

JUVENILE ADULTS

By Joseph Dole

When it comes to our criminal justice system our policies are too often incoherent and irrational. One of the most glaring examples of this is also one of the least pondered. It's that in the eyes of the law we now tell juveniles that they are adults even when we know they are not and only do so to their detriment.

When you were a child I'm sure there were dozens if not hundreds of instances when you wished with all your might that you could wave a magic wand and be transformed into an adult. It may have been to get out of doing homework or not having to have a babysitter, or maybe just because you were sick of hearing those four infuriatingly illogical words; "because I said so." There was always some privilege you were denied due to your not being an adult.

As a child, I'll bet you never thought that such a magic wand really existed though, did you? Well it does. Yet it exists for only one purpose, and it's not to grant wishes or privileges. No, its sole utility is the infliction of punishment. This magic wand is used to beat children over the head on a daily basis, transporting them superficially into adulthood so that they can enter the adult criminal "justice" system. No, this magic wand is not a childhood fantasy. It is a societal reality. Everyday children are reclassified as adults by this magical mechanism that can erase fact, logic, science, and even common sense.

Amazingly this magical wand reappeared over 80 years after Illinois had originated the theory that children should not be tried as adults. As the Illinois Coalition For The Fair Sentencing Of Children noted in their 2008 report titled "Categorically Less Culpable":

Prior to 1899, all children in conflict with the law in the United States were

treated the same as adults; there was not court set up specifically for children.

In 1899, the nation's first juvenile court was established in Illinois, and other

states began to follow shortly thereafter. The juvenile justice system was

founded on the idea that childhood is a distinct phase of life, that juveniles are

less culpable for crimes and more amenable to rehabilitation than adults, and

that rehabilitation, not punishment, is the proper way to handle deviant-even grave-behavior among youth. Eventually, the system which began in Illinois - in which most children accused of crimes were removed from adult courtrooms, adult jails, and adult poorhouses - became a nationwide standard and an international model. In fact, Illinois pioneered one of the nation's most durable and effective legal reforms - the juvenile court. ¹

¹ Illinois coalition For Fair Sentencing Of Children. Categorically Less Culpable: Children Sentenced To Life Without Possibility Of Parole In Illinois. Chicago, IL. February 2008. P. 31

Joseph Dole
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Pg 2

This was a phenomenal achievement of civilized society, but oh how far we have fallen, both as a state and as a country. As the same report noted “[i]n 1982 Illinois passed its first automatic transfer statute, whereby children charged with certain crimes would automatically be tried as adults, regardless of their culpability in the crime.”² How is it that we reverted to a 19th century mindset? It is largely due to politics at the expense of compassion and common sense. As quoted in Illinois Issues magazine, Betsy Clark, the president of the Juvenile Justice Initiative described it succinctly as follows: “There was this political fever, and it wasn’t thought to be safe to vote against law and order, to vote against supposed soft-on-crime bills. So a lot of these laws passed because there was a fear that [the lawmakers] who voted against these measures would lose their seats.”³

Not only is Illinois now one of the most punitive states in the country when it comes to charging and sentencing juveniles, but the United States is the only country in the world (185-1) that voted against a UN resolution calling to abolish life without parole (LWOP) sentences for juveniles.⁴ Why is that, you might ask? Because we are the only ones who still sentence juveniles to LWOP. We are no longer the pioneer of humane policies for juveniles; instead we are the antipathy of them. We have reverted to throwing children to the adult courts where for decades we had agreed they don’t belong. Our fear of crime has prompted us to dismiss all evidence and facts about their level of maturity and enact laws that are nothing more than knee-jerk reactions to horrific crimes. We do so without any analysis of whether these laws are wise, or just, or even effective in accomplishing anything other than revenge.

We all grew up hearing the old adage that everyone deserves a second chance. Unfortunately our society has been branded by tough-on-crime rhetoric so thoroughly that we now live by a new maxim - “lock-em up and

throw away the key.” For thousands of juveniles that is exactly what we have done.

According to The Sentencing Project,⁵ the U.S. had 1,755 juveniles serving LWOP last year. Over 5,000 more are serving a life sentence with parole as a possibility.⁶ I would stress the word “possibility” though as nowadays parole boards rarely grant parole, and clemency is about as likely as the magic wand that grants privileges instead of punishments. Though these numbers are shocking, they’re actually understated as there are tens of thousands of others who are serving equivalent sentences that don’t carry the label “life.” Instead they are sentenced to 50 or 100 years for crimes they committed before they could even drive, and often before they’ve even started puberty.

² Id. p. 33

³ Woodford, Whitney. “Youth justice: Reforms want the state to redouble its efforts to help juvenile criminal offenders.” *Illinois Issues*. February 2009: p. 32

⁴ Human Rights Committee. “Concluding Observations of the Human Rights Committee on the United States of America.” 34 U.N. doc CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006)

⁵ Nellis, Ashley, and King, Ryans S. “No Exit: The Expanding Use of Life Sentences in America.” Washington D.C.: The Sentencing Project, July 2009. P.3

⁶ Id. p. 3

Joseph Dole
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Pg 3

It’s difficult to write objectively on this subject. Not only does the act of charging a juvenile as an adult defy logic, but the advocates of harsh penalties for juvenile offenders rely on emotion and support their arguments with flawed reasoning. They rely mainly on 2 arguments (besides the arbitrary “they deserve it” retort)

First, the tough-on-crime standard bearer - that harsh penalties will deter others from crime. There has never been a shred of reliable, empirical evidence to support such an assertion. After all, how many kids can even tell you what the laws actually prohibit, let alone what the consequences are for breaking them? Not to mention the fact that any objective study done has shown that criminals of all ages almost universally believe that they will never be caught for their crimes, so the possibility of being punished, regardless of the penalty, never enters into the equation beforehand. So how is a harsher penalty going to deter someone who, one, isn’t aware of the penalty, and two, even if he or she was aware of it, wouldn’t factor it into their decision as to whether or not to commit the crime?

When an advocate for harsher penalties is confronted with these facts, they will usually fall back on the argument that, well, it will deter those offenders from committing more crimes because they’ll be imprisoned and incapable of reoffending. As Whitney Woodford related in *Illinois Issues*, it is

rehabilitation and reform models that deter children from reoffending not harsher penalties such as incarceration.⁷

The second argument put forth by the “lock-em up for life” crowd is that without these laws to charge juveniles as adults they would be used as hitman. Linda Szymanski, chief of legal research for the National Center for Juvenile Justice was paraphrased in the Wall Street Journal explaining this theory as follows:

Some criminal experts believe that because some laws are soft on children, drug dealers and gang members may be encouraged to recruit more “shorties” or youngsters who commit crimes on their behalf⁸

Regardless of the fact that there is no research confirming this theory, there are a number of flaws in this reasoning. First and foremost is the obvious fact that the coercion itself by someone older shows that those children are less culpable than an actual adult who chooses to commit these crimes of their own free will. Second, the whole premise is irrational in that an adult getting a kid to commit a crime for him or her will be just as guilty in the eyes of the law. They would simply be charged under an accountability theory (or conspiracy, or the Rico Act, etc.), and receive the same sentence as if they had actually committed the crimes themselves. From the adult’s perspective it actually makes less sense to have a child commit the crime due to the fact that you’re exposing yourself to more risk. If you’re a criminal, who

⁷ Woodford, Whitney. “Youth justice: Reformers want the state to redouble its efforts to help juvenile criminal offenders.” Illinois Issues February 2009: p. 31

⁸ Searcey, Dionne. “Eight and on Trial: young Defendants Throw Criminal Justice Into Confusion.” Wall Street Journal n.d. 2009: n.p.

Joseph Dole
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Pg 4

would you trust to do the crime right and keep their mouth shut, yourself or some scared kid? We should be increasing penalties for adults who use kids to commit crimes if our goal is truly to dissuade such a thing, not targeting the least culpable actors and kidding ourselves that they are adults.

In *Roper v. Simmons*⁹, the U.S. Supreme Court case that finally abolished the death penalty for juvenile offenders in 2005, the court, acknowledging world opinion, recognized what any parent should be able to tell you, and what new research into brain development unequivocally verifies. That is that juveniles don’t think the same way that adults do, and that their immaturity causes them to do foolish and even dangerous things

with little regard for the consequences. Their brains are physically incapable of making the same considerations that adults are able to make.

Although the line defining when exactly someone becomes an adult is hard to pinpoint, we are getting closer to understanding the process. We now know a lot more about the way the brain matures. We know which region forms last and which one governs things like impulse control, long-range planning, the ability to weigh risk versus reward, and to foresee consequences. We know that they are one and the same. We now know that this region doesn't finish developing until you are in your mid-twenties. These facts were all presented to the Supreme Court by the American Medical Association and other organizations from the medical and scientific communities by way of Amicus Curiae briefs ¹⁰ on behalf of the juvenile offender and defendant in *Roper v. Simmons*.

In light of this new research, and maybe due partially to the chastisement from the international community, there is seemingly a new impetus to rethink our strategy when dealing with juvenile offenders. Thankfully it seems we are finally seeing the pendulum swing back away from draconian laws of incarceration and indifference to the lives of the offenders, and back towards rehabilitation, something that has been neglected for decades. Two years ago Ofelia Casillas, describing a new Illinois agency, reported in the *Chicago Tribune* that "barbed wire and punishment are on the way out as the State's new Juvenile Justice Department tries something different to set young offenders on the path to freedom."¹¹

⁹Supreme Court of the United States. *Roper, Donald R. v. Simmons, Christopher*, No. 03-633; 543 U.S. 551, 125 S.Ct. 1183. March 1, 2005

¹⁰ 2004 WL 1636447 (Appellate Brief) Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae Supporting Respondent (July 19, 2004) in the case of *Roper v. Simmons*, 543 U.S. 551; 204 WL 1633549 (Appellate Brief) Brief of the American Medical Association, American Psychiatric Association, American Society For Adolescent Psychiatry, American Academy Of Child & Adolescent Psychiatry, American Academy Of Psychiatry and the Law, National Association Of Social Workers, Missouri Chapter of the National Association Of Social Workers, and National Mental Health Association as Amici Curiae in Support of Respondent (July 16, 2004) in the case of *Roper v. Simmons*, 543 U.S. 551

¹¹ Casillas, Ofelia. "Turning around troubled youths." *Chicago Tribune*, Metropolitan Section; n.d. 2007; p.1

Joseph Dole
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Pg 5

Though this is a good start, and a number of efforts are under way to reform our criminal justice system for juveniles, there is one enormous pink

elephant in the courtroom that nobody seems willing to address. It's the fact that you can't magically turn a child into an adult by decree, even if some politician did write it into the law.

The whole concept defies the laws of nature. Those kids don't think like adults, don't act like adults, don't foresee consequences like adults, can't defend themselves in court like adults, and definitely don't receive any of the privileges of adulthood, even after the court charges them as adults. So how is it that we can label them adults when all the evidence proves otherwise and we only do so to punish them more severely while simultaneously acknowledging that they aren't adults?

Society has for too long been unfalteringly content with charging and sentencing juveniles as adults even while well aware of the plethora of mitigating factors that argue against such a draconian practice. We have been deliberately indifferent to the fact that it defies both common sense and the laws of nature. We ignore that an 8 year old is incapable of forming criminal intent. We ignore environmental factors like lead poisoning which affects the brain and increases criminality.¹² We ignore our own state constitution which demands that the goal of incarceration carries with it "the objective of restoring the offender to useful citizenship,"¹³ so that we can sentence a 13 year-old to die in prison after having served decades of a LWOP sentence. We ignore the fact that an officer can get a child to say just about anything if the poor kid thinks it will get him home faster, and that that same kid will be clueless throughout the entire judicial process, unable to adequately assist in his or her own defense as an adult could.

Why do we ignore all of these things? I don't know. It defies logic, compassion, and common sense. These are our children, the next generation. Yet we rejoice in our tough-on-crime rhetoric and smugly repeat asinine phrases like "throw away the key" and "natural-born killer," etc. without knowing a single factor other than the crime itself. That is the power of rhetoric. It can make you ignore the obvious and champion the unthinkable. Mix that rhetoric with a good dose of self-righteousness and you arrive at a place where we are the only country in the world who still sentence a child to die in prison. A county that thinks they can one-up God and magically turn a child into an adult at the flip of a switch. A country that once led the world in human rights and juvenile justice, but which is now a pariah of both.

If we wish to truly be just, and rejoin the rest of humanity, we can begin by acknowledging that which is irrefutable, that children simply are not adults. Nor are they ever evil, irredeemable, monsters. From there we can craft sensible policies in line with these self-evident truths.

¹² Mitchum, Robert. "Compelling crime story: The lead in the air did it." Chicago Tribune. Perspective Section, August 19, 2007; n.p.

¹³ Illinois Constitution, Article 1, Section 11. 1970

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