INVENTING JUVENILE DELINQUENCY AND DETERMINING ITS CURE
(OR, HOW MANY DISCOURSES CAN YOU DISGUISE AS ONE CONSTRUCT?)

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Once upon a time, there was no such thing as juvenile delinquency. Children were defined as under seven by British Common Law and part of the definition of a child was that they were not capable of criminal responsibility. Over the age of seven they were regarded as being as culpable as adults and liable to the same punishments: branding, flogging, hanging or transportation.¹

There were no laws to protect children by forcing them to reside in a proper home. There were no laws to prevent children having sex or drinking alcohol or gambling. There were no laws to force children to attend school, to prevent them taking full-time paid work or to control their working environment.²

Then the Enlightenment discovered human reason and enlightened humans believed that, if they could get it ‘right’, they could achieve Utopia. Two elements in getting it ‘right’ were the correct upbringing of the young and the rescue of those who had gone astray, but were still impressionable enough to be salvaged. In order to achieve the first of these outcomes, it became necessary to identify and intervene in the childhoods of those who were not being correctly raised. In order to achieve the second of these outcomes, it became necessary to correct or reform rather than merely punish. The result was a construct that combined age (juvenile) with behaviour (delinquency).

Nineteenth Century utilitarianism introduced another element, the idea that the State was obliged to intervene in the public interest to remove designated social nuisances. This resulted from a confluence of forces as the authority of Feudal overlords was undermined by the anarchy of capitalism, secularism required society to defend itself rather than being defended by the Church, and liberalism invented the rights of the individual and the social contract. In the mid-Nineteenth Century the outcome of combining juvenile delinquency with utilitarianism was that both criminal children and children in moral danger acquired special legal status.³ By 1908 hanging and imprisonment of children were prohibited; there were special juvenile courts, special residential schools, fostering and probation systems. This apparently coherent construct, however, conceals a myriad of conflicting and competing discourses that came together to create it.

This paper identifies five distinct discourses that merge under the juvenile delinquency umbrella. I have designated these discourses:

• wickedness deserves retribution;
• dangerous agents require control;
• vulnerable objects require protection;
• embryonic social beings require love; and
• public nuisances require state intervention.

This paper examines the operation of these constructs in determining outcomes in an attempt to understand why we are no nearer ‘solving’ the problem of juvenile delinquency now than we were nearly two centuries ago when we invented it.

The appeal of the ‘juvenile delinquency’ construct was evident in the way it spread through the English speaking world. It was quickly shared between the Old World and the new and even found its way to the very new colonies of Australia. Regardless of the size of the population or the nature of the society the construct was the same; the outcomes were
This should not surprise us. The emigrants carried with them the emotional baggage and entrenched ideologies of the mother country as surely as they carried venereal diseases or the common cold. Without apology, this paper draws examples from both Britain and its Australian colonies.

**Wickedness deserves retribution**

The changes of the Nineteenth Century were built on much older constructs of retribution and desert. As the Governor of Parkhurst told his juvenile inmates in the 1840s, ‘your doom will be fixed according to your merits’. These ancient constructs of wickedness and retribution were overlaid rather than replaced, which made some form of punitive outcome inevitable. Enoch Wines, the President of the International Penitentiary Congress at Stockholm in 1878, took ‘the fall of man’ as ‘a fundamental fact of humanity’ and argued from this that ‘We cannot correct one who has offended in a grave manner without mortifying him in some degree’. This type of ‘Old Testament’ thinking has retained its place, as is evident in widespread resorting to ‘evil’ as the explanation for the brutal and deliberate murder of James Bulger by two children.

In 1854 British legislation the belief that ‘they should be corrected or punished before any efforts are made for their assistance’ led to a preliminary gaol sentence being mandatory before a child was sent to a reformatory school. Indeed, the phrasing of the Act avoided any real innovation, the magistrate being merely empowered to send the offender to reformatory school ‘in addition to the sentence then and there passed as a punishment for his offence’. This punishment was to be not less than fourteen days imprisonment. It was cut to ten days in 1866, left to the judge’s discretion in 1894 and abolished in 1899.

Retributive discourses also led to the continuation of corporal punishment as an option for juveniles; birching was retained in Britain until 1948 and flogging was legal in New South Wales until 1974.

**Dangerous agents require control**

There is a long tradition of seeing children as dangerous, little devils, agents of original sin. When the scale of nineteen century urbanisation created an overwhelming sense of social insecurity, children out of control seemed a particular threat. With the decline of informal social controls, property owners experienced juvenile theft and vandalism as a threat to private property; respectable women feared youth gangs as a threat to their modesty and virtue. Supporters of the economic order feared growing evidence that children found that stealing brought in a better income than working and that many young delinquents ‘lead a merry life’.

The threat posed by youth out of control became the focus of rhetoric framed in the language of panic, based on overwhelming size and rapid growth. In 1815 the London Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders concluded that 8,000 boys in London alone ‘gained their living by depredations on the public’. Fifty years later, author, Benjamin Waugh, warned of the threat posed by outcast children in urban areas for whom things had gone wrong ‘and of late with ever increasing speed’. In 1985 the focus was still on ‘Anxiety about increasing levels of juvenile delinquency’. The dramatized media reporting of youth crime has been described in the 1990s as ‘moral panic’. For nearly two centuries fear has driven interpretation of the available evidence.
The language used to describe delinquency is always ominous. In 1848 Lord Ashley observed that the condition of juvenile delinquents 'renders the state of society more perilous than in any former day'. In Sydney, in 1859, groups of shoeless and stockingless urchins who rambled about the city streets and slept in the open were regarded as 'bent on mischief' and likely to become a 'pest to society'. In 1880 juvenile delinquents were described as a class 'likely to become dangerous and costly to the community'. In the twentieth century, Dingwall and others point out that 'English child care legislation is designed to protect adults from the threat represented by children who have not received an appropriate moral socialization. Youth behaving outside prescribed norms remain a threat to the social fabric.

The epitome of this fear was the reaction to larrikinism in the Australian colonies in the second half of the century. This led to the reintroduction of flogging in South Australia in 1872 and to similar legislation in Victoria in 1887. Claims, however, that the Australian larrikin was 'wilder than the gamins of Paris and cheekier than the arabs of London' seem unfounded. Studies of crime in different cultures suggest that youth gangs are common to all societies in which there is a phase of adolescence between childhood and adulthood.

Fear focussed on the overcrowded, alienated, non-conforming and uncontrollable urban poor. One outcome was that new statutes criminalised a range of behaviour that was seen to be symptomatic of social deviance and thereby indicative of the potential to become seriously criminal. In Britain the Vagrancy Act of 1824 made it a criminal act to play or bet in any street or public place at any game or pretended game of chance. Under the Malicious Trespass Act of 1827 it became an offence to damage fruit or vegetables growing in a garden. The Metropolitan Police Act of 1829 allowed a police officer to apprehend without a warrant 'all loose, idle and disorderly Persons whom he shall find disturbing the Public Peace, or whom he shall have just Cause to suspect of any evil Designs, and all Persons whom he shall find between Sunset and the Hour of Eight in the Forenoon lying in any Highway, Yard or other Place, or loitering therein, and not giving satisfactory Account of themselves'.

Constructing children as dangerous agents meant fear of consequences was seen as necessary to control them and led to priority being given to the deterrent value of outcomes. Some, for example, favoured long-term confinement in reformatory schools replacing short-term imprisonment of children because the latter was ineffective as gaol lost its terrors (food and clothing in gaol generally being superior to that to which the child was accustomed) and therefore lost its deterrent value. The same line of argument insisted that the children must be driven hard in the schools, so that they would not find a normal working life too hard and prefer to return to the school.

**Vulnerable objects require protection**

A challenge to the discourse of children being innately dangerous came when Enlightenment philosophers constructed them as impressionable victims of their environment. This removed the element of pro-active agency as well as removing the threat. It put in place a new construct: helpless children at risk. This led to moves to prevent contamination through protective segregation on the basis of age. Under the 1834 Poor Law, workhouse children were segregated to avoid corruption by adult paupers. In the criminal justice system segregation according to age justified the establishment of the hulk 'Euryalus' especially for boys in 1824, Point Puer for transported boys in Van Diemen’s Land in 1834 and Parkhurst Prison in 1838 as a prison specifically for 'young offenders'. The practices in Parkhurst illustrate that segregation could be taken to great lengths. The new inmate spent four months...
in separate confinement in a probation ward, which could be extended to twelve months for bad behaviour. During this time, the boy was allowed no contact with other boys, although he spent five hours a day in their presence at exercise, lessons or religious services. The only other occupations were knitting or looking at ‘good’ books.\textsuperscript{xxiv}

The aim of segregation was purely ‘to secure young offenders from the contamination to which they were at present being exposed by being shut up in the same prison with old and hardened offenders’.\textsuperscript{xxv} It did not include amelioration of punitive responses on account of youth. At Point Puer the regime involved ‘the most rigid discipline, combined with forced labour and instruction … to an extent which amounts to hardship and to unremitted punishment’.\textsuperscript{xxvi}

Prevention of contamination also led to the extension of summary trial to juveniles to speed up the process so that ‘young and comparatively innocent persons’ should not be ‘exposed to the evils of idleness and the contamination of bad associates, without being subject to the salutary discipline applicable to convicted criminals’.\textsuperscript{xxvii} This effectively curtailed their rights to trial by jury and blurred the distinction between a misdemeanour and a felony. It set up still unresolved tensions between notions of welfare for children and notions of justice for children.\textsuperscript{xxviii} In 1847 Matthew Davenport Hill, the Recorder of Birmingham, spoke against it because he feared the character and ignorance of some magistrates made them unsuitable to wield such absolute power over such ignorant people.\textsuperscript{xxix}

The introduction of children’s courts was a logical outcome of this desire to protect the child from contamination. It occurred first in Boston, USA, where the court was cleared after adult cases and reopened for the trial of juvenile offenders. This innovation was then adopted and improved in South Australia, which established the world’s first separate children’s courts with a separate lock-up (implemented in 1890 following the 1886 State Children’s Act).

The operation of children’s courts created further tensions between welfare and justice. The assumption of good intent led to extensive discretionary powers and exemption from the standards of due process applied to adult criminal trials. Children lost the right to jury trial and were removed from the protective light of publicity. Interestingly in the South Australian debates on the legislation providing for children’s courts in 1894 and 1895, voices were raised against them as ‘secret criminal tribunals’.\textsuperscript{xxx}

Children’s courts did not live up to the assumption of good intent, but suffered from the continuation of retributive discourses. They did no more for children than remove them from the adult arena. They did not produce significantly different outcomes. Children brought before Adelaide’s prototype children’s court were sent to reformatories or whipped with the same frequency as children appearing at the Police Court. Between 1896 and 1899, when both courts were operating, 34% of those sentenced at the police court were sent to reformatories compared with 41% of those sentenced at the children’s court; 45% of those sentenced at the police court were whipped compared with 43% of those sentenced at the children’s court; and 2.1% of those sentenced at the police court were gaolled compared with 2.8% of those sentenced at the children’s court.\textsuperscript{xxxi} It is equally instructive to note the reminiscence of Mary Tenison Woods about her first brief in the Adelaide children’s court in 1917:

The court was little more than an off-shoot of the general Police Court, and frightened little children were treated as adult criminals, being called on to plead guilty or not before his Sovereign Majesty, and so forth.\textsuperscript{xxxii}
In 1980 the Australian Law Reform Commission recommended that in dealing with neglected and abused children court action should be avoided because ‘court proceedings inevitably tend to be stigmatizing and disturbing to those involved’.xxxiii By 1982 there was said to be ‘no evidence that the juvenile court helped any proportion of those it dealt with’.xxxiv

Some took belief in the vulnerability of youth beyond age segregation and focussed on the way children were raised as a contributing factor in causing crime. The Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders in London came up with an early list that included homelessness, parental neglect, abnormal family relations, want of mental, moral and religious education, want of employment, and the corrupt influences of prisons and public houses.xxxv If evil influences were detected, then the growth of moral depravity was preventable by removing the children from home, parents, peers, protecting them from knowledge of immorality and educating them to be moral and useful citizens.

This operated as a self-fulfilling prophecy because the precocity of children who did not fit the model of childhood innocence came to be an indication of deviance.xxxvi Social investigator, Henry Mayhew, for example, described the street arabs of London aged between six and ten as ‘very acute and ready-witted’… [with] a knowing twinkle in their eye, which exhibits the precocity of their minds’.xxxvii The Australian eugenicist, Charles MacKellar explained at the turn of the century:

If early, evil influences persist, the youth - inclined to evil by external things in the first place and not by any inherent vicious principle - will use his increasing reasoning power in the wrong direction. Precocity will take the place of healthy mental development, and habits … will be formed, which will largely not only handicap the unlucky offspring of bad environment in any subsequent efforts at reform, but also offer a great obstacle to social reformers in their dealings with him.xxxviii

Where children seemed too precocious, their progress towards maturity could be impeded with the aid of disempowering institutions, designed to impede the progress towards adulthood through defining them as ‘a separate, non-adult population, inhabiting a less than adult world’.xxxi The emphasis was on ‘child rescue rather than justice for children’.xli To please the respectable middle classes, the child would gain formal education, religious indoctrination, cleanliness and discipline, but for a child accustomed to the freedom of the streets, the likely effect was suffering and alienation. When this suffering and alienation produced a deterioration in behaviour, this could be seen as justification for having incarcerated the child, sure evidence that the institution’s training was needed.

Enforced socialisation ceased to be the post hoc penalty for recalcitrance, but operated as a matter of course to ensure the attachment of the individual to society was the norm.xli ‘Moral nature’ as defined in 1877 by Robert Dugdale, the author of an American case study of crime and pauperism meant ‘the holding of the emotions and passions under the domination of the judgement by the exercise of the will’.xlii Rapid urban expansion and the break-down of social structures were to be countered by normalising self-control as manifested by thrift, diligence, sobriety and cleanliness. Symptoms of deviance included dirty habits, bad language, filth and ignorance.
The discourse of control was at its most dominant in the area of normalising sexual repression. This was enhanced by constructing children as innocent and therefore sexless, which became central to the discourse of vulnerability. Proximity to sex appeared close to the surface of many different theories on the sources of vice. The general argument was typified by the witness to the NSW 1859 Select Committee into the Working Classes who reported that the observation by children of ‘all the intercourse of domestic life’ was calculated to originate impure ideas and desires; that the constant association of young girls with members of the opposite sex would destroy their ‘natural modesty’ and that once this ‘outwork of female virtue’ was broken down, ‘utter destruction’ was comparatively easy.

Girls, as the ‘moral gender’ were held particularly accountable for their behaviour. Although boys were more likely to be labelled delinquent, girl delinquents were regarded as harder to reform because they had a ‘greater natural delicacy and susceptibility’, which ‘renders them open to a deeper impress of good and evil’. These assumptions were supported by statistics. England in the mid-nineteenth century was typical in that boy delinquents outnumbered girls by about five to one, but the number of recommittals of girls was greater by half.

Girls’ moral responsibility in the sexual arena made young prostitutes particularly problematic. They were far harder to reclaim than those who had been thieves and regarded as posing a moral danger to others. They were so rigidly excluded by managers of English reformatories that the Inspector suggested in 1859 that a special school be set up for them.

The colonial reformatory institutions accepted prostitutes, but they were considered to be a major source of trouble. In 1871, for example, a serious riot at the NSW industrial school was blamed on ‘notorious, irreclaimable prostitutes’, who ‘contaminate and destroy, body and soul, innocent and respectable children’.

Fear of sex led to strict segregation by gender in the new institutions. In New South Wales, for example, in 1867, Henry Halloran of the Colonial Secretary’s Department wanted to ban all male visitors except fathers or brothers. Within the institutions absolute suppression of masturbation and homosexual practices led to numerous documented cases of inmates being isolated or flogged on the merest suspicion of ‘unmanly and degrading’ behaviour or ‘unnatural offences’.

Perhaps the most ludicrous example of fear of contamination through exposure to images of sex was the case of Captain Mein’s monkey in New South Wales in 1868. Mein, the Superintendent of the industrial school, NSS ‘Vernon’, kept a monkey to amuse the boys by playing with them. Henry Parkes, however, saw him as being kept ‘merely to exhibit himself indecently to the boys’; and Richard Driver, another Member of the Parliament, expressed concern that the monkey was ‘in the habit of making exhibitions that the boys should not witness ... playing with his person’. Just as it looked like becoming a major issue, the monkey died and was not replaced.

Once children were constructed as being at risk, intervention was justified as being in the interest of ‘the safety of the country’, which ‘required that they should lay hold of those children before they became hardened in vice’. The result was a ‘conceptual integration of delinquent and deprived children’ including extending the jurisdiction of the courts to include destitute, neglected or uncontrollable children. To avoid the moral contagion of consorting with criminal children, these ‘at risk’ children were to be consigned to a new form of institution, the industrial school. Legislation for industrial schools brought neglected children within the legal definition of juvenile delinquency. In Britain the 1857 Industrial Schools Act applied to ‘any child taken into custody on a charge of vagrancy’ if the parents
did not give a written assurance of their responsibility for the child. It also empowered Poor Law Guardians to place any pauper child in an industrial school. This effectively increased the penalty to children for being vagrant. In place of a short (3-6 month) term of imprisonment, the children would be in an institution until they were fifteen years old.

Focusing on the vulnerability of children undermined older discourses that used lack of moral responsibility as a rationale for limiting intervention to children over the age of seven. If children were to be protected rather than punished, they could be taken at any age. There are, for example, records of boys under the age of three being placed on the industrial school ship, ‘Vernon’ in New South Wales.\textsuperscript{lv}

Constructing children as vulnerable made them the moral responsibility of their parents. This directed the search for the potential criminal towards the children of the poor, the intemperate, the immoral and the disorderly. This was such a popular discourses that, when the Inspector of Prisons for the Home District noted in 1852 that the parents of delinquents were not always neglectful of their children, he felt compelled to add, ‘I am, perhaps, singular in the opinion.’\textsuperscript{lv} Drunken parents were a particular focus of blame, because drinking led to neglect. Some went further and accused parents of wanting their children to follow a life of crime. These included Henry Mayhew, Benjamin Waugh and the Superintendent of the New South Wales boys’ industrial school, Captain Mein.\textsuperscript{lv}

Blaming the parents became the rationale for removing children from their home town,\textsuperscript{lvii} incarcerating them for three years instead of a few months\textsuperscript{lviii} and fostering them so that they would transfer emotional loyalties to a new family.\textsuperscript{lix} At its extreme, removal from immoral backgrounds became a rationale for enforced emigration. It was argued, for example, in 1834 by the Governor of Parkhurst that shipping his inmates to the colonies at the expiry of their sentence would cut them off from their former haunts as well as allowing them to earn an honest livelihood as labourers.\textsuperscript{lx} Within the colonies the emphasis was on apprenticing children away from their home towns.\textsuperscript{lxi}

In England, apart from the poorest classes, which were seen as generally prone to crime, there was considered to be a lower, specifically criminal, class. Any suspicion of association with this class was sufficient to justify legal removal of a child from its home environment. Under mid-Nineteenth Century legislation, a child could be incarcerated in an industrial school for residing in a brothel or with a known or reputed prostitute or if a parent was a prostitute or reputed thief or had ‘no visible means of support’ or claimed to be unable to control the child.

Belief in parental responsibility led to forcing parents to financially support their children in institutions. The argument was:

\begin{quote}
[T]he parents being in reality the guilty parties rather than the children … every parent should be chargeable for the maintenance of a child thrown by crime on the charge of the state.\textsuperscript{xii}
\end{quote}

This principle gained wide international acceptance and was incorporated into most legislation. As the English Reformatory Schools Inspector clarified, the object of the law was not so much the collecting of a considerable sum of money as:

\begin{quote}
The producing of a just sense of parental duty and the applying a check to the negligence and drunken habits by which so many parents cause their children to become first vagabond and idle and then vicious and criminal.\textsuperscript{lxiii}
\end{quote}
Philanthropist, Florence Davenport Hill was even more critical. She believed that providing state care at no cost to parents ‘would free the self-indulgent at the cost of the self-controlled’ and enable profligate parents ‘to pursue a career of vice unburthened by their offspring’.\textsuperscript{lxiv}

This argument meant that the failure of parents to pay and the difficulty of collecting contributions were no obstacles to the principle. The potential difficulty of extracting money from the class of people from which most of the parents came was, however, recognised by the clause, ‘if of sufficient ability’ in the British 1854 and 1866 legislation. Much time and effort went into the collecting of parents’ contributions, but by 1879 this source only contributed 5.8% of the rising cost of institutions.\textsuperscript{lxv}

Bad parenting is still a key focus, but the discourse has shifted from blame to reform. In Britain the post-war welfare state introduced the idea of working with families through parent support and parent education programs in order to prevent children from being taken into care. This shift can be seen in different ways, depending on the adopted discourse. It may be presented in a positive light as maintaining families; or it can be criticised as an extension of a normalising discourse accompanied by an even greater measure of surveillance than was possible in the Nineteenth Century;\textsuperscript{lxvi} or it can be condemned as placing abused and neglected children at unnecessary risk by giving priority to parental rights.\textsuperscript{lxvii}

Social determinism was another current in the discourse of vulnerability, but this version saw children as victims of their environment rather than of their parents. The social determinists based their conclusions on embryonic social science. Criminal statistics, supported by empirical studies of the breeding grounds of crime, suggested a social distribution of crime that implied social causes. The major focuses of social determinism were urbanisation and poverty. This discourse allowed delinquents to be constructed as ‘other’ by contemporaries and as victims of the system by Marxists.\textsuperscript{lxviii} It has persisted to the present when ‘[m]ost theories of delinquency are based on the assumption that criminal behaviour prevails among the young, urban and lower-class males’.\textsuperscript{lxix}

Persistence may reflect validity, but it may also be more of a statement about the activities and focus of the criminal justice system than about the level of criminal behaviour. Fear of the so-called morally perishing and socially dangerous classes governed the focus of the law. As most of the attention of those intending to prevent crime was directed to neglected children in poor urban areas, it is not surprising that these children formed the majority who were committed through court action to state care. As was pointed out in 1857 in a letter to \textit{The Times}, ‘The poor are more often detected in crime than the rich, because they are more closely watched.’\textsuperscript{lxx} In support of this hypothesis, some studies have suggested that there is actually very little difference in frequency of criminal behaviour according to class, age or gender.\textsuperscript{lxxi}

The focus on urban areas partly represented an attempt to return to the well-ordered community of a pre-industrial age. Reformers condemned the conditions they saw around them in preference to abandoning their inherited concept of what should be.\textsuperscript{lxxii} This led to an idea that rural environments were per se part of the solution. The 1852 Select Committee on Criminal and Destitute Juveniles, for example, was told, ‘The few criminal offenders we have from the country districts show how much agricultural pursuits have a tendency to keep down crime.’\textsuperscript{lxxiii} One of the most innovative reformers of the nineteenth century, de Metz, who established an agricultural colony for delinquent boys at Mettray near Paris, took as his motto, ‘Improve the earth by man, and man by the earth’.\textsuperscript{lxxiv}
Others focused on poverty. Some simplistically argued that the children of the poor often had to steal to survive. For example, Mayhew asserted in 1861 that ‘Many of them are hungry, and have no food to eat nor money to purchase it, and readily steal when they find a suitable opportunity.’ To ascribe crime to poverty was to some extent an easy way out for the consciences of the rich. It seemed relatively easily soluble by material support in the short term and industrial training in the long term. It was not, however, universally accepted as the cause of crime, even in the Nineteenth Century. One who had other ideas was Matthew Davenport Hill, the Recorder of Birmingham, who was derisive about the ‘benevolent rich’. Hill said poverty would be found to be of secondary or even tertiary importance in causing delinquency. Mary Carpenter, who campaigned vigorously for reformatory schools, also refuted the simple poverty explanation of crime. She quoted several empirical examples of prison populations, where the majority of juvenile inmates said that they were not driven to crime by destitution.

The debate over poverty as a cause of crime illustrates the problem of unilateral, reductionist approaches. Some children were driven to crime by poverty; some were not. The attraction of the poverty model has caused social scientists to repeatedly return to this explanation and to repeatedly reject its simplicity while simultaneously according it some validity. For example, Pfeiffer concluded a 1998 study by saying:

In and of itself, poverty among young people does not appear to constitute a risk factor for increased violence. However, it evidently turns into such a factor when people afflicted by poverty are unable to see any way to improve their marginalized position in society.

Constructing children as at risk was a self-fulfilling discourse. Their vulnerability deprived them the right to obtain full-time paid work, to leave home, to manage their own earned money, to drink, swear or be sexually active. As they lost access to paid work they also lost their economic value to a household. There was no longer an incentive to ‘take in’ and maintain orphaned children. This made them more helpless and more in need of ‘protection’. Children who did not accept their victim/dependent status - who truanted or ran away from home - were seen as a social threat. Deprived of agency, children lost their voice and lost responsibility for their own lives. This made them more vulnerable and so the cycle of objectifying children has built on its own impetus. Age discrimination now operates to construct children as the property of their parents, deny them political rights (granted to all others save criminals and lunatics), enforce their economic dependence and regular attendance at a disempowering institution called a school, deny them sexual activity, control their access to media, and monitor their dwelling places.

The continuation of the phenomenon of delinquency is evidence that the discourse of vulnerability has failed. Many children have not allowed themselves to be completely disempowered and objectified; many adults have not surrendered their moralistic and punitive stance in favour of a more protective approach to children. Recent developments are reversing the trend of seeing all children as victims, but we are reverting to retribution and deterrence, once again seeing at least some children as dangerous agents. We have begun to separate the criminal jurisdiction of juvenile courts from their welfare jurisdiction.
Embryonic social beings require love

As the construct of juvenile delinquency emerged, some few accorded delinquents agency in their own lives but saw misbehaviour as a symptom of unmet need, requiring care and understanding. This argument allowed a discourse of reform to be explored for the young without threatening the over-riding principle of retribution. In England in 1885 Sir Edmund du Cane clarified that ‘reformatory influences should predominate in dealing with younger criminals, those whose minds and character are still unformed and undeveloped … in the older and more hardened the penal should have first place’.\textsuperscript{lxxxi}

A leading campaigner for more care and understanding, Benjamin Waugh, opposed the gaoling of children and also suggested a radical change in the trial of children. He launched an attack in 1873 on: ‘The rigid application of a code of lofty morals … by Englishmen who seemed to believe that their own integrity was some how proved by the unrelenting application of an abstract and not always relevant code of good.’\textsuperscript{lxxxii} He recommended that the categories of judgement be changed for a child to ‘folly, naughtiness, stupidity, want and heroism’ and that trial should be by a tribunal of men and women who were teachers, but, above all, ‘who had committed and not forgotten the appetitive and pugnacious follies of youth’.\textsuperscript{lxxxiii}

Believers in emotional malfunctions sought palliative and therapeutic responses. The reformatory school movement in arguing the possibility of curing delinquents used such medical metaphors as ‘spiritual disease’.\textsuperscript{lxxxiv} Florence Davenport Hill, a stalwart campaigner for children, extended this metaphor to its logical conclusion in objecting to sentencing offenders for a certain period of time. It seemed more sensible to her to release them because they had ‘ceased to do evil and learned to do well’. She concluded:

\begin{quote}
If physicians treated their hospital patients on the corresponding principle, how great would be the outcry at their want of sense and humanity!\textsuperscript{lxxxv}
\end{quote}

In the middle of the Nineteenth century in England, Mary Carpenter led a campaign to establish institutions that would reform criminal children through love. She published major books in 1851, 1853 and 1864 to arouse public interest in their plight and started her own model reformatories. She established one for boys at Kingswood in 1852 and one for girls at Red Lodge in 1854 to demonstrate her ideas of ‘good penal reformatory schools conducted on Christian principles’.\textsuperscript{lxxxvi} Her work has been described as ‘above all, a tribute to her understanding of essential child nature’.\textsuperscript{lxxxvii} Her philosophy was child-centred and Christian love played a major part in the codes of her prototype reformatories. She believed desired behaviour could be achieved by:

\begin{quote}
Appealing to the better nature of our fellow being, showing him that we regard him as a child of the same heavenly father as ourselves, that we recognise the immortal nature within him, which his sins had caused him to forget.\textsuperscript{lxxxviii}
\end{quote}

The therapeutic thinkers had several prototypes on which to base their confidence in their mixture of care, useful work, education and religion. These included the Rauhe Haus established by Dr Wichern in Prussia, based on Pestalozzi’s work with orphan and destitute children and Mettray established near Paris by De Metz, a French ex-judge, based on the power of trust and love. In England the Philanthropic Society made use of the knowledge gained at Mettray in their operation at Redhill Farm School.
The discourse of reform included models of the ideal reformatory officer. At Mettray de Metz established a preparatory school at which he trained his own officers. The Redhill School in England did not train its own staff, but employed trained teachers. In 1846 Sydney Turner, the resident Chaplain at Redhill, described the ideal as like a parent, ‘influencing by affection, not the officer governing by discipline’. Similarly, in NSW Henry Parkes as Colonial Secretary argued that staff should operate ‘more by consistent observance of the rules of human kindness and humanity than by resorting to means of coercion and punishment’. In general, qualities of tact, enthusiasm, kindness, discretion and firmness were emphasised.

Public nuisances require state intervention

As the State became the guardian of public welfare, juvenile delinquency became a problem that must be solved. Placing children in special institutions was part of ‘an effort to insure the cohesion of the community in new and changing circumstances’, that has been well-documented by David Rothman. By 1850 it had become apparent in Britain that the cost of sending a child to a reformatory school was small compared with the cost to society of repeated imprisonment, legal administration and stolen property, which would be incurred if the child became a habitual criminal. Government action was called for to propagate the new system and provide funding, maintain desirable standards and to provide necessary powers of coercion to remove and confine children.

By 1850, two different concepts were operating side by side. Parkhurst was a government run prison for juveniles, based on the principles of desert and retribution. Redhill was a voluntary school for juvenile ex-prisoners, based on the principles of Christian compassion. A major inquiry into criminal and destitute juveniles reported in 1853 in favour of a government system that included both principles. It recommended a penal type of reform school to be run by the Government for children and youths convicted of serious offences, plus reform schools to be founded by volunteers, but given Government aid, for those convicted of minor offences. The former were too much like Parkhurst to receive extensive support and did not come into existence, although the Borstal system established in 1908 was based on similar principles, but the latter received legislative sanction in 1854.

In England the 1854 Act For The Better Care And Reformation Of Youthful Offenders allowed State certification, inspection and funding of voluntarily run schools. It also gave the schools coercive power to retain their inmates. To provide different institutions for those who had committed crime from those who were merely at risk, industrial schools were established by further legislation in 1857 for children ‘who through extreme poverty or vice subject themselves to the interference of the police’. Similar legislation followed in NSW and South Australia in 1866.

The lines between the types of school soon became blurred. In practice, as a period in gaol was a pre-requisite for committal to a reformatory under the 1854 Act and as conditions in prison left much to be desired, many magistrates sent very young criminals to industrial schools, which soon became thought of as junior reformatories. In NSW a boys’ reformatory was not established for 30 years after the passage of the 1866 Act so magistrates sometimes used the industrial school as an alternative to gaol.
Unfortunately, in coming under the jurisdiction of Government and therefore entering the public sphere, the reformatory and industrial school system had to accommodate all discourses. It had to satisfy those who still adhered to retributive principles, reflect the class structure of society and placate those, whose materialism made them want a cheap system. Furthermore, the stultifying effect of a structuralist approach soon manifested itself even in the English volunteer run institutions with the general adoption of rigid principles of management. Prevailing attitudes were ironically summed up by the *South Australian Register* in 1872:

> We cannot entirely overlook the claims of those children who are the victims of neglect and destitution, but we can make them feel that they are the pensioners of the public. Give them the choice between the streets and the rigid discipline of a state institution, but do as little as possible that can have the effect of securing for them the comforts and as far as may be the privileges of home.\textsuperscript{xcvi}

Regimes within institutions had to satisfy believers in free will who wanted to drive children through systems of punishment and reward. Most institutions had codes that included confinement on bread and water as well as corporal punishment with a birch or cane. A danger of faith in the efficacy of punishment to modify behaviour is that if punishment does not work then it must become more severe. An example of this thinking is to be found at the volunteer run quasi-industrial school, Randwick Asylum, in New South Wales, where the infliction of up to eight strokes of the cane was found to be ineffective so an attendant recommended the introduction of judicial birching as practiced in England.\textsuperscript{xcvii} In his 1859 report the English Reformatory and Industrial Schools Inspector criticised the ‘regular display and the repeated use of the cane’, which he observed in institutions.\textsuperscript{xcviii} By 1881 the extent of punishment in British reformatory schools was the subject of such concern that the Home Office made it mandatory to display a list of monthly offences with punishments as a protection for the children.\textsuperscript{xcix}

One of the major obstacles to those who wished to give priority to the needs of the individual transgressor was the ideology known then as ‘utilitarianism’ and now as ‘economic rationalism’. For many, a superficial evaluation of monetary cost tended to override all other concerns. Because the philanthropists won Government support on the basis of utilitarian arguments, ‘obliged, for the protection of the community, to resort to such methods … as may prove most effectual’, \textsuperscript{c} legislation never incorporated their ideals about the rights or needs of children. Institutions would serve the social good by being cheap and training their inmates in useful activities.

In most institutions the material provisions for the children were spartan. Diets were boring and the minimum to maintain health, based largely on bread and potatoes.\textsuperscript{ci} Many buildings were simply improvised from existing edifices. Other purpose-built buildings were as utilitarian as possible, aptly described as barracks. They were designed to hold as many children as possible with minimal staff and maximum regimentation. The goal was the ‘systematic mortification of the self’ as outlined by Goffman.\textsuperscript{cii} Children who were docile, quite and obedient became favourites with the staff. Punctuality, obedience and diligence became routine and there was little scope for the development of self-reliance. Visitors to institutions commended them for their order and cleanliness.
Much of what happened in the emergent institutions ran contrary to the principles of the philanthropists who had campaigned for them. Mary Carpenter objected to children being required to totally submit to external rules. Similarly, Matthew Davenport Hill’s daughters, Florence and Rosamond, believed that no matter how perfect the discipline of an institution was, unless the inmates were allowed a certain amount of voluntary action and self-government, they could not be prepared for life. Boarding-out (fostering) of state children was developed as a reaction to the abuses and rigid routines of institutions. It seemed to offer ‘protecting care and guiding influence’, while retaining all the attributes of State intervention and prescription of appropriate behaviour, care and environments.

The aim of State intervention was to produce valued members of the working class, but not to raise the children above it. The food, clothing and surroundings in reformatories were to be only such as were ‘adapted to working boys and girls … without giving them undue indulgence’. At the international level, the principles of treatment developed at the Congress of Stockholm in 1879, included that the education given in an institution ought to correspond with the conditions in which the working classes lived.

To suit these children for their station in life, industrial training was considered more essential than school education. This attitude persisted throughout the century. In May 1894 Catherine Spence visited Dumfries Industrial School in Scotland and found that it provided only three hours of elementary schooling daily and that the rest of the boys’ day was spent making fishing nets, cutting and turning wood, tailoring and shoe-making. She commented perceptively, ‘People seem always afraid that such children might learn too much’. This fear was certainly evident in an 1873 recommendation that:

> With the exception of the time absolutely necessary for their being taught reading, writing and the first four rules of arithmetic, the time of the children should be devoted to making them proficient in domestic work … From the nature … of their start in life, their prospects of success, more than is the case with other children, must largely depend on acquaintance with the duties of domestic servants, and only by constant practice in the routine of such duties can children learn them.

Similarly, for boarded-out children, accommodation ‘amongst the … honest, industrious, and independent poor’ was deemed sufficient, because ‘there is no reason why destitute children thrown upon the public bounty, should be maintained in a style far superior to that of others in their own rank’.

While Christian compassion drove much of the campaign to reform rather than punish delinquents, institutionalised religion dominated the practices that evolved. This was at great cost to the therapeutic goals of reform as it removed the focus from the emotional processes to the structural outcomes. Instruction in the word of God and observation of religious procedures became important as ends rather than means. For institutions, regulations always specified some form of religious observance, but outward signs were all that the superintendent felt compelled to produce. For example at the New South Wales girls’ industrial school:

> Save for the perfunctory reading of some prayer by an officer, there is no opportunity afforded the most ignorant of learning to take the first tottering steps towards entering the portals of spiritual life...
The emphasis on outward signs of religion also resulted in excessive concern over the denomination of the child. This was exacerbated by the sectarian jealousies of the age. The protection of the child’s right to instruction in the denomination to which he belonged became a major object of the system. A classic example is the debate in Britain on a consolidating bill of 1866. The majority of the discussion focussed on the importance of protecting Protestants from Catholics. It was alleged, among other things, that Catholic priests abducted the children of the lower classes in order to baptise them.\textsuperscript{cxii} Similarly, in South Australia the Destitute Commission which sat from 1883 to 1885 was precipitated by a petition with over 8,000 signatures alleging that Catholic children had been boarded with non-Catholic families. One fifth of the evidence taken by the Commission was concerned with this grievance. As a solution the Commission suggested adopting the English system whereby the magistrate who committed the child to State care was responsible for ascertaining the child’s religion.

As most juvenile offenders had minimal knowledge of religion, this emphasis on denomination was not important to them. Many of the parents were equally indifferent as illustrated in the 1861 English census that suggested many working class people in the larger cities did not attend any Church.

It is possible to legislate for structures and parameters but not for attitudes and behaviour. In practice it was not easy to obtain ideal superintendents and staff. There are excellent examples, such as Captain Neitenstein who took over the Nautical School Ship, ‘Vernon’, the boys’ industrial school, in NSW in 1878. His goal was moral training with minimum resort to punishment.\textsuperscript{cxiii} Managers were, however, mere humans in positions of enormous power over confined and often friendless children. An appalling example is the NSW Girl’s Industrial School at Biloela, although it is hard to know whether this was an isolated case or whether it was merely unique in being subjected to the glare of public scrutiny. Bad behaviour on the part of the inmates was a problem from the school’s inception. The first Superintendent, Captain Clark, blamed this on the ‘vicious dispositions’ of the inmates, but he was regarded as contributing to the problem through being bad tempered, intolerant and disorganised. He was replaced in 1871 by Mr and Mrs Lucas, but they were bad-tempered, weak and ignorant. Cruel punishments became rife, but discipline was non-existent.

The abuses saw the light of day as a result of an 1873 Royal Commission into Public Charities.\textsuperscript{cxiv} On the day of the Commission’s visit to the institution fifty-three of the eighty-nine inmates were ‘scattered about the enclosure, under no sort of supervision’. The girls were ‘impudent, disobedient and unreproved’. Their dinner of bread, boiled meat, potatoes and turnips was served an hour late, and while the tables were being arranged, a cat stole one of the meals. The dinner signal was ‘instantly followed by a general scrambling of food into aprons and pockets, the girls carrying off their half eaten dinners to be devoured at leisure, either by themselves or their absent comrades.’ There was nothing to drink, except water lapped from a trough immediately beneath a dry tap. Girls complained of having been beaten, kicked, dragged by the hair, caught by the throat, and having their heads bashed against a wall. They had also been locked up from Friday morning until Tuesday night, half-naked, in a dark room with a stone floor, no furniture and no ventilation. During this time they had been fed on bread and water, drinking from a bucket as no utensils were allowed.

(Was this an isolated incident, dismissable as in the distant past? At the end of 1973 at Parramatta Girls Training School two staff members resigned over the alleged bashing of two inmates resulting in one broken jaw and another girl suffering head injuries.)
The 1873-4 Royal Commission into Public Charities in New South Wales reacted to the evils of institutions by recommending boarding-out of State children, which led to State involvement in foster care. This was introduced in England and other Australian States, but New South Wales legislated for it in its most comprehensive form in 1881. It was based on structuralist assumptions about the generic value of the family construct, which led to reproducing many of the characteristics of the institutional system. Children were still completely disempowered. Foster homes were more intimate, but were otherwise liable to be as retributive, restrictive, punitive and alien as reformatories.

Conclusions

• **Juvenile delinquency** is a cultural construct producing cultural responses. ‘Juvenile delinquency’ was a construct created out of fear of economic and social upheaval, incorporating discourses of childhood as separate and different from adulthood and utilising a new expectation of public intervention in designated social problems.

• **The emergence of ‘juvenile delinquency’ as a construct cannot be adequately accounted for through a teleological model of history.** Historians have tended to explore the construct of juvenile delinquency through teleological models either of humanitarian progress or encroaching social control, but it overlaid post-Enlightenment ideas of childhood and sociological analysis of post-industrial condition on ancient ideas of retribution and deterrence and pre-industrial concepts of social order.

Applied discourses filtered through political processes tend to become very muddy. In the institutions developed to treat juvenile delinquency, retributive, punitive and palliative paradigms merged in an attempt to please all of the respectable people all of the time. Doctrines based on understanding human frailty failed to displace deeply held suspicions about human depravity; protection of children as vulnerable made them more vulnerable as they deprived them of rights, agency and access to due process. State intervention competed with philanthropic activities as it constructed delinquency as a public nuisance and limited responses through bureaucracy and public opinion.

In answer to continuing debate about whether it is ultimately the story of ‘humanitarian progress’ or ‘encroaching social control’, this paper argues that it was both and it was neither! It was both in that helping children to fit in with hegemonic norms allows them to operate effectively in their society. It was both in that middle class diagnoses of deficiencies in material or emotional care could be valid representations of the children’s experiences. It was neither in that such reductionism denies the complexity of interacting emotional states, ideologies and social forces in constructing or interpreting human outcomes. It was neither in that no single motive prevailed in those whose combined actions progressively amended the legal system to produce today’s mixture of perceptions of children as both dangerous and at risk.

• **The construct of juvenile delinquency contains multiple mutually negating views.** The real story is an endless one of struggle between those who construct children as dangerous agents, those who construct them as helpless victims, and those who construct them as social humans capable of self-regulation. The result was a system that demanded behavioural change as an outcome, which allowed Foucault to describe it as
‘one of the great instruments of power’, cxvi but failed to either deter through punishment or to reform through therapy. It became, to steal Peter Laurie’s phrase, ‘a foggy area of good works and vicious control’. cxvii

Homogenising the community required quite a different approach from that of responding sympathetically to unhappy children; institutions became noted for authority, timetables, monotonous architecture, precision and regularity, obedience and authority, corporal punishment, quasi-military regimes and custodial power. cxviii To place children in an institution or family which they could not leave of their own or even their parents’ volition, to subject them to rules, make them clean and behave properly, must seem more like punishment than reform to those who had previously had the liberty of the streets. Respectable society’s definition of desirable behaviour was alien to many of these children. What advantage did they see in truth, honesty, industry, temperance, respectful behaviour and obedience to superiors? Worse still, these characteristics were usually promoted through rigid rules and enforced by systems of punishment. Even for therapeutically oriented reformers, ‘inflicting pain in such a way as will lead to discipline and reform the character’ was justified. cxix An unresolved conflict was born between enforcing society’s rights and defending children’s rights.

We can still find a full spectrum of opinion. At one extreme are those who believe entirely in free will and therefore that anti-social children are in full control of their decisions to flout social norms. At the other extreme are those who seek some kind of social or individual malfunction to explain misbehaviour. These include social determinists who see the children wholly as victims of their environment; psycho-pathologists who seek to explain the behaviour in terms of emotionally damaged children; and biological determinists, who see the problem in terms of genetic inheritance and/or chemical imbalances. Some blame perceived juvenile crime waves on the judicial and welfare system being too lenient; others blame it on the judicial and welfare system being too harsh; and a few blame it on the judicial and welfare system being inappropriate.

Different views move in and out of focus depending on perceived social need and public opinion. The degree to which the wheel turns full circle may be illustrated by two examples. The first is the aims of the 1970 Children’s and Young Person’s Act in Britain, echoed in the 1971 Juvenile Courts Act in South Australia and the 1981 Community Welfare Act in New South Wales:

Help rather than punishment for the young offenders is the aim of Britain’s new Children and Young Persons’ Act. The Act shuns the simple concept of punishment for offences committed by children. cxx

That was what Mary Carpenter thought she was achieving in the 1850s!

The second example comes from a report prepared in New South Wales in January 1992:

The early history of alternative care services in New South Wales shows that the issues the Review Committee confronted in 1991 are the same as those which have faced Colonial and State Governments for 200 years. Sydney’s street children were a major concern of the early Governors, and were featured in early nineteenth century newspapers as often as they are today. cxxi

Only by understanding the complex interaction of the many conflicting assumptions underlying attempted solutions can we comprehend why the problem remains unsolved.
The last children known to have been hanged in England were an eleven year old boy and his seven year old sister for an unspecified felony in 1808. - See B.E.F. Knell, ‘Capital Punishment: its administration in relation to juvenile offenders in the nineteenth century and its possible administration in the eighteenth’ British Journal of Criminology, 5:2, April 1965, pp 200-202.


For example:
1854 Youthful Offenders Act, England, 17 and 18 Vict., Cap 86
1866 Industrial Schools Act, NSW, 30 Vict., No. 2.
1866 Reformatory Schools Act, NSW, 30 Vict., No. 4.
1866 Destitute Persons Relief Act, SA, No 12 of 1866-7.


Sir James Graham to Committee of Visitors of Parkhurst, 20 December, 1842, in Correspondence (appendix part I) between the Governor and the Secretary of State, Parliamentary Papers, 1843, (171), Vol. XLII, p. 1.


17 & 18 Vict., Cap 86, section 2.


Quoted in E.C. Wines, op. cit., p. 77


R. Dingwall, et al, op. cit., p.207


10 Geo. IV c. 44, cl. VII.


Based on figures given in reports of the State Children’s Council:
30 June 1895, South Australian Parliamentary Papers, 1895, Vol. 3, No 81, p. 3;
30 June 1896, South Australian Parliamentary Papers, 1896, Vol. 3, No 81, p. 3;
30 June 1897, South Australian Parliamentary Papers, 1897, Vol. 2, No 81, p. 3;
30 June 1898, South Australian Parliamentary Papers, 1898, Vol. 3, No 92, p. 3;
30 June 1899, South Australian Parliamentary Papers, 1899, Vol. 3, No 63, p. 3.
30 June 1900, South Australian Parliamentary Papers, 1900, Vol. 3, No 63, p. 3.

The Australian Women's Weekly, 10 June 1950, p. 25.


Quoted in E.C. Wines, op. cit., p. 77.

See S. Magarey, op. cit., p. 19.


This has been well explored by Steven Marcus in his seminal work, The Other Victorians, Corgi, London, 1969.


M. Carpenter, Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders, C. Gilpin, London, 1851, p. 315.


Newcastle Chronicle, 1 April 1871.


R. Dingwall, et al, op. cit., p. 223


M. Carpenter, Juvenile Delinquents..., p.356.


Correspondence on Convict Discipline, Parliamentary Papers, 1843, (158), Vol. XLII, pp 77-8.

See for example, 1873-4 Royal Commission into Public Charities, Second Report, evidence and minutes, NSWV&P, 1873-4, Vol. VI, report, p. 84; Destitute Commission, South Australian Parliamentary Papers, 1885, IV, 228, report, p. ci.

M. Carpenter, Reformatory Schools... p. 348.


For example, Four Corners, ABC Television, 25 October 1999.


S.K. Mukherjee, op. cit., p. 19.

The Times, 2 July 1857.


M. Carpenter, *Juvenile Delinquents…*, pp 141, 149.

For example, C. Pfeiffer, *op. cit.*, pp 257-258;


M. Carpenter, *Juvenile Delinquent…*, p. 16.


*South Australian Register*, 9 November 1872.

Board of Inquiry into Randwick Asylum, *NSWV&P*, 1875-6, Vol. VI, p. 125, report of A. Walker.


E.C. Wines, *op. cit.*, p. 64.


1873-4 Royal Commission into Public Charities, Second Report, evidence and minutes. NSWV&P, 1873-4, Vol. VI.


The West Australian, 23 April 1970.

A Report from the committee established to review Substitute Care Services in NSW, January 1992, p.47.