Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice

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Comments

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When he wasn’t stealing cars, he was throwing things at them or setting them on fire. “What could you do? . . . Tell his grandmother? She’d yell at him, and he’d be right back on the street. If the police picked him up, they’d just bring him back home because he was too young to lock up. He was untouchable, and he knew that.”

I. INTRODUCTION

The above passage articulates the exasperation felt by many who knew and feared eleven-year-old Robert Sandifer. In just a year and a half, he compiled a rap sheet that contained twenty-three felonies and five misdemeanors. On August 28, 1994, apparently acting upon instructions from older members of his gang, he fired a semi-automatic weapon into a group of kids playing football and killed fourteen-year-old Shavon White, who happened to be in the area. Shortly after the shooting, according to the Chicago Police, fourteen-year-old Derrick Hardaway and his sixteen-year-old brother Cragg, both members of


2. See, e.g., id. at 56, 58 (interviewing people who knew Sandifer). One twenty-year-old woman remembered her eleven-year-old neighbor this way: “You really can’t describe how bad he really was. He’d curse you completely out. He broke in school, took money, burned cars.” Id. at 58.

Sandifer, however, did not terrorize everyone in his community. See id. (discussing interviews of some of Sandifer’s neighbors who had fond memories of him). One man observed that “[i]t always meant trouble when he [Sandifer] was with a group. . . . If he was alone, he was sweet as jelly.” Id.

3. Id. at 58.

4. See id. at 56, 59. Gang researcher George Knox, who believes Sandifer was an instrument “of revenge sparked by a drug feud or a personal insult,” attaches the following significance to the fact that Sandifer approached the group on foot: “If it was just an initiation ceremony, he’d do it from a car. But to go right up to the victims, that means he was trying to collect some points and get some rank or maybe a nice little cash bonus.” Id. at 59.

5. Id. at 59. In grief, Shavon’s mother lamented, “Shavon never got a chance, never got a chance.” Id.
Sandifer's gang, drove Sandifer to a railroad underpass, where he was shot twice in the back of the head. Sandifer was indeed untouchable to everyone except members of his own gang, who feared he would inform the police who ordered him to fire the gun that killed Shavon White.

Robert Sandifer's mug shot, the only picture taken of him while he was alive that his family could find, made the cover of Time magazine. Perhaps the most poignant element of the tragedies surrounding Robert Sandifer's life and death is that his story was reported, not as an aberration, but as an emblem of the nation's affliction of juvenile violence and the failure of the nation's juvenile courts to provide an acceptable remedy. In fact, stories like Sandifer's are fueling a movement to reform radically the juvenile court system's approach to juvenile crime.

The juvenile justice system began at the turn of the century, when a group of dedicated and ambitious people set out to provide an

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6. Id. at 59.
7. Id. Police currently fear that the Hardaway brothers could themselves be in danger if their gang believes they may tell the police who ordered them to kill Sandifer, since gangs can easily order incarcerated members to kill fellow inmates. Id.
8. Id. at 54.
9. See, e.g., id. at 57. Cook County Circuit Judge Thomas Sumner noted, "I see a lot of Roberts." Id. Cook County Public Guardian Patrick Murphy observed: "We see this 100 times a week." Id.
10. See, e.g., Lacayo, supra note 9, at 61 (quoting Los Angeles District Attorney Gil Garcetti as saying: "We need to throw out our entire juvenile-justice system."); James A. Fox & Glenn Pierce, American Killers Are Getting Younger, USA TODAY (magazine), Jan. 1994, at 24, 26 (criticizing state legislatures for using publicized cases of juvenile violence to justify reforming their juvenile court systems); Chris Pipho, States Get Tough on Juvenile Crime, Phi Delta Kappan, Dec. 1993, at 286, 287 (chronicling the states' reaction to the rise in violent juvenile crime); Phil Sudo, What Kind of Justice?, SCHOLASTIC UPDATE, Apr. 5, 1991, at 10, 11 (reporting the movement towards reforming juvenile courts); Anastasia Toufexis, Our Violent Kids: A Rise in Brutal Crimes by the Young Shakes the Soul of Society, TIME, June 12, 1989, at 52 (reporting that 88% of Americans believe teenage violence is a bigger problem today than it was in the past).
alternative method of addressing the problem of juvenile crime. Instead of exposing young offenders to the rigidities of the criminal justice system and the cruelties of criminal prisons, the court system devised by these early reformers focused on meeting the special needs of troubled children. Determinism, a philosophical concept which posits that human action is the product of various environmental, biological, or social determinants rather than free will, heavily influenced the early reformers. These reformers believed that juveniles were not responsible for their actions, and therefore believed that the young offenders should be rehabilitated rather than punished. The early reformers included in their recipe for rehabilitation the preservation of the anonymity of young lawbreakers. In order to provide the children appearing before the juvenile courts with a chance to enjoy productive and untroubled futures, the juvenile justice system had to


14. Gault, 387 U.S. at 15 (explaining that the early reformers were appalled by the practice of placing children in adult prisons).

15. Throughout this Comment, the term "early reformers" will refer to the founders and early proponents of the juvenile court system who reformed society's thinking about juvenile crime.


17. See WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 369 (1988) (defining determinism as "[t]he doctrine that every event, act, and decision is the inevitable consequence of antecedents that are independent of the human will."); see infra part II.A.1.b. for an explanation of how determinism played a large part in the formation of the juvenile court system.

18. See, e.g., DAVID MATZA, DELINQUENCY AND DRIFT 5 (1964). Matza noted that the determinism of the early reformers "rejected the view that man exercised freedom, was possessed of reason, and was thus capable of choice." Id.

19. Id. at 5, 7.

20. See, e.g., Mack, supra note 16, at 109. Explaining the importance of preserving the anonymity of the delinquent, Judge Mack wrote:

To get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma,—this is the work which is now being accomplished by dealing even with most of the delinquent children through the court that represents the parens patriae power of the state . . . .

Id.
protect these children from the punishing stigmas that society attaches to those with troubled pasts.\textsuperscript{21}

The early reformers chose to transport their ideals into reality through the vehicle of the \textit{parens patriae}\textsuperscript{22} power of the state. They believed the state, through its courts and social agencies, would fill the parental void in the lives of its juvenile delinquents.\textsuperscript{23} They believed that the \textit{parens patriae} power of the state could shield juveniles from the stigmas of the community\textsuperscript{24} and lead their wayward young back to the road of righteous living.\textsuperscript{25} As Judge Julian Mack wrote in 1909, the juvenile court was to act as “a wise and merciful father handles his own child whose errors are not discovered by the authorities.”\textsuperscript{26}

Support for the juvenile justice system depends upon society’s belief that rehabilitating juveniles is in the best interest of both the community and the child.\textsuperscript{27} This belief can survive only as long as society considers the juvenile court’s efforts to rehabilitate successful. If efforts to rehabilitate delinquents are unsuccessful, then a juvenile justice system that refuses to punish delinquents is destined for public obloquy, because society is left with unreformed lawbreakers who, like Robert Sandifer, can threaten public safety without fear of punishment.\textsuperscript{28} The acknowledged failure of the juvenile justice system’s

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  \item \textsuperscript{21} Id.; see also Paul R. Kfoury, \textit{Confidentiality and the Juvenile Offender}, 17 \textit{NEW ENG. J. ON CRIM. & CIV. CONFINEMENT} 55, 56 (1991) (discussing the injurious effects stigmas have on the self-image and attitude of the juvenile).
  \item \textsuperscript{22} The literal translation of this phrase is “parent of the country.” \textit{BLACK’S LAW DICTIONARY} 1114 (6th ed. 1990). But \textit{parens patriae} usually refers to the unfettered paternalism of the juvenile court, or the doctrine of thought the early reformers developed to justify that paternalism. \textit{See, e.g.}, \textit{Gault}, 387 U.S. at 16 (explaining that the meaning of \textit{parens patriae}, as it is used in juvenile court discussions, is “murky and its historic credentials are of dubious relevance”).
  \item \textsuperscript{23} \textit{See} \textit{Mack, supra} note 16, at 109 (stating that intervention of the state is necessary “because the child needs it, as evidenced by some of its acts, and because the parent is either unwilling or unable to train the child properly”).
  \item \textsuperscript{24} \textit{See id.} (noting that states in 1909 were beginning to use their \textit{parens patriae} power to protect delinquents from the damaging stigmas of criminality).
  \item \textsuperscript{25} \textit{id.} at 122. Judge Mack proclaimed that “those [juveniles] who are treading the downward path shall be halted and led back.” \textit{id.}
  \item \textsuperscript{26} \textit{id.} at 107.
  \item \textsuperscript{27} \textit{See, e.g.}, Orman W. Ketcham, \textit{The Unfulfilled Promise of the American Juvenile Court}, \textit{in JUSTICE FOR THE CHILD} 22, 38 (Margaret K. Rosenheim ed., 1962). “The cornerstone of \textit{parens patriae} is the concept that the interests of the state and the welfare of the child are not in conflict but, in fact, coincide.” \textit{id.} See also David C. Howard et al., \textit{Publicity and Juvenile Court Proceedings}. \textit{11 CLEARINGHOUSE REV.}, 203, 204 (1977) (discussing how the “rehabilitative treatment of problem children contemplated by juvenile court acts is intended to serve the welfare of both the child and society”).
  \item \textsuperscript{28} Ulysses Currie, Democrat Representative to the Maryland House of Delegates, \textit{Close to Home: Reality Requires Tougher Responses to Juvenile Crime}, \textit{WASH. POST}, Feb. 6, 1994, at C8 (“Many young offenders today are hard-core criminals who have
efforts to turn delinquents into law-abiding citizens\(^9\) has eroded faith in the prospect of rehabilitation, and the violence perpetrated by the system's failures has eroded the willingness of many to continue treating juvenile offenders as something other than criminals.\(^{30}\)

Popular discontent with the juvenile courts' failure to punish the delinquents they also fail to rehabilitate reflects a growing trend in American society to hold individuals personally responsible for their actions.\(^{31}\) Consequently, preserving juvenile confidentiality is becoming unpopular because it frustrates society's increasing desire to hold delinquents accountable.\(^{32}\)

In response to the swelling criticism of the juvenile courts, some states are beginning to expose the identities of their more serious juvenile offenders to society's stigmas. States like Missouri,\(^{33}\) Illinois,\(^{34}\) Louisiana,\(^{35}\) New Jersey,\(^{36}\) Idaho,\(^{37}\) Kansas,\(^{38}\) and Colorado\(^{39}\) have passed laws which remove the protective cloak of confidentiality from certain violent and serious juvenile offenders. These laws are products of the brewing conflict between those who stress the good of the community and those who stress the good of the child. These states divide their delinquents into two groups, those for whom they will continue to exercise their powers as parens patriae, and those against whom

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29. See, e.g., Gault, 387 U.S. at 20 n.26 (citing reports that reveal an alarmingly high recidivist rate among juvenile offenders); McLaughlin & Whisenand, supra note 12, at 16 (claiming rehabilitation of juveniles may be a myth); Rorie Sherman, Juvenile Judges Say: Time to Get Tough, Nat'L J., Aug. 8, 1994, at A1 (reporting the results of a poll which found that almost half of today's juvenile court judges "admit . . . [the] juvenile justice system is failing").


31. See infra part IV.A.

32. See infra part IV.A.


they will exercise their powers as protector of the community.\footnote{See infra part II.B.3.d.}

Today’s juvenile courts resemble criminal courts more than they resemble the early reformers’ paternalistic vision.\footnote{See supra notes 33-39.} Preserving juvenile confidentiality is one of the last vestiges of that vision. As states like those listed above\footnote{See infra parts III.C.3 and III.C.4.} proceed to rescind earlier promises to shield juvenile delinquents from society’s stigmas, they are introducing accountability into the juvenile justice system.

This Comment first examines the rise and fall of the philosophy and practices used to justify the maintenance of juvenile anonymity within the early juvenile justice system.\footnote{See infra part II.} It next discusses the constitutionality of, and the political impetus behind, the recision of juvenile confidentiality, while examining a sampling of approaches some states have adopted.\footnote{See infra part III.} This Comment then analyzes the political and practical need for disclosing the identities of juvenile felons.\footnote{See infra part IV.} Finally, this Comment proposes a general direction for the movement to reform the nation’s juvenile justice system, and suggests a specific approach to the issue of juvenile anonymity.\footnote{See infra part II.A.1.}

II. BACKGROUND

The early reformers used several deterministic philosophies to absolve juvenile delinquents from moral culpability.\footnote{See infra part II.A.1.} Determinism, therefore, allowed the juvenile justice system to push the age of criminal liability back from seven or ten to sixteen or seventeen.\footnote{See infra part V.} Pushing the age of moral culpability to early adulthood justified the practice of preserving juvenile confidentiality, because children who are not responsible for their actions should not suffer from society’s stigmas.\footnote{See, e.g., ROBERT R. BELAIR, U.S. DEPARTMENT OF JUSTICE, CRIMINAL JUSTICE INFORMATION POLICY: PRIVACY AND JUVENILE JUSTICE RECORDS 12 (1982) (discussing the belief that children “should not be punished for acts that they neither understand nor intend”); Mack, supra note 16, at 109 (suggesting that society should endeavor to protect juvenile delinquents from the stigma of criminality).} Determinism also gave the early reformers several clinical diagnoses of delinquency, which they could utilize to approach juve-
nile crime similar to the way doctors approach diseases. This further justified the practice of preserving juvenile confidentiality because, according to the reformers, experiencing society’s wrath would hinder the child’s chances of recovering from the disease of delinquency.

The juvenile court system, acting as parens patriae, offered young offenders a chance to escape the harshness of the adult criminal justice system. But youths entering the juvenile justice system were forced to exchange the guarantees of “due process and fairness” provided in the Constitution for the paternalistic solicitude and confidentiality promised to them by the juvenile court. The founders and subsequent proponents of the juvenile court system argued that this exchange benefited the young offenders. When the Supreme Court finally insisted that constitutional rights could not be traded, the parens patriae power of the juvenile court, including the power to preserve confidentiality, began to crumble.

A. The Origins of the Juvenile Court System

At the turn of the century, disgust over the treatment of young criminals fueled the reform movement that established the American juvenile justice system. The early reformers believed that placing children among adult criminals was a cruel practice which extinguished any hope the young offenders had to escape the criminal way of life. Recent advances in the sciences of sociology, psychology, and physiology provided the early reformers with an almost boundless faith in...
the possibility of rehabilitation. This faith led to a belief in the power of sincere solicitude to mold the malleable soul of every child. As a result, the early reformers insisted that the state train "its bad boys so as to make of them decent citizens."

1. Philosophical Origins

The cornerstone of the juvenile justice system is the belief that a child who commits crimes is not a criminal. To some degree, this aphorism is nothing new. Three centuries before the birth of Christ, Aristotle exempted from responsibility children who were too young to make truly deliberate choices. Even before the juvenile justice movement, states recognized that children below a certain age should not be held responsible for criminal acts because they are incapable of forming criminal intent. There was, therefore, nothing revolutionary in exempting children from criminal responsibility. The revolution instead occurred when the juvenile justice movement used the emerging doctrines of child psychology and positivist criminology to claim that every juvenile is incapable of forming criminal intent.

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61. See, e.g., McLaughlin & Whisenand, supra note 12, at 16 n.102 (describing the notions of the early reformers as "idealistic, yet simplistic").

62. Mack, supra note 16, at 120 (asserting that juveniles should be made to feel that they are "the objects of [the state's] care and solicitude."). This belief in the power of solicitude is reminiscent of the philosophy of Jean-Jacques Rousseau. See JEAN-JACQUES ROUSSEAU, EMILE ON EDUCATION 91 (Allan Bloom trans., 1979) (discussing how confronting the child with necessity of things rather than the ill-will of a supervising adult will make the child "patient, steady, resigned, [and] calm, even when he has not got what he wanted").


64. See, e.g., Mack, supra note 16, at 111 (insisting "[c]are must ... be taken not to provide for dealing with the child as a criminal").

65. ARISTOTLE, THE NICOMACHEAN ETHICS 967-968 (Richard McKeon ed. & W.D. Ross trans., 1941) (stating that children are not capable of choice); id. at 971 (stating that choice is a "deliberate desire of things in our own power").

66. The age of accountability was usually seven or ten. See, e.g., Mack, supra note 16, at 106 (noting that states used to attach criminal responsibility to children as early as the age of seven, and as late as the age of twelve if the child was mentally or morally deficient).

67. See, e.g., THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 160 (1992) (noting that since "the dawn of time, age always has been a factor believed to influence the ability to form criminal intent").

68. See id. (reporting that the juvenile court reform movement extended exemption from criminal accountability to all juveniles).

The original Juvenile Court Act in Illinois covered children up to age sixteen. An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children, 1899 Ill. Laws 131 §1. The current act covers children until they reach age
a. *The Emergence of the Theory of Adolescence*

Under the traditional theory of accountability, a child's responsibility for his actions increases as his ability to make deliberate choices matures. In the first half of the nineteenth century, Alexis de Tocqueville observed that Americans encourage this maturation process by gradually increasing the responsibilities and moral culpability of their children. By placing criminal accountability on children from seven to ten, the criminal law in this country reflected the notion that children should become adults as soon as possible.

To rebut the traditional linkage of a child's moral accountability with the maturation of his deliberative faculties, philosophers like Jean-Jacques Rousseau began arguing that childhood is a period of life that is separate and distinct from adulthood. Rousseau insisted that imposing adult standards on children is not only unnatural, but also spoils the child's development.

Although Rousseau laid the foundation for the notion of adolescence in the mid-eighteenth century, the United States did not recognize his...
ideas until the latter part of the nineteenth century. At that time, G. Stanley Hall and other child psychologists began to argue that children, regardless of their specious maturity, were not masters of their thoughts; nor were they responsible for their behavior until they passed through their teenage years. Hall’s theory of adolescence provided a buffer between childhood and the assumption of adult responsibility, which the early reformers used to extend the age of criminal responsibility beyond the traditional ages of seven or ten and into the mid-teens.

b. Applying the Determinism of Positivist Criminology to Juveniles

Much of the philosophy of the juvenile justice system relied on a radical shift in the philosophy of crime. This nineteenth century revolution in thought replaced the classical theory of criminology
with the positivist theory. How each of these theories assigns accountability for criminal conduct is at the heart of the significant difference between them. Simply put, the classical theory places blame on the criminal, while the positivist theory places blame on determinants that are beyond the criminal's control.

Applying determinism to juvenile crime, the early reformers posited that children who commit crimes are not criminals because children are incapable of voluntary acts. The three major determinants of criminal action, according to the positivist theory, are (1) defects in the criminal's environment, (2) defects in his physical makeup, and (3) defects in his psychological condition. Thus, determinism identifies the causes of juvenile crime as defects or disorders in the juvenile's family life, in the struggles of his social or economic class, in his physical

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81. E.g., id. (noting the replacement of the classical theory of deterrence with the positive theory of rehabilitation).
82. Id. at 17, tbl. 1 (listing "[m]oral blameworthiness" [sic] as an element of the classical theory).
83. Positivist criminology is merely determinism applied to criminology. See, e.g., Matza, supra note 18, at 5. "[Positive criminology] rejected the view that man exercised freedom, was possessed of reason, and was thus capable of choice." Id.
Absolution for things beyond one's control is a very old idea. In The Nicomachean Ethics, for example, Aristotle writes that those who commit involuntary acts deserve pardon, and sometimes even pity. See Aristotle, supra note 65, at 964. Aristotle's parochial definition of an involuntary act, however, excludes acts that are not the product of pure compulsion or blameless ignorance. Id. The agent's ignorance cannot be in any way the fault of the agent and the agent must feel pain and regret when he learns the consequences of his actions. Id. at 966.
Whereas Aristotle believes few actions are beyond moral consequence because few are truly involuntary, determinists believe that no action is of moral consequence because no action is truly voluntary. For a more thorough exposition of the determinist theory, see Brand Blanshard, The Case for Determinism, in Determinism and Freedom in the Age of Modern Science 3, 3-15 (Sidney Hook ed., 1958).
84. See William Healy & Augusta F. Bronner, New Light on Delinquency and its Treatment 2 (1936) (applying determinism to delinquency and concluding that delinquency is "as much a response to inner drives and outer stimuli as any other kind of conduct")
85. See Jeffery, supra note 80, at 14 (listing "physical, psychological, [and] sociological determinism" as part of the positivist criminology) (citation omitted). The fathers of the three major branches of determinist philosophies are Karl Marx (sociology), Charles Darwin (physiology), and Sigmund Freud (psychology). Id.
87. See Jeffery, supra note 80, at 14 (discussing those sociologists who, using the class struggles theories of Karl Marx, attribute crime to those struggles); see also Alden O. Miller & Lloyd E. Ohlin, Delinquency and Community 56-66 (1985) (discussing the sociological determinants of juvenile recidivism).
condition,88 or in his psychological condition.89 Since forces beyond his control push the juvenile into delinquency, the juvenile’s actions carry no moral consequence.90 According to determinism, the delinquent, therefore, should not be punished.91

Determinism allowed the early reformers to absolve juveniles from moral culpability. But more than this, determinism pointed to causes of delinquency that the reformers could diagnose and treat the way doctors diagnose and treat diseases.92 Whichever of the recognized causes of the disease of delinquency a child possessed, the early reformers believed they could cure it.93

Exciting new doctrines in sociology, psychology, and physiology pointed to causes of juvenile crime, which the reformers believed they

88. See Jeffrey, supra note 80, at 14 (discussing those determinists who, using the theories of Charles Darwin, attributed criminal activity to one’s physical makeup); see also C.R. Henderson, The Relation of Philanthropy to Social Order and Progress, in JUVENILE JUSTICE PHILOSOPHY: READINGS, CASES AND COMMENTS 29-30 (Frederic L. Faust and Paul J. Brantingham eds., 1974) (advocating using Darwin’s principle of social selection to segregate and deny parenthood to “pronounced degenerates” who are predisposed to criminal activity).

89. See Jeffery, supra note 80, at 14 (discussing those who, using Sigmund Freud’s theories of behavior, attribute crime to one’s psychological makeup); see also HEALY & BRONNER, supra note 84, at 132 (considering delinquency a reaction to emotional disturbances and discomforts).

90. Matza, supra note 18, at 69 (noting that juveniles experience an “episodic release” from the conventional constraints of morality).

91. See, e.g., In re Gault, 387 U.S. 1, 15 (1967) (noting that the early reformers insisted that the “idea of crime and punishment was to be abandoned”); BELAIR, supra note 49, at 12 (discussing the belief that children “should not be punished for acts that they neither understand nor intend”).

92. See Harvey H. Baker, Procedure of the Boston Juvenile Court, in JUVENILE JUSTICE PHILOSOPHY: READINGS, CASES & COMMENTS 177 (Frederic L. Faust and Paul J. Brantingham eds., 1974) (discussing why juvenile court officials find it “helpful to think of themselves as physicians in a dispensary”); see also Faust & Brantingham, supra note 13, at 4-5 (listing “the medical analogy of diagnosis and treatment” as an important element of juvenile justice philosophy contributed by positive criminology).


The fittest must always survive; but the standard of fitness is largely in our control. Any one [sic] familiar with poor-relief or its literature, can point out a dozen places where this may be hopefully begun. At the same time we must work upon the prevention of crime by the reform of social conditions. And, finally, when an individual actually enters upon a criminal career, let us try to catch him at a tender age, and subject him to a rational social discipline, such as is already successful in enough cases to show that it might be greatly extended.

Id. at 24.
could cure. If children became delinquents because they belonged to an oppressed economic or social class, then alleviating the effects of that oppression would lead them back to more civil behavior. If children became delinquents because they reacted to sundry emotional disturbances, as some early reformers believed, then psychoanalysis would put an end to the delinquent behavior. Finally, if delinquency was the product of a physiological defect, then advances in the medical sciences might provide the answer.

2. Characteristics of the Early Juvenile Court System

Early juvenile courts desired to rehabilitate wayward youth instead of punishing them. This desire led the early reformers to create a "peculiar system for juveniles, unknown to our law in any comparable context." The early reformers designed the juvenile court to answer several questions about the juvenile beyond concerns of guilt or innocence, such as "[what] is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." They envisioned a juvenile court judge as ideally having the qualities of a good father, a brilliant psychologist, and a dedicated social worker.

94. See, e.g., Tutt, supra note 60, at 16-19 (setting forth etiological theories of delinquency in physiology, psychology, and sociology).

95. See ALBERT K. COHEN, DELINQUENT BOYS: THE CULTURE OF THE GANG 121 (1955) (attributing delinquency to the fact that "certain children are denied status in the respectable society because they cannot meet the criteria of the respectable status system"); MARK D. JACOBS, SCREWING THE SYSTEM AND MAKING IT WORK 265 (1990) (attributing part of delinquency to society's failure to achieve integration).

96. See HEALY & BRONNER, supra note 84, at 132 (considering delinquency "a reaction to emotional disturbances and discomforts").

97. See Jeffery, supra note 80, at 14 (describing the contributions of Cesare Lombroso and Charles Darwin to the notion that crime is the product of anomalies in the physical makeup of the criminal).

98. Gault, 387 U.S. at 17.


100. Id. at 119. Mack noted the following:

He must be a student of and deeply interested in the problems of philanthropy and child life, as well as a lover of children. He must be able to understand the boys' point of view and ideas of justice; he must be willing and patient enough to search out the underlying causes of the trouble and to formulate the plan by which, through the cooperation, oftentimes, of many agencies, the cure may be effected.

Id.

The early reformers also believed that everything possible should be done to make juvenile proceedings different from criminal trials. The juvenile should feel that he is the "object of [the court's] care and solicitude." The proceedings should take place without the imposing trappings and solemnity that are found in criminal trials. Perhaps most importantly, the identity and records of the juvenile defendant should remain confidential. The juvenile court, therefore, would shield the young offender from the punishing stigmas that society would attach to him if it discovered what he had done.

Additionally, the juvenile proceeding also differed from criminal trials because it could operate without regard to many of the rights guaranteed in the Constitution. The reformers premised this denial of constitutional rights on the assertion that the Constitution does not apply when the court is acting as parens patriae, since there is no adversarial struggle attempting to deprive someone of life, liberty, or property. Procedural rights designed to protect the liberty of the criminal defendant would only get in the way of the juvenile court's efforts to seek what is best for the child.

The early reformers believed that "the basic right of a juvenile is not to liberty but to custody." Hence children have no rights other than

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Criminology, 61, 69 (1922)). The juvenile court is a "laboratory of human behavior," and its judges should be "experts with scientific training and specialists in the art of human relations." Id. The judge should "get the whole truth about a child" as a "physician searches for every detail that bears on the condition of a patient." Id.

101. Mack, supra note 16, at 111 ("Care must . . . be taken not to provide for dealing with the child as a criminal.").

102. Id. at 120.

103. Id. at 119-20 (suggesting that the juvenile court judge should be a fatherly figure who will sit next to the child and occasionally put his arm around him when making a point).

104. See, e.g., Kfoury, supra note 21, at 56 (discussing the injurious effects stigmas have on the self-image and attitude of the juvenile as well as hampering their "educational, social, [and] employment opportunities").


106. See, e.g., Gault, 387 U.S. at 17.

107. See id. (noting that the early reformers believed the juvenile court should not have to be "subject to the requirements which restrict the state when it seeks to deprive a person of his liberty") (citation omitted).

108. Id. at 16; see also Commonwealth v. Fisher, 62 A. 198 (Pa. 1905) (holding constitutional due process concerns should not apply to the Pennsylvania Juvenile Court Act because issues of life, liberty, and property are not decided).

109. Gault, 387 U.S. at 21 (discussing the claim that juveniles benefit from keeping due process out of their proceedings).

those associated with custody.111 This assertion represents the core of the philosophy behind *parens patriae*. The right to custody entitles the child to the care and solicitude that every parent should bestow upon his children. Children become “delinquent” because their parents do not provide this care and solicitude.112 If the state is going to fill this parental void which renders juveniles “delinquent,” then the state, like every other good parent, must raise the child by considering what is in his best interest.113

**B. Losing Faith**

The early reformers built the juvenile justice system on three pillars of faith: (1) faith in the power of science to identify and treat the causes of juvenile crime;114 (2) faith in their belief that every child is sufficiently malleable to rehabilitate;115 and (3) faith in the state’s *parens patriae* power to produce a sincere interest in the welfare of the child.116 This faith prompted the early reformers to make very ambitious promises regarding the juvenile justice system’s ability to rehabilitate...
itate each individual juvenile offender and to decrease significantly the problem of juvenile delinquency as a whole.

Supporters have recognized the juvenile court system’s failure to fulfill its promises throughout its history. Early recognition of the disparity between the promises and practice of the juvenile courts precipitated calls for reform of the practice, but not for a reworking of the promises. Although the officials of the juvenile court system consistently recognized the need to improve their efforts, their faith was not seriously challenged until after World War II. It was at this time that the system’s failure to rehabilitate a large number of the delinquents precipitated sharp criticism of the juvenile courts.

1. The First Pillar: The Power of Science

Faith in the power of science to diagnose and cure the causes of juvenile crime fueled the early reformers’ tremendous optimism regarding the ultimate success of their efforts. Frequently analo-

117. See, e.g., id. at 122. "Those [juveniles] who are on the downward path shall be halted and led back." Id.

118. See, e.g., GEORGE W. WITHEY, ILLINOIS’ SEVENTEENTH ANNUAL CONFERENCE ON DELINQUENCY 12 (1948) (claiming that juvenile delinquency could be eliminated as a major community problem with the proper amount of community-based dedication).

119. As early as 1911, officials in the Illinois juvenile court system recognized the need to reform the juvenile justice system. REPORT OF A COMMITTEE APPOINTED UNDER RESOLUTION OF THE BOARD OF COMMISSIONERS OF COOK COUNTY, THE JUVENILE COURT OF COOK COUNTY, ILLINOIS 46 (1911) (proclaiming the “time is ripe for constructive reform” in the method of disposition of juveniles). In 1934, a speaker at Illinois’ Third Annual Conference On Prevention of Juvenile Delinquency recognized that “[w]hile it cannot be said . . . that we have overcome the difficulties involved, the methods now followed in the treatment of delinquents, when we judge them by their results, offer evidence to convince us that we are now on the right track.” Harno, supra note 59, at 24, 26. Another speaker at this conference admitted that the movement was still in the “pioneer stages in the field of correction or prevention of juvenile delinquency.” Malloy, supra note 115, at 28, 29. See Charles R. Shireman, Foreword to JUSTICE FOR THE CHILD v, vi (Margaret K. Rosenheim ed., 1962) (questioning whether the resources necessary to fulfill the lofty goals of the juvenile court movement can be provided).

120. Ketcham, supra note 12, at 15 (characterizing the years after World War II as a period of disillusionment concerning the juvenile justice system).

121. See id.

122. See Faust & Brantingham, supra note 13, at 145-46; see also Ketcham, supra note 12, at 14 (listing “unerring faith in the efficacy of social science” as one of the slogans of the early reform movement).

Positing an extremist view of the role of science in dealing with children, psychologist Augusta Bronner in 1925 “urged that juvenile courts be allowed to remove children from ‘unworthy or stupid’ parents who did not understand the principles of child psychology.” ROBERT M. MENNEL, ORIGINS OF THE JUVENILE COURT: CHANGING PERSPECTIVES ON THE LEGAL RIGHTS OF JUVENILE DELINQUENTS, in CRIME & DELINQUENCY 68-78 (1972), reprinted in JUVENILE JUSTICE PHILOSOPHY: READINGS, CASES & COMMENTS 52, 64 (Frederic L. Faust & Paul J. Brantingham, eds., 1974) (citing Augusta F. Bronner, The
gizing their efforts to those of a medical doctor, proponents of the early reform movement believed juvenile court judges should be child experts with scientific training.

Despite the disappointing results of their scientific efforts to treat juvenile delinquency, the early reformers and proponents of the juvenile justice movement retained their faith in the power of science to solve the problem. In the late 1940s, as criticism of the potential of science as a solution to delinquency grew, proponents of the scientific approach tried to rekindle the early optimism that their faith in science engendered. They blamed the inadequacy of the states' efforts, while refuting any suggestion of a deficiency in their philosophy, for the failure of the juvenile court system to rehabilitate juvenile delinquents. For those concerned with juvenile delinquency, faith in the power of science persisted into the 1960s.

It was in the late 1950s and early 1960s, however, that a debate over determinism suggested the limits of science's power to provide

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*Contribution of Science to a Program for Treatment of Juvenile Delinquency, in The Child, the Clinic and the Court, 84* (Julia Lathrop et al. eds., 1925)).

123. Van Waters, *supra* note 110, at 191. "Analogy . . . brings the [juvenile] court close to the spirit of the clinic." *Id.;* see, e.g., Baker, *supra* note 92, at 184 (describing why juvenile court personnel must remember that their institution is "a remedial agency, like a hospital" that must discover and cure what is wrong with each delinquent).


125. In 1926, William Healy and Augusta F. Bronner described the current procedure for dealing with delinquency as "unplanful and almost chaotic." *William Healy & Augusta F. Bronner, Delinquents and Criminals* 225 (1969). Things had not apparently improved much by 1936. *Healy & Bronner, supra* note 84, at 1 (concluding that "[s]ince the results of dealing with the [juvenile] offender are so frequently disappointing, it must be that the basic forces producing delinquency and the obstacles to treatment have not been sufficiently considered and made clear").

126. George W. Withey speaking at Illinois' Seventeenth Annual Conference on Delinquency Prevention argued eloquently for a revival of the old faith:

> We must keep a sense of poise and serenity, confident in the faith that is ours.
> When an epidemic of preventable disease sweeps our State . . . let us not cry that scientific medicine has failed. If we are wise, we will say we have failed scientific medicine, skirted its support, neglected its admonitions; let us return to it with new intelligence and new loyalty, for it alone can save us.

*Withey, supra* note 118, at 13.

127. *Id.* "Today the great truth that the common people have the know-how to influence human behavior has not failed, but we have failed its principles." *Id.*


129. For a discussion of the role determinism played in the formation of the juvenile justice philosophy, see *supra* part II.A.1. For a collection of essays dedicated to the debate over determinism, see generally, *Determinism and Freedom in the Age of Modern Science* (Sidney Hook ed., 1958).
solutions to delinquency. The early reformers used determinism to draw an image of the juvenile delinquent as someone who, because he was merely responding to the irresistible demands of his biological, psychiatric, or social condition, should not be punished. By the late 1950s, intellectuals criticized determinism because it left no room for morality or punishment. As a result of this criticism, traditional determinism, which denied the existence of free will, became known as "hard determinism." At the same time, a new brand of determinism emerged, "soft determinism," which recognized the free operation of the human will as a sporadic cause of human action. Soft determinism quickly became more popular than the traditional hard determinism.

The shakeup in determinist philosophy and social science reintroduced issues of morality and personal responsibility into discussions of juvenile crime. In 1964, David Matza wrote Delinquency and Drift, using soft determinism to put forth the theory that delinquents "are neither wholly free nor completely constrained but fall somewhere between." As child advocates and juvenile court supporters began to incorporate the doctrine of soft determinism into their etiological views of juvenile crime, their faith in their ability to cure delinquency scientifically began to wane, for how does one cure the disease of volition?

130. See infra notes 141-44.
131. See supra part II.A.1.
132. See, e.g., Blanshard, supra note 83, at 10 (addressing the argument that determinism "makes a mess of morality").
134. For a discussion of the properties of soft determinism, see generally id. See also MATZA, supra note 18, at 7. Summarizing the soft determinist view of modern social science, David Matza wrote, "[m]en vacillate between choice and constraint." Id.
135. See Edwards, supra note 133, at 105 (discussing the contemporary trend towards subscription of soft over hard determinism); see also MATZA, supra note 18, at 7 (recognizing a shift to softer determinism).
136. See, e.g., MATZA, supra note 18, at 188-91 (discussing the moral significance of juvenile crime).
137. Id.
138. Id. at 27.
139. Etiology is the study of causes. WEBSTER'S NEW WORLD DICTIONARY 481 (2d ed. 1972). Commentators on juvenile justice often employ some form of the word "etiology" to discuss various theories of the causes of juvenile crime. See, e.g., Charles H. Shireman, Perspectives on Juvenile Probation, in PURSUING JUSTICE FOR THE CHILD 138, 145 (Margaret K. Rosenheim ed., 1976) (discussing various etiologies of juvenile crime).
140. For a discussion of how determinism made scientific explanations of juvenile
By the 1970s proponents of the juvenile court system openly recognized the limits of science. More than seventy years of scientific inquiry into the problem of juvenile delinquency produced a multitude of mutually exclusive etiological theories.\(^{141}\) Concentrating on etiology over practice, most of these theories did little to suggest how to deal with the delinquent.\(^{142}\) Contrary to the unfettered optimism of the early reformers,\(^{143}\) proponents of the juvenile justice system during the last twenty years have considered behavioral, social and medical science to be merely tools useful for defining the modest goals, tasks and methods of their programs.\(^{144}\)

2. The Second Pillar: The Power to Rehabilitate

Faith in the power to rehabilitate young offenders has always been the central pillar of the juvenile justice movement.\(^{145}\) This faith presented an alternative to the practice of punishing delinquents like adults: because we can rehabilitate young offenders, we do not have to punish them.\(^{146}\) This faith justified ignoring the procedural rights afforded adult criminals: because we are rehabilitating and not punishing young offenders, we are furthering rather than threatening their rights.\(^{147}\) Furthermore, this faith in the power to rehabilitate precipi-
tated the belief that the efforts of the juvenile court were in the best interest of the community as well as the child: successful rehabilitation eliminates any threat the juvenile poses to the community and saves the wayward child from a life of crime.\textsuperscript{148} Finally, this faith demanded the maintenance of strict confidentiality: the stigmas that society attaches to its lawbreakers thwarts the process of rehabilitation.\textsuperscript{149}

In 1920, only seven states prohibited the disclosure of juvenile court records.\textsuperscript{150} While many of the early juvenile court acts did not explicitly protect the anonymity of delinquents, however, the practice of preserving juvenile delinquents’ confidentiality grew out of the juvenile justice system’s emphasis on rehabilitation.\textsuperscript{151} The early days of the juvenile justice reform system established the connection between juvenile confidentiality and rehabilitation.\textsuperscript{152}

Although protecting delinquents from society’s punishing stigmas was the goal of preserving juvenile court confidentiality,\textsuperscript{153} the juvenile justice system’s failure to rehabilitate delinquents has undercut the reasons for shielding those delinquents from stigmas. If the juvenile

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\item any process at all, for the purpose of subjecting it to the state’s guardianship and protection.
\item \textit{Id.} at 200.
\item \textsuperscript{148} See, e.g., Ketcham, \textit{supra} note 27, at 22, 38. “The cornerstone of \textit{parens patriae} is the concept that the interests of the state and the welfare of the child are not in conflict but, in fact, coincide.” \textit{Id.} See also, Howard, \textit{supra} note 27, at 203, 204 (discussing how the “rehabilitative treatment of problem children contemplated by juvenile court acts is intended to serve the welfare of both the child and society”): \textit{Ex parte} Sharp, 96 P. 563, 564 (Idaho 1908) (holding that the purpose of the juvenile court is to “confer a benefit both upon the child and the community”).
\item \textsuperscript{149} See \textit{Mennel}, \textit{supra} note 75, at 82 (quoting G. Stanley Hall). “The youth who go wrong are, in the vast majority of cases, victims of circumstances or of immaturity, and deserving of both pity and hope.” \textit{Id.} (quoting Hall). Hall’s views of the injustice of the stigmas that society attaches on its young offenders reflect the views of the early reformers: “[I]gnorant and cruel public opinion [condemn] all those who have once been detected on the wrong side of the invisible and arbitrary line of rectitude.” \textit{Id.} (quoting Hall). \textit{See also} Kfoury \textit{supra} note 21, at 56 (discussing the injurious effects stigmas have to the self-image and attitude of the juvenile).
\item \textsuperscript{151} \textit{Belair}, \textit{supra} note 49, at 14.
\item \textsuperscript{152} See, e.g., Mack, \textit{supra} note 16, at 109:
\item To get away from the notion that the child is to be dealt with as a criminal; to save it from the brand of criminality, the brand that sticks to it for life; to take it in hand and instead of first stigmatizing and then reforming it, to protect it from stigma.—[sic] this is the work which is now being accomplished by dealing even with the most delinquent children through the court that represents the \textit{parens patriae} power of the state . . . .
\item \textit{Id.}
\item \textsuperscript{153} See, e.g., \textit{id.}
courts are not rehabilitating delinquents, then protecting their identities prevents society from learning the identities of those juveniles who threaten public safety.\textsuperscript{154} The frequency and vehemence of this position grows as concern for juvenile crime increases, causing even some juvenile court proponents to call for the rescission of the promise of confidentiality.\textsuperscript{155}

3. The Third Pillar: The State As \textit{Parens Patriae}

The early reformers chose the \textit{parens patriae} power of the state as the vehicle for rehabilitating young offenders.\textsuperscript{156} By invoking the \textit{parens patriae} power of the state, the early reformers placed faith in the state's ability and willingness to fill the parental void in the lives of delinquents.\textsuperscript{157} Thus, the state's "care and solicitude"\textsuperscript{158} for its wayward youth would be sufficient to protect the delinquents' rights.\textsuperscript{159}

\textsuperscript{154} An early positer of this argument was J. Edgar Hoover, who in 1957 wrote: "Local police and citizens have a right to know the identities of the potential threats to public order within their communities." Geis, \textit{supra} note 150, at 120 (quoting J. Edgar Hoover).

\textsuperscript{155} \textit{See Belair, supra} note 49, at 18. In 1977, Juvenile Court Judge James J. Delaney argued that "minors who commit crimes forfeit their right to anonymity":

When a juvenile steals an automobile and wrecks it, does he still have the same right to privacy as another who does not offend... We must address the issue of juvenile records and confidentiality with reason. There must be a balancing of rights and obligations, on the part of both the juvenile and society.


In 1982, Juvenile Law Professor Martin Guggenheim asserted that the theory behind preserving confidentiality does not apply to the more hardened criminals among today's delinquents. \textit{Id.} (quoting an unspecified interview with Professor Guggenheim). He further asserted: "We should eliminate juvenile court confidentiality. It has been a protection for terrible abuses." \textit{Id.} (quoting an unspecified interview with Professor Guggenheim).

\textsuperscript{156} \textit{See, e.g., Mack, supra} note 16, at 109 (listing the things the juvenile courts are accomplishing through the \textit{parens patriae} power of the state).

\textsuperscript{157} \textit{See, e.g., An Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children, 1899 Ill. Laws 137, }\S\textsuperscript{ }21 (stating its purpose is to ensure that "the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents"). \textit{See also Commonwealth v. Fisher, 62 A. 198, 201 (Pa. 1905).} "Every statute which is designed to give protection, care, and training to children, as a needed substitute for parental authority and performance of parental duty, is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails." \textit{Id.}

\textsuperscript{158} Mack, \textit{supra} note 16, at 120.

\textsuperscript{159} \textit{See Fisher, 62 A. at 201} (holding that since the power granted the courts through Pennsylvania's Juvenile Court Act was designed to be parental in nature there "is no probability, in the proper administration of the law, of the child's liberty being unduly invaded"). \textit{But cf. Mennel, supra} note 75, at 131-32 (discussing how the equity characteristics of the juvenile court allowed the reformers to obviate concerns for the
Although the first juvenile court system in this country was established in 1899, the Supreme Court did not remedy the exclusion of many constitutional guarantees from the juvenile court until the late 1960s. The Supreme Court recognized that the promises of "care and solicitude," made by the state acting as parens patriae, were no substitute for the rights guaranteed in the Constitution. Belief in the need to preserve the confidentiality of juvenile court proceedings depended on the faith one had in the court's ability to fulfill the promises of parens patriae. If the court could not fulfill these paternalistic promises, then the practice of confidentiality did little more than conceal the juvenile justice system's failures and abuses. Thus, much of the issue rested on just how well the state could fill the parental void in the lives of its juvenile delinquents.

a. The State Filling The Parental Void

The early reformers possessed an unfettered faith in the state's ability to become a substitute parent for delinquent children. They believed a fatherly juvenile court judge would conduct proceedings that resembled father to son talks, and would send the worst young offenders to reformatories where "human love, supplemented by constitutional rights of juveniles).
human interest and vigilance” replaced the locks and bars found in adult prisons.\footnote{168} Because the purpose of reformatories was to rehabilitate rather than to punish,\footnote{169} the state could commit juveniles to one of these institutions without adhering to any of the procedures that the Constitution demands for adult criminals.\footnote{170}

During the 1950s and 1960s, proponents of the juvenile court began to lose faith in the state’s ability to fulfill the promises embodied in its role as \textit{parens patriae}.\footnote{171} State cases began to reveal that some juvenile court judges were more interested in punishing rather than rehabilitating youthful offenders.\footnote{172} Further evidence indicated that many of the detention homes and reformatories where delinquents were sent operated on “fear and repression,”\footnote{173} instead of the “human love, supplemented by human interest and vigilance”\footnote{174} which the early reformers had envisioned. Finally, disappointingly high recidivism rates among juvenile offenders indicated that these prison-like institutions\footnote{175} were not successfully rehabilitating a large number of their

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\footnote{168} Id. at 114.
\footnote{169} See \textit{Fisher}, 62 A. at 201 (stating that the design of Pennsylvania’s Juvenile Court Act was not to punish but to be parental in nature; thus, the child’s liberty would not be “unduly invaded”).
\footnote{170} Id. (stating that the commitment of a juvenile by the state to a state institution designed to replace proper parental authority is “not a trial for an offense requiring a common law, or any jury”).
\footnote{171} See \textit{Ketcham}, supra note 27, at 22-40 (discussing the states’ failure to live up to the promises of \textit{parens patriae}).
\footnote{172} In \textit{In re Barajas}, 249 P.2d 350 (Cal. Dist. Ct. App. 1952), a juvenile judge committed three boys to the California Youth Authority because they attacked a girl. \textit{Id.} The Appellate Court reversed this decision because the judge had considered only “the seriousness of the offense and the necessity for stopping such things,” without considering what was in the best interest of the boys. \textit{Id.} at 352. See \textit{Paulsen}, supra note 112, at 44, 53-54 (quoting \textit{CALIFORNIA GOVERNOR’S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, INTERIM REPORT 20 (1959)}) (“Despite the universal agreement with the avowed rehabilitative focus of the juvenile court philosophy, the actions of some courts appear punitive in nature.”).
\footnote{173} \textit{Ketcham}, supra note 27, at 35 (quoting \textit{ALBERT DEUTSCH, OUR REJECTED CHILDREN} xix (1950)).
\footnote{174} \textit{Mack}, supra note 16, at 114.
\footnote{175} See \textit{Ketcham}, supra note 27, at 35 (quoting \textit{ALBERT DEUTSCH, OUR REJECTED CHILDREN,} xix (1950)) (stating that reformatories were not much better than prisons and
residents.\textsuperscript{176}

The early reformers believed that the state could, like every good parent, dispense with procedural rights in its pursuit of what was in the best interest of its wayward children.\textsuperscript{177} As faith in the state’s ability to play the parent began to wane, recognition of the need for some procedural restraints began to emerge.\textsuperscript{178}

\textit{b. Due Process and Fairness}

In the late 1960s, the Supreme Court began rejecting the notion that a juvenile court need not concern itself with due process. In \textit{Kent v. United States},\textsuperscript{179} the Court noted the possibility that children in juvenile courts suffer because they do not enjoy the procedural protections that criminal courts extend to defendants, nor do they experience the rehabilitative care that the juvenile justice system promises them.\textsuperscript{180} The Court in \textit{Kent} therefore determined that the basic requirements of due process and fairness should be observed in a hearing which determined whether a minor had effectively waived his juvenile status.\textsuperscript{181} In \textit{In re Gault},\textsuperscript{182} the Court noted that the absence of procedural safeguards in juvenile proceedings often led to arbitrariness and unfairness rather than care and necessary treatment.\textsuperscript{183} The Court in

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  \item[\textsuperscript{176}] See \textit{In re Gault}, 387 U.S. 1, 22 (1967) (citing a study by the Stanford Research Institute for the President’s Commission on Crime in the District of Columbia, which found that “approximately 66 percent of the 16-and-17-year-olds referred to the court by the Youth Aid Division had been before the court previously.”); see also Ketcham, supra note 27, at 35 (highlighting the dilemma faced by many juvenile court judges).
  \item[\textsuperscript{177}] See, e.g., Commonwealth v. Fisher, 62 A. 198, 201 (Pa. 1905) (stating that the “design [of the Pennsylvania’s Juvenile Court Act] is not punishment, nor the restraint [of] imprisonment, any more than is the wholesome restraint which a parent exercises over his child”).
  \item[\textsuperscript{178}] See Ketcham, supra note 27, at 38 (calling for the introduction to and application of “due process and fair treatment for the child and his parent” in the nation’s juvenile courts).
  \item[\textsuperscript{179}] 383 U.S. 541 (1966).
  \item[\textsuperscript{180}] Id. at 556 (postulating that juveniles may receive “the worst of both worlds [because they get] neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children”).
  \item[\textsuperscript{181}] Id. at 553-54.
  \item[\textsuperscript{182}] 387 U.S. 1 (1967).
  \item[\textsuperscript{183}] Id. at 18-19. Specifically, the Court stated that the “absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective
Disclosing the Identities of Juvenile Felons

Gault also extended the need for due process and fairness to the adjudicatory stage of the juvenile process, during which the child is determined to be delinquent and may be committed to a state facility.\textsuperscript{184}

c. Confidentiality and the Constitution

The power of the juvenile courts to maintain confidentiality has been weakened by conflicts with the Constitution. In \textit{In re Gault}, the Supreme Court stated in dicta that states could continue the practice of maintaining juvenile confidentiality, as long as they did so in a way consistent with due process.\textsuperscript{185} Although preserving the confidentiality of juvenile offenders was one of the most important powers of the juvenile court, after \textit{Gault}, it became clear that none of the \textit{parens patriae} powers would prevail in a direct conflict with the Constitution.\textsuperscript{186}

d. The Shift to Criminal Court-like Proceedings

The Supreme Court brought the juvenile courts within the domain of the Constitution by rejecting the notion that what takes place in a juvenile proceeding is fundamentally different from what takes place in a criminal trial. In \textit{In re Gault}, for instance, the Supreme Court rejected the idea that the prospect of confinement that a juvenile faces is fundamentally different from the prospect of incarceration that a criminal faces.\textsuperscript{187} The Court in \textit{Gault} further rejected the assertion that the constitutional guarantee of due process does not apply to juveniles.\textsuperscript{188}
The early reformers envisioned an informal proceeding in which a fatherly judge and a wayward boy would sit side by side so the judge could put his arm around the bad boy and gently lead him back onto the righteous path. But the Supreme Court insisted that the child's lawyer and most of the rest of the rights provided in the Constitution also be present at these proceedings. As a result, the juvenile court proceeding of today more closely resembles a criminal trial than it resembles the proceeding envisioned by the early reformers.

III. DISCUSSION

In *McKeiver v. Pennsylvania*, the United States Supreme Court explained that the more the juvenile courts resemble criminal courts, the weaker the justification for maintaining a separate justice system for juveniles becomes. Preserving the anonymity of those who came before it has traditionally been one of the things which has distinguished the juvenile court from criminal courts. Juvenile courts of today are finding that the diminution of their *parens patriae* powers has eroded their ability to maintain that confidentiality. With subscrip-

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189. Mack, *supra* note 16, at 120 (recommending that the judge put his arm around the delinquent when emphasizing an important point).

190. *Id.* at 122. Mack suggests that those juveniles "who are treading the downward path shall be halted and led back." *Id.*

191. An interesting exception is the right to a trial by jury. In *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the Supreme Court held:

> [A] jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal, protective proceeding . . . . Meager as has been the hoped-for advance in the juvenile field, the alternative would be regressive . . . . and would tend once again to place the juvenile squarely in the routine of the criminal process.

*McLaughlin & Whisenand, supra* note 12, at 8 (quoting *McKeiver*, 403 U.S. at 545-47).

192. 403 U.S. 528 (1971).

193. *Id.* at 551. The *McKeiver* Court stated: "If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence." *Id.*

194. See *supra* part II.A.2 (explaining how the practice of preserving juvenile confidentiality fit into the early thinking regarding the juvenile justice system); see also *supra* note 20 and accompanying text (discussing how preserving the juvenile's anonymity was crucial to the early reformers' plan for rehabilitation).

195. See, e.g., *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104 (1979) (holding that the state may not use its *parens patriae* powers to punish a newspaper that legally obtains and subsequently publishes the identity of a juvenile delinquent); *Davis v. Alaska*, 415 U.S. 308, 319 (1974) (holding that the state's *parens patriae* power in protecting juvenile confidentiality may not supersede a criminal defendant's confrontation rights).
tion to the doctrine of *parens patriae* on the wane, and fear of juvenile crime on the rise, some states have begun to rescind the practice of protecting the identities of their more violent delinquents.

**A. The Supreme Court and Juvenile Confidentiality**

Although the Supreme Court has never decided a case that required it to consider the constitutionality of a juvenile's right to confidentiality, a series of decisions dealing with juvenile courts has led federal and state appellate courts to conclude that this right is not constitutional in nature. Preserving juvenile confidentiality remains a legitimate state interest, but the practice of maintaining a juvenile's confidentiality must not infringe on any constitutional right. In *In re Gault*, the Court stated in dicta that the practice of maintaining juvenile confidentiality must be maintained in a manner consistent with due process. In *McKeiver v. Pennsylvania*, the Court held that states have the privilege, but not a constitutional obligation, to grant juveniles

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196. See supra part II.B.3. (discussing the deterioration of the *parens patriae* doctrine).

197. See infra part IV (discussing the various causes of society's rising concern with juvenile crime).

198. See infra part III.C.

199. See *Davis*, 415 U.S. at 319. "We do not and need not challenge the State's interest as a matter of its own policy in the administration of criminal justice to seek to preserve the anonymity of a juvenile offender." *Id.; see also* Susan S. Greenbaum, *Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?*, 44 Wash. U. J. Urb. & Contemp. L. 135 n.12 (1993) (noting that the Supreme Court has not addressed the issue of whether juveniles have a due process right to confidentiality).

200. See *J.P. v. DeSanti*, 653 F.2d 1080, 1090 (6th Cir. 1981) (holding that the Constitution does not require confidentiality of juvenile court records); *see also* Doe v. Wigginton, 21 F.3d 733, 740 (6th Cir. 1994) (using *DeSanti* to reject a prison inmate's claim that disclosure to a corrections officer of the inmate's Human Immunodeficiency Virus infection was an unconstitutional invasion of privacy); *In re Chase*, 446 N.Y.S.2d 1000, 1008 (1982) (holding that a juvenile's right to confidentiality is not constitutional in nature).

201. See *Davis*, 415 U.S. at 319 (declining to challenge a state's interest in maintaining juvenile anonymity as long as there is no conflict with the Constitution); *see also* Smith v. Daily Mail Publishing Co., 443 U.S. 97, 104-05 (1979) (recognizing the state's interest in preserving juvenile anonymity, but holding that it is not sufficient to impose a criminal penalty on the exercise of the First Amendment right of a newspaper to publish legally obtained information).


203. *Id.* at 25. "[T]here is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles." *Id.*

204. 403 U.S. 528 (1971).
a public jury trial. In *Davis v. Alaska*, the Court held that since a juvenile's right to confidentiality springs from state law, it is therefore merely a "policy interest" which must give way to a criminal defendant's Sixth Amendment right to conduct an appropriate cross-examination, even if this requires revealing the juvenile's prior adjudications of delinquency. Finally, in *Smith v. Daily Mail Publishing Co.*, the Court held that the First Amendment prevents states from punishing members of the news media who publish the identity of a juvenile, when that information is obtained lawfully. By drawing attention to the fact that a juvenile's right to confidentiality springs from state law rather than the Constitution, the Supreme Court paved the way for states to rescind their earlier promises to protect juveniles from social stigmas.

**B. Juvenile Confidentiality and the Political Process**

Because juveniles do not appear to have a constitutional right to confidentiality, the states do not have to continue providing it. The issue of preserving juvenile confidentiality, therefore, is a political, not a constitutional question. The political landscape, however, is no longer favorable for juvenile courts. The country as a whole is [205. *Id.* at 547. The *McKeiver* Court explained:

The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the fact-finding function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner. It would not remedy the defects of the system. Meager as has been the hoped-for advance in the juvenile field, the alternative would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process.

*Id.*


207. *Id.* at 320. "The State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness." *Id.*


209. *Id.* at 105-06.


211. *See* Ted Gest & Dorian Friedman, *The New Crime Wave*, U.S. NEWS & WORLD REP., Aug. 29, 1994, at 26. States, in reacting to growing concerns over juvenile crime "are extending prisoner terms for young criminals, sending more for trial as adults and lifting the traditional confidentiality of juvenile files to enable tougher prosecution of repeat offenders." *Id.* *See also* James A. Fox & Glenn Pierce, *American Killers Are Getting Younger*, USA TODAY (magazine), Jan. 1994, at 26 (asserting that state legislatures have overreacted to the rising concerns about juvenile crime by passing laws allowing more juveniles to be tried as adults); Joe Klein, *How About a Swift Kick?*, NEWSWEEK, July 26, 1993, at 30 (asserting that strict discipline can "inspire kids growing up in the most desperate circumstances"). See generally Pipho, *supra* note 10, at 286 (noting that recent increases in juvenile crime rates have prompted various states
experiencing a backlash against the various forms of determinism that lie at the heart of the doctrine of parens patriae. Furthermore, responding to the public’s growing intolerance of the special treatment afforded to juveniles who break the law, some state legislatures have begun to pull back the protective cloak of confidentiality.

C. Four General Approaches of State Legislatures

There are four general categories of state laws dealing with juvenile confidentiality. The first category of laws gives juvenile judges various degrees of discretion regarding the disclosure of juvenile court records. The second category of laws mandates disclosure to at risk school personnel. The third category mandates disclosure for a specified group of juvenile felons. Finally, the fourth category mandates disclosure of most or all juvenile felons.

1. Judicial Discretion

Several state laws grant juvenile judges various degrees of discretion to disclose juvenile records. This category has two subsets. In the first subset, states like Ohio and Minnesota provide juvenile judges a closed list of the persons, agencies, institutions, and courts to which they may disclose juvenile records. In the second subset, states like Kentucky, Maryland, and Nevada permit judges to disclose juvenile identities to persons or entities who show good cause or a
legitimate interest in viewing the juvenile's records.\textsuperscript{219}

2. Mandatory Disclosure to the Delinquent's School

In this category states like California and Connecticut require their juvenile courts to release juvenile records to officials of the delinquent's school.\textsuperscript{220} California law authorizes the juvenile court to release a juvenile's records to any school official necessary to avoid "needless vulnerability."\textsuperscript{221} The Connecticut statute, on the other hand, requires that the juvenile court judge release delinquency records, which are to be used solely for placement and discipline purposes, only to the superintendent of the juvenile's school district.\textsuperscript{222}

3. Public Disclosure for Certain Serious Offenses

Missouri,\textsuperscript{223} Illinois,\textsuperscript{224} and Louisiana\textsuperscript{225} statutes illustrate the third approach to disclosure of juvenile identities. Missouri provides for public disclosure of the identities of juveniles adjudicated delinquent for committing Missouri's most serious felonies, including capital murder, and first and second degree murder.\textsuperscript{226} Illinois provides for disclosure to the general public of the name, address, and offense of any juvenile adjudicated delinquent on the basis of, or convicted under the criminal law of, first degree murder, attempted murder, aggravated

\textsuperscript{219} KY. REV. STAT. ANN. § 610.340 (Michie/Bobbs-Merrill 1994) (authorizing judges to release juvenile records if they have good cause); MD. CODE ANN., CTS. & JUD. PROC. § 3-828 (1994) (authorizing judges to release juvenile records if they have good cause); NEV. REV. STAT. ANN. § 62.360 (Michie 1993) (authorizing judges to release juvenile court records to anyone showing a legitimate interest in those records), amended by 1995 Nev. Stat. 567 (permitting release of a juvenile's name if such juvenile is a party to a civil action in which the juvenile's conduct is the subject of such action and if the court has previously had jurisdiction over the juvenile).


\textsuperscript{222} CONN. GEN. STAT. ANN. § 46b-124 (West 1995), as amended by 1994 Conn. Legis. Serv. § 46b-124 (West).

\textsuperscript{223} MO. REV. STAT. § 211.321 (1994) (amended 1995) (amendments not germane to this article).

\textsuperscript{224} ILL. COMP. STAT. ANN. ch. 705, § 405/1-8 (1995).

\textsuperscript{225} 1995 ILL. COMP. STAT. ANN. ch. 412/1 (West).

\textsuperscript{226} MO. REV. STAT. § 211.321. Only the commission of "A" class felonies (the most serious) render juveniles subject to this law. \textit{Id.} "A" class felonies in Missouri include: first degree murder, second degree murder, rape, first degree robbery, treason, assault which inflicts serious injury, escape from prison, and certain uses of explosives. MO. REV. STAT. § 557.016.
criminal sexual assault, and criminal sexual assault.\textsuperscript{227} The Illinois law further provides for public disclosure of the names, addresses, and offenses of juveniles who were over the age of thirteen when the offense was committed, and who were adjudicated delinquent on the basis of, or convicted in criminal court of, a felony committed as or on behalf of a member of a gang, a felony involving a firearm, and certain drug offenses.\textsuperscript{228}

Louisiana provides for the disclosure of juveniles who are adjudicated delinquent on the basis of committing a “crime of violence.”\textsuperscript{229} Unlike any other state using this approach, however, Louisiana allows for the disclosure of some juvenile felons even before they are adjudicated delinquent.\textsuperscript{230} If a juvenile is charged with an offense that is considered a “crime of violence,”\textsuperscript{231} or is charged with an offense that would become his “second or subsequent felony-grade adjudication,” he is subjected to a pretrial hearing in which the judge decides, based on the weight of the evidence against the juvenile, whether the district attorney shall be allowed to disclose the juvenile’s identity.\textsuperscript{232}

4. Disclosure of Most or All Juvenile Felons

States in this fourth and final category, including New Jersey,\textsuperscript{233} Idaho,\textsuperscript{234} Kansas,\textsuperscript{235} Colorado,\textsuperscript{236} and provide for the automatic disclosure of most or all of their juvenile felons. New Jersey law discloses the identities of delinquent juveniles who commit any of several crimes,\textsuperscript{237} unless the juvenile succeeds in demonstrating that there is

\begin{itemize}
\item \textsuperscript{227} ILL. COMP. STAT. ANN. ch. 705, § 405/1-8 (West Supp. 1995).
\item \textsuperscript{228} Id.
\item \textsuperscript{229} LA. CHILD. CODE. ANN. § 412(B)(7), as amended by S.B. 1412, 1995 La. Sess. Law Serv. 1313 (West). Crimes defined as “crimes of violence” include all degrees of murder, rape, battery and other offenses which involve the threat of use of force. LA. REV. STAT. ANN. § 14:2(13) (West 1995). For the entire list of crimes of violence, see id.
\item \textsuperscript{230} LA. CHILD. CODE. ANN. § 412(I), as amended by S.B. 1412, 1995 La. Sess. Law Serv. 1313 (West).
\item \textsuperscript{231} See LA. REV. STAT. ANN. § 14:2(13) (West 1995) (listing the crimes of violence).
\item \textsuperscript{232} LA. CHILD. CODE. ANN. § 412(I), as amended by S.B. 1412, 1995 La. Sess. Law Serv. 1313 (West). The judge in these hearings considers the “probity of the evidence and the basis of the probable cause” of the case against the juvenile. Id.
\item \textsuperscript{234} IDAHO CODE § 20-525 (Supp. 1995).
\item \textsuperscript{235} KAN. STAT. ANN. § 38-1607 (Supp. 1994).
\item \textsuperscript{236} COLO. REV. STAT. ANN. § 19-1-119.1(b.5) (West Supp. 1995).
\item \textsuperscript{237} N.J. STAT. ANN. § 2A:4A-60 (West Supp. 1995), as amended by Assembly No. 1629, 1995 N.J. Sess. Law Serv. 135 (West) (listing crimes of the first, second, or third
“a substantial likelihood that specific and extraordinary harm would result from such disclosure in the specific case.”

In a law similar to New Jersey’s, Idaho provides for the disclosure of the court records of nearly every delinquency case that comes before its juvenile courts. The only exception occurs when the juvenile court judge issues a written order forbidding disclosure in a specific case.

Kansas provides for public disclosure of certain court records of all juvenile felons who are fourteen or older. The Kansas legislature recently lowered the age of disclosure from sixteen to fourteen. Kansas subjects the police records of its juvenile felons, fourteen and over, “to the same disclosure restrictions as the records of adults.”

Colorado provides for the public disclosure of the court records of every juvenile who is adjudicated delinquent on the basis of committing acts constituting a class 1, 2, 3, or 4 felony or any crime involving the possession or use of a weapon. Colorado, therefore, subjects every juvenile felon to public scrutiny.

IV. ANALYSIS

This Part analyzes the philosophical and practical reasons behind the popular discontent with the juvenile justice system, which has led to support for rescinding juvenile confidentiality. It then analyzes how some states are responding to the movement toward disclosure.

A. Rejecting the Philosophy

The syllogism that justifies the existence of a juvenile court system that rehabilitates rather than punishes is as follows: Juveniles are not responsible for their actions because they suffer from any of a number of maladies that compel their deviancy; punishing juveniles for actions which are determined by forces beyond their control exacer-

238. Id.
239. IDAHO CODE § 20-525 (Supp. 1995).
240. Id.
241. KAN. STAT. ANN. § 38-1608(c) (Supp. 1994).
242. Id.
243. Id.
245. For a discussion of the sundry determinants the early reformers believed to cause delinquency see supra notes 84-91 and accompanying text.
bates rather than alleviates those maladies;\textsuperscript{246} therefore, the juvenile court system should direct its efforts toward treating these maladies rather than punishing the afflicted.\textsuperscript{247} Thus, public support for rehabilitation rather than punishing juveniles hinges on the public’s subscription to determinist etiologies.\textsuperscript{248} Determinist etiologies of juvenile crime received the public’s support when the public believed in the scientific promises that developed and sprang from those etiologies.\textsuperscript{249} The public today, however, is more likely to consider a determinist explanation of juvenile crime as an excuse rather than a scientific diagnosis.

1. Etiology or Excuse?

In 1949, Gustav Schramm predicted that the extension of the ideas underlying the juvenile court system to the adult criminal justice system was inevitable.\textsuperscript{250} Today, it is clear that the practice of shielding actors from the moral culpability of their actions, which formed the basis for Schramm’s theory, has made its way into our nation’s criminal courts\textsuperscript{251} and our nation’s sense of morality in general.\textsuperscript{252} The “I did it, but I was a victim” defense has helped criminal defendants avoid punishment,\textsuperscript{253} and many others avoid personal responsibility

\textsuperscript{246} See, e.g., Mack, supra note 16, at 107 (placing juveniles in adult prisons “criminalize[s]” them).

\textsuperscript{247} For a discussion of proposed methods of treating delinquency, see supra notes 92, 98-113.

\textsuperscript{248} See supra part II.A.1.

\textsuperscript{249} See supra part II.A.1.

\textsuperscript{250} Schramm, supra note 146, at 205.

\textsuperscript{251} See, e.g., Margaret Carlson, That Killer Smile, TIME, Feb. 7, 1994, at 76. “Victimology has turned out to be the winning [criminal defense] tactic of our era.” Id.


It’s a strange phenomenon, this growing compulsion of Americans of all creeds, colors, and incomes, of the young and the old, the infirm and the robust, the guilty as well as the innocent, to ascribe to themselves the status of victims to try to find someone or something else to blame for whatever is wrong or incomplete or just plain unpleasant about their lives.

Id. at 28.

\textsuperscript{253} See, e.g., Carlson, supra note 251, at 76. Lyle and Erik Menendez admitted killing their parents, but mounted a victim defense which resulted in two separate hung juries. Id. Claiming to have been victims of abuse, the Menendez brothers convinced members of their respective juries that they shot their parents, who were watching television at the time, because they believed their parents were going to kill them. Id.

A jury in Virginia acquitted Lorena Bobbitt, agreeing that her husband’s abuse
for their actions. 254

In the face of a surfeit of claims to victimhood, the doctrine of personal responsibility is making a comeback in American political and philosophical thought. 255 The practice of avoiding blame for one’s actions is becoming increasingly bitter to the American palate. 256 In a recent issue of *Time* magazine, Margaret Carlson expressed the exasperation that is at the heart of society’s increasing discontent with those who avoid personal responsibility: “How did we go from a society that brooked no excuses to one that embraces every explanation; from a society that distinguished right from wrong to one that understands all and punishes nothing?” 257

The early reformers used the behavioral theories of Karl Marx, Sigmund Freud, and Charles Darwin to develop their deterministic theories that social, psychological, and biological conditions determine juvenile actions. 258 Today, however, even the above founding philosophies of the juvenile justice system are under attack for destroying society’s sense of morality. 259 As a result, some child advocates are

provoked an “irresistible impulse” to mutilate him. *Bobbitt Acquitted, Taken to Mental Hospital*, *Plain Dealer* (Cleveland), Jan. 22, 1994, at 1A.

254. See, e.g., *Sykes*, supra note 252, at 11. Describing the prevalence of invocations to victimhood, Sykes writes:

Something extraordinary is happening in American society. Crisscrossed by invisible trip wires of emotional, racial, sexual, and psychological grievance, American life is increasingly characterized by the plaintive insistence, *I am a victim* . . . . [Throughout the nation], the mantra of the victims is the same: *I am not responsible; it’s not my fault.*

Id.


256. For a sample of the rising discontent over avoiding responsibility, see generally *Sykes*, supra note 252 (describing and criticizing the “victimization” of America); Arianna Huffington, *Don’t Blame Me!*, FAMILY CIRCLE, Jan. 11, 1994, at 156. Huffington states:

When we set sail for the moral equivalent of Club Med, we pay our passage by handing over some assumptions about what it means to be human. The concept of free will is the first to go-after all, if our destiny is out of our hands, so are our decisions. When free will packs its bags, individual responsibility leaves hot on its heels-because if our actions ain’t [sic] our choice, they sure ain’t [sic] our fault.

Id. *See also* Jesse Birnbaum, *Crybabies: Eternal Victims*, *Time*, Aug. 12, 1991, at 16. “Hypersensitivity and special pleading are making a travesty of the virtues that used to be known as individual responsibility and common sense.” *Id.*

257. Carlson, supra note 251, at 76.

258. Jeffery, supra note 80.

beginning to question whether using determinism to shield delinquents from realizing the moral consequences of their actions is counter-productive to the prospect of rehabilitation.\textsuperscript{260}

Yet another sign that morality may be making a comeback can be seen in the fact that many contemporary proponents of the juvenile justice system employ a softer form of determinism,\textsuperscript{261} adding free will as a sporadic agent in their etiological theories.\textsuperscript{262} But even this softer form of determinism does not appear to receive much popular subscription. Importunities for compassion based on the assertion that society's failings are responsible for personal action are not likely to overcome the growing backlash against victimization.\textsuperscript{263} Any attempt

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\textsuperscript{260} Wilson argues that we are paying the price for a century of intellectual wrongheadedness. The legatees of Marx, Freud and Darwin argued that morality was a chimera; it had 'no basis in science or logic.' Moralisers were forced to flee to the musty backwaters of philosophy and theology; the barbarians took hold of public policy. 'It is difficult to say what effects have followed [our] effort to talk ourselves out of having a moral sense,' Wilson writes. 'We may have harmed vulnerable children who ought to have received surer guidance from family and neighborhoods; we may have promoted self-indulgence when we thought we were only endorsing freedom.'

Klein, supra note 211, at 30 (quoting, summarizing, and endorsing JAMES Q. WILSON, THE MORAL SENSE (1993)).

\textsuperscript{261} See, e.g., MATZA, supra note 18 (noting that shielding delinquents from the moral expectations imposed on everyone else may actually exacerbate their feelings of alienation); Lacayo, supra note 9, at 61. "It's imperative for serious juvenile offenders to know they will face a sanction . . . Too many of them don't understand what punishment means because they have been raised in a world with no understanding of reward and punishment." \textit{id.} (quoting Attorney General Janet Reno).

\textsuperscript{262} See, e.g., JACOBS, supra note 95, at 21 (espousing Albert Reiss's theory that delinquency is a failure of social as well as personal controls and espousing Erik Erikson's psychosocial theory that delinquency is an embrace of a negative identity to escape confusion regarding their present schooling and their beliefs of future employment); \textit{id.} at 124 (noting that contemporary juvenile probation officers are reluctant to relieve juveniles and their parents from responsibility for their actions).

In 1992, Thomas J. Bernard, in \textit{THE CYCLE OF JUVENILE JUSTICE} wrote:

[L]et us admit that we choose to live with the problem of juvenile delinquency because it is less costly and more convenient than choosing to solve it . . . .

Let us respond to delinquents in the spirit of the founders of the first juvenile court: as firm but kindly parents. We cannot ignore delinquent behavior, but we must not forget that to some extent it is the result of our own choices. Conscious of our own failings, let us be more gentle with the failings of these juveniles.

BERNARD, supra note 67, at 188.

\textsuperscript{263} Julia Reed, \textit{It's Not My Fault! Should We Really Think Any Excuse Will Do?},\textit{VOGUE}, May 1994, condensed and reprinted in \textit{READER'S DIGEST}, Aug. 1994, at 113, 114. "There has arisen this insane notion that we deserve a perfect life with nice parents and lots of stuff, and that anything short of that is grounds for committing murder or"
to shield juveniles from accountability, even in the form of a "soft determinism," is becoming increasingly unpopular because America is beginning to reject the philosophical pillars of the juvenile justice system.  

Emblematic of how the rising discontent over attempts to avoid personal responsibility exacerbates the rising discontent with the juvenile justice system is a letter to the editor of The Washington Post, written by Maryland State Representative Ulysses Currie.  

Supporting a bill before the Maryland State Legislature, Representative Currie noted that in 1991 nearly twenty-nine percent of the suspects arrested in Maryland for murder, rape, robbery, assault, breaking and entering, larceny, and motor vehicle theft were juveniles. Representative Currie offered the following explanation for these alarming statistics:

One reason for [this] dismal figure is that Maryland's juvenile justice system is based largely on a philosophy . . . that holds that young offenders are not fully aware of right and wrong and therefore should not be held responsible for their crimes to the same extent that adults are held responsible. But that is out of sync with reality. Many young offenders today are hard-core criminals who have long arrest records for serious crimes by the time they are eighteen. And most of them know that juvenile law tips the scales of justice in their favor.

The criticisms the public levels against determinism in general and the juvenile justice system specifically, which focus on a failure to hold people accountable for their actions, suggest a movement in favor of a more traditional view of morality. By rejecting the determinist assertion that no action is of moral consequence because no action is
truly voluntary, society appears to yearn for something approaching an Aristotelian construct of ethics, in which the only actions that are excused from moral relevance are those few that are completely beyond the control of the actor.

2. The Vanishing Doctrine of Adolescence

Representative Currie's remarks reflect a rapidly spreading belief that the philosophy of the juvenile court system is too solicitous to deal with today's hardened and more violent juveniles. G. Stanley Hall and other child psychologists in the nineteenth century argued that children are not masters of their thoughts, nor are they responsible for their behavior until they pass through their teenage years. The early reformers used this doctrine of adolescence to absolve juveniles from moral and criminal culpability. Today, several states are finding increasing support for the proposition that delinquents are responsible for their crimes and should, therefore, be held accountable to the community.

Although there is little evidence to suggest that the experiment the early reformers conducted based on that philosophy was ever successful in its attempts to rehabilitate delinquents, society countenanced

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267. For a more thorough exposition of the determinist theory, see Blanshard, supra note 83, at 3-15.

268. In *The Nicomachean Ethics*, Aristotle writes that those who commit involuntary acts deserve pardon, and sometimes even pity. See *Aristotle*, supra note 65, at 964. Aristotle's parochial definition of an involuntary act, however, excludes acts that are not the product of pure compulsion or blameless ignorance. *Id.* The agent's ignorance cannot be in any way the fault of the agent, and the agent must feel pain and regret when he learns the consequences of his actions. *Id.* at 966.

269. *See, e.g.*, Lacayo, supra note 9, at 60. "America's juvenile justice system is antiquated and no longer able to cope with the violence wrought by children whom no one would call innocents." *Id.*

270. *See Menzel*, supra note 75, at 81 (crediting Hall with laying the foundation of the modern views of childhood, youth, and adolescence). *See also supra* part II.A.1.a (discussing the emergence of the theory of adolescence).

271. *See supra* part II.A.1.

272. *See* Lacayo, supra note 9, at 60 (describing a 1994 North Carolina law which allows children as young as thirteen to be tried as adults); *Id.* at 60-61 (describing similar laws in Arkansas, California and Georgia); *see also Sykes*, supra note 252, at 245 (noting the trend for juvenile courts to abandon the "there-are-no-bad-boys policy" of the early reformers); Currie, supra note 28, at C8 (supporting a bill before the Maryland State Legislature which would make violent delinquents more accountable for their crimes); John F. Harris, *State Law Will Mark 'Bad Kids': Schools to Get Access to Juvenile Records*, WASH. POST, Apr. 8, 1993, at v1 (reporting a recent Virginia law that authorizes school boards to exclude students who have been expelled from any school in the nation for incidents involving weapons, violence or drugs).

273. *See supra* part II.B.2 (discussing the early reformer's disappointment over their efforts to rehabilitate); *see also* Faust & Brantingham, supra note 13, at 149
the experiment’s failure for decades because delinquents did not pose much of a threat. The alarming rise in the severity and frequency of juvenile crime today, however, makes tolerating the juvenile court system’s failures much more difficult.\textsuperscript{274} Aside from becoming increasingly severe and frequent, today’s juvenile crime has become gratuitous, and today’s delinquents often show no remorse.\textsuperscript{275} The acknowledged failure of the juvenile courts to rehabilitate,\textsuperscript{276} and the increasing frequency, violence, and gratuity\textsuperscript{277} of today’s juvenile violence, makes the cost of subscribing to the doctrine of adolescence, which absolves juveniles from moral accountability, too much for society to bear.\textsuperscript{278}

\textsuperscript{274} See, e.g., \textit{3 Texas Teenagers Join 2 Others On Death Row For Same Murders}, CHI. TRIB., Sept. 26, 1994, at 4 (citing and quoting the crime historian, Robert Lineberry) (reporting that the first and the second most common ages of those arrested for committing felonies are sixteen and fifteen, respectively); Fox & Pierce, \textit{supra} note 10, at 24, 25 (reporting that incidents of murder committed by juveniles between the ages of fourteen and seventeen rose 124 percent between the years 1986 and 1991).

As University of Houston Professor Robert Lineberry explains: “The composition of crime is changing . . . In the past, teenagers tended to at worst knock off the 7-eleven store. These days, teenagers knock off the store and murder the manager at the same time. That was almost unheard of 20 or 30 or 50 years ago.” \textit{3 Texas Teenagers Join 2 Others On Death Row For Same Murders}, supra, at 4 (citing and quoting the crime historian, Robert Lineberry).

\textsuperscript{275} According to Juvenile Court Judge Susan R. Winfield, presiding judge of the Family Division of the Washington, D.C., Superior Court, “[t]here is far more gratuitous violence and far more anger [and] shooting . . . . Youngsters used to shoot each other in the body. Then in the head. Now they shoot each other in the face.” Lacayo, \textit{supra} note 9, at 61 (quoting Judge Winfield). See also Toufexis, \textit{supra} note 10, at 52.

What is chilling about many of the young criminals is that they show no remorse or conscience, at least initially. Youths brag about their exploits and shrug off victims’ pain. A Chicago case in which four teenagers raped and killed a medical student was solved because of good police work and what Pat O’Brien, Cook County deputy state’s attorney, describes as “the defendants’ inability to keep their mouths shut” about the crime. “It was a badge . . . . It was something they talked about as if it gave them status within that group of guys.” Youngsters [also] offhandedly refer to innocent passersby caught in the line of gunfire between two gangs as “mushrooms.”

\textit{Id.}

\textsuperscript{276} See \textit{supra} part II.B.2.

\textsuperscript{277} See \textit{supra} notes 274-75 and accompanying text.

\textsuperscript{278} For a discussion of the growing support for treating juvenile felons more like adults, see \textit{supra} note 272 and accompanying text.
B. The Need For Disclosure

The recent movement among the states to rescind the practice of maintaining juvenile confidentiality represents a split between what is perceived to be good for the child and what is perceived to be good for the community. This split has occurred because people have lost confidence in the state’s ability to rehabilitate juvenile offenders. Treating young lawbreakers with the fatherly “care and solicitude” prescribed by the early reformers is acceptable only if it is successful. If efforts to rehabilitate delinquents are unsuccessful, then a juvenile justice system which refuses to punish delinquents is destined for public obloquy, because society is left with unreformed lawbreakers who can threaten public safety without fear of punishment.

The aim of the juvenile courts in preserving the confidentiality of juvenile records is “to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.” But the phrase “youthful errors” should never describe the murders, rapes, and other serious offenses that juveniles are now committing. Society will no longer tolerate protecting today’s juveniles when society itself feels threatened by these very same juveniles. The alarm-

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279. See supra note 28 and accompanying text.
280. For a discussion of the deterioration of faith in the state’s ability to perform as parens patriae, see supra part II.B.3. See also Kfoury, supra note 21, at 67 (observing that “juvenile felons are no longer necessarily viewed as salvageable or productive beings whose rehabilitation is more significant to society than their punishment”).
281. Mack, supra note 16, at 120.
282. For a discussion of the deterioration of faith in the power of the juvenile court to rehabilitate, see supra part II.B.2.
283. See, e.g., Senate Transcript, supra note 30, at 2. Senator Geo-Karis stated: “People are getting fed up with youngsters . . . getting by with murder, so to speak, ‘cause [sic] they’re underage.” Id.; see also Currie, supra note 28, at C8 (stating that “[m]any young offenders today are hard-core criminals who have long arrest records for serious crimes by the time they are eighteen. And most of them know that juvenile law tips the scales of justice in their favor.”).
285. See, e.g., Senate Transcript, supra note 30, at 4-5. In support of Illinois House Bill 2696, Senator Petka commented:

There was a time when the protection of a juvenile, in my opinion, was a very humane and very compassionate thing to do. We were dealing . . . with Halloween pranks, with vandalism, with joyriding, perhaps theft of motor vehicles. We were . . . as a matter of public policy . . . shielding juvenile offenders from their own emotional immaturity, their own mental immaturity, in recognizing that certain things simply should not be done. What [HB 2696] . . . targets [are] offenders who are not refugees from Father Flannigan’s Boys Camps. [W]e are targeting . . . hardened incorrigible punks who are engaged in violent activities . . .

Id.
ing violence that juveniles are committing today has forced communities to demand that the state be more concerned with protecting the lives and safety of the public than it is with protecting the identities of juvenile felons.

1. Providing Warning

Laws which provide for the disclosure of juvenile identities give people of the communities that are plagued by juvenile crime two benefits. The first benefit is warning. While it may not be in the immediate interest of the delinquent, the interest of both victims and potential victims alike in knowing who poses a threat to them are safeguarded by such disclosure. The early reformers believed that juveniles should not be punished by society's stigmas. They premised their belief, however, on faith in their power to lead delinquents back to the righteous path of civic living. Today's alarming recidivism rates among delinquents make it difficult to imagine how disclosing the identities of the most serious juvenile offenders could possibly reduce their chances of becoming rehabilitated. With the prospects of rehabilitation resembling more of a chimera than reality, protecting juvenile confidentiality accomplishes little for juveniles, and does nothing for society except for concealing those who threaten public safety.


287. See, e.g., Senate Transcript, supra note 30, at 5. In supporting Illinois House Bill 2696, Senator Petka asserted, "[The Bill permits] disclosure when it is in the best interest of the community to know that information, and [in] the best interest of people who are victims of crimes, to know that information." Id. An early positer of this argument was J. Edgar Hoover, who, in 1957 wrote: "Local police and citizens have a right to know the identities of the potential threats to public order within their communities." Geis, supra note 150, at 120 (quoting J. Edgar Hoover).

288. See supra notes 104-05 and accompanying text.

289. See supra notes 24-26 and accompanying text.

290. See, e.g., Greene, supra note 145, at A11 (citing a study of juvenile recidivism in eight states conducted by the National Council on Crime and Delinquency which found that 50%-70% of juveniles arrested were rearrested within twelve months); Herbert, supra note 266, at E13 (citing a report stating that New York State's juvenile recidivism rate is approaching 90%).


"This is his fourth arrest," Detective Walker said, referring to the 14-year-old boy whose name was withheld in keeping with Family Court laws intended to protect the youth. "All four cases were for assault and robbery only in two cases the result was death."

"He didn't seem shook up," the detective said. "He knows he can only get 18 months. We can't cope with this court system. They're not giving them enough time. There's no punishment."
Ernest van den Haag points out:

There is little reason left for not holding juveniles responsible under the same laws that apply to adults. The victim of a fifteen-year-old muggers [sic] is as much mugged as the victim of a twenty-year-old mugger, the victim of a fourteen-year-old murderer or rapist is as dead or as raped as the victim of the older one. The need for social defense or protection is the same.292

2. Asserting Morality

The second benefit communities derive from disclosing the identities of juvenile felons is the opportunity to assert the need for morality by placing punishing stigmas on those who commit immoral acts.293 The determinism that permeates the juvenile justice system forbids people from attaching moral culpability to the juveniles who are committing serious crimes.294 Morally healthy human beings experience a natural and ineluctable sense of anger at the sight of crime.295 This anger fuels

Id.

292. Id. at 174.

293. For an illustrative discussion of the ways communities react to crime, see JAMES Q. WILSON, THINKING ABOUT CRIME 26-40 (First Vintage Books ed., 1985) (1975). Predatory crime does not merely victimize individuals, it impedes and, in the extreme case, prevents the formation and maintenance of community. By disrupting the delicate nexus of ties, formal and informal, by which we are linked with our neighbors, crime atomizes society and makes of its members mere individual calculators estimating their own advantage, especially their chances for survival amidst their fellows. Common undertakings become difficult or impossible, except for those motivated by a shared desire for protection. Coming together for protection may, of course, lead to a greater sense of mutual aid and dependence and provide the basis for larger and more positive commitments. It was out of a desire for self-defense, after all, that many of the earliest human settlements arose. But then it was a banding together against a common external enemy. Mutual protection against an enemy within is more difficult to achieve, less sustaining of a general sense of community, and more productive of conflict as disputes arise over who is the victim and who the aggressor. Id. at 26 (emphasis in original).

294. For a discussion of how determinism conflicts with the notion of moral culpability, see supra part II.A.1.b.

295. See, e.g., WALTER BERNS, FOR CAPITAL PUNISHMENT: CRIME & THE MORALITY OF THE DEATH PENALTY 145 (1979) (arguing that anger in response to the commission of crime springs from our souls). Criminals are properly the objects of anger, and the perpetrators of terrible crimes—for example, Lee Harvey Oswald and James Earl Ray—are properly the objects of great anger. They have done more than inflict an injury on an isolated individual; they have violated the foundations of trust and friendship, the necessary elements of a moral community, the only community worth living in. A moral community, unlike a hive of bees or a hill of ants, is one
their desire to see justice done.\textsuperscript{296} One of the primary functions of the criminal justice system is to alleviate public anger by bringing about justice.\textsuperscript{297} Public support for the criminal justice system, therefore, is dependent on the belief that the courts are more effective at bringing about justice than mob rule or vigilante justice, both of which are examples of the dangers involved in excessive public anger.\textsuperscript{298} The early reformers convinced society to exempt juveniles from moral judgment, asking the public to replace its anger over juvenile crime with compassion.\textsuperscript{299} This was not very difficult when juvenile crime was rarely more serious than youthful pranks.\textsuperscript{300} It has become much

whose members are expected freely to obey the laws and, unlike a tyranny, are trusted to obey the laws. The criminal has violated that trust, and in so doing has injured not merely his immediate victim but the community as such. He has called into question the very possibility of that community by suggesting that men cannot be trusted freely to respect the property, the person, and the dignity of those with whom they are associated. If, then, men are not angry when someone else is robbed, raped or murdered, the implication is that there is no moral community because those men do not care for anyone other than themselves. Anger is an expression of that caring, and society needs men who care for each other, who share their pleasures and their pains, and do so for the sake of the others. It is the passion that can cause us to act for reasons having nothing to do with selfish or mean calculation; indeed, when educated, it can become a generous passion, the passion that protects the community or country by demanding punishment for its enemies. It is the stuff from which heroes are made.

\textit{Id.} at 155. (footnotes omitted).

\textsuperscript{296} \textit{Id.} at 152 (stating that “[a]nger is the passion that recognizes and cares about justice”).

\textsuperscript{297} \textit{Id.} at 169.

\text{[T]he punishments imposed by the legal order remind us of the reign of the moral order; not only do they remind us of it, but by enforcing its prescriptions, they enhance the dignity of the legal order in the eyes of moral men, in the eyes of those decent citizens who cry out ‘for gods who will avenge injustice.’ Reenforcing the moral order is especially important in a self-governing community, a community that gives laws to itself.}

\textit{Id.} (citations omitted).

\textsuperscript{298} Abraham Lincoln eloquently described the corrosive effects mob justice has on public support for the laws:

\text{[G]ood men, who love tranquility, who desire to abide by the laws, and enjoy their benefits, who would gladly spill their blood in the defence of their country; seeing their property destroyed; their families insulted, and their lives endangered; their persons injured; and seeing nothing in prospect that forebodes a change for the better; become tired of, and disgusted with, a Government that offers them no protection . . . .}


\textsuperscript{299} \textit{See, e.g.,} Mack, \textit{supra} note 16, at 120 (insisting that the juvenile court must make the child “feel that he is the object of its [the state’s] care and solicitude”).

\textsuperscript{300} \textit{See, e.g.,} supra notes 284-85 and accompanying text.
harder, however, because juveniles are now committing murder, rape, armed robbery, and other serious crimes. When someone intentionally commits one of these crimes, angry calls for justice are not only inevitable, they are appropriate.

Disclosing the identities of delinquents who have committed serious offenses gives society the opportunity to express its moral outrage by placing stigmas on those who commit such acts. The early reformers were mistaken in believing that the stigmas society attaches are always unjust. Stigmas can be a sign of a morally healthy society because they are expressions of what society values. If we value equality, we will place stigmas on racists. If we value freedom, we will place stigmas on tyrants. If we value the dignity of human life, we will place stigmas on murderers, rapists and other serious criminals. A society without stigmas, therefore, would value nothing at all.

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301. See Senate Transcript, supra note 283, at 2 (endorsing an Illinois bill which rescinds the confidentiality of certain serious juvenile felons).

302. See, e.g., Berns, supra note 295, at 145 (discussing how punishment satisfies angry reactions to crime).

303. This Comment should not be mistaken as an endorsement of vigilante justice. The expression of the community’s moral outrage should never exceed the boundaries of the law. See Current, supra note 298, at 14-15 (stating that when private people take the law into their own hands they destroy the public’s attachment to the government and its laws).

304. For a discussion on why it is important that communities attach such stigmas, see Wilson, supra note 293, at 28:

When I speak of the concern for ‘community,’ I refer to a desire for the observance of standards of right and seemly conduct in the public places in which he lives and moves, those standards to be consistent with, and supportive of, the values and life styles of the particular individual. Around one’s home, the places where one shops, and the corridors through which one walks there is for each of us a public space wherein our sense of security, self-esteem, and propriety is either reassured or jeopardized by the people and events we encounter. Viewed this way, the concern for community is less the ‘need’ for ‘belonging’ (or, in equally vague language, the ‘need’ to overcome feelings of ‘alienation’ or ‘anomie’) than the normal but not compulsive interest of any rationally self-interested person in his and his family’s environment.

Id. (footnote omitted).

305. Because they are signs of what society values, stigmas, of course, can also reveal moral sickness.

306. Wilson, supra note 293, at 253. Defending the practice of stigmatizing crime, Wilson argues:

To destigmatize [sic] crime would be to lift from it the weight of moral judgment and to make crime simply a particular occupation or avocation which society has chosen to reward less (or perhaps more!) than other pursuits. If there is no stigma attached to an activity, then society has no business making it a crime . . . . The purpose of the criminal justice system is not to
Stigmas also enable society to perpetuate its values by discouraging others from engaging in a disapproved activity. 307 A common complaint against the juvenile court system is that delinquents know that their acts are not accompanied by serious consequences. 308 Social stigmas will not dissuade many current delinquents from breaking the law, but they are important for forming the moral codes of law-abiding youngsters. 309 Stigmas dissuade crime by showing law-abiding citizens that one of the unpleasant consequences of crime is incurring the opprobrium of their communities. 310 The young need to see that engaging in serious crime is more than a “youthful error” that is buried in “the graveyard of the forgotten past.” 311 It is, rather, a serious mistake with long-lasting consequences. 312

Id.

expose would-be criminals to a lottery in which they either win or lose, but to expose them in addition and more importantly to the solemn condemnation of the community should they yield to temptation.

Id.

307. See, e.g., id.

308. See, e.g., Currie, supra note 28, at C8 (stating that juveniles know the scales of justice weigh in their favor); Herbert, supra note 266, at E13 (stating that delinquents know the juvenile court system is a joke).

309. See, e.g, Wilson, supra note 293, at 28-29 (describing the effects of a community’s standards on an individual).

Next to one’s immediate and particular needs such things as shelter, income, and education, one’s social and physical surroundings have perhaps the greatest consequence for oneself and one’s family. ... How he dresses, how loudly or politely he speaks, how well he trims his lawn or paints his house, the liberties he permits his children to enjoy—all those not only express what the individual thinks is appropriate conduct, but in some degree influence what his neighbors take to be appropriate conduct.

Id.

310. Id. at 253 (asserting that the criminal justice system should expose criminals to the “solemn condemnation of the community”).

311. In re Gault, 387 U.S. 1, 24 (1967) (describing the justification that advocates of juvenile confidentiality present for shielding delinquents from stigmas).

312. The story of Robert Sandifer, as told in Gibbs, supra note 1, at 54, is a moving example of a community using a tragedy to teach its children about the consequences of crime. Eleven-year-old Robert Sandifer shot an automatic weapon into a crowd of people, hoping to hit rival gang members, but instead he hit and killed fourteen-year-old Shavon Davis, an innocent bystander. Id. at 56. Members of Sandifer’s gang killed him to prevent him from being caught and possibly informing the police about their involvement in Shavon Davis’s murder. Id. at 59. Although he was only eleven, Robert Sandifer had 23 felony and 5 misdemeanor adjudications. Id. at 58. Several parents brought their children to Robert Sandifer’s funeral to show them the risk any criminal takes. Id. at 54. The Reverend Willie James Campbell told the children at the ceremony, “[C]ry if you will, but make up your mind that you will never let your life end like this.” Id.
C. Legislating Juvenile Disclosure

The four general categories of state laws dealing with juvenile confidentiality\textsuperscript{313} effect differing levels of public notification.

1. Judicial Discretion

State laws that leave disclosure of juvenile records to the discretion of judges\textsuperscript{314} do little to protect or promote the interests of society.\textsuperscript{315} A recent National Law Journal survey of the nation's juvenile court judges found that while eighty-five percent of the judges surveyed believed that delinquency records should be disclosed to law enforcement officials, seventy-one percent believed that those records should not be disclosed to the public.\textsuperscript{316} It does not appear that conditioning disclosure of delinquency records on judicial discretion results in much public notification.\textsuperscript{317}

2. Mandatory Disclosure to the Delinquent's School

The statutes in this category,\textsuperscript{318} which require juvenile courts to release records to certain school officials, recognize the threats delinquents can pose to their teachers, their principals, and their classmates. However, it is difficult to understand why, when acknowledging the danger school administrators and classmates face when delinquents are present, the state legislatures did not also recognize the danger to the rest of society from these same delinquents. The closed and often emotional surroundings of most schools render teachers and school administrators who have disciplinary duties vulnerable to juvenile violence.\textsuperscript{319} It is difficult to say, however, that those who live in...
communities plagued by juvenile crime are in a much safer position.

Furthermore, disclosing delinquency records to teachers and administrators, as the California law provides, does not protect the juvenile from the stigmas the teachers and administrators may place on their troubled students. The California law, therefore, does not protect juveniles from the stigmas of those responsible for their educations. Opponents to disclosing juvenile records point out that society's stigmas can hinder a juvenile's chances of gaining employment. But stigmas which potentially reduce chances to gain future employment can do no more harm than stigmas which potentially reduce present chances to receive an education. California has left itself very little reason not to extend the protection of its disclosure law to cover all of society.

3. Public Disclosure for Certain Serious Offenses

The third approach to disclosure of juvenile identities, used in Missouri, Illinois, and Louisiana, marks a significant withdrawal from the parens patriae protection these states formerly extended to their juvenile delinquents. This approach evinces the regrettable conflict between those who emphasize the child's interests and those who emphasize society's interests. Those who opposed the Illinois law, for instance, argued in terms of what is in the best interest of the child, while those in favor of it argued in terms of what is best for the community. Missouri, Illinois, and Louisiana currently divide their delinquents into two groups, those for whom they will continue to exercise their powers as parens patriae, and those against whom they will exercise their powers as protector of the community.

These laws do not go far enough. By listing certain specific felonies which may result in public disclosure, Louisiana, Missouri, and

320. CAL. WELF. & INST. CODE § 827 (b)(2) (West Supp. 1995), as amended by, S.B. 1092, 1995 Cal. Legis. Serv. 71 (West) (allowing the principal to disseminate the information to any teacher or administrator “directly supervising or reporting on the behavior progress of the minor”).

321. See, e.g., Gottesman, supra note 286, at A1, A11 (disclosure of juvenile records could shut juveniles out of school or work).

322. See supra part III.C.3.


324. See, e.g., Gottesman, supra note 286, at A11 (quoting Al Pennacchio) (claiming the new Illinois law tells juveniles they don’t have a chance to turn their lives around).

325. See, e.g., Senate Transcript, supra note 30, at 5 (Senator Petka stated: “[Illinois law permits] disclosure when it is in the best interests of the community to know that information, and [in] the best interest of people who are victims of crimes, to know that information.”).
Illinois open themselves up to charges that they unwisely exclude some crimes and unfairly include others. In Illinois, for example, the identity of a juvenile mugger who uses a knife is protected, while the identity of a juvenile mugger who uses a gun is not.\textsuperscript{326} Illinois' minimum age provision also exposes that state to criticism.\textsuperscript{327} The identity of a twelve year old who takes part in an armed robbery is protected, while the identities of any of his co-felons who are age thirteen or over are not.\textsuperscript{328}

If the purpose of denying the protection of confidentiality is to protect the community, then the law should apply to all those who pose a serious threat to the community. Whenever juveniles commit felonies, they become threats to society, and thereby forfeit any right to confidentiality.\textsuperscript{329} Missouri, Illinois, and Louisiana should subject every juvenile felon to public scrutiny. Society is just as threatened by, and feels just as much righteous anger at, the juvenile felons who are not covered by these disclosure laws. Juveniles who threaten someone with a knife should experience the same public disapproval as those who use guns. A crime committed by a gang member does no more damage than the same crime committed by a lone assailant. Exposing all juvenile felons to automatic disclosure would further the efforts of society to discourage all felonious activity and would notify the public of all those juveniles who threaten its safety.

4. Disclosure of Most or All Juvenile Felons

States in this final category go the furthest in ensuring disclosure of juvenile felons.\textsuperscript{330} These states have recognized that society will no longer tolerate juvenile felons who go unpunished by societal stigmas. By disclosing juvenile felons' identities, these states provide warning to the community and assert morality, two primary benefits of this policy.\textsuperscript{331}

\textbf{D. The Inevitability of Disclosure}

In 1982, Robert Belair, writing a report for the United States Department of Justice, predicted the burden proponents of preserving

\begin{itemize}
\item \textsuperscript{326} The Illinois law covers all felonies that involve use of a gun, but not a knife. \textit{Id.}
\item \textsuperscript{327} Thirteen is the minimum age for potential disclosure. \textit{Id.}
\item \textsuperscript{328} \textit{Id.}
\item \textsuperscript{329} \textit{BELAIR, supra} note 49, at 18 (paraphrasing Juvenile Judge James J. Delaney of Brighton, Colorado). "[A] juvenile who commits a crime forfeits his rights of privacy . . . in just the same way that adult offenders forfeit their right of privacy." \textit{Id.}
\item \textsuperscript{330} \textit{See supra} part III.C.4.
\item \textsuperscript{331} \textit{See supra} part IV.B.1-2.
\end{itemize}
juvenile confidentiality would have to meet over the next decade:

Because confidentiality in our society is seldom justifiable as an end in itself, proponents of juvenile justice confidentiality will be called upon to demonstrate that the degree of confidentiality now enjoyed by juvenile offenders is warranted; presumably because confidentiality fosters rehabilitation and because efforts at rehabilitation are desirable and realistic.332

A resurgence in the doctrine of personal responsibility has made efforts at rehabilitation undesirable.333 The frequency and severity of today’s juvenile violence make efforts at rehabilitation unrealistic.334 These two factors combine to make the burden for proponents of juvenile confidentiality insurmountable.

Mr. Belair continued his prophetic paragraph by predicting, with laudable foresight, what would happen if proponents for juvenile confidentiality did not meet the above burden:

In the absence of such a demonstration, it is likely that juvenile justice records, or at least those that pertain to “older” juveniles, will eventually be subject to the same confidentiality standards that apply to adult criminal record information. In any event, proponents of juvenile justice confidentiality should expect that over the course of the next decade, policymakers will take a careful and skeptical look at the purpose, practicability and effect of confidentiality in juvenile justice . . . records.335

Both Kansas and Colorado currently treat the records of juvenile felons as if they were the records of adult felons.336 States like Louisiana, Missouri, Illinois, New Jersey, and Idaho are approaching this practice.337

It appears inevitable that most states will enact laws similar to those in Kansas and Colorado, thereby disclosing the records of all juvenile felons above a certain age. Proponents of juvenile confidentiality are not able to defend successfully (on either philosophical or practical grounds) the continuation of the practice of shielding delinquents from society’s stigmas. There is nothing in America’s present political or philosophical landscape to suggest that the American public will be more receptive to the practice or philosophy behind juvenile confidentiality in the near future.

333. See supra part IV.A.
334. See supra part IV.B.
336. See supra notes 241-44 and accompanying text.
337. See supra notes 226-29, 237-40 and accompanying text.
E. Prediction

The failures of the juvenile justice system may ultimately lead to the complete abandonment of the promise of rehabilitation and the rise of a new system of juvenile justice based on punishment, where a defendant's age is considered only in sentencing. If the problem of juvenile delinquency continues to worsen, the state may be left with no choice but to punish those whom it cannot rehabilitate. This will, at best, alleviate only some of the problem. A system that promises punishment rather than rehabilitation may keep some juvenile offenders off the streets longer, and may even serve as a greater deterrent to those youths considering criminal activity. But the causes of the rise in juvenile crime, like those of the rise in adult crime, are too complex to be resolved by any judicial system.

V. PROPOSAL

The practice of preserving juvenile confidentiality, one of the last vestiges of the paternalism that flowed from the state's role of parens patriae, is dissolving. Society will no longer allow those youth who engage in serious crime to escape accountability.338 States like Missouri, Illinois, Louisiana, New Jersey, Idaho, Kansas, and Colorado have passed laws which establish the rule that committing certain crimes is an effective forfeiture of a juvenile's right to confidentiality.339 Society's desire for juvenile accountability, coupled with the precedent set by these laws, may lead to states drawing more lines in the sand, which will further rescind the special treatment afforded juvenile offenders.340 This Part proposes a general direction for the movement to reform the nation's juvenile justice systems, and suggests a specific approach to the issue of juvenile anonymity.

A. Recognize the Philosophical Shift and Reform Accordingly

Alexis de Tocqueville observed that: "[Once] an opinion has taken root in a democracy and established itself in the minds of the majority, it afterward persists by itself, needing no effort to maintain it since no one attacks it."341 The public accepted deterministic premises culminating in the assertion that delinquents can be rehabilitated, even

338. See Kfoury, supra note 21, at 67 (stating that "[s]ociety requires accountability. Juveniles must be accountable indeed to the court, but more importantly, in the larger sense, to society").
339. See supra notes 226-29, 233-44, and accompanying text.
341. DE TOCQUEVILLE, supra note 70, at 643.
though there was never a convincing amount of evidence to support this proposition.\textsuperscript{342} Eventually, the price became too high, as juveniles became increasingly violent.\textsuperscript{343} Consequently, the juvenile justice system lost public support because it has failed to protect society from the juveniles it cannot rehabilitate.\textsuperscript{344}

For several years the deterministic assertions of the juvenile justice system benefited from an inertia of favorable public opinion.\textsuperscript{345} Today, however, determinism is frequently seen as a source of excuses rather than legitimate etiologies.\textsuperscript{346} By rejecting the determinist assertion that no action is of moral consequence because no action is truly voluntary,\textsuperscript{347} society appears to yearn for something approaching an Aristotelian construct of ethics in which the only actions that are excused from moral relevance are those few which are completely beyond the control of the actor.\textsuperscript{348}

Any reform of the juvenile justice system must recognize the shift back to traditional ethics if it is to receive public support. Such reforms should aspire to expose juveniles to the moral consequence of their crimes. This does not mean that we should return to the practice of locking small children in with adult criminals.\textsuperscript{349} It does mean, however, that every crime committed by a juvenile should be punished in one form or another, including incarceration for the worst juvenile offenders. As Attorney General Janet Reno recently remarked: "It is imperative for serious juvenile offenders to know they will face a sanction . . . . Too many of them don't understand what punishment
means because they have been raised in a world with no understanding of reward and punishment.\textsuperscript{350} The juvenile justice system that failed to punish Robert Sandifer for the twenty three felonies he committed before he was killed made him feel he was untouchable.\textsuperscript{351} His tragic life and the callous way he took the life of Shavon White are the predictable results of living in a world excluded from the rewards and punishments that comprise the expectations of morality.\textsuperscript{352}

B. Disclose the Identities of All Felonious Juveniles

Experiencing the disapproval of the community he victimizes should be part of the punishment for every juvenile felon. Every state, therefore, should adopt legislation similar to Colorado’s, which simply discloses the records of every juvenile who is “adjudicated delinquent on the basis of committing an act which would constitute a felony if committed by an adult.”\textsuperscript{353} There are two reasons why such an approach is important: (1) it serves the good of the child’s community, and (2) it serves the good of the child himself.

1. Disclosure is Good for the Community

When a juvenile commits a felony he renders himself a threat to the peace and security of his community. It is in the best interest of the community to disclose the identities of those who threaten it. Aside from allowing communities to protect themselves from those who are likely to disturb their peace and security, disclosure allows communities to exercise their moral sense by attaching stigmas to those who act in inappropriate ways.\textsuperscript{354} The moral health of each community depends upon its ability to express its disapproval of those who threaten it.\textsuperscript{355}

2. Disclosure is Good For the Child

The early reformers of the juvenile justice system erroneously believed that society’s moral sense was its enemy instead of its friend.\textsuperscript{356}

\begin{itemize}
\item \textsuperscript{350} Lacayo, supra note 9, at 61.
\item \textsuperscript{351} Gibbs, supra note 1, at 58.
\item \textsuperscript{352} For an interesting discussion of what happens to children when they are shielded from morality, see Matza, supra note 18, at 189 (suggesting that such children commit crimes, in part, because they wish to rejoin the moral order by forcing adults to punish them for what they have done).
\item \textsuperscript{354} See supra part IV.B.1-2.
\item \textsuperscript{355} See, e.g., Berns, supra note 295, at 155 (describing the importance of allowing communities to express their moral anger at crime).
\item \textsuperscript{356} See, e.g., Mack, supra note 16, at 109 (insisting that children must be shielded
\end{itemize}
As a result, they did everything they could to exclude juveniles from the moral order that operates in the rest of society. They failed to appreciate the fact that the disapproval of a delinquent’s community is a powerful instrument of moral reform. Juvenile felons should not believe, as Robert Sandifer did, that they are beyond the reach of their communities’ moral condemnation.

VI. CONCLUSION

The juvenile justice system was designed to rehabilitate “bad boys” who had made “youthful errors,” which could be forgotten in the name of the best interest of the child. But an increasing number of today’s “bad boys” are committing crimes which society cannot, and should not, forget. Missouri, Illinois, Louisiana, New Jersey, Idaho, Kansas, and Colorado have laws that have taken significant steps toward recognition of the fact that, when dealing with juvenile felons, the juvenile court system fails to rehabilitate and succeeds only in putting the rest of society at risk. Other states should follow suit and introduce accountability into the juvenile justice system.

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357. Id.
358. See Wilson, supra note 293, at 29 (describing the power the opinions of one’s community can have over individual action).
359. See supra note 1 and accompanying text.
362. See, e.g., supra part IV.A.2.