

Lesson 2

Tuesday 1/30/24

# Parens Patriae Doctrine

- Houses of Refuge - first institutions designed specifically for children - privately operated but supported by the state: New York (1825), Boston (1826), and Philadelphia (1827).
- Key court cases: (1) Ex parte Crouse (1838); and (2) People of Illinois v. Turner (1870) (Daniel O'Connell case).
- Underlying theory: some children would be taken from their parents -- not for punishment but for help and support.
- Since children were supposed to receive a benefit during the time they were out of parental custody, due process protections would not be required.
- A departure from normal legal procedure whereby the state would normally have to meet due process requirements before depriving someone of their liberty.

## Ex Parte Crouse (1838) and People v. Turner (1870)

- These two court cases (both available as links to pdf files under Lesson 1), arose in Pennsylvania and Illinois.
- Both cases went to the supreme courts of their respective states.
- Both cases involved a child who was confined to an institution even though no crime had been alleged or proven.
- The two states ruled in opposite directions on these cases. Pennsylvania upheld the doctrine of *parens patriae* as a justification for placing a child in the Philadelphia House of Refuge. Illinois went in the opposite direction.

# Conflicting Supreme Court Rulings

- Today, when 2 state supreme courts issue contradictory rulings dealing with a federal constitutional issue (deprivation of liberty), we would expect the U.S. Supreme Court to get involved.
- In the mid-1800's this did not happen. Why not?
- The 5th and 14th Amendments both say that a person may not be deprived of life, liberty, or property without due process of law. The 5th Amendment has typically been understood as a prohibition on the federal government while the 14th Amendment specifically acts as a prohibition on the states.
- These are both state cases and the 14th Amendment was not ratified until 1868 which was right before the O'Connell case was decided.
- The Supreme Court would not take any juvenile justice cases connected to the legal doctrine of parens patriae (in light of the 14th Amendment) until the mid-20th century.

## So, What Happened after 1870?

- The law became unsettled and some jurisdictions began to experiment with new approaches to children's issues.
- Coincided with the beginning of the so-called Progressive Era which ushered in a series of policy reforms related to children (public schools, child labor laws, child protective services, and a specific child-centered justice system) .
- The Juvenile Court Act of 1899 in Cook County Illinois (Chicago) founded the first modern juvenile court on the idea of *parens patriae* - that the state would act in the child's best interests.

# Early 20th Century Developments

- An important first legal test of the *parens patriae* doctrine as a justification for the new juvenile court was *Commonwealth of Pennsylvania vs. Fisher* (1905).
- The Supreme Court of Pennsylvania once again upheld the doctrine of *parens patriae*.
- Since World War II all U.S. states have had a juvenile court similar in mission and function to the original 1899 Cook County juvenile court.

# Features of the Juvenile Court

- Juvenile courts decided which cases to adjudicate.
- Main areas of concern: delinquency, dependency, abuse, and neglect.
- Jurisdiction was a matter of discretion.
- Varying degrees of formality.
- Due process was a lower priority than the child's "best interests."
- Some cases waived or transferred to the adult court.
- Indeterminate dispositions.

## Mid-1900's Concerns

Martha Eliot (1952): "In the Children's Bureau we are deeply worried about what is happening to America's children. Reports received by the bureau in 1951 from 9,179 juvenile courts located largely in 13 states in various sections of the country showed that these courts handled 19 percent more juvenile delinquency cases than in 1948... Delinquency is an index of the effectiveness of services to children in general. When the incidence of delinquency arises, it is evident that our services to children are failing to keep pace with the time" (Barnosky, 2006:330).

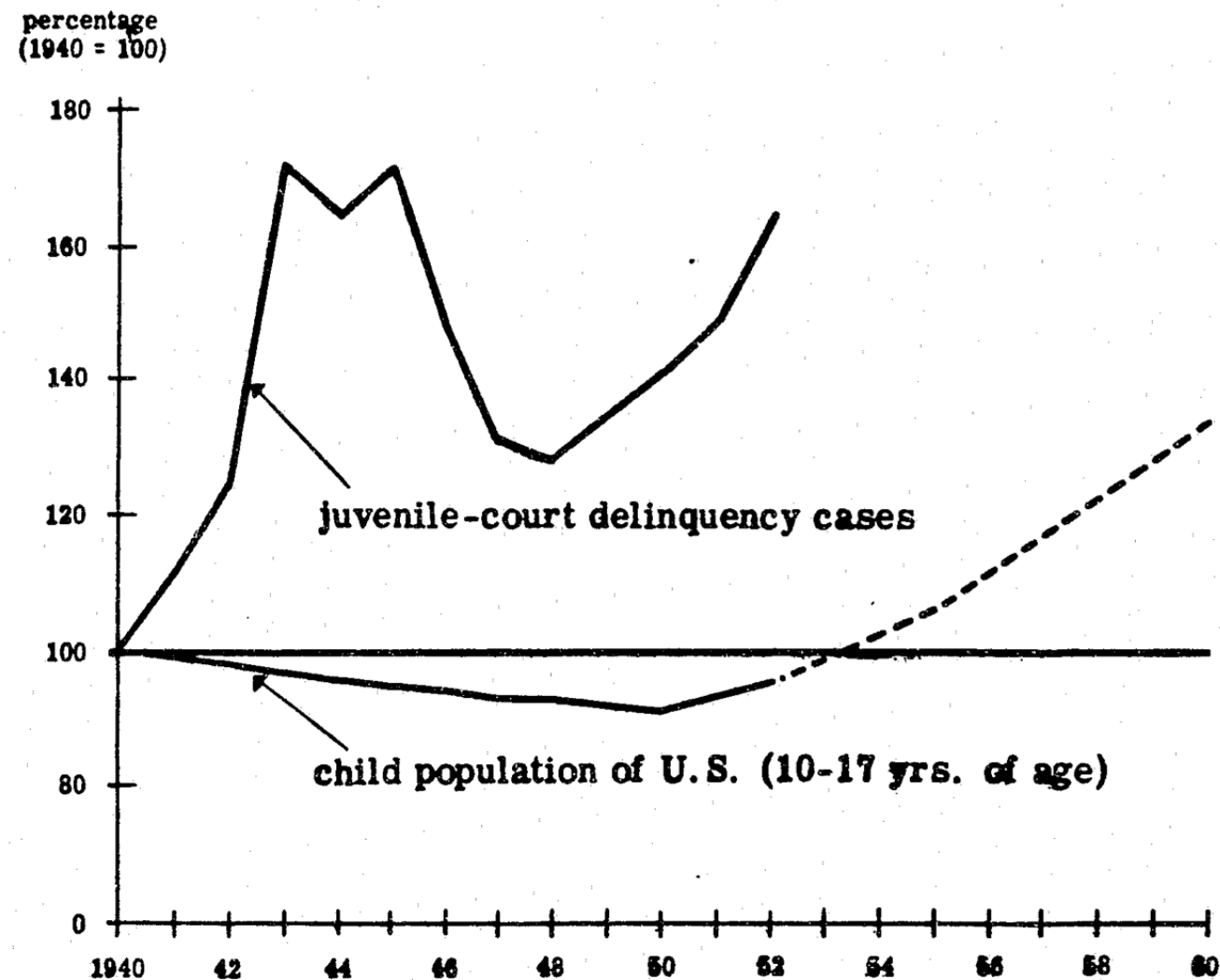
Source: Jason Barnosky (2006). The violent years: responses to juvenile crime in the 1950's. Polity, 38:314-344.



# Early 1950's Juvenile Court Statistics

## JUVENILE DELINQUENCY CASES ARE RISING

An estimated 385,000 children (or about 2% of all children in the U. S. aged 10-17) were dealt with by juvenile courts in delinquency cases in 1952.



Source: U.S.  
Department of  
Health,  
Education, and  
Welfare (1954).  
Juvenile Court  
Statistics  
1950-52.  
Washington DC:  
US Government  
Printing Office  
(page 3).