

**CRIMINAL JUSTICE IN THE LIVES OF AMERICAN ADOLESCENTS:  
CHOOSING THE FUTURE**

Francis T. Cullen

*University of Cincinnati*

John Paul Wright

*University of Cincinnati*

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Although most adolescents break the law—indeed, abstaining from involvement in at least petty delinquencies might be considered “deviant”—only a relatively small percentage of the youth population is brought into the criminal justice system in any given year. In the United States, for example, the Federal Bureau of Investigation (1999) compiles annual data on arrests for “Crime Index” offenses—an index comprised of eight offenses that is meant to assess serious violent and property crime. A little over 4 percent of youths nationally are arrested for any Crime Index offense over the course of a year (Cook and Laub 1998). Perhaps more revealing, only a tiny percentage of juveniles in the United States—less than one-half of 1 percent of youths ages 10 to 17—are arrested for violent offenses on the Crime Index (Snyder, Sickmund, and Poe-Yamagata 1996). Further, even among adolescents who are arrested, 44 percent are diverted from formal processing by the criminal justice system, with their cases handled informally (Stahl 1999).

Growing up in the United States, then, most youngsters do not have their lives decidedly circumscribed by the criminal justice system. They may experiment with illegal activities, but their criminality is not serious enough and persistent enough to draw sustained attention from enforcement officials or to prompt their incarceration. This observation is not advanced here as a prelude to our arguing that criminal justice interventions are of little consequence—as we will see shortly. Even so, it is perhaps a useful corrective to the intense media and popular representations which convey the message, implicitly if not explicitly, that drive-by gang shootings, wanton murders, and senseless school massacres are somehow both commonplace among adolescents and a sign that America is on the brink of moral collapse (see, e.g., Bennett, DiIulio, and Walters 1996; see also, Garland 1999). Hyperbole may garner headlines and sell books, but it can also stir up misplaced worries and cause us to choose unhelpful policies.

A judicious understanding of criminal justice in the lives of adolescents thus would start with the admonition not to exaggerate the extent to which youths are arrested and criminally sanctioned. But it would also lead us to examine more carefully how, from slightly different angles, the impact of criminal justice may be important and of concern to policymakers. Three considerations warrant attention.

First, as is well known, small percentages computed on a large base can result in a substantial *number* of cases. Thus, although a low percentage of adolescents are apprehended each year, the number of arrests is hardly inconsequential. The figures vary some from year to year, but the data from 1997 are instructive. For those under 18, there were over 2.8 million juvenile arrests. Of these, about 825,000 were for FBI Crime Index offenses; the rest were for “Non-Index” offenses, which are generally less serious legal violations. Almost 125,000 were for Crime Index violent offenses, including 2,500 for murder (Snyder 1998). Once in the criminal justice system, almost 1 million youths are processed each year by the juvenile court, with 10,000 cases sent to adult court for prosecution (Stahl 1999). It also is estimated that about 70,000 adolescents are behind bars in public juvenile facilities, with the average number of youths per state incarcerated standing at 1,351 (Moone 1997a). Privately-run facilities house another 39,671 juveniles, with almost 6 in 10 committed for a delinquent or status offense (as opposed to the commitment being tied to a youth's abuse, neglect, or emotional disturbance) (Moone 1997b).

Second, calculating annual figures can be misleading if we do not consider the *cumulative* or lifetime risk of significant contact with the criminal justice system. For example, although less than half of 1 percent of the nation's population was incarcerated in state and federal prisons on December 31, 1997 (Gilliard and Beck 1998), 5.1 percent of people in the

United States will spend time in these prisons at some point in their lives (Bonczar and Beck 1997). Data on the risk of incarceration during the juvenile years is sketchy, but the chances of being sent to a state or federal prison—*institutions typically reserved for those over 18—is 1.1 percent by age 20*. For African-American males, however, the figure is a disquieting 7.9 percent (Bonczar and Beck 1997). These statistics, moreover, exclude time spent in municipal and county jails, which are used to detain the accused as they await court proceedings and to house those convicted of crimes in which the sentence is less than a year long. It is noteworthy that a 1993 census of jails estimated that the annual number of new admissions to local jails was nearly 10 million (Bonczar and Beck 1997).

Third, as the above discussion suggests, the impact of the criminal justice system is not spread evenly across society but rather is socially concentrated. “At the close of the twentieth century,” observes Mauer (1999: 118), “race, crime, and the criminal justice system are inextricably mixed.” Being a minority, especially from an inner-city community, dramatically increases one’s prospects of significant contact with the criminal justice system (Snyder and Sickmund 1999a, 1999b; see also, Mann 1993). Thus, an analysis of statistics from Duval County, Florida, which contains Jacksonville, reported that a quarter of African-American youths between the ages of 15 and 17 had been arrested in a four-month period (Miller 1996). Such figures are unusually high, but other studies of urban males find that upwards of a third are arrested by their eighteenth birthday (Tracy, Wolfgang, and Figlio 1985). In light of these statistics, it is perhaps not surprising to learn that in private and public residential juvenile facilities, 4 in 10 youths are Black and 1 in 5 are Hispanic (Gallagher 1999).

Such disproportionate contact with the criminal justice system extends into early adulthood, if not beyond. For example, among Black males 20 to 29, nearly 1 in 3 are under

some form of supervision by the criminal justice system—that is, either behind bars or in the community while on probation or parole (Mauer 1999). In some places, the figures are even higher, with half the African-American men in their twenties in Baltimore—to cite but one example—under formal legal supervision (Currie 1998). At birth, 3 in 10 Black males will face a prison sentence of a year or more in their lives (Mauer 1999). Specifically, among males, the lifetime likelihood of going to a state or federal prison—again, figures that do not include time spent in local jails or juvenile facilities—is 28.5 percent for African Americans, 6.0 percent for Hispanics, and 4.4 percent for whites; among females, the comparable figures are, respectively, 3.6 percent, 1.5 percent, and 0.5 percent (Bonczar and Beck 1997).

Scholars have differentially interpreted what these data mean. DiJulio (1994), for example, argues that justice is “color blind,” and that the disproportionate presence of Blacks in the criminal justice system reflects their disproportionate involvement in serious and violent crime. In fact, the allocation of police and correctional resources to catch and incarcerate minority offenders is, in his view, a belated and much-needed investment of government resources in communities devastated by rampant criminality. Because criminal victimization is largely intra-racial and intra-class, locking up predatory offenders “saves Black lives.” In contrast, other commentators characterize the high arrest and incarceration rates of poor African-American youths as reflecting, at least in part, persisting racial discrimination. In the crackdown on crime, many adolescents who are not serious offenders are pulled, alongside predatory offenders, into the criminal justice system. The result of this “search and destroy” policy, as Miller (1996) calls it, is to foster antagonism toward criminal justice officials, to create as much crime as is saved, and to disrupt the life prospects of young Black males (see also, Mauer 1999; Tonry 1995).

It is beyond the scope of this essay to settle this larger dispute. Nonetheless, there are two salient points to be faced. First, any discussion of “criminal justice in the lives of adolescents”—our topic here—is primarily a discussion of criminal justice in the lives of *minority* adolescents. White middle-class youngsters episodically have brushes with the law and some find their way to jail or prison, but most do not grow up with the expectation that contact with the criminal justice system will be a normal life event. For minority youths in the inner city, however, law enforcement officials are a common feature of the landscape, arrests can be witnessed all too often, and finding friends or family members—or oneself—behind bars is almost certain to take place in one's life course (Miller 1996).

Second, given the heavy presence of criminal justice in the lives of the most disadvantaged youths and in the most disadvantaged communities in the United States, it is critical to address the quality and effects of the sanctions that are imposed on adolescents by the legal system. What, in short, should be done with the youths brought within the criminal justice system—especially those that are confined in correctional institutions? The main point of this essay is to show that two dramatically different answers have been offered to this question—answers that will frame the policy choices with regards to kids and criminal justice in the twenty-first century. One approach, *the punishment paradigm*, argues that the legal system should be used to punish youthful lawbreakers either to do justice and/or to control crime through deterrence (scaring offenders straight) or through incapacitation (locking up potentially chronic offenders so that they are physically unable to offend again). The second approach, *the rehabilitation paradigm*, wishes to implicate the criminal justice system in the social welfare task of improving offenders and their lives. “Programs,” rather than the delivery of pain or the caging of youths, are held to change wayward adolescents for the better and thereby make society safer.

Deciding which approach to embrace is a complex task, complicated—as in other policy issues—by debates over core values and practical outcomes. Even so, in choosing the future, we have the benefit of looking to the past and of learning what has and has not proven effective. Indeed, the past two to three decades provide ample evidence with which to inform criminal justice policies as they relate to youths. We should confess “up front” that we are skeptical of the value of the punishment paradigm and cautiously optimistic about the value of the rehabilitation paradigm—views we convey in detail below. As a prelude to doing so, however, we will first provide a context for assessing the policy choices that confront us at the beginning of the twenty-first century by considering the “future” chosen by reformers in the U.S. at the very beginning of the twentieth century.

As suggested thus far, this essay focuses predominantly on how criminal justice impinges on the lives of youths in the United States (for comparative discussions of juvenile justice, see Klein 1984; Mehlbye and Walgrave 1998; Winterdyk 1997). To a degree, the U.S. context and experience are exceptional. To be sure, most commentators suggest that youth crime has, despite periods of stability and decline, generally increased in Western Europe in the last quarter of the twentieth century (Albrecht 1997; Weitekamp, Kerner, and Herberger 1998). As Europe has become more multicultural, there also has been a tendency—similar to the US—to have ethnic, racial, and immigrant minorities disproportionately represented in the justice system (Mehlbye and Walgrave 1998; see also, Tonry 1994). European nations, however, lack the distinguishing feature of the juvenile crime problem in the States, especially among minority inner-city youths: its disquieting lethality (see, more generally, Currie 1998; Zimring and Hawkins 1997).

Again, only a tiny fraction of American delinquents take the lives of others, and youth violence has been falling in very recent years in the U.S (Blumstein and Wallman 2000). But the

numerical count—as noted above, 2,500 arrests for murder in 1998—is shocking compared to the relative rarity of youthful homicides in other nations—or, for that matter, of murders in general. In 1996, for example, people *of all ages* in England committed fewer than 700 murders; in the U.S. the figure was close to 20,000 deaths from homicide (Langan and Farrington 1998). Currie (1998: 117) furnishes another revealing statistical juxtaposition in noting that in 1994, “an American male aged fifteen to twenty-four was 92 times as likely to die by violence as his Austrian counterpart.”

Extreme acts of youthful violence are salient because they challenge the legitimacy of “juvenile justice” and, if publicized and politicized sufficiently, can trigger policy changes. When seemingly senseless episodes of lethal violence transpire—such as a recent case in the U.S. in which a 13-year-old gunned down his teacher on the final day of the school year—the subsequent discourse inevitably laments that the “system was never designed to handle kids who kill.” Prosecutors claim that they “have no choice” but to “treat this juvenile as an adult”; and where such efforts are frustrated by legal restrictions—such as a youth being too young to be transferred to adult court—calls are often made to expand the discretion of juvenile court officials to do so. Such cases are less frequent in other Western nations, precisely because violence is not as common. Still, they do occur, as was the case in England:

All this coincided with an exceptional crime in Merseyside, where a two-year-old boy was abducted from a shopping centre and murdered by two boys aged 10 and 11. It was a period of “public furore and massive media coverage” concerning criminal justice issues. In response, the Government decided to toughen its previous stance on criminal justice; and the courts became more punitive in their sentencing. (Bottoms, Haines, and O’Mahony 1998: 156; see also, Gelsthorpe and Fenwick 1997).

As this latter quote suggests, despite the distinctive features of juvenile crime and justice in the U.S., there are common experiences that transcend the geographical and political boundaries separating America from other advanced industrial nations. As we will see immediately below, reformers in the U.S. developed a separate juvenile justice system—ostensibly for the purpose of rehabilitating wayward youths—in the beginning years of this past century. In the last quarter of the century, however, this social welfare approach to juvenile delinquents came under attack, both for its unjust legal treatment of youths and for its failure to “get tough” and curb your predators from committing violent crimes. As Walgrave and Mehlbye (1998) point out, similar trends have characterized various Western nations (see also, Leschied, Jaffe, and Willis 1991).

Shortly after the creation of a distinct juvenile court in the U.S., “separate jurisdictions and penal laws for children were established in the Netherlands (1905) [and] in the United Kingdom (1908). Belgium and France set up specific Children’s Courts in 1912, which was done on an experimental basis in some cities in Germany already in 1908. Also in Denmark and in Italy, special attention was given to the position of children in penal justice” (Walgrave and Mehlbye 1998: 21). Similar to the U.S., these systems of juvenile justice were based on a rehabilitative or “welfare approach: punishments are excluded, or are adapted to the specific needs of young people” (Walgrave and Mehlby 1998). But also like America, the hegemony of this model dissipated in the last quarter of the twentieth century. The emphasis on the “welfare of the child” lost legitimacy as the effectiveness of rehabilitation was called into question. Again like the U.S., reforms were initiated that, paradoxically, vacillated between trying to provide juveniles with more formal legal protections and justice on the one hand and trying to inflict

harsher punishments on them on the other hand (Walgrave and Mehlbye 1998; see also, Matthews 1999; Leischied et al. 1991; Mehlbye and Walgrave 1998; Winterdyk 1997).

As Walgrave and Mehlbye (1998: 23) observe, the resulting ideological crisis has led officials in virtually every nation to “struggle with the welfare/justice balance.” There has been a reluctance to abandon fully the idea that wayward youths should be “saved.” But as in America, crime has often been politicized, and juvenile justice—especially the sanctioning of older, more serious offenders—has proven an attractive target for harsh rhetoric and, on occasion, punitive policies and practices. Thus, officials in Europe and elsewhere must—as in the U.S.—choose a future for their juvenile justice system. It strikes us that other nations have tended not to become so vigorous as the U.S. in their desire to exact harsh punishment on youthful criminals. Even so, the challenge remains as to whether the guiding thrust of these juvenile justice systems will be to rehabilitate and advance the welfare of youngsters or to be instruments that seek to inflict pain on juvenile “criminals,” albeit justly and with an eye for advancing public safety. It is to these issues that we now turn.

### ***The Progressive Vision***

Poised at the front of a new century—the twentieth—reformers in the “Progressive era” made a bold effort to choose a dramatically different approach to dealing with wayward youths. The justice system was faced with youthful offenders disproportionately drawn from poor, immigrant neighborhoods in the burgeoning inner cities. The social Darwinists suggested that such adolescents were of deficient stock and largely beyond redemption. An option might have been simply to embark on a campaign to lock up as many of the “dangerous classes” as was

necessary and affordable. Instead, starting in 1899 in Cook County (Chicago), Illinois, they took the path of creating a “juvenile court” whose explicit focus was to rehabilitate—not give up on—troubled youngsters. Although critical of their efforts in many respects, Platt (1969) termed these reformers the “child savers.”

The inventors of the juvenile court rejected the idea that the state should stand as an *adversary* to delinquent youths. Instead, embracing the doctrine of *parens patriae*, they argued that the court and subsequently correctional officials should, as representatives of the state, act as kindly parents that were mindful of the best interest of their charges. In this view, youthful offenders should have no formal legal rights because they did not require protection from the parental, as opposed to adversarial, state. Much like parents, judges and other officials thus were accorded nearly unfettered discretionary powers to decide what should be done with the youths before them. The reformers believed that because the causes of crime were complex and potentially unique to each youth, adolescents entering the justice system should be studied carefully, the sources of their misbehavior diagnosed, and then a customized response developed on a case-by-case basis. Equipped with this knowledge, the court could then decide whether to divert an individual youth from the system, place the child in the community under supervision, or send him or her to a “reformatory.” Adolescents who were institutionalized were not to be given a fixed sentence. Rather, they were to be kept in the reformatory until they were rehabilitated, which for particularly recalcitrant youths could extend until they reached the age of majority.

The Progressives wished, in essence, to *de-criminalize* the behavior of juveniles. Youths who committed “adult crimes” were not to be sanctioned like adults, but rather were—with few exceptions—to be kept within a juvenile justice system whose explicit purpose was to

rehabilitate them. The de-criminalization of youth conduct, however, also justified the inclusion under the juvenile court of youths whose misbehavior and/or life circumstances would, if they were adults, have received no state intervention. To use contemporary language, these reformers believed that there were “risk factors” that would predict future criminality—parental abuse or neglect, truancy or running away from home—and that youths manifesting these risk factors required “early intervention.” Accordingly, they expanded the jurisdiction of the juvenile court to cover “persons in need of supervision” (kids mistreated or not cared for by parents) and to cover “status offenses” (essentially deviant acts, such as skipping school, staying out late, and getting drunk, that adults can commit with impunity but which the “status” of youthfulness should prohibit). The logic, again, was for the state to intervene with and save youngsters on the pathway to serious criminal involvement—to provide the parenting that these juveniles' own parents could not furnish or undertook ineffectively.

This vision of saving youths either in or on the precipice of crime seemed noble and rational; by “doing good,” the juvenile court would save troubled kids and make society safer. By 1917, all but three states in the U.S. had created legal structures similar to the juvenile court, and by 1945 all states had passed legislation mandating special juvenile courts and justice systems (Platt, 1969; Rothman, 1980). In the adult criminal justice system, the move toward rehabilitation was not so complete. Still, rehabilitation was elevated to the guiding philosophy, especially in the realm of corrections, where innovations emerged such as probation, parole, the indeterminate sentence, and the delivery of “treatment programs” both inside and outside the “correctional” institution.

This ambitious plan to save adolescents from a life in crime was beset by a range of problems: inadequate resources; the lack of trained personnel to deliver treatment services; a

lack of criminological knowledge needed to diagnose and rehabilitate offenders; the abuse of discretion by judges and corrections officials; widely different penalties given to youths who had engaged in similar conduct; the inadvisability of mixing serious offenders with status offenders and kids whose only “offense” was being abused or neglected by their parents; the placement of youngsters in “re改革atories” that more approximated harsh prisons; and so on (Platt 1969; Rothman 1980).

Even so, the rehabilitative ideal—the idea that juveniles should be reformed rather than punished—remained hegemonic until the mid-1960s. Until that time, problems were detected but were seen as fixable. Beginning in the middle part of the sixties, however, the very integrity of the Progressives' theory of individualized treatment came under sustained attack. In a series of rulings, the U.S. Supreme Court extended an array of legal protections to juveniles, in essence agreeing that the state was an adversary to youthful offenders and that juvenile reformatories dispensed more punishment than treatment. “Persons in need of supervision”—abused and neglected kids—were largely taken out of the juvenile system. The juvenile court still decided their fate but their day-to-day supervision was given to the child welfare division in states (Schwartz, Weiner, and Enosh 1999). The federal government also passed legislation seeking to prompt states to desinstitutionalize status offenders (Holden and Kapler 1995). Together, these changes re-criminalized youthful offenders both by extending them legal rights accorded to adult criminals and differentiating them from youths who committed status offenses or who suffered parental abuse or neglect.

Importantly, the attack on the Progressives' vision of the juvenile court came from those on the left and the right of the political spectrum. In large part, this odd coalition was inspired by the events in the prevailing social context, which created—at this particular juncture in time—a

special sensitivity to long-standing problems in the juvenile justice system. The failure of the government to respond effectively to the disorder in the sixties and early seventies—which was punctuated by such notable events as the killings of students protesting the Viet Nam war at Kent State, the massacre of inmates and guards in the Attica prison riot, and the scandals of Watergate—fostered a declining public confidence in government (Lipset and Schneider 1983). Yet the Progressives' vision of the juvenile court and of the rehabilitative ideal was predicated on a healthy *trust* in the state to do good—to act in the best interest of juveniles. It is instructive, therefore, that the reforms suggested by both liberals and conservatives focused on constraining the discretionary powers that had been accorded juvenile court judges and corrections officials. Those on the left and right agreed, albeit for different reasons, that the state could not be trusted to exercise its discretion in an appropriate way (Cullen and Gilbert 1982; Cullen, Golden, and Cullen 1983).

For liberals, the poverty of the juvenile system lay in the proclivity of state officials, under the guise of doing good, to act *coercively* toward youths. Rather than rehabilitate wayward kids, the system subjected youths—many of whom had done little wrong—to punitive intrusions into their lives, especially by placing them in inhumane juvenile “re改革atories.” Equally troubling, this excessive—indeed, repressive—social control was directed primarily at poor and minority youths, thus exacerbating existing inequalities. This is why they favored taking away discretion from state officials by giving youths an array of legal rights. Even better, they preferred a policy of “radical non-intervention”—of the justice system leaving the kids alone whenever possible (Schur 1973). In contrast, for conservatives, state officials were not overly coercive but overly *lenient*. Equipped with a naïve, bleeding-heart ideology, judges and corrections officials—all in the name of rehabilitation—placed young predators back on the

street. As one exposé's headline read: "Inside the Juvenile-Justice System: How Fifteen-Year-Olds Get Away with Murder" (Pileggi 1977). The state, in short, could not be trusted to protect the public. Its discretion to turn loose dangerous offenders—regardless of their age—had to be curtailed.

These criticisms contained important elements of truth: the juvenile justice system could be coercive and could allow serious offenders to return to the community to offend again. The difficulty, however, was that critics were better at scrutinizing the system and illuminating its failings than at articulating a coherent alternative that would prove more effective than existing practices rooted in the Progressives' rehabilitative ideal. As Miller (1996) understands, an important rationale underlying the founding of the juvenile justice system and the exercise of discretion was that judges and corrections officials would consider not just what an offender had done but also the nature of the offender's life circumstances:

In juvenile court, judges would, for the first time, consider issues that were dismissed as irrelevant to strict criminal court procedure. Issues associated with delinquency and crime—such as unemployment, health problems, emotional disturbance, disorganized communities, socially debilitating environments, poor education, family disorganization, and socioeconomic pressures—would all be fair game. (p. 90)

But with discretion fettered, the juvenile court would change its focus back to the offender's crime rather than to understand how the offender's circumstances had led him or her to break the law. The purpose, in short, would be to punish the crime, not to understand and save the wayward youth.

Moving away from the Progressives' paradigm of individualized treatment thus meant—and continues to mean—sacrificing an important policy consideration. The punishment perspective endorses a legalistic approach to offenders. In a very real way, the approach to offenders de-contextualizes and de-personalizes them. The only thing that matters are what criminal wrongs they committed and whether such conduct suggests that they might be dangerous in the future. Why they were moved to break the law and how their surroundings and emotional struggles may have contributed to their criminality are rendered invisible. Before the court, they are largely reduced to what they did—their crime—and, in turn, society is relieved of any responsibility for addressing the causes of their behavior. Because juveniles before the court are disproportionately poor and persons of color, this approach means that the role of the criminal justice system in investing in disadvantaged youthful offenders is ended. Instead, the role is narrowed to using punishment as a means of “doing justice” and controlling crime.

Moving away from the Progressives' rehabilitative paradigm also has entailed a *redistribution of power* within criminal justice as to who makes decisions over the lives of wayward youngsters. Under individualized treatment, legislators set only broad parameters as to the punishment delinquents would receive. Judges were invested with the discretion to decide whether youths should be sent home, supervised in the community, or sent to a reformatory. Corrections officials would then decide when such juveniles should be released from community supervision or from the institution. The goal, admittedly often not reached, was to base these decisions on the best interest of the child—on whether a youth had been rehabilitated. In the punishment paradigm, however, judges and corrections officials are largely stripped of their decision-making powers. The policy agenda is to standardize penalties by the seriousness of the crime committed, so as to ensure that offenders either receive equal sanctions before the court or

experience certainty of punishment, which is held to foster deterrence. In this scheme, legislators pass laws that mandate what judges and corrections officials must do. Power thus reverts to politicians and, to an extent, to prosecutors who decide with which crime offenders will be charged. In the end, the question is whether troubled youths—and the community at large—will be better off having the fates of adolescents decided by legislators and prosecutors or by judges and corrections officials.

### ***The Punishment Paradigm***

#### ***Getting Tough with Juvenile Offenders***

Between the mid-1970s and the late 1980s, rates of juvenile crime remained remarkably stable (Cook and Laub 1998). Although property offenses remained level, violent crimes by juveniles—especially homicides—rose precipitously between 1988 and 1994. During this time, arrests for violence increased 60 percent for those between the ages of 10 and 17; arrests for homicide more than doubled (Cook and Laub 1998; Snyder 1998). In a much-publicized essay, DiIulio (1995) warned that these trends were reflective of a new generation of youthful offenders. No longer were we dealing with the kind of wayward kids depicted in *West Side Story* but with “super-predators,” youths raised in “moral poverty” who “are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons....They fear neither the stigma of arrest nor the pain of imprisonment. They live by the meanest code of the meanest streets, a code that reinforces rather than restrains their violent, hair-trigger mentality” (DiIulio 1995: 26). DiIulio predicted that, given the increasing size of the youth population in the years ahead, the United States would face in the next decade “an army of young male

predatory street criminals who will make even the leaders of the Bloods and Crips...look tame by comparison” (p. 25).

In reality, the juvenile arrest rate for violent crimes, including for murder, began a steady decline in 1994 that has continued throughout the decade (Cook and Laub 1998; Fox 2000; Snyder 1998; see also, Blumstein and Wallman 2000). Still, the disquieting jump in youth violence and its attribution to a crop of remorseless predators placed juvenile justice policy prominently on the political agenda (Bilichik 1998). A commonly proposed solution to this problem was to ‘get tough’ with juveniles—to punish them like adults and to put them behind bars. Symptomatic of this “temptation to increase punishment,” as Donziger (1996: 134) calls it, was the following policy initiative:

During the debate over the 1994 federal crime bill, one proposal called for spending \$500 million to build new juvenile institutions to hold 65,000 delinquent youths. At the time the proposal was made, *all* juvenile [public] facilities in the United States held a total of 63,000 youths, and only about 18 percent of those had been convicted of violent crimes. There was little discussion as to how the additional 65,000 beds would be filled, but it at least *sounded* as if something was being done about the juvenile violence problem.  
(Donziger 1996, p. 135; italics in the original)

This kind of thinking is a far cry from the idea that the juvenile court should try to “save” youths from a life in crime. It reflects a trend within criminal justice generally to use the infliction of pain on offenders as a means of controlling crime—what Clear (1994) calls the “penal harm movement” (see also, Beckett 1997; Mauer 1999). Within the adult justice system, for example, the number of inmates in state and federal prisons increased six-fold between 1970 and the century's end (Gilliard 1998; Langan, Fundis, Greenfeld, and Schneider 1988). Including

offenders in jail, the United States' incarcerated population now tops two million (Butterfield 2000). To keep offenders behind bars longer, legislators have passed an endless stream of mandatory punishment laws (Tonry 1996). They also have passed “three-strikes-and-you're out” laws, which require life imprisonment following a third felony conviction, and “truth in sentencing laws,” which require offenders to serve a high proportion of the sentence assigned by the trial judge before any possibility of parole or early release (Ditton and Wilson 1999; Shichor and Sechrest 1996). States have tried as well to make prisons more discomforting by curtailing inmates' amenities—from permission to lift weights, to access to television, to support for college education (Finn 1996; Lacayo 1995).

The proposal to lock up an unprecedented number of young people, however, also is a continuation of an array of policies that, since the 1970s, has sought to toughen the justice system's reaction to adolescent offenders (Merlo 2000). Indeed, as Frazier, Bishop, and Lanza-Kaduce (1999: 167) observe, “get-tough reforms aimed at juvenile offenders have become commonplace in the United States” (see also, Feld 1998). For example, between 1988 and 1992 the percent of juveniles “waived” or transferred from juvenile court to adult court for prosecution increased 68 percent (Parent, Dunworth, McDonald, and Rhodes 1997; see also, Bishop 2000; National Criminal Justice Association 1997; Sickmund, Snyder, and Poe-Yamagata 1997). States have passed laws lowering the ages at which adolescents can be waived and broadening the crimes for which youths can be sent to adult court. Indeed, as Snyder, Sickmund, and Poe-Yamagata (2000: xi) observe, “between 1992 and 1997, all but six states expanded their statutory provisions for transferring juveniles to criminal court, making it easier for more juveniles to be transferred.” Notably, “the purpose of transfer laws has not been to rehabilitate youthful violent offenders but rather to protect the public from them” (Parent et al. 1997: 1; see also, Bishop

2000). Similarly, by the end of 1997, 17 states had changed the legal purpose of the juvenile court to de-emphasize rehabilitation and to emphasize public safety, the imposition of certain sanctions, and/or offender accountability (Torbet and Szymanski 1998). The number of youths held in public juvenile facilities shows a trend consistent with this switch in justice philosophy: between 1984 and 1990, the institutionalized population rose 30 percent (Moon 1996). Further, Feld (1998) notes that numerous states have implemented laws mandating, based on the crime committed, determinate or mandatory minimum prison terms for adolescent offenders.

### ***Does Punishment Work?***

The punishment paradigm hinges on a clear conception of human conduct: behavior, including criminal behavior, is a matter of rational choice. Thus, youths will avoid crime if doing so is made sufficiently unpleasant—that is, if crime is made not to “pay.” The solution to adolescent criminality is to increase the dose of punishment so that breaking the law becomes an unappealing choice.

This theory of crime and punishment, however, faces two problems. First, its understanding of crime is incomplete, if not incorrect. Research shows that there are a number of strong predictors of delinquent behavior, such as holding anti-social values, associating with delinquent peers, having an impulsive personality, and family dysfunction (Andrews and Bonta 1998). Punishing a wayward youth does virtually nothing to change these known predictors of criminal involvement. Even if the notion that “crime pays” were implicated in delinquent conduct, it would be only *one* cause of crime among many that tough punishment would potentially influence.

Second, the effectiveness of punishment—as any behavioral psychologists understands—depends on the negative stimuli being applied close in time to the targeted conduct, with certainty, and in an appropriately calibrated dosage. The justice system, however, has great difficulty applying punishments that could meet any of these criteria. Many delinquent acts that youths commit are not detected by law enforcement officials; punishments are applied many months after a youth is arrested; and the dosage of punishment can range from being too lenient to being overly harsh.

Relatedly, policy initiatives aimed at inflicting more stringent sanctions on delinquent youths can have unanticipated consequences. In Florida, for example, a 1994 “get tough” law aimed at facilitating the transfer of youthful lawbreakers to adult court did not lead to marked increases in the number of offenders actually waived to that court (Frazier et al. 1999). Similarly, research on the punishments received by adolescents in adult court as opposed to juvenile court illuminates a complex picture. Violent offenders waived to adult court do receive longer sentences. However, it appears that waived property offenders and persistent offenders are assigned *shorter* sentences than they would have received if they had remained under the jurisdiction of the juvenile court (Feld 1999). From the punishment perspective, results such as these are problematic, for they show how difficult it is to arrange a scheme of penalties that are applied as intended and in a way that might inhibit future criminal conduct.

Given these problems, it is perhaps not surprising that evaluations of deterrence-oriented programs with juveniles have revealed little support for the efficacy of “tough” criminal sanctions. In the 1980s and into the 1990s, jurisdictions implemented an array of programs aimed at increasing control over youths (and adult offenders). These included, for example, “scared straight” programs in which wayward adolescents were brought to prison and told by

inmates, often in loud and graphic language, what ills would befall them were they to be incarcerated; “boot camps” in which offenders were subjected to military discipline while imprisoned; and “intensive supervision programs” in which offenders were closely watched in the community, with the threat of being sent to prison hanging over their head. Meta-analyses of evaluation studies report that these initiatives either had no effect or *increased* offender recidivism (Andrews et al. 1990; Lipsey 1992; Lipsey and Wilson 1998; see also, Cullen, Wright, and Applegate 1996; Finckenauer and Gavin 1999; MacKenzie 2000). We should also note that evidence from longitudinal studies is consistent in showing that contact with the criminal justice system can increase recidivism (Miller 1996). Finally, there is research suggesting that longer stays in prison are associated with higher recidivism rates (Gendreau, Goggin, Cullen, and Andrews 2000). Again, this kind of evidence is inconsistent with the punishment perspective's claim that “getting tough” deters criminal behavior.

The punishment perspective, however, has a fallback position: even if harsh sanctions do not deter, locking up—and thus “incapacitating”—super-predators saves crime because these offenders are “off the street.” This claim is not without some merit. Life-course research demonstrates that there are youths who offend chronically and/or at a high rate (Le Blanc and Loeber 1998). Criminologists differ on how much future crime is prevented through a policy of incapacitation (see, e.g., Clear 1994; DiJulio and Piehl 1991; Mauer 1999; Sabol and Lynch 2000; Zimring and Hawkins 1995). Even so, it would strain common sense to argue that institutionalizing chronic, high-rate offenders is a foolish policy (Spelman 2000).

Three problems, however, temper one's enthusiasm for relying on incapacitation as a guiding principle for addressing the problem of youth crime. First, the vast majority of offenders arrested each year are not candidates for imprisonment due either to the low seriousness of their

offense and/or to their lack of criminal history. For those adjudicated as delinquent by the court, 28 percent are placed in a residential facility. The remainder are either given probation (54 percent), given another sanction (e.g., restitution, fine) (13 percent), or are released (4 percent) (Stahl 1999; Torbet 1996). Beyond arguing that more offenders should be locked up, those endorsing incapacitation have little to say about what the justice system should do with the tens of thousands of offenders who will be returned by the court to the community.

Second, the policy of incapacitation is needlessly limited; it proposes to warehouse offenders but to do nothing to change them while they are within the confines of a juvenile institution. In the medical field, this would be tantamount to building hospitals to contain the sick but then to take no steps to treat the patients while they lay in their beds. Recall that in the Progressives' model, the purpose of imprisonment was for *both* social protection and rehabilitation. Release from juvenile reformatories was to be selective and based on offenders being cured of their criminal predispositions. The utility of institutions thus was linked not only to their ability to cage but their ability to provide the opportunity to improve the future life chances of offenders.

Third and relatedly, the effectiveness of incapacitation must be placed in an appropriate context. In computing how much crime would be saved from incapacitation, analysts assume that the alternative is that offenders would be roaming free on the streets. But the appropriate point of comparison should be how much crime incapacitation saves versus other possible policy alternatives—such as incapacitation plus treatment or community placement plus treatment. When this comparison is made, it is problematic whether incapacitation is, with most offenders, the most cost effective and most crime preventative strategy (see, e.g., Greenwood, Model, Rydell, and Chiesa 1996).

In closing, there appears to be a wide gap between the empirical support earned by a punishment-oriented policy and the confidence with which advocates argue that “getting tough” reduces youth crime. This is not to say that punishment has no effects. Although the magnitude remains unclear, a case can be made that criminal sanctions have a general deterrent effect—that those contemplating crime may be dissuaded by fear of suffering the sting of the criminal law (see, e.g., Nagin 1998). And, as stated, imprisoning chronically criminal youths will prevent crimes that might have been committed. Nonetheless, as a dominant model for the future, the limits of the punishment perspective are clear. It is based on a questionable theory of criminal behavior, applying it within the criminal justice system is difficult, and its effects on juveniles’ crime are modest at best and counterproductive at worst. It also makes the disquieting choice, implicit if not explicit, to abandon youths once they have been arrested and given a stiff sentence. That is, once such adolescents enter the correctional system, the punishment perspective has no plan—other than heaping more punishments on them or subjecting them to “boot camp” discipline—to change offenders for the better.

### ***The Liberal Punishment Perspective***

As noted, in the 1970s, many liberals—the traditional supporters of the rehabilitative ideal—relinquished their allegiance to the Progressives’ model of individualized treatment, which was most fully embodied in the juvenile court. They depicted judges as exercising their discretion inequitably, reformatories as being bastions of inhumanity, and the release from juvenile facilities as being conditioned on acquiescence to institutional rules rather than on youths being “cured” of their criminality. They also trumpeted a 1974 study by Martinson which

ostensibly showed that “nothing works” in corrections to reduce recidivism. Taken together, these considerations led these liberals to argue that they should forfeit the optimistic but unattainable goal of “doing good” and substitute the pessimistic but realistic goal of “doing less harm.” This is why they favored 1) giving youthful offenders an array of legal rights that would make the youths' conviction more difficult; 2) restraining the discretion of judges so that they would have to punish more equally (punish everyone committing a given crime the same); 3) trying to limit the number of offenders institutionalized; and 4) making sentences to reformatories “determinate” so that the release date would be set at the time of sentencing and would be contingent on the severity of the crime, not on the supposed rehabilitation of the offender (Cullen and Gilbert 1982).

Again, this approach made strange bedfellows of liberals and conservatives, because both groups were calling for the abandonment of the rehabilitative ideal and were seeking to constrain the discretion exercised by judges and corrections officials. The key difference, however, was that liberals wished to *decrease*, while conservatives wished to *increase*, the punitiveness of the juvenile justice system. In the intervening years, the juvenile justice system has not been fully dismantled, rehabilitation remains an integral goal of many states' systems, and some innovative policy initiatives have been undertaken that are, in the least, not exclusively punitive (see, e.g., Moon 1996). Even so, since the 1980s, the clear policy orientation—as we have reviewed above—has been decidedly in a conservative, punitive direction. Although a complex process, a main reason for this has been the redistribution of power in the justice system away from the back end of the system (judges and corrections officials) to the front-end of the system (legislators and prosecutors). During this time period, crime and its control have been highly

politicized issues (Beckett 1997). Legislators have seen “getting tough”—with adults and juveniles—as a way to secure political capital and advance their election prospects.

In this context, do liberal policy proposals that are punitively oriented have a future? We are skeptical that embracing punishment will produce a more humane or efficacious criminal justice intervention into the lives of adolescent offenders. Still, we will briefly review two policy proposals—abolishing the juvenile justice system and “restorative justice”—that view equitable sanctions, rather than well-designed rehabilitation programs, as the preferred basis for the state's reaction to wayward youths.

### ***Doing Justice: Abolish the Juvenile Court***

Feld (1998, 1999) makes a persuasive case for abolishing the juvenile court and for having one court system that has jurisdiction over both adults and adolescents. His abolitionist stance starts by repeating and documenting many of the criticisms voiced by liberal critics of rehabilitation in the 1970s: there is disparity in punishment in the system that works to the disadvantaged of minorities; the rights of youthful offenders are not fully protected; juvenile reformatories do not reform; and, in general, rehabilitation programs do not have a meaningful effect on recidivism. Rather than retain the masquerade that the juvenile court could be a means of doing good, “states should uncouple social welfare from social control, try all offenders in one integrated criminal justice system, and make appropriate substantive and procedural modifications to accommodate the youthfulness of some defendants” (Feld 1999: 19). The lynchpin to his policy proposal—what makes it liberal rather than conservative—is that he wishes to treat youthfulness as a formal mitigating factor in the punishment an offender would receive. Thus, he advocates for a “youth discount” in which juveniles would receive a shorter

penalty because of their presumed immaturity in social developments. “A 14-year-old offender might receive,” says Feld (1999: 23), “23-33 percent of the adult penalty; a 16-year-old defendant, 50-66 percent; and an 18-year-old adult, the full penalty, as currently occurs.”

There are four problems that mark Feld's abolitionist stance. First, it is far from clear that a legalistic, rights-oriented approach to reforming the criminal justice system leads to a more just and more humane system (Cullen and Gilbert 1982; Griset 1991; Tonry 1996). For example, under determinate sentencing, which Feld favors, judges merely apply the punishment listed in the statute for the crime committed—ostensibly evenly to all offenders regardless of race, class, or gender. This approach seemingly would reduce disparities in punishment, which occasionally occur. Under this system, however, prosecutors gain in power since they decide whether to plea bargain and decide with what crime an offender will be charged. Whether a system that vests so much power in prosecutors produces better outcomes for youths is problematic.

Second, Feld's advocacy of a “youth discount”—the key to his proposal not devolving into a reform that exposes young offenders to the full weight of the adult system—seems politically naïve. One imagines that in the face of a well-celebrated heinous crime committed by a juvenile, thoughts of “punishment discounts” for delinquents would be dismissed. The risk of his system leading to far greater punishment of youths—an adult system with few, if any, discounts—seems a likely and disturbing prospect.

Third, like other liberals concerned with “doing justice” for youthful offenders, Feld largely ignores the *utilitarian* goal of the criminal justice system—the expectation that the system will control crime. To a large extent, Feld believes that punishing in a just manner is the core function of the legal system, not controlling lawlessness. Unfortunately for those of his persuasion, this is *not* the view of the American public or, for that matter, of the nation's

policymakers (Cullen, Fisher, and Applegate 2000). The popularity of “get tough” policies lies not only in the promise of revenge but in the promise of reducing the threat criminals pose to public safety. Feld's approach, however, has virtually no answer as to what to do to reduce youth crime. Giving punishment discounts is unlikely to be a politically feasible response, especially when doing so can be readily depicted as teaching young “super-predators” that crime pays.

Fourth, the abolitionist's position to divorce criminal justice from social welfare assumes that a system stripped of a human services orientation will somehow be preferable. But why would one expect that youths in the juvenile justice system will be better off if the goal is avowedly to punish them—to inflict pain on them—rather than to save them, to improve their lives? Whatever the failings of the rehabilitative model, it drew in numerous workers whose occupational goal was to “help kids,” and it reified the idea that “doing good” for youthful offenders was a legitimate correctional goal. Rejecting rehabilitation in the name of punishing “justly” ignores the potential costs of stripping from juvenile justice the good will of its workers and the impulse to seek a better life for the youths—mostly poor and minority—that the state brings under its control.

### ***Restorative Justice***

“Restorative justice,” an increasingly popular idea within criminal justice, seeks to offer an alternative approach to traditional ways of reacting to offenders (see Braithwaite 1998, 1999; Van Ness and Strong 1997). This perspective rejects the philosophy of retributive justice in which the state, on behalf of the victim, exacts a just measure of pain from the offender. Instead, its focus is on rectifying the harm that a criminal act has caused. In this scheme, the state, acting as a mediator, brings the offender, victim, and interested community parties together, usually in

some form of conference. In this meeting, the offender is called on to accept responsibility for the harm he or she has caused. Victims are able to express their anger and identify their injury. The sanction that is developed is oriented toward having the offender repair the harm he or she has caused to the victim and, secondarily, to the community (e.g., through restitution, community service). In exchange for remorse and reparation, the victim and community are to accept the offender back into the community, ideally in a way that repairs the harms the offender may have suffered in his or her life. Typically, the goal of restorative justice is to keep the offender in the community and thus to obviate the need for incarceration.

Restorative justice is increasingly being used to inform how youthful offenders are processed within juvenile justice (Bazemore 1999a; Levrant, Cullen, Fulton, and Wozniak 1999). Indeed, restorative justice is shaping justice policies and practices not only in the U.S. but also in many nations (see Bazemore and Walgrave 1999; Bonta, Wallace-Capretta, and Rooney 1998; Braithwaite 1998, 1999). Some good may come of this approach, because it has the potential to conceptualize offenders not merely as purveyors of bad acts but as people who are driven to break the law for complex reasons. Even so, restorative justice may also prove to be a reform that creates as many problems as it solves.

First, advocates of restorative justice make much of the fact that it is a “balanced” approach, one that demands accountability from offenders in exchange for supportive reintegration into the community. Underlying this “balance,” however, are two incompatible interests: 1) the interests of conservatives to see restorative justice bring more justice to victims, who often have been ignored and not received justice as their cases have been processed by a bureaucratic legal system; and 2) the interests of liberals who see restorative justice as a means to punish offenders in a nicer way—that is, with forgiveness and certainly not in prison. It remains

to be seen how this latent tension will be resolved. Will restorative justice remain balanced, or will it become a reform that ultimately inflicts increasing amounts of “responsibility”—that is, harsher sanctions—on offenders with little restoration given in return (Leviant et al. 1999)?

Second and relatedly, restorative justice is best suited for minor offenders—those with whom victims may be willing to meet and for whom prison is not an appropriate penalty. In particular, it is not clear how restorative justice would deal with recalcitrant offenders who, after promising to repair harm, either ignore the conditions of their sanction (e.g., do not pay restitution) or, still worse, choose to recidivate. That is, once restorative justice fails, what is the next option? Is it more of the same or a reliance on harsher punishment?

Third, because restorative justice is a sanction-based perspective, it is limited in scope and, in the end, potentially unscientific. Advocates of restorative justice have a faith, rooted in precious little evidence, that “restorative” sanctions—such as offenders making public displays of remorse at victim-offender conferences and offenders making restitution and or doing community service—have the capacity to transform criminals into non-criminals (Leviant et al. 1999). Although the application of these sanctions may have some benefits, the restorative focus narrows the kinds of interventions that might be employed (i.e., interventions, such as behavior programs, that are offender-oriented and have nothing to do with restoring victims will not generally be considered). Further, the perspective risks being non-scientific because it starts with the realm of sanctions it wishes to impose and then, working backwards to the offender, presumes that these sanctions will change the offender's behavior. It fails to ask, initially, what causes criminal behavior and then, subsequently, what interventions are able to target these criminogenic predictors for change (for an alternative view, see Bazemore 1999b; Braithwaite 1998, 1999).

At present, research on restorative justice programs remains in its beginning stages, often raising more questions than it answers. It seems clear that in general, these programs are supported by offenders and victims who participate in them and find the process and outcomes “satisfying” (Braithwaite 1998; Schiff 1999). More problematic, however, is whether restorative justice interventions are able to reduce recidivism. Rigorous, randomized experimental tests of these programs are in short supply, and existing studies provide conflicting results (Kurki 2000; Schiff 1999; Sherman, Strang, and Woods 2000). When positive results are reached, it is difficult to discern whether reductions in recidivism are due to the “restorative” aspect of the program or to some other feature of the intervention—such as the services offenders received (Bonta et al. 1998). Further, two recent meta-analyses of programs with a restorative justice orientation report that these interventions have, at best, a modest overall impact on recidivism (Gendreau and Goggin 2000; Latimer, Dowden, and Muise 2001). These latter results are not surprising to us, because, as noted above, the behavioral science underlying restorative justice provides, at best, a partial understanding of criminal behavior (in contrast, see Andrews and Bonta 1998).

It is possible that the socio-cultural context in which restorative justice is implemented will shape whether this initiative does more good than harm. If used in communities or nations characterized by low crime and homogeneity, restorative justice may provide creative ways to sanction less serious offenders. The challenge faced by restorative justice is whether it can provide politically feasible and scientifically viable answers to the more daunting problem of serious chronic offending.

### ***The Rehabilitation Perspective***

In the early 1970s, a team of researchers embarked on an effort to collect and assess evaluation studies on the effectiveness of correctional treatment programs (see Lipton, Martinson, and Wilks 1975). They tracked down 231 studies that had a treatment and control group and that were published between 1945 and 1967. One of the authors, Robert Martinson (1974), conveyed his interpretation of the results of this analysis in what would become one of the most important and most cited social science essays, “What Works? Questions and Answers About Prison Reform.” Martinson concluded that “with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism” (1974: 25).

This finding—presented in seemingly cautious scientific language—soon was interpreted as showing that “nothing works” in correctional rehabilitation. Most academic studies, of course, are greeted with skepticism and criticism. And in this case, a few commentators did urge caution, pointing out, for example, that almost half of the treatment-intervention studies reviewed by Martinson showed that recidivism was reduced and that many of the programs evaluated had little “therapeutic integrity” (see, e.g., Gendreau and Ross 1979; Palmer 1975). But these more judicious voices were largely ignored. Martinson’s “nothing works” conclusion was taken by academic criminologists and policymakers as the “final word” to be uncritically accepted. To a large extent, this ready acceptance of rehabilitation’s ostensible ineffectiveness was triggered by the fact that many people—as noted above—had already come to reject the Progressives’ model of individualized treatment. Martinson’s study did not so much change their

minds as confirm “what they already knew” (Cullen and Gendreau 2000; Cullen and Gilbert 1982).

Now a quarter century after Martinson's essay appeared, it is difficult to convey the enormous impact of his message. But some sense of the essay's effects in the 1970s can be grasped from Adams's (1976: 76) contemporaneous appraisal that the “Nothing Works doctrine...has shaken the community of criminal justice to its roots....widely assorted members of the criminal justice field are briskly urging that punishment and incapacitation should be given a much higher priority among criminal justice goals.” After all, in the face of hard empirical evidence confirming that rehabilitation “did not work,” how could faith in the paradigm of offender treatment—no matter how noble its goals—be sustained?

For those who would prefer a criminal justice system in the twenty-first century that seeks to save rather than merely punish adolescent offenders, this question remains to be confronted. Is it possible for correctional interventions to change youths for the better? Can these interventions work with serious offenders? Beyond these questions, even if rehabilitation does in some sense “work,” will the public—often characterized as seeking vengeance—support a criminal justice response to offenders that takes seriously the Progressives' challenge of reforming wayward youths? Below, we address these questions.

### ***Does Rehabilitation Work?***

It would seem a rather simple matter for researchers to agree whether rehabilitation does, or does not, “work” to reduce recidivism. A number of reviews have been conducted on treatment program effectiveness, but interpreting the results of these analyses has been the occasion for disagreement rather than agreement. Andrews et al. (1990: 374) note, for example,

that “reviews of the literature have routinely found that at least 40 percent of the better-controlled evaluations of correctional treatment services reported positive effects.” But what are we to make of this finding? One might conclude that there are many programs that are effective with offenders, and that these should be used as models for future programming. One might also conclude that rehabilitation is a “hit or miss” affair, an enterprise characterized more by chaos than by reliable, replicable results that could be used to develop effective programs across diverse social settings. In short, is the glass half-full or half-empty?

An important measure of clarity to this debate was introduced by the use of the technique of “meta-analysis” to quantitatively synthesize the evaluation literature (see Hunt 1997). A meta-analysis starts by computing for each study the statistical relationship, ranging from +1.0 to –1.0 between the treatment intervention and the outcome variable—in our case, recidivism. Then, it computes the average “effect size” of treatment across all studies. This approach can also explore what factors may “condition” the effect size. For example, does the effect size vary by the quality of the methodology employed or by the type of offender studied?

A number of meta-analyses have now been conducted on the extant body of evaluation studies, with many of them evaluations undertaken with juvenile samples and cross-culturally (see, e.g., Andrews et al. 1990; Lipsey 1992, 1999; Redondo, Sanchez-Meca, and Garrido 1999). Across these assessments, Losel (1995) estimates that the average effect size is .10. In practical terms, this means that if a control group had a recidivism rate of 55 percent, the treatment group's recidivism rate would be 45 percent (for the computation of this statistic, see Rosenthal 1991).

Again, one might quibble as to whether a 10 percent reduction in recidivism is substantively important. Three considerations are relevant to this concern. First, when one considers that the comparable reduction for deterrence-oriented programs is zero (if not an

increase in recidivism), this savings in crime achieved by treatment appears more noteworthy. Second, research shows that the decrease in criminal participation from rehabilitative interventions is achieved among *serious and violent* juvenile offenders (Andrews et al. 1990; Lipsey 1999; Lipsey and Wilson 1998). It is one thing to depress rates of shoplifting, quite another to put a dent in chronic offending and predatory crimes. Third, the focus on a 10 percent reduction in recidivism is misleading for the following reason: there is considerable *heterogeneity* in the effect size according to the type of intervention that is used. That is, the reductions in recidivism are far higher—25 percent and upwards in recidivism reduction—for some rehabilitation programs than for others (Andrews et al. 1990; Lipsey and Wilson 1998). Again, in practical terms, this means that if a control group had a recidivism rate of 62.5 percent, the treatment group's recidivism rate would be 37.5 percent.

Notably, scholars are attempting to develop a theory of the “principles of effective correctional intervention” (see, e.g., Andrews 1995; Andrews and Bonta 1998; Gendreau 1996). They suggest, for example, that programs are most effective when they: 1) target for change the known predictors of recidivism (e.g., anti-social values, pro-criminal associates, anti-social personality characteristics); 2) use cognitive-behavioral treatment strategies as opposed to non-directive and psychodynamic approaches; 3) focus primarily on high-risk offenders; 4) take into account the learning styles of offenders; 5) are conducted in the community rather than in an institution; 6) are delivered by a trained staff ; and 7) involve relapse prevention or “aftercare.”

The challenge, of course, is whether these principles can be followed in a typical criminal justice agency that processes youthful offenders. Two considerations merit our attention. First, it is important to note that research on correctional interventions has developed to the point where the “technology” exists to make meaningful impacts on the lives of youthful offenders,

including serious offenders (see also, Henggeler 1997). In the past, this knowledge did not exist; the Progressives and successive generations largely conducted rehabilitation programs based on hunches or, at most, on theories of criminal conduct for which there were scant empirical support. What differs now is that the knowledge to intervene more effectively with adolescent offenders is not beyond reach.

Second, while the issue of how best to transfer this “technology” or knowledge remains a daunting question, it is instructive that the “principles-of-effective-treatment” movement is gaining headway in the United States. When these principles are presented to audiences comprised of criminal justice practitioners and officials, the response most often is quite receptive (personal communication, Edward Latessa). Indeed, when faced with the question—“Why aren't you doing what works?”—many of those in juvenile justice are willing to reconsider current ways of doing things. They are not wed to the irrationality of pursuing ineffective policies when effective intervention strategies are at hand.

### ***Does the Public Support Child Saving?***

Research on public opinion about the criminal sanctioning of offenders consistently reveals that citizens favor interventions that are *both* punitive and rehabilitative (see, e.g., Applegate, Cullen, and Fisher 1997; Cullen et al. 2000; Roberts and Stalans 1997). This finding contravenes the popular conception, often portrayed in the media, that the public is clamoring exclusively for draconian measures to deal with law-breakers. Instead, it appears that people want a balanced approach to criminal justice interventions, one that exacts a measure of pain, incarcerates the dangerous, and does its best to reform offenders and return them to the community less predisposed to victimize again.

But what about juvenile offenders? What role does the public want criminal justice to play in the lives of adolescents? For a number of years, commentators have questioned whether “rehabilitation is dead” in the public’s eyes (Cullen et al. 1993; Moon, Sundt, Cullen, and Wright 1999). In fact, the results for juvenile delinquents parallel those for adults—with one noteworthy exception: although punitive toward youthful offenders—especially violent criminals—citizens are even more supportive of the rehabilitation of juveniles than they are of adults (Moon et al. 1999). They also strongly endorse a range of early intervention programs with youths at-risk for criminal involvement (Cullen et al. 1998). Belief in child saving, it seems, is alive and well.

For example, a 1998 sample of Tennessee residents were asked “what should be the main emphasis of juvenile prisons.” In a forced-choice response, almost two-thirds chose “rehabilitation” as opposed to punishing the adolescent criminal (18.7 percent) or using juvenile prisons to protect society from the future crimes a young offender might commit (11.2 percent). Further, about 9 in 10 members of the sample stated that it was a “good idea” to treat offenders who are in the community and/or who are in jail. Further, 3 in 4 respondents believed that rehabilitation programs should be “available even for juvenile offenders who have been involved in a lot of crime” (Moon et al. 1999). These findings are consistent with studies conducted in other states (Cullen et al. 2000).

### ***Conclusion: Choosing the Future***

In an essay commenting on the “decline of the rehabilitative ideal,” Francis Allen (1981) keenly observed that, concrete criticisms aside, the shattering of the hegemony of the

Progressives' paradigm of individualized treatment in the 1970s reflected the weakening of two interrelated beliefs: a belief in the malleability of offenders, and a belief that the state could represent a social consensus of the American citizenry and serve broader social purposes. In short, people became less convinced that the government had the know-how and competence to change criminals for the better. This situation was exacerbated, suggested Allen (1981: 30-31), by the issue of race:

...public pessimism about the capacities of penal programs to achieve reform....requires further analysis, but there is reason to suspect that in part it is related to a widespread perception of the American crime problem as one principally of race. It is hardly coincidental that the decline in public support for the rehabilitative ideal accompanies rising percentages of noncaucasian inmates in the prisons. Optimism about the possibilities of reform flourishes when strong bonds of identity are perceived between reformers and those to be reformed. Conversely, confidence in rehabilitative effort dwindles when a sense of difference and social distance separates the promoters from the subject of reform.

Allen's analysis is not without flaws—for example, the public's faith in rehabilitation declined but nonetheless remained firm—but he raises issues that might help us to think more clearly about what future role criminal justice should play in the lives of wayward adolescents. We have made the case that the empirical support for rehabilitative interventions is growing and should guide how we process youths in the criminal justice system. Yet we also understand that social science data are but one consideration—usually a small consideration—in the formulation of criminal justice policy. In addition to rational analysis, fundamental cultural beliefs are likely to shape what policy future is chosen.

In this regard, a conservative punishment perspective rests on the belief that offenders are not malleable and that the tools the state has to reform offenders are ineffectual. In this view, offenders are not portrayed as abused and troubled—as needing help—but as “super-predators” drawn from and reaping most of their havoc on the inner city. The racial identity of these criminals is left implicit but is not hard to fathom. For these offenders, talk of “malleability” seems senseless. The state is left to try to scare them straight or, still better, to use its resources to do the one thing that it can do effectively: store them away in prisons for years to come. As James Q. Wilson (1975: 235) asserted in his now-famous statement, “Wicked people exist. Nothing avails except to set them apart from innocent people.” If Hillary Clinton could argue that ensuring a child's welfare “takes a village,” this perspective would argue that with juvenile justice, “it takes a prison” to ensure society’s welfare.

The liberal punishment perspective is pessimistic about the malleability of offenders and is fearful of what the state might do if given the leeway to try to change people. This abiding pessimism underlies its hope that the law might serve to give youthful offenders a measure of justice and a measure of protection from the power of the criminal justice system. It especially sees the need to protect the major clientele of the system: disadvantaged minorities, mainly young males. Its approach is minimalist: don't let the state try to reform offenders and don't let the state punish offenders (at least not too much).

In a decided contrast, the rehabilitation perspective is optimistic about both the malleability of offenders and about the ability of the *people* who work in criminal justice—as opposed to the ill-defined concept of “the state”—to develop programs that invest in and improve the life prospects of offenders. Admittedly, the Progressives of a century ago were *overly* optimistic about the ease with which offenders can be changed. Such a task is difficult

and replete with failure. Even so, the contemporary rehabilitation perspective—now rooted more firmly in scientific criminology—is persuaded that offender change is attainable and a worthy goal for us, as a people, to pursue. In particular, given the disproportionate involvement of the poor and minorities in the juvenile justice system, it seems inexcusable to acquit “the state” of any obligation to invest resources to “save” these youthful offenders.

In reality, elements of these competing perspectives will be found in state and local juvenile justice systems across the United States. This assessment can be made of juvenile justice systems in most advanced industrial nations (Mehlbye and Walgrave 1998). At issue, however, is which paradigm will shape most fully the destiny of juvenile justice policy in the twenty-first century. We can offer two competing prognostications or “futures” for youths ensnared in the criminal justice system—one which focuses on punishing adolescents and a second that focuses on saving them.

### ***Punishing Adolescents***

Perhaps the safest prognostication is that the conservative punishment perspective will continue to eviscerate, little by little, the juvenile court invented by the Progressives. This “future” seems likely because of the principle of inertia: things just have to keep going in the current direction. An inordinate effort or cataclysmic series of events will be needed to reverse paths and to revitalize the rehabilitation or welfare model.

A conservative, “get tough” future might not just “plod along,” however; it might gain strength if social change leads to the continued polarization of society—in America or elsewhere. Predictions of sustained socio-economic cleavages come, disturbingly, from the political left and right. On the left, there is the warning that persistent racial divisions and inequities are not

closing but are widening and being reified (Hacker 1992; Massey and Denton 1993). In America's inner cities, an entrenched underclass—caught in the midst of deteriorating neighborhoods and buffeted by concentrated disadvantage—is socially, culturally, and politically isolated from “mainstream” society (Wilson 1987; see also, Anderson 1999). In the near future, at least, there is little prospect for their participation in the larger social order. On the political right, the analysis differs but the endpoint is similar. Thus, in their controversial *The Bell Curve: Intelligence and Class Structure in American Life*, Herrnstein and Murray (1994) argue that it is the very openness of the U.S—for example, the “democratization of higher education”—that is fostering inequality. In an increasingly open-class society, a meritocracy based on “cognitive capacity” is inevitable. As time progresses, the more intelligent rise to the top of the socio-economic ladder; the “stupid” among us fall to the bottom rungs of society. Social Darwinism, in short, becomes a reality.

We have just described, of course, two underlying views on the origins of inequality: one that attributes inequality to social causation, the other to self-selection. Regardless of the merits of these competing positions, both perspectives predict the greater isolation of urban minorities from the “rest of society.” If this transpires, it is conceivable that these inner-city residents—especially because they are marked by comparatively high levels of violence that may be fueled further by projected increases in their youth population (Fox 2000)—will be portrayed, even more so than today, as “dangerous classes” (see also, Gordon 1994). This portrayal could have salient consequences (Gordon 1994). Thus, Herrnstein and Murray’s analysis of crime may be faulty in other respects (see Cullen, Gendreau, Jarjoura, and Wright 1997), but they may be prescient in alerting us to the risk that we are headed toward a “custodial state.” “When a society reaches a certain overall level of affluence,” they write, “the haves begin to feel sympathy

toward, if not guilt about, the condition of the have-nots” (p. 523). But this emotion can change as the affluent become “increasingly frightened of and hostile toward the recipients of help”; they can lose “faith that remedial programs work” (p. 523). In this scenario, resources are reallocated from assisting the disadvantaged to keeping those populating the dangerous class in “their” neighborhoods, where they can be policed, frisked, monitored, and, if necessary, confined. Indeed, as noted above, Allen (1981) has warned that as social distance, exacerbated by racial division, widens, offenders can be seen as virtual aliens that are beyond redemption. Harsh policies are the likely result when the objects of our “justice” are seen as members of a dangerous class—as “wicked people”—with whom we have no connection and for whom we have no responsibility.

The punitive future envisioned by conservatives, however, is not ensured. Indeed, it is likely to confront three stubborn realities that, taken together, promise to temper, if not undermine, its realization. First, the punishment paradigm is testing the limits of how tough we wish to get with our children. The extensive popularity of Hillary Clinton’s (1996) *It Takes a Village* is a testament to the nation’s abiding belief that *all of us* have a collective responsibility to save from undue hardship *all of the nation’s children*. We have not, in short, lost our bonds to and sense of responsibility for the young, even for those that live apart from us socially and culturally. It is instructive that, as we have reported, there remains widespread faith among Americans that juvenile offenders can change and should be the object of efforts to rehabilitate them. These cultural beliefs are strong and enduring, and they reflect a common sense of purpose with regard to delinquent kids. Again, if Allen’s (1981) insights are correct, then these cultural beliefs will restrain further attempts to move away from a juvenile justice system devoted to the welfare of “wayward youths.”

Second, simplistic “get tough” policies are running up against another obstacle: the evidence suggests that they are not effective in reducing crime—that is, they “don’t work.” Failure is not necessarily a recipe for policy change, but it does make policy initiatives vulnerable to criticism and, eventually, to revision. In the U.S., for example, by the early 1990s “boot camps” for youthful offenders had achieved the status of a panacea that promised to “build character” and show delinquents “discipline.” The research studies demonstrating that these programs were ineffective did not immediately stop the implementation of boot camps (Cullen et al. 1996). Still, after several years of negative findings and publicity of these failures in the media, boot camps have now lost their appeal and are being abandoned as a policy initiative (Blair 2000).

Third, and related to the previous two points, correctional systems face the problem of “legitimacy deficits” and concomitantly the constant task of showing—or at least rationalizing through ideology—their legitimacy (Sparks 1994). In the past, “get tough” rhetoric has served this purpose by arguing that harsh sanctions were achieving “law and order,” but its capacity to persuade may be waning. Especially in the realm of juvenile justice where “kids” are involved, the prospect of continuing to warehouse increasing numbers of youths—mostly poor and/or people of color.raises the question of “what is wrong” with the justice system and, more broadly, with the prevailing social order. The “custodial state” that Herrnstein and Murray see on the horizon might be an efficient way to control underclass youths, but it runs the risk of making the stark admission that the government has forfeited any concern for its “disadvantaged” citizens. As Piven and Cloward (1971) understood some years ago, welfare potentially functions to “regulate the poor”—to bolster the legitimacy of the state and to calm the poor’s impulse for insurgency. In the absence of a welfare approach—were a custodial state to

take hold—the crass exercise of the state’s power—backing the haves over the have-nots—would be unmasked and could well deepen feelings of injustice and of anger toward the government and its officials. If Marxist commentators are correct, this is a risk that the state cannot afford to take because such a movement could call into question the fairness of capitalist America—not only to the poor but to others committed to “equality”—and cost some politicians their jobs.

### *Saving Adolescents*

The onward march of the punishment paradigm thus is not an inevitability. At least some ideological space exists in which to carve out progressive reforms (Dionne 1996); after all, even those on the right are now speaking of “compassionate conservatism.” But if a progressive agenda is to emerge, its viability, we suspect, ultimately will hinge on its ability to build on the pervasive sentiment that children—even troubled and troubling ones—have not fully chosen their fates and deserve a chance to have a meaningful life.

For this reason, we do not believe that a liberal punishment approach that stresses doing justice and preventing harm—but not “saving” or changing offenders for the better—will guide progressive reform efforts. It would be unpersuasive to argue that a lack of legal rights is the main problem confronting youths at-risk for crime and will prompt a movement to renovate juvenile justice. More likely, a variant of this view—restorative justice programs—will continue to spread and gain popularity in the U.S. and in other Western nations. Restorative justice is appealing because it promises to punish youths—to hold them accountable—but in a constructive way. In this model, adolescent offenders restore harm (e.g., by making restitution), and in exchange they typically avoid incarceration. Advocates of restorative justice also contend

that the process of restoring harm—a process in which offenders acknowledge their guilt and compensate their victims—will help reform or save offenders. We do not believe that this last contention is built on sound criminology or on what is known about why offenders change, but that may be beside the point as long as people believe that restorative justice has such benefits. In the end, restorative justice is an attractive package because it seemingly offers something for everyone—victims, the community, and offenders.

Another possibility, however, is that the vision articulated by Progressives over a century ago will be revitalized. These reformers had a bold design for the juvenile justice system: it should be like Hillary Clinton’s “village”—a place where everyone was working to save troubled children. It became fashionable to critique the Progressives’ system, but it is clear that attempts to move away from it arguably have caused much more harm than good. In this context, it is not farfetched to suggest that reformers should embrace a future that, in essence, embraces the central message of the Progressives. In choosing this future, reformers would state directly that the justice system is not simply an instrument of punishment but an instrument for social welfare. When troubled youths come within its reach, it has an obligation to the offenders and to the public to rehabilitate these adolescents—to save their lives and to save the public from preventable future victimization.

We favor this option of reaffirming rehabilitation, both because we are persuaded as to its effectiveness and because there is strong public support for treating youthful offenders. However, even if this is not the future chosen by progressives, there is a large need to pursue juvenile justice policies in which the well being of adolescent offenders is not relegated to secondary importance (Merlo 2000). The main message of this essay is that the growing salience of the punishment paradigm has moved us decidedly in this uncaring direction. Its

ready embrace has made criminal justice an ineffectual, if not counterproductive, force in the lives of too many adolescents. The choice to do more of the same or, even worse, to make the system still harsher is disquieting—and clearly within the realm of possibility. In the U.S. and, increasingly, elsewhere, there is thus an urgency to balance a desire and, at times, need to “get tough” with the realization that reforming youthful offenders, especially serious ones, requires an investment into their lives. The challenge, in short, is to loudly proclaim that criminal justice has a special mandate when it comes to our youths—a mandate unflinchingly trumpeted by Progressive reformers a century ago but that rings true today: to care about wayward adolescents and to save them from a life in crime.

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