
REACTION ESSAY

PUBLIC OPINION AND JUVENILE JUSTICE POLICY: MYTHS AND MISCONCEPTIONS

DONNA M. BISHOP

Northeastern University

In the last 30 years, legislatures throughout the United States have instituted a series of reforms that redefined the purposes of juvenile courts and exposed young offenders to a variety of harsh punishments. Among the more significant changes, they amended juvenile codes to endorse the goals of punishment and protection of public safety, expanded provisions to transfer youths to the jurisdiction of the criminal courts, created blended sentencing options that carry sentences that sometimes extend well into the adult years, and adopted offense-based determinate and mandatory minimum sentencing.

Legislators frequently claim that they had a public mandate to enact punitive reforms. However, the role actually played by the public in the “get tough” movement is a matter of considerable debate. According to most accounts, the movement was initially set in motion by an upsurge in youth violence in the 1960s and 1970s that put the problem of youth crime squarely on the nation’s radar screen. After a brief period of stabilization in the early 1980s, juvenile crime—especially drug crime and urban gun violence—increased at unprecedented rates. The media provided heavy and often sensationalized coverage, contributing to a climate of fear.

According to one view, the citizenry placed much of the blame for the wave of youth violence on a juvenile justice system that was perceived to be lenient and ineffectual. They powered the “get tough” movement by demanding harsh punishments, which they believed would be more effective in reducing crime. An alternative view has it that the public wanted “something” done but did not push a punitive agenda. However, policy makers—relying on the media and interest groups as barometers of public opinion—greatly overestimated public support for punishment and acted on those misperceptions (Doble, 2002). A third perspective is offered by Beckett (1997), who argues that conservative politicians themselves set the punitive agenda. They fueled public fears with alarmist rhetoric, polled the public in ways that would be sure to elicit punitive responses (e.g., “What penalty is appropriate for a juvenile who uses a gun to commit robbery?”), and then touted the promise of simplistic regressive solutions. In the atmosphere of fear they had helped to create, those who took a hard line on youth crime were rewarded at the ballot box.

That punishment of juvenile offenders is broadly and single-mindedly supported by the public has now become “accepted wisdom” among citizens, policy makers, and many criminologists (Matthews, 2005). Nagin et al.’s article in this volume (2006) challenges that view and demonstrates that the legislative response to youth crime does not accurately reflect the public will. In Pennsylvania, where the violent crime rate is among the highest in the nation, they find that the vast majority (72%) of citizens surveyed endorse rehabilitation for serious juvenile offenders and express a willingness to pay additional taxes to support rehabilitative programming. They also find that a majority (65%) are willing to finance early childhood preventive interventions. A lesser proportion (59%) are willing to pay for lengthier incarceration. Commenting on the high levels of support for rehabilitation and early intervention, Nagin et al. infer that either politicians have misread public sentiment or public sentiment has changed. They suggest that the dramatic drop in juvenile crime that began around 1992 may have calmed citizens’ fears and rendered the public more receptive to the idea of rehabilitation than it had been in years past.

COMMENTS ON NAGIN ET AL.’S RESEARCH

Methodologically, Nagin et al. improve on much of the prior public opinion research. For instance, the scenario that they present to respondents identifies a specific offender type. Many previous polls and studies have simply asked people to report their views on what should be done with “juvenile offenders.” A citizen who thinks of juvenile offenders as persons who commit serious violent crimes is likely to respond very differently than one who views juvenile offending primarily in terms of minor property offenses; yet if both were asked about a specific offender, their responses might be nearly identical (Roberts, 1992). By setting the offense in the scenario, Nagin et al. assure a more accurate assessment. It is also noteworthy that the offense presented is fairly serious, and that respondents were informed that a youth who commits this sort of offense is typically sentenced to about one year in jail. That the researchers nevertheless uncover strong support for rehabilitation is all the more impressive.

Nagin et al. also improve on past research through an innovative application of the method of contingent valuation. This technique represents an advance over many prior efforts to assess public preferences because it takes questions out of the abstract and concretizes them in a way that is more salient to respondents (the actual personal cost burden). This method affords a more realistic account of the breadth and depth of the public’s appetite for treatment and punishment.

Nagin et al. also conduct an interesting “first-cut” benefit–cost analysis of rehabilitative and carceral strategies. Using willingness to pay as a

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proxy for perceived program benefits, they calculate the total dollar benefits associated with each option. They then estimate the total dollar costs associated with delivering each option to Pennsylvania's serious offender population. By using a generous, high-end estimate of rehabilitation costs and a conservative, low-end estimate of incarceration costs, they set up the analysis to favor the punishment option. Nevertheless, they find that the benefit-to-cost ratio for rehabilitation is several times greater than that for incarceration.

A couple of interpretive points deserve mention. I am wary of the authors' claim that they are somehow isolating "true preference" by presenting the proposed carceral and rehabilitative strategies as equally effective in reducing recidivism. These strategies are not *in fact* equally effective, and I suspect this may be an influential consideration in the formulation of citizen preferences. For the same reason, I do not find the benefit-cost analysis especially persuasive. Although the authors make the case that many program benefits consist of intangibles that cannot be measured, I suspect that most of these unmeasurables are linked to program effectiveness (e.g., feelings of safety, feelings of improved quality of life, feelings of gratification associated with improving the life chances of troubled youth). By presenting the alternatives as equally effective in reducing recidivism, the authors may have inadvertently equalized these intangibles. It is not surprising, then, that the results of the benefit-cost analysis turn solely on differences in program cost.

I devote the remainder of this essay to broader issues relating to public opinion and juvenile justice policy. I begin by placing Nagin et al's study in the context of the larger body of research on public preferences for youth rehabilitation and punishment. My read of that literature challenges "stubborn" ideas about the decline of the rehabilitative ideal, the connection between fluctuations in crime rates and changes in public preferences, and the public's contribution to punitive trends in the policy arena. I then reflect on the status of American juvenile justice. I suggest that the attention given to punitive reforms has contributed to distorted views of juvenile justice policy and practice—more specifically, to an overestimation of the scope and influence of the "get tough" movement. Although very little systematic research has been conducted on the operation of today's juvenile courts and corrections systems, there is considerable evidence that they have not changed to the degree that we often assume. I argue that systematic assessment of how juvenile courts and correctional agencies respond to the nonchronic, nonviolent offenders who constitute the vast majority of the juvenile justice system's clientele should become a research priority.

PUBLIC RESPONSES TO YOUNG OFFENDERS

My read of the empirical record convinces me that we have sold the public short for a long time regarding the degree to which it supports the rehabilitation of juvenile offenders. Nagin et al. themselves misread the research literature. They report that some studies have found support for punitive policies, whereas others have found support for rehabilitation, and they conclude that, "It is quite plausible that assessments of public sentiment about juvenile crime, and the appropriate response to it, vary greatly as a function of when and how public opinion is gauged." What they fail to say is that their findings of public support for rehabilitation are entirely consistent with what others have shown repeatedly for the past 25 years.

Despite major fluctuations in crime rates over time, the public has strongly and *consistently* supported rehabilitation as a response to all but the most violent juvenile offenders (Cullen et al., 2000). A national poll conducted in 1981, when juvenile crime rates were relatively low, showed that 75% of the public favored rehabilitation over punishment (Opinion Research Center, 1982). Similar levels of support were found in a California poll conducted in 1987, when juvenile crime was on the rise (Steinhart, 1988). In 1991, at the height of the surge in youth violence, a national survey queried the public about whether the main purpose of the juvenile court should be to "treat and rehabilitate" or "punish." Over three quarters chose "treat and rehabilitate" (Schwartz et al., 1992).

Support for rehabilitation continued unabated after juvenile crime rates began their precipitous decline. In a 1995 survey of Cincinnati residents, over 80% of respondents endorsed the idea of juvenile rehabilitation (Sundt et al., 1998). In the same year, 63% of Virginia residents surveyed reported that the main purpose of the juvenile court system should be to rehabilitate (Survey and Evaluation Research Laboratory, 1995). In a 1996 Ohio survey, 95% of respondents supported rehabilitation for juveniles in the correctional system (Applegate et al., 1997). Sixty-eight percent of Tennessee residents surveyed in 1998 felt that rehabilitation should be the primary focus in juvenile correctional institutions (Moon et al., 2000, 2003). A national survey conducted in 1999 showed that 90% of the public supported prevention and rehabilitation of juvenile offenders (Soler, 2001). Most recently, in a statewide survey of Florida residents, over 80% of respondents supported rehabilitation for a wide range of juvenile offenders—young and old, first offenders and repeaters, and violent and nonviolent youths (Applegate and Davis, 2005).

In sum, over the past 25 years, even while the media was decrying the "crack cocaine epidemic," the coming of the "superpredators," and the mass murder of children in schools in America's heartland, and even while

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legislatures in all 50 states and the District of Columbia were passing harsh reform measures, the American public remained steadfast in its support for juvenile rehabilitation.¹

This is not to suggest that the public rejects the idea of punishment. On the contrary, the public sometimes endorses punishment nearly as much as it does rehabilitation. Surveys show that there is little or no correlation between public support for rehabilitation and public support for punishment (see, e.g., Mascini and Houtman, 2006). Criminologists, on the other hand, tend to view punishment and rehabilitation as opposite and incompatible (see, e.g., Blomquist and Forst, 1992; for commentary on this issue, see Doble, 2002; Mascini and Houtman, 2006; and Mathews, 2005). This tendency is implicit in Nagin et al.'s research design—i.e., they proposed the rehabilitative strategy to one half of the sample and the punitive strategy to the other half—in the title of their article, and in their (mis)interpretation of the extant literature.

To the public, the idea of punishment *versus* rehabilitation is a false dichotomy. Most people do not reflect on the kinds of philosophic and pragmatic issues related to sentencing that concern criminologists—such as how to reconcile the interests of justice in fair and proportionate outcomes with the rehabilitative requirement of individualized and flexible responses. Instead, they think in terms of “stopping crime” and “reducing delinquency,” and they endorse multiple strategies simultaneously. For example, in the 1998 Tennessee survey, 95% of respondents said it was important to rehabilitate juvenile offenders, 92% said that juveniles deserve to be punished for the harms they have caused, and 63% were optimistic that punishments could also deter them (Moon et al., 2000:48). It is clear that the American people would like the vast majority of young offenders² to be punished for their offenses, to learn from the experience of being punished, and to receive the sorts of treatment that will help them to move through the troubles of adolescence to become productive and law abiding adults. They see no contradiction in supporting all of these objectives simultaneously.

1. It is noteworthy that the public has also supported rehabilitation of adult offenders throughout this period. Although endorsement of rehabilitation programs for adults is not nearly as strong as in the juvenile context, it is nonetheless substantial.

2. Although the public endorses punishment of juvenile offenders, punishment seldom trumps rehabilitation. The consistent exception involves seriously violent juvenile offenders, from whom the public wants protection, and for whom adult-type punishments are preferred (see, e.g., Roberts, 2004).

JUVENILE JUSTICE SYSTEM RESPONSES TO YOUNG OFFENDERS

Just as we tend to overestimate the extent to which public sentiment is punitive, it seems that we also overestimate how punitive the juvenile justice system has become. Given the number and variety of regressive reforms, and the scale on which they have been passed, it is easy to exaggerate their scope and influence. Moreover, criminological research in the juvenile justice area has been greatly influenced by the reform movement. Because the reforms have for the most part been directed at serious and violent offenders, and at the margins of juvenile justice, that is where a disproportionate share of our attention has been directed. The concentration of criminological research in these areas may have contributed to the tendency to exaggerate the magnitude of the shift toward punishment. Take juvenile transfer/waiver research, for example. The number of scholarly writings on the subject has become enormous. Yet transfer affects only about 1% of the juvenile offender population. Comparatively speaking, we have paid far less attention of late to more routine operations of the juvenile court and to processes and programs affecting the nonchronic, less serious offenders who comprise the other 99% of the juvenile court's clientele.

It is not at all uncommon for criminologists to claim that rehabilitation has essentially disappeared from the juvenile justice scene. Examples abound. "Rehabilitation, if not dead, is in serious decline" (Woolard et al., 2001:13). "Politicians and the public have repudiated the court's original rehabilitative premises" (Feld, 1999: 3) "The original purpose of the juvenile court has systematically unraveled" (Garascia, 2005:489). "[The system is] unable to stem the tide of declining public support" (Bazemore and Umbreit, 1997:5).

Can such claims be substantiated? There is a paucity of research on the contemporary juvenile court, on the philosophies and practices of intake officials, judges, prosecutors, defense attorneys, and those who administer and work in the juvenile correctional system. Obtaining an accurate picture of the orientation of our nation's juvenile courts is made all the more difficult because juvenile justice is local. Variations in philosophy and practice exist not only across the 50 states and the District of Columbia, but *within* these jurisdictions as well.

There is an abysmal lack of systematic data on juvenile correctional operations and programming. Most jurisdictions do not maintain inventories or conduct surveys that would allow them to describe, except at the most superficial level, the programs they operate or the young people who participate in them. Juvenile correctional systems are fragmented. Many of the sanctions and services provided to offenders in the community involve

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referrals to private agencies, and the trend toward privatization of residential facilities further complicates our understanding. Questions about the nature, level, duration, and intensity of services provided to youth in the juvenile justice system are almost impossible to answer. We are forced to rely on anecdotal evidence and best guesses (National Research Council and Institute of Medicine, 2001).

Notwithstanding the lack of systematic data and research, there are numerous indications that the juvenile justice system is less punitive and more treatment-oriented than is commonly assumed. As we shall see, legislative commitment to punishment of juvenile offenders is not absolute. And at the state and local levels, justice officials have done much to soften the impact of punitive reforms, to develop new programs with a rehabilitative orientation, and to improve the quality of existing nonpunitive programs.

In preparing this essay, I reviewed the juvenile code purpose clauses in the 50 states and the District of Columbia to assess their compatibility with the juvenile justice system's traditional mission. I looked for indications that the system is expected to provide offenders with rehabilitation and/or treatment³ or that it is expected to act in the "best interests of the child." Of the 50 jurisdictions that have purpose clauses, 40 identify treatment or rehabilitation as a goal. An additional 5 instruct their juvenile courts to act in the child's best interest. Of the remainder, 1 uses the language of rehabilitation, but it seems to have redefined punishment as treatment,⁴ whereas the other 4 endorse objectives that are limited to some combination of punishment, accountability, protection of victim rights/victim reparation, and protection of public safety. In sum, although state legislatures have rewritten their juvenile codes to endorse punitive objectives, 45 maintain allegiance to the juvenile court's traditional benevolent mission. Although few identify that mission as its sole purpose, most feature rehabilitation prominently alongside the goals of protecting the public and holding youths accountable (most often for the purpose of deterrence). Several states explicitly reject the goal of retribution as inappropriate for children.

I also examined juvenile justice legislation that has been enacted or introduced in each of the 50 states over the last three years. That analysis shows that harsh reforms aimed at serious and violent offenders—especially sex offenders—continue to expand in some jurisdictions. However,

3. Jurisdictions that described rehabilitation as optional were not considered to have met this criterion.

4. The Texas juvenile code endorses "rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct."

in several states, efforts are underway to mitigate or even abandon punitive features. And most notably, there is a broad movement afoot to address the treatment needs of most juvenile offenders. Legislation aimed at improving individualized treatment plans for committed youth was passed in three states (Mississippi, South Dakota, and Wyoming). Provisions for mental health assessment and treatment were passed in four states (Idaho, Washington, Connecticut, and Virginia). Several states passed legislation to establish teen courts and other diversion programs. Four states (Michigan, Ohio, Colorado, and Indiana) passed legislation to provide drug treatment, and several others included drug treatment in broader diversionary initiatives. The Mississippi legislature phased out its boot camp program. Illinois gave monetary incentives to counties to reduce commitments to state institutions. Colorado and South Dakota enacted measures to separate transferred offenders from incarcerated adults. Tennessee passed legislation to expunge juvenile records at age 21. And the Connecticut legislature, in contemplation of a move to raise the age of juvenile court jurisdiction from 16 to 18, created a group to identify and report on what would be needed to effectuate this plan.

Courts, state correctional agencies, and advocacy groups have also made significant inroads toward softening the impact of punitive reforms and preserving a juvenile justice system with a rehabilitative focus.

As Zimring (2001:5) has observed, there is much more bark than bite to “get tough” reforms: Much of their function is symbolic, and there is only a loose connection between their symbolic impact and their operational impact. There is plenty of evidence that, at the local level, justice officials have acted to mitigate their impact. For example, although transfer laws are much broader in scope today than in years past, prosecutors and judges apply them to only a small fraction of eligible offenders (see, e.g., Dawson, 2000; Sridharan et al., 2004).⁵ Criminal court judges often impose sentences on transferred offenders that are comparable with or shorter than those that youths might have received in juvenile court (see, e.g., Podkopacz and Feld, 1996). In some jurisdictions, substantial numbers of transferred youth receive probation (Fagan, 1995).

Alongside approaches that are focused on youth accountability (e.g., graduated sanctions), new and empirically grounded approaches to treatment (e.g., multisystemic therapy, teaching family homes) have been

5. Underutilization of transfer might be to organizational resistance to change and resource strain (especially in adult corrections). However, it also clearly reflects court officials' judgments that adult punishments are inappropriate for the majority of transfer-eligible youth, that adolescents have much potential to change, and that the juvenile justice system has the capacity to facilitate that change (see, e.g., Florida Department of Juvenile Justice, 2002).

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implemented in several jurisdictions. At least three states (Florida, Pennsylvania, and Washington) have adopted evidence-based treatment programming in juvenile corrections. Significant advances in criminological evaluation research have greatly improved the empirical basis for developing and faithfully implementing effective programs (see, e.g., Andrews et al., 1990; Gendreau, 1996; Lipsey and Wilson, 1998), and they have increased justice officials' confidence in the system's ability to reduce recidivism.⁶

Other indicators of renewed enthusiasm for rehabilitation include the development of specialized courts with a treatment mission. In the last decade, several hundred juvenile drug courts have been established to provide intensive treatment along with close supervision (e.g., weekly judicial review) to drug-involved youths and their families. Most recently, the drug court model has been replicated in specialized mental health courts in at least three jurisdictions. The goal is to provide more effective treatment to offenders with mental disorders and their families.

Following a recommendation of the National Council of Juvenile and Family Court Judges, court administrators in at least 35 states have reorganized juvenile courts according to a family court model. The family court has jurisdiction over delinquency, abuse and neglect, domestic disputes, divorce, and adoptions, and it is structured so that a single judge hears all cases involving the same family. Because levels of parental support, supervision, and family conflict are all implicated in delinquency, and because family court judges are likely to develop a better understanding of individual family dynamics, the hope is that they can respond more effectively to individual youth and family needs. A preliminary evaluation of family courts in one state (Gebo, 2005) reported findings consistent with a return to a more individualized approach to processing.

Criminologists would do well to address more research attention to the contemporary juvenile court and juvenile correctional systems, particularly to assess the balance between rehabilitation and punishment in policy and practice. Currently we have no idea about the philosophical orientation of juvenile courts across the nation, or of the extent to which disposition decisions are influenced by a desire to provide treatment to youth and their families. Similarly, we know almost nothing about community-based and residential programming for delinquent youth. We have a good grasp

6. In Florida, transfer practice was dramatically affected by several positive changes in juvenile corrections (expansion of deep-end residential programs, adoption of an evidence-based policy toward programming, and yearly evaluation of program outcomes). In the mid-1990s, prosecutors were transferring more than 7,000 cases annually to the criminal courts. That number was reduced by several thousand as prosecutors gained confidence in the juvenile correctional system (Florida Department of Juvenile Justice, 2002).

of the kinds of programs that are effective if implemented well, but we have no idea of the extent to which they have been adopted. The lack of systematic research on the contemporary juvenile court and corrections systems only facilitates the perpetuation of myths and misconceptions.

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Donna M. Bishop is Professor of Criminal Justice at Northeastern University. She has written and published extensively on juvenile justice policy and practice, including the transfer of juveniles to criminal courts; juvenile detention reform; assessment and treatment of juvenile offenders; and the role of race, gender, and place in justice processing and outcomes.

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