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Book Review

Lowering Expectations


Reviewed by Tony Platt†

In Best-Laid Plans, author Ellen Ryerson sets out to explain how the idea of a separate justice system for juveniles, optimistically promoted by enterprising reformers at the turn of the century, has been so undermined in practice that today it is an experiment that failed. Ryerson begins by setting out the historical context and development of the juvenile court, focusing on the ideology and aspirations of the "child-saving" movement. The book then details the history of the juvenile court, from its beginning in Illinois in 1899 to the present, recounting critiques of this "experiment" successively advanced by different social science disciplines: survey research, psychology and psychiatry, law, and sociology. Each of the assumptions of the juvenile court movement was false, Ryerson concludes, and thus it was an experiment that could not succeed. Her conclusion: we should "aim to do less with law."

Best-Laid Plans is not typical historiography, with minute detail and massive documentation. Trained in both history and law, Ryerson writes in the style of the classical essayist and from the theoretical perspective of intellectual history. The book is a series of condensed and elegant essays, a distillation of the scholarship of others covering

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2. Among social historians, the "child-saving movement" refers to efforts by reformers of the Progressive era to protect children from the harms of industrialization. Such reforms included enactment of child-labor laws, enforcement of universal compulsory education, and creation of a juvenile justice system. Many historians now agree that such reforms were motivated not so much by concern for children as by the needs of emerging monopoly capitalism and the developing middle-class. See generally A. Platt, The Child Savers (2d ed. 1977).

3. P. 162.
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a broad sweep of history. Its style, though not its general approach, suggests William Appleman Williams rather than Arthur Schlesinger. Because it contains almost nothing new in empirical data (and in fact omits a great deal), the book's effectiveness depends on its ability to generate new insights into old arguments, to undermine and revise the conventional wisdom. To be effective on this intellectual terrain, one must be unsettling.

Being unsettling, however, is not a tradition among social historians of the United States. Except for solitary voices like W.E.B. DuBois and C. Wright Mills, the social sciences were until very recently characterized by a narrow pragmatism, self-policing, and, in Thorstein Veblen's memorable phrase, "aggressive mediocrity." Although the repression of critical ideas in the academy has roots in the development of higher education in the late nineteenth century, this was intensified under the enforced intellectual conformity of the Cold War. In the 1960s, however, the illusion of consensus and harmony was ruptured by ghetto rebellions, the women's movement, and popular opposition to the war in Vietnam. On college campuses, the emerging student movement played an important role in puncturing the myth of academic neutrality by exposing university complicity in the military-industrial complex. The student movement also "discovered" the social and cultural contradictions of capitalism and, in doing so, politicized a new generation of academic activists.

Although the prolonged disruption of academic institutions subsided in the early 1970s, when the end of universal conscription was combined with a judicious blend of repression and co-optation, earlier struggles have left an indelible mark on the white-washed walls of academia. With a deepening economic crisis in the world capitalist system and growing distrust about the legitimacy of government, the

5. As Lillian Hellman wrote in her recent memoirs: I had, up to the late 1940's, believed that the educated, the intellectual, lived by what they claimed to believe: freedom of thought and speech, the right of each man to his own convictions, a more than implied promise, therefore, of aid to those who might be persecuted. But only a very few raised a finger when McCarthy and the boys appeared. Almost all, either by what they did or did not do, contributed to McCarthyism, running after a bandwagon which hadn't bothered to stop to pick them up.
Simply, then and now, I feel betrayed by the nonsense I had believed. I had no right to think that American intellectuals were people who would fight for anything if doing so would injure them; they have very little history that would lead to that conclusion.
L. HELLMAN, SCOUNDREL TIME 40 (1976).
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last few years have seen a reemergence of critical inquiry into all aspects of United States life and institutions. Radical scholars have played a much-needed role in debunking and challenging the “value-free” pretensions of conventional social science, distinguishing the myths of pluralistic democracy from the realities of monopoly capitalism and investigating the inequalities of institutions.

Historiography, a long-time bastion of over-specialized empiricists and quiescent liberals, has been shaken and revitalized by this recent social ferment as scholars have been forced to seek better answers to the roots of the current crisis. The burning issues—race relations, politics and government, work and the labor process—have challenged historians to examine old evidence in new ways.

Against this background, Ryerson’s book, though superficially radical, is traditional and cautious. The Best-Laid Plans is another addition to the growing genre of historical investigations into the problems and failures of criminal justice and prisons. The bankruptcy of this system as it affects juveniles has been well-documented by a series of nationwide studies, culminating in the authoritative study by the National Assessment of Juvenile Corrections in 1976. These reports paint a dismal picture of increasing detention, widespread violations of due process, institutionalized racism and sexism, administrative chaos, and deteriorating social services. Accepting this situation as a starting point, Ryerson sets out to trace and explain the roots of the current crisis in juvenile justice.

Critics of the juvenile court system can be divided crudely into two


8. These studies are motivated by a variety of factors: the growing crime rate in working class communities (despite the government’s “war on crime” subsidized by millions of taxpayers’ dollars); the government’s failure to prosecute business and organized crime; the prisoners’ revolts against miserable conditions, racism and the hypocrisy of “rehabilitation”; and the fiscal crisis. See, e.g., Platt, “Street Crime—A View From The Left, Crime & Soc. Just., Spring-Summer 1978, at 26-34; Platt & Takagi, Intellectuals for Law and Order: A Critique of the New “Realists”, Crime & Soc. Just., Fall-Winter 1977, at 1-16.


12. In so doing, Ryerson adds her name to a long list of commentators. E.g., J. Hawes, Children in Urban Society (1971); R. Mennel, Thorns and Thistles (1973); R. Pickett, House of Refuge (1969); S. Schlossman, Love and the American Delinquent (1977).
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camps: those who complain that it is ineffective in controlling delinquency and those who argue that it violates constitutional norms of due process of law. Ryerson argues that these two critiques, either separately or combined, proved the unmasking of the child-saving movement. The empiricists in survey research, psychology, and sociology demonstrated repeatedly that juvenile justice does not deter delinquency or rehabilitate delinquents, while the constitutionalists attacked the juvenile court’s procedural irregularities. Because Ryerson presents herself as a constitutionalist and because this perspective is fashionable in liberal circles, the constitutionalist position is worth examining in more detail.

From its inception, the juvenile court never lacked professional critics. For the most part, however, their criticism was technocratic rather than structural, dominated by fiscal and administrative concerns. Now and then a lone voice would protest the underlying punitive dimension of the juvenile court, but this view was decidedly unpopular in both the legal and academic professions. Far more typical was the view expressed in 1934 by Edwin Sutherland, perhaps the most famous criminologist in the United States: “[W]hen considered in relation to what might conceivably be done, [the juvenile court] appears to be a failure,” but “[w]hen considered as a substitute for the criminal court, it is regarded as a decided success.” Sutherland did not express concern about the arbitrary or informal nature of juvenile court procedures. On the contrary, he was so committed to the ideal of justice embodied in the juvenile court that he advocated extending the reach of the juvenile justice system not only to more juveniles but also to other agencies of child-socialization. Sutherland also hoped the juvenile court ultimately would become the model for all criminal courts, as the tradition of adversary justice in criminal law would bow to the superiority of welfare imperatives.

Unabashed enthusiasm for the therapeutic justice of the juvenile

13. E.g., Lindsey, The Juvenile Court Movement from a Lawyer's Standpoint, 52 ANNALS 140, 145 (1914) (for a child committed to an institution by a juvenile court, “there is often a very real deprivation of liberty nor is that fact changed by refusing to call it punishment or because the good of the child is stated to be the object”).
15. Id. at 283 (“[T]he great need of the juvenile court is the extension of its machinery and point of view to the rural sections [of the country].”)
16. Id. at 289 (“[D]elinquencies can be treated by the school more satisfactorily because they will be discovered earlier and because the school will have a natural connection with the family.”)
17. Id. at 295 (“[I]f the essential elements in the juvenile court are considered, all of them seem to be applicable to the criminal court and would probably improve very greatly the work of that organization: definite social investigations, use of summons, reform as the ideal of treatment, informal procedure, and secret sessions.”)
court continued for half a century. In 1949 the prestigious American Academy of Political and Social Science devoted a whole issue of its *Annals* to celebrating the juvenile court. Aside from some pointed observations about the vagueness of definitions of delinquency and the arbitrary tendency of the court to criminalize immorality, this special issue uncritically defended the juvenile court. For many criminologists, the post-war years were a period of great optimism, partly as a result of the temporary decrease in the prison population—made necessary by the draft and the scarcity of “free” labor—and partly as a result of the growing acceptance of the rehabilitative ideal in corrections. With the development in the early 1940s of the first Youth Authority in California, which legislated separate facilities for youth and a centralized administration, professional functionaries came to believe control of crime was within their grasp. The 1949 issue of the *Annals* is testimony to this utopianism.

This bubble of optimism would quickly burst, for by 1949 it had outlived the social conditions that had fostered its growth. Soon after the war, unemployment rose and the surplus labor force filled prison cells; the issue of street crime reappeared in the public’s mind. With the post-war depression came civil libertarians, whose main concern was that procedural injustice would once again fanning the flames of popular discontent. The first systematic critique of the juvenile court from the constitutionalist perspective was Paul Tappan’s *Juvenile Delinquency*, published in 1949. After Tappan there followed a long list of constitutionalist articles in professional journals. Perhaps the

19. See, e.g., Killian, *The Juvenile Court as an Institution*, 261 *Annals* 89, 97-100 (1949) (suggesting need for even greater coordination between judicial and administrative branches of court); Schramm, *Philosophy of the Juvenile Court*, 261 *Annals* 101, 108 (1949) (juvenile court is “personalized justice for troubled youth”). Even Thorsten Sellin, who was otherwise known for his sensitivity to the repressive aspects of legal and penal institutions, see T. Sellin, *Pioneering in Penology* (1944), remarked that the Illinois statute of 1899 establishing the first juvenile court in the United States had “remarkably well stood the test of time” and was “an inspiration to legislators in distant lands,” Sellin, *Foreword*, 261 *Annals* at vii, viii (1949).
20. Building on his earlier research, see P. Tappan, *Delinquent Girls in Court* (1947), Tappan was an uncompromising critic:

Statutory and official pronouncements to the contrary, the characteristic employment of penalties, deprivations, and restrictions is a real and bitter reality to the delinquent who is being “corrected,” “rehabilitated,” or “saved.” An altered semantics of child care, liberally slanted euphemisms, cannot alone transport the maladjusted child to the imaginary correctional utopia where he will find understanding and moral reconstruction.

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most articulate spokesman for this tradition has been Francis Allen, who, writing in 1964, located the juvenile court in a much broader framework. For Allen, the “word-magic” and “semantics of ‘socialized justice’” were a “trap for the unwary”:

We shall escape much confusion here if we are willing to give candid recognition to the fact that the business of the juvenile court inevitably consists, to a considerable degree, in dispensing punishment. If this is true, we can no more avoid the problem of unjust punishment in the juvenile court than in the criminal court.

On the crest of such criticism the constitutionalists won their most prominent victory in the 1967 case In re Gault, in which the Supreme Court held that minimal procedural safeguards, including the right to counsel, applied to juvenile court. Later cases expanded those procedural rights, though not as much as the constitutionalists would have liked.

These “landmark” cases, however, had little practical effect. Indeed, the limits of the constitutionalist perspective as a critique of the juvenile court are evident when one examines what little effect these

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23. Id. at 14, 18.
24. Id. at 18.
26. Id. at 41. When proceedings could result in confinement, the juvenile has, in addition to the right of counsel, a constitutional right to adequate notice of the charges against him, id. at 33-34, a right to confront and cross-examine adverse witnesses, id. at 56, and a constitutional privilege against self-incrimination, id. at 55.
27. Compare In re Winship, 397 U.S. 358, 368 (1970) (criminal standard of proof beyond a reasonable doubt applies to juvenile court proceedings) and Breed v. Jones, 421 U.S. 519, 541 (1975) (constitutional prohibition against double jeopardy bars criminal prosecution following juvenile court adjudication) with McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (plurality opinion) (no constitutional right to jury trial in juvenile court). Speaking for the plurality in McKeiver, Justice Blackmun acknowledged the “disappointments,” “failures,” and “shortcomings” of the juvenile court, id. at 545, but insisted that making the jury trial in the juvenile court a matter of right might “put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding,” id., and would ignore “every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates,” id. at 550. But, as Justice Brennan noted, denial of a jury trial, when combined with the judge’s power to exclude the general public from the hearing, permits the juvenile court to be used for political ends without public accountability. Id. at 556 (Brennan, J., concurring in part and dissenting in part). This is what had happened in one of the cases before the Court in McKeiver; about 45 black youths, ages 11 to 15 years, were adjudged to be juvenile delinquents for participating in a mass, disruptive political protest concerning school reorganization. Each of the youths was spared indefinite confinement in the state juvenile corrections center only on the condition that, for a period of one or two years, he or she would violate no state laws, report monthly to a social welfare worker, attend a school approved by the welfare director, and be home by 11 p.m. each evening. 403 U.S. at 536-38 (plurality opinion).
Supreme Court decisions have had on the actual practice of juvenile courts. In the ten years since *Gault*, "no revolution has occurred in the implementation of due process in the juvenile court. Most judges do concur that juvenile rights should be acknowledged and protected, but they agree far less about how and to what extent procedural safeguards must be implemented." Compliance has been more in form than in substance. Similarly, my own studies of private attorneys and public defenders found that lawyers in juvenile court are more likely to cooperate with other functionaries in the interests of bureaucratic efficiency than to be vigorous advocates for their clients. Experience of the last ten years suggests that "due process" in juvenile court is just as expedient, mechanical, and perfunctory as "due process" in criminal court.

All these constitutionalist critiques, including Ryerson's, help expose the contradictions of the child-saving movement and the dubious constitutional legitimacy of the juvenile court. But while Ryerson, like her colleagues, knows how to catalogue the injustices of juvenile justice, she has great trouble explaining why they exist.

*The Best-Laid Plans* moves on and between two analytical levels: on the one hand, "[t]he subject of this book . . . is the juvenile court—its conception, the assumptions upon which it was based, and its fate as a reform idea"; on the other hand, it explores "the degree to which the juvenile court represented a more general perception of and approach to social problems, and to which its fate exemplifies changes in American perceptions of and solutions to similar problems." The juvenile court lends itself well to this approach because it was a part of the Progressive reform movement; it is almost impossible to evaluate the origins of the juvenile court without investigating its political and economic roots. Ryerson attempts, therefore, not only to explain the failure of the juvenile court but also to dissect the "life cycle of reform."

At the first level of analysis, Ryerson does a competent job of chronicking the rise and fall of the juvenile court. The early history of the child-saving movement, its high hopes and gradual adjustment to compromise and failure, is by now well-known, but Ryerson makes good use of her skills as an essayist to cull the essential points from a variety

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29. *Id.* at 206.
30. A. PLATT, supra note 2, at 163-75.
32. *Id.*
33. P. 33.

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of case studies. Her chapters on the divergence between the idea and practice of juvenile justice graphically illustrate how the “fusion of social control with greater humaneness is a tenuous [reform] which typically dissolves, leaving the machinery for social control firmly entrenched—even if it is ineffective—after the spirit of humanitarianism has departed.”

Yet even on its own terms as “intellectual history,” The Best-Laid Plans is extraordinarily narrow and uncritical. The sexism of the juvenile court, in both its definition of child-saving as “women’s work” and its double standard of punishment for male and female “immorality,” is not examined. Racial discrimination, widely practiced in all aspects of juvenile justice from arrest to sentencing, does not even rate a listing in Ryerson’s index, much less a serious analysis. One possible reason for these inexcusable omissions is that the author lets herself be ruled by her data. Admittedly Ryerson is a dogged and laborious synthesizer of the history of professional ideas about juvenile justice, but she accepts these ideas far too readily. Rather than rising above the existing literature, she is respectful to the point of obsequiousness. Thus Ryerson not only summarizes the conventional wisdom but also reproduces its sexism, racism, and intellectual myopia.

At the second level of analysis, certainly the more important, the deficiencies are even more acute. For Ryerson, ideology is the primary factor that determines political and economic relations in society. This metaphysical perspective compels Ryerson to interpret the history of juvenile justice as a battle between the “juvenile court idea” and various competing intellectual disciplines such as psychology, sociology, and public administration. “My interest,” she writes, “is in how the juvenile court idea gained and lost the confidence of people concerned about delinquency.” But even as “a history of ideas and institutions,” Ryerson unduly restricts the scope of her inquiry.

As critical historiography makes clear, changes in the ideas and forms of punishment are related to changes in other aspects of social life: the mode of production, the labor market and labor process, class relations

34. Id.
35. See, e.g., A. Platt, supra note 2, at 75 (child-saving was “moral enterprise” undertaken by “natural caretakers” of children, i.e., women).
36. See, e.g., Chesney-Lind, Judicial Paternalism and the Female Status Offender, 23 Crime & Delinquency 121, 129 (1977) (status offenses used to maintain sex role by requiring obedience and chastity of young women while encouraging males to “sow wild oats”); Chesney-Lind, Judicial Enforcement of the Female Sex Role: The Family Court and the Family Delinquent, Issues Criminology, Fall 1976, at 51, 58.
38. P. 15.
39. Id.
and political struggles, and fiscal constraints. By focusing only on ideology and abstracting from the material conditions on which it is based, Ryerson conveniently sidesteps the most significant questions: why particular ideas rise and fall, how ideology articulates and legitimizes a specific mode of production, and what class interests are served by particular ideas. She does this, one suspects, because they are not a proper subject of "intellectual history." Almost as an afterthought Ryerson flirts with the difficult but necessary task of locating the juvenile court in the political economy. "[T]he historiography of the progressive era," she writes, "is a virtual thicket of questions in which one risks getting lost." It is a risk Ryerson decides not to take:

One question is whether the movement for which it is named was peopled by an old middle class acting out status frustrations, or by a new middle class acting out its professional ambitions, or by a business elite seeking a predictable environment in which to pursue its own interests. A variant of the question is whether progressivism was a movement of humanitarian reform that failed or a movement of capitalist conservatism that succeeded. Did the many different people who called themselves progressives leave us with a term that connotes something in particular or nothing at all? These are questions which I do not wish to engage directly. More accurately, these are questions she does not address at all.

Though critical and disapproving, Ryerson shares the sensibilities and class attitudes of the middle-class professionals who populate her book. Her style, muted and genteel, expresses her fundamental belief in the dispassionate expert; the absence of anger and outrage is striking. Although she criticizes the child-savers for violating due process rights, she resents perhaps even more strongly their passion and lack of professional restraint. And while pretending to mourn the loss of faith in reform, Ryerson does not urge new forms of scientific agitation; rather, she wishes only to make "a not too undignified retreat." Confessing to "the belief that we do not know what to do about juvenile

41. P. 4.
42. P. 4-5 (notes omitted).
43. See, e.g., p. 162 (commenting that optimistic assumptions of child-savers "carried us to a high plateau of intervention and left us exposed to serious disappointment," and "more modest ambitions" would be appropriate now).
44. Id.
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crime, and a fear that collectively we can do nothing," Ryerson concludes with a whimper; her advice is simply that we should “aim to do less with law.”

Ryerson’s cynicism derives in part from her inability to get outside the world view of the technical-professional class. As Ryerson candidly admits, her study “puts the designers, defenders, and critics of the institution at the center and leaves aside the children and parents who pass through it.” In effect, if not by intention, this makes the mass of humanity mere objects of history, hidden in the shadows of “great” men and women.

While the author’s honesty is appreciated, it is not enough. The juvenile court is an important social institution which emerged under specific political and economic conditions. The child-saving movement was not a humanistic enterprise on behalf of the working class against the established order. On the contrary, its impetus came primarily from the bourgeoisie and petty bourgeoisie who were instrumental in devising new institutions of control and new forms of management to protect their power and privilege. The child-saving movement was not an isolated phenomenon but reflected massive changes in the mode of production—from laissez-faire to monopoly capitalism—and in strategies of social control—from haphazard repression to welfare-state benevolence backed up by centralized and professionalized force.

The impact of the juvenile court has been and continues to be felt deeply by hundreds of thousands of working-class families. It is not surprising that without an investigation of the class character of the child-saving movement and the juvenile court, without an appreciation of the material conditions which relentlessly sweep aside or co-opt efforts to reform legal institutions, without an understanding of the collaboration between business and government, Ryerson can only vacillate between cynicism and moral indignation. As long as she looks for the roots of juvenile injustice only in the realm of ideas, she is

45. P. 161.
46. P. 162.
47. As Howard Zinn once remarked:
There is an underside to every Age about which history does not often speak, because history is written from records left by the privileged. We learn about politics from the political leaders, about economics from the entrepreneurs, about slavery from the plantation owners, about the thinking of an age from its intellectual elite.
H. ZINN, THE POLITICS OF HISTORY 102 (1970). And, he might have added, about the juvenile court from its administrators and professional critics.
49. See, e.g., A. PLATT, supra note 2, at xi-xxix. See generally G. KOLKO, supra note 7, at 1-10 (Progressive-era reforms were really attempts to preserve existing power and social relationships).
unable to indicate how the juvenile court might be effectively reformed. The overall impression of *The Best-Laid Plans* is that Ryerson supports the constitutionalist reformers. But her idealist perspective does not allow her to explain either why it has taken so long for legal reforms to be implemented or why their implementation has failed to transform the quality of juvenile justice. She seems to assume a natural antagonism between lawyers (constitutionalists) and child-savers (social workers), which the day-to-day operations of the legal system contradict. The bureaucratic collaboration and comparable class interests among professionals undermine whatever symbolic rivalries appear on the surface. If Ryerson were to look more deeply into the social structure—the economic crisis and the extraordinarily high unemployment rates among youth, the deterioration in social services, and the growing political malaise among broad sectors of the population—she perhaps would be able to explain the ineffectiveness of liberal reforms and the resurgence of more severe forms of penal sanctions for both youth and adults.

*The Best-Laid Plans* provides a service by concisely summarizing the damning evidence against juvenile courts. But as a polemical or interpretative essay, it is neither illuminating nor unsettling. On the contrary, it is a decidedly conservative book: it mystifies the social origins of legal institutions, it ignores the central interests of the people who are most affected by the juvenile court, and it proposes only resigned defeatism as a course of action for the future. Twenty years ago, in the aftermath of the Cold War, it might have been enough just to debunk the myths of juvenile justice and expose the false promise of “rehabilitation.” But today’s climate is very different and intellectuals have an obligation to develop both a theoretical alternative to bankrupt liberalism and an analytical framework from which to explore the significant questions of modern history. From this admittedly difficult task, Ryerson simply retreats. Exposé history, even with a radical veneer, can be just as conservative as official apologetics when, like *The Best-Laid Plans*, it teaches that the only solution to injustice is lowered expectations.

50. *See* p. 1758 *supra.*

51. For a discussion of these questions, *see* Dixon, *supra* note 4, at 251.