

# JUVENILE JUSTICE: A WORK "IN PROGRESS"

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## I. INTRODUCTION

"What should we do with children who commit crimes?" The question is an increasingly uncomfortable one, as America faces the dilemma of more children committing more violent criminal acts.<sup>1</sup> In 1899 the State of Illinois created the first juvenile court,<sup>2</sup> thereby recognizing the need for society to separate children from adults in criminal prosecution.<sup>3</sup> The primary purpose of the juvenile court was

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1. In 1965, juveniles accounted for only one-fifth of all arrests for serious crimes. *In re Gault*, 387 U.S. 1, 20 n.26. (1967) (citing NAT'L CRIME COMM'N REP. 55 (1967)). In 1974, "juveniles accounted for almost half the arrests for serious crimes in the United States." 42 U.S.C. §5601(1) (1995). However, juveniles accounted for less than one-third of such arrests in 1983. *Id.* There was a 70% increase in juvenile arrests between 1987 and 1994. U.S. DEPT. OF JUST., OFF. OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 1997 UPDATE ON VIOLENCE 18 (1997). However, between 1994 and 1995 juvenile violent crime arrests decreased again by 2%. *Id.* While the slight decrease in 1995 is encouraging, the overall arrest number is still two-thirds greater than 1985. *Id.* at 19.

2. The amended statute that created the juvenile court system states:

The purpose [of the Juvenile Court Act] is to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his parent only when his or her welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him or her custody, care, and discipline as nearly as possible equivalent to that which should be given by his or her parents, and in cases where it should and can properly be done to place the minor in a family home so that he or she may become a member of the family by legal adoption or otherwise.

705 ILL. COMP. STAT. 405/1-2 (West 1992) (amending the originally enacted statute at 1899 Ill. Laws 131, §§1, 21).

3. Prior to the separation of the juvenile court system, the fact that the person committing the crime was a minor was only a mitigating factor. See Kelly Keimig Elsea, *The*

to provide guidance, care and protection for wayward youth under the doctrine of *parens patriae*.<sup>4</sup>

However, society's growing fear of violence by juveniles has sparked debate about the need for a separate juvenile court, and about the juvenile court's ability to function effectively under the *parens patriae* model.<sup>5</sup> The juvenile court, functioning as a court of law, has been given a strong social mandate to "save kids." The earliest

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*Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, KAN. J.L. & PUB. POL'Y, Fall 1995, at 135, 137. However, adults in the prisons were teaching the juveniles more criminal sophistication and many juries refused to convict juveniles, especially since the juries knew the juveniles would receive the same harsh sentences as adults. *Id.* Other factors contributed to the creation of a separate juvenile court, such as the Industrial Revolution, European immigration, the delayed legal age of marriage, compulsory education laws, and child labor laws. Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 B.C. L. REV. 927, 931-932 (1995). These changes meant decreased demand for teen-age labor; therefore, there was increased economic dependency of youth for years beyond the normal age of independence in an agrarian society. *Id.*

4. *Parens patriae* is the principle that refers to a state's sovereign power of guardianship over persons under a disability, like a juvenile or the insane. BLACK'S LAW DICTIONARY 1114 (6th ed. 1990). *Parens Patriae* originally gave the state guardianship over the youth within its borders in situations, for example, where an orphan's parents left an estate which could not be managed by a minor child. Catherine R. Guttman, *Listen to the Children: The Decision to Transfer Juveniles to Adult Court*, 30 HARV. C.R.-C.L. L. REV. 507, 511 (1995). While expanding *parens patriae* to delinquency was "unprecedented," it enabled the visionary juvenile court to focus on the "guiding principle" of "individual treatment." *Id.* at 511-12. Thus, juvenile courts used *parens patriae* as a legal doctrine that would take social deficits into account as well as misbehavior, and then would assign delinquents to a program geared to their needs. *Id.* at 512.

5. The Supreme Court has stated:

Although the juvenile-court system had its genesis in the desire to provide a distinctive procedure and setting to deal with the problems of youth, including those manifested by antisocial conduct, our decisions in recent years have recognized that there is a gap between the originally benign conception of the system and its realities. With the exception of *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the Court's response to that perception has been to make applicable in juvenile proceedings constitutional guarantees associated with traditional criminal prosecutions. *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970). In so doing, the Court has evinced awareness of the threat which such a process represents to the efforts of the juvenile-court system, functioning in a unique manner, to ameliorate the harshness of criminal justice when applied to youthful offenders. That the system has fallen short of the high expectations of its sponsors in no way detracts from the broad social benefits sought or from those benefits that can survive constitutional scrutiny.

*Breed v. Jones*, 421 U.S. 519, 528-29 (1975). The Court found that the juvenile process did put the juvenile in jeopardy of life or limb, thus a subsequent transfer to adult court violated the Double Jeopardy Clause. *Id.*, see also U.S. CONST. amend. V.

juvenile courts functioned in the capacity of a surrogate parent, concerned with the care, protection, and rehabilitation of children.<sup>6</sup> However, public pressure has increasingly resulted in juvenile courts being responsible for the development and implementation of interventional and preventative social programs, using a *parens patriae* justification. This dramatic increase in the juvenile court's traditionally extra-judicial participation in social programs has led the legal community to raise serious questions about whether the juvenile court is maintaining its constitutional mandate, as part of the third branch of government, to remain separate and independent from the other branches of government. In light of these doubts, it is important to remember that the juvenile court is not merely a public social agency with a smattering of law; it is a court of law, albeit with a strong social philosophy and mandate to "save kids."

Today, America is facing a much greater challenge in responding to juvenile crime than had ever been imagined one hundred years ago. Therefore, juvenile courts need to examine new paradigms for responding to juvenile crime. However, in doing so, it is vitally important that juvenile courts not lose their identity and function as courts of law, whose fundamental duty is not to implement social programs to resolve societal issues, but to administer justice. The Balanced Approach<sup>7</sup> to juvenile justice is an example of a model for juvenile justice reform that not only respects the juvenile court's role as a court of law, but also aids in the administration of "true" justice.

## II. FINDING THE WAY: THE IMPORTANCE OF A PHILOSOPHY OF JUSTICE

Responding to juvenile crime is more than just a social and legal issue; it is also a "justice" issue. However, coming to terms with what "justice" really means, and how it is to be administered, is difficult because "justice" is an esoteric term. The definition of "justice" varies depending on one's role within the legal system, or with one's

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6. Guttman, *supra* note 4, at 511-12. The Progressives were a group of reformers at the end of the nineteenth century. They believed that juvenile delinquency stemmed from the social and economic changes that had occurred in the country. Holly Beatty, *Is the Trend to Expand Juvenile Transfer Statutes Just an Easy Answer to a Complex Problem?*, 26 U. Tol. L. R. 979, 981 (1995).

7. See *infra* Part IV.

perspective within the social framework where the offense occurred. Prosecutors normally define justice as a successful prosecution resulting in conviction. Defense attorneys normally define justice as obtaining an acquittal. An accused child may define justice as "getting out of this." The victim normally defines justice as having the loss restored, "making the offender pay for his crime," or both. The local community where the crime occurred usually defines justice as sending a strong message that "such actions will not be tolerated." Additionally, the parents of a delinquent child and of a child victim, understandably have divergent perspectives on justice.

The judge who presides over the case has the ultimate control over defining "justice" in any particular case. The judge has the ethical duty to impartially administer the law according to legislative dictates,<sup>8</sup> and his neutrality affords greater opportunity for effectuating a truly just result.<sup>9</sup> However, it is impossible for judges to administer "justice" in a truly preceptless environment. Thus, every court, functioning through judges who possess their own respective definitions of justice, administers justice in accordance with a spoken or unspoken philosophy of justice.

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8. Some of a judge's ethical duties are as follows:

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. . . .

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

ABA MODEL CODE OF JUDICIAL CONDUCT CANON 3(B), §§ 2, 5 (1990).

9. Bias for or against a party is different from a judge defining justice based on his individual experiences and study of legal theories. For example, a juvenile judge with a purely retributive philosophy of justice would feel that his case disposition satisfied his definition of justice if it punished a guilty offender swiftly and severely. *See infra* text accompanying note 56 (discussing the retributive philosophy). On the other hand, a juvenile judge with a more restorative philosophy of justice would feel that his case disposition satisfied his definition of justice if it restored the victim's loss, protected the community, and, in the process, taught the offender skills to aid him in developing a successful future. *See infra* text accompanying notes 42-91 for a full discussion of these three components of the Balanced Approach, a model for implementing a restorative philosophy of justice.

Ultimately, these philosophies of justice are shaped by the personal and philosophical views of society, expressed through its values, mores and culture. The various laws and court opinions, which play a pragmatic role in a court's definition of "justice," are only a reflection of the values which society holds at any given time. Perhaps the most startling illustration of the power and significance of societal values producing a morally unjust result<sup>10</sup> is the *Dred Scott* decision of 1857, wherein the Supreme Court held that a human being was "property" under the law.<sup>11</sup> *Dred Scott* illustrates the complexity of defining "justice" and of measuring the degree to which our current justice systems reflect "true" justice in any particular case.<sup>12</sup> Despite this complexity, society must come to terms with what "justice" really means, both practically and philosophically, if society is to have truly authentic, morally meaningful systems of justice wherein the moral ideal transforms and transcends the pragmatic.

But what does a philosophy of justice have to do with the administration of justice within the context of the juvenile court system? Everything. If a justice system has a skewed philosophy of justice, then the administration of justice within that system will also necessarily be skewed. Some judges may fail to give adequate attention to purposefully developing a philosophy of justice and still function effectively on a pragmatic level. However, such failure enhances the probability of administering inadequate justice, at best, and injustice, at worst.

This is true because a court's underlying philosophy of justice, directly or indirectly, impacts the public policy of the court, even if the court does not admit to having a public policy. This, in turn, consciously or unconsciously, impacts the court's case dispositions or sentencings. And every judge knows that the heart of the juvenile justice system is the disposition he renders in any particular case.<sup>13</sup> This is where the juvenile court's philosophy of justice has its "day of

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10. And this in spite of the ostensible collective wisdom of the United States Supreme Court and under the power and rationality of legal precedent.

11. *Dred Scott v. Sanford*, 60 U.S. (How.) 393 (1857).

12. See *infra* text accompanying notes 14-25 (discussing "true" justice).

13. The term "disposition" is customarily used in juvenile court parlance in place of the word "sentencing," as delinquency cases are generally technically deemed as "civil" in nature, as opposed to "criminal." This is true even though "delinquency," by definition, necessarily involves a violation of a criminal statute, law or ordinance.

reckoning,” in terms of administering justice for persons involved in or affected by the unlawful act. Thus, a court’s philosophy of justice vitally affects the administration of justice on a daily basis.

### III. POINTING THE WAY: A PHILOSOPHY OF MORAL JUSTICE WITHIN THE JUVENILE JUSTICE SYSTEM

“True” justice is the only standard of justice that will suffice if the juvenile court is to fulfill its mandate, as a court of law, to administer justice within the context of “saving kids.”<sup>14</sup> A juvenile court fails to administer “true” justice, to the same extent that the case disposition fails to sufficiently address and properly respond to the relevant needs and concerns of all parties affected by the unlawful act. Conversely, a juvenile court fulfills its mission to administer “true” justice to the same extent that the court justly and adequately responds, by court decree and enforcement thereof, to these same needs and concerns.

It is impossible for a judge or juvenile justice system to administer “true” justice in a moral vacuum. Legislatures and courts can reflect “true” justice only to the degree that society embraces “true” values. “True” values are those that are in accord with the “Laws of Nature and of Nature’s God.”<sup>15</sup> It follows, then, that the administration of “true” justice requires that laws and court decisions be in accord with God’s nature and character, as revealed in the created order and in the holy scriptures.<sup>16</sup>

God’s Word, the Bible, tells us that God places high value on just determinations in personal and societal affairs of mankind: “He has shown you, O man, what is good; And what does the LORD require of you But to do justly, To love mercy, And to walk humbly with your God?”<sup>17</sup> Also, in the biblical parable of the persistent widow, Jesus Christ deemed a judge “unjust” because the judge neither “feared

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14. See *supra* text accompanying notes 5-6 (noting the juvenile justice system’s mandate to “save kids”).

15. THE DECLARATION OF INDEPENDENCE para 1 (U.S. 1776).

16. Herbert W. Titus, *The Law of our Land*, 6 J. CHRISTIAN JURIS. 61 (1986). See also 1 WILLIAM BLACKSTONE, COMMENTARIES \*42 (discussing the illegitimacy of human law that contradicts God’s law as revealed in nature and scripture).

17. *Micah* 6:8 (New King James).

God" nor "respected man."<sup>18</sup> We should not be too quick to gloss over the importance of what is revealed in this text, as to why Christ deemed the judge "unjust."<sup>19</sup> The importance of this Scripture is that it reveals, from God's perspective, the *sine qua non* of any true system of justice, and the qualifications of those persons whom God charges with the responsibility of administering justice: the qualities of "fearing God" and of "respecting man."<sup>20</sup>

First, a "fear of God" is an understanding of, appreciation for, and willingness to function under God's premise that earthly systems of justice derive their legitimate authority from God, not from man.<sup>21</sup> As such, administrators of justice are stewards of the good things of God, who gives Law to mankind as a gift of His grace, for man's

18. The parable states:

There was in a city a judge, which *feared not God, neither regarded man*. And there was a widow in that city; and she came unto him, saying, Avenge me of mine adversary. And he would not for a while: but afterward he said within himself, Though I fear not God, nor regard man; yet because this widow troubleth me, I will avenge her, lest by her continual coming she weary me. And the Lord said, Hear what *the unjust judge* saith. And shall not God avenge his own elect, which cry day and night unto him, though he bear long with them? I tell you that he will avenge them speedily. Nevertheless when the Son of Man cometh, shall he find faith on the earth?

Luke 18:2-8 (King James) (emphasis added).

19. Luke 18:6.

20. See *supra* note 18 and accompanying text (explaining the parable of the unjust judge).

21. The Bible states:

Let every soul be subject unto the higher powers. *For there is no power but of God: the powers that be are ordained of God*. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he *beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil*. Wherefore ye must needs be subject, not only for wrath, but also *for conscience sake*. For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour. Owe no man anything, but to love one another: *for he that loveth another hath fulfilled the law*.

Romans 13:1-8 (King James) (emphasis added).

well-being.<sup>22</sup> Accordingly, the steward is accountable to God to exercise the stewardship in accordance with His character and precepts.<sup>23</sup>

Second, if we are to have true justice in the affairs of mankind, the steward of the administration of justice must also “respect” man, that is “care for” or “have regard for” other people. Accordingly, those charged with the administration of justice must carefully consider the powerful impact that their decisions will have on all persons subject to the court’s authority. Therefore, it is imperative that both judges and justice systems function under the weight of their conscience when administering justice, not only because the steward of justice is accountable to God for such administration, but also because the steward is also fallible, being of “like flesh.”<sup>24</sup>

In light of the above, every system of justice must have due regard for both God and man in its creation and implementation, if it is to serve the ends of true justice. Thus, any justice system desiring to produce truly just results must adopt an appropriate philosophy of justice in its development and administration.

I speak, here, of the importance of pursuing “true” justice as a moral ideal, not for mere academic pondering, but because judges cannot administer “true” justice without the serious pursuit of moral justice. All justice systems should be vitally concerned with producing morally just results, if institutions of justice are to have any real meaning in civilized society. When I speak of “true” justice, I am not speaking of perfect or absolutely complete justice (which is unattainable in this life). Rather, I am speaking of a quality and breadth of justice in actual case dispositions which embodies the same qualities and sensitivities as those of the ideal of moral justice.<sup>25</sup>

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22. “Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful. But his delight is in the law of the Lord; and in his law doth he meditate day and night.” *Psalms* 1:1-2 (King James).

23. “Obey them that have the rule over you, and submit yourselves: for they watch for your souls, as they that must give account. . . .” *Hebrews* 13:17 (King James). See also *Luke* 16:2-12 (Jesus’ parable of the unjust steward who had to give account of his stewardship when he was accused of wasting the rich man’s goods).

24. “As it is written, there is none righteous, no, not one.” *Romans* 3:10 (King James).

25. Examples include the need for personal accountability, the restoration of loss, protection of community, correction and development of the wrongdoers so as to reduce



The ideal of applying "true" justice begs the question: "Whose idea of justice corresponds to true justice?" The delinquent child's? The victim's? The community's in which the child lives? The parents' of the delinquent child? The parents' of a child-victim? Rather than adopting the concerns of just one of these groups, a system that truly "fears God" and "respects man" offers justice for all those affected by crime.

#### IV. THE BALANCED APPROACH: BALANCING DIFFERING MODELS FOR A MORE JUST RESULT FOR JUVENILE OFFENDERS

The "Balanced and Restorative Justice" model for juvenile justice addresses the question of "justice for whom?" by designating the victim, the offender, and the community as the necessary and proper parties to be served by the juvenile justice system.<sup>26</sup> In 1988, a treatise outlined the Balanced Approach as a framework for addressing juvenile probation.<sup>27</sup> In the years that followed, interest in the Balanced Approach expanded from a framework for juvenile probation to a framework for the entire juvenile justice system.<sup>28</sup> In fact, at least fourteen states, including California and Pennsylvania, have adopted Balanced Approach language in their juvenile justice codes.<sup>29</sup> Several juvenile courts in Ohio, including my own, have adopted or are using the Balanced Approach as the model for administering justice. Also, the Ohio Department of Youth Services, which houses felony delinquents committed to its care from the various Ohio Juvenile Courts, is currently in the process of developing and implementing a "Balanced and Restorative Justice" perspective within its programs of residential care. In order to understand the significance and philosophy of the "Balanced and

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repeat behavior. See *infra* text accompanying notes 43-91 for the discussion of the Balanced Approach factors.

26. Gordon Bazemore, *What's New About the Balanced Approach?*, JUV. & FAM. CT. J., Winter 1997, at 1-2.; see also U.S. DEPT. JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, BALANCED AND RESTORATIVE JUSTICE FOR JUVENILES 7 (1997) [hereinafter BARJ].

27. Bazemore, *supra* note 26, at 1 (citing Dennis Maloney, et al., *The Balanced Approach to Juvenile Probation*, JUV. & FAM. CT. J., Summer 1988, at 1 (1988)).

28. *Id.*

29. *Id.*

Restorative Justice” model to juvenile justice, it is important to first consider the main philosophies or models of juvenile justice that have impacted juvenile justice systems to the current day: the rehabilitative justice model and the retributive justice model.

### *A. The Rehabilitative or “Treatment” Justice Model*

The “rehabilitative justice model,” or “treatment model,” of juvenile justice focuses on the delinquent child as needing “treatment” because he is a “victim” of his condition or circumstances.<sup>30</sup> Its primary focus is to render psychological, social, and other services in order to “fix” the child.<sup>31</sup> A narrow application of the rehabilitative approach reveals several justice-related weaknesses. First, this approach generally fails to adequately address the justice needs of the victim and of the community where the crime occurred.<sup>32</sup> Second, it tends to foster passivity.<sup>33</sup> Third, it generally fails to adequately address the issue of personal accountability.<sup>34</sup> Finally, community safety may be jeopardized by focusing primarily on offender treatment, without giving adequate attention to the other factors given priority by the Balanced Approach.<sup>35</sup> The rehabilitative approach, as a whole, is inadequate because it is one-dimensional, it tends to minimize the significance of personal accountability,<sup>36</sup> and it fails to provide goals for helping the victim and the community.<sup>37</sup>

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30. BARJ, *supra* note 26, at 26.

31. *Id.*

32. See Bazemore, *supra* note 26, at 10 (discussing the inadequacies of the rehabilitative or “treatment” approach).

33. *Id.* at 3. For example, the child only passively attends counseling or rehabilitation programs where experts treat him. *Id.* In contrast, under the Balanced Approach, the child may actively work in the community or for his victim to acquire the skills needed to function in society. See *infra* text accompanying notes 63-68 (explaining competency development under the Balanced Approach).

34. See BARJ, *supra* note 26, at 9, 27 (explaining that the child who is told that the crime is not his fault cannot assume active responsibility for the harms he has inflicted).

35. See *infra* text accompanying notes 72-91 (explaining how the Balanced Approach protects the community).

36. BARJ, *supra* note 26, at 26.

37. See Bazemore, *supra* note 26, at 10 (discussing shortcomings of both the rehabilitative and retributive approaches).

### B. The Retributive Model of Justice

"Retributive justice," as a system response to juvenile delinquency, focuses primarily on punishment.<sup>38</sup> The underlying concept of this model is that the amount and type of punishment determines whether a case disposition served justice in any particular case.<sup>39</sup> People who simplistically hold to retribution as the "end-all" approach to stopping juvenile crime are usually quick to criticize juvenile courts for being "too lenient," or for only "slapping the hands" of delinquent children. There is no question that punishment, administered in appropriate ways and in responsible measure, does constitute an important part of many dispositional plans. However, punishment alone or punishment administered reactively but not responsibly, is not an effective means to eradicate juvenile delinquency. In fact, in some cases, punishment does more harm than good, especially if not administered as part of a comprehensive dispositional plan involving some positive aspects in responding to the child. Further, in many other cases, punishment alone achieves no long-term benefits, because punishment alone is a relatively ineffective vehicle for producing and maintaining long-term positive behavior. This is especially true of the many attention-deficit, hyperactive, or other impulse-impaired children that juvenile judges regularly see in their courts.

Generally speaking, a purely punitive approach to juvenile justice also results in a court only considering the offender. Thus, the court thereby fails to adequately address the important justice needs of other parties who have been affected by the unlawful act, such as the victim of the crime and the community where the crime occurred.<sup>40</sup> A retributive justice response may assuage the frustrations or anger of the victim or the public.<sup>41</sup> However, its primary weakness, as a system response to delinquency, is that it lacks sufficient positive or restorative aspects which would otherwise serve the needs and

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38. BARJ, *supra* note 26, at 24.

39. *Id.* at 25.

40. See Bazemore, *supra* note 26, at 10 (showing how the retributive approach ignores the victim and community).

41. Allowing public's fear of juvenile crime waves (see *supra* note 1 and *infra* note 73) to drive a system of justice is dealt with unfavorably in THE ABA MODEL CODE OF JUDICIAL ETHICS CANON 3(B)(5). See *supra* note 8.

concerns of the victim, the offended community, and the offender. In the final analysis, the retributive justice model is shortsighted, generally ineffectual in reducing recidivism, and lacks depth and breadth in delivering a truly “just” response for all parties concerned.

### *C. The Balanced and Restorative Justice Model*

The “Balanced and Restorative Justice Model,” on the other hand, is three-dimensional and full-orbed. It considers the needs and concerns, not only of the delinquent child, but also of the victim and of the local community, in seeking to produce a truly just result.<sup>42</sup> “Balance,” in this model, does not mean simply providing equal doses of punishment or treatment at the dispositional level. Rather, “balance” means providing, at the system level, equal or proper consideration to the broader needs and concerns of all persons or entities that have been directly or indirectly impacted by the unlawful behavior.<sup>43</sup> The intended outcome is, of course, not simply to create a greater sense of “justice” in the theoretical sense. Instead, the goal of the Balanced Approach is to provide appropriate and meaningful responses, in the form of judicial case dispositions, to all who have been impacted by the delinquent behavior.<sup>44</sup> This includes restoration of loss and a sense of vindication for the victim, safety for the community, and accountability and competency development for the delinquent child.<sup>45</sup> In fact, the authors of the Balanced Approach have designated personal accountability, competency development, and community protection as the three primary objectives of an effective system based on the “Balanced and Restorative Justice Model.”

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42. See Bazemore, *supra* note 26, at 6-7 (discussing in Table 1 how offenders, victims, and communities all benefit).

43. *Id.* at 2.

44. *Id.* at 3.

45. See *id.* (explaining the three areas of the Balanced Approach: accountability, competency, and community protection).

## 1. Personal Accountability

Under the Balanced Approach, juvenile offenders are viewed as responsible actors.<sup>46</sup> Offenders actively assume personal responsibility for their wrongdoing by actively making amends to restore the victim's loss.<sup>47</sup> The "accountability" factor is most beneficial to offenders, victims, and communities when the victim and the community are, to some degree at least, active participants in determining what would be an appropriate sanction under the circumstances.<sup>48</sup> Traditionally, juvenile courts have tried to instill accountability with punishments, such as writing essays, obeying curfews, or complying with drug screening.<sup>49</sup> However, the Balanced Approach is unique because "the offender's obligation is defined primarily as an obligation to his victims rather than to the State."<sup>50</sup> Thus, merely holding the offender accountable without attempting to restore the victim does not satisfy the underlying values of the Balanced Approach's accountability factor.<sup>51</sup> Rather, specific sanctioning options that do comport with the underlying values of the accountability factor include the following: restitution, community service, personal assistance for the victim, victim/offender mediation, victim impact panels, and victim/offender groups at correctional facilities.<sup>52</sup>

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46. See *id.* ("It is much more difficult—and important—to get [offenders] to take responsibility.").

47. *Id.*

48. *Id.*

49. *Id.*

50. Gordon Bazemore & Susan E. Day, *Restoring the Balance: Juvenile and Community Justice*, JUV. JUST., Dec. 1996, at 3, 7.

51. *Id.*

52. BARJ, *supra* note 26, at 25. All of these sanctions should involve direct input from the victim where possible. *Id.* The community involvement in sanctioning is important because the community is always an indirect victim of juvenile crime. *Id.* at 23. When victims are allowed to have direct input, such as suggesting the amount of restitution or participating in victim/offender mediation, they are often less concerned with punishing the offender and more concerned that someone

recognize the trauma they have been through . . . [T]hey need to express that, and have it expressed to them; they want to find out what kind of person could have done such a thing, and why to them; and it really helps to hear that the offender is sorry—or that someone is sorry on his or her behalf.

Although both the purely punitive approach and the personal accountability factor involve sanctioning, the accountability factor is not just purely punishment.<sup>53</sup> The accountability factor of the Balanced Approach is different from the purely punitive approach in its values, goals, and practice priorities.<sup>54</sup> While the punitive approach values punishing the offender in order to hold him accountable to the system, the Balanced Approach values restoring the victim in order to hold the offender accountable to the victim and to the community.<sup>55</sup> The goal of a purely retributive approach is generally to punish as many offenders as possible, swiftly, certainly and severely.<sup>56</sup> In contrast, the goal of “accountability” is to restore and involve as many victims as possible, and make as many offenders as possible aware of the real harm that their crimes have inflicted.<sup>57</sup> Another goal is to send a clear message to the offender that his actions have consequences, that he has wronged another human being, that he is responsible for his actions, and that he is capable of repairing the harm.<sup>58</sup>

“Accountability” also differs in practice priorities from purely punitive sanctioning. Incarceration and surveillance, and the formal processes required to implement them, are often central to retributive justice.<sup>59</sup> In contrast, “accountability” substitutes more informal processes like negotiation and mediation to create a “mutually satisfactory agreement based on the active input of victims, offenders, and the community (including the offender’s family and other

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Bazemore, *supra* note 26, at 8 (citations omitted).

53. Bazemore, *supra* note 26, at 4 (In describing current attitudes equating accountability and punishment, an example of one response equating accountability with punishment was, “Accountability? Oh yeah (sic), that’s our detention center and our jail tours.”).

54. BARJ, *supra* note 26, at 24.

55. *Id.* at 23-24. The state’s (not the community’s) interest is secondary in this Balanced Approach model, rather than primary as in a retributive criminal justice model. In this system, the state, of course, still retains an interest in the fairness, meaningfulness and appropriateness of sanctions. *Id.* at 23.

56. *Id.* at 24.

57. *Id.*

58. *Id.* at 25-26. In contrast, retributive punishment often sends the offender the message that he is bad, and that swift and severe punishment will deter him from committing future crimes. *Id.* at 26.

59. *Id.* at 22, 25.

relevant adults), rather than on achieving the adversarial goal of fixing blame."<sup>60</sup>

The Balanced Approach's accountability factor also differs from the "sanctions" associated with a purely rehabilitative model. Neither punishment nor treatment is the primary goal of the accountability factor. When treatment is the only means to sanction offenders and hold them accountable, offenders receive the message that they "are sick or disturbed" and that their behavior is not their fault.<sup>61</sup> While rehabilitating the juvenile is of vital importance in the Balanced Approach, it is more appropriately considered under the "competency development" factor, rather than as a means of holding the juvenile responsible to the victim and community under the personal accountability factor.<sup>62</sup>

## 2. Competency Development

Although the rehabilitation approach and the competency development involve "helping the child," competency development is not the rehabilitative approach reduced to one factor. Under the Balanced Approach, "competency development" improves an offender's self-esteem by engaging him in productive activities.<sup>63</sup> The competency development factor focuses on giving the offender new skills for long-term development through activities like work experience.<sup>64</sup> Treatment is incorporated into competency development as supplemental, rather than as the primary objective of the system.<sup>65</sup> For example, traditional treatment measures include drug abuse

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60. *Id.* at 25, 27. These negotiation and mediation sessions often result in agreements for appropriate sanctions. This adds additional goals for accountability: "the number of reparative settlement agreements negotiated and completed; [and the] promptness and quality of completion of restorative requirements." *Id.* at 24. Reliance on informal processes is still consistent with the due process protections "intended to protect the offender from the abuses of unrestricted retribution . . ." *Id.* at 27.

61. *Id.*, at 26.

62. *See id.* at 27-29 (discussing competency development more fully). *See also infra* notes 63-71 and accompanying text (discussing competency).

63. BARJ, *supra* note 26, at 27-29. "To develop a legitimate identity, young people must gain a sense that they are useful, that they belong to their community and conventional groups within it, that they can make meaningful contributions, and that they have some power over what happens to them." *Id.* at 28.

64. *Id.* at 29.

65. *Id.* at 28.

counseling, anger management, and decision-making skill training. Under the Balanced Approach, these measures are still used, but only as a means to improve the juvenile's productivity when he is working in the community.<sup>66</sup> Making offenders more productive members of society also helps to restore a sense of safety in the community.<sup>67</sup> In practical application, work experience is essential to satisfying the competency development factor.<sup>68</sup> Work experience includes youth service as peer drug educators or recreational aids, workers in recycling and community beautification projects, helpers for the elderly, and tutors for younger children.

Additionally, "competency development" does not, as a concept, involve punishment. While punishment, rightly administered and rightly measured, has a legitimate place in the administration of juvenile justice, it more appropriately falls under the personal accountability factor.<sup>69</sup> The primary goal of competency development is not the short-term benefits which may result from the proper use of punishment. Rather, the goal is to draw upon the fundamental human needs of belonging and self-worth, as instrumental in enhancing long-term positive behavior and personal growth.

Under the Balanced Approach, administrators must assess and discover the personal, social, emotional, psychological, and educational strengths and deficiencies of a child. By assessing a delinquent child's strengths, the juvenile court can enter a dispositional decree which will use the child's own strengths to enhance his positive development. By assessing the juvenile's deficiencies, disabilities, or both, the court can provide appropriate responses, which will enhance the child's ability to function responsibly in daily life. Accordingly, a court must give proper attention to educational deficiencies (such as the inability to read) or to psychiatric disorders (such as manic-depressive disorder), if any child with such a need, deficiency, or disorder is to experience any meaningful opportunity to grow into responsible, healthy adulthood.

The importance of "competency development" cannot be overstated. Its primary focus is to administer a case disposition which

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66. *Id.*

67. *Id.* at 30.

68. *Id.* at 29.

69. *See supra* notes 46-62 and accompanying text (discussing accountability).



affords the child a meaningful opportunity to grow into responsible adulthood. Central to this concept is enhancing a child's capacity to do something well that others value, by incorporating positive opportunities to gain skills into the case disposition.<sup>70</sup> This factor is crucial to the child's personal development, as personal and public affirmation enhances a person's sense of self-worth.<sup>71</sup> Improving self-worth is an important ingredient in reducing recidivism because the human need for a sense of self-worth is vital to healthy human development. It is much more effective to catch the wind in the sail of a boat and propel it along its desired course, than to never raise the sail and thereby miss the opportunity to harness the wind's power. Likewise, promoting long-term positive behavior requires discovering those human needs, resources, and dynamics which promote wholeness and personal well being.

Additionally, the preservation and enhancement of a sense of hope within a child is fundamentally important to the competency development dimension. When hope exists within a child, a court always has the opportunity to cause that hope to burst into something brighter and more powerfully productive. However, when a sense of personal hopelessness exists, no amount of treatment, programming, or other response can properly engage a child's inner resources and strengths to move that child towards wholesome and responsible adulthood. Accordingly, competency development must provide a genuine sense of hope for a child. The significance and power in providing this essential ingredient cannot be overestimated.

### 3. Community Protection

"Community protection" is the third factor of the Balanced Approach.<sup>72</sup> Public fear has been instrumental in the shift from a rehabilitation-focused juvenile court to a retributive-focused juvenile court.<sup>73</sup> Punishment and public safety are inextricably woven

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70. Bazemore, *supra* note 26, at 3.

71. See BARJ, *supra* note 26, at 28 (discussing improvements to self-image).

72. See *id.* at 30-32 (discussing community protection).

73. A newspaper article notes:

[A] nation panicked at the rising violence of youth crime, and frustrated with a juvenile justice system that often fails either to protect or to rehabilitate . . . Stiff

together in the purely punitive approach's focus on incarcerating a high number of juvenile offenders in secure facilities.<sup>74</sup> Under the Balanced Approach, juvenile court personnel must assess each offender's potential threat to the community.<sup>75</sup> By considering the threat each individual presents to the community, a rational assessment of risk, rather than public fear, determines the type of confinement.<sup>76</sup> Secure confinement is required for those with a high risk of endangering the community.<sup>77</sup> However, there are more creative and cost-effective solutions than secure confinement for those who do not present a clear risk of danger to the community.<sup>78</sup> Specific examples include structuring the juvenile's free time while on home probation, and developing clear sanctions for non-compliance with probation agreements.<sup>79</sup>

The ultimate goal of any measure considered to satisfy the community protection factor should be to improve the community's feeling of safety. This can be done by actively increasing the community's capacity to "supervise youthful offenders and prevent delinquency."<sup>80</sup> Community protection can be enhanced by neighborhood dispute resolution programs, school mediation, gang mediation, parent/child mediation, conflict resolution training in

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penalties have popular appeal. In a U.S.A. TODAY/ GALLUP Poll, 60 percent favor executing teen murderers. And at least 19 states plan get-tough changes in juvenile codes. . . . But critics say most get-tough, punitive programs only lock up kids for a while, then send them back as more vicious, proficient criminals.

Sam Vincent Meddis and Patricia Edmonds, *Rehabilitation on a Small Scale; Intensive Programs Save Some Youngsters*, U.S.A. TODAY, Sept. 29, 1994, at A10.

74. See BARJ, *supra* note 26, at 30.

75. See *id.*

76. As the United States Department of Justice has noted:

All of us, victims, offenders, and community members, are caught in a downward spiral where more crime leads to greater fear and increased isolation and distrust among community members, leading to even more crime. Community safety depends primarily upon voluntary individual restraint conditioned by community norms which control harmful behavior and reinforce conventional productive behavior.

*Id.* at 5.

77. *Id.* at 30.

78. *Id.*

79. *Id.* at 30-31.

80. *Id.* at 30.

detention facilities, and by the facilitation of dialogue between offenders and victims and their families.<sup>81</sup> Additionally, resources must be devoted to fostering partnerships with local police in order to decrease the community's fear in the most dangerous neighborhoods.<sup>82</sup>

A powerful example of how facilitating dialogue between offenders, victims, their families and their school can increase public safety by restoring delinquents to their communities recently took place in my jurisdiction. Richland County, Ohio, where my court sits, recently launched a pilot mediation program.<sup>83</sup> The Court of Common Pleas hired a full-time mediator to resolve disputes in a less adversarial setting, although the court retained control over the mediation outcome.<sup>84</sup> The mediator's first dispute resolution involved teenagers who had stolen their friends' clothes, pagers, backpacks, and jewelry out of the school locker room.<sup>85</sup> The victims were very hurt and angry that their friends could have stolen from them.<sup>86</sup> However, the mediation session broke down the tension by allowing the victims to ask "why" and see the repentance of the offenders, who will serve one year in a juvenile detention facility for this and other felony crimes.<sup>87</sup> In the end, the victims, who were threatening violence as revenge against the offenders, truly forgave their friends.<sup>88</sup> As noted above, a divided community fraught with suspicion and fear is much less safe than a community that acts as a whole to hold each other accountable.<sup>89</sup> Thus, reconciliation between these victims and offenders had a practical impact on community protection.

Further, the most practical step in improving community protection involves structuring the free time an offender could normally use to engage in crime.<sup>90</sup> Elements of the other two

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81. *Id.* at 31.

82. *Id.*

83. Ann M. Mack, *New Mediator Seeks Peace Outside Court*, MANSFIELD NEWS J., Dec. 17, 1997, at 1A.

84. *Id.*

85. Ann M. Mack, *Face to Face with Thieves, Teens Forgive*, MANSFIELD NEWS J., Dec. 17, 1997, at 1A.

86. *Id.*

87. *Id.*

88. *Id.*

89. See *supra* note 76 and accompanying text (noting how close communities can deter crime).

90. BARJ, *supra* note 26, at 31.

dimensions, personal accountability (e.g., via community service) and competency development (e.g., via work experience), may occupy much of this time.<sup>91</sup>

#### V. THE FINAL ANALYSIS: THE BALANCED APPROACH WITHIN A MORAL FRAMEWORK OF JUSTICE

Within the framework of “true” justice, focusing on either rehabilitation or punishment alone does not satisfy the multi-faceted biblical perspective on justice. The definition of a just judge in Luke’s gospel as one that “fears God” and “respects man” shows that a judge must both “execute wrath” for wrongdoing<sup>92</sup> and be merciful and consider the needs of the juvenile before the court.<sup>93</sup> When a juvenile requiring special attention appears before the court for delinquent behavior, the judge has a duty and opportunity to “[t]rain up a child in the way he should go.”<sup>94</sup> However, the juvenile judge striving for “true” justice cannot abdicate his role to hold the juvenile responsible for his actions as an accountable moral agent.<sup>95</sup> Thus, “true” justice requires that elements of both retribution and rehabilitation be considered, rather than focusing on one to the exclusion of the other. Regardless, the pursuit of “true” justice requires a focus which goes beyond the basic rehabilitation and punishment considerations.

The Balanced Approach attempts to administer a more comprehensive justice that acknowledges the value God places on both justice and mercy.<sup>96</sup> Additionally, the Bible expounds on these two core values and lends support to the need for a juvenile justice system that considers the three factors given priority in the Balanced Approach.

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91. *Id.*

92. *Romans* 13:1, 4 (King James).

93. *See supra* notes 18-24 and accompanying text (discussing the qualities of a “just” judge).

94. *Proverbs* 22:6 (King James). This is true especially in light of the original *patris* mission. *See supra* note 4.

95. *See supra* text accompanying notes 63-64 for a comparison of the rehabilitative model’s underlying goals and values with the role of competency development under the Balanced Approach.

96. *See Micah* 6:8 (explaining that God wants his people to be humble, merciful, and just). *See supra* text accompanying note 17.

First, under "personal accountability," punishment, administered fairly and in accord with God's principles of justice, is essential to justice.<sup>97</sup> And, punishing an offender with restitution to the victim corresponds to punishments under the Mosaic law.<sup>98</sup>

Second, under "competency development," God places significant value on avoiding idleness, which can quickly develop into delinquent behavior when coupled with juvenile peer pressure.<sup>99</sup> Additionally, the scriptures even associate work experience, one of the main avenues for fulfilling the "competency development" factor, as an important element towards promoting law-abiding behavior.<sup>100</sup> The juvenile court, as mentioned earlier, also has the opportunity to "train up a child in the way he should go" under the *parens patriae* doctrine.<sup>101</sup>

Finally, I believe that, in implementing the Balanced Approach to juvenile justice, community protection should always remain the most important factor. And, if proposed or desired measures concerning personal accountability or competency development seriously jeopardize community protection during their implementation, then,

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97. "Withhold not correction from the child: for if thou beatest him with the rod, he shall not die. Thou shalt beat him with the rod, and shalt deliver his soul from hell." *Proverbs* 23:13-14 (King James).

98. See *Exodus* 22:1-17 (showing various offenses and the restitution required).

99. "Behold, this was the iniquity of thy sister Sodom, pride, fullness of bread, and abundance of idleness was in her and her daughters, neither did she strengthen the hand of the poor and needy." *Ezekiel* 16:49 (King James) (emphasis added). This passage not only shows the Lord's disapproval of idleness, but also the Lord's placement of value on strengthening the hand of those that are not equipped with the skills and necessities to function successfully in life. *Id.* Additionally, the Lord has always recognized the power of peer pressure in a juvenile's life and cautioned him against following the evil crowd. *Proverbs* 1:10 (King James) ("My son, if sinners entice thee, consent thou not."). See generally *Proverbs* 1: 10-19.

100. "Let him that stole steal no more: but rather let him labour, working with his hands the thing which is good, that he may have to give to him that needeth." *Ephesians* 4:28 (King James). Perhaps this is true because when a delinquent is involved in this type of productive activity he does not have as much time for idleness. See *supra* note 99 (discussing idleness).

101. A juvenile disposition that lacks any positive development skills is akin to saying "[d]epart in peace, be ye warmed and filled" to a person who has no clothes and is starving, without giving him any food or clothing. *James* 2:16 (King James). The Bible asks, in regard to the food and clothing analogy, "What doth it profit?" *Id.* To punish a juvenile and command him never again to engage in unlawful behavior, without attempting to equip him with skills that would assist him to be and remain a law-abiding person, would similarly be of little practical value.

in that event, community protection should always prevail. Notwithstanding that fact, the community protection factor must be analyzed in a manner consonant with the other two Balanced Approach factors of personal accountability and competency development. God established civil authority so that men could lead a "quiet and peaceable life."<sup>102</sup> And Jesus also placed value on peace and order when he said, "Blessed are the peacemakers: for they shall be called the children of God."<sup>103</sup> In fact, God established and ordained the Mosaic law in order to establish peace in the Promised Land.<sup>104</sup> Thus, God highly values protecting His people, as He Himself is the Good Shepherd.<sup>105</sup> And being a steward of God's principles, a "just" judge must give the same high regard for community protection.<sup>106</sup> Accordingly, in implementing the Balanced Approach, the goals of personal accountability (of the child) and competency development (concerning the child) should always be considered within the context of providing appropriate community protection.

## VI. CONCLUSION

In a time when legislators, critics and the public at large are growing more reactionary to the problem of juvenile crime, to the extent that the future of the separate juvenile court system is now in question, it is imperative that those of us entrusted with the administration of juvenile justice carefully and courageously pursue development of a system of justice which truly honors the rightful concerns of both God and man.

Man is entrusted by God with the responsibility to administer justice in this world, not in accordance with his own thoughts, but in

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102. Paul asks Timothy to pray: "For kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty." *1 Timothy* 2:2 (King James).

103. See *Matthew* 5:9 (King James) (praising those who make peace).

104. See *Deuteronomy* 6:1-19 (The Lord promises to bless the Israelites and cast out their enemies if they keep his commandments and teach them diligently to the children to guide future generations.).

105. Jesus explains the parable of the Good Shepherd by saying, "I am the good shepherd, and know my sheep, and am known of mine." *John* 10:14 (King James).

106. See *supra* note 24 and accompanying text (noting that those in authority are accountable to God for their subjects).

accordance with "righteousness."<sup>107</sup> If any man-made system of justice is to further the ends of true justice, it must have embodied within it those values and perspectives that are in accord with the nature and character of God. Without a commitment to those values revealed in the natural law and the Bible, any system of justice will fail to serve its intended high purpose.<sup>108</sup>

A just system of justice requires the development and implementation of a philosophy of justice that is consistent with these values. Any philosophy of justice which does not give full consideration to the two-fold aspect of "fearing God" and "respecting man" will fail to adequately address and respond to God's perspective of what constitutes a legitimate man-made system of justice.<sup>109</sup> Further, any philosophy of justice which fails to adequately consider all persons or entities affected by an unlawful act will, to that extent, fail to adequately address and respond to the needs of all persons who are entitled to justice. The Balanced Approach to juvenile justice is a viable and effective approach to administering juvenile justice in accordance with those values and perspectives that are consistent with moral justice.

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107. See *Micah* 6:8, *supra* note 17 and accompanying text (discussing just determinations in personal and societal affairs); see also *Leviticus* 19:15 (King James) ("Ye shall do no unrighteousness in judgment: thou shalt not respect the person of the poor, nor honour the person of the mighty: but in righteousness shalt thou judge thy neighbour;") *John* 7:24 (King James) ("Judge not according to the appearance, but judge righteous judgement.").

108. "Thy kingdom come. Thy will be done on earth as it is in heaven." *Matthew* 6:10 (King James).

109. See *supra* note 18 and accompanying text (discussing the parable of the unjust judge).