
Failure Of The Criminal Law To Fairly And Effectively Address Juvenile Crime

Introduction

This essay will present and analyze a variety of academic sources to oppose the statement that criminal law is fair and effective in addressing crime, punishing offenders, and maintaining social cohesion. The focus group of this essay will be juvenile offenders, which in Queensland means an offender between the ages of 10 and 16 (Richards, 2011). According to the rule of law, all defendants should be treated with the presumption of innocence, which is not often met when juveniles are involved. This leads to the violation of the right to a fair trial, an element of due process. Overall, this lack of equal treatment of juvenile offenders leads to increased contact with the criminal justice system (CJS) as well as high recidivism rates, and hence, failure to rehabilitate them back into the community.

The rule of law refers to the concept that all people are equal in the eyes of the law and that every man, whatever his rank or condition, is bound by the law (White & Perrone, 1997; Bingham, 2010). One aspect of the rule of law is the presumption of innocence, which is rarely upheld in the case of juvenile offenders.

Offenders aged 15-19 are the most likely age group to be processed by police, due to their neurobiology and their tendency to commit crimes that are public and unplanned (Richards, 2011; Riddhi & Bartels, 2018). Hence, juveniles are commonly considered a vulnerable group simply due to their age; however, many juveniles have additional forms of vulnerability that can disadvantage them during interactions with police. These vulnerabilities can be innate, such as intellectual disabilities, sexuality, or race, or can be caused by individual circumstances, such as homelessness (Dwyer, 2017).

Historically, police have specifically targeted young people in an attempt to control 'larrikinism', which generally refers to obscene language and offensive behavior (Finnane, 1987). Due to this discriminatory policing, young people are often subject to excessive and invasive searches, name and address checks, and move-on orders (Cunneen, Goldson, & Russell, 2016). Move-on orders, which allow police to effect the removal of any person from a public space, are often used even when there is no indication of a breach of peace occurring (Farrell, 2009). In accordance with the rule of law, innocence should be presumed, and hence, police should not be able to exercise this discretionary power over vulnerable young people who have displayed no intentions to commit a crime.

Additionally, paperless arrest laws in Queensland allow police to arrest and detain a person for up to four hours for committing, or being about to commit, a minor offense, such as loitering (Cunneen et al., 2016). This detainment without charge is one clear example of a violation of the presumption of innocence. According to Cunneen et al. (2016), it also puts young people at the risk of arbitrary detention. A similar example is the introduction of alcohol prohibition orders, which are often imposed on juveniles by police without judicial oversight, denying the recipient the chance to conduct a defense (Cunneen et al., 2016).

As shown, the current legislation in Queensland gives police power to target and discriminate against juvenile offenders. Move-on orders, paperless arrest laws, and alcohol prohibition orders are just some of the avenues for police to unfairly apprehend young people, unnecessarily bringing them into contact with the CJS. In all these cases, the rule of law is not applied fairly as the presumption of innocence is not upheld.

The breach of the rule of law in regard to the presumption of innocence eliminates the chance for juvenile offenders to exercise their right to a fair trial. The right to a fair trial is defined as an individual's right to "have their case heard by a competent and impartial court following a fair and public hearing" (Burnnard, 2008, p.176).

According to Finnane (1987), when a police officer apprehends a juvenile delinquent for a public order offense, chances of successful prosecution of charges are high. Additionally, these chances increase when a magistrate is "in sympathy with a local law and order campaign" (Finnane, 1987, p.95). This is a clear violation of the right to a fair trial, as the magistrate does not administer the law fairly or equally. Additionally, most young people apprehended by police will be convicted, even though it has already been proven that the power of police allows them to target and discriminate against these young people.

Yet another violation of the right to a fair trial is seen in the failure to adapt the court processes to the needs of juvenile offenders by not treating them in an age-appropriate manner. Most young people have difficulty understanding legal proceedings, likely due to the use of complex legal jargon (Burnnard, 2008). This comprehension can be further hindered by limited English proficiency, poor education, fear or anxiety, and mental health disorders or cognitive disabilities (Cunneen et al., 2016). Juvenile offenders have the right to fully participate in legal proceedings, so the only way they can receive a fair trial is if the proceedings are explained plainly and simply and if the trial is conducted in a language understandable to the defendant (Burnnard, 2008).

Additionally, according to Watt, O'Leary, and O'Toole (2017), a fair trial cannot be delivered if the offender themselves is not fit to stand trial. Compared to adults, children under the age of 16 are consistently much more likely to be evaluated as impaired in competence-related abilities, yet many of them are trialed anyway (Watt et al., 2017). This is unfair treatment on behalf of the court, and, in addition to the other evidence presented, clearly shows that juvenile offenders are often deprived of a fair trial.

One of the purposes of criminal law is to rehabilitate offenders back into the community. However, the unequal application of the rule of law and the violation of the right to a fair trial causes more juveniles to come into contact with the CJS than necessary. This has the potential to further marginalize young people, leading them to re-offend (Corr, 2014). According to the Australia Bureau of Statistics (2019), there were 54,064 youth offenders recorded by police between 2016 and 2017, constituting 13% of the total offender population.

Despite rehabilitation programs that are offered by juvenile detention centers, such as social integration programs and substance abuse counseling, 41% of juvenile offenders of a sample of 1500 reoffended, a statistic which rises to 61% for those who had previously been on supervised orders (Day, Howells, & Rickwood, 2004). The reason for this, according to Corr (2014), is that once an individual obtains a criminal record by coming into contact with the CJS, they become 'resigned' to an offending lifestyle, seeing resistance as futile. This can be attributed to Becker's labeling theory, which states that people construct their identities from

society's perceptions of them (Shulman, 2005). Therefore, current rehabilitation programs in detention centers are not efficient in lowering recidivism rates, and the only solution is to divert young people from the CJS in the first place.

Diversion strategies, including community service work, treatment programs, or educational programs, generally result in less reoffending rates than traditional juvenile detention (Wilson & Hoge, 2013). As police are usually the first responders to juvenile crime, they are considered the gatekeepers who determine who enters the CJS and how (Dwyer, 2014; Cunneen et al., 2016). However, they are likely not the most qualified people to deal with vulnerable young people. Police should specifically be trained to deal with juvenile offenders and to recognize youthful vulnerabilities, such as intellectual disorders so that they will be able to refer young people to other services to aid in their diversion from the CJS (Dwyer, 2017). Another option is raising the age of criminal responsibility in Queensland from 10-years-old to 14-years-old, to reduce the likelihood of life-course interaction with the CJS (Cunneen et al., 2016; Riddhi & Bartels, 2018).

In conclusion, it has been evidenced that the rule of law is not applied equally to all, as juvenile offenders are often treated unfairly and processed without the presumption of innocence. Additionally, the due process right of a right to a fair trial is not often met. These both make it difficult for criminal law to successfully fulfill its purpose of rehabilitating juveniles and diverting them from a life of crime. Overall, this shows that criminal law is neither fair nor effective in addressing crime, punishing offenders, and maintaining social cohesion.

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