

The Development of Informal Reformatory Sentences for Juvenile Offenders in the Late Eighteenth and Early Nineteenth Centuries

As we have seen in the last chapter, the English criminal justice system was struggling to find appropriate sentencing options for the rising tide of juvenile offenders that was coming into the courts by the early nineteenth century. 'In time of war', as Wade pointed out in his *Treatise on the Police and Crime of the Metropolis* in 1829, 'the sea service ... afforded a convenient outlet for profligate youths, but now it is with great difficulty persons can be found to take them, as is proved by the experience of the Marine Society'. Wade was also clear that the alternatives were far from satisfactory. 'The methods now employed to dispose of delinquent children failing to reform them or relieve society from their presence, it is certainly expedient a new experiment should be tried', he wrote. 'This class of offenders ... may be imprisoned and whipped, ... (or) transported for a limited term. Neither of these punishments serves any salutary end, and when applied, the magistrates generally take occasion to remark, at the time, that they have resorted to them merely because they have no other way of disposing of the objects before them.' Wade's solution was compulsory exile, and assisted emigration in various less drastic forms did emerge as a major policy option in the late 1820s and 1830s.[1] However, although historians have paid very little attention to it and although it was not based on any statutory authority, in the first three decades of the nineteenth century the courts did evolve a new and very different sentencing option. In a significant proportion of cases involving juveniles they experimented with informal sentencing practices designed to put the offender into an institution with a reformatory regime.

1. The Coming of Reformatory Sentencing

The formal records left by the Old Bailey and by its gaol at Newgate contain virtually no indication that juvenile offenders were being sentenced to institutions with reformatory regimes in the late eighteenth and early nineteenth centuries. The *London and Middlesex Calendar of Prisoners in His Majesty's Gaol of Newgate*, which was printed before every Old Bailey sessions and listed all those who were scheduled to appear, contain no such references when they first become available in the early eighteenth and early nineteenth centuries. Equally, historians consulting the manuscript Home Office criminal registers for London and Middlesex, which cover much the same group of prisoners but begin three decades earlier [2], could be forgiven for concluding that the Old Bailey was not involved in any systematic attempts to develop reformatory-based sentencing policies for young offenders. Apart from a small number of very young offenders recorded in the first years of the nineteenth century as being referred to the Philanthropic society, there is no apparent sign that such a policy was being pursued [3]. By 1820, as we have seen in the previous chapter, a significant proportion of juvenile offenders were recorded in the Home Office criminal registers as having been given a nominal fine of one shilling. However, there is no indication in those registers, or in the parallel printed calendars, that these offenders were subjected to any other form of punishment. Unsurprisingly, therefore most historians of crime have not portrayed the first quarter of the nineteenth century as a period when the courts were developing a new policy of

sentencing a significant proportion of young offenders to reformatory style institutions [4].

In reality, however, just such an experiment was taking place in the 1810s and 1820s. The Old Bailey judges, faced with the severe penal dilemmas discussed in the previous chapter, began to develop sentencing policies that would enable them to put significant numbers of young people into institutions that were designed to be reformatory. Until 1806 the number of juveniles involved was extremely limited because the only institution available was the Philanthropic Society, which by then was only open to the tiny proportion of offenders aged 12 or under [5]. However, by the 1810s another potential reformatory with no age restrictions, the London Refuge for the Destitute, had become available. This philanthropic initiative, begun in 1806, was designed ‘for the purpose of affording an opportunity of reformation to criminals, and relief to the distressed’. In its early years the Refuge took in a considerable number of adults, but it soon began to specialise and from the second half of the 1810s onwards its inmate population was dominated by juveniles. [6]

The main instrument that the Old Bailey judges mobilised in order to make use of the Refuge, and to a much lesser extent of the Philanthropic, was their tradition of recording a suspended sentence of ‘judgement respited’. This had been used quite extensively in the eighteenth century in other contexts. In May 1793, for example, at the beginning of the war against France, 17 per of the sentences handed out to males at the Old Bailey were recorded as either ‘judgement respited for a soldier’ or ‘judgement respited to go to sea’. Two more sentences used the overlapping tactic of a nominal fine with a compulsory condition attached – ‘fined one shilling to enlist as a soldier’ [7]. This tactic was used less frequently at other times because rapid armed forces recruitment was rarely such a high priority, but it was still used occasionally. In 1806, for example, the criminal registers include a 14-year-old boy given a sentence of ‘judgement respited, sent to serve in the navy’. By this time the registers also make it clear that the judgement respited procedure was being used to place a few very young offenders in the Philanthropic. In that year, one ten year old and two eleven year olds, i.e. 43 per cent of all the males under 13 convicted in 1806, were recorded as ‘judgement respited, delivered to the Philanthropic’. At this point, however, only about one per cent of offenders were sufficiently young to qualify for the Philanthropic – a percentage that fell still further in the 1810s when that institution ceased to accept any girls with criminal backgrounds [8]. The opening of the Refuge for the Destitute in 1806, where the only age criteria was that those under 12 were not eligible because the Philanthropic already catered for them, made it possible for the Old Bailey judges to gradually increase this particular use of respited judgements. [9] To what extent did they actually do so?

This is not an easy question to answer. The Home Office criminal registers, as we have seen, make virtually no mention of the Refuge for the Destitute. Usually by the 1810s young offenders alongside whose names a cryptic ‘JR’ (for Judgement Respited) is recorded are then put down as merely receiving a one shilling fine before being discharged. Equally, when the printed Calendars first become available in 1820 the hand written post trial entries that record trial outcomes are no more revealing. For a number of offenders each session the entry simply reads ‘judgement respited’, with the only indication of what happened after that being the printed ‘Prisoners upon Orders’ entry at the end of the subsequent session which sometimes offers no further

information but often records that they were 'fined one shilling – discharged'[10]. Behind these opaque recording practices, however, an extensive system of referring cases to the Refuge had in fact developed. Asked directly by a Parliamentary committee on London's prisons in 1818 whether the Refuge 'receive a good many persons from Newgate ... who have been found guilty, sentenced to a fine of a shilling and discharged with the understanding that they were to be sent to that institution', a representative of the Refuge replied in the affirmative. Ten years later the Superintendent of the Male side of the Refuge was asked by another Parliamentary committee 'Do the judges ever send persons there?' 'Yes', he replied, 'I have fifteen in the house now of that description' [11]. Although the Refuge turned away a high proportion of those who applied for admission, it made a point of advertising the fact that whatever its financial circumstances it always accepted those referred to it by the Old Bailey. (It also automatically took a smaller number who were pardoned after receiving a sentence of death or transportation on condition that they were admitted to the institution.) . This policy was orientated primarily, although not yet exclusively, towards the young. In 1819, for example, a representative of the Refuge not only told a Parliamentary committee investigating juvenile offenders that many of those admitted were 'recommended to the institution by the judges' but also stressed that 'some of them are so very young that it would be unreasonable to inflict upon them the punishment annexed by the law to their offences.' [12]

A rough idea of the numbers of convicts sent to the Refuge after receiving a respited judgement and a nominal fine can be gained from the its sporadically surviving printed reports and its internal records. Between 1820 and 1822, for example, just under a hundred offenders who had been convicted and respited at the Old Bailey entered the Refuge. Between 1817 and 1826, which appears to have been the most important decade during which the Old Bailey made use of this judgement respited mechanism, over a quarter of the males and an eighth of the females who entered the Refuge did so by this route. In the peak years 1820-22, 43 per cent of the males admitted and 18 per cent of the females had been through that process. Because the archives of the Refuge, from the date of its move to bigger premises in 1811, have recently come to light, it is now possible to link the names in the printed Old Bailey calendars to the Refuge's own records. In December 1820, for example, these calendars list 19 Old Bailey 'prisoners upon orders' who had been convicted in the previous two sessions and 'upon whom the judgement of the court was respited'. Of these at least 12 can be traced into the internal records of the Refuge for the Destitute including 7 offenders against whose names the printed calendars specifically recorded that they were 'fined one shilling and discharged'. Split equally between the sexes, all but two of the 12 sent to the Refuge were aged between 15 and 19, and only one was over 21. All were automatically admitted. Although there is no direct mention of the Refuge in either the printed calendars or the Home Office registers, the Old Bailey was now regularly sending batches of offenders to that institution under the cover of the judgement respited procedure[13]. An informal system of reformatory sentencing was now in existence.

The Refuge was never dominated by those referred straight from the Old Bailey under the judgement respited procedure. Many inmates came by other routes. A very substantial number came after they had served a term of imprisonment, a few came as a condition of being formally pardoned, and others were referred to the institution by magistrates or, more occasionally, victims as a substitute for formal prosecution.

However, Old Bailey referrals were certainly a very important part of the Refuge's operation by the early 1820s. The opening sentence of its annual printed report for 1823, which recorded that 48 per cent of the males admitted that year had been 'convicted and judgement respited', emphasised its role in taking in 'those persons, of either sex, who have been convicted of crime and pardoned by His Majesty, or respited by the judges, upon condition of their being received into the Refuge for the Destitute'. [14] By the late 1810s and early 1820s the Refuge was providing the judicial system of the Metropolis with an important resource – a reformatory regime for juvenile offenders which met a series of needs but which was a particularly useful addition to the sentencing armoury of the major courts. At its peak in the later 1820s it was running two sizeable establishments, admitting nearly 180 juveniles a year and submitting them to a regime that usually lasted for two years. How did this come about?

The Refuge had been launched in 1806 as a purely private philanthropic initiative and anyone familiar with the unending financial difficulties experienced by such enterprises in these years will not be surprised to know that it was soon in debt and facing deep financial constraints. To understand the development of the Refuge as an important part of the reformatory sentencing strategies that were developed at the Old Bailey in the first quarter of the nineteenth century, it is therefore important to outline the general development of the Refuge in this period. In particular it is necessary to analyse the symbiotic relationship between government policy and philanthropic enterprise which shaped the Refuge's rise and decline, and which arguably turned it into the first central state funded juvenile reformatory.

2. The Development of the Refuge for the Destitute

The Refuge for Destitute developed through a number of stages. Beginning as a small institution admitting about 80 inmates a year, the Refuge gradually expanded in the 1810s. In 1811 it moved to a new site in Hackney road, Shoreditch, and in the next few years appeals, public meetings and sermons very successfully raised its profile. Its subscription lists grew fivefold between 1806 and 1816 and in the process it gained many influential connections. The Duke of York was its president, the Prime Minister, Spencer Percival, was a vice president at the time of his assassination in 1812, and by the later 1810s many key government figures such as the Home Secretary, Sidmouth, and the Chancellor of the Exchequer, Vansittart, were playing similar roles [15]. Its subscription lists were packed with the great and the good. In 1821, for example, they included more than 70 individuals of the rank of Duke, Marquis, Viscount, Earl, or Lord, as well as 6 Bishops, 23 M.P.s and a number of other influential figures such as Wilberforce, Ricardo and Baron Rothschild. In 1815, after consulting with the Home Secretary, it expanded into 2 separate establishments – one for males and one for females, and in 1818 two further 'Temporary Refuges' were added with finance partly provided by members of 'The Committee for Investigating Juvenile Delinquency'. By the mid 1820s it was admitting an average of 180 inmates a year, more than seven times the annual number being taken by the Philanthropic [16].

At its inception, the Refuge had two broad aims - to offer 'an opportunity of reformation to the criminal and relief to the distressed'. These were primarily to be achieved by 'receiving within its walls persons discharged from penal confinement, penitent prostitutes, and others who, from loss of character and extreme indigence cannot procure an honest maintenance.' [17] However, within a decade or so the institution was beginning to change its focus in three ways. First, from a non age-specific remit it increasingly specialised in the treatment of juveniles alone. As early as 1816, 88 per cent of the males admitted to the refuge were under 20. By the period 1826-28, when systematic information first becomes available on the whole of the inmate population, the Refuge was essentially a juveniles-only institution and 96 per cent of the males were under 20. The focus was increasingly on those in their mid teens, the peak age for boys being 14 and for girls 16 (Figure 1). In 1828, asked about the ages of the inmates, the superintendent of the male side of the Refuge replied that 'I have hardly any but boys; I have no more men than what I require as servants in the house... I have only four above twenty, and I do not think that I have more than seven that are as much as seventeen.' [18].

Secondly, the Refuge started to move away from a general focus on the destitute and increasingly concentrated most of its resources on those who had actually committed offences[19]. In 1818, for example, the printed Account published by the Refuge, whilst it continued to stress its joint aims 'to succour the destitute, and to reform the vicious', also described itself specifically as an 'asylum for penitent criminals'. By 1823 the Refuge's annual report underlined just how far this change had gone by stressing that 'During the last year, the committee have adhered to the *primary* views of the institution, and have applied its provisions to *criminal objects* only'. [20] Finally at the same time as the Refuge was increasingly focussing on offenders it was also moving, as we have seen, towards a more significant pre-incarceration rather than post-incarceration role. Those who set up the Refuge had originally envisaged that its main functions in relation to offenders would be 'to provide a place of refuge and reformation for persons who have been discharged from prison or the Hulks'. However, as the Old Bailey judges and a number of magistrates' courts began to use the Refuge as an alternative to a prison sentence this emphasis changed. As early as 1816 the Refuge was reporting that 'the greater number (of inmates) were received at the instance of judges and magistrates', and figures supplied to a 1819 parliamentary committee indicate that over half of all the males admitted to the refuge between 1816 and 1818 were sent there either after having been 'convicted and judgement respited' or after an informal decision in the magistrates courts [21] Rather than just acting as an after care institution for destitute ex-prisoners, by the late 1810s and 1820s the Refuge had begun to play a significant role within the sentencing process itself. By the early 1820s the managers of the Refuge were stressing that it was 'so constituted in its design, as to impose its beneficial provisions between the infliction of punishment upon convicted offenders against the laws of the land and their possible recovery to society', and were congratulating themselves that their endeavours 'have afforded means to the judicial and executive powers of mitigating the severities of general laws towards the juvenile delinquent' [22]

'The Refuge for the Destitute' never formally changed its name, but it had gradually moved from refuge to reformatory, from the destitute to the delinquent, from a non age specific admissions policy to a complete focus on juveniles, from the relieving of

distress to the use of 'rational principles of Remedy and Prevention' in order to arrest 'the progress of crime'. [23] By the late 1820s it saw itself first and foremost as a juvenile reformatory which 'for more than 20 years had proved that a great number of youthful offenders might be reformed'[24] and its annual reports were soon simplifying its history along those lines by suggesting that it was founded 'with the design of counteracting the progress of youthful delinquency by providing an asylum for young persons of both sexes'. This clearly distorted to some extent the much more general motives and aims of those who had originally set up the Refuge. However, in 1840 (when juvenile delinquency was attracting even greater attention) this did not prevent the committee from boasting with some justification that 'they may lay claim to the credit of having been the first to rouse the attention of the British public to the vast practical importance of providing efficient remedies for the serious and widespread evil of juvenile delinquency'.[25]

The managers of the refuge did not necessarily move from refuge to reformatory, from a post-incarceration to a partially pre-incarceration facility, entirely of their own volition. In its early years the Refuge was seriously short of cash and often in deep debt to its treasurer and this was particularly the case after its move to new premises in 1811. When the courts, and particularly the Old Bailey started to use the Refuge informally as a sentencing option its managers seem to have quickly realised that this was their main hope of getting state funding. As they began to use their extensive contacts within the government in an attempt to obtain a regular central grant they made great play of the fact that they were providing an important service to the courts and the government by always accepting all of the offenders referred to them both by the Old Bailey under the judgement respited system, and by other routes. Initially they made considerable mileage out of the small number of offenders they automatically accepted after they had received a formal royal pardon. The minutes of the General Committee, for example, after reporting that 'your committee have made an earnest appeal to His Majesty's Government for pecuniary assistance', partly based their hopes that they would soon get 'some support' on the positive testimony about the 'beneficial provisions of the Refuge' provided by the Prince Regent after it had accepted four capital offenders recently pardoned by him 'on the express condition of their being admitted into the Refuge'.[26]. Increasingly, however, the committee's requests for funding played on its role in servicing the needs of the Old Bailey justices and of the magistracy for a reformatory sentencing option. In the memorial they sent to the Home Office in February 1813 asking for a 'National Grant of Pecuniary assistance', they first stressed the fact that both these groups 'have deemed it expedient to arrest the sentence' of many offenders by 'recommending them as fit objects for the support and restraint which this establishment provides'. They then highlighted their policy of always acceding to these requests despite the costs involved. 'Such recommendations', they wrote, 'have been always regarded, by your memorialists, as applications made by authority, in the name of the country at large; and therefore, having with them, the most imperative claim on their attention; so that they have never suffered the lowest state of the funds of the refuge, to furnish them with a plea for the rejection of any object so recommended [27].

This argument that the Refuge was providing a vital sentencing option and, of course, saving the costs that would have accrued if these offenders had been imprisoned or transported,[28] soon bore fruit. The Refuge received its first grant of £1,500 in 1814

and by 1817 it was in regular receipt of a substantial annual sum. Between 1819 and 1826, the peak period of the judgement respited procedure, it received a grant of £5000 per year, although this was then reduced slightly in the later 1820s. This grant more than doubled the income of the charity, and throughout the 1820s it covered around half of the costs of the Refuge [29]. In applying each year for the renewal of this state subsidy, the managers of the Refuge continued to lay great emphasis on their role as a sentencing option. In 1821, for example, they claimed that among the 281 persons who had been afforded the benefit of the institution in the previous year ‘ a very large proportion has been recommended by His Majesty’s judges and magistrates, several having received the royal pardon ... and many others respited by the judges for the express purpose of being sent to the Refuge for the Destitute’. In 1822 their application not only stressed that they performed an ‘essential service’ in admitting ‘criminals recommended by His Majesties justices’ but also suggested that this procedure was being widely adopted outside London. ‘Seldom a session passes at the Old Bailey’, they wrote in their memorial to the Secretary of State, Robert Peel, ‘but the judges recommend some of the individuals there tried, to be sent to the Refuge; and in the same manner persons are constantly admitted by the desire of the judges of assize, and the courts of quarter sessions in the country.’[30]

By developing its role as a reformatory offering an important sentencing option to the courts in the later 1810s and early 1820s the Refuge had been able to shore up its precarious finances and greatly expand its operations. The journey of this institution from refuge to reformatory had complex causes, but it was clearly a very useful institutional survival strategy. The key period between 1813 and 1817 during which the Refuge sought to obtain financial backing from the government was one of rapidly growing anxiety about crime, and most especially about juvenile crime.[31] The Refuge was able to mobilise these concerns to support its case for funding by re-orientating its operation in two ways . First, at precisely the point, in 1815, when demobilisation meant that the capital was overflowing with young males it proposed opening a separate male refuge which would enable it to reverse its previous wartime policy of admitting more females than males. [32]. Second, as the number of juvenile offenders reaching the courts rapidly expanded it also re-orientated its policy about prioritising young offenders. In 1815 less than half the males admitted into the Refuge were under 20. In 1816 this rose to over 85 per cent and remained at or above that level from then onwards.[33] The Refuge turned itself into a juvenile reformatory at precisely the right time to cash in on, and in its own way reinforce, the growing focus on juvenile delinquency as a major social problem which rapidly gained momentum in the mid 1810s.

In the later 1810s it also gained from an alliance with the influential ‘Committee for Investigating the Alarming Increase of Juvenile Delinquency in the Metropolis’ formed in 1815. For the first two years of its existence this charitable body was not intimately involved with the operations of the Refuge. At the beginning of 1816, only three of the Refuge’s committee members were also members of the Juvenile delinquency committee [34]. However, this changed rapidly in the next few years. By 1818 the committee, which had now evolved into the ‘Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders’, had been instrumental in building a temporary refuge in the grounds of the Refuge for the Destitute which considerably increased the latter’s capacity [35]. Moreover, the key players in the Prison Discipline Society – its Treasurer, chairman and two secretaries

were all highly active members of the committee that ran the Refuge for the Destitute. The juvenile delinquency committee had attempted to persuade the Home Secretary of the need to build a separate 'Juvenile Penitentiary' and had presented detailed plans for such an institution to a Parliamentary committee in 1817, but these initiatives were unsuccessful and the increasing involvement of key activist such as Samuel Hoare and Peter Bedford in the affairs of the Refuge may not have been unrelated to that failure. The most active role in the governance of the Refuge was played by the 'visitors' and by 1821 half of the visitors involved in the day to day running of the Male Refuge were leading members of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile offenders. That society, which also boasted an illustrious group of Vice Presidents, had considerable influence in the early 1820s and provided both positive publicity for the Refuge and continuing financial support for its Temporary Refuges.[36]

By 1820 the Refuge had therefore managed to ally itself not only with the government but also with the most important philanthropic body working within its chosen field of operations. Neither of the other English early juvenile reformatory experiments that were set up in the first quarter of the nineteenth century – the Philanthropic and the tiny Warwick Asylum opened in 1818 – managed to get central state funding in this period. Indeed it is not clear that there were any other juvenile reformatories in Europe that did so. The Refuge's partial dependence on state funding was a two edged sword. When the government withdrew its grant support in 1848 the Male Refuge was immediately closed for ever.[37] But in the first three decades of the nineteenth century a complex and informal set of interactions between a body of philanthropists, a group of judges wishing to expand their sentencing options in cases involving juveniles and a government that was responding to growing fears about juvenile delinquency, created both a new informal system of reformatory sentencing and what appears to have been Europe's first centrally funded juvenile reformatory

3. Selection and Treatment

How was this new sentencing option used in the first quarter of the nineteenth century? Did the courts, and more specifically the Old Bailey, only resort to this option when faced with certain very particular kinds of offenders? It is far from easy to work out precisely how the judgement respited system was used in practice. The Old Bailey Judges did not formally record their selection criteria. Moreover, the process was informal and was rarely recorded at all. However, the surviving internal records of the Refuge, despite their patchy and sometimes inconsistent nature, are rich in qualitative material, particularly when they are used to trace offenders already identified in the Old Bailey records. One dimension of admissions policy is immediately clear from such an exercise. Although the court occasionally sent older offenders to the Refuge for a brief stay, the great majority of those who were subjected to the full one to two year programme organised by the Refuge were juveniles. A systematic survey of all those reported in the Refuge records as having been admitted after having judgement against them respited in the period 1820-22 (Figure 2) indicates that the peak age was 16 and that about 70 per cent were aged 19 or less [38]. Moreover, as we have seen, by the mid 1820s almost the entire inmate population of the Refuge was under 20 years old (Figure 1).

It is much more difficult to work out what other characteristics persuaded the Old Bailey judges to single out particular offenders for reformatory treatment. If the brief descriptions taken down by the Refuge at their admission are any guide, the backgrounds of those placed in the institution by the Old Bailey judges were very varied. The judges almost certainly favoured those offenders who both aroused their sympathy and seemed to exhibit signs of potential reformability, but did this mean that they mainly selected those young people who could present themselves as having been driven into crime by economic and social forces beyond their control?

There is considerable evidence that this was an important set of criteria. A core theme in many of the brief narratives recorded in the early 1820s was family breakdown. Ann Smith's father had 'run away from her' when she was seven. Her mother was dead. James McBride was deserted at the age of 14 by his father, 'a dissipated man and fond of strong drink'. Thomas Hill, 13, was the son of a shoemaker who had 'left his family 4 years since and went to America with another woman'. Phrases such as 'his parents are dead' or 'he has no parents' pepper the reports.[39] So do references to young offenders who had spent time in their parish workhouse because their parents had deserted them. One 16-year-old ex-inmate of St Clement Danes workhouse, for example, told the committee he believed his mother was still living but 'he knows not where'. These young people were easily exploited and had precious few resources to fall back upon when times were hard. The entry for the 10-year-old, John Hill, poignantly illustrates this. 'He has no friends', the clerk at the Refuge recorded. 'He was brought up in Marylebone workhouse, whence he was taken by one Raspberry, of Witham Essex, a chimney sweeper, who having no work, discharged him.' [40]

The court may also have recognised that even those with some limited family networks available to them became highly vulnerable when they lost their main source of employment. Examples of young offenders whose appropriational activities appear to have begun when they could not find work occur regularly in the Refuge archives. Mary McGraham, a 15 year old from Connaught, was fairly typical having fallen into crime after losing her place as a servant. Others were badly affected by the casual nature of the labour market. Elizabeth Johnstone, 17, lived with her grandmother and 'did waistcoat work', but 'being out of work and in much distress she stole 4 shoes' from a shop in Back Lane and was convicted.[41] Harriet Summers, 15, having had to leave home 'because her father in law would not keep her', went to her cousins who obtained her lodgings with a laundress. However, 'she had no employment for her' and she soon stole and pledged some gowns.[42] Some of the young offenders who came to the Refuge under the judgement respited system still had parents who were alive and potentially sympathetic, but their family could be of little help to them because they were long distance migrants who had failed to find a survival strategy in the big city. Thomas Harris, for example, the 18 year old son of 'a very poor' Coventry ribbon weaver, 'came to London about six months since to seek employment, but has found no work, except a few jobs as porter'. David Tyndale, 16, whose parents lived in Ramsgate, had worked as a painter and glazier until, 'being out of employ he stole a prayer book and was convicted'. [43]

The Old Bailey Judges did not, however, confine their referrals to the Refuge to those whose crimes might in part be excused by the fact that they lacked family support and/or had fallen into distress through unemployment. A very considerable proportion

of those who were sent to the Refuge as an alternative to either imprisonment or transportation were in regular employment and still had frequent contact with their parents and other relatives. William Thacker, 19, worked for a hat maker before his arrest, and was described by the latter as ‘ a very indifferent character’. His father was a sawyer and his parents lived just round the corner from William’s workplace but were described as living an ‘improbous life’.[44] Sarah Richards, 16 and the daughter of a jeweller, had recently returned to her parents house after living for nine months as servant to her uncle who kept ‘ a ham and beef shop’. She then ‘went to Bow fair, where she was seduced’ and fell into crime.[45] The majority of young female offenders had recently been in, or were still in, service when they committed their offences and most of the boys sent to the refuge also had some form of employment when they were arrested. Some were respectable apprentices – one was apprenticed to a bookbinder after being ‘educated in Christ’s Hospital’. Some were still school children. James Ewan and Samuel Rushton (aged 13 and 14) were pupils at the St Pancras National School when they were arrested.[46] however, at the other end of the spectrum several boys clearly followed highly marginal occupations. One was an errand boy, another had ‘usually gone about town with pipes and a drum’, while James McBride, 16, made a precarious living ‘ lighting Whitecombe Street with torches’. [47] While many had problematic or non-existent families, in a considerable number of cases it is clear that the young offenders referred to the Refuge came from reasonably functional family backgrounds. Moreover their fathers’ occupations suggest that a considerable proportion had not been brought up in households from the very poorest groups in the metropolis. Some of their fathers were probably on the lowest and most vulnerable rungs of the occupational hierarchy - a bricklayer’s labourer, a poor ribbon weaver, a dealer in old clothes in Petticoat Lane - but others appear to have been well established in skilled or semi-skilled trades –a locksmith, a gunmaker, a fan maker, a cabinet maker, a jeweller, a master bricklayer, a manufacturer of scouring paper, a customs house officer, an exciseman. [48]

Lacking any equivalent depth of information about a parallel sample of young offenders whom the Old Bailey did not refer to the Refuge, it is impossible to work out whether particular kinds of offender was being singled out for reformatory treatment. However, the Old Bailey judges clearly did not reserve reformatory sentences only for those who could claim that acute distress and family breakdown had been major factors in their offences. Nor did they only offer this alternative sentence to offenders who came from relatively respectable backgrounds. They sent a broad spectrum of different types of young offender to the Refuge.

There is not space here to discuss in detail the reformatory regime experienced by those who were admitted to the Refuge for the Destitute in the early nineteenth century, although the survival of detailed internal records does make this possible. [49] Broadly speaking, however, the regime was based on very similar principles to those on which a number of other reformatory institutions established in the early nineteenth century were founded [50] - the idea that most individuals are reclaimable; a stress on ‘lenient and persuasive’ treatment rather than harsh physical punishment combined with a focus on orderly habits and strict conformity to regulations; the use of individualised treatment plans and of incentives to produce correct responses (such as returning part of the income earned by labour); the importance of providing religious and educational instruction; the centrality of constant employment; and the high priority given to instruction in a trade and to ensuring that inmates would be able

to maintain themselves once they have left the institution. In practice by the mid 1810s this meant a tightly regulated, work-orientated day, daily prayers, basic instruction, and a reasonably good diet. Classification was rudimentary and was mainly based on work roles. Boys started in the wood-cutting shed and then graduated to a trade – tailoring, shoemaking, bookbinding etc. Female employment was increasingly dominated by washing, for the stronger girls at least. [51] Discipline was mainly via dietary deprivations, short periods in solitary confinement or a temporary return to hard labour in the woodshed. The average stay was two years, but if a suitable situation – an apprenticeship, regular employment with relatives or friends, a place aboard ship, or latterly an emigration opportunity – became available, many inmates stayed for shorter periods. The core emphasis was on retraining and the re-establishment of a good character so that the inmate could be self supporting as soon as possible. [52]

The Refuge's founders had not originally intended to formally enclose the institution in order to prevent inmates from leaving without permission, but during the 1810s it effectively became a prison, with bars being fitted in a number of places to prevent further escapes. [53] Inmates were allowed visitors on a fairly regular basis and after six months they were permitted to visit family or respectable friends for brief, one day, 'holidays' provided that their behaviour had been good. However, partly, no doubt, as a result of its growing role as a sentencing option for the Old Bailey, the Refuge had almost all the attributes of a prison establishment by the 1820s. Asked about this by a parliamentary committee in 1828 the Superintendent of the male Refuge admitted that the inmates could not get out and that the Refuge was 'like a prison' and 'quite secure, surrounded with walls'. [54] The Refuge's legal position when an offender absconded was highly problematic. Samuel Hoare admitted in 1819 that 'we have no power to detain them' whilst at the same time observing that by then very few inmates left illegally, presumably because the premises had been made secure. Another witness before the 1819 committee, the lawyer and long serving committee member Stephen Lushington, was well aware that the Refuge had little legal foundation for many of its operations. 'though we have no power of detention', he observed, 'we should not think it right to set a boy at liberty sent to us by government ... though perhaps we are not justified by strict law to detain them'. [55] The legal position of those who absconded after being sent to the Refuge by the Old Bailey continued to cause difficulties. In 1822 the Refuge agreed to admit Charlotte Duckitt, who 'had been convicted at the Old Bailey of ... robbery and judgement was respited in order that she might be sent to the Refuge', but when problems arose and they took legal advice they found themselves in a difficult position. When the superintendent went to confirm the legal position with the judges he was informed in no uncertain terms by the Common Sergeant that 'the committee cannot send her back to Newgate; and that he is aware that they cannot keep her in the refuge against her will.' He therefore 'recommended to the committee to be very circumspect'. [56] Although the Old Bailey was making extensive use of the judgement respited procedure to place juvenile offenders in the refuge, and to a lesser extent in the Philanthropic, there was no formal legal or statutory authorisation for the practice. All those involved had to be very circumspect, which may explain the courts' reluctance to formally record the existence of the practice in their printed calendars or in the criminal registers. The Refuge, although itself effectively part of the legal system, was operating right on the edges of illegality.

Conclusion

Despite the almost complete silence of the formal court records on the subject, there can be no doubt that the London courts gradually developed a system of informal reformatory sentences in the first quarter of the nineteenth century and then used it extensively to deal with juvenile offenders. This centred mainly on the Refuge for the Destitute and to a lesser extent on the Philanthropic. After 1825 it may also have included the Chelsea School of Discipline opened in that year [57]. This judicial change was not initiated by government and at no point in this period did it receive legislative backing. Indeed its legal foundations were extremely shaky. It was created by the dynamic interaction at ground level between a group of philanthropists, the Old Bailey judges, and the formal government authorities. The personnel involved in these groups sometimes overlapped and each played an important role. However, the main momentum behind the development of this informal reformatory sentencing system arose from the creation of institutions with reform based regimes capable of being used as sentencing alternatives, and then from the courts increasing desire to use them as they became aware that all other sentencing options were inadequate when juveniles were involved. Once the latter started to use charitably financed institutions as reformatories this then allowed the Refuge in particular to gain financial assistance from the government and this in turn enabled it to further expand its operations. By 1835 the Refuge was being described in the Times as 'almost a government concern' [58]. The first partially state funded juvenile reformatory in England had come of age.