

The San Francisco Industrial School and the Origins of Juvenile Justice in California: A Glance at the Great Reformation

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Introduction

On April 15, 1858, the California Legislature passed the Industrial School Act. The Act created the first institution for neglected and delinquent youths on the West Coast.¹ Hailed as an enlightened response to the surging numbers of “idle and vicious” youths wandering the streets of San Francisco, the institution’s purpose was “the detention, management, reformation, education, and maintenance of such children as shall be committed or surrendered thereto”² Modeled on the earlier houses of refuge established in New York, Boston, and Philadelphia during the 1820’s, the San Francisco Industrial School was the inaugural and most significant nineteenth century event in the establishment of California’s juvenile justice system.³

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¹ Industrial School Act, ch. 209, 1858 Cal. Stat. 166.

² *Id.*

³ *See generally* ROBERT MENNEL, THORNS & THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES 1892-1940, at 32-77 (1973) (describing the development of juvenile institutions including the New York, Philadelphia, and Boston Houses of Refuge); ROBERT PICKETT, HOUSE OF REFUGE: ORIGINS OF JUVENILE REFORM IN N.Y. STATE 1815-1857, at 21-50 (1969) (describing the origins of the New York House of

The model established by the Industrial School's east coast predecessors was the penitentiary model.⁴ The penitentiary model sought to remove children from urban streets and confine them in an institution which would teach them proper work habits. Although promoted as sanctuaries from vice and indolence, institutions such as the San Francisco Industrial School quickly degenerated into corrupt and brutal warehouses for unwanted children. Periodic public outcry did little to alter the harsh realities of institutional life.⁵ Growing disillusionment with the bitter realities of institutional life led to other forms of state sanctioned intervention, such as the privately administered probation and foster care systems.⁶ Yet it was the San Francisco Industrial School that provided the foundation for California's present-day juvenile justice system.

This article examines the Industrial School's controversial thirty-three year history and the development of juvenile justice laws, policies, and practices in California. Part I examines the influence earlier institutions had on the Industrial School. Part II details the social conditions that prompted the institution's founding, the theories, processes, and precedents that led to the school's founding, and the problems that soon emerged after its opening. Part III reviews attempts to reform the school by abolishing its private charter and reestablishing it as a public institution. Other reforms discussed in this section include the removal of girls from the Industrial School and the establishment of the first girls only institution in California. Part IV looks at the legal challenges that confronted the school during its middle years and the

Refuge); Sanford Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970) (discussing the development of the reform schools in Illinois, New York and Boston).

⁴ See STEVEN L. SCHLOSSMAN, LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF PROGRESSIVE JUVENILE JUSTICE 1825-1920, at 9-17 (1977).

⁵ ALDEN D. MILLER & LLOYD E. OHLIN, DELINQUENCY AND COMMUNITY: CREATING OPPORTUNITIES AND CONTROLS 14 (1985).

⁶ See MENNEL, *supra* note 3, at 32-77; STEPHEN O'CONNOR, ORPHAN TRAINS: THE STORY OF CHARLES LORING BRACE AND THE CHILDREN HE SAVED AND FAILED 312-15 (2001).

juvenile jurisprudence that developed as a result. Alternative forms of child welfare intervention that evolved in response to the Industrial School are covered in Part V. Lastly, Part VI deals with the Industrial School's final years and its legacy.

I. The Industrial School's Historical Roots

Following the gold rush, San Francisco's leaders feared that the growing juvenile population would increase the city's already existing social problems.⁷ In searching for an effective way to deal with this potential problem, the city's leaders looked to the houses of refuge established in New York, Pennsylvania and Massachusetts as their guide for establishing the San Francisco Industrial School. Civic leaders of the east coast cities adopted the penitentiary model for their houses of refuge. This model sought to reform youths by isolating them in institutions. A house of refuge was to be the youths' escape from the corruption of the outside world. As such, refuges were portrayed to be as vital to a delinquent's education as the public school. The ideal of refuge and reform, however, was never achieved in these earlier models. Even so, the refuge system was the accepted model for reform when San Francisco looked to address its own growing juvenile population.

A. The Industrial School's Eastern Origins

The New York House of Refuge was the first institution in the United States established for neglected, vagrant, and delinquent youths.⁸ It was founded in 1825 by a group of prominent protestant civic and religious leaders who formed the Society for the Reformation of Juvenile Delinquency ("SRJD").⁹ The SRJD believed that the growing numbers of poor and destitute immigrant children who wandered city streets were destined for a life of poverty.

⁷ See *infra* Part II.A.

⁸ SCHLOSSMAN, *supra* note 4, at 22-32.

⁹ *Id.*

The SRJD viewed the peril of these children as a direct result of morally inferior parents and justified their rescue as a moral crusade to promote the public good.¹⁰ The earlier children could be rescued from their unfortunate circumstances, the better for all.¹¹ Additionally, because the SRJD's efforts were couched as benign intervention, no distinction was necessary between poverty and criminality, as they were inextricably linked.¹² Thus, both delinquent and impoverished children were able to receive the House of Refuge's intended benefits.

The SRJD believed that isolation from corrupting influences and penitence for wrongdoing was a necessary element of reformation.¹³ The penitentiary model, established in Pennsylvania thirty-six years earlier, was developed as a humane alternative to a system of criminal sanctions and corporal punishment.¹⁴ The penitentiary system also provided the benefits of isolation and penitence that the SRJD sought to access for the benefit of wayward youth. Consequently, the SRJD adopted the penitentiary system model for its new juvenile institution.¹⁵

When the SRJD published a "Report on the Penitentiary System in the United States" in 1822,¹⁶ confidence in the adult penitentiary system was waning.¹⁷ Instead of places of reformation and repentance, penitentiaries

¹⁰ *Id.*

¹¹ *Id.* The House of Refuge was envisioned as a place where boys "under a certain age, who become subject to the notice of our Police, either as vagrants, or houseless, or charged with petty crimes, may be received, judiciously classed according to their degrees of depravity or innocence, put to work at such employments as will tend to encourage industry and ingenuity." *Id.* at 9-17.

¹² Fox, *supra* note 3, at 1196-1201.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The SRJD was known as the Society for the Prevention of Pauperism at the time of this report. SOC'Y FOR THE PREVENTION OF PAUPERISM, REPORT ON THE PENITENTIARY SYSTEM IN THE UNITED STATES 61 (photo. reprint 1974) (1822); Fox, *supra* note 3, at 1195.

¹⁷ *Id.*

were places of brutality and corruption. In reaffirming their commitment to the penitentiary ideal, the report's authors urged that separate facilities be built for children.¹⁸ Historian Sanford Fox classified the SRJD's advocacy of the classical penitentiary model as a "retrenchment in correctional practices," where youth would be subject to a "course of discipline, severe and unchanging."¹⁹

In the penitentiary model's highly regimented structure, youths would learn proper work habits, through "constant employment in branches of industry."²⁰ The institution was also to offer instruction in the elementary branches of education and the careful inculcation of religious and moral principles.²¹ The opening of the New York House of Refuge in 1825 fulfilled this goal. Within two years, similar institutions were established in Boston and Philadelphia.²²

The east coast institutions were predominantly viewed as preventive.²³ As a result, most committed youths were non-delinquents with no criminal record.²⁴ Commitments were indeterminate and release was subject to the discretion of institutional managers. It was not uncommon for homeless and destitute youths to remain in the institutions for much of their adolescence.²⁵ When they were released, it was either to a parent or relative, or they were apprenticed to a local farmer, craftsman, or artisan.²⁶ The more hardened and recalcitrant boys were indentured to merchant ships and put to sea.²⁷

The first institutions also coupled the penitentiary model with the congregate system. In the congregate system youths lived in large fortress-like buildings with three to four

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² MENNEL, *supra* note 3, at 4.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 13-31; SCHLOSSMAN, *supra* note 4, at 18-32.

floors of individual cells or large dormitories.²⁸ The youths' daily routine was long and laborious with little variation. The primary emphasis was on inculcating work habits and subservience to authority through a strict code of discipline and punishment.²⁹ The creed of discipline was expressed in a resolution at a convention of refuge managers in the 1850's, where it was declared, "The first requisite from all inmates should be a strict obedience to the rules of the institution."³⁰ In the event inmates failed to adhere to institution rules, "severe punishment" including food deprivation and, in extreme cases, corporal punishment would be administered.³¹

B. Public Schools and *Parens Patriae*

To avoid unfavorable identification with the penitentiary system, refuges quickly sought to identify themselves as extensions of the public school.³² The emerging

²⁸ James Gillespie Lief, *A History of the Internal Organization of the State Reform School for Boys at Westborough, Mass.* (1988) (unpublished Ph.D. dissertation, Harvard University) (on file with author and the Harvard University Library). The period of the reform school was from 1846-1974. *Id.*

²⁹ See MENNEL, *supra* note 3, at 19; Superintendent's Report on Discipline in the Boston House of Refuge (1841), *reprinted in* CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY 1600-1865, at 688-89 (Robert H. Bremner ed., 1970) [hereinafter CHILDREN AND YOUTH IN AMERICA I]; Lief, *supra* note 28.

³⁰ DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM* 231 (1971).

³¹ *Id.* These institutional control methods over a predominately non-delinquent and involuntarily confined population also represented an extension of poor-law policy. *Id.* Traditional poor laws were based on the forced removal of poor and vagrant people from the streets to be housed in institutional settings. *Id.* Under prevailing poor laws, admission to almshouses for adults was voluntary. MICHAEL KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* 21-25 (1986). Almshouse living conditions were severe and most adult residents were free to leave. *Id.* Freedom to leave, however, was not a liberty extended to institutionalized non-delinquent children. Fox, *supra* note 3, at 1187-95.

³² To identify themselves as schools, the refuges gradually adopted the generic name reform school, and later, industrial schools. Although the congregate design remained dominant, institutions sought to incorporate longer hours of education to simulate the emerging public school curricula. SCHLOSSMAN, *supra* note 4, at 31-38.

public school movement during the mid 1800's accelerated the refuge movement. Many refuge advocates were also leaders in the public school movement and viewed free education as an essential element in socializing children and promoting respect for the established social order.³³ The public education movement advocated mandatory school attendance, which necessitated coercive state powers. This mandatory education was a further step towards extending state control over all children.³⁴

As an asserted extension of the public school, the refuges invoked *parens patriae* to confine children. Under the *parens patriae* doctrine, constitutional due process rights guaranteed to adult criminal defendants were considered unnecessary for children because the state was acting in the child's best interest.³⁵ Youths could be institutionalized on the recommendations of any individual in authority, including police, public officials, and parents.³⁶

The classification of refuges and reformatories as schools was confirmed by the Pennsylvania Supreme Court in *Ex parte Crouse*.³⁷ A fourteen-year-old girl, Mary Ann Crouse, had been sent to the Philadelphia House of Refuge by her mother for incorrigibility.³⁸ Her father attempted to have her released but was rebuffed by institutional managers. He then filed a writ of habeas corpus claiming that Mary Ann's confinement was unconstitutional because she had not committed a crime and was not given due process protections.³⁹

In a landmark holding, the court affirmed the institution's right to invoke *parens patriae* and assume the role

³³ *Id.* at 10 (discussing the public school movement).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Industrial School Act, ch. 209, § 10, 1858 Cal. Stat. 166, 169; SCHLOSSMAN, *supra* note 4, at 8-11; Fox, *supra* note 3, at 1192-93.

³⁷ *Ex parte Crouse*, 4 Whart. 9, *11 (Pa. 1838); JOHN R. SUTTON, STUBBORN CHILDREN: CONTROLLING DELINQUENCY IN THE UNITED STATES 1640-1981, at 68-73 (1988).

³⁸ *Id.*

³⁹ *Id.*

of parent when the natural parents were determined unequal to the task.⁴⁰ The court noted, “The infant has been snatched from a course of which must have ended in confirmed depravity; and, not only is the restraint of her person lawful, but it would be an act of extreme cruelty to release her from it.”⁴¹ Consequently, Mary Ann Crouse’s confinement was justified because it was for her reformation and not for her punishment.⁴²

Crouse was among the most significant cases in juvenile justice history. By refusing to consider the institution’s realities, the Pennsylvania Supreme Court established a legal doctrine that allowed courts to evaluate a statute based solely on its intent rather than its practice.⁴³ The early statutes all defined the involuntary indeterminate confinement of children as reformatory and in their best interests. *Crouse* simply reaffirmed this principle and became the foundation for the juvenile justice system that endured for the subsequent 130 years.⁴⁴

C. Developments in the 1840’s and 1850’s

The expectation of well-ordered institutions populated by grateful, docile, and malleable children never materialized. Instead, institutionalized youth frequently rebelled against unwanted confinement.⁴⁵ Such rebellions led to assaults, escapes, and riots.⁴⁶ In response, frustrated administrators often resorted to abusive and brutal measures to maintain order and control. During the 1830’s and 1840’s, a number of scandals and investigations led many to conclude that the congregate institutional model was a failure.⁴⁷ The growing skepticism of the system led to administrative and philosophical shifts. New innovations focused on the ideal

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Fox, *supra* note 3, at 1204-06.

⁴⁵ Lief, *supra* note 28, at 12.

⁴⁶ *Id.*

⁴⁷ SCHLOSSMAN, *supra* note 4, at 35.

that a family environment was best for nurturing children. This ideal eventuated in the development of the cottage and placing-out systems.⁴⁸

The cottage system sought to create a family-like atmosphere and was an institution-based alternative to the congregate system's impersonal structure.⁴⁹ Under the cottage system, institutions were divided into semi-autonomous living units where house parents presided over as many as thirty youths.⁵⁰ Each unit lived and worked together and only occasionally had contact with youths from other cottages.⁵¹ Youths were assigned to units with designated house parents based on each child's age and personal characteristics.⁵²

The placing-out system was initiated by the Children's Aid Society in New York beginning in 1853.⁵³ The system was based on the belief that America's family farms offered the best hope of rescuing the city's street youth from poverty and neglectful parents.⁵⁴ Children's Aid Society founder, Charles Loring Brace, enthusiastically embraced the placing-out system as a better approach to treating children: "If enough families can be found to serve as reformatory institutions, is it not the best and most practical and economical method of reforming these children?"⁵⁵ Under the placing-out system, children were rounded up, boarded on trains, and sent to Western states.⁵⁶ Along the way, the trains stopped at the various towns to allow townspeople to inspect the children and decide whether to accept them into their homes. Farm families were given preference. Society workers sought to sever the children's ties to their natural families by ensuring that the children were not able to

⁴⁸ MENNEL, *supra* note 3, at 32-39; O'CONNOR *supra* note 6, at xiv-xi; Fox *supra* note 3, at 1207-09.

⁴⁹ MENNEL, *supra* note 3, at 32-39; Fox *supra* note 3, at 1207-09.

⁵⁰ SCHLOSSMAN, *supra* note 4, at 37-42.

⁵¹ *Id.*

⁵² *Id.*

⁵³ MENNEL, *supra* note 3, at 32-39.

⁵⁴ *Id.*

⁵⁵ *Id.* at 39 (quoting Charles Loring Brace).

⁵⁶ *Id.*

maintain contact with parents or relatives.⁵⁷ During the sixty years following the creation of the placing-out system, over 50,000 children were sent west.⁵⁸

The cottage and placing-out systems expanded the range of methods employed by preventive agencies and institutions in controlling children. Yet, for economic reasons, the congregate system remained the nation's dominant approach to the treatment of poor, abandoned and delinquent children, despite the growing disillusionment with institutional treatment.

II. The San Francisco Industrial School

The San Francisco Industrial School was opened in 1859 with great optimism and fanfare. The opening of the Industrial School was followed a year later by the founding of another reformatory in Marysville. The state reformatory at Marysville, strongly opposed by Industrial School supporters, did not survive long. The Industrial School remained the only reform school in the state for delinquent and homeless youths. However, shortly after its opening, the school came under severe criticism for operating more like a prison than a school or reformatory. Visitors to the facility were shocked by the absence of adequate training facilities and the harsh daily regimen of manual labor to which young inmates were subjected. Investigations later revealed mismanagement and physical abuse of inmates. These scandals greatly damaged the school's reputation.

A. *Vice and Villainy in the Gold Rush City*

The discovery of gold at Sutters Mill, California, in 1847, initiated one of the greatest peacetime migrations in

⁵⁷ *Id.*

⁵⁸ *Id.*

history.⁵⁹ Thousands of fortune-seekers heading to the California gold fields streamed into San Francisco by sea and land. The city was transformed from a quiet hamlet to a large urban center.⁶⁰ The quest for easy riches combined with rapid urbanization created an atmosphere of unbridled avarice and corruption.⁶¹

In this unsavory environment, San Francisco quickly developed a reputation for lawlessness and disorder. Initially, most of the new arrivals were young males between ages eighteen and thirty-five who drifted back and forth from the gold fields.⁶² During their stay, these men would frequent the city's many saloons, gambling houses, and brothels, particularly along the notorious waterfront.⁶³ Later on, the new arrivals that settled in the city coalesced into roving street gangs who beat and robbed with impunity.⁶⁴ With a weak political system and few adequate stabilizing social structures, rampant crime seemed pervasive and unstoppable.⁶⁵

However, this lawlessness and disorder could not last. During the gold rush San Francisco became a financial and commercial center with a prosperous merchant class and an expanding middle class.⁶⁶ Fearing a threat to the city's prosperity, local business leaders organized the famous committees of vigilance in 1851 and 1856 to rid the city of its criminal population.⁶⁷ These committees carried out summary

⁵⁹ OSCAR LEWIS, *SAN FRANCISCO: MISSION TO METROPOLIS* 58-78 (1980); ROGER W. LOTCHIN, *SAN FRANCISCO 1846-1856: FROM HAMLET TO CITY* 3-30 (1974).

⁶⁰ *See* LEWIS, *supra* note 59, at 20-76.

⁶¹ *See id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ KEVIN J. MULLEN, *LET JUSTICE BE DONE: CRIME AND POLITICS IN EARLY SAN FRANCISCO*, at xvi (1989) (noting that between 1850 and 1856, San Francisco averaged 230 murders a year); *City Police: A Historical Sketch of the San Francisco Police Department*, *DAILY ALTA CAL.*, Jan. 10, 1881, at 1.

⁶⁶ LEWIS, *supra* note 59, at 20-76.

⁶⁷ *Id.*

arrests, banishments, and executions.⁶⁸ The first committee of vigilance was short lived, but the merchant organizers of the second committee used it as a vehicle to form the People's Party and gain control of the city's government.⁶⁹ The party succeeded in electing a secession of mayors drawn from the city's merchant class. The new officials' goals were the promotion of a favorable business climate, restricting government spending, and maintaining law and order.⁷⁰

The city's leaders also recognized the need to address the growing number of vagrant and destitute children.⁷¹ Civic leaders concluded that society was "to a great extent responsible to itself for the amount of evil they may do in the future, as well as morally responsible to the children themselves."⁷² Throughout the post gold rush era, the city's juvenile population grew rapidly.⁷³ A census taken in 1860 by the San Francisco Board of Education found 12,116 children under the age of fifteen.⁷⁴ By 1867 this number swelled to 34,710—a 300% increase.⁷⁵ The city's leaders feared that many of these children would inevitably threaten the social order by forming a permanent pauper class.⁷⁶

Seeking a solution to this potential menace, the city's leaders looked to the house of refuge model established in New York thirty years earlier. In arguing for a San Francisco house of refuge, Colonel J.B. Crockett,⁷⁷ described the plight

⁶⁸ *Id.*

⁶⁹ WILLIAM F. HEINTZ, *SAN FRANCISCO MAYORS: 1850-1880*, at 43-55 (1975).

⁷⁰ *Id.*

⁷¹ Untitled article, *DAILY DRAMATIC CHRON.* (San Francisco), Dec. 4, 1856, at 1.

⁷² *Id.*

⁷³ LEWIS, *supra* note 59, at 114.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ THOMAS J. BERNARD, *THE CYCLE OF JUVENILE JUSTICE* 60 (1992) (indicating that paupers were considered "undeserving poor people," whose destitute condition resulted from their corrupt and vice-ridden nature).

⁷⁷ Crockett delivered the opening address at the Industrial School's inauguration. *Inauguration of the Industrial School*, *DAILY BULL.* (San Francisco), May 17, 1859, at 1. His speech was an excellent explanation

of California immigrant children and the urgent need for California to follow the example of New York, Massachusetts, and Pennsylvania in establishing the Industrial School.⁷⁸ Crockett described the journey to California as long and arduous: “Many families arrive here sick and destitute, and in their struggle with poverty and disease, their children are utterly neglected and left to shift for themselves.”⁷⁹ As a result of these social conditions, destitute children “ramble the streets and fall into bad company and quickly become thieves and vagabonds.”⁸⁰ Crockett expressed the prevailing sentiment among institutional proponents that these children must be restrained from “evil associations” and “vicious indulgences” and “by considerate kindness, must be weaned from their ill practices.”⁸¹

B. The House of Refuge Movement Comes to California

In its early years, the houses of refuge were widely hailed as a great and enlightened reform by founders and visiting notables. During their trip through the United States in 1833, Alexis de Tocqueville, and Gustave de Beaumont noted that the houses of refuge offered a means for children who “have fallen into a state so bordering on crime, that they would become infallibly guilty were they to retain their liberty.”⁸² Others writing favorable comments included author Charles Dickens and social reformer Dorthea Dix.⁸³

of the theoretical foundations of the school. Prior to moving to San Francisco, Colonel Crockett championed the passage of a reform school while a member of the Missouri legislature in 1851. *Id.* Colonel Crockett recalled, “[I]n reviewing my past life, no one act of it affords me more alloyed satisfaction than that derived from the consciousness that I have contributed even in so humble a manner, to the founding of such an institution.” *Id.*

⁷⁸ BERNARD, *supra* note 76, at 60.

⁷⁹ *Inauguration of the Industrial School*, *supra* note 77, at 1.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² GUSTAVE DE BEAUMONT & ALEXIS DE TOCQUEVILLE, ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE 111 (1833).

⁸³ *Id.*

Following her visit, Dorthea Dix found the New York House of Refuge “a blessing to its inmates and to society.”⁸⁴

A surge in institution building during the 1830’s and 1840’s signified a pervasive acceptance of the refuge or reform school model. Refuge and reform school managers began to assemble at yearly national conferences. These gatherings helped spread knowledge of refuge and reform schools and led to the establishment of uniform standards and practices that further propelled institutional expansion.⁸⁵ The first children’s institutions on the west coast were established in 1851 and 1852 with the founding of the Protestant and Catholic orphanages.⁸⁶ Since orphanages did not provide for the care of impoverished or neglected children, houses of refuge emerged to fill the gap.

The first action towards establishing a San Francisco house of refuge was the designation of a “house of refuge” lot by the Board of Supervisors in the early 1850’s.⁸⁷ Since no funding was allocated, serious planning did not begin until 1855.⁸⁸ Efforts to initiate construction were immediately stalled in 1855 and 1856 following passage of two charters by city voters.⁸⁹ After the charters were passed, city tax receipts plummeted, forcing drastic cuts in public services.⁹⁰ With the city’s finances in dire straits, money for charitable endeavors was scarce. However, house of refuge plans were revived when the state legislature intervened and passed the Industrial School Act in 1858.⁹¹

⁸⁴ MENNEL, *supra* note 3, at 23 (quoting Dorthea Dix).

⁸⁵ *Id.* at 30; Proceedings of the First Convention of Managers and Superintendents of Houses of Refuge and Schools of Reform (1857) reprinted in CHILDREN AND YOUTH IN AMERICA I, *supra* note 29, at 16-46.

⁸⁶ *Inauguration of the Industrial School*, *supra* note 77, at 1.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ LOTCHIN, *supra* note 59, at 245.

⁹⁰ *Id.*

⁹¹ PICKETT, *supra* note 3, at 50-67; Negley K. Teeters, *The Early Days of the Philadelphia House of Refuge*, in 27 PENNSYLVANIA HISTORY 165-87 (1960). In the legislation, the term “house of refuge” was substituted in favor of industrial school. PICKETT, *supra* note 3, at 67-103; *The*

Under the act, San Francisco was to support the privately chartered institution with an initial construction allocation of \$20,000 and a subsequent monthly allocation of \$1,000 contingent upon \$10,000 in matching private donations.⁹² The legislation also designated a corporate governing structure that required a president and vice president elected by a twelve-member board of managers.⁹³ The act vested the Industrial School's Board of Managers with the power to assume "all the rights of parents or guardians to keep, control, educate, employ, indenture, or discharge" any child committed or surrendered to the school's superintendent.⁹⁴ The Board of Managers was required to manage the institution in an economical way and to maintain "strict discipline and comprised of private citizens elected by school sponsors."⁹⁵ School sponsors were individuals who contributed a minimum of \$10 a year or purchased a lifetime membership for \$100.⁹⁶ To ensure the participation of local officials, the act mandated that three members of the San Francisco Board of Supervisors serve as *ex officio* Industrial School Board members.⁹⁷

Industrial School of San Francisco, 4 HUTCHINGS CAL. MAG. 58-61 (1859).

⁹² As part of the effort to raise the necessary \$10,000 in donations, shipping merchant and former Vigilance Committee executive member, Frederick A Woodworth, raised over \$2,000. *The House of Refuge Meeting*, DAILY ALTA CAL., June 3, 1858, at 1. A month later, Woodworth was elected to the Industrial School's first Board of Managers where he later served as Vice President. *Id.*

⁹³ *Id.*

⁹⁴ Industrial School Act, ch. 209, § 6 1858 Cal. Stat. 166, 167-68.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Beginning with the privately chartered and publicly subsidized New York House of Refuge, a variety of administrative models evolved. MENNEL, *supra* note 3, at 49. These models included the privately-chartered and privately-funded organization, and the privately-chartered and publicly-supported organization. *Id.* Eventually, most states abandoned the privately-chartered institutional model in favor of the publicly-run and publicly-financed institution as a result of continuing problems of mismanagement and inadequate funding. *Id.*

The first election of the Industrial School's Board was held on June 7, 1858.⁹⁸ Following the election, construction began with the adoption of plans for a three-story building with thick walls and two massive wings.⁹⁹ Due to insufficient funds, only one wing was initially built. The wing consisted of three floors of sixteen "five feet six inches by seven feet six inches . . . little brick cells."¹⁰⁰ The cells on the second and third tier level opened onto a metal walkway protected by iron railings. Each cell was furnished with a metal bed that "folded snugly up against the wall in the day time."¹⁰¹ The tiers connected to a washroom and water closet (toilets) that were accessed by staircases at each end.¹⁰² The far end of the first floor wing contained a dining room and pantry while the end of the second floor wing contained a hospital ward.¹⁰³ The bottom floor of the corridor connecting the wing to the main building on opposite ends consisted of a classroom and workroom.¹⁰⁴ The central building's bottom floor contained the staff dining room, kitchen, and servants' rooms.¹⁰⁵ The second and third stories functioned as living quarters for the superintendent and other resident officers.¹⁰⁶

On May 18, 1859, political leaders, the Industrial School Board of Managers, clergy members, city officers, and

⁹⁸ *The House of Refuge Meeting*, *supra* note 92, at 1. Thomas H. Shelby, a prominent businessman and future mayor, was elected as the school's first president. *Id.* During the proceedings, controversy erupted when a delegate protested the absence of German, Irish, French, and Jewish names on the ballot and the dominance of "front street merchants." *Id.* The dominance of the protestant business elite in the formation of nineteenth century reform schools is widely acknowledged by historians. MENNEL, *supra* note 3, at 3-12; PICKETT, *supra* note 3, at 21-34. After a spirited debate the proceedings continued with the election of the remaining board members. MENNEL, *supra* note 3, at 3-12.

⁹⁹ SPECIFICATIONS FOR THE INDUSTRIAL SCHOOL BUILDING OF SAN FRANCISCO 1-15 (1858) (on file at the Bancroft Library, University of California at Berkeley).

¹⁰⁰ *The Industrial School of San Francisco*, *supra* note 91, at 5.

¹⁰¹ *Opening of the House of Refuge*, DAILY ALTA CAL., May 17, 1858, at 1.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

private citizens gathered at the Industrial School for an inaugural ceremony.¹⁰⁷ In his address, Colonel Crockett delivered a sweeping oratory on the importance of such institutions as “another important step on the road to onward progress” by providing means of controlling San Francisco’s “large class of feeble, helpless, thoughtless, guileless children” who without responsible parents will inevitably grow to be adult criminals.¹⁰⁸

C. The Early Years

In its first year, sixty boys and five girls were admitted to the school. Of this group nine were committed for petit larceny, two for vagrancy, and one for grand larceny.¹⁰⁹ The remaining youths were committed for the non-criminal offense of “leading an idle and dissolute life.”¹¹⁰ This all-encompassing designation meant the child was considered to be without guidance or direction because of parental neglect. As a result, nineteenth century houses of refuge lodged primarily non-delinquent youths.¹¹¹ The Industrial School’s commitments were indeterminate, allowing the acceptance of children or youth up to the age of eighteen.¹¹²

Commitments typically reflected California’s immigration patterns and included children from all over the country.¹¹³ During the periodic economic downturns that gripped San Francisco during the 1850’s and 1860’s when

¹⁰⁷ *Inauguration of the Industrial School*, *supra* note 77, at 1.

¹⁰⁸ *Id.*

¹⁰⁹ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 18 (1860) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1860].

¹¹⁰ *Id.*

¹¹¹ Fox, *supra* note 3, at 1187-91.

¹¹² It was not unusual for youth as old as nineteen or twenty to be housed in the facility if they were successful in convincing a judge that they were under eighteen. In some instances, former inmates were arrested after release and simply shipped back to the institution even though they had reached the age of majority. THE INDUSTRIAL SCHOOL INVESTIGATION 2-14 (1872) (testimony of J.C. Morrill) (on file at the Bancroft Library, University of California at Berkeley).

¹¹³ S.F. MUN. REPORTS, 1860, *supra* note 109, at 18.

anti-Chinese sentiment ran high, Chinese youth represented the largest institutional ethnic group.¹¹⁴ Unlike many other institutions, the Industrial School did not segregate by race.¹¹⁵ Throughout its history, Chinese and Black youth comprised a segment of the institution's population.¹¹⁶ Although there is no information regarding differential treatment, this policy led one member of the Board of Supervisors to comment to the superintendent that he was disturbed "to see these poor unfortunate children obliged to sit at the same table with Negroes and Chinamen!"¹¹⁷ The superintendent simply responded that all the children "had to be fed" and the policy remained unchanged.¹¹⁸

Of the sixty-five youth admitted into the school in 1859, the average age was twelve, with two children under the age of five and twenty-six over the age of fifteen.¹¹⁹ The majority of children were born outside California. New Yorkers accounted for thirteen and "foreigners" accounted for twenty-three of the youths.¹²⁰ Children under the age of five were typically committed for "leading an idle and dissolute life."¹²¹ Youths committed to the Industrial School were believed to be lacking in moral and spiritual virtue. Only hard work and rigorous instruction could reverse such characteristics. To promote proper habits, institution

¹¹⁴ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 187 (1865) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1865]; see RAND RICHARDS, HISTORIC SAN FRANCISCO 108-10 (1991).

¹¹⁵ MENNEL, *supra* note 3, at 17; Letter from Nathaniel C. Hart to Stephen Allen (Dec. 17, 1834) (on file with the New York Historical Society), reprinted in CHILDREN AND YOUTH IN AMERICA I, *supra* note 29, at 687.

¹¹⁶ J.L. Morrill, With A Glance at the Great Reformation and its Results 2 (1872) (unpublished manuscript, on file at the Bancroft Library, University of California at Berkeley).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ S.F. MUN. REPORTS, 1860, *supra* note 109, at 18.

¹²⁰ *Id.* at 78.

¹²¹ See S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT (1860-1870) [hereinafter S.F. MUN. REPORTS, 1860-1870] (all reports on file at the San Francisco Public Library).

managers endeavored to structure a regimen that would promote docility and industry.¹²²

Most nineteenth century youth reform schools were expected to achieve a level of self-sufficiency. As a result, they depended on their commitments to provide inmate labor. This reliance on inmate labor typically resulted in less emphasis and fewer resources devoted to the development of academic and vocational training—ostensibly a reform school’s primary purpose.¹²³ In the case of the Industrial School, young inmates in the early years spent most of the day assigned to the cultivation of the school’s 100 acres.¹²⁴ The sale of surplus goods was considered vital to offsetting the school’s maintenance costs.¹²⁵ To facilitate the shipping of Industrial School surplus produce to markets in San Jose and San Francisco, the school’s managers negotiated with the San Francisco-San Jose Railroad for a rail stop less than 100 yards from the school’s main entrance.¹²⁶ In exchange for the right of passage over Industrial School lands, the railroad granted “free conveyance of all supplies” and the free passage for all those “connected with the school’s governance” for twenty-five years.¹²⁷

Despite the plaudits expressed by proponents, early institution visitors were struck by the absence of educational and vocational facilities.¹²⁸ Although the industrial school’s

¹²² *The Industrial School*, DAILY ALTA CAL., Dec. 30, 1859, at 1 [hereinafter *The Industrial School*, Dec. 1859].

¹²³ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 265 (1875) (on file at the San Francisco Public Library); S.F. MUN. REPORTS, 1865, *supra* note 114, at 256; *Industrial School Matters*, DAILY ALTA CAL., Jan. 18, 1871, at 1 [hereinafter *Industrial School Matters*, Jan. 1871].

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ The school was first expected to cultivate sufficient produce to meet its own needs. *Id.*

¹²⁷ *Industrial School Anniversary Celebration*, DAILY ALTA CAL., May 17, 1863, at 1.

¹²⁸ Visitors were also repelled by the unbearable stench that emanated from the water closets at the end of each hall of the inmate’s living quarters. Due to poor design and inadequate ventilation, the scent of bodily waste permeated the cell blocks, causing one reporter to comment, “[I]n passing

purpose was to teach a marketable skill, no appropriate facilities for such training existed.¹²⁹ At the time of its opening, the school consisted of one schoolroom and one teacher with a barrel and plywood serving as a desk. To begin the school day, inmates carried benches and tables from the dining room to the schoolroom.¹³⁰ Instead of benefiting from well-furnished classrooms and workshops, boys toiled most of the day “digging down and wheeling away the earth from the bank in the rear of the building.”¹³¹

One commentator described the school’s daily routine as beginning at 5:30 a.m., when the youths were awakened.¹³² Youths were given breakfast and immediately afterwards were taken outside to work with a “pick and shovel in grading the hill in the back of the building.”¹³³ At noon, dinner was served, and from 1:30 p.m. to 2:30 p.m., they performed the same grueling work routine as in the morning.¹³⁴ From 3:00 p.m. until 5:30 p.m., the youths attended school.¹³⁵ Supper was served at 6:00 p.m., and at 7:00 p.m., they again went to school until 8:30 p.m.¹³⁶ Bedtime was at 9:00 p.m.¹³⁷ The rigors of the daily schedule and dearth of adequate facilities immediately exposed the school to severe criticism.¹³⁸

from the lower story to the school apartments above, the stench is absolutely intolerable.” *The Industrial School of San Francisco*, *supra* note 91, at 58-61.

¹²⁹ *Industrial School Anniversary Celebration*, *supra* note 127, at 1.

¹³⁰ *The Industrial School*, Dec. 1859, *supra* note 122, at 1.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *The Industrial School of San Francisco*, *supra* note 91, at 58-61.

¹³⁸ One visiting journalist expressed the following concerns:

How is it possible that, with such a routine of daily employment, they can possibly be improved in morals, and which is the great and laudable aim of the founders of the institution? There is no gymnasium; no workshop; no suitable play-ground, so that now they are all huddled together in the basement story, in front of their cells,

Industrial School activities were conducted along the congregate system. Under the congregate system, youths were marched to and from each activity and rules of conduct were strictly enforced. In the dining hall they ate in long rows with everyone facing in one direction.¹³⁹ To visitors, “the iron-barred windows, and the little brick cells with small iron gratings in the doors” created a prison-like environment.¹⁴⁰ This strict regimen and prison-like configuration led local observers to question the veracity of school proponent’s claims that the Industrial School would benefit youth.¹⁴¹

With only forty-eight individual cells at the time of its opening, the Industrial School quickly confronted a space shortage. When funding was secured in 1863, the School was expanded and refurbished with the addition of a second wing—increasing capacity by two thirds.¹⁴² To accommodate more inmates, the second wing adopted dormitory living units that slept up to 150, so the boys would “be in full view of the officers on duty.”¹⁴³ According to Industrial School Board President, J.P. Buckley, “The benefits arising from this change alone will be great—preventing secret practices and not inuring the inmates to a life in an iron-barred cell as at the

during the little time allowed them for leisure. Indeed they are made to feel by far too much that they are juvenile prisoners, rather than boys and girls who are placed there by a generous public, for their physical, mental, and moral improvement

Id.

¹³⁹ *Id.*

¹⁴⁰ One critic at the time concluded:

The antiquated and exploded idea of “ruling with a rod of iron” seems, unfortunately to have found its way into this institution; and all the angel arts and elevating tendencies of such agencies as taste, refinement, physical and mental amusement, mechanical conception and employment, and a thousand other progressive influences, with all their happy effects, are as, yet, excluded.

Id.

¹⁴¹ *Id.*

¹⁴² *Industrial School Anniversary Celebration, supra* note 127, at 1.

¹⁴³ *Id.*

present—the greater of whom have never committed a crime.”¹⁴⁴ The “objectionable cells” of the existing south wing were eliminated, save for a few, which were kept to confine “incorrigible” children.¹⁴⁵

As in the case of other houses of refuge and reformatories, the Industrial School’s managers were perplexed by the high rate of runaways.¹⁴⁶ Rather than compliantly accept their confinement, youths took every opportunity to escape and make their way back to the city. According to many accounts, escape for many Industrial School youths became a preoccupation.¹⁴⁷ Escapes were particularly common when the boys were laboring outside on the school grounds, where there was nothing to stop them from running. Frequent escapes created consternation within the administration, as they threatened to undermine the school’s reputation and legitimacy.¹⁴⁸ A loss of reputation was serious since it imperiled the school’s ability to generate private donations needed to supplement its government allocation.

The administration responded to these escapes by denying the inmates access to shoes and socks except when they were sick and requiring the wearing of “conspicuous

¹⁴⁴ *Id.*

¹⁴⁵ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT (1864) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1864]. Isolation has been a primary method for imposing disciplinary control since the earliest institutions. Superintendent’s Report on Discipline in the Boston House of Refuge, *supra* note 29, at 688-89. At the time there were still no facilities for workshops or provisions for adequate employment. To eliminate idle time and improve discipline, daily military drill was instituted in 1865. *Id.* Youths were equipped with wooden guns, which were manufactured at the Industrial School “at little cost.” *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ “One little rogue, not over 10 years of age, with the aid of a common hair comb alone, sawed off a brick from the side of his door; another with a similar implement had industriously dug deep grooves in the wall adjoining his cell.” *The Industrial School*, Dec. 1859, *supra* note 122, at 1.

¹⁴⁸ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 188-89 (1862) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1862].

garb” of gray cloth.¹⁴⁹ When these measures proved inadequate a twelve-foot fence was erected in 1860, “forming a square of four hundred feet about the building.”¹⁵⁰ With erection of the fence, the boys were allowed outside on more occasions for work details, although escapes continued to occur. Furthermore, when inmates escaped, school officials instituted the practice of distributing wanted posters statewide with full personal descriptions and resident addresses.¹⁵¹ Discipline was strict and was maintained through solitary confinement on bread and water, “with the time and quantity being gauged according to the culprit.”¹⁵² In other instances, flogging was used. Because such measures were standard practice, little concern was raised except when stories of excessive harshness and arbitrary enforcement began to filter out.

Plans for releasing youths followed a traditional refuge model and included release to an apprenticeship or relative.¹⁵³

¹⁴⁹ *Legislators at the Industrial School*, DAILY ALTA CAL., Dec. 29, 1867, at 1.

¹⁵⁰ *The Industrial School*, Dec. 1859, *supra* note 122, at 1.

¹⁵¹ The following are two examples:

\$20 Reward! Ran away from the Industrial School, John Smith. Age, 9 years; height, 4 feet 11/2 inches; complexion fair; eyes, blue; hair, light brown. General appearance: Large head; high forehead; firm, close-set lips; small scar over left eye; bright and intelligent looking. Father dead. Mother living at 49 Blank Street.

Escaped yesterday: Tom Brown; 16 years old; dark complexion; black hair; rather coarse features; low forehead; squints with one eye; chews tobacco, and swears terribly. Had on a white shirt, and a good suit of clothes. Father in State Prison; mother dead. General appearance, decidedly bad. Took with him a gold watch and chain. A liberal reward, and all expenses paid for his apprehension. Address, Industrial School Department.

Morrill, *supra* note 116, at 2.

¹⁵² *The Industrial School*, DAILY ALTA CAL., May 17, 1859, at 1 [hereinafter *Industrial School*, May 1859].

¹⁵³ S.F. MUN. REPORTS, 1860-1870, *supra* note 121. Even so, records show that Industrial School apprenticeships were rare and most youths were returned to their parent or guardian. *Id.*

The Industrial School also attempted to make use of the city's maritime industry by indenturing its older, more recalcitrant youth to sea captains. This was a common practice among reformatories throughout the nation.¹⁵⁴ Because the school could not segregate by age, this practice was viewed as a convenient means of dislodging the older youths and ensuring a younger more tractable population.¹⁵⁵

D. The Marysville Challenge

While San Francisco citizens were developing plans for a privately chartered Industrial School, plans for a state-administered reform school were being initiated in the state legislature.¹⁵⁶ The impetus for another reform school resulted from concern over the lack of institutional options for youths residing outside of San Francisco. This need was documented in a report by the California Prison Committee showing the presence of over 300 boys at San Quentin State Prison, some as young as age twelve and another 600 children confined in adult jails throughout the state.¹⁵⁷ In response, legislation was approved in 1859 to establish a new reform school about thirty miles north of Sacramento in the town of Marysville.¹⁵⁸

The Marysville Reform School opened on December 31, 1861.¹⁵⁹ During the first year thirty-three boys were committed to the facility.¹⁶⁰ However, because of its remote location and inadequate transportation, the school was

¹⁵⁴ CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY 1866-1932, at 39-41 (Robert H. Bremner ed., 1971) [hereinafter CHILDREN AND YOUTH IN AMERICA II]; MENNEL, *supra* note 3, at 1.

¹⁵⁵ CHILDREN AND YOUTH IN AMERICA II, *supra* note 154, at 39-41; MENNEL, *supra* note 3, at 1.

¹⁵⁶ California Youth Authority, The History of Juvenile Detention in California and the Origins of the California Youth Authority 1850-1980 (1981) (unpublished manuscript, on file with the California Youth Authority in Sacramento, CA).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

practically inaccessible in the winter months.¹⁶¹ Along with its locational difficulties, the school faced fierce opposition from San Francisco Industrial School supporters.¹⁶² At the time the Marysville facility was established, the San Francisco Industrial School was the subject of scrutiny due to unfavorable publicity about the institution's management and the small number of inmates.¹⁶³ The Industrial School's Board feared that the adverse notoriety, along with the emergence of a new institution, could jeopardize the school's existence.¹⁶⁴

In response, the Industrial School Board appointed a special committee in 1862 to pressure the state legislature to amend the Industrial School Act and allow commitments of youths from throughout California.¹⁶⁵ In a letter to the legislature the committee asserted "that one reform school is ample for the wants of California"¹⁶⁶ The committee advocated for the immediate transfer of all the Marysville Reform School residents to the San Francisco Industrial School.¹⁶⁷

Fortunately for Industrial School proponents, the Marysville Reform School never achieved viability. Its remote location and lack of adequate transportation resulted in a cost that exceeded \$230 a year per youth compared to the \$145 per capita yearly costs at the Industrial School.¹⁶⁸ Along with its excessive costs, the Marysville Reform School's support was further eroded by allegations of abusive

¹⁶¹ *Id.* In his report to the legislature, school Superintendent Gorham lamented, "This school would be constantly filled with boys requiring its discipline, were it not for a single obstacle, viz: the lack of provision for payment of officers of the law for transportation of boys to this place." *Id.*

¹⁶² S.F. MUN. REPORTS, 1862, *supra* note 148, at 187-97. Maintaining enrollment was a prerequisite for survival, and competition among nineteenth century reform schools and orphanages was often intense. MENNEL, *supra* note 3, at 58-59.

¹⁶³ S.F. MUN. REPORTS, 1860, *supra* note 109, at 193.

¹⁶⁴ *Id.* at 195.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

conditions and mismanagement.¹⁶⁹ Typical of congregate institutions, the facility held youths of various ages and development with no capacity to segregate. As a result, staff were unable to prevent older inmates from victimizing the younger inmates. An 1865 superintendent's report to the Board of Trustees noted "with very great concern the pernicious influences of the larger boys"¹⁷⁰ The frustration and the inability to maintain control inevitably resulted in staff abuses that soon became public—dealing the institution a fatal blow.¹⁷¹

Amid soaring costs and growing controversy, the Marysville Reform School was closed in 1868 by legislative decree.¹⁷² Marysville's remaining youths were transferred to the Industrial School.¹⁷³ Industrial School supporters saw the closure as a victory, and it was twenty years before another state-run reform school was established in California.¹⁷⁴ The next time, however, it was at the expense of the Industrial School.

E. Escapes, Scandals, and Brutality

With the closing of the Marysville Reform School, the Industrial School became the state's only institution for destitute and delinquent children. However, the school was soon swirled in controversy as allegations of staff brutality began to spread. Two grand jury investigations looked into these allegations during the late 1860's.¹⁷⁵ Publicity from these investigations undermined the school's reputation as a place of reform.

The allegations leading to the 1868 grand jury investigation accused Superintendent Joseph Wood, head teacher Captain Joseph C. Morrill, and other school staff of

¹⁶⁹ Untitled article, MARYSVILLE DAILY APPEAL, Nov. 22, 1867, at 3.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ California Youth Authority, *supra* note 156, at 13.

¹⁷⁴ *Id.*; S.F. MUN. REPORTS, 1862, *supra* note 148, at 193-98.

¹⁷⁵ *Reform Schools—The Industrial School of this City—Faults of Discipline*, DAILY BULL., July 14, 1869, at 1.

“barbarous” treatment of inmates.¹⁷⁶ Witnesses charged that in some instances the treatment was so severe that youths were driven to suicide.¹⁷⁷ A grand jury investigation documented over fourteen cases where youths were subjected to close confinement on bread and water or severe beatings and floggings.¹⁷⁸ In some cases, youths were subjected to over 100 lashes.¹⁷⁹ In one instance, a boy¹⁸⁰ was flogged so badly that “shreds of his shirt stuck to the wounds on his back, and the shirt glued to the body by the blood.”¹⁸¹ In another instance, a boy was beaten so severely that he became depressed and committed suicide a few days later.¹⁸²

During the 1868 investigation, a delegation conducting an inspection of the isolation cells discovered five boys, whose ages ranged from fifteen to nineteen, “shut up in close, dark, damp cells, with nothing to sleep on but the asphaltum floor.”¹⁸³ The cell doors were covered to prevent any light from penetrating and inmates were maintained on a diet of bread and water.¹⁸⁴ When one of the cell doors was opened for the grand jury inspectors, a “boy was brought out a living skeleton, his face was blanched, he reeled, and blinked his eyes like a bat in the sunshine.”¹⁸⁵ Though the boy had been locked in the cell for two weeks, one commentator noted “that *a week’s* confinement in that hole of utter darkness and breathing stench would make an idiot of an adult.”¹⁸⁶

It was not unusual for inmates to rebel against such treatment by yelling, pounding, and destroying furniture. Usually, this had the effect of worsening their treatment and

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ The boy was Benjamin Napthaly. *Id.* See *infra* note 201 and accompanying text.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* (emphasis added).

extending their periods of solitary confinement.¹⁸⁷ In some instances, youths who continued to rebel were “bucked and gagged.”¹⁸⁸ Gagging involved forcing a “stout, short stick” to the back of the youth’s throat that was “held in place by cords tied around the neck.”¹⁸⁹ Then the youth was bucked with a “stout stick” placed over the arms and under the knees with hands manacled securely. A youth “bucked and gagged” had to sit doubled up or rolled over on his side. According to accounts, “In either position, the pain after a short time is almost indescribable.”¹⁹⁰ Often youths were left in this position for a night.

In addition to charges of brutality, Colonel Wood was also implicated in the sexual abuse of girl inmates and the embezzlement of school funds.¹⁹¹ During the investigation, girls in the institution reported that Colonel Wood would let them do anything as long as they did not tell “certain things.”¹⁹² These allegations led to calls for the girls’ immediate separation from the male-run institution.¹⁹³ Following the investigation and public outcry, Colonel Woods was forced to resign and immediately left the city. Although Captain Morrill was temporarily elevated to the superintendent’s job, he, too, was dismissed within a few months.¹⁹⁴ As a result of the scandals, it was said that a hundred men from Sacramento were ready to come to San

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ EDWARD BOSQUI, MEMOIRS OF EDWARD BOSQUI 108 (1952); *Tenth Anniversary of the Industrial School*, DAILY ALTA CAL., May 18, 1869, at 1. It was common for girls to be subjected to sexual exploitation by institution staff during this era. O’CONNOR, *supra* note 6, at 126-30. In the rare instances when such scandals were made public, they were typically only obliquely referenced without details. *Id.* In instances where the exploitation involved allegations against “respectable” community members, efforts were made to blame the incident on the “sluttiness” of young female victims. *Id.*

¹⁹⁴ *Tenth Anniversary of the Industrial School*, *supra* note 193, at 1.

Francisco, tear down the Industrial School buildings and hang the superintendent.¹⁹⁵

In 1872, Captain Morrill wrote a response to the public condemnation of him and the school insisting that the problems were the result of external forces that were beyond school management's control.¹⁹⁶ In his testimonial, Captain Morrill asserted that the institution was not capable of fulfilling its role as a place of reformation.¹⁹⁷ Due to the inability to segregate according to age, many of the younger, less sophisticated inmates learned their first lessons in crime within the institution.¹⁹⁸ Morrill asserted that strict discipline was necessary to protect the younger boys and ensure the orderly running of the institution.¹⁹⁹ He attributed the public condemnation of his actions to publicity-seeking politicians and sensation-driven newspapers.²⁰⁰ One former inmate, Benjamin Naphthaly, who became a reporter with the *San Francisco Chronicle*, was singled out by Morrill and his defenders for exploiting the situation for personal gain.²⁰¹

The public humiliations to which he was subjected embittered Morrill long after his tenure. Believing he had administered the school responsibly, he felt unjustly condemned. He claimed many of the wrongs for which he was accused were actually committed by former superintendents and that he was the victim of unfair media attack:

The unthinking public were made to believe that I was accountable, in some way or other, for every fault charged against the institution. . . [Old wrongs] were rehashed and served up .

¹⁹⁵ Morrill, *supra* note 116, at 2.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* It was not unusual for children as young as two years old to be housed alongside adults over the age of eighteen sentenced by judges who viewed the Industrial School as a preferred alternative to the adult penitentiary. *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*; BOSQUI, *supra* note 193, at 109-10.

. . . as proofs positive that I was a heartless monster, a sort of ghoul, whose greatest delight was in the writhings and tortures of unfortunate and helpless children! . . . I . . . who knew no higher happiness than childhood's unbought love and confidence—I accused of cruelty to children!²⁰²

The publicity that surrounded these investigations permanently damaged the school's reputation and further undermined its financial stability.

III. Reorganization And Reform

In the 1870's efforts were made to reorganize the Industrial School to restore public confidence. The school's Board took great cares to select a new superintendent. During this time, the city also recognized the need for a separate girls facility. This led to the creation of the Magdalan Asylum—the first institution for wayward and delinquent girls on the West Coast. Despite the attempts at reform, the school continued to suffer from poor management, inadequate funding and media scrutiny. In an attempt to save it from financial collapse, the Industrial School's private charter was abolished and responsibility for managing the institution was transferred to the city.

A. Financial Trouble and Reorganization

Following the revelations of abuse and mismanagement, the School's Board sought to revitalize the School's reputation by seeking a superintendent with an impeccable record. With Captain Joseph C. Morrill's dismissal, John C. Pelton was appointed superintendent with the task of salvaging the school and restoring its flagging reputation.²⁰³ Pelton, a member of the Industrial School

²⁰² Morrill, *supra* note 116, at 7-8.

²⁰³ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 373 (1870) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1870].

Board, was considered the father of California's public school system.²⁰⁴ Pelton addressed the school's issue of brutality by inaugurating a system of "kindness" that was intended "to appeal to the better feelings of the boys."²⁰⁵ Prior to Pelton's administration, Catholic religious instruction was not welcomed at the Industrial School. After his appointment religious instruction was opened to Catholic and all Protestant denominations.²⁰⁶

When Pelton assumed the superintendent's position, the institution's finances were in disarray. Unfortunately, in Pelton's zeal to improve the school's institutional conditions, he proved a poor financial manager by substantially worsening the school's debt.²⁰⁷ In 1869, the school was approximately \$20,000 in debt and yearly costs were rapidly rising. Initially, when confronted by a hostile press, Pelton claimed that the rising costs were due to increased enrollments. But it was soon revealed that the institution's population had actually declined.²⁰⁸ Even so, the cost of food and clothing increased significantly between 1869 and 1870.²⁰⁹

Local newspapers noted that the school's yearly expenses were almost twice as much as that of the local

²⁰⁴ *Sketch of the Origin and Early Progress of the Free School System in California*, 4 HUTCHENS CAL. MAG. 29 (1859) [hereinafter *Early Progress*]. According to historians it was common for public school officials to serve on reform school boards in the nineteenth century. SCHLOSSMAN, *supra* note 4, at 10.

²⁰⁵ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 373 (1870) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1870].

²⁰⁶ *Id.*

²⁰⁷ *Industrial School Matters*, Jan. 1871, *supra* note 123, at 1.

²⁰⁸ *Id.*

²⁰⁹

	1869	1870
Groceries and Provisions	\$ 8,570.96	\$ 10,007.85
Clothing	\$ 1,559.03	\$ 5,815.45
Furniture	\$ 2,267.79	\$ 2,460.91
Salaries	\$ 12,941.17	\$ 15,003.66
Miscellaneous	\$ 2,867.03	\$ 5,065.53
Total	\$ 28,205.98	\$ 38,353.40

The Industrial School, DAILY ALTA CAL., Dec. 12, 1870 at 1.

orphan asylums.²¹⁰ Superintendent Pelton responded by comparing the institution's cost to local colleges, but he was vilified for making such a "preposterous comparison."²¹¹ As a result of these revelations, the school's budget was severely restricted by the Board with only necessary purchases allowed.²¹² No funds were available for building maintenance or expansion, and Pelton's efforts to improve instructional facilities ceased.²¹³

B. Abolishment of the Private Charter

Dwindling public support from scandals and financial mismanagement permanently crippled the school's viability as a privately chartered public charity. In 1874, Pelton was replaced by David C. Woods.²¹⁴ By this time a change of administration was insufficient to reverse the school's fortunes. The School's Board was embroiled in internecine squabbles, and there was no means for meeting the school's mounting debt.²¹⁵ The situation forced the Board to conclude that the school's "debt and future support must be assumed as a public burden, or else it will collapse of its own weight."²¹⁶ After fifteen years as a privately chartered institution, it was now clear that the Industrial School could no longer survive as a private entity.

While unanimity existed on the need to dissolve the private charter, a debate persisted on whether to transfer responsibility for the school's administration to the state or the city. Since San Francisco was considered the "grand rendezvous for vagabonds from every county," some officials feared that turning it over to the state would absolve the city of the school's debt and force the state to assume full financial

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *The Industrial School*, DAILY ALTA CAL., Feb. 20, 1871 at 1.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

responsibility.²¹⁷ Arguments favoring local control centered on the value of the school's prized property and the likelihood that the city would provide better management.²¹⁸ Another suggestion was for a joint state-county administered institution, with the city appointing two-thirds of the managing board.²¹⁹ Proponents of joint management believed that allowing the state to appoint one-third of the board would ensure continued financial support from the state.²²⁰

Ultimately, the argument for local control prevailed. In February 1872, the Industrial School's Board passed a resolution dissolving "the present system of management, and for the surrender of the entire institution to the Board of Supervisors as representing the City and County of San Francisco."²²¹ With the resolution's passage, management of the Industrial School was transferred to the city in April 1872, and California's experiment in privately chartered reform schools ended.²²²

The Industrial School's transfer to the city improved its financial base and produced a momentary degree of optimism. Needed repairs to the building structure were initiated and additional farm supplies and livestock were purchased.²²³ Later, an education department was created to restructure and provide more emphasis on academics.²²⁴ Despite these changes, the school continued to labor under limited resources, poor management, and public distrust.

C. The Magdalan Asylum and the Treatment of Girls

As part of the Industrial School's reforms, girls committed to the school were moved to a separate facility.

²¹⁷ *The Industrial School: The Proposed Change in its System of Management*, DAILY ALTA CAL., Feb. 12, 1872, at 1.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 408 (1873) (on file at the San Francisco Public Library).

²²³ *Id.*

²²⁴ *Id.*

The care and treatment of abandoned, abused, and delinquent girls in the nineteenth century reflected the prevailing societal ambivalence towards females in general. Although they were the products of the same desperate and destitute conditions as boys, girls were usually little more than an afterthought among institution managers. Initially, girls and boys were housed in separate units of the same institutions.²²⁵ However, when commingling proved unworkable due to inadequate facilities and sexual exploitation, separate institutions were developed.²²⁶

Reform school training in the nineteenth century was even less accessible for girls than for boys.²²⁷ This reflected the widespread belief that females were not physically or intellectually suited for jobs in the mainstream economy.²²⁸ As a result, most reform school girls spent their days assigned to domestic chores such as laundry, house cleaning, sewing, and meal preparation.²²⁹ These tasks, especially laundering and sewing, were used to generate income for the institution.²³⁰

When the Industrial School opened, few special provisions for girls were considered. Girls were housed in cells on one of the institution's three tiers.²³¹ While boys were primarily engaged in manual labor, girls were assigned "to the domestic duties and arrangements."²³² Following the scandals of 1868, immediate efforts were made by the Industrial School's Board to remove the girls from the institution. According to Board member Edward Bosqui, "at the first meeting of the board of managers we unanimously determined to remove the girls from under the same roof with the boys, and reported necessity of doing so to save all those concerned

²²⁵ BOSQUI, *supra* note 193, at 108.

²²⁶ *Id.*

²²⁷ MEDA CHESNEY-LIND & RANDALL G. SHELDEN, GIRLS, DELINQUENCY, AND JUVENILE JUSTICE 125-38 (1998).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ S.F. MUN. REPORTS, 1870, *supra* note 205, at 373.

²³² *Id.*

from the current scandal and reproach incident to such a system.”²³³ With this determination, the San Francisco Board of Supervisors passed legislation authorizing the Industrial School management to contract with the Sisters of Mercy to house the Industrial School girls in the Magdalan Asylum.²³⁴ Although the girls remained the responsibility of the Industrial School superintendent, the Sisters of Mercy agreed to house, clothe, feed, and train the girls for \$15 a month.²³⁵

With the signing of the contract, sixty-three Industrial School girls were immediately transferred to the Asylum.²³⁶ The Industrial School girls represented a unique challenge to the sisters, since they were involuntary court commitments “under terms of detention.”²³⁷ To accommodate these “refractory [girls] . . . most of whom were more sinned against by neglect and bad environment than sinners themselves,” a

²³³ BOSQUI, *supra* note 193, at 108.

²³⁴ SISTER MARY AURELIA MCARDLE, CALIFORNIA’S PIONEER SISTER OF MERCY 95 (1954) (describing the founding of the Sisters of Mercy and the Magdalan Asylum). The Sisters of Mercy was a Catholic order of nuns with a mission of humanitarian service. *Id.* In 1859, the sisters established the Magdalan Asylum in San Francisco as a shelter for former prostitutes who were “poor, wretched, brokenhearted victims of crime and credulity.” *Id.* Admission to the institution was voluntary, and the “penitent magdalans” were free to leave. *Id.*

²³⁵ The decision to contract with a Catholic agency was particularly unusual for nineteenth century juvenile justice policy given the high degree of anti-Catholic sentiment among institution proponents. The promotion of juvenile institutions during the century was predominately carried out by Protestant civic leaders who sought to imbue youths with Protestant ethic. MENNEL, *supra* note 3, at 63-64. In this instance, the city’s decision to contract with a Catholic order, suggests a degree of desperation. In addition, the Protestant denominations were often criticized throughout the history of the industrial school for failing to take an active role in the spiritual needs of institutionalized youth. BOSQUI, *supra* note 193, at 109; MENNEL, *supra* note 3, at 63; PICKETT, *supra* note 3, at 182-83; Randall Shelden, *Juvenile Justice in Historical Perspective*, in REFORMING JUVENILE JUSTICE: REASONS AND STRATEGIES FOR THE 21ST CENTURY 7-39 (Dan Macallair & Vincent Schiraldi eds., 1998); ARCHIVES OF THE SISTERS OF MERCY, 2 SCRIPT ANNALS 1 (various dates) (on file at the Sisters of Mercy Convent, Burlingame, Cal.).

²³⁶ ARCHIVES OF THE SISTERS OF MERCY, *supra* note 235, at 25.

²³⁷ *Id.*

new wing was added to the Magdalan facility.²³⁸ Like the Industrial School, the Magdalan Asylum adopted the traditional congregate institutional model.²³⁹ The living units were dormitories with beds lined in rows along a corridor with the head of one against the foot of another.²⁴⁰ One sister was assigned to sleep in each dormitory.²⁴¹ The girls were awakened at “half past five in the summer and six o’clock in the winter.”²⁴² Bedtime was at 9:00 p.m. As in the Industrial School, the day was divided between school and work. Dinners were served in a large dining room on two long tables that sat sixty each.²⁴³

Training at the Magdalan Asylum involved long hours of sewing in the facility’s workshop.²⁴⁴ The Magdalan Asylum was dependent on inmate labor particularly after 1876 when the Asylum lost its state appropriation due to legislation barring state aid to religious organizations.²⁴⁵ Initially, the Asylum was dependent on charitable donations and proceeds from the sale of “needlework.”²⁴⁶ Later, a sewing workshop was installed where the girls manufactured household linen, ladies wearing apparel, and embroidery work.²⁴⁷

Typical of institutionalized populations, the Industrial School girls were disruptive and unresponsive to their involuntary confinement. Fearing that their rebelliousness would infect the Magdalans, the sisters established separate living quarters and play grounds for the “industrials” so they could not commingle with the Magdalans.²⁴⁸ Furthermore, the

²³⁸ *Id.*

²³⁹ *Id.* at 95.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* (comparing the Magdalans home with the branch jail).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.* In one instance in 1884, the Industrial School girls rioted after a sister tried to stop one from passing a note through a wall. *Id.* When the sister took hold of the girl’s arm, the other girls became enraged and began shouting. *Id.* They then broke open the gate that separated them from the

institution was under constant siege by gangs of male “ruffians.” These young men and boys frequently attempted to gain access to the grounds in the rear of the building in order to cavort with the young women.²⁴⁹ In response, the sisters were forced to install a signal line directly to the local police station.²⁵⁰

As the difficulty in managing an involuntary and rebellious population became evident, the sisters adopted traditional reformatory disciplinary practices. Such practices included the use of isolation cells and food deprivation.²⁵¹ The isolation cells were installed on the urging of local authorities and were located in the basement of the institution.²⁵² The cells had large iron doors and locks “as big as a football.”²⁵³

Nineteenth century attitudes towards reform school girls was summed up by Hastings Hart of the Russell Sage Foundation in 1910, when he asserted the girls are “giddy and easily influenced” and that they needed to be kept safe.²⁵⁴ Training for girls should prepare them to support themselves or be a more efficient housewife and mother.²⁵⁵ The concern with protecting a young girl’s virtue and innocence was reflected in commitment patterns by the San Francisco Police Courts.²⁵⁶ A much larger percentage of girls than boys were

Magdalans “and continued shouting and demanding their liberty.” *Id.* At that moment a police officer arrived and attempted to intervene; however, this only enraged the girls further, as they began pelting him with stones. *Id.* More officers eventually arrived, and the riot was stopped. *Id.*

²⁴⁹ Neil Hitt, *An Old Building Razed, and a Story of Sin and Mercy is Unfolded*, S.F. CHRON., 1939, in ARCHIVES OF THE SISTERS OF MERCY, *supra* note 235.

²⁵⁰ *Id.*

²⁵¹ *Id.* Following the 1884 riot “the leaders were punished by fasting and close confinement in dark cells.” *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ HASTINGS H. HART, PREVENTIVE TREATMENT OF NEGLECTED CHILDREN 70-72 (1910).

²⁵⁵ *Id.*

²⁵⁶ Under commitment procedures, girls continued to be committed to the Industrial School. The girls were then placed in the Magdalan Asylum by the Industrial School superintendent who remained responsible for their

committed to the Industrial School for leading an idle and dissolute life, using vulgar language or drunkenness, or were surrendered by parents or guardians.²⁵⁷ In 1906, the Magdalan Asylum was renamed Saint Catherine Training School and remained the primary San Francisco institution for wayward girls until 1934.²⁵⁸

IV. New Legal Procedures and Jurisprudence

The Industrial School ushered in a new era of jurisprudence by giving local police court judges sweeping jurisdiction over a range of child welfare and delinquency issues. Police courts were established for the enforcement of local ordinances. As they had been in other states, these sweeping powers were challenged and the question of whether California's children had due process rights when being committed to the Industrial School found its way to the California Supreme Court. The deciding legal arguments focused on whether the Industrial School constituted a prison or a school and the state's moral duty to invoke *parens patriae*.

well being. S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 97 (1884) (on file at the San Francisco Public Library).

²⁵⁷ The following chart compares the reasons for commitment to the Industrial School for boys and girls in 1884:

	Boys	Girls
Leading an idle and dissolute life	40	38
Petit larceny	38	1
Misdemeanor, vulgar language, drunkenness, etc.	15	13
Surrendered by parents and guardians as unmanageable	1	16
Malicious mischief	3	0
Attempt to pick pockets	1	0
Total	98	68

Id.

²⁵⁸ MCARDLE, *supra* note 234, at 97.

A. Police Courts and Legal Procedures

Throughout the Industrial School's history, police courts accounted for over ninety percent of its commitments. Although typically not courts of record, nineteenth century police courts were responsible for regulating and enforcing local regulations and statutes. Examples of such laws were those against vagrancy, "disorderly persons" and a broad range of misdemeanor offenses.²⁵⁹

In San Francisco, the police judge was the primary arbiter of Industrial School commitments.²⁶⁰ Under the city's Municipal Corporation Act, a police judge could sentence an offender under eighteen years of age to the Industrial School for up to six months.²⁶¹ In instances where the person was under age fourteen "and has done an act, which if done by a person of full age would warrant a conviction of the crime of misdemeanor," the police judge could also impose a six-month commitment.²⁶² No provision existed for the sentencing of youths convicted of felonies to the Industrial School.²⁶³ Youths convicted of felonies continued to be committed to the adult jail.²⁶⁴

²⁵⁹ CURTIS HILLYER, PRACTICE AND FORMS FOR JUSTICES OF OTHER INFERIOR COURTS IN THE WESTERN STATES 21-23 (1912).

²⁶⁰ *Id.* at 160.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ The San Francisco's Municipal Corporation Act stated:

Upon application of the mayor, or any member of the supervisors, or any three citizens, charging that any child under eighteen years of age lives an idle and dissolute life, and that his parents are dead, or, if living, do, from drunkenness or other vices or causes, neglect to provide any suitable employment, or exercise salutary control over such child, the said court or judges have power to examine the matter, and upon being satisfied of the truth of such charges, may sentence such child to the industrial school; but that no person can be so sentenced for a longer period than until he arrives at the age of eighteen years.

Id.

Ironically, the Municipal Corporation Act provided greater discretion to police judges in non-delinquent matters. Police courts were limited to sentencing delinquent youths to six months in the Industrial School.²⁶⁵ However, youths who were the victims of parental neglect or considered on the path to later criminality were subject to indeterminate confinement up to their eighteenth birthday.²⁶⁶ These non-delinquent commitments represented the majority of police court commitments during the Industrial School's early years.²⁶⁷ In later years, as the Industrial School became viewed more as a penal institution, police courts shifted their emphasis to short term periods of confinement for low-level offenses.²⁶⁸

The decision on a youth's commitment usually involved an informal hearing with few due process protections. Such informal court procedures gave the city's police court broad discretion over children's lives. Consequently, the police courts were the primary vehicle for institutionalizing non-delinquent youths in the Industrial School.²⁶⁹ The police court's informal procedures and expansive judicial powers was the model for California's future juvenile court.

B. Legal Challenges and Precedents

The practice of confining non-criminal youths in reform schools was first successfully challenged in 1870. In *People ex rel. O'Connell v. Turner*,²⁷⁰ the Illinois Supreme Court examined the legality of fourteen-year-old Daniel O'Connell's indeterminate commitment to the Chicago Reform School. Daniel was committed for the non-delinquent offense of vagrancy—a situation almost identical to *Crouse*.²⁷¹ In a stunning repudiation of reform school practice, the court ruled that a youth cannot be arrested and confined based on

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *People ex rel. O'Connell v. Turner*, 55 Ill. 280, 281 (1870).

²⁷¹ *Ex parte Crouse*, 4 Whart. 9, *1 (Pa. 1838).

simple misfortune or parental neglect.²⁷² Similarly, children who were “only guilty of misfortune” could not be deprived of their liberty.²⁷³ Thus, after examining circumstances in the Chicago Reform School the court determined that its prison-like conditions rendered commitments without due process unconstitutional.²⁷⁴

According to the court, “Destitution of proper parental care, ignorance, idleness and vice, are misfortunes, not crimes.”²⁷⁵ In contrast to *Crouse*, the *O’Connell* court equated confinement in the Chicago Reform School with imprisonment: “This boy is deprived of a father’s care; bereft of home influence; has no freedom of action; is committed for an uncertain time; is branded as a prisoner; made subject to the will of others, and thus feels that he is a slave.”²⁷⁶ Subsequently, the court ordered Daniel’s release to his father, and within a year the school closed.²⁷⁷

In 1872, a youth of Chinese ancestry named Ah Peen was committed to the San Francisco Industrial School for leading an idle and dissolute life.²⁷⁸ Seizing on the *O’Connell* precedent, San Francisco attorney Frederick H. Adams filed a writ of habeas corpus on behalf of the sixteen-year-old “Mongolian” youth. Adams challenged the constitutionality of California’s Industrial School Act since it allowed the same practice condemned in *O’Connell*.²⁷⁹ According to Adams, the Industrial School Act gave a police judge arbitrary power to sentence a youth to the Industrial School for “ten, fifteen, or twenty years” without “hearing any evidence against the minor.”²⁸⁰ Except for the police judge or the Industrial School’s superintendent, no other state official, including the

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Fox, *supra* note 3, at 1220.

²⁷⁸ *The Industrial School Matters*, DAILY ALTA CAL., Feb. 18, 1871, at 1.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

governor, could order the youth's release.²⁸¹ Once confined, "inmates were attired in uniform and shorn."²⁸² Although the Industrial School was not designated a prison, Adams noted, "According to the statute of 1858, if a child attempts an escape he is guilty of a misdemeanor as if he were in the County Jail."²⁸³

Adams characterized the power of police court judges to render summary judgments as "ridiculous" given its blatant disregard for constitutional guarantees of due process. He asserted that constitutional rights applied to "infants" just as it applied to adults: "The law was unconstitutional, inasmuch as it conflicts with Section 1, Article 3, of the Constitution. . . . The basest criminal has a right to plead, and it is claimed that an infant possesses the same right."²⁸⁴ The right of trial by jury, Adams argued, is secured to everyone.²⁸⁵

San Francisco District Attorney Daniel J. Murphy, countered with arguments from *Crouse* by defining children as a separate class who were not subject to constitutional protections. Since California's Industrial School Act was modeled on Pennsylvania's statute, Murphy argued that the court should adopt the reasoning of the Pennsylvania Supreme Court in *Crouse* and uphold the Act's constitutionality. Furthermore, Murphy claimed that the Industrial School was not a penal institution, "although vicious and incorrigible children are detained there."²⁸⁶ Murphy argued the importance of the state to have the power to intercede into lives of children who are "dissolute or vicious" and "are the victims of parental neglect."²⁸⁷ According to Murphy, "To deny such power would be most horrible to contemplate."²⁸⁸

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

Murphy also asserted that the constitutional right to a jury trial does not exist for all minor offenses.²⁸⁹ Since there was over 300 years of precedent established by parliaments “authorizing summary convictions of certain classes of persons, such as vagrants etc., there is nothing contradictory about the current statute.”²⁹⁰ Finally, Murphy warned that overturning the Industrial School Act would result in the “wholesale release of the inmates.”²⁹¹

After hearing Adam’s and Murphy’s arguments, the California Supreme Court upheld the constitutionality of the Industrial School Act.²⁹² In doing so, the court adopted the prevailing national opinion on refuges and reform schools as places of reformation and not places of punishment. Instead of examining the realities of confinement as the Illinois Supreme Court had done in *O’Connell*, the California Supreme Court simply accepted the Industrial School Act’s intentions and affirmed its constitutionality.²⁹³ Citing the precedents established by the Pennsylvania Supreme Court in *Crouse* and by the Ohio Supreme Court in *Prescott v. State*,²⁹⁴ the Court concluded:

²⁸⁹ “Every state in the union, since the beginning of their Government, punished for the lesser offences without a jury.” *Id.*

²⁹⁰ *Id.*

²⁹¹

In thirteen of our States statutes have been passed instituting such schools. Will this Court, then, in view of the general establishment of such institutions and their general utility, and the almost universal recognition given them, decide that, after all, these praiseworthy efforts have been for naught? I submit that, in view of the authorities I have read, that the Court will not so decide. To so decide is to at once resist the current enlightened legislation—to run against the best and intelligent thought of the time—and unless the Court is compelled so to do by the most manifest and indubitable reason. I respectfully ask the Court to sustain this Legislative Act and the legality of our Industrial School.

Id.

²⁹² *Ex parte Ah Peen*, 51 Cal. 280, 280-81 (1876).

²⁹³ *Id.*

²⁹⁴ *Id.* at 281 (citing *Prescott v. State* 19 Ohio St. 184 (1869)).

It is obvious that these provisions of the Constitution have no application whatever to the case of this minor child. . . . The purpose in view is not punishment for offenses done, but reformation and training of the child to habits of industry, with a view to his future usefulness when he shall have been reclaimed to society, or shall have attained his majority. . . . The restraint imposed upon him by public authority is in its nature and purpose the same which under other conditions, is habitually imposed by parents, guardians of the person and other exercising supervision and control over the conduct of those who are by reason of infancy, lunacy, or otherwise, incapable of properly controlling themselves.²⁹⁵

As a result of this decision, Ah Peen was ordered recommitted to the Industrial School, and the right of the state to supercede parental rights under *parens patriae* remained California's dominant legal doctrine concerning children.²⁹⁶

V. New Approaches and the Birth of Probation

By the end of the 1870's, disillusionment with the Industrial School spawned an interest in new approaches. In 1873, the San Francisco Boys and Girls Aid Society was established as an alternative to Industrial School commitment. The Boys and Girls Aid Society led the fight for the creation of one of the nation's first probation laws. In 1876, San Francisco city officials attempted to convert an old naval vessel into a nautical training school for Industrial School youth. The training school only lasted a few years, and no such program was ever attempted again in California.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

A. *The Boys and Girls Aid Society and California's First Probation Act*

In response to growing disenchantment with institutional care along with “increasing hoodlumism,” city leaders created the San Francisco Boys and Girls Aid Society in 1873.²⁹⁷ The organization was founded as a private charity and was modeled on the New York Children’s Aid Society. At the San Francisco Society’s first annual meeting, speakers repeatedly praised the accomplishments of the New York Society.²⁹⁸ According to speaker Irving Scott, the success of the New York Children’s Aid Society was “unprecedented for the prevention of crime,” and therefore a model for California to emulate.²⁹⁹

Turning away from institutional care, the San Francisco Boys and Girls Aid Society emphasized placing out as a preferred alternative.³⁰⁰ Similar to the New York model, the San Francisco Boys and Girls Aid Society adhered to the belief that the best place for a child to be raised was in a nurturing homelike environment in the countryside far removed from urban corruption.³⁰¹ Like its New York counterpart, the society employed agents who went into the city and seized custody of suspected abandoned, vagrant, neglected, or delinquent children.³⁰² The agents operated under the aegis of *parens patriae* and could “take the children despite the protest of the parents.”³⁰³

The children were housed by the Society for an average of six weeks in a facility donated by Charles

²⁹⁷ *Human Waifs: Philanthropic Vigilances Which Projects the Homeless*, THE S.F. DAILY CALL, Dec. 20, 1885, at 1.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.* In recalling instances where parents, deemed unworthy, attempted to regain custody of their children, Society superintendent, E.T. Dooley noted, “Within the past two years there have been three or four instances where these kind of people have sought redress from us and the recovery of their children through the courts. Thanks to the integrity of our Judges they have failed every time.” *Id.*

Crocker.³⁰⁴ During this time, the Society endeavored “to fit each for an honest and useful future by the implanting of decent personal habits, better tastes and more wholesome inclinations.”³⁰⁵ At the end of six weeks, the children were placed in a family home. Most of these homes were located far from San Francisco, in surrounding rural counties, including Contra Costa, Alameda, Fresno, San Joaquin, Tulare, and Merced.³⁰⁶ An agent visited the children three times a year once they were placed in the family home.³⁰⁷

The San Francisco Boys and Girls Aid Society became the state’s premier advocate for the non-institutional care of children.³⁰⁸ Under the Society’s leadership, California passed one of the nation’s first probation laws in 1883 that provided “for the probationary treatment of juvenile delinquents.”³⁰⁹ The law allowed a judge to suspend a misdemeanor or felony conviction if the judge had reasonable grounds to believe the youth may be reformed. During this suspension period, the youth was placed in the custody of “any nonsectarian charitable corporation conducted for the purpose of reclaiming criminal minors.”³¹⁰ Youths could be placed in one of these charitable corporations for up to two months, and the judges had the option of extending the period of custody.³¹¹ The judge could direct the county to pay twenty-five dollars a month for board, clothing, and transportation or other expenses.³¹²

California’s Juvenile Probation Act was one of the first comprehensive probation laws in the country.³¹³ The development of special probation services did not evolve in most other states until after the establishment of juvenile

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Juvenile Probation Act, ch. 91, 1883 Cal. Stat. 377.

³¹³ MENNEL, *supra* note 3, at 114.

courts in the first decade of the twentieth century.³¹⁴ Founded as a response to the Industrial School's failures, the San Francisco Boys and Girls Aid Society pioneered the expansion of non-institutional options for dealing with delinquent and neglected youth. By spearheading the passage of the Probation Act, the Society laid the foundation for today's foster care and probation systems.

B. The U.S.S. Jamestown

The quest for alternatives to institutional confinement of delinquent and neglected youths continued throughout the century. Among the new approaches was the indenturing of youths to merchant ships. This practice was a long established practice among nineteenth century reform schools.³¹⁵ Since its inception, the Industrial School administration had employed it to purge the school of older, more recalcitrant boys.³¹⁶ In 1874, Congress passed an act authorizing the transfer of retired naval vessels to state jurisdictions to encourage the development of "public marine schools."³¹⁷ San Francisco officials immediately petitioned the state legislature to submit an application on the city's behalf.³¹⁸

The enabling legislation was approved on April 3, 1876, and the U.S.S. Jamestown was formally placed under the city's jurisdiction as a branch of the Industrial School.³¹⁹ Initially, the state statute authorized the ship to serve as an

³¹⁴ *Id.*

³¹⁵ The first nautical reform school was established in Massachusetts in 1860 as a branch of the state reform school at Westborough, but the program was abandoned in 1872 due to heavy operating costs, serious disciplinary problems, and a glut of available seaman in the labor market. M.L. Elbridge, *History of the Massachusetts Nautical Reform School*, in CHILDREN AND YOUTH IN AMERICA I, *supra* note 29, at 713; FAILURE OF SCHOOL SHIPS TO DISCIPLINE AND TRAIN MASSACHUSETTS BOARD OF STATE CHARITIES, EIGHTH ANNUAL REPORT (1871) *reprinted in* CHILDREN AND YOUTH IN AMERICA II, *supra* note 154, at 451; Thomas A. McGee, *Training Delinquent Boys Under Sail*, PAC. HISTORIAN, Nov. 1964, at 193-95.

³¹⁶ See S.F. MUN. REPORTS, 1860-1870, *supra* note 121.

³¹⁷ McGee, *supra* note 315, at 193-95.

³¹⁸ *Id.*

³¹⁹ *Id.*

alternative to Industrial School confinement. However, when the city auditor, Monroe Ashbury, became aware that the federal statute specifically prohibited the ship's use as a place of punishment, he refused to pay the ship's expenses.³²⁰ This led the Jamestown commander, Henry Glass, to petition for a writ of mandate to secure payment.³²¹ In 1875, *Glass v. Ashbury* reached the California Supreme Court, where the court held that the city had no authority to accept the vessel because the state law was in clear conflict with the federal statute.³²² Specifically, the court determined that the Industrial School could not be affiliated with the U.S.S. Jamestown, because it was a place of punishment.³²³ Notably, one year later, the California Supreme Court would take the opposite view in *Ex parte Ah Peen*.³²⁴

In response to the ruling in *Glass*, the state legislature amended the law to bring it into compliance with the federal statute. The new law separated the Jamestown from the Industrial School and placed it under the purview of a special "Training Ship Committee" of the San Francisco Board of Supervisors.³²⁵ After the ruling in *Ex parte Ah Peen*, the Jamestown could accept transfers from the Industrial School provided they were not serving a sentence for a "penal violation."³²⁶

In 1876, the Jamestown initiated service as a training ship for San Francisco youths and fifty-seven older boys from the Industrial School were immediately transferred.³²⁷ The program was the first nautical training school on the West Coast. Youths in the program resided on board, where they slept in hammocks.³²⁸ While in port, they woke up at 6:00 a.m. For the first two hours, they prepared breakfast and

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ 51 Cal. 280, 281 (1876).

³²⁵ McGee, *supra* note 315, at 193-95.

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

performed routine maintenance duty and cleanup. At 9:00 a.m., they attended classes that included lessons in reading, English grammar, arithmetic, writing, and seamanship.³²⁹ Morning exercises concluded at 11:30 a.m. After lunch, afternoon session began and lasted from 1:00 p.m. to 4:00 p.m.³³⁰

In July 1876, the *Jamestown* set sail for Hawaii on its inaugural voyage with eighty-four youths aboard. The voyage was completed in nineteen days.³³¹ The return voyage was marred by tragedy when Andrew Perritt, an Industrial School youth, fell to his death from a topsail yardarm while practicing sail making.³³² Despite this incident, when the ship arrived in California, Glass sent a letter to the Board of Supervisors proclaiming the voyage a success. In addition, he informed the Board that the boys had been well-behaved and had all returned to the ship after being given liberty.³³³ Over the next three years, the *Jamestown* made two additional trips to Hawaii.³³⁴

Unfortunately, the training program never achieved the success that city officials had envisioned. One reason for its lack of success was that the ship was dependent on private fee-paying referrals to supplement its city subsidy.³³⁵ Because parents did not want their children commingled with Industrial School youths, private referrals never approached expectations. In instances when parents surrendered their children, the majority of them submitted applications for the boys' discharge only a few months later.³³⁶ This tendency for parents to use the ship as a short-term placement led the administration to impose a minimum two-year required stay to ensure adequate revenues and to maintain a sufficient

³²⁹ *Id.*

³³⁰ *The Training Ship*, DAILY ALTA CAL., Apr. 9, 1876, at 1.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

complement of youth.³³⁷ Since the ship served as a public school, administrators could invoke *parens patriae* and forbid parents from reclaiming their children. However, the impact of this involuntary confinement incited public anger and inspired youths to flee.³³⁸ The public reproach was worsened by allegations of abuse and mismanagement.³³⁹

The unfavorable publicity further reduced voluntary commitments and eroded the ship's political support.³⁴⁰ The state legislature attempted to remedy the situation in 1878 by barring Industrial School youths and allowing other counties to make referrals.³⁴¹ Nonetheless, the San Francisco Board of Supervisors remained convinced that parents used the ship primarily as a temporary restraint on their children's delinquent habits at great public expense.³⁴² Amid mounting criticism, soaring costs, and declining referrals the Jamestown experiment was ended in 1879 when the ship was returned to the United States Navy.³⁴³ Although the Industrial School continued to indenture youths to merchant ships, no formal nautical training program for delinquents was again attempted in California.³⁴⁴

VI. The Industrial School's Legacy

The Industrial School's final years were marked by continual controversy and financial hardship that further eroded its credibility. By the end of the 1880's, few people were left to argue the school's merits. When it finally closed, local newspapers hailed the decision as long overdue. Despite its failure and unceremonious closure, the establishment of the San Francisco Industrial School was the defining nineteenth

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² McGee, *supra* note 315, at 200.

³⁴³ *Id.*

³⁴⁴ *Id.* at 201.

century event in the development of California's juvenile justice system.

A. The Industrial School's Final Years

Bruised and battered, the Industrial School crept through the 1870's and 1880's. Despite frequent changes in administration and revisions in the school curriculum, the school remained in disrepair and embroiled in controversy.³⁴⁵ In 1878, the school's disciplinary system came under attack when it was revealed that certain boys received special treatment for rule violations while less favored boys were subjected to severe flogging.³⁴⁶ In an investigation by the Board of Supervisors, assistant teacher Cary testified, "The system of punishment was governed entirely by favoritism."³⁴⁷ Cary recalled boys who escaped from the school not being punished, while others were beaten.³⁴⁸

The investigation also revealed that the boys were regularly served food that was unfit for consumption.³⁴⁹ Edward Twomy, steward of the School, testified that during a six month period, he "never saw fish which was fit to eat. It was rotten. Have seen maggots an inch long in the meat which had been placed on the table. When the meat is not good it is made into a stew."³⁵⁰ School staff testified that the use of rancid meat and fish was "a very frequent occurrence."³⁵¹ The 1878 investigation also included

³⁴⁵ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 97-98 (1886) (on file at the San Francisco Public Library).

³⁴⁶ *The Industrial School Investigation*, DAILY ALTA CAL., Feb. 12, 1878, at 1. Under the institution rules, penalties were designated for certain transgressions. *Id.* Normal procedures called for administering two dozen lashes to runaways, ten lashes for attempted runaways, and "four to ten lashes" for minor offenses. *Id.* In one instance "a boy who attempted to set fire to the house got ninety lashes. . . . *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

accusations of incompetence, foul language, and frequent drunkenness against the school's leadership.³⁵²

In 1882, controversy again arose when an altercation occurred between Superintendent John F. McLaughlin and Samuel Carusi, head teacher.³⁵³ Carusi was arrested when he said he would "get even" with McLaughlin.³⁵⁴ Although the matter was trivial, the charges were well publicized in the local papers. The incident dealt another blow to the school's reputation and reaffirmed assumptions of disarray and incompetence.³⁵⁵ Along with the unfavorable attention, the school faced a greater challenge from declining resources and increased expenses. By the 1880's the institution was over twenty years old and in disrepair. Management had to make major structural upgrades because the piping and flooring were deteriorating, and the fence was on the verge of collapse.³⁵⁶ These upgrades came at considerable expense and had to be paid through the school's annual operating budget.³⁵⁷

Added to the many pressures from the outside, the school had to deal with an increasingly restless group of institutionalized youth. The school never achieved its primary goal of providing training in useful trades. Although the school eventually employed a tailor, shoemaker, and carpenter, these individuals provided little in the way of meaningful training and could only accommodate a small number of boys at any given time. In an 1882 "defense" of the Industrial School, a school official explained that the institution's workshops could never be viable because they did not have the proper materials or facilities.³⁵⁸ In addition,

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *The Industrial School*, DAILY ALTA CAL., Nov. 23, 1882, at 1.

³⁵⁶ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 317 (1880) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1880].

³⁵⁷ *Id.*

³⁵⁸ *The Industrial School: A Defense of the Institution by One of its Officers*, DAILY ALTA CAL., Dec. 17, 1882, at 3 [hereinafter *Defense of the Institution*].

Superintendent David Woods reported that all manufacturing materials were purchased through the school's operating budget.³⁵⁹ But the proceeds from the sale of any Industrial School products were returned to the city's general fund.³⁶⁰ Therefore, manufacturing products beyond the institution's daily needs only further depleted its limited resources.³⁶¹ Even in the event that a successful enterprise could be established, political opposition from business interests, fearful of competition, would inevitably force the program to be cancelled.³⁶²

In the absence of proper training facilities, school management struggled to keep the inmates busy. Preventing idleness was further hampered by the propensity of the boys to run away when the opportunity was presented.³⁶³ Because of the boys' propensity to escape, they could rarely be used as farm laborers even under the eye of a hired farmer.³⁶⁴ If the youth were allowed outside the institution walls, they typically tried to escape and staff could do nothing to prevent it.³⁶⁵ One institution official concluded that without armed guards with authority to shoot escapees, as with the adult house of corrections, the Industrial School could not prevent youth from running away.³⁶⁶ Although most Industrial School inmates were committed for misdemeanors and non-delinquent acts, institution staff disdained and feared them. The staff saw them as "reeking with corruption" and "ready to commit any crime in the calendar."³⁶⁷ Institution staff were sure that many of the boys would kill if it meant being able to escape.³⁶⁸

³⁵⁹ S.F. MUN. REPORTS, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 333 (1877) (on file at the San Francisco Public Library) [hereinafter S.F. MUN. REPORTS, 1877].

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Defense of the Institution*, *supra* note 358, at 3.

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

During the 1880's the school department's curriculum was reorganized to better emulate public school curriculum.³⁶⁹ Under this reorganization school hours were expanded and better educational records were maintained. The school hours were now from 10:00 a.m. to 11:30 a.m., 1:00 p.m. to 3:30 p.m., and 5:15 p.m. to 6:30 p.m.³⁷⁰ Despite a greater emphasis on formal education, inmate scholarship was still not considered a high priority.³⁷¹ As Jon Robinson, Principal Teacher, noted, "it was more desirable to teach the class of boys we have to deal with habits of industry and obedience to law than mere book learning."³⁷²

An area of education that was given special consideration was the institution's band. Started in 1870, the band was a means for enhancing the institution's image, and the institution's superintendents highlighted its activities in their annual reports.³⁷³ The band performed frequent noon concerts in San Francisco's Union Square and at a variety of community and religious events.³⁷⁴ The special emphasis on the band is evident by the presence of a designated staff member who was solely responsible for band training.³⁷⁵ Despite the institution's limited resources, in the 1880's the school administration erected a bandstand in Union Square

³⁶⁹ Following is a summary of the school's curriculum:

Monday: Spelling, Reading, Arithmetic, Writing, and Lessons on Morals and Manners; Tuesday: Spelling, Reading, Intellectual and Written Arithmetic, Grammar, Geography, Writing and Singing; Wednesday: As on Monday; Thursday: As on Tuesday; Friday: Spelling, Reading, Dictation, Composition, Arithmetic, and Lessons on Morals and Manners; Saturday is taken up with house cleaning, bathing, inspection or clothing, etc.; Sunday: Religious exercises from 9 1/2 to 10 1/2 A.M. and from 6 1/4 to 7 1/4 P.M.; Band Exercises: On school days from 10 to 10 1/2 A.M. and from 6 1/4 to 7 1/4 P.M.

S.F. MUN. REPORTS, 1880, *supra* note 356, at 322.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² S.F. MUN. REPORTS, 1877, *supra* note 359, at 336.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

with institution funds.³⁷⁶ By the end of the 1880's, the band reflected the school's declining fortunes. The instruments were in disrepair and the school's population was changing as youths were being committed for short fixed sentences rather than indeterminate stays.³⁷⁷

The advent of the Boys and Girls Aid Society and the passage of California's Probation Act, coincided with a change in commitment patterns to the Industrial School. In contrast to its early years, during the 1880's a growing percentage of boys were committed for criminal law violations.³⁷⁸ Although these were low level misdemeanor offenses, they represent a distinct shift from earlier commitment patterns.³⁷⁹ Police judges were more likely to impose short-term sentences for criminal behavior, and no longer viewed the institution as a preventive measure for non-delinquent youth. This shift reflected the school's tainted

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 322.

³⁷⁸ *Id.*

³⁷⁹ The following chart compares the Industrial School male commitment offenses for 1865 and 1885 period:

	1865	1885
Leading an Idle life	7	
Leading an Idle and Dissolute Life	59	64
Burglary	1	2
Forgery		
Grand Larceny		
Attempt to Commit Grand Larceny		
Attempt to Commit Petit Larceny	1	
Petit Larceny	16	33
Surrendered	2	
Vagrancy		
Attempt at Petit Larceny		
Assault		
Unmanageable		
Battery		
Malicious Mischief		
Misdemeanor	1	10
For Protection	1	
Total	88	109

S.F. MUN. REPORTS, 1880, *supra* note 356, at 324.

reputation as a place of reformation and of the possible increased role of non-institutional options such as the Boys and Girls Aid Society.³⁸⁰

Along with changes in commitment offenses and sentencing patterns, the institution superintendent complained of special treatment for boys with “influential” contacts who were having their sentences recalled after a short time.³⁸¹ In the face of these trends, institution officials argued desperately for a return to longer indeterminate sentences.³⁸² Unfortunately, by this time the school had little credibility. Years of well-publicized scandal were compounded by the school’s high recidivism rate—a failure rate that was continually lamented throughout the 1870’s and 1880’s.³⁸³ To make matters worse, San Francisco media continued to criticize the institution’s legitimacy.³⁸⁴

B. *The Industrial School Closes Its Doors*

In 1892, after a tumultuous thirty-three years, the San Francisco Industrial School was ordered closed.³⁸⁵ The building was converted to a women’s prison and staff were dismissed.³⁸⁶ The youths were transferred to two new state-

³⁸⁰ *Child-Saving Charities in this Big Town*, S.F. MORNING CALL, May 28, 1893, at 18.

³⁸¹ S.F. MUN. REPORT, REPORT ON THE INDUSTRIAL SCHOOL DEPARTMENT 503 (1882) (on file at the San Francisco Public Library).

³⁸² *Id.*

³⁸³ *Id.* Commenting on the high recidivism rate, Industrial School superintendent M.A. Smith insisted, “[T]his cannot be charged against the institution. They nearly all come from evil associations or wretched localities, and when released is it to be wondered at all that they should, in many cases, resume their former associations and become part of the people by whom they are surrounded.” *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Wiped Out at Last: The Industrial School Has Passed into History*, S.F. MORNING CALL, Nov. 24, 1891, at 1.

³⁸⁶ Along with its banner headline, the *San Francisco Morning Call* noted, “The Industrial School Committee submitted an elaborate report at the meeting of the Board of Supervisors, announcing the practical abolishment of that institution.” *Id.* The report contained a brief history of the institution since its founding. Since 1872, it had cost the city considerably more than a million dollars and had utterly failed to accomplish the objects

administered reformatories in Ione and Whittier, California.³⁸⁷ These two institutions, the Whittier State Reform School and Preston School Industry, continue to operate as part of the present-day California Youth Authority.³⁸⁸

Conclusion

The Industrial School reflected the nineteenth century belief that institutional segregation was a salutary response to addressing a child's exposure to parental neglect and urban vice. However, in attempting to reform the budding delinquent, the Industrial School reflected the same realities that plagued similar institutions. Structurally incapable of acting as a surrogate parent, institutional systems inevitably degenerated into coercive, impersonal, and abusive environments that bred despondency and disaffection. In the Industrial School's congregate structure, order could only be maintained by enforcing rigid adherence to organizational authority.³⁸⁹ In addition, despite the rhetoric of Industrial School proponents, the youths remanded to its care were viewed as products of an inferior class who were incapable of benefiting from anything other than elementary training.³⁹⁰

The school's mission was further compromised by the need to achieve a level of financial self-sufficiency. This prerequisite was a common ingredient of nineteenth century institutions. The result was insufficient resources and an inability to provide all but the most rudimentary training. Despite the lack of resources, managers struggled to promote the institution's survival through optimistic pronouncements or by minimizing problems.

Ironically, the failings of the refuge and reform school systems were well recognized by the time the Industrial

for which it was established. *Id.* The judicial department long since denounced it as a "nursery of crime." *Id.*

³⁸⁷ California Youth Authority, *supra* note 156, at 24-36.

³⁸⁸ *Id.*

³⁸⁹ ROTHMAN, *supra* note 30, at 231.

³⁹⁰ BOSQUI, *supra* note 193, at 108.

School was established. In 1848, Elijah Devoe, former assistant superintendent at the New York House of Refuge, wrote an incisive critique of the congregate institutional system, in which he concluded that the system was an abject failure that could never achieve its stated goals.³⁹¹ These

³⁹¹ In his report, Devoe questioned whether children were happy in the refuge:

No treatment, however kind or generous, will serve to make children contented in the Refuge after a certain period has elapsed. A wall is around them. Every moment they are under strict surveillance. The severity of discipline to which every boy, however well disposed is subject—the unceasing and unvaried repetition of duties, fare and employment—breed disgust which degenerates into melancholy and despair. When from careless or purposed neglect, a boy has been suffered to remain longer in the House than the average time in such cases, he grows restless and unhappy—a state of feeling succeeded by that kind of sickness of the heart which comes from “hope deferred.” He mopes about, and takes no part nor interest in the sports of the playground. When hope flies, nature relaxes in a degree her firm hold.

Are children happy in the Refuge? There is scarcely any conceivable position in life that would render human beings entirely and uninterruptedly wretched Although to children, life in the Refuge is dark and stormy, still, in general they know how to avail themselves of all facilities that afford present enjoyment; and do not fail to bask in those rays of sunshine which occasionally light up and warm their dreary path. But, nothing short of excessive ignorance can entertain for a moment the idea that the inmates of the Refuge are contented. In summer, they are about fourteen hours under orders daily. On parade, at table, at their work, and in school, they are not allowed to converse. They rise at five o’clock in summer—are hurried into the yard—hurried into the dining room—hurried at their work and at their studies. For every trifling commission or omission which it is deemed wrong to do or to omit to do, they are “cut” with the rattan. Every day they experience a series of painful excitements. The endurance of the whip, or loss of a meal—deprivation of play or solitary cell. On every hand their walk is bounded; while Restriction and Constraint are their most intimate companions. Are they contented? upon the principles of

revelations about earlier institutions did not discourage Industrial School proponents. Even when the Industrial School exhibited the same failings as its east coast predecessors, faith in the institutional system remained dominant in California long after the Industrial School's passing.

The Industrial School represented the refuge and reform school movement's great contradiction. While purporting to exist for the charitable reformation of wayward children, its overriding purpose was the removal of the undesirables from public view. The city's powerful business class feared the presence of destitute children on the streets and promoted the institution's development. Once the children were committed to the institution, the public rarely took an interest in them unless a scandal arose. A scandal brought about investigations and public condemnations. However, as soon as the issue faded from the public spotlight, the old patterns of institutional mis-management quickly reemerged. The fear of wayward children freely wandering the streets overwhelmed altruistic tendencies and allowed reform schools to continue despite their obvious failures.

Just as in other states, characterizing the Industrial School as an extension of the state's emerging public school system provided the necessary legal justifications to confine non-delinquent children without due process protections. By placing the decision-making power in the hands of the police courts, the Industrial School Act also provided the foundation for California's future juvenile court. Police courts were not bound by due process requirements because the Industrial School was not a prison but a place of reformation. Police courts, acting under *parens patriae*, could exercise absolute control over delinquent and non-delinquent youth, and no other state official had the authority to grant clemency or counter a police judge's decision.

life. The functions of the body are performed with less energy

Elijah Devoe, *The Refuge System, or Prison Discipline Applied to Juvenile Delinquents* (1848), reprinted in CHILDREN AND YOUTH IN AMERICA I, *supra* note 29, at 24-28.

In response to the Industrial School's periodic scandals, new approaches emerged to deal with delinquent and neglected youth without institutionalizing them. These new approaches included the enactment of one of the nation's first probation acts. This act laid the foundation for the state's future system of probation supervision and foster care. In the absence of other options, the institution-based system embodied by the Industrial School remains dominant in California up to the present day.³⁹² As the inaugural event in California's juvenile justice system, the Industrial School was directly responsible for laying the legal and structural foundation that eventually evolved into a separate juvenile court, probation services, and congregate correctional institutions.

³⁹² *40 Years of Service to California (1941-81)*, 34 CAL. YOUTH AUTHORITY Q., 20-35 (1982).