The original theory behind separating juvenile offenders from adult offenders was to provide care and direction for youngsters instead of isolation and punishment. This idea took hold in the 19th century and became mainstream by the early 20th century. In the 1950s and 1960s, public concern grew because of perceived lack of effectiveness and lack of rights. The Supreme Court made a series of rulings solidifying juvenile rights including the right to receive notice of charges, right to have an attorney, and proof of beyond a reasonable doubt. In the 1980s, the public view was that the juvenile court system was too lenient and that juvenile crimes were on the rise. In the 1990s, many states passed punitive laws, including mandatory sentencing and blanket transfers to adult courts for certain crimes. As a result, the pendulum is now swinging back toward the middle from rehabilitation toward punishment.

19.1 Introduction

The economic developments of the 19th century brought the legal status of children to the public’s eye. The first years of the 1800s were characterized by expansionary fiscal policy. The country was booming and the government was spending freely on infrastructure improvements and real estate speculation, increasing banking activity. By 1818, Americans began to lose confidence in the banks, forcing the government to begin to contract the economy. This economic slowdown intensified, and in 1819, the US plunged into its first true economic crisis, the Great Panic of 1819 (1). This crisis forced most children factory workers out of their jobs and into a state of unsupervised inactivity. Concern about these children began the transformation of social safety net institutions to institutions designed to help these children. In 1824, in New York City, the Society for Prevention of Pauperism became the Society for Reformation of Juvenile Delinquents. This Society opened the first “House of Refuge” in US in 1825, followed by similar agencies in Boston and Philadelphia in 1828. These institutions were designed to prevent civil unrest by maintaining class status (2).

The purpose of these juvenile facilities, a.k.a. training schools, was to isolate the juvenile delinquents from the corruption of hardened adult criminals, and to provide them discipline and guidance. A large part of the adjudicated minor’s daily schedule was devoted to supervised labor for the purpose of education and discipline, but also to support the operating expenses. In addition, students were taught literacy and religion. Today’s training schools continue to house a large number of juvenile offenders. However, over the years, the emphasis changed toward recovery with individualized diagnosis and treatment, improved education, and rehabilitation services (3).
Later in the 19th century, the Industrial Age transformed the workplace to one in which workers required an increasingly complex skill set (4). Manufacturing began focusing on production of interchangeable parts with repeatable precision and mass production. With steam power, electrical power and internal combustion engines came the use of production machinery that required specific learned skill sets to operate (5). As these skills took time to acquire, youths required a longer transition between childhood and working adulthood. Thus the concept of adolescence began to develop, and so did the idea that the responsibilities of this newly defined demographic should be different from those of adults. In what is now known as the Progressive Era, laws were enacted requiring school attendance, limiting the hours of employment, and increasing the age at which one could marry (4). During this time period, more parents began working outside of the home and, therefore, could not home-school their children. The burden of educating children, both academically and socially, then fell upon the school system (6).

Prior to this Progressive Era, there was no separate juvenile justice system, and juvenile offenders were prosecuted under the same criminal law constructs as adults (7). Some additional protections were afforded to youths, however, as immaturity could be used to reduce culpability. For example, depending on jurisdiction, “infancy” was considered an absolute defense until the age of 7 or 10 years. After that, there was a presumption that a youth was incapable of forming criminal intent until the age of 14 years. This presumption could be rebutted if the prosecution could present sufficient evidence of maturity (8, 9). Children fourteen and older were presumed capable of understanding wrongfulness, but the defense could rebut this presumption by establishing immaturity (10).

19.2 Juvenile courts

In 1899, the nation’s first juvenile court was established in Cook County, Illinois (11). In the first juvenile courts, instead of the adversarial trials of adult courts which sought an answer of guilt versus innocence, judges investigated the character and social background of children. They attempted to interpret the reasons and motivations behind the children’s actions to help determine their moral character (12). Instead of using the terminology of guilt, innocence, trial or sentence, these courts spoke of adjudication and disposition. Instead of focusing on the offense at hand, they focused on the best interests of the juvenile (13). These courts began to distance themselves from adult criminal courts by seeking rehabilitation for youths rather than punishment (12).

Since the objective was treatment, the proceedings of these courts differed significantly from criminal courts. Due process and rules of evidence were viewed as unnecessary and possibly detrimental to the goal of assisting the wayward youths. With the key question being amenability to treatment, rather than culpability, social
workers, probation officers, and mental health professionals played key roles, as they were best equipped to answer the question at hand (8).

Additionally, children could be adjudicated for “status offenses,” behaviors that were illegal for a person under the age of 18 years, but legal if committed by an adult. These offenses included sexual acts, alcohol consumption, smoking cigarettes, running away, and truancy. Under the public policy of parens patriae (the power of the state to protect the individuals who need protection), the juvenile courts were given control over all juvenile matters, both delinquent (i.e., criminal) and status offence. Unfortunately, children were often adjudicated into reform schools for both delinquent matters and status offences for unreasonable durations without due process (14). Children could also be adjudicated for “predeliquency” even if no crime was yet committed, as long as they had caused trouble for an authority figure (15).

In 1974, the National Juvenile Justice and Delinquency Prevention Act was enacted. The purpose of this act was to give the states money in order to enact four core items: (a) the deinstitutionalization of juvenile status offenders from detention centers and jails, (b) the provision of “sight and sound” separation between juvenile and adult offenders, (c) the prevention imprisonment of youth in adult jails, and (d) an investigation of the issue of over-representation of minorities in the justice system (16).

19.3 The Supreme Court of the United States’ role in defining the juvenile justice system

The US Supreme Court noticed the imbalance in juvenile rights and responded. In 1966, *Kent v. United States* began a surge of reformatory aimed at providing juveniles rights similar to defendants in criminal courts. The petitioner in *Kent v. United States* was a 16-year-old male who was arrested for charges of housebreaking, robbery, and rape. As a 16-year-old, he was subject to the jurisdiction of the juvenile court unless after a “full investigation,” that court waived jurisdiction and remanded him to the District Court for trial. He was waived to the District Court after a “full investigation,” but without due process. He moved to dismiss this indictment and was overruled. The US Court of Appeals upheld this decision, but the US Supreme Court reversed the decision, stating that due process and assistance of counsel are necessary in order for such a waiver to occur. Justice Fortas said, “... the child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children” (17, 18).

A year later, the US Supreme Court expanded the rights of minors facing charges in their decision on the case of *In re Gault*. Gerald Gault was a 15-year-old male who was brought into custody for making obscene phone calls. His parents were not notified of his arrest, they were not officially notified of his charges, and he was not given an opportunity to confront his accuser. Despite the lack of due process, Gault was
committed to the State Industrial School for 6 years as a juvenile delinquent. The US Supreme Court opined that in most cases the Constitutional protections afforded to adults facing criminal charges should also apply to youths. As such, juveniles had a right to be advised of their right to counsel, have timely notice of their hearings, cross-examine witnesses testifying against them, and invoke their right against self-incrimination (17, 19).

In 1969, the Supreme Court heard a case in which Samuel Winship, a 12-year-old, was charged as a juvenile delinquent for stealing $112 from a woman’s purse. In the New York Family Court, at that time, the standard for proving a juvenile’s guilt was based on “preponderance of evidence” (i.e., more likely than not). Using this standard, Winship was found guilty, even though the Family Court acknowledged that the evidence against Winship would not meet the standard of “beyond a reasonable doubt,” the much higher standard used in criminal courts. The Supreme Court ruled that the standard of “beyond a reasonable doubt” must be used in all criminal cases, both for adults and for juveniles (17, 20).

Despite the changes that occurred from these cases, the US Supreme Court continued to support significant differences between juvenile adjudication courts and adult criminal courts. For example, the Supreme Court drew the line at the right to jury trials for youths in *McKeiver v. Pennsylvania* in 1971. Justice Harry Blackmun wrote that juveniles were entitled to some, but not all of the Constitutional rights of adults in the criminal justice process (17, 21).

In 1975, The Supreme Court upheld the ideal that the juvenile justice system was a more benevolent entity than the adult justice system, and that it offered significant social benefits. Through their decision in *Breed v. Jones*, the Court gave youths the protection against double jeopardy in transfers to adult courts and opined that having such waiver hearings prior to adjudication hearings would not unduly strain the juvenile justice system (17, 22).

The US Supreme Court, focused on the Eighth Amendment of the US Constitution. In the 2002 case of *Atkins v. Virginia* the US Supreme Court opined that it is cruel and unusual to execute mentally retarded individuals. The justices sited the “evolving standards of decency.” Based on that standard, in the 2005 case of *Roper v. Simmons*, the Supreme Court of US held that it is unconstitutional to impose death sentence if the perpetrator was less than 18 years of age at the time of the crime (23).

### 19.4 More recent changes

In the late 1980s, there was a significant increase in lethal violence perpetrated by youths. By 1994, homicides and aggravated assaults committed by teens aged 13–17 years more than doubled. School violence in the suburbs and small towns nationwide was also on the rise (24). Public opinion is a major driving
force in democratic societies. In 1991, the general opinion was that juveniles who committed seriously violent offences should be punished. However, the majority of people did not think that incarceration of juvenile offenders in adult facilities was appropriate. Public opinion changed, however in the early 21st century, when a public poll showed that the majority of respondents favored treating violent, juvenile offenders between the ages of 14 and 17 the same as adults (8). The legislatures in most states responded to the public opinion that juvenile crime had reached epidemic proportions by increasingly modeling their juvenile justice system after their adult criminal systems. This resulted in lowering the age and broadening the offense criteria for trying teenagers in adult criminal court as opposed to juvenile court (24).

19.5 Current controversies

Juvenile justice is a complex issue that spans many boundaries and touches many lives. As long as we are open to discuss the controversies that exist within the system we will be able to improve on what we currently have.

One of these controversies is the question of whether lack of punishment is a cause of the increase in juvenile violent crimes. During the period between 1970s and 1990s, the juvenile justice system became more adjudicative than punitive. During the same period, rates of juvenile violent crimes had grown almost twice as fast as the adult crime rates (25).

Another controversy is about blanket provisions that transfer juvenile offenders from the juvenile to the adult justice system for certain charges (26). Currently 23 states do not specify a minimum age for transfer to adult court for one or more offense classifications. In addition, 46 states allow the transfer of a case into the adult criminal system based on the type of the offense (27).

Yet another controversy is whether juvenile status offense laws are justified or if they should be abolished. Many behavioral health experts believe that status offense behaviors are precursors to more serious crimes (13).

19.6 Summary

From its beginnings within the same framework as the adult criminal code, to the reformations that attempted to transform the system into a therapeutic rather than punitive entity, and more recently the shift back to increased punishment, the juvenile justice system of US has been in a state of frequent flux. The current controversies and varying opinions as to whether a more punitive or more therapeutic approach should prevail will likely continue this trend of change.
References