

HOLDING SERIOUS JUVENILE OFFENDERS RESPONSIBLE: IMPLICATIONS FROM DIFFERENTIAL OPPRESSION THEORY

John D. Hewitt, Grand Valley State University
Robert M. Regoli, University of Colorado

Abstract

A current controversy in criminology is whether juvenile offenders should be treated in a similar manner as adult offenders. This paper examines this issue within the context of the theory of differential oppression. Differential oppression theory argues that delinquents and their delinquencies are a consequence of adult perceptions and treatment of children as inferior persons. The remedy for delinquency is to change existing social arrangements to give children the opportunity to be viewed as equally valuable as adults and as autonomous persons. Implicit within the recommendation is that children be held responsible for their wrongful actions. To do otherwise would deny them their humanity and their right to be treated as persons. Treating children as adults for the decisions they make (both good and bad) is being respectful of them as autonomous, moral agents.

INTRODUCTION

Research reports the presence of a relationship between the maltreatment of children and subsequent problem behaviors, and more specifically, juvenile delinquency (e.g., Brezina, 1998; Fleisher, 1995; Widom and Maxfield, 2001; Heck and Walsh, 2000; Kaufman and Widom, 2000; Smith and Thornberry, 1995; Straus, 1994; Zingraff, et al., 1993; Widom, 1989). These studies collectively point out that the physical, sexual, emotional, and educational maltreatment of children frequently directly or indirectly "pushes" adolescents into engaging in maladaptive responses to their mistreatment.

These findings are consistent with Regoli and Hewitt's *theory of differential oppression* (1991). They argue that delinquents and their misdeeds are a consequence of adult's perceptions of children as inferior and the translation of these perceptions into an oppressive regulation and control of children. But does the claim that a child's delinquency is a consequence of adult maltreatment and oppression exempt them from being held responsible for their criminal actions? Or, does differential oppression theory's argument for an adolescent's right of personhood justify holding serious and violent juvenile delinquents responsible for their crimes?

THE THEORY OF DIFFERENTIAL OPPRESSION

Because of their social and legal status, children have little power to affect their social world. Compared to adults, children have lim-

ited resources available to manipulate others. From a resource standpoint, adults, having superior power in relationship to children, are at a considerable advantage in determining and enforcing rules that control the basic lives of children. Compared to parents, teachers, and other adult authority figures, children are relatively powerless and expected to—often required to—submit to the power and authority of these adults. When this power is exercised to prevent children from attaining access to valued resources or to prevent them from developing a sense of self as a subject rather than an object, it becomes oppression.

Oppression restrains, restricts, and prevents people from living life the way they would in the absence of oppressive force. One consequence of oppression and control is that people are often made into *objects*. Paulo Freire (1990:51) has noted that the greater the exercise of control by oppressors over the oppressed, the more they change them into apparently inanimate things or objects, rather than subjects. One group objectifying another allows the dominant group to control the dialogue about the relationship between the two groups, to establish the rules governing the relationship, and even to create the rules for changing the rules. When members of a group experience themselves as objects rather than subjects they operate according to a self-defeating consciousness because, as objects, they assume they are powerless and eventually accept the disvalued vision of themselves projected on them by the more powerful group.

Children usually accept their status as oppressed beings because it is a social reality that pervades our society: The perception of children as oppressed is constantly reinforced by their submersion in the reality of oppression. Freire describes how oppressors can create images of oppressed groups as dependent and threatening to the social order:

For the oppressors it is always the oppressed (whom they obviously never call "the oppressed" but—depending on whether they are fellow countrymen or not—"those people" or the "blind and envious masses" or "savages" or "natives" or "subversives") who are disaffected, who are "violent," "barbaric," "wicked," or "ferocious" when they react to the violence of the oppressors (1990:41).

It is quite easy to substitute the following images of children (as the oppressed) into the preceding quote: "teenage hoodlums," "problem children," "pre-delinquents," or "delinquents" who are "disrespectful," "barbaric," "violent," or simply "alienated" when they react to their oppressors. As children internalize the image of the oppressor and adopt the oppressor's guidelines and rules of behavior, they naturally become fearful of exploring the nature of their own freedom and autonomy. Indeed, they often fully accept the socially constructed notion that they are inferior, incompetent, and irresponsible.

FOUR PRINCIPLES OF DIFFERENTIAL OPPRESSION

The theory of differential oppression is organized around four principles:

1. Adults emphasize order in the home and school.
Every day, children are forced to obey rules designed to reinforce adult notions of "right and wrong" behavior. Such rules evolve out of adult beliefs about how children should behave. The rules, and the enforcement of the rules, are believed to be in the child's own good, and violations of the rules are perceived by adults as threats to their own conceptions of good order.
2. Adults perceive children as inferior, subordinate beings and as troublemakers.
To the extent adults view children as posing a threat to the established or-

der, they must be controlled. A child who shows deference to adults and their rules is considered to be a "good child." The child who challenges his or her inferior status or who questions the rules that define the social order is seen as threatening adult control.

3. The imposition of adult conceptions of order on children may become extreme to the point of oppression. Adult attempts to establish order in the home and school frequently lead to arbitrary rule enforcement, censure, and punishment. Sometimes the coercion and use of force take the form of abuse and neglect, diminishing the parent-child relationship and weakening the child's respect for authority.
4. Oppression leads to adaptive reactions by children. The oppression of children produces at least four major adaptations: passive acceptance, exercise of illegitimate coercive power, manipulation of one's peers, or retaliation.

Passive acceptance is an obedience built upon fear. It is similar to the passive acceptance of the slave role or adaptations of battered women. The child outwardly accepts their inferior position, but develops a repressed hatred for the oppressor, possibly leading to low self-esteem, drug abuse, or alcoholism.

Exercise of illegitimate coercive power is the attempt to "make something happen. Delinquency provides the youth with an opportunity to establish a sense of autonomy and control.

Manipulation of one's peers is an attempt to gain social power. Through manipulation of others within the peer group, a child who has experienced oppression by adults may acquire a sense of strength and control or a degree of empowerment not otherwise felt.

Retaliation involves striking back at both the people and the institutions the child blames for causing their oppression. School vandalism often occurs because a student is angry at a teacher or principal, and children who assault or kill their parents are gener-

ally responding to past experiences of severe maltreatment at the hands of their parents.

However, it is not the mere existence of oppressive relations with children that lead children to delinquency. Children in fact are differentially oppressed, some more frequently and more severely than others. The oppression of children falls on a continuum. Children who experience more frequent and severe forms of oppression are more likely to respond to their oppression in ways defined as delinquent (Regoli and Hewitt, 2000: 158-160).

While there are few tests of differential oppression theory to date, initial studies appear to be supportive of the theory. For example, Dennis Chan interviewed a group of high school students defined as "unruly pupils" by school administrators and teachers (1994). He noted that these students reported high levels of oppression both at home and at school, that school officials were quick to impose punishments for rule violations, and that the students tended to respond by engaging in delinquent activities. Matt DeLisi and his associates surveyed 178 university undergraduate students to assess their perceptions of the autonomous nature of children. Approximately three-fourths of the respondents indicated a belief that children are inferior in status relative to adults and nearly half expressed support for the use of physical punishment when children misbehave. In general, respondents felt that children must be controlled because they are not otherwise equipped to lead their own lives.

What, then, are the implications of differential oppression theory in terms of the State's response to the adolescent who engages in a serious or violent criminal act? Does differential oppression theory fall on the side of some sort of "abuse excuse" whereby the juvenile offender who has been seriously maltreated is "excused" because of the oppressive maltreatment? Or, does differential oppression theory provide a theoretical justification for holding the youth criminally responsible and deserving of punishment? We contend the theory logically supports the latter point. In the following discussion we will examine how children came to be defined as inferior to adults, how the early juvenile court reinforced images of children as incompetent and dependent, and how the nature of childhood in the new millennium radically departs from social constructions of a hundred years ago.

SOCIALLY RECONSTRUCTING ADOLESCENTS AS INCOMPETENT AND DEPENDENT

The emergence of the juvenile court in Cook County (Chicago), Illinois, in 1899, was a natural consequence of more than two centuries of constructing and reconstructing the nature of childhood and children. In the end, however, it needed to be decided just what population the new juvenile court would serve. What would be appropriate upper and lower end ages for court jurisdiction? And what would objectively distinguish juveniles from adults?

Infancy had long been a conceptually distinct age-marking category defining the essential difference between adults and children and the term was often used interchangeably with "childhood" (e.g., Schultz, 1985; McLaughlin, 1974). In the eighteenth century, those persons who were not considered infants were beginning to be redefined as something qualitatively different from adults. Childhood, as a newly invented social and intellectual category emerged. Social historians attribute this "new" social construction of childhood to a variety of factors, including the rise of the middle class, the emergence of the modern family, and the extension of formal schooling (Postman, 1994). Childhood (adolescence) was soon believed to designate significant developmental differences between youths and adults. However, the exact nature of these differences was debated between two perspectives. On the one hand, those who held to the Lockean or Protestant image of childhood viewed the child at birth as a blank slate to be written on or developed by responsible adults. Children must be raised and trained into civilized adults. On the other hand were those who held to the Rousseauian, or Romantic image. They viewed childhood as reflecting the pure, spontaneous, and uncorrupted qualities of the young. Children must be allowed to grow and develop with as little intrusion as possible by already corrupted adults.

Regardless of the ultimate merits of either perspective, they both agreed that children were inherently different from adults. By the end of the nineteenth century, a Progressive vision spearheaded by psychologists, philosophers, and the new education experts was beginning to emerge. It defined childhood as a stage in the development from infancy to adulthood (Dewey, 1899; Freud, 1924, 1925; Hall, 1905).

THE JUVENILE COURT: INCOMPETENCE AND DEPENDENCE VERSUS AUTONOMY AND RESPONSIBILITY

The Progressive vision of the new juvenile court was based on socially constructed definitions of childhood and children designed to justify separate and differential treatment focused on rehabilitation. This new social construction reflected a dramatic change in perceptions about adolescent culpability.

Prior to the Progressive reforms, infancy marked the lower limit of court jurisdiction. Infants were thought to be unable to distinguish right from wrong sufficient to hold them criminally responsible, and thus were exempt from punishment. But the reconstructions of childhood informing the new juvenile court assumed that adolescence was a developmentally distinct stage: Children who had not yet fully achieved puberty, who had not yet finished their formal schooling, and who had not been adequately prepared to enter the adult world were incapable of forming true criminal intent. It was now assumed that children below age 18 were incompetent, unable to be socially or morally responsible, and yet somehow malleable and likely to be receptive to the rehabilitative efforts of juvenile court workers.

Because the juvenile court rejected the idea that children were autonomous, responsible beings, concern over criminal offenses alone was also rejected. To have a separate juvenile court to handle only youth who violated the criminal law would have raised the question of criminal culpability. Thus the court broadened its jurisdiction to allow it to deal with children who not only violated the criminal law, but who behaved in ways that were objectionable to adults—moral and social transgressions—which were essentially tied to the relatively normal misbehaviors of young persons newly categorized into a special age status: adolescence

Understandably, youths who were made subject to the juvenile court in the early years of the twentieth century were rarely serious offenders. Instead of dealing with violent, predatory, and habitual criminal youth who might force the question of criminal responsibility, the courts largely busied themselves with the control and regulation of dependent and morally wayward children, and often the control and regulation was limited to informal handling. The majority of cases (some 5,100) brought to the District of Columbia Juvenile

Court between 1917 and 1922, for example, were handled informally. Disorderly conduct, petty theft and damage (often nothing more than “noise making, apple swiping, and window breaking”) along with “sleigh riding, throwing papers in sewers, and riding bicycles on the sidewalk” were representative of the majority of juvenile offenders in the court during those years (Rothman, 1980:250). Many of these non-serious delinquencies were explained as the products of other juvenile misbehaviors, such as cigarette smoking and truancy (Sutton, 1988:149).

A reasonable characterization of those youth believed to be the at-risk, targeted subjects of the early juvenile court would suggest that they were young and wayward, socially and morally irresponsible, and legally dependent. Therefore, they were fit subjects for an individualized, nurturing, rehabilitating, and paternalistic court. The few children who did engage in serious delinquencies could always be institutionalized in training schools or possibly, in the more extreme circumstances, waived to criminal court. But the overriding perspective was that treatment, not punishment, was appropriate for non-culpable offending youth. In other words, the juvenile court viewed the basic right of children to be protected from their own bad judgments and from the larger ills of society, but essentially denied adolescents personhood rights—the recognition of the child as an autonomous and capable individual.

CHILDHOOD AND ADOLESCENCE IN THE NEW MILLENNIUM

How might the adolescent population be characterized in the year 2002? Are youths noticeably different from their peers of a hundred years ago? Does the image of children between the ages of 8 and 17 as incompetent, irresponsible, dependent, and non-culpable continue to work? Or, are youth today significantly different from the Progressive’s socially constructed and limiting image of childhood?

Neil Postman (1994) suggests that there has been a measurable disappearance of the Progressive’s notion of childhood and adolescence over the latter half of the twentieth century. As evidence, he points to the virtual disappearance of children, as children, from the media, including radio, movies, and especially television. Today, as in the Middle Ages, young

persons are being portrayed as miniature adults: "Children . . . do not differ significantly in their interests, language, dress, or sexuality from adults. . ." (Postman, 1994:122-123).

Children also enter puberty at a much earlier age today than they did when the Progressives established the juvenile court. The average age of menarche at the middle of the nineteenth century was 17; by the 1960's it had dropped to 12.8; and by 1999 some studies suggested it was closer to 12.2. In addition, recent studies report that nearly 15 percent of white girls showed evidence of the onset of secondary sex characteristics by age eight. About 15 percent of African American girls evidenced the development of breasts or pubic hair by age seven and nearly half by age eight. (Lemonick, 2000:68).

Children in the new millennium are exposed to much more formal education than their peers of a century earlier. Over 95 percent of children age 14 to 17 were enrolled in high school in 1997, compared to only seven percent in 1890 (U.S. Bureau of the Census, 2000: Table 259; Postman, 1994:xii). The school year was also much shorter in the late 1800s than it was a hundred years later. For instance, in the 1890s, the average length of the school term was only 136 days while in the 1990s it was 178 days (Snyder, 1993:46-47). The percentage of high school graduates has grown from two percent of the seventeen-year-old population in 1870, to 49 percent in 1940, and to nearly 83 percent in 1998 (Feld, 1999:41; U.S. Bureau of the Census, 2000: Table 263). Youths are not only more book literate today, they are the first generation to develop computer literacy as early as the elementary grades. The technological sophistication of many adolescents ranges from the development of computer software to digital filmmaking and highly creative animation.

The census for 1880 recorded more than one million children between the ages of 10 and 15, or approximately 18 percent of children that age, as being employed. Many were working in factories, mines, and mills or as street vendors or apprentices (Clement, 1985:248-249). The enactment of child-labor laws prohibiting children from working entirely or by delaying their economic entry functioned to remove lower-paid children from the competitive labor market and move them into greater financial dependency on their parents. The impact

of the child-labor laws was swift. "Between 1910 and 1930, the number of children between ten and fifteen years of age gainfully employed declined nearly 75 percent, from 18 percent to about 5 percent" (Feld, 1999:43).

Adolescents in the new millennium are significant players in the modern consumer-driven economy. More than 5 million children between the ages of 14 and 17 (or about 31 percent of children that age) work in regular jobs. Their jobs range from providing child care, delivering newspapers, and sacking groceries to working in the fast food industry, as summer recreation counselors, and in retail sales at local malls. Approximately 60 percent of working teenagers under age 18 are employed in the retail industry (Sunoo, 2000; U.S. Bureau of the Census, Table 16). The total purchasing power of adolescents is estimated to be in excess of \$100 million. Children between the ages of 6 and 11 wield \$17 million in spending money, while youths from 5 to 18 are expected to spend nearly \$2 million this year making purchases online (Cardona and Cuneo, 2000; Crockett, 1999). This is a dramatic shift from a century ago when Progressive reformers were enacting child labor laws to protect children from exploitation and abuse.

Adolescents in the new millennium also differ from their counterparts of a hundred years ago on another dimension: their delinquencies involve much more serious criminal behavior, are more frequent, and occur at younger ages. In Chicago, during the decade immediately prior to the establishment of the juvenile court, most of the offenses that juveniles were arrested for involved petty crimes. If the offense was deemed serious, the case might be referred to the grand jury. But there were only about 15 such cases a month and most of these cases involved "burglary, petty depredations upon freight cars, candy or bake shops, or stealing pigeons or rabbits from barns, hoodlum acts that, in the country, would be considered boyish pranks rather than a crime" (Hawes, 1971:162). During the first six months of 1899, the Chicago jail received 332 boys under age 16 who had been arrested on such charges of burglary, "flipping trains," and playing ball on the streets (Platt, 1969: 127). Once the juvenile court was in operation, the typical charges involving children did not appear to be any more serious. Platt notes that "during the earliest years of the Cook County juvenile court,

over 50 percent of the delinquency cases arose from charges of 'disorderly behavior,' 'immorality,' 'vagrancy,' 'truancy, and 'incurribility'" (1969:140).

Two-thirds of a century later the pattern of juvenile delinquency began a three-decade long rise in both seriousness and frequency. From the mid-1960s until the mid-1990s, juveniles increasingly accounted for a larger portion of all persons arrested and for a larger portion of both Crime Index Offenses and violent crimes. In 2000, over 1.5 million juveniles were arrested, accounting for 17 percent of total arrests. In addition, juveniles comprised 28 percent of all Crime Index arrests, 25 percent of robbery arrests, and 16 percent of all Index Violent crime arrests. More importantly, about 498,000 of juveniles arrested were under the age of 15. These younger adolescents accounted for more than 155,000 Crime Index arrests. Just over 1,100 were arrested for forcible rape, more than 4,800 for robbery, nearly 16,000 for aggravated assault, and slightly over 24,000 for burglary (Federal Bureau of Investigation, 2001:226).

What is to be made of these changes? We argue that on nearly every measure, today's adolescents enter puberty at an earlier age, are better educated, are as much or more involved in the work force, participate more extensively in the consumer-driven economy, and are more involved in serious, violent delinquency than their peers of a century ago. Adolescents today are significantly different from those children targeted by the early juvenile court. Furthermore, developmental psychologists now recognize that there is little to distinguish adolescents from adults on the grounds of competence, comprehension, and reasoning in making important decisions (Melton, 1983; Scott, 1992; Scott and Grisso, 1998).

DIFFERENTIAL OPPRESSION THEORY AND SERIOUS JUVENILE OFFENDERS

Differential oppression theory claims that much delinquency is the product of who children are in relation to adults. By defining children as objects, less socially and morally valuable than adults, and ultimately incapable of sufficiently mature reasoning and responsible action, it becomes easy to deny them criminal responsibility and thus to relegate them to enforced treatment, rehabilitation, and nurturing in the juvenile justice system. The refusal to

hold serious juvenile offenders criminally responsible is nothing more than the state's affirmation of adolescent inferiority and its stamp of approval for denying them their humanity.

Forcing the child to undergo treatment for a criminal act because the child is deemed incapable of responsibility for the act rather than allowing the child to be punished or to face his or her just deserts because the child *is* responsible is a denial of the child's right to be treated as a person. According to Herbert Morris (1995:87), "The right to be treated as a person is a fundamental human right belonging to *all human beings* by virtue of their being human. It is also a natural, inalienable, and absolute right" (italics added). It is consistent with differential oppression theory to argue that our institutions of justice need to respect the choices (albeit bad choices) of juvenile offenders and then hold them responsible for their conduct, not treat or cure them of a condition they are not responsible for as we would an illness.

Differential oppression theory, holding that juveniles make choices within the context of the opportunities they are presented with, is supportive of, and supported by, arguments from just-deserts theory that the individual, even an adolescent, is a sovereign person deserving of punishment for blameworthy decisions (Wilson, 1983; Fogel, 1975; van den Haag, 1975). According to Feld (1999:305): "Blaming a culpable actor for her voluntary choice to do 'wrong' and giving her the consequences that her choice deserves respect her integrity as a morally responsible individual." The juvenile court's traditional emphasis on treatment and rehabilitation not only denies a youth's personal responsibility, but it "reduces offenders' duty to exercise self-control, erodes their obligation to change, and sustains a self-fulfilling prophecy that delinquency occurs inevitably for youths from certain backgrounds" (Feld, 1999:323).

The juvenile court's emphasis on treatment and rehabilitation, denial of the competence of adolescents, and failure to recognize the personhood of children justified differential treatment of juvenile offenders. If differential oppression theory is correct, then serious, violent juvenile offenders must be held responsible and punished appropriately. Punishment is not foreign to the juvenile justice system: The Supreme Court even noted in *Kent v.*

United States (1966) that in the juvenile court, "the child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." Deserved incarcerative punishment not only provides for limited rehabilitative needs of juvenile offenders and protects society from further possible crimes while the youth is incarcerated, it affirms the humanity and personhood of the child.

In the final analysis, differential oppression theory, to be consistent with its underlying premise that children are competent, responsible, autonomous subjects who should be allowed the authorship of their own lives, must be respected and held criminally responsible for their serious delinquencies. The social construction of definitions of children as innocent, immature, incompetent, and not capable of being responsible for choices provides a broad justification for the creation of a separate juvenile justice system. This set of institutions ranging from juvenile courts to miniature prisons, in turn, reinforces images of children as dependent and in need of different and special treatment. The beginning of this new millennium may be the right time to start to recognize the full humanity of children, to grant them their moral value, and to hold them equally responsible for their choices, be they good or bad.

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