

To what extent should principles and practices of criminal justice for young offenders be different from those for adults?

Over the past two decades there has been a number of different ideologies regarding the approach to young offenders. At the end of the nineteenth century there were many social reforms that demanded that children should be removed from the adult prison system. The Youthful Offenders Act 1854 established separate industrial schools for young offenders that were supposed to be more educational than punitive. It was at this point that society recognised young offenders should be treated differently to adults. The policies of the developing youth justice system can be gathered from the later acts. For example, The Children Act 1908 endorsed “the conception of the child or juvenile as a special category” and the Criminal Justice Act 1948 was based on recommendations that “strongly emphasised the unwisdom of sending young persons to prison”. Although the way that the system deals with young offenders has changed over the decades the basic tenet that juveniles should be treated as distinct from adults has survived. They have a separate court system, separate detention centres, and a variety of additional non-custodial orders. During the course of this essay I shall be drawing on some of the past practices of this country’s youth justice system to highlight some of the ways that juveniles are treated differently to adults. I shall also be proffering some reasons as to why this should be the case. In doing this I also hope to show the extent to which juveniles and adults should be treated differently and the possible dangers of getting the balance between the two systems wrong.

As you look at the development of the youth justice system in this country you will see that there has always been attempts (which have sometimes been thwarted) to divert young people away from, or out of custodial sentences. For example, in a 1990 circular it was held that ‘there is widespread agreement that the courts should only be used as a last resort, particularly for juveniles and young adults; and that diversion from the courts by means of cautioning or other forms of action may reduce the likelihood of reoffending.’ The cautioning of young, indictable offenders in the early nineties was around 80 per cent. The figure for adult cautioning was then, and always has been, much lower. Even when in court it is often the case that a young offender will receive a less harsh sentence than an adult who has committed a similar crime. But why should one encourage diversion from custody in relation to juveniles? The best place to start in answering this question is the research that shows that most young offenders actually grow out of crime. The peak age for offending in males is 18 and in females 15. Even the most persistent young offenders will often desist by the ages of 21-25 (Newburn). It has also been found that the main culprits in youth offending are a small proportion of persistent offenders. The corollary of this must, therefore, be that there exists within the youth crime sphere a significantly large number of one-off offenders. Taking these two points into consideration it may be best to deal with these offenders in a rehabilitative, rather than an incapacitative (which may have been more suitable if the offender were an adult) manner. If the majority of offenders are only going to ever commit one crime then the justification of incarceration diminishes: after they have been caught there is little if no chance of them reoffending.

In fact, incarceration of young people may actually further the problem evident in youth crime. As is well documented, custodial measures can have a stigmatising and labelling effect on offenders. Once labelled as a criminal it is harder to become accepted into society both on a community and employment level. This may often have the effect of pushing the recipient into criminal sub-cultures where crime is socially acceptable. It would not be unfounded to suggest that this stigmatising effect could be more damaging to a young offender than it would to an adult as they may be more susceptible to criticism and are more likely to be looked down upon (due to the combination of their criminal conduct and their age). If this is the case, harsh punishment (especially custody) is likely to be counter-productive and may set juveniles off on a criminal career at an early age. This has got to be detrimental to society, even if only on an economic level, as the earlier they start the more money they are going to cost the community, not only in the crimes they commit, but also in the further judicial intervention they incur.

In highlighting these points, however, one must be aware not to become too lenient in the treatment of young offenders. You don't want to treat them with kid gloves, so to speak. As important as it is to understand the differing needs of children as compared to adults, one must be careful not to treat them so differently as to legitimise their behaviour. Although the welfare of the young offenders is important, what is equally important is the fact that they are still treated as a young *offender*. In some respects this may advocate treating them in a harsher way than adults in the same position. For example, although the greater proportion of offences committed by young offenders result in a caution (or now warnings and reprimands) it must also be noted that a number of juvenile offences are cautioned that would not have resulted in a caution if committed by an adult. This maybe due to the fact that it is important for young people to realise that what they have done is wrong and that crime will not be tolerated by the system. It could be seen as having a deterrent effect that will probably work best with the people who are least likely to become persistent offenders. In other words, trying to nip the problem in the bud using early intervention. However, there is also a caveat attached to this: one has to be careful that the 'punishment' is proportionate to the crime. If trivial offences are reacted to too heavily there is the danger of incurring a 'crisis of legitimisation' of the system within youth culture. If a juvenile has reduced respect for the law there is a chance that he will more frequently flout it.

The separation of youths from their elders may also help in classifying young offenders as a separate animal from an adult offender. This may prevent young offenders equating themselves with their adult counterparts, which they may use to legitimise adult offending in later life. This vivid line of demarcation may also encourage young offenders to grow out of crime, as they do not see young offending as a platform to adult offending but as something separate. They are offending because they are young, not because they are inherently offenders. One has to be careful, however, not to push the distinction too far, as it is still important that youth offending is recognised as serious and treated that way. After all, people under the age of 21 commit about one quarter of all crime.

So the extent to which young offenders should be treated differently to adults should be to ensure that the punishment (if any) that they do receive should be more rehabilitative in nature than may be the case for adult offenders. It is in the country's

best interest to try to reform young offenders and not treat them too punitively, bearing in mind that they are likely to grow out of crime, and are more likely to do so if they have not been treated as criminals. However, this is countered by the need for tough early intervention to try to nip the problem in the bud. The situation is put well by Cavadino and Dignan: 'the tougher you get the earlier you get tough, the greater the likelihood that young offenders will suffer the adverse effects of stigmatising...and accelerate "up the tariff" into overcrowded and damaging institutions before they have a chance to grow out of crime.'

It is important, in dealing with young offenders that their differing needs are taken into account. They are more easily influenced by social conditions, they may often have problems within the family home which would not really affect adult offenders, they are more reactive to harsh, punitive sanctions and are possibly more likely to respond positively to rehabilitative or restorative measures. It is for these reasons that it is important to treat them somewhat differently to the way that adults may be treated within the criminal justice system. However, it must be remembered, as I have stressed earlier, that young offenders should still be susceptible to the clutches of the hands of justice. To treat them too differently may be to play down the effects of their behaviour and tacitly encourage offending. The Home Secretary voiced this concern in 1994 when he said that repeat cautioning of young offenders led to the reduction in the effect of the caution and had limited effect on reoffending.

It is unclear where the balance lies. Although the recent developments in the youth justice system in this country seem to be coming somewhere close. Although they have become tougher this tightening up seems to be taking place out of court rather than in it. Action Plan Orders, reparative orders and referrals make the juvenile acknowledge that he has wronged but also go some way to trying to rehabilitate them back into society. This comes somewhere in between the welfare approach (best posited by the Children and Young Persons Act 1969) and the justice approach (which is much more akin to the time of the Conservative boot camps and short, sharp shock treatments). Whether this has struck the right balance only time will tell. It does acknowledge that young people can be moral agents, although they may not be as free in their choices as adults and so deals with them in a slightly different way, but a way that still holds them accountable for their actions.