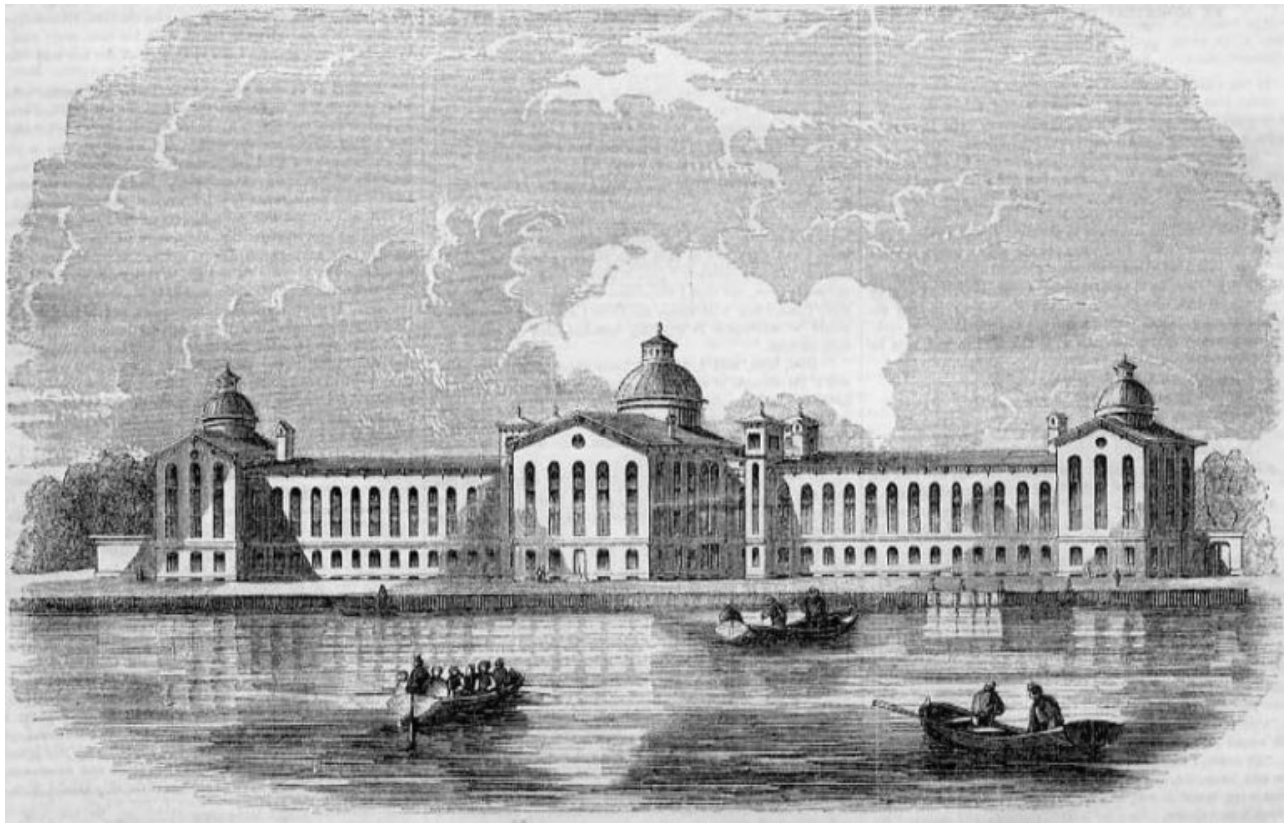


Incarcerating Children in the Age of Emancipation



By half past six on Sunday evening, March 17, 1872, Samuel Calvert, a veteran overseer at the New York House of Refuge on Randall's Island, was nearly finished locking the inmates in for the night. As he approached the last door on the hall, sixteen-year-old Justus Dunn, first admitted to the Refuge when he was thirteen, attacked Calvert with a knife and severed his femoral artery. The guard died a few hours later. Initial coverage of the attack, noting the high esteem in which Calvert's colleagues held him and Dunn's "dark record," suggested the matter would be swiftly and harshly resolved. Instead, the ensuing trial grew from an inquiry into Dunn's attack on Calvert into a far-reaching investigation of the institution itself. For House of Refuge inmates, murdering a guard became an unlikely opening for exposing the brutality of the nation's first juvenile reformatory.

Incorporated in 1824, New York's House of Refuge was at the leading edge of penal reforms that made age, specifically youth, a key consideration in shaping institutional practices toward convicts. The redemption of youthful offenders was the Refuge's nominal goal, and its 1854 move to state-of-the-art facilities on Randall's Island—boasting different wings to separate inmates by sex and degrees of "viciousness," abundant classrooms, and multiple manufacturing shops—seemed to promise future success. Yet improved infrastructure failed to forestall the violence that appeared to be an ineluctable feature of the

Refuge's operations. While conflict between officers and inmates was commonplace across the institution's history, 1872—punctuated by inmate revolts, work stoppages, and the Calvert murder—stood out for its volatility and the surprising public reaction to Justus Dunn's trial.

In recent years, violence in New York's juvenile correctional facilities has once again captured public attention. [Kalief Browder's](#) tragic 2015 suicide demonstrated how deadly the combination of violent abuse, solitary confinement, and delayed justice could be. State investigations of abuse on Riker's Island and reporting on harrowing individual stories of suffering suggest violence is endemic to juvenile corrections. If violence is a constant, much else separates the present state of corrections from that of 1872: the sheer scale, the racial composition of the incarcerated population, the possibility of escape. Yet, there are also commonalities. Then, as now, incarcerated youths' pursuit of redress hinged on convincing the public that there was a crisis. Evidence of suffering alone rarely sufficed. Further, the relationship of youth to justice remains unsettled. Americans continue to offer radically different answers to the question at the heart of juvenile justice: when does treating children differently from adults serve the interests of justice, and when does it undermine them? In 1872, a confluence of circumstances made it possible for a small group of white male inmates to challenge the terms of their incarceration, but even their modest success suggests the hazards of imagining children's rights outside of human rights.

Newspaper coverage of Dunn's murder trial revealed sharp disagreement about whether his age made him especially innocent or particularly depraved. According to the *New York Times*, Dunn's youth was a damning factor. The paper argued that this "utterly unredeemed ruffian" demonstrated the folly of sending sixteen- to twenty-year-olds anywhere but the penitentiary. Calling it a hard but true doctrine, the paper asserted that such boys were unreformable: they were old enough to have the ambition to commit grand crimes yet too young to be checked by an understanding of the risk of punishment. In contrast, the *New York Herald* referred to Dunn as a "lad," noting the "imploring way" he looked to the jury. Emphasizing Dunn's affective capacity and his youthful isolation from supportive family was essential to the *Herald's* effort to cast Dunn in a sympathetic light. This, in turn, served the paper's broader critique of the House of Refuge and its defense of the inmates' resistance. In short, the paper interpreted the inmates' "revolt" as an indictment of their treatment rather than a function of their depravity.

Defenders of Dunn and the other rebelling inmates struggled to strike a balance between appeals for sympathy grounded in the boys' youth and justifications of their violent resistance. The former helped make the inmates' suffering a crisis worthy of public attention while the latter threatened to undercut their claims to public protection. Citizens who appealed for special consideration by virtue of their youth usually emphasized their dependence and minimized their agency. In this instance, however, both the inmates and their advocates sought to make a more difficult case: that the young inmates' suffering was worthy of

public intervention even though they had not abnegated violent resistance.

Given that committing acts of violence usually undermined youthful offenders' ability to make successful appeals for relief, the question arises: why did Dunn and his fellow rebels receive a sympathetic hearing in *any* quarter? Part of the answer lies in who they were. As Gunja SenGupta argues, the kinds of resistance these boys engaged in, and the approbation it received, were contingent on their whiteness, maleness, and crucially, their ability to tap into the city's denominational conflicts that made the treatment of institutionalized children a volatile issue. Yet timing also mattered. In 1872, the radically democratic politics of Reconstruction, and the idea that they might have some relevance for children, was still alive.

On its face, Reconstruction seemed to offer little to citizens whose rights were restricted by incarceration or age. The Thirteenth Amendment sanctioned involuntary servitude as punishment for a crime, with dire consequences in the South and the North. Further, the redefinition of citizenship in the Civil Rights Act of 1866 and Fourteenth Amendment did not challenge the legality of age as a principle for restricting rights. Yet for many citizens, the political possibilities of Reconstruction exceeded the legislative legacies that have come to define it. Northern reformers, for example, took to the press and the stage to argue that the era of children's rights was at hand. In 1870, Celia Burleigh, soon to be the first woman ordained in the Unitarian Church, delivered a lecture on "The Rights of Children," covered with varying degrees of respect and ridicule across the nation. In the *Phrenological Journal and Science of Health*, Julia Carney argued that the nineteenth century would not deserve its reputation as "an age of progress and of right" if it failed to address children's rights. The animal rights crusader Henry Bergh, who attended Dunn's trial, claimed the "emancipation of the little children" was imminent, an inevitable sequel to the emancipation of slaves and animals. Despite approaching a sometimes radical vision of children's autonomy, reformers ultimately prioritized what historian Susan Pearson calls children's right to be dependent. As protection became the governing principle of the movement, it identified parents, and particularly poor parents, as the greatest threat facing children, not the state that had power to incarcerate them.

The rebelling inmates at the House of Refuge offered a different vision of children's rights, one centered on equality rather than rescue. They argued that equal access to protection under the law would go far toward improving their circumstances. This assertion, and the tactics these young inmates employed, had more in common with popular grassroots Reconstruction politics than the strategies of sentimental antebellum reform. In making their suffering the foundation of demands for redress, the inmates echoed the tactics of freedpeople in the South who made the act of testifying to the violence they endured the foundation of an expansive understanding of citizenship itself.

With the sanction of a sympathetic judge, boys from the House of Refuge transformed Dunn's murder trial into a platform for testifying to the abuse

they had suffered at the hands of guards. They described receiving lashes with multi-thonged whips and being hung up by their thumbs for failing to complete manufacturing tasks. They reported that Calvert, also known as "Sammy the Brainer," taunted them by referring to their beatings as "candy." Amplified by the court and the press, the boys used their testimony to challenge authorities' premise that the House of Refuge was fundamentally different from an adult prison. The principle that the state could best protect itself by reforming rather than punishing child criminals was supposed to organize life within the Refuge. If it was a reformatory in name only, however, denying its inmates due process became less defensible.

Shortly before Dunn's attack on Calvert, the New York Supreme Court's decision in *Huber v. the People* seemed to challenge the legitimacy of the Court of Special Sessions that committed many children to the House of Refuge through expedited trials. While the district attorney insisted the scope of the decision was narrow and should have no bearing on the commitments of most juvenile and adult convicts, House of Refuge inmates advocated an expansive interpretation by bringing suits asserting that the decision invalidated their convictions. At the same time, Dunn used his trial to condemn one of the defining features of juvenile reformatories: indefinite commitment. Reformers argued that indeterminate sentences were essential to incentivizing juveniles to reform rather than count down the days to their release. Reforming children, in this view, required shielding them from a definite sense of time in a way that made their incarceration even more isolating and disruptive than adult imprisonment. To many inmates and parents, the practice was simply unjust. During his trial Justus Dunn proclaimed his preference for confinement to the penitentiary, "for then you know when you are to get out." Inmates of the House of Refuge used the courts, bodily resistance, and the publicity around Dunn's murder trial to condemn their treatment and advance the idea that equal protection required eliminating unjust distinctions designed to "protect" the young, but which in actuality made their punishments far harsher.

While Justus Dunn's trial succeeded in sparking outrage, it did not upend the House of Refuge. Dunn certainly benefited from the expansive turn the trial took, as evidenced by his one-year sentence to Sing Sing, the shortest sentence possible for his conviction. In the months following the trial, New York courts proved sympathetic to parents' appeals to remove children from the facility through writs of habeas corpus based on improperly filed convictions. Yet the managers had tools to defend themselves. The State Commissioners of Public Charities undertook a special investigation of the institution in the wake of the trial, which seemed designed to exculpate rather than investigate. Institutional managers defended their use of the whip as essential "to quell and crush this spirit of insurrection" among older boys and dismissed the testimony of abuse that emerged during the Dunn trial as nothing but the lies of inveterate criminals. The institution, and its administrators, survived the crises of 1872.

Reconstruction, as a historical context that fostered Americans' sense of

radical political possibility, contributed to the opening seized by incarcerated youth at the House of Refuge to protest their treatment. Although the Dunn trial turned on the particularities of its New York City context, it was not the only instance in which inmates of northern reformatories found courts and a public receptive to their appeals to principles of equal protection. As David Tanenhaus has demonstrated, the Illinois Supreme Court moved toward recognizing children's rights to due process in 1870 when it found that confining children to a reform school absent a conviction was illegal. Notably, however, in Illinois and in New York it was only white, male prisoners housed in juvenile facilities who succeeded in capitalizing on this window of political opportunity.

These northern battles left the crisis of child incarceration emerging in the postwar South untouched. For the mostly black children who made up the steadily growing population of inmates housed in Virginia's penitentiary in the years following the Civil War, emancipation was not prelude to a new era of children's rights but to hard labor, violence, and family disruption. Children sent to Virginia's penitentiary enjoyed the equality Justus Dunn implied would best serve youth inmates: they received the same treatment as adults. A defined sentence meant little, however, if you did not survive it. Booker Jennings, for example, died at age sixteen, only two years into a ten-year sentence, while working on a canal that claimed the lives of many Virginia convicts. While Virginia lacked separate institutions for child convicts, the state's justice system was not entirely indifferent to age. Court records and clemency appeals reveal a widespread understanding that youth could be seen as a mitigating factor to reduce or even eliminate punishment. Yet application of this principle was at the discretion of judges, juries, and governors who created a shadow system of juvenile justice that offered some protection to white children while leaving black children exposed.

Thus, in Virginia, juvenile justice reform came not with Reconstruction, but with the reestablishment of white supremacy and the sharp curtailment of black political power. Beginning in 1890, the state's episodic reforms targeted only white boys accused of low-level crimes, who were diverted from city and county jails rather than the penitentiary. As in New York, the new juvenile reformatory was almost immediately dogged by reports of violence and overwork, as well as habeas corpus challenges by inmates and parents. The evidence of abuse white boys suffered in this new system made O.M. Steward wary of African American reformers' efforts to establish a reformatory for black children. In a letter to the state's leading black newspaper, the *Richmond Planet*, he argued that "if such things are reported of the reformatory of the white people of the state who are abundantly able to defend and take care of themselves and their children, what may we expect from the reformatory of the colored people . . .?" Steward suggested that a juvenile reformatory's promise to protect black children would prove hollow in the absence of meaningful rights for all African Americans.

In the postwar North, reformers and incarcerated children saw potential in the

political ferment of the 1870s to advocate principles of equal protection for children. Yet whiteness operated as an unnamed prerequisite of their appeals, not just as an unacknowledged requirement for standing as a deserving child, but as a marker of membership in a group whose rights deserved recognition. These experiments in appeals to children's rights demonstrate that legal mandates to protect children mean little in the absence of commitments to protect the rights of the communities of which they are members. In the twenty-first century, as in the nineteenth, children's rights mean nothing in the absence of human rights.

Further Reading

The trial of Justus Dunn was covered extensively in the New York press, much of which can be accessed through [Chronicling America: Historic American Newspapers](#), hosted by the Library of Congress. The records of the New York House of Refuge, including reports on the investigations that followed the 1872 trial, are housed at the New York State Archives and are available on microfilm.

For the fullest treatments of the history of the House of Refuge, and the unrest of 1872, see Gunja SenGupta, *From Slavery to Poverty: The Racial Origins of Welfare in New York, 1840-1918* (New York, 2009) and Robert S. Pickett, *House of Refuge: Origins of Juvenile Reform in New York State, 1815-1857* (Syracuse, N.Y., 1969). On the history of child protection, see Susan J. Pearson, *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago, 2011) and on children's rights see Barbara Bennett Woodhouse, *Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate* (Princeton, N.J., 2011).

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Catherine Jones is associate professor of history at the University of California, Santa Cruz. She is the author of *Intimate Reconstructions: Children in Postemancipation Virginia* (2015) and is currently working on a book about the history of child incarceration in the nineteenth century.