"Punishment Versus Non-Stigmatization in the Massachusetts Juvenile Justice System"

by

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ABSTRACT

This paper looks at the dilemma between the values in the concepts of punishment and nonstigmatization as evidenced in the Massachusetts juvenile justice system and child welfare system. The source of this dilemma is in the historical attitudes toward the delinquency and dependency of children.

The laws re delinquents and dependent children (i.e., 1973 "CHINS ACT" Chapter 1073, Chapters 119 and 120 of Massachusetts General Laws) do not force a resolution of the value choices nor proffer an explication of the ambiguous usage of the terms stigmatization and punishment in the statement of goals and values. One instance where the dilemma manifests itself is in the placement of delinquents and "Children in Need of Services" (previously the historically defined "dependent" children or the status offenders who were labeled "wayward", "stubborn child", "truant", "runaway") in group home facilities shared by them. This paper looks at two group homes which try to meet the goal of "nonstigmatizing their residents yet forced to also function for the goal of punishment; two goals which can not be accomplished simultaneously.
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INTRODUCTION

The Massachusetts juvenile justice system has been accused of being inefficient at its best and a sham at its worst because of the conflict between its legislated purposes and goals and those implied by its administrative design and organizational structure. There was extensive reorganization of the formal system in 1969 to align it closer to its purposes and ideal. And in 1973 the "CHINS" (Children in Need of Services, Chapter 1073) Act was passed in response to the increasingly popular hypothesis that delinquent tendencies in children could be further encouraged and propagated by stigmatization, a hypothesis derived from Lemert's theory of secondary deviation. These actions of 1969 and 1973 brought into conflict the values represented by the history of Massachusetts' attitudes toward "dependent" children, toward delinquent children and toward the historic functions of punishment and of the juvenile justice system; and the values represented by the currently popular ideas of juvenile justice reform. The dissatisfaction with the present juvenile justice system results from the nonresolution of the state legislature's dilemma between these values.
In the first chapter the concepts and conflicting values which form the dilemma are discussed. The concepts are those of punishment and stigmatization and the conflicting values are expressed in the competing definitions of punishment and in the confusion of the definitions of punishment and stigma. The second chapter explains how the present understanding of these concepts and values have evolved within the Massachusetts juvenile justice system. An overview of the formal goals and purposes as stated in the Massachusetts state laws pertaining to the plight of "dependent" children and to the commission of delinquent acts by juveniles is presented in the third chapter. The fourth chapter presents an example of how and where the goals and the laws of child welfare and juvenile justice can contradict. The data was gathered from interviews at two group homes, the Department of Youth Services (DYS) and the Division of family and Child Services (DFCS), and from what published data the agencies made available to me.
Chapter 1

"Concepts of Punishment and Stigmatization"

The definitions of punishment and of stigmatization, and the justifications for punishment are often confused. A justification for punishment is frequently substituted as a definition and vice-versa. H. L. A. Hart, in his "Principles of Punishment," and Anthony Flew, in his "The Justification of Punishment," define a standard or central case of "punishment" in terms of five elements:

(1) it must involve pain or otherwise unpleasant consequences;
(2) the pain has to be inflicted for an offense legal rules;
(3) the pain must be inflicted on the person(s) believed to be guilty;
(4) the guilty person must receive the punishment from a personal agent; that is, natural penalties or acts of God are not considered under this definition;
(5) the personal agent must be an authority constituted by the legal system against which the crime was committed.
Stigmatization is sometimes taken to be synonymous with punishment. Yet often their congeneric aspects are denied or ignored; such is the case when a society claims to "punish" without stigmatizing. Stigma is any mark or label of disgrace indicating deviation from some norm or standard. Stigmatization is a socialization, that general process by which status and role transitions take place. Individuals experience varying degrees of personal differentiation by a process of degradation in which (1) both event (offense) and perpetrator are proved extraordinary; (2) uniformity of the offense and perpetrator is emphasized, while the dissimilarity of the offense and offender to the preferred event and person is enunciated; (3) the dignity and suprapersonal values of society are salient and accessible to view; (4) the denouncer is invested with the right to speak in the name of these ultimate values; (5) the denouncer is seen as a supporter of these values; (6) witnesses and denouncer are presumed to be alike in essence.

Stigmatization serves the purpose of reinforcing the bonds of conformity to society's values. The deviant behavior is considered detrimental to the
continuance of the society, therefore the offender must be made known to be not a full status member of that society; society's values and ultimate goals are made to look desireable, so that others feel the deviant behavior must be cast out and not repeated by themselves; because the others want to belong to the group. Stigmatization is a form of casting out the deviant person by redefining the offender's self (as being inherently different), reinterpreting his past experiences so that the offender's non-membership in the group becomes salient to view by group members.

Punishment can be incorporated into stigmatization. But stigmatization is not necessarily punishment. Primarily stigmatization is seen as a natural reaction by members of the group and is seen as occurring without formal guidelines. Punishment can be viewed as a mechanism for reinstating the stigmatized person into society.

Some theorists attempt to justify punishment as a formal device for retribution, expiation or retaliation. This theory sees vengeance as a natural desire that will be expressed. The formal procedure of criminal law is a more rational expression of the primitive demand for public vengeance. Attempts have been made to rationalize this "primitive demand" for vengeance as a need to bring
about a state of affairs in which it is as if the wrongful act had never happened. Vengeance serves to annul the wrongful act. This theory could then be extended to say that with the annulment of the transgression, the offender is reinstated into society. In this way it can be said that although punishment may be a part of stigma, the punishment can serve as a formal way of also removing that stigma.

Another theoretical justification for punishment is deterrence. Sometimes deterrence is thought to be the only justification for punishment; and at other times it is said to be secondary, that of reprobation being primary. However, in explicating this theory, the purposes of law can be confused with the purposes of punishment. The law is passed as a deterrent to behavior that is socially unacceptable. And few believe that for such laws as against suicide and adultery that punishment has any deterrent effect on others and the consequent diminution of the number of offenses.

Supporters of the theory of punishment as deterrence have a wide spectrum of views on deterrence from that of not needing to justify punishment (as a deterrent) by proving that it always prevents crime by its deterrent quality ("It is enough to indicate there would be more crime if all punishment were abolished."
to that of "scientifically" determining the most efficaceous means of using punishment to deter even if it means "punishing" innocent people, or requiring the severest penalties for offenses of impulse or passion since such offenses can only be prevented by a penalty greater than is needed to prevent deliberate offenses.  

The justification of punishment as rehabilitation falls under that of deterrence; for rehabilitation supposedly assures the non-repetition of crime by the "rehabilitated" offender. Critics of this justification feel that to aim for deterrence through rehabilitation is futile if the causes of crime are looked upon as determined by the life of certain groups, and if the rehabilitation concept deals with the individual as if he were a self-sufficient and self-determining system. It is felt that the rehabilitation concept can only work if applied to a whole social group or, if in adapting the individual completely to the dominant social group and conditions.  

And by what scale of values would the end of therapy be determined? Can perfect beings be created? And then, what of the rest of society? These questions consternate the advocates of rehabilitation.

Bound up with these theories of deterrent and
rehabilitative purposes of punishment are values of equity and utility. It has been argued on the theories of rehabilitation and deterrence that there should be no punishment for one who is no longer capable of doing harm. This argument stems from a utilitarian yet humanistic view of punishment. But it also ignores the utilitarian consideration that punishment, even in this case, may deter all others who may be tempted to commit similar offenses even under conditions not quite the same. Humanists feel that to punish a man because he deserves it and as determined to be equitable in proportion to his crime is mere revenge, barbaric and immoral.\(^{11}\)

Punishment can be perverted into cruelty or therapy if reformation or deterrence are allowed to become independent ends; to those who advocate a retributive purpose for punishment, they (reformation or deterrence) are only acceptable as aspects of the retributive act, annulment and negation.\(^{12}\) Some consider the theories of deterrence and rehabilitation to be more humanistic than that of reprobation and retribution. However, utilitarians can carry the cause of deterrence to an extreme which to them may seem humanistic in a broad sense or regards benefit to society, but can seem cruel as regards individuals. To these utilitarians, whatever may
serve the purpose of deterrence must be carried out, be it "punishment" of an innocent or whatever may serve the purpose of "rehabilitation, be it life-long incarceration of an alcoholic or a lobotomy performed on a "compulsive" offender. There are those who feel offenders should be made to suffer no more and no less than the amount of suffering which may have been caused by them. Yet punishment can have different aims for different crimes.

Notice that in none of these definitions is it possible to have punishment without stigmatizing the individual receiving the punishment. In retribution, this assertion is clear. In deterrence, it may not be so clear. This is because deterrence can be seen either as applying to individuals who have erred and can be deterred from erring in the future, or as applying to individuals who may or may not have erred and are made examples of or "sacrificed" to deter those who have not yet erred. In the former, all conditions for stigmatization are met. The latter case does not necessarily meet all the conditions in the standard definition of punishment. (Confer the definitions of stigmatization and punishment.)

Each of these definitions of punishment discussed
in this chapter are present to some extent in the current Massachusetts juvenile justice system and can be traced to historical attitudes of Massachusetts and much of America, and much earlier, of England, toward criminality. It is in the second chapter that we look at how these have evolved within the Massachusetts juvenile justice system.
Chapter 2

Stigmatization and Punishment as Expressed in Historical Attitudes by Massachusetts Toward Child Welfare

The dilemma which frustrates Massachusetts' efforts to deal with juvenile delinquency has evolved out of the history behind the roles, and the attitudes of which these roles are indicative, performed by the state agencies Division of Family and Child Services (DFCS) and Department of Youth Services (DYS). The Division of Family and Child Services is responsible for status offenders who are designated as Children in Need of Services (CHINS) as well as children eligible for welfare and social security benefits. However, the Division of Family and Child Services falls under the auspices of the state's Department of Public Welfare. The Department of Youth Services is responsible for those youthful offenders adjudged "delinquent." It is a state department unto itself, and is in the Governor's Executive Office. Legal doctrines about juvenile delinquency had a separate historical beginning and development from legal doctrines concerning "dependent" children. The stigma of destitution and that of deviance, both commonly acknowledged and conspicuous, were separate realities in the 18th and early 19th centuries. Toward the latter part of the 19th century
the two distinct perceptions of delinquent children and dependent children began to merge into one of that of the child in trouble. As these perceptions changed, so did the stigma attached to being poor, destitute or delinquent, and so did the role(s) and forms of "punishment" as incorporated into the stigma of being delinquent change.

Before the twentieth century, much of American law and legal philosophy, and especially that of Massachusetts, was adapted from that of English common law. Punishment was viewed as a way of reifying the conceptual relationship between sin and suffering. The criminal was held responsible for his actions; no notion of "diminished responsibility", (such as suggesting leniency and reduced sentences by reason of defendant's insanity, etc.), was established before 1843, the McNaghten Case, under English common law. Though common law demanded that both minor and adult alike be punished for infractions, American nineteenth century legal doctrines and sentencing policies did make allowances for the immaturity and disabilities of children. Laws were enacted specifying the minimum ages at which a youth was to be held responsible for certain crimes; age seven years at common law in some states, and ten in others, with a chance for leniency up to the
age of twelve years if mentally and morally immature. But, the law did not differentiate between the adult and the minor who had reached the age of criminal responsibility. The gradual development, beginning in the mid-1800's, of an attitude which differentiates between the criminal responsibility of an adult and that of a minor occurred largely due to the rise of social reform and the questioning of what are and ought be the "functions" of punishment.

The toying with ideas of "other" "functions" of punishment was one consequence of the nineteenth century social reformers' quest for solutions to the ensuing problems of the industrial revolution. The awesome amount of suffering entailed upon urban life due to overcrowding, filth, disease, destitution, unsupervised and uncared-for children received the attention of the social reformers. These problems were most evidenced within the city's debt prisons, poor-houses, and jails. Children made up much of the population of the latter institutions. This was apparently due to (1) the peasant class women having left the rural with their families to comprise part of the industrial labor force, with the result of children being neglected, (2) the tremendous overcrowding and
poverty in which many families were incapable of properly caring for children. The common law presumption that parents would perform their natural duty, and the interpretation of the fourteenth amendment to the Constitution as protecting the "natural right of a parent to the custody of his child from state intervention without due process of law" both tended to restrict the court's assumption of custody of cases where it was necessary in order to prevent injury due to neglect or maltreatment to the child. So, little protection was assured to children whose distress was mostly not of their own causing, even less or no protection was assured to those needy children whose distress was compounded by their own delinquent acts. Public care of dependent children took the form of committing them to county almshouses as were impoverished adults. Dependent children who received State attention via criminal acts were placed in jail, as were offending adults. Sadly, dependent children often only received State attention in response to delinquent acts because of the two reasons stated above.

Between 1850 and 1870 the almshouse system was supplemented by private organizations and "rescuing" societies. The Society for the Prevention of Cruelty
to Children, founded in 1875, afforded "organized protection for dependent children" and "provisions of an official character for the prosecution of parents or otherwise who ill-used or brutally treated the young and defenseless." In 1869, for the first time, a law was enacted which extended the authority of a Massachusetts state agency over both delinquent and dependent children. The State Board of Charities was charged to attend the hearing of any child on trial in a criminal court, and to arrange care for him with a private family instead of commitment to a reformatory, if this was in the child's interest, and to visit him at intervals. By 1875, Massachusetts had established county homes and institutions for dependent children. But, dependent children continued to be committed to the city's overseers of the poor (often the State Board of Charities) who supervised the almshouse system.

It began to be a common opinion that orphaned and unsupervised children were liable to become delinquents. As early as 1847, the first rural training school in Massachusetts was opened because the state legislators felt that cities bred crime, and that youthful offenders should be removed from their environment to be
"rehabilitated" in the country. The rural training school was the predecessor to the reformatory system that was well established within the state by the 1870's. Social reformers, philosophers, penologists developed the idea of the reformatory as a special form of prison discipline for adolescents and young adults. The reformatory concept was based on principles formulated by Britishers Matthew Davenport Hill, Alexander Maconochie, Walter Crofton, and Mary Carpenter: indeterminate sentencing, the "mark" system, and "organized persuasion" rather than "coercive restraint." Although challenged in the 1860's by a few state legislators, the reformatory concept stood the test of time in Massachusetts as training schools such as the Lancaster Industrial School for Girls and the Shirley Industrial School, the likes of which were referred to as "institutions of reformation" in the late 1800's, operated well into the 1960's. The youths committed to these training schools, industrial schools, and reformatories were considered without homes and "too old" for orphanages. Advocates of these youth institutions felt that without them the "dependent" youth would become "depraved," "unprincipled;" girls would become "impure" and grow up to "reproduce their kind three to five fold."
Any citizen could petition the court to inquire into the alleged dependency of a child; and if adjudged dependent the child could be committed to an industrial school until (s)he reached a set maximum age unless discharged sooner.

The reformatory plan incorporated imprisonment as a way to (1) remove delinquents from their environments for their own protection and place them in "guarded sanctuaries of love, guidance, firmness, restraint;" (2) reform the delinquent; therefore, sentences were to be indeterminate as an incentive to the delinquent to participate voluntarily in his (her) own reformation; (3) to segregate youthful offenders from the corruptive influences of adult criminals; (4) "punish only as is good for the punished person." Delinquents were assigned to reformatories without trial and with few legal requirements. The lack of due process was "justified" by claiming that the intention of reformatories was reformation and not punishment.

By 1899, the increased use of legislation to obtain humanitarian social ends, the growing disapproval of the traditional criminal law practice of treating children over seven as criminals, and the mounting number of specialized correctional facilities for dealing with youthful criminals were trends, all of which helped to
bring about the establishment of the juvenile court in America. By 1917, Massachusetts and all but three other states had juvenile courts. Children charged with law violations were to be treated with the same individualized assistance as dependent children and not to be treated as criminals. Protection and rehabilitation of the child were to replace indictment and punishment.

Overcrowding, mismanagement, inadequate financing, and staff-hiring problems were leading to the demise of the reformatory concept. By the 1940's reformatories were being supplemented by "treatment facilities," many of which were maximum security institutions. The rational for treatment centers is based on the idea of separating the treatment functions of the juvenile justice system from that of adjudication. This concept originated with the Model Youth Authority Act.25 The goals were treatment and rehabilitation. But these were not based on a "cottage system" as reformatories were; and there was less emphasis, if any, on agricultural or vocational training, which had become irrelevant in the reformatories.

It was during the 1940's that legislation was passed which required the diagnosis of each child committed to the newly created Youth Service Board, and which raised the criminal proceedings minimum age from
seven to fourteen. Although it was being acknowledged back in 1941 that the commitment of a child to a training school, "though not regarded strictly for the purpose of punishment, has elements of a disciplinary nature closely related to punishment,"26 by 1969, the Residential Treatment Unit at Oakdale, the Juvenile Guidance Center in Bridgewater, and the Lancaster Industrial School for girls, and the Lyman School had become the mainstay of the Massachusetts juvenile correction system.

The responsibility of supervision over the juvenile justice system was taken from the trustees of state primary and reform schools and given to the Youth Service Board created in 1948. The Youth Service Board gave up the responsibility to the Division of Youth Services in the Department of Education in 1952. The division itself was abolished and replaced by a separate Department of Youth Services in the Executive Office in 1969. It was in 1969 that the juvenile justice system's use of institutions began to be phased out and replaced by a system which "purchased services" for youth individually from private agencies and organizations, and incorporated community volunteer services, and was of a more social service-delivery orientation. The old methods of juvenile "reformation" had come under
harsh criticism, and the 1969 legislation calling for the reorganization of the juvenile justice system bureaucracy and replacement of the old system was passed in response to (a) the growing public attention received by crime statistics (growing alarm over crime rates, the majority committed by repeat offenders, some adult offenders were in youth "reformatories" when children); (b) the civil rights movement and the upsurge of interest in the legal rights of poor persons; (there was a disproportionate representation of minorities in prison; and civil rights groups felt that imprisonment served the ulterior motives of the power groups. Prisoners rights became an issue - prisoners said "rehabilitation" was nonexistent or irrelevant, and ex-prisoners did not seem to "reintegrate" into society); (c) heightened community awareness of the baneful problems of youth and their families.

Children who committed status offenses as well as those who violated state or local laws were processed as delinquents through the juvenile justice system and came under the jurisdiction of DYS regardless of their individual circumstances; even though many status offenders shared like circumstances with children who were neglect and abuse or poverty cases and who were handled separately by the Department of Public Welfare.
(DPW). (The DPW had absorbed the functions of the State Board of Charities, except for probational duties, in the 1930's.)

In 1973 the state legislature delegated a new legal status for children, that of "child in need of services" to replace the label of "wayward" or "delinquent" for the status offender, and delegating responsibility for "CHINS" to the DPW agency DFCS. The 1973 CHINS Act again extended authority of a single state agency DFCS over both "needy" children and certain of those children who before the act were labeled "delinquents" (status offenders). But this time the responsibilities was for more than providing probation services, the responsibility was comprehensive in the providing of services.

In the beginning the whole of Massachusetts juvenile justice system was based on English common law which held a child of seven or more years and an adult to be equally responsible criminally. Punishment served the sole purpose of retribution. And as until the 1840's, the offender bore full responsibility for his crime (no sense of "diminished responsibility" was considered) no need was perceived for a distinct "juvenile" justice.

As the causes of crime began to be perceived in
the 1840's as being not imminent so much to an offender as being mostly a product of the environment, the idea of the reformatory was conceived as a form of punishment which had the function of not only retribution (supposedly a very minor aspect) but of "rehabilitation."
The training schools began to take on an aspect of deterrence because it was felt that older city youth without "proper" family and home would commit crimes otherwise mature into "undesireables" if not placed in a training school. These goals of deterrence and rehabilitation never claimed to completely replace the simple goal of retribution until the 1960's.

A form of juvenile probation service in 1869 was another step in the recognition of a delinquent youth apart from an adult offender and in the development of a separate system of justice, that being for juveniles.

With the proliferation of the corrective institutions, the establishment of the juvenile court, and the supervision of the correction system formalized (at first training schools had no state authority), Massachusetts then had a system of justice for juveniles distinct from that of adults. With the development of a separate system of justice was the development of an inequitable legal status for children in the form of status offenses and lack of due process. State care
of "needy" children and "delinquent" children was again divided up as the probation duties of the State Board of Charities were replaced by those of the Youth Service Board, and the welfare duties of the State Board of Charities were absorbed by the Department of Public Welfare.

So in summary the CHINS Act was an acknowledgment of (1) the current attitude that statutory laws were unfair; status offenders should not suffer the stigma of legal offenders (delinquents); (2) the opinion that a "welfare" background is responsible for crime, and in this case, status offenses; here, punishment is thought only in terms of future deterrence: status offenders meeting criteria for DFCS aid could be diverted from the juvenile justice system. Other youth offenders were placed with DYA and were still thought of as deserving the stigma of legal offenders although often the ultimate "punishment" was little or no different from the "treatment" or "aid" received by the CHINS with DFCS. How it is decided which youthful offenders deserved the "delinquent" stigma may seem arbitrary, but it is this very arbitrariness which allows the system to continue without resolving the dilemma of whether to pursue a policy of deterrence, rehabilitation, or retribution.
In the following chapters we see how the Massachusetts laws regarding children give substance to the dilemma.
Chapter 3

"How Massachusetts State Laws Reflect the Historical and Present Day Attitudes Toward Punishment and Stigmatization of Delinquent Dependent Children"

Chapter 119 ("Public Welfare: Protection of Children and Proceedings Against Them") of Massachusetts General Laws cites the reasons for the state's interest in the plight of dependent children: among the primary goals of the State are (1) strengthening and encouraging the institution of the family for the protection and care of children; (2) assisting and encouraging "the use by any family of all available resources to this end;" (3) providing "substantial care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to assure the rights of any child to sound health, and normal physical, mental, spiritual, and moral development." It is from these goals that the juvenile court, as representative of the state, assumes the role of parens patriae in exercising its authority over delinquents (for the purpose of "the care, treatment, and training of juvenile delinquents") as well as dependent children.

The proceedings which are to be followed in responding to children brought before the court in
child neglect/abuse cases or on allegations of having committed status offenses or having broken laws are specified in Chapter 119. These proceedings were amended in 1973 to correct the adverse effect on "Children in Need of Services" ("CHINS") which, prior to the amendment, the law regarded as either "neglected, or abused," "wayward," or "delinquent." The purpose of this new classification "CHINS" was to prevent needless stigmatization of status offenders by their being labeled "wayward" or "delinquent" or by their penetrating too early or too deeply into the formal juvenile justice system. It was felt that a large number of these status offenders were youth reacting negatively to maleficent home environments, who if treated as if they were expected to be delinquents, as the State previously did by practice, would, after having been through juvenile judicial process, exhibit the expected delinquent behavior. The guiding principle which brought about the change in the law seemed to be the one stated in this excerpt from Chapter 119:

Care, custody, and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated not as criminals, but as children in need of aid, encouragement, and guidance...
the State's duty is "to protect against the harmful effects resulting from ... inability, inadequacy or destructive behavior of ... parent substitutes."

And in this case, the juvenile justice system which took custody of the status offenders were the parent substitutes accused of exhibiting inadequate or destructive behavior.

In effect, because the criminal nature of status offenses is nonexistent, the delinquent or "criminal" stigma had to be "removed" from children adjudicated as status offenders. Though acknowledgement of the retributive aspect of the juvenile correction system is minimized, the court and DYS are the organs by which the State officially censures offenders, and inherent in any response by the court and DYS is an "offender" stigma which is retributive in nature. By no longer considering "punishment" but deterrence per se as regards status offenders, the role of the juvenile justice system loses much of its relevance. Therefore, for CHINS, it seems more practicable that responsibility for them be relegated to a state agency already set up to provide services under such sanction as is given to providing for the state's disadvantaged. It is more practicable that this responsibility be relegated to DFCS. For the offenses committed by CHINS are more
thought to be symptoms of a social malady remediable by state action is individual cases than thought to be wrongs against society which call for redress or which can be deterred through the fear of and the actuality of punishment.

However, under Chapter 119 an adjudged CHINS is not necessarily given the same consideration of neglect/abuse cases. Often, status offenders (CHINS) are still referred to DYS for the specific purpose of placement in individual foster care. The law does allow the judge, probation officer, etc. discretion in the choice of charges against a juvenile. If a child is brought before the court under arrest, it is mandatory that a petition be issued. This petition must state whether the child is being charged as being CHINS or delinquent, however, the discretion is in whether the arresting officer reports a petty thief as a runaway, truant, etc. instead of as a law-breaker or delinquent.

The conflict between the desire to view status offenses or CHINS as problems to be dealt with by social agencies so designated, as, for example, delinquent tax payers are dealt with by the IRS, the State's intolerance toward the commission of status
offenses (which is in mien the same as that toward
criminal acts) is brought about by the specification
that an alleged CHINS may be brought before the court
on arrest if the arresting officer believes it could
be defined as a CHINS but is unlikely to respond to a
summons.

What is interesting is that a child alleged to
be CHINS is tried for circumstances and not for an act
perpetrated by him. The question of will or intent in
regards to a specified deed, as in the case of a
delinquent or adult offender, is not addressed by the
court. The home environment is what is tried; and if
found lacking, the possible dispositions are the same
options given a court when trying a case of neglect/
abuse or parents' inability or inadequacy to care for a
child: (1) prescribe medical, psychological,
psychiatrical, educational, occupational and/or social
services, and for supervision by a court clinic or by
any public or private organization providing counselling
or guidance services, and permit the child to remain
with relative or any adult designated by the court, or
any private organization either authorized by law to
receive and provide care for such children or deemed
by the court to be capable of bearing such responsibility
for the child; (3) commit the child to DFCS.35 The
DPW (of which DFCS is the office ultimately responsible for the CHINS cases) has to accept on commitment from any juvenile court or juvenile session of a court any child under sixteen years declared to be in need of foster care or to be a CHINS. This statute is backed by "Title IV" of the federal government's Social Security Act (which regulates state welfare offices receiving funds), Part B, Sec. 2 regarding mandatory services which must be provided to all appropriate persons:

(c) (1) services which supplement or substitute for parental care and supervision for the purpose of preventing, remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children.

(Emphasis added.) Under the Social Security Act the federal government provides 50 - 75% of the funding for most of the state's welfare.

The difference between the State's perception of CHINS and its perception of delinquents is that CHINS misbehavior is symptomatic of an environment needing substitution, correction, or adaption toward them; while delinquent behavior, and behavior of those few status offenders and CHINS who are referred to DYS, is symptomatic of the individual needing readapting or rehabilitation towards society.
Chapter 120 is entitled the "Care and Training of Juvenile Delinquents." It delineates the authority and responsibilities and limits of the state agency (authorized by the chapter) which is primarily responsible for those children adjudicated delinquent by the courts. The agency so authorized is DYS. Sec. 5 of Chapter 120 lists the responsibilities of DYS, and sections 6 and 6A of Chapter 1073 prescribe the means by which DYS is to correct "the socially harmful tendencies" of a person committed to it: 37 (1) upon receiving a child committed to it, by rules established by DYS, examine and study child and investigate all pertinent circumstances of his life and behavior; (2) reexamine all persons within its custody, except those on parole or in foster homes, periodically at intervals not exceeding one year in length; the bureau of clinical services must assess the rehabilitative progress of any child that was committed to DYS for having committed a status offense (truancy, runaway, stubborn child, wayward), and must report this information so that the committing court can review the case, and determine whether the child's needs can be best met by continuing him in the same institution, or by making a new order; (3) keep written records of all exams, conclusions, and orders concerning
disposition or treatment of every person under its control; 38 (4) have discretion to permit child liberty under supervision, and require such modes of life and conduct as seems best adapted to fit him for return to full liberty without danger to the public; (5) order his confinement as it believes best for the protection of the public, or reconfinement or renewed release; (6) require participation by him in vocational, physical, educational, and corrective training and activities; (7) provide such medical and psychiatrical treatment as is necessary; (8) revoke or modify an order, except an order of final discharge; (9) discharge him from control with notice to the court. 39

The amount of criminal responsibility borne by the child varies with the offense, and as the amount of responsibility varies, so does the function of "punishment". For most CHINS who have committed status offenses, there is no punishment per se; that their personal involvement in a wrong against society is not what the State is responding to. However, for most delinquents, the punishment is "rehabilitation" with retributive overtones. In the case of a juvenile violating a motor vehicle law, punishment may take the form of restitution or a fine (not exceeding the amount of fine authorized by such law violation) in addition to the other
dispositions at the court's option. In this case, if the juvenile defies a court order which specifies fine and/or restitution in addition to another disposition, he bears the full weight of the consequences; as he may be arrested, and the abstracts of all adjudications and dispositions may be used by the motor vehicle registry against the child in proceedings for the revocation or restoration of the child's driver's license or for the motor vehicle insurance covering the vehicle operated by the child, or in any action of tort arising out of the negligent operation of the motor vehicle by the youth, as such could be used against an adult. And in other cases, if the complaint alleges that a law was broken about which the court feels it would be more in the public's interest for the child to be tried for that offense or violation, the court may dismiss the delinquency case. No criminal proceedings may be begun against a person who commits an offense prior to his 17th birthday, unless first delinquency proceedings have been begun and dismissed. Neither an adjudged delinquent nor an adjudged CHINS may be committed by the court to any jail, house of correction, or any state-supported institution for the custody, care, and training of delinquents. Commitment of a delinquent child to DYS,
gives DYS the authority to place him in a facility specifically operated for the purpose of custody, care, and treatment of delinquents. A CHINS may not be placed in such a facility, but the law does not preclude placement of CHINS in a facility shared by youth adjudged to be delinquent.

The most preferred residential placement outside of foster care is group home placement, which, most typically, is shared by both CHINS and delinquent youth. In Chapter 4, we look at a case study of two group homes, both shared by delinquents and CHINS, serving the functions of "rehabilitative punishment" and "providing substitute care for the socially disadvantaged" simultaneously.
Chapter 4

"Group Homes: Where Stigma and Non-Stigmatization Try to Live With Each Other"

The law and policy-makers of recent years claim their aim is to mitigate stigmatization in the juvenile judicial/correction process. "Stigmatization" is perceived as having negative effects in "reformation"; the possibility of its having a positive role in juvenile correction is not considered. Chapter 119 gives the court discretion in referring or committing a child to either DFCS or DYS. DYS feels the referral program exists to "divert youngsters from further entry into the juvenile justice system by providing them with types of care which offer the promise of redirecting their delinquent behavior. Referral also avoids stigmatizing youths without DYS commitment record."1 Because of an overstrained budget, DFCS has a policy of refusing referred delinquents, since DYS is an agency which can provide for them. Neither do the courts usually refer a CHINS to DYS for placement in foster care. It seems that the immediate effect upon the child is little different whether he is referred or committed to DYS; the difference is on paper and what possible future effects that record may have; the
services provided by DYS are the same for both referred and committed.

The group home is considered by both DYS and DFCS, who are given primary responsibility by state law for delinquent and dependent children, as one way of satisfying its charges: that of "rehabilitative punishment" without stigmatization for DYS and that of servicing the socially deprived" for DFCS. Because (1) the law does seek to make a distinction between the youth, yet it imposes the condition of mitigating stigmatization in both cases, and (2) the group home in a facility where the fallacies of the law regarding the two sets of youth become more apparent because of the proximity of the two groups and the dual function of the home make comparisons easier, I chose the group home as that part of the juvenile justice/welfare system on which I would focus.

What are the implications of this dual role for the group home? Is it being suggested that children with problems of maleficent family situations or who are emotionally disturbed, and/or are status offenders (i.e. CHINS) are equivalent to delinquents who may also have these problems but are DYS instead of DFCS)? For if the two sets of children are not differentiated
within the group home, the "rehabilitative punishment" is the same as the "substitute care" and/or social services provided CHINS; the distinction made between being a CHINS and being delinquent, and being sponsored by DYS or by DFCS at the time of writing the petition and at adjudication loses its significance. But if the two sets of children are differentiated within the group home, can a staff in such a facility shared by the two sets of youth play the double role? Is there a difference made by the agencies between CHINS (DFCS) youths and delinquents? Given that stigma is inherent in such a situation, who is stigmatized, and how is this stigma manifested? How does the law contribute to stigmatization? These are the questions I am attempting to answer.
METHODOLOGY

I attempted to find answers to these questions by use of the personal interview and observation. The measures I used are:

1. the profile of the "typical" youth and his background;
2. the services provided by each agency to its respective clientele within a group home;
3. the amounts and sources of funding for major services at the department level and at the level of the individual recipient;
4. the process for receiving services provided by each state agency; and whether they are initiated by the state or by the recipient.

I made up two questionnaires for use as guides in my interviews at the DYS, DFCS, and Office for Children offices and group homes. I limited the number of group homes in the study to two, which were chosen because of their accessibility physically and the familiarity I have with the homes themselves. Of the group homes, one is a home for girls of ages twelve to eighteen years, and for exceptions, extended to twenty-one years, Somerville D.A.R.E.; the other is a home for boys twelve to eighteen years old,
Hastings House. Hastings House prides itself as being a program for "hard-core" youth and on its success rate for "resocializing" the youth who have come through the program. Most of its residents are DYS clients, while only two or three are DFCS clients out of the thirteen residents in the home. Somerville D.A.R.E. is a home for eighteen young women of whom three-fourths are DFCS clients and the remaining quarter is made up of court-referred, private, or DYS clients. Both are affiliated with Dynamic Action Residence Enterprise, Inc. (D.A.R.E.) which is a corporation of autonomous group homes, resident schools, day programs, and camps for delinquent and maladjusted youth. D.A.R.E. serves the homes, et al. as a fund-raising unit, financial manager, and resource of professional advice and personnel.

The interviews were with staff personnel within the homes and with representatives of DYS and of DFCS in their downtown offices. The residents of the home were not interviewed unless present at time of interview with staff member, and then only as part of observation data.
FINDINGS

Is there a difference made by the agencies between CHINS (DFCS) youth and delinquents? For comparable characteristics of their clientele as shown in Table 1, DFCS and DYS provide remarkably similar services (see tables 2 and 3). The difference between the DYS and DFCS youth seems to be made in the manner of service delivery. At the girls' home it was thought that DYS' budget is not handled well, and because of this, financial problems and funding situations have priority, interfering with DYS case-workers getting involved personally with the girls. This affects group home placement. Group home placement is felt to be productive only on a long-term basis; but in that it is unpredictable when DYS funds for a particular girl will "run out," DYS girls are often "pulled" from a group home to be placed in a less costly situation without a study of more substantive reasons for terminating placing.

Differences in the provision of basic need services such as clothing allowance, medical bills et cetera are changing now with cost of purchase of the slots in group homes including a clothing allowance, et cetera preset by the group home. The group home has identical
rates for all residents. However, until the change is fully instituted, the DFCS maximum individual clothing allowances average approximately fifty dollars a year greater than the maximum of those of comparable DYS cases. The clothing allowance from DFCS is administered automatically on a quarterly basis, in the form of a cash grant to the recipient or check to the store of purchaser's choice. Clothing allowance from DYS is administered by need only (group home has to initiate the issuance of the voucher), and in the form of a voucher for stores preselected by DYS.

Any additional funds that may be required, as for unexpected medical expenses, are acquired through a voucher system at DYS. One has to apply for special through the legal department at DYS; medical, clothing, etc. additional funds have to come from the same special fund. DFCS has access to federal "emergency" funds set up specifically for medical or clothing, etc.

Somerville D.A.R.E. found that school placements and obtaining funds for particular school placements were affected. This usually is because the most desirable school placement may require additional funds not already provided by initial agreement with the agency. DFCS has a procedure for applying for such funds; but DYS, with an already complicated system for
administering agreed upon funds, has no or little additional funds for such a situation. Hastings House found that procurement of certain individual needs for the boys (winter clothing, school equipment, etc.) on an equitable basis was affected because funding not only varies by agency, but also by regions within an agency.

Table I. Comparison of DYS Clientele and DFCS Clientele

<table>
<thead>
<tr>
<th>DYS 44</th>
<th>DFCS 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committed come from families at, or near, the poverty level ....88%</td>
<td>Come from families at, or near, the poverty level.................60%</td>
</tr>
<tr>
<td>Committed come from broken homes ............33.3%</td>
<td>Come from broken homes ................50%</td>
</tr>
<tr>
<td>Committed have one or both parents suffering from a serious alcohol or narcotics problem ............60%</td>
<td>Are placed because parent(s) mentally ill .................. 23%</td>
</tr>
<tr>
<td>Of DYS caseload are court referred, despite a maximum of 10% who are committed being characterized as dangerous ............ 23%</td>
<td>&gt;Are placed because of neglect, abuse or inadequate homes. ............. 13.6%</td>
</tr>
<tr>
<td></td>
<td>Have behavioral/ emotional problems ............. 13%</td>
</tr>
</tbody>
</table>
Table II. Services Provided by DYS

1. Diagnostic screening

2. Placement - a. Residential treatment - youth is placed in a residential program and services purchased for her such as individual counseling, group therapy, individual psychiatric therapy, medical and dental care, family counseling, and educational services.

   b. Group homes - youth who are not allowed to live at home may be placed in group homes, receiving supportive services such as tutoring, referrals to public schools, and limited clinical treatment.

   c. Specialized boarding schools - specialized educational services for children with physical handicaps, learning disabilities, or emotional problems.

   d. Boarding schools.

   e. Residential camps - social services in a camp setting.

   f. Foster care - (1) Placement in private home with regional DYS staff providing limited casework services. (2) Private placement agency provides administrative and social services.

3. Provision of nonresidential services -

   a. Day school programs and alternative schools which focus on learning disabilities.

   b. Recreational programs.
Table II. Continued. Services Provided by DYS

c. Individual counseling.

d. "Big Sister", "Big Brother," and other volunteer services.

e. Employment opportunities and job banks.

f. Drop-in centers.

4. Provision of secure settings for "dangerous" youth - "intensive care"

Table III. Services Provided by DFCS

1. Diagnostic screening.

2. Placement (See descriptions above.)
   b. Group homes.
   c. Specialized boarding schools.
   d. Foster care.

3. Provision of nonresidential services.
   a. Day care programs.
   b. Information and referral services.
   c. Transportation services (for handicapped and elderly).
   d. Provision to at-home clients of medical services, services for the mentally retarded, educational services, Drug Addiction Service, Alcoholic Service
Who is stigmatized, and how is this stigma manifested?

For both delinquent and status offenders, the first condition under the definition of stigmatization is met by the court process and adjudication as either delinquent or CHINS. The second condition is also met for DYS youth. For uniformity of the offense, and perpetrator must be emphasized in order to justify a program of rehabilitation or of reformation for delinquents. This second condition is not met in the case of CHINS. It is the very dissimilarity of the offense and offender which justifies a child being declared a CHINS. DFCS is supposed to provide those essentials of the environment which were lacking; and consequently the lacking of these "essentials, not the child, which are to account for the perpetration of the offense. The third, fourth, and fifth conditions are met by the police, court, DYS, DFCS, and group home personnel.

DFCS youth at Hastings House seem to have a difficult time adjusting because of their resentment at being like those youth who are regarded as delinquents. They have a fear of being thought of as delinquent. The few DFCS youth without the "I'm not a delinquent!" attitude (as one staff member
phrased it), showed a negative change in behavior after initial exposure to the DYS boys. This was nearly always a temporary change. But DFCS youth seldom leave the program successfully, and they usually leave voluntarily because of the reputation of Hastings House as being a home for delinquents. Staff members account for this by saying that the rigid program "which is hard anyway, makes them (DFCS boys) feel they have been lowered in status."

How does the law contribute to such stigmatization? As mentioned in the preceding question, the adjudication process is a part of the stigmatization process. However, some of the inequity of service delivery to CHINS and delinquents by the two state agencies can be attributed to the law calling for two departments which compete for funds from one state budget to provide essentially the same services to sets of youth which within the homes themselves are not very different (confer appendix).

CONCLUSION

It seems apparent that one of the homes is resentful of DYS because tensions created by financial difficulties. The other home made no complaint about the financial situation at DYS. I think this brings up several things that
should be looked into: (1) The similarity of needs (cf. Tables I - III) between DYS kids and DFCS kids is striking. There are two agencies providing essentially the same services to children who seem to have essentially the same needs. But affiliation with the agency (DYS) can affect the child's acceptance outside of DYS by a private agency like Sommerville D.A.R.E. because of a reluctance to deal with "delinquents," because of the financial turmoil at DYS. The intolerance of a home such as Somerville D.A.R.E. compared to the air of resignation at Hastings House the higher expectation engendered by primarily dealing with DFCS which is social welfare and expecting the same of DYS, which I believe has financial difficulties in part due to a political stigma of setting aside "too much" money for delinquents and not enough for the poor deserving youth. Hastings House which deals primarily with DYS and delinquents, is much more resigned to the lower priority and status that social welfare assigns to delinquents. (2) The stigma of being delinquent is so prevalent, that "non-stigmatization" by such placements in group homes is not possible as long as the state insists on labeling certain juveniles delinquent (despite strikingly similar backgrounds to
those of CHINS and placing them in situations with CHINS where the disparity of comparable delivery services is salient to view. (3) CHINS who are placed in facilities shared by delinquents may come to feel they also share the stigma of being delinquent.

It seems that the effort to rid the stigma, a stigma credited with inhibiting delinquency prevention or delinquent rehabilitation, attached status offenders is subordinate to the aim of retribution and the juvenile justice system, although this is denied by the State. It is because of the denial and yet actions to the contrary, that CHINS status offenders and delinquents have the added problem of uncertain and seemingly arbitrary status.
FOOTNOTES

1 "Secondary deviation" refers to "a special class of socially defined responses which people make to problems created by the societal reactions to their deviance." Edwin M. Lemert, "The Concept of Secondary Deviation", Human Deviance, Social Problems and Social Control, 1967, p. 40.

2 "Dependent" is a euphemism for an unsupervised child, or a child without a legal guardian or proper abode, or a child who is poor, neglected, or abused.


8 c.f. C. W. Mundle, "Punishment and Desert", The Philosophy of Punishment.

9 This theory justifies "punishment" as a process of restoring an individual to a useful and constructive place in society through some form of vocational, correctional, and/or therapeutic retraining.


Bernard Rosenquet, H. B. Acton's Philosophy, p. 12.

Anthony M. Platt, The Child Savers: The Invention of Delinquency, 1969, p. 15. Also footnote 6—c.f. T. H. Green, in Acton's Philosophy, who feels that punishment is just to the extent necessary to maintain the rights of all. By associating violation of rights with the terror of punishment, the importance of rights is emphasized and their maintenance is strengthened. The degree of terror should be in proportion to the degree of importance of the rights which are violated.


Youth shared the same correctional facilities and punishments as adults. They were arrested, put into prison, indicted by the grand jury, tried by a petit jury, "under all the forms and technicalities of our criminal law"; and if found guilty, they were punished by the state. c.f. Lela B. Costin, "The Child and the Court," Child Welfare: Policies and Practice, 1972 p. 92.


Dependent children were defined as those who beg or receive alms while vending or under pretense of vending; or who, for the purpose of begging or receiving alms, frequent any street, alley, or place; or who had no permanent home, proper parental care or guardianship; or sufficient means of substance; or who associates with reputed thieves or criminals or undesirables; or who is found in a house of ill-repute or in a poor house. cf. Margaret Keeney Rosenheim, Justice for the Child.

Anthony Platt, loc. cit., p. 54-110.

This was the first form of juvenile probation service in Massachusetts. cf. Lela B. Costin, loc cit., p. 95-6. Private families who took the initiative of taking dependent or delinquent children into their homes had to notify the State Board of Charities and Lunacy, and private boarding homes for infants had to be registered with and licensed by the board. By 1892, the state Board of Charities was assuming the role of parens patriae. Parens patriae is a principle which
can be stated as "children who are under the court are subject to its discipline and entitled to its protection; therefore, the state may intervene in his behalf to safeguard him from any harm and to enforce legal obligations of others in relation to him."


21 Founder of free schools for poor children, and reformatories for boys and for girls. cf. J. Estlin Carpenter, Life and Work of Mary Carpenter, (1879).

22 Lela B. Costin, loc. cit., p. 92.

23 cf. Anthony Platt, Ibid., p. 110

24 Anthony Platt, Ibid. p. 15.

25 cf. Margaret Keeney Rosenheim, Justice for the Child.


27 Ibid. , sec. 1, 1969.


29 A "Child in Need of Services" is a child below the age of seventeen who persistently runs away from the home of his parents or that of his legal guardian, or who persistently refuses to obey the lawful and reasonable demands of his parents or legal guardian, thereby resulting in said parent's or guardian's inability to adequately care for and protect said child, or a child between the ages of six and sixteen who persistently and willfully fails to attend school or persistently violates the lawful and reasonable regulations of his school." Thus, the label "wayward" and "stubborn child" could be discarded.

30 Ibid., Chapter 119, sec 53 and sec., 1969.
This state action would be in the form of making available those social services intended to discourage a child's further delinquency and or dependency by changing his home environment (including possible removal from home of his parent or guardian).


Ibid., sec. 55. 1969.

"Delinquent" is defined as having broken any state statute, city ordinance, or town by-law, or any statute or law pertaining to the regulation of motor vehicles not punishable by a death or a fine of more than $100.00. A petition alleging delinquency can only apply to a child between the ages of seven and seventeen years. If the seventeenth birthday occurs after commission of the offense but apprehension occurs before the eighteenth birthday, or the child turns eighteen during the time pending hearing, adjudication, or determination of appeals, all provisions and rights applicable to a child under seven shall apply to such child.


Ibid., secs. 5-6A.

Ibid., Chapter 1073, sec. 21. Failure to examine or reexamine a person committed to the board, entitles person to petition committing court for an order of discharge, and court will discharge person if DYS does not satisfy court of necessity for further control.

Responsibilities enumerated (4) through (9) are given in Chapter 1073, secs. 6 and 6A. Children committed to DYS are not committed for a pre-specified length of time but are considered to be on parole and retain this status until they are eighteen years old. "In this way DYS is still able to purchase follow-up services for the child and may, if necessary, provide additional services in the future without going through the court process again." cf. "Department of Youth Services: How DYS is Organized," Department
The exceptional cases being alleged violations of any provision of Chapter 89 or 90 which is not punishable by imprisonment or by a fine of not more than $100.00 or of any law regulating the operation of motor vehicles. Mass. Gen. Laws Annot., Chapter 119, sec. 74.


I was affiliated with D.A.R.E. for seven months as a volunteer counselor in a third group home in proximity to these two. In earlier papers I have used information acquired from my own visits and interviews and from evaluation studies by a DYS team to which I had access.

Ibid., p. 3.

Foster Home Care in Mass.: A Study of Foster Care..., Alan R. Cruber, Gov. Commission on Adoption and Foster Care, Boston, 1973, pp. 73-75.

"A Strategy," p. 9. Judges, probation officers and DYS staff differ in their estimates, but the highest estimate of persons familiar with youthful offenders was 10% of all DYS commitments.

Certain educational services provided through the agency, regardless of services provided through the agency, regardless of services provided by group home or foster care, are under the auspices of Title I and are federally funded. A child is placed in a group care situation where all needs will be met in placement. Casework services, administration and social services (psychiatric therapy and counseling, and or casework) is provided by or procured by DYS for foster care placements.

About the placement problems which the girls complained, DYS feels that their girls who really need group home therapy are considered by the homes to be
too "high-risk, hard-core", and that girls' homes such as Somerville D.A.R.E. are reluctant to accept them.
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Massachusetts General Laws Annotated. 1969.


APPENDIX

Are there general characteristics among the residents which vary along the lines of the "type" of youth usually associated with DYS, or with DFCS? DYS boys are "highly institutionalized." Staff at the boys' home feel that DFCS youth are very seldom so, having fewer and less harsh brushes with the law. At the girls' home the difference is seen to be only initially present. The "attitude of institutionalization" DYS girls have wears away in time.

Is there a difference in orientation and adjustment problems? Resident-resident relationships at Somerville D.A.R.E. are not affected so much, DYS girls and DFCS girls get along with each other. But staff-resident relationships involving DYS girls are very trying. The majority of the girls are not DYS, and it is felt that due to majority attitude prevailing and the effects of a "group home atmosphere," the initial antipathy passes.

Are most of your youngsters eligible to attend "regular" public schools? Only a small number of Hastings House boys are in regular schools, because of behavioral problems. Agency affiliation seem to have no bearing on this trend. Hardly any of the
girls at Somerville D.A.R.E. were ever behavioral problems in school, and most are in regular school now, the other being drop-outs or in night school. This does not vary according to agency affiliation.

Do DYS and DFCS kids differ in ways of "acting out" in the home? Somerville D.A.R.E. reported no difference in the matter of "acting out" between DFCS and DYS girls. At Hastings House they reported a difference in intensity in that DFCS youth are not as aggressive or destructive as DYS boys in their "acting out".