

Juvenile Justice

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ABSTRACT

Juvenile justice is conceived as a positive system in which the work of its organs should focus on rescuing and protecting children in vulnerable families, as well as in combating the acts of these parents that endanger the real life of the child. Juvenile justice is a special legal and judicial system aimed at protecting the rights of juveniles. This system should function in such a way that government bodies and non-government institutions conducting justice in cases in which is involving juveniles should monitoring the rehabilitation and correction of the mistakes of young perpetrators. Their basic tasks, among other things, should consider the prevention of juvenile delinquency and social measures to protect the rights of juveniles.

Keywords: Juvenile, Violence, Crime, Justice, Psychology

INTRODUCTION

The cycle of juvenile justice is a unique feature of approaches for responding to juvenile offenders in the United States [1]. Americans have long held strong and conflicting views about juvenile delinquency and appropriate public responses. One group in our society believes that the juvenile justice system is too lenient in emphasizing treatment for juvenile offenders. They contend that the leniency of the system encourages delinquency, thus they call for harsher approaches for juvenile offenders. Increased use of incarceration typically follows. After these policies are put into effect, another group begins to oppose harsh punishments, pointing out that they do not appear to reduce juvenile crime. These arguments lead to the return of more emphasis on rehabilitation of juvenile offenders, beginning the cycle again. In each of these eras, the current cohort of delinquents was described as “worse than ever before.” This characterization of juvenile delinquents is not unusual.

Youth justice emerged from the understanding that children are different from adults and require specific forms of support to allow them to develop and eventually contribute to society [2]. This position implies a welfarist, or social justice philosophical approach; children require care, and the state has some duty to provide it, or at least the opportunity for support, in order to achieve or maintain prosperity. However, as

this philosophical view has not been made explicit, the actions taken within youth justice have not always been in line with this approach, allowing punitive and neo-liberal approaches to emerge within practice. That practitioners typically hold and support welfarist approaches to practice, and the neo-liberal view has generally supported in top- down justice-driven formats highlights the divide within the organisation of youth justice. Philosophical principles need to be clearly established in order to effectively underpin practice.

PARENTAL RIGHTS

Childhood is usually seen as a period in which individuals have not yet fully developed self-control and their impulses tend to lead to misbehavior and acts of delinquency [3]. It is why parents, teachers and other adults during the period from childhood into adolescence help to modulate children’s poor internal controls, teach them skills to navigate problems in life, and help them avoid inflicting harm on others. Thus the years across childhood and adolescence are seen as a crucial period in which to bring about in young people a shift from external to internal controls. However, in late adolescence and early adulthood the appearance of physical maturity does not necessarily mean that mental maturity has been fully achieved and that internal controls are completely formed and are regularly exercised by the young person.

The concept of parental rights may have a long history and retain considerable appeal, but so does the concept of adolescents having their own rights, independent of their parents [1]. The same laws and principles that granted parents rights also placed on parents the high duty to foster their children's healthy development and prepare them for appropriate roles in society. The leading contemporary case to do so recognized that the government could control the social development of young children much more than the development of adolescents, deemed best controlled by their parents. That stance was considered reasonable because adolescents' values and life ambitions, unlike those of younger children, could be too highly influenced by their peers and government-sponsored socializing institutions (such as public schools). For adolescents, parents were deemed the most appropriate guides for their development and, as a result, the proper ones to control the rights that determine their children's future. Still, parents were charged with acting responsibly and fostering the development of effective citizens. In a real sense, parents were permitted to control the rights of their children when they could demonstrate that they would do just as well, or better, than the government. The concept of adolescents' rights, just like the concept of parental rights, then, concerns itself with who should control the development of individuals, with the goal of ensuring effective development for functioning appropriately in society.

JUVENILE VIOLENCE

Adolescents live in a rapidly changing world [1]. These changes challenge not only adolescents but also the institutions that guide their development. Their socialization now must include efforts to prepare them for an unstable, unpredictable, and precarious globalized society. Yet the legal system, which guides the development of institutions and what they can do to socialize individuals, has only begun to adapt to these developments. The failure to adapt is not surprising, as law seeks stability and resists rapid change. As a result, the legal system's approach often exposes a mismatch between how the legal system treats adolescents and what is known about adolescents' experiences and needs. As it does so, the legal system makes assumptions about adolescents that remain highly debatable and disputable.

Many examples reveal the mismatch between adolescents' rights and what we know and do

not know about adolescents (for our purposes, teens under 18, whom the law views as "minors" or "juveniles"). One of the most important examples is the legal system's tendency to treat adolescents as incompetent children rather than engaged individuals who need effective social structures to develop skills and competencies to navigate their changing world. Determining when and how to move away from the default assumption of incompetence has become the legal system's most important challenge in its efforts to address adolescents' needs.

Although the dire prediction of a new "wave" of juvenile violence never materialized, fear of young people had grown in the public's mind and the more punitive philosophy of the adult criminal justice system filtered down to the juvenile justice system [2]. Further momentum was given to that movement by a review of correctional programs that erroneously concluded that "nothing works". Together, these developments ushered in significant changes in the boundaries of the juvenile justice system and in policies and procedures for handling juvenile offenders. New laws designated more juveniles as serious offenders, brought more minor offenders into the system, and extended periods of confinement in juvenile correctional facilities. Many states abandoned rehabilitative programs in favor of boot camps, "Scared Straight" programs, and increased confinement of youths in detention centers and juvenile reformatories. Increasingly more juvenile offenders were transferred to the criminal justice system, and transferred juveniles convicted of felonies were often given longer prison sentences than adults for the same offenses.

The difficulty of defining violence complicates the identification of risk factors for violent behavior among youth, as well as efforts to prevent youth violence [4]. The National Center for Health Statistics defines violence as the threatened or actual use of physical force or power that either results in or has a high likelihood of resulting in death, injury, or deprivation. However, studies of violence tend to employ either an overly broad definition that blurs the distinction between aggression and violence or an overly narrow definition that focuses on specific types of violence, such as murder, rape, robbery, and assault. When researchers rely on the use of official records (e.g., arrests, convictions) to measure outcomes, many violent acts that never lead to an arrest or a conviction are excluded. Due to institutionalized racism and lower-

quality legal representation, reliance on official records may exaggerate the relative levels of violence among groups that are more likely to be arrested and convicted.

CHILD-ON CHILD VIOLENCE

If child-on-child violence is regarded as different from other kinds of violence, the main reason for this belief derives not from empirical evidence but from moral and philosophical presumptions about young offenders [5]. Children, according to long traditions in law, religion, and psychology, are deemed to be more impulsive; less aware of society's norms, standards, and consequences; and less capable of harboring so-called criminal intent, or *mens rea*. Some of the aversion to using crime-oriented labels like assault is the belief that children should not be judged by the same moral or legal standards as adults and should be spared the stigma inherent in such labels. This principle forms the basis for having a separate and less punitive system to handle juvenile offenses.

But along with presumptions about child offenders, perceptions of child-on-child violence appear also to contain parallel presumptions about child victims. These presumptions consider the victims of peer violence to be less violated, less injured, and less affected than similarly victimized adults might be.

Would it be considered unreasonable for a man who is knocked down, injured in the jaw, and verbally abused by a co-worker to pursue a grievance about such treatment a year after the episode? Would it be considered unreasonable for a woman hit on the head in great anger with a clenched fist to seek a restraining order against her offender? In recent instances, when children have filed such grievances or sought restraining orders, typically in the face of more serious abuse, questions have been raised about whether the children or their families were "going to extremes."

RISK

One important finding is that most youth who run afoul of the law are not on a pathway that leads to adult criminal careers [2]. Most delinquency is self-correcting as youth age, and much delinquency is not serious, violent, or chronic. Juvenile justice systems thus should not treat every case as if a failure to vigorously intervene will lead to a lifetime of crime. It is the serious, violent, and chronic cases that need to be the focus in allocating scarce resources,

and they represent a relatively small proportion of the population of juvenile offenders. Moreover, predictive risk and protective factors have been identified that can be used to assess the likelihood that a youth will become a serious, violent, or chronic offender. This information allows juveniles on high-risk pathways to be identified relatively early so the juvenile justice system can give them special attention. The "pathways" part of the picture shows a developmental progression (rather than more or less random delinquents and incidents) with the implication that these pathways can be interrupted by effective intervention. Moreover, there are different points of intervention along that pathway, ranging from early prevention to more intensive intervention, easily graduated according to where a juvenile is positioned in the developmental progression. Young offenders who begin to engage in delinquent behavior at an early age are at especially high risk for serious, violent, or chronic delinquency and warrant particular attention when they appear in the juvenile justice system.

CRIME

Common law held that those under the age of seven had no mental capacity to commit crimes, and that their mental capacity increased until age fourteen, when responsibility was assumed [6]. Now each state has a juvenile court system that effectively eliminates the defense of age by trying juvenile defendants without juries as delinquents rather than as criminals. In most states these courts have exclusive jurisdiction up to a certain age. At the upper age range, often sixteen to eighteen years, the juvenile court can transfer or certify cases to adult criminal courts if the crime is serious and the juvenile is mature. Reaction to recent, widely publicized, violent crimes by younger children has led to a lowering of the age for trial as an adult in some jurisdictions.

At common law, it was a complete defense to a charge that the accused was a child under the age of seven at the time the crime was committed [7]. It was irrebuttably presumed that children under seven were incapable of forming the requisite *mens rea* to commit a crime. A rebuttable presumption of incapacity existed for those between 7 and 14 years of age. The presumption could be overcome for those between 7 and 14 if the prosecution could prove that the defendant understood that the criminal act was wrong. Few minors are charged with crimes today. This is the result of the advent of

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the juvenile court systems in the United States. Currently each state has a juvenile court system that deals with juvenile delinquency and neglected children. Statutes vary, but it is common for juvenile courts to possess exclusive jurisdiction over criminal behavior of juveniles. However, some states give concurrent jurisdiction to criminal courts and juvenile courts. If concurrent, the juvenile court usually must waive jurisdiction before the criminal court can hear the case. Determining who is a juvenile also differs, with some jurisdictions utilizing a method similar to the common law (irrebuttable and rebuttable presumptions) and others simply setting an age cutoff, such as 14 or 16.

The purpose of the juvenile justice system differs from that of the criminal justice system. Whereas criminal law has punishment as one of its major purposes, the purpose of the juvenile system is not to punish, but to reform the delinquent child.

Criminal liability is imposed on conduct felt to be against the general interests of society [8]. Obviously if millions of people have to live together, their lives will be more pleasant and peaceful if some measures are taken to prevent people from killing or physically attacking others, walking into their houses and taking things away, or smashing up someone else's car. Most of us would agree that these types of behaviour are anti-social, and we want them to be controlled. But there is not always agreement on what kinds of conduct should be considered criminal. Swearing in front of children is considered anti-social by many, along with eating smelly fast food on public transport, or wearing too much perfume or aftershave. Yet none of these constitutes a crime, and very few people would wish them to be. On the other hand, there are types of behaviour which may affect nobody but the people involved – smoking cannabis and failing to wear a seat belt are examples – which are nevertheless criminal acts.

TEEN COURTS

Teen courts turn peer pressure on its head, using young people to censure teens who have broken the law [9]. With the earliest documented teen court established in Grand Prairie, Texas, in 1976, teen courts have recently blossomed across the United States with 1,127 courts in 49 states. These courts, by providing an alternative to more formal case processing for young offenders, serve to craft a more meaningful

response to low-level teen offending, as well as positively involve young people in the justice process. Teen courts fit into the rubric of community justice by creating a “community of teens” that work to promote and enforce appropriate standards of behavior for young people in their neighborhood.

Although there are many types of teen courts, in the basic model, young offenders who have already admitted their guilt to low-level offenses such as vandalism, truancy, shoplifting, and trespassing, participate voluntarily in a process in which their case will be heard by a judge and jury of their peers, who determine the appropriate sanction. Schools, probation departments, police, nonprofit agencies, and courts all may operate a teen court. Some teen courts use adult judges with youth juries and/or youth “attorneys,” while other courts are fully staffed by young people. Typical sanctions might include community-service hours, essay writing, a letter of apology, service on the teen-court jury, and/or restitution. Teen courts may also work to incorporate family participation, with parents being required to take the stand or with mandated parental attendance at the hearing. Teen courts frequently draw on the principles of restorative justice by incorporating a social-service assessment of the young person prior to or after the hearing and subsequent linking to social services. One of the primary philosophical underpinnings for the use of teen courts is that youth continually cite peers as having the most influence on them as they are growing up. With this in mind, designers of teen courts argue that sentences pronounced by peers will have more of an effect on the future behavior of a defendant than a sentence pronounced by an adult who is seemingly unconnected with the trial and tribulations of being a teenager.

A central premise of the juvenile court is that juveniles and adults should be treated differently [10]. It is assumed that adolescents have less responsibility for their acts and need protection. Therefore, it follows that juveniles should receive less than the full adult penalties for their misconduct. In addition, informal procedures are preferred for handling juvenile cases, and discretionary processes are the norm. The architects of these laws based their models on the adult criminal court system, while eliminating most of the procedural safeguards protecting constitutional rights of persons accused of crimes. The court was to be paternalistic instead of adversarial. Following the

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logic of *parens patriae*, it was assumed that formal procedures that ensure constitutional rights for juveniles are unnecessary because the court is committed to looking out for the best interests of children.

Under the *parens patriae* philosophy, the goal of the juvenile court became individualized justice. Judges and other decision makers in the juvenile justice system were encouraged to look beyond a youth's alleged crimes to the best interests of the child. Tailoring decisions to the needs of the individual child led them to base discretionary judgments on social characteristics of offenders such as race, sex, age, family status, and social class. Such reliance on nonlegal factors has resulted in differential processing and more severe sentencing of minority youths, raising issues of fairness and equality.

JUSTICE

At first glance, the characteristics of the adversarial criminal justice process in Western societies seem to overlook many of the needs—rights of child victims [11]. Their rehabilitation and best interests, while possibly in the background, are not assigned high priority in the process. Child victims' participation is limited and problematic. Important aspects of children's development and the right to equality are further neglected. As to protection, while this is clearly a goal of the criminal justice system (unlike the other human rights principles), the low reporting rates of crimes against children and the evidentiary difficulties associated with such crimes make it difficult for the criminal justice system to reach this goal in a satisfactory manner. Further, an investigation into the psychosocial needs of child victims such as an apology, direct (positive) interaction with the perpetrator, validation, and a sense of control reveals that they are typically not addressed in the criminal process.

In Western adversarial criminal justice systems the major participants are the state—represented by the prosecutorial authority—and the offender. Victims are typically only witnesses. In many cases, the process ends with a plea bargain, leaving no role for the victim. In other cases, victims are called to give testimony, and while doing so, to put themselves at the hands of defense attorneys who are trained to conduct stringent cross-examinations. Seen as a “piece of evidence” (albeit a central one), victims often are denied opportunities to tell their stories in their own terms, to ask questions

that bother them, or to talk about the aftermath of their victimization.

SOCIAL JUSTICE

Justice plays a large and vital role in our society; however, defining justice is difficult [12]. Philosophers have considered the problem of justice since antiquity and there is not a single, universally supported understanding of justice. Different forms of justice have been theorized, which has allowed more concrete understanding to occur. Criminal justice sanctions those who have broken the law; distributive justice creates systems for the sharing of resources. Some forms of justice are still contested and the subject of debate; social justice is one of these. Social justice relates to the well-being and equality of citizens—how the state should treat those who uphold the law. These various forms of justice are all interlinked, and together create an overall “justice”. The relationships between the different forms of justice are not always clear though, and require further exploration.

Philosophical approaches view the world in different ways, and so will implement a single concept differently [12]. Social justice can be viewed in many different ways, depending on how society is conceived, what level of activity is considered to be participation, and what is considered to be opportunity. When these approaches, constructions, and views are applied, it is not to a blank slate society. As our world already has established structures, patterns, and norms, philosophical approaches cannot be applied or adopted exactly as they are conceived. As our society has pre-existing, well-established inequalities, these would need to be addressed by the philosophical approach being applied in order for any change to have a meaningful impact. Otherwise they would likely remain. Treating everyone equally is not necessarily social justice, as this assumes that everyone starts from the same point. Social justice is not just about creating equality of opportunity; it is about ensuring that those opportunities are equally accessible.

CONCLUSION

Criminal legal status, regarding the position of juvenile perpetrators of criminal acts and misdemeanors in contemporary criminal legislation, is completely different from the status of adult perpetrators of criminal acts and misdemeanors. There is a number of reasons, and above all, because juveniles are a special category of perpetrators whose personality is

characterized by special psycho-physical, emotional and social characteristics that require a completely different form of social response to their illicit behaviors. Activities in modern legislation affirm the less punishments of young adults in relation to adult perpetrators. This approach is a combination of criminal and rehabilitative approach, complementing with the philosophy and practice arising from a new restorative, i. e. renewal approach. This practice has proved successful in a large number of countries, giving concrete results in reducing the recidivism of juveniles. Of course, this kind of sequence has led to the fact that we have special sanctions for juveniles in modern criminal legislation.

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