal and external pressures on the part of both, must be brought into balance. This can in no way be achieved if either party is segregated from the other. For integration to take place, both must be allies to that integration. It must occur through a mutual acceptance of responsibility, the willingness to make changes and the willingness to adapt to them. (Cooperative Extension Service, 1971:4)

The Governor's Task Force on Corrections quite clearly adopts a theoretical orientation which emphasizes the role of social inequality in the generation of juvenile and adult crime. Yet, it abandons the theory on pragmatic grounds, since its mission clearly does not include the reorganization of society. All its recommendations are, thus, geared at the reform of the correctional system which the report concedes cannot ultimately solve the problem.

[The Task Force is persuaded that the causes of crime in Maine are multiple, complex, and inextric-
cably related to social, economic, psychological, and political factors that are far beyond the reach and power of the correctional system alone to control.

The Report goes on to quote from Ramsey Clark's *Crime in America*, that "Most crime in America is born in environments saturated in poverty and its consequences." It concludes,

Thus, while the correctional system does not and cannot deal with the underlying forces that produce anti-social behavior, it can and does have a crucial and lasting influence upon the lives of those who exhibit such behavior. (1973:iii)

What is even more striking is that there is so little effort to bring any knowledge of delinquency to bear on the reform process in Maine. While our knowledge of delinquency is far from adequate, it would seem essential to take into account what knowledge there is. Even when an effort to review existing knowledge is evident, such as discussions of the issues in diversion and youth services mechanisms in the Reports of the Commission to Revise the Statutes, such discussion appears to be completely unrelated to conclusions and proposals which emerge from these studies.

Although theoretical knowledge is most fundamental, adequate information on the existing system would seem equally essential to fruitful reform efforts. Yet, in none of the reports, nor in the work of the Legislature in studying proposed legislation, is there any indication of efforts to gather independent information on the performance of important segments of the juvenile justice system, most notably, the correctional institutions. A great deal of the informa-
tion in most of the studies originates in the very agencies who are the object of reform efforts. The only detailed analyses that appear to accompany the reform efforts are the in depth studies of the goals, regulations, and statutes of Maine's juvenile justice system conducted by the consultants to the Commission to Revise the Statutes. Information on the actual functioning of the system and the extent to which spirit and letter of current goals, regulations, and statutes were being met remained largely ungathered.

An exceedingly important aspect of knowledge in the implementation of reforms is the knowledge of results. In order to ensure that reforms are implemented, monitoring or evaluation are necessary. One of the major difficulties in reforming these complex institutions is represented by the difficulties of genuine monitoring and evaluation. Without evaluation and/or monitoring, it is impossible to determine whether reforms are being implemented. Consequently, adjustments, corrections, and redirection are impossible.

One problem with evaluation that Feeley points to is that evaluation is usually conducted in the initial phases of reform implementation when there is the greater likelihood that the reforms are being observed and implemented. It is, however, in the routine stage of reform implementation that real difficulties tend to emerge. These difficulties are not, then, discovered in evaluation. (1983:38)
There is the further problem of agency resistance to evaluation. Agencies accept funding for various reform projects or programs contingent upon evaluation and then refuse to cooperate in the evaluation process by failing to keep proper records, refusing to collect necessary data, and so forth. (Feeley, 1983:83)

A further problem with evaluation is that the goals of reform may be adjusted to fit the results of evaluation. The Manhattan Court Employment project gradually evolved from a job search program to a "rapping," counselling-type program in response to evaluation conclusions that all the project was accomplishing was "rapping" with clients. "Success" is subsequently redefined from getting a job to showing up for scheduled counselling sessions. Thus, the Project can claim a 55% success rate! (Feeley, 1983:89)

A number of commentators have made the point that evaluations often confuse formal enactment of reforms and official policy statements with actual operational policy. As Ryerson points out, when the ideal and the actual in juvenile justice are compared, the results are discouraging. (1978:97) Stanford's discussion of proliferation of diversion programs in the 1970's illustrates the problem. Such wild proliferation was facilitated by a lack of critical analysis. The traditional evaluative approaches confuse ideals and officially stated goals with actual goals. He suggests that a more dynamic approach to evaluation re-
search, the "multi-goal evaluation technique" would help to avoid this problem. (1984:60ff)

Perhaps the most glaring example of the failure of the evaluation and monitoring function is the work of the Legislative Committee to Monitor the Implementation of the New Juvenile Code. After several years, the Committee went out of existence without conducting any serious evaluation of the functioning of the new system and without issuing any report to the Legislature or the public. The only other effort that relates to evaluation is the compilation of juvenile justice data (from Intake records) by the Department of Mental Health and Corrections. The Department discontinued this practice a few years ago convinced that the data was no longer necessary in view of the satisfactory functioning of the system. Thus, despite the insistence of all post-Gault reports on the importance of continuous evaluation, monitoring, and planning, knowledge of the actual functioning of the system remains scant.

Finally, there are more radical forms of the "hidden agenda" explanation of the failure of reform. Typically, these explanations assume some form of the argument that reforms were not intended to provide a just and effective system of juvenile justice, but, rather, represent the efforts of the middle and upper classes to maintain their privileged position in society. Ryerson, for example, has argued that juvenile justice reforms had the imposition of middle-class values and behavior upon the poor as a primary purpose.
In such declarations of purpose, the reformers exhibited a desire not simply to improve upon the criminal justice system but to retrain the child offender and his family in life patterns that were more acceptable to the middle class. (1978:48)

She goes on to point out that, like most reformers, those associated with the juvenile court movement had as their purpose both humanitarian reform and protection of the status quo. (1978:49)

Similarly, Fox (1970:1226), has argued that the pursuit of self-interest has always had a great deal to do with juvenile justice reform. He further suggests that punishment and repression of the poor has always been among its latent functions. It was to avoid nullification, the refusal to proceed against juveniles on the belief that sanctions were too severe, that reforms were supported. (1970:1194,1199)

The work of Anthony Platt perhaps best exemplifies this approach. Platt has argued that

Efforts to reform the juvenile court system (and other criminal justice institutions) are a response by corporate and government policy-makers to the deepening economic and political crisis, a crisis which has its roots in systematic instabilities in the world capitalist economy and the post-McCarthy era resurgence of militant mass movements. (1977:80)

Similarly, Schwendinger and Schwendinger (1979:257) write of "the political and economic conditions whose dual effect contributes to crime while prohibiting genuine alternatives to crime control." These kinds of explanation relate both to the sources of delinquency and the failure of reforms to effectively address the problem.
Although it is difficult to see how the new Maine Juvenile Code furthers the interests of the dominant classes, it is not difficult to understand that the Code and the process from which it emerged ignored substantial evidence that the juvenile justice system in Maine finds a disproportionate share of its clientele among the poorest of its citizens. In nearly all of the post-Gault studies, there is at least some hint of recognition that the source of the delinquency problem lies deeply in the organization of modern American society. The comments of the Governor's Task Force on Corrections have already been cited. Similarly, the Comprehensive Juvenile Delinquency Study recognizes the role of social institutions in the generation of delinquency. The Children and Youth Service Planning Project is emphatic in linking delinquency to inequality and lack of opportunity. Yet, none of these reports moves beyond recommending programs that will approach the problem by attempting to act in some way upon the individual.

The Failure of Reform

These and other factors certainly played an important role in ensuring that post-Gault reform in Maine resulted in little change in juvenile justice. Each of them, however, leaves important questions unanswered. Why do organizations and individuals resist and subvert reforms? Is self-inter-
est, individual or organizational, an inevitable law of so-
cial relations? Why do legislatures fail to provide re-
sources necessary to carry out meaningful reforms? Why does
the public pressure legislators to avoid such expenditures?
Why are the regulated chosen to be regulators? Can reforms
get implemented? If so, can they solve the problems?

The answer in part seems to lie in the fact that each of
the above explanations relates to the nature of reform it-
self. What stands out most clearly in examining post-Gault
reforms in relation to the history of such efforts is that
the liberal reform strategy itself seems doomed to failure.

Juvenile justice in the United States has been subjected
to innumerable reforms in the decades since the founding of
the New York House of Refuge in 1825. A common thread in
these efforts is that whether the problem was defined as de-
fective or unfortunate juveniles or a preyed upon public,
the solutions were defined in terms of minor adjustments to
the social system, or, even more typically, adjustments to
the character of the individual juvenile. Through the pro-
vision of special services (job training, shelter, educa-
tion, etc.) or treatment (counselling, psychiatric care,
隔过, etc.) whatever kinks in the social system or
flaws in the individual could be worked out. Although there
appear frequently through the history of juvenile justice
reform some recognition that the problem is ultimately root-
ed in the structure or organization of society and/or its
institutions, there continues an inexplicable faith in the ability to eliminate the problem without altering the world from which it emerges. In their Crisis in American Institutions, Skolnick and Currie characterize the view of social problems and policy dominant in the 1960's and 1970's. It seems an apt description of the views that informed juvenile justice reform in the post-Gault era.

The social problems literature of the 1960's -- and the official policies that paralleled it -- assumed that the problems of American society could be solved by piecemeal measures. If people could be given enough training, there would be no unemployment and no "social dynamite" in the ghettos. If criminals and drug addicts could be "rehabilitated," there would be no more crime and social disintegration. This approach, like those before it, although giving considerable lip service to the idea that "society" was to blame for social problems, ultimately laid the burden of change on individuals. And when in the seventies things began to get worse instead of better, many social scientists could only conclude that there was something fundamentally wrong with people.

The new, gloomy social science of the 1970's rediscovered, and made respectable, some of the old theories of degeneracy and defectiveness... (1982:12-13)

The above characterization seems applicable not only to the 1960's reform era of which post-Gault juvenile justice was a result, but to the long history of such efforts. And, indeed, their inevitable failures have typically heralded the onset of another era of reaction.

The reformist approach which has so characterized efforts to solve social problems in the United States is doubly flawed. The first of these flaws is clearly implied in
the more radical explanations of the failure of justice reform referred to above. That is, the reformist approach fails to appreciate fully the source or "cause" of the problem it attempts to remedy. Or, as has often been the case, it fails to recognize that the problem can only be solved by addressing it at this fundamental level. Specifically, whether the problem itself is defined as the behavior of the delinquent or the application of the delinquent label, it must be understood that these actions are rooted in the organization of society and cannot be solved without making fundamental changes in the organization of the social system. A case in point is the recognition in the report of the Governor's Task Force on Corrections that much of the problem of crime and delinquency emerges in a society marked by poverty and inequality. Yet, in keeping with the liberal perspective, the Task Force fails to understand that such conditions are endemic to American society and can only be effectively addressed at the level of social structure. Liberal reform, in short, cannot solve the problem because in failing to understand the nature of the problem, it offers tinkering where radical change is required.

The second aspect of reform that is suggested by the foregoing research as well as the literature is that liberal reform is doomed to failure also because it fails to understand that the mechanism through which it seeks change, the basic institutions of society, are in fact part of the prob-
The political institution, for example, is so constituted as to make compromise of reform ideals a prerequisite of any action. The end result of such a process is the kind of document represented by the new Maine Juvenile Code. Furthermore, in implementation by resistant agencies and institutions who define the reforms as contrary to their interests, what little correspondence remained between the reforms as ideal and actual is typically eliminated. Whatever principle can be said to motivate the process, whether it be expediency, self-interest, power, force, or class dominance, it serves to undermine the implementation of reform policies. In short, not only does the liberal reformist approach propose policies inadequate to the task, it seems incapable of getting these policies implemented.

Is reform, in the final analysis, futile? Are there no meaningful and potentially effective directions in which policy can move closer to a just and effective system of juvenile justice? While there is not a considerable basis for optimism, an understanding of the severe limitations of the reform approach may be a fruitful place to begin a study of alternatives. Secondly, a decent juvenile justice system is unlikely to emerge from narrowly based thinking and research on juvenile delinquency and juvenile justice which does not recognize that both are tied intimately to the organization of society and cannot be significantly altered without altering the basic structure of society. Like criminal jus-
tice, juvenile justice is "inextricably interwoven with, and largely derivative from a broader social justice." (American Friends Service Committee, 1971:142) There is, ultimately, no such thing as juvenile justice; there is only justice. Until reformers recognize this, a just and effective juvenile justice system is likely to be elusive.
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