Late-Modern Future of a Switch-Hitting Juvenile Court: Where Did It Come From - What Is It - And How Will We Know When it Arrives

Simon I. Singer
THE LATE-MODERN FUTURE OF A SWITCH-HITTING JUVENILE COURT: WHERE DID IT COME FROM? WHAT IS IT? AND HOW WILL WE KNOW WHEN IT ARRIVES?

SIMON I. SINGER*

INTRODUCTION

The contemporary juvenile court can no longer be viewed as the tightly focused regulative court that its late-nineteenth century reformers once envisioned.1 It is not the tightly coupled coordinating court of jurisdiction that its creators once hoped for when arranging for the treatment or dispositions of delinquent youths. Instead, it has become just one legal setting in a multitude of treatment and justice systems. For many juveniles charged with the least serious of offenses, the juvenile court is to be avoided. Instead, diversion into a set of treatment-oriented programs has created the "soft-end" of juvenile justice. For juveniles who are charged with serious violent offenses or have a history of chronic delinquency, the criminal court has become the center of judicial decision making, sentencing, and criminal punishment. While the "hard-end" in the shape of a public criminal court and a public criminal record is clearly visible, the soft-end is not, and the juvenile court has become just one of many possibilities in increasingly bureaucratic systems of juvenile justice.2

† On November 7, 2007, the Notre Dame Journal of Law, Ethics & Public Policy hosted a panel discussion entitled, "Lost Innocence: Hope and Punishment in the Juvenile Justice System." Professor Singer's remarks have been revised for publication.

* Professor at the College of Criminal Justice, Northeastern University; Ph.D., University of Pennsylvania, 1980.

1. For the most recent account of the original goals of the juvenile justice system, see DAVID S. TANENHAUS, JUVENILE JUSTICE IN THE MAKING (2004). An earlier historical account that should be noted as presenting an image of a tightly focused juvenile court is contained in the words and experience of Judge Ben Lindsey. See Paul Colomy & Martin Kretzmann, Projects and Institution Building: Judge Ben B. Lindsey and the Juvenile Court Movement, 42 Soc. Probs. 191 (1995); see also MURRAY LEVINE & ADELINE LEVINE, HELPING CHILDREN 115–141 (1992).

Why is the juvenile court no longer the coordinating court of jurisdiction for many juveniles in the juvenile justice system? Is there actually a system of juvenile justice or are there too many systems to have a single court to coordinate both its treatment and punishment objectives? How can we think about a juvenile court that meets the best interests of society in responding to delinquency and preventing delinquents from becoming adult offenders? The answer that I will present is not to eliminate the juvenile court, but to revise the way that we think about its ability to function in a complex modern society. I will draw on the term "modernity" to suggest complexity in the current state of juvenile courts. My reading of the history of juvenile justice is not only informed by a theory of modernity, but also by a theory of complex organizations in a post-industrial modern society.¹

Modernity may be defined by specific time periods in America's past industrialization and its current high-tech information and service economies. My objective is not simply to review history in light of contemporary social theories of modernity, but to recommend a way of thinking about juvenile justice that is not that far removed from the way we have always thought about a singular system of treatment and punishment. I will draw on the idea of a juvenile court that is able to combine regulative and the normative objectives in a single coordinating court of jurisdiction. I use the term "a switch-hitting juvenile court" to represent a court that is both regulative and normative in its ability to emphasize safety and control. Several coordinating features of a switch-hitting juvenile court draw on the contemporary literature on complex organizations and focus on transparency and tight-coupling. A switch-hitting juvenile court repeats the contemporary language of modernity.

But before proceeding, consider briefly the current state of juvenile justice. First, there is more than one system of juvenile justice to consider. Second, these systems persist not necessarily because they have been proven to meet their stated objectives. Rather, they are often there to provide an impression of doing something about juvenile crime or delinquency. They fall into the political range of interests and concerns, ideas that are worth pursuing in the wake of public calls to do something about juvenile delinquents. Third, systems of juvenile justice may be considered either exclusionary or inclusionary in their efforts to treat and to punish. The inclusionary is less stigmatizing and allows

¹ See Anthony Giddens, The Consequences of Modernity (1990) for a theory relevant to understanding the late-modern as opposed to the industrial-modern world.
youths to become adults without a disenfranchising record. They may move on in their educational and occupational pursuits. However, I will suggest that inclusionary forms of justice are often less satisfying than penalties that exclude.

Sentencing juveniles to criminal court or isolating them in a prison is exclusionary, visible, and often most satisfying to the public. The state of inclusionary forms of juvenile justice is not only less visible, but also fleeting, and frequently entails doing virtually nothing to provide treatment for troubled youths, such as when probation officers are much too busy to spend time counseling youths. But there are other forms of soft-end diversions that yield little proof of success. These include juvenile drug courts, teen or peer courts, and even therapeutic schools just to name a few of many possibilities. Juveniles often enter these soft-end treatment programs because if they fail to do so they can face punishment in juvenile court. Similarly, failing to conform to the requirements of juvenile court can lead to criminal court. This too is juvenile justice, as some youths commonly thought of as under the age of majority are eligible for criminal court. The assumption held by states which provide hard-end justice for juveniles is that if they are old enough to commit a violent act, then they are old enough to serve the adult form of punishment. But this exclusionary form of punishment is with a background of inclusionary sanctions so that a segment of juveniles are deemed as lacking adult criminal responsibility.

The issue of adult legal responsibilities is at the heart of both the soft- and hard-ends of juvenile justice systems. The U.S. Supreme Court in *Roper v. Simmons* acknowledged the need for juvenile justice when it disallowed a state court's sentence of a seventeen-year-old to death. In the opinion of the majority of justices, seventeen-year-olds have a diminished sense of adult responsibility. The justices cited research in developmental psychology that shows adolescents are less rational and more impulsive than adults. Not surprisingly, they agreed that juveniles are not as mature as adults. The justices also cited evolving standards of decency. For example, the vast majority of developed nation-

---

4. For discussion of some of these soft-end diversions, see, e.g., *Juvenile Drug Courts and Teen Substance Abuse* (Jeffrey A. Butts & John Roman eds., 2004); Simon I. Singer, *Criminal and Teen Courts as Loosely Coupled Systems of Juvenile Justice*, 33 Wake Forest L. Rev. 509 (1998).
6. *Id.* at 569.
7. *Id.*
8. *Id.* at 564–67.
states no longer execute their juveniles. This again is no surprise in the sense that the modern nation-state is a civilized state. Still the Supreme Court maintained the right of states to prosecute and convict juveniles as if they were adults. *Roper v. Simmons* is only concerned with the ultimate penalty of death as it might be applied to juveniles under the age of eighteen.

Essentially, the Supreme Court reiterated only one aspect of the past that affirmed that adolescents are socially and legally distinguishable from adults, and ignored that aspect of history recognizing the juvenile court as the only court of jurisdiction for the punishment of juveniles. It left open the door to criminal court and life without the possibility of parole, while denying the significant age-specific reason for a juvenile court. The Supreme Court allowed the current bureaucratization of juvenile justice to persist in its divisions between treatment and punishment in juvenile or criminal court.

In presenting a late modern vision of a switch-hitting juvenile court, I wish to limit the current bureaucratization of juvenile justice. The regulative and normative concerns with safety and control will not be satisfied by a continued expansion of the soft- and hard-ends of our justice systems. Instead I will suggest that juvenile justice requires first an acknowledgment of its regulative and normative roots and the ways that it can function to meet the demands of an increasingly complex society. Both the regulative and normative functions of law can be considered in a reinvigorated juvenile court that is able to coordinate both its soft- and hard-ends in a single system of justice. This would mean eliminating criminal court for juveniles, while addressing the normative concerns of a society that requires a segment of its delinquents punished. Similarly, it would also require at the soft end of juvenile justice systems, the elimination of drug and teen courts as separate courts of jurisdiction, although the services and treatments that they offer would be provided by coordinating the regulative aspects of a juvenile court. The regulative mission of the juvenile court should be maintained with soft-end treatment, and the normative mission with hard-end sanctions.

---

9. See id. at 577.
10. Id. at 568–69.
11. The term "bureaucratization" describes not only complex organizations that are ritualistic but also those that seem to have endless divisions of labor that serve no specific purpose. For an excellent review of the many images or frames of complex organizations, particularly as they relate to the business world, see generally Lee G. Bolman & Terrence E. Deal, *Reframing Organizations* (1991); Gareth Morgan, *Images of Organization* (2d ed. 1997).
To picture the regulative and normative missions of a reinvigorated juvenile court is not an easy task, and my argument is mainly theoretical. The idea of a switch-hitting juvenile court still needs to be developed along with the regulative and normative functions of juvenile justice. For now I will emphasize the need for organizational transparency and tight-coupling in the administration of justice. To make the theoretical argument I draw on a metaphor based on the switch-hitting batter in the game of baseball. Switch hitters are able to draw on their ambidextrous skills to improve the odds of getting a hit. They are able to shift their batting stance from left to right, according to the throwing direction of a pitch. A left-handed pitcher will usually cause a switch hitter to bat from the left, while a right-handed pitcher from the right. Managers often call on their switch hitters to pinch hit when there is a change in pitchers. A switch-hitting juvenile court would similarly be able to confront a variety of youths and adolescents; those who can throw the unexpected curves that lead to a serious response. It would be prepared to provide soft-end and first resort treatment-oriented options, but also hard-end and last resort penalties. This soft-end focuses on the regulative mission of the juvenile court, while the hard-end is concerned with the normative.

The words "regulative" and "normative" in the social control literature have come to take on meanings that are often interchangeable. The normative is a derivation of the word norm, and suggests the primacy of the group. Normative behavior is behavior that conforms to the group. The group may be defined as a group of friends, community, neighborhood, village, or society. Legal norms are codified and reflect criminal, civil, or administrative laws. Social norms are not necessarily codified and are associated with particular groups. The normative aspects of life are particularly clear when there is considerable overlap with social and legal norms. There may be deviation from the group, but that deviation is easily recognized and acknowledged. In terms of understanding the forces of social control, there is little need to go beyond a single group.

But modern societies cannot easily box their members into a single group, neighborhood, community, or society. The definition of modern societies is one that consists of a variety of groups, neighborhoods, and communities. In the sociological literature, such terms as "pluralistic," "heterogeneous," and "subcultural" are cited to describe the fact that modern societies are not composed of a single normative group. Instead there are pastiches of groups, neighborhoods, and communities to consider each with its own ways of behaving that are difficult if not impos-
sible to describe in a purely normative sense of the word. In terms of delinquency and crime, the social norms of a violent gang are obviously in conflict with the legal norms of society. Similarly, what is normative for adolescents is not for adults. The bottom line in the normative view of understanding human behavior is that an identifiable group defines the deviant, delinquent, or criminal. Clearly certain norms, such as "thou shalt not kill," are clearly normative and universal, although they are too subject to debate as in a trial when act of killing is defined as act of murder as opposed to act of defense.

But for the less serious category of offenses that are often relegated to concerns about the values of a society, such as the value placed on school attendance and underage alcohol consumption, the regulative comes into play. The word "regulative" is rooted in the idea of an object to be controlled or a principle to be pursued. It is not clearly defined in the context of a specific group. While the normative excludes (you are either part of the group or not), the regulative advocates, such as for the regulation of safety. In the complex world of social control, the regulative is oriented towards the principle of risk management. To regulate is not only to manage, but also to acknowledge deviance and the risks of things going wrong. For instance, parents typically regulate the behavior of their children. They regulate generally with several principles in mind. One principle that would reflect their view on delinquency and overlaps with a traditional juvenile court is the idea of regulating safety. A lot of child rearing is centered on maintaining the safety and health of the child as he or she matures from childhood to adolescence.

Modern societies and their governments are also in the business of regulating safety, and this comes in the form of regulating crime. This is one aspect of the American progressive agenda that was first introduced in the nineteenth century. Juvenile justice was to fit the regulative mission of a modern-day society. It differed from the exclusionary object of normative control; it was less about identifying the deviant in the community and sanctioning his or her behavior and more about avoiding the continued risk of trouble. It was about regulating safety just as a physician would regulate a temperature that was marked to be much too high.

In advocating a switch-hitting juvenile court, I will suggest a court that is able to integrate its regulative mission of safety and society's demand for normative control. It is a way of thinking beyond the notion that social welfare and social control objectives are mutually exclusive and oppositional.\textsuperscript{13} To make the case for a switch-hitting juvenile court I not only draw on theories of modernity, but also on research literature that repeatedly shows a multitude of complex organizational goals and interests. The simple paradigm of a single normative system of control makes little sense in the wake of the current late-modern world.\textsuperscript{14}

\textbf{Purpose}

To lend order to the multitude of ideas that relate to this paper, I begin by first discussing early industrial modernity's attempt at juvenile justice. I expand on the point that the nineteenth century is the period when America's progressive reformers advocated social institutions that reinforced the age-specific stage of life that would come to be known as adolescence. I suggest that industrialization socially extended the dependency of childhood into late adolescence, and that this basic fact had implications for the coordinating objectives of several progressive institutions. The most notable in the progressive agenda is compulsory school attendance and the passage of child labor laws. Houses of refuge, reformatories, probation, and then juvenile courts can be viewed as one set of progressive reforms to regulate the lives of its youth. But in reviewing the development of a juvenile court, I will note the inability of late-nineteenth-century advocates of juvenile justice to take into account the normative need to see the offender punished.

The second part of this paper expands the critique of a traditional juvenile court by drawing on the due process requirements of the Supreme Court as mandated in the \textit{Kent}\textsuperscript{15} and \textit{Gault}\textsuperscript{16} decisions. I draw on a theory of modernity and organization to suggest that the court advocated bifurcating systems of justice. Without the coordinating features of a court of jurisdic-

\textsuperscript{13} \textit{See generally} Barry C. Feld, \textit{Bad Kids: Race and the Transformation of Juvenile Court} 287-330 (1999).

\textsuperscript{14} Although I make this distinction between the normative and regulative aspects of the social, legal, and administrative, most sociological and organizational theorists do not.

\textsuperscript{15} \textit{Kent} v. United States, 383 U.S. 541, 554 (1966) (holding the transfer of juveniles to adult court must comply with required procedures).

\textsuperscript{16} \textit{In re} Gault, 387 U.S. 1, 30-31 (1967) (holding a juvenile court adjudication is subject to the Due Process requirements of the Fourteenth Amendment).
tion, the contemporary post-

134 NOTRE DAME JOURNAL OF LAW, ETHICS & PUBLIC POLICY [Vol. 22

Gault] juvenile court began to loosen its legal jurisdiction. I relate bifurcating systems of juvenile justice to modern-day complexity, expert systems of knowledge, and the absence of a localized sense of place. I suggest that these are processes of modernity, and they have contributed to the current endless splitting of juvenile justice.

In the third part of this paper, I extend late-modernity theory to suggest the parameters of a switch-hitting juvenile court. I emphasize its regulative and normative functions within the context of judicial leadership and a tightly-coordinated and transparent system of juvenile justice. The regulative and normative functions of a juvenile court, I further suggest, produce disparities in our systems of juvenile justice. For youths living in affluent suburban cities, the regulative features of juvenile justice provide treatment through diversion. For those who reside in the impoverished inner cities, the juvenile court has become less treatment-oriented, lacking any of the services that might be available in more affluent suburbs. Instead, a hard-end of juvenile justice exists often with transfer to criminal court, creating increased disparities in the sentencing of troubled youths. I conclude by suggesting that a more visible and tightly coordinated juvenile court would reduce disparities in juvenile justice and provide the legal rules that could prevent states from having to punish their juveniles as if they were adults.

I. INDUSTRIAL MODERNITY AND THE CREATION OF THE JUVENILE COURT

May those that love us, love us,
And those that don't love us,
May God turn their hearts.
And if He doesn't turn their hearts,
May He turn their ankles
So we will know them by their limping.17

The time has long passed when the turning of ankles could be considered appropriate ways of identifying the deviant. The turning of ankles by today's standards is considered cruel and unusual punishment. But in pre-modern times, this physical side of punishment served several important functions. First, it clearly marked the offender, creating the visible stigma that distinguished the individual from the group or community. Knowing the offender and being able to watch over the offender is important as stated in the concluding line of the above Irish blessing.

17. An Irish blessing on a wall plaque in the Morris Inn at the University of Notre Dame, November 7, 2007.
There, the "turning of ankles" reinforces social norms of the community from which the poem comes. In a sense, the physical mark of punishment represented the visible rules of law, rules which are now codified into the criminal law. Typically, we view legal norms as specific to criminal law, and law that is backed up with specific sanctions clearly related to the seriousness of offense. But the high degree of consensus that once marked the criminal was no longer in place by the time that industrialization appeared in the nineteenth century. The factory began to segregate or compartmentalize individuals on a larger scale than was the case in previous centuries. During these pre-modern times there was less institutional segregation in the chronological life course of individuals.

Historians and cultural theorists repeatedly emphasize that over the course of the nineteenth century, modern societies extended childhood into a period of time that would commonly become known as adolescence. Society's need to do so can most directly be attributed to the way most people living in industrialized cities were required to live. They needed to commute to a place of work, and their workplaces required skills that could not be easily duplicated without training or formal education. The ability to know the technical skills required to succeed in an industrial society demanded longer and more compulsory age-segregated forms of education.18

It is no accident in time that the beginnings of juvenile justice in the shape of America's first institutions for juveniles appeared early in the nineteenth century. At about the same time New York's House of Refuge was built for the treatment of delinquents, the age period when youths were required to attend public school was extended. This is the birth of adolescence in age-segregated forms of compulsory schooling and its back-up system of juvenile justice.

But it was not a simple factory but a complex factory that required the extension of childhood, the creation of adolescence, compulsory schooling, and the beginnings of juvenile justice. There was complexity in the form of industrial modernity with many divisions of labor. The assembly line illustrates the divisions that would take place in moving raw materials into desirable products. For those who believed in the promise of

18. Juvenile justice as it relates to the newly created category of adolescence is also related to the nineteenth-century requirements for extended periods of public schooling. A number of culturally sensitive reviews cite adolescence as a distinct historical phenomenon. See, e.g., Jon Savage, Teenage: The Creation of Youth Culture 1 (2007).
industrialization, the factory also exemplified the rational pursuit of modern-day life.

Yet the modern industrial city not only became a source of economic prosperity; it also became a source of impoverishment. It created instability and newly desired needs in an increasingly complex and divided world. No matter how historians and the sociologists have commented on nineteenth-century industrial modernity, the picture is virtually the same. It is a story of complexity and the instability of place. Individuals who were able to escape poverty learned to adapt to modernity by leaving their local and traditional sense of place. They moved and developed the specialized skills that were required by an increasingly complex society.

This complex vision of society is emphasized in the scholarly writings of distinguished nineteenth-century social theorists like Emile Durkheim, Max Weber, and Karl Marx, who presented a vision of industrial modernity.19 They all presented a vision of modernity that was grounded in their emerging European industrial worlds. For Durkheim the sources of social control could be found in the complexity in divisions of labor. These divisions, he suggested, created the specialization that an industrial society required to maximize its productivity. The unintended consequence of all this specialization produced the social alienation that Marx repeatedly observed. The village and its traditional marketplace was no longer to be observed for it would evaporate into air.20 For Durkheim, the divisions led to his theory of anomie based on the fact that individuals were gradually more on their own. Of particular concern was the expectation of living in a world where the business was producing things that went beyond the individual's basic needs. Society needed to regulate desires in the wake of increasing affluence attributed to industrialization.21 The regulative view of modern-day life was also observed by Weber in the conflicting organizations that emerged, and the way that bureaucracies took on a complex life of their own.22 The bureaucratic Weber saw complexity and con-


21. See Durkheim, Labor, supra note 19.

22. See Weber, supra note 19.
flict as endemic to the desires of those manning government
offices and the desires of the public to know the reasons for all
those complex decisions. Following the German philosophers of
the time, industrial modernity and the promise of a highly ratio-
nalized world were treated with significant suspicion.

In relation to juvenile justice, systems of regulating the lives
of adolescents were beginning to come into place in the wake of
industrial modernity. The reasons for doing so are worth repeat-
ing. First, educational systems emerged to separate the place of
school from the place of family. The place of work was already
separated from the place of the family in an industrial society,
producing the age-segregated environment previously noted.
Second, the street corner became a significant place in the lives
of youths. The street corner was the localized village, but it was
one that consisted of youths. There was a place on not just one
corner but a multitude of corners. Corner boys could be distin-
guished from college boys, and in densely-populated inner cities
commentators began to note the problem of youth gangs and
the failure of city officials to control their emergence. Third,
social institutions were needed to assist youths in their transition
from adolescence to adulthood. They were required so that
youths were not as much on their own. The school was the most
dominating institution.

Compulsory public school attendance required a back-up
sanction and an offense category. The regulation of truancy was
one of the missions of juvenile justice. It is not the only status
offense to emerge. Status offense categories that would lead to a
view of delinquent in a special children's part of criminal court
could be quite general. The category of ungovernable was
enough to set in motion the possibility of youths also finding
themselves in houses of refuge. Soon the option of houses of re-
uge, reformatories, or training schools looked less desirable. Offi-
cials advocated for alternatives, and the idea of probation also
became a system for regulating the lives of youths.

By the end of the nineteenth century there were too many
possibilities or systems of juvenile justice. There was rising con-
cern about the many administrative categories and the legality of
these categories. According to officials at the time, a court of
jurisdiction was needed to make sense of reformatories, proba-
tion, social work, and mental health clinics. The juvenile court
became a "work in progress." It was to be the unifying court of
jurisdiction to bring together systems of juvenile justice. In this

24. See generally TANENHAUS, supra note 1.
sense it was regulative in the way that an industrial modernity was in the business of regulating the factory, the city, public health, child labor, and now delinquency and youth crime. The objects of regulation were to create a more rational and ordered society—one that would be productive and efficient. The engine of productivity could be observed in a well-ordered factory and a well-designed city. It could also be obtained through public health that would reduce the risks of disease, injury, and disaster. The progressive agenda stayed focused on issues of safety by creating regulative courts and agencies. The juvenile court was just one of many regulative courts that appeared on the list of progressive late-nineteenth-century reformers.

But for those who were well aware of the social psychology of groups and the split between the regulative desires of a complex society in the wake of a decline in a simple normative order, there was a major paradox to be confronted that could not easily be resolved then and today. The juvenile court to its critics simply extended the paradox in the form of a confidential non-adversarial civil court where the sole stated purpose was the best interests of the child. Treatment, not punishment, as the object of juvenile justice could not be maintained in the newly formed juvenile court, because this kind of regulative view of delinquency conflicted with the normative force of law.

We can see the regulative force of the juvenile court in the words of many of its early-twentieth-century advocates. Judge Julian Mack questioned the justification for a newly created juvenile court:

> Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if he learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.\(^2^5\)

Mack states simply the reason not only for a juvenile court but also for a regulative view of juvenile justice. According to Mack, the state should go beyond “asking merely whether a boy or a girl has committed a specific offense.”\(^2^6\) The specific offense matters little. The regulative function of the court is to move beyond offense categories. To learn about the delinquent is to learn how to prevent the delinquent from turning into an adult criminal. Thus, the court performs a function that in theory alters the

\(^{26}\) *Id.*
pathways or structures in the life of troubled youths. To repeat, the regulative view is one where offense matters little and is only considered important as it reflects a particular pathway to criminality.

Not only did the particular offense matter little in the progressive image of a traditional juvenile court, but the offense and the offender were also not to be publicly observed. To turn a delinquent into a worthy adult citizen required a veil of confidentiality. The juvenile's entrance into the juvenile court was to be hidden to avoid the stigma of an arrest and a criminal conviction. In this sense the juvenile court was an anonymous court, an unobservable regulatory court, existing to identify deviance or crime in the newly created category of delinquency.

For the early critics of the juvenile court, this confidential regulatory court conflicted with the basic principle of normative control. George Herbert Mead, the distinguished early-twentieth-century social psychologist, feared that the juvenile court was an experiment that might not work. The problem for Mead was that it conflicted with the normative needs of society. He wrote it is psychologically impossible "to hate the sin and love the sinner." To love the sinner appeared critical to the rehabilitative model and to the regulative shape of the juvenile court. The question that remained in Mead's mind was how the juvenile court could really condemn the sin without condemning the sinner.

Durkheim pushed the regulative envelope even further by suggesting not only divisions of labor, but also the notion that punishing the offender brings a society together. For Durkheim this was not a simple act of defining normality. Recall the point that society now was composed of many divisions of labor in the industrial world that he observed in nineteenth-century France. Instead, the normative had to be located within these specialized worlds. The professions would create their own normative order, and seriousness would become relative. Law would switch from a more repressive-visible-physical shape towards a more restitutive, less-visible psychological form.

So Mead and Durkheim both knew that the normative was important and could not nearly imagine how a regulatory form of juvenile justice could ignore completely the normative force of law, especially when it came to serious-offense categories. For the normative shape of law to have any meaning in a regulative juve-

---

28. Id.
29. See DURKHEIM, LABOR, supra note 19.
nile court, it was first important to distinguish categories of offenses. The mixture of minor and major offenses, status and non-status, into generalized acts of delinquency were for the purpose of focusing on the individual and not on the specific offense, to repeat the point raised above by Judge Mack. But in focusing on the offender and not the offense—to love the offender and not to hate the sin—created not only the psychological conflict to which Mead alluded, but also an organizational conflict with respect to the status of the offender. In the normative sense of law, the offender was important, and identification of repeated offensive behavior was critical. It made little sense to criminologists and the general public to ignore the prior-offense history of the delinquent, for to ignore chronicity in offending behavior is to ignore the predictive value of the past as a determinant of the future.

At this point it is important to consider complex organizational theory and how it may be relevant to understand the inability of a juvenile court to merge the regulative and the normative. The first is organizational coupling. Complex organizations involve a multitude of decision makers all operating within specific subsystems. The organizational model of an industrial modernity was that of a machine. This is reflected in the time-management theories of Frederic Taylor, who produced a discipline of organizational behavior that is referred to as Taylorism. The basic assumption is that people can be treated as if they were machines, studied for their ability to conform to specific tasks on an assembly line, and then worked in a way that would produce maximum efficiency. The trouble with this tightly-coupled view of organizational behavior is that it neglected the human or emotional element that was involved in people's labor. People on an assembly line are unlikely to be able to perfectly synchronize their mental states. Indeed, as critics of Taylorism have noted, demands of such conformity literally drove workers nuts.

Yet the case for a tightly-coupled system can be made based on the words of the early juvenile court judges that populated the newly created juvenile courts. They were not only reformers, but also charismatic individuals who David Rothman referred to as creating a "cult of judicial personality." It was a tightly-cou-

30. See supra text accompanying note 25.
31. For an excellent review of Taylorism, see Morgan, supra note 11, at 22-26.
32. See David J. Rothman, Conscience and Convenience (1980) (providing an excellent historical review of juvenile court judges and introduction the "cult of judicial personality" as a term).
ple view of the juvenile justice system as one that allowed a single official in the form of a juvenile court judge to understand, observe, track, and maintain both the treatment and punishment objectives of the court. I will not repeat the Judge Ben Lindsey stories, such as his weekly visits to reformatories to check on the treatment of the juveniles that he placed there. Rather, I will simply state that a reading of Lindsey's view of juvenile justice is one that was dedicated to not only understanding the youths who entered his courts but also to maintaining control over official decision making.

Thus the cult of judicial personality produced tight coupling to the extent that Lindsey was his own probation officer. Judge Mack saw Lindsey's approach to juvenile justice as naive and not easily reproduced. He was well aware of the ability of Lindsey to act in a way that went beyond the courtroom. Mack stated that Lindsey's tactics could not be duplicated because his work depended too much on personality and not enough on organizational structure. Mack stated:

Judge Lindsey cannot be imitated, because his work depends upon his personality. . . . His real greatness is his work as his own chief probation officer. Now, if a judge happens to be fitted by nature to be the chief probation officer in his community, and if his community is of a size that he can combine the work of the judge and chief probation officer, that community is fortunate. But the lines of our work should not be laid out on the basis that we are going to find that unique personality in any of our communities.33

The problem for Judge Mack and advocates of a more bureaucratically-attuned juvenile court is that there are too few "personalities" to fill the role of a super parent.

Both Mack and Lindsey were correct in their ideal vision of a juvenile court. But rather than think of Lindsey merely as a personality, we might view him in organizational terms as a leader. The juvenile court judge in a sense is a chief executive officer. Judges in the regulative court for juveniles are to lead, not to be managed. However, the literature on judicial decision making is one that emphasizes the role of the juvenile court judge as one that is managed. Decisions are often already made for the judge by the time a case is to be heard. Instead of juvenile court judges

managing, they are managed. This is not leadership in the organizational sense of the word.

The term "cult of judicial personality" is too easily dismissive of Lindsey's attempt to create a tightly coupled system of juvenile justice. It ignores the fact that he was transparent about his ability to decide the status of youths. Lindsey did not hesitate to respond to both regulative and normative concerns. He was willing to use the hard-end of the system in the form of exclusionary controls. But he was able to draw on inclusionary forms of control through the use of probation. The critical ingredient for Lindsey was not only maintaining tight coupling in its organizational objectives but also attaining transparency in observing and reporting the actions of officials.

Yet for juvenile courts that were not as tightly coupled around the regulative and normative objectives as Judge Lindsey's court was, a loosening of goals emerged and the stated best interests of juveniles conflicted with principles of justice. Based on his observations of juvenile justice and a theory of delinquency, David Matza produced one of the most cited sweeping critiques of juvenile justice in general and the juvenile court in particular. In the first part of his 1964 book, Delinquency and Drift, Matza reviewed subcultural theories of delinquency and suggested, as I have at the beginning of this article, they were too singular in their normative approach. They emphasized too much delinquency and neglected to explain why everyone in subcultural groups failed to become delinquent. He repeated the standard argument of control theorists, stating that only a small proportion of youths become seriously delinquent. Nonetheless, he departed from control theorists to suggest also that there was not one singular group controlling the lives of adolescents in a modern society.

Matza presented a more dynamic view of delinquency and control. He rejected the static normative conception of control. He repeated the standard critique of a sociology that was structured around a normative conception of group or an over-socialized conception of human behavior. For Matza there was validity to an ongoing regulative view of life that took into account a multitude of meanings and ways of interpreting behavior deemed as deviant, delinquent, and even criminal. In presenting a dynamic


35. Matza's book is one of the most highly cited books in criminology. It has surely had influence on my own work and, I believe, the work of Professor Barry Feld. See David Matza, Delinquency and Drift (1964).
conception of delinquency, he agreed with labeling theorists that a lot of delinquency was episodic, trivial, and of little consequence. Delinquency turned serious when the juveniles were identified repeatedly as delinquents and isolated by a system of justice that was perceived to be exclusionary and unfair.36

For Matza what is normative in the adult world was not necessarily normative in the social world of adolescents. Delinquency was more or less public and common in the world of adolescents, particularly in the form of status offenses, such as possessing alcohol or skipping school. There was a risk in punishing youths as delinquents for these common acts of delinquency because they generally desisted, if not identified, as delinquent.37

The risk of identifying juveniles as delinquent for Matza was the same as if they were identified as criminal. But juveniles had more to draw on in sensing legal injustice. In particular, they expected juvenile justice and they received criminal justice. Delinquents saw little in the way of individualized justice, and more in the way of offense-based justice. This adult principle of offense-based justice clearly operated in the criminal court, it emphasized a relationship between the severity of punishment and the severity of crime, and it also operated in the juvenile court. The difference is that while the criminal court was explicit about this normative function, the juvenile court was not.38

Matza further suggested that a delinquent subculture would emerge for a small segment of disgruntled and labeled youths. They would become committed to their deviant values and the norms because the juvenile court failed to provide them with a sense of justice. Delinquents in this serious category were at risk of becoming chronic adult offenders. For these delinquent youths, the sense of legal injustice that is perpetrated by a loosely coupled juvenile justice system leads them to become serious delinquents.39

The sense of legal injustice may be viewed as reflecting the basic conflict between the regulative and normative forces of law. In the terms Matza draws on, it is the conflict between the principle of individualized justice and the principle of offense. The normative is clearly in the principle of offense—the seriousness of the offense is critical to the election of criminal as well as juvenile court judges and to the idea of protecting the community. The juvenile court may state that it is in the business of treatment

36. Id.
37. Id.
38. Id.
39. Id.
or pursuing the best interests of the juvenile, but in reality, it must respond to normative concerns, which means addressing the seriousness of the offense. The juvenile who expects individualized justice but receives instead the offense-based retributive objectives of a juvenile court is at risk of becoming a serious delinquent.

Matza further states a set of doctrines that qualify the principles of offense and individualized justice. These doctrines are able to be invoked by juvenile justice officials to modify the decision making that leads to a wide range of possible dispositions. The first doctrine is straightforward control—the doctrine of parental sponsorship. Juvenile court judges will readily admit to this one, noting that parents make a difference in the way they decide a case. If the judge knows the juvenile has caring parents or adults who are willing to look after the alleged delinquent and keep the youth on a straight and narrow path, the judge is less inclined to incarcerate the youth.40

The second doctrine Matza calls the doctrine of residential space. Here, Matza is not just discussing space in existing prisons. Rather, residential space relates to the old adage, "You build them. We will fill them." This is purely organizational justice by geography based on capacities in the stated administration of justice. It is specific to particular systems within a larger, broader concept of administering justice given the availability of limited resources. While juvenile court officials will attempt to deny it, when pressed with the data, they will often acknowledge that organizational capacity makes a difference. A serious offense may or may not lead to incarceration based on the capacity of institutions to provide delinquents with residential space.41

The sense of injustice that can emerge from these conflicting principles and doctrines can make a bad situation even worse. This is where Matza's critique is most devastating, for it suggests that the juvenile court is too loose, too conflicting in its organizational mission, and neither regulative nor normative in its ability to control and prevent serious delinquency. Matza was not alone in his critique. An emerging chorus of critics emerged in the sixties to complain about the rehabilitative ideal and the ability of the state to decide the best interests of its youth in a confidential court of jurisdiction. The concern was not only with a loosening of principles, purposes, and system of juvenile justice, but also with a vast non-visible bureaucratic juvenile court.

40. Id.
41. Id.
A new generation of child-savers first wished for the determination of justice in an adversarial process that could determine the truth about the alleged delinquent behavior. They wished for both the normative and the regulative.

II. Late Modernity and the Contemporary Juvenile Court: What Is It?

Matza's critique overlapped with the critique of scholars who viewed the court's confidential, non-adversarial procedures as creating what the U.S. Supreme Court would later view as neither providing justice nor the solicitous care promised by its reformers. In a series of due-process oriented decisions that first appeared in Kent v. United States and then continued with In re Gault, a majority of court members viewed delinquents as receiving the worst of both worlds.

The due process revolution that would occur for juvenile court can first be traced to Kent. In Kent, a chronically violent youth was transferred by a juvenile court judge to criminal court without a hearing. The U.S. Supreme Court, in its first case of juvenile justice, wrote, "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." In other words, the juvenile court failed to meet its normative and regulative functions. The evidence was theoretically strong based on the impressions of juvenile court critics, but empirically weak. It was a blanket condemnation of juvenile justice, and it was one based on a theory of justice that was normatively grounded in the need to see the offender punished.

Although the Supreme Court's condemnation of a traditional juvenile court stopped short of fully advocating adult due process rights for juveniles by later rejecting the right to a trial by jury and protection against preventive detention, it did provide a semblance of justice through an adversarial process that guaranteed youth threatened with incarceration the right to legal representation. In seeking the "best" of both worlds in the standard formula for due process, the Supreme Court wished to emphasize the normative. Standards of justice were emphasized, but within a juvenile court. In advocating the best of both worlds, the regulative aspects of the court could become secondary to the normative. In other words, through a mix of normative and regulative, the Supreme Court wished to have it both ways—treat-

ment and punishment, inclusion and exclusion, regulative and normative forms of justice.

Not only would a more complicated form of justice emerge, but also one that suffered from the obfuscating effects of too many systems. Each of these systems could be allowed to exist for reasons that go beyond the principles and doctrines that Matza initially suggested. The "systems approach" mushroomed into a multitude of legal and administrative avenues. Criminalization became just one direction for the technically more serious and violent offenders. The mixing of regulative and normative missions created opportunities for many juveniles to enter one system for reasons that had little to do with individualized justice or the principle of offense. Organizational capacities expanded beyond just residential availability.

In a series of articles on the impact of criminalization, Professor Barry Feld has pointed repeatedly to its unintended consequences in producing justice by geography and in increasing racial disparities. The impact of a criminalized juvenile court is to increase the proportion of minority youth who are subject to hard-end systems of justice. The threat of minority youth may have always been there, but criminalization provided a new avenue for creating a system of more intrusive forms of control. This was not clearly possible in a hidden system of juvenile justice. It was possible in a public criminal court where the violent juvenile offender could be seen, counted, and tracked. Criminalization satisfied societal demands to do something about juvenile crime. But doing something was specific to those urbanized areas where there was a heightened concern about impoverished minority youths who were viewed as largely responsible for serious violent crime.

Criminalization could have been anticipated in a juvenile court that could not maintain its regulative mission. At the soft-end of the juvenile justice system, the President's crime commission advocated the diversion of status offenders. Diversion would make the stigma of a delinquent classification in juvenile court of less consequence. It was a way to take seriously the arguments of


labeling theorists and to advocate at the soft-end ways of avoiding juvenile justice in a singularly administered regulative court.

Many scholars have written about the intended and unintended consequences of diversion from juvenile court. The separation of status offenders from the rest of the delinquent population would create more than one category of delinquent. It was the beginning of bifurcating post-industrial systems of justice. Donald Cressey and Robert McDermott were particularly insightful when they reviewed the emerging diversionary literature and concluded,

[T]here will be a polarization of attitudes and programs: Lawbreaking juveniles are likely to be processed along the lines of the adult model and hence will receive more due process and less humanistic consideration; after all, are they not merely small criminals? Juveniles who have been called “predelinquents,” because they can’t get along at home or in school, will be diverted.45

This kind of bifurcation in the legal process of delinquents and predelinquents is just one kind of classification. Many more would appear with states producing a diversity of categories, legal labels, and administrative as well as legal avenues for producing juvenile justice. Newly derived legal terms to describe the traditional all-encompassing category of delinquent would include, juvenile offender, restrictive juvenile delinquent, person-in-need of supervision, youthful offender, and so forth. Each of these terms would follow its own system of regulative or normative justice. They would further loosen the juvenile court from its original overarching mission to provide the coordinated care that adolescents in a complex society needed to move from their dependent status.

It is important to consider how the late-modern vision of juvenile justice might be viewed in a slightly different light from that of the industrial modernity of the past. Principles of offense and individualized justice would need to be revised to take into account structural shifts in the post-industrial modern world. It is not enough to state simply that the modern world is more complex. Rather it is just as important to consider how complexity in a late modern world is related to the social structure of contemporary adolescence.

The first observation is that the late-modern world of adolescence is a less grounded place. It is one where there is increased suburbanization. It is one where there are fewer street-corners

and less of the youth population that can be observed as simply hanging out. Rather the complexity of place is compounded by newly created, fast-moving technologies. The internet has become the new street-corner for many youths. Instant messaging, MySpace, and Facebook produce virtual communities. They are easily observable and create mechanisms of control that previously did not exist.

All this technology, however, is not for everyone. It is for those who are affluent enough to afford a personal computer and to live in a suburban development. The large proportion of non-impoverished youths who today have access to computers reflects the affluence of a society where there are expectations of living in a larger, globalized world. Within this larger world of modern-day affluence, there are pockets of poverty and these are often located where we began our review: in the impoverished inner city. It is disorganized, and just as much a zone of transition today as it was a hundred years ago when Chicago school sociologists first identified its existence. It is still considered a dangerous place—an area where violent gang activity thrives and an area to be contained by the residents of the larger metropolitan area.

Thus the bifurcating mechanisms of control in the late modern world has produced two kinds of juvenile justice. The first in the form of control as it relates to impoverished youths in the impoverished inner city. This is clearly normative. The boundaries are marked and reinforced by the way that newly derived strategies of control draw on the hard-end of juvenile justice. The second is control as it relates to affluent youths in the affluent suburban city. This is regulative. Here the boundaries are marked by a wealth of resources that create a vast soft-end system of juvenile justice. This includes private therapy and the private insurance to pay for the troubling behaviors of affluent youths. But the affluent suburban city also includes plenty of diversionary programs; the schools function with diversion in mind, in the form of treatment and support for those who deviate from the norm. It is purely regulative and non-normative. If anything there is a bit of self-actualization in the affluent suburban city where a certain degree of deviance is considered normal, acceptable, and part of what it means to be an adolescent.

Today the late-modern future of the contemporary juvenile court is a precarious one for failing to make explicit in a single court of jurisdiction its regulative and normative functions. The

late modern world has allowed juvenile justice to proceed in the United States based on categories of affluence. These categories of affluence will continue to see criminal justice as appropriate for a segment of delinquents charged with acts of violence, the normative principle of offense will continue to be invoked.

Although Roper v. Simmons emphasized the fact that no other modern developed country imposes the death penalty on its youth, it also supported the possibility of life without parole for those juveniles who could not be executed. Although it also pointed to psychological evidence that youths lack the maturity of adults, it affirmed the criminal court as an appropriate court of jurisdiction. It is also important to bear in mind that the Supreme Court could have included sociological data showing the increasing dependence of older adolescents and young adults on their parents, thus supporting the notion that the age of onset for adult responsibilities is becoming even longer in today's late-modern world. In other words, the Supreme Court refused to consider the late-nineteenth-century idea that juveniles were deserving of a separate and exclusive system of juvenile justice.

Thus the late-modern future is one that may continue to blur the lines of juvenile justice. It may continue to be normative for a segment of juveniles that is viewed as criminal and regulative for another segment that is viewed as predelinquent. This classification may continue to be debated without a clear vision of the alternatives.

But we can also expect in a future set of court and legislative decisions repeal of waiver laws that punish relatively young juveniles with adult kinds of punishment. The same logic expressed by the Supreme Court in Roper may be expressed when it comes to life in prison without the possibility of parole. According to a recent New York Times front page story, seventy-three offenders in nineteen states are currently serving life sentences without the possibility of parole for crimes they committed prior to their sixteenth birthday. If we move to the next category and include juveniles below the age of eighteen, Amnesty International reports 2225 offenders currently serving sentences of life without the possibility of parole. The number of juveniles sentenced to life with the possibility of parole represents only a small

segment of juveniles who are convicted in criminal court. This vision of criminal justice will continue for juveniles unless there is a vision of regulative and normative control in the juvenile court. It is a vision that must take into account the theory of complex organizations and the fact that juvenile justice systems are bifurcating in a post-industrial world.

III. THE LATE MODERN FUTURE OF A CONTEMPORARY SWITCH-HITTING JUVENILE COURT: WHEN WILL WE KNOW IF IT HAS ARRIVED?

The late-modern future of the contemporary juvenile justice system should not simply be viewed as expanding the vision of a late-nineteenth-century juvenile court. The need for a juvenile court remains the same. Despite calls for its abolishment, no American state or modern nation-state has eliminated its juvenile courts. The juvenile court will remain as long as states of social dependency continue as they have from childhood into adulthood. It will also remain as the only possible coordinating court of legal jurisdiction for troubled youths. The juvenile court has the legal authority that no other institution has to provide both the regulative safety and normative controls that are seen as in the best interests of society.

But at the same time that juvenile court is recognized as a critical legal institution, its failure to have a theory of complex organizations should be considered. The first aspect of a theory is to recognize its suggestive possibilities. Social theories are not deterministic theories; they are probabilistic and may be viewed for their heuristic value in making it possible to see the less visible in a complex organizational setting. This is particularly the case, as I have argued, when it comes to juvenile justice. At this point I wish to draw on the organizational literature to suggest the importance of classification, tight-coupling, and community.

The regulative view of complexity is to reduce it by a system of classification. It is one that cannot simply be defined in terms of good and evil. Rather it is relational and acknowledges the fact that individuals are not all endowed equally with the same set of abilities and desires. The troubling behaviors of youths who are deemed delinquent need to be understood in a system of classification that is not for the purpose of exclusion but for the purpose of inclusion. Here I have in mind the language of disabilities and the possibility that anyone may be disabled due to an accident or illness. The desire is to identify the disability for

50. See Singer, supra note 44.
the purpose of enabling the individual to be a fully participating member of society.

Tight-coupling is a way of coordinating loosely coupled systems. It should be balanced with the need for an adversarial process that acknowledges the possibility that to do otherwise is to risk a sense of injustice. Perceived fairness in any social system or social institution is critical to the legitimacy of that institution. Consistency and fairness in response to the particulars is seen as critical to good parenting. It cannot exist without an acknowledgment of authority; although that authority cannot fall into the camp of authoritarian control at least in a modern democratic society. The authoritative rule of law fits with the regulative and normative visions of control; you can see it and debate it in a way that makes sense to all of its participants.

The third aspect of complex organizational theory is that of community. But it is not community in traditional, old fashioned sense of the word—a place that is associated with a tightly-knit group of individuals. It is hardly normative as it is used in the organizational literature. It has been advocated as a way of making organizations more effective and consistent in their tasks. Community is identified when considering the work groups that scholars in the analysis of legal decision making have repeatedly identified. This kind of community may be viewed as fleeting, but when set in terms of specific goals it is seen as critical to getting the job done.

A switch-hitting juvenile court will arrive when officials are able to identify the systems of classification, tight-coupling, and community in juvenile justice. I will conclude with three more ingredients that, in my mind, would reinvigorate the possibilities for a regulative and normative juvenile court. The first ingredient is the concept of visibility. The juvenile justice system should be a visible system while protecting the confidentiality of its youth. Official decision making and various treatments and punishments should be subject to review. In the wake of organizational complexity and the risk of classifying youths in a way that incorrectly excludes, visibility is critical to a switch-hitting juvenile court.


52. For a view of how working groups of officials in criminal courts act as communities, see James Eisenstein et al., The Contours of Justice: Communities and Their Courts (1988).
The second ingredient is the concept of resorts. A switch-hitting juvenile court needs to make visible its first, second, and tertiary resorts. The continuum of resorts and possibilities must be explicit if the shape of juvenile justice is to be identified. For certain regulative purposes, a longer spectrum of first and last resort responses would seem appropriate. For certain normative functions, the available sanctions may be more limited. Resorts may also be associated with age providing the youth discount that Professor Barry Feld has advocated.53

The third ingredient is the idea of leadership. The switch-hitting juvenile court will look to how complex organizations have moved beyond the mere principle of management to suggest principles of leadership. An effective organization is not one where supervisors merely manage through the control of its employees but one where supervisors are able to lead. This principle of leadership makes the most sense when dealing with professionals who are in the business of trying to provide innovative solutions. There is little that could be more innovative than confronting the troubling behavior of youths.54

By making the juvenile court the coordinating court of jurisdiction, I have suggested that the late-modern system of juvenile justice will be one where its regulatory mission is not at odds with normative concerns. This again requires leadership to assure visibility in classification, tight-coupling in organizational response, and community in the unifying objectives of juvenile justice officials.

CONCLUSION: WHAT HAS YET TO BE SAID ABOUT A SWITCH-HITTING JUVENILE COURT

It is too easy to be critical, and my suggestions for switch-hitting juvenile court may be viewed as quite sparse. First, we need to know more about the normative and regulative functions in a society where classification is often found to be related to states of affluence as they often are related to class and race. The status of minority and majority youths in the juvenile and criminal justice system cannot be separated from issues of poverty. The impoverished inner city remains as the reason for a hard-


54. The distinction I make between leadership and management draws on Bolman & Deal, supra note 11, at 309–446.
The affluent suburban city is the justification for a soft-end system of juvenile justice. A late-modern switch-hitting juvenile court will be difficult to implement if this division between the affluent and non-affluent worlds of juvenile justice cannot be reduced.

A second late-modern issue that I have only touched upon is the extended dependency of youth into adulthood. Sociologists have noted this to be the case as more youth are spending more time in school, delaying marriage and work even further. When they are working, they expect to be less set in their careers, and more likely to switch from one place of employment to the next. We would expect juvenile justice to extend to this new, older age category of extended adolescence based on their economic and psychological states of dependency. But that is not the case based on the fact that ages of criminal responsibility have been reduced, not increased.

My last point relates to the limitation of theorizing about certain basic facts. The facts that I have drawn on come from my own research on the expanding nature of criminal justice for juveniles⁵⁵ and from Roper. The other facts are the expanding number of soft-end diversions. But there may be examples of switch-hitting juvenile courts which suggest that all is not so wrong with the state of juvenile justice. My feeling is that the switch-hitting juvenile court is already there in the affluent suburban city. This is a post-modern place where the resources that can be spent on youths far exceed the amount spent on impoverished inner city youths. Empirical research is required to see how both a regulative and normative court operates in some places more than in others.

In either case, my attempt at theorizing about the possibility of a switch-hitting juvenile court is for the purpose of making the juvenile court into the kind of legal setting that would be in the best interests of a society that wishes to reduce delinquency and crime. It is not an easy road to follow. But to continue to go along a path of defining a segment of juveniles as adults when they clearly are not risks perpetuating bureaucratic complexity or systems of juvenile justice. The alternative road to juvenile justice as I have tried to repeatedly suggest is for a more transparent, organized, and orderly system of juvenile justice that is rooted in a late-modern vision for a switch-hitting juvenile court.

⁵⁵. See Singer, supra note 44.