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Juvenile Detention Reform in the United States: From a Punitive Measure to Helping Youth

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Abstract

Historically, American juvenile justice has been defined by rehabilitative functions that aim to serve the treatment needs of youth. However, in recent years, juvenile justice practices have come in line with the Crime Control Era that has defined adult criminal justice. Juvenile detention, which is the physical holding of youth in secure settings prior to juvenile court hearings, is an example of a juvenile justice entity that is reflective of the Crime Control Era and its punitive nature. The present commentary seeks to understand how detention, as currently defined, supports a punitive ideology within the system of juvenile justice. The history of juvenile justice in the United States is traced, and the Rehabilitative Ideal as a philosophy for the system to follow is questioned. Secure detention as a policy is utilized as an example of the shift to punitive juvenile justice practice in the past 30 years. Furthermore, attention is given to the reform of secure detention, and how such reform can help juvenile justice recapture elements of a rehabilitative focus.

Introduction

Prior to the mid-1800s, criminal justice in the United States – while not characterized as extremely punitive at the time – was also not unified by a distinct rehabilitative goal in all

segments of the criminal justice system. As the 1900s approached, criminal justice system components – both adult and youth – began to embrace rehabilitative goals and functions. The formal system of juvenile justice that came into spirited development as the 20th century approached has often been considered by many commentators as the epitome of the Rehabilitative Ideal, a movement that swept criminal justice in the United States during the early 1900s (Blomberg and Lucken, 2010). The goal of this paper is to trace the development of juvenile justice in the United States in brief, and question whether rehabilitation of youth is possible given the nature of the juvenile justice system today. With this questioning of the initial rehabilitative function in recent years comes the description of the current state of juvenile justice and its departure from the original key goals of the Rehabilitative Ideal. This commentary concludes with a narrower focus by contextualizing the practice of juvenile detention as a punitive measure within the current juvenile justice system. For the purpose of this commentary, detention is defined as the temporary custody of a youth in a physically secure setting. Questions to be addressed include the following: (1) Can the current state of detention practices be used to understand the goals of the American juvenile justice in the 21st century?, and (2) If detention in its current state is in fact too punitive a policy for youth in the system, could detention reform allow progressive juvenile justice practitioners the opportunity to realign detention with the initial goals of juvenile justice? In other words, can detention reform aid in bringing rehabilitation back as the central goal of the American juvenile justice system, and if so, is this the course of action most appropriate for serving our youth in the system?

A Brief History of Juvenile Justice in the United States

Early prohibitions of child misbehavior and crime were regularly observed, and the punishment of youth for this behavior was a regular occurrence. During the early Greek, Roman, and Chinese Empires, children could be sentenced to death for offenses that their parents committed. Centuries

later, in 1800s England, children worked long hours in coal mills. As Postman (1994) has noted, the concept of childhood is one that was not even considered prior to the 19th century. Thus, it comes as no surprise that children worked long hours and were likely to be punished severely for minor transgressions against the community/society. At this time, cruelty to animals was a punishable offense, whereas cruelty to children was not a punishable offense. Clearly, for many centuries, with the exception of the labor they provided, children were a powerless group that held little value to the community at large. In Colonial America, children's behavior was strictly enforced by the Stubborn Child Laws, which prescribed that children obey their parents. Colonial American communities also utilized the English common law principle of responsibility to determine which individuals were capable of understanding the repercussions of their behavior. The common law principle of responsibility stated that children under 7 were not capable of harboring criminal intent, children between the ages of 8-13 were possibly capable of harboring intent, and individuals aged 14 and older were definitely capable of harboring criminal intent, and thus should be treated in the same manner as adults. This would, at times, result in harsh, public punishments of youth (Blomberg and Lucken, 2010; Rendleman, 1971; Shelden, 2008). Additionally, there were differences in which the children of each social class were handled. Children from the lower classes often were sentenced, irrespective of their offense, to perform hard labor or serve as apprentices to individuals that owned land or businesses, whereas children of the wealthy may have been punished by a small fine to be paid by their parents. It should also be noted that many of the punishments were handled informally; yet, children were often abused sexually and physically as well as housed with adult offenders when they were incarcerated for punishment (Bremner, 1970; deMause, 1974; Empey, 1979; Kett, 1977).

American juvenile justice developed its foundations as a response to the extreme and disparate treatment of youth prior to the 1800s. With the onset of the 1800s, juvenile justice

programs targeting intervention and treatment developed with much promise and enthusiasm. Juvenile delinquency was conceptualized as a different entity than adult crime, as young offenders were viewed as more amenable to treatment than their adult counterparts. As Sheldon (2008) notes “the term juvenile delinquent originated around early 1800s and had two different meanings that correspond to the two words being used: (1) *delinquent*, which means ‘failure to do something that is required’ (as in a person being delinquent in paying taxes) and, (2) *juvenile*, meaning someone who is ‘malleable, and not yet fixed in their ways,’ and subject to change and being molded (i.e., redeemable)” (p. 199). States adopted the concept of *parens patriae* in the early 1800s, which was based on the English common law principle defining the state as guardian of every child.

The House of Refuge movement came shortly after the concept of juvenile delinquency was coined with the goal of separating young offenders from adult offenders, and removing children from homes without proper supervision and slum communities in an effort to place rehabilitation as the foremost goal of handling youth. The Society for the Reformation of Juvenile Delinquents (SRJD), which was comprised of wealthy business owners, established the New York House of Refuge in the 1825. This institution was the first institution built exclusively for youth in the United States, and it set the stage in terms of philosophy and design for all youth detention and residential commitment institutions built in the years following its opening. Other houses of refuge opened in other populous cities along the Eastern coast of the United States shortly after the New York House of Refuge opened. During this time, adverse social conditions were considered to be the chief cause of delinquency in many urban settings (Sheldon, 2008). While the House of Refuge movement clearly embraced the humanitarian goal of removing delinquent and wayward children from ill-fated communities and thus seemed to be a humane approach to handling delinquency in theory, children serving time in these institutions were often subject to corporal punishments and solitary confinement

(Pisciotta, 1982). With the advent of the Industrial Revolution in the late 1800s, many delinquent youth found themselves working in factory settings instead of benefitting from services that initially defined the House of Refuge movement (Shelden, 2008). While this was not an ideal way of handling delinquent youth, criminologists began to conceptualize delinquency in accord with the positivist theories of criminology that dominated the field at that time. In turn, this attempt to understand delinquency and criminal behavior gave rise to the Rehabilitative Ideal that developed and gained steam at the end of the 1800s.

The dawn of the 20th century brought about a similar initiative to the House of Refuge – the Child Savers movement. The Child Savers movement stressed the removal of wayward and troubled youth from poor environments in an effort to prevent the proliferation of delinquency via contact with delinquent and criminal family members and/or peer groups in rapidly developing urban areas. These children were placed in orphanages and refuge homes in urban locales, or transported to rural farms. While the goal of these programs was to assimilate youth to the elements of conforming society, the practices often were quite similar to those of the mid 1800s as they were marked by rigid regimes, inhumane conditions, and physical abuse of the youth. While initiatives and programs were marked by unintended consequences and problems, the ideology surrounding 19th century juvenile justice continued to gain momentum as the 20th century approached (Platt, 1969). The first juvenile court was established under the advisement of lawyers, penologists, and social workers in Chicago, Illinois in the year 1899. The proceedings of juvenile court were to be entirely different than those of the adult criminal court. All activity was anonymous in an effort to protect the youth. Furthermore, judges acted in the best interests of the children, tending to their individual needs without presuming guilt, and stressing treatment over punishment. With the onset of the 20th century, the juvenile court was considered the gold standard of the Rehabilitative Ideal, which also included the proliferation of indeterminate

sentences, the reformatory regime, probation, and parole for adult offenders (Bernard and Kurlychek, 2010; Blomberg and Lucken, 2010).

The juvenile court and its rehabilitative standards were in place in the majority of the states by 1925; thus, it was no surprise that there was a proliferation of rehabilitative services for youth during the first half of the 20th century. The placement of youth in detention facilities has a long history in the United States, and the initial, expressed goals of these facilities were no different than that of the juvenile court. As stated above, early youth detention facilities in America borrowed heavily from the physical plant design and daily regime of the refuge homes that dominated programming for youth in the 1800s. While the primary goal of the facilities was rehabilitation, practices were often marked by sub-standard programming and corporal punishment due to lack of treatment personnel and overcrowding. Strict schedules of activities and corporal punishment for disobedience were commonplace in these facilities. Many juveniles were sent to adult jail facilities after the Great Depression for the purpose of detention when facilities for youth were not readily available. Reasons for this included a concern over the lack of education, recreation, and social service programs available in juvenile facilities. As the 20th century progressed, problems relating to the physical plant of facilities and a lack of medical and psychological services continued to be problematic (Frazier and Bishop, 1985). During the 1960s, there was a boom in juvenile detention facility construction; however, many of these facilities still resembled adult jails in appearance, which would lead to the conclusion that detention facilities had abandoned the central, established goal of juvenile justice – that of rehabilitation.

As the 1980s approached, policy recommendations included increasing the provision of social services, the elimination of the potential for the misplacement of youth in detention, and strengthening community resources to eliminate the need for some youth to enter detention facilities (Waid, 2011). How-

ever, the due process rights extended to youth in the 1960s and the current Crime Control era which served to bring juvenile justice in line with adult criminal justice impeded widespread adoption of these principles. In turn, overcrowding, understaffing, and underfunding have been problematic in facilities since the late 20th century. However, questions of how “just” the treatment of delinquent youth actually was at the height of the Rehabilitative Ideal in the middle of the 20th century have been raised, as these youth were without due process rights and other protections, and perhaps most importantly, many youth experienced corporal punishment at the hands of a system that espoused treating youth as a central goal. In fact, some commentators have called for the dissolution of the juvenile justice system all together as it resembles the criminal justice system in so many aspects (Authur, 2000). In order to address these concerns, a general overview of rehabilitative goals and elements are necessary. After these are presented, juvenile detention will be considered, with a special emphasis on considering the reformation of juvenile detention to provide a continuum of services to youth that are detained.

Is Rehabilitation the Answer?

The question of what works in rehabilitating offenders – both adult and juvenile – has been at the forefront of correctional inquiry since the early 1970s, with commentators disagreeing on what elements, if any, comprise effective treatment for offenders. Clearly, as demonstrated above, questions regarding the effectiveness of various treatment modalities have stimulated criminological discussions since the turn of the 19th century, with what works to rehabilitate youth often generating spirited discussion. Until the 1960s, questions regarding the impact of reform in reducing recidivism were, for the most part, straightforward; specifically, the goal was to find a treatment modality that could be implemented throughout the adult and juvenile correctional systems, and most importantly, show effectiveness in decreasing recidivism among offenders participating in these programs. Many of the pro-

grams evaluated in the mid-20th century showed that several treatment programs worked for some offenders, depending on their characteristics and needs, and under certain conditions. (Andrews et al., 1990; Cullen and Gendreau, 1989, 2001; Gendreau, 1996a, 1996b; Gendreau and Ross, 1979, 1987; Gottfredson, 1979; Martinson, 1974; Ross and McKay, 1978; Waid, 2010).

The question of “what works” in offender reform has remained a key issue in corrections research since the 1970s. This leading question, coupled with the increasing political interest in offender rehabilitation led Robert Martinson (1974) to engage in a research synthesis of 231 varied, separate evaluations of correctional programs, both adult and youth, conducted between 1945-1967 (Sarre, 1999). Martinson’s summary of the synthesized research provided an outlook that was quite bleak, as he stated that “with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism” (1974, p. 25). More specifically, no one particular treatment modality that he analyzed as part of his synthesis worked to substantively reduce criminal and delinquent activity. Perhaps more defeating than Martinson’s pessimistic statement of rehabilitative endeavors and lack of encouragement for the future of offender treatment was the dawn of the “get-tough” movement in American criminal justice at the end of the 1970s (Waid, 2010). It is possible that the lack of confidence in rehabilitation as a primary mission of the juvenile justice system led to policy and procedural changes that intended to protect the due process rights of youth, and thus intended to be more just in application, yet instead were more punitive in reality.

Juvenile justice in the United States had, until the mid-20th century, been a front-runner in the Rehabilitative Ideal, and had in turn embraced many of the movement’s recommendations such as individualized treatment and assessment for each youth prior to the receipt of services. Elements of effective offender reform uncovered in the past 30 years has

centered on a series of treatment principles, and the program modalities in which these principles are based. Although the Martinson Report has been noted a key publication that led to policy makers retracting their support for rehabilitation, a select few researchers have continued to advocate for offender treatment, calling for rigorous evaluations of existing programs (Cullen and Gendreau, 1989, 2001; Gendreau and Andrews, 1990; Gendreau and Ross, 1983-1984; Miller, 1989; Van Voorhis, 1987; Waid, 2010). The importance of matching offender risk, need and responsivity to treatment became the focus of program development, delivery, and evaluation during the early 1990s with great confidence and success (Andrews et al., 1990). These elements continue to drive treatment programming implementation and delivery for all types of juvenile offenders with the hopes that the past pattern of goals unrealized will not be encountered again. However, juvenile justice has been influenced by the get-tough philosophy in the past 30 years. The current state of juvenile detention provides an excellent example of this shift to a get-tough stance in juvenile justice. This analysis will allow for a questioning of the rehabilitation of youth and whether it is possible given the nature of the juvenile justice system today.

Today's Secure Detention: A Punitive Measure

During the last two decades of the 20th century, the rehabilitation of youth, while still stressed as the central goal of juvenile justice, was not all encompassing as it had been in years past with the onset of what has been considered the juvenile rights period in the 1960s. With the case of *In re Gault* (1967), juveniles were extended due process rights, such as the right to an attorney and the right to trial by jury. Specifically, questions of whether justice could be served in the juvenile justice system when youth were not afforded due process rights were raised, and it was not uncommon for criminologists that had once advocated for the clinical model of treatment for youth to retract their views and advocate for youths rights, especially since it was often difficult to determine if the goals of treatment were met. The use of secure

detention of youth increased and became widespread as a practice during the latter half of the 20th century.

It has been noted that secure detention of alleged delinquents should primarily be restricted to cases where youth are at risk of harming themselves and/or residents of the communities in which they reside, as well as youth who are at risk of not returning to the juvenile court for hearings. The complexity of the juvenile justice process, the adversarial nature the juvenile justice system has come to embrace since the due process movement of the 1960s, the lack of assessment tools, as well as a myriad of extra-legal factors (i.e., the socioeconomic status of a child) contribute to the fact that many juveniles posing little to no risk of harm to themselves or residents of their communities and/or flight risk are detained in secure facilities in many jurisdictions. This practice has resulted in case backlog in the juvenile courts and overcrowding in institutional settings. In fact, these adverse conditions of confinement are considered by some criminologists to be far below the necessary standards for the protection of youth. Specifically, many programmatic elements (i.e., educational and vocational programs and psychological services) are deficient in most secure youth detention facilities throughout the United States (Waid, 2011).

Because secure detention is relied upon so heavily today, many juvenile courts deny access to youth that could benefit from alternative services such as foster care. In many instances, juvenile justice officials are not aware of services available to youth in their jurisdiction (Cannon, Warner, Waid, and Knowles, 2008). Even if officials are aware of options beyond secure detention, the planning, implementation, and monitoring of alternatives would require extra staff time as well as the skills of qualified juvenile justice specialists and researchers – which, important to note, was something that was problematic in the delivery of treatment options during the height of the Rehabilitative Ideal. The Annie E. Casey Foundation advocates jurisdictions develop a continuum of alternatives for youth in need of detention services; how-

ever, this too would require resources – resources that many jurisdictions may not have. Home/community detention and day and/or evening reporting are considered to be the most optimal choices for the majority youth in need of services, not secure detention. These methods have shown that effective monitoring of youth can be achieved, and they can reduce further involvement in the formal juvenile justice system (Waid, 2011).

Conclusion

While secure detention moves juvenile justice away from the initial focus of the system as it was conceptualized almost 200 years ago, demands for detention reform bring the possibility of humane treatment and attention to the needs of youth back to the forefront. Juvenile justice policy makers have made the point that although juvenile justice practices have become more punitive in the latter half of the 20th century, the system still embraces the rehabilitative elements and language of the original juvenile court, and thus has, at its heart, the treatment needs of youth at the forefront (Authur, 2000; Sanborn and Salerno, 2005). Others have argued that adolescents treated as adults are likely to become chronic offenders, which will cost the criminal justice system in the long term (Fagan, 2010; Frazier and Cochran, 1986).

Practices such as the attempted reform of secure detention are indicative of the retention of treatment and serving the individual needs of youth, which the general public supports (Schwartz, Guo, and Kerbs, 1996). With the implementation of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, alternatives to secure detention settings and residential confinement as described above were encouraged. As the new millennium approached, the continued over-reliance on secure detention for youthful offenders led to proactive reform initiatives in several jurisdictions across the country (Lubow, 1999; Roush, 2004). In keeping with the spirit of detention reform, the Juvenile Detention Alternatives Initiative (JDAI), implemented in pilot jurisdictions in the 1990s,

sought to reform secure detention practices. The reform efforts at these sites, which placed a heavy emphasis on the strategic development, implementation, and comprehensive evaluation of alternatives to secure detention, were evaluated so that successful components could be shared with both urban and rural jurisdictions frustrated with existing secure practices (Annie E. Casey Foundation, 1999). It is possible that in doing this, the cycle of previous juvenile justice initiatives as detailed above can be curtailed and the goal of helping youth can be attained. Whether the decision is intentional or not, juvenile court personnel deny access to youth that could benefit from age-appropriate and culturally-relevant alternative services such as after-school reporting and foster care. Clearly, detention alternatives are ripe for matching the risks, needs, and responsivity of youth to appropriate programs when applicable. Much of the time, placement is a function of those involved in the decision making process (i.e., prosecutors, juvenile court judges, and juvenile probation officers) being unaware of these services in the jurisdiction, or not having the personnel to implement initiatives, supervise youth, and evaluate alternative programs (Waid, 2011). Thus, communication and information-sharing is critical to the future of juvenile justice. Considering this, embracing the initial rehabilitative goals of the juvenile justice system for years to come will not only be cost effective, but can serve youth based on the principles for which the system was founded almost two centuries ago (Fritz, 2008; Schwartz, Fishman, Hatfield, and Krisberg, 1987). This undoubtedly is just in the minds of juvenile justice system personnel.

System stakeholders interested in detention reform have the ability to serve as a catalyst for the system, and realign this major component of the juvenile justice system with its initial goal of rehabilitation. With careful implementation and evaluation, mistakes from the past should not be revisited, and perhaps the rehabilitative functions of serving youth can be kept while juvenile justice operates within a framework of protection of youth rights. , If this path is followed, other parts of the system may then have a blueprint – specifically

in terms of the resources available and personnel needed – to follow suit. As Garland (2001) notes, older treatment oriented practices are often reconfigured to emphasize the control of offenders (i.e., solitary confinement, once used as a crude form of rehabilitation, is now used as a punishment). Detention reform does advocate for new methods and many of the key principles advocated by treatment professionals, which would lead to a break in the cycle detailed above, and thus the just treatment of youth.

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