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Putting an End to the Punishment and Rehabilitation Pendulum

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Abstract

Over the past 30 years, the juvenile justice system can be described as a pendulum that swings between the concepts of rehabilitation and punishment. When the juvenile justice system was first created, rehabilitation and restorative justice were its primary purposes. However, over time the system has strayed from these views and has turned its focus toward punishment. The punishment focus has partially risen out of the communities' fear of crime that has been ignited by the media concerning adolescents who are not deterred by the juvenile justice system. Nonetheless, it can be argued that the juvenile justice system should revert back to their original initiatives and focus on rehabilitation and restorative justice once again. Factors that support the juvenile justice system returning to rehabilitative methods are adolescent brain development and labeling theory's impact on recidivism and the development of "career criminals." These factors are important to consider in order to be able to decrease the effect that labeling theory has on an adolescent. Recommendations for improvement to current juvenile justice policy are made and policy implications are discussed.

Putting an End to the Punishment and Rehabilitation Pendulum

The juvenile justice system had originally been created to help rehabilitate juveniles and integrate them back into society. However, the juvenile justice system started to move away from that approach and began to focus more on punishment. Based on previous research this study examines current policy around juveniles entering the criminal justice system and how they are processed through the system. The purpose of the study is to identify whether adolescents who come into contact with the juvenile justice system and are diverted to a restorative justice approach and not adjudicated as delinquent are less likely to be involved in future crime than those labeled as criminal. Thus, the purpose of this research is to determine whether the juvenile justice system should go back to its original mission of rehabilitation and restorative justice instead of current policy that focuses on punitive punishment.

Literature Review

Rehabilitation of Juveniles

The Juvenile Justice and Delinquency Prevention Act of 1974 set out to advocate for youth in order to provide outreach to delinquent youth within the community. However, due to the perceived spike of adolescent violence in the 1980s and the 1990s, there was a switch in ideology from a rehabilitative approach to a more punitive punishment approach. According to Borum (2003), a poll conducted in 1994 found that Americans believe that juveniles were responsible for approximately half of all violent crimes. However, based on actual crime statistics, juveniles accounted for roughly 13 percent of all violent crimes at that time. Probation is one of the most common forms of punishment for juvenile offenders. Probation which roughly accounts for two thirds of all juvenile adjudications. Borum (2003) argued that evidenced-based intervention works in reducing recidivism among adolescents. The system should be looking at

what a youth offender's risks are and applying the appropriate treatment when assessing recidivism rates.

Day, Howells, and Rickwood (2004) examined three important 'what works' principles, the needs principle, the risk principle, and the responsivity principle. What works is a rehabilitation model initiative that is based off of the three principles. When these three principles are implemented, it has been shown to be effective in reducing recidivism rates among adult offenders. The risk principle is the concept that offenders who are at a high risk for recidivism receive the most intensive form of rehabilitation. Through a risk assessment tool, one can determine an offender's level of risk. The needs principle focuses on what needs are most likely to cause offending (Day et al., 2004). These needs are most commonly found within the five life domains. The five life domains are self, peers, family, education, and work. The purpose of programs that support this principle are to intervene in these aspects of life that directly relate to the offender's behavior. Lastly, the responsivity principle supports programs that have the best effect on offenders. Programs with the best effect on an offender are programs that successfully engage and match the learning styles of the offenders participating within these programs.

Piquero and Steinberg (2010) constructed a new study on comparing tax payer's willingness to pay (WTP) for certain program proposals. The study focused on comparing the WTP for programs and policies geared toward either rehabilitation or incarceration of juveniles. The results of this comparison were that WTP was higher for programs that supported some type of rehabilitation method. However, Piquero and Steinberg (2010) suggested that the results were limited due to the fact that the research was only conducted within the state of Pennsylvania. Therefore, Piquero and Steinberg (2010) constructed a study to attempt to make the previous finding generalizable. Piquero and Steinberg (2010) used a random digit telephone interview

from the following four states Illinois, Louisiana, Pennsylvania, and Washington. Results found that taxpayers were willing to pay twenty percent more in taxes annually for rehabilitative programs when informed that rehabilitation and incarceration were equally effective. In addition, to their willingness to pay more in taxes, taxpayers actually preferred rehabilitation approaches over incarceration for juveniles who had committed serious offenses. Overall, the study found that the public does not favor incarceration over rehabilitation, but that the public favors the opposite.

Chamberlain and Reid (1998) conducted a study that compared two community alternatives to incarceration for adolescent males who were considered chronic offenders. The study examined how effective group care (GC) was compared to multidimensional treatment foster care (MTFC). Chamberlain and Reid (1998) compared the two options by examining their impact on criminal offending, incarceration rates, and the completion of the program. Chamberlain and Reid (1998) concluded that MTFC participants had a better outcome than GC participants. Those who participated in MTFC were less likely to run away, completed more programs, and were less likely to be locked up in juvenile detention centers or training schools. In comparison, the boys who were in the GC had a low completion rate, sixty-four percent of the boys in GC had not completed their programs (Chamberlain & Reid, 1998). Boys in GC had a higher chance of criminal referrals and committed more delinquent acts-compared to those who were in MTFC. Chamberlain and Reid (1998) did note that most youth who are antisocial and begin their delinquent career before age 14 are at high risk for delinquency. The youth that participated were between the ages of 6.9 and 16.3 years of age. The results showed, that for those who participated in MTFC, age of first offense did not have any impact on offending rates after the boys received treatment.

According to Clarke (1974), there are two sides to the debate on penal sanctions for juvenile offenders: the “treaters” and the “punishers.” He describes the “treaters” as those who believe that prison is cruel, expensive, and non-rehabilitative. The “treaters” state that even if prison is seen as the only option, treatment should be used instead because it is less cruel and less costly. On the other hand, although the “punishers” believe that prison is not rehabilitative, they believe that incarcerating juvenile offenders will prevent them from committing crime which will reduce total crime significantly. Based on this debate, Clarke (1974) wanted to determine whether the prison experience would increase or decrease a juvenile offender’s chance of recidivism. Findings indicated that, for juveniles who were not incarcerated, an increase in crime would not happen right away. If an increase did happen, the increase would be gradual and the full extent of this increase would not be noticed until several years after the implementation of a non-incarceration policy (Clarke, 1974).

Often in cases where juveniles are detained, they commit more crime following their incarceration. While a juvenile is incarcerated, they often learn ideas from others that are incarcerated and become exposed to more criminal behavior. Another possible problem with the incarceration of a juvenile is the developmental stint it will place on them. Juveniles are at a high risk of recidivism, for suicide, victimization, and assault, especially if they are exposed to an adult facility (Borum, 2003). Evidence based research points out that if juveniles are sent to adult prison, they will lack the tools to be able to be rehabilitated effectively. Not only is juvenile exposure to adult prisons potentially harmful to the juvenile as well as ineffective, but this exposure will heighten both behavioral and mental health problems in adolescents (Borum, 2003).

Adolescent Brain Development

Recidivism is not the only consideration when evaluating a change in current policy from a punitive approach to a rehabilitative approach. Adolescent brain development is another important topic to gain a deeper understanding as to why juveniles behave the way they do and why punishment is not always the best course of action. Gur (2005) argues that a person's brain does not mature fully until young adulthood. The approximate age of maturation is approximately 21 years of age (Bishop, 2000). Studies have concluded that the main process for maturation of the brain, which is called "myelination," is not fully complete until roughly the third decade which is approximately somewhere between 20 and 22 years of age (Bishop, 2000; Gur, 2005; Steinberg, 2003). In addition to the "myelination" process, there is the increase and subsequent elimination of cell numbers and connectivity, which is referred to as "pruning." This process can be completed as early as 15 years of age. Based on these brain maturation points, there are major behavioral development milestones that need to be considered as part of adolescent development.

A key aspect of brain development that directly relates to criminal culpability is the prefrontal area of the brain, which is one of the last areas to mature (Gur, 2005). The prefrontal area of the brain is responsible for the control of aggression and the frontal lobe has been found to control behaviors, such as long-term goal setting, organization, mental flexibility, and certain aspects of memory. Therefore, if these aspects of the brain have not reached maturity then it is unreasonable to expect that an adolescent would exhibit behaviors of a matured young adult.

Based on the extant research that has been conducted on the adolescent brain and its development, it can be noted that there is a link between adolescent brain development, culpability, and rehabilitation, rather than punishment. This link can be shown through the work

of Steinberg and Scott (2003). Steinberg and Scott (2003) examined juvenile culpability based on an adolescent's current stage of brain development. Due to lack of brain development, adolescents cannot fully understand their crime and therefore, cannot fully understand their punishment, thus making a punishment-based policy pointless. Juvenile justice policies based on punishment can lead to an adolescent being adjudicated and labeled as delinquent for a crime, without the full appreciation of the wrongfulness of the conduct based on immaturity and an adolescent's stage of brain development which may lead to negative consequences into adulthood.

Labeling Theory

A recurring theme that appears in labeling theory is the consequences that labeling some deviant has on deviant groups. Based on research conducted by Becker (1963), labeling theory argues that the reaction of society to crime is a significant milestone in the evolution of the "career criminal." Becker (1963) argued that, once a juvenile is labeled as deviant, they will often join groups of other deviants to seek a form of a "social shelter." Therefore, if a juvenile is labeled as delinquent and is pushed into a subset group of delinquents, they are then be more likely to commit delinquent behavior. Not only does this delinquent group provide a shelter from societies harsh criticism, but it also creates a forum for the sharing and encouragement of more delinquent behavior.

Bernburg, Krohn and Rivera (2006) examined delinquency in waves in order to test the theory that labeling effects delinquent behavior. Labeling theory predicts that there is a positive association between juvenile delinquency and subsequent delinquency. There should be some intervention at the stage where juveniles have involvement with delinquent groups in order to prevent further delinquent behavior. The first wave was juvenile justice intervention, the second

wave was deviant networks and delinquency, which then led to the third wave of delinquent networks, and then the fourth wave which is again delinquency. Bernburg and colleagues (2006) found youth that experienced juvenile justice intervention had an increased likelihood of becoming gang members compared with those who did not experience intervention.

Bernburg and Krohn (2003) further examined both a police and juvenile justice intervention for early adolescent crimes, as well as the long-term effects of early intervention on the adolescent, to determine how interventions affect both the adolescent's educational attainment and employment. Results concluded that there was a positive effect on adolescents who experienced an intervention early on with both the police and the juvenile justice system in regards to adult unemployment. The study also found that there were some potential long-term effects that pertained to educational attainment. However, the evidence was not substantial enough to form a formal conclusion.

Based on the extant literature, it can be concluded that adolescents who come into contact with the juvenile justice system and are diverted to a restorative justice approach are less likely to be involved in future crime compared to those who are labeled as delinquent. Moreover, research, such as the study conducted by Gur (2005), indicated that an adolescent cannot fully be held accountable for their action to be that of a matured young adult because of brain development. Labeling theory indicated that based on that lack of maturation, the delinquent brain is pliable. Therefore, when the delinquent is labeled and then outcasted by society, he/she will seek the acceptance of delinquent peers and thus inevitably leading to more delinquency.

Methodology

Research Purpose and Questions

The purpose of the research is to examine the argument that implementing restorative justice and rehabilitation practices instead of punitive punishment decreases the effects of

labeling theory on juveniles. The questions to be answered by this research are: What impact does restorative justice have on adolescents in the justice system? How does labeling an adolescent delinquent affect their future criminal behavior? What are the differences in outcomes for juveniles who have received a restorative justice and restitution approaches versus punishment approach when they first enter the juvenile justice system? Based on previous research, this analysis expects to find that adolescents who come into contact with the juvenile justice system and are diverted to a restorative justice approach have better life outcomes than those who were adjudicated delinquent.

Variables of Interest

This study is interested in examining the effects of restorative justice approaches (i.e. types of restitution), adolescent brain development, and the delinquent label on future criminality. Restitution is conceptually defined as monetary restitution, community service, or direct service to victims. Adolescent brain development is conceptually defined as the differences in the maturation of the brain between adolescents and adults. As discussed above, labeling theory suggests that those who are adjudicated delinquent are more likely to continue patterns of offending compared to those who are not adjudicated delinquent by the court. Future criminality is conceptually defined as whether adolescents continue to commit crime into adulthood. A greater number of charges over the lifespan could potentially identify someone as a career criminal.

Policy Analysis

The likelihood that an adolescent will engage in future criminality will be determined by whether he/she has been diverted out of the juvenile justice system using a restorative justice approach compared to those who have been labeled as delinquent. This paper employs an in-

depth policy analysis on the juvenile justice system and its restorative justice approach. Through an analysis of past and current juvenile justice policy, one should be able to draw a conclusion as to the effectiveness of the use of rehabilitation and restitution in the juvenile justice system. After evaluating the strengths and limitations of current juvenile justice policy, recommendations for improvement will be made and policy implications will be discussed.

The steps to a policy analysis include (1) defining and analyzing the problem; (2) constructing alternatives; (3) developing evaluation criteria; (4) assessing alternatives; and (5) drawing conclusions. The first step in a policy analysis is to define and analyze the problem. The problem is that the juvenile justice system is currently following a punishment model and it is not effective when it comes to an adolescent's risk of recidivism. In addition to a punishment model not being effective in reducing recidivism, it also allows for the labeling of juveniles as delinquents which could subsequently lead the juvenile to commit more crime. Adolescents should receive a more rehabilitative approach. This problem is the result of "tough on crime" policies and practices. Tough on crime policies derived from the public believing that juveniles account for over half of all violent crimes, but as stated by Borum (2003), juveniles actually account for only thirteen percent of all violent crimes.

The second step in a policy analysis is to construct alternatives. An alternative to punishment when a juvenile is suspected of committing a crime is a restorative justice approach, which in turn will then lead to less adolescents being labeled as delinquents. The restorative justice approach can be applied through rehabilitation. According to the Office of Juvenile Justice and Delinquency (2015), residential facilities within the year 2015 held fifty-four percent fewer delinquents compared to the year 1997. Additionally, the residential facilities held sixty-three percent fewer status offenders. The statistics show that the number of juvenile offenders

being placed in residential facilities has been decreasing since the late 1990s. Therefore, there is not a need for harsh punishment sanctions on juvenile offenders when the alternative method of rehabilitation can help to continue to decrease these numbers even more in the upcoming years. In terms of rehabilitation, there are several ways the juvenile justice system could implement this approach. One example could be in the form of monetary restitution where juveniles pay back their victims. Another example would be community service where the juvenile offender has to give back to the community as a condition of his/her probation.

The third step in a policy analysis is to develop evaluation criteria. The best way to evaluate the current policy is to examine recidivism rates, by comparing recidivism rates for those who have been adjudicated versus those who were involved in restorative justice programs. Another criterion that is important to consider is the brain development of an adolescent versus an adult and how these differences in brain development are important in the approach that is taken when these individuals come into contact with the criminal justice system. In order to evaluate whether or not these new alternatives are effective, one would have to evaluate studies conducted on juveniles who were adjudicated and their outcomes and juveniles who received restorative justice and were never adjudicated and their outcomes. In order to determine good outcomes over bad outcomes, criteria would need to be set to determine the outcomes. A good outcome would be if the juvenile goes through the restorative justice process and does not recidivate, whereas a bad outcome would be if the juvenile recidivates after going through a restorative justice process.

The fourth step in a policy analysis is to assess alternatives. It is a better alternative to use a form of restorative justice than to get tough on crime. The reason that a restorative justice is a better alternative is because it allows for the adolescent to learn from their mistakes and prevents

them from being labeled as criminal at a young age. An analysis of both approaches, punishment versus restorative justice, can help one to distinguish and determine that one alternative is better than the other. According to the Office of Juvenile Justice and Delinquency Prevention (2014), since the 1990s to the year 2014, the juvenile caseload has decreased by almost half providing evidence that there is not a need for such harsh punishments to be inflicted on juvenile offenders. In the year 2016, only twenty seven percent of the delinquency cases involved detention (Office of Juvenile Justice and Delinquency Prevention, 2016). This provides further evidence that punishment is not always needed and that rehabilitation can help to continue to decrease the number of juvenile offenders, as well as the number of juveniles incarcerated.

The final step in a policy analysis is to draw conclusions. Based on previous research, a conclusion can be drawn about which method results in a more desirable outcome. Therefore, the conclusion that can be made is that a restorative justice approach would be the more favorable outcome. The reason that restorative justice would be a more favorable outcome is because research has shown that due to an adolescent's brain development that their mental maturation is not yet at the same level as an adult and these individuals cannot be seen as culpable for their crimes. According to Bishop (2000), the brain has multiple steps that still need to occur before an individual turns 21, such as the process of myelination and pruning, which does not take place until the brain is fully developed. Certain criteria can be used in court cases to distinguish the differences in brain maturation for individuals who commit more heinous crimes. In cases where crimes are especially heinous, such as murder, the juvenile can submit to a brain scan to show the stage of maturation. The brain scan that is completed can be compared to that of an average brain of a matured adult and this comparison of the two brain scans can show the difference in maturation of the brain visually. Therefore, adolescents would benefit more from a restorative

approach versus a punishment approach, because they have yet to be able to fully comprehend the extent of their crimes, due to their current stage in brain development.

Discussion

What started out as a system with the intent to help youth turned into a punishment driven system with a need to incarcerate. This system has not been effective. Statistics have shown that this model of punishment does not decrease recidivism rates (Bishop, 2000). The current system actually plays into the revolving door that has become the criminal justice system and also feeds into the “career criminals” that are filling up prisons. It is time for the juvenile justice system to revert back to its original intentions and that is to help to rehabilitate youth who enter into the system instead of adjudicating these youth as delinquent.

Research that has been conducted on both adolescent brain development and labeling theory are important studies that help to provide reasoning as to why juveniles should not be adjudicated, but instead be diverted to a restorative justice approach. Labeling theory argues that when juveniles are formally processed through the juvenile or criminal justice systems and are adjudicated, they are more likely to reoffend after being labeled and viewed by the community as a criminal. Another important aspect of labeling theory is that it was found that those who were not adjudicated and labeled as delinquent and were diverted into a restorative justice program were less likely to participate in future delinquent behavior.

Another important aspect that is found in the extant literature is the influence of adolescent brain development on a youth's potential to commit crimes. It has been found that because of the stage of brain development that an adolescent is in, they cannot be held fully accountable for their actions. The reason being is that adolescent's brains are not yet at full maturation and they cannot fully comprehend the extent of their crimes. Therefore, by placing a

adolescent on a restorative justice track can help them to both understand why their crime was wrong and require them to reflect on the consequences of their crime.

It should be noted that the research in this area has a number of limitations. However, previous research does show that there is a correlation between recidivism and the approach that is taken when an adolescent enters the juvenile justice system. Further research needs to be conducted to illustrate this correlation, its effects on the system as a whole, as well as on the individuals within the system and their outcomes. Another important limitation to the extant literature is that the data has been collected in certain geographic locations, has not been replicated elsewhere, and therefore, potentially has low external validity.

In order to improve current research and to further support the idea that adolescents who entered the criminal justice system should be diverted, more research should be conducted that focuses on investigating the outcomes of juveniles who have been adjudicated and those who have been through a restorative justice approach. A series of studies should be conducted using quasi-experimental designs in order to determine the different outcomes. It is recommended that if a quasi-experiment was conducted then a cohort design should be used. The quasi-experiment would take adolescents who were adjudicated when the first came into contact with the juvenile justice system and those who went through a restorative justice process. The study should be longitudinal in nature as to follow participants to determine their outcomes later on in life. The purpose would be to measure recidivism rates, as well as education and employment outcomes for these adolescents. This design would help to determine which approach would be more effective and impactful in lives of adolescents entering the juvenile justice system.

Today, the juvenile justice system pendulum swings between the concepts of punishment and rehabilitation. At this time, the juvenile justice system's focus is still a punishment model.

This model is built on communities' fear of crime and crime portrayal in the media. Based on previous research, there is reason to believe that the juvenile justice system should revert back to its original intent of rehabilitation and restoration. The studies that were examined in this analysis involved adolescent brain development and labeling theories' affects an adolescents' risk of recidivism. However, future research should be conducted in order to retrieve more conclusive results through a quasi-experimental design. The research examined in this paper is just the beginning. It is time that the juvenile justice system makes a change. This change can be initiated on the basis that previous research shows a strong correlation between recidivism and the approach that is taken when an adolescent enters the juvenile justice system. It is time to stop the pendulum from swinging in the wrong direction.

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