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Foreword

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In November 1998, the interdisciplinary Center for Children, Families and the Law at the University of Virginia sponsored a conference on Youth Violence and Juvenile Justice Reform. The conference brought together an extraordinary group of experts from the academic disciplines of law, criminology and psychology. Before an audience made up of researchers, students, policy makers, and practitioners in the field of juvenile justice, these experts analyzed legal policy toward juvenile crime from a variety of disciplinary and methodological perspectives. The articles in this important symposium issue of the *Virginia Journal of Social Policy & the Law* are based on the papers and comments that were presented at the conference.

Thoughtful academic voices can contribute a great deal to a policy debate that has been the focus of intense media and legislative interest around the country in the 1990s. Indeed, it is fair to say that no other set of legal policy issues involving children is subject to greater debate and controversy than that of how to respond to youth crime—particularly violent youth crime. Often the discussion is shrill and not very informed, as first the media and then politicians respond to tragic cases of children killing children. The empirical and normative issues are complex, and satisfactory long-term solutions are not obvious. It makes sense for researchers and scholars who study juvenile crime to play a more prominent role in formulating juvenile justice policy.

The articles in the symposium issue all focus on the central question of the policy debate: Should the law's response to juveniles who commit crimes differ from its response to adult offend-

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ers? The traditional juvenile court, which will celebrate its 100th anniversary this year, answered this question with an unambiguous "Yes". The Juvenile Court was founded on a confident belief that young offenders were different from adults. First, because of their immaturity, juvenile offenders were not responsible for their criminal conduct, and therefore should not be subject to adult criminal punishment. Second, juveniles were more malleable than adults because they were still developing, and thus would be amenable to rehabilitative treatment. Finally, if juveniles were treated in a separate system, protected from the bad influences of adult criminals, many would "grow out" of their tendency to get involved in criminal activity. The juvenile justice system, based on these assumptions about youthful offenders, was characterized (in theory at least) by leniency and procedural informality, and committed to rehabilitation rather than punishment as the appropriate response to youth crime.

Beginning in the 1960s, courts and legislatures began to chip away at the foundations of the juvenile justice system, and over time, its procedures and purposes have been radically reformed. The landmark Supreme Court opinion of *In re Gault*[1] introduced procedural regularity to delinquency proceedings. After *Gault,* criminal responsibility began to play a larger role in the legal response to juvenile crime. In part, the changes grew out of skepticism about the effectiveness of rehabilitation on juveniles, together with a belief that young offenders were less childlike than the traditional model of juvenile justice assumed. In the post-*Gault* period of the 1970s and 80s, reformers and policy makers struggled to develop policies that held young offenders accountable for their crimes, while at the same time recognizing that these offenders were less mature than their adult counterparts and that correctional interventions should recognize these differences.

There is no longer a consensus about whether any differential treatment of youthful and adult offenders is appropriate. In the past decade, punitive policies have gained adherents, and critics increasingly espouse the view that there is no good reason to treat juveniles charged with crimes (particularly violent crimes) differently from adults. Legislatures across the country have revised ju-

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1 387 U.S. 1 (1967).

venile codes in an effort to protect the public from what is sometimes described as an epidemic of youth violence. The direction of the legal trend is systematically in the direction of treating juveniles charged with crimes like their adult counterparts. In the political arena, the conclusion that public welfare is served by punitive juvenile justice policies is becoming fixed.

The authors of the articles in this symposium issue challenge the direction of the legal trend from a variety of perspectives, and they question, directly or indirectly, the utility and fairness of punishing young offenders without regard to their immaturity. Employing sophisticated analytic tools of the social sciences and law, the authors revitalize the empirical and normative case for differential treatment of juvenile offenders, but they also narrow and modernize the broad, simplistic, and unscientific assumptions about youth that shaped the traditional response to juvenile crime.

Laurence Steinberg and Elizabeth Cauffman analyze the recent trends in juvenile justice policy from the perspective of developmental psychology. They argue that policy makers should consider scientific knowledge about adolescent development, particularly in resolving the core question of "at what age, and under what circumstances, should violent young offenders be adjudicated as adults?" The authors pose three questions that they argue are relevant to this inquiry. First, when are young offenders competent to be adjudicated in an adult criminal proceeding? Secondly, at what age can they appropriately be held criminally responsible as adults? Finally, at what developmental point are youths no longer good candidates for rehabilitative treatment?

Steinberg and Cauffman examine developmental research and theory that directly and indirectly bear on these questions, and acknowledge that the existing scientific evidence does not provide clear answers to the questions they pose. Nonetheless, they argue that general trends in intellectual and psychosocial development are clearly discernable and can inform justice policy. Their analysis on age-related developmental trends leads them to conclude that scientific knowledge is sufficiently clear to point to a lower age boundary below which juveniles should not be tried or punished as adults (age 13), and an upper boundary, above which young offenders can fairly be categorized as adults (age 16). For

youths between the ages 13 and 16, Steinberg and Cauffman conclude that there is sufficient developmental variability that individualized assessment is required as to whether adult or juvenile court adjudication is appropriate.

Franklin Zimring focuses on the relationship between criminal responsibility and immaturity in his essay on the principles that should govern the legal response to adolescent homicide. Youthful immaturity is particularly relevant to assigning responsibility for homicide, Zimring argues, because the harm involved is of the gravest kind, yet punishment varies greatly on the basis of subjective psychological factors. Rejecting both the rehabilitative approach of the traditional juvenile court and the punitive response of the criminal court (which affords no principled basis for consideration of age and immaturity in mitigation of punishment), Zimring instead argues that just punishment of young offenders should be based on a principle of diminished responsibility. Because of youthful immaturity, adolescents are less blameworthy than adults who commit homicide, and their diminished responsibility should define the upper and lower boundaries of available punishment. Within those boundaries, Zimring argues, punishment policies should be shaped by the youth policy objective of promoting healthy development to adulthood. Zimring rejects a formulaic response that simply discounts adult punishment for young offenders. Instead, he argues for a subjective approach, which recognizes that the extent of responsibility (and punishment) are contingent on a range of individual and contextual factors, and that the immaturity and vulnerability of youth may be implicated differently in different criminal contexts.

Context is critically important to Jeffrey Fagan, a criminologist, who argues provocatively that conventional criminal law doctrines of justification and excuse may accommodate a "social toxin" excuse for adolescents living in some inner city neighborhoods, based on contextual influences that shape their criminal behavior. Fagan argues that ethnographic studies of social interaction among inner city youths indicate that these youths live in a spatially and socially bounded world in which their development, masculine identity, and conduct are shaped by the social context of an antisocial peer culture. In this isolated environment, and against

a background of routine access to guns, street codes and norms develop which strongly encourage and reinforce the use of violence as a means of maintaining status and resolving disputes. These norms and codes are internalized, and violent behavior becomes an almost automatic "scripted" response to perceived threat.

Fagan argues that a criminal law defense of excuse, somewhat analogous to battered woman syndrome, should be available to youths whose violent behavior is shaped by these contextual influences. In his view, the criminological evidence indicates that the social toxin claim meets the conditions necessary to establish an exculpatory defense—a reasonable belief in an imminent threat and limited alternatives to criminal conduct. In the context in which violent interactions occur, the choices available to these offenders are severely constrained, and therefore their culpability is mitigated.

While Professor Fagan's proposal breaks new jurisprudential ground, Mark Lipsey revitalizes a very traditional concept in juvenile crime policy. The charge that "rehabilitation doesn't work" has been effectively employed by critics who argue for the abandonment of a rehabilitative model of juvenile justice. Lipsey challenges this claim through an analysis of almost 200 studies that have evaluated the effects of delinquency intervention programs on recidivism. Using the quantitative technique of meta-analysis, which limits methodological error, Lipsey found that not only demonstration research programs, but also "practical" programs reduced recidivism, but that the effect varied significantly among programs. While a majority of practical programs had no effect on recidivism, the most effective programs reduce recidivism by twenty-five percent. The dimensions of programs that were most salient to their effectiveness included: (1) the type of program (the most effective being intensive probation supervision, academic skill development, restitution, some forms of counseling); (2) duration (more than 18 weeks / 5 hours per week); (3) the relationship to the juvenile justice system (the most effective were sponsored by, but not situated in a juvenile correctional facility); and (4) the characteristics of the juveniles. Lipsey concludes that although beneficial effects do not come automatically, the categori-

cal pessimism about the possibility that rehabilitative programs can be effective in reducing recidivism is unwarranted.

In the last few years, violent juvenile crime has declined. In response, it seems likely that there will be less talk in the future about the threat of young "superpredators," and that the political furor over this issue may subside. This is fortunate, because legislatures and courts are more likely to craft sensible legal policies when media scrutiny is less intense and public pressure less urgent. In this calmer climate, the empirical and theoretical contributions of academic researchers who study youth crime are likely to be received with greater interest, and to play a valuable role in shaping policy. The articles, essays, and comments in this symposium issue will be high on the list of required reading.