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SYMPOSIUM—STRUGGLING FOR A FUTURE: JUVENILE VIOLENCE, JUVENILE JUSTICE

FOREWORD†

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Juvenile crime is one of the major social concerns of our day. Accounts of young people caught in the juvenile justice system and of victims of juvenile crime proliferate. Yet public debate over juvenile justice is confusing; resulting public policy is often inconsistent and short-sighted. The articles in this Symposium bring some clarity to that debate. They are drawn from a December 1994 conference, "Struggling For a Future: Juvenile Violence, Juvenile Justice," that was jointly sponsored by Boston College Law School and the Criminal Justice Institute at Harvard Law School.¹

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¹ Panelists during the two-day conference represented the range of disciplines addressing causes of delinquency, public perception of the problem, and appropriate responses. Representative panels focused on "Deprivation and Violence," "Family Breakdown and Youth Violence,"

The articles in this Symposium reflect the two broad levels along which the juvenile justice debate has been framed. They address the first level of the debate by rejecting much of the disagreement over the nature, extent, and causes of juvenile crime that has resulted in inconsistent public policy. Recognizing the magnitude and complexity of the problem, the articles focus on the next level of the debate and search for a theoretical framework for the juvenile justice system and system reform that reflects the theoretical framework.² Though the public debate surrounding juvenile justice has been divisive, the articles in this Symposium point toward a great deal of common ground.

The public discussion about juvenile justice begins with characterizations of the nature, extent and causes of the problem. All agree that both the adult and juvenile crime rates in the United States are too high and that there has been a rapid increase in the rate of violent crimes committed by juveniles with guns.³ Yet agreement about the nature, extent and causes of juvenile crime typically breaks down when those characterizations must be translated into public policy.⁴ Child

"Thinking About Gangs," "Schools and the Juvenile Justice System," and "Media Perspectives on Juvenile Violence."

² These levels are admittedly rough, and there is ongoing interaction between them—characterizations on one level influence characterizations on the other. Historically, the discussion has been dynamic and contentious on both levels.

³ See *Weapons Offenses Up Among Young, Study Says*, N.Y. TIMES, Nov. 13, 1995, at A14 [hereinafter *Weapons Offenses*]. The New York Times reported:

A study by the department's Bureau of Justice Statistics found that 23 percent of all weapons arrests in 1993 were of juveniles, compared with 16 percent in 1974. From 1985 to 1993 weapons-related arrests of juveniles more than doubled, to more than 61,000 from less than 30,000, while the adult arrests for such crimes grew by one-third in that period.

Cases involving weapons violations by juveniles grew by 86 percent between 1988 and 1992, more than any other juvenile offense.

Id.

⁴ Some say that the juvenile crime rate is rising while others say that juvenile crime, like adult crime, has not risen substantially and by some indicators has declined. See MICHAEL A. JONES & BARRY KRISBERG, NAT'L COUNCIL ON CRIME & DELINQUENCY, IMAGES AND REALITY: JUVENILE CRIME, YOUTH VIOLENCE AND PUBLIC POLICY 2-3, 8 (1994). Based on an analysis of statistics provided by the FBI Uniform Crime Report and U.S. Department of Justice National Crime Victimization Survey this study reaches a number of conclusions about current rates of juvenile crime. They find, for example:

Over the past 10 years the contribution to the pool of total arrests in the U.S. by persons under the age of 18 years has actually declined from 18 percent in 1982 to 16 percent in 1992. The proportion of total arrests for serious (index) crimes attributed to juveniles decreased from 31 percent to 29 percent over the same period.

.....

In 1982, 17.2 percent of all arrests for violent crimes were of juveniles. By 1992 the proportion had increased by less than half of one percent to 17.5 percent.

.....

If current arrest trends continue through 1995, the five-year increase in arrest

advocates argue that a disproportionate amount of juvenile crime is committed by a small group of juveniles⁵ and that the vast majority of juveniles in the system have committed property crimes and other less serious offenses.⁶ As a result, they complain that public fear of a relatively small number of violent juveniles is driving the juvenile justice debate and legislative agenda and that our policies should be directed toward the greater number of younger and more minor offenders. On the other hand, many policy makers argue that public fear is warranted⁷ and society deserves more certain punishment for delinquent youth. Related to these arguments over policy is the nagging concern that the popular media controls the debate by fueling public fear of juvenile violence.

Along with the debate over the nature and extent of the problem, the debate over causes of delinquency has been the subject of political agendas reflected in shifting public policy.⁸ Assigning blame for crime to the criminal's family signaled a reduction in the perception of

rates for violent juvenile crime between 1990 and 1995 will be the second lowest increase recorded since 1965.

Id. at 2-3.

⁵ See *Weapons Offenses*, *supra* note 3, at A14; Christy Visser et al., *Predicting the Recidivism of Serious Youthful Offenders Using Survival Models*, 29 CRIMINOLOGY 329, 330 (1991). See generally ROBERT J. SAMPSON & JOHN H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE (1993).

⁶ "The vast majority (94 percent) of young people who are arrested in the U.S. are arrested for property crimes and other less serious offenses. Arrests for property offenses, particularly burglary and larceny, represented 85 percent of all arrests of juveniles for serious crimes in 1992." JONES & KRISBERG, *supra* note 4, at 2.

⁷ Some of the most startling statistics supporting the public fear of violent crime, and of violent juvenile crime in particular, relate to the rise in possession and use of firearms. A 1993 report issued by the National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention concluded that

A total of 83% of the [juvenile] inmates [surveyed] owned at least one firearm just prior to their confinement (67 percent acquired their first gun by age 14). Two-thirds (65 percent) owned at least three firearms just before being jailed. Nearly a quarter of the [inner-city] students (22 percent) possessed a gun at the time the survey was completed. Six percent reported owning three or more guns at the time of the survey.

JOSEPH F. SHELEY & JAMES D. WRIGHT, NATIONAL INST. OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, GUN ACQUISITION AND POSSESSION IN SELECTED JUVENILE SAMPLES 5 (1993). "In the United States in 1990, 2,861 children 19 years and under were murdered with guns, an increase of 114% since 1985," Youth Alive at the Summit Medical Ctr., Oakland, Cal., *Youth Homicide and Guns*, in FIREARM FACTS, at 1 (Laurie Duker, Children's Safety Network, National Ctr. for Educ. in Maternal & Child Health, ed., 1994). "In one U.S. city, over half of all male 11th graders surveyed said that they could easily obtain a handgun. Nine percent of these students said that they had shot at another person." *Id.*

⁸ See generally ELLIOTT CURRIE, CONFRONTING CRIME 182-221 (1985); LEE RAINWATER & WILLIAM L. YANCEY, THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY (1967); Barry Krisberg, *Are You Now or Have You Ever Been a Sociologist?*, 82 J. CRIM. L. & CRIMINOLOGY 141 (1991).

community responsibility and thus in social programs. Assigning blame to social and economic conditions signaled a rise in social programs but that rise, in turn, was met with calls for greater individual and family responsibility and a corresponding reduction in programming. Though controversy remains over the causes of juvenile crime, the articles in this Symposium reflect consensus that those causes are multiple and complex. Family deprivation, violent social climate, availability of weapons, lack of economic opportunity, racial tension, inadequate education, and lack of individual and community responsibility all contribute to the problem.

The nature and causes of delinquency lead the articles in this Symposium naturally to the next level of discussion: the theoretical framework our society should adopt to define the juvenile justice system and the logical attributes of that system. Although intuition supports deriving a theoretical framework and system reform from the nature, extent and causes of the problem, this progression is lacking from much of the public policy concerning delinquency. As with other "hot button" issues, society's collective values, instincts, fears, and emotions have influenced the theoretical debate, which at times proceeds independently of the defining facts. Because the need for solutions is urgent and the theoretical debate is complex, more pragmatic discussions about the nature of the problem and the systemic response risk being derailed in the public forum. This Symposium responds to this pressing need by providing an approach that is both theoretical and pragmatic.

Ultimately, the theoretical framework chosen should lead to system reform, and all the articles in this Symposium contain insights about the attributes of a contemporary juvenile justice system. However, recent politics and misunderstandings of the history of the juvenile justice system and its foundation jurisprudence confine efforts to reform and improve the juvenile justice system.⁹ Similarly, popular and legislative responses to violence across the nation resulting in reactive and piecemeal legislation make comprehensive reform difficult.

The articles in this Symposium recognize the role history and politics play in system reform yet pursue more ideal theories and designs. In her article, Abbe Smith, Deputy Director and Clinical Instructor at the Criminal Justice Institute of Harvard Law School, describes a Dan Wasserman editorial cartoon in which a child opines that after giving up on the war on poverty, the war on crime and the

⁹ See Catherine J. Ross, *Disposition in a Discretionary Regime: Punishment and Rehabilitation in the Juvenile Justice System*, *post*, at Introduction.

war on drugs, adults have turned to "[a] war on children."¹⁰ The articles in this Symposium adopt this premise—that our juvenile justice policy and emerging federal social policy reflect a war on children. Yet the articles are premised on respect for individual differences among young people. They recognize that treating the issues of young people generically denies their individuality and humanity. They translate this respect for the individuality and humanity of young people into proactive and aspirational approaches to the juvenile justice system. Though they criticize the existing regime and the trend toward punitive delinquency policy, they all urge hopeful solutions. Though their answers differ, they pose the question similarly: how do we stem punitive policies born of society's fear and neglect of young people?

A. Leon Higginbotham, Jr., Chief Judge Emeritus of the United States Court of Appeals and the Reverend Jesse Jackson begin the Symposium with papers drawn from their keynote addresses given at the conference. They critique current federal social policy and draw on their personal experiences as they call on us to create a social order incompatible with juvenile crime.

Judge Emeritus Higginbotham epitomizes the Symposium's constructive tone by urging us to seek dignity and justice for all citizens. He presents a powerful critique of the "Contract With America" that "excludes the weak, the poor and the minorities from fundamental human rights."¹¹ Judge Emeritus Higginbotham draws on the civil rights movement as a model of a movement that sought dignity and fundamental human rights for people. He cautions the African-American community to learn history's lesson and honestly discuss the problem of violence in its midst while seeking a "national commitment to take responsible action that will, in the long run, decrease violence and create within our society a mutual respect that makes violence and racism and sexism incompatible with the daily practices of American life."¹²

Reverend Jackson speaks of the complexity of the problem of juvenile crime, which evades simplistic solutions reflected in purely punitive criminal justice policy. "[T]he causes lie both in the home and in the social environment. . . . [T]he solutions lie both in preventive measures and in holding people accountable for their behavior."¹³ He

¹⁰ See Abbe Smith, *They Dream of Growing Older: On Kids and Crime*, *post*, at text accompanying note 150.

¹¹ See A. Leon Higginbotham, Jr., *Violence in America: "Contracts," Myths and History*, *post*, at part II.

¹² *Id.* at part IV.

¹³ See The Reverend Jesse Jackson, *Reclaiming Our Youth from Violence*, *post*, at text accompanying notes 22-23.

urges economic solutions that will in turn create opportunity for young people—on the premise that hope will follow opportunity. He urges African-American communities to use their power to stop the self-destructive cycle of violence. He talks personally of “home-training”—the discipline, respect and character he learned as a child in his home—that must be taught to all children to provide the core of a productive adult life.

The remaining articles examine the nature of the problem, discuss the theories on which a reformed juvenile justice system must be based, and propose attributes of a justice system that addresses the complex reality of juveniles who commit crimes. Janet E. Ainsworth, Associate Professor at Seattle University School of Law, begins by extending the proposal for abolition of the juvenile court that she made in an earlier article¹⁴ and proposing the abolition of both the existing juvenile and adult criminal courts in favor of a unified and reformed criminal court that would address the individual qualities of juvenile and adult defendants. Abbe Smith argues for a juvenile court separate from adult criminal court with full due process and sufficient resources to respond to the multiple social causes of juvenile crime. Stephen Wizner, William O. Douglas Clinical Professor of Law at Yale Law School, addresses his article to Abbe Smith’s proposal and, though he assumes the validity of her social critique, argues that to be effective the juvenile court must be honest about its goals.¹⁵ He proposes a juvenile court with enhanced authority including the capacity to order extended dispositions in serious cases both to protect the community and to rehabilitate young offenders. Catherine J. Ross, Visiting Assistant Professor at Boston College Law School, closes the circle by arguing that the theoretical underpinnings of the juvenile justice system are not stark alternatives of rehabilitation or punishment, discretion or process. Ross demonstrates that the foundation cases of *Kent v. United States*¹⁶ and *In re Gault*¹⁷ recognize flexibility in the juvenile justice system by anticipating delinquency dispositions that both ensure the public safety and rehabilitate the juvenile.

Both Judge Emeritus Higginbotham and Reverend Jackson urge us to reinvision the problem of juvenile delinquency to further our aspirations for young people, their families, and their communities.

¹⁴Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083 (1991).

¹⁵Stephen Wizner, *On Youth Crime and the Juvenile Court*, *post*.

¹⁶383 U.S. 541 (1966).

¹⁷387 U.S. 1 (1967).

While the articles that follow are notable for their commonality, they also present great breadth in their discussion of the nature of the problem and their search for a "coherent theory"¹⁸ to be reflected in the design of a future juvenile justice system.

As a group, the articles are instructive on methodology. Recognizing that the history of the system and the politics surrounding it influence the current debate, the articles discuss both the progressive era, which spawned the current juvenile justice system, and the civil rights movement of the '60s and '70s. Moreover, they highlight the need to act collaboratively across disciplines on both levels of the discussion rather than confining the debate within any individual sphere of knowledge. The articles consistently recognize that the problems of young people who have been marginalized by lack of economic opportunity, racism, and the incapacity of youth require complex responses.

Though both Abbe Smith and Janet Ainsworth conclude with the need for an individualized justice system with sufficient resources to rehabilitate delinquent youth, the form they propose for that system, and their examinations of the cultural and ideological assumptions about children that lie behind the juvenile justice system are quite different. Ainsworth argues for a unified criminal court because the current two-tier system is premised on a misconception about the essential nature of childhood.¹⁹ Ainsworth sees the demarcation between childhood and adulthood as blurred, making modern children more adult-like than their predecessors and modern adults more child-like. Abbe Smith also examines the nature of children and reaches the opposite conclusion. She faults social and economic conditions for depriving many children of their youth and critical pieces of their development, which prolongs and accentuates their childhood. As a result, deprived children are more childlike than their predecessors—creating greater need for benevolence and the individualized approach that is the core of the traditional juvenile court. While Ainsworth views the progressive era as prolonging childhood and contemporary times as shortening childhood, Smith views contemporary times as truncat-

¹⁸ Professor Wizner borrows this phrase from Geoffrey Hazard and agrees that the juvenile justice system is in need of a "coherent theory of its own." See Geoffrey C. Hazard, Jr., *The Jurisprudence of Juvenile Deviance*, in *PURSuing JUSTICE FOR THE CHILD* 3, 4 (Margaret K. Rosenheim ed., 1976).

¹⁹ That misconception—that children are essentially different from adults and characterized by vulnerability and dependence—results in the worst aspects of the juvenile justice system, its lack of adequate attention to procedural rights and lack of adequate resources. Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, *post*, at part II.

ing childhood in favor of premature responsibility and exposure to harsh, growth-stunting reality.

All of the articles in this Symposium support full procedural due process for youth charged with delinquency. The articles note that many juvenile courts still offer the "worst of both worlds"²⁰—inadequate resources devoted to rehabilitation evidencing an ambivalent commitment to that ideal *and* imperfect procedural guarantees. The lack of a right to a jury trial and the frequent inadequacy of representation in juvenile court is cited in the articles as the most troublesome of these procedural inadequacies. These authors would reject any bargain that would compromise due process protections for treatment in a juvenile system.²¹ Though each article supports full due process guarantees, they also support individual, rehabilitation-oriented juvenile justice.

The articles argue the consistency of providing process to maintain the system's integrity and investing the juvenile justice system with hope through dispositions focused on rehabilitation. For example, Catherine Ross argues that individual accountability, rehabilitation, and public safety can live harmoniously in the juvenile justice system. Ross points to Judge Bazelon's opinion in the remand of *Kent v. United States* in which he vacated Morris Kent's waiver into the adult system and his subsequent criminal conviction, advising the government that civil commitment was available. In doing so, Ross notes, "He never, however, lost sight of the conditional terms of the rehabilitative ideal. Rehabilitation—a gift of the state—was possible only after meeting the security needs of society. . . . Bazelon was convinced that . . . [Kent] would remain confined for 'treatment for as long as the public safety requires.'"²²

²⁰ See *In re Gault*, 387 U.S. 1, 18 n.23 (1967) (quoting *Kent v. United States*, 383 U.S. 541, 556 (1966)).

²¹ The notion of a due process bargain is found in the jurisprudence establishing due process in the juvenile justice system and a right to treatment. This phrase refers to the premise that juveniles in the delinquency system have a right to treatment which they receive, in part, by giving up procedural guarantees given to adult criminals. Catherine J. Ross discusses this notion in *Disposition in a Discretionary Regime: Punishment and Rehabilitation in the Juvenile Justice System*, *post* at text accompanying notes 97–104. The implications of that bargain on the future of the juvenile justice system is the subject of current discussion. At a September 1995 conference entitled "Looking Back, Looking Ahead: The Evolution of Children's Rights" that was jointly sponsored by Temple University School of Law and the Juvenile Law Center in Philadelphia, Pennsylvania, discussion of the future of the juvenile justice system turned to the observation that attempts to win rights for juveniles through a "due process bargain" have had unintended consequences, opening the door to proposals for full due process in the juvenile justice system in exchange for punitive dispositions or expanded waiver of young offenders into the adult criminal justice system. For an example of this view in the judiciary, see *In re K.B.*, 639 A.2d 798 (Pa. Super. Ct. 1994).

²² Catherine J. Ross, *Disposition in a Discretionary Regime: Punishment and Rehabilitation in*

The articles recognize the complex relationship between rehabilitation and punishment in the juvenile justice system, and that the structure of a revised juvenile justice system should reflect that complexity as well as take into account the many dimensions of children. Janet Ainsworth criticizes the juvenile court for emphasizing the attributes of childhood as its basis over the attributes of race, class, and culture. Abbe Smith agrees that the design and theory of the juvenile court must incorporate the many dimensions of children. She points out the enormous impact that culture, economics and race have on the development of children, particularly in poor, urban areas. The tone of her paper and her choice of sources emphasize the need to reform the juvenile justice system by drawing on the voices and cultures of juveniles in the system. Smith eloquently relates the dilemma of childhood in the criminal justice system through her experience with a young defendant. By weaving this individual account through her article, Smith reminds us of the need to incorporate the context of young people's lives into system reform and poignantly draws our attention to the marginality of young people in society and in our justice system.

After noting the need for a "coherent theory" for the juvenile justice system and comparing the treatment of an offender in the adult criminal, mental health, and juvenile systems, Stephen Wizner concludes by supporting a reinvigorated and separate juvenile justice system.²³ Abbe Smith argues for the compassion one can find only in a system designed for children and in which determinations focus on the individual qualities of each child. Catherine Ross concludes that the individual dispositions that represent the best of the juvenile court rehabilitate the young offender and serve society's needs. Even Janet Ainsworth, who favors abolition of the current two-tier system, does so in favor of a more individual criminal justice system for both juveniles and adults.

All roads seem to converge. Ultimately, the search for a coherent theory and system reform found in this Symposium helps us to identify common ground on which to build the future of young people and a healthy society.

the Juvenile Justice System, *post*, at text accompanying note 67 (quoting *Kent v. United States*, 401 F.2d 408, 412 (D.C. Cir. (1968))).

²³ This represents a shift in position for Professor Wizner, who in 1977 wrote in favor of abolition of the juvenile court. See Stephen Wizner & Mary F. Keller, *The Penal Model of Juvenile Justice: Is Juvenile Court Delinquency Jurisdiction Obsolete?*, 52 N.Y.U. L. Rev. 1120 (1977).