

housing about a dozen children in a family-style atmosphere under responsible adult supervision. The Massachusetts State Industrial School For Girls first tried the cottage plan as an alternative to large congregate institutions in 1856, but the plan was ahead of its time elsewhere in the nation. The St. Louis board's recommendation garnered considerable public support and led to an 1873 statute authorizing St. Louis City to issue \$50,000 in bonds so the House of Refuge could build several cottages, an assembly hall, a school and a building for shops. The city's municipal assembly approved the bond issue, but post war inflation led the mayor to veto it as too expensive. A few new buildings were constructed on the house's grounds, but cottages would have to await a later day.<sup>39</sup>

The St. Louis House of Refuge became overcrowded when the depression of 1857 deepened local poverty, and the Civil War created new orphans and left many families with their male breadwinner killed or severely wounded on the battlefield. Public concern for the plight of soldiers' children was genuine because their fathers' loss or disability came from military service that dispelled any thought of personal blame for poverty. In January of 1865, shortly before Grant met Lee at Appomattox, Missouri Governor Thomas C. Fletcher called the war's orphans "children of the People," and summoned the citizenry to give them "a home and a culture of mind to fit them for preserving the institutions in defense of which their fathers died." Many dependent war orphans nonetheless found themselves confined in the inhospitable House of Refuge and similar institutions, together with juvenile criminals.<sup>40</sup>

The nation's houses of refuge were secure facilities, that is, facilities children could not leave without permission. By the early 1870s, child savers found little difference between them and the prisons they purported to replace. The mayor of St. Louis reported in 1872 that the city's house of refuge had become "principally a prison-house for the juvenile offenders, where compulsory educational discipline assumes the form of punishment." Fear that the buildings' inadequacy encouraged escapes inspired prison-like discipline. Windows and doors had iron bars, children wore uniforms, rules prevented talking at meal-time and the children's heads were shaved. The children had no directed play, and few facilities for indoor or outdoor recreation.<sup>41</sup>

Public concern about cruelty at the St. Louis House of Refuge led the legislature to reconstitute its management in 1873, but conditions there changed little. A law that year finally required separation of the house's delinquent and dependent children, but overcrowding was so severe that the law was generally ignored for the rest of the century.<sup>42</sup> In 1893, the house's superintendent pleaded with the city's lawmakers: "We have 100 boys sleeping in one room 40 by 80 feet, low ceiling and the beds are 'two story'; there

are no bathroom privileges of any kind in the building . . . Can we not prevail upon this assembly to give us relief? In the name of humanity!"<sup>43</sup>

Complaints about the house's inadequate buildings continued, and overcrowding forced officials to release some boys and allow others to sleep at home. Homeless boys were apprenticed to rural masters.<sup>44</sup> When a Girls' House was completed in 1885, the event was hailed as "the greatest event in the history of the House of Refuge," even though the new building was not occupied until 1887 for lack of heat and furnishings. All the while, no private St. Louis orphanage accepted black children until 1885, when the St. Francis Orphanage opened under Catholic auspices. By 1902, the St. Louis House of Refuge still confined some juveniles at hard labor, which sometimes meant work on public roads or breaking rock.<sup>45</sup>

The nation's houses of refuge may have been undesirable places for children, but Missouri's smaller counties often had few alternatives to these and other congregate institutions. When Governor B. Gratz Brown unsuccessfully urged the legislature in 1871 to create a state industrial reform school for delinquent and dependent children, he cited the lack of public institutions outside the cities. When his successor, Silas Woodson, called for construction of a state reform school for boys in 1874, he appealed to the lawmakers' highest motives. "Who will undertake to calculate the importance of eradicating vice from the hearts of the youthful offenders against the laws of the State, and implanting therein the seeds of virtue?" Governor Woodson asked the lawmakers. "Who can estimate the good that has been done when a poor, erring, friendless boy has been rescued from a life of infamy, ignorance and crime, and made a happy, intelligent, honest, good citizen?" "Go to the erring boy with a panacea for his corruption—light to drive away the darkness from his mental and moral nature," the Governor urged. "Fail to do it, and allow him to come to the Penitentiary . . . and you have sealed his fate for time and eternity."

Governor Woodson's eloquence failed to produce immediate results. At the 1875 Missouri Constitutional Convention, Henry Boone offered a resolution to create "the Reform School for the Correction and Instruction of Minors who shall be convicted of any felonious offense." The resolution was defeated. It was 1887 before the General Assembly authorized construction of the state's first two juvenile reformatories, whose charters permitted the St. Louis House of Refuge and other county houses to continue operating. In 1889, the Missouri Reform School For Boys opened at Boonville and the State Industrial Home For Girls opened at Chillicothe. Like the juvenile reformatories opening in many other states, the two Missouri institutions were set in remote rural areas because the agrarian ideal still equated farm life with personal growth and redemption.<sup>46</sup>

The Boonville reformatory housed both white and African American children, but on a segregated basis. Calls to build a separate institution for blacks went unheeded. Chillicothe consistently refused court commitment of African American girls. In 1903, Chillicothe's superintendent explained that "intermingling of the races would inevitably result in the demoralization of the whites and nullify, to a great extent, the good we are now doing." With no other state institution for African American girls, a twelve-year-old was reportedly committed to the state penitentiary in 1908, released only when the Federated Negro Women's Clubs of Missouri appealed to attorney general Herbert S. Hadley, the future governor.<sup>47</sup>

In 1909, the General Assembly authorized creation of the State Industrial Home For Negro Girls. Twenty-eight acres of land for the home was purchased northwest of Sedalia, but objections from local residents forced abandonment of plans to build there. Other towns also objected, and it was not until 1913 that the lawmakers passed an appropriation to purchase land a mile north of Tipton, where the school opened three years later. The Tipton school became one of only a handful of reformatories for African American girls in the United States, all in the South and border states. Northern states generally placed all girls in a single school, but usually in separate quarters.<sup>48</sup>

The governors and legislators who created the Boonville, Chillicothe and Tipton reformatories reflected both lack of punitive motive and adherence to the stereotypes of the day. "Nothing is so costly to the State as jails and penitentiaries," Governor Thomas T. Crittenden said in 1885. "If the state is the guardian of its children, it should be prepared to take charge of the little waifs of society." Four years later, Governor Albert P. Morehouse told the General Assembly that "[t]he State cannot engage in a more laudable undertaking than caring for and reforming its youth, whom circumstances over which they had no control have started on the wrong road in life." Governor Morehouse estimated that 90% of youths sent to reform schools "make good and honorable citizens" later on.<sup>49</sup>

The General Assembly itself recited that the 168-acre Boonville boys school would be "not simply a place of correction, but a reform school where the young offender of the law, separated from vicious associates, may receive careful physical, intellectual and moral training, be reformed and restored to the community with purposes and character fitting for a good citizen, an honorable and an honest man."<sup>50</sup> The 47-acre Chillicothe girls' school would offer "thorough systematic teaching of all domestic industries [and] a thorough education in every branch of household work." Chillicothe's rules and regulations recited that "girls, removed from vicious associates and evil influences, may receive careful physical, intellectual, and moral training, participate in the enjoyment of a true home life, be reformed, and become good

domestic women prudent in speech and conduct, cleanly, industrious and capable housekeepers.”<sup>51</sup>

The terms “vicious associates and evil influences” had particular meaning because girls continued to be committed to Chillicothe primarily for sexual indiscretions, unlike male delinquents generally committed to Boonville for crimes against persons or property. Governor Lon V. Stephens confirmed as much in 1899, when he noted that Chillicothe’s girls “have nothing against their characters,” but were “only poor, and forlorn, beset by temptations, with no competent protector.” The Governor reported that counties were “waking up to the necessity of saving their girls, believing that it is better to commit with downward tendencies, than to wait until she is altogether bad before reformation begins.”<sup>52</sup>

The 165-acre Tipton girls’ school would offer training in practical nursing and domestic science, including (according to a 1942 description) “laundrying, cleaning, cooking, sewing, and other household branches, gardening, dairying, poultry raising, and the care of lawn, flowers, and shrubbery.”<sup>53</sup>

Despite these lofty gubernatorial and legislative mission statements and the institutions’ benign names, Boonville and Chillicothe soon became reformatories of last resort. Neglected children as young as eight were often committed by courts in smaller counties that had no other place to put them. These vulnerable children found little protection against older inmates convicted of serious crimes, who were often institutionalized only after probation and other efforts at rehabilitation had failed. Boonville and Chillicothe did keep many children out of prison, but their own austere prison-like conditions frequently compromised treatment efforts. In 1908, a leading juvenile court judge praised the nation’s early twentieth century juvenile reformatories as “moral sanitariums,” but he was exaggerating their virtues.<sup>54</sup>

One researcher reported that by 1911, Boonville had “slumped from its previously high standards to a juvenile prison similar to a penitentiary.” The Osborne Association, a national corrections organization, reported that until the Constitution of 1945 classified the reformatories as educational institutions, girls at Chillicothe were fingerprinted and their prints were registered with federal and state bureaus of criminal investigation. Boys at Boonville were not fingerprinted or photographed, but commitment to the school was considered an official criminal record under the state’s habitual criminal act and records were furnished to county prosecutors on request. Commitment to Tipton was not considered a criminal offense and the girls were not fingerprinted.<sup>55</sup>

The opening of Missouri’s state reformatories began nine decades of generally unhappy experiences that ended only when the state finally closed the last two, Boonville and Chillicothe, in the early 1980s and assumed national

leadership in innovative juvenile corrections. Meanwhile, the long unhappiness was not confined to Missouri. Training schools were national failures with, as one writer remarked in 2002, “a zero reputation for innovation or behavioral impact. . . . The sole virtue of the reform school was the fact that it was not a prison.”<sup>56</sup>

Many children convicted in the late nineteenth century still landed in county prisons with hardened adult criminals. An 1887 St. Louis city ordinance mandated that “all children under 15 confined in the jail or calaboose must be kept separate from other inmates.” Once it became clear that the ordinance would be ignored, private charity assumed a central role. In 1894, seven private child caring institutions agreed with the mayor to take in boys under twelve and girls under fourteen charged with crimes, without cost to the city, so the children would not be sent to prison or the city’s House of Refuge.

In November of 1900, a letter-to-the-editor in the *St. Louis Globe-Democrat* decried the city’s failure to enforce the 1887 ordinance. The letter also cited year-old grand jury reports recommending commitment of young boys to Boonville rather than the city jail, and reemphasizing the need for separating detained children from adults pending trial.<sup>57</sup>

The letter-to-the-editor was written by a member of the St. Louis Humanity Club, which Mrs. John W. Noble had founded in 1893 to seek improved conditions in the city’s house of refuge and remove children from the city jail. The Club chalked up a number of impressive victories during the 1890s with the cooperation of the mayor, whose wife was a member. The Club became a driving force behind the 1903 legislation creating the St. Louis city juvenile court.<sup>58</sup>

The St. Louis Court of Criminal Correction tried felony cases of adults and children alike. One contemporary observer reported that on trial day, prisoners of all ages would wait in “an iron cage just outside the court room” until the judge called their case. In 1897, sustained efforts by the Humanity Club led the General Assembly to authorize courts to parole persons under twenty-five who had been convicted of felonies other than murder, rape, arson or robbery. Courts rarely exercised this authority, largely because of public perception that parole meant little more than releasing a criminal. Records indicate that children received parole more often than adults did.<sup>59</sup>

The Humanity Club redoubled its efforts in 1899 after four members visited the St. Louis city jail and found between thirty and forty imprisoned boys under sixteen, including ones bound over to the grand jury which might not meet for weeks or even months. The boys were confined in cells separate from those of adult men, but were permitted to mingle freely with the men during recreation hour. The young prisoners included two ten-year-

olds, John Holman and Eddie Brown, already jailed for months awaiting trial for grand larceny because they had driven off with a farmer's wagon and were found asleep in it.<sup>60</sup>

Incarceration of children with adults was not unique to Missouri during these years. In 1880, more than two thousand children were listed as inmates in the nation's prisons. In the year or so preceding passage of the 1899 Illinois juvenile court act, 575 children were confined in the Cook County jail and 1,983 boys in the city jail. In 1900, about 500 children between six and sixteen were confined in Philadelphia's county prison.<sup>61</sup>

Circumstances elsewhere did not leave Missouri reformers any less appalled. In 1901, a member of the St. Louis Charities Commission charged that 700 to 800 boys between nine and twenty were still confined each year in the city jail, without separation from adult prisoners. This number included not only sentenced boys, but also boys awaiting trial. In 1901, the Humanity Club secured passage in the General Assembly of legislation creating a probation department, but the legislation applied only to St. Louis because of opposition by Kansas City and St. Joseph lawmakers. Most St. Louis judges welcomed probation as a way of removing children from the city jail, and only one boy (a federal prisoner) was still confined there in March of 1904, ten months after the juvenile court began sitting.<sup>62</sup>

The 1901 probation statute had an immediate effect in St. Louis. By 1911, the number of delinquents held in the city's House of Refuge (by then renamed the St. Louis Industrial School) had fallen, thanks partly to the juvenile court's willingness to release children as soon as their records and homes permitted. The court was also proactive because, according to a 1911 city commission report, the court had released many children previously "neglected in the institution without thought of looking up relatives to assume their care."<sup>63</sup>

The nation's child savers perceived delinquents as victims akin to neglected or disabled children, less responsible than adults for antisocial behavior and more amenable to rehabilitation. As the century drew to a close, the child savers were getting their message out. Their biting criticisms of the criminal process reached more and more receptive ears as people began to find it barbarous to lock up children in the same prisons as hardened adult criminals, or to lock them up at all.<sup>64</sup>

Imprisonment of children began to collide with what historian Phillippe Aries called the "discovery of childhood." Emerging scientific and sociological thought no longer saw children as miniature adults, but as individuals with developing cognitive faculties, moral sensibilities and emotional needs. Growing numbers of Americans no longer viewed juvenile offenders as miniature adult criminals deserving adult incarceration. After decades of

effort by the child savers, the time was ripe for the juvenile court and continued progress throughout the twentieth century.

## Abused Children

For most of the nineteenth century, abused children faced a hard lot because the young nation had no firm tradition of positive state intervention in family affairs. Despite Justice Story's broad formulation of the *parens patriae* doctrine, states rarely intervened to protect abused children or regulate their upbringing in the family. The law turned a blind eye to most physical child abuse, including quite serious abuse, because it emphasized the rights of parents (particularly fathers) and viewed children as legally incompetent in domestic matters.

Like other states, Missouri from the earliest years of statehood criminalized murder, manslaughter, assault and other physical crimes in general language that applied to adult and child victims alike. Parents who abandoned their children were subject to imprisonment for five years in the state penitentiary or one year in a county jail.<sup>65</sup> Child abuse and abandonment remained under-prosecuted crimes, however, because the law considered children almost as the property of their parents, again particularly of the father. The property analogy raised few eyebrows because children had significant economic value to their parents before enactment of child labor and compulsory education laws early in the twentieth century. The common law entitled fathers to the services and earnings of their minor children while he housed and maintained them, a right resembling a master's property right to a servant's labor and services. The property analogy encouraged little official patience for claims of child maltreatment by parents.<sup>66</sup>

The property analogy was imperfect because the law permitted parents, for example, to kill or destroy their property but not to kill or destroy their children. In early Missouri, however, even homicide was excusable when "committed by accident or misfortune . . . [i]n lawfully correcting a child, apprentice, servant or slave, . . . with usual and ordinary caution, and without unlawful intent."<sup>67</sup>

The nation's civil child protection system did not begin confronting family privacy and parental rights until 1874, when New York City responded to the case of Mary Ellen, an eight-year-old tenement child savagely beaten by her stepmother. Her story resembled those of hundreds of other maltreated children, but her plight quickly caught the fancy of the press and influential private citizens, who did not let the case rest. One historian reports that the

nascent women's rights movement, increasingly concerned with domestic violence, helped keep the case in the public eye.<sup>68</sup>

With no child protection system in place, Mary Ellen's cause was argued by the president of the New York Society for the Prevention of Cruelty to Animals, who implored the court that even if the girl had no legal right as a human being to protection from abuse, she at least deserved the same protection enjoyed by other animals. "The child is an animal," the president said, "If there is no justice for it as a human being, it shall at least have the rights of the stray cur in the street. It shall not be abused."<sup>69</sup>

Journalist Jacob Riis wrote movingly about the trial: "I saw a child brought in, carried in a horse blanket, at the sight of which men wept aloud, and I heard the story of Mary Ellen told again, that stirred the soul of a city and roused the conscience of a world that had forgotten; and, as I looked, I knew I was where the first chapter of the children's rights was being written." The court provided relief and eighteen years later, Riis reported that Mary Ellen had married and was happily living on a thriving central New York farm.<sup>70</sup>

In response to Mary Ellen's case and growing public concern about child abuse, the New York Society for the Prevention of Cruelty to Children was established and the state enacted a child protection statute. The society and similar groups in other states began actively investigating abuse and neglect complaints and placing abused and neglected children in institutions and foster care. The Missouri Humane Society, organized in 1870 as the Society For the Prevention of Cruelty to Animals, had its charter amended in 1890 to permit it to extend protection to abused and neglected children. The society became the third humane society in the nation to extend its mission to children as well as animals.<sup>71</sup>

Missouri's General Assembly legislated against abuse and neglect by the last decade of the nineteenth century. In 1889, the lawmakers provided for turning over neglected and abused children to child protection societies. Legislation in 1897 authorized county courts to transfer custody of any child whose mother or father was "habitually intemperate or inhuman" to the child, "or grossly immoral in any manner to such an extent to render it reasonably probable that such child will be raised up to a life of crime or shame." The court could place the child with a person or institution whose care, guidance and education would enable the child "to grow up amid good surroundings and into useful citizenship."<sup>72</sup>

Legislation in 1899 provided that where parents entrusted a child under seven to an institution and then abandoned the child for two years, the institution could execute and record a deed of adoption in favor of an adoptive parent with the probate court's approval. The deed would terminate the

child's legal relationship with the natural parents and would create a new legal relationship with the adoptive parents.<sup>73</sup>

When juvenile courts began sitting early in the twentieth century, child protection cases became a major part of the caseload in nearly all states. As late as 1910, however, a leading juvenile justice professional found the states still reluctant to assist child protection societies. "[T]here is a growing tendency to regard the governmental attitude toward societies for the prevention of cruelty as an evasion of duty," he complained. "The incorporated society is a dubious cross between a private venture and a public department. . . . There are not a few who think that the state should reconsider its share in this undertaking."<sup>74</sup>

Missouri's child abuse legislation was yet another step in the march toward creation of the juvenile courts a few years later. More victories for the child savers, with more challenges ahead.

## Poor Children

### "Outdoor Relief"

The condition of the nation's poor children and their families in the nineteenth century is central to the juvenile court's history. Cases arising from family poverty moved the child savers and helped fuel their desire for the specialized court. In turn, the juvenile court later played a central role in dispensing relief to poor Missouri children until the New Deal.

Child poverty, a root cause of dependency and neglect, was no insignificant matter in nineteenth century America. Because large families were common, family poverty often meant one or two poor parents but even more poor children. Public care in the United States passed through various stages that Sarah H. Ramsey and Daan Braveman conclude "seem to have been designed to destroy the child's emotional well-being."<sup>75</sup>

Poor relief in the United States had generally been a county responsibility since colonial days, and it remained a county responsibility in nineteenth century Missouri. In 1815, the Missouri Territory's first poor law required each county to maintain sick, handicapped and other poor persons unable to support themselves because of age or infirmity. To deter an influx of the poor seeking assistance, applicants were eligible only after having resided in the county for at least nine months, a period shorter than the year most neighboring states required.<sup>76</sup>

After a starving family had been forced to wait nine months for relief, the General Assembly in 1825 repealed the residency requirement and left eligi-

bility to each county court's discretion. County courts were administrative bodies comprised of three elected judges who, despite their titles, had few judicial responsibilities and resembled county commissioners in other states. (Harry S Truman was a judge of the Jackson County court from 1922 to 1934, and he knew he was an executive officer rather than a jurist.)<sup>77</sup>

In the earliest years of statehood, Missouri's poor families and their children sometimes received "outdoor relief," that is, assistance provided by counties to poor families outside of institutions. Recipients either received financial or other assistance in their own homes, or they were "boarded out" in the homes of other families in the community.

One twentieth century researcher found that outdoor relief in Missouri before the Civil War was rare and subject to abuse. In-home financial assistance was usually paltry and inadequately supervised. The state's vagrancy law provided that if an able-bodied person could not earn a living, or had left his family or was found begging, the sheriff or constable could board him out. Sheriffs sometimes boarded out the poor at public auction, but most Missouri counties made the contracts privately to spare paupers community embarrassment.<sup>78</sup>

Persons taking in poor boarders usually needed their labor, and thus were often in desperate straits themselves and not especially likely to provide much help to get the poor family back on its feet. In 1912, the Secretary of the State Board of Charities and Corrections criticized the boarding-out system as "primitive," though it still existed in nine Missouri counties at that late date.<sup>79</sup>

For poor children and orphans in the first half of the nineteenth century, boarding-out often meant apprenticeship. The apprenticeship system (or indenture system, a virtual synonym) was imported from England and quickly became popular in the colonies because it provided for poor children without burdening taxpayers. Apprenticeship became central to the poor laws of the Missouri Territory and the new state. Missouri provided for jailing vagrant or poor children until the sheriff or court bound them out, sometimes without the consent of the parent or guardian or even over their objection.<sup>80</sup> Boys were apprenticed until twenty-one and girls until sixteen to persons who agreed to assume the cost of teaching them an art, trade or business, plus reading, writing and arithmetic.<sup>81</sup> Apprenticeship was an early form of foster care, but it was essentially a business transaction done without direct concern for the best interests of the child and without judicial oversight of the child's condition before or after placement.

The law on the books does not always reflect the law in practice. On the plus side, apprenticeship provided many children substitute homelike settings after their own homes had broken down, and it taught other children skills that enabled them to avoid intergenerational poverty. But apprentice-