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BLACKNESS AS DELINQUENCY

CHERYL NELSON BUTLER*

ABSTRACT

This is one of the first law review article to analyze both the role of "blackness" in shaping the first juvenile court and the black community's response to the court's jurisprudence. This Article breaks new ground on two fronts. First, it considers the first juvenile court's treatment of black youth within the context of the heightened racial oppression immediately following the Supreme Court's landmark decision in Plessy v. Ferguson. *Second, this Article recovers the lost story of the black women's club movement's response to race issues within the juvenile court movement. In doing so, this Article reconsiders the history of the national black women's club movement within a new framework—that of black women as advocates for juvenile and criminal justice reform. Furthermore, a major issue that these child savers faced remains one that scholars of the juvenile court's early history have not fully explored: race.*

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Thus, this Article makes two main arguments. First, from its inception, the juvenile court perpetuated existing racial stereotypes about blackness and delinquency and enforced societal notions of race, gender and class stratification. Second, the National Association of Colored Women ("NACW") responded by placing criminal and juvenile justice issues as a major component of its civil rights agenda. From 1899 to 1930, the NACW's efforts to challenge stereotypes about black delinquency impacted the development of the juvenile court system and its jurisprudence. NACW's particular interest in juvenile justice sheds new light on how black female activists shaped the national discourse on race and crime and formulated their own strategies for juvenile justice reform.

INTRODUCTION

When Ida B. Wells arrived in Chicago in 1893, her international campaign to end lynching in the United States[1] had already set the wheels of the national black women's club movement in motion.[2] Wells electrified crowds on the international lecture circuit, vividly depicting

1. The legendary Ida B. Wells is famously known as an international advocate against lynching and as a founder of the National Association for the Advancement of Colored People (NAACP). *See* Alfreda M. Duster, *Introduction* to CRUSADE FOR JUSTICE xxi, xix–xxxii (Alfreda M. Duster ed., 1970); CRYSTAL N. FEIMSTER, SOUTHERN HORRORS: WOMEN AND THE POLITICS OF RAPE AND LYNCHING (2009); Amii Larkin Barnard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women's Fight Against Race and Gender Ideology, 1892–1920*, 3 UCLA WOMEN'S L.J. 1, 13–18, 27 (1993); Deleso Alford Washington, *Exploring the Black Wombman's Sphere and the Anti-Lynching Crusade of the Early Twentieth Century*, 3 GEO. J. GENDER & L. 895, 896–99 (2002).

2. For legal scholarship discussing the black women's club movement, see Barnard, *supra* note 1; Eileen Boris, *The Power of Motherhood: Black and White Activist Women Redefine the "Political,"* 2 YALE J.L. & FEMINISM 25 (1989); Monica J. Evans, *Stealing Away: Black Women, Outlaw Culture and the Rhetoric of Rights*, 28 HARV. C.R.-C.L. REV. 263, 283–84 (1993); Dorothy E. Roberts, *Black Club Women and Child Welfare: Lessons for Modern Reform*, 32 FLA. ST. U. L. REV. 957, 958 (2005). In the social science literature, *see generally* ANNE MEISS KNUPFER, THE CHICAGO BLACK RENAISSANCE AND WOMEN'S ACTIVISM (2008) (discussing club activism between 1930–1960); ANNE MEISS KNUPFER, TOWARD A TENDERER HUMANITY & A NOBLER WOAMNHOOD: AFRICAN AMERICAN WOMEN'S CLUBS IN THE TURN-OF-THE-CENTURY CHICAGO, 14 (1996) (mentioning black women's role in the juvenile court mvoement as limited beyond milestones such as acquiring paid postions by the court); PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA (1984); BELL HOOKS, AIN'T I A WOMAN?: BLACK WOMEN AND FEMINISM (1981); JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY, FROM SLAVERY TO PRESENT (1985). For primary sources, *see generally* A HISTORY OF THE CLUB MOVEMENT AMONG THE COLORED WOMEN OF THE UNITED STATES OF AMERICA (1902) [hereinafter IDA B. WELLS PAPERS], *available at* http://www.lib.uchicago.edu/ead/pdf/ibwells-0009-006.pdf; Duster, *supra* note 1; MARY CHURCH TERRELL, A COLORED WOMAN IN A WHITE WORLD (1940); Fannie Barrier Williams, *Social Bonds in the "Black Belt" of Chicago: Negro Organizations and the New Spirit Pervading Them*, 15 THE SURVEY 40, 41 (1905).

lynching as such "cold-blooded savagery" that "[n]one of the hideous murders by butchers of Nero to make a Roman holiday exceeded these burnings alive of black human beings."[3] Wells opined:

> [Lynching] is appalling, not only because of the lives it takes, the rank cruelty and outrage to the victims, but because of the prejudice it fosters and the stain it places against the good name of a weak race. The Afro-American is not a bestial race.[4]

As the above quote indicates, Wells saw lynching as the ritualized stereotyping of black people as dangerous, uncivilized criminals. Carried out with impunity by private actors, lynching reflected the pervasiveness of racial oppression during the Progressive Era.[5] When Wells settled in Chicago to marry fellow human rights advocate Ferdinand Barnett,[6] she was also ready to create another national movement for social justice. In addition to the lynching, Wells grew concerned about a related issue: the juvenile court movement.[7]

This last point is not well-known. Though Wells's campaign against lynching is legend, few historians have recovered Wells's advocacy for black youth before juvenile courts and their offshoot, boys' courts; a significant omission given its centrality to Wells's commitment to criminal justice issues. A national cadre of women reformers—self-proclaimed "child savers"—shaped the jurisprudence and policies of the first juvenile courts.[8] Black women joined them. Even though black women like Ida B.

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3. IDA B. WELLS-BARNETT, CRUSADE FOR JUSTICE 70 (Alfreda M. Duster ed., 1970).

4. Ida B. Wells-Barnett, *Southern Horrors: Lynch Law in All Its Phases*, *reprinted in* AFRICAN AMERICAN CLASSICS IN CRIMINOLOGY & CRIMINAL JUSTICE 23, 23–24 (Shaun L. Gabbidon et al. eds., 2002). For legal scholarship on the practice of lynching on legal segregation and white supremacy in the United States, see Thomas D. Russell, *"Keep Negroes Out of Most Classes Where There Are a Large Number of Girls": The Unseen Power of the Ku Klux Klan and Standardized Testing at The University of Texas, 1899–1999*, *in* LAW, SOCIETY, AND HISTORY: THEMES IN THE LEGAL SOCIOLOGY AND LEGAL HISTORY OF LAWRENCE M. FRIEDMAN 309 (Robert W. Gordon & Morton J. Horwitz eds., 2011) (tracing the origins of "spectacle lynchings" and the impact of lynching ideology on racial discrimination at The University of Texas); Anders Walker, *The Violent Bear It Away: Emmett Till and the Modernization of Law Enforcement in Mississippi*, 46 SAN DIEGO L. REV. 459, 463 (2009) (discussing how, even in 1955, when the lynching of fourteen-year-old Emmett Till galvanized the modern Civil Rights Movement, lynching "acted as a type of public ritual, a 'spectacle' aimed at disciplining the African-American population while galvanizing the white").

5. Walker, *supra* note 4, at 463.

6. *See* WANDA A. HENDRICKS, GENDER, RACE, AND POLITICS IN THE MIDWEST: BLACK CLUB WOMEN IN ILLINOIS 20 (1998).

7. WELLS-BARNETT, *supra* note 3, at 405–14. By the term "juvenile court movement," this Article refers to the reform movement to establish "juvenile courts" and their offshoots, "boys' courts," during the Progressive Era. For an in-depth treatment of "boys' courts," see MICHAEL WILLRICH, CITY OF COURTS: SOCIALIZING JUSTICE IN PROGRESSIVE ERA CHICAGO 208–40 (2003).

8. *See, e.g.*, ELIZABETH J. CLAPP, MOTHERS OF ALL CHILDREN: WOMEN REFORMERS AND THE

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Wells were involved in challenging the court's policies and procedures with respect to black youth, their efforts have been underestimated by scholars.[9] A major issue that these child savers faced remains one that scholars of the juvenile court system's early history have not fully explored: race.

This Article fills several gaps in the legal scholarship concerning the American juvenile court system. As part of a new wave in scholarship, this Article reconsiders the role of race in the early juvenile court system[10] and offers new and distinct insights from current literature. This Article is one of the first to analyze the role of race and blackness in the development jurisprudence, policies, and procedures of the nation's first juvenile court and the way in which the establishment of that court influenced a national agenda for juvenile justice by black female child savers.[11] While the literature examining the racial disparities within the modern day juvenile court is robust,[12] few scholars have examined the origins of the first

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RISE OF JUVENILE COURTS IN PROGRESSIVE ERA AMERICA 77–104 (1998); MARY E. ODEM, DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885–1920, at 118–20 (1995); Mae C. Quinn, *"Feminizing Courts": Lay Volunteers and the Integration of Social Work in the Progressive Reform*, *in* FEMINIST LEGAL HISTORY: ESSAYS ON WOMEN AND LAW, 206, 206–19 (Tracy A. Thomas & Tracy Jean Boisseau eds., 2011); Solomon J. Greene, Note, *Vicious Streets: The Crisis of the Industrial City and the Invention of Juvenile Justice*, 15 YALE J.L. & HUMAN. 135, 138 (2003).

9. *See, e.g.*, ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY xxiii–xxvi (2d ed. 1977) (asserting that the child-saving movement was "dominated by the daughters of the old landed gentry"); Graham Parker, *The Juvenile Court Movement*, 26 U. TORONTO L.J. 140, 144 (1976) (mentioning the contributions of some white, but not black, reformers to the juvenile court movement); Sanford J. Fox, *Juvenile Justice Reform: A Historical Perspective*, 22 STAN. L. REV. 1187 (1970) (mentioning the participation of white, but not black, women in juvenile court movement).

10. *See generally* GEOFF K. WARD, THE BLACK CHILD SAVERS: RACIAL DEMOCRACY & JUVENILE JUSTICE (2012) (reviewing juvenile justice from the Progressive Era through the 1950s); Robin Walker Sterling, *Fundamental Unfairness: In re Gault and the Road Not Taken*, 72 MD. L. REV. 607, 607 (2013), *available at* papers.ssrn.com/sol3/papers.cfm?abstract_id=2079767 (discussing the pervasiveness of race discrimination in the criminal and juvenile justice system from the 1870s through modern times).

11. *See* WARD, *supra* note 10, at 133–48 (highlighting the efforts of black juvenile justice reformers in Alabama, Virginia, Tennessee, Oklahoma, South Carolina, and other states). *See generally* Sterling, *supra* note 10 (focusing on the juvenile justice efforts generally throughout the United States between the 1870s and the 1950s).

12. *See generally* Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53 (2012); Olatunde C.A. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374 (2007); Elizabeth N. Jones, *Disproportionate Representation of Minority Youth in the Juvenile Justice System: A Lack of Clarity and Too Much Disparity Among States "Addressing" the Issue*, 16 U.C. DAVIS J. JUV. L. & POL'Y 155 (2012); Ian F. Haney López, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CAL. L. REV. 1023 (2010); Kenneth B. Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DEPAUL L. REV. 679 (2002).

court's treatment of black youth *at its inception*.[13] Second, this Article recovers the lost story of the black women's club movement's response to the juvenile court and the unique nature and meaning of the movement for black women reformers.[14] In doing so, this Article considers the history of the national black women's club movement within a new framework—the role of black women in juvenile justice and criminal justice reform work. Unearthing the contributions of black women to the juvenile court movement sheds light on the black community's perceptions of crime and delinquency.[15]

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13. *See* WARD, *supra* note 10, at 2 (Until recently, there has been a "near absence of historical background in . . . race and juvenile justice research."); *cf.* Marian J. Morton, *Institutionalizing Inequalities: Black Children and Child Welfare in Cleveland, 1859–1998*, 34 J. SOC. HIST. 141, 141 (2000) ("Recent scholarship on local child-care institutions, however, has paid scant attention to black children—as did the institutions themselves."). For a brief discussion on the first court's treatment of black youth, see David S. Tanenhaus, *Degrees of Discretion: The First Juvenile Court and the Problem of Difference in the Early Twentieth Century*, *in* OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE 105, 108–10 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005).

For scholarship addressing the history of the juvenile court's treatment of black youth in periods *other than* the Progressive Era, see BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 7–8 (1999) [hereinafter FELD, BAD KIDS]; Barry C. Feld, *A Century of Juvenile Justice: A Work in Progress or a Revolution That Failed?*, 34 N. KY. L. REV. 189, 198, 201 (2007) (recognizing the role of juvenile justice reform in addressing disproportionate representation of minorities, poor, and juveniles among those accused of crimes); Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 MINN. L. REV. 337, 332–38 (1998) [hereinafter Feld, *Transformation*] (discussing changes in the nature of the juvenile court system from nominally rehabilitative to primarily punitive policies).

14. For emerging legal scholarship on the black community's response to the juvenile court specifically, see WARD, *supra* note 10; Geoff K. Ward, *The Racial History of Juvenile Justice*, 18 TROTTER REV. 87 (2009) (arguing that black women played a role in shaping the juvenile court); see also Cheryl D. Hicks, *"In Danger of Becoming Morally Depraved": Single Black Women, Working-Class Black Families, and New York State's Wayward Minor Laws, 1917–1928*, 151 U. PA. L. REV. 2077, 2077–78 (2003) (discussing two black parents' efforts to use the juvenile court to police their daughter's delinquent behavior); Tonya Evette Perry & Denise Davis-Maye, *Bein' Womanish: Womanist Efforts in Child Saving During the Progressive Era*, 22 J. WOMEN & SOC. WORK 209 (2007) (discussing black women's role in founding a leading juvenile court reformatory).

15. For articles addressing the black community's diverse views on crime, see Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983 (2004) (analyzing how hip-hop culture reflects the black community's views of crime); David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy's "Politics of Distinction,"* 83 GEO. L. REV. 2547 (1995); James Forman Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 23 (2012) (critiquing recent scholarship on mass incarceration as failing to consider "black attitudes toward crime and punishment"); Trevor Gardner II, *The Political Delinquent: Crime, Deviance, and Resistance in Black America*, 20 HARV. BLACKLETTER L.J. 141, 141–42 (2004) (arguing that black crime is a manifestation of the black community's "rejection of destructive mainstream values that have perpetuated social inequalities and power imbalances"); Angela Onwuachi-Willig, *Just Another Brother on the SCT?: What Justice Clarence Thomas Teaches Us About the Influence of Racial Identity*, 90 IOWA L. REV. 931, 959–63 (2009) (discussing black conservative ideology concerning black crime).

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This Article makes two new arguments about the nature and meaning of the black club movement's role in the Progressive Era's juvenile court movement. First, from its inception, the juvenile court perpetuated existing racial stereotypes about blackness and delinquency and enforced societal notions of race and class stratification. Second, the National Association of Colored Women ("NACW") responded by making criminal and juvenile justice issues a major component of its civil rights agenda.[16] From 1899 to 1930, the NACW's efforts to challenge stereotypes about black delinquency impacted the development of the juvenile court system and its jurisprudence.

In contrast to the scholarly accounts suggesting that black women reformers played a limited or mostly conservative role in juvenile justice reform,[17] this Article suggests that NACW advanced an ambitious two-pronged strategy to save black youth from racial discrimination within the juvenile court system. First, black women adopted a progressive and daring integrationist strategy—advocating that the juvenile court system apply its child-saving ideals to protect black children. Second, black women implemented a cautiously conservative self-help strategy within the black community to prevent delinquency. Through this two-pronged strategy, black female activists shaped the national discourse on race and crime and formulated their own unique strategies for juvenile justice reform.

This story proceeds in five parts. Part I places the founding of the NACW (1896) and establishment of the nation's first juvenile court, the Cook County Juvenile Court in Illinois (1898), in the historical context of the Progressive Era's heightened racial oppression against black people. Part I argues that the founding of NACW marked the emergence of one of the first national organizations dedicated to child-saving and civil rights. Part I further argues that NACW's work within the national child saving movement took on a unique meaning in light of the "separate but equal" doctrine set forth in the U.S. Supreme Court's landmark decision *Plessy v. Ferguson*.[18]

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16. The National Association of Colored Women (NACW) was founded in 1896 and continues to exist today as the National Association of Colored Women's Clubs (NACWC). RECORDS OF THE NATIONAL ASSOCIATION OF COLORED WOMEN'S CLUBS, 1895–1992, vii, xv (Lillian Serece Williams ed., 1994) [hereinafter RECORDS].

17. *See* WARD, *supra* note 10, at 129, 152–59 (arguing that black women had a limited conservative agenda of racial uplift in response to the constraints posed by race discrimination and threats of violence by those opposed to black equality).

18. 163 U.S. 537 (1896).

Part II argues that the first juvenile court never applied its child-saving ideals equally to all children. Instead, the first juvenile court undermined its own ideals by perpetuating social stratifications and oppression based on race, ethnicity, gender, and class. Part III argues that these biases proved particularly disastrous for black youth and their families because, in effect, the juvenile court equated blackness with delinquency itself. Part IV argues that, in response, black clubwomen in Illinois implemented several reform campaigns to counter four prevailing racial stereotypes about black juvenile delinquency: (1) the lynching stereotype; (2) the Jezebel stereotype; (3) the delinquent black mother stereotype; and (4) the delinquent black community stereotype. Part V concludes with insights for modern community-based juvenile justice reform.

I. CALL TO ACTION: BLACK WOMEN AS CHILD SAVERS

A. The National Black Club Movement

The Progressive Era marked a major entrée of women into the public sphere, where they transformed law and society, and dynamic black women like Ida B. Wells did not sit by idly. Ida B. Wells urged black women to organize and protest the use of racial stereotyping to sanction legal oppression of black people.[19] Heightened racial tensions during the Progressive Era summoned black women into action to develop several legal reform campaigns in the United States. The founding of NACW represented the inclusion of black women as a major voice in black civil rights and social reform advocacy. A major part of their agenda was, in their words, to "defend their name."[20] Arguably, "defending their name" meant countering the racial stereotyping of black people as criminals and challenging laws that codified these stereotypes.

After attending a town hall meeting in which Ida B. Wells called upon black women to organize clubs to protest lynching, Josephine St. Pierre Ruffin—wife of the first black judge in Massachusetts—founded the African American New Era Club.[21] Equally inspired by Wells, black women in New York City established the Woman's Loyal Union in 1892 to focus on "the defense of the oppressed" and to raise funds for civil

19. *See* Duster, *supra* note 1, at xix–xxi.
20. RECORDS, *supra* note 16, at Reel 1.
21. *Id.* at viii.

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rights test cases in the South.[22] One year later, Wells herself founded the Ida B. Wells Club—Chicago's first black woman's club.[23]

In addition to lynching (and the related stereotyping of black men as rapists), the stereotyping of black women as prostitutes was another impetus for organizing NACW.[24] In 1895, the Missouri Press Association published an open letter from its president, James W. Jacks, stating: "the Negroes of this country are wholly devoid of morality; the women are prostitutes and are natural thieves and liars."[25]

Here, the Jacks letter raised issues of race and gender oppression in the larger society. Black clubwomen knew that this was not an isolated incident, but rather, a reflection of the racial stereotypes about black women's moral character and sexuality. A corollary to the stereotype of black women as prostitutes was the claim that only white women were exemplars of Victorian ideals of chastity, female morality, and respectability.[26] The prevalence of these racial stereotypes caused some white women to exclude black members from women's clubs and Progressive Era reform movements.[27]

Yet, this Jezebel myth[28]—this pervasive stereotyping of black women as prostitutes or sexual seductresses invoked with impunity in the Jacks letter—struck a chord with elite black women for several reasons. Josephine St. Pierre Ruffin, a leading black female reformer, recognized how the larger society used this myth in order to deny decent employment choices to black women and instead steer black women into sex work.[29] In

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22. EFFORTS FOR SOCIAL BETTERMENT AMONG NEGRO AMERICANS 55 (W.E. Burghardt Du Bois ed., 1909) [hereinafter EFFORTS FOR SOCIAL BETTERMENT] ("The Woman's Loyal Union owes its formation to an unusually large meeting held in New York city [*sic*], in aid of Miss Ida B. Wells . . . .").

23. *See* HENDRICKS, *supra* note 6, at 17.

24. *See (1895)* Josephine St. Pierre Ruffin, *"Address to the First National Conference of Colored Women,"* BLACKPAST.ORG, http://www.blackpast.org/?q=1895-josephine-st-pierre-ruffin-address-first-national-conference-colored-women (last visited Apr. 9, 2013) [hereinafter *St. Pierre Ruffin Address*].

25. RECORDS, *supra* note 16, at vii.

26. *See generally* Kenneth W. Mack, *Law, Society, Identity, and the Making of the Jim Crow South: Travel and Segregation on Tennessee Railroads, 1875–1905*, 24 LAW & SOC. INQUIRY 377, 387–93 (1999); Barbara Y. Welke, *When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to* Plessy, *1855–1914*, 13 LAW & HIST. REV. 261, 266–77 (1995).

27. DUSTER, *supra* note 1, at 269 (Ida B. Wells recalled that "[t]he Chicago Women's Club had almost been rent in twain a few years before [1898–1900] because of the admission of a lone colored woman to its membership."); Josephine St. Pierre Ruffin, *The Chicago Woman's Club Rejects Mrs. Williams*, THE WOMAN'S ERA, Vol. 1, No. 9 (Dec. 1894), electronic edition accessed at http://www.womenwriters.library.emory.edu/content, on June 6, 2011 (documenting the national controversy that ensued when white women's clubs fought for official exclusion of colored women from their ranks).

28. *See infra* Part IV.B.

29. Fannie Barrier Williams, *The Intellectual Progress of The Colored Women Of The United States Since The Emancipation Proclamation—An Address By Fannie Barrier of Illinois, reprinted in*

contrast to this stereotype, black elites saw themselves as "race men" and "race women"—leaders dedicated to preaching assimilation and conservative Victorian values to the black community as a means of uplifting the black masses from poverty, crime, and the degradation of slavery.[30]

Arguably, the Jacks letter became a final straw—a forceful catalyst that moved black women to challenge the social theories and legal institutions that associated even middle class black people with crime. Insisting that black women no longer remain "silent under unjust and unholy charges,"[31] Josephine St. Pierre Ruffin of the Women's Era Club used her national magazine, *The Women's Era*, to call upon black women to attend a national convention.[32] The clubs attending this convention formed the National Federation of Afro-American Women (NFAW) and elected Margaret Murray Washington—the wife of national leader Booker T. Washington—as its president.[33] One year later, in 1896, the NFAW organized its first national convention in Washington, D.C. Just a few days later, the NAFW held a second convention, during which time it merged with the Colored Women's League of Washington (the "League"), to form the NACW.[34] Mary Church Terrell, the first national president of the NACW,[35] had helped to found the League in 1893 as a national coalition dedicated, in her words, to "all matters pertaining to the education and elevation of our race."[36]

THE WORLD'S CONGRESS OF REPRESENTATIVE WOMEN, 696-711 (May Wright Sewall, ed., 1894), *available at* http://www.greenstone.org/greenstone3/nzdl?a=d&c=HASHOlezC22126cdb4b577fc7e.pdf. In Chicago, women reformers worked with Richard R. Wright, Jr. to open the Trinity Mission for Black prostitutes. KEVIN MUMFORD, INTERZONES: BLACK WHITE SEX DISTRICTS IN CHICAGO AND NEW YORK IN THE EARLY TWENTIETH CENTURY, 45 n.23 (1996).

30. On the ideology of racial uplift among black elites between 1880–1920, see JACQUELINE M. MOORE, LEADING THE RACE: THE TRANSFORMATION OF THE BLACK ELITE IN THE NATION'S CAPITAL, 1880–1920, 2–3 (1999) ("[T]he black social elite created new strategies of social advancement that tied them inseparably to the black community."); KEVIN K. GAINES, UPLIFTING THE RACE: BLACK LEADERSHIP, POLITICS, AND THE CULTURE OF THE TWENTIETH CENTURY xiv (1996) (discussing racial uplift ideology as a strategy in which "black ministers, intellectuals, journalists, and reformers sought to refute the view that African-Americans were biologically inferior and unassimiliable by incorporating "the race" into obstensibly universal but deeply racialized ideological categories of western progress and civilization.") For first-hand accounts on the rise of the black elite and their relation to the black masses, see W.E.B. DU BOIS, THE PHILADELPHIA NEGRO: A SOCIAL STUDY 197–234 (Univ. of Penn. Press 1996) (1899).

31. *See St. Pierre Ruffin Address*, *supra* note 24.; RECORDS, *supra* note 16, at Reel 1.

32. *See St. Pierre Ruffin Address*, *supra* note 24; *see also* WELLS-BARNETT, *supra* note 3, at 243.

33. TERRELL, *supra* note 2, at 186–87.

34. *Id.*; LAVONNE LESLIE, THE HISTORY OF THE NATIONAL ASSOCIATION OF COLORED WOMEN'S CLUBS, INC.: A LEGACY OF SERVICE 28 (2012).

35. *See* TERRELL, *supra* note 2, at 188.

36. TERRELL, *supra* note 2, at 186. Terrell gained prominence as a civil rights leader for decades

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B. The Impact of Plessy v. Ferguson

If the Jacks letter was one major catalyst that called black women to action, the United States Supreme Court's landmark decision in *Plessy v. Ferguson* was another. NACW's resolve to save black children from racial stigmatism and oppression became all the more imperative after the Supreme Court handed down the *Plessy* decision just two months prior to the NACW's founding convention in Washington, D.C.[37] Like many of the NACW founders, Homer Plessy was light-skinned (visibly of mixed racial descent), educated, middle class, and active in his local community.[38] Mr. Plessy challenged the constitutionality of a Louisiana statute that forbade black people from riding in the "whites only" cars on public railroads.[39] The Supreme Court held that separate but equal accommodations on interstate railroads did not violate the Fourteenth Amendment's equal protection clause.[40] The Court reasoned that separate but equal accommodations did not stigmatize the black race.[41]

NACW members disagreed with the Supreme Court's ruling.[42] To them, the Court's support of forced segregation of the races exacerbated racial myths and stereotypes about black people and undermined black self-esteem.[43] From the onset, the NACW placed the challenging of Jim Crow cars, as well as government sanctioned racial segregation in all forms, at the forefront of its national agenda.[44] Ida B. Wells had already waged a similar legal battle against Jim Crow cars in the Tennessee state courts and lost.[45] Likewise, Mary Church Terrell had also experienced the personal indignities of Jim Crow cars and inferior service on the interstate

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to come and as a founder of the NAACP. TERRELL, *supra* note 2, at 233–36 (1940) (providing her personal account of her help in founding the NAACP).

37. The U.S. Supreme Court decided *Plessy* on May 18, 1896. *Plessy v. Ferguson*, 163 U.S. 537, 537 (1896). The NACW was founded just weeks later in Washington, D.C. on July 21, 1896. RECORDS, *supra* note 16, at XXV.

38. *See Plessy*, 163 U.S. at 541; KEITH MEDLEY, WE AS FREEMEN: *PLESSY VS. FERGUSON* 20–33, 139–69 (2003) (discussing Plessy's background as a light-skinned, middle class leader of the creole community in New Orleans).

39. *See id.* at 540–41.

40. *Id.* at 543–52; *see also* Jonathan Khan, *Controlling Identity:* Plessy, *Privacy, and Racial Defamation*, 54 DEPAUL L. REV. 755, 758 (2005).

41. *Plessy*, 163 U.S. at 551–52.

42. *See* RUFFIN, *supra* note 24.

43. *Id.*

44. RECORDS, *supra* note 16, at Reel 1; *see also* TERRELL, *supra* note 2, at 189–90.

45. Mack, *supra* note 26, at 377–78.

railroads, wondering "[h]ow self-respecting colored people can patiently endure such treatment year in and year out without getting desperate."[46]

Wells and Terrell, like other black elites, recognized the potentially demoralizing effect of Jim Crow segregation and of forced racial segregation and stigmatization on black people, especially youth.[47] For Ida B. Wells, the separate but equal doctrine was based on the fears of some whites that successful, educated, and respectable blacks were a threat to a social order, just like the fears that had justified black lynching.[48] To black people, the decision reinforced the hard truth that even respectable black community leaders like Homer Plessy (and the NACW founders themselves) were not immune from badges of otherness, inferiority, criminality, or delinquency placed upon them by an increasingly hostile white society.[49] Indeed, Wells' contemporary, scholar and activist W.E.B. Du Bois, observed the increasing racial hostility against even educated black people.[50] In particular, DuBois observed that opponents linked education of black people with increased levels of criminality.[51] Du Bois observed that prosperous and striving black people, like himself and the NACW founders, "who can read and write" were "considered more criminal than the illiterate."[52]

Thus, *Plessy*, like the Jacks letter, galvanized NACW members to rebuke any "badge of inferiority" cast upon blacks by American courts. The Supreme Court's endorsement of Jim Crow laws rallied NACW to include civil rights issues in its program of work. Although concerns about myriad legal issues spurred these two national organizations to merge, the records of NACW's national convention are replete with its founders' scathing condemnations of the Jacks letter and the Jim Crow cars.[53]

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46. TERRELL, *supra* note 2, at 346.

47. *Id.*; WELLS-BARNETT, *supra* note 3, at 141–42.

48. Indeed, a catalyst to Wells's anti-lynching campaign was the lynching of her friends in Memphis whose black-owned businesses threatened a competing white establishment. *See* WELLS-BARNETT, *supra* note 3, at 141–42.

49. *See* WILLIAM EDWARD BURGHARDT DU BOIS, SOME NOTES ON NEGRO CRIME PARTICULARLY IN GEORGIA: REPORT OF A SOCIAL STUDY 17 (1904), *available at* http://books.google.com/books?id=RIDAAAAMAAJ&pg=PA17&lpg=PA17&dq.pdf; *cf.* Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 623–29 (2009) (discussing how the practice of "othering" influences who society recognizes as victims or perpetuators of crime generally and in the particular context of human trafficking).

50. *See* WILLIAM EDWARD BURGHARDT DU BOIS, SOME NOTES ON NEGRO CRIME PARTICULARLY IN GEORGIA: REPORT OF A SOCIAL STUDY 17 (1904), *available at* http://books.google.com/books?id=RIDAAAAMAAJ&pg=PA17&lpg=PA17&dq.pdf.

51. *Id.*

52. *Id.*

53. *See* NACW Records Reel 1, Frame 0001; Introduction to NACW Records, viii, *available at* http://www.lexisnexis.com/documents/academic/upa_cis/1555_RecsNatlAssocColWmsClubPt1.pdf

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Increased social hostility and legal oppression toward black people after Reconstruction molded the NACW into the largest black reform organization of the Progressive Era. Thus, contrary to the stereotype of women's clubs as primarily social clubs or literary societies,[54] NACW also engaged in legal and social reform out of necessity.[55] Racial uplift, not the "fuss and feathers of pink teas," was the standard upon which NACW leaders evaluated their affiliate clubs.[56]

C. The Child Saving Movement

Scholars have explored the role of white women and their organizations in social welfare reform; yet, the corresponding roles of black women have been obscured.[57] In particular, revisionist historians have uncovered the leading role that white women's clubs and social settlements played in the juvenile court movement but discounted the role of their black counterparts.[58] In his seminal work, *The Child Savers*, Anthony Platt described the coalition of "child savers" who labored to establish the nation's first juvenile courts as "composed primarily of white, native-born, middle-class women for whom 'political liberty was

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54. As Karen Blair explains, many women's clubs were literary or culture clubs, but others were concerned with social reform issues like suffrage and temperance. *See* KAREN J. BLAIR, THE CLUBWOMAN AS FEMINIST: TRUE WOMANHOOD REDEFINED, 1868–1914, at 4–5 (1980). Blair explains that even some "literary clubs have been ignored, dismissed as trivial or frivolous" because scholars have failed to recognize the ways in which social clubs helped women to develop the confidence to engage later in public reforms. *See id. But see* WARD, *supra* note 10, at 151 (arguing that black women reformers were not merely "self-interested bourgeois agents of social control"); ANNE FIROR SCOTT, NATURAL ALLIES: WOMEN'S ASSOCIATIONS IN AMERICAN HISTORY (1991) (describing the diversity of types of women's clubs that developed by the early twentieth century).

55. *See* TERRELL, *supra* note 2, at 14; Fannie Barrier Williams, *Work Attempted and Missed in Organized Club Work*, COLORED AM. MAG. Jan. 1908, at 285. On black elites and their responses to the rise of Jim Crow, *see also* MOORE, *supra* note 30, at 2–3; GAINES, *supra* note 30, at xiv ("the self-help ideology of racial uplift describes the response of educated African-Americans . . . in the 1890's to de jure or legal segregation.") (discussing how the rise of Jim Crow laws prompted Mary Church Terrell and other black elites to focus on gaining rights as a group); *see* Terrell, *supra* note 2, at 345–46 (discussing her personal experience with racial prejudice on Jim Crow cars), 43–47, 425–28 (discussing Jim Crow segregation in the nation's capitol).

56. Fannie Barrier Williams, *Work Attempted and Missed in Organized Club Work*, COLORED AM. MAG., Jan. 1908, at 285.

57. *See, e.g.*, ANNE MEIS KNUPFER, TOWARD A TENDERER HUMANITY AND A NOBLER WOMANHOOD: AFRICAN AMERICAN WOMEN'S CLUBS IN TURN-OF-THE-CENTURY CHICAGO 14 (1996) (focusing on black women's clubs, but indicating that more research is needed to determine the impact these organizations had on the juvenile court movement); ODEM, *supra* note 8, at 118–20 (arguing that black women reformers "had little . . . influence" over juvenile policies, as compared to white women reformers).

58. *See* sources cited *supra* note 9.

almost automatically with Anglo-Saxon ancestry.'"[59] Along these lines, in *Delinquent Daughters*, Mary Odem noted that black women "had little . . . influence" on the juvenile court because that was a movement led by white women.[60]

This tendency to overlook the role of black women in the juvenile court movement is indicative of the general trend of marginalizing black women's contributions to legal history. As Linda Gordon has noted, the contributions of black women to legal history generally have been underestimated.[61] In recovering the legal history of social reform movements, historians either have focused on the contributions of white women or black men.[62] Black clubwomen of the Progressive Era would have disagreed with such claims that they did not play significant roles as child savers and advocates for delinquent black minors.

In fact, the NACW was formed precisely in time for black women to respond to other women reformers who lobbied for the creation of the first juvenile courts. By the late 1890s, two Chicago-based women's organizations, the Chicago Woman's Club (the "CWC") and the Hull House Social Settlement ("Hull House"), led this national juvenile court movement.[63] Founded in 1876, the CWC grew into a coalition of accomplished, mostly white, middle-class women who led several legal reform movements to benefit children and families.[64] For example, the CWC partnered with Jane Addams and her Hull House Social Settlement

59. PLATT, *supra* note 9, at xxiv.

60. *See, e.g.*, ODEM, *supra* note 8, at 118–20.

61. Linda Gordon, *Black and White Visions of Welfare: Women's Welfare Activism, 1890–1945*, 78 J. AM. HIST. 559, 559 (1991) ("Several historians have recently studied black women's civic contributions, but black women's reform campaigns have not usually been seen as part of welfare history."); Anne Firor Scott, *Most Invisible of All: Black Women's Voluntary Associations*, 56 J. S. HIST. 3, 4 (1990) ("[M]ost historians of women, after bows to Sojourner Truth and Harriet Tubman, had concentrated on white women, while the burgeoning history of black Americans had implicitly focused on men.").

62. Scott, *supra* note 61, at 3–4; Welke, *supra* note 26.

63. *See* Greene, *supra* note 8, at 131. Hull House, for example, was an institutional leader in child labor law reform, municipal government reform and other social change movements. *See* LOUISE W. KNIGHT, JANE ADDAMS: SPIRIT IN ACTION xiv (2010) (Through Hull House, Addams "worked to end child labor, support unions and workers' rights, protect free speech and civil rights, respect all cultures, achieve woman's suffrage and woman's freedom . . . ."); *see also* Felice Batlan, *Florence Kelley and the Battle Against Laissez-Faire Constitutionalism* 2–5 (discussing how Florence Kelley commenced her career fight for child labor laws while a resident at Hull House), *available at* http://ssrn.com/abstract=1721725.

64. The CWC led the lobbying efforts for juvenile courts. The lobbyists included legendary reformer Jane Addams and some of the nation's trailblazing women attorneys such as Myra Bradwell and Catherine Waugh McCullough. *See* ANNALS OF THE CHICAGO WOMAN'S CLUB FOR THE FIRST FORTY YEARS OF ITS ORGANIZATION, 1876–1916, at 114, 262 (1916) [hereinafter ANNALS], *available at* http://www.archive.org/details/annalsofchicagow00chic.

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to provide legal and social services to European immigrants in Chicago's slums.[65] Other child saving programs developed by Hull House, including a probation office, would later become official Cook County Juvenile Court institutions.[66]

Many of these women reformers responded to the socio-economic and other challenges faced by newcomers to newly industrialized cities such as Chicago. In the 1890s, the industrial revolution transformed the United States from an agrarian society of small towns to a conglomerate of bustling cities.[67] The population of European immigrant and black migrants exploded in northern cities and drastically changed the ethnic and racial demographics there.[68] In Chicago, women reformers identified the children of these newcomers as the perpetrators of minor crime which resulted in part from their maladjustment to new urban and industrial society.[69] Women from the CWC and Hull House believed that they could save youth from the myriad moral vices and lack of social controls within the new Chicago y that led children astray.[70]

Like their counterparts across the nation, these women identified themselves as "child savers"—guardians of moral virtue in the chaotic urban city who were uniquely qualified to determine the moral standards

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65. CLAPP, *supra* note 8, at 56–64.

66. *Id*. at 62–75. Scholars have debated whether Addams and other reformers genuinely sought to protect immigrant children from anti-immigrant sentiment and racial stereotyping or instead, aligned themselves with corporate interests who were threatened by civic unrest and rising crime. For a discussion of both sides of the debate, see Rivka Lissak, *Myth and Reality: The Pattern of Relationship Between the Hull House Circle and the "New Immigrants" on Chicago's West Side, 1890–1919*, 2 J. AM. ETHNIC HIST. 21 (1983). Addams argued that the social settlement became a democratic endeavor in which its settlement workers would work together with immigrants on equal footing to actively fight poverty, crime, and other social problems impacting their neighborhood. *See* JANE ADDAMS, TWENTY YEARS AT HULL-HOUSE 37 (1910) [hereinafter ADDAMS, TWENTY YEARS]; Jane Addams, *Social Settlements in Illinois*, *in* TRANSACTIONS OF THE ILLINOIS STATE HISTORICAL SOCIETY 162–71 (1906) [hereinafter Addams, *Social Settlements*].

67. DONALD L. MILLER, CITY OF THE CENTURY: THE EPIC OF CHICAGO AND THE MAKING OF AMERICA 17, 176, 188 (1996).

68. By 1890, the immigrant population swelled to 75 percent of the entire population of Chicago. Similarly, between 1890 and 1900, Chicago's black population had increased by 111 percent as black migrants left the southern states, seeking refuge from deteriorating race relations. CHICAGO COMMISSION ON RACE RELATIONS, THE NEGRO IN CHICAGO: A STUDY OF RACE RELATIONS AND A RACE RIOT 621–22 (1922) [hereinafter COMMISSION].

69. Tanenhaus, *supra* note 13, at 108–10 (discussing the concern among white reformers that immigrant children threatened Victorian values unless Americanized). For example, leading reformer Jane Addams would observe that a large portion of juvenile court cases arose from minors who committed acts of mischief involving railroad cars such as "throwing stones at moving train windows," "breaking signal lights on the railroad," and "stealing linseed oil barrels from the railroad to make a fire." JANE ADDAMS, THE SPIRIT OF YOUTH AND THE CITY STREETS 55–57 (1909) [hereinafter ADDAMS, THE SPIRIT OF YOUTH].

70. *Id.*

of societal behavior for youth and to transform these standards into law.[71] Child savers argued that legal institutions must recognize a new stage in human development (called "adolescence") in which minors are "vulnerable, malleable, and in need of adult guidance, training, and control before they could graduate to full personhood."[72] Child savers would protect minors in this stage of development from negative influences in their urban environment and the unsocial behavior which the juvenile court would label as "delinquent."[73]

Members of the CWC and Hull House argued that juvenile courts could advance their child-saving goals and took the lead in lobbying for and developing the nation's first juvenile court.[74] The CWC and Hull House advanced several child-saving arguments in favor of the creation of juvenile courts. First, juvenile courts could offer an alternative to the prosecution of minors in criminal court.[75] Addams argued that a juvenile court could further Hull House's goal of preserving the opportunity of immigrant children to assimilate into American society—an opportunity which the stain of a criminal record could undermine.[76] Second, Addams theorized that economically disadvantaged immigrant children should be given the opportunity to grow into productive citizens in the growing American democracy.[77]

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71. *See* ADDAMS, THE SPIRIT OF YOUTH, *supra* note 69, at 3–9.

72. BARRY C. FELD, JUSTICE FOR CHILDREN: THE RIGHT TO COUNSEL AND THE JUVENILE COURTS 8 (1993).

73. *See, e.g.*, SOPHONISBA P. BRECKINRIDGE & EDITH ABBOTT, THE DELINQUENT CHILD AND THE HOME 2 (1912) (listing various charges associated with juvenile delinquency).

74. HASTINGS HORNELL HART, PREVENTIVE TREATMENT OF NEGLECTED CHILDREN 210–12 (1910) ("The juvenile court owed its origin in Chicago to the efficient work of the women of the Chicago Women's Club, who began the movement and stimulated other organizations to efficient co-operation.").

75. Women reformers worked with the Chicago Bar Association to draft a resolution advocating for the establishment of a juvenile court. The resolution stated that a juvenile court was needed to resolve the following issues (all of which had been addressed in the women's reform campaigns): (1) the need for alternatives to institutionalization of children; (2) support alternatives to incarceration such as probation, instead of sentencing children to the Bridewell prison where "they [were] kept in immediate association with drunkards, vagabonds and thieves;" and (3) removal of children's cases from the criminal court jurisdiction since that court was overburdened with such cases. *See* TIMOTHY DAVID HURLEY, ORIGIN OF THE ILLINOIS JUVENILE COURT LAW 16–18 (3d ed. 1907).

76. *See, e.g.*, ADDAMS, TWENTY YEARS, *supra* note 66, at 355–57; ADDAMS, THE SPIRIT OF YOUTH, *supra* note 69, at 45–47.

77. *See* Addams, *Social Settlements*, *supra* note 66, at 168–71; ADDAMS, TWENTY YEARS, *supra* note 66, at 368.

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D. The Meaning of Black Child Saving

Although rarely identified by scholars as such, black women acted as child savers too.[78] For black clubwomen, child saving took on a special meaning tied to racial uplift.[79] NACW's commitment to saving children from racial oppression was critical because few black organizations or lawyers existed to advocate on behalf of black children.[80] Their work as "lay lawyers" also preceded both the enactment of the Nineteenth Amendment and universal support for a woman's right to practice law.[81] NACW's advocacy against segregation and other forms of racial oppression preceded the founding of the National Association for the Advancement of Colored People (NAACP) in 1909. The NACW's work represents another lost chapter in the struggle for civil rights from "the bottom up."[82] As in later moments in the long history of civil rights, average citizens and community-based organizations, not just judges and

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78. Several scholars have analyzed the role of the NACW in a variety of other social welfare reform movements and issues. *See, e.g.*, LESLIE, *supra* note 34; PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 95–118 (1984); Roberts, *supra* note 2.

79. *See* WARD, *supra* note 10, at 127–29.

80. When the NACW was founded in 1896, there were only two black women lawyers admitted to the bar of any state, although one of them, Ida Platt, had been admitted in 1894 to the Illinois Bar. She was the sole black female lawyer in Illinois for decades. On Ida Platt, see LESLIE, *supra* note 34, at 10; Gwen Hoerr Jordan, "*Ida Platt*", *in* WOMEN BUILDING CHICAGO 1790–1990: A BIBLIOGRAPHIC DICTIONARY 699–702 (Rima Lunin Schultz & Adele Haste eds., 2001). For scholarship on black women's long struggle to join the legal profession, see REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS (J. Clay Smith, Jr. ed., 1998); Gwen Hoerr Jordan, *Engendering the History of Race & Inernational Relations: The Career of Edith Sampson, 1927–1978*, 87 CHIC. KENT L. REV. 521 (2012); J. Clay Smith, *Black Women Lawyers: 125 Years at the Bar: 100 Years in the Legal Academy*, 40 HOW. L.J. 365 (1997); Kenneth W. Mack, *Law and Mass Politics in the Making of the Civil Rights Lawyer, 1931–1941*, 93 J. AM. HIST. 37, 38 (2006); Ann Juergens, *Lena Olive Smith: A Minnesota Civil Rights Pioneer*, 28 WM. MITCHELL L. REV. 397 (2001); Kenneth Walter Mack, *A Social History of Every Day Practice: Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925–1960*, 87 CORNELL L. REV. 1405 (2002).

81. *See* Edieth Y. Wu, *American Women—The Struggle Continues*, 12 J. L. SOC. CHALLENGES 13, 15 (2010). *See generally* Felice Batlan, *The Ladies' Health Protective Association: Lay Lawyers and Urban Cause Lawyering*, 41 AKRON L. REV. 701 (2008) (conceptualizing Progressive Era women reformers as "lay lawyers").

82. *See* TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT (2011) (calling for the need to look at the long history of the civil rights movement from the "bottom up," *i.e.*, through the experience of members of the community who organized the movement); Kenneth W. Mack, *Law and Local Knowledge in the History of the Civil Rights Movement*, 125 HARV. L. REV. 1018, 1019–29 (2012) (arguing that Brown-Nagin challenges "the familiar narrative" of civil rights history that focuses on national organizations and the courts and fails to include the efforts of local community groups).

lawyers, planned and led the movement for equality.[83] In the juvenile court movement, NACW members advocated on the national level but also labored from the "bottom up," allowing local affiliates and community members to lead the local struggle for juvenile justice.[84] Indeed, they developed a program to advocate for the civil rights of black youth in the courts "in an era when people were not sure that an African American could be an equal citizen much less an officer of the court."[85] The NACW challenged lynching, Jim Crow segregation, as well as other forms of racial discrimination.[86] As a result of the NACW's commitment to child saving, the juvenile court likewise became a major concern.

NACW's commitment to child saving was motivated by several factors. Black women reformers understood that Progressive Era notions about child protection resonated with their goals of racial uplift.[87] Indeed, the determination to protect black children from the negative effects of racial oppression made child saving a major focus on black women's groups. Josephine St. Pierre Ruffin was particularly concerned with the impact racial oppression would have on black children. At the NACW's founding convention in Boston, Ruffin advocated that protecting black children was central to the black community's survival:

> We need to talk over . . . things that are of special interest to us as colored women, the training of our children, openings for boys and girls, how they can be prepared for occupations and occupations may be found or opened for them . . . moral education of the race . . . how to make the most of our own, to some extent, limited opportunities . . . ."[88]

Likewise, child saving was a major component of the racial uplift strategy of the Colored Women's League. Reflecting on the League's mission, Mary Church Terrell recalled: "I believed it was the duty of colored women to do everything in their power to save the children during the

83. *See generally* BROWN-NAGIN, *supra* note 82; *see generally* Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 COLUM. L. REV. 1436, 1436 (2005).

84. *See infra* Part IV.

85. KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF A CIVIL RIGHTS LAWYER 268 (2012).

86. RECORDS, *supra* note 16, at Reel 1.

87. According to Ward, three main factors made juvenile justice a part of the black freedom movement. First, the fleeting citizenship rights since Emancipation; second, recognizing that black freedom was tied to child welfare; and third, the influence of progressivism—belief in the notion of a kind and just parental state. WARD, *supra* note 10, at 127–29.

88. *St. Pierre Ruffin Address*, *supra* note 24.

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early, impressionable period of their [lives]."[89] Terrell, like Ruffin, resolved to save black children from the badges of criminality and immorality.

Moreover, saving black children from the horrific injustices imposed by the criminal justice system was a cornerstone of NACW's agenda from the onset.[90] NACW founders protested the horrors of lynching, mindful that not only black men but also black women and minors were lynched with impunity. Moreover, NACW members were also concerned with the abuses suffered by black children who were kidnapped, arrested, or otherwise forced to work on chain gangs as part of the convict lease system.[91]

Yet, as their meetings over the Jacks letter suggests, NACW was also concerned with countering negative stereotypes about blackness.[92] Thus, their child-saving campaigns, like much of their other advocacy work, was fueled by their dual desire to shape a positive identity both as black people and as women. Defending their name meant countering the racial stereotyping of black people as criminals and challenging laws that codified these stereotypes.

Black clubwomen resolved to prove to the American society that black women and their families deserved respect, equality, and citizenship.[93] Black women were particularly concerned that these stereotypes had already become a cornerstone of societal theories about crime.[94]

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89. TERRELL, *supra* note 2, at 190.

90. Debra Newman Ham, *Foreword* to TERRELL, *supra* note 2, at 14 (the NACW was "concerned with equal rights for African Americans, work opportunities for Black women, female suffrage, and the criminal justice system.").

91. Appalled that black women and children were forced to work on chain gangs, the NACW challenged the Convict Lease System and resolved to send a representative to the next Prison Conference of the United States. Ida B. Wells, *The Convict Lease System*, *in* THE REASON WHY THE COLORED AMERICAN IS NOT IN THE WORLD'S COLUMBIAN EXPOSITION 34 (Ida B. Wells ed., 1893). For more on the role of convict leasing in the criminal court system, both before and after the juvenile court system, see WARD, *supra* note 10, at 65–70; Sterling, *supra* note 10, at 21–22.

92. *See* WARD, *supra* note 10, at 152 (noting that "[m]odern concepts of true womanhood and progressive maternalism also influenced black" women reformers).

93. Anne Stavney, *Mothers of Tomorrow: The New Negro Renaissance and the Politics of Maternal Representation*, 32 AFR. AM. REV. 533, 534–35 (1998) (discussing efforts of black women to attain an image of respectability as women and mothers).

94. *See, e.g.*, WELLS-BARNETT, *supra* note 3, at 284–85 (expressing dismay that white clubwomen in Chicago stereotyped black men as criminals). For a discussion of the history of oppression of black people in the United States through discriminatory criminal laws and practices, see SOME NOTES ON NEGRO CRIME PARTICULARLY IN GEORGIA (W.E. Burghardt Du Bois ed., 1904) [hereinafter SOME NOTES ON NEGRO CRIME] (providing firsthand observations of racial discrimination in criminal justice during the Progressive Era); Donald F. Tibbs & Tryon P. Woods, *The Jena Six and Black Punishment: Law and Raw Life in the Domain of Nonexistence*, 7 SEATTLE J. SOC. JUST. 1 (2008) (discussing the use of black codes during and after slavery); Walker, *supra* note 4, at 463–68

The stereotyping of blacks as criminals threatened black clubwomen's self-portrait as worthy counterparts to white upper-middle class Victorian ladies. Many black women ascribed to some of the same tenets of Victorian refinement, and some did so to distinguish themselves from the black masses.[95] Elite black women were outraged that white society extended this prostitution myth even to them.[96]

Black elites also perceived black crime as a threat to their quest for acceptance by whites as well as to their own identity as a respectable community worthy of citizenship rights. As national civil rights advocates, W.E.B. Du Bois and Ida B. Wells both knew first hand that even educated, professional, wealthy black people were still susceptible to racial stereotypes.[97] A rise in black crime—real or imagined—threatened their aspirations as a viable upper-middle class community. Wells and her contemporaries also knew that as long as some black people were in fact criminal or immoral, the entire race would remain stigmatized.[98] In the words of Fannie Barrier Williams, an NACW leader, "[t]he status of the race is fixed by [the] impoverished condition of the majority and not by the noble achievements of the ever increasing few."[99]

E. Defying Plessy*: Interracial Collaboration*

An investigation into the interracial collaborations between white and black female child savers challenges both of the prevailing theories about the impact of black women reformers on the juvenile court movement.[100] First, the black club movement's emphasis on interracial collaboration contradicts the theory that strained race relations undermined their ability to impact the movement.[101]

(discussing lynching and discriminatory law enforcement practices at the dawn of the modern civil rights movement).

95. *See* Onwuchi-Willig, *supra* note 15, at 37 (discussing the modern day efforts of blacks to refute or distinguish themselves from the stereotype of the black criminal).

96. WELLS-BARNETT, *supra* note 3, at 230 (discussing concerns over the stereotyping of black women as prostitutes); *see* Dorothy Roberts, *Prisons, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1492 (2012), *available at* http://ssrn.com/abstract=2184329 (discussing the historic stereotyping of black women as "jezebels" and the modern day impact of that stereotype on black mothers in the criminal justice system).

97. *See generally* KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS (2010); CHARSHEE C.L. MCINTYRE, CRIMINALIZING A RACE: FREE BLACKS DURING SLAVERY 153–63 (1993).

98. WILLIAMS, *supra* note 29, at 87 ("The ever increasing exceptions to Negro ignorance, Negro poverty, and social disorder have not as yet made much of an impression on public opinion.").

99. *Id.*

100. *See generally* CLAPP, *supra* note 8.

101. *See generally id.*

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Second, such efforts challenge the notion that black clubwomen limited their juvenile justice reform strategy primarily to conservative racial uplift programs.[102] I agree to some extent with Professor Ward's argument that "[p]ragmatic and conservative strategies, extremely limited political capital, and a reliance on private resources moderated their advances."[103] Yet, in contrast, I argue that the black club strategy was far bolder and more radical because black women in Chicago believed that they could attain equal justice and integration within the juvenile court system. Arguably, their efforts toward interracial collaboration represented a bold and progressive effort to defy the firm color line drawn by the Supreme Court in *Plessy*. Their connections to some of the most powerful white women in the United States—particularly the female reformers in Chicago leading the juvenile court movement—gave them perhaps more clout and inspiration with which to maneuver than their counterparts in other parts of the nation.[104] Thus, when their white counterparts in the CWC organized women into a national movement to establish juvenile courts,[105] these black women child savers wanted to play their part.

In response to these emerging concerns about juvenile justice, the NACW formulated a national action plan. Just weeks after the first juvenile court opened for business in Chicago, black clubwomen convened the NACW's second biennial national convention there in order to foreground juvenile justice issues in its national agenda.[106] "[N]early two thousand people [black and white] crowded into Quinn Chapel," according to an editorial in the *Chicago Tribune*, to hear NACW delegates present their broad national civil rights agenda.[107]

A pivotal event during the Chicago convention raised the issue for black clubwomen of whether interracial collaborations were a potentially attainable strategy for social justice reform. When Jane Addams invited

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102. *See* WARD, *supra* note 10, at 129.

103. *Id.*

104. *See id.*

105. Emily Foote Runge, *Women in the Juvenile Court*, 56 ANNALS AM. ACAD. POL. & SOC. SCI. 88 (1914) (providing a firsthand account by the Assistant Probation Officer of the St. Louis Juvenile Court of the roles that women played as probation officers and referees in juvenile courts in St. Louis and throughout the country). By 1889, the CWC began the process of creating the first national organization of women's clubs, the General Federation of Women's Clubs (GFWC). *See* ANNALS, *supra* note 64, at 58–61.

106. For Terrell's personal recollection of the Chicago convention, see TERRELL, *supra* note 2, at 189–93. The national reports presented at the convention addressed various criminal justice issues including "Convict Lease System as It Affects Child Nature"; "Lynch Law"; and "Prison Work." RECORDS, *supra* note 16, at Reel 1 ("Minutes of the Third Biennial Meeting or Third Convention of the National Association of Colored Women: Chicago, Illinois 1899").

107. TERRELL, *supra* note 2, at 191.

Terrell, Ida B. Wells, and the NACW convention delegates to a tour and luncheon at Hull House, the women immediately recognized the enormous significance of this gesture by one of the most renowned women in the United States.[108] The meeting was such a rare occurrence that it was covered extensively in the press[109] and, as Ida B. Wells recalled, caused a ruckus among concerned white clubwomen.[110] Indeed, the meeting gave "the color line . . . [a] good rub" such that "colored women [were] given recognition in a social way by a woman of lighter skin."[111] Terrell reaffirmed her life commitment to challenging state-sanctioned racial segregation.[112]

The public display of support from Jane Addams and the national attention it drew encouraged the NACW officers to work on civil rights and children's issues.[113] Mindful that black children did not have such programs, Terrell affirmed NACW's plans to adopt juvenile justice reform work as a national program.[114] To raise money for kindergartens and other child saving programs, Terrell sold pamphlet forms at the convention of her famous address, *The Progress of Colored Women*, "which [she] had delivered before the Thirtieth Annual Convention of the National American Woman Suffrage Association."[115] Terrell called on the delegates to implement child-saving programs within their local chapters.[116]

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108. *See id.* at 190–91.

109. *See id.* at 190.

110. WELLS-BARNETT, *supra* note 3, at 267–68.

111. TERRELL, *supra* note 2, at 190 (recalling coverage by the *Times-Herald*). On Jane Addams' continued efforts to integrate Black women's clubs into the predominantly white women's club movement, particularly the General Federation of Women's Clubs, see "Colored Women's Cause," LOS ANGELES EXPRESS (May 6, 1900), JANE ADDAMS PAPERS, CLIPPINGS FILE, REEL 55-0671, SPECIAL COLLECTIONS, THE UNIVERSITY LIBRARY, THE UNIVERSITY OF ILLINOIS AT CHICAGO, *available at* http://tigger.uic.edu/htbin/cgiwrap/bin/urbanexp/main.cgi?file=new/show_doc.ptt&doc=694&chap=83.html; [untitled clipping], *Boston Transcript* (May 7, 1902) JANE ADDAMS PAPERS, CLIPPINGS FILE, REEL 55-0671, SPECIAL COLLECTIONS, THE UNIVERSITY LIBRARY, THE UNIVERSITY OF ILLINOIS AT CHICAGO, *available at* http://www.uic.edu/jaddams/hull/urbanexp/introduction/introduction.html ("It hardly states the whole case to say that the decision against the administration of colored clubs to the General Federation was a defeat for Bay State women from other parts of the country, notably Jane Addams of Chicago, have spoken at home and in the convention strongly favoring the ignoring of the [unreadable] women's clubs.").

112. *See* TERRELL, *supra* note 2, at 190–91, 296–367, 413–24.

113. *See id.* at 190–91 (discussing the events of the NACW conference in Chicago, including the development of the NACW national program of work and the positive publicity resulting from the Hull House tour).

114. *See* RECORDS, *supra* note 16, Reel 1, at 5 ("Minutes of the Fifth Biennial Meeting or Sixth Convention of the National Association of Colored Women, Brooklyn, New York 1908," discussing a national symposium on Juvenile Court work as part of the convention agenda).

115. TERRELL, *supra* note 2, at 190.

116. *See id.*

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At the NACW national convention of 1899, seven black women's clubs from Illinois—the "Magic Seven"—led by Fannie Barrier Williams, formed the Illinois Federation of Colored Women's Clubs ("Illinois Federation").[117] The Illinois Federation's motto, "Loyalty to Women and Justice to Children," reflected its focus on child saving.[118] As I will discuss below, black clubwomen maintained important (albeit imperfect) alliances with a core group of white clubwomen, including Celia Parker Woolley of CWC and Addams and other settlement workers of Hull House.[119] The white and black women who met at Hull House for tea would gather again in later years as founders of interracial social justice organizations including the NAACP.[120] As the first juvenile court opened its doors in Chicago, their efforts on behalf of black youth would be critical.

II. THE FIRST JUVENILE COURT AND ITS IDEALS

A. The Court's Child Saving Ideals

In his famous *Harvard Law Review* article, Julian Mack, the second judge of the Juvenile Court of Cook County, argued that the first juvenile court reflected "a revolution in the attitude of the state toward its offending children."[121] The Juvenile Court Act of 1899 gave the new court jurisdiction over both dependent and delinquent children.[122] The creation of "juvenile delinquency" as an independent legal status marked a major reform of criminal law.[123] This new legal status, "delinquency," changed the legal procedure for adjudicating criminal acts committed by adolescents.[124] In considering the role of a child's community and

117. ELIZABETH LINDSAY DAVIS, THE STORY OF THE ILLINOIS FEDERATION OF COLORED WOMEN'S CLUBS, 1900–1922, at 2 (1922).

118. *Id.* at 12.

119. *Id.* at 36; TERRELL, *supra* note 2, at 190–91 (discussing a visit by the NACW leaders to Hull House during their 2nd Biennial Convention in Chicago in 1899).

120. Addams, Terrell, and Wells, along with other leaders, later founded the NAACP. *See* PATRICIA A. SCHECHTER, IDA B. WELLS-BARNETT AND AMERICAN REFORM, 1880–1930, at 122; TERRELL, *supra* note 2, at 233–35 (discussing first-hand her work as an NAACP founder). *See* CHRISTOPHER ROBERT REED, THE CHICAGO NAACP AND THE RISE OF BLACK PROFESSIONAL LEADERSHIP, 1910–1966, at 17–18 (1997).

121. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 104 (1909) [hereinafter Mack, *Juvenile Court*].

122. This Article focuses on the court's treatment of delinquent, as opposed to dependent, children. Under the Act, a "dependent and neglected child" was defined as a "boy under seventeen or a girl under eighteen years of age who is 'destitute, homeless or abandoned or dependent upon the public for support.'" THE JUVENILE COURT OF COOK COUNTY, ILLINOIS 10 (1912).

123. *See* Mack, *Juvenile Court*, *supra* note 121, at 106.

124. *Id.*

neighborhood in breeding delinquents, juvenile court law contrasted with criminal law jurisprudence, which focused on individual responsibility for one's criminal acts.[125] A child who committed a crime would no longer be prosecuted in the criminal court but, instead, could have a juvenile court judge fashion a rehabilitative outcome. Thus, the status of "delinquent," as opposed to "criminal," saved the minor from the stigma of a criminal record.[126]

The court promised to protect the child in cases where the family or neighborhood had failed him. Judge Julian Mack compared his juvenile court to a loving nurturing family ready to give children the parenting and protection that they needed.[127] In the famous words of Judge Mack, the child would feel the loving hand of the juvenile court judge—the support and concern of "a wise and merciful father"—rather than the painful stigma of an outcast or criminal.[128] Likewise, the "probation officer acts as a parent, and does in each case what seems wisest and best for him to do, having the authority and sanction of the court to fall back upon."[129]

The juvenile court judge would honor the court's commitment to the "social rehabilitation" of the child.[130] The court would not consider the delinquent as an outsider,[131] but as a redeemable member of the community who had lost his way temporarily.[132] To preserve the child's dignity, hisvisit to the Juvenile Court was "the . . . turning point in his life—the crossroads branching towards useful, manly, law-abiding citizenship."[133] Juvenile court judges had broad discretion to determine the outcome of the cases but rehabilitation was to be the focus regardless of

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125. *See* Gerald Leonard, *Towards a Legal History of American Criminal Theory: Culture and Doctrine from Blackstone to the Model Penal Code*, 6 BUFF. CRIM. L. REV. 691, 738–39 (2003).

126. *See* Julian W. Mack, *Legal Problems Involved in the Establishment of the Juvenile*, *in* THE DELINQUENT CHILD AND THE HOME, *supra* note 73, at 181, 191 [hereinafter Mack, *Legal Problems*]; *see also* FELD, BAD KIDS, *supra* note 13, at 68.

127. CLAPP, *supra* note 8, at 181.

128. Mack, *Juvenile Court*, *supra* note 121, at 107; *see also* Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 957–58 (2006) (discussing Judge Mack's famous *Harvard Law Review* article and his vision of the court's rehabilitative ideal).

129. Richard S. Tuthill, *Illinois: History of the Children's Court in Chicago*, *in* CHILDREN'S COURTS IN THE UNITED STATES: THEIR ORIGIN, DEVELOPMENT, AND RESULTS 1, 4 (1904).

130. Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1098 (1991); Feld, *Transformation*, *supra* note 13, at 339 n.27 ("Juvenile court jurisprudence rejected blameworthiness and deserved punishment for *past offenses* in favor of a utilitarian strategy of *future-oriented* social welfare dispositions.").

131. *See* Nunn, *supra* note 12, at 683 (noting that the juvenile justice system was created to protect youths from the negative influences and dangers associated with the criminal justice system).

132. Bernard Flexner, *The Juvenile Court as a Social Institution*, *in* PREVENTIVE TREATMENT OF NEGLECTED CHILDREN, *supra* note 74, at 260.

133. HURLEY, *supra* note 75, at 88–89.

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the outcome. The means used by the court to rehabilitate a child included probation—an option of "first resort"—and institutionalization—the one of "last resort."[134] The judge could order the child released to a family member or a reputable person.[135]

B. The Limits of the "Child Saving" Ideal

Judge Mack's famous *Harvard Law Review* article about his experience as the nation's second juvenile court judge helped shape the court's legacy as an ideal child-saving institution,[136] prompting legal scholars to question whether the modern day juvenile court lives up to the ideals set forth by the first court. In particular, concerns about the modern court's treatment of racial minorities have raised this issue.[137]

Yet, even the original juvenile court did not live up to its own child-saving ideals, particularly where questions of racial equality and justice were concerned. Notwithstanding its public image as a child-saving institution, the juvenile court never committed fully to save *all* children, nor were the women child savers who worked within the court "mothers of all children."[138]

Despite Judge Mack's view of the juvenile court judge as a "merciful father," many court officials clearly believed that not all delinquent children were salvageable; social class was one of several threshold tests for determining delinquency and predicting a child's worthiness and ability to be reformed.[139] In theory, the court was to ensure fair and humane treatment of all children; the promise would, in Judge Mack's words, "appl[y], with equal force, to the son of the pauper and [the son of] the millionaire."[140]

In practice, however, the court's idealistic pronouncements about protecting children masked class and ethnic biases; a child's social class blatantly determined the disposition of his case.[141] Middle class children from "thoroughly good" families were given a warning, while children

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134. FELD, BAD KIDS, *supra* note 13, at 71; *see also* Ainsworth, *supra* note 130, at 1098–99.

135. Ainsworth, *supra* note 130, at 1099.

136. Mack, *Juvenile Court*, *supra* note 121.

137. *See generally* Nunn, *supra* note 12.

138. *See generally* CLAPP, *supra* note 8 (referring to the white women reformers who volunteered at the first court as "mothers of all children").

139. *See* HURLEY, *supra* note 75, at 88 (demonstrating that Judge Tuthill was a good judge of character and not prone to leniency with all crying children).

140. Mack, *Juvenile Court*, *supra* note 121, at 113.

141. Paul Colomy & Martin Kretzmann, *Projects and Institution Building: Judge Ben B. Lindsey and the Juvenile Court*, 42 SOC. PROBS. 191, 199 (1995).

from lower class homes were often considered "morally defective" and institutionalized.[142] Occasionally, probation was given to children who were deemed to have had negative social influences but still considered "reformable."[143]

Arguably, by their own accounts, several of the first juvenile court's officials seemed to believe that the court's fundamental goal was to save certain children—mainly native white or middle class children—from criminal prosecution and from other delinquent children. For example, Chief Probation Officer Henry W. Thurston stated that the true desire to protect children of the upper middle class from other children was an impetus for the juvenile court movement; citizens and bar association members needed to "take their babies away from contact with the criminal, debased and immoral men and women."[144] Judge Mack reflected that "the number of girls that go wrong in a large city is enormous."[145] But he cautioned that "these are not 'our girls' who 'we' properly supervise"—meaning arguably, that these were not girls from an upper middle or elite class.[146]

Whereas probation was for the chosen few, boys relegated to reform schools could only learn certain trades because, with rare exception, they were considered "too young and too backward to take advanced courses in agricultural training."[147] The prevailing view among juvenile court judges was that some boys were so thoroughly vicious that they should be segregated so as to not contaminate recidivist youngsters.[148]

The first juvenile court's lack of appropriations for operational expenses, facilities, and personnel gave wealthy white women reformers major political influence over the court's legal policies, procedures and adjudications. Members of the CWC and other women's clubs financed these facilities, organized the probation program, and in turn, wielded enormous influence.[149] To some extent, the white clubwomen and settlement workers on the new juvenile court negotiated favorable outcomes for some children, particularly the immigrants affiliated with

142. *Id.*
143. *See id.*
144. Henry W. Thurston, "Ten Years of the Juvenile Court in Chicago", Survey 23 (Feb. 5, 1910): 656–66 by Superintendent of Illinois Children's Home & Aid Society & Former Chief Probation Officer of the Chicago Juvenile Court (Russell Sage Foundation Report).
145. BRECKINRIDGE & ABBOTT, *supra* note 73, at 158.
146. *Id.*
147. BOARD OF STATE CHARITIES, *Boards of Children's Guardians*, IND. BULL. CHARITIES & CORRECTION, Mar. 1903, at 7.
148. *Id.*
149. *See* ANNALS, *supra* note 64, at 177.

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Hull House.[150] Judge Julian Mack continued to serve with Jane Addams on the board of the Immigrant Protective Agency that was run from the settlement while the court operated directly across the street from Hull House.[151] Immigrant children benefitted most when the juvenile court officially incorporated the probation program at Hull House into its system.[152] The CWC's Probation Committee became the Juvenile Court Committee, an arm of the juvenile court which administered the court's orders.[153]

The influential role of child-saving probation officers had a potentially coercive influence on a variety of families.[154] The view was that the juvenile court could save minors from "bad" families. Probation officers had the power to coerce families into adopting certain values under threat of incarceration, institutionalization, and separation from their families and

150. For example, the Cook County Juvenile Court first opened for business across the street from the Hull House and thereby focused on protecting the same children affiliated with the settlement. *See generally* ADDAMS, TWENTY YEARS, *supra* note 66. This may have been the trend across the country. Judge Harvey Baker of the Boston Juvenile Court recalled that in the first five years of operation, from 1906–1911, the court's legal jurisdiction was limited to children from "the central part of the city, comprising, roughly speaking, the North, South and West Ends and the Back Bay." Harvey Humphrey Baker, *Judge Baker's Review of the First Five Years of the Boston Juvenile Court*, *in* HARVEY HUMPHREY BAKER, UPBUILDER OF THE JUVENILE 15, 27 (1920). Thus, Baker noted, "[s]tatistics as to the racial extraction of the children [were] of no real significance. . . . [because t]he great preponderance of all the children in that district [were] of Irish, Italian and Jewish extraction," while children of other races lived in other parts of the city. *Id.*

151. Erwin N. Griswold, *The Harvard Law Review—Glimpses of Its History as Seen by an Aficionado*, *in* HARVARD LAW REVIEW: CENTENNIAL ALBUM 1 (1987), *available at* http://www.harvardlawreview.org/hlr_497.php (noting Julian Mack's professional accomplishments as a founder of the *Harvard Law Review* and a second circuit judge). Walter Roth, *Judge Julian W. Mack: The Court and The Community*, 31 CHICAGO JEWISH HISTORIAL SOCIETY 1 (2007), *available at* http://chicagojewishhistory.org/pdf/2007/cjh.3.2007.pdf (discussing Judge Mack's advocacy on behalf of jewish immigrants); On Judge Mack's service to the Immigrants Protective League, *see* ANNUAL REPORT OF THE IMMIGRANT PROTECTIVE LEAGUE (online) which lists Mack as a board member. On the location of the juvenile court directly across the street from Hull House, see Margaret Strobel, *Hull House and Women's Studies: Parallel Approaches for First-and Second-Wave Feminists*, 30 WOMENS STUD. Q. 56 (2002) (article by interim director of the Jane Addams Hull House Museum), http://www.jstor.org.proxy.libraries.smu.edu/stable/40003242?seq=1&uid=3739920&uid=2&uid=4&uid=3739256&sid=21102585763827. On Judge Mack's career as a lawyer and jurist, *see generally* HARRY BARNARD, THE FORGING OF AN AMERICAN JEW: THE LIFE AND TIMES OF JUDGE JULIAN W. MACK (1974).

152. *See* Mrs. John Dickinson Sherman, *The Women's Clubs in the Middle Western States*, 28 ANNALS AM. ACAD. POL. & SOC. SCI. 29, 41–43 (1906).

153. Lucy Flower recruited Alzina Stevens, who had run the probation program at the Hull House, to serve as the juvenile court's first probation officer; Stevens ran the court's probation office from the Hull House. ANNALS, *supra* note 64, at 181. As an official court probation officer, Stevens helped her wards find jobs and provided educational, cultural and other opportunities. *See* ADDAMS, TWENTY YEARS, *supra* note 66, at 323–24; ANNALS, *supra* note 64, at 191–92 (commenting on the necessity and importance of the probation officers to the goals of the court); *Officer of the Juvenile Court*, HULL HOUSE BULL., Autumn 1900, at 11.

154. *See* HURLEY, *supra* note 75, at 74.

communities.[155] As a result, women acted as social engineers—using state-sanctioned home visits to impose their views of morality onto lower class families that were under their care.[156] During its first decade, the majority of delinquent children brought before the Cook County Juvenile Court were immigrant or black.[157]

C. Delinquent Jurisprudence

The emerging Juvenile Court jurisprudence (the "Act") further reflected these ethnic, racial, gender, and class biases. The definition of "delinquent child" set forth in the Act defined delinquency to include acts that were criminal if committed by an adult, such as theft, resisting arrest, and assault.[158] Yet, the Act also proscribed myriad acts and behaviors which did not otherwise violate a criminal code.[159] Thus, the Act gave the juvenile court judge broad discretion to decide which types of behavior constituted delinquency.[160] For example, the court's prohibition against associating with "immoral people" was subjective and reflected the moral politics and cultural biases of the judge and other court officers. Equally subjective was the judge's ability to determine what type of juvenile was likely to commit a delinquent act and what type of family or community was at fault for nurturing delinquency within its youth. The court could label not only a child but also a family and neighborhood as "delinquent."[161]

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155. *See, e.g.*, WILLRICH, *supra* note 7, at 277 ("By attempting to work out complex social problems through human individuals, both environmentalism and eugenics—indeed, the entire project of socialized criminal justice—circumscribed offenders' procedural rights and subjected the everyday lives of urban working-class populations to new levels of governmental intervention.").

156. For this reason, scholars have argued that the clubwomen, in some cases "undermined family autonomy." Greene, *supra* note 8, at 139.

157. *See id.* at 155, 166.

158. The Act defined delinquent behavior as follows:

> A "delinquent child" was one who "violates any law of this State; or is incorrigible, or knowingly associates with thieves, vicious or immoral persons; or without just cause and without consent of its parents, guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly associates with any policy shop or place where any gaming device is operated; or frequents any saloon or dram shop . . . or wanders about the streets in the night time . . . or uses vile, obscene, vulgar, profane or indecent language, in any public place or about any school house; or is guilty of indecent or lascivious conduct . . . ."

Illinois Juvenile Court Act (1899 Ill. Law 132 et. seq.).

159. *See id.*

160. *Cf.* Tamar R. Birckhead, *Juvenile Justice 2.0*, 20 J.L. & POL'Y 15, 17–18 (2011) (discussing the application of the court's rehabilitative ideals in U.S. Supreme Court cases addressing juvenile justice issues).

161. *See id.* at 39.

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Judge Mack agreed that the child's environment—his home or neighborhood—was often the cause of his delinquency.[162] On the one hand, child savers working as probation officers argued that municipal neglect—the failure of local governments to provide adequate sanitation, street lighting, and playgrounds in urban neighborhoods—fostered delinquency and crime among the youth.[163] For example, Timothy Hurley, the First Chief Probation Officer of Cook County, argued that "the real criminal was not the individual himself, but the entire social body that permitted conditions to exist which could produce only criminals."[164] Child savers in the juvenile court movement attributed a variety of social factors to delinquency such as the "lack of clean, wholesome, upbuilding recreational opportunities . . . the complaisant failure to prevent the exploitation of youth in employments which sap the moral and intellectual fiber, [and] the presence of vicious amusements."[165] The court recognized "wretched physical conditions" in "disreputable neighborhood[s]" as contributors of delinquency.[166]

On the other hand, attributing delinquency to the child's environment was a double-edged sword whose edges were sharpened by class, ethnic and racial bias, and gender stereotyping. The court also subscribed to the view that a child's family and ethnic culture—factors within the family's control—created delinquent youth.[167] For example, the court, and its army of women probation officers, attributed the cause of delinquency among these children to the delinquent home and the "delinquent family."[168] Delinquent homes were homes in which the family's culture, morals, and lifestyle did not conform to societal notions of the Victorian middle-class mother.[169] The records of the first court showed that out of 348 cases involving girls, 41 cases involved a girl whose mother or other family member was a prostitute; yet, another 74 cases involved a mother who had "questionable morals" or "doubtful character" based on other grounds.[170]

Mothers of "doubtful character" were those who ran households and families that deviated from the traditional middle class home in terms of

162. *See* Mack, *Juvenile Court*, *supra* note 121, at 104–06.
163. *See* Tanenhaus, *supra* note 13, at 10; *see also infra* notes 165–66 and accompanying text.
164. HURLEY, *supra* note 75, at 57.
165. BRECKINRIDGE & ABBOTT, *supra* note 73, at 46; *See generally* RESIDENTS OF HULL-HOUSE, HULL-HOUSE MAPS AND PAPERS (1895).
166. BRECKINRIDGE & ABBOTT, *supra* note 73, at 109.
167. *See, e.g.*, ILLINOIS ASSOCIATION FOR CRIMINAL JUSTICE, THE ILLINOIS CRIME SURVEY 663 (1929).
168. BRECKINRIDGE & ABBOTT, *supra* note 73, at 109.
169. *See id.*
170. *Id.* at 107.

family composition.[171] Along these lines, the court attributed delinquency to overcrowded homes—homes that included unconventional families, unmarried parents, boarders, too many children, or intergenerational families.[172] Working mothers were delinquent mothers.[173] By these standards, many middle-class youth would be saved or protected from being branded as delinquent. The court recognized that even children from "comfortable homes"—*i.e.*, middle class families—could become delinquent, but the court was inclined to assign probation rather than blame the parent by removing the child from the home.[174]

But the very definitions themselves had a disparate impact on black families. As discussed below, this jurisprudence of defining delinquency based on assumptions regarding ethnicity, class, and morality had particularly disastrous results for black youth on whom unique badges of degradation and criminality had already been assigned.

III. BLACKNESS AS DELINQUENCY

The juvenile court's power to impose the badge of "delinquency" on not only the child, but also one's family, culture, and community had particularly devastating effects for black youth. In the society in which juvenile courts developed, blackness itself became synonymous with "delinquency." In other words, the society from which the juvenile court emerged had already equated their neighborhoods, culture, customs, and families as synonymous with delinquency itself.[175] This part discusses the ways in which race and blackness impacted the emerging jurisprudence on delinquency and how black child savers responded.

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171. *See id*. at 107–14.

172. *See id*. at 115–25.

173. *Id.* at 71, 176, 276–81 (describing the cases of several delinquent immigrant children in which the cause of delinquency was attributed to "working mothers"—*e.g.*, a Polish mother who kept her house clean but took a job washing, failed to watch over her kids).

174. *Id.* at 160–69.

175. During other periods of civil rights history, opponents used other proxies as indicia of immorality among black youth. *See* Anders Walker, *"A Horrible Fascination": Segregation, Obscenity & the Cultural Contingency of Rights*, 89 WASH. U. L. REV. 1017, 1029 (2012) (discussing the use of marriage rates among African-Americans as a proxy for black immorality in the post-*Brown* era); Anders Walker, *Legislating Virtue: How Segregationists Disguised Racial Discrimination as Moral Reform Following* Brown v. Board of Education, 47 DUKE L.J. 399, 402–03 (1997) [hereinafter Walker, *Legislating Virtue*] (discussing how segregationists opposing *Brown* used "mythological stereotypes" about black male and female sexual immorality).

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A. "Degenerates From Birth"

The juvenile court, like the society from which it sprang, attributed delinquency among black youth to their so-called "degenerate moral character and intellect," as opposed to municipal neglect.[176] Black children were considered "degenerate from birth"—children of an immoral or shamed household.[177] In this way itself, the very definitions of delinquency coincided with the societal views and racial stereotypes toward black people. This belief that delinquency among black youth was caused by "black degeneracy"—innate defects in the character and morality based on race—infiltrated the Chicago juvenile justice system by the turn of the century when the population of black migrants coming to northern cities from the South increased substantially.[178] Black juveniles had to contend with the stigma of being considered "degenerate from birth."[179]

The eugenics movement promoted the view that certain immigrant groups and black people were genetically inferior to whites and more prone to delinquency, criminal activity, poverty, and other indicia of social ineptitude.[180] Moreover, there was a perception that not only black men,

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176. *See, e.g.*, SOME NOTES ON NEGRO CRIME, *supra* note 94, at 9–12 (Southern views about race and crime were exemplified by the statements by the governor of Mississippi that "[t]he Negro is much more criminal as a free man than he was as a slave" and that "[t]he Negroes who can read and write are more criminal than the illiterate."); Monroe N. Work, *Crime Among the Negroes in Chicago* 79–80 (1897), *reprinted in* AFRICAN AMERICAN CLASSICS IN CRIMINOLOGY AND CRIMINAL JUSTICE, (Shaun L. Gabbidon ed., 2002) ; CHAS. H. MCCORD, THE AMERICAN NEGRO AS A DEPENDENT, DEFECTIVE AND DELINQUENT 293 (1914) (attributing black delinquency and criminality to defects in character by stating, for example, that "[t]he Negro race is a child race" and that "it remains a fact that children at school seldom do any good and often exhibit very undesirable traits of character under teachers they dislike.").

177. On the widely held view that black people were "degenerates from birth," *see Jane Addams Talks: Addresses Club Women on Democracy and Social Ethics*, Chicago Inter-Ocean (Nov. 18, 1900), *available at* http://tigger.uic.edu/htbin/cgiwrap/bin/urbanexp/main.cgi?file=new/show_doc.ptt&doc=154&chap=83.

178. *See* BARRY KRISBERG, JUVENILE JUSTICE: REDEEMING OUR CHILDREN 38 (2005) (noting that juvenile reform systems were "infused with the ethos of the Jim Crow laws").

179. Crime statistics persuaded some reformers that European immigrants were more worthy of citizenship and democracy. *See* Jeffrey S. Adler, *"We've Got a Right to Fight; We're Married": Domestic Homicide in Chicago, 1875–1920*, 34 J. INTERDISC. HIST. 27, 39 (2003) (discussing the overt discrimination that both blacks and immigrants experienced).

180. For an example of arguments by Progressive Era scholars on eugenics and race, see Edward Thorndike, *Eugenics: With Special Reference to Intellect and Character*, *in* MORTON A. ALDRICH ET AL., EUGENICS: TWELVE UNIVERSITY LECTURES 325 (1914) (lectures by leading scholars in support of eugenics during the Progressive Era). For contemporary legal analyses, see Mary Ziegler, *Eugenic Feminism: Mental Hygiene, the Women's Movement, and the Campaign for Eugenic Legal Reform, 1900–1935*, 31 HARV. J.L. & GENDER 211 (2008); Angela Onwuachi-Willig, *A Beautiful Lie: Exploring* Rhinelander v. Rhinelander *as a Formative Lesson on Race, Identity, Marriage, and*

but also black women, were prone to violent crime.[181] In the early twentieth century, some whites in Illinois shared these views.[182] According to firsthand accounts, a "prevailing impression [was] that Negroes are by nature more criminal than whites and more prone to commit sex crimes."[183] The public attributed statistics about high crime in Chicago's "Black Belt" as evidence that black people had "savage tendencies."[184] In addition to crime statistics, whites were also influenced by scholarly literature, the press, and other sources of propaganda that, in particular, associated black youth with *hereditary* tendencies toward juvenile delinquency.[185]

Contrary to the juvenile court's rehabilitative ideal, eugenic theories attributing delinquency to race and ethnicity dominated the court's laws and policies, particularly where black children were involved.[186] The juvenile court perpetuated the myriad of racially discriminatory and oppressive policies toward black children.[187] In attributing race-based theories of delinquency to black children, the Cook County Juvenile Court resembled other Progressive Era criminal courts that used race as a dominant factor in every stage of the criminal justice process.[188] Black

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Family, 95 CAL. L. REV. 2393, 2415 (2007) (describing the role of eugenics in giving force to anti-miscegenation policies); Stephen A. Siegel, *Justice Holmes*, Buck v. Bell, *and the History of Equal Protection*, 90 MINN. L. REV. 106, 112–15 (2005) (discussing the criminal sterilization laws); LEE D. BAKER, FROM SAVAGE TO NEGRO: ANTHROPOLOGY AND THE CONSTRUCTION OF RACE, 1896–1954, at 97–98 (1998) (discussing how the law used eugenics to shape racial categories from the Progressive Era to the present).

181. *See* Adler, *supra* note 179, at 41 (noting that white women involved in domestic disputes generally killed their children, while black women tended to kill their husbands or male domestic partners).

182. The Chicago Race Commission found that "the persistence of these archaic beliefs and fears" had become a major factor in deteriorating race relations in Chicago. COMMISSION, *supra* note 68, at 632.

183. *Id*. at 621.

184. *Id.*at 621–22.

185. *See, e.g.*, Scott, *supra* note 61, at 9–10.

186. *See* WILLRICH, *supra* note 7, at 229–30; *cf.* Siegel, *supra* note 180, at 112–16 (discussing constitutional challenges to forced criminal sterilization).

187. *See, e.g.*, Wilma Peebles-Wilkins, *Janie Porter Barrett and the Virginia Industrial School for Colored Girls: Community Response to the Needs of African American Children*, *in* A HISTORY OF CHILD WELFARE 137 (Eve P. Smith & Lisa A. Merkel-Holguín eds., 1996) (noting that black children were not the focus of mainstream child-saving campaigns, which resulted in discriminatory treatment). For a scholarly discussion of the court's treatment of dependent children, see David S. Tanenhaus, *Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago*, 19 L. & HIST. REV. 547 (2001).

188. COMMISSION, *supra* note 68, at 621–22. Between 1870 and 1930, for example, the criminal courts imposed capital punishment sentences on black defendants, including juveniles, at a disproportionate rate in cases involving white victims. *See* Derral Cheatwood, *Capital Punishment for the Crime of Homicide in Chicago: 1870–1930*, 92 J. CRIM. L. & CRIMINOLOGY 843, 846, 851–59

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children overcrowded jails because they were less likely to receive probation or find a reformatory that would accept them.[189] Many of the juvenile reform institutions that accepted black children were known to discriminate against those children once they enrolled.[190] For example, black children were institutionalized in reformatories for longer periods.[191]

In adopting eugenics and other race-based theories of delinquency, the juvenile court failed to depart from a decades-old legacy of racial discrimination, originally imposed upon immigrant and black children by criminal courts and the early juvenile Houses of Refuge.[192] Just as U.S. criminal laws had developed "as a means to control the enslaved population, Native Americans and the poor,"[193] the juvenile court likewise enforced race and class stratifications. Just as the *Plessy* decision had imposed a stain of inferiority on black people by enforcing state-sanctioned segregation, so did the juvenile court. And, just as the Supreme Court in *Plessy* had assigned racial identities, so too did the juvenile court as it enforced the stereotyping of black people, families, and neighborhoods as "delinquent."

This view that black people were inherently degenerate persisted even though increased racial oppression played a major role in placing black youth at risk for delinquent behavior. State-sanctioned discrimination directly caused delinquency among black youth as their neighborhoods suffered from the debilitating effects of *Plessy*'s "separate but equal" doctrine.[194] Fannie Barrier Williams, one of Chicago's leading clubwomen, offered a poignant first-hand account of how increased racial discrimination in housing and employment relations between 1895 and 1905 forced black children to live in high crime districts:

(2003) (noting that race was a factor in criminal sentencing including, but not limited to, capital punishment sentencing).

189. *See* Fox, *supra* note 9, at 1232–33.

190. *See id.*

191. COMMISSION, *supra* note 68, at 621–22.

192. *See* Fox, *supra* note 9, at 1187, 1189, 1210–32 (chronicling oppressive policies toward immigrant and black offending youth that preceded the juvenile court and were adopted by it). *See* Sterling, *supra* note 10, at 18–21 (discussing racial bias against black children in the Houses of Refuge).

193. Kenneth B. Nunn, *The "Darden Dilemma": Should African Americans Prosecute Crimes?*, 68 FORDHAM L. REV. 1473, 1484 (2000); *see also* Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 262 (2007) (discussing the criminal justice system's foundation of racial oppression).

194. *See* FANNIE BARRIER WILLIAMS, *Social Bonds in the "Black Belt" of Chicago: Negro Organizations and the New Spirit Pervading Them*, *in* THE NEW WOMAN OF COLOR: THE COLLECTED WRITINGS OF FANNIE BARRIER WILLIAMS, 1893–1918, 117 (Mary Jo Deegan ed., 2002).

> In the matter of employment, the colored people of Chicago have lost in the last ten years nearly every occupation of which they once had almost a monopoly. There is now scarcely a Negro barber left in the business district. Nearly all the janitor work in the large buildings has been taken away from them by the Swedes. White men and women as waiters have supplanted colored men in nearly all the first-class hotels and restaurants. . . . It scarcely need be stated that colored young men and women are almost never employed as clerks and bookkeepers in business establishments. A race that can be systematically deprived of one occupation after another becomes an easy victim to all kinds of injustice.[195]

As the immigrant population grew, Chicago's black community was increasingly marginalized, particularly with respect to employment and economic opportunities.[196] Further, Williams suggested here that the systematic racial oppression made black children susceptible to crime. Racially discriminatory housing practices forced the black community to reside adjacent to the red light "levee district," where gambling, prostitution, and other vices flourished, thus, placing black children literally and figuratively closer to criminal lifestyles.[197] The court's willingness to equate poverty with delinquency was particularly harmful to black children.[198]

As the larger society stigmatized and segregated black people, so did the juvenile court. Throughout the nation, some juvenile courts completely excluded black children from their jurisdictions altogether or excluded them from reform schools, thereby increasing the likelihood that delinquent black children would be sentenced to prison instead of reform programs. Several agencies under the court's auspices, including the Juvenile Psychopathic Institute, promoted theories of delinquency based

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195. *Id.*

196. *Id.*

197. *Id.*

198. The juvenile court offered widow pensions at a startlingly low rate to poor black families as compared to white families. For further analysis of the court's treatment of dependent children, see Tanenhaus, *supra* note 186, at 575. Arguably, by discriminating against black families who were otherwise eligible for widow pensions, the juvenile court placed dependent black children at greater risk of exposure to poverty, crime, vice, and delinquency. *See* T.H. MacQueary, *Dependent, Schools for Delinquent, and Truant Children in Illinois*, 9 AM. J. SOC. 1, 14, 22–24 (1903) (explaining the correlation between poverty, unstable families, and increased rates of juvenile delinquency and arguing that girls from certain neighborhoods were more likely to be sexually promiscuous and morally delinquent).

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upon eugenics the view that race, ethnicity, and heredity caused and contributed to delinquency.[199]

B. Investigations of Racism in Cook County

Black women built coalitions with white allies to investigate juvenile court institutions, challenge racial stereotypes about black youth and delinquency, and protest racial discrimination by the juvenile court. For example, Jane Addams publicly challenged black degenerate theory.[200] Other white reformers, such as Celia Parker Woolley, a CWC member, came to agree with these findings.[201] In doing so, some black and white juvenile court reformers would find common ground and begin to develop new national organizations, including the NAACP and the National Urban League.

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199. On the use of race-based eugenics by the early juvenile court and its institutions, see MICHAEL A. REMBIS, DEFINING DEVIANCE, SEX, SCIENCE AND DELINQUENT GIRLS, 1890–1960, 16–17 (2011) ("Eugenic also fit well with dominant scientific theories that rooted modern social problems in the mind and bodies of the deviant 'other'—poor people, new immigrants, anarchists, people with disabilities—and not in social, economic or political systems."); Michael Willrich, *The Two Percent Solution: Eugenic Jurisprudence and the Socialization of American Law, 1900–1930*, 16 LAW & HIST. REV. 63, 65–67 (1998) (eugenics "rejected the Enlightment's egalitarian strain, insisting that hereditary endowment determined social structure . . . [and that there were] distinct genetic roots for the many problems of personality and society . . . from "feeblemindedness" and "psychopathy" to "delinquency" and "hypersexuality."); on the role of eugenic jurisprudence in other Progressive era reform movements, see Mary Ziegler, *Eugenic Feminism: Mental Hygiene, The Women's Movement, and the Campaign for Eugenic Legal Reform*, 31 HARV. J.L. & GENDER 211 (2008).

200. *See* "*Jane Addams Talks: Addresses Club Women on Democracy and Social Ethics*," Chicago Inter-Ocean (Nov. 18, 1900), *available at* http://tigger.uic.edu/htbin/cgiwrap/bin/urbanexp/main.cgi?file=new/show_doc.ptt&doc=154&chap=83 (disputing the view that black children as a group were "degenerates from birth"). On the emergence of degenerate theory as a theory of criminality adopted by the juvenile court and other Progressive era courts, see WILLIAM HEALY, THE INDIVIDUAL DELINQUENT: A TEXT-BOOK OF DIAGNOSIS & PROGNOSIS FOR ALL CONCERNED IN UNDERSTANDING OFFENDERS, § 48 (1905) (first-hand research by Director of the Juvenile Psychopathic Institute of the first juvenile court attributing delinquency to multiple factors including heredity); MICHAEL WILLRICH, CITY OF COURTS: SOCIALIZING JUSTICE IN PROGRESSIVE ERA CHICAGO 229 (2003); Jennifer Devroye, *The Rise and Fall of the American Institute of Criminal Law & Criminology*, 100 J. CRIM. L. & CRIMIOLOGY 7, 13–14 (2010) ("degeneracy theory amounted to a belief that some families were bad and would just keep getting worse with each successive generation").

201. *See* Celia Parker Woolley, *Democracy and the Race Problem*, 94 UNITARIAN REGISTER 1115 (Nov. 25, 1915). To Woolley, the one major difference was that black Americans still suffered from the unique legacy of slavery and legally sanctioned racial oppression that transcended hostility toward immigrants in Chicago. In this way, Woolley agreed with the theories of black criminality advanced by black clubwomen in two ways. First, Woolley noted that, while "[t]he criminal rating of the Negro is admittedly high," racial discrimination was a major role in causing and exacerbating this trend. Second, [a]s a social outlaw [the Negro] suffers from constant discriminations practised against him and a hostile public sentiment." *Id.*

Several investigations of the Cook County Juvenile Court found that black children were rarely protected or rehabilitated by the juvenile court or its institutions.[202] The first study of the court found that, within the court's first decade (1899–1909), a disproportionately large number of black children were brought before the court and adjudicated as delinquent, even though blacks comprised less than 2 percent of the population during this period.[203] Breckenridge and Abbott reasoned:

> Difference of language is an effective barrier [among immigrants], but difference of color is a more effective and a more permanent one. It is necessary, therefore, for many purposes, to class with the various foreign colonies the 30,000 native colored citizens of Chicago, who although they do not suffer from a lack of common language, are barred from the complete enjoyment of many so-called common rights by a prejudice which manifests itself in many and subtle ways.[204]

Here, they suggested that the same arguments that excused delinquency among immigrant children, namely, urban decay and lack of adjustment, also applied to black youth.[205]

The Juvenile Protective Association (the "JPA")—a coalition of child savers focused on protecting minors as well as young adults age 17–21 from delinquency and crime[206]—conducted its own race investigation. This investigation was consistent with the JPA's role of investigating complaints into the social causes of delinquency, such as the rise of vice districts, the sale of alcohol to minors, or the lack of recreational opportunities for youth. The JPA then advocated that the juvenile court and other government agencies address these root causes of delinquency.[207] The JPA expressed the view that the majority of youth

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202. JUVENILE CRIME, JUVENILE JUSTICE, COMMISSION ON BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION 59, 61 (2001).

203. *Id.* The report showed that of the 584 delinquent boys brought before the court in its first six months of operation, forty-eight had a Negro parent. In the court's first decade, four percent of the boys and six percent of the girls brought before the court were black. *Id.*; *see also* LOUISE DE KOVEN BOWEN, THE COLORED PEOPLE OF CHICAGO: AN INVESTIGATION MADE FOR THE JUVENILE PROTECTIVE ASSOCIATION 3 (1913) (discussing racial disproportionality in the Cook County Juvenile Court during its first decade).

204. *Id.* at 56.

205. *Id.*

206. THE JUVENILE PROTECTIVE ASSOCIATION OF CHICAGO SEVENTEENTH ANNUAL REPORT, 1917–1918, at 10 (1918), PAPERS OF THE JUVENILE PROTECTIVE ASSOCIATION, UNIVERSITY OF ILLINOIS [hereinafter JPA], *available at* http: books.google.com/books?id=tGQvAQAAIAAJ.

207. *Id.* at 12–16; *see also* LOUISE DE KOVEN BOWEN, THE PUBLIC DANCE HALLS OF CHICAGO (1917) (investigating the sale of liquor to minors at public dance halls).

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under juvenile court jurisdiction were "the innocent victims of vicious and unlawful neighborhood influences."[208]

In 1913, the JPA investigation confirmed that stringent racial oppression played a major role in placing black youth at risk for delinquent behavior and that the juvenile court system discriminated against black youth on the basis of their race.[209] The JPA reported that "although the colored people of Chicago approximate one-fortieth of the entire population, one-eighth of the boys and young men and nearly one-third of the girls and young women who had been confined to the jail during the year were Negroes."[210] To conduct its investigation, the JPA interviewed "all the boys" in the Cook County jail.[211] The JPA opined that "it was clear that the lack of congenial and remunerative employment had been a determining factor in [the boys'] tendency to criminality . . . ."[212]

In her groundbreaking book, *Safeguards for City Youth at Work and At Play*, Louise de Koven Bowen echoed and expanded upon these findings that pervasive race discrimination caused high delinquency rates among black youth.[213] Bowen compared the increased opportunities for economic mobility for immigrants to impediments faced by black families moving their families out of crime-prone and overcrowded urban neighborhoods:

> [T]he sons and daughters of colored families . . . because they continually find the door of opportunity shut in their faces, are more easily forced back into their early environment however vicious it may have been. . . . the colored young people, however ambitious, find it extremely difficult to move their families or even themselves into desirable parts of the city . . . .[214]

Bowen adds that racial discrimination in employment, education, housing, and the criminal justice system placed black children at great risk of involvement in delinquent behavior, including coerced prostitution, theft, school truancy, and vagrancy.[215] Bowen confirmed that the juvenile court perpetuated these inequalities by refusing to house even "semi-delinquent

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208. JPA, *supra* note 206, at 10.

209. BOWEN, *supra* note 203, at 3 (discussing racial disproportionality in the Cook County Juvenile Court during its first decade and its causes); *see* LOUISE DE KOVEN BOWEN, SAFEGUARDS FOR CITY YOUTH AT WORK AND AT PLAY 171 (1914) [hereinafter BOWEN, SAFEGUARDS] (recognizing the existence of a disportionate number of black children in the juvenile court system).

210. *Id.*

211. BOWEN, *supra* note 203, at 5.

212. *Id.*

213. BOWEN, SAFEGUARDS, *supra* note 209.

214. *Id.* at 171–72.

215. *Id*. at 173–96.

colored children" in reformatories or other alternatives to adult prisons, with administrators often using "the cryptic utterance, 'We have no room.'"[216] As a result, she found that "the care for dependent and semi-delinquent colored children is totally inadequate" in light of the disproportionate rates of reported black crime.[217]

Bowen also reflected on her personal involvement with the JPA's advocacy on behalf of a nineteen-year-old black man named George W. who was arrested based on a charge of raping a white girl. Bowen recalled that:

> At the police station [George] was not allowed to sleep, was beaten, cuffed and kicked, and finally battered and frightened, he confessed that he had committed the crime . . . . The evidence against him was so flimsy that the judge referred to it as such in his instructions to the jury. . . . Though the description given by the people who saw the colored man running away [from the crime scene] did not agree with George's appearance, nevertheless the jury brought in a verdict of guilty and the judge sentenced the boy to fourteen years in the penitentiary. When one of the [witnesses] . . . was asked why he did not make his testimony more explicit, he replied, "Oh well, he's only a nigger anyway."[218]

The JPA made vigorous efforts to get the case overturned but could not persuade the court to free George from the penitentiary.[219]

Bowen and the JPA recommended several remedies for the unjust discrimination and its correlating high rates of crime among young black people. First, Bowen advocated that the larger society abandon its propensities toward racial stereotypes. "[G]eneralizing against the negro," she wrote, "should cease; the fact that one negro is bad should not fix criminality upon the race." She added: "the negro should not be made the universal 'scapegoat.'"[220] Second, housing and employment discrimination by whites against blacks should cease.[221] Third, black children lacked but desperately needed preventative institutional care. Fourth, discrimination against blacks in the provision of recreation activities, including the use of swimming pools and Lake Michigan, should cease.[222]

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216. *Id*. at 195.
217. *Id*.
218. *Id*. at 195–96.
219. *Id*.
220. *Id*. at 197–98.
221. *Id*. at 199.
222. *Id*. at 198–99.

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Apparently, the JPA's recommendations fell on deaf ears. The Chicago Race Riot of 1919, which resulted when a black boy was stoned to death after swimming in Lake Michigan, suggests that Cook County and its juvenile court system had failed to implement these recommendations.[223] Following the Riot, the Chicago Race Commission conducted an extensive investigation into racial oppression of blacks by individuals and social institutions, including the juvenile court.[224] The Commission's groundbreaking investigation of race relations in turn of the century Chicago confirmed that, by 1919, racial discrimination against black youth by the Cook County Juvenile Court was pervasive.[225] The juvenile and criminal courts' reputations for discriminatory treatment of black children became so notorious that several national black organizations would conduct reports that concurred with the Commission's findings. The Commission reported:

> [F]rom the records and from the testimony of the judges in the juvenile, municipal, circuit, superior, and criminal courts, of police officials, the state's attorney, and various experts on crime, probation, parole, [it appears] that Negroes are more commonly arrested, subjected to police identification, and convicted than white offenders; that on similar evidence they are generally held and convicted on more serious charges, and that they are given longer sentences. This bias, which is reflected in the figures, serves to bolster by false figures the already existing belief that Negroes are more likely to be criminal than other racial groups.[226]

Embracing these theories, some white administrators of juvenile reformatories believed that a black juvenile was so permanently degenerate that he could never be reformed.

The Chicago Race Commission also found the major environmental factor that contributed to delinquency among the black population was racism. The Report found that this racism distinguished the black experience from that of white immigrants. Black migrants endured discrimination in education, housing (the forced segregation of the black population near vice districts), and employment.

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223. On the race riot, see COMMISSION, *supra* note 68. *See generally* WILLIAM M. TUTTLE, RACE RIOT: CHICAGO IN THE RED HOT SUMMER OF 1919 (1996).

224. COMMISSION, *supra* note 68, at 623.

225. *Id.*

226. *Id.*

The juvenile court also connected blackness with delinquency in gendered ways, thereby perpetuating intersectional racial and gender oppression.[227] For example, investigations confirmed that the juvenile court sanctioned intersecting race and gender discrimination within its reformatories. Investigations of the Illinois State Industrial School for Delinquent Girls at Geneva—a Cook County Juvenile Court institution—found that officials there diagnosed girls as "psychopathic," "feeble-minded," "hysterical," and "lesbian"; they also used such terms to taunt girls.[228] In this way, the officials at Geneva characterized interracial relationships between residents, whether sexual or platonic, as delinquent, immoral behavior. The staff was also known to spit racial epithets at black girls.[229]

The race hatred against blacks also fostered other forms of discrimination against other groups institutionalized by the juvenile court. At Geneva, white girls who befriended the black girls were derided by staff as "nigger lovers" and "White trash."[230] In this way, juvenile courts used racial stereotypes to link young black women with sexual promiscuity—the primary basis for identifying any young girl with juvenile delinquency.

Geneva was not an isolated case; several of the few juvenile reform institutions that accepted black children were known to discriminate against those children once they enrolled.[231] Similarly, Ida B. Wells recalled, for example, that The Memphis Scimitar published a story of a young white girl who gave birth to a mixed race child. Because she refused to provide the name of her "rapist," the girl was committed to the insanity ward of the county hospital.

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227. For scholarly treatment of "intersectionality" as a theoretical framework analyzing the intersection of race and gender oppression, see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

228. Anne Meiss Knupfer, *"To Become Good, Self-Supporting Women": The State Industrial School for Delinquent Girls at Geneva, Illinois, 1900–1935*, 9 J. HIST. SEXUALITY 420, 420–46 (2000); *see also* T.H. MacQueary, *supra* note 198, at 14.

229. Anne Meiss Knupfer, *"To Become Good, Self-Supporting Women": The State Industrial School for Delinquent Girls at Geneva, Illinois, 1900–1935*, 9 J. HIST. SEXUALITY 420–46 (2000); *see also* T.H. MacQueary, *supra* note 198, at 14.

230. Knupfer, *supra* note 228, at 420–46.

231. *See* Philip Jackson, *Black Charity in Progressive Era Chicago*, 52 SOC. SERV. REV. 400, 401 (1978) ("Discrimination by White charitable organizations forced Blacks to organize in order to provide for needy Blacks, particularly with forms of service such as institutional care requiring face-to-face interaction among clients.").

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Child savers in Illinois defended these race-gender stereotypes about black girls and delinquency before national audiences. For example, Martha P. Falconer, a leader in the juvenile court movement who became a probation officer for female delinquents, promoted race-gender stereotypes about black girls and delinquency during a national child welfare symposium.[232] While historian Mary Odem credits Falconer for standing at the forefront of "a movement . . . that emphasized rehabilitation instead of punishment and individualized treatment instead of regimented control," this tribute could not possibly apply to Falconer's punitive assessment of *black* delinquent girls.[233] Falconer belonged to the Nineteenth Century Club, a prominent women's club, and became a nationally recognized "expert" on the care of delinquent girls.[234] Falconer perpetuated the view that "colored girls" were "children of degenerates" and, as such, "[t]hey can never be trained to be good citizens."[235] Falconer further explained that because this view was widely shared, it was near impossible to release black girls from institutions because outplacements in a family home were purportedly much more difficult to find for them than for white girls.

C. The NACW's Investigations

Similar reports of racial injustice within juvenile courts throughout the nation spurred black child savers to develop a national plan of action as well as local responses. Throughout the juvenile court's first decade, black clubwomen were pained by testimonies that juvenile courts throughout the country discriminated against black children.[236] By 1908, the NACW held a National Symposium on Juvenile Court work where testimonies brought

> tears to the eyes of their listeners as they were told about the horrors of prison life for little Negro children and of their individual efforts to have them released. They dwelt on the fact that in so many cases the charges against the children were so minor that they could not

232. Martha P. Falconer, *The Wayward Girl*, *in* A CHILD WELFARE SYMPOSIUM 32 (William Henry Slingerland ed., 1915).

233. ODEM, *supra* note 8, at 116.

234. *Id.*

235. Falconer, *supra* note 232, at 34; *see also* WILLRICH, *supra* note 7, at 66–67.

236. *See, e.g.*, RECORDS, *supra* note 16, at Reel 1 (Minutes of the Fifth Biennial Meeting or Sixth Convention of the National Association of Colored Women, Brooklyn, New York 1908, at 16).

> have been called a crime but the children were kept in custody because they had no one to speak on their behalf.[237]

In response to its 1908 symposium, the NACW passed a resolution urging its member clubs to devote efforts toward "saving the boys and girls through the instrumentality of the juvenile courts, and lifting as far as possible, the fallen men and women of the race."[238]

After the symposium, Juvenile Court work became an official department of the NACW.[239] Margaret Murray Washington, NACW national president from 1912–1916, called upon NACW members throughout the country to fight the trend of condemning black children for petty offenses and sending them to state prisons, where they could "mingle with hardened criminals."[240] Washington and NACW affiliates led this effort in Alabama by working to establish the Industrial School for Boys at Mt. Meig's, an alternative placement for delinquent boys under juvenile court jurisdiction.[241] Washington was also successful in getting the national NACW to support this program and other similar prison reform campaigns throughout the nation.[242]

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237. *Id.*; *see also* Margaret Murray Washington, *The National Association of Colored Women's Clubs*, COLORED AM. MAG., Sept. 1908, at 497, 502, *available at* http://babel.hathitrust.org/cgi/pt?id=uc1.b3793668;view=1up;seq=521 (providing a first-hand account of the symposiums presented).

238. *See, e.g.*, RECORDS, *supra* note 16, at Reel 1 (Minutes of the Fifth Biennial Meeting or Sixth Convention of the National Association of Colored Women, Brooklyn, New York 1908, at 30) (including a national symposium on Juvenile Court work as part of the convention agenda).

239. *Id.*; EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 47 (quoting NACW Honorary President Josephine S. Mates statement that the NACW had organized a national juvenile court department and was involved in building reformatories); *see also* Addie W. Hunton (National Organizer), *The National Association of Colored Women: Its Real Significance*, COLORED AM. MAG., July 1908, at 417, 423 ("Pennsylvania women awakened our clubs to their duty in the Juvenile courts and now, in several Southern cities, our women are doing effective service in keeping our little ones from a horrible prison life."); Josephine T. Washington, *Child Saving in Alabama*, COLORED AM. MAG., Jan. 1908, at 48, 51, *available at* http://babel.hathitrust.org/cgi/pt?id=uc1.b3793668;view=1up;seq=60 (observing first-hand that children in the Mt. Meigs reformatory, run by black women, were "saved from the slavery of an iniquitous prison system" and were "busy, happy, loving and being loved").

240. RECORDS, *supra* note 16, at Reel 1 (Minutes of Fourth Biennial Convention of NACW, July 1906; Minutes of the Fifth Biennial Convention of NACW, August 1908); Cornelia Bowen, *Woman's Part in the Uplift of Our Race*, COLORED AM. MAG., Mar. 1907, at 222–23 (firsthand account by the Principal of Mt. Meig's Institute of the black women's role in juvenile justice reform), http://babel.hathitrust.org/cgi/pt?id=uc1.b3793667;view=1up;seq=239.

241. Cornelia Bowen, *Woman's Part in the Uplift of Our Race*, COLORED AM. MAG., Mar. 1907, at 222–23, *available at* http://babel.hathitrust.org/cgi/pt?id=uc1.b3793667;view=1up;seq=239 (firsthand account by the Principal of Mt. Meig's Institute of the black women's role in juvenile justice reform).

242. *Id.*

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Having observed the discriminatory practices of juvenile courts throughout the nation toward black children, Adella Hunt Logan, one of the NACW founders, wrote in a national magazine:

> Negro parents admit that their own children are not all angels, but they know that the environments which they are helpless to regulate increase misdemeanor and crime. . . . When colored juvenile delinquents are arraigned, few judges and juries feel bound to give them the clemency due a neglected class. When sentence is pronounced on these mischievous youngsters, too often they are imprisoned with adult criminals and come out hardened and not helped by their punishment. When colored mothers ask for a reform school for a long time they receive no answer. They must wait while they besiege their legislature.[243]

Arguably, it seems Hunt saw a need for black parents to organize to protect their children from both crime and race prejudice and to fight for suffrage in order to change these policies.[244] She also urged black parents to lobby state legislatures to change their juvenile court laws.[245]

In response, "social control" took on a new meaning for black child savers who labored to resist and survive within the juvenile court movement's racial confines. The NACW adopted a two-pronged response to racial discrimination against black children by juvenile courts. First, as discussed below, the NACW encouraged its members to work within the juvenile court system to achieve justice for black youth. Arguably, their work within the system did not represent a blanket approval of the juvenile court's policies but instead reflected a strategy for protecting black children. Second, black women worked directly with black families to protect them from the juvenile court.[246]

IV. CHALLENGING BLACK DELINQUENCY MYTHS IN ILLINOIS

> *Our clubs are indispensable factors in our elevation . . . . Our visits to the jails and juvenile courts show that many of our women are doing good work along these lines. Through organized effort, homes*

243. Adella Hunt Logan, *Colored Women as Voters*, 4 THE CRISIS No. 5, 242 (Sept. 1912).
244. *Id*.
245. *Id*.
246. As Professor Dorothy Roberts has explained generally, black clubwomen were "unlike white child-savers of the time, who sought to rescue poor immigrant children from what they perceived as a corrupting environment." Instead, they were "motivated to rescue Black children from the punitive institutions created by whites." *See* Roberts, *supra* note 2, at 963.

> *for working girls, day nurseries and kindergartens are being established. Is not this progress?*[247]

To implement their national agenda on juvenile justice, black women's clubs in Illinois fought four particular stereotypes about black delinquency. First, they challenged the "lynching stereotype"—a belief that black people accused of crimes did not deserve a trial and could not be reformed by the criminal court system, and therefore, should be lynched.[248] Second, the clubwomen challenged the myth of the degenerate black mother, i.e., the claim that black children were "degenerate from birth" because, allegedly, black women themselves were not morally acceptable mother figures.[249] Third, black women's clubs defended the honor of black women generally by rebutting the Jezebel myth, i.e., the view that young black women were inherently delinquent because they were prostitutes[250] or sexually promiscuous.[251] Fourth, black clubwomen implemented several programs in order to challenge the myth of the delinquent black neighborhood.

A. The Lynching Stereotype

Black clubwomen realized that a pervasive lynching stereotype[252] tainted their children's experience in the criminal and juvenile courts and therefore resolved this problem in several key ways. This lynching stereotype was based in part on "the myth of the black rapist," namely that black men are so attracted to white women that they will rape a white

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247. EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 51 (reprinting address by president of the Illinois Federation of Colored Women's Clubs, 1908).

248. Although not referred to as the "lynching stereotype," advocates and scholars have discussed how stereotypes about black sexuality and crime affected the prevalence of lynching and other forms of harassment and terrorism against black people. *See, e.g.*, Adrienne D. Davis, *Slavery and the Roots of Sexual Harassment*, *in* DIRECTIONS IN SEXUAL HARASSMENT LAW 457, 458–61 (Catherine MacKinnon & Reva Siegel eds., 2003) (framing slavery "as an early and particularly virulent strain of institutionalized sexual harassment.").

249. *See, e.g.*, ADDAMS, THE SPIRIT OF YOUTH, *supra* note 69, at 51 (attributing "[a] certain number of the outrages upon the spirit of youth" to "degenerate or careless parents"); Hicks, *supra* note 14, at 2088 (stating that reformers' perception that blacks were "inadequate" parents influenced the use of wayward youth laws).

250. PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 5 (2d ed. 2000).

251. CORNEL WEST, THE CORNEL WEST READER 514–20 (1999) (discussing how Jezebel and other racist stereotypes of black and white sexuality persist in modern times).

252. For examples of the pervasiveness of the lynching stereotype, see generally WELLS-BARNETT, *supra* note 3 (providing accounts and descriptions of several lynchings); Emma Coleman Jordan, *Crossing the River of Blood Between Us, Lynching, Violence, Beauty and the Paradox of Feminist History*, 3 J. GENDER RACE & JUST. 545, 546–49 (2000).

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woman if the opportunity presents itself.[253] Arguably, the practice of lynching suggested that black men who commit crimes cannot be brought to justice or rehabilitated by the court system and thus, they should be executed.

Lynching was also a symbol of gender oppression that promoted the sanctity and protection of white womanhood.[254] Finally, lynching was a means to destroy black families by emasculating black fathers and sons; it was, in Ida B. Wells' words, "[a]n excuse to get rid of Negroes who were acquiring wealth and property and thus keep the race terrorized and 'keep the nigger down.'"[255]

Challenging this lynching stereotype meant challenging the notion that black people did not deserve due process and legal protections within the juvenile court system. Black clubwomen promoted their view that poor black youth were not irreversibly degenerate from birth. To the contrary, they argued that black children could be lifted out of the environmental and personal circumstances that caused delinquency and immorality. In their view, black children, like their immigrant counterparts, could be rehabilitated and restored through the positive guidance that black clubwomen could provide. Speaking at the NACW national convention in 1897, Mary Church Terrell noted that "the colored youth is vicious we are told, and statistics showing the multitudes of our boys and girls who fill the penitentiaries and crowd the jails appall and discourage us."[256] Terrell argued that an environmental theory of delinquency (which child savers applied to immigrant children) explained delinquency among black children:

> [S]ide by side with these facts and figures of crime, I would have presented and pictured the miserable hovels from which these youthful criminals come. Crowded into alleys, many of them the haunts of vice, few if any of them in a proper sanitary condition,

253. For analysis of the stereotyping of black men as rapists, see Angela Y. Davis, *Rape, Racism, and the Myth of the Black Rapist*, *in* WOMEN, RACE, AND CLASS 172, 173 (1981). *See generally* Walker, *Legislating Virtue*, *supra* note 175, at 401–03 (discussing how segregationists opposing *Brown* used "mythological stereotypes" about black male sexual immorality).

254. Lynching portrayed white females as *per se* victims if they had any sexual encounters with black men. *See generally* A. LEON HIGGINBOTHAM JR., IN THE MATTER OF COLOR, RACE AND THE AMERICAN LEGAL PROGRESS: THE COLONIAL PERIOD 40–41 (1978) (describing how American law "was tolerant of white male illicit 'escapades' involving either white females or black females . . . and brutally harsh on infractions between black males and white females").

255. WELLS-BARNETT, *supra* note 3, at 64.

256. Mary Church Terrell, *Address to the National Association of Colored Women, Nashville, TN (1897)*, *in* LIFT EVERY VOICE: AFRICAN-AMERICAN ORATORY, 1787–1900, at 843 (Philip Shelton, Eric Foner & Robert J. Branham eds., 2007).

> most of them fatal to mental and moral growth, and destructive of healthful physical development as well, thousands of our children have a wretched heritage indeed.[257]

For Terrell, this "wretched heritage," from which black children could be rescued, included not only the legacy of slavery but the failure of local government to provide sanitary streets and neighborhoods as well as the role that government and private owners played in providing substandard segregated housing to Black families.[258] Terrell then called upon NACW members to "counteract the hateful influences upon innocent victims . . . . whose little feet will have so many thorny paths of prejudice, temptation, and injustice to tread."[259]

As discussed below, NACW's response in Illinois took several forms. First, challenging the lynching stereotype meant waging legal campaigns to ensure due process. Second, part of their strategy for juvenile justice was to work within the juvenile court system to make sure that black youths found more justice there than with the lynching mob. Third, black women also worked directly with the black community to prevent delinquent behavior and ensure compliance with criminal law. Fourth, challenging the lynching stereotype also required that black clubwomen directly challenge the absence of juvenile court reformatories for black youth.

1. Advocacy & Legal Defense Campaigns

Black clubwomen waged legal defense campaigns to protect black minors accused as delinquents or charged as criminals. On a national and local level, black women fought against the convict labor system and chain gangs—both of which targeted black children.[260] Black women's clubs also raised money for legal defense campaigns both for lawyers to defend children accused of delinquency and for prosecuting police officers accused of killing or harassing black men and boys.[261] They also provided legal counsel.[262] Ida B. Wells challenged the harassment of black youth in Chicago—including her own sons—by white gangs[263] and raised

257. *Id.*
258. *See id*.
259. *Id*.
260. Boris, *supra* note 2, at 42; Roberts, *supra* note 2, at 961.
261. *See, e.g.*, DAVIS, *supra* note 117, at 21, 27, 31 (providing first-hand accounts of various black club programs).
262. *See id*. at 29–31.
263. Duster, *supra* note 1, at xxiv–xxv.

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awareness for juveniles wrongly accused of crime and delinquency.[264] Black clubwomen throughout the country also fought the trend among juvenile courts to certify black youth to adult prison and thereby deprive these youth of alternative placements in reformatories.[265]

Black clubwomen also challenged the efforts of white female child savers to use the lynching stereotypes to lobby for rape shield laws to protect white female minors. For example, black clubwomen accused their white counterparts of using "race-baiting" to justify the rape shield and age-of-consent campaigns that were led by Chicagoan Frances Willard, national president of the Women's Christian Temperance Union ("WCTU") of America.[266] Willard worked with the CWC and its Women's Protective League to execute these two international campaigns on a local level.[267] Some black women opposed the campaign to raise the age of consent because they believed that rape shield laws would have discriminatory impact on young black men who disproportionately were accused of rape.[268] Ida B. Wells accused Willard of perpetuating the myth of the black male as a rapist and criminal threat to "[t]he safety of women, of childhood [and] of the home."[269] Thus, as a result of their distrust of the motives of Willard, black women did not support CWC's campaign to raise the age of consent.[270]

2. Fighting For Integration

Black clubwomen advocated for employment as juvenile court police officers and probation officers. They argued that black women, as "mothers in and to the community," should be allowed to serve as police officers to watch over black youth.[271] It was not until 1918 when

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264. *See id.* at 410–13.

265. *See, e.g.*, WELLS-BARNETT, *supra* note 1, at 410–13 (Wells's fight against having a seventeen-year-old sent to the Bridewell prison); Jacqueline Anne Rouse, *Out of the Shadow of Tuskegee: Margaret Murray Washington, Social Activism, and Race Vindication*, 81 J. NEGRO HIST. 31, 35 (1996) (discussing the prison reform work of Washington, NACW national officer, and the Alabama Federation of Colored Women's Clubs).

266. *See* Jane E. Larson, *"Even a Worm Will Turn at Last": Rape Reform in Late Twentieth Century America*, 9 YALE J.L. & HUM. 1, 50 (arguing that Willard was "race-baiting" to garner support among whites for the age of consent campaign); *see also* Leonard, *supra* note 125, at 89–92.

267. *See* Larson, *supra* note 266, at 2 n.1, 20 (generally describing Willard and the WCTU's efforts to raise the age of consent).

268. *See id.* at 50.

269. WELLS-BARNETT, *supra* note 3, at 151–52.

270. Larson, *supra* note 266, at 50.

271. Megan M. Everett, *Extra! Extra! Tracing the Chicago Defender's Campaign for African American Policewomen in the Early 20th Century*, EXPLORATIONS: AN UNDERGRADUATE RESEARCH JOURNAL 73, 75 (2009).

clubwoman Grace Wilson, a probation officer for the Negro Fellowship League and "house mother" for the Industrial School for Girls, became the first black policewoman in both Chicago and in the United States.[272] Her appointment was significant because white police officers were known to harass and arrest black youth in disproportionate numbers.[273]

Black clubwomen also fought for other employment opportunities within the juvenile court system, particularly as probation officers, that would ensure their roles as protectors of black children. Fannie Barrier Williams observed that, by 1914, for example, there were several black women "acting as probation officers" in the Cook County Juvenile Court.[274] Yet, several of these black women were, like their counterparts throughout the country, acting on a volunteer basis or with less pay than white probation officers.[275] Black women worked in juvenile court institutions without compensation even where the court paid white women in the same positions.

Clubwoman Irene McCoy Gaines (who later became a national president of NACW) became one of the first black women employed by the Cook County Juvenile Court.[276] The Juvenile Court hired Gaines as a stenographer in 1913, the position being "considered a good job for an African-American woman" at that time.[277] But when Gaines passed the civil service exam in 1917 to qualify as a paid juvenile court probation officer, she was not hired at that time in part because the Cook County juvenile court offered few opportunities for black women.[278] Within the court's first two decades, a few other black women would seek and gain positions in the juvenile court as a means of protecting black families. Edith Spurlock Sampson, one of first black women members of the Illinois Bar (and a leading black woman lawyer of her era), began her legal career as a juvenile court probation officer in 1935 and urged other black attorneys to do the same.[279] Sampson wrote that "[w]omen as lawyers are

272. WELLS-BARNETT, *supra* note 3, at 410–13.

273. *See id.*

274. Fannie Barrier Williams, *Colored Women of Chicago*, *reprinted in* THE NEW WOMAN OF COLOR: THE COLLECTED WRITINGS OF FANNIE BARRIER WILLIAMS, 1893–1918, 67 (Mary Jo Deegan, ed. 2002).

275. Sandra M. O'Donnell, *The Right to Work Is the Right to Live: The Social Work and Political and Civic Activism of Irene McCoy Gaines*, 75 THE SOC. SERV. 456, 461–62 (2001); Megan M. Everett, *Extra! Extra! Tracing the Chicago Defender's Campaign for African American Policewomen in the Early 20th Century*, EXPLORATIONS: AN UNDERGRADUATE RESEARCH JOURNAL 73, 75 (2009).

276. O'Donnell, *supra* note 275, at 456.

277. *Id.*

278. *Id.*

279. Edith Spurlock Sampson, *Legal Profession Followed by Nation's Best Known Socialites* (The Chicago Defender, May 4, 1935, at 25), *reprinted in* J. CLAY SMITH JR., REBELS IN LAW: VOICES IN

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needed in matters concerning the protection and welfare of women [and] children" in particular as probation officers and juvenile court judges.[280] Sampson noted that, black women had "not been especially active in the field of criminal law, yet practice of the criminal branch has great social significance . . . ."[281] Sampson and fellow attorney Sophia Boaz Pitts, who was admitted to practice in 1923, would become members of the staff of the Cook County Juvenile Court.[282] They were two of the few black women who were able to break through the many barriers that prevented black women from practicing law, especially in the areas of criminal law.[283]

Ida B. Wells and the other first black women probation officers in Cook County advocated for black juveniles. Wells labored for over a decade as a probation officer for the Boy's Court in order to protect black youth from racial injustice within the juvenile and criminal justice systems.[284] Wells used her influence as a probation officer for both adults and boys to challenge the harassment of black youth by civilians and white police officers.[285]

In one example, Wells was assigned as the probation officer of a seventeen-year-old homeless boy named George Thomas, who was repeatedly arrested by the same white police officer for vagrancy and beaten in police custody.[286] When Thomas's case came before the court, Wells advocated on his behalf and helped Thomas avoid a wrongful prison term.[287] Wells noted that he grew to become a respectable citizen.[288]

In another case, Wells used her probation officer badge to persuade a white female employer to return clothing to a black domestic that the employer had fired despite having declined to pay the domestic for five years.[289] Wells defiantly warned the employer that she was coming to her house in Wells's "official capacity" as a probation officer to demand the

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THE HISTORY OF BLACK WOMEN LAWYERS 16 (2001); Joan Cook, *Edith Sampson, 1st Black Woman Elected to Bench in Illinois, is Dead*, N.Y. TIMES, at D19 (Oct. 11, 1979).

280. Sampson, *supra* note 279, at 16–17.

281. *Id*. at 17.

282. *Id*. at 22.

283. Mack, *supra* note 80, at 38.

284. The Boy's Court was established in 1914 to hear cases involving young adults between seventeen and nineteen years old. WILLRICH, *supra* note 7, at 210.

285. *See, e.g.*, WELLS-BARNETT, *supra* note 3, at 409–14.

286. *Id.* at 412 (quoting the police officer's comment to the prosecutor, "This is the third time I have brought that 'nigger' in and this time we are going to send him to the Bridewell [prison]").

287. *Id.*

288. *Id*. at 413.

289. *Id.* at 410.

return of the clothing and the money owed the black domestic.[290] The white employer "felt very sure that matters could be adjusted without the necessity to report the matter to the courts, whereupon she paid the girl . . . and [Wells] gave her a receipt."[291] The white employer also "gave the girl her clothes, and we ended what was a very pleasant interview, all things considered."[292] Of the outcome, Wells recalled that "the poor [black] girl was dumbfounded because she hadn't dreamed it was possible for a colored woman to succeed in getting justice for her."[293] In another example, clubwoman Anna Elizabeth Hudlun voluntarily allowed children under the juvenile court's jurisdiction to stay at her prosperous home during weekends in order to play and be nurtured.[294]

NACW affiliates advocated for just adjudications of cases involving black youth. Elizabeth Lindsay Davis, for example, recalled first-hand that Juvenile Court Committees monitored the court's treatment of black children under the court's jurisdiction, investigated the conditions of detained black youth, and challenged discriminatory treatment.[295] These committees were successful in advocating for favorable outcomes in cases involving black children. For example, the Silver Leaf Club, founded in 1919, recorded that it had "done its major work in caring for the welfare of [j]uveniles, and in numerous instances ha[d] been able to secure leniency for delinquent youths, in one case placing a girl in the home of a Club member to prevent her being sent to an Industrial School."[296] Additionally, Wells and other women organized committees to raise funds for the legal defense of victims of police bias.[297]

3. Fighting for Justice in Juvenile Reformatories

Black women advocated that the juvenile court establish juvenile reformatories for black children because most reformatories in Chicago would not accept black minors. Black children, unlike their white counterparts, were left with long prison stays as the only alternative where

290. *Id.*
291. *Id.*
292. *Id.*
293. *Id.*
294. HALLIE QUINN BROWN, HOMESPUN HEROINES AND OTHER WOMEN OF DISTINCTION 141–43 (1926).
295. DAVIS, *supra* note 117, at 4 (recalling firsthand that "committees composed of [black] women [of the Illinois Federation] are found in the courts, looking after dependent and delinquent children, investigating criminal conditions and unjust discrimination").
296. *Id.* at 21.
297. *Id.* at 27.

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probation was denied. The shortage of black reformatories stemmed from the difficulty in securing funding from public or private institutions.[298] For example, as early as 1898, NACW affiliates in New York financed and built a state reformatory for black children after visiting local jails and observing that black children too often were sent to work on chain gangs "for the least offense" or "placed in prison cells with hardened criminals."[299] Thus, these women saw reformatories as efforts to "sav[e] the boys" and made the state reformatory the chief work of the New York State Federation of NACW.[300] Other clubs performed similar work.[301]

Black clubwomen fought for the admission of black children to juvenile court reformatories because these institutions could offer a less punitive alternative to prison.[302] In Chicago, many of the black clubs contributed financially to the Phyllis Wheatley Home, the Amanda Smith Home, the Louise Juvenile Home, and other black-run agencies serving children that the juvenile court deemed delinquent or dependent.[303] Black women's clubs were especially supportive of the Amanda Smith Home because its founder was an internationally renowned black evangelist who had travelled throughout the world in support of several causes.[304]

Elizabeth McDonald, a black woman who had served as a juvenile court probation officer in Chicago for ten years, founded the Louise Juvenile Home of Chicago, a juvenile court reformatory.[305] Drawing analogies between lynching and the injustices black children faced in the juvenile court, McDonald explained:

> Seeing that in the prisons the larger majority were colored according to population; knowing that we have always had prisons and dungeons, and people have been burned at the stake and have been hanged by the neck and nothing seemingly to have done any good in regards to reforming one that has fallen, experience in my

298. EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 55 (reproducing a report from black clubwomen in New York who testified that the state did not provide aid for black reformatories so black clubwomen funded these institutions).

299. *Id.* at 56–57; *see also* BROWN, *supra* note 294, at 228 (recalling how black boys were sent to prison or chain gangs for minor offenses).

300. EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 56–57.

301. *Id.* at 57–62.

302. In advocating for black children, for example, the Colored Women's League of Washington, D.C. lobbied Congress for black representation on the trustee boards of reform schools. Helen Appo Cook, *The Work of the Woman's League, Washington, D.C.*, *in* EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 79.

303. DAVIS, *supra* note 117, at 30; KNUPFER, *supra* note 57, at 81.

304. KNUPFER, *supra* note 57, at 79–80.

305. *See id.* at 80–81.

> rescue work has taught me that it would be easier to prevent crime than it is to reform hardened criminals. . . . So . . . we established the Louise Juvenile Home for dependent and neglected children in my own private home, in which we care for fifty-six children and two mothers . . . .[306]

Black women's clubs throughout Illinois gave financial and other support to the Louise Juvenile Home as well.[307]

There is evidence that several black clubwomen sought to implement rehabilitative, as opposed to punitive, policies in black reformatories. Fannie Barrier Williams made a national appeal for the establishment of black reformatories that would commit to mold black children into productive citizens.[308] She called on black leaders to implement supportive, cheerful, and nurturing environments.[309] Several black reformatories run by NACW members developed a national reputation as institutions that followed this protective approach.[310]

B. The Jezebel Myth

Black clubwomen also fought the entrenchment of the Jezebel myth in juvenile court jurisprudence. Black women came to represent the modern Jezebel who, like her Biblical counterpart, was a symbol of lust, sexual immorality, "innate wickedness" and even "disobedience to God."[311] Clubwomen in Chicago felt the sting as these stereotypes dominated the discourse about black women and crime.[312] Fannie Barrier Williams knew that "[s]lavery made the [black woman] the only woman in America for

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306. EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 80.

307. DAVIS, *supra* note 117, at 32.

308. Fannie Barrier Williams, *Need of Co-operation of Men and Women in Correctional Work*, 2 WOMAN'S ERA 3, 3–4 (1895).

309. *Id.*

310. *See* Washington, *supra* note 239, at 110–12 (discussing Mt. Meigs).

311. Lori A. Tribbett-Williams, *Saying Nothing, Talking Loud: Lil' Kim and Foxy Brown, Caricatures of African-American Womanhood*, 10 S. CAL. R. L. & WOMEN'S STUD. 167, 173–75 (discussing how the Jezebel stereotype began during slavery and in modern times is perpetuated in the lyrics and persona of some Black female rap artists.); *see* Dorothy E. Roberts, *Prison, Foster Care, and the Systematic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1492 (2012) [hereinafter Roberts, *Prison*] (The Jezebel stereotype does "not simply percolate in some disembodied white psyche. They are reinforced and recreated by foster care and prison, which leave the impression that black women are naturally prone to commit crimes and abuse their children."); Verna L. Williams, *The First (Black) Lady*, 86 DENV. U. L. REV. 833, 840 (2009) (In the present day . . . "[b]lack females are constructed as oversexed and overly fertile"); Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 J. GEN. & L. 1, 11–12 (1993).

312. *See, e.g.*, Welke, *supra* note 26, at 266–67 (discussing how the goal of protecting white womanhood, in theory and practice, impacted the law of travel accommodations on the railroads).

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whom virtue was not an ornament and a necessity."[313] This inheritance deprived black women of "an integral part of the general womanhood of American civilization."[314] Arguably, Williams perceived that this "terrible inheritance" deprived black women of a public perception of worthiness as citizens in a democratic republic. As Professor Joan Tarpley has argued, "[j]urisprudential expression has exploited the myth of 'jezebel,'" and has institutionalized her into legal jurisprudence of modern day welfare reform, interracial marriage, and other legal issues.[315]

The juvenile court movement provided another avenue through which the Jezebel myth was paraded to marginalize black female delinquents. Black clubwomen were determined to repudiate the Jezebel myth and use their own voice to shape an identity divorced from images of sexual depravity precisely because these issues were synonymous with crime and delinquency.

The influence of the eugenic movement upon juvenile court judges and administrators furthered and entrenched the notion of dark-skinned women and girls as Jezebels. The juvenile court's embrace of these race-based stereotypes about black womanhood and sexuality had disastrous consequences for black girls sent to reform institutions. At the State Industrial School for Girls at Geneva, black female residents and the white residents who befriended them endured the most atrocious emotional, physical, and sexual abuses.[316] Black girls were disproportionately represented at the school—twenty-five percent of the population of 400 inmates.[317] The superintendent sterilized black girls because, in the schools' view, they could never become good wives, good mothers, or run good homes.[318] Members of the West Chicago Woman's Club (a white

313. WILLIAMS, *The Colored Girl*, *in* THE NEW WOMAN OF COLOR, *supra* note 194, at 63, 69. *See* Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West*, 14 SIGNS 912, 912 (1989) ("'The links between black women and illicit sexuality consolidated during the antebellum years had powerful ideological consequences for the next hundred and fifty years.'"); Walker, *supra* note 175, at 402–03 (1998) (discussing how segregationists opposing *Brown* used "mythological stereotypes" about female sexual immorality to "resurrect the great gendered allegory of sexual racism: the cult of southern womanhood").

314. Fannie Barrier Williams, *The Club Movement among Colored Women of America* (1900), *reprinted in* HENRY LOUIS GATES, JR. & GENE ANDREW JARRETT, THE NEW NEGRO (2007).

315. Joan R. Tarpley, *Blackwomen, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1344–45 (1996) (explaining how the Jezebel myth has become the basis for legal jurisprudence affecting black women).

316. Anne Meis Knupfer, *"To Become Good, Self-Supporting Women": The State Industrial School for Girls at Geneva, Illinois, 1900–1935*, 9 HIST. OF SEXUALITY 420, 435–36 (2000) (discussing the treatment of African-American inmates at Geneva and the racism of the staff).

317. *Id.* at 422.

318. *Id*. at 425, 438. Black girls committed to Geneva were stereotyped as "jezebels" and Amigh, the superintendent, promoted eugenics to justify such racism. The staff viewed black girls as more

club) and The Golden Circle of King's Daughters & Sons (a black club) became aware of the abuse at Geneva through their monthly visits to the institution and protested the abuse.[319] From 1916 to 1918, Grace Wilson, a member of a black club, the Chicago Union Charity Club, became the first black woman in Chicago to pass the civil service exam.[320] She then received a civil service appointment as "house mother" at Geneva.[321] Nevertheless, the abuses at the school persisted for another decade.[322] Black women had limited ability to eradicate prejudice within juvenile justice institutions.

In light of their limited influence in achieving fairness with integrated institutions, black clubwomen also focused on preventing black girls from being labeled delinquent. As girls were considered delinquent primarily for "sexual immorality," this standard arguably made black girls especially vulnerable due to stereotypes about black sexuality. Defending their sexual honor required creating a delinquency prevention campaign to protect black girls from sexual promiscuity and exploitation. Of greatest concern to Fannie Williams was that, notwithstanding the delinquency prevention work of such agencies as CWC's Protective Agency for Girls, black females found "'no protection against the libelous attacks upon their . . . characters, and no chivalry generous enough to guarantee their safety against man's inhumanity to woman.'"[323]

In fact, black girls, particularly migrants from the South, were especially vulnerable to sexual coercion. Chicago employment agencies steered black girls into prostitution, often using trickery and false advertising to do so.[324] Upon arrival, their "luggage was confiscated" and they were forced to work as maids or prostitutes in brothels, and the law permitted the agencies to do so.[325] In response, the Phyllis Wheatley Club put all of its other activities on hold and opened the Phyllis Wheatley

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aggressive, sexual and lewd. Medical exams would confirm the staff's characterization of the black girls as "uncivilized," "sexually unrestrained," and "primitive people." It was a problem of "'race and color.'" *Id.*

319. In 1910, Judge Mary Bartelme, who had become the first female judge to serve on the juvenile court, "divert[ed] public attention" from the controversy and recommended a night watchman and urged other reforms. Black women also sought employment in state reformatories in part to watch over black girls. *Id.* at 435.

320. SCHECHTER, *supra* note 120, at 315 n.17.

321. *Id.*

322. Knupfer, *supra* note 316, at 428, 445.

323. MARLON B. ROSS, MANNING THE RACE: REFORMING BLACK MEN IN THE JIM CROW ERA 67 (2004).

324. WILLIAMS, *The Colored Girl*, *in* THE NEW WOMAN OF COLOR, *supra* note 194, at 63, 69.

325. *See* JONES, *supra* note 1, at 156 (discussing abusive labor trends in northern metropolitan areas).

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Home for Girls to provide boarding and social services to girls who had migrated from the South.[326] Black clubwomen were concerned that "'[m]any of these girls were going astray by being led unawares into disreputable homes, entertainment and employment because of lack of protection that strange girls of the other Races enjoy.'"[327] The services included employment referrals and educational resources to protect female migrants from sex trafficking.[328] Black women's clubs opened other female protective leagues to steer black girls from prostitution.[329]

C. "Delinquent Black Mother" Stereotypes

Challenging the myth that black children were delinquent because their mothers were degenerate was a major component of the black club agenda. Like the lynching and Jezebel stereotypes, the stereotyping of black mothers as immoral and incompetent historically has influenced the jurisprudence in a variety of ways, and the juvenile court offered no exception.[330] Clubwoman Fannie Barrier Williams knew first-hand that the degenerate mother myth was based in part on a false stereotype that black women often failed to raise moral children; in Williams' words, "colored women as mothers, as home-makers, as the center and source of the social life of the race have received little or no attention."[331] Black women employed several strategies to challenge the myth of the degenerate black mother, including (1) educating families about perceived links between poor parenting and delinquency; (2) creating reformatories for Black

326. EFFORTS FOR SOCIAL BETTERMENT, *supra* note 22, at 100–04 (reproducing the Report of the Phyllis Wheatley Home for Girls and documenting similar efforts throughout the nation).

327. JOANNE J. MEYEROWITZ, WOMEN ADRIFT: INDEPENDENT WAGE EARNERS IN CHICAGO, 1880–1930, at 54 (1988).

328. JONES, *supra* note 1, at 29.

329. Fannie Barrier Williams, *Colored Women of Chicago*, *in* NEW WOMAN OF COLOR, *supra* note 194, at 65 (discussing organized efforts to protect black girls from sexual immorality).

330. *See, e.g.*, Regina Austin, *Step on a Crack, Break Your Mother's Back: Poor Moms, Stereotypes of Authority, and Drug-Related Evictions From Public Housing*, 14 YALE J.L. & FEMINISM 273 (2002); Bernie D. Jones, *Single Motherhood by Choice, Libertarian Feminism, and the Uniform Parentage Act*, 12 TEX. J. WOM. & L. 419 (2003); Dorothy E. Roberts, *Prison, Foster Care, and the Systematic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1492 (2012) ("A popular mythology promoted over centuries portrays black women as unfit to bear or raise children."); Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 J. GEN. & L. 1 (1992); Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938 (1996); Williams, *supra* note 311, at 840 ("Black motherhood is abnormal and blameworthy for social problems such as juvenile dependency and poverty."). On law and motherhood generally, see Laura E. Oren, *Honor Thy Mother?: The Supreme Court's Jurisprudence of Motherhood*, 17 HASTINGS WOMEN'S L.J. 187 (2009).

331. Williams, *Colored Women of Chicago*, *in* THE NEW WOMAN OF COLOR, *supra* note 29, at 65 (discussing organized efforts to protect black girls from sexual immorality).

children in need of rehabilitation; and, (3) developing social settlements in order to combat the societal factors that put families at risk of delinquency.[332]

The assumption that black women fostered delinquency in their children was so entrenched that even Jane Addams, a staunch opponent of race discrimination and segregation, seemed to some extent to accept black stereotypes of working class black parenting. As discussed above, Jane Addams suggested that immigrant parents were more adept at preventing sexual immorality and delinquency among their daughters:

> One could easily illustrate this lack of inherited control by comparing the experiences of a group of colored girls with those of a group representing the daughters of Italian immigrants, or of any other South European peoples. The Italian girls[’] . . . mothers seldom give them permission to go to a party in the evening, and never without chaperonage. Their fathers consider it a point of honor that their daughters shall not be alone on the streets after dark. The daughter of the humblest Italian receives this care because the parents are but carrying out social traditions.[333]

Addams added that by contrast,

> A group of colored girls, on the other hand, are quite without this protection. If they yield more easily to the temptations of a city than any other girls, who shall say how far the lack of social restraint is responsible for their downfall?[334]

Jane Addams wrestled with the view that black daughters were vulnerable to sexual immorality because black mothers allegedly could not serve as “true women” and moral instructors.

Fannie Barrier Williams and Ida B. Wells refuted the claims that slavery had eviscerated cultural traditions and middle class values among black parents.[335] Black communities in Chicago and throughout the United

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332. *See* WILLIAMS, *The Need of Social Settlement Work for the City Negro*, *in* THE NEW WOMAN OF COLOR, *supra* note 194, at 116–32.

333. Jane Addams, *Social Control*, *reprinted in* THE CRISIS, Jan. 1911, at 22–23. *But see* Hicks, *supra* note 14, at 2077–78 n.265a, 2087 (providing an example of black working-class families’ anxieties about the moral behavior of their young women and determination to control such behavior).

334. Jane Addams, *Social Control*, *reprinted in* THE CRISIS, Jan. 1911. *But see* Hicks, *supra* note 14, at 2077–78 n.265a, 2087.

335. The assumption that blacks lacked cultural traditions to protect their daughters from sexual delinquency is further refuted by the fact that, during slavery, black freemen had developed strong families and were able not only to prevent dependency and delinquency among their own children but also to develop cultural, social, and benevolent organizations. *See* HERBERT B. GUTMAN, THE BLACK

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States had developed several social organizations including churches, fraternal organizations, and social service agencies, which as Fannie Barrier Williams, W.E.B. Du Bois, and others observed, were dedicated to building social bonds among youth and other community members.[336] Furthermore, the efforts of black women to organize delinquency prevention programs refute Addams's argument. Nevertheless, Addams's comment indicates that ignorance of these efforts on behalf of even well-meaning child savers perpetuated the myth that the absence of "social controls," community-based institutions and programs within black communities were a major cause of delinquency.

The struggles of black female probation officers also highlight the use of the myth of the degenerate black mother. Elizabeth McDonald, the first black probation officer, was not paid a salary (even though her white counterparts were paid) and was assigned to monitor black delinquent children only.[337] The policy was based on notions of the moral inferiority of blacks who were perceived as unfit to monitor and control white children. If the probation officer deviated from his or her racially segregated assignments, or if the public feared such, the court was staunchly criticized.[338]

The court came under attack, for example, after the Chicago Examiner ran an article claiming that a "coloured probation officer," Joanna Snowden, had "jurisdiction over White children."[339] Ms. Snowden then wrote to Julia Lanthrop, the Hull House settlement worker, to ask the latter to quell such "grievously wrong and unjust statements."[340] In the end, even Ida B. Wells confessed that she felt discouraged in her efforts as a probation officer, noting that "[a]lthough I had given ten years to the

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FAMILY IN SLAVERY AND FREEDOM, 1750–1925, at 144–84 (1976) (arguing that black families remained intact and developed social bonds through slavery and the decades following emancipation); Gerda Lerner, *Early Community Work of Black Club Women*, 59 J. NEGRO HIST. 159, 159 (1974) ("Contrary to widely held racist stereotypes, black communities have a continuous record of self-help, institution building and strong organization to which black women have made continuous contributions."); Scott, *supra* note 61, at 7–10 (discussing history of black women's efforts to organize and uplift the race during slavery); Stephanie J. Shaw, *Black Club Women and the Creation of the National Association of Colored Women*, 3 J. AM. WOM. HIST. 19, 19 (discussing the community consciousness and collective activity among blacks from the advent of American slavery to modern times).

336. WILLIAMS, *The Need of Social Settlement Work for the City Negro*, *in* THE NEW WOMAN OF COLOR, *supra* note 194, at 116–32.

337. KNUPFER, *supra* note 57, at 71–72.

338. *See* WILLIAMS, *The Need of Social Settlement Work for the City Negro*, *in* THE NEW WOMAN OF COLOR, *supra* note 194, at 116–32.

339. *Id.*

340. *Id*. at 277 n.70.

work, I had been unable to get the city, the church or the moral forces to help us administer the 'ounce of prevention' to keep Black boys from going wrong."[341]

Black clubwomen visited homes to impart middle class values of respectability as a delinquency prevention strategy. Black club leaders encouraged their members to keep clean homes in addition to continuing their longstanding role as workers outside of the home.[342] NACW chapters formed "mothers' meetings" to focus on improving family life, and to teach domestic science and manual training classes to black women of mostly lower social classes.[343] Mothers' meetings also allowed clubwomen to impart educational information and skills training in such areas as "home economics, gardening and sewing."[344] Clubwomen also imparted their brand of morality and character training—advocating against vice and for conservative values such as temperance and Christian fellowship.[345] In this way, the black clubwomen were like their white counterparts who, with the goal of preventing delinquency, also organized mothers' meetings and other programs to impart middle-class values and proper practices for raising children.[346]

Mothers' meetings provided black clubwomen with a national movement to engage black women and families in their brand of racial identity formation. For them, focusing on mothers and the home was not conservative, but radical. Black clubwomen felt it was progressive to tell black women—who had labored as nannies and wet nurses for white families under slavery and who continued to do so as paid domestics—that they were entitled and obligated to mother their own children.[347] To do so was to uplift their children from the threat of crime and delinquency.

The kindergarten movement was another major programmatic thrust directly tied to delinquency prevention.[348] The NACW's support for kindergartens reflected its repudiation of the argument advanced by some child savers, namely that employed mothers fostered delinquency because they were not at home controlling their children. Black clubwomen knew

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341. WELLS-BARNETT, *supra* note 3, at 413.

342. *See* Stavney, *supra* note 93, at 539.

343. *Id*. at 539–40.

344. Lerner, *supra* note 335, at 160.

345. *Id.* (describing how members of mothers' meetings served as missionaries, prompted temperance, and ran Sunday school).

346. *See* Boris, *supra* note 2, at 38–40, 44–45.

347. *See id*. at 46–47 (discussing schooling for children and teaching mothers about the necessity for upkeep in single-room homes).

348. For a discussion of this relationship, see Larry Cuban, *Why Some Reforms Last: The Case of the Kindergarten*, 100 AM. J. EDU. 166, 168 (1992).

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that the lower socio-economic status of the majority of black families, as well as the pervasive employment discrimination against black men, meant that black women could not meet this standard. As Fannie Barrier Williams argued, "the women who work with their hands in the humbler walks of life, as cooks, housecleaners, laundresses, caretakers, and domestics . . . . deserve great credit for their eager willingness to aid their husbands in helping to provide a living for themselves and their families."[349] Thus, Black clubwomen saw working black women not as delinquent mothers, but rather as "altogether prosperous and sufficient" due to their efforts in aiding their families' economic survival.[350]

Black women also supported kindergartens to prevent delinquency by providing black children with opportunities for positive and affirming psychological development.[351] Like their white counterparts, black clubwomen embraced the theories of Froebel and other scholars of the Progressive Era child-study movement, which advocated that kindergartens improve the social development and educational capacity of minors.[352] In the same year that the juvenile court was founded, NACW leaders explained this nexus between kindergartens, child saving, and crime prevention:

> The hope of the nation lies in the children. We talk of schools for reformation; of how to cure ills, why not how to prevent? It seems to us, we seek to reform those who have fallen, rather than prevent others from falling . . . for the whole effect of the Kindergarten system tends to prevent crime, and too great an estimate cannot be placed upon an instrumentality which saves the child from becoming a criminal.[353]

Advancing this philosophy, the Ida B. Wells Club in Chicago started the first black kindergarten in 1896.[354] Since 1900, clubs throughout the country embraced the kindergarten movement to combat delinquency by providing moral training and early intervention for children.[355]

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349. WILLIAMS, *Colored Women of Chicago*, *reprinted in* THE NEW WOMAN OF COLOR, *supra* note 194, at 68.

350. *Id.* at 67.

351. *See* Josephine Silone Yates, *Kindergartens and Mothers' Clubs as Related to the Work of the National Association of Colored Women*, COLORED AM. MAG., June 1905, at 304, 307.

352. *Id.*; Josephine S. Yates, *Education and Genetic Psychology*, 10 THE COLORED AMERICAN MAGAZINE 293, 293–94 (1906).

353. RECORDS, *supra* note 16, at Reel 23 (The National Association Notes, *Lifting as We Climb*, November 1899); TERRELL, *supra* note 2, at 190.

354. SCHECHTER, *supra* note 120, at 181.

355. *See, e.g.*, RECORDS, *supra* note 16, at Reel 23 (The National Association Notes, *Lifting as We*

D. The Myth of the Degenerate Black Neighborhood

Black clubwomen also fought the stereotype of the degenerate black neighborhood. This stereotype branded black communities as inherently degenerate and breeders of delinquent children. A particularly important example of local organized efforts to protect entire black neighborhoods was the work of the Chicago Women's Conference.[356] Fannie Barrier Williams played a leadership role in this group and served as its representative at NACW conferences.[357] The Conference formed a "Friendly Visiting Committee" whose tasks mirrored those of the probation officers and advocates who protected children from delinquency and vice.[358] The Conference's official report to the NACW indicated:

> The work of this entire Com. [sic] was to be done by dividing the portion of the city wherein they were to do special work, into districts, two members of the visiting com. [sic] to be assigned to each district. A record of all children of school age was to be kept; the names of the children to be taken who are seen going into saloons for beer for their parents and friends, and the homes of such children to be visited and an effort made to show to the parents the demoralizing influences to which they are endangering their children. The homes visited which showed degrees of poverty and distress making it impossible for them to send their children decently to church and to school went through the vigilance of this com. [sic] providing them with clothing and a watchful care and practical assistance given to them until the family could provide for relief.[359]

The Committee's work was aimed at controlling children's behavior by organizing its own "Investigating and Police" Committee.[360] Black reformers also attacked the neighborhood vices they believed were the true root causes of black delinquency.

Climb, February 1900, reproducing resolution made by the Federation of Southern Colored Women adopting kindergartens to combat delinquency).

356. RECORDS, *supra* note 16, at Reel 1.

357. RECORDS, *supra* note 16, at Reel 1 (Minutes of the National Convention of the National Association of Colored Women (Chicago, Illinois 1899)).

358. *Id.*

359. *Id.*

360. *Id.* (This Committee "made the young boys and girls in their special care endeavoring as far as possible to prevent the walking up and down the streets at night, a prey to the worst temptations and influences.").

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Lookout committees represented another approach black clubwomen used to police delinquent behavior in the black community. In addition to visiting homes and saloons, the lookout committee also prevented delinquency by working directly with schools to curb delinquent behavior there.[361] Black clubwomen indicated that their efforts were successful, as school principals reportedly called on them to assist "in the management of some disorderly girl or boy and thus if possible save them to society and his own further protection."[362] The Progressive Circle of Kings Daughters in Chicago also reported in 1899 that it had established a "Vigilant Band [that] has taken as their especial care little children."[363]

Williams, Wells, and other reformers started black social settlements as part of their strategy to prevent delinquency.[364] Some black social settlements had worked with Hull House workers to gain insight into how to develop delinquency prevention programs in black communities. Jane Addams argued that playgrounds and other recreational activities were a key factor in preventing delinquency and trained black women to lead settlements that served black women.[365]

Birdye Henritta Haynes, the first black graduate of the Chicago School of Civics and Philanthropy, was tutored by Hull House workers Breckinridge and Abbott before she took the helm of the Wendell Phillips Settlement in the black community of Chicago's West Side.[366] There, Haynes enrolled over 300 Black children in recreational, educational and employment skills classes.[367] Haynes further advocated for additional programs for youth age 14 to 21, including recreation activities, and for better housing and employment opportunities for black community residents.[368] Ida B. Wells started the Negro Fellowship League because, in

361. *Id.*

362. *Id.* (In August 1899, months after the opening of the juvenile court, this committee reported that it had saved "14 men, 47 women and 112 children" including "6 boys and 7 girls [who] have been rescued from prisons—where perhaps the discouragements and disgrace might have caused them to a lead a life of dishonesty and shame.").

363. RECORDS, *supra* note 16, at Reel 23 ("Report of the Progressive Circle of the Kings Daughters, Chicago, Ill., August 15, 1899, *in* The National Association Notes, *Lifting as We Climb*, November 1899.).

364. For further reading on Black social settlements, see ELIZABETH LASCH-QUINN, BLACK NEIGHBORS: RACE AND LIMITS OF REFORM IN THE AMERICAN SETTLEMENT HOUSE MOVEMENT 1890–1945; Iris Carlton-LaNey, *The Career of Birdye Henrietta Haynes, a Pioneer Settlement House Worker*, 1994 SOC. SERV. REV. 254, 255 (discussing the Wendell Phillips Settlement in Chicago as of 1914); JACQUELINE ANNE ROUSE, LUGENIA BURNS HOPE: BLACK SOUTHERN REFORMER (2004).

365. Carlton-LaNey, *supra* note 364, at 259–60.

366. *Id.* at 260–63.

367. *Id*. at 259.

368. *Id.* at 260–63.

her daughter's words, "She sought the kind of . . . help and cooperation from these Negroes that Jane Addams was able to secure from whites for Hull House."[369]

CONCLUSION

This Article is inspired by the recent call of legal historians to "unearth the forgotten stories of important women in politics, law, and society" and to use these stories to provide a "deeper understanding of what happened in the past to make a difference with policy today."[370] The contribution of black women's clubs to the juvenile court movement is a forgotten, but important story that sheds light into the past and present-day role of race in the juvenile court system. Black clubwomen were among the first black leaders to recognize how the first juvenile court operated as a vehicle for perpetuating race-based assumptions about crime and morality. Indeed, stereotypes about black youth and delinquency not only shaped juvenile court ideology in the *Plessy* era, but also framed the cultural opposition of the *Brown* decision (which overturned *Plessy*) half a century later.[371] Black women's clubs challenged the juvenile court's racial, gender- and class-based ideologies, and institutional policies. Black women organized nationally to challenge the negative images of black people that impacted juvenile justice jurisprudence.

Black women laid the groundwork for both scholarly and public policy debates on juvenile delinquency prevention for black children. They were among the first to recognize what legal scholars and advocates today know for sure: that "black incarceration functions like a . . . Jim Crow caste system."[372] Their concerns about racial discrimination in the juvenile and criminal justice systems still resonate today. Indeed, concerns about the mass incarceration of black people remain a major stain in the democratic fabric of American society and, consequentially, a major topic of scholarly debate.[373]

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369. WELLS-BARNETT, *supra* note 3, at xxv.

370. Tracy A. Thomas, *The New Face of Women's Legal History: Introduction to the Symposium*, 41 AKRON L. REV. 695, 697 (2008).

371. *See* Anders Walker, *Blackboard Jungle: Delinquency, Desegregation, and the Cultural Politics of Brown*, 110 COLUM. L. REV. 1911, 1911–14 (2010) (discussing the lost historical link between stereotypes about black delinquency and the fears about desegregating schools after the 1954 Supreme Court decision in *Brown v. Board of Education*).

372. Roberts, *Prison*, *supra* note 311, at 1479 (discussing the work of legal scholar Michelle Alexander).

373. For recent legal scholarship on the mass incarceration of black people in the modern era, see MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF

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NACW should be credited as one of the first organizations to formulate effective national strategies for addressing delinquency among minority youth. They were among the first advocates to address the disproportionate impact of the juvenile court's discrimination on black youth, a problem which persists today. Indeed, NACW's strategies for preventing delinquency are the same strategies that are currently advocated by scholars and policymakers. For example, Mary Church Terrell's argument about the nexus between afterschool programs and delinquency prevention remains the subject matter of modern policy debates assessed by legal scholars today.[374] Likewise, NACW's approach to preventing delinquency and rehabilitating minority youth is used by modern policy advocates.[375] Having begun to work together on juvenile justice issues, a core of black and white clubwomen continued this endeavor by building a next generation of national civil rights organizations, including the National Urban League and the NAACP.

Should NACW's response to juvenile delinquency serve as a model for a modern day community-based response to juvenile delinquency? Today's minority children need an alternative to the present day "lock 'em up" policies that move black children out of their communities to jail-like facilities where they receive no rehabilitative programs.[376] Instead, they need programs, similar to those developed by black club members that built self-esteem, formulated racial pride, and taught individual accountability. Where the juvenile court administers such programs, it should collaborate with other membership organizations. The call by early black clubwomen for the development of a community-based and community-led strategy resonates today. Ida B. Wells and her

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COLORBLINDNESS (2010); Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012); James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21 (2012) (analyzing Michelle Alexander's thesis); Joseph E. Kennedy, *The Jena Six, Mass Incarceration, and the Remoralization of Civil Rights*, 44 HARV. C.R.-C.L. L. REV. 477 (2009) ("Mass incarceration ultimately rests on the notion that African Americans need to be incarcerated in historically unprecedented numbers because of moral breakdown in their communities . . . ."); Roberts, *Prison*, *supra* note 311, at 1479.

374. *See* David R. Katner, *Delinquency and Daycare*, 4 HARV. L. & POL'Y REV. 49, 49 (2010) ("After-school care programs . . . spare children and their communities the expense, fear, and suffering which often accompanies delinquent misconduct . . . .")

375. *See* Theresa A. Hughes, *Juvenile Delinquent Rehabilitation: Placement of Juveniles Beyond Their Communities as a Detriment to Inner City Youths*, 36 NEW ENG. L. REV. 153, 156–61 (2001) (discussing how the modern day policy of locking up minority youth in facilities far away from their communities is ineffective and undermines the juvenile court's rehabilitative ideal).

376. *Id.* at 158.

contemporaries saw juvenile justice issues as central to their struggle for civil rights and dignity for black families. Their vision should resonate with advocates today.

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