Rethinking Juvenile Justice: Catholic Social Thought as a Vehicle for Reform

Timothy J. Pillari
As of October 3, 2005, ninety-seven hundred Americans were serving life sentences in adult penitentiaries—one-fifth of those without the chance of parole—for crimes they committed before they reached the age of eighteen. While today many Americans may not find this shocking or even unjust, the reformers at the turn of the twentieth century who worked strenuously for the creation of a separate and independent court system to adjudicate juvenile crime would have been dismayed by such a statistic. Indeed, for a system in which rehabilitation and reintegration were originally the sole aims, the common, modern juvenile court procedure of waiving certain crimes to adult criminal court for prosecution would have been considered antithetical to the entire venture. As the Progressive reformers envisioned the juvenile adjudicatory process, judicial actors were to "take [the juvenile offender] 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." A juvenile offender was seen merely as the product of his environment; the child had engaged in criminal activity, it was thought, only because of a lack of moral instruction and sound guidance. Naturally then, punishing the child was viewed as unjustified; more so, locking a juvenile away for the remainder of her natural life, as is often done today, would have been considered unconscionable.

Today, the treatment of juvenile offenders in the United States centers not on rehabilitation and reintegration but rather on retribution and deterrence as guiding principles. Instead of viewing a juvenile criminal as an innocent byproduct of a detrimental social or family setting (as the Progressives would have), juvenile delinquents are largely treated in the adjudicatory process as self-determinate decision makers, fully responsible for their conduct. The language used to describe these juveniles has markedly changed—no longer is the juvenile delinquent thought of as one capable of being formed as a "worthy citizen" to be nurtured and assisted along the way, but rather as a "super-predator" to be guarded against, often discarded by society to a life behind bars.

---

5. See H. Warren Dunham, The Juvenile Court: Contradictory Orientations in Processing Offenders, 23 Law & Contemp. Probs. 508, 525 (1958) ("[T]he social-agency image [of juvenile court] has been the more dominant [during the court's sixty years of existence] ... [This image] may be seen when an eminent judge describes the juvenile court as comparable to a hospital or clinic where the 'sick' patient is diagnosed, hospitalized, treated, and discharged ... ").
7. See supra text accompanying note 4.
8. Noted scholar John Dilulio is credited with coining the phrase "super-predators," writing: "On the horizon, therefore, there are tens of thousands of severely morally impoverished juvenile super-predators. ... [F]or as long as their youthful energies hold out, they will do what comes 'naturally': murder, rape, rob, assault, burglarize, deal deadly drugs, and get high." John J. Dilulio Jr., The Coming of the Super-Predators, Wkly Standard, Nov. 27, 1995, at 23. The potential punishment for juveniles was of course much more severe until 2005, when the United States Supreme Court declared in Roper v. Simmons, 543 U.S. 551, 575 (2005), that sentencing to death an offender who was under eighteen years old at the time of the crime committed is cruel and unusual punishment in violation of the Eighth Amendment.
While the reasons for drastic modification of the structure and aims of the juvenile courts over the past century are many and varied,9 threaded throughout the history of the courts has been a tension between the aims of rehabilitation and reintegration on the one hand and retribution, deterrence, and public safety on the other. This struggle is often posed as a battle between the child’s welfare and societal control.10 While the Progressives looked past both the societal effects of a juvenile’s crime and his accountability for such behavior, focusing instead on reintegrating the juvenile into society, the modern trend in the “get tough” legislation of the past couple of decades is to focus largely on the juvenile’s personal accountability for the crime committed and on public safety concerns.11 Otherwise stated, in the treatment of juvenile offenders, the pendulum has swung from an exclusive focus on individual responsibility prior to the creation of the juvenile courts,12 to an absolute focus on rehabilitation and reintegration, and now back again to a model that emphasizes individual responsibility and self-determination, in the interests of public safety. In this Note, I will argue neither approach alone is satisfactory in seeking the common good. Rather, I will argue that the seemingly conflicting aims of retribution, individual responsibility, and deterrence on the one hand and rehabilitation and societal reintegration on the other, are in fact reconcilable, and that the social teachings of the Catholic Church—while not providing a blueprint for reform—set forth sound principles for retooling the juvenile justice system to embrace both sets of aims. In effect, these principles provide a vehicle for the creation of a more just and humane mode of treatment of youth offenders.

9. See infra Part II for a discussion of some of the factors involved.
10. Sally T. Green, Prosecutorial Waiver into Adult Criminal Court: A Conflict of Interests Violation Amounting to the States’ Legislative Abrogation of Juveniles’ Due Process Rights, 110 PENN. ST. L. REV. 233, 268 n.208 (2005); see Adam D. Kamenstein, The Inner-Morality of Juvenile Justice: The Case for Consistency and Legality, 18 CARDOZO L. REV. 2105, 2105 (1997) (arguing that there is an “insurmountable struggle” between those who are “focused on the welfare of the child” and those who are seeking to “hold[] the child accountable”).
12. Prior to the creation of a separate court system, juvenile offenders were treated no differently than their adult counterparts. Kamenstein, supra note 10, at 2108–09.
In Part I, I will discuss at greater length the origins of juvenile justice and its progression from a purely rehabilitative model to the modern "get tough" movements. Part II will then analyze the current emphasis on individual responsibility and self-determination, and the sources and factors that play into this current emphasis. Finally, in Part III, I will introduce the central tenets of Catholic Social Teaching as providing a conciliatory voice between these two sets of values. In this section, I will contend that if human dignity is recognized as an inviolable starting point in formulating juvenile justice policy, and if the principles of solidarity and subsidiarity are likewise put into practice both at the governmental and informal social and familial levels, then these seemingly contradictory sets of values can be merged.

I. THE CREATION AND EVOLUTION OF THE AMERICAN JUVENILE JUSTICE SYSTEM

A. The Progressive Era and the Formation of the Juvenile Court

The juvenile court marked its official beginnings with the passage of the Illinois Juvenile Justice Court Act in 1899. Spurred by great dissatisfaction with the societal response to troubled youths, renegades such as Dorothea Dix, and later Jane Addams, advocated for a more compassionate treatment of juveniles, who were often subject to severe punishment—if not by the court system, then by parents or by religious communities. The new court system, which quickly spread from Illinois to the rest of the country, took on the role of parens patriae—that is, it was shaped with a wholly protective motive for the delinquent child. Julian Mack, an early leader in the juvenile justice movement, famously framed the aims of the juvenile court in this way:

To get away from the notion that the child is to be dealt with as a criminal; ... to take it in hand and instead of first stigmatizing and then reforming it, to protect it from the stigma,—this is the work which is now being accomplished by dealing even with most of the delinquent children through the court that represents the parens patriae power of the state, the court of chancery. Proceedings are brought to have a guardian or representative of the state look after the child, to have the state intervene between the natural parent and the child because the child needs it,
as evidenced by some of its acts, and because the parent is either unwilling or unable to train the child properly.\textsuperscript{16}

The juvenile court systems in the early twentieth century barely resembled their adult counterparts. For one, the judge responsible for making determinations on the fate of the delinquent juvenile often interacted with him in a parental manner. In fact, juvenile judges that sought to reject the traditional high-seated bench of adult criminal court would physically seat the child in a chair next to a desk so that the judge could interact more intimately with him.\textsuperscript{17} Generally, the judge would attempt to emphasize his concern, and the system’s concern, for the juvenile’s well-being.\textsuperscript{18} In addition, as criminal acts were seen as a reflection of immaturity, juveniles were not seen as individually responsible for the crimes they committed. As such, there were said to be no “criminals” in juvenile court, but only children with illnesses that required treatment.\textsuperscript{19} Thus, the crime that was committed by the juvenile was often of little relevance in the court’s determination of the treatment required, and juveniles in different social circumstances who committed the same crime could receive markedly differing dispositions.\textsuperscript{20} Other unique features of the juvenile courts included age-segregated detention facilities, penal sanctions for neglectful or malicious adults, and treatment focused on the child’s home and family.\textsuperscript{21}

While the contours of the early juvenile courts may strike the modern reader as bizarre or even unjust, there is no doubt that the Progressive reformers who fought for the creation of juvenile courts were motivated by idealistic ends. Dorothea Dix, Jane Addams, and their contemporaries had witnessed a significant lack of support for a vulnerable segment of society. The response of juvenile courts to youth offenders, while perhaps fraught with problems, was overwhelmingly compassionate. Rather than ignore the issues that led to juvenile delinquency, and instead of simply casting the blame upon a youth’s shoulders, the Progres-

\begin{footnotes}
\item[16] Mack, \textit{supra} note 4, at 109.
\item[18] Mack, \textit{supra} note 4, at 120.
\end{footnotes}
B. Post-Gault Era and Increased Due Process Rights

While the rehabilitative aims of the early juvenile court system were admirable, juvenile courts noticeably lacked the procedural safeguards that were otherwise available to adults in criminal court. This omission was justified as the lesser of two evils: retaining flexibility in the court’s procedures provided the most opportune environment for fashioning treatments based on the needs of the child, as perceived by a juvenile court judge. Contrary to the requirements of the Fourteenth Amendment, for example, juveniles were not afforded due process of law before being deprived of their liberty. This changed in 1967, with the Supreme Court’s handing down of In re Gault. Gault involved a fifteen-year-old who was taken into custody pursuant to a complaint by a neighbor that she had received inappropriate telephone calls from him. Gault was neither notified of the charges against him, nor granted the right to counsel or several other guaranteed procedural safeguards of the adult criminal court. The Court held that the actions taken against Gault were unconstitutional, and that the essentials of due process were required in juvenile court adjudication. Similarly, a year before Gault was decided, the Supreme Court had taken action to expand the procedural safeguards of juvenile delinquents. The Court ruled in Kent v. United States that juvenile waiver orders (providing for adjudication of the juvenile as an adult) must be grounded in a hearing, and that a statement of reasons must accompany the waiver order.

While providing procedural safeguards for juvenile adjudication may be considered a positive step in the protection and welfare of juvenile offenders, the move was also undoubtedly a step away from the ideals of the juvenile justice system’s original

22. Indeed, broad societal acceptance of the Progressive reformers’ ideas was evidenced by similar reforms in education, in the penal system as a whole, and in care for the mentally ill. Id. at 49.
23. Kamenstein, supra note 10, at 2115.
24. Regardless of whether the disposition of a child in juvenile court was deemed rehabilitation or punishment, the court order was still a deprivation of liberty. See generally id.
26. Id. at 4.
27. Id. at 33–34.
28. Id. at 41.
champions. Through the installation of many of the same procedural mechanisms that were provided in adult criminal court, the distinction between the two sets of systems—and thereby the distinction in treatment of the individuals before each judicial body—was bound to fade. No longer would it be possible, for example, for the juvenile court judge to serve more as a father figure than as an objective government authority.

In many ways, this fading in the distinction was not merely a natural after-effect of *Gault* and *Kent*, but rather an intended one. Justice Fortas, writing for the Court in *Gault*, noted that juveniles had previously been getting "the worst of both worlds"—neither the procedural safeguards of the adult court system nor the rehabilitation promised in the juvenile system. As Fortas expressed, skepticism had increased as to the actual rehabilitative effects of the juvenile court “treatments” due to evidence presented that suggested poor results. Though in the post-*Gault* years there remained a dominant view that juveniles were still lacking in maturity—reflecting a diminished culpability for crimes committed, which resulted in less severe punishments than for adults committing the same crimes—juveniles were nonetheless expected to take greater responsibility for their choices than in the pre-*Gault* years.

C. The Modern Era

Since in the 1980s, perspectives on juvenile crime have moved even further from the rehabilitative ideals of the Progressive Era reformers. The emphasis in the treatment of juvenile offenders is now almost solely on retributive and deterrent aims and on protecting society from the criminal behavior of delinquent juveniles. Even though it was once a guiding principle in

30. It should be noted that the Supreme Court stopped short of providing all of the procedural safeguards in juvenile court that were constitutionally required in adult court. In *McKeiver v. Pennsylvania*, 403 U.S. 528, 545-550 (1971), the Supreme Court held that there is no right to a trial by jury in juvenile adjudications.

31. See supra text accompanying notes 16-17.

32. In re *Gault*, 387 U.S. 1, 18 n.23 (1967).


34. Id. at 145-46.

35. Id. at 148. As one example of the change in policy, compare Juvenile Court Act, ch. 685, § 1, 1959 Minn. Laws 1275, 1275 (repealed 1980) ("The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor"
the juvenile court's response to crime, youthful immaturity has largely been rejected as a factor of much importance. More and more often, prosecutors and juvenile court judges are transferring older juveniles to adult court. Many states, in fact, have enacted mandatory transfer statutes for certain crimes committed by juveniles of a certain age and older. Furthermore, the juvenile court itself has in large part evolved to mirror its adult counterpart. The dominant perspective now, as one "get tough" advocate put it, is that juvenile offenders "are criminals who happen to be young, not children who happen to commit crimes." Further, the writer states, "there is no reason that society should be more lenient with a sixteen-year-old first offender than a thirty-year-old first offender." In sum, society's perception of juvenile offenders has now completed a 180-degree turn: rather than focusing on the vulnerability of delinquent youths, the public attention has centered on the horrific crimes juveniles are capable of committing and the need to hold them accountable.

36. Scott & Grisso, supra note 33, at 148.
38. Id. One example is California's Proposition 21, discussed supra note 6, which requires transfer to adult court for juveniles who commit murder or serious sexual offenses, among other severe crimes. Gang Violence and Juvenile Crime Prevention Act of 1998, CAL. PENAL CODE § 182.5 (West 2007); see also Eric J. Fritsch & Craig Hemmens, An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case Study of Texas 1973-1995, 23 AM. J. CRIM. L. 563, 572 (1996) (noting that juveniles who are at least fifteen years old may be waived to adult court in a majority of states).
39. One writer notes that the juvenile court's movement towards a close resemblance of the adult court is "reinforced by the movement towards a more punitive, 'just desserts' response to juvenile criminality . . . [with] greater consideration given to the act itself and the protection of society as opposed to the nature and needs of the juvenile." Kamenstein, supra note 10, at 2125 (footnote omitted).
41. Id. at 68.
II. FACTORS CONNECTED TO THE CHANGE IN POLICY

The basis for the change in public policy in juvenile justice can be pinned on a myriad of factors. First, the simple reality is that arrest rates overall, including juvenile arrest rates, increased throughout the 1980s and into the early 1990s. As this certainly would be a matter of public concern, reformers not surprisingly sought modifications to juvenile justice systems. In addition, some of the types of crimes juveniles were committing could scarcely have been dreamed of by the public imagination a century ago. One shocking example of brutality was adjudicated in Davis v. State. In Davis, a seventeen-year-old was convicted for sodomizing and stabbing a sixty-eight-year-old store owner seventeen times. The proliferation of youth gun violence in schools, a recent phenomenon, also surely enhances the view that juveniles today present a greater danger to society, thus requiring stiffer measures of punishment to ensure society’s protection.

A second factor, independent of the realities of juvenile crime, is the public perception of juvenile crime. Even though juvenile crime rates have steadily dropped since the early 1990s, the public commonly believes such rates are on the rise. Likewise, for years the public has perceived the rehabilita-


44. Interestingly, reputed juvenile law scholar Franklin Zimring contends that analysis of juvenile crime statistics is flawed and that the increase in arrest rates did not actually correlate with an increase in crime itself, but rather was the result of a change in the way police report and classify arrests. Recent Trends in Juvenile Crime Policy Are Driven by Fear, Not Fact, Says a National Expert on Juvenile Justice, SCIENCE BLOG, Dec. 9, 1998, http://www.scienceblog.com/community/older/1998/A/199800520.html.


46. Id. at 1096.

47. See Candace Zierdt, The Little Engine that Arrived at the Wrong Station: How to Get Juvenile Justice Back on the Right Track, 33 U.S.F. L. Rev. 401, 402 (1999) (arguing that the public hysteria in response to well-publicized crimes such as the Columbine High School massacre has been a primary reason for the “get tough” reforms in the juvenile justice system).

48. Between 1994 and 2003, the percentage of juvenile arrests in the United States decreased by eighteen percent, including a thirty-two percent drop in violent crime arrests. Juvenile Offenders and Victims, supra note 43, at 128.

tive model for juvenile justice is ineffective. Further, despite the often highly punitive treatment of juveniles, a common perception is that the juvenile system treats delinquents "with kid gloves and essentially establish[es] no consequences for their crimes." The media has contributed to the perception of juvenile crime, capturing the public imagination with sensational stories of juvenile delinquents and casting them in a near sub-human light. John Dilulio's famous description of juvenile delinquents as "super-predators" out to terrorize society is a prime example of the media distortion (or at least over-simplification) of juvenile crime.

Third, treatment of juvenile offenders has been affected by a major transformation in family life over the past few decades. Several elements have been involved in this transformation. First, attitudes about sex and reproduction outside of marriage have changed dramatically since the early 1960s, resulting in an ever-increasing rate of births outside of marriage. Second, the number of mothers working full time has drastically increased, leaving fewer parents to stay home to take care of young children. By the year 2000, only thirty-six percent of married women with children under the age of six stayed at home with the children, compared to eighty-one percent in 1960. Third, the divorce rate has skyrocketed in recent decades, with rates more than quadrupling since the late 1960s.

Studies have shown a direct correlation between family structure and juvenile delinquency; juveniles who live with both biological parents have lower crime rates across the board. Likewise, such drastic modifications to the nuclear family struc-

50. See Francis Barry McCarthy, The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Jurisdiction, 38 St. Louis U. L.J. 629, 629-30 (1994) (noting that as early as the early 1970s, the New York Times began to portray the ineffectiveness of the juvenile courts in dealing with violent crime).
51. Zierdt, supra note 47, at 413.
52. See Dilulio, supra note 8.
56. Id.
57. See Juvenile Offenders and Victims, supra note 43, at 72 (providing data illustrating that in the categories of gang membership, assault, drug use or dealing, vandalism, and theft, crime rates for those living with both biological
ture—or as one writer described it, the "flight from the nuclear family"—are likely to lead to increased disconnection from familiar social supports. Certainly, as the rates of multi-income households continue to increase, and as the rates of single mothers continue to increase, there is limited time to even get to know one's neighbors, much less time enough to develop close relationships which facilitate networks of social support. When there is a loss in connectedness between neighbors or community members, individuals are more likely to feel unsafe in their surroundings and increasingly view their neighbors (or the greater community) with remote disinterest, or even fear. Consequently, it becomes easier to frame a juvenile criminal, entirely divorced from one's realm of association or experience, as a monster to be guarded against rather than a vulnerable member of society to be viewed with compassion.

A fourth factor involved in policy changes within the juvenile justice system has been a renewed emphasis on the American ideals of individual responsibility and self-determination. In many respects this emphasis is not surprising, considering the tenets underlying the founding and heritage of the United States. At the root of societal emphasis on individual responsibility and self-determination is what one writer calls "self-individuating liberalism." This idea, which links freedom to "the discovery, development, and expression of each individual's unique self," stretches back to the influences of preeminent philosophers Jean Jacques Rousseau, Immanuel Kant, and John Stuart Mill. There are two strands of self-individuating liberalism; one strand, modeled by Rousseau, conceived authentic individual expression to be the summit of liberty. Heavily influenced by Rousseau, Mill later argued in his seminal text On Liberty that

58. David Popenoe, Family Decline in America, in Rebuilding the Nest: A New Commitment to the American Family 39, 40 (David Blankehorn et al. eds., 1990).
60. Lawrence Friedman writes of "the exaggerated individualism of twentieth-century Americans," and its expression in the criminal justice system as a "deep concern ... for individual responsibility" for criminal acts. Lawrence M. Friedman, Crime and Punishment in American History 438, 443 (1993).
62. Id.
63. Id. at 565–66.
the individual must be free from government control in his opinions and actions as long as they do not harm others.\textsuperscript{64} Furthermore, according to Mill, choices are not merely passive preferences but represent an active quality through which persons define and develop themselves.\textsuperscript{65}

In line with Mill, the American Founders’ vision for the nation consisted of, as one scholar notes, “private individuals standing in private relationships with one another, each with a right to make of himself as much as he wished and could, and each responsible for his choices and actions, good and bad alike.”\textsuperscript{66} Such a vision likely served as a prime motivation for the Constitution’s exaltation of the inalienable right to life, liberty, and the pursuit of happiness. Some years later, Transcendentalist figures such as Henry David Thoreau and Ralph Waldo Emerson picked up on the self-individuating liberalism of Rousseau and Mill, firmly cementing their ideas in the American heritage. Emerson once wrote, “[I]nsist on yourself; never imitate. Your own gift you can present every moment with the cumulative force of a whole life’s cultivation. . . . Every great man is a unique.”\textsuperscript{67} This notion of freedom, and the romanticism of the possibilities an individual may seize, remains firmly embedded in American culture. The concept of the “American Dream” serves as a foremost example—the individual, it is believed, can make whatever of herself that she wishes. Youths are commonly encouraged to dream big and to follow those dreams (regardless of a dream’s rationality).

The second strand of self-individuating liberalism, in contrast to romanticism, stems from the rationalist thought of Immanuel Kant. Kant emphasized in his writings that freedom is guided by reason—that is, to be free means to embrace the universal capacity for detached decision making.\textsuperscript{68} Through the cul-

\textsuperscript{64} Mill writes: “The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.” \textit{John Stuart Mill, On Liberty 9} (Alburey Castell ed., Harlan Davidson 1947) (1859).

\textsuperscript{65} Hill, \textit{supra} note 61, at 563.


\textsuperscript{68} Hill, \textit{supra} note 61, at 565. American admiration for rationalist thought of this type is illustrated by the selection as heroes of individuals embodying a rationalist mindset. As one example, Tour de France champion and cancer survivor Lance Armstrong is viewed as a hero for his ability to define himself through sheer willpower.
tivation of reason, according to Kant, the will can resist and overcome the more emotive human motivations. Kant's rationalist thought can be said to have been incorporated in the American mindset via reliance on natural law. In the formation of the new American government, the Founders premised that there was a higher law of right and wrong, grounded in and discoverable by human reason. While it is doubtful that incorporation of the natural law tradition in toto into the political framework of the nation was the intention of the Founders, it enabled them to speak of rights that must, in accordance with higher law, be granted respect. In turn, because each person was said to possess these rights, and because these rights were deemed comprehensible by human reason, high emphasis was placed on the ability of the individual to map his own destiny.

Both strands of self-individuating liberalism, in placing a premium on the autonomy of the self and in glorifying individuality, are implicitly echoed in the modern trends of juvenile justice. The values of individual responsibility and self-determination, in my view, play an essential role in the framing of U.S. juvenile justice policy because they serve as primary justifications for the stiff penalties regularly doled out to juvenile offenders. Due to the renewed reliance on these principles today, the sentencing of a fourteen-year-old to life in prison can be rationalized as a consequence of that youth's "free choice" to engage in criminal behavior.

69. Id.

70. Pilon, supra note 66, at 509.

71. Though the idea of natural law was undeniably an influence on the content of such founding documents as the Declaration of Independence, this does not imply that the Founders firmly planted themselves within the tradition or were well versed in the writings of natural law scholars. Rather, it merely illustrates that the natural law had a legitimate place in the thinking of the Founders. R.H. Helmholz, The Law of Nature and the Early History of Unenumerated Rights in the United States, 9 U. PA. J. CONST. L. 401, 407 (2007).

72. Conversely, under both strands of self-individuating liberalism, the Progressive Era reforms would be viewed with distaste and paternalism and understood as an indication of the decline of individuality. Hill, supra note 61, at 570.

73. I offset the term "free choice" with quotation marks because the true freedom of such choice is debatable. Pages of analysis could be devoted to the issue; this Note, however, will not enter that fray.
III. A Conciliatory Voice: Catholic Social Teaching

The competing sets of values that have spurred the juvenile court’s transformation from the role of caretaker to the role of enforcer over the past century illustrate a juxtaposition of the values of rehabilitation and reintegration against the values of retribution, deterrence, and public safety. These sets of values need not be viewed as polar opposites. Neither set, standing alone, holistically or satisfactorily addresses the complex issues surrounding juvenile justice; steady dissatisfaction with the juvenile justice system over the past century seems to suggest that many would agree. As for the original juvenile justice system, history itself—in the form of drastic changes to the system—illustrates that the means and ends of the original system were not deemed satisfactory. Despite the idealism of the Progressive Era reformers, juvenile delinquents lacked protection of their constitutional rights, and the public eventually perceived that the system was not really solving the problem of juvenile crime. As for the current “get tough” model of juvenile justice, one need to only scan the myriad of commentary on the problems of and possible reforms for the juvenile justice system to recognize current dissatisfaction. And while the general public may be satisfied that juvenile delinquents are being punished for their crimes, one would be hard pressed to suggest that the problems of juvenile crime have been solved.

A. A Basic Overview of Catholic Social Teaching

While any juvenile justice system is likely to have its shortcomings, current juvenile courts would be well served by bringing together many of the qualities of the two competing sets of values that have influenced the system over the past century. Contrary to popular perception, conciliation between these values is possible when viewed through the lens of Catholic Social Teaching. While not providing a blueprint for specific juvenile justice reform, the foundational principles of Catholic Social Teaching—namely human dignity, solidarity, and subsidiarity—provide a framework from which to rethink the aims of the juve-

74. The terms “Catholic Social Teaching,” “Catholic Social Thought,” and “Catholic Social Doctrine” are used interchangeably throughout this Note to refer to the body of the Catholic Church’s social teachings.
75. See supra text accompanying notes 32-33.
76. See supra note 11 and accompanying text.
77. Though juvenile crime arrest rates have consistently decreased since 1994, there were still approximately 2.2 million arrests of persons under eighteen in 2003. Juvenile Offenders and Victims, supra note 43, at 125. Likewise, one in twelve murders in 2002 involved juvenile offenders. Id. at 65-66.
nile courts that would allow for a more holistic, just response to juvenile crime.

In some respects, Catholic Social Teaching marks its origin with Pope Leo XIII's encyclical *Rerum Novarum* ("The Condition of Labor") in 1891, which was written in response to a growing need of the Church to be included as a voice of commentary and guidance on the pertinent social issues of the day. Of course, *Rerum Novarum* did not really signal the true beginning of the Church's social teachings, as the principles of such teachings were to be found in the Scriptures and were developed through Church doctrine throughout the centuries. Nevertheless, the encyclical initiated a tradition of popes applying the wisdom of the Church to the world's social problems, thus officially marking the beginning of a set of documents that combine to form the Church's social doctrine. Today, the body of writings comprising the Church's Social Teaching has, as one writer suggests, come to "communicate a vision of the church as servant to humanity, a renewed concern for the human person and human rights, [and] an increasing emphasis on popular participation." As mentioned, Catholic Social Teaching is rooted, first and foremost, in the Christian Scriptures. Beginning with Genesis, humans are said to be made in God's image: "Then God said, 'And now we will make human beings; they will be like us and resemble us.' . . . So God created human beings, making them to be like himself. He created them male and female." Thus, the question of who man is directly ties back to who God is. As one writer notes,

If a human is 'the being related to God' then it follows in an analogous (more unequal than equal, but still real) manner that a human has a part of the characteristics of God. Everything that one can say of God, also has a meaning for humans and their concept of themselves.

In a society historically dominated by Christian believers, this may not seem a novel idea at first glance. But the import of such an idea, if taken seriously, is quite remarkable. It means that each

---

individual is to be respected not only as an autonomous being with certain rights and liberties (as Kant or Mill, and the United States Founding Fathers would conceive), but more fundamentally as a creature with irreducible value on account of her sharing in God's nature. In the Christian faith, the relationship between the nature of God and humanity is particularly made evident in the incarnation of Jesus Christ. Briefly stated, the Christian message as delivered through the person of Jesus was that the suffering that marked the lives of people was not the ultimate reality; rather, through Jesus' proclamation of the kingdom of God, believers placed their hope in a superior reality of redemption.\textsuperscript{82}

From these primary tenets of the Christian faith flows the fundamental principle of Catholic Social Teaching—human dignity. In his encyclical \textit{Pacem in Terris}, which provides perhaps the fullest general treatment of political morality in the body of Catholic Social Teaching, Pope John XXIII emphasizes the importance of human dignity as a foundation for the workings of society. He writes:

\begin{quote}
Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.
\end{quote}

When, furthermore, we consider man's personal dignity from the standpoint of divine revelation, inevitably our estimate of it is incomparably increased. Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory.\textsuperscript{83}

While much of the above quote echoes the words of the Declaration of Independence, Pope John's words are set apart by an emphasis not only on rights, but duties. While human dignity requires that one be able to choose one's own actions,\textsuperscript{84} this inviolable dignity also necessitates that society members "be animated by such love as will make them feel the needs of others as their own."\textsuperscript{85} Likewise, the understanding of human dignity

\begin{itemize}
\item \textsuperscript{82} O'Brien & Shannon, \textit{supra} note 79, at 2.
\item \textsuperscript{83} \textit{Pope John XXIII, Pacem in Terris: Peace on Earth} paras. 9-10 (1963) [hereinafter \textit{Pacem in Terris}].
\item \textsuperscript{84} \textit{Id.} para. 34.
\item \textsuperscript{85} \textit{Id.} para. 35.
\end{itemize}
through the lens of Catholic Social Teaching is differentiated from a secular understanding of rights in that the rights and duties granted to each individual predate any sort of social contract. The person is at all times understood in Catholic Social Teaching as the "source, subject, and goal" of all social conduct.  

A second principle of Catholic Social Teaching, closely tied to the fundamental principle of human dignity, is solidarity. The term "solidarity" is a relatively recent term in the Christian tradition, but, like Catholic Social Teaching as a whole, its roots are firmly planted in Scripture. Literally meaning "an entire union of interests and responsibilities in a group," John XXIII describes solidarity as "bind[ing] all men together as members of a common family." The principle is presented in the pivotal Vatican II document Gaudium et Spes as an expression of both justice and love, which can be best fulfilled by "contribut[ing] to the common good according to one's means and the needs of others, and also [by] promot[ing] and help[ing] public and private organizations devoted to bettering the conditions of life." As a principle that calls for the recognition of human interconnectedness, solidarity is an implicit rejection of secular individualism. In fact, Pope John Paul II understood the act of embracing solidarity to be transformative, leading one in precisely the opposite direction from individualistic self-determination. In his encyclical Sollicitudo Rei Socialis, John Paul writes that the principle of solidarity prompts a human "to take on the specifically Christian dimension of total gratuity, forgiveness and reconciliation." Further, he states, solidarity leads one to "'lose oneself' for the sake of the other instead of exploiting him, and to 'serve him' instead of oppressing him for one's own advantage."

While the principle of solidarity implicitly rejects individualism, the third key principle of Catholic Social Teaching, sub-

---

86. Roos, supra note 81, at 57.
92. Id. para. 38.
sidiarity, is a rejection of individualism’s inverse—collectivism.\(^{93}\) As originally discussed in Pope Pius XI’s encyclical *Quadragesimo Anno*, the principle of subsidiarity holds:

[It] is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice, and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies.\(^{94}\)

Though solidarity may be easily comprehended as rooted in Christian principles, subsidiarity may be a bit more difficult to grasp. Why is it that Catholic Social Thought considers collective action not just inefficient, but a “grave evil,” when individuals or subordinate bodies are able to complete the task at hand? The answer lies again in looking back to Catholic Social Teaching’s foundational principle, human dignity. If the collective body (often, the State) takes upon itself tasks that are normally left to individuals, smaller bodies of government, or informal associations, there is a grave threat that the collective body may in effect “destroy or absorb” the individual members.\(^{95}\) Collectivism thus threatens to make individuals the instruments of the State, rather than preserving the proper role—consonant with the recognition of human dignity—of the State as servant of the people.\(^{96}\)

Beyond the dangers of collectivism, subsidiarity is emphasized in Catholic Social Teaching because it best allows for human flourishing. For one, the principle of solidarity is not likely to be realized if the collective body provides disincentives for individual initiative and expression. In such a society, motivation to give of oneself for another is diminished, since the collective body purports to take it upon itself to provide. As John Paul II writes in *Centesimus Annus*, “By intervening directly and depriv-

---

93. Verstraeten, *supra* note 87, at 133.
94. Pope Pius XI, *Quadragesimo Anno*: On Reconstruction of the Social Order para. 79 (1931) [hereinafter *Quadragesimo Anno*].
95. *Id.*
96. This distrust of the State is not surprising, considering the encyclical was written during the rise of Mussolini and during the beginnings of the consolidation of the Russian communist regime. Likewise, John Paul II, who similarly emphasized the importance of the principle of subsidiarity during his pontificate, personally lived through the horrors of both Nazi and communist regimes as a Polish youth.
ing society of its responsibility, the social assistance state leads to a loss of human energies . . .” 97

Additionally, Pius XI understood subsidiarity to be valuable as an engine for reconstructing the social order. Through the creation and sustaining of a social fabric held together by small associations of people and other “prosperous and independent institutions,” social authority will become more effective. 98 Further, unless the individual is granted freedom and responsibility consonant with one’s inherent dignity, the broader social organism cannot prosper. In a statement drawing on the Apostle Paul’s discussion of the Body of Christ in his Letter to the Romans, Pius XI writes in Divini Redemptoris:

“Just as in the living organism it is impossible to provide for the good of the whole unless each single part and each individual member is given what it needs for the exercise of its proper functions, so it is impossible to care for the social organism and the good of society as a unit unless each single part and each individual member—that is to say, each individual in the dignity of his human personality—is supplied with all that is necessary for the exercise of his social functions.” 99

B. Bringing the Principles of Catholic Social Teaching to Bear on the Juvenile Justice System

As previously stated, Catholic Social Doctrine fails to provide a blueprint either for the criminal justice system or for the political organization of the State. This, of course, is intentional, as Jesus’ message offered no specific form of government or economic system as superior. At the same time, the Church has never intended to present Christ’s message in a vacuum, sealed off from the concerns of the world. To the contrary, though according to Scripture the fullness of Christ’s message is not to be realized until the Second Coming, 100 the work of redemption

97. POPE JOHN PAUL II, CENTESIMUS ANNUS: ON THE HUNDREDTH ANNIVERSARY OF RERUM NOVARUM para. 48 (1991). This is not to say, however, that governmental social assistance is frowned upon per se in Catholic Social Thought. John XXIII emphasized in Mater et Magistra that the State can play a positive role if it “encourages, stimulates, regulates, supplements, and complements” and is “based on the principle of subsidiarity.” MATER ET MAGISTRA, supra note 89, at para. 53.

98. QUADRAGESIMO ANNO, supra note 94, at para. 78.

99. POPE PIUS XI, DIVINI RÉDEMPTORIS: ON ATHEISTIC COMMUNISM para. 51 (1937).

100. Christ’s Second Coming is referenced throughout the Christian Scriptures, most notably in Matthew 16:27 (“For the Son of man is to come with
is believed to be present and ongoing. Thus, the teachings of the Church, including the Church’s Social Doctrine, are intended to influence societal structures.

The key principles of Catholic Social Thought outlined above provide bases for critiques of elements of both paradigms of juvenile justice that have been dominant throughout the past century in the United States. As to the ideals of the Progressive Era, surely much is consonant with the principles of Catholic Social Teaching—particularly the principle of solidarity. In fact, though they may not have named it as such, the Progressive reformers were likely motivated by solidarity. The treatment of the nation’s youth, they witnessed, was abhorrent and embarrassing. Instead of allowing youth to undergo the same harsh punishment that their adult counterparts were receiving for their crimes, the reformers believed society had a responsibility to look after, rehabilitate, and reintegrate these troubled youths. Thus, their motivations and actions were consistent with the urging of the Second Vatican Council in *Gaudium et Spes* several decades later to take common responsibility in improving the living conditions of those that were falling through the cracks.101

Likewise, it could be argued that the principle of subsidiarity was respected in the original juvenile justice system. The stated aim of the system was, as Julian Mack put it, for the State to take responsibility for a child when the child’s family was unable or unwilling to provide proper care or development.102 In theory, the idea of *parens patriae* is in harmony with Pope John XXIII’s vision in *Mater et Magistra* of the State as a support and complement of the more immediate familial or community units. In practice, though, it is likely that the State often overstepped its bounds, at least when viewed in light of the aims of subsidiarity. Rather than acting as a true complement to the family unit, the State surely exerted its own will in the face of good-faith objections from a troubled youth’s family, reforming the child in the

---

101. *See Gaudium et Spes,* supra note 90, para. 30.

102. *See supra* text accompanying note 16.

---

his angels in the glory of his Father, and then he will repay every man for what he has done.”) and *Matthew* 25:31–32, 46 (“When the Son of man comes in his glory, and all the angels with him, then he will sit on his glorious throne. Before him will be gathered all the nations, and he will separate them one from another as a shepherd separates the sheep from the goats . . . . And they [the goats] will go away into eternal punishment, but the righteous into eternal life.”).
Such behavior, if occurring, would be contrary to the aims of subsidiarity.

Despite the good intentions of the Progressives, and despite the admirable attempt to put into practice the principle of solidarity (and perhaps subsidiarity, to some degree), it is questionable whether the Progressive vision—and the resulting juvenile justice system—was really in line with the foundational principle of human dignity. In some respects, of course, the system established by the reformers was entirely reflective of the dignity of the troubled youth they sought to treat. The juveniles that entered the system were treated paternally, it could be argued, precisely because they were seen as valuable. Nevertheless, several aspects of the original juvenile courts were at odds with the dignity of its subjects. First, juveniles were not granted any constitutional rights in the juvenile courts, nor were there established procedures for determining each juvenile's required treatment. The Progressives were well aware of this, of course, but found it necessary in order to prevent youths' perceptions that their sentences involved punishment. What resulted, as discussed above, was drastically disparate treatment of juveniles who committed the same crime, depending on their circumstances.

Such a denial of fairness violated a right purportedly extended by the Constitution to all. More so, this sort of disparate treatment reflected a deterministic view of individuals as pure products of their environment. Viewing youth in this way is at odds with the Catholic understanding of human dignity, which places great emphasis on intelligence and free will.

The system established by the Progressive reformers also strayed from the principle of human dignity in refusing condemnation of crimes committed and in denying juvenile culpability. In doing so, all sense of moral responsibility for one's

103. Commenting on the court's overbearing nature, one writer notes that the juvenile court "flunked parents just as the public school flunked children." SCHLOSSMAN, supra note 21, at 58.
104. See supra text accompanying note 32.
105. See Feld, supra note 20, at 872–73.
106. See supra text accompanying notes 23–28.
107. One writer viewed this as the most profound failure of the juvenile justice system. He writes:

If there is no element of culpability then what effectuates society's moral condemnation for the acts committed? Without the moral condemnation of society, how is the actor to be informed that his actions are deemed wrong? How does a youth come to understand the meaning of right and wrong when he is not blamed for his actions, yet may well know that another actor, of major age, would be?

Kamenstein, supra note 10, at 2134.
actions is negated, and as a result the moral development of youth offenders is likely stunted. While there is merit to studies questioning the decision-making capacity of juveniles, a complete negation of moral responsibility—in all circumstances—clearly cuts against respect for the inherent dignity of the juvenile actors. From a Christian perspective, the story of salvation (and of human nature) is one of both sin and redemption; while shame is not good in itself, it is valued as an ingrained response to failure and as an impetus to conversion. By denying the capacity of juveniles to choose between right and wrong, the original juvenile courts encouraged a distorted understanding of human nature, thus denoting disrespect for a juvenile’s inherent dignity.

The modern era of juvenile justice brought reform in a couple of the areas of deficiency espoused by the early juvenile courts. For one, with the Supreme Court’s rulings in Gault and Kent, juveniles were provided procedural safeguards guaranteed to them by the Constitution that had previously been withheld. As argued above, this seemed to be a step in the right direction and was consonant with respect for the dignity of juvenile offenders. Likewise, “punishment” in the modern era of juvenile justice is no longer a dirty word, and society clearly communicates its moral condemnation for crimes committed. While, as I will argue below, the emphasis and extent of punishment of juvenile crime has extended well beyond bounds of appropriateness, the fact that youths’ moral responsibility for their actions is taken seriously, as a preliminary matter, is consistent with the recognition of their dignity.

Though juvenile justice has arguably made some strides, its reforms have ultimately failed when considered in light of the principles of Catholic Social Teaching. First, neither solidarity nor subsidiarity are given much credence in the structure and aims of the current juvenile courts. While the Progressive reformers understood society’s common responsibility towards wayward youths, the modern approach to juvenile justice consistently abrogates such responsibility. This is made clear through the willingness of the courts to sentence offenders to life sentences in prison, often without opportunity for parole. Truly, for the thousands of juveniles given such sentences, society has effec-

110. See supra text accompanying note 1.
tively communicated that the offending juvenile is no longer worthy of reintegration, regardless of possible repentance and transformation, even forty or fifty years down the road. Such treatment is in stark contrast with the principle of solidarity which, in recognition of human interconnectedness, calls forth selflessness for the sake of one's neighbor. The principle of subsidiarity is likewise overlooked, as a juvenile justice system with such punitive measures places higher value in serving the security needs of the collective body rather than the needs of the offending individual, guilty though he may be of his crime. While it is certainly a duty of the State to provide protection for its citizens, doing so at the cost of denigrating and overly-harsh punitive sentences, with disregard for the offending youth, leaves an imbalance that is out of line with subsidiarity.

Altogether, the current treatment of juvenile offenders illustrates a lack of respect for human dignity. Despite strides in recognition of a juvenile's moral responsibility for his actions, treatment of offenders appears to be motivated more by fear rather than concern. While the Progressive Era reformers may have communicated a lack of respect for the dignity of youth offenders by failing to recognize their abilities of moral reasoning and free choice, the modern era has effectively relied on individual responsibility to justify, in many instances, complete societal disregard for youths who have made poor choices.

C. Possible Solutions

The core principles of Catholic Social Teaching present a third way to envision societal treatment of juvenile offenders—one that brings together the best of both of the traditional paradigms for juvenile justice. In light of Catholic Social Teaching's principles, there are three distinct ways in which the juvenile justice system—and society at large—could more effectively, and justly, react to the problems of juvenile crime. First, in line with the ideals of the Progressive reformers and the principle of solidarity, society at large (and in turn the mechanisms within states' respective juvenile justice systems) must take on a renewed sense of responsibility for youth offenders. The role of the State as parens patriae, while overly paternalistic in the form envisioned by the Progressive reformers, should be emphasized with renewed vigor. Americans have traditionally prided themselves on their collective abilities to assist those in need, and there is no reason to presume it would not be possible for committed advocates to incite the public conscience and work for reform in this area. The emphasis by politicians of "getting tough" on youth crime is
motivated, surely, by the desires and values of their constituents. Were the public to speak loudly and clearly about the common responsibility to take care of our nation’s troubled youth, undoubtedly states’ juvenile justice systems would change to reflect greater compassion for youth offenders, refocusing punitive efforts on the eventual goals of reintegration and rehabilitation as primary aims.

Second, in order to more holistically achieve true reintegration and reconciliation, the juvenile courts must continue to focus on the moral blameworthiness of actions taken, so as to refrain from denigrating the dignity of the offenders themselves (or, for that matter, the victims of their crimes). Furthermore, in line with the principle of dignity, reintegration should never be sought at the expense of the recognition of—and most often some form of penance for—the wrongfulness of conduct that occurred. While diminished moral capacity should be taken into account, communication of right and wrong must not be marginalized, as doing so would be contrary to the moral development of the offending youth. Shame can be an impetus for the recognition of wrongful conduct and eventual reform and thus should not be smothered by the state authority, as was the tendency in the Progressive Era. Thus, traditional American values of individual responsibility and self-determination should continue to be emphasized, though in moderation; such values must not be used as a justification to de-humanize youth offenders as “super-predators,” canceling out solidarity and community responsibility aims and ignoring the intrinsic dignity of the juvenile.

Third, on an informal societal level, there must be a renewed emphasis on the principle of subsidiarity. The family and community breakdown over the last several decades has been remarkable, and there appears to be no end in sight to the isolation of individuals and families from one another. Still, individuals must take it upon themselves to build organic support systems in their communities. Without rebuilding networks where neighbors can rely on one another, and without families committed to each other, public perception of juvenile crime is not likely to change, and fear among disassociated community members will continue to motivate the societal approach to juvenile offenders. Government, likewise, while strengthening its own role as parens patriae, must develop mechanisms and avenues for the encouragement of the formation and strengthening of informal, organic societal units. Out of respect for the potentiality of human ingenuity and initiative, the State must attempt to provide room for communities to take it upon themselves to
work for solutions to the problems of juvenile crime. One possible practical solution is to emphasize restorative justice, enabling offenders and victims to together achieve reconciliation and understanding.\footnote{111. For more information about restorative justice, which seeks to restore victims, offenders, and their communities from the effects of crime through the use of victim-offender mediation, see generally John Braithwaite, Crime, Shame and Reintegration (1989); Repairing Communities Through Restorative Justice (John G. Perry ed., 2002); John Braithwaite, Restorative Justice: Assessing Optimistic and Pessimistic Accounts, 25 CRIME & JUST. 1 (1999); Mark S. Umbreit et al., Restorative Justice in the 21st Century: A Social Movement Full of Opportunities and Pitfalls, 89 MARQ. L. REV. 251 (2006).}

**CONCLUSION**

It would be naïve to suggest that the problems of juvenile crime can be solved easily. Since the idealistic reforms of the Progressive Era near the turn of the twentieth century, the fabric of American society—and the nature of juvenile violence—has undoubtedly become more complex. Despite these complexities, current societal treatment of juvenile offenders should once again incite moral outrage, as it did for Dorothea Dix, Jane Addams, and their companions. The current state of American juvenile justice reflects, at best, an inadvertent disregard for the care and development of future generations. At worst, it signals a collective selfishness and a conscious disassociation with those youths that are most in need of community, rationalized by a casting of such individuals as somehow less than human.

The values of the modern era of juvenile justice need not be cast entirely aside, however. A traditional emphasis on individual responsibility and self-determination is unavoidably a part of American heritage and is not likely to go away—nor should it, so long as such values are tempered by a strong dose of communal responsibility and aims of reconciliation, rehabilitation, and reintegration. The foundational principles of Catholic Social Teaching—which, though rooted in the Catholic tradition, are widely applicable—provide a bedrock for bringing these different sets of aims, seemingly in conflict with one another throughout the history of the juvenile courts, together as one.