

Adolescents in Adult Court: Does the Punishment Fit the Criminal?

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I came to a fork in the road
 I took the one that looked right
 It led me left
 on the wrong path to overcome a journey to a destiny
 that I wasn't ready for
 Livin' the life I chose
 The only way I know
 Seems to be my downfall on this road
 —an adolescent offender, *True Notebooks* (Ref. 1, p 270).

What should we do with an adolescent who has committed an act that would be a crime if committed by an adult?

“Lock ‘em up.” That’s the view of my 17-year-old son, expressed over dinner as he’s about to embark on a spring vacation trip with his friends. To get permission to go, he’s been working hard to impress his mother and me with his good judgment and sense of responsibility. He thinks his judgment is as good as that of most adults, and he has a stake in proving it. If you start with the view that late adolescents think just as well as adults, then it makes sense to hold them criminally responsible as adults.

But I press on: “Treat them as though they were adults for everything? Shoplifting? Fleeing the police in a high speed chase and hurting someone in an accident?”

“No, those are just being stupid. It’s the difference between doing something stupid and doing something mean.” Another view of adolescents: they are more impulsive than adults, but they’re not more

ignorant about good and evil. And that leads to a different view of what are appropriate interventions. How you think about adolescence has a great deal to do with what you think should be done with juvenile offenders.

Adult Crime, Adult Time

The concept of adolescence as a transitional phase of development between childhood and adulthood is a fairly modern invention. The first academic book on adolescence appeared in 1904,² around the same time as the early juvenile courts. Prior to that, adolescent antisocial behavior was dealt with in the adult criminal system. The reformers saw delinquency as related to neglectful upbringing (which is part of why juvenile courts handle both child deprivation proceedings and delinquency) and wayward youth in need of guidance and rehabilitation. Rehabilitation was the ostensible objective of juvenile court interventions with delinquents, but over time the practice became increasingly punitive. In 1966, Justice Fortas, writing for the majority in *Kent v. United States*, holding that a hearing was required for the juvenile court to waive a defendant to adult court, opined that in the juvenile court “. . .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” (Ref. 3, p 556). The following year *In re Gault* extended many criminal due process protections to juvenile court proceedings.⁴ In the 1970s, the scientific evidence about

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the effectiveness of rehabilitation suggested that “nothing works,”^{5,6} further undercutting the rationale for juvenile justice to invest heavily in rehabilitative efforts.

In the late 1980s and early 1990s, the adolescent crime rate soared. In 1993, for male African-American youth aged 15 to 19, homicide was not simply the leading cause of death; it accounted for more deaths than all other causes combined.⁷ Noted criminologists predicted—erroneously, as it turned out—that the crime rate would go higher yet.⁸ Concern for public safety and a worry that adolescent offenders would “get away with it” by aging out of the juvenile system led to more punitive approaches under the “adult crime, adult time” mantra. Since 1992, all states except Nebraska have expanded their provisions for transferring adolescents to adult court.⁹ Transfer laws utilize several mechanisms, including allowing prosecutorial discretion, lowering the age at which an adolescent is considered an adult from 18 to 17 or 16, and statutory exclusion (specifying age and offense combinations that are automatically sent to adult criminal court). The nature of the act, not the nature of the actor, became the basis for most transfers to criminal court.

Although such legislation focused on the criminal act, it was facilitated, and possibly driven, by a view of the actor. The media were full of reports along the lines of: “Youth shoots 14-year-old for jacket, then goes for ice cream.” The view of the offender as a troubled adolescent who deserves help was replaced by a view of the adolescent offender as a remorseless criminal or superpredator. Although many of the punitive legislative responses were based on an image of adolescent killers, the laws themselves were written more broadly, by lowering the age at which all crimes are tried in adult court to 17 or 16, or including a wider range of offenses, such as robbery, multiple burglaries, or aggravated child molestation (which might be defined as aggravated solely based on the age of the “victim,” even if the “perpetrator” is only a few years older). The problem is not that killers had been treated too leniently—most states already had laws allowing most adolescent murder defendants to be dealt with in criminal court—but that a large group of nonmurderous adolescents became viewed as hardened criminals.

The Crime Decrease

To practically everyone’s surprise, crime rates after 1993 fell dramatically. Adolescent crime rates have fallen over 50 percent, back to the rates of the 1970s.¹⁰ Why the rate fell is still the subject of much debate. In what is probably the most sophisticated assessment of factors that explain the overall crime rate drop, Levitt¹¹ argues that the leading factors were increases in the prison population, increases in the number of police, the decline of crack, and legalized abortion. (The last of these is particularly intriguing: that reducing unwanted births appears to reduce crime is not an argument one often hears in the abortion debate.) There is little evidence that waiving juveniles to adult court affected any of these factors. The number of adults jailed has increased significantly, while the crime rate has dropped. The number of youth in juvenile detention also increased over the past 10 years,¹² and it is reasonable to think that if a delinquent youth is off the streets, he is less likely to commit a crime. However, the number of youths in adult prisons and jails has decreased since 1995,¹³ suggesting that moving offenders to criminal court has not decreased crime to a significant extent. Furthermore, there is considerable evidence to suggest that punishing juveniles as adults leads to an increase in recidivism.^{14,15}

Adolescent Culpability

Since the mission of the juvenile court has not focused on punishment, until relatively recently adolescent moral and criminal responsibility have received very little attention. In adult criminal courts, however, the proportionality of punishment to culpability is important. In 1988, Justice Stevens, writing for the majority in *Thompson v. Oklahoma*,¹⁶ in which the Supreme Court held that it was unconstitutional to impose the death penalty on defendants who were below the age of 16 when they committed the offense, said:

Thus, the Court has already endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. The basis for this conclusion is too obvious to require extended explanation. Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and

responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult [Ref. 16, p 835].

Notwithstanding that reduced culpability of juveniles was “obvious,” the following year in *Stanford v. Kentucky*¹⁷ the Court held that executing 16- and 17-year-olds was constitutionally permissible. The *Stanford* court reasoned that some youth over 15 could be fully responsible and that grounds other than culpability were also relevant in determining whether the death penalty for minors represents cruel and unusual punishment.

The argument about immaturity, as commonly utilized, holds that if the decision to commit a crime can be shown to derive from judgments that can be meaningfully distinguished from adult judgments, then adolescent culpability is reduced. And the reverse may also be argued: if adolescent capacity cannot be meaningfully distinguished from that of an adult, then differential blame is not warranted. Most studies of adolescent decision-making through the early 1990s found that cognitive decision-making of 15-year-olds on issues such as health care were not significantly different from the decision-making capacities of adults. Below age 15, capacity fell off fairly quickly: about half of 13- to 14-year-olds’ decision-making capacity was significantly worse than that of adults. Some studies, such as Grisso’s work on waiving *Miranda* rights,¹⁸ also took into account noncognitive factors, such as deference to authority, but found similar results. This research was utilized by the professions in arguing for increased legal recognition for autonomous rights for minors over age 14, most especially in the debate regarding whether an adolescent girl should be able to provide legal consent to obtain an abortion without involving her parents.¹⁹

In the 1990s, a number of research efforts were begun to examine adolescent decision-making along dimensions other than cognitive capacities. Cauffman and Steinberg²⁰ hypothesized that other aspects of thinking were relevant to decision-making, such as self-reliance, the ability to see short- and long-term consequences, the ability to take another person’s point of view into account, and impulse control. Utilizing a self-report, paper-and-pencil methodology, they found that psychosocial maturity was more positively correlated with making socially responsible choices and avoiding risky behavior than was age.

The Supreme Court took note of reduced culpability in finding execution of minors unconstitutional last year,²¹ but there is little evidence that views of reduced culpability have played a major role in decreasing transfers of adolescents to the criminal courts.

The Youthful Offender as Hardened Criminal

We know a good deal more about adolescent crime than we used to.²² We now know that adolescent crime is quite different from adult crime in many respects. Violence is a common adolescent phenomenon: according to the Surgeon General’s Report,²³ 30 to 40 percent of boys commit a serious violent offense by age 17. Fortunately, most adolescent offenders, and most violent offenders, do not continue offending into adulthood. The social pattern of adolescent crime is different. One of the hallmarks of adolescent development is the increased importance of peer relationships. Adolescents tend to offend in groups, unlike adult offenders who tend to act alone. If you don’t know an adolescent’s behavior, ask about what sort of activities his peers are getting into. If adolescent crime is a time-limited event for most youth, then it makes little sense to intervene with youthful offenders as though they are hardened criminals. Zimring²⁴ has proposed that we consider adolescence as a period of having a “learner’s permit,” and recognize that learning involves experimentation and the risk of making mistakes. Society has a large stake in minimizing the harm from those mistakes and in helping those who have trouble learning. Unlike the 1970s when the view of “nothing works” predominated, we now have interventions with demonstrated effectiveness.²³

While mental health professionals who work with delinquent youth see them in human terms, it seems likely that many lay people still see delinquent youth in much harsher terms. To them, I recommend *True Notebooks*,¹ in which Mark Salzman describes his work teaching writing to a class of inmates at Juvenile Hall in Los Angeles, most of whom appear to be charged with murder and awaiting conviction and long sentences in adult prison. The writings of those deprived inner city youth portray a surprising humanity, depth of feeling, and capacity for insight.

My best friend, my mother, my father, hate was all that. Hate helped me grow, or was dat wrong? I asked myself this question

one day when I was lookin' into a six-by-nine mirror in my cell. I was wearing somebody else's clothes, underwear, and socks full of holes. Hate had left me to duel with misery and pain. Thanks, hate [Ref. 1, p 293].

Few will come away from that book without a sense of tragic waste in having such youth spend their lives in prison.

Adolescence as Becoming

As parents, we have many hopes for our children. Essential in much of how parents respond to their children is the idea that teenagers are on their way to becoming something else. How to integrate this sense of becoming into our view of adolescence has not received careful analysis and is difficult to articulate. This is part of why adolescent culpability and deserved punishment are such difficult topics. Responsibility turns not only on the present capacity to control one's actions and make sound judgments, but also on having had the opportunity to mature. As adolescents grow, they have an opportunity to reflect on their experiences, and, potentially, to break away from their environments. Consider two offenders, one an adult, and the other an adolescent, who have committed a similar crime and who have a similar sense of time perspective, intelligence, and other capacities that are taken to be elements of maturity of judgment. We should consider the adolescent as less responsible because he has not had the same amount of experience in making choices nor has he had the opportunity to reflect on his choices to the same extent as an adult. Knowing that an adolescent is still developing also contributes to the disquieting sense that an adolescent who is punished today is not the same person who will be sitting in prison five years from now.

Conclusion

Deciding what to do with youthful offenders involves weighing several factors: public safety, fair and just punishment, and fostering the development of productive and moral citizens. We see these goals through the lens of our ideas, often not clearly articulated, of what adolescent growing up is all about. The "adult crime, adult time" approach not only encompasses a distorted view of adolescence, it appears to be an ineffective strategy for furthering public safety or the well-being of adolescent offenders. There have been major advances in our understand-

ing of adolescent offending, but with few exceptions, these understandings have not yet been translated into legislation. The question of appropriate punishment has been examined most thoroughly in the context of the death penalty for adolescents, which was prohibited last year. Extending the analysis to adult punishment for youthful offenders has yet to be done. The American Psychiatric Association has called for reform of current practices of transferring adolescent offenders to adult criminal courts.²⁵ More empirical investigation and the further development of effective interventions will help to clarify these concerns, but advancing juvenile justice policy will also require careful analysis of just punishment for juvenile offenders and analysis of the tradeoffs between competing goals.

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