

juvenile offenders in the commission of homicide, making the use of a juvenile offender in a homicide an aggravating factor that enhances their sentence and constitutes an aggravating factor in the penalty phase of the homicides of the First Degree which carry the possibility of the death sentence. Laws should also be passed that enhance sentences for adults that sell firearms to juveniles. As a prisoner it is difficult for me to advocate prison for any human being, however, any man should have enough values to know that he should not use juveniles in the commission of any crime, much less a homicide. These measures would also satisfy politicians who believe that tougher prison terms are an effective way of fighting crime while sending a message to the streets that adults who use juveniles in the commission of murders will be held responsible for not only taking a human life, but for taking advantage of a juvenile.

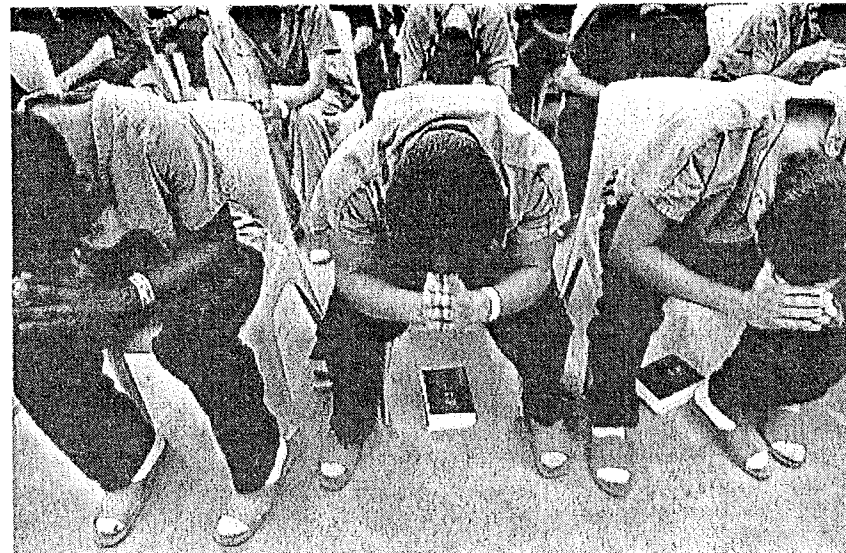
Before any of this is accomplished, however, it will require advocates from both sides, those that support "Adult Crime, Adult Time" and those that oppose it, to sit down in an environment free of the political sensationalism that surrounds the issue, in order to hammer out a proportionate punishment for juvenile offenders that have committed or participated in murder that recognizes they are children and deserve an opportunity at a second chance. Unfortunately, in today's political climate, such an environment does not exist and politicians will go on being politicians, while children will go on being children, at least until they run afoul of the state's draconian laws governing the transfer of juvenile offenders into adult court. It will be child's play no more, much to theirs and society's detriment.

Robert L. Holbrook #BL-5140
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370
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to learn more about Robert visit:
www.freesalim.net

Notes

1. Bishop on Criminal Law (9th Ed. 1923)
2. Blackstones Commentaries Vol. 4 pages 23-24
3. MacArthur Foundation Network on Adolescent Development and Juvenile Justice Research www.adjj.org
4. Criminal Responsibility in Adolescents: Lessons from Developmental Psychology by Elizabeth Scott
5. Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity and Diminished Responsibility by Franklin Zimring
6. Roper v. Simmons, 125 S.Ct 1183
7. Less Guilty by Reason of Adolescence by Laurence Steinberg and Elizabeth Scott
8. Youth on Trial by Thomas Grisso and Robert G. Schwartz



And Life to Go: Juvenile Offenders Sentenced to Life Without Parole in Pennsylvania

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In Pennsylvania prior to the passage of legislative statutes governing the automatic transfer of juvenile offenders charged with murder into Adult Court, juvenile offenders charged with murder were protected from automatic transfer into Adult Court. They were routinely subjected to a hearing before a judge to determine whether or not, based on their maturity and capacity, they would be transferred into Adult Court. Transfers of juvenile offenders charged with murder were rare and typically reserved for heinous crimes in which the juvenile offender was the actual perpetrator or when the juvenile offender had an extensive arrest/detention record.

After the 1972 legislative change to the State's Juvenile Delinquency Act, juvenile offenders charged with murder were deemed criminally culpable to the same degree as adult offenders and were automatically transferred into Adult Court. Hereafter, the burden remarkably rested on the juvenile offender to prove he was an adolescent and less culpable than an adult offender. Society, as well, is presented with the ironic portrait of the mighty weight of the State of Pennsylvania's District Attorney's offices arguing that a 14, 15, or 16 year old child who cannot yet legally vote, run for office, marry, purchase cigarettes, possibly drive, or enter into a contract, should be sentenced to spend the rest of their natural lives in prison for committing or participating in a terrible act as a juvenile.

Pennsylvania's courts and prosecutors so eagerly embraced this practice that the state holds the dubious distinction of leading not only the nation, but the entire world in the number of juvenile offenders serving prison sentences of Life Without Parole (LWOP). The present number exceeds 350 prisoners.

This practice particularly took off in the 80's as the crack epidemic exploded on the streets of Philadelphia "drafting" many juveniles into the open air drug markets that dominated the city. How did it come to this? And is it really appropriate to automatically hold juvenile offenders to the same culpability as adult offenders?

Historical Context

In response to a perception in the rise in crimes committed amongst juvenile gangs in Philadelphia in the late 1960s and early 1970s as well as to serve as a deterrent to other juvenile offenders, Pennsylvania's legislature embraced the "Adult Crime, Adult Time" slogan to adjudicate juvenile offenders charged with murder. The rationale behind the slogan was that if a juvenile offender commits an adult crime (i.e. murder) he/she should do adult time. In theory the concept seemed to be an effective way of punishing the "worst of the worst" juvenile offenders and also to send a message to other juvenile offenders that such crimes would not be tolerated. How else could society punish juvenile offenders that committed the ultimate crime and deter others from doing the same? Treat them like adults. The fact that their mental state is not of an adult does not matter. The act takes precedence over the mental state of the offender.

ers and is reminiscent of the language that stripped humans of their humanity and paved the way for the acceptance of slavery, genocide, and ethnic cleansing and should have no place in the debate on the treatment and punishment of juvenile offenders charged and sentenced as adult offenders.

The exclusive emphasis on punishment and retribution advocated for juvenile offenders has created a climate where politicians one up each other in sponsoring legislation that increases already harsh punishments for juvenile offenders. Lobbyists for District Attorney's associations and law enforcement agencies aided by a victims' rights movement that has been hijacked by right wing conservative activists in the "cultural wars" have vigorously opposed any legislation or debate that re-evaluates the sentencing of juvenile offenders to LWOP, accusing politicians supportive of the issue "soft on crime" or "coddling criminals." This exclusive emphasis on punishment does nothing to prevent crime or protect society. Its sense of justice only arrives after the fact of the crime and does nothing to prevent future murder by juvenile offenders. In a sense it only puts society at risk because it ignores all the indicators that at risk juvenile offenders do not correlate their own behavior with similarly situated juvenile offenders sentenced to LWOP.

With the most "Juvenile Lifers" (i.e. juvenile offenders sentenced to LWOP) in its prison system than any other state Pennsylvania should take the lead in legislating new laws that balance the immaturity and underdevelopment of juvenile offenders with the severity of the offense of murder. No one is advocating a "free ride" or "light sentence." A sentence of LWOP, however, is excessively disproportionate when it comes to juvenile offenders who were accomplices to First or Second Degree murder, which carry automatic mandatory LWOP sentences in Pennsylvania. There are numerous cases of juvenile offenders that had adult co-defendants who manipulated them through fear or influence into participating in murder as "lookouts" or unwitting participants. Under such circumstances, based on the overwhelming influence the adult offender possesses over the juvenile, diminished responsibility should weigh in the juvenile offenders favor and prevent him/her from suffering a LWOP sentence. On the contrary, in Pennsylvania, the fact that a juvenile offender is charged with adult co-defendants is not regarded as a mitigating factor, but rather is considered an aggravating factor working against the juvenile offender and is used by the prosecution to demonstrate the juvenile's criminal maturity and sophistication. This is not proportional justice. This is the travesty of justice.

State legislators should pass laws prohibiting the sentencing of juvenile offenders found guilty of First and Second degree murder to LWOP and allow for Life with the possibility of parole after an appropriate number of years. Using comparative sentencing schemes from Pennsylvania's neighboring states as a guide, New York allows for the possibility of parole for juvenile offenders after 25 years, New Jersey 30 years, and both Ohio and Delaware 25 years. It should be emphasized that parole opportunity does not mean automatic release, it only provides the opportunity for a juvenile offender to demonstrate he is worthy of release into society. This law should be applied retroactively to allow the present prisoners serving LWOP for crimes they committed or participating in as juvenile offenders to one day re-enter society should they exhibit appropriate reformed behavior in prison.

The legislators should also pass tougher laws directed at adults who use

juvenile offenders, despite the seriousness of their crime, do not cease being juveniles when they commit their crime.

For the advocates of "Adult Crime, Adult Time" for juvenile offenders sentenced to LWOP, their continued insistence, despite scientific evidence to the contrary, that there are no fundamental differences between 14, 15, or 16 year old offenders and similarly situated adult offenders is not based on any sound evidence but rather a vengeance driven sense of justice that would be more suited to vigilante frontier justice than a modern enlightened society.

Even the argument of deterrence, that the sentence of juvenile offenders to LWOP is a necessary deterrence to other "at risk" juvenile offenders and serves the greater interest of protecting society, no longer has merit. The MacArthur Foundation study conclusively demonstrated that adolescents typically lack the ability to transform cognitive understanding into the fully developed capacity and ability to control impulses. The study found that based on this underdeveloped mental capacity, adolescents fail to understand in totality the long range consequences of their actions. The frontal lobes of the brain where these decisions are made are less developed in adolescents and these frontal lobes are responsible for the correlation between determining the long range consequences of right-wrong decisions. Adolescents' decisions are normally temporal. Under these circumstances the sentencing of juvenile offenders to LWOP as a deterrent is an unfortunate futile exercise because very few at risk juveniles can correlate the sentencing of juvenile offenders to LWOP and their own at risk behavior.

If there is any more convincing evidence of the failure of "deterrence as prevention" for juvenile offenders, one needs only to look at the high rate of violence and homicide amongst juvenile offenders in Philadelphia. Pennsylvania has the highest rate of juvenile offenders serving LWOP in the country. Where is the deterrence? The deterrence argument is even more shaky when it comes to adult offenders, so why would anyone assume that a policy of deterrence would be effective in adolescents whom society prevents entering into contracts because of their inability to contemplate the long term consequences and obligations of contracts. The deterrence argument falls short when it comes to juvenile offenders, like the "Adult Crime, Adult Time" theme it rests on a foundation of pandering to society's fears and perception of violent juvenile predators.

Conclusion

The present policies that govern the punishment of juvenile offenders charged and sentenced as adults for criminal homicide for the First and Second Degree in Pennsylvania is not driven by any sound debate on the differences between these juvenile offenders and adults. To quote an advocate of the "Adult Crime, Adult Time" slogan, "juvenile offenders are criminals who happen to be young, not children who happen to be criminal." (Getting Away With Murder. A.S. Regnery 1985. Policy Review 35). While this may be a good sound bite, it is absent of any truth and this attempt to disconnect juvenile offenders from their identity as children is what has fractured this issue to the point it is almost impossible to get advocates and opponents in the same room. This attitude is perhaps almost the most disturbing trend adopted by the "Adult Crime, Adult Time" crowd because it de-humanizes juvenile offend-

Not content with just targeting the "worst of the worst", the state went a step forward and held that even if a juvenile offender was not the actual perpetrator of the murder but an accomplice to either First or Second Degree murder he/she would also face LWOP if convicted. It became a one size fits all approach to juvenile offenders charged with murder and again the reasoning behind this approach was "deterrence". If a juvenile offender knew he or she would be equally as culpable as the actual perpetrator then they would be less likely to become participants in a murder. So now juvenile "accomplices" to murder were classified in the "worst of the worst" category and sentenced to LWOP.

Pennsylvania's treatment of juvenile offenders charged or convicted of murder has been guided by the English Common Law system which is the foundation of the state's law. Under the Common law doctrine for juveniles/children charged with murder the question is focused not on the immaturity of the offender, but rather solely on the "intent" of the offender. In essence it all came down to mental "capacity". Under Common Law a child under 7 years of age is conclusively presumed incapable of crime. For children between 7 and 14 years of age the law deems the child incapable, but only prima facie (Latin: at first view) therefore evidence may be obtained that shows criminal capacity. "Over 14, infants (children) like all other persons are prima facie capable and he who would set up their incapacity must prove it." (Bishop on Criminal Law, 9th Ed. 1923). In several early decisions upholding the death penalty for juvenile offenders in Pennsylvania, the courts have frequently quoted ancient common law doctrines and commentaries to justify executing juvenile offenders. Far from being "enlightened" or "liberal" to juvenile/child offenders charged with murder, English Common Law was brutal and harsh, invoking almost biblical tones in its punishment of juvenile/child offenders. In England, children as young as 8 have suffered the death penalty. In one instance of Common Law justice a child of 10 was hung from the gallows because after killing his playmate it appeared he hid himself, which manifested in the eye of the Common Law, a consciousness of guilt and discretion to discern between good and evil. (Blackstones Commentaries Vol. 4).

Borrowing from Common Law, in an early Pennsylvania Supreme Court case determining capital punishment and minimal intent/capacity, the court stated "if the circumstances of a crime committed by an infant above the age of seven years exhibits unequivocal malice and an obvious knowledge of the impropriety of the act, he may be convicted even capitally." To this day whenever determining the appropriateness of harsh sentences such as LWOP for juvenile/child offenders, Pennsylvania's courts increasingly reach back and cite the precedence of common law doctrine to uphold such sentences. Is this right? Should Common Law doctrine governing juvenile offenders still determine the appropriateness of punishment for the state's juvenile offenders charged with murder and sentenced to LWOP in Pennsylvania?

It is my behalf that reliance on Common Law doctrine and precedence governing "intent" and "capacity" to hold juvenile offenders accountable to the same standards of adult offenders is out of line with contemporary studies and evidence shedding new light on the mental development of juvenile offenders. There is more to a crime than "intent" and "capacity" when it involves juvenile offenders. Society has evolved too far in its understanding of adolescents to continue relying on precedent and doctrine from English Common Law. We simply do not live in ancient medieval common law England. We live

in modern times. One of the main reasons in Common Law England children at 14 were considered as capable, and by extension, culpable as adults is because in an era when the average life expectancy was 40 years old, a child at 14 in most cases was on the threshold of assuming the responsibilities of an adult. It was an era when boys of 14 were prepared for marriage, assuming responsibility of the household in the absence of a father, inheriting title to the land/estate, or being "conscripted" to fight a war. It was also not uncommon for young girls of 14 to be married, give birth to child, raise children and take care of households as maidens. Under these circumstances, when puberty was the measuring stick for adulthood, it is not surprising that society and the law would regard children 14 and above as criminally culpable as adults. It was a sign of the times, an era we no longer live in unless we want puberty to once again determine adulthood in our children.

Also significant is the fact that "precedence" is not "permanence." New evidence can turn precedence on its head and the evolution of society can render certain precedence obsolete. Since we live in modern times, modern science should guide our treatment and punishment of juvenile offenders. It is precisely the evolution of science that has punched holes in the "Adult Crime, Adult Time" slogan that has guided juvenile justice the past 20 years. The facts are as follows:

"Adult Crime, Adult Time vs. Diminished Responsibility for Juvenile Offenders"

It should be obvious that juveniles are not adults and should not be held moral or mentally accountable to the same standards of adults. To a great degree, society recognizes this and prohibits persons under 18 from voting, purchasing cigarettes, entering into contracts, joining the military, being deployed into combat and even marrying in some states. Yet when it comes to law breaking and committing serious crimes, juvenile offenders are automatically deemed moral and intellectually culpable as adults. For the offense of murder, a juvenile offender is held help responsible for his actions as if he were an adult, despite the fact that the split moment before being charged with murder he was a juvenile in the eyes of the law. So in an instance the threshold for the journey into adulthood is not mental maturity, but rather the performance of a criminal act.

If modern psychology can conclusively determine that fundamental differences exist between the mental reasoning and decision making abilities of adolescents and adults, it would be appropriate to assign a degree of diminished responsibility to juvenile offenders charged as adults that would prohibit them from being sentenced to LWOP in the same manner as their adult counterparts. Diminished responsibility is not something new to the law and is a defense commonly used by individuals with mental impairment or mental disease. Has modern psychology conclusively determined fundamental differences exist between adolescents and adults? The answer is yes.

In 2005, ground breaking studies into adolescent development were released by Temple University's Department of Psychology. The studies were the result of years of research, observation and field tests on juvenile offenders in four states, Pennsylvania included, that was sponsored by the John D. MacArthur Foundation. Labeled the MacArthur Foundation Network on Ado-

lescent Development and Juvenile Justice the study was headed by Laurence Steinberg, a distinguished professor of Psychology at Temple University. The Network's research found:

- (a) Mounting evidence suggesting that at least some of the differences between adults and adolescents have neuropsychological and neurobiological underpinnings. Studies of brain development during adolescence and of differences in patterns of brain activation between adolescents and adults indicate that the patterns of development in the prefrontal cortex, the region of the brain responsible for long term planning, judgment, and decision making are underdeveloped in adolescents.
- (b) Adolescents lack the ability to fully transform cognitive understanding into the fully developed capacity and ability to control impulse driven behavior. Due to a limited life experience their attitudes toward and perception of risks are less developed than adults. This mental and cognitive immaturity affects the choices that adolescents make with the result that many of their choices are less responsible than those that similarly situated adults would make.
- (c) Adolescents are more susceptible to peer pressure and manipulation by adults, making it more difficult for them to remove themselves from criminal or at risk behavior than adults.

In 2005 the MacArthur Foundation Network on Adolescent Development and Juvenile Justice research attained credibility when it was heavily relied on by the United States Supreme Court in its 5-4 decision abolishing the imposition of the death penalty on juvenile offenders in *Roper v. Simmons*. The court cited a juvenile's diminished responsibility and culpability in reaching its conclusion that juvenile offenders should not suffer the death penalty for the offense of murder that would subject an adult offender to the death sentence.

Professor Elizabeth Scott, a member of the MacArthur Foundation Network, in a paper on Criminal Responsibility in Adolescence stated "When analyzed in the framework of conventional criminal-excuse doctrine, the developmental evidence supports a presumption of diminished responsibility for adolescent offenders, but not a lack of responsibility." A presumption of diminished responsibility is not a "get out of jail free" card for juvenile offenders but would rather balance juvenile offenders' immaturity with a proportional punishment. Proportional punishment is, according to Berkeley Professor of Law Franklin Zimring, a core value in Anglo-American criminal law. It is what, in theory, should distinguish American law from the one size fits all law that in other nations allows the thief to have their hand chopped off for simple theft or public officials executed for bribery.

This concept, this core value of proportional punishment is tragically absent when it comes to juvenile offenders sentenced to LWOP for being accomplices to murder (i.e. lookouts, participants). This is not "just desert." Sentencing a juvenile offender to spend the rest of his/her life in prison for a terrible decision they made in the developing years of adolescence is grossly excessive when analyzed through the lens of developmental psychology of adolescents. If developmental psychology can establish diminished responsibility for the mentally impaired and mentally diseased, it should be good enough to establish the same in adolescent offenders. The evidence is conclusive that