

Chapter 8

The Elimination Argument, Part 1: Juvenile Offenders Should Not Go to CC

ABSTRACT

Chapter 8 addresses a popular anti-transfer crowd (ATC) tactic in arguing for the elimination of transfer. The ATC has employed a couple of maneuvers, here. The first move is contending that a singular case that suggests or shows the possible inappropriateness of transfer is sufficient to claim that all transfers are wrong. Specifically, the ATC says that since juveniles are generally (more) amenable to treatment, and are less mature (i.e., culpable) and less deterrable than adults, they should not see CC. This Chapter exposes the corrupt use of converting the singular and relative cases to establish a false categorical. The ATC also moves in the opposite direction in claiming that a categorical (e.g., OE) establishes the wrongfulness of transfer applied to a particular juvenile. Since violent behavior is supposedly normal juvenile behavior, this normal juvenile behavior should not qualify for transfer. This Chapter debunks both false conversions.

INTRODUCTION

The ATC has employed a tactic that involves two conversions. First, the ATC converts a singular case/relative condition to a categorical level. The ATC vehemently opposes categoricals when they wrongly see them in OE. The ATC does not hesitate, however, in constructing categoricals when their mission is served by them, even when their categoricals are wrong. The ATC opposes categoricals that do not exist but is willing to create ones that are inappropriate. The second conversion deals with transporting an alleged categorical trait to an individual level.

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A. The Tactic of Converting the Singular Case or a Relative Status to a Categorical

1. If One Transfer Can/Might Be Bad, All Transfers Are Bad¹

ATC members conjure up an *arguably* bad transfer case and highlight it as the reason transfer should not exist (see Maroney, 2009, p. 131).¹ That transfer in their selected cases is unreasonable is debatable. Even if this transfer was inappropriate, that the entire transfer system should be condemned/abandoned is what is unreasonable in this situation. Zimring (1998a) questioned the wisdom of imprisoning a 6-year-old (p. 75). The prospects of imprisoning 6-year-olds may have propaganda impact but lacks a basis in reality. Zimring also suggests that “if the defendant is 15 years old and of slightly subnormal intelligence, to try and punish him as if he were adult in all respects is a dangerously counterfactual enterprise (Id., p. 132).” Zimring’s example does not represent the typical transfer candidate. It is even possible that Zimring’s case example could/would not be transferred in the first place. Ironically, the handicap from which Zimring’s offender suffers might receive a more sympathetic response in CC. In CC, there’s a possibility this offender would not be convicted due to mental impairment or could be sentenced leniently due to his condition. Meanwhile, in JC, this condition could be the basis for a JC judge’s determining the youth needs to be (inappropriately) adjudicated delinquent to receive the JC’s help. At the same time, that 15-year-olds of “slightly subnormal intelligence” should always/automatically be granted immunity from CC prosecution, regardless of offense and record, is what constitutes a very dangerous counterfactual enterprise.

2. If Juveniles are More Amenable to Treatment, All Juveniles are Amenable to Treatment

According to the ATC, JC was founded on the premise that juveniles are, by and large, *more* salvageable/ amenable to treatment. The ATC translates this truth into a contention that JC should treat *all* juvenile offenders (see Bishop, 2000; Bonnie & Grisso, 2000; Brink, 2003-2004; DeJong & Merrill, 2001; Gasper & Katkin, 1980; Hogan, 1974; Kirkish et al., 2000; Steinberg & Cauffman, 2000; Steinberg & Schwartz, 2000; Vitiello, 1976). Feld endorsed this proposal.

Although “rehabilitative” juvenile courts assume that all offenders differ and no direct relationship exists between their offenses and their “real needs,” legislators appear to presume and courts to accept without further elaboration that youths who commit serious crimes differ from minor offenders... (Feld, 2000, p. 97, quotation marks in original).

Feld questions the existence of a true rehabilitative state of JCs but then fights to ensure that virtually all juvenile offenders are prosecuted there, presumably, to receive treatment. More important, why are legislators incorrect in presuming that violent (or chronic) offenders differ significantly from minor, one-time offenders? Assuming Feld is correct that JCs are not about rehabilitation, serious juvenile offenders *certainly* should be differentiated from minor ones. Even in treatment terms, those willing to stab someone to death or brutally rape are fundamentally different from shoplifters and burglars, and certainly qualify for different reactions from JCs. While the violent/chronic offender is somewhat of an outlier, the relatively minor offender is the criminal norm for juveniles. The extremely violent or chronic

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