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## Rehabilitate the Community by Rehabilitating its Youth- How Cognitive Science, Incarceration, and Jurisprudence Relate to the Criminal Justice System's Treatment of Juveniles

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**Rehabilitate the Community by Rehabilitating its Youth—  
How Cognitive Science, Incarceration, and Jurisprudence Relate to the  
Criminal Justice System’s Treatment of Juveniles**

*“I’ve got thoughts of determination in the midst of hard times.  
Hard facts of life replace nursery rhymes in the hearts and minds of our city’s youth.”\**

*By Jacob L. Zerkle\*\**

I. INTRODUCTION

Juvenile delinquency came to the forefront of the public mind in the 1980s and early 1990s with violent juvenile crime on the rise.<sup>1</sup> Unsure of how to react, but knowing that action needed to be taken, the legal community adopted a “get tough on crime” motto that corresponded to its response to adult violent crime.<sup>2</sup> The result? The United States has a higher incarceration rate of adults and juveniles than any other country in the world.<sup>3</sup> And it is no secret that America’s prisons do not rehabilitate; on the contrary, a study of prisoners released from thirty states in 2005 showed

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\*Romona Parks, *Hard Times* (spoken word performance given at Lawndale Christian Legal Center’s First Annual Benefit, Nov. 9, 2012).

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<sup>1</sup> PRESTON ELROD & R. SCOTT RYDER, *JUVENILE JUSTICE: A SOCIAL, HISTORICAL, AND LEGAL PERSPECTIVE* 391 (3d ed. 2011).

<sup>2</sup> Ellie D. Shefi, Note, *Waiving Goodbye: Incarcerating Waived Juveniles in Adult Correctional Facilities Will Not Reduce Crime*, 36 U. MICH. J.L. REFORM 653, 660–61 (2003). During the 1990s, state legislatures became more favorable to the transfer of juveniles into adult court. *Id.* at 661. The harsher political attitude towards juveniles was due, at least in part, to the “increased media attention on violent juvenile crime, particularly gang violence, which lead to greater community outrage and fear, and increased political pressure on community representatives.” *Id.* at 661 n.63. Today, juveniles may be waived into the adult system in three different ways: (1) a juvenile court judge may exercise her discretion, waiving jurisdiction over a juvenile offender after a hearing usually at the request of the prosecutor after the judge takes into consideration criteria set out in *Kent v. United States*, 383 U.S. 541 (1966) or some analogous criteria; (2) a prosecutor may determine whether to file charges in a juvenile or criminal court, based on the age and offense criteria, and this decision is not subject to judicial review; or (3) the legislature may pass a statute, excluding certain offenses from juvenile court jurisdiction based on the age, type of offense, and/or prior record of the juvenile. *Id.* at 662 n.70.

<sup>3</sup> Michelle Ye Hee Lee, *Yes, U.S. Locks People Up at a Higher Rate than any Other Country*, THE WASH. POST (July 7, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/>; see also Adam Liptak, *U.S. Prison Population Dwarfs that of Other Nations*, N.Y. TIMES (Apr. 23, 2008), [http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all&_r=0). *Infra* note 45 (providing more detailed statistics on juvenile incarceration rates in the United States).

that 67.8% were rearrested within three years.<sup>4</sup> This zero tolerance attitude towards criminal behavior has dramatically affected the way juveniles are treated in the criminal justice system.<sup>5</sup>

If getting tough on crime is not the answer, the incredibly complex question becomes: What is an appropriate response? This Article advocates for a moderate Progressive approach,<sup>6</sup> contending that juvenile violent behavior is not the root of the problem; rather, it is the fruit—the result of a combination of deeper issues, not all of which can be fully explored in the limited scope of this discussion. This Article argues that juveniles need positive role models, cohesive families, and community support in order to properly develop cognitively and relationally.<sup>7</sup> In contrast, this country's youth are thrust into one of the most violent communities in the United States when they are incarcerated, deprived of positive role models, and cut off from family support, all of which have detrimental effects on a juvenile's cognitive development.<sup>8</sup>

In the words of Marc Klaas:

We will win the war on crime when we are ready to invest our time, energy and tax dollars in America's most vulnerable children, so that they never become America's most wanted adults. Suggesting that we can win the war against violent crime solely by building more prisons is like saying that we can win the war against cancer by building more cemeteries.<sup>9</sup>

The solution to juvenile violent crime is not in our prisons—it is in the communities that shape and mold America's youth.

Part II of this Article provides a broad historical overview of the legal system's treatment of juveniles.<sup>10</sup> Part III then discusses the conditions in adult and juvenile facilities followed by Part IV, which explores various jurisprudential theories, applying them to the problem of juvenile crime.<sup>11</sup> Finally, Part V examines the North Lawndale community, located on Chicago's west side, contending that juveniles are only truly rehabilitated when immersed in a community of people who truly care.<sup>12</sup>

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<sup>4</sup> ALEXIA D. COOPER ET AL., *RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010*, (U.S. Dept. of Justice Bureau of Justice Statistics, 2014), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>.

<sup>5</sup> See *supra* note 2 and accompanying text (explaining that politicians were under pressure by the public to adopt a harsher stance toward juvenile crime).

<sup>6</sup> The Author uses “moderate progressive” to refer to a middle ground between the Progressive mindset, which ignored normal adult criminal procedures and applied individualized discretion in every case, and the “adult time for adult crime” attitude of the 1980s and 1990s, which treated juveniles exactly the same as adults in terms of culpability and punishment.

<sup>7</sup> See *infra* Part V (offering North Lawndale as an example of a community that is committed to rehabilitating its youth).

<sup>8</sup> See *infra* notes 44–57 and accompanying text (describing the deplorable conditions in adult and juvenile facilities).

<sup>9</sup> PETER ELIKANN, *SUPERPREDATORS: THE DEMONIZATION OF OUR CHILDREN BY THE LAW* 806 (1999) (quoting Marc Klaas in the Foreword).

<sup>10</sup> See *infra* Part II.

<sup>11</sup> See *infra* Part III—IV.

<sup>12</sup> See *infra* Part V.

## II. A HISTORICAL OVERVIEW

The American perception of juvenile offenders has varied during the past 150 years. Public opinion in turn has had a substantial role in influencing legislators, politicians, and attorneys, all of whom have tremendous power in determining how juveniles should be treated in our judicial system. As a result, laws affecting juveniles in the criminal system have fluctuated between paternalism and strict punishment.

### A. *The Emergence of the Progressive Approach: 1899–1966*<sup>13</sup>

The Progressives confronted the problem of juvenile delinquency with the following philosophy: “Children are materially different from adults with regard to the reasons they commit crimes, and the consequences that flow from their wrongful acts should reflect that insight.”<sup>14</sup> This system differed from the adult criminal system in two ways: (1) procedural rules in the adult criminal system were no longer necessary because the juvenile system focused on the child’s needs and interests; and (2) the purpose of the juvenile court was rehabilitative and reformatory, not merely punitive.<sup>15</sup> The state justified its creation of the new system by the doctrine of *parens patriae*, which establishes that the government has the responsibility and obligation to intervene in the lives of children who have broken the law.<sup>16</sup>

The traditional procedural rules from the adult system would no longer be necessary because the Progressives trusted that attorneys and judges would look out for a child’s best interests.<sup>17</sup> The Progressives believed that the adult criminal court was “restrained by antiquated procedure, saturated in an atmosphere of hostility, trying cases for determining guilt and inflicting punishment

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<sup>13</sup> See generally *In re Gault*, 387 U.S. 1, 15–16 (1967). The Supreme Court refers to the Progressives as the “early reformers” and summarizes the way these men and women viewed juvenile delinquents:

The early reformers were appalled by adult procedure and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society’s duty to the child could not be confined by the concept of justice alone. They believed that society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.’

*Id.* at 15.

<sup>14</sup> Martin Guggenheim, *Graham v. Florida and a Juvenile’s Right to Age-Appropriate Sentencing*, 47 HARV. CIV. RTS. - CIV. LIBERTIES. L. REV. 457, 466 (2012). See generally ELROD & RYDER, *supra* note 1, at 116; Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 804 (2003). One author has explained the philosophy of the progressives like this:

The early reformers were appalled by adult procedures. . . . The child . . . was to be made to “feel that he is the object of [the state’s] care and solicitude,” not that he was under arrest or on trial. The rules of criminal procedure were, therefore, altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in . . . procedural criminal law were therefore to be discarded.

Sanford J. Fox, *Juvenile Justice Reform: A Historical Perspective*, 22 STAN. L. REV. 1187, 1221 (1970).

<sup>15</sup> Guggenheim, *supra* note 14, at 464–65. See *Gault*, 387 U.S. at 15–16 (summarizing the progressive approach and ideology).

<sup>16</sup> ELROD & RYDER, *supra* note 1, at 119 (citing *Ex Parte Crouse*, an 1838 case that established this doctrine).

<sup>17</sup> Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Reform*, 79 MINN. L. REV. 965, 970–71 (1995).

according to inflexible rules of law.”<sup>18</sup> This led judges to make individualized determinations, based on the facts of each case, and led judges away from a strict application of legal standards.<sup>19</sup> The system’s purpose was chiefly reformative because the Progressives believed that a specific criminal offense did not tell the child’s whole story; in other words, their goal was to determine why the child was offending in the first place.<sup>20</sup> Juvenile courts generally adhered to the core principles of Progressive thought until the seminal U.S. Supreme Court case, *In re Gault* in 1967.<sup>21</sup>

### B. Gradual Departure from the Progressive Approach: 1967–1980

Society’s perception of juvenile culpability during this time period can be summed up as follows: Children may be different than adults, but they should be given many of the same due process rights, even if the justice system does not treat them exactly the same.<sup>22</sup> The Supreme Court in *In re Gault* held that juveniles should be provided many of the same procedural safeguards guaranteed to adults because the Progressive ideal of discretionary individualized treatment was no longer adequate.<sup>23</sup> Although the Progressives’ goal was “careful, compassionate, individualized treatment,” the Court stated that “unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.”<sup>24</sup> The Court limited its holding to procedural safeguards in an adjudicatory hearing (i.e., the actual trial in a juvenile case), declining to address other areas where the juvenile and adult criminal system differed.<sup>25</sup> Three years later, the Supreme Court expanded the procedural protections afforded to juveniles, holding that the State must establish delinquency “beyond a reasonable doubt” like in adult proceedings.<sup>26</sup> Although *In re Gault* resulted in greater due process protections for juveniles in the criminal system, it also marked the Supreme Court’s divergence from the Progressive approach, igniting the gradual “procedural and substantive convergence of juvenile and criminal courts.”<sup>27</sup>

### C. Rejection of the Progressive Approach: 1980–2004

The idea that juveniles should be treated differently than adults in the criminal system came under attack in the 1980s.<sup>28</sup> The general mindset can be summed up in the following: Juvenile

<sup>18</sup> Guggenheim, *supra* note 14, at 465 (internal quotation marks omitted).

<sup>19</sup> Feld, *supra* note 17, at 970–71. The “best interests of the child” standard was born out of this philosophy. *Id.*

<sup>20</sup> *Id.* at 971.

<sup>21</sup> *See Gault*, 387 U.S. at 28, 57.

<sup>22</sup> ELROD & RYDER, *supra* note 1, at 124. Specifically, juveniles have the right to reasonable notice of charges, the right to counsel, the right to confront and cross-examine witnesses, and the right against self-incrimination. *Id.*

<sup>23</sup> *Gault*, 387 U.S. at 14–17.

<sup>24</sup> *Id.* at 18.

<sup>25</sup> *Id.* at 13.

<sup>26</sup> *In re Winship*, 387 U.S. 358, 368 (1970).

<sup>27</sup> Feld, *supra* note 17, at 973.

<sup>28</sup> Scott & Steinberg, *supra* note 14, at 806 (“This period was . . . marked by criticism of the juvenile court and a loss of confidence in its capacity to serve young offenders and also effectively protect the public.”); *see also* Marsha Levick, et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. OF L. & SOC. CHANGE 285, 288–89 (2012) (explaining how society’s mindset changed with the rise of juvenile crime in the United States). Society drastically changed the way it viewed juveniles charged with criminal offenses:

Convinced that the country was headed toward a generation of increasingly violent teens, legislators quickly enacted laws that sought to ensure that youth charged with the most serious offenses would

crime has the same effect as adult crime; thus, juveniles should receive the same consequences and treatment from the criminal justice system regardless of any cognitive differences. Juvenile crime escalated in the 1980s and early 1990s, causing the slogan “adult time for adult crime” to become popular.<sup>29</sup> The juvenile system came under attack by legislators and policy makers who wanted to get tough on crime because they believed, perhaps subconsciously, that society’s interest in public safety should trump its interest in the rehabilitation of its youth.<sup>30</sup> Consequently, many states began lowering the age at which a juvenile could be tried as an adult, and legislative waiver became more common.<sup>31</sup> Society, through the legislative process, made a collective judgment that juveniles were just as culpable as adults, fully responsible for their actions, and thus should be punished in the same way.<sup>32</sup> In sum, the American judicial system rejected the Progressive approach.

#### *D. A Moderate Progressive Approach: 2005–2012*

Societal panic over juvenile crime eventually subsided, giving way to a slightly less punitive view of juvenile delinquency. This perspective is summarized as follows: Juveniles are somewhat different than adults; the consequences that flow from their actions and the manner in which they are treated by the criminal justice system should reflect this insight.<sup>33</sup> The Supreme Court memorialized this idea in *Roper v. Simmons*, holding that it is unconstitutional to impose the death penalty on a juvenile who committed an offense while under the age of eighteen.<sup>34</sup> The Court reasoned that juvenile offenders should not be classified as adult criminal offenders, citing three differences: (1) “A lack of maturity and an underdeveloped sense of responsibility . . . often result[s] in impetuous and ill-considered actions and decisions”; (2) “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and (3) “the character of a juvenile is not as well formed as that of an adult.”<sup>35</sup> In other words, unlike adults,

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be prosecuted as adults. As yet another period of transformation swept over the juvenile court, concerns for due process and the constitutional rights of juvenile offenders were almost completely eclipsed by concerns for public safety, incapacitation, and retribution—the latter being core attributes of the adult criminal system.

*Id.* at 289.

<sup>29</sup> Scott & Steinberg, *supra* note 14, at 806. The idea of the juvenile “superpredator” also became prevalent during this time. *See generally* ELIKANN, *supra* note 9. From 1985 to present day, the number of drug arrests has tripled. Marc Mauer, *The Drug War and its Social Implications*, 13 CHAP. L. REV. 695, 700 (2010). In 1980, U.S. prisons held approximately 40,000 people for drug offenses, and in 2010, 500,000 people were incarcerated for drug offenses. *Id.* There are about two million people in prisons in the United States today, with an incarceration rate of 743 people per 100,000 of America’s national population. Patrice A. Fulcher, *Hustle and Flow: Prison Privatization Fueling the Prison Industrial Complex*, 51 WASHBURN L.J. 589, 591 (2012). To put these numbers in context, this is a higher incarceration rate than those found in China, Russia, or Rwanda. *Id.*

<sup>30</sup> Levick et al., *supra* note 28, at 289–90.

<sup>31</sup> Scott & Steinberg, *supra* note 14, at 806 n.35; *see* Shefi, *supra* note 2 (discussing the three types of waiver in our judicial system).

<sup>32</sup> Levick et al., *supra* note 28, at 289–90; Scott & Steinberg, *supra* note 14, at 806–07.

<sup>33</sup> *See infra* notes 34–40 (citing the Supreme Court’s recognition of the cognitive and developmental differences between juveniles and adults).

<sup>34</sup> *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

<sup>35</sup> *Id.* at 570.

the Supreme Court recognized that “[t]he personality traits of juveniles are more transitory, less fixed.”<sup>36</sup>

Five years later, the Supreme Court went a step further, holding that a life sentence without the possibility of parole violates the Cruel and Unusual Punishment Clause of the Eighth Amendment.<sup>37</sup> In its reasoning, the Court pointed to the differences in juvenile development: “[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds . . . . Juveniles are more capable of change than adults are, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.”<sup>38</sup>

Most recently, the Supreme Court held that an officer must take a child’s age into account when determining whether a child is in custody and, consequently, entitled to a *Miranda* warning.<sup>39</sup> The majority emphasized that a reasonable child who is questioned by police may respond differently than a reasonable adult who is also questioned by police.<sup>40</sup> To support its conclusion, the Court cited cognitive and psychological differences between juveniles and adults, stating that they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them . . . .”<sup>41</sup>

### E. Moving Forward

The Supreme Court’s recent shift to a more moderate line of thinking illustrates its willingness to take into account data on the cognitive differences between children and adults. From 1899 through 1967, the legal system’s chief goal was rehabilitation, while from 1967 into the 1990s its primary focus was punishment and deterrence.<sup>42</sup> The *Gault* Court recognized that the juvenile system had failed to look out for the best interests of the child, and sought to afford the same procedural protections that were provided to adults.<sup>43</sup> However, the pendulum swung the other way when legislatures and policy makers tried to erase the distinction between juveniles and adults with phrases such as “adult time for adult crime.”<sup>44</sup> The moderate approach avoids both errors, recognizing that juveniles are developmentally different than adults. However, the question still

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<sup>36</sup> *Id.* at 569–70. The Court went on to further explain differences between adults and juveniles guilty of criminal behavior:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed. Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.”

*Id.* at 570 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).

<sup>37</sup> See *Graham v. Florida*, 560 U.S. 48, 74 (2010).

<sup>38</sup> *Id.* at 74–75 (quoting *Roper*, 543 U.S. at 570).

<sup>39</sup> *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2406 (2011).

<sup>40</sup> *Id.* at 2402–03.

<sup>41</sup> *Id.* at 2403 (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)).

<sup>42</sup> See *supra* notes 14–27 and accompanying text (providing a brief history of these time periods).

<sup>43</sup> See *supra* notes 22–27 (discussing the Court’s decision in *In re Gault*).

<sup>44</sup> Scott & Steinberg, *supra* note 14, at 806. See *supra* notes 28–32 (delving into society’s attitude toward juveniles during this time).

remains concerning what to do with juveniles who are incarcerated in either adult or juvenile institutions.

Although the judicial system has veered away from the harsh attitude prevalent in the 1980s and 1990s, policymakers should take a serious look at alternatives to incarceration because of the horrific conditions in adult and juvenile facilities, as well as the cognitive differences between juveniles and adults.

## II. INCARCERATION: PROBLEM OR SOLUTION?

An individual incarcerated in an adult prison in the United States will face extremely harsh conditions, to put it mildly.<sup>45</sup> Although juveniles fare better in juvenile institutions, the conditions in these facilities are only marginally better.<sup>46</sup> Data is now available showing that youth in juvenile facilities between 1970 and 2000 experienced “excessive use of isolation or restraints, systemic violence, and physical and sexual abuse” in thirty-nine states.<sup>47</sup> A study from 2000 through 2011 found that these conditions were still prevalent in twenty-two states.<sup>48</sup> It is likely that these statistics do not accurately reflect the actual conditions in these facilities, because youth may fear retaliation if they report abuse; they may have limited access to counsel and the media; and they may not recognize that their rights are being violated because of a general ignorance of the law.<sup>49</sup>

Although juvenile facilities are not ideal, America's youth face a much greater risk of abuse in adult institutions, including risks of sexual and physical assaults.<sup>50</sup> Juveniles are mentally and

<sup>45</sup> Sara Taylor, *Unlocking the Gates of Desolation Row*, 59 UCLA L. REV. 1810, 1868 (2012).

<sup>46</sup> See *infra* notes 47–54. To put the problem of juvenile incarceration into perspective, consider that the juvenile violent crime rate in the United States is only slightly higher than many other nations; however, “America's youth custody rate (including youth in both detention and correctional custody) was 336 of every 100,000 youth in 2002—nearly five times the rate of the next highest nation (69 per 100,000 in South Africa).” RICHARD A. MENDEL, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION, 2 (The Annie E. Casey Found. 2011), [http://www.aecf.org/OurWork/JuvenileJustice/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ\\_NoPlaceForKids\\_Full.pdf](http://www.aecf.org/OurWork/JuvenileJustice/~/media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf). The author concludes by saying, “In other words, mass incarceration of troubled and troublemaking adolescents is neither inevitable nor necessary in a modern society.” *Id.* Mendel goes on to cite six glaring problems with juvenile correctional facilities: these facilities are frequently “(1) dangerous, (2) ineffective, (3) unnecessary, (4) obsolete, (5) wasteful, and (6) inadequate.” *Id.* at 4.

<sup>47</sup> Levick et al., *supra* note 28, at 307. “We have to recognize that incarceration of youth per se is toxic . . . so we need to reduce incarceration of young people to the very small dangerous few. And we've got to recognize that if we lock up a lot of kids, it's going to increase crime.” Mendel, *supra* note 46, at 4 (quoting Dr. Barry Krisberg, president of the National Council on Crime and Delinquency).

<sup>48</sup> Mendel, *supra* note 46, at 5–7. The evidence shows that America's youth correctional facilities are accompanied by: (1) “[w]idespread physical abuse and excessive use of force by facility staff,” (2) “[a]n epidemic of sexual abuse,” (3) “[r]ampant overreliance on isolation and restraint,” (4) “[u]nchecked youth-on-youth violence,” and (5) “[f]requent violence against staff.” *Id.* at 6–8.

<sup>49</sup> Levick et al., *supra* note 28, at 307.

<sup>50</sup> Shefi, *supra* note 2, at 664; see Neelum Arya, *Using Graham v. Florida to Challenge Juvenile Transfer Laws*, 71 LA. L. REV. 99, 108 (2010) (“[E]very year an estimated 200,000 youth are prosecuted, sentenced, or incarcerated as adults across the United States instead of being adjudicated in the juvenile justice system.”); Andrea Wood, Comment, *Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller*, 61 EMORY L.J., 1445, 1451 (2012) (“[J]uveniles made up 7.7% of all victims of substantiated acts of sexual violence in prisons and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population.”). An estimated 10,000 juveniles are held in adult facilities on any given day. *Children in Prison*, EQUAL JUSTICE INITIATIVE, <http://www.eji.org/childrenprison>, (last visited Apr. 24, 2016).



emotionally incapable of coping with these conditions and, as a result, are more likely to become hardened criminals themselves.<sup>51</sup> One statistic stands out, illustrating the effects of adult prisons on juveniles like no other: “[S]uicide is the number one cause of death for juveniles in adult jails.”<sup>52</sup> Recognizing this statistic, prison officials may attempt to protect juveniles by placing them in isolation or administrative segregation.<sup>53</sup> However, this practice may cause further damage, because for many young people solitary confinement causes paranoia, anxiousness, and despondency, especially among juveniles.<sup>54</sup> In 2015, President Obama instructed the Attorney General and the Justice Department to investigate the overuse of solitary confinement in juvenile facilities.<sup>55</sup> After reviewing the findings of their report, President Obama issued an executive order banning the use of solitary confinement for juveniles in federal prisons.<sup>56</sup>

Another significant difference between juvenile and adult institutions is that youth in the juvenile system are held under the doctrine of *parens patriae* and, consequently, have a constitutional or statutory right to rehabilitative treatment.<sup>57</sup> In contrast, youth in the adult criminal system are incarcerated under the state’s police power and have no such right.<sup>58</sup> In addition, adult facilities are often drastically understaffed, making it more difficult for juveniles in adult facilities to receive proper supervision.<sup>59</sup> Even further, juveniles lack access to educational materials, appropriate healthcare, and other rehabilitative services in adult institutions.<sup>60</sup>

#### IV. JURISPRUDENCE AND JUVENILES

<sup>51</sup> Shefi, *supra* note 2, at 664; *see* Wood, *supra* note 50, at 1456 (“Many juveniles can only adjust to life in adult prisons or jails by ‘accepting violence as a part of daily life and, thus, becoming even more violent.’”).

<sup>52</sup> Levick et al., *supra* note 28, at 307; *see also* Shefi, *supra* note 2, at 664 (“[Juveniles] housed in adult jails and prisons are nearly eight times more likely to commit suicide than their adult counterparts.”). Children in adult facilities face a heightened risk of physical and sexual abuse at the hands of other prisoners, abuse by staff, and widespread isolation and restraint. Mendel, *supra* note 46, at 6–8. “[J]uveniles housed in adult prisons are 36 times more likely to commit suicide than juveniles housed apart from adult offenders.” Jessica Lahey, *The Steep Cost of Keeping Juveniles in Adult Prisons*, THE ATLANTIC (Jan. 8, 2016), <http://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/>.

<sup>53</sup> Levick et al., *supra* note 28, at 307.

<sup>54</sup> Terry F. Hickey & Camilla Roberson, *Pretrial Detention of Youth Prosecuted as Adults*, 44 DEC. MD. B.J. 44, 48 (2011).

An individual held in solitary confinement for 23 hours a day typically begins to lose his sense of reality, and becomes paranoid, anxious and despondent, all of which can exacerbate existing mental health conditions. Given that many of the youth being held in adult jails have experienced some serious trauma in their lives or have undiagnosed or untreated mental illness, they are particularly vulnerable.

*Id.*

<sup>55</sup> Barack Obama, *Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), [https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce\\_story.html](https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html); U.S. DEP’T OF JUST., REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING (Jan. 2016), <https://www.justice.gov/dag/file/815551/download>.

<sup>56</sup> Obama, *supra* note 55.

<sup>57</sup> Arya, *supra* note 50, at 123–24 (“While children adjudicated delinquent in the juvenile system have had a statutory and constitutional ‘right to treatment’ since the 1970s, children prosecuted in the adult system do not.”).

<sup>58</sup> *Id.*

<sup>59</sup> Wood, *supra* note 50, at 1453 (“Juvenile detention facilities generally have a ratio of one staff member to every eight youths, while an average adult jail has a staff-to-inmate ratio of one to sixty-four.”).

<sup>60</sup> Wood, *supra* note 50, at 1454–55.

How should the legal system respond to this data? Or, rather, what should motivate it to change? This Section discusses two jurisprudential theories, contending that a Judeo-Christian natural law theory and a therapeutic theory indicate that incarceration should not be the justice system's chief remedy for juvenile delinquency.<sup>61</sup>

#### A. Natural Law

Proponents of a natural law theory of jurisprudence contend that an extra-human source is the foundation of human law.<sup>62</sup> Natural law adherents are a diverse group, encompassing those who believe that nature is the source of this law, and others who hold that the Judeo-Christian God, or some other higher being, is the motivating factor.<sup>63</sup> For purposes of this discussion, this Article applies a Judeo-Christian perspective, evaluating existing laws through a biblical framework.<sup>64</sup> The Bible vests governmental bodies with authority on the basis that "there is no authority except that which God has established."<sup>65</sup> This includes authority to punish wrongdoers.<sup>66</sup> However, the Bible is also very clear that individuals have a duty to defend the rights of the weakest members of society, including the orphan, widow, alien, and prisoner.<sup>67</sup>

<sup>61</sup> See *infra* Part IV.B, Part IV.C.

<sup>62</sup> Richard L. Gray, *Eliminating the (Absurd) Distinction Between Malum In Se and Malum Prohibitum Crimes*, WASH. U L.Q. 1369, 1379 (1995).

<sup>63</sup> *Id.* Although America is very diverse in terms of religious beliefs, for purposes of this discussion, this Article focuses on the Bible as God's revelation to mankind and thus a source of natural law.

<sup>64</sup> Michael P. Ambrosio, *Legal Realism*, THE NEW JERSEY LAWYER MAG. 30, 31 (2000).

<sup>65</sup> *Romans* 13:1 (New International Version). If not otherwise stated, this Article is referencing the New International Version of the Bible.

<sup>66</sup> *Id.*

<sup>67</sup> There is precedent for this view in both the New and Old Testaments. See *Deuteronomy* 10:18–19 ("[God] defends the cause of the fatherless and the widow, and loves the foreigner, giving them food and clothing. And you are to love those who are foreigners, for you yourselves were foreigners in Egypt."); *Deuteronomy* 24:17–18 ("Do not deprive the foreigner or the fatherless of justice, or take the cloak of the widow as a pledge. Remember that you were slaves in Egypt and the Lord your God redeemed you from there. That is why I command you to do this."); *Deuteronomy* 27:19 ("Cursed is the man who withholds justice from the alien, the fatherless or the widow."); *Psalms* 82:2–3 ("How long will you defend the unjust and show partiality to the wicked? Defend the weak and the fatherless; uphold the cause of the poor and the oppressed."); *Proverbs* 31:8–9 ("Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy."); *Isaiah* 1:17 ("Seek justice, defend the oppressed. Take up the cause of the fatherless, plead the case of the widow."). God later judged his people in Israel for taking advantage of the most vulnerable members of its society. See also *Isaiah* 10:1–2 ("Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless."); *Jeremiah* 5:28 ("Their evil deeds have no limit; ... they do not promote the case of the fatherless, they do not defend the just cause of the poor."); *Zechariah* 7:9–10 ("This is what the Lord Almighty said: 'Administer true justice; show mercy and compassion to one another. Do not oppress the widow or the fatherless, the foreigner or the poor.'"). For authority in the New Testament, see *James* 1:27 ("Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress and to keep oneself from being polluted by the world."). Perhaps one of the most powerful motivations for the Christian to care for the rights of the most vulnerable in society comes from *Matthew* 25:31, where Jesus tells his listeners that whatever they have done for the "least of these" (those for whom society has little regard), they have done for him:

I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me." Then the righteous will answer him,

Adherents to a Judeo-Christian theory may agree on the principles but not on their application to the criminal justice system's treatment of juveniles.<sup>68</sup> On the one hand, the Bible teaches that the judicial and legislative branches have been established by God and thus have the authority to promulgate laws and make decisions that address the issues facing our society, including juvenile crime.<sup>69</sup> On the other hand, the governing authorities are not always motivated by what is best for society as a whole, and, as recent DNA exonerations illustrate, the criminal judicial system has considerable flaws.<sup>70</sup> The resulting tension demands that the citizenry critically evaluate whether its decision-makers are correctly using their position and power to maintain a safe and productive society, while simultaneously protecting the interests of the most vulnerable in society, including juvenile criminal offenders.

In sum, the Bible provides principles, as opposed to black letter law, for the public to use when determining whether a law is just; therefore, natural law adherents should apply other theories of jurisprudence, in conjunction with the Bible, to evaluate our justice system's treatment of juveniles.

### B. Therapeutic Jurisprudence

Therapeutic jurisprudence examines the existing procedures, policies, and roles of the various players of the legal system and asks whether the system promotes therapeutic rather than anti-therapeutic consequences in relation to those affected by the system.<sup>71</sup> This theory of jurisprudence has two goals: (1) to promote positive therapeutic outcomes, and (2) to reform those anti-therapeutic legal rules and practices that produce negative psychological and behavioral effects.<sup>72</sup> Scholars have explained that the judicial system is most effective, reformatory, and "therapeutic" when individuals feel like they have been treated with "fairness, respect, and dignity."<sup>73</sup> In light of

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"Lord when did we see you hungry and feed you, or thirsty and give you something to drink? When did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go visit you?" The King will reply, "Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me."

*Matthew* 25:35–40.

<sup>68</sup> See generally Martin H. Pritikin, *Punishment, Prisons, and the Bible: Does "Old Testament Justice" Justify Our Retributive Culture?*, 28 CARDOZO L. REV. 715 (2006) (challenging the assumption that the Old Testament of the Bible condones harsh retribution as a means of punishing criminal offenders).

<sup>69</sup> See *supra* notes 62–64 and accompanying text (providing a broad overview of the natural law theory of jurisprudence as it relates to a Biblical framework for understanding this issue).

<sup>70</sup> *Romans* 3:11–12, 23 ("There is no one who understands, no one who seeks God. All have turned away, they have together become worthless; there is no one who does good, not even one. . . . [F]or all have sinned and fall short of the glory of God . . ."); see generally *DNA Exonerations Nationwide*, THE INNOCENCE PROJECT (Jan. 15, 2016), <http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/dna-exonerations-nationwide> (providing statistics on the 337 post-conviction DNA exonerations and noting several weaknesses in the criminal justice system which may have contributed to wrongful convictions).

<sup>71</sup> Bernard P. Perlmutter, "*Unchain the Children*": *Gault, Therapeutic Jurisprudence, and Shackling*, BARRY L. REV. 1, 55 (2007). This branch of jurisprudence "is a perspective that regards the law as a social force that produces behaviors and consequences . . . . Therapeutic jurisprudence wants us . . . to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process can be fully respected." David B. Wexler, *Therapeutic Jurisprudence: An Overview*, INTERNATIONAL NETWORK ON THERAPEUTIC JURISPRUDENCE (1999), <http://www.law.arizona.edu/depts/upr-intj/>.

<sup>72</sup> Perlmutter, *supra* note 71, at 55.

<sup>73</sup> Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*, 71 U. CIN. L. REV. 89, 94 (2002).

the prison conditions described in Part III above, special care should be taken when assessing the effects of incarceration on juveniles, who differ from adults in the following areas: decision-making, impulsivity, vulnerability, and cognitive development.<sup>74</sup>

Decision-making encompasses a juvenile's "cognitive, emotional, and social factors that influence how [they] process information and arrive at conclusions."<sup>75</sup> More specifically, decision-making encompasses a juvenile's ability to evaluate future consequences, weigh costs and benefits, and identify risks.<sup>76</sup> Research indicates that social and emotional factors strongly affect juveniles, partly because psychosocial maturity develops well into adulthood.<sup>77</sup> Consequently, when faced with decisions that may have criminal consequences, juveniles are affected by social and emotional factors, which are not experienced in the same degree by adults.<sup>78</sup>

Impulsivity is an individual's "predisposition toward rapid, unplanned reactions to internal or external stimuli without regard to the negative consequences of these reactions . . . ."<sup>79</sup> A natural consequence of an underdeveloped decision-making ability is impulsivity.<sup>80</sup> A juvenile's tendency towards impulsivity is perhaps most prevalent when faced with a choice between an immediate, small reward or a delayed relatively larger reward.<sup>81</sup> The tendency towards instant gratification declines as an adolescent reaches his or her mid-twenties.<sup>82</sup>

Children and adolescents are an especially vulnerable population in terms of cognitive ability and emotion regulation.<sup>83</sup> Adolescents have a diminished ability to think and reason independently, and often have a poor self-image and low self-esteem.<sup>84</sup> This is why adolescents consistently look to others for validation and approval, helping to explain why peer pressure can be particularly

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<sup>74</sup> Levick et al., *supra* note 28, at 293.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 293–94. Emotions can shape a juvenile's decision-making in three possible ways, categorized by researchers as: "(1) anticipated emotional outcomes, (2) anticipatory emotions, and (3) incidental emotions." *Id.* The authors explain these three factors in more detail below:

First, individuals may choose to perform particular behaviors in a given situation by evaluating the anticipated emotional outcomes of various behavioral options. Behaviors that seem likely to increase positive emotions tend to become more desirable, even if they carry with them a degree of risk. Second, individuals' direct emotional responses to various behaviors also may guide their decision-making. For instance, individuals tend to approach behavioral situations to which they have positive emotional responses and avoid those situations that evoke negative emotions. Finally, incidental, or background, emotions can influence judgments about the risk or desirability of certain behavioral options.

*Id.* at 294.

<sup>78</sup> See *supra* notes 35–40 (citing the Supreme Court's explanation for treating juveniles differently than adults in certain instances).

<sup>79</sup> Levick et al., *supra* note 28, at 294.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 295.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 296–97. Judges should be aware of emotional challenges facing the youth that come into their courts:

Adolescents tend to demonstrate difficulties recognizing and expressing feelings, managing their emotions, and coping with undesirable feelings . . . . Factors such as childhood maltreatment, maternal depression, exposure to violence, and economic deprivation are associated with poor emotion regulation (i.e., emotion "dysregulation") in children and adolescents.

*Id.* at 296.

<sup>84</sup> *Id.* at 295–97.

harmful when criminal behavior is on the table.<sup>85</sup> Although youth are vulnerable when faced with pressure from their peers, they are especially susceptible to coercion from authority figures.<sup>86</sup> It is not hard to imagine how these factors generally have a greater effect on an adolescent than an adult in the same situation. The instability affecting a juvenile's decision-making, impulsivity, and vulnerability will diminish as the juvenile develops and matures.<sup>87</sup>

The above factors have implications on a juvenile's propensity to participate in criminal behavior, but the factors could also have legal consequences. For example, police are more likely to obtain a false confession from a juvenile than an adult.<sup>88</sup> Several factors are prevalent in juvenile false confessions: (1) psychological and developmental disabilities, (2) a waiver of *Miranda* rights, (3) coercive interrogation process, such as "psychological manipulations, accusation, isolation, and confrontation," and (4) deceptive interrogation practices.<sup>89</sup> These factors, combined with a juvenile's underdeveloped cognitive and emotional abilities, make juveniles more susceptible to false confessions.<sup>90</sup>

Following the thinking of the moderate Progressive approach discussed in the previous section, the principles of therapeutic jurisprudence indicate that the cognitive differences between juveniles and adults should be taken into account when evaluating the existing procedures, policies, and roles of the various players of the legal system.

### C. Incarceration Is Not the Answer

Adherence to a natural law theory compels us to evaluate existing laws in light of a higher law, defined in the Judeo-Christian community by biblical parameters. The God of the Bible gives special attention to the most helpless in society and simultaneously vests the governmental authorities with the power to punish wrongdoers.<sup>91</sup> Even though the Bible contains numerous commands to act justly and care for the orphan, it does not provide concrete instructions about how to do so.<sup>92</sup> Additionally, therapeutic jurisprudence indicates that the developing nature of

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 297.

<sup>87</sup> *Id.* at 297. A correctional system in Vermont has implemented a program designed to teach adult offenders how to observe their own thinking, to recognize the consequences of that thinking, and to learn specific skills for controlling that thinking" with the following strategies:

- (1) identify the patterns of thinking that have led him or her to perform acts of crime and violence in the past and that pose a risk of such behaviors in the future;
- (2) learn specific skills for intervening in and controlling these patterns of thinking; and
- (3) summarize these patterns and interventions in the form of a plan for controlling their high-risk thinking in the community.

Ronner, *supra* note 73, at 112.

<sup>88</sup> Ayleen Barbel Fattal, *Interrogations Can Lead to False Confessions by Juveniles, Study Finds*, FIU NEWS (Oct. 16, 2013), <https://news.fiu.edu/2013/10/interrogations-can-lead-to-false-confessions-by-juveniles-study-finds/68963>.

<sup>89</sup> Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, W. ST. U. L. REV. 29, 36, 39–43 (2013).

<sup>90</sup> Amelia Hritz, Michal Blau, & Sara Tomezsko, *False Confessions*, CORNELL U. L. SCH. SOC. SCI. & L. [http://courses2.cit.cornell.edu/sociallaw/student\\_projects/FalseConfessions.html](http://courses2.cit.cornell.edu/sociallaw/student_projects/FalseConfessions.html) (last visited Mar. 13, 2016).

<sup>91</sup> See *supra* Part IV.A (summarizing what the Bible says about the vulnerable in our society and outlining the authority given to governmental authorities).

<sup>92</sup> See *supra* note 67 (quoting biblical texts commanding individuals to show mercy to the most vulnerable members of society).

juvenile cognition generally cautions against incarceration, but it does not explicitly provide alternatives to our current system.<sup>93</sup>

The history of our judicial system's approach to juveniles, a survey of the conditions in our prison systems, and a discussion of these jurisprudential theories are reasons to believe that legislators, judges, and attorneys need to invest their time and resources in seeking alternatives to incarceration for juveniles. Not only is incarceration expensive, it has detrimental effects on our nation's youth.<sup>94</sup> Moreover, incarceration has *de minimus* value in terms of rehabilitation.<sup>95</sup> In fact, it may lead to a higher likelihood that the child or adolescent will reoffend in the future.<sup>96</sup> This is particularly significant because most juveniles will be released from prison during their lifetimes, which means that they will either integrate into society or reoffend and continue to live on the state's dime.<sup>97</sup>

#### V. NORTH LAWNSDALE: A CASE STUDY

A few communities have created programs that focus on the root of the problem: lack of community support, positive role models, and cohesive families. The reality is that many juvenile offenders grow up in dysfunctional families with few positive role models.<sup>98</sup> Moreover, many communities, especially in the inner city, face an uphill battle, fighting against failing schools, soaring unemployment rates, and gang activity to name just a few.<sup>99</sup> One church on Chicago's West side is attempting to rehabilitate its community by addressing some of these issues.

In 1975, Wayne Gordon and his wife, Anne, moved into North Lawndale, one of Chicago's poorest communities.<sup>100</sup> "Coach" Gordon, as he's called in Lawndale, coached wrestling and

<sup>93</sup> See *supra* Part IV.B (discussing adolescent development, the effects of incarceration on juveniles, and the implications of therapeutic jurisprudence).

<sup>94</sup> Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers* (2012), <http://www.vera.org/pubs/special/price-prisons-what-incarceration-costs-taxpayers>; BARRY HOLMAN & JASON ZIEDENBERG, *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* 2–3 (2006), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

<sup>95</sup> See Holman & Ziedenberg, *supra* note 94 at 4–7 (citing evidence which shows that incarceration may actually increase recidivism among youth).

<sup>96</sup> Laurence Steinberg, *Adolescent Development and Juvenile Justice*, ANN. REV. CLIN. PSYCHOL. 66 (2008), <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Adolescent-development-and-juvenile-justice.pdf>.

<sup>97</sup> Compare U.S. DEP'T OF JUST., STATISTICAL BRIEFING BOOK: JUVENILES IN CORRECTIONS (2015), <http://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2013> ("Nationally, 54,148 juvenile offenders were held in residential placement facilities on October 23, 2013."), with *End Juvenile Life Without Parole*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/end-juvenile-life-without-parole> (Last visited Mar. 13, 2016) ("Approximately 2,570 children are sentenced to juvenile life without parole or "JLWOP" in the United States.").

<sup>98</sup> Amber Carlson, *How Parents Influence Deviant Behavior Among Adolescents: An Analysis of their Family Life, their Community, and their Peers*, PERSPECTIVES JOURNAL 3–5 (2012), [http://cola.unh.edu/sites/cola.unh.edu/files/student-journals/P12\\_Carlson.pdf](http://cola.unh.edu/sites/cola.unh.edu/files/student-journals/P12_Carlson.pdf).

<sup>99</sup> See *infra* Part V (describing the conditions in the North Lawndale community as an example of this).

<sup>100</sup> Between 1950 and 1960, the great black migration brought an influx of African American's to the North Lawndale community. LAWNSDALE CHRISTIAN HEALTH CTR., *North Lawndale History*, <http://www.lawnsdale.org/content/north-lawnsdale-history> (last visited Nov. 8, 2012). During this time the black population grew from 13,000 to 113,000 and the white population declined from 87,000 to 11,000. *Id.* After this population shift, North Lawndale's population was approximately 125,000 and was 91% African American. *Id.* Several race riots devastated the economic activity in the neighborhood during the 1960s, eventually causing Dr.

football at a local Lawndale high school and eventually began a Bible study in his home for some of the local high school athletes.<sup>101</sup> This Bible study developed into a small church, and these individuals—as residents of North Lawndale—were very cognizant of other needs in the community.<sup>102</sup> As a result, Coach Gordon and other members of the community founded the Lawndale Christian Health Center (“LCHC”) in 1984,<sup>103</sup> the Lawndale Christian Development Corporation (“LCDC”) in 1987,<sup>104</sup> Hope House in 1995,<sup>105</sup> and the Lawndale Christian Legal Center (“LCLC”) in 2010.<sup>106</sup>

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Martin Luther King Jr. to visit the community in order to draw attention to the deplorable housing conditions and other social problems in the area. *Id.* More race riots ensued after the assassination of Dr. Martin Luther King Jr. in 1968. *Id.* By 1970, 75% of the businesses in the community relocated to other locations, and African American residents were also moving to other neighborhoods. *Id.*

<sup>101</sup> *Rev. Dr. Wayne L. “Coach” Gordon: Biography*, LAWNDALÉ CMTY. CHURCH, [http://www.lawndalechurch.org/documents/coach\\_bio\\_2011.pdf](http://www.lawndalechurch.org/documents/coach_bio_2011.pdf) (last visited Nov. 19, 2012).

<sup>102</sup> *Id.* To learn more about the history of Lawndale Community Church, read Coach Gordon’s book, WAYNE GORDON, REAL HOPE IN CHICAGO (1995).

<sup>103</sup> *LCHC Origins*, LAWNDALÉ CHRISTIAN HEALTH CTR., <http://www.lawndale.org/about/our-history> (last visited Mar. 13, 2016). After living in the community and listening to its residents, Mr. Gordon began planning and praying for a health facility to meet the physical and emotional needs of the Lawndale community. *Lawndale Community Church*, LAWNDALÉ CHRISTIAN DEVELOP. ASSOC., <http://www.lcdc.net/lcc.html> (last visited Nov. 19, 2012). The Health Center now treats approximately 150,000 patients every year, providing affordable health care to community members who would otherwise not be able to afford it. *LCHC Origins*. The main Health Center facility is located on Ogden Avenue, but it has expanded to three additional satellite locations in the Lawndale Community. *Id.* “Services include laboratory, radiology, and pharmacy, dentistry, optometry, behavioral health, and health support services for targeted populations such as pregnant women, seniors, asthmatics, diabetics, and persons with HIV.” *Id.* Connected to the health center is a fitness center, a café, conference center, women’s health center, and pediatric medical and dental clinics. *Id.*

<sup>104</sup> *Milestones*, LAWNDALÉ CHRISTIAN DEVELOP. ASS’N, <http://www.lcdc.net/milestones3.html> (last visited Nov. 19, 2012). After establishing the health center, members of LCC focused on the need for safe, affordable, and quality housing. *Lawndale Community Church*, LAWNDALÉ CHRISTIAN DEVELOP. ASS’N, <http://www.lcdc.net/lcc.html> (last visited Nov. 19, 2012). Today, the LCDA is responsible for \$48 million in commercial and residential redevelopment. *Id.* This initiative includes “65 single-family homes, condominiums and two-flats and 167 apartment units for low-income families and a \$3.1 million childcare facility (Jubilee Family Resource Center) which serves 220 children and employs 50 people.” *Id.* The LCDA’s greatest successes are seen in the lives of: “[t]he once apathetic resident who now recognizes the power of uniting with other community members; the families experiencing the joy and financial benefits of homeownership; and Lawndale children, adults and senior citizens who have begun to bridge the gap caused by the ‘digital divide . . . .’” *Id.*

<sup>105</sup> *The Hope House & the Nehemiah Discipleship House Ministry*, LAWNDALÉ CHURCH, <http://www.lawndalechurch.org/hope-house.html> (last visited Nov. 8, 2012). Hope House is a ministry of Lawndale Community church “designed to help equip and encourage men, striving to reenter society after prison and/or recovery from substance abuse, to be productive Kingdom men.” *Id.* The program equips the men with a faith-oriented twelve-step support program, job skills, encouragement, and foundational Biblical teachings. *Id.* After participating in the program for three months, the men have the opportunity to work with one of the Hope House’s partnering employers, receive financial management counseling, and are encouraged to reconcile with loved ones. *Id.* After nine months in the program, the men can either conclude their time in the program or move into the Nehemiah Discipleship House where they will continue to receive counseling on planning and goal setting. *Id.* Since its inception in 1995, the leadership at Hope House estimates the 2,500 men have participated in the program and about “90 percent of the men have completely recreated lives, and are enjoying productive, drug/alcohol free lives.” *Id.*

<sup>106</sup> *About Us*, LAWNDALÉ CHRISTIAN LEGAL CTR., <http://www.lclc.net/about.php> (last visited Nov. 3, 2012).

According to the Steans Family Foundation, the median household income in North Lawndale in 2000 was \$18,342 and the unemployment rate was 13.5%.<sup>107</sup> In 2004, North Lawndale had a high school graduation rate of 38.8%, the city of Chicago had an overall average high school graduation rate of 56.6%, and the national average was 70%.<sup>108</sup> In 2008, 64% of Chicago juvenile arrests occurred in ten districts, with North Lawndale ranking second among the ten.<sup>109</sup> In 2001, 57% of the residents of North Lawndale were either in prison, on probation, or on parole.<sup>110</sup> In that same year, 2,442 residents of North Lawndale were sentenced to prison and 68% of these individuals were incarcerated for drug related offenses.<sup>111</sup> The 2010 census showed that 10,000 males from North Lawndale were in prison, resulting in “permanent or intermittent father absence, decreased family income, and a heavy reliance on grandparents for parenting.”<sup>112</sup> The members of Lawndale Community Church founded the Legal Center to address some of these pressing needs.

LCLC, through its lead attorney Clifford Nellis, represents youth twenty-four-years-old and younger in the North Lawndale community who are involved in Chicago's juvenile or adult criminal courts, regardless of their ability to pay.<sup>113</sup> LCLC provides quality legal representation, but it also offers “compassionate social health services and one-on-one mentoring” designed to provide youth with holistic treatment on their path to rehabilitation.<sup>114</sup> After agreeing to representation, LCLC provides its youth with an attorney and a social worker to support him or her for the duration of the case, as well as after the case has finished.<sup>115</sup> Youth in the program meet regularly with a case manager to create a “game plan” for success that is designed specifically for the youth's individual needs.<sup>116</sup> LCLC's program has three phases, which include pending case, aftercare, and alumni: “Our services begin while our youth have a case pending in juvenile or adult criminal court and continue after the case is over during their period of supervision, probation, incarceration, or parole, or for six months if they are found not guilty.”<sup>117</sup>

Mr. Nellis, other volunteer attorneys, social service providers, and community mentors are all part of the effort to help these young men and women navigate the juvenile and adult criminal justice systems.<sup>118</sup> Its advisory board consists of seventeen members from a diverse range of

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<sup>107</sup> Clifford Nellis, Presentation Given at Lawndale Community Church (August 22, 2010) (on file with author). *See also North Lawndale Today*, STEANS FAMILY FOUND. [http://www.steansfamilyfoundation.org/lawndale\\_today.shtml](http://www.steansfamilyfoundation.org/lawndale_today.shtml) (last visited Dec. 10, 2015) [hereinafter STEANS FAMILY FOUND.].

<sup>108</sup> STEANS FAMILY FOUND., *supra* note 107.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *About Us*, *supra* note 106. LCLC has a few requirements for young men and women who participate in its program. *Holistic Legal Services*, LAWDALE CHRISTIAN LEGAL CTR.,

<http://lclc.net/programs/holisticlegalservices/> (last visited Apr. 27, 2016). They must: (1) pay a \$25 processing fee; (2) put in writing career goals and the steps needed to achieve those goals; and (3) engage in a mentoring relationship.

*Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Lawndale Christian Legal Center Newsletter (October 2012) (on file with author).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* LCLC works with youth in the program for an average of three years. *Id.* After one of the youth in its program is completely out from under the criminal justice system, completes LCLC's program, and “demonstrates good citizenship and leadership in [the] community,” LCLC holds an Annual Graduation and Awards Ceremony where they “honor youth who have graduated from [the] program.” *Id.*

<sup>118</sup> *Id.*



occupations, including attorneys from various practice areas, law professors, a juvenile probation and court services employee, a retired lieutenant and homicide detective with the Chicago police department, and a Lawndale Christian Health Center director.<sup>119</sup> Representatives from LCLC visit local high schools to educate the students on their legal rights so that they are aware of their options if they have an encounter with law enforcement.<sup>120</sup>

Bryan Stevenson, Founder and Executive Director of Equal Justice Initiative, has stated that the first step in creating greater justice in our society is to “get proximate.”<sup>121</sup> Specifically, he encourages his audiences with these words, “Get close to the things that matter, get close to the places where there is inequality and suffering, get close to the spaces where people feel oppressed, burdened, and abused . . . . See what it does to your capacity to make a difference, see what it does to you.”<sup>122</sup> Mr. Nellis and most of the Legal Center’s staff themselves live in the neighborhood in close proximity to the people they are serving. “We see ourselves as less of an organization and more as people who live and work in the neighborhood who are trying to mobilize community resources already here,” stated Mr. Nellis in an interview with the Chicago Bar Foundation.<sup>123</sup> He added, “There’s a sense of solidarity with the community that, I think, fosters trust, which is invaluable.”<sup>124</sup>

## VI. CONCLUSION

The Progressives were onto something when they evaluated all of the facts and circumstances of a child’s life in an effort to ascertain the root of his or her criminal behavior, perhaps obeying some natural law idea of looking after the prisoner and orphan. However, our experience tells us that such an approach is impracticable in today’s society, where judges are overwhelmed with criminal cases. Moreover, the post-Progressives were also right in that judges and attorneys are not always capable of making a judgment that is in the child’s best interests. Subsequently, politicians in the 1980s and 1990s carried out society’s wishes by imposing harsher penalties on violent juvenile offenders, idealizing public safety and welfare. Modern research on juvenile cognitive development combined with the deplorable conditions of juvenile and adult institutions indicate that incarceration is not rehabilitative in any sense of the word. Highlighting the problem is much easier than proposing a solution, but the members of Lawndale Christian Church have attempted to address these problems in its mission to serve its community.

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<sup>119</sup> *Board of Directors*, LAWDALE CHRISTIAN LEGAL CTR., <http://lclc.net/about-us/board/> (last visited Apr. 27, 2016). LCLC’s volunteers are a diverse group, because LCLC welcomes volunteers from all backgrounds whether an individual is an “attorney, social worker, pastor, fundraiser, grant writer, administrator, office manager, school teacher, tutor, probation officer, counselor, psychologist, psychiatrist, investigator, paralegal, police officer, judge, accountant, or someone who simply loves youth and wants to be a mentor . . . .” *Volunteer Opportunities*, LAWDALE CHRISTIAN LEGAL CTR., <http://lclc.net/partnering/volunteering/> (last visited Apr. 27, 2016).

<sup>120</sup> *Holistic Legal Services*, *supra* note 113. The LCLC also partners with “school programs, youth clubs, sports programs, church programs, and other advocacy groups,” because “[w]e need to join hands in an effort to raise our youth.” *Id.*

<sup>121</sup> Tatiana Johnson, *Bryan Stevenson Discusses his Four Elements for Creating Change*, HARV. JOHN F. KENNEDY SCH. OF GOV’T (Apr. 6, 2015), <http://www.hks.harvard.edu/news-events/news/alumni/bryan-stevenson-discusses-his-four-elements-for-creating-change>.

<sup>122</sup> *Id.* (quoting Bryan Stevenson in an address given to Harvard students and faculty).

<sup>123</sup> *Lawndale Christian Legal Center*, THE CHI. BAR FOUND. (Oct. 15, 2015), [http://chicagobarfoundation.org/news\\_item/lawndale-christian-legal-center/](http://chicagobarfoundation.org/news_item/lawndale-christian-legal-center/).

<sup>124</sup> *Id.*

I have addressed only a few of the problems facing youth in impoverished communities, failing to discuss the effects of joblessness, failing public schools, gang influence, police misconduct, the availability of guns, the media, and other related issues. This Article suggests that the only way to inspire lasting change in the lives of this country's youth is to change the communities where they live. Of course, the judicial system is incapable of producing this kind of result, and some may even argue that "changing a community" is too abstract a goal anyway. But what has happened in Lawndale is a compelling argument that change is possible at the community level through the efforts of faith-based organizations. And when this happens, the youth are inevitably impacted.

Instead of building bigger prisons, state and federal governments should look closely at North Lawndale—an impoverished community that is being transformed by a church committed to loving and rehabilitating juvenile offenders—and consider how to come alongside and encourage other communities to develop similar initiatives.

Let me conclude with a few lines from Ms. Parks' poem:

And I'm convinced that society makes more beds in prison cells than in dorm rooms for little Tyrone's and Malik's. This is why my heart bleeds . . . I'm wishing we had less handcuffs and more degrees. But I found out, it just takes one voice to speak out, one truth. That's why God only created one of me to speak to all of you about what it takes to overcome in the midst of an economic and spiritual recession. . . . From slave ships to Jim Crow, Watts Riots to Rodney King blows, Skid Row, cultures underneath Wacker Drive in da Chi—oh yes, we've seen our fair share of hard times. . . .<sup>125</sup>

Through the love and creativity of the people of Lawndale Community Church, North Lawndale's youth have the opportunity to overcome these hard times.

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<sup>125</sup> Romona Parks, Mentor & Coach at Lawndale Christian Legal Center, Hard Times, Spoken Word Performance given at Lawndale Christian Legal Center's First Annual Benefit (Nov. 9, 2012) (transcript on file with author).