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The Ethical Foundations
of Blended Juvenile Sentencing

Matthew C. Jennejohn

Blended sentencing cannot provide an acceptable approach to solving the juvenile justice problem and should therefore be abandoned for more ethical alternatives.

After fatally shooting a complete stranger, eleven-year-old Nathaniel Abraham calmly returned home, watched television, and bragged of his crime to a classmate. During his trial this seemingly calculating killer spent most of his time drawing pictures, oblivious to the import of what was taking place around him. Conservative “retributionists” see a murderer in this preteen. Yet progressive “reformists” claim he is an innocent victim. Advocates of blended sentencing say “both.” Who is right?

In its increasing sophistication, cruelty, ubiquity, and virulence, juvenile violent crime proves to be of paramount concern. Recently a high school in New Bedford, Massachusetts, stared down a sophisticated Columbine-style massacre. Five students, plotting the attack “like a military operation,” intended to fulfill their self-given charge to “kill everyone” using explosives, snipers, surprise tactics, and automatic weapons. The murder of two-year-old Jaime Bulger provides another chilling example of how the thirst of today’s youth for the macabre is replacing yesterday’s penchant for petty theft, truancy, and vandalism. In the Bulger case, two English schoolboys

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4 The terms “retributionist” and “reformist” are Rebuff’s (2001).

kidnapped and murdered the toddler by "stomping and kicking him and by dropping a heavy iron bar over his head." The only thing more appalling than the perpetrators' inhumanity is their age—eleven and ten. The pervasiveness of juvenile violent crime compounds its specter. Although juvenile violent crime rates have decreased recently, juvenile violent crime arrests are still twenty-one percent higher than the average of the 1980s. These realities, magnified through increased media coverage, have led many to call once again for sweeping reforms of the juvenile justice system.

Juvenile justice policy has reverberated between two schools of thought in twentieth-century America: one established by progressives around the turn of the century and the other championed by conservatives since the 1970s. Progressives sought for a separate juvenile justice code both to mitigate the harshness of a system designed to punish adults and to rehabilitate youth that they might return to society. In contrast, conservatives hoping to curb youth crime through punishment and deterrence responded to the arguable failure of the progressive system of the 1960s and 1970s by seeking to abolish the juvenile justice system and to try youths as adults. While both approaches still retain significant numbers of supporters, a third "middle-ground" movement composed of people in favor of "blended sentencing" has emerged. Blended sentencing supporters propose a mixture of the rehabilitative aspects of the juvenile justice system and the punitive aspects of the adult system to rectify juvenile crime.

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1 Sentlilger, 124.
2 Howard N. Snyder and Melissa Sickmund, Juvenile Offenders and Victims: National Report (National Center for Juvenile Justice, 1999), 53. The comparison here is made using 1997 numbers.
4 Note that the term conservative as used here does not necessarily refer to political ideology. I use the term conservative to refer solely to those who seek a return, in some measure, to the preprogressive practice of trying juveniles in adult courts, giving them adult sentences. For a discussion of preprogressive juvenile justice, see Erin Samolis, "Divergent Clockwork Oranges: The Juvenile Justice Systems of the United States and Great Britain," University of Chicago Roundtable 8 (2001): 2.
5 Ibid.
6 Ibid.
This mixture creates a number of questions. Is blended sentencing morally valid,\textsuperscript{11} considering its ethical foundations from a theoretical paradigm?\textsuperscript{12} Is blended sentencing just? Can blended sentencing's underlying theory produce a just result relying upon its own implied logic? Specifically, can blended sentencing theory combine two dichotomous paradigms, progressive and conservative, thus creating a Hegelian synthesis? Or is such combination logically impossible, with the paradigms as Platonic antipodes, leaving blended sentencing a theoretical house divided?

Blended sentencing is morally invalid and characteristically unjust. Thus, it cannot provide an acceptable approach to solving the juvenile justice problem and should therefore be abandoned for more ethical alternatives. To present this argument, we will first discuss and test the logic behind the progressive and conservative paradigms of juvenile justice. Then, we will examine the logic behind blended sentencing using the theories of Plato and Hegel as analogies. In addition, we will analyze the ramifications of blended sentencing for both perpetrator and society and will offer policy prescriptions for juvenile justice in accordance with the findings.

**THE LOGIC BEHIND TRADITIONAL APPROACHES TO JUVENILE JUSTICE**

In order to examine the moral validity of blended sentencing, we must first ascertain the validity of its components: progressive and conservative juvenile justice. Both the progressive and conservative approaches to juvenile justice enjoy moral validity. Their different policy prescriptions result from different views of human nature. However, before we can discuss the validity of the two approaches, we must first identify validity itself.

Moral validity in this case exists if the approach's policy prescriptions logically flow from its assumptions of human nature. Arguably, in the vein of classical social contract theorists, human nature is the fundamental origin of any social theory.\textsuperscript{13} For example, Marx's dialectical materialism can

\textsuperscript{11} I define **moral validity** simply as consistency between a theory's assumption of human nature and that theory's policy prescriptions. This validity is "moral" in that it depends upon a value judgment, in this case, of humanity.


\textsuperscript{13} Hobbes, Locke, and Rousseau.
ultimately be traced back to his conception of human nature as materialist and interest-maximizing. Human nature also provides its elementary assumption, inasmuch as law is the explicit rules and bounds of society, established and dependent upon theory. Thus, for a legal policy to be valid, its prescriptions must harmonize with its assumption of human nature. For example, it would not follow if a legal policy viewed human nature as lazy yet prescribed laws to correct laziness that depended upon individuals' hard work. Prescription must match assumption.

The progressive approach to juvenile justice is predicated upon a positive view of human nature readily attributable to Rousseau. The progressive view of human nature mirrors Rousseau’s observation that “man is naturally peaceful and shy” by viewing children as corruptible innocents that are not accountable for their actions in the same way that adults are. Operating from this Rousseauistic view of human nature, progressives established a juvenile justice system whose primary focus was not to discern juvenile guilt or innocence but to discover “what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.” The progressive project sought to correct or rehabilitate delinquent youth by believing that such correction is possible, inasmuch as human nature is good.

By the early 1970s, however, high recidivism rates and swelling juvenile detention centers made such optimism seem naïve. In response, conservatives succeeded in legislating criteria under which juveniles could both be tried as adults and be given punitive adult sentences. Such policy resulted from the conservative a posteriori negative view of human nature. The conservative policy of punishment and deterrence implies that human nature is essentially corrupt, cannot be corrected, and can only be constrained. The conservative focus “upon the seriousness of the crime and public outcry as the determinative factors to consider in establishing whether a child should be prosecuted as an adult” rather than upon the needs and potential of the

14 Chamberlin, IA.
15 Chamberlin, 3.
16 Chamberlin, 4.
17 Sentlinger, 2.
youth subtly mirrors Hobbes's pessimistic call for a "Leviathan" to protect men from their "solitary, poor, nasty, brutish, and short" lives.  

These two approaches to juvenile justice are valid, though founded upon converse assumptions of human nature. Believing that rehabilitation can correct any deviance from this goodness, progressives based their prescriptions on a Rousseauistic belief in the inherent goodness of human nature. Conservatives founded their prescriptions upon a Hobbesian belief in the inherent corruption of human nature, with only constraint and deterrence able to control this degeneracy. With prescriptions harmonious with assumptions, both of these approaches to juvenile justice are morally valid. Note also, both approaches are just assuming their respective views of human nature. For instance, the progressive view's rehabilitation of the perpetrator is just to the individual (by allowing him or her a new lease on life through correction) and just to society (by removing a threat).

Blended sentencing rests upon the assumptions that both approaches are morally valid. Does this validity remain when the two approaches are blended?

The Logic of Blended Sentencing: Platonic Antipodes

The "yes" answer to the question of whether blended sentencing retains validity is best analogized by Hegel's philosophy of synthesis, while Plato's denial of synthesis provides the best allegory for the question's "no" answer. Hegel argues for the synthesis of thesis and antithesis in explaining the engine driving his historical dialectic. On the other hand, Plato's theory of "form" and "object," in which the form is perfect and the object is corrupt, denies the conflation of thesis with antithesis (at least in material existence). Which of the two provides the best analogy of the logic of blended sentencing? Can Rousseau and Hobbes be synthesized to give blended sentencing moral validity?

It is impossible to synthesize the progressives' "good" human nature assumption with the conservatives' "evil" human nature assumption. This is

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not to say that there can be no deviancy from either nature: a fundamentally good person obviously can do evil, while a fundamentally evil person obviously can do good. However, deviancy is just that: a perversion of an original constant, not evidence of thesis-antithesis cohabitation. While a person’s actions may be a ratio between the good and the evil, a person’s nature is either fundamentally good or fundamentally evil, not a mixture of both. A true synthesis of both natures, where an individual’s nature is both good and evil, would not result in an equal number of good and evil acts, but rather acts that were equally good and evil. Following this reasoning, if all persons are good and evil synthesized, there would be no good or evil acts, only neutral acts. Obviously, this is not the case; therefore good and evil natures cannot synthesize. Like Derridan binary pairs, good and evil coexist, defined by the other, but can never combine. Thus, the gulf between Rousseau and Hobbes remains.

With a dichotomous assumption of human nature, blended sentencing’s synthetic prescriptions (e.g., mixing adult incarceration with juvenile rehabilitative programs) do not follow. Education is the principle behind the progressive approach to juvenile sentencing. The progressives posit that deviancy from good human nature, caused through ignorance or under-development, can be corrected through education and guidance. Deterrence is the principle behind the conservative approach to youth justice: criminal behavior, though natural, can be controlled through punishment. If, however, an individual is good or evil by nature, applying both approaches’ prescriptions is illogical. For example, conservatives would question if it were logical to not only punish a hardened criminal but also grant him the liberties and benefits of a progressive program. It is only logical to constrain his behavior through punishment and removal from society. If human nature is either “good” or “evil,” then sanctions against such should also be mutually exclusive.

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20 Each individual may have the potential for the maximum of either nature, but potential does not precipitate action—it is action with which the law is concerned.
21 This of course assumes that one’s nature is the primary factor determining action.
22 See Samolis’s discussion of the Progressives’ focus on guiding juvenile offender development, 2.
23 Ibid.
Thus, with a synthesized consequent illogically following a dichotomous antecedent, blended sentencing is morally invalid. Compounding its invalidity is the inherent injustice of this approach.

THE WORST OF BOTH WORLDS: THE INJUSTICE OF BLENDED SENTENCING FOR BOTH SOCIETY AND PERPETRATOR

To apply a combination of both prescriptions to an offender is unjust to both offender and society. If human nature is fundamentally good, the adult-strength sanctions of blended sentencing would counteract the nurturing effect of the progressive approach, constraining growth by constricting all action. Adult sanctions would also needlessly harden and embitter the youthful subject. Should human nature be fundamentally evil, the progressive sanctions would undermine the constraining effect of the conservative program, allowing negative growth by not providing enough constraint on the offender's behavior. For example, one blended-sentencing program sentences a young offender to the juvenile justice system until he or she is transferred to an adult corrections facility at the age of twenty-one. Assuming evil nature, such a program is unjust to society in that it insufficiently controls a dangerous criminal—the criminal's negative impulses are unconstrained and he or she may offend again. Assuming good nature, it is unjust to incarcerate youth who could benefit from rehabilitation. This is especially the case if youth are not able to employ adult-level reasoning or are otherwise lacking development at the time of offense (which is often the case). Under blended sentencing, both society and perpetrator find themselves in a lose-lose situation. Blended sentencing is both morally invalid and unjust and is unfit to serve as an approach to remedy juvenile crime.


25 Chamberlin, 15.

26 In re Abraham, the appeal of eleven-year-old Nathaniel Abraham to a second-degree murder conviction, the court incarcerated the juvenile even though he did not have the mental ability (because of his age) to understand his Miranda rights (399 NW2d 736; see "B. Knowing and Intelligent Waiver").
Getting Out of the Woods: Blended Sentencing as a Step towards Better Approaches

As blended sentencing's moral invalidity illustrates, the "good" and "evil" perceptions of human nature provide the only foundations for juvenile justice policy. Instead of trying to cover all the bases by applying both progressive and conservative prescriptions (and incur the unjust consequences outlined above), we should more effectively identify which of the two approaches best fits the perpetrator in question. With "some of the primary causes of delinquency" now identified, we can better determine the causes of juvenile crime. We might model Great Britain's system in which "the court would want to get to the source of [the perpetrator's] criminal behavior." Acknowledging that "we know that every single criminal case is in fact different," and with the increased ability to discern the nature of the individual and the causes behind his or her delinquency, we can more accurately apply either progressive or conservative sanctions. Rather than blended sentencing, we need a blended approach to diagnosis.

Such a focus on diagnosis will allow the legal system to treat causes rather than symptoms. The current injustices will be replaced with rulings both effective and reasonable. Only with a more accurate and individualized approach to diagnosing criminal causality will we preempt juvenile crime.

27 Chamberlin, 9.
21 Samolis, 1, II.
25 Blumoff, 163.