The Delinquencies of Juvenile Law: A Natural Law Analysis

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Abstract: This article is a substantive analysis tracing the legal, philosophical, social, historical, jurisprudence and political backgrounds of juvenile law, which is an outgrowth of the so-called Progressive movement - a popular social and political movement of the late nineteenth and early twentieth century. I also trace how this socio-political cause célèbre became a fixture in American culture and society due to existential child labor abuses which progressive intellectuals used as a pretext to codify juvenile law in federal law and in statutory law in all 50 states by 1925. Moreover the dubious social science and Machiavellian political efforts that created the juvenile justice system out of whole cloth has done much more harm to the Constitution and to the children it was mandated to protect than any of the Progressive ideas initially envisioned rooted in Positive Law (separation of law and morals). Finally, I present am impassioned argument for congressional repeal of all juvenile case law and statutes because they are rooted in Positive Law, contrary to Natural Law (integration of law and morals), the original intent of the constitutional Framers and are therefore patently unconstitutional.

Keywords: juvenile justice; natural law; positive law; progressivism; constitutional framers; liberalism

The powers of the Star Chamber were a trifle in comparison with those of our Juvenile courts.[1]

Roscoe Pound

1. Introduction

In November, 1945, Justice Robert Jackson acting as Chief Prosecutor for the United States famously remarked during his Opening Address at the Nuremberg

[1] Roscoe Pound (1876-1964), Dean of the Harvard Law School (1916-36), is attributed as the author of this famous and prophetic remark about the juvenile justice system. An earlier version of this article was previously published in Ellis Washington, *The Delinquencies of Juvenile Law: A Natural Law Analysis* in Washington, *The Inseparability of Law And Morality* (2002), pp. 29-60; Ellis Washington, *Excluding the Exclusionary Rule: A Natural Law Analysis*, Vol. 10, No. 2, Deakin Law Review (Australia) 772-94 (Sept. 2005). For a Natural Law treatment of international law, *see* Washington, *The Nuremberg Trials: Last Tragedy of the Holocaust* (2008). *See Generally* Walter J. Wadlington, *Children in the Legal System* (1983), pp.197-98.

Trials that, "The Constitution is not a suicide pact." That said, the juvenile justice system in America by all reasonable accounts has been not only a suicide pact, but a monumental failure as well.[1] (Gifis, 1984, pp. 523-524)It has neither given help to the troubled youth within its jurisdiction, nor has society received justice or protection from the ever-increasing criminal conduct visited upon them by this seemingly incorrigible, criminal-youth class.[2] (Thomas & Bilchik, 1985, pp. 439-479) Up until the establishment of the juvenile justice system in the early twentieth century, issues of morality and family were the primary domain of the church and other moral-based civic organizations. However, beginning around the 1850s the foundations of societal morality in America began to be directly assaulted and challenged by new academic discoveries in the areas of law, science, philosophy, and education–Immanuel Kant (1724-1804), Frederick Hegel (1770-1831), Friedrich Nietzsche (1844-1900), Martin Heidegger (1889-1976) (philosophy, metaphysics), Jeremy Bentham (1748-1832), John Austin (1790-1859) (law, philosophy), Charles Darwin (1809-1882), Thomas Henry Huxley (1825-1895) (biology), Julian Sorell Huxley (1887-1975) (science; biology, evolution), Karl Marx (1818-1883), Friederich Engels (1820-1895) (economics, political philosophy), Sigmund Freud (1856-1939) Carl Jung (1875-1961) Max Weber (1864-1930) (psychoanalyst, psychology, sociology), Franz Boas (1858-1942), Margaret Mead (1901-1978) (ethnology, cultural anthropology), Charles William Eliot (1834-1926), John Dewey (1859-1952) (education, philosophy), Theodore Roosevelt (1858-1919), Woodrow Wilson (1856-1924) (U.S. presidents), Herbert Croly (1869-1930) (writer, co-founder of The New Republic), Walter Lippmann (1889-1974) (intellectual, writer, reporter, co-founder of The New Republic). These influential people, by the sheer power of their ideas, brought forth scientific, philosophical, political, legal and intellectual suppositions that so challenged the conventional beliefs and morality of their society so as to forever put in doubt what Progressives considered anachronistic notions like God, truth, reality, liberty and Natural Law. "God is dead" and moral relativism was all the rage. By 1900 the ideas of these scientists, educators and intellectuals, were quickly absorbed by the increasingly secular academic community and the political class in their proud

[1] *See* 18 *Crime and Delinquency* 68-78 (1972). However, the due process rights accorded to juveniles are not identical to those of adults. Juvenile Delinquent – Term used to describe minors who have committed an offense ordinarily punishable by criminal processes, but who are under the statutory age for criminal responsibility. When a juvenile commits an offense it is considered an act of juvenile delinquency.

[2] For analysis of the juvenile delinquency code, *see* ABA Standards, *Juvenile Delinquency and Sanctions*.

attempts to have their various disciplines stamped with the imprimatur of "science."

By the beginning of the twentieth century, the legal community had exchanged the philosophical foundations it inherited from the English Common Law which presumed a higher authority [God] as the foundation of all legitimate law. Natural Law, a synthesis of legality and morality which America's constitutional Framers borrowed from their English cousins across the Atlantic, the controlling legal philosophy which Thomas Jefferson eloquently defined in the Declaration of Independence as–"…the law of Nature and of Nature's God." By the early 1900s the presumption of an inseparability of law and morality in jurisprudence was replaced by a naturalistic, secular, humanistic philosophy–Positive Law. Legal Positivism, from which Positive Law is derived, is a system or philosophy specifically designed to supersede previous notions of God, theology, metaphysics, or the supernatural. Positive Law is law which is posited or created *by* and *for* man apart from any supernatural source. Its credo–*He who is sovereign rules!* Tragically, this aphorism would serve the totalitarian desires of depraved tyrants from Lenin, Stalin and Mussolini to Franco, Hitler, Mao, Pol Pot and others throughout the twentieth century.

The academy, child activist groups, liberals, Democrats, socialists and progressives armed with this new *zeitgeist* of the modern, industrial age, believed that science had all the answers to the problems that have plagued mankind since ancient times and that previous reliance in God, religion and metaphysics of past generations in their attempts to understand phenomenon, humanity and the world; (particularly those ideas out of the Judeo-Christian traditions of intellectual thought), were now viewed by these progressive intellectuals of the late nineteenth century as anti-intellectual, medieval, nonrational, backward, superstitious, unenlightened, and anti-progressive.[1] (Posner, 1999, p. 1638) (Washington, 2002, p. 249)

Furthermore, as the nineteenth century drew to a close, an increasingly activist and conservative Supreme Court that showed little regard to the original intent of the Constitution, *stare decisis* (judicial precedent), or a proper understanding of Natural Law, began ruling on cases without reliance on the explicit text of the

[1] Judge Richard A. Posner, former Chief Judge of the Seventh Circuit Court of Appeals in Chicago frequently refers to legal philosophers that mix law and morality as "academic moralists", "moral entrepreneurs." He further characterizes them as: "prissy, hermetic, censorious, naive, sanctimonious, self-congratulatory, too far Left or too far Right, and *despite its frequent political extremism*, rather insipid."

Constitution. Later called s*ubstantive due process*,[1] this judge-created doctrine was initially used to strike down governmental regulations in the areas of economics and employment in the early 1900s,[2] however, by the mid-1940s, substantive due process would be increasingly expanded by the Court, which because of deaths, retirements and President Franklin Delano Roosevelt's Court Packing plan threat of 1937, now much more leftist, socialist activist Court began issuing radical rules in such areas as: church/state relations, freedom of speech, freedom of religion, sexual relationships, and contraceptives. Particularly the Court from 1937-50 and the Warren Court (1953-69) exercised oligarchy-like power to hold consistent majorities on cases that totally reshaped societal morality and structure. Although substantive due process ruled constitutional jurisprudence from the 1900s to the early 1930s, however, soon another, even more sinister judicial doctrine arose, the so-called *incorporation doctrine*, of the 1930s and 40s, where the Supreme Court applied the Fourteenth Amendment to the states in an effort to bring state law under the Bill of Rights and as a means to justify its scientific rulings rending states rights via the Ninth and Tenth Amendments a deadletter. These cases used a doctrine called "procedural due process."[3] Beginning in the late 1940s activist Courts using the so-called *incorporation* and *procedural due process* began applying the Bill of Rights to the states and rather than interpreting the Constitution, the Court began reading their own personal policy preferences into the Constitution. For example, the Court's removal of prayer from the public

[1] Substantive Due Process. Doctrine that due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution require legislation to be fair and reasonable in content as well as application. Such may be broadly defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property. The essence of substantive due process is protection from arbitrary and unreasonable action. *See Black's Law Dictionary*, 6TH ED., 1429 (1990). Jeffries v. Turkey Run Consolidated School Dist., C.A.Ind., 492 F.2d 1, 3.

[2] *See* Lochner v. New York, 198 U.S. 45 (1905) (the Court struck down laws regulating the maximum number hours a baker could work per week in New York). This case was the beginning of the rise of what scholars later called, *Substantive Due Process*. This type of jurisprudence was first used in the infamous pro-slavery case, Dred Scot v. Sanford (1857) and spawned an entire generation of case law where judges used their own subjective views (in some instances a misapplication of Natural Law) to reach judicial decisions apart from reliance on an explicit text in the Constitution.

[3] Procedural Due Process. The guarantee of procedural fairness which flows from both the Fifth and Fourteenth Amendments due process clauses of the Constitution. For the guarantees of procedural due process to apply, it must first be shown that a deprivation of a significant life, liberty, or property interest has occurred. *See* Black's Law Dictionary, 6th Ed., 1203 (1990). Fuentes v. Shevin, 407 U.S. 67, 79k 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556; Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed.2d 287. N.B.: Since *Lochner*, et al., the so-called incorporation doctrine whereby the Courts applied the freedom guarantees in Bill of Rights to the states, have become conventional jurisprudence by most jurists.

schools,[1] legalized birth-control for everyone including unmarried minors,[2] legalized abortion on demand,[3] pornography (including the public libraries providing children access to pornography on the internet),[4] de facto legalization of homosexuality,[5] severely limited religious freedom of speech,[6] and outlawed the posting of the Ten Commandments in the public schools.[7]

Behind these radical court decisions are a cabal of well-organized, well-financed and diverse group of progressive politicians, socialists, fascists, anarchists, communists, atheists, agnostics, secularists, leftist special interest groups, and their supporters which were becoming increasingly hostile to America's traditional notions of family, morality and respect for the historical and substantive influence that Christianity and the church has played in controlling the marketplace of ideas. This concerted, systematic attack on moral foundations of America came to its apotheosis in the early 1960s as the decline of Christianity, morality, and a respect for the rule of law have correlated with the rise of progressivism. The current moral crises endemic in American culture from the pandemic hopelessness and violence of ghetto life in the inner-cities, to the failing public schools, failing test scores and high school seniors that can't even read their diplomas, to the marbled walls of the

[1] Engel v. Vitale, 370 U.S. 421 (1962) (Court ruled prayer and Bible study in the public schools as unconstitutional).

[2] Griswold v. Connecticut, 381 U.S. 479 (1965) (Court held that a Connecticut statute forbidding the use of contraceptives by married persons as an unconstitutional intrusion on Fourth Amendment the right of privacy).

[3] Roe v. Wade, 410 U.S. 113 (1973) (holding in part, that criminal abortion statutes which prohibit abortions at any stage of pregnancy except where necessary to save the life of the mother are an unconstitutional intrusion on the right of privacy); Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) (Roe v. Wade's essential holding that a woman can chose to have an abortion before viability is reaffirmed).

[4] Miller v. California, 413 U.S. 15 (1973) (Court gave pornography First Amendment protection under the freedom of speech clause). *See generally* Robert Bork, *Slouching Toward Gormorrah: Modern Liberalism and American Decline* (1997) (arguing that the decline of modern culture is causally linked to the rise of modern liberalism); Washington, The Inseparability of Law and Morality *supra* note 1.

[5] Stanley v. Georgia, 394 U.S. 557 (1969) (Court held that private possession of obscenity in one's own home cannot be made a crime due to the constitutional right of privacy); *overruled in* Lawrence v. Texas 539 U.S. 558 (2003); *See also Supreme Court strikes down Texas sodomy law: Ruling establishes new ground for privacy experts say*, Law Center, Nov. 18, 2003.

[6] Bowers v. Hardwick, 478 U.S. 186 (1986) (Court denied that there exists under the right of privacy a constitutional right for consenting adults to engage in homosexual sodomy); *Bowers* was overruled by a 5-4 majority supporting sodomy in Lawrence v. Texas, 41 S.W. 3d 349 (1998), 539 U.S. 558 (2003).

[7] Stone v. Graham, 449 U.S. 39 (1980) (the Court struck down laws allowing the Ten Commandments to be posted in all public schools).

Supreme Court that has played an increasingly activist and inimical rule in the coarsening of societal morality by their opinions on freedom of speech and religion, right to privacy, morality, sexual expression and culture–a perverse jurisprudence that seems to relish in denigrating America's historical veneration of the Judeo-Christian traditions, Natural Law and original intent in its laws that presupposed an integration of law and morality.

The establishment of the juvenile justice system in America is but one of many progressive systems initiated by the leviathan state which has usurped power not expressly enumerated to it by the Constitution. The results from establishing the juvenile justice system has been devastating to the family, society, and ironically, to the offending child which progressives say is altruistically all done "in the name of the children." Note some of the tragic effects upon society due in part to the creation of the juvenile justice system in America:

- Increased parent/child alienation (for example, children can now "divorce" their parents) (McBride, 1996, pp. 68-69);
- Breakdown of the tradition family unit;
- An explosion of homelessness–largely middle and upper middle class children aimlessly wandering America's large cities seeking to survive by selling drugs, selling their bodies or whatever they can steal;
- Loss of liberty due to increased government interference into our personal and spiritual affairs;
- Weakening and marginalization of the Judeo-Christian tradition and the church's former role as the moral compass for the nation has been eclipsed by the academic and intellectual classes and welfare state bureaucrats;
- A drastic decline in SAT scores by students since 1963;
- Declining societal morality due to unbridled statist power and the ascendancy of an increasingly omnipotent federal government and secular judiciary which at its core is explicitly pagan, humanist, statist, morally relativist, politically socialist and viscerally anti-Christian.

A. History of Juvenile Law

The history of juvenile law was merely one of the many major changes in American law that occurred during that crucial fifty year period from 1870-1920 that concurrently witnessed the end of the civil war and the start of two major social movements: Radical Reconstruction (1865-77) and the Progressive Era

(1890s-1920s). During that time a political reformist group calling itself, "Progressives" launched the Progressive movement. (Webster, 1993)[1] Progressives were challenging many existential societal problems that the Democratic and Republican parties had failed or neglected to address, one of them being that children were being exploited for economic gain by the then burgeoning Industrial Revolution (1877-1913). This massive increase in American production was sparked by the invention of new technologies like the radio, telephone, phonograph, automated factory, steam engine, the gas and electric lamps, the automobile, and was desperately in need of a large work force to fill these newly-created jobs. Large population shifts called, The Great Migrations (1870-1914; 1910-30) caused many children to move with their families from small, rural towns and farming communities in the South to the large, increasingly crowded industrial cities of the North in search for higher paying jobs and a better quality of life. The American captains of industry–Astor, Standford, Gould, Vanderbilt, Carnegie, Mellon, Ford, Rockefeller, Getty, Morgan, Hughes, Harriman, Kennedy, soon found a boundless supply of cheap labor in children and with large families of five or more children, parents felt compelled to allow their children to work these factory jobs in order to help out with family expenses as their children had done by working in the cotton fields of the South. The rising social opposition here was not so much against the hard work children were subjected to, but the oppressive and dangerous working conditions and long hours required that made such work for children unconscionable to the Progressive movement reformers.

The consequences of this new child labor boom proved negative on many counts. For example, children as young as five years old were made to work long hours–as many as ten or more per day, in large industrial complexes that produced the coveted raw materials for America's automobile, steel, copper, and aluminum, iron, metal and rubber factories. Garment, manufacturing, and textile factories were in every major American city of the North. As these mammoth industries grew, so grew the need for cheap unskilled labor. Since there weren't enough adults to fill this void, children by the thousands were called upon to occupy these jobs. British Historian, Paul Johnson, ably wrote of these times, stating that:

The antibigness emotion so characteristic of the decades between the Civil War and World War One. [transfixed] Progressives, who tended to be highly educated

[1] First coined in 1846, the general philosophy of the Progressive political movement was marked by "one believing in moderate political change and especially *social improvement by government action*."

intellectuals aiming at an urban audience. Historians have seen the Progressive Era [from] 1900 up to America's entry into World War One. *Progressivism was the hostile reaction of the educated middle class to the overwhelming power of Big Business, whose wealth and scale and lure elbowed them out of the political-economic picture entirely, or so they feared.* Since the days of the Founding Fathers, the educated elite had guided, if they had not exactly run, the United States, and they felt their influence was being eroded by the sheer quantity of money now sloshing around in the bowels of America's great ship of state. (Johnson, 1997, p. 607) (Posner, 1999, p. 1638) (Washington, 2002, p. 249)

Child labor per se is not bad for children have always worked in virtually every society. Hard work has many redeeming characteristics—it teaches a child good character, frugality, encourages responsibility, industry, and how to avoid idleness and profligacy. However, these crowded factories had little or no federal or state regulation and were often very dirty and dangerous places to work. Many children as well as adults suffered crippling injuries; some were even killed due to the unsafe working conditions inside these large industrial factories one of the most infamous being the Triangle Shirtwaist factory fire of April, 1911 where 148 people were killed (some children) due to unsafe and oppressive working conditions. Also, due in large part to the above circumstances, crime, exploitation and vice increased, and children, being the most vulnerable in our society, bore the brunt of these societal ills during America's industrial ascendancy of the late nineteenth and early twentieth century. The social and political ground was ripe for government action.

The Progressive Movement

A. Political Group in Search of a Pretext

Like most social "movements" in America in order to gather momentum towards the projected goal and to galvanize the people into action, the occurrence of the ubiquitous "event"–a pretext if you will, that seizes the attention of the masses in such a dramatic way that a quantum leap politically, culturally and socially can be made by the group and many if not all of their political goals can be achieved. For example, President Barack Obama's Chief of Staff, Rahm Emanuel has a saying echoed by Obama and Secretary of State, Hillary Rodham Clinton—"Never allow a serious crises go to waste." Furthermore, this giant step from obscurity to

notoriety usually makes returning to the original status quo theoretically impossible. Such has been the pattern of most major historical events of world. Other examples include: the Inquisitions and the Crusades in Medieval Europe, and the Salem Witch Trials in Colonial America (1692-95), all marked historical episodes of religious zealotry run amuck. Consequently, those who disliked organized religion and resented Christian its influence in American society conveniently used those spectacular episodes of barbarism to abolish religious influence in society–its impact on culture.

The counter-cultural backlash against religious barbarism of the past has spawned such contemporary cultural aberrations as *radical egalitarianism* (the equality of results rather than opportunities), *radical individualism* (the severe reduction of restraints to pleasure), *radical liberalism* (freedom without morality or conscience), *positivism* (separation of legality from morality) *relativism* (moral equivalence of all things or the idea that no person, place, or thing is superior to another), *humanism* (man is the center of all things). These diabolical philosophies effected society immeasurably and provoked the flourishing of such radical ideas as– abortion, homosexuality, same-sex marriages, the feminist movement, multiculturalism, and such pseudo-legal doctrines as separation of church and state, the right of privacy, judicial activism, and the "evolving" or "living constitutional" doctrine first uttered by progressive President Woodrow Wilson and popularized by Justices Holmes, Cardozo, Judge Richard Posner, and in modern times Harvard constitutional law professors, Laurence Tribe, Charles Ogeltree and Cass Sunstein. In modern times, a majority of Justices, judges, legal theorists and law professors view a Positive Law approach to the Constitution as conventional wisdom and sound legal thinking and view jurists of an earlier generation reliance on theistic-based legal philosophies like the Common Law, *stare decisis*, Natural Law and originalism, as non-rational, anti-intellectual and anti-progressive.

In the late 1800s, at the dawn of the industrial revolution, American Christians were largely silent in the face of unbridled, *laissez faire* capitalism. This moral omission by the 1890s was fully exploited by the media and Progressive reformers for largely contributing to the shameful abuse of children (some as young as 5) were forced to work under harsh, inhumane working conditions combined with the industrialist's seeming indifference or in some cases, outright hostility against enacting any preventative laws; let alone the necessity for immediate and draconian child labor laws, is truly one of the more egregious chapters in American history. The Progressive reformers charged that industrialists and uber-capitalists, whom

they and the press derisively mocked as “Robber Barons”– men like Astor, Stanford, Gould, Rockefeller, Vanderbilt, Packard, Ford, Carnegie, Mellon, Getty, G. P. Morgan, Hughes (most whom were also conspicuous Christians), built their fortunes by placing profits over principle, money over morality, expediency over fairness, and hubris over humanity. The fallout was disastrous to the American family as Southern families migrated *en masse* to the North and as newly-arrived immigrates from Europe squeezed into already overcrowded industrial cities of the North in search of untold riches and a better quality of life promised by the industrial revolution. Children, being the most vulnerable, were decimated by America’s technological explosion at the advent of the twentieth century.

B. Early Period: 1899-1925

Prison conditions in the mid-nineteenth century shocked the conscience of the early Progressive movement reformers and helped propel their then infancy political movement into national prominence as they reacted in moral outrage that children convicted of crimes were given equally long prison sentences as adults and incarcerated in adult prisons along with the most dangerous hardened criminals in society. The zeal exerted by the Progressive movement in the area of juvenile justice reform centered on the supposition that the cold hand of justice was an inadequate response to rehabilitate and to reestablish the lawless child back into society. The Progressive’s rallying cry was that something more than imprisonment and punishment had to be done to "help" children that had broken the law. To prevent juvenile delinquency in children[1] the “welfare” of the child became the paramount concern.[2] The idea was that children needed to be “rehabilitated.” The reformers decided to change the original intent and the language of the criminal law and criminal procedure and to establish a separate court system without all the usual paraphernalia due process rights of the legal system in dealing with children. The result of this new system, which was rooted in the secular humanist and relativist philosophy of Positive Law, was that society was no longer to distinguish whether a child was "guilty" or "innocent" but sociological, philosophical, even psychological questions were poised: "[w]hat is he, how has he become what he is,

[1] People v. Deibert, 117 Cal App-2d 410, 256 P2d 355.
[2] Young v. Knight (Ky) 329 SW2d 195, 77 ALR2d 994.

and what had best be done in his interest and in the interest if the state is to save him from a downward career."[1]

Juvenile law castigated the old legal order under Natural Law and created controversial and radical assumptions about human nature and human behavior directed by the academic class which comported well with the Progressive movement's philosophy of moral relativism, egalitarianism and then popular notions that the criminal justice systems were quite inadequate and inapplicable to the delinquent child and to their newly created juvenile justice system. They saw the procedural and substantive effects of criminal law as too religious, judgmental, harsh, rigid and antithetical to the enlightened principles of the juvenile justice philosophy rooted in "science" which viewed the delinquent child as "ill" and in need of medical "treatment" and rehabilitation rather than the unforgiving had of justice and the rule of law. After all Progressives saw themselves as enlightened, evolved, cosmopolitan, educated, secular and thought that humanity in a civil society had evolved beyond antiquated notions of retribution, punishment, vengeance, and "eye for an eye" justice. Traditional assumptions of crime and punishment based on Natural Law, liberty and Judeo-Christian theistic principles were discarded and every step in the juvenile justice process from apprehension, institutionalization, through rehabilitation, were to be "clinical" rather than punitive and governed by Positive Law.

The former jurisprudence of Natural Law was rooted in an objective moral order and based upon transcendent universal precepts and immutable moral principles out of the Judeo-Christian traditions under which all mankind were subjected to (including children), were replaced by newly discovered scientific and theoretical assumptions and speculations of a host of newly created body of knowledge called social sciences whose philosophy was rooted in some form of naturalism–positivism, materialism, secularism, atheism, pragmatism, egalitarianism, utilitarianism, humanism. Natural Law, with its presumptions of judgment, justice, and adherence to God's law, the Bible and to the rule of law was replaced by the Progressive reformer's naive, misguided and ultimately, nihilist notions of "compassion"–which even the most intractable juvenile delinquent then and now understands gives them a license to commit the most heinous crimes he is capable

[1] Julian Mack, *The Juvenile Court*, 23 HARVARD L. REV. 104, 119-120 (1909); State ex rel. Minot v. Gronna, 79 ND 673, 59 NW2d 514; State ex rel. Minot v. Gronna, 79 ND 673, 59 NW2d 514; State ex rel. Minot v. Gronna, 79 ND 673, 59 NW 2d 514; Killian v. Burnham, 191 Okla 248, 130 P2d 538.

of committing–their punishment, limited only by their chronological age and by the perverseness of their imagination.

To address these growing social problems, Progressives called for the creation of special juvenile courts to deal with delinquent minors.[1] (Sanford, 1970, p. 1187) At that time, the term "delinquent" also included both vagrant and neglected children. The Illinois Act, America's first juvenile code, was created in 1899. Its principle focus was criminal conduct by children and was a direct product of several decades of intense lobbying efforts by the Progressive movement reformers, whereby they expressed their sense of outrage at the manner by which children were processed in the criminal justice system. Progressives outlined the principle ideas of their juvenile court philosophy as follows:

(1) A special court was created for neglected, dependent or delinquent children under age sixteen.[2]

(2) The purpose of the juvenile court was to rehabilitate children rather than punish them.

(3) Ostensibly, no stigma would attach to a child from a court appearance; all records and proceedings were to be confidential.[3]

(4) The Act required that juveniles be separated from adults when incarcerated or placed in the same institution in order to avoid the corrupting influence of adult criminals on juveniles. All detention of children under twelve in police stations or jails was barred.

(5) Juvenile court proceedings were to be informal. Indeed, these new tribunals were not to operate on a legal model at all; the analogy from the start was medical, reflecting proposals by early reformers utilizing techniques of the then newly-developed[4] social and behavioral sciences to diagnose, treat

[1] For a general analysis of other courts, *see* 20 Am Jur 2d., Courts; Uniform Juvenile Court Act § 1; Gregg v. Juvenile & Domestic Relations Court.
[2] Young v. Knight (Ky) 329 SW2d 195, 77 ALR2d 994; Gregg v. Juvenile & Domestic Relations Court, 133 NJL 89, 42 A2d 458, 159 ALR 1225; Juvenile Court of Shelby County v. State, 139 Tenn 549, 201 SW 771.
[3] Leroy T. v. Workmen's Compensation Appeals Board, 12 Cal 3d 434, 115 Cal Rptr 761, 525 P2d 665, 39 Cal. Comp. Cas. 569; People v. West (3rd Dist.) 154 Cal. App. 3d 100, 201 Cal. Rptr. 63.
[4] Young v. Knight (Ky) 329 SW2d 195, 77 ALR2d 994.

> and cure socially sick children.[1] (Davis, Scott, Wadlington, & Whitebread, 2008, pp. 197-198)

So aggressive and comprehensive were the lobbying efforts and public advocacy of the Progressive movement that between 1899 and 1917, there were only three states that had not yet instituted a juvenile court system for children. The Progressive movement was the key catalyst for social reform in the years leading up to World War I, as the philosophy of the juvenile court was embraced in virtually every major city from New York to Los Angeles. Although the historical magnitude of the juvenile courts are still debated by scholars today, one thing is certain that by 1925 the philosophy of the juvenile court system had swept the country and was viewed by most legal scholars, politicians and courts to be a constitutionally sound system. But was it?

C. Middle Period: 1925-1966

Prior to Justice Fortas majority opinion in the *Kent* case in 1966, juvenile courts essentially functioned without legal oversight, constitutional strictures or monitoring. During this so-called middle period in juvenile law history, many scholars believed that technically the juvenile courts were not “courts” at all–at least not in the legal sense of the word. Juvenile courts operated without the usual trappings of a regular court (e.g., lawyers, reporters, a standard body of laws, etc.). This absence of the usual legal paraphernalia was not by accident for the progressive founders of the juvenile justice system purposely rejected the traditional punitive approach in favor of a rehabilitative remedy to handling children that violate the law; this included a full battery of medical and psychiatric tests and treatments.

The concept of a "dependent child" in the juvenile court scheme, arranges temporary placement of a child within a state approved family so that the child will receive comparable guardianship had his biological family fulfilled their parental responsibilities.[2] During this middle period, "juvenile court" became a broad term encompassing all courts with jurisdiction to hear juvenile cases regardless of whether the court created such laws.

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[1] S*ee* In re Dargo, 81 Cal. App. 2d 205, 183 P2d 282; Schall v. Martin, 467 U.S. 253, 81 L. Ed. 2d 207, 104 S. Ct. 2403.
[2] *In re* Hudson, 13 Wash 2d 673, 126 P 2d 765.

Another promise of the juvenile court philosophy was that it is more concerned with the minor's reformation than with punishment.[1] This artificial "legal" construct which I mentioned earlier, disregards the legal technicalities and formalities of the Constitution under the presumption that the substituted and simplified court procedures will better secure the juvenile's interests under its jurisdiction, and to empower the judges to effectively control their charges encouraging them to behave more responsibly in the future rather than dwell on past "mistakes," "offenses" and "delinquencies."[2] Consistent fact finding techniques are fundamental to determining which aspects of due process and equal protection are necessary to apply in the juvenile law process.[3] To insure these outcomes, the juvenile courts by the 1960s had developed a balancing test whereby the liberty interests of the juvenile delinquent was balanced against the seriousness of the juvenile's offense and the particular and unique circumstances of the individual case.[4]

D. Modern Period: 1966-Present

Beginning with *Kent* case of 1966, followed closely by the *Gault* case in 1967, juvenile law was brought into the modern period as the Supreme Court systematically codified seventy years of juvenile law by bringing it (to a certain degree) within the bounds of constitutional due process. (Gifis, 1984) Justice Fortas, in his holding in *Kent*, summarized the Court's opinion and gives us a subtle insight into the majority's philosophical presumptions and suppositions regarding the functioning of the juvenile justice system. While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of Constitutional guaranties applicable to adults. There is much evidence that some juvenile courts lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the

[1] *In re* Dargo, 81 Cal. App. 2d 205, 183 P 2d 282.
[2] *Ibidem.*
[3] In re Appeal in Pima County, Juvenile Action, No. 63212-2, 129 Ariz 371, 631 P 2d 526.
[4] In re Smith (Okla Crim) 326 P 2d 835 (stating that proceedings involving a delinquent child in juvenile court should be conducted with deliberation, giving the accused the benefit of every substantial rule of procedure in his favor).

worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children. (Davis, Scott, Wadlington, & Whitebread, 2008, p. 216)

In the *Kent* and *Gault* cases I believe that Justice Fortas misses the subtle intrinsic/extrinsic nature of juvenile law, as well as the historical, philosophical, social, moral, and political background that lead to the institution of the juvenile justice system in the first place, therefore his reasoning is weaken by his own arguments for a remedy, which causes his conclusions to lack persuasiveness. Basically, Justice Fortas is admitting that while juvenile law was instituted with good intentions, it has been a totally abject failure and a malfunctioning system, therefore, it is time for the Supreme Court to remedy this system by bringing juvenile law under the ambit of the rule of law and congressional control. However, a stronger holding would have conceded that children in the juvenile justice system receive neither the constitutional protection accorded adults nor rehabilitation because juvenile law was conceived by progressive reformers to function outside required constitutional strictures. This is painfully obvious. Furthermore, Fortas' opinion should have stated that under a constitutional system such as America's democratic republican form of government, legal custody of a child in the juvenile justice system would be constitutionally impermissible due to the fact that the entire system was purposely conceived *outside* the jurisdiction of the U.S. Constitution, therefore the juvenile law is wholly a legal fiction and the present existence of the juvenile justice system is due to a combination of congressional indifference and incompetence and judicial usurpation. Justice Fortas and the majority in *Kent* should have ruled the very concept and existence of juvenile law as unconstitutional, being outside of the Framer's original constitutional scheme and began the process of dismantling the entire juvenile justice system as it did with slavery by using the Thirteenth Amendment and the Fourteenth and Fifteenth Amendments to address and later to combat racial segregation in *Plessey v. Ferguson* and in *Brown v. Board of Education*.[1] The Supreme Court, by failing to exercise such judicial wisdom, has instead given juvenile law a form of pseudo-constitutional legitimacy even though the juvenile

[1] Plessey v. Ferguson, 163 U.S. 537 (1896); Brown v. Board of Education, 347 U.S. 483 (1954). *See also* Ellis Washington, [MONOGRAPH] *A Voice Crying Out in the Wilderness: A Word About Brown v. Board of Education; LeBron James—Separate But Unequal Revisited*, (with Che Ali Karega) Issues & Views.com (2003); Connecticut Public Interest Law Journal, University of Connecticut School of Law (website 2003).

justice system by every account is totally dysfunctional and continues to be without a legitimate basis in the Constitution.

2. Juvenile Reform: New Wine in Old Wineskins

A. Traditional Alternatives

The result of all juvenile justice reforms sought more specific and precise rules for juvenile judges to use discretion in deciding delinquency cases. Congressional concern over the increasingly deplorable conditions of the juvenile system, concurrent with the explosion of increasingly violent youth crime, resulted in a series of congressional acts, namely the Federal Juvenile Justice and Delinquency Prevention Act of 1974[1] amended in 1977, 1981, 1992 and most recently in 2002.[2] This Act reflects congressional concern over the extent of youth crime over the past 40 years. The Act (1) instituted the Office of Juvenile Justice and Delinquency Prevention to administer and regulate grants to fund state experimental programs for experiment delinquency prevention programs at the state level; (2) the federal government using a carrot/stick approach to administer federal dollars to the states upon compliance with the federal guidelines under the Act by transferring the status of juveniles from "law-breaker," "offender," "criminal" to "juvenile delinquent" thus de-institutionalizing the so-called status offenders and (3) formulating a juvenile code to be used as a body of statutory law to be applied to "delinquent" conduct by children under federal jurisdiction. (Davis, Scott, Wadlington, & Whitebread, 2008, p. 201) Many attempts at reforming the juvenile justice system have been tried since its inception 100 years ago. Below are some contemporary examples of states trying to improve juvenile law:

(1) *Waiver*

Waiver, also called certification, is an approach being tried increasingly by a number of states which treats the juvenile as an adult if he is a repeat offender or commits a particularly heinous act like murder, rape, aggravated assault or any violent felony in general. In these situations, the juvenile, after a hearing on waiver,

[1] 42 U.S.C.S. 5672, Secs. 5601 *et seq.*

[2] 42 U.S.C.S. 5672, Secs. 5601 *et seq.* *The Public Health and Welfare*, Chapter 72, *Juvenile Justice and Delinquency Prevention*, Subchapter II, *Programs and Offices*. Part J, *General and Administrative Provisions*.

is brought within the ambit of the criminal justice system and is handled no differently than his adult counterparticle[1]

(2) *Juvenile Correctional Facilities*

A variety of alternatives are used by states for those juveniles who are not waived into the adult criminal justice system. The most serious of these alternatives and the most common is placement in a juvenile correctional facility which can range from a small group home to campus-style dormitories to maximum-security fortresses. Critics claim that these are juvenile prisons and that they are ineffective, inefficient and cost too much money. The national average for annual cost at these facilities is $29,600 (South Dakota has the lowest cost per resident $17,600, Rhode Island, the highest $78,800).

(3) *Boot Camp*

Boot camps are a get tough approach at handling the juvenile crime problem and are popular with the public. It is modeled after the basic training rigors for entrance into the U.S. armed forces. Critics, while conceding that boot camps provided need disciple that most of its participants lack, the reality however, is that when their time is completed, most juveniles don't have that inner-discipline to continue staying out of trouble and becoming productive members of society. Recidivism rates among juvenile participants are high.

(4) *Restitution*

Offenders may compensate their victims as part of their punishment if the jurisdiction they are tried in has a restitution program. The main purpose of the program is to restore that which was taken away of the victim and to create in the mind of the offender the principle of paying for your crime. Critics charge that restitution programs would apply to too few offenders, noting that the majority of the juvenile delinquents are violent offenders where restitution would be an inappropriate remedy.

[1] Regarding jurisdiction questions or the power of juvenile court to compel the parent of a juvenile to pay restitution for the juvenile's offenses, 66 ALR4th 985. *See also* People v. Aguirre (4th Dist.) 2227 Cal. App. 3d 373, 277 Cal. Rptr. 771, 91 CDOS 969, 91 Daily Journal DAR 1390, reh. den. (Cal. App. 4th Dist.) 91 CDOS 1671, 91 Daily Journal DAR 2420.

(5) *Wilderness Challenges*

This novel idea is popular in some states where juveniles are taken out in the wilderness and placed in small groups that are made to perform a series of increasingly difficult tasks requiring teamwork. The objective is to instill in the juvenile a sense of positive individual/group accomplishment, self-reliance and community participation. Critics claim that the recidivism rates vary widely from 0% - 43% and those studies measuring the program's effectiveness are inconsistent.

(6) *Intensive Supervision*

Intensive supervision programs are a probation-type approach to dealing with juvenile crime. It was designed to alleviate overcrowding in training schools. Critics charge that while these programs show promise to non-violent juveniles, intensive supervision is generally not used for the majority violent offenders.

B. Hybrid Approaches

(7) *Florida Environmental Institute's Last Chance Ranch*

This hybrid approach to addressing juvenile delinquency is a voluntary program offered to juveniles sentenced to adult prisons. This program features unfenced (but alligator infested) facilities and unarmed guards that seek to foster community responsibility among the offenders. If rehabilitation doesn't occur, the juvenile is transferred back to prison for the rest of his term.

(8) *Department of Justice Violent Juvenile Offender Program*

The Department of Justice has instituted Violent Juvenile Offender Programs in Boston, Detroit, Memphis, and Newark. This is a hands-on-based program that focuses on re-integration back into the community and careful monitoring in transitional housing where the youth can be reunited with family members.

(9) *Serious Violent Juvenile Offender Project*

This is a carrot-stick approach to addressing juvenile crime instituted in a pilot program first instituted in National City, California in January 1995. During a three year trial period, fifty of the most violent juvenile offenders are paired with a probation officer and counselor who will give him access to an array of programs from conflict mediation to self-esteem therapy, and job training. In exchange, the

juvenile promises to attend classes, keep a journal, and desist from criminal behavior. Early statistical analysis deemed the effectiveness of this program to be negligible at best and has contributed little to stemming the high tide of juvenile crime.

(10) *Systemic Alternatives: Small Facility Networks*

These small facility networks are being implemented with a measure of success in Massachusetts, Utah, Missouri and Pennsylvania. The program consists of a group of small facility networks which provide treatment within a setting of secure confinement, thus balancing rehabilitation with punishment. (O'Connor & Treat, 2006, pp. 1319-1321)

Laudable and innovative though all of these programs outlined above may be, several defects are common to them all: (1) Each program was probably created by member of the intellectual class, an academic, a socialist, a utopian, a bureaucrat, a progressive politician, which, lacking a sound philosophical base, has doomed their efforts at the genesis; (2) I venture to say that none of these programs were created at the grass roots level; where people who are affected most by these programs have the least input in their creation/implementation; (3) Each program *ipso facto* accepts the constitutional (legal) legitimacy of juvenile law, therefore are based on intellectual assumptions rooted in humanism, relativism, materialism and positivism, which, as I have demonstrated throughout this article are patently spurious and false ideologies. (4) None of the ten juvenile justice reforms listed above are based on the Constitution, Natural Law, or the rule of law, but presuppose a separation of legality and morality; (5) Each program attempts to deal with a spiritual problem (social pathology, criminal acts) via secular, non-theistic means (e.g., legislative Acts, judicial mandates, juvenile recidivism rates studies; comparative analysis of various programs designed to rehabilitate). Though these approaches vary widely in the degree of success as measured by scientific studies, the common denominator is that absent a coherent, theistic-based remedy like Natural Law, the criminal heart, soul and mind of the growing youth criminal class will not be substantively changed by *any* program no matter how good the intentions.

3. Parens Patriae

Constitutionally speaking, juvenile law is a legal fiction. It is literally a politically-created facade cloaked in legalese. The Progressive-minded framers of juvenile law knowing that their juvenile justice system had no legitimate basis in the Constitution specifically designed this legal system to function *outside* of regular constitutional strictures. However, to give the appearance of legality and constitutionality, the Progressive reformers deceitfully borrowed a phrase from ancient English Common law–*Parens Patriae* (literally, parent of his country). This means that the juvenile legal proceedings were not viewed as being adversarial, as in the criminal justice system, but the state, functioning as a parent, would guide the child from institutionalization to eventual rehabilitation and freedom. As the juvenile legal system developed, the *parens patriae* doctrine became increasingly part of its vocabulary. Used first by the Progressive reformers, it was later adopted by legislators and finally the courts, as each group and institution tried to rationalize the necessity of maintaining a strict wall of separation between juvenile law and the Constitution. Children ages seven to thirteen have a rebuttable presumption of criminal intent and children fourteen and above, were subjected to the same punishment as an adult. Prior to the institution of juvenile law at the beginning of the twentieth century, the Constitution prohibited giving any American citizen (including children) fewer procedural rights than those assumed by adults. The creation of juvenile law cavalierly disregard centuries of Constitutional law, American tradition and judicial precedent *(stare decisis*) for the expediency of law by substantive due process, which is subjective judicial policy-making and jurisprudence by judicial fiat to secure a political, Machiavellian end.

It is important to remember that juvenile law was created by political Progressives and liberal ideologues out of whole cloth. Because there is no viable constitutional foundation either for the creation of juvenile law or for its continual existence, all juvenile courts should be immediately dismantled by Congress via its Article III powers which gives it control over the creation (and dismantling) of inferior courts. These Article III courts are vested with administrative as well as judicial functions, and congressional power to create such hybrid courts has been sustained by prior Supreme Court precedent.[1]

The shameful legacy of juvenile court history has again demonstrated that unbridled executive, legislative or judicial power, however benevolently motivated,

[1] Glidden v. Zdanok, 370 U.S. 930 (1962)

is frequently a poor substitute for the rule of law principle and proper constitutional procedure. The Progressive reformers insistence in removing substantive standards from the juvenile law process has not achieved their intent that children would instead of facing prison and punishment, would be better served by efficient, effective and humane care tailored to the child's needs. However, the history of juvenile law and the collapse of the juvenile justice system in modern times due to endemic youth violence, the absence of procedural rules and moral laws based upon constitutional principles did not and could not ever yield sound, compassionate, and competent legal procedures. Instead, the Progressive movement's departures from constitutionally enacted principles of due process has not spawned the enlightened surrogate system in place of criminal law, but instead has created this ungainly monstrosity of a juvenile justice legal system we presently have in America that is neither wholly "legal" nor is it a competent or coherent "system."

By ignoring the fundamental requirements of constitutional due process, juvenile law has yielded a juvenile justice system that should have never been allowed to exist in a constitutional Republic such as what we claim to have in America. However, even if allowed, certainly not in the grotesque and dysfunctional form we have today ad hoc deprivation of the juveniles fundamental rights based upon unproven findings of fact and inadequate findings of remedy. Due process of law is the fundamental requirement of the Constitution and is absolutely necessary to assure individual freedom. So ungainly and potentially oppressive was this unchecked state power that Hobbes dedicated an entire treatise to this subject which he entitled, *Leviathan* a voracious sea-monster spoken of in the Bible. Leviathan was a metaphor Hobbes used to represent the State unbridled, tyrannical government power over the people. No man could tame this diabolical monster and it destroyed and devoured everything in its path. Progressives defended that the juvenile justice system would exchange child's normal due process rights for the delinquent child to have access unique procedures from the judge which would counterbalance the absence of regular constitutional rights. I contend that in order for juvenile law to exercise truly meaningful reform, the adherence to constitutional due process standards is essential. To this end, it is clear that the so-called "benefits of the juvenile process should be seriously reformed to conform to legitimate Constitutional law.

For the state to usurp parental authority and to interfere with the sacred parent/child relationship, while at the same time sanctioning immature minors with adult

decision-making capacity even over parental objection, renders the parents impotent their influence, obsolete, in guiding and disciplining their own children with the morals and values that they hold important in raising their children. This break with traditional Christian-based mores is a prescription for continuing family disintegration and further societal chaos. I am convinced from my years of study of the juvenile court system has been a tragedy to the Constitution and to our children; that there are no redeeming values in the juvenile justice system save the segregation of children from adults. Therefore, I strongly disagree with the proponents of the juvenile justice system which affirm that the "special" rights accorded to juveniles off-set the waiver of their constitutional rights of due process.

Another much touted benefit of the juvenile law procedures is the decriminalization of the entire process no matter how heinous the offense. The *logos* subtleties of juvenile law are deceptively simple, and are therefore even more inimical to the rule of law. For example, juvenile law vocabulary include words like "juvenile," "youthful offender," "delinquent," rather than "criminal," "murder," "rapist," "thief." The vocabulary of the juvenile justice system makes a patent mockery of the rule of law and the Constitution and there is no reason why these word-games should continue.[1] (Zimring, 1982) A crime is a crime–the age or maturity of the criminal notwithstanding. Even the juvenile's themselves realize that they have *carte blanc* to create societal mayhem virtually free of any real or lasting consequences from the criminal justice system, (O'Connor & Treat, 2006, p. 1335) this is one reason why juvenile recidivism rates have exploded year after year, exponentially since the early 1960s. (O'Connor & Treat, 2006, p. 1306)

Finally, harsh though the law is to the offender, by dispensing with the legal fiction of juvenile law and bringing adolescent law-breakers under the ambit of the criminal justice system will teach the offender and his peers a valuable lesson in the Judeo-Christian precepts of universal moral order, retribution, judgment, reaping what you sow, otherwise the rule of law and the Constitution becomes meaningless while juvenile courts and detention centers continue to be overcrowded as more and more children joining the burgeoning youth criminal class; committing more and more heinous crimes as original intent, the rule of law and common sense makes a headlong retreat into obscurity and irrelevance.

[1] In the preface to his book, Professor Zimring makes the very important point that lawyers speak a different language from that found in the social science literature. Words such as "adolescent" and "adolescence," for example, rarely are found in law review and other legal literature.

4. The Solution? A Return to Natural Law Jurisprudence

The 2005 Supreme Court case of Roper v. Simmons[1] was a decision in which the Supreme Court of the United States held that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18. The 5-4 decision overruled the Court's prior ruling upholding such sentences on offenders above or at the age of 16.[2] The dissent by Justice Scalia, joined by Chief Justice Rehnquist, Justice O'Connor and Justice Thomas, sounded an overt Natural Law tone. The dissents questioned whether a "national consensus" existed among the state laws, citing the fact that at the time of the ruling only 47 percent or 18 of 38 death penalty states prohibited the execution of juveniles. The Court's two originalists Justices Scalia and Thomas, exerted the strongest objection of was whether such a consensus was constitutionally relevant. Justice Scalia argued that the appropriate question was not whether there was presently a consensus against the execution of juveniles, but rather whether the execution of such defendants was considered cruel and unusual at the point at which the Bill of Rights was ratified. Furthermore, Justice Scalia also objected to the Court's penchant to find judicial precedent from foreign law in interpreting the Constitution; his dissent questioned not only the relevance of foreign law, but also accused the Court of "invok[ing] alien law when it agrees with one's own thinking, and ignor[ing] it otherwise," noting that in the case of abortion U.S. laws are less restrictive than the international norm.

Scalia considered the majority opinion in *Roper* as being fundamentally anti-democratic citing a passage from the Federalist Papers which stated that the role of the judiciary in the constitutional Republic is to interpret the law as formulated in democratically selected legislatures. Setting an anti-judicial activist position Scalia argued that the Court's singular role is to determine what the law *says*, not what it *should* say. Furthermore, the *legislature*, acting under its enumerated powers under Article V of the Constitution, are to offer amendments to the Constitution in light of the explicit, black letter text, not for the *Court* to arbitrarily make *de facto* amendments. Justice Scalia criticized the right of unelected lawyers to determine

[1] Roper v. Simmons, 543 U.S. 551 (2005); http://en.wikipedia.org/wiki/Roper_v._Simmons.
[2] *Stanford v. Kentucky*, 492 U.S. 361 (1989), overturned statutes in 25 states that had a juvenile death penalty law under 18. The controlling legal question of the majority promoted a national consensus on the juvenile question prohibited the death penalty for juveniles under 18.

moral values and then to impose them on the people in the name of flexible readings of the constitutional text.

Historically, this intellectual class has been hostile to the Judeo-Christian moral principles that undergird all of America's founding documents, its primary institutions including church, school, business, government, and law. Under a juvenile law scheme, issues of punishment became increasingly irrelevant, instead, issues of correction and protection were primary as the juvenile justice system sought "to make good citizens of potentially bad ones." Instead of the prior Western worldview of a healthy, civil society based on a strong rule of law and the constitutional principles of swift justice and retribution against the criminal act, under this new juvenile law paradigm, legal concepts like morality, the rule of law, punishment and retribution against the juvenile offender was now viewed as barbaric, ineffective, anti-progressive and irrelevant.[1]

Ironically, these lofty goals and objectives of juvenile law stated above have not prevented one single act of juvenile delinquency. On the contrary, the Positive Law philosophy that undergirds juvenile law has only exacerbated the problem as juvenile crime sky-rockets year after year. Why is this so? Like criminal law, juvenile law is impotent until one breaks or violates the law, therefore juvenile law is inherently reactive and incompetent. Secondly, juvenile law is constitutionally illegitimate because it is not undergirded with the moral foundation of Natural Law, the original philosophy upon which the Framers used to fashion all of America's laws and founding documents including the Mayflower Compact (1620), the Articles of Association (1774), the Declaration of Independence (1776), the Articles of Confederation (1787), the U.S. Constitution (1787), the Bill of Rights (1789), and virtually every state Constitution up to 1900.

In the history of American law in law was based upon the moral precepts out of the Judeo-Christian tradition is vastly superior to the poor secular imitators rooted in humanism and naturalism, for Natural Law is proactive not reactive. In my view a juvenile justice system rooted in the Natural Law principles that the Framers of the Constitution originally intended would most positively effect the child from birth

[1] Regarding Professor Laurence Tribe's so-called living Constitution approach to constitutional interpretation Dr. Walter Williams, a well-known Black economist, conservative intellectual was the former Chair of the Economics department at George Mason University, has a witty anecdotal saying to those people who hold to an evolving or "living" constitutional philosophy: I would love to play poker with those who believed in "living rules." Therefore my two pair could beat your flush. I would never lose a card game if I could change the rules all of the time.

through adulthood. By the time the child reaches adolescence he would have been well versed in his responsibilities and duties to God, to society, to himself as well as notice of the speedy and harsh penalties for any breach of those sacred duties that he has inherited by his very humanity. Had the Progressive reformers built their system on the foundation of Natural Law and its attendant theistic presuppositions, we would have greatly diminished the need for building more juvenile homes or trying to come up with novel programs to stem the tide of escalating juvenile crime.

The rule of law is only as strong as the principles and moral authority which undergird it or serve as its foundation. For example, Natural Law held as axiomatic a strong belief in God and the Bible as God's revealed word to man therefore all legitimate law must be rooted in the Judeo-Christian tradition. Hence, when the Framers of the Constitution looked for a philosophy upon which to base this document, Benjamin Franklin summarized their sentiments quite aptly: "We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed. And we have viewed Modern States all around Europe." (Madison, 2008, p. 451) Constitutional law scholar, David Barton wrote that, "The philosophers embraced by the Founders all expounded a similar theme: the importance of Natural Law and the Bible as the foundation for any government established by men. Natural Law and the Bible formed the heart of our Founder's political theories and were incorporated as part of their new government." (Barton, 1992, p. 195)

Barton further expounds how America has inherited Natural Law as the foundation of America's constitutional government system, and that all other political and philosophical positions are inherently alien and inferior to this democratic republican form of government. In place of Positive Law and its antecedents–legal positivism, empiricism, naturalism, logical positivism, Barton urges jurists, legislators, policy makers, and the Courts to return to the original philosophy of the Framers of the Constitution America's founding documents–Natural Law. Natural Law is the only historically rooted and constitutionally legitimate foundation of any system of laws in American jurisprudence–juvenile law notwithstanding. While the practicality of Natural Law in contemporary constitutional jurisprudence is not easily established by empirical evidence, the theory itself provided the strongest possible theoretical foundation for the world's oldest continuing Republic of the United States of America.

Positive Law, on the other hand, is the controlling philosophical base of most liberal academics and the socialist, intellectual classes give credence to including many noted politicians, attorneys, judges, elected officials, civil liberty organizations, think-tanks, and of course, the academic and intellectual class. The central premise of Positive Law is pure raw power–He who is sovereign, rules! Positive Law, or the law of man, doesn't give any regard to a higher law or to a higher power other than the State in rendering its decisions. Government power is preeminent and omnipresent. Like the 16th century Italian political theorist, Niccolo Machiavelli (1469-1527), who wrote in his infamous treatise on political statescraft, *The Prince* (1513), so it is with adherents to Positive Law "The end justifies the means." Positive Law cynically looks only at the end result it wishes to achieve and presses toward this end by any means necessary. The Progressive reformers created a juvenile justice system based on Positive Law suppositions to rehabilitate and give medical treatment to criminal teenagers and fashioned state law to comply with its sophistic philosophical assumptions regarding causation of crime and the innate goodness of human nature. Under a Positive Law paradigm, little regard is given to concepts as–God, the Bible, or even traditional notions of fair play and substantial justice–He who is sovereign, rules![1]

5. Conclusions

The existence of a separate juvenile justice system that functions outside of legitimate constitutional jurisprudence should be viewed by anyone with a rudimentary understanding of Constitutional law, as a monumental fraud. The philosophy underlying juvenile law in America is based primarily in relativism and a radical egalitarian worldview. The juvenile justice system is a direct outgrowth of the Progressive movement of the late nineteenth and early twentieth century. Progressive accomplishments included trust-busting by President Theodore Roosevelt, where large industrialists, the so-called "Robber Barons" men like Astor, Standford, Gould, Rockefeller, Vanderbilt, Morgan, Getty, Ford and Carnegie and others, were forced to notice public opinion by having their

[1] *Washington v. International Shoe*, 326 U.S. 310, 316 (1945). Due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he has certain minimum contacts with it such that the maintenance of the suit does not offend *traditional notions of fair play and substantial justice*.

monopolistic domination of industry tempered by the long hand of socialist and statist government regulation.

Opposition to Progressivism grew as initiatives failed and Courts struck down Progressive legislation *Lochner v. New York* (1905), being the most famous case where the Court used Natural Law jurisprudence and substantive due process together with the sanctity of contract law to overturn a state law in New York limiting the number of hours a baker could work per week. Also government remained mainly under the influence of business and industry even after many reforms were enacted so the people thought not much had really changed. With the outbreak of World War I, with its attendant death, disease, and starvation, the enthusiasm of Progressive reforms and to use the governments to create just societies on earth was dampened.[1]

The humanist philosophy behind juvenile law was one of many secular philosophies that grew out of the eighteenth century secularist revival movement called the Enlightenment Period. Juvenile law by origin and definition is an anti-rationalist, anti-theistic legal system and was expressly developed to marginalize the parent-child relationship.[2] Juvenile law philosophy is also radically relativistic (all people, places, things, ideas, are equal) and confirmed well with our present age of cultural relativism whereby a parents views, aspirations, and values for the child are viewed by many liberal academics, intellectuals, and politicians, as being no better (and increasingly worse) than the individual minors' own decision-making capabilities. Demonstrative of this fact is that under current Constitutional law, a minor child can get an abortion without parental consent, if a judge ordains that she is competent to make an informed decision to obtain an abortion on her own.

Beneath the jurisprudence of the juvenile justice system facade lies a spurious intellectual foundation whereby the requirements of the state are conjoined by Austinian jurisprudence—He who is sovereign rules, Kantian empiricism, Darwinian evolution, progressivism, Freudian psychoanalysis, and Marxist socialism. Thus, the philosophical assumptions of juvenile law are well received in the academy of modern times while the implementation of more child autonomy and less parental control over the child so trumpeted by the academic class since

[1] Greg D. Feldmeth, U.S. History Resources, http://home.earthlink.net, (31 March 1998) The Progressive Era, p. 5

[2] Kerry Lorraine McBride, *A Minor's Right to Divorce His or Her Parents*, *supra* note 15, at 68-69.

the 1960s, has only driven a wedge between the parent and child thus eroding substantive familial bonds, despite the fact that previous generations treated the family as a sacred relationship ordained by God. Now, due in large part to culturally denigrating philosophies intellectual suppositions by Darwin, Marx, Freud, Dewey, Wilson, FDR, LBJ, Obama and others, these ideas have been codified into juvenile law statues and given the imprimatur stamp of "law" by judicial mandates, the fallout is that the family is becoming less and less a spiritual, cohesive unit and the primary building block of society, and more and more an impersonal tool of a secular humanist, leviathan state to be manipulated, controlled and used for its own diabolical ends. Let us never forget that the entire juvenile justice system in America was created in the name of the children. May Congress have the political will to dismantle the juvenile justice system in the name of the children.

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