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Goal Conflict in the Juvenile Court

The Evolution of Sentencing Practices in the United States

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The United States has experienced significant changes in its juvenile justice system since it began in 1899. The focus of juvenile sentencing has shifted from the best interests of the child to more punitive sanctions, which are based on the offense committed. An alternative method for dealing with offenders has arisen in the form of restorative justice, which focuses on balancing the justice response between offender, victim, and community. This article describes the changes in the U.S. juvenile system, highlights the sentencing practices in other countries, and addresses this conflict between punitive and restorative practices.

Keywords: *juvenile justice; sentencing; comparative juvenile justice*

In the United States, two distinct court systems exist to handle violators of the law. A criminal court system punishes adult offenders, and a juvenile court system handles offenders under the age of majority. Each system utilizes separate judges, prosecutors, court personnel, and physical space to adjudicate adult and juvenile offenders. Both systems have realized changes in philosophy over time, with opinions about dealing with offenders vacillating between treatment and punishment models. Faith in rehabilitating the offender grows and encourages individualized outcomes, only to be discredited and replaced with more generalized, punitive measures. In turn, disillusionment with “get tough” sanctions opens the door to alternative treatment options and rehabilitation enjoys a revival (Bernard, 1992; Feld, 1999a; Singer, 1996). These cycles have shaped juvenile justice practices in the past, and continue to influence current decisions. This article examines change in

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sentencing practices over time in the United States. The current status of juvenile justice nationwide will be discussed, as well as specific programs and practices implemented in one large metropolitan city as an illustration of national practices. The recent introduction of federal funding in the form of grants for specific juvenile justice purposes has created conflict in the juvenile justice system, where punitive punishment and a focus on accountability have clashed with the initiation of restorative justice practices. In addition, comparisons will be made between the United States and several other countries, including Australia, New Zealand, England, and Wales, and, more generally, Europe to place American juvenile justice practices in an international perspective.

AMERICAN JUVENILE JUSTICE

The idea of a separate court system for juvenile offenders in the United States developed during the 1800s out of a number of complex issues. Judges were faced with the choice of sentencing a child to the adult penitentiary or releasing him with no sanction whatsoever (Bernard, 1992; Feld, 1999b; Mack, 1909). In addition, Progressive reformers recognized that many youthful offenders came from poor, immigrant families, and were optimistic that what they perceived to be a positive change in the child's environment would eliminate future offending (Bernard, 1992; Mack, 1909). The dual concerns with public safety and care for the underprivileged prompted the creation of the first juvenile court in Chicago in 1899 (Bernard, 1992; Platt, 1977). The legal basis of the new juvenile system was *parens patriae*, which empowered the court to have jurisdiction over all dependent, neglected and delinquent youth, under the assumption that the court was looking out for the "best interests" of the child. These interests were evident in procedures used by the first court to differentiate juvenile from adult proceedings. Wording was changed from accusing and punishing to identifying problems and ameliorating these problems (Bernard, 1992). The idea of a separate juvenile justice system spread quickly across the country and became well established (Moore & Wakeling, 1997). Current juvenile justice practice is both similar to and different from the original directive for the best interests of the child. The current juvenile court has evolved as a result of political and public pressures, with individual jurisdictions responding in unique ways.

AMERICAN JUVENILE JUSTICE SENTENCING PRACTICES

Each individual jurisdiction across the country faces distinct challenges related to a particular population, political climate, and level of crime. These

facts, combined with the ability of states to control the specifics of court structure and functioning produces high variability in actual court procedures within and between states (Sampson & Laub, 1993). Certain practices are fairly consistent across states, such as method of referral to the court and detention and transfer procedures. However, several methods are highly variable between the states and do not follow a standardized procedure, such as intake and petition practices (Feld, 1999b; Snyder & Sickmund, 1995). State statutes govern many legal decisions, but a significant number of organizational procedures are established at the court level. Not only are specific practices variable, but the overall organization of the court differs among jurisdictions as well. All jurisdictions focus on the crime-control quality of the court, but the inclusion of other family-based issues such as divorce or abuse and neglect differs among individual courts (Moore & Wakeling, 1997). This variability raises concerns in regard to disparity in treatment of offenders. The existence of a complex function combined with a large number of decision makers provides continuous opportunities for inconsistency at every level (Ashworth, 1992; Feld, 1999a). Thus, size of jurisdiction, population density, and other social factors as well as concerns about disparity in processing and sentencing have affected individual jurisdiction's organizational and sentencing practices through time.

The United States has experienced significant modifications in sentencing practices for juveniles to correspond with the shifts in penal philosophy throughout the history of the court. The juvenile court originated with a commitment to the concept of *parens patriae* and the stated belief that decisions would be made in the best interests of the child. This included indeterminate sentences, usually until the child reached the age of majority or could be assigned as an apprentice (Rothman, 1971). As time passed, however, the focus shifted from the characteristics of the offender and what would best rehabilitate him to the offense that was committed and how the offender must be accountable for the harm done (Ainsworth, 1991; Feld, 1999b). States have responded in different ways at different times, but a general pattern in juvenile sentencing has emerged. Encouraged by legislatures, courts have abandoned the aim of rehabilitation in favor of the aim of accountability. Practices such as transfer to adult court and mandatory, determinant sentencing guidelines have been implemented to focus on the punishment of the juvenile rather than on treatment to prevent recidivism or ameliorate social problems (Ashworth, 1992; Feld, 1999a; Singer, 1996).

A recent trend in juvenile sentencing has attempted to integrate accountability and rehabilitation. Programs based on the concept of restorative justice have been introduced to focus on accountability of the offender and repairing harm done to the victim while reducing the punitive aspects of punishment (Bazemore & Umbreit, 1995; Braithwaite, 1989). A significant con-

tributor to this focus on accountability is the federal Juvenile Accountability Incentive Block Grant (JAIBG) program, which began in 1997. JAIBG has set forth legislative mandates for individual jurisdictions to receive funding and has designed specific purpose areas for which grant money must be spent.

DESCRIPTION OF JAIBG

JAIBG has its origins in Public Law 105-119, November 26, 1997, and is based on Title III of HR 3. Congress initially appropriated \$250 million for the JAIBG program, designed to provide funds for states and units of local government to combat youth crime and increase accountability on the part of juveniles in the juvenile justice system. As such, it is the major federal legislative initiative in the field of juvenile justice and has spanned both the Clinton and Bush administrations. Four specific mandates are included in HR 3, and participating states and units of local government must have these in effect within 1 year of receipt of funding: (a) treat 15-year-olds as adults if they commit serious violent acts, (b) impose sanctions on every juvenile offender who commits a delinquent or criminal act or who violates probation, (c) establish a minimum system of records relating to prior adjudication, and (d) ensure that state law does not prevent juvenile court judges from issuing court orders against parents, guardians, or custodians. These four mandates provide the backbone of sanctions and punitive orientation that underscore JAIBG. The implementation of JAIBG programming highlights the differences between accountability, punitive punishment, and the restorative justice philosophy and addresses how these differences affect juvenile justice sentencing. JAIBG has not produced a uniform set of practices or philosophies across juvenile courts. Rather, there is a patchwork quilt of accountability, sanctions, and restorative justice that varies from one jurisdiction to another.

JAIBG is an example of the conflict inherent in accountability, graduated sanctions, and restorative justice. Such conflicts are hardly new in juvenile justice (Bernard, 1992); they have their historic roots in Elmira (Pisciotta, 1994), the Workhouse (Rothman, 1971), and the origins of the juvenile court (Ainsworth, 1991; Platt, 1977). These contradictions are inherent in most reforms, particularly reforms that reject prior philosophy or practice. Such reforms typically fail to integrate an understanding of adolescent behavior, social institutions (including the family, school, community and juvenile court), and the interaction between individuals and institutions. As a consequence, such reforms fail to capture the realities of juvenile's lives and the institutions that must deal with them.

JAIBG provides a reasonable example of such conflict with its emphasis on juvenile accountability and punishment. What JAIBG fails to adequately integrate is an appreciation for adolescence and the behavior of adolescents. As a consequence of the broader failure to grasp the full character of adolescence, JAIBG provides interventions that are inconsistent with the behavior of juveniles. This article examines the implementation and development of a JAIBG program in St. Louis, Missouri. The implementation process illustrates the goal conflict inherent in the JAIBG mandate.

Before proceeding to an examination of a specific jurisdiction and specific programs, we review background information about the juvenile justice system and juvenile sentencing practices in general. The following sections will outline the evolution of the juvenile court and juvenile sentencing in general; this will be followed by specific examples of current juvenile sentencing practices. The origin of the juvenile court itself is an example of conflicting ideologies (Bernard, 1992; Platt, 1977; Feld, 1999a, 1999b), which have persisted through time and consequently have affected current sentencing procedures.

Evolution of the Juvenile Court

The juvenile court has been in existence in the United States for slightly more than 100 years. The circumstances surrounding its emergence are complex and related to important social dynamics present at the time. The turn of the century was a time of great economic and social change for the country, with the beginnings of the Industrial Revolution and floods of immigrants, particularly from Western Europe. Capitalism flourished, and middle and upper classes of businessmen and industrialists became well-established. Conversely, European immigrants provided the means of manual labor, with conflicting cultural norms from the capitalist elite (Feld, 1999a; Platt, 1977). These differences in social class and culture set the stage for the emergence of the first juvenile institutions in the United States.

Prior to the introduction of the juvenile court, juveniles were subject to the same criminal proceedings as adults. Sentences to the adult penitentiary were not uncommon, and this harsh and unbalanced treatment came to the attention of reformers. The only choices available to the criminal court were to convict the juvenile to the adult prison or release the juvenile without any sanction whatsoever (Bernard, 1992; Feld, 1999b; Mack, 1909). Judges and other reformers saw the need for an intermediate step, whereby adolescents would be held accountable for their actions but not excessively punished (Bernard, 1992; Platt, 1977).

By examining the social history of offenders, it was determined that offenders, both children and adults, were victims of their upbringing. Inat-

tentive or inefficient parents were usually to blame, failing to protect their family from the corruptions of drinking and other vices. Crime was blamed primarily on the environment; therefore, if a deviant was removed from the sinful environment and placed in an institution that focused on discipline, the individual would be healed and could be returned to society (Pisciotta, 1994; Platt, 1977; Rothman, 1971). The advance of the social work movement encouraged the idea that environment and parental involvement played a key role in behavior. The idea that environment can influence behavior became one of the leading rationales of the progressive movement, with the promise that removing a child from a bad environment would reshape his behavior (Bernard, 1992; Platt, 1977; Rothman, 1971). Armed with a vision that a juvenile will behave properly in the proper environment and the knowledge that fear of crime was increasing, reformers set the wheels of establishing a juvenile institution in motion.

A precursor to the juvenile court was the House of Refuge, which opened in New York in 1825. The opening of this institution led to issues that would later be significant in beginning the separate justice system for adolescents. The House of Refuge was also founded on the principles of environmental influence and social class, particularly the problem of the chronic poor, or paupers (Rothman, 1971). The middle and upper classes saw paupers as lazy and undeserving of assistance, but they excluded children from responsibility for their lot in life by admitting them to the House of Refuge where a proper work ethic could be taught (Bernard, 1992; Rothman, 1971). Legal issues concerning due process called attention to the arbitrary nature by which children were admitted to the institution. Administrators claimed the purpose of the institution was to treat children rather than to punish them, so due process protections were unnecessary. The United States Supreme Court disagreed, ruling that it was illegal to send a child to reform school without committing a felony offense (Bernard, 1992). Supporters still felt that children needed to be handled differently from adults, however, so the middle and upper classes redefined the admissions procedures to officially establish the first separate juvenile court system.

Evolution of Juvenile Sentencing

Just as the structure and function of the juvenile court changed through time, so did sentencing practices, depending on whether the treatment or punishment model dominated decision making. Under the original rationale of the court, the treatment of each individual juvenile was indeterminate, as the amount of time needed for rehabilitation was unknown (Feld, 1998, 1999b; Mack, 1909). Judges held vast amounts of discretion over the sentencing of an offender, with decisions rooted in the rehabilitative ideal and

focused on the best interests of the child. Sentencing was concerned primarily with the real needs of the child, and the actual offense was seen as secondary (Feld, 1999b). These original plans have not been consistent with actual practices, however, and disillusionment about the functioning of the court has caused significant changes in sentencing practices over time.

A fundamental shift in sentencing practices has taken place in the United States since this original idea of rehabilitation and the best interests of the child. Beginning in the 1960s, the focus of juvenile sentencing has become the offense rather than the offender. Instead of concentrating on how best to rehabilitate the young offender, courts have used the current offense, age of the offender, and prior record to determine what sentence to impose (Ainsworth, 1991; Feld, 1998, 1999a, 1999b). Concern for the juvenile is directed not on his future and how to prevent further offending but rather on his past and how to punish inappropriate behavior. This shift occurred because of a lack of faith in rehabilitation and the realization that the juvenile court was not functioning according to its original plan (Ashworth, 1992; Feld, 1999a, 1999b; Moore & Wakeling, 1997). The original goals of rehabilitating the offender and returning the offender to society went unfulfilled, and legal challenges regarding the lack of procedural safeguards began to arise.

Two important supreme court decisions, known as *Gault* (1967) and *McKeiver* (1971) proved to be a turning point for the American juvenile justice system. Whereas *Gault* provided some due process protections for juvenile offenders, such as the rights to notice of the charges and counsel, *McKeiver* failed to provide juveniles with the right to a jury trial comparable to adults (Feld, 1998, 1999a, 1999b). These legal decisions caused a change in focus from informal treatment to formal legal procedures, and transformed the original intent of the court. Rather than concentrate on the needs of the child, sentencing procedures became preoccupied with the offense (Ainsworth, 1991; Feld, 1993, 1998, 1999a). This shift in sentencing philosophy highlights two important issues, the conflict between punishment and treatment and changes in the sentencing of juvenile offenders.

The conflict between the treatment and the punishment perspectives has played a continuous role through time in sentencing young offenders. The juvenile court was originally founded on its ability to treat young offenders rather than punish them (Feld, 1999a; Platt, 1977), and important decisions were formulated on this assumption. The *McKeiver* decision was based on the notion that the juvenile court's function was treatment, thereby rendering the protection of a trial by jury unnecessary (Feld, 1998; 1999b). Treatment and punishment are fundamentally two separate functions, and within the juvenile court, it has proven difficult to differentiate between the two (Feld, 1993, 1998). Throughout its existence, the rhetoric that founded the court has supported rehabilitation, whereas the reality of such treatment has become

increasingly punitive. This reality is easily illustrated by the shifting role of juvenile offenders in American society; JAIBG is one example of such reality.

Conceptions of the juvenile offender have changed considerably since the inception of the juvenile court. Originally, children were seen as unable to form criminal intent (Ainsworth, 1991); they were victims of the culture conflict between the capitalist elite and immigrant labor (Platt, 1977). As formal legal procedures became the focus of sentencing practices, conceptions of the juvenile offender have changed. Fear of crime—particularly, fear of juvenile crime—fueled by fantastic media accounts produced an image of juvenile offenders as extremely violent (Singer, 1996). Television and newspaper stories relating the victimization of the elderly and other innocents prompted a public response to increase the accountability of such offenders. The 1970s saw an increase in the demands for juvenile offender accountability and more punitive sentences (Ainsworth, 1991; Feld, 1993); this was supported by politicians as well as the general public (Singer, 1996). This demand for accountability was focused on those juveniles who had committed violent crimes. Serious juvenile offenders were considered to be more sophisticated, diminishing the idea that youth must be treated differently in a separate justice system (Bishop, 2000; Feld, 1999a; Singer, 1996). Laws in many states were changed during the 1970s and 1980s to focus on the “just desserts” of the offender, highlighting punishment for the current offense rather than treatment of the real needs of the child (Ainsworth, 1991; Feld, 1993, 1998, 1999a). Increases in crime and the fear of crime combined with the emphasis on formal legal proceedings for juveniles resulted in increased punitiveness for serious crimes but a concurrent reduction in punitiveness for noncriminal, or status, offenses.

At the same time that sentencing procedures for serious juvenile offenders were becoming more punitive, a move to reform the sentencing of status offenders was underway. Status offenses are those behaviors that would not be considered criminal if committed by an adult (e.g., incorrigibility or truancy). Concerned legislators and court personnel began to worry that harsh treatment for noncriminal offenses may negatively affect the juvenile, particularly through this stigma and labeling as a criminal. Three alternatives were implemented to handle status offenders in a less punitive manner: diversion, decriminalization, and deinstitutionalization. Each of these options has the goal of removing status offenders from secure detention facilities, as was mandated by the Federal Juvenile Justice and Delinquency Prevention Act of 1974 (Feld, 1993). Diversion seeks to redirect young status offenders away from the formal court system, by providing counseling or other services to assist the juvenile. A significant problem with early diversion programs developed, however. Such programs tended to “widen the net” of offenders,

whereby juveniles who would not normally have come under the jurisdiction of the court were doing so through diversion programs (Decker, 1985; Feld, 1993; Klein, 1979). Thus, a program that was meant to reduce juvenile involvement with the court was actually increasing it. Decriminalization refers to the reassignment of status behaviors from the delinquent to the nondelinquent category. Frequently, this reassignment merely involved the relabeling of the role of the juvenile, for example, from delinquent to dependent or neglected. Because secure detention was no longer an option for such youth, other modes of intervention were established. An increasingly popular choice among court referrals and parents is hospitalization, whether under the category of chemical dependency or psychiatric care (Feld, 1993). Decriminalization and deinstitutionalization represent examples of the court system replacing secure detention with other forms of coerced treatment. Deinstitutionalization of status offenders was a main goal of the 1974 act, which was on its way to being reached by the mid-1980s. Other sentencing options remained open concerning status offenders, however, including medium-security work-camp programs (Feld, 1993). Thus, concerns about the negative impact of involvement with the formal juvenile justice system prompted the court to find less punitive sentencing options for those juveniles referred to the court for nondelinquent status offenses.

The juvenile court has continually had to face the dual problems presented by serious violent offenders on one hand and noncriminal status offenders on the other. The conflict between dealing with sophisticated criminals and assisting with the needs of a wayward child has resulted in significant differences among juvenile courts—and sentencing practices—across the country. Individual jurisdictions can establish their own sentencing philosophy based either on the treatment or punishment model, which will be evident when the purpose clause of the court is examined.

Beginning in the 1970s, some states included just desserts and offender accountability in their purpose clauses, a trend that has grown significantly in popularity (Ashworth, 1992; Feld, 1993). One specific example involves the state of Washington. In 1977, Washington revised its purpose clause to indicate that juvenile offenders would be punished rather than treated by the juvenile court system (Ainsworth, 1991). By examining a court's purpose clause, the nature of the court can be determined as well as whether the court favors the original treatment model or the just desserts model. Different jurisdictions are in different stages of this fundamental shift in sentencing from the focus on the offender to the focus on the offense, with two basic types of courts in existence in the United States (Feld, 1993).

Because courts are organized at the local level, significant differences in sentencing practices exist. Jurisdictions tend to fall into one of two categories based on their purpose clause and actual procedures. Traditional courts tend

to focus on the best interests of the child and utilize more indeterminate sentences, whereas due process courts tend to focus on the legal rights of the juvenile and utilize structured sentencing plans (Feld, 1993; Kempf, Decker, & Bing, 1990; Stapleton, Aday, & Ito, 1982). Most states are moving toward the due process model, with increasingly punitive purpose clauses, sentencing practices, and a stronger emphasis on offender accountability.

A recurrent problem for the juvenile court is the disparity between stated goals and objectives and actual practices. Reform of the court and its practices has occurred several times since its inception in response to this disillusionment with outcomes (Bernard, 1992; Feld, 1999a; Moore & Wakeling, 1997; Singer, 1996). Original sentencing procedures were indeterminate and focused on the best interests of the child, but they were replaced with more punitive measures when juvenile crime increased and the court adopted a more legalistic perspective. Over time, legislators and court personnel have realized that secure detention is not only ineffective but also detrimental for certain juvenile offenders, and alternate sentencing options have been sought. Among these alternatives is the introduction of restorative justice techniques, particularly the implementation of balanced and restorative justice (BARJ) (Bazemore & Umbreit, 1999), a topic we deal with at length at a later point in this article. The main goal of the restorative model is to achieve a more balanced approach to justice. Rather than being offender focused, the BARJ approach seeks a balance between offender, victim, and community (Bazemore & Umbreit, 1999; National Institute of Corrections, 2001). Punitive punishment of the offender is not the main focus; the focus, instead, is on repairing the harm caused by crime.

Thus, a recent trend in juvenile sentencing has been an attempt to accommodate both the legalistic and treatment models of juvenile justice. Programs based on the concept of restorative justice have been introduced to focus on accountability of the offender and repairing harm done to the victim while reducing the punitive aspects of punishment (Bazemore & Umbreit, 1999; Braithwaite, 1989). These restorative techniques are at odds with the due process model of sentencing. This clash between current punitive sentencing practices and BARJ will be detailed in the next section.

Current Status of Juvenile Sentencing

The juvenile justice system did not experience significant changes in functioning until pivotal judicial decisions challenged the ideas of due process in the 1960s (Bernard, 1992; Feld, 1999b). These challenges gave the juvenile court characteristics of the adult criminal court but without all of the constitutional safeguards afforded to adults (Bernard, 1992; Feld, 1999a; Singer, 1996). These challenges were accompanied by an increase in juvenile crime

and fear of crime that undermined the faith in the juvenile system (Moore & Wakeling, 1997). A shift in sentencing began that focused on just desserts as the aim of the court, with more emphasis on the offense committed than on the characteristics of the juvenile (Ashworth, 1992; Feld, 1999a). Since this shift toward the legal aspects of the juvenile court, several sentencing practices have evolved and have been implemented in different fashion throughout the country. Indeterminate sentences with the aim of rehabilitating the juvenile have been replaced with practices that focus on accountability and just desserts.

The general shift from focusing on the offender to focusing on the offense was presented above, and the section below examines how the juvenile court has responded to the demands of increased punitiveness through transfer to adult court; increased sentence length; mandatory, determinate sentences; and truth in sentencing procedures. In addition, the fundamental conflict between punitive and restorative sentencing philosophies is examined.

Transfer. Transfer of a juvenile to the adult criminal court system can be accomplished for a variety of reasons and in a variety of ways. Nearly every jurisdiction makes transfer to adult court available as a sentencing option, with the number of transfers increasing significantly in recent years (Feld, 1999b; Snyder & Sickmund, 1995). As with other court practices, transfer procedures are highly variable between jurisdictions, though most were implemented for the same reasons. For the most part, transfers to criminal court are based on the age of the offender and the seriousness of the current offense (Snyder & Sickmund, 1995). Large increases in violent juvenile crime provided most of the rationale behind the transfer movement specifically, as well as the shift toward more punitive sentencing generally. Between 1965 and 1990, the overall juvenile arrest rate for homicide rose by 332% nationwide, from 2.8% to 12.1% (Federal Bureau of Investigation, 1992). This increase in violence among young people contributed to public endorsement of more punitive sentencing options, including transfer to adult court. Juvenile offenders make their way to adult court most frequently by judicial waiver, prosecutorial discretion, and statutory exclusion.

Judicial waiver places the decision to transfer the juvenile into the hands of the judge. This procedure is highly variable and allows the judge extensive discretion in making decisions about which crimes and juveniles should be tried in adult court (Bishop, 2000; Feld, 1999a, 1999b). The trend in waived offenses has fluctuated in the last 20 years. Before 1993, most cases waived to adult court involved property, public order, or drug offenses (Bishop, 2000; Snyder & Sickmund, 1995), but after that date, person crimes became more prevalent (Bishop, 2000).

Prosecutorial discretion, or direct file, places the decision to transfer in the hands of the prosecutor. This method of transfer involves a different legal arrangement than judicial waiver. Prosecutorial discretion places the decision-making power in the hands of the prosecuting component, but jurisdiction over the juvenile is concurrent between both the juvenile and adult systems (Bishop, 2000; Snyder & Sickmund, 1995). Again, characteristics of the juvenile, such as age, offense seriousness, and prior involvement, determine whether the prosecutor chooses the venue of juvenile or adult court. This option for transfer differs from the others in scope and popularity. Statutes that authorize prosecutorial waiver are frequently broad, encompassing general age and offense criteria (Bishop, 2000). Fewer states utilize prosecutorial discretion as opposed to judicial waiver, but if the choice of direct file exists, it is used more frequently than waiver (Snyder & Sickmund, 1995).

The decision to transfer to adult court under statutory exclusion is based on the laws that have been enacted regarding offenders and crimes to be excluded from the juvenile court system. Statutory exclusion differs from the other transfer methods in use of discretion and scope. This method allows for the least discretion as the law mandates the conditions for waiver. Any youth who meets the criteria of age or particular offense (variable by state but nearly always involving serious violent felony) is automatically to be transferred to adult court (Bishop, 2000; Snyder & Sickmund, 1995). In addition, the scope of statutory exclusion is much narrower than for prosecutorial discretion. Specific crimes are targeted as permanently inappropriate for the juvenile system, such as homicide or other violent person crimes (Bishop, 2000). By specifying the age at which young offenders no longer remain under the jurisdiction of the juvenile court, the state can manipulate how many offenders are transferred to adult court (Bishop, 2000; Feld, 1999a; Snyder & Sickmund, 1995). Statutory exclusion accounts for the highest number of juveniles tried in adult court (Snyder & Sickmund, 1995). Thus, transfer of juveniles to the adult criminal system can be accomplished through judicial waiver, prosecutorial discretion, or statutory exclusion. Each method can be customized to a particular jurisdiction in terms of actual offenses excluded/included or age of the offender, but in every case, some combination of age of the offender, offense seriousness, and prior involvement guide sentencing practices, rather than the best interests of the child

Increased sentence length. Sentencing practices for juveniles in the United States have become more punitive in the last 20 years, particularly since the focus of the juvenile court has shifted from the offender to the offense. As mentioned earlier, this shift is the result of increased juvenile crime rates as well as local political maneuvering. Politicians hesitant to be

seen as “soft on crime” endorsed increasingly punitive measures for juveniles, including extending sentence lengths (Emerson, 1974; Feld, 1999b; Singer, 1996). As with transfer to adult court, the seriousness of the current offense plays a key role in the length of sentence received. The juveniles that receive the longest sentences are convicted of the most serious crimes or are chronic offenders (Feld, 1999b). Thus, legislators responded to the increase in juvenile crime by adopting more punitive sentencing practices, including increased sentence length for juveniles. Ironically, although sentence length increases in response to increases in juvenile crime, it has not declined when juvenile crime decreased.

Mandatory and determinate sentencing. The adoption of mandatory and determinate sentencing practices is another example of the shift of focus in the juvenile justice system from the offender to the offense. In addition to rising juvenile crime rates, the impetus for these sentencing changes came from the discretionary nature of the original court structure. The original philosophy of the juvenile court used indeterminate sentences to assess the real needs of the child and provide treatment on a case-by-case basis (Bernard, 1992; Feld, 1999a). This approach was highly discretionary, however, and those who opposed the rehabilitative ideal cited these high amounts of discretion when directing attention to the high amounts of inequality and unfairness in the court system. Support of determinate sentences was support of a more theoretically equal distribution of justice. Thus, current sentencing practices focus on the seriousness of the crime and often utilize standardized guidelines, with much reduction in discretion. Many jurisdictions have sentencing guideline commissions that offer recommendations on appropriate sentencing options for particular crimes and offense histories (Feld, 1999b). This structured approach to sentencing is in direct conflict with the philosophy of restorative justice.

THE BARJ APPROACH TO JUVENILE JUSTICE

Despite the general trend toward increased punitiveness in the juvenile court, some courts have adopted restorative justice models. The conflict between the treatment and retributive models of juvenile justice in the United States has led to a reexamination of alternatives to the current paradigm of juvenile justice. Restorative justice philosophies, values, and programs have appealed to opponents of the punitive orientation of juvenile justice systems across the United States as well as internationally. Advocates of the restorative justice movement criticize both the treatment and retributive models predominantly on two fronts. First, critics characterize both models of justice for being “closed systems” that only focus on the offender and ignore the

other actors of a criminal event, that is, the victims and the communities. Second, restorative justice advocates feel that the current system of justice places offenders into a passive role rather than allowing each individual offender to proactively make amends or change their behavior (Bazemore & Umbreit, 1995). Although the orientation toward restorative justice is not embraced by all courts, there is a strong commitment to this model in many jurisdictions across the United States.

Opponents of the rise in retributive juvenile justice feel that the formal justice process is often intimidating and stigmatizing for juvenile offenders. Proponents of a restorative justice approach contend that the more informal and nonadversarial settings of restorative justice programs can help to contribute to a more meaningful and honest outcome while attempting to address the root cause of problem behaviors (Bazemore, 1998a, 1998b; Bazemore & Umbreit, 1995; Lawrence, 1991). Proponents of a restorative response to juvenile offenders stress the need for an individual response to each offender that is less costly, less punitive, and less stigmatizing (Bazemore & Umbreit, 1995), while preserving the protective and law-enforcement powers of the state (Bazemore, 1998b; Bazemore & Walgrave, 1999).

Restorative justice advocates contend that the present adversarial system does not allow for active participation for those who are directly affected by the crime—the victim and the community (Bazemore, 1998a). Proponents point out that the paradigm of restorative justice allows for all those involved—the victim, the offender, and the community—to have equal impact and action in the justice process. In the view of restorative justice principles, all three actors of justice should be viewed as the “customers” or “clients” of justice (Bazemore, 1998a; Bazemore & Umbreit, 1995). Accordingly, restorative justice principles stress the need for the justice system to tailor itself to the needs of all parties involved, not simply the offender.

Crimes are defined in the current judicial process as being committed against the state, not against the individual victim or their property. Unlike the current punitive model of juvenile justice, however, in the restorative justice paradigm, accountability is viewed from the point of view of the victim, not the state, while focusing on the needs of the offender (Bazemore & Umbreit, 1995). A restorative justice approach finds the forgotten components of the crime—the victim and the community—as essential for a successful outcome for the offender. Unlike previous community-oriented programs, such as monetary restitution and community service, restorative justice stresses the healing of all involved (Bazemore, 1998b).

Whereas there are varying degrees of what constitutes a restorative justice program and its implementation, Bazemore and Walgrave (1999, p. 48) define the approach concisely as “every action that is primarily oriented toward doing justice by repairing the harm that has been caused by crime.”

Following this perspective, restorative justice allows for different techniques of restoration and outcomes for each victim, offender, and community.

International Perspectives of Juvenile Justice

The restorative justice movement has proliferated across the Western world. By the early 1990s, at least 300 restorative justice programs could be found in the United States and 700 across Europe (Kurki, 1999). In Australia and New Zealand, governmental reforms have led to the widespread implementation of restorative justice programs, predominantly in their juvenile justice systems (Bazemore, 1998a; Kurki, 1999; Seymour, 1996). The prevalence of restorative justice theory and practice has largely been the result of the conflict and ideological shifts between the treatment and punitive goals of juvenile justice that we find in the United States (Pratt, 1989; Reichel, 2002; Wakefield & Hirschel, 1996). The reforms in Australia and New Zealand fall distinctly under the rhetoric of restorative justice, whereas other countries throughout Europe have adopted "corporatist" and "community control" models of juvenile justice that attempt to integrate restorative principles into the conflicted systems of juvenile justice (Junger-Tas, 1992; Pratt, 1989). Change has also been prompted internationally by rises in juvenile crime rates, especially violent crime, and the subsequent demand by the public to take action similar to the United States (Junger-Tas, 1992; Reichel, 2002).

Although the juvenile justice system in Australia has typically been dominated by the welfare ideology, the country has not been without systemic change (Reichel, 2002). Prior to the early 1990s, juvenile legislation in Australia was strongly rooted in the welfare model of juvenile justice but subsequently has adopted a restorative justice style of juvenile justice (Reichel, 2002; Seymour, 1996). Although restorative justice practices have been implemented in every state and territory in Australia, the best examples still remain in South Australia and Western Australia. Both territories drastically revised their systems of juvenile justice through the Young Offenders Act of 1993 in South Australia and in 1994 in Western Australia (Reichel, 2002). These reforms have led to the increased use of restorative justice practices, mainly the use of family group conferencing (FGC). New Zealand represents the first systemic change based solely on the values and philosophy of restorative justice. For example, presently in New Zealand, all juvenile cases, except homicide and rape, can be sent to FGC (Kurki, 1999).

In 1989, New Zealand passed the Children, Young Persons, and Their Families Act, which endorses the use of FGC to allow "more direct participation and influence of the judicial process for juveniles, their families, and victims" (Morris & Maxwell, 1998, p. 2). In New Zealand, arrest and detention are only used as a last resort for juveniles. Maxwell and Morris (1993)

reported that approximately 60% of all juvenile cases result in a police warning, apology by the offender, or community service; 30% of youth are sent to FCG; and 10% of juvenile offenders are actually sent to the juvenile court. Following the 1989 act, juvenile court cases have been reduced from 10,000 to 13,000 per year to 2,587 in 1990 (Umbreit, 1996). Approximately 5,000 juvenile conferences are conducted annually in New Zealand (Morris & Maxwell, 1998). This represents the largest criminal justice system impact resulting from a restorative justice program (Umbreit, 1996).

The juvenile justice system in England and Wales has also been restructured, moving from the welfare model to the retributive model (Pratt, 1989). This shift in ideological thinking has led to the conflict over juvenile justice policy and practice that we find in the United States. This conflict has also led to the juvenile justice system in the United Kingdom adopting restorative theory and practice in recent legislative reforms. The Crime and Disorder Act of 1998 and the Youth Justice and Criminal Evidence Act of 1999 are both based on the three restorative principles of restoration, reintegration, and responsibility (Crawford & Newburn, 2002). These restorative justice reforms, however, have not been as widespread as we have seen in Australia and New Zealand. Although the emphasis is turning to restorative justice, juvenile sanctions are still broad, ranging from retributive to restorative (Reichel, 2002). This continued reliance on punitive measures has led some to label this integrated model the "corporatist" model of juvenile justice (Pratt, 1989; Reichel, 2002). A new conflict has arisen in the United Kingdom between the restorative justice goals and the managerial and administrative goals and practices (Crawford & Newburn, 2002), a conflict similar to that occurring in the United States.

Finally, many countries in Europe, including the Netherlands, have adopted a "community control" model of juvenile justice. Whereas most European nations have adhered more closely to the welfare model than the United States has, they have also seen increasing reliance on the justice model of juvenile justice. This conflict, in combination with rising rates of juvenile crime and overwhelmed systems of juvenile justice, has led to a rise in the community control model, which incorporates many restorative justice principles and practices (Junger-Tas, 1992).

The community control model of juvenile justice strongly emphasizes offender reintegration and community involvement. This approach includes increased crime-prevention efforts at the community level, implementation of new diversionary tactics, and informal sanctioning, including mediation, reparation, and restitution (Junger-Tas, 1992). Similar to England and Wales, this has also led to more involvement of social service agents in exercising social control in place of the formal system when appropriate, but the police, prosecutors, or judges may also apply diversion and alternative sanctioning

programs. Junger-Tas points out however, that despite these new practices, rates of juvenile detention have not been meaningfully reduced. In Europe, the focus has moved from treatment or punishment to that of socialization and control under the paradigm of the corporatist model or community control model of juvenile justice (Junger-Tas, 1992; Pratt, 1989).

Challenges to Implementation

Although research on the effectiveness and success of restorative justice programs is still in its infancy, both proponents and opponents of restorative justice already point out the major obstacles that restorative justice practices must address. Besides questioning the approach in general, there are five specific areas that are problematic to implementation and may ultimately result in further negative consequences for the juvenile justice system.

First, critics point to a lack of due process and legal protections with restorative justice programs that may unintentionally lead to increased sanctions for restorative justice program participants (Bazemore, 1998a; Bazemore & Umbreit, 1995; Levrant, Cullen, Fulton, & Wozniak, 1999). The second is a concern with the successful implementation of restorative justice programs. Successful implementation depends on the characteristics of program participants but also must account for net widening and the lack of racial and ethnic diversity among program participants (Kurki, 1999; Levrant et al., 1999). The third concern addresses the voluntary participation of victims and offenders in restorative justice programs (Levrant et al., 1999; Umbreit, 1998; Umbreit & Greenwood, 1997). Although victim participation is always voluntary, the benefits of the program will be lost if the victim declines the meeting. The fourth challenge to restorative justice programming does not center around implementation but rather in the manner in which success is gauged. Unlike the punitive emphasis on recidivism and reentry, restorative justice programs must be evaluated both on traditional outcome measures, such as recidivism, as well as restoration of the community and victim satisfaction because the two models of justice are applied with different goals and intentions (Bazemore & Umbreit, 1995; Kurki, 1999; Morris, 2002). Finally, the largest question that remains is the overall compatibility of the restorative justice approach with the present juvenile justice system. The largest challenge the restorative justice movement faces is in effecting systemic change, not merely symbolic change through the renaming of the current retributive juvenile justice system that can only claim to be restorative (Levrant, 1999).

It remains to be seen whether the United States and Europe can integrate restorative justice components into the juvenile justice system as successfully as Australia and New Zealand have been able to do. Although the histor-

ical patterns of ideological conflict may not be that dissimilar internationally, as stated so eloquently by Bazemore and Umbreit (1995, p. 311), "U.S. cities are not the same as cities in New Zealand or Europe, and juvenile justice systems are larger, more complex, and more crisis-driven."

PROGRAMS IN ST. LOUIS

We now move to an examination of local examples of these national and international trends. Specifically, we present several of the changes in sentencing practices in St. Louis, Missouri, a city of 348,000 residents in a larger metropolitan area of nearly 2.5 million people. St. Louis has been characterized by many of the problems that accompany an urban underclass, including job loss, population loss, and concentrated poverty. St. Louis experiences extremely high rates of violence and gang activity and has ranked consistently among the top five most violent cities in the United States.

Putting St. Louis in Context

In many jurisdictions, including St. Louis, programs are too new to have been officially evaluated for effectiveness in meeting stated goals. Several programs across the United States have been in place for a significant length of time, however, and program evaluations are available from these jurisdictions. St. Louis has taken advantage of these previous evaluations to guide program design and implementation, aiming to provide helpful and effective services to those who are referred to the court. Nightwatch, community service restitution, and victim/offender mediation (VOM) programs in St. Louis are all based on conclusions drawn from previous research and the experiences of other jurisdictions.

Prior research devoted to the evaluation of restitution programs has produced mixed results. Some studies find juveniles who participate in restitution programs reoffend significantly less than those who do not participate (Cannon & Stanford, 1981; Guedalia, 1979; Hofford, 1981), whereas others find no difference between these groups (Wax, 1977). Regardless of these mixed results, restitution programs are popular for a number of reasons. Restitution provides a method for the victim to be repaid for losses, makes the offenders accountable for their actions (Bureau of Justice Assistance [BJA], 1992), and may be more cost-effective than other court involvement (Shichor & Binder, 1982). This focus on victim involvement and offender accountability has established restitution programs within the restorative framework in St. Louis as well as other jurisdictions. St. Louis began its restitution program in 2000 and averages about 25 new referrals per month. St. Louis has had success in its program pertaining to completion of restitution agree-

ments, with a majority of juveniles completing their assigned duties and repaying their victims. Again, no formal evaluation of the restitution program in St. Louis has been completed, but feedback from victims, offenders, and work site supervisors indicates high levels of satisfaction with the program.

Several VOM programs across the United States have been evaluated to assess their effectiveness at reducing recidivism, involving victims in the justice process, and affecting offender behavior. Nugent, Umbreit, Wiinamaki, and Paddock (1999) report that participants in VOM showed a 19% reoffending rate over a 1-year period, whereas those who did not participate reoffended at a rate of 28%, the difference being statistically significant. A cross-site analysis of four VOM programs in Albuquerque, Austin, Minneapolis, and Oakland by Umbreit and Coates (1993) showed high levels of satisfaction for both victims and offenders with the mediation process. Both parties indicated a high degree of active participation and satisfaction that the agreement reached was fair. In addition, juveniles that completed VOM were more likely to successfully complete their restitution obligation than those who did not participate (Umbreit & Coates, 1993). Not all researchers agree that VOM is a valuable method for dealing with juvenile offenders (Arrigo & Schehr, 1998; Leverant et al., 1999), but its use is gaining popularity as jurisdictions adopt restorative justice methods. St. Louis has only recently implemented VOM, with promising initial results. In a 2-year period, nearly 100 cases have been mediated, with nearly every mediation resulting in an agreement that was acceptable to both parties. Measures of recidivism are not yet available, but preliminary surveys indicate high levels of participant satisfaction with the process that mirrors that of previous studies, particularly for fairness and whether they would recommend the process to someone else. Thus, St. Louis has designed and implemented programs after consulting previous evaluations, and preliminary results indicate that programs in St. Louis are similar in outcome to these previous studies.

The St. Louis Nightwatch program. Nightwatch in St. Louis is modeled loosely after the Nightlight program started in Boston, Massachusetts, to address that city's problem with serious gang-related violence (Boston Police Department and Partners, 1997; Corbett, Fitzgerald, & Jordan, 1996). Curfew-check programs such as these have spread across the country and have shown initial success in reducing juvenile crime. Baltimore, Indianapolis, Minneapolis, and Los Angeles are just a few examples of cities that have implemented programs targeted toward reducing juvenile violence, with curfew enforcement as one component of this strategy (Kennedy, Braga, Piehl, & Waring, 2001). Preliminary results indicate that this targeted enforcement has reduced homicide rates (Kennedy & Braga, 1998; Kennedy et al., 2001),

increased community safety, increased the credibility of probation departments, and received support from parents involved in the program (Corbett et al., 1996). The program in St. Louis has not undergone a formal evaluation, but feedback from parents indicates high levels of satisfaction with their child's involvement in Nightwatch. Other results indicate a high percentage of juveniles assigned to the program are home when visited by the Nightwatch crew, with very few juveniles accumulating three or more unexcused absences in 1-month's time.

The Nightwatch program began in the St. Louis Family Court in March of 2000. Nightwatch is a collaborative effort between the St. Louis Metropolitan Police Department, St. Louis Family Court-Juvenile Division, and the University of Missouri at St. Louis. The Nightwatch program is funded by both state and federal agencies, including JAIBG, the United States Department of Justice (USDOJ), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Missouri Department of Public Safety.

Designed to monitor the court-ordered curfew of juveniles placed under official court supervision, Nightwatch employs three crews of deputy juvenile officers (DJOs) and police officers to make random home visits to verify compliance with the court-ordered curfew of the juvenile. Youths are first classified into one of three categories based on risk: high, medium, and low. High-risk youths are visited three times a week, medium-risk youths are visited two times a week, and low-risk youths are visited once per week. The court mandates curfew times, but if a parent or guardian requests that the child be home at an earlier time, that curfew laid out by the parent or guardian is expected to be met. The juvenile is not to leave the residence before 5 a.m. the following morning.

The restorative-based Nightwatch program uses a graduated-sanctions and rewards system based on a "sanctions matrix." Nightwatch supervisors regularly review cases to determine if and when a sanction has been warranted. Violation sanctions may include community service, increased office visits with the DJO, written reports, attendance at a restorative sanction group, home detention, detainment at the juvenile detention center, and out-of-home residential placement. Rewards for compliance include small gift certificates for products or services.

Truancy court. The Truancy Initiative Project targets youth that have been referred to the family court for a truancy violation. The goals of the truancy court are to improve school attendance and performance, to decrease student dropout rates, to increase parental involvement, and to promote juvenile accountability. DJOs are assigned to St. Louis public schools where juveniles have been referred to the court for truancy violations. Truancy court is held every other week within a school and presided over by the family court judge.

A parent or guardian is also scheduled to attend each court hearing with his or her child. Both parent/guardian and the juvenile are required to sign a behavior contract at the time of the initial court appearance.

Rewards and sanctions are both used to promote compliance in the truancy court. If attendance does not improve during the course of participation in the truancy court, the youth may be referred to the family court docket. In some cases, youth are sentenced to spend up to 23 hours in the juvenile detention center. In addition, the parent/guardian may also be referred to St. Louis City Court and be held responsible under the city's truancy ordinance if they are uncooperative with the DJO, refuse to attend truancy court, have alcohol or drug problems, or if no progress has been made in their child's case. If this court referral results, parents/guardians are also assessed and linked to community resources. A fine of \$25 a day for each day their child is truant or up to 90 days in jail may also be imposed on the parent/guardian.

The VOM program. The VOM program began in the St. Louis Family Court in December of 2001 and is funded through JAIBG. The program is designed to bring juvenile offenders face-to-face with their victims with the aid of trained mediators to discuss the events of the case, share feelings, and to come to a possible reparation and restitution agreement. Participation by both the victim and the offender is voluntary in nature.

The VOM program accepts referrals from both juvenile x-bookings (unofficial) and official court referrals. To proceed, all referrals must have legally sufficient evidence. The VOM program targets youth that have not been previously adjudicated. Intrafamily conflicts, "victimless" crimes, and crimes against the state are not eligible for the mediation process.

St. Louis implemented each of these programs to address the conflicting priorities of punishment and concern regarding the welfare of the child. Children who are out on the street past curfew or who are not attending school need some type of intervention to discourage delinquent behavior, but the current sentencing trend focuses on punitive sanctioning. VOM and community service restitution attempt to bridge this issue by placing more emphasis on offender accountability and by trying to tailor the punishment to the crime committed.

CONCLUSIONS

The juvenile justice system in the United States has undergone significant changes since its original implementation. The initial focus of the court was on the best interests of the child, with sentences focusing on personal and

social needs, such as education or life skills, rather than the offense. Increases in youth crime shifted public and political opinion toward more punitive responses, such as increased sentence length and mandatory, determinate sentencing. The realization that more punitive responses to youth crime are not necessarily more effective has prompted the recent introduction of the restorative justice movement in the United States. The idea of balancing the response to crime between the offender, victim, and community has focused on the response as repairing the harm rather than overt punishment. Restorative justice programs attempt to stabilize the conflict between punishment and victim involvement through offender accountability.

St. Louis was not the first jurisdiction in the United States to implement these restorative programs, and there are many jurisdictions that are yet to take this step. In its efforts to implement JAIBG, the juvenile court in St. Louis faced conflicting sentencing goals, with restorative justice bumping up against accountability and graduated sanctions. The resolution of these conflicts was not easy, but it illustrates the process of institutional change within the juvenile court setting. These changes are not new to such courts in their roughly 100-year history. Putting restorative programs into practice does not occur quickly or easily, as it involves systemic changes in operation for the entire juvenile court system, changes that often conflict with existing practices and philosophies. Progress in implementing restorative justice practices should be seen as an evolution from punitive, incarceration-based punishment toward restorative, community-based practices. Implementation of such programs in St. Louis faced several hurdles, as evidenced by a survey of court staff regarding the VOM program. Staff noted several concerns, notably a lack of general knowledge about the program and how it works as well as specifics about the referral process. The concepts behind the program were clear, but the steps necessary to make it a reality were not as apparent to court staff. This illustrates one of the dilemmas of any institutional change; spreading the word is not nearly as difficult as changing old habits.

Sentencing practices for juveniles in the United States are in transition. The United States lags behind many countries in moving toward restorative justice. New Zealand and Australia have undergone systemic changes in implementing restorative practices for a majority of offenses, whereas the United States struggles with the conflict between the appropriate punishment, victim involvement, and offender accountability. This conflict is not new to the juvenile justice system in the United States; it has been a constant tension in the history of the juvenile court. This article has shown that the transition between philosophies, regardless of their orientation, is seldom smooth or easy.

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