Juvenile Crime and Criminal Justice: Resolving Border Disputes

Authors: Jeffrey Fagan

Introduction

At the outset of the juvenile court more than a century ago, juvenile court judges were given the option to expel cases and transfer them to criminal court. Transfer was an essential and necessary feature of the institutional architecture of the new juvenile court. Indeed, transfer helped maintain the court’s legitimacy by removing hard cases that challenged the court’s comparative advantage in dealing with young offenders—cases that critics could use to launch attacks on the court’s efficacy and therefore its core jurisprudential and social policy rationales.

Unlike today, though, hard cases in the early years of the juvenile court did not necessarily involve children charged with murder or other violence. Rather, the youth who were expelled more often were thought to be "incorrigible"—repetitive delinquents whose failure to respond to the court’s therapeutic regime signaled the intractability of their developmental and social deficits. Such cases negated the theory of the court: these youth’s repeated failures to respond to treatment canceled their eligibility for protection from the harmful regimes of criminal punishment. In fact, for more than five decades, juveniles charged with murder were more likely than not to be retained in the juvenile court, beneficiaries of both its diversionary and stigma avoidance rationales.

During these years, decisions to transfer youth to criminal court were made routinely and almost exclusively by juvenile court judges with little attention or scrutiny from legislators, advocates, scholars, or the press. Their decisions were individualized to the unique factors for each youth. That is, judges decided which youth were immature and "amenable to treatment" on a case-by-case basis. In some instances, transfer decisions were based on the severity of the offense, where principles of proportionality—the requirement that the punishment fit the crime—trumped collateral considerations that might have otherwise mitigated the case for transfer.

These procedures lasted for decades, until 1966, when the U.S. Supreme Court in Kent v. U.S. identified constitutionally sanctioned standards, criteria, and procedures governing decisions by the juvenile court to waive its jurisdiction over the offending adolescent. Signs of "maturity" and "sophistication" in the crime were important parts of the Kent calculus, signaling to the judge that the young offender posed a danger for further crimes. Adolescents who were deemed "amenable to treatment" were retained in the juvenile court. In deciding whom to waive to the criminal court and whom to retain in the juvenile court, judges relied heavily on the evaluations of social work professionals whose recommendations on waiver were usually persuasive and authoritative to the court.

Kent was decided during the mid-1960s, when both juvenile and adult crime began to spike in the United States. In reaction to the sharp rise in crime, many states began in the mid-1970s to redesign the
laws and revise the philosophy that had long shaped the boundary between juvenile and criminal courts. Popular reactions to rising crime and violence shaped the social and political context of the restructuring, a process that continued through the late 1990s, when juvenile crime began a decade-long decline. As adolescents came increasingly to be feared as perpetrators of the most serious and violent crimes, the principles of rehabilitation that were essential to the juvenile court were largely abandoned. Judicial discretion was weakened. In some states, judicial authority was replaced with politically designed sentencing structures that fixed punishment to crime seriousness. In other states, the decision whether to try a juvenile as an adult was either shifted to the prosecutor or was made by legislators who carved out large groups of youth who were excluded from the juvenile court.

Demands for dismantling the juvenile court’s judicially centered waiver regime focused on four issues: inconsistencies and disparities from one case to the next, racial biases, insensitivity by judges to the seriousness of adolescent crimes, and rising rates of serious juvenile crime that signaled the failure of the juvenile court and corrections to control youth crime. The critiques motivated state legislatures across the country to remove judicial discretion by disqualifying large sectors of the juvenile court population—children as young as ten years of age—and removing them to the jurisdiction of the criminal court. The result was a recurring cycle of legislation, starting in 1978 and lasting for more than two decades, that redrew the boundaries between juvenile and adult court. State legislators passed new laws and revised old ones, steadily expanding the criteria for transfer to the criminal court and punishment as an adult. In effect, the legislatures decided that adolescent offenders had become criminally culpable and more dangerous at younger ages than they were in the past.

This cycle of legislation also reassigned—from juvenile court judges to prosecutors, criminal court judges, legislators, and correctional professionals—a large share of the discretion over the types of cases to be transferred. Today, decisions about court jurisdiction sometimes are made in a retail process repeated daily in juvenile courts or prosecutors’ offices; at other times, corrections officials may decide which youth can be released early and which will serve the balance of long prison sentences; and at other times, the choice is made in a wholesale legislative process by elected officials far removed from the everyday workings of the juvenile courts.

These choices involve not just two very different court systems, but deeply held assumptions about the nature of youth crime, about the blameworthiness of youth who commit crimes, and about how society should reconcile the competing concerns of public safety, victim rights, and youth development. The two courts have sharply contrasting ideas about adolescents who break the law—their immaturity and culpability, whether they can be treated or rehabilitated, the security threats they pose, and the punishment they might deserve. Whatever the motivation, sending an adolescent offender to the criminal court is a serious and consequential step. It is an irreversible decision that exposes young lawbreakers to harsh and sometimes toxic forms of punishment that, as the empirical evidence shows, have the perverse effect of increasing criminal activity.
Nearly four decades after Kent and three decades after this restructuring began, it is now possible to look at the results of this large-scale experiment in youth and crime-control policy. In this article I examine the new boundaries of the juvenile court from three different perspectives. The first perspective is doctrinal or statutory: what is the legal architecture of the new boundary-drawing and boundary-maintenance regimes? The second perspective is conceptual and jurisprudential: what are the justifications for the adult punishment of juvenile offenders, and what do the new boundaries signal about popular views on youth crime, about the appropriate responses to such crime, and about the theory of a juvenile court stripped of its most challenging cases? The third perspective involves policy. Looking at the new boundaries from a policy perspective requires assessing empirical evidence on the reach, consequences, and effectiveness of relocating entire groups of juvenile offenders and offenses to the criminal court. After revisiting the jurisprudential and policy issues that are the heart of this debate, I look to the future of law and policy regulating the upper boundary of the juvenile court.

MLA Citation