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THE THREE Rs - REPRESSION, RESCUE AND REHABILITATION

by

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THE THREE Rs REPRESSION, RESCUE AND REHABILITATION:
IDEOLOGIES OF CONTROL FOR WORKING CLASS YOUTH

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This paper is an initial and exploratory attempt at making some connections between themes discernible in the development of the English legal apparatus for the control of deviant working class youth.¹ The concerns of the paper are shaped by an interest in the development of juvenile justice in the nineteenth century, and by an interest in the relation between dominant ideologies and the apparatus of social control developed by the dominant class. I am not offering a detailed historical account of the Juvenile Court, but rather attempting to make some sense of the recurrence of certain central ideological themes around the issue of Youth and Crime. The ordering of the paper is consequently somewhat disjointed. It opens with a consideration of the role of law in the "disciplining" of subordinate classes to the logic of a bourgeois social order; and secondly it asks the question of why youth and the question of youthful (mis) behaviour should be accorded a privileged position in discussions about the direction and nature of the Social Order. The substantive analysis is centred around major themes of what I have loosely termed the juvenile reform movement of the nineteenth century, and the subsequent trajectory of those themes in the later development of English juvenile justice.

Law and Capitalist Order:

The maintenance of a class-structured mode of production poses a variety of problems centring on ensuring or enforcing the commitment of the subordinate classes to their ascribed roles in that system. In capitalism, the central institutional locus of this "disciplining" of the proletariat by the bourgeoisie was, and remains, the work place itself (cf. Young, 1975). Nevertheless, the controls and discipline which can be exercised through the work place are not of themselves sufficient to inculcate and maintain the whole range of habits of mind and behaviour necessary to the untroubled development of a bourgeois order. Most importantly, these controls do not have the necessary range or power to extend themselves to the non-work spheres of social life - the controls via the wage system, the physical and technological structuring of work, supervision and so on, are simply not reproducible outside the factory.

The common sense notion of leisure as "free-time" is, like most other common-sense "freedoms", a misnomer, but there is a sense in which working

1. I am very grateful to Richard Johnson and Stuart Hall for their help and encouragement in the preparation of this paper, and to Colin Fletcher for his comments on an earlier version.

class leisure represents an area of freedom, by contrast with the economic, technical and social disciplines of work. This relative freedom has allowed for the displacement of many of the "focal concerns" of the class experience (often developed at work) to be developed and articulated - often in symbolic form - in "working class culture" (see Clarke et al., 1975).

As Edward Thompson (1967) and Gareth Stedman-Jones (1974) have both shown, the habits to be inculcated for the creation of a stable bourgeois order cross this neat dividing line between work and non-work - the need for the worker also involves ensuring his stable reproduction from day-to-day in his patterns of "consumption". The range of nineteenth century voluntary and statutory interventions into the living and recreational conditions of the working class testify to the importance attributed to ensuring this stable base outside the factory. (See Pearson, 1975).

The criminal law is not usually accorded a key role in analyses of these interventions, indeed most Marxian analysis shares Renner's attribution to the law of a "back-stop" function:

"The 'natural laws' of society which normally achieve this regulation within capitalist society only do so so long as labour-power remains actually chained to the res.

"If a revolt of the workers loosens these chains, society throws off its mask of torpor. It suddenly becomes conscious of its mission to regulate labour. Then it applies direct and authoritative measures of coercion against labour in the form of laws." (Renner, 1949:38)

In a broad sense, this is obviously true, the coercive apparatus of the State is held, as Gramsci suggests, in readiness against the moment of a "crisis in hegemony". Nevertheless, the routine operation of the Law also has a range of consequences which themselves contribute to the maintenance of hegemony. The law has functions in what I would call an ideological mode as well as a directly repressive mode, functions which have been well exemplified in Douglas Hay's recent study (1975) of the functions of eighteenth century criminal law. Gramsci's observations on the State and the Law offer a suggestive starting point:

"In reality, the State must be conceived of as an "educator", in as much as it tends precisely to create a new type or level of civilisation. Because one is acting essentially on economic forces reorganising and developing the apparatus of economic production, creating a new structure, the conclusion must not be drawn that superstructural factors should be left to themselves to develop spontaneously, to a haphazard and sporadic germination. The State in this field, too, is an instrument of "rationalisation".... It operates according to a plan, urges, incites, solicits, and "punishes"; for, once the conditions in which a certain way of life is "possible" are created, then "criminal action or omission"

must have a punitive sanction, with moral implications, and not merely be judged generically as "dangerous". The Law is the repressive and negative aspect of the entire, positive, civilising activity undertaken by the State. The "prize-giving" activities of individuals and groups, etc., must also be incorporated in the conception of the Law; praiseworthy and meritorious activity is rewarded, just as criminal actions are punished (and punished in original ways, bringing in "public opinion" as a form of sanction." (1973:247)

In the law, then, are embodied the conditions which make "a certain way of life" possible. In bourgeois law are contained, in their specifically legal form, the legal supports for those conditions which the bourgeoisie experiences as the central bases of its system. The law allows for both the punishment of those who either infringe or omit to take advantage of those conditions, and for, via the public visibility of the legal process, the restatement of those conditions to "remind" others of their importance. In doing so, it demarcates for all to take cognisance of, the limits of what the "society" (or rather, its ruling class) will tolerate in social behaviour, and at the same moment, offers psychic rewards to those "upright consciences" who have not transgressed.

In a broader sense, the visibility of the legal process, its commitment to formal equality before the law, and so on, identify it as the protector of social, rather than sectional, interests, and as such contribute to its function as a bedrock metaphor of social harmony and consensus in the forms of "the rule of law", the "thin blue line", and not least in its guise of "law and Order" (see Jefferson et al., 1975).

There is a final sense of the Law as "educator", which I want to consider here in relation to the juvenile reform movement, in which the legal apparatus is used to provide the machinery of a directly educative intervention against the criminal to ensure that he makes use of those conditions of a certain (bourgeois) way of life. The tendency is already visible in an embryonic form in the utilitarian demands of an eighteenth century law reformer like Berkeley:

"Whether some way might not be found for making criminals useful in public works, instead of sending them to America, or the other world?" (quoted in Radzinowicz, 1948:263, fn.)

The creation of useful labour was, and still is, the key to the "social problem".

The Juvenile Obsession: Youth and the Social Order:

My interest in youth and juvenile crime is wholly in keeping with the English obsession which has been a central part of public, legal and criminological concern with the state of crime and the social order since

the eighteenth century. Youth has been identified as being of central social and political significance in the past three centuries, from the apprentices who provided an ever-present and excitable element of the London Mob, through Chadwick's concern in his report on the Sanitary Conditions of the Labouring Population to guard against the "substitution for a population that accumulates and preserves instruction and is steadily progressive, a population that is young, inexperienced, ignorant, credulous, irritable, passionate and dangerous.." (quoted, Pearson, 1975:170) right through to the post war "moral panics" about hooligans, bizarre youth cults, and gangs who make the streets unsafe for law abiding people.

In these various forms Youth as a social category seems to have the power to carry a deeper message about the state of society, the social and political changes taking place and so on, without recourse to the language of politics itself. In the eighteenth and nineteenth century, the message of the relation of youth and political and social stability is more overt in the unified moral and political discourse of the age, but in "affluent Britain" with a technical political discourse, its commitment to the "new Golden Age", and the dissolution of moral and political discourse into the various technical arms of the Welfare State, discussion of society and change had to be conducted in a more tangential terminology:

"Youth was, in both papers (the Daily Express and the Daily Mirror) and perhaps in the whole press of the period, a powerful, but concealed metaphor for social change: the compressed image of a society which had crucially changed, in terms of basic life-styles and values - changed, in ways calculated to upset the official political framework, but in ways not yet calculable in traditional political terms..." (Smith et al., 1975)

Thus, the discussion of youth is made to carry more than its surface message, and operates, at a deeper level, as the vehicle for the discussion of society and social change. It will be part of the rest of the argument in this paper that the concern with youth (and working class youth, in particular) is made to perform this double function, dealing directly with youth, but always with an eye on youth as an indicator or carrier of broader social messages.

This "youthful obsession" is like all other ideological discourse, in that it is not without its "rational core" - the real social base upon which it rests even in the same moment that it distorts it. The real key to the importance of youth lies, again, in the question of the reproduction of the social conditions of production. Central among these conditions is that of ensuring the stable reproduction of the labour force over time - the guaranteed recruitment of the young to their role as the next generation of the proletariat. (cf. Althusser, 1971). As the growth of a state

educational system, to identify but one of a range of institutions, indicates, the task of ensuring this continuity is too complex and vital a task to be left to the traditional institutions of socialisation, especially that extremely unreliable institution, the working class family.

So far, I have used the term "youth" loosely to cover both childhood and adolescence (and for good reason,¹ I shall continue to do so), but there is something specific to adolescence which makes it particularly problematic for contemporary capitalism. I have already argued that the central locus of discipline in capitalism is the work place, I now want to add two other institutions which are concerned with socialisation and discipline - the family and the school - to which are given the functions of preparing the future labour force. My suggestion is that the contemporary concern with adolescence (and the political and social instability which attracts the attention) derives directly from the position of the adolescent in relation to this nexus of institutions - adolescents are marginal to all three.² The age of this marginality has, of course, varied historically, but from the nineteenth century reformer's plaint that the working class family failed to exercise sufficient control over their children to the twentieth century sociologist's oft-repeated finding that juvenile misbehaviour is intimately connected to the last years at school and the first years at work, testimonies are adduced to the dangers of this "relative autonomy" of working class youth.

Innocence Redeemed - the moral and political economy of Juvenile Rescue:

The history of industrialism has always been a continuing struggle (which today takes an even more and vigorous form) against the elements of "animality" in man. It has been an uninterrupted, often painful and bloody process of subjugating natural (i.e., animal and primitive) instincts to new more complex and rigid norms and habits of order, exactitude and precision which can make possible the increasingly complex forms of collective life which are the necessary consequences of industrial development.

Gramsci "Americanism and Fordism" (1973:298)

The sentiment of human benevolence, and its practical expression, derived directly from religious influence. It came from the quickened knowledge, born of the new religious revivalism, that all men were children of God, and loved by Him...There is no doubt that the greatest single urge to help the less fortunate... sprang from deep religious experience.

Young and Ashton: 1956:41-2

1. The distinctions between the child and the young person shift too regularly in Juvenile legislation to be an adequate distinction, and as I shall argue in the case of the reformers, this very vagueness performs a particular function.
2. See Clarke, 1975, for a more detailed consideration of this theme in relation to post-war working class subcultures.

The Juvenile reformers appear in many of the works on the emergence of welfare and social work in Britain as among the principal agents of the new "humanism" - springing from a deep religious experience or not - which sought to ameliorate the human tragedies of the Industrial Revolution. It is, however, my intention to treat them here as a prime example of Gramsci's process of subjugation of the "natural" to the demands of industrial capitalism. First, though, a brief expansion - I do not wholly accept the connotations of the Gramscian "natural" in this process. I would want to treat this as referring to both the continuities of pre-Industrial Revolution habits which were retained by the emergent industrial proletariat, and to the adaptations which they developed in the face of a tenuous and unstable existence in early nineteenth century cities.

I am taking as my starting point that instability of youth, and thus the uncertainty of their recruitment to the labour force, which I discussed above, as focussing the efforts of the juvenile reformers. The first assault of the reformers (in the early nineteenth century) was on the need for separation of adult and juvenile offenders in prison. The mixture of the two groups was seen as the major cause of promoting a seemingly inevitable recruitment of the young offender to the criminal rather than the labouring classes. The logic of the position was eventually recognised by the State in the establishment firstly of the juvenile hulks, and subsequently the use of Parkhurst as a juvenile prison.

Subsequent debate attempted to build on this recognition by calling for a more broadly based recognition of youth as a special case in the eyes of the law, a case deserving of special treatment and exemption from the classical legal concerns of individual responsibility and punishment. It is the themes raised in the discussion of the causes and prevention of juvenile crime which I shall focus on here. The causes of delinquency (and what I offer here is an abstraction from the myriad explanations of what I feel are central coherent complexes) may roughly be represented in the interplay of the nature of childhood, the functions of the family, and the effects of the neighbourhood.

The family is given a central role to play in the stability of the social order in ensuring the correct upbringing of children. Margaret May has rightly argued (1975) that much of the heat of the reformers' drive to "rescue" the children of the streets can be traced to the dissonance between their own experiences of bourgeois childhood and their subsequent contact with the more relaxed discipline of the working class family which "abandoned" the children to the rigours of the outside world, often from a

very early age. The recurrent theme of the reformers is of delinquents and pre or near delinquents being the result of abandonment or neglect by the family, where it is not the result of a more direct education for crime by the family itself. Thus, the driving force identified behind Mary Carpenter's first three classes of delinquents is the family:

"The first class consists of daring, hardened young offenders, who are already outlaws from society.... We need hardly ask what has been their previous history; it is certain that they have led an undisciplined childhood, over which no moral or religious influence has been shed, and which has been untrained to any useful, industrious habits....

"The second class is, if possible, more dangerous to society than the first, because more systematic in their life of fraud... these are youths who are regularly trained by their parents or others in courses of professional dishonesty....

"A third class, and perhaps a still more numerous one, consists of children who are not hardened or daring as the first, or trained to crime as the second, but who, from the culpable neglect of their parents, and an entire want of all religious or moral influence at home, have gradually acquired, while quite young, habits of petty thieving, which are connived at, rather than punished, by their parents...." (1853:23) (My emphasis).

Implicit in this image of the family is an understanding of childhood as a special status, characterised above all else by its dependency on the parents. In the iron grip of the family, the child - the unknowing repository of innocence - was carefully prepared for its delayed entry into the real world. The exposure by working class parents of their children to the street and all that it contained thus precipitated the child from its privileged position of innocence and dependency into an unnatural knowledge and premature worldliness:

"The latter (the delinquent) is a little stunted man already - he knows much and a great deal too much of what is called life - he can take care of his own immediate interests. He is self-reliant, he has so long directed or mis-directed his own actions and has so little trust in those about him, that he submits to no control and asks for no protection. He has consequently much to unlearn - he has to be turned again into a child..."

(Matthew Hill, quoted May, 1973:7.)

In similar vein, Robins writing to Lord Russell contrasted the proper nature of childhood with the deformed and corrupted nature of the delinquent:

"hideous antithesis, an infant in age, a man in shrewdness and vice... the face of a child with no trace of childish goodness."
(quoted May, 1973:21.)

While the Commander of the reformatory ship, Akbar, had little doubt about where the problems of reform had to begin:

"the first great change which has to be affected... when they are received on board in their vagrant state is to make them "boys". They are too old, too knowing, too sharp when they come on board, - too much up in the ways of the world."
(quoted May, 1973:28-9.)

This "hideous antithesis", where it does not derive directly from parental corruption, is attributed to their exposing the child to the "moral sewer" of the streets, and the life style which they contained - the halfworld of the Victorian Underworld which enveloped (to the horror and terror of the Bourgeoisie) both the leisure pursuits of the labouring classes and the networks of the criminal classes. The reformers' commentary on the children of the streets thus has a double thrust - both at the moral condition of the children and at the leisure habits of the labouring classes which provide the sources of that corruption and unnatural knowledge. It is important not to underestimate the thrust of this "double-edge", for it embodies a deliberate vagueness in its target. The problem is not that of the delinquent child, but those conditions of working class life which stand behind both the 'delinquent' and the 'neglected' child, the conditions of both family life and the recreational pursuits of the working class. Thus Samuel Wilderspin - like some intrepid-participant-observer - donned "a dirty face.. long beard.. and a jacket" in order to "see them as they are". He was not, however, delighted with the richness of the ethnographic detail with which he returned:

".. you find their conversation generally consists in immoral language and language of an obscene nature.. and young creatures of both sexes may be seen in the public houses hearing all this, pledging each other in their glasses and the boys with a pipe in their mouths smoking."

(quoted Johnson, 1975:8.)

In a similar vein, Mayhew's catalogue of the ills of the "nomads" of the city streets bears more than a passing resemblance to those more scientifically phrased commentaries on the working class' inability to adopt a calculus of deferred gratification:

"The nomad.. is distinguished from the civilised man by repugnance to regular and continuous labour - by his want of providence in laying up a store for the future - by his inability to perceive consequences ever so slightly removed from immediate apprehension - by his passion for stupefying roots and herbs... and for intoxicating liquors... by an immoderate love of gaming... by his love of libidinous dances ... by his delight in warfare and all perilous sports - by his desire for vengeance - by the looseness of his notions as to property - by the absence of chastity among his women, and his disregard for female honour."

(quoted in Pearson, 1975:153.)

It was into this morass of crime, debauchery and idleness that children were thrust by parental neglect, and the danger of allowing the young to "idle away" their time on the streets was noted in the Report of the Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis:

"He falls in with those gambling in the streets and becomes contaminated. In this manner has many a deluded youth been ruined, who was first incited to gamble in the streets from want of an industrious occupation; he graduates from petty pilfering to experienced thieving. Here he mixes with the most abandoned criminals and acquires a taste for the commission of crime."

(quoted in Pinchbeck and Hewitt, 1973:436)

Here, then, the young were exposed to and contaminated and infected by the "moral diseases" of the city streets and turned to the paths of gambling, licentiousness, drink and crime. Without the preventive inoculation of the moral guardianship of the family, the neglected young appeared to be doomed. In the absence of that other great resolver of all social ills - education¹ - the law offered for the reformers the only available machinery through which these children could be "rescued" and restored to their proper child like nature (and, coincidentally, to a life of industriousness, sobriety, thrift and morality.)

The mechanisms through which the voluntary agencies and individuals managed this rescue were many and varied, but, again, there are common threads running through them in the redemption of the innocents debauched. From the informal system of probation used by Hill, to the visiting of the delinquent in prison practised by the Society for Investigating the Causes.. where

"the youths in confinement (were to be) separately examined and privately admonished, the evil consequences of their conduct to be represented to them and every persuasion used for their recovery which kindness could suggest."

(quoted in Pinchbeck and Hewitt, 1973:433)

and from the voluntary industrial and reform schools to the redemption through the countryside practised by Canon and Mrs. Barnett's more forceful methods in which "sometimes the circumstances made it necessary to kidnap a girl" (quoted, Pearson, 1975:191) similar focal points recur: the family the true nature of childhood, moral and industrial tutelage. Mary Carpenter once again provides the definitive statement of the first two aspects in her recommendation of systems of reform which approximate as closely as possible to the family:

1. There are obvious and intimate connections between the education movement and the juvenile reform tendency which I have not the space to detail, but I would suggest they are both shaped by a similar problematic - that of establishing the proper socialisation of working class youth, even though the latter are more overtly committed to only delinquent youth their view of the phenomenon and its causes parallels the educationists closely. See Johnson, 1970 on education and social control.

"The child... must be placed where the prevailing principle will be, as far as practicable, carried out - where he will be gradually restored to the true position of childhood.

He must be brought to a sense of dependence by re-awakening in him new and healthy desires which he cannot himself gratify, and by finding there is a power far greater than his own to which he is indebted for the gratification of those desires. He must perceive, by manifestations which he cannot mistake, that this power, whilst controlling him, is guided by interest and love; he must have his own affections called forth by the obvious personal interest felt in his own individual well-being by those around him; he must, in short, be placed in a family."
(1853:298.)

Carpenter's argument is instructive as much for its revealing insights into the bourgeois family as for its detailing of the proper method of rehabilitation. It innocently reveals the "deep structure" of the bourgeois conception of the family, casting aside its concealing appearances. It is, apparently, an institution which articulates around the giving and taking of love and affection, focussing on personal development and individual well-being. Carpenter reveals, inadvertently through the agency of the context into which it is being inserted, an institution of coercion, creating and enforcing dependency in the child through the calculated manipulation of those rewards which constitute its "surface appearance" - love, affection and interest.¹ The bourgeois family, stripped naked, becomes remarkably similar to other bourgeois institutions, concerned with the distribution and use of power, with the construction of hierarchies, deference and positionally ascribed responsibilities, duties and character. It is here that the appropriate character traits, habits and knowledges are inculcated and ingrained (both for bourgeois and proletarian children, though differentially structured) through the position of controlled dependency. In a more homely vein, Mrs Barnett tells the same story in writing of two correctional homes where "sixteen girls are received and loved and scolded into training" (quoted in Pearson, 1975:191.).

The other central theme of "rescue" is the creation of a self which is "useful" - prepared to play the part of a proper citizen in labour and life. Lord Russell, introducing the 1854 Reformatory Schools (Scotland) Act to Parliament, expressed the hope that these institutions might "be able to affect to some measure that the young offenders sent to these institutions

1. Ronald Laing's example of the mother who held her three year old son out of her flat window and used the fact that she did not drop him as evidence of her love for him, is perhaps the most extreme working out of this logic of love and power. (Laing, 1968.)

would forget their vicious habits and be restored as respectable and useful members of society" (quoted in Boss, 1967:26). The reformatory schools held out the prospect of industrial training and moral education. The work was not always directly suited to occupational rehabilitation on release - sometimes the emphasis tended towards work that made profits for the institution, as Carlebach describes:

"There was, first of all, a gradual trend from work carried out for training purposes to work which would increase profit. A number of institutions eventually confined themselves to employments which were not only useless in the training sense, but were very harmful to the children in order to achieve maximum profit from their labour. Amongst such employments were brick-making, wood-chopping and paper-salvage for boys, and laundry work for girls." (1970:68-9.)

The development of such a tendency is perhaps not all that surprising within a system whose avowed aim was to prepare the child for a return to a life of labour from which maximum profit would be extracted. Mary Carpenter's preferred form of labour was also not noticeable for its direct connection with the likely future employment prospects of its graduates. Firmly convinced of the merits of the "colonie agricole" at Mettray, she thought agricultural labour to be most conducive to rehabilitation:

"The salutary fatigue of the body removes from the mind evil thoughts and renders it necessary to devote to repose the hours which in the towns are given to vicious pleasures."
(1853:306)

However, in this industrial training, the content or type of work to be learnt was almost certainly of less relevance to the reformers than that the child should learn the form of work - its routines, habits and patterns. The provision ensured that the child would be normalised to work in general, rather than acquire specific skills.

From Repression to Reform: the attack on Responsibility

Before pursuing some of these themes in the subsequent development of juvenile justice, I want to briefly consider a more abstracted theme raised by the reform movement activities. The State support for reformatory schools was not won without opposition - an opposition which often centred around those already in possession of the delinquents - the Prison Inspectorate (James, 1972). One focus of the reformers' attacks on the existing state system of juvenile hulks and prisons was that their traditional emphasis on a punitive character for imprisonment was particularly unsuited to the special needs of the young, that, as Carpenter put it, "children should not be dealt with as men but as children". In a more rhetorical vein, Brenton condemned the hulk, Euryalus, as a "Floating ~~Bastille~~; - children

in iron cages who should have been in a nursery garden" (quoted in Pinchbeck and Hewitt: 1973:455).

Such an attack constituted the first major assault (in practice rather than in the philosophy of law) on the classical view of crime, law and punishment which (in typically uncodified manner) forms the bedrock of the English criminal law, most notably in the subordination of questions of motivation to the questions of guilty knowledge and responsibility. This orientation has its roots in the image of bourgeois man generated in the formulations of classical political economy and political philosophy, the atomised, egotistic, rationally self seeking embodiment of individualism, bounded only by the "social contract". Taylor, Walton and Young, in their summary of classical law, make this observation on the central relation between the individual and the law:

"the individual is responsible for his actions and is equal, no matter what his rank, in the eyes of the law. Mitigating circumstances or excuses are therefore inadmissible."
(1973:2.)

The assumptions of rationality and knowledge, taken together with the formal equality before the law, constitute the ground on which the obsessive focus with guilt, responsibility and punishment of the criminal law is possible without the consideration of the conditions and motives of the act. It is against this, embodied in its practical form in the criminal law and the prison system, that the juvenile reformers mounted their attack based on the implicitly positivist premise that the young were not fully "bourgeois men", but were subject, by virtue of their innocence and dependency, to contagion by the worst excesses of the real world, from which contagion the delinquent "exhibited in almost every respect, qualities the very reverse of what we should desire to see in childhood" (Carpenter, quoted in May, 1973:22). Thus, contrary to the prevailing legal principle, the reformers argued that "his age, the neglect or vice of his parents, and the depraving circumstances of his childhood should be taken into account" (at the Birmingham Conference, quoted in May, 1973:23).

The exemption created by the acceptance in law of this determinist image of the child created the first major hole¹ in the classical structure through which the subsequent armies of psychiatrists and social workers have run and thoroughly confused the law's focus on criminal responsibility

1. It is not the first, strictly speaking, for the M'Naghten rules which are taken as the original basis of the defence of mental inadequacy precede it, but their development as a positivist exemption had to wait on the professional development of psychiatry and psychology.

(for a legalist discussion, see Jacobs, 1971). Crucially, this "confusion" has broadened the conception of punishment to include a range of "liberal" and "humanitarian" interventions in the criminal's welfare - a scope far beyond the classical penologists' conception of the Law's function.

Beccaria's ruling might well have been addressed to the reformers:

"Reformation is not to be thrust even on the criminal; and while, for the very fact of its being enforced, it loses its usefulness and efficiency, such enforcement is also contrary to the rights of the criminal, who can never be compelled to anything save suffering the legal punishment."
(quoted in Radzinowicz, 1966:12.)

Sentiments which expressed rather less regard for the "rights of the criminal", but which share its logic in practice, were part of the punishment philosophy which the Prison Inspectorate were to deploy against the reformers. They held that the prisoner...

"has committed an offence; he must, therefore, be punished; he is depraved himself; he must, therefore, not be suffered to deprave others..."

and he should be discouraged from further offences "by a recollection of the privations, hardships and discomforts of a prison" (quoted in James, 1972:18). From this classical position emerges one of the earliest articulations of what remains a familiar complaint against the modifications in the prison system which aim at rehabilitation:

"It is not merely sufficient to transfer the juvenile deprecators to a charitable asylum.. the imperfect and relaxed discipline of which is not calculated to produce any deep impression, or any permanent change in his habits and character.

".. if the juvenile deprecators of the metropolis discovered that their offences would be merely visited by a short detention in a comfortable asylum, where they would be regarded as objects of compassion, and subjected to little privation and restraint, such a course would only tend to confirm the offender in his deprecatory habits and invite others to follow his example." (Report of Prison Inspectors, 1838, quoted in James, 1972:27-8.)

Similarly, as late as 1851, the Surveyor-General of Prisons could still thunder the warning that institutions modelled on Redhill and Mettray "do not possess the PENAL features which are calculated to repress ~~by~~ by the fear of its consequences" (James, 1972:30). From the softness of the "charitable asylums" to the contemporary mythology of colour TVs and bingo in the 'hotels for prisoners' is but a short step, and the classical equation of crime and punishment remains a key element in contemporary understandings of law and order.

It is in such debates as this and their outcomes within the system of justice and control that the "practical logics" of the conflicts which

Radzinowicz and others have treated at the level of legal and criminological theorising find their real consequences. In these logics in practice, the abstract philosophies do not remain visible in their "pure forms" - they become adapted to the conventions of the already existing logics in use, shape themselves around those of the opposing tendencies, organise themselves to "win" the support of public and political opinion and so on. Even in the case of the reformers themselves, one finds a strange mixture containing traces of both the classical view of the criminal and the emergent positivist conception of the delinquent. Their roots in investigative work - their concern with causation and classification - their deterministic conception of childhood all stress an affinity with a later positivist criminology, while their commitment to rescue and redemption contain a close approximation to the classical view of man - the installation of an ability to distinguish right and wrong, the acknowledgement of his responsibilities to society and so on.¹

Juvenile Welfare - in loco (working class) parentis:

It remains to trace through two themes which emerged in the Reform Movement's re-creation of juvenile justice - the focus on the family, and the blurring of distinctions between the delinquent and neglected child - through their developments in the subsequent career of the juvenile court.²

These two themes seem to determine both the shape and trajectory of the juvenile court up to the present, and carry in the development of their logic the conditions and direction of a more extremely interventionist variant of social control than emerges anywhere else in the legal apparatus. They are also the bases for the more obvious controversy which focusses on the contradiction between criminal procedure and the welfare of the delinquent in juvenile court procedure.

1. These are essentially observations in passing. There remains the complex task of the analysis of ideological logics in practice, and their development and adaptation of new forms, and the continuing uses and traces of old forms.
2. These developments necessarily involve the consideration of the interrelations of other movements which affect the policy making on juvenile delinquency - for example the development of an English criminology with an almost exclusive concern with delinquency (see Cohen, 1974) and the growth and institutionalisation of the social work professions - but I have neither the space nor the ability to consider these here, and consequently will only consider them as and where they enter specifically into the policy making area.

In the establishment of the juvenile court as a distinct legal institution in the 1908 Act, the court was empowered to act upon two types of children - the delinquent, who appears before the court on a criminal charge, and the "neglected" child, whom they were empowered to send to an industrial school. Neglected children were those who were found begging, having parents who failed to exercise proper guardianship, were destitute, or whose parents had criminal or drunken habits or were in prison; or who were associating with reputed thieves or common prostitutes. The significance of this lies not only in the breadth of the conditions which were taken to constitute neglect, but that from the first the court was empowered to intervene to rescue the child from the vagaries of working class socialisation.

The thorough conflation of the categories of delinquent and neglected had only to await the deliberations of the 1927 Home Office Departmental Committee on the Treatment of Young Offenders, who argued, in terms with which Mary Carpenter would have fully sympathised, that:

".. there is little or no difference in character and needs between the neglected and the delinquent child. It is often a mere accident whether he is brought before the court because he was wandering or beyond control or because he has committed some offence. Neglect leads to delinquency."
(Cmd. 2831:6.) (my emphasis.)

Thus, albeit belatedly, the reformers' vision of the dependent and vulnerable child was enshrined at the very heart of the juvenile system, with the classical "responsible individual" of bourgeois law being replaced by the "responsible family" of juvenile law. The "responsible family" was embodied in the juvenile court in the formulation, in the 1933 Children and Young Persons Act, of the child "in need of care and protection" - if he was shown to be falling into "bad associations" or being exposed to "moral danger", through the absence or neglect of his parents. And in all cases before them, the court itself was enjoined to play the part of the responsible parent, by having regard to "the welfare of the child" as the primary principle in the disposition of the child.

The 1908 and 1933 Acts command and shape the field of juvenile justice right through until the post-war upsurge of delinquency which threatened to mar the pleasant vistas of the "Affluent Society". The Conservative established Ingleby Committee was the first of a variety of contributions to the discussion of delinquency and the Juvenile Court which were to occur during the sixties. Their attention was focussed squarely on the family in relation to delinquency, but we have to tread on more delicate ground with the use of the family in this and the subsequent debates, for it appears with differing political "glosses". The Ingleby Committee's view

of the family bears the marks of its Conservative ancestry, its primary stress is on parental responsibility for the upbringing and proper discipline of the child, though with a by no means purely "free enterprise" admission of the role which may be placed by social services in helping the family carry out its responsibility:

"The child cannot be regarded as an isolated unit. The problem is always one of the child in his environment and his immediate environment is the family to which he belongs. It is the situation and the relationships with the family which seem to be responsible for many children being in trouble, whether the trouble is called delinquency or anything else. It is often parents who need to alter their ways, and it is therefore with family troubles that any preventive measures will be concerned." (quoted in Ford, 1975:23) (my emphasis.)

The Ingleby Committee's concern with the family and the image of it which they articulate (parents who must 'mend their ways') are part of the Committee's overall focus on a conservative vision of the juvenile court, which centres on the allocation of "responsibility". Bottoms describes their reasoning as follows:

"By and large, children come to court because those responsible for their upbringing.. have 'been unable in different degrees and for various reasons to bring the child up in the way he should go. They have been unable.... to teach him to behave in an acceptable manner'. For the younger child, the responsibility lies 'squarely' with the upbringers; but later on 'the child must learn to stand on his own feet and accept greater responsibility for his actions'." (1974:323-4.)

The ghost of bourgeois legal man still haunts these considerations, with their simple and specific concern with moral education and responsibility. The modest recommendations of the Committee were embodied, in diluted form, in the 1963 Children and Young Persons Act, which also expanded the category of "in need of care and protection" to a somewhat "tougher" version - that of being "in need of care, protection or control" - presumably to include that new breed of delinquent who resisted even the efforts of morally upright and well intentioned parents to exercise parental authority.

The Fabian Family and Social Reconstruction:

The family was to remain the key issue in the discussion of delinquency, dominated from now on by the Labour Party. The tone was set by a Fabian pamphlet criticising the Ingleby Report in 1962 which complained that "those who hoped to find the outline of a statutory service to help the family in need looked in vain." (Donnison et al., 1962, my emphasis.) The social democratic image of the family is inextricably bound up with

the whole Labour commitment to the construction of "equality" and the meritocratic society.¹

Given the post-war social reconstruction and the seeming creation of an "open society" via rehousing, educational change and so on (not to mention the all pervasive image of affluence), delinquency, from a social-democratic standpoint, was almost necessarily part of a category of residual social problems. These problems focussed on the "problem family" which, for whatever reason (and preferably, personal inadequacy, especially after the collapse of the economic base for Labour's "social programme") had failed to adjust to take advantage of the new opportunities of a meritocratic Britain. This familial ideology was first propounded in relation to delinquency in the Longford study group's pamphlet "Crime - a challenge to us all." of 1964, which stresses the problems of adjustment of working class children:

"Chronic or serious delinquency in a child is, in the main, we believe, evidence of the lack of care, the guidance and the opportunities to which every child is entitled. There are very few children who do not behave badly at times; but the children of parents with ample means rarely appear before juvenile courts. The machinery of law is reserved mainly for working class children who, more often than not, are also handicapped by being taught in too big classes in unsatisfactory school buildings with few amenities or opportunities for out-of-school activities.

"Anti-social behaviour in a child may arise from difficulties at home, from unhappiness at school, from physical and mental handicaps or maladjustment, or from a variety of causes for which the child has no responsibility." (quoted in Berlins and Wansell, 1974:22.)

1. This is not the place to untangle either the complex inheritance of the post war Labour Party, nor the ideology of social reconstruction, Taylor, Walton and Young's observations on the social and ideological tendencies of this policy are instructive. The policy of reconstruction:

"gathered... an army of specialist and expert middle class constituencies - most notably, architects and town planners, academics and teachers, and most significantly for criminal and civil legislation, the bulk of the British social-worker population." (1975:10:)

I shall suggest that one of the crucial links between the social-work constituency and the Labour Party was forged during the development of the Labour policy on delinquency in the sixties.

The sweep of causes is characteristically social-democratic both in its range and its limits - from environmental "disadvantage" to personal and family "maladjustment", though at this early stage, there is a stronger edge to the "social disadvantage" theme than is subsequently visible. The question of "responsibility" is firmly and abruptly swept off the agenda, in favour of more socially interventionist solutions to these "disqualifying" factors, with the family-as-socialisation-for-healthy-participation at the centre:

"It is a truism that a happy and secure family life is the foundation of a healthy society and the best safeguard against delinquency and anti-social behaviour." (quoted in Berlins and Wansell, 1974:23.)

Consequently, a central recommendation of the group was for:

"the establishment of a family service with the aim of helping every family to provide for its children the careful nurture and attention to individual and social needs that the fortunate majority already enjoy." (1964:1)

Thus, delinquency appears firmly on the agenda of the "mopping up" work of the social services who are enjoined to intervene to promote the adjustment of "problem families" to the healthy enjoyment of the good life that the "fortunate majority" already participate in.

It was the Longford report, and its more formal development in the 1965 White Paper on "The Child, the Family and the Young Offender" which made possible the alliance between the emerging social work professions and the Labour position on delinquency. The vagueness of the identification of delinquency, and the role attributed to the family both allowed an entree for casework based conceptions of family socialisation processes. Bottoms offers the more cynical suggestion that the central role envisaged for the social worker in the Family Councils to be set up to replace the juvenile court had some appeal to an emerging profession attempting to set the seal of respectability on its status.

The criticism of the White Paper meant that its proposals were dropped, but it reappeared in modified form in the 1968 White Paper "Children in Trouble". Here the alliance with social work is accomplished, delinquency and the family are re-presented in a more psychoanalytically derived and social-work based frame of reference, though the intent - the possibility of intervention - remains the same:

"It is probably a minority of children who grow up without ever misbehaving. Frequently such misbehaviour is no more than an incident in the pattern of a child's normal development. But sometimes it is a response to unsatisfactory family or social circumstances, an indication of maladjustment or immaturity or a symptom of a deviant, damaged or abnormal personality." (quoted in Berlins and Wansell, 1974:28.)

Delinquency now appears merely as the "presenting symptom" of some deeper malaise and maladjustment - conceived in terms of deviations from the "normal" pattern of child development. The terms may have changed to scientific ones, but the focus of attention remains the same as that of the nineteenth century reformers - how to ensure the proper socialisation of working class children, i.e., according to the pattern derived from the ideal (bourgeois) family structure. The 1969 Act establishes the conditions for intervention to ensure this standard is attained - what is now in the dock in the juvenile court is no longer the delinquent but the "deviant, damaged or abnormal" family. The Act all but accomplishes the abolition of the troublesome distinction between the delinquent or neglected child, by demanding that an offence is not, of itself, sufficient basis for bringing a child (and his family) before the courts. In addition, the child must be shown to also fall within one or other of the categories which constitute "neglect". The Act also places the disposition of the child largely in the hands of the social work agencies.

I argued earlier that the juvenile reform movement embodied an implicit critique of the working class family arrangements and child rearing practices. Their solution was to find a "substitute" family which would perform the necessary functions of training and discipline. That alternative has not been lost - community homes have replaced, in name, if nothing else, the old "approved school" system as the alternative agencies of discipline and the development of the "useful" citizen. But the 1969 Act culminates the deeper logic of the reformers by providing the mechanisms, not for the rehabilitation of the delinquent, but for the rehabilitation of the deviant family. Where the condemnation of the working class family was once indirect and polemical, the possibilities for the inspection, judgement and condemnation of working class families by the social work profession is now lodged at the centre of the juvenile justice system. The condemnation is now direct and practical.

Conclusion:

I have been arguing that the juvenile reform movement and its consequences for the development of the juvenile court articulates around very central core ideas of bourgeois ideology - especially those of the Family and Work. These terms are rarely given a detailed theoretical development, but are carried at level of "practical common-sense." The very vagueness and appeal to "verification" in every day experience constitute the basis for their ability to create a deep and pervasive non-political consensus about English society. The vagueness and appeal to

"common-sense" allows the 'concepts' to address and cohere the disparate experiences of various class cultures. The themes take different forms in the different class experiences, but their thematization in the categories of the Family and questions of authority and discipline, and Work and notions of responsibility, respectability and self-hood can contain and hold these differences.¹

My concern here is not to inaugurate a discussion of the merits and demerits of the working class family (nor even of its 'deviant' cases), which would open up issues beyond the scope of my argument here. Such consideration must force an analysis of bourgeois "social control" which goes beyond the relatively simple task of demystifying "humanitarian" advances to reveal their contribution to "controlling" the working class, to a more difficult level of attempting to untangle the ways in which bourgeois social control is both a means for repressing the working class and a 'civilising' force as well, which raises the development of the productive forces (in which I include the working class itself) to higher and more advanced (and at the same time, more contradictory) levels.

Within the more limited horizons of my argument here, I hope to have begun to open up the processes by which:

"each new class.. is compelled, merely in order to carry through its aim, to represent its interest as the common interest of all the members of society, that is, expressed in ideal form: it has to give its ideas the form of universality, and represent them as the only rational universally valid ones." (Marx and Engels, 1970:65-6.)

In juvenile justice, it is possible to follow the embodiment of the process of "ideal" universalisation into the logics in practice of the apparatuses of the State with the power to "realise" that universalisation. The Juvenile Court offers an illustration of the way in which "the conditions which make possible a certain way of life" are mediated through the "ideal expressions" of bourgeois experience into direct and practical attempts to ensure their fulfilment.

The role of the juvenile court in such a process is, obviously, a relatively marginal one, especially given the development of other state institutions (centrally, a state education system) charged with the control of working class socialisation. But the court does have a privileged

1. For a more detailed discussion of these and other themes of an "English Ideology", see Jefferson et al., 1975. The earlier commentary on the political glosses on the family in post-war discussions on delinquency give an indication at a different level of the way categories like the family can cohere these different positions.

position by virtue of its legal power to intervene directly in the individual and the family, to be able to enforce, where necessary, the conditions of proper socialisation. That this logic should reach its consummation in the social democratic concern with the family's role in creating "equality of opportunity" only indicates both the extent to which those "universalised" ideas have taken hold, and the problems which are raised in understanding the bourgeois state and its relation to and adaptation of, "pressure from below" for "equality" and "welfare". It is appropriate, perhaps, to finish what is essentially a speculative argument by pointing to some of the problems which it raises.

Bibliography

- L. Althusser (1971), "Ideology and Ideological State Apparatuses" in Lenin and Philosophy, New Left Books.
- V. Aubert, ed. (1969) Sociology of Law. Penguin.
- M. Berlins and G. Wansell (1974) Caught in the Act. Penguin.
- P. Boss (1967) Social Policy and the Young Delinquent. RKP.
- A.E. Bottoms (1974) "On the decriminalisation of the English Juvenile Courts" in Hood (ed.), 1974.
- J. Carlebach (1970) Caring for Children in Trouble.
- M. Carpenter (1853) Juvenile Delinquents: their condition and treatment. Cash.
- J. Clarke (1975) "Style" in Working Papers in Cultural Studies, 7/8.
- J. Clarke et al., (1975) "Classes, Cultures and Subcultures" in WPCS, 7/8.
- S. Cohen (1974) "Criminology and the Sociology of Deviance in Britain" in Rock and McIntosh, eds. (1974).
- D. Cooper, ed., (1968) The Dialectics of Liberation. Penguin.
- D. Ford (1975) Children, Courts and Caring. Constable.
- A.W. Gouldner (1971) The Coming Crisis of Western Sociology. Heinemann.
- A. Gramsci (1973) The Prison Notebooks. Lawrence and Wishart.
- D. Hay (1975) "Property, Authority and the Criminal Law" in Hay, Linebaugh and Thompson, eds. (1975).
- D. Hay, P. Linebaugh and E.P. Thompson, eds. (1975) Albion's Fatal Tree. Allen Lane.
- R. Hood, ed. (1974) Crime, Criminology and Public Policy, Heinemann.
- F.G. Jacobs (1971) Criminal Responsibility. Weidenfeld and Nicolson.
- D.W. James (1972) "The Origins of the Youthful Offenders Act of 1854" M.Soc.Sci. diss., Dept. of Econ. and Soc. History, University of Birmingham.
- T. Jefferson et al. (1975) "Mugging and Law'n'Order". CCCS Stencilled Paper.
- R. Johnson (1970) "Educational Policy and Social Control in Early Victorian England". Past and Present, 49.
- R. Johnson (1975) "The Blue Books and Education: 1816-1896" CCCS Stencilled Paper.
- R. Laing (1968) "The Obvious" in Cooper, ed. (1968).
- K. Marx and F. Engels (1970) The German Ideology. Lawrence and Wishart.
- M. May (1973) "Innocence and Experience: the evolution of the concept of Juvenile Delinquency in the mid-nineteenth century". Victorian Studies, XVII(1).
- G. Pearson (1975) The Deviant Imagination. MacMillan.
- I. Pinchbeck and M. Hewitt (1973) Children in English Society, vol.11. RKP
- L. Radzinowicz (1948) History of the English Criminal Law, vol.I. Stevens.
- L. Radzinowicz (1966) Ideology and Crime. Heinemann.
- K. Renner (1949) The Institutions of Private Law and their Social Functions. RKP. (page refs. refer to the extract in Aubert, ed. 1969).
- P. Rock and M. McIntosh (eds.) 1974. Deviance and Social Control. Tavistock.
- A.C.H. Smith et al. (1975) Paper Voices. Chatto and Windus.
- G. Stedman-Jones (1974) "Working class culture and Working class politics in London, 1870-1900: Notes of the remaking of a working class". J. of Social History.
- I. Taylor, P. Walton and J. Young (1973) The New Criminology. RKP.
- I. Taylor, P. Walton and J. Young (1975) "Critical Criminology in Britain: review and Prospects" in idem, eds. (1975).
- I. Taylor, P. Walton and J. Young, eds. (1975) Critical Criminology, RKP.
- E.P. Thompson (1967) "Time, Work-discipline and Industrial Capitalism" Past and Present, 38.
- A.F. Young and E.T. Ashton (1956) British Social Work in the Nineteenth Century. RKP.
- J. Young (1975) "Working Class Criminology" in Taylor Walton and Young, eds. 1975.