

COMMENTS

CULTIVATING BOYHOOD AND GIRLHOOD: THE ROLE OF GENDER IN PROGRESSIVE ERA JUVENILE JUSTICE REFORM IN WISCONSIN

*Vanessa Carroll**

INTRODUCTION

In 1926, the Wisconsin Industrial School for Girls¹ lamented its unsuitable physical condition and lack of adequate rehabilitative facilities.² That same year, the Wisconsin State Board of Control³ described the buildings as “old,

* Vanessa Carroll received her J.D. from the University of Wisconsin Law School in 2007, and is currently a Law Fellow with the Southern Poverty Law Center’s Mississippi Youth Justice Project. Vanessa would like to extend her gratitude to the staff of the Women’s Law Journal for the support and hard work that allowed this Article to be published despite some trying circumstances.

1. The Wisconsin legislature’s Act of 1875 authorized the organization of industrial schools to care for “any male child under the age of twelve years, or any female child under the age of sixteen years . . . that is begging or receiving alms; or that is found wandering and not having any home or settled place of abode, proper guardianship, or means of subsistence; or is found destitute either by being an orphan or having a parent or parents who is undergoing imprisonment, or otherwise; or that frequents the company of reputed thieves or of lewd, wanton or lascivious persons in speech or behavior, or notorious resorts of bad characters; or that is found wandering in streets, alleys, or public places, and belonging to that class of children called ‘rag pickers,’ or that is an inmate of any house of ill-fame or poor house . . . ; or who has been abandoned in any way by his parent or parents or guardians; or who is without means of subsistence or support.” Act of 1875, ch. 325, Laws of Wisconsin, 1875 (act authorizing industrial schools). Both parents and law enforcement officials could petition the court to have a child committed to the institution if such commitment would promote the welfare of the child. *Id.*

2. WIS. STATE BD. OF CONTROL, EIGHTEENTH BIENNIAL REPORT OF THE WISCONSIN INDUSTRIAL SCHOOL FOR GIRLS 453 (1926) [hereinafter EIGHTEENTH BIENNIAL REPORT].

3. The Wisconsin Legislature created the Board of Control in 1891 to place the administration of the State’s various institutions under a single administrative body. BERNETT O. ODEGARD & GEORGE M. KEITH, A HISTORY OF THE STATE BOARD OF CONTROL OF WISCONSIN AND THE STATE INSTITUTIONS: 1849-1939, at 5-6 (1939). The legislative purpose of creating the Board was: “‘To secure the just, humane and economical administration of the laws concerning the charitable, curative, reformatory and penal institutions of the state.’” *Id.* at 6 (quoting Act of 1891, ch. 221, Laws of Wisconsin 1891 (act creating the State Board of Control of Wisconsin Reformatory, Charitable, and Penal Institutions). The Board oversaw the erection, maintenance and administration of institutions; commitment proceedings; probation and parole; and sterilization procedures. *Id.* at 7-13.

inadequate and dangerous The fire hazard is very great Everything is cramped and crowded”⁴ The Board of Control report blamed the poor physical conditions of the school for “the breaches of discipline which recur from time to time in the institution.”⁵ The School demanded that the state legislature give this critical situation “immediate attention” and relieve its troubles by providing the School with a new physical institution.⁶

State actors within the Wisconsin juvenile justice system also spoke out about the disgraceful state of the school. A Milwaukee juvenile court judge described the School as “the most inadequate public institution” he had ever seen, and commented that he could not in good conscience send girls to the Industrial School.⁷ Additionally, the State Board of Control spoke with strong condemnation: “If the Industrial School were a hotel, the state would be the first to compel it to close and then would throw the proprietor in jail.”⁸

By 1927, the general public became aware of the deplorable state of the School.⁹ This awareness provoked sharp criticism of the state legislature for its historic failure to provide adequate financial support for the Industrial School and other public institutions.¹⁰ Women’s organizations, such as the Federation of Women’s Clubs and the Federated Church Women of Milwaukee, were particularly vocal in their criticism.¹¹ An activist from the Federation of Women’s Clubs demanded to know whether “hog farms are considered more important than the state’s children.”¹² That summer, the *Wisconsin State Journal (Journal)* printed an editorial that appealed “to a civilized senate” to pass an appropriations bill that would finally respond to the “screaming neglect” of the Industrial School.¹³

The *Journal’s* critique of Wisconsin’s institution for the commitment of dependent or delinquent girls conveys a most troubling contradiction that has encumbered the very foundation of the juvenile justice system since its inception; namely, the contradiction between the protective, rehabilitative impulses of child welfare reform, and the punitive austerity of reformatory institutions built to correct delinquency. Indeed, the reform movement for a distinct juvenile justice system took shape at the turn of the century under the

4. EIGHTEENTH BIENNIAL REPORT, *supra* note 2, at 40.

5. *Id.*

6. EIGHTEENTH BIENNIAL REPORT, *supra* note 2, at 453.

7. WIS. STATE BD. OF CONTROL, THE WISCONSIN INDUSTRIAL SCHOOL FOR GIRLS: PAST, PRESENT, FUTURE 15 (1939) [hereinafter THE WISCONSIN INDUSTRIAL SCHOOL FOR GIRLS: PAST, PRESENT, FUTURE].

8. *Id.* (quoting Frank Klode, a member of the State Board of Control).

9. *See, e.g.*, Editorial, *To a Civilized Senate*, WIS. ST. J., July 20, 1927, at 3 [hereinafter *To a Civilized Senate*].

10. *See id.* (“For ten years we have been coasting on public buildings. The worst condition found anywhere is among the institutions under the state board of control. Of these conditions, the very worst is that at the industrial school.”).

11. *May Revive Fund for Welfare Work*, WIS. ST. J., July 21, 1927, at 1.

12. *Id.* at 4.

13. *To a Civilized Senate*, *supra* note 9, at 3.

rubric of child welfare reform.¹⁴ Speaking in a 1918 court opinion upholding the constitutionality of Wisconsin's juvenile court law, a Milwaukee judge explained that juvenile court proceedings:

[A]re simply statutory proceedings by which the state, in the legitimate exercise of its police power, . . . reaches out its arm in a kindly way and provides for the protection of its children from parental neglect or from vicious influences and surroundings, either by keeping watch over the child while in its natural home, or, where that seems impracticable, by placing it in an institution designed for the purpose.¹⁵

However, the reform movement also evoked critical and pessimistic sentiments about inadequate families and the vicious, immoral, and incorrigible children that these families produced.¹⁶

The tension between these contradictory sentiments may be interpreted as a manifestation of a broader cultural anxiety over the security of traditional mores and values in an increasingly diverse, urban and industrial society.¹⁷ In the early twentieth century, a moral panic swept throughout much of middle-class America, and "the old bourgeoisie took a stand against rank immorality," and prompted legislatures to declare a war on "vice" in all its permutations.¹⁸

14. Toward the end of the nineteenth century, social reformers began to criticize the practice of exposing children to the criminal justice system as if they were adults and advocated for a separate juvenile court "with the explicit intention of helping, rather than punishing, young offenders." David Wolcott, "*The Cop Will Get You*": *The Police and Discretionary Juvenile Justice, 1890-1940*, 35 J. SOC. HIST. 349, 349-350 (2001). Illinois enacted the first juvenile-court law in 1899, which created the first juvenile court in Cook County, Illinois. LAWRENCE M. FRIEDMAN, *AMERICAN LAW IN THE 20TH CENTURY* 90 (2002). Wisconsin soon followed with a juvenile court in Milwaukee in 1901. Marion G. Ogden, *How the Juvenile Court Began in 1901*, at 1 (1961) (unpublished manuscript, on file with the Wisconsin Historical Society).

15. *State v. Scholl*, 167 N.W. 830, 831, 167 Wis. 504, 509 (1918).

16. "Most reformers still conceived of juvenile delinquents as impoverished immigrant youngsters victimized by ignorant or malicious parents who neither shielded their children from perverse influences nor provided for their developmental needs." STEVEN L. SCHLOSSMAN, *LOVE & THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE, 1825-1920*, at 68 (1977).

17. FRIEDMAN, *supra* note 14, at 95-96. Linda Gordon has noted that Progressive Era reformers evidenced a particular alarm about the "decline of the family," and a "hostility to urban child-raising conditions." LINDA GORDON, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE, BOSTON 1880-1960* at 73, 74 (1988). "They feared 'individualism,' inadequate parental authority, and the erosion of domesticity, and believed that they were defending 'traditional' family values." *Id.* at 82.

18. FRIEDMAN, *supra* note 14, at 96. See also MARY E. ODEM, *DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885-1920*, at 96 (1995).

During the first two decades of the twentieth century, public officials, business leaders, physicians, and social scientists, in addition to women reformers, expressed mounting concern about the apparent rise in sexual promiscuity

Progressive Era¹⁹ reformers worried in particular that the traditional institution of the family would fracture under the immense pressures of the modern world.²⁰ Reformers pointed to the rise in welfare and state dependency,²¹ single motherhood,²² child neglect,²³ and juvenile delinquency²⁴ as evidence of the vulnerability of the family unit.²⁵ Thus, one of the predominant goals of Progressive Era social reform was the preservation of the family.²⁶

Within this goal of saving and rehabilitating families, Progressive Era reformers carved out the preservation of childhood as a distinct aspiration.²⁷ The juvenile justice system was created to further this goal by creating a separate system that would protect children rather than punish them and shield

among young working-class women . . . and cautioned that such behavior posed serious moral, social, and health threats to the rest of society.

Id.

19. Historians usually date the Progressive Era as the period from approximately 1890-1920 in United States history. See GORDON, *supra* note 17, at 59; MARTIN J. SKLAR, *THE CORPORATE RECONSTRUCTION OF AMERICAN CAPITALISM, 1890-1916*, at 1 (1988). It is a distinctive era in that it represents the formative years of

[B]asic institutions, social relations, and political divisions of United States society as it evolved toward and beyond the mid-twentieth century. In one and the same period were laid down and intermeshed the foundations of the corporate-capitalist economy, of the regulatory state, of internationalist foreign policy, and of modern political liberalism, as they would develop in mutually reinforcing and conflicting ways over the next several decades in the United States.

Id. The era is also distinctive for its focus on social reform:

Progressivism, composed as it was of impulses of economic efficiency and social justice, embraced many separate but parallel movements: antitrust, railroad regulation, the reform of municipal government, women's suffrage, hours and conditions of work, and the abolition of child labor [Progressives] sought to reshape institutions in ways that would make them more responsive to a growing urban, industrial society.

KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 197 (1989).

20. David S. Tanenhaus, *Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago*, 19 *LAW & HIST. REV.* 547, 554 (2001).

21. Linda Gordon, *Putting Children First: Women, Maternalism, and Welfare in the Early Twentieth Century*, in *U.S. HISTORY AS WOMEN'S HISTORY: NEW FEMINIST ESSAYS* 63, 65 (Linda K. Kerber, et al. eds., 1995).

22. GORDON, *supra* note 17, at 83.

23. Progressive reformers "emphasized child neglect rather than child abuse; and they made out the characteristic villain no longer as a drunken immigrant father but rather as an incompetent, insensitive, and possibly untrained mother in need of professional guidance." *Id.* at 61.

24. *Id.* at 138-39.

25. *See id.* at 73.

26. *Id.* at 73-74.

27. Gordon, *supra* note 21, at 65.

children from the hopelessness and depravity of jails and prisons.²⁸ However, the concern for the preservation of childhood generated a set of prescriptive norms about domestic family life that competed with the protective child welfare ideals of juvenile justice reform. In particular, the cultural anxiety over vice and family dissolution took precedence in the management of delinquent girls. Reformers, juvenile court judges, and others used the juvenile court system as a means to cabin the sexuality and morality of girls, which in turn furthered the goals of protecting traditional domesticity. They believed that any failure to address the sexually immoral tendencies of delinquent girls would engender more crime, illegitimacy, and dependency; the very social evils that undermined the constitution of the American family. The stigma of sexual immorality clung to girls in the juvenile justice system and prompted gender-specific policies and attitudes that were at odds with the purported rehabilitative goals of the juvenile justice system.

This Article will examine the way that the competing goals of child welfare and the maintenance of traditional, domestic family ideals manifested themselves in the context of juvenile justice reform in Progressive Era Wisconsin. I will make the argument that this tension in the values underlying the juvenile court movement emerged in the particular attitudes toward and treatment of delinquent girls. Namely, female delinquency was framed in terms of sexuality, and this preoccupation with sexual delinquency translated into a certain pessimism towards female misconduct. Girls were often perceived as beyond rehabilitation; while boys seemed to enjoy more sympathy and optimism. Part I of this Article will discuss how juvenile justice reform was situated within the Progressive Era concern for children's welfare. Progressive child welfare advocates blamed environmental factors—such as the dissolution of family life—for child neglect and delinquency. Part II will examine how women and mothers were the main targets of this family criticism. Women therefore bore the primary responsibility for cultivating a

28. See Marion G. Ogden, *True Kindness and Child-Saving*, THE JUVENILE ADVOCATE 309, 309-10 (The Juvenile Improvement Ass'n, Denver, CO), Dec., 1906 [hereinafter Ogden, *True Kindness*] (on file with the Wisconsin Historical Society).

To be sure, the old way of treating the wayward child like a deliberate adult offender, was not lenient; neither was it kind. And the friend of childhood is asking far more than the abolishment of old wrongs; even for the installment of the right of the child to have somehow, somewhere, that which may honestly be called a chance.

Id. Writing for a child welfare newsletter in 1905, Marion Ogden conveyed the desperation of children confined to an adult jail:

And then the writer sees, not in imagination, but in memory, six small boys locked in a . . . room of the county jail, all too young to have reached the age of desperation, yet all undergoing the hardening process which the State at that time considered necessary before it could seriously undertake to do anything which might be of help to an erring child.

Marion G. Ogden, *Juvenile Court Department: Not an Accident*, THE CHILDREN'S HOME FINDER (Milwaukee, Wis.), Jan. 1905, at 7 [hereinafter Ogden, *Not An Accident*].

home that inculcated children with morality. Finally, Part III will show how the preoccupation with the import of motherhood worked its way into the juvenile justice system. It infused the juvenile justice system with a certain pessimism about female delinquency and deprived girls of the hope of rehabilitation that supposedly distinguished the juvenile court system from the adult criminal justice system.

I. JUVENILE JUSTICE REFORM IN THE PROGRESSIVE ERA

During the Progressive Era, women became more active in social reform efforts through their involvement in civic organizations and the growing profession of social work.²⁹ Women's clubs, such as the Federation of Women's Clubs and the Federated Church Women of Milwaukee, became increasingly active in political affairs.³⁰ Women dominated the boards of professional and civic organizations such as the Children's Betterment League of Milwaukee³¹ and the Children's Board of Richland County.³² Women activists believed that they were uniquely positioned *as women* to engage in social work, since this type of work demanded a certain maternal sensitivity.³³ Indeed, Ada James,³⁴ a notable Progressive activist from Richland County,

29. See generally GORDON, *supra* note 17, at 60-69 (discussing the professionalization and secularization of charity-work into "social work" during this era).

30. See *May Revive Fund for Welfare Work*, *supra* note 11, at 3 (indicating that the State Federation of Women's Clubs and the Federated Church Women of Milwaukee were among the vocal supporters of an appropriations bill for the care of dependent and/or delinquent children).

31. The Children's Betterment League formed in 1907, and adopted a mission to "undertake, encourage and assist work for the improvement of conditions affecting child-life in . . . Milwaukee, and the protection of children from injustice, evil influences and preventable suffering . . ." CHILDREN'S BETTERMENT LEAGUE OF MILWAUKEE 3 (1911) (on file with the Wisconsin Historical Society). The League had committees to deal with the juvenile court and detention home, legislation, parks and playgrounds, truancy and housing, and parental schools. *Id.* at 2. Women served as officers of the League, and numerous women held positions on the executive committee and the standing committees. *Id.*

32. Richland County created the Children's Board in 1926 to "investigate the conditions surrounding the mentally defective, dependent, neglected, delinquent and illegitimate children within the county and to secure for them the full benefit of the laws embodied in the Children's Code." Ada L. James, History of Surveys Made by the Richland County Children's Board (1926) (unpublished manuscript, on file with the Wisconsin Historical Society). The Board's Annual Report from 1938 states that the membership of the Board consisted entirely of women. RICHLAND COUNTY CHILDREN'S BD., ANNUAL REPORT (1938) (on file with the Wisconsin Historical Society).

33. See Gordon, *supra* note 21, at 65.

34. Ada L. James (1876-1952) was born in Richland Center, WI. Wisconsin Historical Society, Dictionary of Wisconsin History, http://www.wisconsinhistory.org/dictionary/index.asp?action=view&term_id=1485&keyword=ada+james (last visited May 23, 2007). Following her graduation from high school, she participated in the women's suffrage movement until the passing of the 19th Amendment. *Id.* Throughout the 1920's and 1930's, James was active in the Progressive party as well as many reform movements, including birth control, pacifism, and prohibition. *Id.* James was also active in social work in

Wisconsin, argued that women's clubs were crucial to promoting social welfare to the extent that if one were to "[d]ivorce social welfare and women's clubs the one would starve and the other stagnate."³⁵

A logical outgrowth of a maternalist approach to social work was an intense interest in children's welfare during the Progressive Era.³⁶ "Child saving" became the focus of many social reformers of this period.³⁷ This focus was driven by a commitment to the idea that children were fundamentally different from adults and that children were particularly vulnerable.³⁸ Vulnerability in turn warranted the attention of lawmakers, social workers, and reformers in order to ensure that children received adequate care and protection from society.³⁹ Society bore the responsibility of restoring to the "realm of childhood its lost rights."⁴⁰

This interest in preserving and protecting childhood drove the agenda of juvenile justice reformers to see their work as child welfare reform rather than criminal justice reform. Thus, Progressive Era reformers advocated for a separate juvenile justice system.⁴¹ Marion Ogden⁴² explained that "progressive and informed" citizens began advocating for a separate juvenile justice system when they could no "longer endure the public neglect perpetrated on a certain class of helpless children."⁴³ Her writings do not place juvenile justice reform within the realm of work necessitated by public safety.⁴⁴ Indeed, once Wisconsin passed legislation for a juvenile court in Milwaukee, Ogden celebrated that the court ushered in "a new epoch in welfare work."⁴⁵ Public officials also viewed the juvenile court as an element of child welfare reform

Richland County, and served as chair of the county children's board for a number of years. *Id.*

35. Ada L. James, *Woman's Part in Social Welfare*, 1 (1910) (unpublished manuscript, on file with the Wisconsin Historical Society).

36. See Gordon, *supra* note 21, at 73-75.

37. See, e.g., Ogden, *True Kindness*, *supra* note 28, at 309. In this essay, Ogden characterized the juvenile justice reformer as a "friend of childhood." *Id.*

38. See Gordon, *supra* note 21, at 73.

39. *Id.*

40. Marion G. Ogden, *Juvenile Court Ideals* 2 (n.d.) (unpublished manuscript, on file with the Wisconsin Historical Society).

41. See generally Ogden, *supra* note 14, at 1-7 (describing the early efforts of Wisconsin reformers to establish a separate court for juveniles).

42. Marion G. Ogden (1875-1976) was born and raised in Milwaukee, Wisconsin, and devoted much of her adult life to advocating for reforms in the juvenile justice system. She began her volunteer work by visiting boys at the county jail in Milwaukee, and continued as a probation officer well into the twentieth century. Ogden, Marion G., 1875-1976, Univ. of Wisconsin-Milwaukee Archives Dep't, <http://www.uwm.edu/Libraries/arch/findaids/mssef.htm> (last visited June 23, 2007).

43. Ogden, *supra* note 14, at 1.

44. Ogden described the campaign for the juvenile court as "welfare work" or "philanthropy." *Id.* "A Children's court is not a place where the good may be separated at once from the bad, but a place where each one shall acquire every chance that life still offers, to prove whether he will belong to the good or the bad." Ogden, *supra* note 40, at 3-4.

45. Ogden, *supra* note 14, at 1.

and described the juvenile court as “the Official Agency for the promotion of child welfare.”⁴⁶

The perception of delinquent children as helpless and neglected distinguished them from adult offenders whose actions were often considered deliberate.⁴⁷ When Marion Ogden first started visiting jails at the turn of the century, she was struck by the innocence and immaturity of the boys housed at the Milwaukee jail.⁴⁸ She commented on how they were “better suited for a kindergarten than for a jail” and recalled the children’s hunger for story-telling and the simple delights of looking at pictures and folding and weaving strips of bright colored paper.⁴⁹ These interactions with children led her to believe that the courts needed to develop an entirely new attitude toward wayward children and recognize that “there is so wide a gulf between child-hood and adult-hood that the words ‘child’ and ‘criminal’ are not consistent one with another.”⁵⁰ More than anything, delinquent children were victims of their environment.⁵¹

46. REPORT OF MILWAUKEE COUNTY JUVENILE PROBATION DEPARTMENT AND DETENTION HOME, JANUARY 1ST TO DECEMBER 31ST, 1927, at 7 (1928) (on file with the Wisconsin Historical Society) [hereinafter 1927 REPORT].

47. “It is now generally recognized that young boys and young girls who go wrong should not be treated as criminals, not even necessarily as needing reformation, but rather as needing to have their characters formed” Ogden, *Not An Accident*, *supra* note 28 at 8.

Cases of theft which are the direct result [sic] of pure lawlessness [sic] and love of adventure are very common, and the more neglected the child, the more likely is it that his stealing is no mania at all but the very natural result of his mistaken mode of life. It is no thing to be trifled with, this pilfering, for like all other deeds, it may become a habit; but the fact that the child has taken something while living under wrong conditions does not prove that he will take things again after conditions are made right.

Ogden, *supra* note 40, at 6-7.

48. In 1902, Ogden described a visit to the Milwaukee jail in a child welfare newsletter:

The kindly jailer opens the door and here are the boys. Look at them. One little chap is weeping bitterly, and he loses no time in making known his grievance. “That boy,” pointing to the smallest, likewise the most aggressive-looking of the group, “hit me.” “That boy,” with a sudden accession of solicitude for the order of the room, promptly asserts that the aggrieved one has been jumping on the beds. Oh, for a punching bag, for something legitimate, to “hit” in these close quarters! Did you ever think what it means to shut six active boys in a room for seven days . . . ? Do you suppose they leave their energy behind them when they enter those stone walls?

Juvenile Court Department: Children in the Jail, THE CHILDREN’S HOME FINDER (Milwaukee, Wis.), Oct. 1902, at 8 [hereinafter *Children in the Jail*] (on file with the Wisconsin Historical Society).

49. Ogden, *supra* note 14, at 2.

50. Ogden, *supra* note 40, at 19.

51. Marion G. Ogden, *Juvenile Court Department: Results Expressed in Figures*, THE CHILDREN’S HOME FINDER (Milwaukee, Wis.), Oct. 1903, at 6, 7 (on file with the Wisconsin Historical Society).

It is much easier to convict little John of being incorrigible than to convict him of having parents who know nothing about the needs of childhood.

Although their behavior occasionally warranted punishment,⁵² the juvenile court needed to focus on the reformation of character.⁵³

Further, reformers believed that there was something special about childhood that needed to be nurtured and preserved in order to save a child from continuing down a destructive path.⁵⁴ The boys that Ogden worked with were not bad, per se. Rather, they “had the boy-hood so crushed out of them” that they resorted to delinquent behavior.⁵⁵ Wisconsin therefore needed a system that recognized the significance of childhood; where “children could be treated as individuals, so that their childhood could be considered.”⁵⁶ It was essential to preserve childhood in order to divert children from the moral corruption that rendered adult criminals undeserving of much sympathy.

Ogden and other juvenile justice reformers believed that a juvenile system that recognized childhood would also protect children from the harmful and punitive aspects of the adult criminal justice system.⁵⁷ Protecting children and preserving childhood were not compatible with the adult criminal justice system, which relied heavily upon discipline and punishment.⁵⁸ Reformers were adamant that the juvenile justice system needed to distinguish itself by subordinating punishment to rehabilitation.⁵⁹ Ogden noted that although punishment and accountability were necessary components of rehabilitating a delinquent child, punishment itself could not constitute the entire rehabilitative agenda.⁶⁰

It is easier to convict small Joe of assault and battery than to convict him of having a mother who wages perpetual warfare with her neighbors and teaches him to do likewise. As the world is constituted it must ever be so—the children must suffer for the sins, and ignorance, too, of their fathers.

Id.

52. Ogden, *supra* note 40, at 8½ (“Punishment is not a thing to be despised, but such senseless, indiscriminate punishment as [jail] is too common in this world. Punishment is an element in training, not a substitute for it.”).

53. *Id.* at 1.

If by reason of neglect, the child has failed to learn the high and holy meaning of law in the home, he must learn it from the State, in loco parentis

The Juvenile Court must remove all influences, in its dealing with children, that would degrade those children It must wield all those influences which may uplift these children.

Id.

54. In an essay on the ideals of the juvenile court, Ogden wrote: “While childhood lasts, hope lasts. The pliability of childhood is its hope and from it our responsibility grows.” *Id.* at 3.

55. *Id.* at 9.

56. *Id.* at 10.

57. *Id.* at 10-11.

58. See Marion G. Ogden, *Juvenile Court Department: Why Have a Juvenile Court?*, CHILDREN’S HOME FINDER, Jan. 1905, at 5, 5-6 (Milwaukee, Wis.).

59. *Id.* at 6.

60. Ogden, *supra* note 40, at 8½.

Saving children from the punitive consequences of the criminal justice system and preserving childhood also entailed creating an institution to detain children that did not resemble a prison or jail. Children needed a detention center with "sanitary and homelike surroundings bearing as little resemblance to a prison as possible."⁶¹ Prior to 1909, Milwaukee did not have a separate detention facility, and thus, children were often housed with adults in the county jail.⁶² This practice outraged child welfare reformers. Ogden noted that "[t]he impelling motive of this reform was to keep children from criminal atmosphere and jail. The placing of children in jail was an unqualified evil."⁶³ Ogden cringed at the memory of seeing children locked in the county jail, "all too young to have reached the age of desperation, yet all undergoing the hardening process which the State . . . considered necessary. . . ."⁶⁴

Reformers decried the presence of locks, bars, or anything that would press the stigma of criminality over children.⁶⁵ In 1917, a controversy erupted over the erection of a fence around the Milwaukee juvenile detention home.⁶⁶ A newspaper editorial emphasized that "children . . . are not criminals" and condemned the fence as a "violation of all the principles for which the juvenile court and the detention home stand for."⁶⁷ Others in the community felt that the fence made the detention home look like a "den in which to put wild beasts."⁶⁸ Most significantly, reformers like Ogden were concerned that the fence "with its cage like appearance" gave the impression that the children housed there were all criminals.⁶⁹

Progressive child-savers reviled fences, bars, and locks, because they stood in such stark contrast to the ideal upbringing of a child: the home.⁷⁰ The ideal innocence of childhood could, of course, be best cultivated in a home rather than an institution.⁷¹ Courts derived their ability to intervene in the affairs of the home through the common law doctrine of *parens patriae*, which justified state incursions into the home whenever a child's welfare was endangered.⁷² Although the court had the authority to send a child to a

61. Letter from Comm. on Juvenile Delinquency to the Bd. of Supervisors of Milwaukee County (Dec. 11, 1912) (on file with Wisconsin Historical Society).

62. Ogden, *supra* note 14, at 2.

63. Ogden, *supra* note 58, at 5.

64. Ogden, *Not An Accident*, *supra* note 28, at 7.

65. See Marion G. Ogden, Letter to the Editor, *The Detention Home Fence*, J. SENTINEL, Sept. 2, 1917 ("The new fence at the House of Detention is not a thing of beauty. We rebel at the ferocious looking spikes.").

66. *Fence Around Detention Home Causes Protest*, Sept. 1, 1917 (newspaper clipping on file in the *Marion Ogden Papers*, Box 3, Folder 2 with the Wisconsin Historical Society).

67. *Id.*

68. *Id.*

69. *Id.*

70. See Ogden, *supra* note 58, at 5.

71. See *id.* at 5-6 ("The impelling motive of this reform was to keep children from criminal atmosphere and jail . . . [t]he ideal of the court is to keep children in their homes.").

72. SCHLOSSMAN, *supra* note 16, at 8.

reformatory, industrial school, or some other institution,⁷³ it was widely agreed that “the ideal of the court [was] to keep children in their homes when it [could] possibly be made to their interest.”⁷⁴ This sentiment was echoed by a judge deciding a delinquency and child custody case in 1921: “The question . . . involved . . . in most cases of juvenile delinquency is whether or not the interest of the child will be promoted by taking the child out of the family and placing it in a public institution.”⁷⁵ The judge went on to explain that the state’s intent behind delinquency proceedings was:

[T]o supplement the home in cases where it is needful. . . . Doubt should be resolved in favor of the home even though it be imperfect and even though its standards be not of the highest. Its imperfections must be striking and its standards low indeed if the child would be benefited by being committed to the care of a public institution⁷⁶

In order to cultivate the essential years of childhood and prevent their loss, the industrial schools were designed with a domestic feel in order to mimic a familial structure.⁷⁷ The girls’ school was described as providing children with the necessary parental restraints, caring for girls as a “wise and faithful parent.”⁷⁸ Indeed, the Industrial schools articulated the objective of providing girls and boys “the care and nurture of a well-regulated christian [sic.] family.”⁷⁹ Accordingly, the industrial schools organized children into distinct “family units” that would be overseen by a matron.⁸⁰ The daily operations of the home were not described in regimented, institutional terms. Rather, the Industrial School consisted of a “well ordered and regulated” family life, where the matron stood as “a wise, conscientious and sympathetic mother.”⁸¹

II. WOMEN AND MOTHERS AS TARGETS FOR CRITIQUE

The salience of the family and motherhood in the juvenile justice system reflected Progressive Era anxieties about the family. Although juvenile justice reformers and juvenile court judges articulated a preference for maintaining a child in his or her own home,⁸² there was a growing concern that the family as a

73. *In re Alley*, 182 N.W. 360, 361, 174 Wis. 85 (Wis. 1921) (citing Wis. Stat. § 48.08 (1921)).

74. Ogden, *supra* note 58, at 6.

75. *Alley*, 182 N.W. at 361.

76. *Id.* at 362.

77. See BD. OF MANAGERS OF THE WIS. INDUSTRIAL SCH. FOR GIRLS, THIRTY-FIRST ANNUAL REPORT 4 (1907) [hereinafter THIRTY-FIRST ANNUAL REPORT].

78. WIS. INDUSTRIAL SCH. FOR GIRLS, THIRTY-SECOND ANNUAL REPORT: 1907-1908, at 39 (1909) [hereinafter THIRTY-SECOND ANNUAL REPORT].

79. THIRTY-FIRST ANNUAL REPORT, *supra* note 77 at 4.

80. THIRTY-SECOND ANNUAL REPORT, *supra* note 78, at 40.

81. *Id.*

82. Ogden, *supra* note 58, at 6.

social unit had plunged into decadence.⁸³ Social reformers believed that the rise in divorce, single-motherhood, and women's labor outside of the home simultaneously atomized and weakened the family.⁸⁴ This weakness manifested itself in child neglect and the growing dependence of children on the state.⁸⁵ An editorial in the Wisconsin State Journal in 1927 remarked that:

Today the responsibility for the training of the youth seems to have been placed upon society, thereby making it possible for many parents to escape the obligations that are theirs by right Organized society has made it possible for many parents to evade their duties in raising their children.⁸⁶

Progressive child-savers consistently blamed environmental factors for producing delinquency and juvenile delinquency was simply one example of the erosion of morality and the family.⁸⁷ They extended sympathy to "morally hungry" children suffering the misfortune of living in a home that was "worse than no home" at all.⁸⁸ Delinquent children came from homes with parents that knew "nothing about the needs of childhood."⁸⁹ In an essay on the effect of divorce on children, Ogden commented that "[n]eglect is almost certainly the forerunner of juvenile delinquency It is unquestionably true that an astounding percentage of juvenile delinquency of all kinds occurs among children of broken homes"⁹⁰ Reformers therefore believed that the juvenile justice system could play a role in rehabilitating the entire family.⁹¹

83. See GORDON, *supra* note 17, at 21, 72-73. Progressive era reformers evidenced a particular concern for inadequate parenting and the "erosion of domesticity." *Id.* at 82. An editorial in the Wisconsin State Journal from 1927 sharply criticized parents for passing the burden of child-raising on to the state. See Editorial, *Duty of Society*, Wis. St. J., July 26, 1927, at 3 [hereinafter *Duty of Society*].

84. See GORDON, *supra* note 17, at 72-74, 82-83. "The child protectors particularly blamed 'individualistic' tendencies in family life, by which they meant particularly divorce Caseworkers condemned choices—and even necessities—that took women out of their homes." *Id.* at 73.

85. See *Duty of Society*, *supra* note 83, at 3.

86. *Id.*

87. The family was responsible for instructing children in morality; when the family failed to do so, the child was often rendered delinquent. Katherine D. Lumpkin, *Social Situations and Girl Delinquency: A Study of Commitments to the Wisconsin Industrial School 77* (1928) (unpublished Ph.D. dissertation, University of Wisconsin-Madison) (citing Ernest H. Shideler, *Family Disintegration and the Delinquent Boy in the United States*, J. OF THE AM. INSTITUTE OF CRIM. L. & CRIMINOLOGY, Jan. 1918, at 709, 712).

88. *Juvenile Court Record*, Milwaukee Juv. Ct., c. 1900, at 7 (on file with the Wisconsin Historical Society).

89. *Id.*

90. Marion G. Ogden, *The Problem of Divorce when Children Under 16 are Involved* 2 (n.d.) (unpublished manuscript, on file the Wisconsin Historical Society).

91. See GORDON, *supra* note 17, at 73.

Ogden advocated for a preventative focus of the juvenile court.⁹² By working through a preventative paradigm, the juvenile court would be able to act as “a wise and loving father” and do more than merely punish delinquent children.⁹³ Rather, the court could isolate “the primary cause of any deflection from the path of rectitude,” correct that wrong, and “again [start] the little one on the right road.”⁹⁴

Progressive Era child-savers maintained a very particular set of “traditional” family values as the acceptable standard for raising children. This standard included two married parents in which the mother devoted herself to domestic responsibilities and did not work outside the home.⁹⁵ Child welfare reform was therefore used to promote the kind of family structure and relationships that middle-class social workers valued.⁹⁶ However, the middle-class ideal often overlooked the burdens of poverty and urban, industrial life, and faulted families’ “deficiencies” that were merely the manifestation of hardship.⁹⁷

The Progressive Era child-savers’ ideal family was reflected in a study of the population at the Industrial School for Girls, upon which Katherine DuPre Lumpkin devoted a considerable portion of the study to examining the girls’ family backgrounds.⁹⁸ She created a scale on which she rated the quality of a girl’s home life from “poor” to “good.”⁹⁹ A good home consisted of both parents living at home, with the mother not holding a job outside of it.¹⁰⁰ “United” families raised healthy, moral children; while the “degenerate” families contributed to the breeding of delinquents.¹⁰¹ Under this paradigm,

92. See Marion G. Ogden, *Dealing with Beginning Delinquency 2* (Aug. 1, 1969) (unpublished manuscript, on file with the Wisconsin Historical Society) (“It is easy to say . . . that we are hopeless of coping with . . . the wrongs of offending children. Yet . . . it seems somewhat stupid not to find out what would happen if we took hold of the beginning in earnest when chance offers.”).

93. *Juvenile Court Record*, *supra* note 88, at 7.

94. *Id.*

95. See GORDON, *supra* note 17, at 83 (“Single mothers . . . struggled to meet the contradictory expectations of raising and providing for children in a society organized on the premise of male breadwinning and female domesticity.”).

96. *Id.* at 84.

97. See *id.* at 84 (“[Single mothers] could not conform to norms of domesticity, since they by necessity worked outside the home, or tried to Not only single mothers but all poor or employed mothers thus failed their children [according to middle-class child-savers]).

98. Lumpkin, *supra* note 87, at 36-41 (showing Lumpkin’s “Scale for Rating Parental Conditions,” which includes sections meant to analyze broken and unbroken homes, parental supervision, harmony in the home, discipline, and social defective tendencies in the family).

99. *Id.* at 36.

100. *Id.*

101. *Id.* at 76 (citing MARY S. RICHMOND, *SOCIAL DIAGNOSIS* 139 (1917)).

children could only thrive in a traditional family environment.¹⁰² Deviations from this norm induced children to pursue delinquent habits.¹⁰³

Women bore the primary burden of creating a suitable domestic life that could cultivate the ideal childhood.¹⁰⁴ Indeed, women were believed to possess a natural aptitude for motherhood and domestic gentility.¹⁰⁵ For example, Ada L. James encouraged women to embrace their “womanly” nature through responsible childbearing, since motherhood was “the most important function of women.”¹⁰⁶ James described the “primeval duties of women” to be “maternal, domestic and marital” and noted that “the woman who attains the highest excellence in these three lines can well be rated the most womanly woman.”¹⁰⁷ The “womanly woman” was a dutiful wife and loving mother that devoted herself to her children and husband.¹⁰⁸ In sum, “[t]he womanly woman will sacrifice prejudice, style, jewelry and even public approval if necessary to perform her traditional duty as wife, mother and homemaker in the best possible way.”¹⁰⁹

As women were primarily responsible for maintaining the proper domestic standard to cultivate childhood, they also assumed most of the blame for any deviation from this ideal.¹¹⁰ Progressive reformers targeted single-mothers and illegitimacy as two factors that were most responsible for the companionate evils of child neglect and juvenile delinquency.¹¹¹ Single motherhood emerged as a distinct problem during the Progressive Era and many social reformers struggled with the difficulty of providing single-mothers with assistance, while simultaneously trying to reinforce middle-class norms of maternalism and domesticity.¹¹² Single motherhood and illegitimacy not only transgressed acceptable social norms, but also burdened the state with dependent children and mothers. These women reproduced without considering the consequences of a child, “helpless in the face of their own “fecundity,”¹¹³ and seemed to believe that the community “owe[d] them a living.”¹¹⁴ Ada James therefore condemned the practice of providing financial assistance to single-mothers who

102. *See id.*

103. *See id.*

104. Linda Gordon has explained that childhood, both historically and today, is constructed in relation to motherhood, and vice versa. Gordon, *supra* note 21, at 65.

105. *See* Ada L. James, *The Womanly Woman* 1 (1919) (unpublished manuscript, on file with the Wisconsin Historical Society).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 5.

110. GORDON, *supra* note 17, at 73.

111. *See* Gordon, *supra* note 21, at 82.

112. GORDON, *supra* note 17, at 83.

113. Ada L. James, *The Need of a Sterilization Law* 4 (WTMJ radio broadcast Nov. 29, 1932) (unpublished transcript on file with the Wisconsin Historical Society).

114. ADA L. JAMES, *A LITTLE STORY OF HUMAN AND ECONOMIC INTEREST* 5, 14 (1935) (pamphlet on file with the Wisconsin Historical Society).

had not effectively carried out their womanly duties, as this would only foster the development of delinquent children that would become a source of much trouble and expense to society.¹¹⁵

Progressive reformers also characterized single motherhood and illegitimacy as an unnatural transgression and failure of womanhood.¹¹⁶ Thus, the sterilization campaign of the Progressive Era singled out women to receive the brunt of its acerbic rhetoric.¹¹⁷ Since single motherhood and illegitimacy were regarded as so unnatural, the women that bore the stigma of these moral lapses were labeled feeble-minded and mentally defective.¹¹⁸ In speeches and pamphlets, James made countless references to feeble-minded women that gave birth to sometimes a dozen children that possessed the same unsavory qualities as their parents. For example, James described how the “morons” in her hometown of Richland Center:

[H]ad from eight to fourteen children. Fortunately for all concerned, the epidemics that children were subject to took a heavy toll and not all reached maturity; however, enough survived so that it is now necessary for Richland County to spend more than half of her total tax for charity and corrections.¹¹⁹

Sterilization advocates also focused on sexual promiscuity and illegitimacy as indices of feeble-mindedness.¹²⁰ Sexual immorality signified an inherited mental defect and the “feeble-minded girl supposedly posed a grave social menace because she contributed to the spread of immorality, disease, and

115. *See id.* at 3-4.

116. Single mothers “could not conform to norms of domesticity, since they by necessity worked outside the home, or tried to; or their domesticity was suspect because they were paupers, dependent on charity or the state. Failing domesticity, they by definition failed at proper femininity and mothering.” GORDON, *supra* note 17, at 84.

117. *See ODEM, supra* note 18, at 98.

Eugenicists and their supporters advocated rigorous measures to control female moral offenders. . . . [E]ugenicists also advocated sterilization to remove even the slightest possibility of such a person’s reproducing her own kind. In response to eugenic concerns, . . . thirty states had passed laws allowing for the sterilization of “unfit” and feeble-minded persons.

Id.

118. *Id.*

“It is well known that feeble-minded women and girls are very liable to become sources of unspeakable debauchery and licentiousness which pollutes the whole life of the young boys and youth of the community. They frequently disseminate in a wholesale way the most loathsome and deadly diseases, permanently poisoning the mind and bodies of thoughtless youths at the very threshold of manhood.”

Id. (quoting Walter E. Fernald, a leading eugenicist in 1904).

119. James, *supra* note 113, at 3.

120. ODEM, *supra* note 18, at 98.

the propagation of 'defective' and 'unfit' offspring."¹²¹ Motherhood thus carried with it significant social consequences and could be either "the most patriotic or the most criminal of acts."¹²² The unchecked propagation of the "unfit" and "the practice of breeding from the bottom" was becoming "race suicide with a vengeance."¹²³ Thus, the state needed a way to control women's reproduction in order to ensure the health and safety of children and the national citizenry.

III. FEMALE DELINQUENCY AND THE LACKING EFFORT TO REHABILITATE GIRLS

Under Progressive Era norms of morality and decency, women bore most of the stigma and blame for the promiscuity that perpetuated child neglect and delinquency and threatened the fitness of the human race.¹²⁴ This attitude toward women trickled down into the juvenile justice system. Girls were held to a uniform standard of morality in which their sexual transgressions were perceived as unnatural and dangerous.¹²⁵ In essence, the juvenile justice system transposed the expectations of adult women and mothers upon young girls. As female delinquency was measured in terms of sexual irregularity, a definite pessimism clouded the perception of girls within the juvenile justice system. They were essentially subsumed by the moral gravity of their sexual misconduct and denied the optimism of rehabilitation.

The most significant difference between the treatment of girls and boys by the juvenile court is evident if one examines the offenses that resulted in a commitment to an industrial school. As noted above, Progressive reformers perceived promiscuity and immorality as the two most critical manifestations of feeble-mindedness.¹²⁶ Since the feeble-minded were believed to be more prone to delinquency, juvenile justice advocates posited sexual reform and control as the central focus of the juvenile court system for girls.¹²⁷ For girls, the juvenile justice system operated to police sexuality and morality.¹²⁸ Consequently, most girls were found delinquent and sent to industrial schools because they "degraded their womanhood and count it no sin."¹²⁹ In 1927, in the Milwaukee County Juvenile Probation Department and Detention Home, the annual report noted that out of 472 girls "looked after" that year, 252 or 53 percent had been immoral and 251 men were arrested and prosecuted for contributing to their

121. *Id.*

122. Matthew J. Lindsay, *Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States, 1860-1920*, 23 *LAW & SOC. INQUIRY* 541, 567 (1998).

123. *James*, *supra* note 113, at 3.

124. *See GORDON*, *supra* note 17, at 92.

125. *See ODEM*, *supra* note 18, at 95-98.

126. *James*, *supra* note 113, at 5.

127. *ODEM*, *supra* note 18, at 95-98.

128. *Id.*

129. THIRTY-FIRST ANNUAL REPORT, *supra* note 77, at 11.

delinquency.¹³⁰ The 1928 Biennial Report of the Industrial School for Girls also noted that “Sex delinquency is the reason for the majority of girls being committed to the School. . . . Of 107 committed in one year, 97 had been immoral; in many of these cases running away from home, drinking, and insubordination had accompanied the immorality.”¹³¹ The preoccupation with female promiscuity is also evident in the manner in which the Milwaukee Probation Department and the Industrial School for Girls kept track of the incidence of venereal disease among girls, but not boys.¹³² A review of commitment records from the Industrial School for Girls revealed that at least some girls were subject to gynecological examinations to determine whether they still maintained their virginity.¹³³

Indeed, sterilization advocates focused some of their attention on delinquent girls since they were perceived to be the products of feeble-minded parents, contributing to the imminent “race suicide”¹³⁴ by continuing the practice of “breeding from the bottom.”¹³⁵ Sexual delinquency warranted sterilization in order to protect both the girl and society.¹³⁶ In an essay pressing for stronger state support of sterilization for juvenile girls, Ada James stated that “[i]t is far more humane to sterilize a girl than lock her up during her reproductive period.”¹³⁷ Sterilization diminished the threat presented by sexually delinquent girls, and would limit the expense of institutionalization to just the “criminally inclined.”¹³⁸

In contrast, the annual reports for the Industrial School for Boys do not acknowledge sexual delinquency as a problem for boys.¹³⁹ A table showing the committing offenses of boys does not even contain “sexual delinquency” or “immorality” as an offense.¹⁴⁰ The only sexual offense is “attempted rape,” and

130. 1927 REPORT, *supra* note 46, at 12.

131. WIS. STATE BD. OF CONTROL, NINETEENTH BIENNIAL REPORT OF THE WISCONSIN INDUSTRIAL SCHOOL FOR GIRLS 455 (1929).

132. *See* 1927 REPORT, *supra* note 46, at 12.

133. Wisconsin School for Girls, Inmate Case History Books, 1875-1926 (1901) (unpublished collection of commitment records) (series 311, box 3, folder 2, on file with the Wisconsin Historical Society). A commitment record from 1901 for “MB” contains a signed note from a Madison doctor certifying that MB was examined and “found to be a virgin and entitled to the status of a chaste woman.” *Id.*

134. *James, supra* note 113, at 3. The term “race suicide” communicates the panic that fueled the eugenics movement of the early 20th century. The “science” of eugenics advanced the belief that certain “undesirable” characteristics (namely, those associated with the poor) were inheritable. In order to avoid overpopulating the race with “undesirables,” eugenics advocated sterilization of the “unfit.” *See* Matthew J. Lindsay, *supra* note 122, at 567-68.

135. *James, supra* note 113, at 3.

136. *See id.*

137. *Id.* at 2.

138. *Id.*

139. *See* WIS. STATE BD. OF CONTROL, EIGHTEENTH BIENNIAL REPORT OF THE WISCONSIN INDUSTRIAL SCHOOL FOR BOYS 176-77 (1918).

140. *See id.*

remarkably few boys were committed for this offense.¹⁴¹ The juvenile court articulated distinctly different conceptions of male and female delinquency, and what types of conduct necessitated incarceration.

Additionally, Progressive reformers and those involved with the juvenile justice system evinced distinctly different attitudes toward male and female delinquents. A certain degree of pessimism and permanent moral stigma surrounded female delinquency, as if immorality rendered a girl beyond help, whereas the same stigma did not follow boys. Marion Ogden commented on the distinction between male and female delinquency and noted that "girls are as a whole much more serious, and they are often brought too late."¹⁴² The juvenile justice system perceived unrestrained sexuality as leading girls to an "infamy worse than death."¹⁴³

The intense stigma of promiscuity is evident in the manner that girls were housed at the Industrial School for Girls. Girls were not housed according to age. Rather, the School grouped them "according to their moral condition" so that the proper restraint and influence could be exercised over unchaste girls.¹⁴⁴ The school segregated the more "degraded" girls and did not allow any communication between girls housed in different cottages in order to prevent "corrupting influences . . . [from] prey[ing] on the comparatively innocent girl."¹⁴⁵

This focus on moral depravity and sexual stigma is absent from the Progressive Era conception of male delinquency. For example, the 1905 Annual Statement of The Juvenile Improvement Association of Denver¹⁴⁶ clearly shows that the bulk of the Association's work was devoted to fostering the vitality of boys by overseeing their participation in numerous activities.¹⁴⁷ The cover contains a photograph of eleven boys around the age of ten and under, looking poor, but happy.¹⁴⁸ Pictures of boys dominate the inner pages of the pamphlet, with only one picture of a girl,¹⁴⁹ which gives the impression that boys are the objects of reform and rehabilitation. The boys are shown playing sports, working on farms, engaged in a "newsboys" club, and playing instruments in a boys' band.¹⁵⁰

In Milwaukee in particular, the momentum for the juvenile court came from work that had been going on since the late 19th century that was

141. *Id.* In 1918, only one boy was committed for this offense. *Id.*

142. Ogden, *supra* note 40, at 8.

143. FIRST ANNUAL REPORT OF THE MILWAUKEE INDUSTRIAL SCHOOL 22 (Milwaukee, Burdick & Armitage 1877).

144. THIRTY-FIRST ANNUAL REPORT, *supra* note 77, at 11.

145. *Id.*

146. The juvenile court of Denver, Colorado, under auspices of Judge Ben Lindsay, was modeled by juvenile judges in Milwaukee. SCHLOSSMAN, *supra* note 16, at 161-62.

147. THE JUVENILE IMPROVEMENT ASS'N OF DENVER, ANNUAL STATEMENT 1905 (pamphlet on file with the Wisconsin Historical Society).

148. *Id.*

149. *Id.*

150. *Id.*

specifically aimed at relief efforts for poor, inner-city boys.¹⁵¹ According to Marion Ogden's recollections, the individuals involved with Milwaukee's "Boys' Busy Life Club" were primarily responsible for passing the law that created the juvenile court.¹⁵² Indeed, these individuals were instrumental in building a network of resources specifically designed for boys, such as the Farm School for Boys in Dousman, Wisconsin.¹⁵³ Significantly, when Marion Ogden reflected in 1961 on the reform efforts at the turn-of-the-century, she immediately thought of the compassion that the juvenile justice system extended to boys in particular.¹⁵⁴ Nowhere in her recollections does she recall the needs of girls, but rather focuses on "small boys with all their energy and all their possibilities."¹⁵⁵

There is also evidence that there were generally more resources devoted to preventing and treating delinquency in boys. The Yearbook of the Children's Betterment League of Milwaukee¹⁵⁶ from 1908 gives a hint of this disparity. The last section of the yearbook contains a directory of organizations working for the betterment of child life in Milwaukee.¹⁵⁷ It lists five organizations devoted exclusively to boys and these consist of organizations that provide boys with opportunities for outdoor recreational activities.¹⁵⁸ In contrast, there are only two organizations exclusively for girls and both of them focus on preventing girls' immorality through learning and performing domestic activities.¹⁵⁹

Another remarkable feature of juvenile justice reform efforts was the celebration of the unique qualities of boyhood. Activists explained that these qualities needed to be nurtured and encouraged, as a failure to do so would lead to behavioral problems and delinquency.¹⁶⁰ An essay on boyhood found in Ogden's papers described how a boy has "a natural love of physical activity; and he possesses the abundant persistent energy made necessary to him by his

151. See Ogden, *supra* note 14, at 1, 4.

152. *Id.* at 1.

153. *A Message from President Morton, OUR BOYS (Farm Sch. for Boys, Dousman, Wis.), Apr. 1939, at 1 (on file with the Wisconsin Historical Society).*

154. Ogden, *supra* note 14, at 1.

155. *Id.* at 3.

156. The League was founded in the early 20th century with the object to "undertake, encourage and assist work for the improvement of conditions affecting child-life in the city and county of Milwaukee, and the protection of children from injustice, evil influences and preventable suffering" THE CHILDREN'S BETTERMENT LEAGUE OF MILWAUKEE, YEARBOOK OF THE CHILDREN'S BETTERMENT LEAGUE OF MILWAUKEE 3 (1907) (pamphlet on file with the Wisconsin Historical Society).

157. *Id.* at 20-26.

158. *Id.*

159. *Id.*

160. For example, Marion Ogden criticized the cramped conditions of county jails that held young boys, and particularly decried these conditions for creating boys who "have had the boy-hood so crushed of them" which is what made the jails bad. Ogden, *supra* note 40, at 9.

position as progenitor and protector of the race.”¹⁶¹ Reformers seem to have adopted this mentality, and thus advocated for a juvenile justice system that would accommodate the unique energy and vitality of boys.¹⁶² Juvenile court advocates favored rural retreats for young boys, and explained that vigorous outdoor labor would restore delinquent boys to proper physical and mental health.¹⁶³

CONCLUSION

The Progressive Era is notable for its recognition of children as unique, vulnerable, and deserving of state-sponsored and charitable assistance. Childhood's unique qualities warranted a separate juvenile justice system so that children would not be punished for the neglect perpetrated around them. Children needed their own system that would promote childhood innocence and nurture them with domesticity. Indeed, Progressive Era child-savers celebrated childhood as a special moment, that could be best cultivated through stable family life. However, this celebration of the vigor and vitality of childhood rarely entered the discourse surrounding delinquent girls. The expectations of a moral womanhood and motherhood were transposed upon girls, and they were consequently viewed exclusively through the lens of moral depravity. Unlike boys, once they transgressed certain moral norms, they left their childhood behind them, and placed themselves beyond the reach of rehabilitation.

161. R.S.V.P., *Boys*, (periodical unknown) 339, 341 (article on file in the *Marion Ogden Papers*, Box 3, Folder 3 with the Wisconsin Historical Society).

162. Ogden, *supra* note 14, at 1-5.

163. “Many farmers have rendered service year after year in taking the untrained, unhealthy minded city boys to the farms and sending them back healthy in mind and body, with a knowledge of the joy of physical work and clean outdoor living.” 1927 REPORT, *supra* note 46, at 23.