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The Thirteenth Amendment and the Juvenile Justice System

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COMMENTS

THE THIRTEENTH AMENDMENT AND THE JUVENILE JUSTICE SYSTEM

INTRODUCTION

In the past twenty-five years, the American juvenile justice system has changed dramatically. Legislatures, executive agencies, and courts across the United States have joined to transform this system from a means of rehabilitating errant children to a means of punishing juveniles for criminal acts.[1] While the goals of juvenile justice may have changed, the methods employed by juvenile courts and state agencies to achieve these goals do not completely reflect this transformation.[2] The latitude of discretion enjoyed by juvenile courts and agencies in administering what used to be a process of rehabilitation now threatens juveniles in an increasingly adversarial process designed to exact retribution. As juvenile court adjudication assumes the nature and consequences of the adult criminal justice system, courts will find it more difficult to justify withholding from juveniles the same procedural safeguards constitutionally guaranteed to criminal defendants.

The shift toward punishment in juvenile justice is necessarily inconsistent, as it has developed on a state-by-state basis.[3] Different methods employed by the states to transform juvenile justice have led to anomalous judicial interpretations concerning the constitutionality of these various methods. Many courts seem caught between justifying the discretion of a previously benevolent juvenile justice system, and extending the constitutionally guaranteed procedural and substantive protections of criminal defendants to delin-

[1] For recent examinations of this trend, *see* Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 323 (1991); Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691 (1991).

[2] Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 822 (1988).

[3] *See infra* notes 124-30 and accompanying text.

quents embroiled in an ever more hostile juvenile adjudication process. For example, some courts still consider juvenile court adjudication distinct from criminal prosecution for the purpose of Fifth and Fourteenth Amendment due process analysis.[4] Yet, courts may also find the involuntary commitment of juvenile delinquents analogous to criminal imprisonment when applying the Eighth Amendment prohibition against cruel and unusual punishment.[5]

The courts have interpreted the Thirteenth Amendment prohibition of involuntary servitude with similar inconsistency in the area of juvenile justice.[6] The Thirteenth Amendment, widely recognized as the Amendment that proscribed slavery, also prohibits involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted."[7] In the context of juvenile justice, the Thirteenth Amendment raises the question of whether states may compel juvenile delinquents to perform involuntary labor as part of their juvenile court disposition.

Court-ordered community service and vocational training programs in juvenile detention centers are often incorporated into juvenile delinquent rehabilitation.[8] In addition, some juvenile justice statutes subject delinquents to compulsory labor expressly for the purpose of punishment, not rehabilitation.[9] Under the terms of the Thirteenth Amendment, however, involuntary servitude may exist only "as a punishment for crime" of which a person has been "duly convicted."[10] Since juvenile court adjudication does not provide

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4 *See, e.g., In re* S.C., 790 S.W.2d 766 (Tex. Ct. App. 1990) (adjudication in juvenile court without indictment does not violate due process); State v. Schaaf, 743 P.2d 240 (Wash. 1987) (legislature may constitutionally deny juveniles the right to jury trial; juveniles do not form a suspect class for equal protection purposes).

5 *See, e.g.*, Nelson v. Heyne, 491 F.2d 352 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983), *cert. denied*, 466 U.S. 974 (1984).

6 *Cf.*, Morales v. Turman, 569 F. Supp. 332, 349 (E.D. Tex. 1983) (applying the Thirteenth Amendment to strictly limit compulsory labor at juvenile detention centers); *In re S.C.*, 790 S.W.2d at 774-75 (applying the Thirteenth Amendment criminal punishment exception to allow state imposition of compulsory labor on delinquents).

7 U.S. CONST. amend. XIII, § 1. The entire amendment reads:

> Section 1. Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
> Section 2. Congress shall have the power to enforce this article by appropriate legislation.

8 *See, e.g., Morales*, 569 F. Supp. at 349; *In re* C.A.H., 578 N.E.2d 1321 (Ill. App. Ct. 1991).

9 *See, e.g.*, State v. Lawley, 591 P.2d 772, 775 (Wash. 1979) (Rosellini, J., dissenting) (citing the Juvenile Justice Act of 1977 at WASH. REV. CODE 13.40.010 (1977)); *In re C.A.H.*, 578 N.E.2d at 1325 (citing Illinois Juvenile Court Act § 5-23, ILL. REV. STAT. ch. 37, ¶¶ 805-23 (1989)).

10 U.S. CONST. amend. XIII, § 1.

the same due process protection given defendants in criminal prosecutions, a juvenile court's holding may not be a criminal conviction. Because juvenile court findings are distinct from criminal convictions,[11] juvenile court dispositions which include involuntary servitude may not be exempt under the Thirteenth Amendment.

As states have expanded their emphasis on punishment in juvenile justice, contradictions in Thirteenth Amendment interpretation have become more prevalent. This article addresses the central question of whether the Thirteenth Amendment's protection extends to juvenile delinquents. The purpose of this comment is not to argue for or against the imposition of compulsory labor on juvenile delinquents. Rather, this comment will focus on the conditions under which the Constitution permits compulsory labor in the context of juvenile adjudication, disposition, and commitment.

The first section of this comment briefly addresses the scope of the Thirteenth Amendment beyond slavery. Though not invoked as often as other constitutional protections, the right to be free from involuntary servitude has served to combat a wide range of social conditions, from peonage which existed at the amendment's inception,[12] to forced labor camps which have existed to the present.[13] This section discusses the legislative and judicial developments in the Thirteenth Amendment's scope which have defined the concept of "involuntary servitude" as it is presently applied.

The next section of this comment addresses whether the explicit criminal punishment exception in the Thirteenth Amendment applies to juvenile delinquents. Involuntary work programs for defendants convicted in criminal court have long been held to be criminal punishments and thus constitutional under the Thirteenth Amendment.[14] In several states, juveniles found delinquent[15] are

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11 *See infra* notes 110-23 and accompanying text for a discussion of the distinctions between juvenile and criminal adjudication.

12 *See infra* notes 39-40 and accompanying text for a discussion of the Thirteenth Amendment's application to peonage conditions.

13 *See, e.g.*, United States v. Warren, 772 F.2d 827 (11th Cir. 1985), *cert. denied*, 475 U.S. 1022 (1986); United States v. Booker, 655 F.2d 562 (4th Cir. 1981).

14 For a judicial history of the criminal punishment exception applied to convict labor, *see* Draper v. Rhay, 315 F.2d 193 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963).

15 Most juvenile justice statutes use a different terminology than that of criminal law. Thus, criminals are prosecuted, and if found guilty of committing a crime are convicted and sentenced. Juveniles, on the other hand, may be adjudicated, found delinquent for having committed an offense, and are given a disposition rather than a sentence. *See infra* notes 110-23 and accompanying text. In this comment, I will use the term "juvenile" or "minor" to describe someone subject to the jurisdiction of juvenile court. The term "juvenile delinquent" will denote a juvenile who has been found by that court to have committed an offense.

also subject to dispositions whose purpose, at least in part, is to punish them for the violation of criminal statutes.[16] Juvenile courts and juvenile detention centers may require delinquents to perform involuntary labor as part of their court disposition and commitment.[17] By analogy, some courts have reasoned that the imposition of involuntary servitude on juveniles adjudged delinquent falls within the criminal punishment exception to the Thirteenth Amendment.[18] This comment argues that such reasoning must fail because it ignores the constitutional distinctions between juvenile court adjudication and criminal court prosecution and sentencing.

Section three of this comment discusses the implicit exceptions to the Thirteenth Amendment which may justify the imposition of compulsory labor on juvenile delinquents. These exceptions, recognized at common law, include the state's imposition of servitude as a civic duty, as well as a parent or guardian's imposition of compulsory labor on children in his custody.[19] Part A of this section addresses the civic duty exception, which exempts the government from the Thirteenth Amendment when it requires citizens to perform labor for the public welfare.[20] Some courts have suggested that juvenile court dispositions requiring the performance of labor to maintain juvenile detention facilities may be constitutional under this civic duty exception.[21]

Part B of section three evaluates whether the courts may apply the Thirteenth Amendment's implied exception for parental guardians to the state in its adjudication, disposition, and commitment of juvenile delinquents. At common law, courts have exempted parents—and anyone acting as parents—from the prohibition of involuntary servitude as it applies to children in their custody.[22] Under the principle of *parens patriae*, the state assumes the role of a juvenile delinquent's parents because both the parents and the juvenile himself are presumed incapable of providing an environment which

16 *See infra* notes 84-87 and accompanying text for a discussion of punitive-based juvenile court dispositions.

17 *Id.*

18 *See, e.g.*, M.J.W. v. State, 210 S.E.2d 842, 844 (Ga. Ct. App. 1974); *In re* Erickson, 604 P.2d 513, 513-14 (Wash. Ct. App. 1979). *See also infra* section II for a discussion of the criminal punishment exception applied to juvenile delinquents.

19 Butler v. Perry, 240 U.S. 328, 332-33 (1916).

20 *Id.*

21 *See, e.g.*, Morales v. Turman, 569 F. Supp. 332, 349 (E.D. Tex. 1983).

22 *See, e.g.*, Robertson v. Baldwin, 165 U.S. 275, 282 (1897) (exempting from the Thirteenth Amendment "the right of parents and guardians to the custody of their minor children or wards").

promotes the delinquent's best interests.[23] Courts have argued that the state, in its role as surrogate parent disciplining a juvenile delinquent, qualifies for the same implicit exception to the Thirteenth Amendment that applies to the parents and guardians of other juveniles.[24] As juvenile justice adopts the punitive nature of the criminal justice system, however, the government may act less as a surrogate parent and more as an adversary.[25] Some jurists have questioned whether, under any juvenile justice system, the government ever assumes the role of a surrogate parent acting in the child's best interest.[26]

Part four of this comment reviews the judiciary's attempts to develop guidelines for the imposition of involuntary servitude on juvenile delinquents. While some courts find compulsory labor incompatible with a delinquent's rehabilitation,[27] other courts find that required work programs may provide useful therapy.[28] Still other courts find that the Constitution permits states to use compulsory labor as a form of punishment, which may serve a role in the reformation of delinquents.[29] Consensus in this area has yet to be reached.

The conclusion of this comment will briefly explain how the Thirteenth Amendment forces a more conscious development of the juvenile justice system. The imposition of involuntary servitude as criminal punishment will require the extension of all criminal due process safeguards to the juvenile court. Alternatively, society may choose to justify the imposition of compulsory labor on juvenile delinquents under the implicit exceptions to the Thirteenth Amendment. The legal prerequisites to these exceptions would force governments to restructure the juvenile justice system, focusing solely on the rehabilitative treatment of delinquents in the state's custody. Either choice represents a policy decision with a profound impact on the way our society views its children.

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23 *See, e.g.*, Schall v. Martin, 467 U.S. 253, 265 (1984) (explaining the premise of *parens patriae*).

24 *See, e.g.*, *In re* Bacon, 49 Cal. Rptr. 322, 339 (Cal. Dist. Ct. App. 1966).

25 Kent v. United States, 383 U.S. 541, 556 (1966) (noting the trend for juvenile justice programs to more closely resemble the practices and philosophy of criminal justice).

26 *Schall*, 467 U.S. at 289-90 (Marshall, J., dissenting).

27 *See, e.g.*, King v. Carey, 405 F. Supp. 41 (W.D.N.Y. 1975).

28 *See, e.g.*, M.J.W. v. State, 210 S.E.2d 842, 843-44 (Ga. Ct. App. 1974).

29 *See, e.g.*, Santana v. Collazo, 533 F. Supp. 966, 988 (D.P.R. 1982), *aff'd in part, vacated in part*, 714 F.2d 1172 (1st Cir. 1983), *cert. denied*, 466 U.S. 974 (1984).

I. THE DEVELOPING CONCEPT OF INVOLUNTARY SERVITUDE

On first impression, one might question how the Thirteenth Amendment applies at all in the context of juvenile justice. The Thirteenth Amendment, after all, most frequently provokes thoughts of slavery and the Civil War. Yet, the nineteenth century did not mark the end of the Thirteenth Amendment's relevance in our society because the amendment also prohibits involuntary servitude, which has persisted in various forms to this day. For example, in the last ten years the United States Department of Justice has received more than one hundred complaints alleging involuntary servitude arising in such contexts as agricultural work, domestic work, religious cult activities, and prostitution.[30] In the last twenty-five years, courts have found violations of the Thirteenth Amendment resulting from the imposition of involuntary servitude on migrant laborers,[31] household servants,[32] and patients at state mental institutions.[33] Such a variety of applications suggests that the prohibition of involuntary servitude has acquired a broad scope. This section of the comment discusses how Congress and the courts have developed the meaning of involuntary servitude and whether this condition occurs in the adjudication, disposition, and commitment of juvenile delinquents.

Congress has long attempted to define the scope of involuntary servitude prohibited by the Thirteenth Amendment. So extreme was the concept of prohibiting all forms of involuntary servitude that radical Republican legislators supporting the amendment, as well as conservatives opposed to it, feared that its scope would be too broad.[34] At least one Congressman attempted to introduce a more limited version of the amendment which exempted involuntary servitude "arising from the relations of parent and child, master and apprentice, guardian and ward," but this attempt failed.[35] Perhaps by not giving involuntary servitude a specific definition, legislators reached a compromise that allowed for the amendment's

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30 James Henry Haag, Comment, *Involuntary Servitude: An Eighteenth Century Concept In Search of a Twentieth Century Definition*, 19 PAC. L.J. 873, 873 n.2 (1988).

31 *See, e.g.*, United States v. Warren, 772 F.2d 827 (11th Cir. 1985), *cert. denied*, 475 U.S. 1022 (1986).

32 United States v. Mussry, 726 F.2d 1448 (9th Cir. 1984), *cert. denied sub nom.*, Singman v. United States, 469 U.S. 855 (1984).

33 *See, e.g.*, Wyatt v. Aderholt, 503 F.2d 1305, 1316 (5th Cir. 1974).

34 Lea S. Vandervelde, *The Labor Vision of the Thirteenth Amendment*, 138 U. PA. L. REV. 437, 454, 478 (1989).

35 *Id.* at 456 (quoting CONG. GLOBE, 38th Cong., 2d Sess. 528 (1865) (remarks of Rep. Brown of Wisconsin)).

passage but also guaranteed contention over its proper application in the years to come.

The framers of the Thirteenth Amendment did not expect that a mere declaration would bring an end to either slavery or involuntary servitude, so they explicitly provided for the enactment of supplemental legislation to enforce the amendment's substantive provisions.[36] Congress passed supplemental enforcement legislation in response to specific activities it identified as manifestations of involuntary servitude violating the Thirteenth Amendment.[37] For example, in 1867, Congress passed the original Peonage Act in an attempt to abolish peonage systems used primarily in the western territories to secure Mexican, Indian, and Chinese "coolie" labor.[38] Congress also enacted the Padrone Statute of 1874,[39] aimed at preventing the sale of immigrant Italian boys into involuntary servitude by parents willing to send a son to America in exchange for that child's labor.[40]

Early in this century, Congress revised supplemental legislation to extend Thirteenth Amendment protection to people of all races, emphasizing the prohibition of the condition of involuntary servitude instead of the protection of a particular group of people.[41] Yet some Thirteenth Amendment proponents believed that supplemental legislation should extend protection from involuntary servitude on the basis of a person's vulnerability to oppression.[42] These Congressmen intended to "enable the law to reach those who come here without being a party to the disposition of their services or the control of their rights whether they be children of irresponsible years and conditions or whether they be people who, because of their environment or conditions of their lives cannot protect themselves. . . ."[43]

While supplemental legislation has been applied in a wide range of contexts, Congress enacted these enforcement statutes only in response to specific situations that it found to violate the

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36 "Congress shall have the power to enforce this article by appropriate legislation." U.S. CONST. amend. XIII, § 2.

37 Haag, *supra* note 30, at 877-84.

38 *Id.* at 880. Railroad barons used much of this labor to extend their empires across the Western Frontier.

39 Act of June 23, 1874, ch. 464, § 1, 18 Stat. 251 (1874).

40 Haag, *supra* note 30, at 881. *See, e.g.*, United States v. Ancarola, 1 F. 676 (C.C.S.D.N.Y. 1880).

41 Haag, *supra* note 30, at 882. In 1909, Congress revised the Slave Trade Act of March 2, 1807, ch. 22, § 6, 2 Stat. 427 (1807), which attempted to curb the further importation of blacks for use as slaves in the United States. *Id.*

42 *Id.* at 883 n.61 (quoting 42 CONG. REC. 1115 (1908) (remarks of Sen. Heyburn)).

43 *Id.*

Thirteenth Amendment.[44] Congress' role in developing the Thirteenth Amendment's scope through enforcement legislation represents an ex post reaction to societal conditions, rather than a prospective vision defining the right against involuntary servitude.[45] By reacting to specific conditions, Congress has failed to anticipate new contexts of involuntary servitude where the principles of Thirteenth Amendment protection may be relevant. This reactive posture has resulted in a noticeable absence of supplemental enforcement legislation addressing compulsory labor in the context of juvenile court adjudication, disposition, and commitment.

While supplemental legislation focused attention on what Congress considered to be the most prevalent violations of the Thirteenth Amendment,[46] the courts by necessity assumed a prominent role in the development of the Thirteenth Amendment's scope. The Supreme Court, in effect, required the judiciary to consider Thirteenth Amendment claims not contemplated by enforcement statutes when it held that the amendment is "self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances."[47] Initially, the judiciary construed the limits of the Thirteenth Amendment by determining whether involutary servitude existed, "irrespective of the manner or authority by which it is created."[48] More recently, however, courts have shifted their analysis from defining what constitutes involuntary servitude to identifying the unconstitutional means to compel labor.[49] As this comment discusses, contemporary Thirteenth Amendment precedent suggests that compulsory labor arising from juvenile court adjudication, disposition, and commitment may fall within the definition of involuntary servitude.

Since the beginning of this century, courts have been reluctant to define the Thirteenth Amendment by limiting its application to a specific class of potential victims especially vulnerable to slavery or involuntary servitude.[50] Instead, the Thirteenth Amendment represents "the denunciation of a condition, and not a declaration in favor of a particular people."[51] By focusing their analyses on the

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44 *See id.* at 877-83.

45 *Id.*

46 *Id.*

47 Civil Rights Cases, 109 U.S. 3, 20 (1883).

48 Clyatt v. United States, 197 U.S. 207, 216 (1905).

49 *See, e.g.*, United States v. Kozminski, 487 U.S. 931, 942 (1988) (prohibiting the use or threat of physical or legal coercion to compel servitude).

50 *See, e.g., Clyatt*, 197 U.S. at 216; Hodges v. United States, 203 U.S. 1, 16-17 (1906), *overruled on other grounds by* Jones v. Alfred H. Mayer Co., 392 U.S. 403 (1968).

51 *Hodges*, 203 U.S. at 16-17.

condition of involuntary servitude, rather than on the characterization of a limited class of potential victims, the courts were able to extend Thirteenth Amendment protection to situations involving "coercion and oppression, in varying circumstances" beyond the paradigm of black slavery.[52] This approach left the scope of the Thirteenth Amendment very broad, but it did not provide a positive test for determining the constitutional limits of involuntary servitude.

In the past thirty years, courts have struggled to interpret the scope of the prohibition on involuntary servitude. "While the general spirit of the phrase 'involuntary servitude' is easily comprehended, the exact range of conditions it prohibits is harder to define."[53] Rather than attempting to define the conditions which constitute involuntary servitude, contemporary judicial interpretation has focused on the means of coercion used to compel labor in determining the scope of Thirteenth Amendment protection. For example, in *United States v. Shackney*,[54] Judge Friendly found that involuntary servitude could result only from labor compelled by the use or threat of physical force or by the legal threat of imprisonment.[55] While this standard appears to set the objective parameters of involuntary servitude, the *Shackney* court's analysis explicitly permits judicial consideration of the victim's subjective belief in the threat of the coercion at issue.[56]

Other circuits have suggested that a court's test for involuntary servitude should give even more weight to the victim's perception of coercion.[57] For example, the Ninth Circuit accorded perceived or psychological coercion the same legal status as physical and legal coercion in its analysis of involuntary servitude.[58] Yet the Ninth Circuit found that the *Shackney* test, limited to proof of physical or legal coercion, failed to recognize both the historically mandated breadth of Thirteenth Amendment protection, as well as the need for an evolving standard of involuntary servitude.[59] Just as "[t]oday's involuntary servitor is not always black," the court reasoned, so too

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52 Bailey v. Alabama, 219 U.S. 219, 231 (1911) (applying the Thirteenth Amendment to invalidate a state law which subjected debtors to imprisonment and involuntary servitude as restitution for breach of a labor contract where advance payment was made).

53 *Kozminski*, 487 U.S. at 942.

54 333 F.2d 475, 486 (2d Cir. 1964).

55 The threat of criminal imprisonment may also be referred to as legal coercion.

56 *Shackney*, 333 F.2d at 486.

57 *See, e.g.*, United States v. Bibbs, 564 F.2d 1165, 1168 (5th Cir. 1977) (applying the *Shackney* court's test), *cert. denied*, 435 U.S. 1007 (1978).

58 United States v. Mussry, 726 F.2d 1448 (9th Cir.), *cert. denied sub nom.*, Singman v. United States, 469 U.S. 855 (1984).

59 *Mussry*, 726 F.2d at 1451-52.

"the methods of subjugating people's wills have changed from blatant slavery to more subtle, if equally effective, forms of coercion."[60] The Ninth Circuit's test for involuntary servitude required only a finding that the will of the victim had been subjugated, by whatever means, to the extent that the victim believed he had no alternative but to perform the labor.[61]

More recently, the Sixth Circuit limited the psychological coercion test so that it applied only to those people inherently vulnerable to coercion: minors, foreign-speaking immigrants, and the mentally incompetent.[62] The Sixth Circuit found this group analogous to the class of persons lacking the capacity to contract, so the court allowed psychological coercion to serve as proof of involuntary servitude in this context.[63] In this manner, the Sixth Circuit attempted to harmonize the *Shackney* court's criteria of physical and legal coercion with the Ninth Circuit's more subjective psychological test.[64]

While the Supreme Court affirmed the Sixth Circuit's ruling, it rejected as too broad a test which relied upon the victim's state of mind to define the limits of involuntary servitude.[65] The Court acknowledged that "the vulnerabilities of the victims are relevant" in determining the existence of involuntary servitude, but it held that the victim's subjective belief could be used only to establish the credibility of the physical and legal coercion prohibited in *Shackney*.[66]

> Although we can be sure that Congress intended [the Thirteenth Amendment] to prohibit " 'slavelike' conditions of servitude," we have no indication that Congress thought that conditions maintained by means other than by the use or threatened use of physical or legal coercion were "slavelike." Whether other conditions are so intolerable that they, too, should be deemed involuntary is a value judgment that we think is best left for Congress.[67]

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60 *Id.*

61 *Id.* at 1452-53. The Ninth Circuit explicitly rejected the *Shackney* test as being too narrow and instead adopted its own test from a concurrence in that case. *See* United States v. Shackney, 333 F.2d 475, 487-88 (2d Cir. 1964) (Dimock, J., concurring).

62 United States v. Kozminski, 821 F.2d 1186, 1192 (6th Cir. 1987) (en banc), *aff'd*, 487 U.S. 931 (1988).

63 *Id.* at 1193.

64 *Id.* at 1192.

65 United States v. Kozminski, 487 U.S. 931, 949 (1988), *aff'g* 821 F.2d 1186 (6th Cir. 1987) (en banc).

66 *Id.* at 952. The Court suggested that the existence of a legal or physical threat would be easier to prove if the victim was especially vulnerable, because such a victim could be more easily persuaded than a normal adult that the threat was credible enough to compel labor. *Id.* at 948.

67 *Id.* at 951 (quoting Justice Brennan's concurrence at 961).

Instead of defining involuntary servitude by example, the Supreme Court construed the Thirteenth Amendment to prohibit labor compelled by the "use or threat of physical restraint or injury, or the use or threat of coercion through law or the legal process."[68] The Court restricted the standard of involuntary servitude because it recognized that a definition which included labor compelled by psychological coercion "would appear to criminalize a broad range of day-to-day activity."[69] Activities which would be prohibited under the psychological coercion standard might include a parent's use of emotional influence over his offspring (both minor and adult children), a political leader's use of intellectual influence over campaign volunteers, and a religious leader's use of spiritual influence over a congregation.[70]

Ironically, the Supreme Court's *Kozminski* test appears to render unconstitutional another activity which society has accepted as routine, viz., the imposition of compulsory labor on juvenile delinquents by the juvenile justice system. By definition, juvenile court orders which require juvenile delinquents to perform compulsory labor constitute "the use or threat of coercion through law or the legal process."[71] In fact, juvenile court orders requiring the performance of community service[72] or participation in work programs administered by a juvenile detention center[73] are commonplace in the juvenile justice system. For example, an Illinois appellate court affirmed a juvenile court judge's order compelling a juvenile delinquent to perform public service work or to obtain private employment in order to make restitution to victims.[74] In addition, the appellate court approved the imposition of additional periods of confinement for failure to comply with the juvenile court's orders.[75]

Furthermore, juvenile detention center staff members systematically employ "the use or threat of physical restraint" or the "use or threat of coercion through law" in their efforts to compel participation in detention center work programs. For example, under some juvenile justice administrative policies, a delinquent who refuses to

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68 *Id.* at 952.

69 *Id.* at 949.

70 *Id.*

71 *Id.* at 952. *See also supra* note 66 and accompanying text.

72 *See, e.g.*, M.J.W. v. State, 210 S.E.2d 842 (Ga. Ct. App. 1974).

73 *See, e.g.*, Desrosiers v. Androscoggin County, 611 F. Supp. 897, 899 (D. Me. 1985).

74 *In re C.A.H.*, 578 N.E.2d 1321, 1325 (Ill. App. Ct. 1991).

75 *Id.* The Supreme Court has previously found the threat of imprisonment for failing to make restitution a violation of the Thirteenth Amendment. *See* Bailey v. Alabama, 219 U.S. 219, 244-45 (1911) (invalidating a statute which subjected debtors to criminal imprisonment for failure to make restitution).

participate in compulsory detention center work programs may be confined to a "solitary" cell or subjected to a hearing before a juvenile court judge, who may increase the delinquent's period of commitment to the detention center as a penalty for refusing to work.[76]

II. THE THIRTEENTH AMENDMENT'S CRIMINAL PUNISHMENT EXCEPTION

As the above examples illustrate, the juvenile justice system's imposition of compulsory labor on delinquents meets the *Kozminski* court's definition of involuntary servitude. Consequently, this imposition of involuntary servitude must be found unconstitutional unless it qualifies as an exception to the Thirteenth Amendment. One possible basis for the exemption of juvenile delinquents from the Thirteenth Amendment's protection may be the amendment's explicit criminal punishment exception, which prohibits involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted."[77] Applying this exception to juvenile delinquents requires the characterization of delinquent disposition and confinement as a form of punishment for criminal behavior. Furthermore, application of the criminal punishment exception also depends upon whether juvenile court adjudication meets the "duly convicted" qualification in the Thirteenth Amendment.

A. THE EXPLICIT CRIMINAL PUNISHMENT PREREQUISITE AND JUVENILE COURT DISPOSITIONS

In the United States, a separate system of juvenile justice arose from the "belief that juveniles were different from adults and needed to be protected, nurtured, and treated, rather than held completely responsible and punished for their wrongdoing."[78] Courts recognized the legislative intent to promote rehabilitation, not retribution, through juvenile justice statutes:

> Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others. Coercive measures, where employed, are considered neither retribution nor punishment. Supervision or confinement is aimed at rehabilitation . . .[79]

For example, juvenile delinquents usually do not go to prison, but

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[76] *See, e.g.*, Morales v. Turman, 383 F. Supp. 53, 79-80 (E.D. Tex. 1974); Morgan v. Sproat, 432 F. Supp. 1130, 1153 (S.D. Miss. 1977).

[77] U.S. CONST. amend. XIII, § 1.

[78] Forst & Blomquist, *supra* note 1, at 324.

[79] McKeiver v. Pennsylvania, 403 U.S. 528, 552 (1971) (White, J., concurring).

they may be sent to training schools or camps to receive education and treatment.[80]

In distinguishing juvenile justice from criminal justice, some jurists have concentrated intensely on the statutory language carried over from the past. Yet, the emphasis on differentiating juvenile delinquents from criminal convicts has prevented some jurists from sufficiently acknowledging the shifting focus of juvenile justice.[81] Despite more than a century of treating delinquency with rehabilitative programs, the juvenile justice system has failed to meet the public's expectations.[82] No matter what the reasons for this failure may be,[83] society has grown discontent with the treatment-oriented administration of juvenile justice. The disappointment with this rehabilitative approach has prompted legislation that instead attempts to punish juvenile offenders and hold them criminally responsible for their behavior.[84] For example, Washington state's legislature passed the Juvenile Justice Act of 1977, the goals of which, in part, are to:

> (c) Make the juvenile offender accountable for his or her criminal behavior;
> (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender . . .
> (j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both. . . . [85]

Other states also recognize punishment explicitly as part of the *raison d'etre* of the juvenile justice system. For example, the Illinois Juvenile Court Act authorizes juvenile court judges to impose punishments on delinquents, including participation in community service programs and labor in private employment for the provision of restitution to victims.[86] By its incorporation of the Illinois criminal justice code, this Act also empowers juvenile court judges to impose

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[80] *See, e.g.*, Schall v. Martin, 467 U.S. 253, 257 n.4 (1984) (describing New York's Family Court Act as providing for the rehabilitative disposition of juvenile delinquents).

[81] For more thorough analysis of this shift, *see* Forst & Blomquist, *supra* note 1; Feld, *supra* note 1.

[82] The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, at 7-9 (1967), *cited in McKeiver*, 403 U.S. at 544 (noting the report as a "devastating commentary upon the system's failures as a whole").

[83] *McKeiver*, 403 U.S. at 544 (arguing that a lack of funding, a lack of concern and poor administration prevented the proper implementation of rehabilitative programs).

[84] *See* Feld, *supra* note 1, at 692 (noting that punishment has displaced treatment as the premise for confining juvenile delinquents); and *see generally id.* at 708-18.

[85] State v. Lawley, 591 P.2d 772, 775 (Wash. 1979) (Rosellini, J., dissenting) (citing the Juvenile Justice Act of 1977, WASH. REV. CODE § 13.40.010 (1977)).

[86] *See, e.g., In re* C.A.H., 578 N.E.2d 1321, 1325 (Ill. App. Ct. 1991) (citing Ill. Juv. Ct. Act § 5-23, ILL. REV. STAT. ch. 37, ¶¶ 805-23 (1989)).

additional periods of confinement as a punishment for failing to comply with the court's orders.[87]

Due to the increased emphasis on punishment, juvenile adjudication may result in the imposition of determinate periods of confinement as well as compulsory labor.[88] Yet, some courts still deny that such juvenile court dispositions necessarily constitute a form of punishment.[89] For example, one litigant challenged a state's imposition of forced labor resulting from a juvenile court disposition.[90] He argued in part that the delinquency proceedings and subsequent disposition amounted to criminal prosecution in violation of Texas juvenile justice statutes, and that, in any event, the criminal punishment exception could not apply to juvenile delinquents.[91] Rejecting his first claim, the court relied on its literal interpretation of the statute regulating the juvenile court disposition at issue:

> [A]ppellant ignores the Family Code pronouncement that "[a]n order of adjudication . . . under this title is not a conviction of a crime, and does not impose any civil disability ordinarily resulting from a conviction. . . ." Tex. Fam. Code Ann. § 51.13(a) (1986) Although appellant labels his adjudication a "criminal prosecution," his categorization does not necessarily make it so.[92]

This same judge, however, found that the "quasi-criminal" nature of the juvenile justice system casts the appellant's disposition as a form of punishment within the scope of the criminal punishment exception to the Thirteenth Amendment.[93]

Some courts, however, have probed beyond a strictly textual interpretation of statutes to determine a delinquent's constitutional rights, finding that "[l]ittle, indeed, is to be gained by any attempt simplistically to call the juvenile court proceeding either 'civil' or 'criminal'."[94] Such courts have applied a broader construction of legislative intent both to distinguish and to analogize juvenile court and criminal court proceedings.[95] As a federal district judge observed, "Declaring that juveniles confined at [youth centers] are prisoners or civilly committed persons should not control the out-

87 *Id.* at 1325 (citing ILL. REV. STAT. ch. 38, ¶ 1005-5-6(h) (1989)).

88 *See, e.g., In re* Erickson, 604 P.2d 513, 513-14 (Wash. Ct. App. 1979) (citing the Juvenile Justice Act of 1977, WASH. REV. CODE § 13.40.010 (1977), which updated the state's juvenile justice system).

89 *See, e.g.*, State v. Rice, 655 P.2d 1145, 1148-50 (Wash. 1982) (en banc); *infra* note 127 and accompanying text.

90 *In re* S.C., 790 S.W.2d 766 (Tex. Ct. App. 1990).

91 *Id.* at 773.

92 *Id.* at 773-74.

93 *Id.* at 774-75.

94 McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971).

95 *See infra* notes 120-44 and accompanying text.

come of this [Thirteenth Amendment] constitutional claim. Rather, the justification for confining juveniles should determine the appropriateness of work assignments for [juvenile detention center] residents."[96]

Courts have relied on the increasing punitive emphasis in juvenile justice as grounds for applying the Thirteenth Amendment's criminal punishment exception. As early as 1974, a state court found that "the quasi-criminal aspects of juvenile law" justified the imposition of involuntary servitude on juvenile delinquents under the amendment's criminal punishment exception.[97] In rejecting a claim that juvenile court-ordered community service violated the Thirteenth Amendment, a Washington court cited the punitive goals listed in that state's juvenile justice statute.[98] "Given these similarities with the adult criminal justice system, we hold that the juvenile disposition order did constitute 'punishment for crime' sufficient to fall within the constitutional exception to involuntary servitude."[99]

As a result of the conflict between the revised punitive goals and the rehabilitative aims which remain, the courts disagree about the intent of juvenile justice statutes and about what effect this intent has on a juvenile delinquent's constitutional rights.[100] For example, in determining which constitutional standards to apply to juvenile confinement, some federal courts found delinquents equivalent to criminal convicts,[101] while others distinguished juveniles due to the rehabilitative goals of juvenile justice statutes.[102] Most courts would agree that "[t]he status of the detainees determines the appropriate standard for evaluating the conditions of confinement."[103] Yet, the judicial conflict over the roles played by punishment and rehabilitation in juvenile justice suggests that

96 Santiago v. City of Philadelphia, 435 F. Supp. 136, 157 (E.D. Pa. 1977).

97 M.J.W. v. State, 210 S.E.2d 842, 844 (Ga. Ct. App. 1974).

98 *In re* Erickson, 604 P.2d 513, 513-14 (Wash. Ct. App. 1979) (citing the Juvenile Justice Act of 1977, WASH. REV. CODE § 13.40.010 (1977)). *See also supra* note 85 and accompanying text.

99 *In re* Erickson, 604 P.2d at 514.

100 *See infra* notes 125-30 and accompanying text which portray the inconsistent interpretations of one state's juvenile justice statutes.

101 *See, e.g.*, Nelson v. Heyne, 491 F.2d 352, 355 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974) (applying the Eighth Amendment to protect delinquents at a juvenile detention center from being beaten by guards).

102 *See, e.g.*, Gary H. v. Hegstrom, 831 F.2d 1430, 1431 (9th Cir. 1987) (discussing application of both the Eighth Amendment "cruel and unusual punishment" standard and the Fourteenth Amendment due process standard to juvenile detention centers).

103 *Id.* at 1432.

the courts have failed to recognize the Thirteenth Amendment protection owed to minors adjudicated in juvenile court.

B. THE "DULY CONVICTED" REQUIREMENT AND JUVENILE ADJUDICATION

While the criminal punishment exception to the Thirteenth Amendment allows the imposition of involuntary servitude, the amendment stipulates that the punishment must result from a "crime whereof the party shall have been duly convicted."[104] Consequently, courts must find that juvenile adjudication meets this "duly convicted" requirement of the Thirteenth Amendment in order to apply the exception to juvenile delinquents. Some courts, by analogizing the language and intent of juvenile justice statutes to the criminal justice code, have found that juvenile adjudication meets this requirement.[105] Alternatively, courts have compared the consequences of juvenile adjudications versus criminal prosecutions to determine whether juvenile court proceedings meet the "duly convicted" requirement.[106] Through both modes of analysis, courts have recognized that the more punitive aspects of delinquency proceedings justify the extension of certain criminal due process safeguards to the accused in juvenile court.[107] Still, courts have denied juveniles some of the most fundamental rights afforded criminal defendants,[108] on the grounds that society has refused to abandon completely the rehabilitative premise of the juvenile justice system.[109]

In their attempts to differentiate the administration of juvenile and criminal justice, the courts have contrasted the flexible process of juvenile adjudication from the constitutionally mandated proce-

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104 U.S. CONST. amend. XIII, § 1.

105 *See, e.g.*, *In re* Erickson, 604 P.2d 513, 514 (Wash. Ct. App. 1979)(describing legislative intent to punish delinquents for acts which would be crimes if committed by adults); *In re* S.C., 790 S.W.2d 766, 774-75 (Tex. Ct. App. 1990); *see also infra* notes 124-30 and accompanying text.

106 *See, e.g.*, *In re* S.C., 790 S.W.2d at 775 (juveniles receive "many of the same due process rights that are afforded to adult criminal defendants," so punishment imposed on juveniles for committing an offense does not violate the Thirteenth Amendment).

107 *See infra* notes 131-36 and accompanying text.

108 *See, e.g.*, Schall v. Martin, 467 U.S. 253, 266 (1984) (authorizing a more lenient standard of justification for pretrial detention of juvenile delinquents); McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) (refusing to confer on juveniles the Sixth Amendment right to a jury trial for fear that it would transform juvenile adjudication from an "informal protective proceeding" into a "fully adversarial process").

109 *See, e.g.*, *Schall*, 467 U.S. at 263 (citing Santosky v. Kramer, 455 U.S. 745, 766 (1982), for the proposition that the state has a *parens patriae* interest in promoting the best interests of delinquents).

dures of criminal prosecution.[110] By acknowledging that juvenile adjudication and disposition are not equivalent to criminal prosecution and conviction, the judiciary has confirmed that juvenile delinquents are accorded a different constitutional status than that of a criminal defendant who is prosecuted, convicted, and sentenced.[111] As the Thirteenth Amendment's stated exception applies only to a person who has been "duly convicted" of a crime, proof that juvenile court procedures do not meet the constitutional due process requirements for criminal prosecution and conviction precludes application of the criminal punishment exception to juvenile delinquents.

Courts have found the conditions of the "duly convicted" requirement to be met "[w]here a person is duly tried, convicted, sentenced and imprisoned for crime. . . ."[112] Challenges against the imposition of compulsory labor have failed where the plaintiff, a prison inmate, contested an out-of-prison work release program,[113] as well as where a prisoner contested forced labor while his conviction was on appeal.[114] In contrast, the Due Process Clause prohibits any punishment of pre-trial detainees.[115] Both trial and appellate courts have acknowledged that the Thirteenth Amendment prohibition of involuntary servitude extends to persons detained for reasons not related to criminal conviction.[116] For example, the criminal punishment exception does not apply to a person committed to a state institution for treatment of a narcotics addiction.[117] The Supreme Court also recognizes that the states may impose

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110 *See, e.g., id.* (balancing the need for "fundamental fairness" in procedures with the juvenile court's unique need for "flexibility" and "informality" to promote the child's welfare).

111 *See McKeiver*, 403 U.S. at 545 (distinguishing juvenile court adjudication from criminal prosecution in order to justify denying a minor accused in juvenile court his Sixth Amendment rights).

112 Draper v. Rhay, 315 F.2d 193, 197 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963).

113 Murray v. Mississippi Dept. of Corrections, 911 F.2d 1167, 1168 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 760 (1991).

114 Foster v. Daley, 1991 WL 140125 at *1, 1991 U.S. Dist. LEXIS 10022 at *2 (N.D. Ill. July 18, 1991). The Fifth Circuit recently found that the criminal punishment exception applies only to those convicts who are sentenced to hard labor, while other convicts retain their Thirteenth Amendment rights. Watson v. Graves, 909 F.2d 1549, 1552 (5th Cir. 1990). This position, however, was stated in dicta not dispositive of the holding and sits squarely against all other precedent. *See, e.g., Draper*, 315 F.2d at 197 ("There is no federally protected right of a state prisoner not to work while imprisoned after conviction, even though that conviction is being appealed.").

115 Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979).

116 *See, e.g.*, Stone v. City of Paducah, 86 S.W. 531, 533 (Ky. 1905) (refusing the state permission to compel labor from a mentally disabled man confined in a county jail for the public's protection); *Ex parte* Lloyd, 13 F. Supp. 1005, 1009 (E.D. Ky. 1936).

117 *Ex parte* Lloyd, 13 F. Supp. at 1009.

criminal sanctions, such as compulsory labor, only as a result of a criminal conviction,[118] and not merely as a consequence of commitment to a state institution.[119]

To determine whether juvenile court adjudication meets the "duly convicted" requirement of the criminal punishment exception, some courts have relied upon statutory analysis.[120] Juvenile justice statutes often employ terminology distinct from the language of criminal law.[121] For example, juvenile offenders are not "prosecuted" at "trial" and "convicted" upon being found "guilty" of "crimes."[122] Instead, juvenile court judges preside over adjudications where they determine whether a juvenile is delinquent for having committed an offense.[123]

State courts, however, have employed their interpretations of juvenile justice statutes both to contrast and to analogize delinquency proceedings and criminal prosecution.[124] For example, the Supreme Court of Washington characterized the state's juvenile justice statutes as both punitive and rehabilitative, and on that basis it distinguished juvenile court adjudication from the unequivocally punitive mechanism of criminal prosecution.[125] Incongruously, a Washington appellate court cited the same characterization of the statute's quasi-punitive elements to justify the application of the criminal punishment exception against juvenile delinquents.[126] Three years later, the state supreme court expediently applied its previous characterization to justify longer, presumably more rehabilitative, periods of confinement for juveniles than for criminal defendants convicted for committing the identical acts.[127] Yet, less

118 O'Connor v. Donaldson, 422 U.S. 563, 586 (Burger, C.J., concurring) (1975) (distinguishing the bases of commitment between a patient confined to a mental institution and a criminal convict held in prison).

119 *See, e.g.*, Youngberg v. Romeo, 457 U.S. 307, 316 (1982) (stating that persons involuntarily committed, who are not convicted criminals, "may not be punished at all").

120 *See, e.g.*, *In re* S.C., 790 S.W.2d 766, 773-74 (Tex. Ct. App. 1990).

121 McKeiver v. Pennsylvania, 403 U.S. 528, 551-52 (1971) (White, J., concurring) (noting the word choice used in statutes to distinguish juvenile and criminal proceedings).

122 *See* Schall v. Martin, 467 U.S. 253, 257 n.4 (1984) (description of New York's Family Court Act providing for the adjudication of alleged juvenile offenders).

123 *Id.*

124 *See infra* notes 125-30 and accompanying text.

125 State v. Lawley, 591 P.2d 772, 772-73 (Wash. 1979) (en banc) (refusing to extend to juvenile delinquents the right to trial by jury, in order to preserve the rehabilitative aspects of juvenile justice).

126 *In re* Erickson, 604 P.2d 513, 513-14 (Wash. Ct. App. 1979).

127 State v. Rice, 655 P.2d 1145, 1148-50 (Wash. 1982) (en banc) (arguing that the intent of the juvenile justice system was to respond to the special needs of each delinquent, providing rehabilitation or punishment according the individual and the context

than eighteen months later the same court acknowledged the juvenile justice system's evolution from a "*parens patriae* scheme to one more akin to adult criminal proceedings," and it consequently upheld the use of criminal defense pleadings in "juvenile proceedings that are criminal in nature."[128] Through their interpretation of the intent of juvenile justice statutes as "somewhere midway between the poles of rehabilitation and retribution,"[129] the lower courts have subjected juvenile delinquents to criminal punishment without giving them the benefit of all the due process safeguards constitutionally guaranteed to criminal defendants.[130]

The Supreme Court, through its failure to reconcile the conflicting punitive and rehabilitative aspects of juvenile adjudication, has also produced such constitutionally anomalous results. The Court initially responded to increasingly punitive juvenile justice, statutes by extending many due process safeguards to delinquency proceedings.[131] The Court reasoned that "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts, for '[a] proceeding where the issue is whether the child will be found "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.' "[132] Recognizing a need to balance the rehabilitative goals of juvenile justice with the punitive consequences of juvenile adjudication and disposition, the Court extended to juvenile delinquents such procedural safeguards as the reasonable doubt standard of proof,[133] the right to counsel[134] and cross-examination of witnesses,[135] as well as the privilege against self-incrimination.[136]

Despite its acknowledgement of the increasingly punitive nature of juvenile justice, the Court has refused to extend to juveniles all the constitutional safeguards afforded criminal defendants be-

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of his offense). The court explicitly rejected Fourteenth Amendment equal protection arguments relating to the practices of juvenile court disposition. *Id.*

128 State v. Q.D., 685 P.2d 557, 560 (Wash. 1984) (en banc) (permitting the use of the "infancy defense," which posits a lower standard of accountability based on the offender's lesser mental and moral development).

129 State v. Schaaf, 743 P.2d 240, 244 (Wash. 1987) (en banc).

130 *See, e.g., id.* at 242 (refusing to afford juveniles the right to trial by jury in delinquency proceedings).

131 *See, e.g., In re* Winship, 397 U.S. 358 (1970); *In re* Gault, 387 U.S. 1 (1967); *infra* notes 133-36 and accompanying text.

132 *In re* Winship, 397 U.S. at 365 (quoting *In re* Gault, 387 U.S. at 36).

133 *Id.* at 364.

134 *In re* Gault, 387 U.S. at 36-37.

135 *Id.* at 57.

136 *Id.* at 55.

cause it fears that this would put the criminal imprimatur on juvenile delinquency proceedings.[137] For example, the Court withheld from delinquents the Sixth Amendment right to a jury trial, implying that juries would be less forgiving of delinquents and would somehow undermine the treatment orientation of juvenile adjudication.[138] The Court also held that more stringent guidelines concerning the detention of juveniles pending adjudication furthered the rehabilitative goals of juvenile justice.[139]

The Supreme Court has thus applied a balancing approach to justify increased procedural safeguards protecting juvenile delinquents from some of the punitive consequences of juvenile justice, without extending to delinquents all of the constitutional safeguards accorded criminal defendants.[140] This balancing approach, however, offers little guidance to the lower courts in their interpretation of a juvenile delinquent's constitutional rights. Rather than relying on the well-developed standards of criminal due process, the Supreme Court has determined which constitutional rights apply to juvenile delinquents on the basis of "fundamental fairness" and the Court's desire to sustain the rehabilitative goals of juvenile justice long abandoned by many states.[141]

In the abstract, then, a state may not impose criminal deprivations of liberty on juveniles absent a criminal conviction reached through due process.[142] In practice, however, courts have not reached a consensus on which constitutional rights apply to the adjudication and disposition of juvenile delinquents. For example, courts have extended to delinquents the Sixth Amendment rights to counsel and confrontation of witnesses, while at the same time witholding the Sixth Amendment right to a jury trial. Just as incongruous is the decision to give alleged delinquents Fourteenth Amendment protection from the pre-adjudicatory punishment,[143] while the same juveniles possess fewer rights than criminals with re-

137 Schall v. Martin, 467 U.S. 253, 263 (1984).

138 McKeiver v. Pennsylvania, 403 U.S. 528, 547 (1971). Ironically, conservatives on the Court feared that any depiction of juvenile court adjudication as a criminal process would harm the still viable goal of rehabilitation, while more liberal jurists urged the bench to extend constitutional protections to juveniles subjected to more punitive juvenile justice laws. *Id.* at 559 (Douglas, J., dissenting).

139 *Schall*, 467 U.S. at 264-68.

140 *Id.* at 257 n.4.

141 *Id.* at 263.

142 O'Connor v. Donaldson, 422 U.S. 563, 586 (1975) (Burger, C.J., concurring). *See also* Youngberg v. Romeo, 457 U.S. 307, 316 (1982) (stating that persons involuntarily committed who are not convicted criminals "may not be punished at all"); Milonas v. Williams, 691 F.2d 931, 942 n.10 (10th Cir. 1982), *cert. denied*, 460 U.S. 1069 (1983).

143 Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987).

spect to pre-trial detention.[144]

While the judiciary examines the statutory language, intent, and practices of juvenile adjudication, it ignores the constitutional significance of withholding from juvenile delinquents a fundamental due process safeguard. "Any institutional rules that amount to punishment of those involuntarily confined prior to an adjudication of guilt of criminal wrongdoing are violative of the due process clause per se."[145] The Sixth Amendment guarantees the right to a jury trial in all criminal prosecutions.[146] The Thirteenth Amendment prohibits the imposition of involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted."[147] At a minimum, then, the judiciary must afford juveniles the right to a jury trial in delinquency proceedings before juvenile court adjudication can be considered criminal prosecution for purposes of constitutional law.

Whether our society should treat juvenile offenders like their adult counterparts properly concerns a legislative debate over the competing normative values of rehabilitation and punishment. But what fundamental rights our judicial system must recognize for criminal defendants, and non-criminal detainees as well, is mandated by the Constitution. Until juvenile delinquents receive the same due process safeguards provided in criminal prosecutions, juvenile court adjudication and disposition does not meet the "duly convicted" requirement of the Thirteenth Amendment's criminal punishment exception.

III. Implicit Exceptions to the Thirteenth Amendment

In addition to the Thirteenth Amendment's explicit exception for criminal punishment, the judiciary has recognized a number of contexts in which the prohibition of involuntary servitude does not apply. The Supreme Court acknowledged that certain traditional servitude relationships are beyond the scope of constitutional interference:

> It is clear, however, that the amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional, such as military and naval enlistments, or to disturb the right of parents and guardians to the custody of their minor children or wards. . . . To say that persons engaged in a public service are not within the amendment is to admit that there

144 *Schall*, 467 U.S. at 263.
145 *Milonas*, 691 F.2d at 942 n.10. *See also supra* note 142.
146 U.S. Const. amend. VI.
147 U.S. Const. amend. XIII, § 1.

> are exceptions to its general language, and the further question is at once presented, where shall the line be drawn? We know of no better answer to make than to say that services which have from time immemorial been treated as exceptional shall not be regarded as within its purview.[148]

As the Court failed to provide criteria for determining which services were implicitly exempt, exceptions to the prohibition of involuntary solitude seemed limitless. Rather than establish guidelines, some courts merely relied on the "recognized exceptional status" of such persons as "sailors . . . soldiers . . . minors, apprentices, idiots, and lunatics" to justify their exception from Thirteenth Amendment protection.[149]

Over time, however, courts have articulated the rationale by which the state may constitutionally impose involuntary servitude. For example, the Thirteenth Amendment does not apply to compulsory labor in the performance of civic duties.[150] As Congress meant to prohibit only those forms of compulsory labor that restricted liberty, the Supreme Court reasoned, the Thirteenth Amendment "was not intended to interdict those duties which individuals owe to the state," which promotes its citizens' liberty.[151] Furthermore, courts have held that the Thirteenth Amendment may not apply to compulsory labor imposed upon persons legally held in protective custody.[152] In its role as *parens patriae*, the state may determine that compulsory labor serves as a form of rehabilitation which promotes the welfare of persons in state custody.[153]

Courts have suggested that both of these Thirteenth Amendment exceptions, civic duty and *parens patriae*, may permit the state to impose compulsory labor on juvenile delinquents in its custody.[154] Yet both of these exceptions also imply conditions which must be met by the state before it becomes exempt from the prohi-

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148 Robertson v. Baldwin, 165 U.S. 275, 282 (1897) (denying Thirteenth Amendment protection to seamen on the basis of their voluntarily assent to the duty of servitude recognized in admiralty).

149 *Ex parte* Lloyd, 13 F. Supp. 1005, 1008 (E.D. Ky. 1936).

150 Butler v. Perry, 240 U.S. 328, 332-33 (1916) (holding that the Thirteenth Amendment did not prohibit a state from requiring able-bodied citizens to provide some minimal assistance in the maintenance and construction of public roads).

151 *Id.* at 333.

152 *See, e.g.*, Jobson v. Henne, 355 F.2d 129, 134 (2d Cir. 1966) (allowing states to impose compulsory labor with a therapeutic purpose on mental institution patients); Morales v. Turman, 569 F. Supp. 332, 349 (E.D. Tex. 1983) (setting guidelines for the imposition of juvenile detention center work programs).

153 *See, e.g.*, *Jobson*, 355 F.2d at 134 (acknowledging the state's authority to impose mental institution work programs in the interest of patient therapy and rehabilitation).

154 *See, e.g.*, *Morales*, 569 F. Supp. at 349 (permitting the state to impose compulsory chores at a juvenile detention center to help maintain a public facility); M.J.W. v. State,

bition of involuntary servitude. In the context of civic duty, the state must show that the imposition of compulsory labor serves a compelling state interest and is a burden shared by other citizens.[155] As a prerequisite to the *parens patriae* exception, the state must show that compulsory labor promotes the rehabilitation of persons committed to state custody.[156] Consequently, whether the civic duty and *parens patriae* exceptions apply to juvenile delinquents depends upon the extent to which the state's imposition of involuntary servitude satisfies these conditions.

A. THE CIVIC DUTY EXCEPTION

The Court has recognized the civic duty exception to uphold compulsory participation in public works projects,[157] the military draft and service,[158] as well as alternative service for conscientious objectors.[159] These cases of compulsory labor arise from a citizen's social compact with the state, and they fulfill compelling interests in the protection and development of society. More recently, the civic duty exception has been applied to state programs which impose compulsory labor on people to help defray the costs of state institutions from which they specifically benefit. For example, one federal court waived Thirteenth Amendment protection and approved mandatory labor for high school students, based on the state's interest in fiscal savings.[160]

Yet, courts disagree whether the civic duty exception justifies the imposition of compulsory labor on juvenile delinquents.[161] A federal district court in Texas found that a state may require juveniles to participate in work programs that assist in the mainte-

210 S.E.2d 842, 843-44 (Ga. Ct. App. 1974) (upholding a juvenile court's imposition of community service work as rehabilitation in the delinquent's best interest).

155 Bobilin v. Bd. of Educ., Hawaii, 403 F. Supp. 1095 (D. Haw. 1975).

156 *See, e.g.*, Morales v. Turman, 383 F. Supp. 53, 71 (E.D. Tex. 1974) (prohibiting a juvenile detention center from imposing compulsory labor which served no therapeutic purpose).

157 Butler v. Perry, 240 U.S. 328, 332-33 (1916) (confirming the constitutionality of required participation in state public road projects).

158 Arver v. United States, 245 U.S. 366, 390 (1918).

159 Heflin v. Sanford, 142 F.2d 798, 800 (5th Cir. 1944) (noting that the Thirteenth Amendment "was never intended to limit the war powers of government or its right to exact by law public service from all to meet the public need").

160 *Bobilin*, 403 F. Supp. at 1095 (finding the threshold of public benefit met by the cost savings from the use of mandatory student work in state high school cafeterias).

161 *Cf.*, Morales v. Turman, 569 F. Supp. 332, 349 (E.D. Tex. 1983) (allowing limited use of compulsory labor to maintain the facilties at a juvenile detention center); Morgan v. Sproat, 432 F. Supp. 1130, 1153 (S.D. Miss. 1977) (prohibiting the assignment of required janitorial tasks and limiting juvenile detention center labor to vocational training).

nance of detention center facilities.[162] In contrast, a Mississippi federal district court held that a state could not require delinquents to perform any compulsory labor, including maintenance work, except if that labor was part of an accredited vocational training program.[163] The court reasoned that because the state's only constitutional interest in confining juveniles was their treatment and rehabilitation, the state could not justify work programs that did not relate to those purposes.[164]

B. THE *PARENS PATRIAE* EXCEPTION

Courts have disagreed, too, whether the *parens patriae* exception justifies involuntary servitude in the rehabilitation of juvenile delinquents.[165] Some courts recognize that the state as *parens patriae* may impose compulsory labor based on its " 'legitimate authority for the control and education of children, since a child may be subjected to restraints that may be necessary for his proper education and discipline that could not be applied to adults.' "[166]

At least one influential jurist, Justice Marshall, has criticized the *parens patriae* analogy between a state's confinement of a juvenile delinquent and the supervision provided in that child's home:

> [The] characterization of preventive detention as merely a transfer of custody from a parent or guardian to the State is difficult to take seriously. Surely there is a qualitative difference between imprisonment and the condition of being subject to the supervision and control of an adult who has one's best interests at heart.[167]

While courts have recognized the state's *parens patriae* interest as exempt from the Thirteenth Amendment, they have sharply disagreed over the extent to which that interest justifies the imposition of compulsory labor on juvenile delinquents. Some courts find that the state has a duty under *parens patriae* to provide juveniles with rehabilitative treatment,[168] which would strictly limit the amount

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162 *Morales*, 569 F. Supp. at 349.

163 *Morgan*, 432 F. Supp. at 1153.

164 *Id.* at 1135 (the nature of involuntary commitment must "bear some reasonable relation to the purpose for which the individual is committed") (quoting Jackson v. Indiana, 406 U.S. 715, 738 (1972)).

165 *Cf.* King v. Carey, 405 F. Supp. 41 (W.D.N.Y. 1975); M.J.W. v. State, 210 S.E.2d 842, 843-44 (Ga. Ct. App. 1974).

166 *In re* Bacon, 49 Cal. Rptr. 322, 339 (Cal. Dist. Ct. App. 1966) (quoting 16 C.J.S. *Con. Law* § 203 (5)). *See also* H.F.H., Annotation, *Constitutionality of Statute for Reformatory Purposes Deprives Parent of Custody or Control of Child*, 60 A.L.R. 1342 (1929).

167 Schall v. Martin, 467 U.S. 253, 289-90 (1984) (Marshall, J., dissenting).

168 *See, e.g.*, Nelson v. Heyne, 491 F.2d 352, 360 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); Morgan v. Sproat, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977).

and types of compulsory labor justified as being in the child's best interest.

Analogizing the confinement of a juvenile delinquents to the involuntary commitment of mental patients, one court held that due process limited a state's juvenile justice practices to programs which were reasonably related to a delinquent's treatment and rehabilitation.[169] Another court similarly held that "[w]hen a state assumes the place of a juvenile's parents, it assumes as well the parental duties, and its treatment of juveniles should, so far as can be reasonably required, be what proper parental care would provide."[170] This standard affords juvenile delinquents the right to "individualized care and treatment" that meets the minimum standards approved by the trial court.[171]

In contrast, many courts reject the notion that *parens patriae* confinement of juvenile delinquents restricts the state's use of compulsory labor to rehabilitation programs.[172] Instead, the state may decide what types of work programs are in the delinquent's best interest, limited only by the Eighth Amendment prohibition of cruel and unusual punishment.[173] Another court suggests that national standards, provided by experts in juvenile corrections, serve as presumptively valid guidelines which limit a state's detention practices.[174] Such guidelines, if they exist, likely discuss the extent to which states may impose compulsory labor on juvenile delinquents. Yet, no court has cited national standards adopted by either the federal or state judiciary. This lack of consensus is hardly surprising because juvenile justice administrators exercise "a substitute parental control for which there can be no particularized criteria."[175] If it is human nature to criticize how parents raise their children, then people are even quicker to denounce the effectiveness of surrogates.

IV. The Formulation of Guidelines

While there is no consensus on the extent to which *parens patriae*

169 *Morgan*, 432 F. Supp. at 1153 (citing Jackson v. Indiana, 406 U.S. 715, 738 (1972)). *See supra* note 164.

170 *Nelson*, 491 F.2d at 360.

171 *Id.*

172 *See, e.g.*, Santana v. Collazo, 533 F. Supp. 966, 974-75 (D.P.R. 1982), *aff'd in part, vacated in part*, 714 F.2d 1172 (1st Cir. 1983), *cert. denied*, 466 U.S. 974 (1984); Morales v. Turman, 562 F.2d 993, 998-99 (5th Cir.), *reh'g denied*, 565 F.2d 1215 (1977).

173 *Morales*, 562 F.2d at 998-99.

174 Gary H. v. Hegstrom, 831 F.2d 1430, 1439 (9th Cir. 1987) (citing Youngberg v. Romeo, 457 U.S. 307, 323 (1982)).

175 Schall v. Martin, 467 U.S. 253, 279-80 (1984) (quoting People *ex rel.* Wayburn v. Schupf, 350 N.E.2d 906, 910 (N.Y. 1976)).

justifies compulsory labor, the Supreme Court has acknowledged that for people involuntarily committed by the state, "the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."[176] Assuming, as the Court does, that juvenile justice programs retain some rehabilitative purpose,[177] then juvenile delinquents in detention centers must be treated differently than criminal convicts in prison. "When a person is institutionalized—and wholly dependent on the state— . . . a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities."[178]

Federal courts have managed to escape the formulation of consistent guidelines for the imposition of involuntary servitude on juvenile delinquents, despite a canon of constitutional review which requires the delineation of objective standards.[179] Federal courts may hesitate to exercise their equitable powers to enact guidelines because many juvenile court judges retain jurisdiction to amend dispositions *sua sponte*.[180] Furthermore, federal courts may refrain from intervening where the juvenile delinquent has not exhausted avenues for relief provided by the state.[181] Yet, federal courts recognize their obligation to review the consequences of juvenile court dispositions, especially where state officials countenance the practices challenged on constitutional grounds.[182] In reviewing the state-sanctioned imposition of involuntary servitude on juvenile delinquents, federal courts must establish guidelines which protect the juveniles' constitutional rights without infringing on the states' right to adopt and administer their own juvenile justice policies.[183] Achieving this balance is an exacting task, because it is as easy to

176 Jackson v. Indiana, 406 U.S. 715, 738 (1972). *See also* McNeil v. Director, Patuxent Inst., 407 U.S. 245, 249-50 (1972); Morgan v. Sproat, 432 F. Supp. 1130, 1150 (S.D. Miss. 1977).

177 *Schall*, 467 U.S. at 263 (1984) (affirming the state's *parens patriae* interest in the reform of juvenile delinquents).

178 *Youngberg*, 457 U.S. at 317.

179 Gary H. v. Hegstrom, 831 F.2d 1430, 1438 (9th Cir. 1987) (citing Rhodes v. Chapman, 452 U.S. 337, 346 (1981) (courts must determine the constitutionality of punishment through the use of objective factors to the maximum possible extent)). *See also* Ingraham v. Wright, 430 U.S. 651, 669 n.37 (1977) (reserving decision on the constitutional treatment in juvenile detention facilities).

180 Santana v. Collazo, 533 F. Supp. 966, 972 (D.P.R. 1982), *aff'd in part, vacated in part*, 714 F.2d 1172 (1st Cir. 1983), *cert. denied*, 486 U.S. 974 (1984).

181 *Id.*

182 Santiago v. City of Philadelphia, 435 F. Supp. 136, 149, 153 (E.D. Pa. 1977).

183 *Gary H.*, 831 F.2d at 1432 (citing Youngberg v. Romeo, 457 U.S. 307, 322-23 (1982), and Touissant v. McCarthy, 801 F.2d 1080, 1086 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069 (1987)).

overstep the bounds of federal jurisdiction as it is difficult to formulate rules which have no constitutional loopholes. For example, one circuit court noted the overzealousness of a trial judge in setting regulations to be implemented by a defendant juvenile detention center: "[N]othing we can find in the due process clause . . . or in Supreme Court decisions authorizes a federal district judge to establish candle power at desk level of reading lamps, proscribe pink pajamas, or order the superintendent of the institution to maintain seasonal temperatures appropriate for resort hotels."[184]

On the other hand, policies which broadly outlaw punishment and promote rehabilitation may not go far enough to prevent the imposition of involuntary servitude under the *parens patriae* rationale. One juvenile detention center ran a "vocational program" in which half the students were merely assigned to work crews and compelled to perform manual labor, without even a pretense of training or instruction.[185] The chief administrator at another juvenile detention facility imposed "useless," "strenuous," and "degrading" field labor on delinquents, punishing those who would not participate in the work with beatings and tear gas assaults.[186] This administrator attempted to justify the imposition of "such unproductive and humiliating labor" by explaining that "anything that helps the staff control the boys is therapeutic."[187]

In response to the unconstitutional policies administered at this detention center, the district court drafted rules for the Texas Youth Council (TYC), which the court believed would put an end to Thirteenth Amendment violations:

> Students in TYC facilities shall not be required to perform work of any kind (other than academic school work) unless (1) the work is reasonably related to the student's housekeeping or personal hygienic needs and is equitably shared by the other students in that program or facility, (2) the work is part of an approved vocationally oriented program for the student, (3) the work is in furtherance of the maintenance of the facility and is in lieu of restitution for property damage committed by the student or is routine clean-up which is equitably shared by all the students, (4) the student volunteered for the work assignment, or (5)the student is being compensated for the work assignment.[188]

After ten years of litigation, as well as careful consideration by

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184 *Id.*

185 Morgan v. Sproat, 432 F. Supp. 1130, 1153 (S.D. Miss. 1977).

186 Morales v. Turman, 383 F. Supp. 53, 79-80 (E.D. Tex. 1974). The delinquents were forced to swing heavy pickaxes and pull grass by hand for hours at a stretch without a break. *Id.*

187 *Id.* at 81.

188 Morales v. Turman, 569 F. Supp. 332, 349 (E.D. Tex. 1983).

the district court, perhaps only the first two of these five rules would prevent detention centers from administering compulsory labor programs in violation of the Thirteenth Amendment.[189] The third rule does not place limits on maintenance work,[190] and it also wrongly assumes that the Thirteenth Amendment makes an exception for compelled labor to make restitution.[191] The volunteerism envisioned in the fourth rule is not an appropriate proviso in the context of a juvenile detention facility, where physical and legal coercion may persist to the extent that staff "requests" for volunteers may be interpreted by the juvenile inmates as orders. Finally, the fifth rule conditions acceptable work assignments on payment, but compensation does not convert involuntary servitude into voluntary labor.[192]

Some courts have rejected the notion that *parens patriae* could ever serve as a justification for the imposition of compulsory labor on juvenile delinquents.[193] Rather than equate all forms of involuntary servitude with punishment, other courts have characterized juvenile court dispositions of compulsory labor as part of the rehabilitation process.[194] For example, one court upheld a juvenile court's imposition of community service work under the *parens patriae* exception, by noting the therapeutic effect such a disposition was meant to have:

> As the trial judge stated: "This is specific action designed to foster in him an understanding that he's got some responsibilities and what it takes to create something as opposed to going around destroying things." (T. 28). It is constructive rather than punitive. It comes within the mandate that juvenile court judges are to make such disposition of a delinquent child as is "best suited to his treatment, rehabilitation, and welfare." Code Ann. § 24A-2302.[195]

The reviewing court, however, felt it necessary to justify the community service work on other grounds as well, and paradoxically claimed that the disposition fell under the criminal punishment exception to the Thirteenth Amendment.[196] Another court which upheld the *parens patriae* imposition of community service similarly

189 The second rule could arguably be circumvented by sham vocational programs, unless "approved programs" meant curriculum and instruction accredited by the state public school system. *See supra* note 162 and accompanying text.

190 *See supra* notes 152-53 and accompanying text.

191 *See supra* note 75 and accompanying text.

192 *See supra* note 152 and accompanying text.

193 King v. Carey, 405 F. Supp. 41 (W.D.N.Y. 1975); Nelson v. Heyne, 491 F.2d 352, 360 (7th Cir. 1974).

194 *See, e.g.*, M.J.W. v. State, 210 S.E.2d 842, 843-44 (Ga. Ct. App. 1974).

195 *Id.*

196 *Id.* at 844.

diluted its opinion by noting that the record did not provide evidence of court-ordered labor and that community service may have required only attendance at an educational seminar.[197] Finally, an even more extreme view holds that "[d]isciplinary measures and punishment are an integral part of the rehabilitative process" for juvenile delinquents.[198]

While the imposition of compulsory labor on juvenile delinquents may not always be therapeutic, it may not always be punitive either. Constitutional interpretation of compulsory labor in the treatment of delinquents is extremely difficult, because "Federal Courts are tribunals of limited jurisdiction, and . . . matters such as the wholesale reform of the juvenile justice system are not within its competence or expertise."[199] Perhaps the best the federal bench can do to limit institutional abuses of power is to restrict the disciplinary practices used at juvenile detention centers,[200] and to require administrators to provide accredited programs of rehabilitation and professional assessment to ensure the progress of each delinquent.[201] As one court noted, the imposition of compulsory work programs as both rehabilitative and disciplinary treatment may not be mutually exclusive. "[W]e conclude that the truth lies somewhere between Plaintiffs' contentions to the effect that conditions at the juvenile facilities resemble the Black Hole of Calcutta and Defendants' version that they approximate a Hollywood version of Father Flanagan's Boys' Town."[202]

V. CONCLUSION

Over the past twenty-five years, juvenile justice systems have become progressively more retributive in their goals as well as in their methods. One manifestation of the growing punitive nature of juvenile justice is the states' imposition of compulsory labor on juvenile delinquents. Compulsory labor programs may fulfill several goals in juvenile justice simultaneously: the acknowledgement of society's desire for offender accountability, the provision of restitution in the form of payment to victims or the performance of related community service, and the instillment of values and moral respon-

197 *In re* Bacon, 49 Cal. Rptr. 322, 339 (Cal. Dist. Ct. App. 1966).

198 Santana v. Collazo, 533 F. Supp. 966, 988 (D.P.R. 1982), *aff'd in part, vacated in part*, 714 F.2d 1172 (1st Cir. 1983), *cert. denied*, 466 U.S. 974 (1984).

199 *Id.* at 978.

200 *See, e.g.*, Milonas v. Williams, 691 F.2d 931, 943 (10th Cir.), *cert. denied*, 460 U.S. 1069 (1983) (limiting juvenile detention center disciplinary practices to those required for the maintenance of order and security).

201 *See, e.g.*, Morgan v. Sproat, 432 F. Supp. 1130, 1140 (S.D. Miss. 1977).

202 *Santana*, 533 F. Supp. at 969.

sibility in delinquents through the discipline of work. Whatever its purpose, the imposition of compulsory labor on delinquents through present juvenile justice systems does not comport with the Thirteenth Amendment's prohibition of involuntary servitude.

Supporters of punitive juvenile justice advocate compulsory labor for delinquents under the Thirteenth Amendment's criminal punishment exception. Juveniles, like criminal defendants, must be "duly convicted" of a crime before this constitutional exception will apply. While some states provide juveniles with many procedural safeguards, no juvenile justice system affords alleged delinquents the same due process guaranteed to criminal defendants by the constitution. Until juvenile justice systems can pass constitutional muster, the imposition of compulsory labor on delinquents cannot be justified by the Thirteenth Amendment's criminal punishment exception.

Alternatively, some courts suggest that the government may justify compulsory labor for delinquents as an exercise of the state's power under *parens patriae*. Yet, reformers who advocate compulsory labor as therapeutic treatment in the juvenile's best interest must rebut the Thirteenth Amendment's presumption that involuntary servitude is oppressive and punitive rather than rehabilitative. To meet this burden of proof, juvenile justice systems would have to provide individualized treatment programs. Such an undertaking would require tremendous political and financial commitments from our society, as well as the government's perseverance to gain the long-term benefits of such rehabilitative programs. Yet these obstacles pale in comparison to the social costs of crime, unemployment, and illiteracy, which are the adult products of juvenile delinquency.

Under today's juvenile justice system, "there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[203] By helping to alleviate this problem, the Thirteenth Amendment may serve yet again as a catalyst for social reform.

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[203] Kent v. United States, 383 U.S. 541, 556 (1966).