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Rehabilitation and “Tough Love”: Balancing Two Approaches to Juvenile Crime

Ross J. Davidson

The philosophy of “tough love” as a response to juvenile crime is potentially dangerous and must be tempered by rehabilitative philosophies.

In December 1994 Star County, Texas, Police found the body of fifty-six-year-old Eleanor Ginder in her van. She had been “beaten, strangled and stabbed” to death. County Police quickly implicated two women, issuing warrants for their arrests. The suspects fled to Chicago where they were eventually apprehended.

Most Americans would no longer be surprised to learn that Marie Vega, one of the women implicated in the murder of Ginder, was only sixteen years old at the time of the crime. Vega’s case illustrates a sharp nationwide rise in juvenile crime over the last thirty years. This increase is particularly noticeable and troubling in cases of homicide and other violent crimes. A 1991 FBI report noted a fifty-one percent rise in juvenile homicide arrests from 1980 to 1991; homicide arrests for adults dropped six percent during the same period. To counteract this trend, many state legislatures and judiciaries have taken a primarily punitive or “tough love” approach to juvenile crime. For example, in People v. Thorpe the Colorado Supreme Court upheld a law allowing district courts to try juveniles as adults. Many states have

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similar laws. Also, in the last decade many states “have added or modified statutes that provide for a mandatory minimum period of incarceration for juveniles convicted of certain violent or other serious crimes.”

According to G. Larry Mays and Marilyn Houghtalin, the result of these changes is that “rehabilitative philosophies have given way to retributive or ‘just desserts’ [sic] orientations.” Unfortunately, the new orientations have done little to hamper the rise in juvenile crime, perhaps even contributing to the increase in crime by disregarding important aspects of rehabilitative approaches. Benefits exist to both retributive and rehabilitative philosophies. Recognition of the faults of both approaches and a combination of their positive elements will best ensure that the aims of the criminal justice system—rehabilitation, punishment, and deterrence—are all met.

Retributive approaches to youth crime often encourage rather than deter criminal behavior as well as interfere with rehabilitative efforts. One problem with the “tough love” approach is that it focuses on punishing the offender while ignoring the need for rehabilitation. Current measures to counteract juvenile crime reflect such one-sidedness. Reforms, such as adult trials and longer periods of incarceration, satisfy the need for retribution but fall short in rehabilitating the offender and deterring future criminal acts.

Juveniles who are tried as adults in criminal courts are seldom given the same chances for rehabilitation as juveniles who are tried in juvenile courts. The adult criminal court is geared toward punishment rather than rehabilitation, a fact attested by Alan B. Salazar in his article “The Expanding Scope of Prosecutorial Discretion in Charging Juveniles as Adults”:

A juvenile offender who has just been charged as an adult . . . not only has been subjected to the risk of conviction, but he must now face adjudication in a court which preserves a full adversary process, and in which the prosecutor may ask for punishment rather than rehabilitative treatment.

\footnote{Hunter Hurst III, “Crime Scene: Treating Juveniles as Adults,” \textit{Trial Journal of the Association of Trial Lawyers of America} 33 (July 1997): 37.}
\footnote{Salazar, 620.}
The punitive focus of the adult courtroom stands in fundamental opposition to the goal of rehabilitation. In *Idaho v. Anderson* the court asserted that “the state’s primary interest in dealing with most minor offenders is rehabilitation rather than punishment.” Yet juveniles in criminal courts are subject to more severe punishment and stand in danger of being sent to prison rather than a rehabilitative center, such as a juvenile training school.

The same dichotomy exists between the prison and the training school as between the criminal and juvenile courts. While the juvenile training school is focused “on rehabilitation and making the juveniles better citizens when they are released,” the prison is primarily a place of punishment. Prison time might emphasize the seriousness of a crime, but it will probably also signal that the court believes the youth is past rehabilitation. Such a message damages the offender’s own expectations for change.

Exposure to prison brutality and adult criminals also has a damaging effect on the inexperienced juvenile offender. According to “Youth Violence: A Report of the Surgeon General,” youth placed in adult prisons “are eight times as likely to commit suicide, five times as likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent as likely to be attacked with a weapon.” Close proximity to adult criminals in prison has a detrimental influence on young offenders, providing them with negative role models and exposure to violence that could lead to future offenses.

Another example of the adult criminal court favoring punishment over rehabilitation is the possibility for juvenile offenders to receive the death penalty. Over 280 juveniles age seventeen and younger have been executed in the United States. In her article “Trying Juveniles as Adults,” Katherine L. Evans writes that “the goals of the death penalty are retribution and deterrence,” although its effectiveness as a deterrent is questionable. The death penalty denies an offender the possibility of rehabilitation, thus

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10 Evans, 120.

11 Ibid., 122.
disregarding one of the primary aims of the juvenile justice system. Although
some offenders are perhaps beyond hope of reform, the criminal court may
altogether overlook rehabilitation as an option.

Just because the criminal court can inflict harsher punishments than the
juvenile court does not mean that it succeeds in deterring future criminal ac-
tivity. According to Craig A. Mason and Shau Chang, “Research shows that
youth who enter the adult justice system are at greater risk for recidivism [fu-
ture criminal offenses] than are those who remain within the juvenile justice
system.” Rehabilitation is an important consideration when dealing with ju-
veniles, yet measures promoting it are often lacking in the adult justice system.

One reason trying juvenile offenders as adults has not worked effectively
is that doing so disregards the fundamental differences between juveniles
and adults. Although clearly capable of coherent thought and rational deci-
sion making, juveniles may be less aware of or concerned with the conse-
quences of their actions. Preoccupation with self and a belief that one’s point
of view is the only reasonable one is a normal part of adolescent develop-
ment. Because of such egocentrism, “the juvenile may be less a threat to
peace and order than a more mature offender,” whose crimes may signify a
more unusual deviation from the norm. Egocentrism also causes juveniles
to be more susceptible than adults to internal and external pressures. In
Thompson v. Oklahoma the Supreme Court cited this characteristic as a
primary distinguishing factor between juveniles and adults:

Inexperience, less education, and less intelligence make a 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 pres-
sure than is an adult.

These characteristics of juveniles played a major role in the case of New
Hampshire v. Farrell. On February 19, 1996, Jason Farrell went with two of

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12 Craig A. Mason and Shau Chang, “Re-arrest Rates among Youth Sentenced in Adult
Court,” Evaluation Report for Juvenile Sentencing Advocacy Project, Miami-Dade County Public
13 Evans, II2–13.
14 Ibid., II4.
15 Ibid., III.
his friends "to a vacant lot . . . to shoot a handgun." Afterward, Farrell and one of the friends began "messing around," when Farrell pointed the loaded gun at the other boy and told him to count to ten and then yell "bang." Before the boy finished counting, the gun discharged and he was killed. While Farrell did not seem to be acting with malicious intent, his actions showed a serious lapse in judgment and a failure to "evaluate the consequences of his . . . conduct." Although originally tried as an adult and sentenced to twenty-two to forty-four years in prison, Farrell appealed, arguing that his rights as a minor were violated because he was not allowed to see or consult his parents during police interrogation. The court, citing a law requiring that juveniles be allowed such consultation due to their immaturity, reversed the decision and remanded for retrial.

"Tough love" approaches do not take into account the immaturity and impressionability of juveniles. Instead, they treat juveniles as adults who know better and are past reform. Because juveniles are more immature and impressionable than adults, they should be held less accountable for criminal activity. Impressionability can also mean that juveniles are more likely than adults to be successfully rehabilitated. This is particularly true of first-time offenders. Juvenile offenders often do not have an established pattern of delinquency, increasing the likelihood of effective rehabilitation.

While a retributive approach may not meet the juvenile's need to be treated differently than an adult, this approach does have its benefits. Although adult trials and excessive punishment hurt a juvenile's chances for rehabilitation, proper rehabilitation cannot occur without adequate punishment. According to Catherine J. Ross, "Swift and definite punishment is an essential part of both 'justice' and 'rehabilitation.'" One reason for this is that the threat of punishment may help deter future criminal acts. The juvenile who is not subject to severe punishment following a crime will not be afraid to commit subsequent illegal acts.

Another reason punishment is important to rehabilitation is "the very concept of rehabilitation may include a serious message that consequences

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17 Evans, III.
follow conduct." While lighter sentencing in an effort to rehabilitate gives the offender the opportunity to change, excessively light sentencing may do more harm than good by downplaying the importance of personal accountability. In *Louisiana v. Ervin* the fifteen-year-old defendant was convicted of armed robbery and sentenced to “two concurrent nine-year sentences.” When he appealed the decision, claiming the sentences were too severe, the court responded “that lesser sentences than those actually imposed would deprecate the seriousness of the offenses.” Unless accountability is stressed, rehabilitation of the juvenile offender is unlikely to succeed.

Because punishment is an important goal of the criminal justice system and even aids rehabilitation, retributive approaches to juvenile justice should not be entirely dismissed. The main problem with these approaches is that they fail to adequately consider the need for rehabilitation. Adopting an approach to youth justice that is neither mainly retributive nor mainly rehabilitative, but a combination of both, will help in solving this problem.

Unfortunately, a combined approach to youth justice is difficult given the current state of the criminal justice system. A desire for tougher treatment and sentencing of juvenile offenders has resulted in a recent shift from juvenile courts to adult courts. Since the focus of juvenile courts is rehabilitation, they are limited in their ability to sentence offenders. As a result, prosecutors and defendants are confronted by two extremes: the leniency of the juvenile court and the severity of the criminal court. Although an increasing number of cases are tried in adult courts, the majority of cases are still tried in the juvenile court because its “non-adversarial” setting is “geared towards the protection and rehabilitation of young offenders.”

Better opportunity for rehabilitation is only through possible a combination of elements from the criminal and juvenile courts. A juvenile court with expanded abilities to punish could still maintain its emphasis on rehabilitation, thus providing what is often missing from the criminal court. But whether such a court should be entrusted with the most serious juvenile cases is another question. Certain requirements often govern what cases will

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19 Ibid.
21 Salazar, 622.
be moved from juvenile to adult courts, in order to prevent less serious cases from being tried in criminal courts. For example, New Mexico state law requires “reasonable grounds to believe that the child committed the offense alleged,” that rehabilitation is not possible, that the child is not “mentally disordered, and that the interests of the community require legal restraint of the child.” Adopting some of the punitive elements of the criminal courts will allow juvenile courts to try serious cases in an environment more suited to the fair treatment and rehabilitation of young offenders.

In order to strike the proper balance between rehabilitation and retribution, changes are necessary in both legislation and public perception of the juvenile justice system. Until these changes are made, society will have little success in curbing the rise of juvenile crime. Rehabilitation must be balanced with the other aims of the judicial system: punishment, deterrence, and protection of society. These aims are complementary, not mutually exclusive; “indeed the ability to accommodate diverse goals is a measure of [the] success” of the criminal justice system.

Punishment can aid the rehabilitation process, but if excessive, it will damage the individual and society. For this reason the philosophy of “tough love” as a response to juvenile crime is potentially dangerous and must be tempered by rehabilitative philosophies. Only by combining these two approaches can justice be served and society protected. By making rehabilitation a priority in cases involving juveniles, legislatures and judiciaries can effect positive change in the lives of youth and prevent the troubling rise of juvenile crime.

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22 Houghtalin and Mays, 816.
23 Ross, 1058.