

Social Policy Report

Giving Child and Youth Development Knowledge Away

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Adolescents as Adults in Court: A Developmental Perspective on the Transfer of Juveniles to Criminal Court

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Summary

For the past 100 years, American society has treated most juvenile infractions as matters to be adjudicated as delinquent acts within a separate juvenile justice system designed to recognize the special needs and immature status of young people and emphasize rehabilitation over punishment. In recent years, however, there has been a dramatic shift in the way juvenile crime is viewed by policy-makers and the general public. Rather than choosing to define offenses committed by youth as delinquent, society is increasingly opting to deal with young offenders by redefining these juveniles as adults and adjudicating their cases in criminal court. Approximately 200,000 individuals under the age of 18 are tried in criminal court annually in the United States.

This *Social Policy Report* examines the transfer of juveniles to the adult system from a developmental perspective. Three specific questions guide our analysis:

1. Are juveniles competent to stand trial as defendants in an adversarial criminal court proceeding?
2. Are juveniles, by virtue of developmental immaturity, less blameworthy than adults, and if so, do they deserve less or different punishment than adults for comparable crimes?
3. Are juveniles more amenable to treatment than adults and therefore poorly served within a criminal justice system whose main response to crime is punishment, or are juveniles no more likely to profit from rehabilitation than older offenders?

For each of these questions, we examine what we know about the development of the underlying capacities and competencies presumed to affect adjudicative competence, criminal culpability, and amenability to treatment and ask whether it is possible to draw bright-line, chronologically-based boundaries that reliably distinguish juveniles from adults.

Although psycholegal research that directly examines these questions is needed, indirect evidence, drawn from studies of normative cognitive and psychosocial development, raises serious concerns about the transfer of individuals under 13 to adult court. At the other end of the continuum, it is likely that the vast majority of individuals 17 and older are not appreciably different from adults in ways that would prohibit their fair adjudication within the criminal justice system. We conclude that variability among individuals between the ages of 13 and 16 requires that some sort of individualized assessment of an offender's competence to stand trial, blameworthiness, and likely amenability to treatment be made before reaching a transfer decision.

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From the Editors

In this issue, Drs. Steinberg and Cauffman review work emerging from a MacArthur Foundation Network dealing with the criminal treatment of youth offenders. There has been a tendency in recent years to treat juveniles as adults, particularly if the crime is egregious such as murder. This article reviews the developmental implications of such an approach, illustrating the necessity of considering developmental processes (e.g., the extent to which an individual has the competency to be held blameworthy) when implementing policy or altering it. It demonstrates how critical it is that we consider both development and what we know from research as we implement policy changes in such areas.

For example, the recent tendency to get tough on adults committing crimes has been extended to youth. This approach has not been adequately attentive to what we know from research. Growth in the violent crime rate has paralleled the growth in incarceration rate. If incarceration impacted the crime rate, we would expect the crime rate to decrease as incarceration increased. It has not. Similarly adolescence is a time of experimentation; this also applies to aggression. There is an increase in aggression during adolescence. For most youth, the level of aggression declines as the youth move into young adulthood. It does not decline for young African American males—unless they have a stable job or a stable relationship. This work by Delbert Elliot, University of Colorado, implies that assistance with the transition to adulthood might have more impact on the crime rate than incarceration. Research indicates that the most effective approach to policy may not always be the most direct one.

If what we know about youth development from research is applied to criminal proceedings, youth of all ages are more likely to be treated fairly and appropriately for their developmental level. By treating youth appropriately we reduce the likelihood that they will enter a lifetime career of crime and thereby contribute not just to the well-being of youth but also to reducing crime.

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Adolescents as Adults in Court: A Developmental Perspective on the Transfer of Juveniles to Criminal Court¹

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Few issues challenge a society's ideas about both the nature of human development and the nature of justice as much as serious juvenile crime. Because we neither expect children to be criminals nor expect crimes to be committed by children, the unexpected intersection between childhood and criminality creates a dilemma that most people find difficult to resolve. Indeed, the only ways out of this problem are either to redefine the offense as something less serious than a crime or to redefine the offender as someone who is not really a child (Zimring 1998).

For the past 100 years, American society has most often chosen the first approach – redefining the offense – by treating most juvenile infractions as matters to be adjudicated as delinquent acts within a separate juvenile justice system designed to recognize the special needs and immature status of young people and emphasize rehabilitation over punishment. When a five-year-old shoots his sister with a gun, few argue that the child's behavior is criminal. When a 25-year old does this, few argue that it is *not* criminal. The presumption behind the juvenile justice system is that, while teenagers are certainly more mature than five-year-olds, the same factors that make them ineligible to vote or to serve on a jury require us to treat them differently than adults when they misbehave.

In recent years, however, there has been a dramatic shift in the way juvenile crime is viewed by policy-makers and the general public. Rather than choosing to define offenses committed by youth as delinquent, society is increasingly opting to deal with young offenders by redefining these juveniles as adults.

This trend is clearly reflected in the growing number of juveniles whose cases are being adjudicated in adult criminal court, either by statute (i.e., where a state's law calls for the automatic filing of certain charges in criminal court, even when the offender is a juvenile, or where the state's boundary between juvenile and criminal court simply is drawn at an age below 18), prosecutorial discretion (i.e., where a state permits a prosecutor to charge a juvenile in adult court, if circumstances are believed to warrant it), or judicial waiver (i.e., where a judge determines that the appropriate venue for a juvenile's adjudication is criminal, not juvenile, court). Precise estimates of the numbers of juveniles tried in criminal court are difficult to come by, but most experts agree that the numbers have risen in recent years. Today, approximately 200,000 individuals under the age of 18 are tried in criminal court annually in the United States.

In 1997, the John D. and Catherine T. MacArthur Foundation launched its Research Network on Adolescent Development and Juvenile Justice to examine, from a developmental perspective, a range of issues related to the treatment of juvenile offenders within the justice system. Among the Network's many research projects currently underway are studies of age differences in individuals' competence to stand trial in criminal court, of the perceived and actual criminal blameworthiness of children and youth,

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of the developmental trajectories of serious juvenile offenders and the pathways that lead them out of crime, and of the differential impact of juvenile versus adult sanctions on young people. Two edited volumes produced by the Network, *Youth on Trial: A Developmental Perspective on Juvenile Justice* (Grisso & Schwartz, 2000) and *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (Fagan & Zimring, 2000),

provide further reading for those interested in exploring these issues further.

In this *Social Policy Report*, we apply a developmental perspective to the question of whether and under what circumstances juveniles should be tried as adults. We recognize that many considerations, including concerns about public safety, victims' rights, and retributive justice, are valid components of a discussion of the transfer issue. Nevertheless, we believe that a comprehensive analysis of the matter necessitates some consideration of what we know about adolescent psychological development.

Adjudicating Adolescents as Adults: Developmental Implications

Transferring a juvenile to criminal court has three sets of implications that lend themselves to a developmental analysis. First, transfer to adult court alters the legal process by which a minor is tried. Criminal court is based on an adversarial model, while juvenile court has been based, at least in theory, on a more cooperative model. This difference in the climates of juvenile versus adult court is significant because it is unclear at what age individuals have sufficient understanding of the ramifications of the adversarial process and the different vested interests of prosecutors, defense attorneys, and judges.

Second, the legal standards applied in adult and juvenile courts are different in a number of ways. For example, competence to stand trial is presumed among adult defendants unless they suffer from a serious mental illness or substantial mental retardation. Competence to stand trial is rarely an issue in juvenile court. It is unclear whether the presumption of adjudicative competence holds for juveniles tried as adults, who, even in the absence of mental retardation or mental illness, may lack sufficient competence to participate in the adjudicative process (Grisso & Schwartz, 2000). Standards for judging culpability – the extent to which an individual can be held accountable or blameworthy for damage or injury he or she causes – may be different in juvenile versus adult courts as well. Again, in the absence of mental illness or substantial deficiency, adults are presumed to be responsible for their own behavior. We do not know the extent to which this presumption applies to juveniles.

Finally, the choice of trying a young offender in adult versus juvenile court often determines the possible outcomes of the adjudication. In adult court, the outcome of being found guilty of a serious crime is nearly always some sort of punishment. In juvenile court, the outcome of being found delinquent also may be some sort of punishment, but juvenile courts typically retain the option of a rehabilitative disposition, alone or in combination with some punishment. The difference between possible rehabilitation and certain punishment for the juvenile who is waived to adult court has important ramifications. Rather than face a limited amount of time in a training school, the juvenile on trial in adult court for a serious offense faces the very real possibility of a long

period of incarceration in prison, with potential iatrogenic consequences and increased risk of recidivism after release (see Bishop & Frasier, 2000). Although this argument may not carry weight with those who favor harsh consequences for young offenders for purposes of retribution, from a utilitarian perspective, a punishment that ultimately results in increased offending does not make very much sense. Thus, even if one were to argue that adolescents have the competencies necessary to participate in an adversarial court proceeding and to be held culpable for their actions, one could still question the wisdom of imposing adult-like sanctions on young offenders.

Developmental research is best utilized not to establish a bright-line boundary between adolescence and adulthood, but to point to age-related trends in legally-relevant attributes.

In sum, the significance of having a jurisdictional boundary between juvenile and adult court inheres in the *presumptions* about age and its relation to development that policy-makers and practitioners hold. The juvenile court operates under the presumption that offenders are immature, in three different senses of the word: their development is incomplete, their judgment is callow, and their character is still maturing. The adult court, in contrast, presumes that defendants are mature: competent, responsible, and unlikely to change.² Which of these presumptions best characterizes individuals between the ages of 12 and 17? Is there an approximate age at which the presumptions of the criminal court become more applicable to an offender than the presumptions of the juvenile court?

Because developmentalists have learned a great deal about the transitions that occur between childhood and adulthood in the realms of competence, responsibility, and malleability, their research may be valuable in guiding the formulation of transfer policies founded on scientifically verifiable developmental evidence. This is the good news.

The bad news is that developmental research rarely yields the sorts of dichotomous boundaries that are customarily used to create bright-line age distinctions under the law. Most developmental analyses reveal that development is gradual rather than abrupt, quantitative rather than qualitative, and highly variable among individuals of the same chronological age. Accordingly, developmental research is best utilized not to establish a bright-line boundary between adolescence and adulthood, but to point to age-related trends in legally-relevant attributes, such as the intellectual or emotional capabilities that affect decision-making in court and on the street. These trends can then be used to define legal age

Translating the Transfer Question into Developmental Issues

boundaries that are reasonably consistent with the developmental evidence. This approach may be particularly useful in three pursuits relevant to transfer policy:

1. identifying the lower boundary of the age range below which a particular attribute can be safely assumed to be absent, and which, therefore, would preclude the treatment of younger individuals as adults;
2. identifying the upper boundary of the age range beyond which that same attribute may be safely presumed to be present, and which would recommend the treatment of individuals older than this as adults; and
3. delineating the assessment tools to be used and the guidelines to be applied in making differential recommendations about individuals whose age falls between the two boundaries.

This approach leads to the identification of *three*, not two, categories of individuals for purposes of legal decision-making: *juveniles*, who, in this framework, should be categorically non-transferable to criminal court; *adults*, who should be automatically charged in adult court; and, *youths*, whose transferability to criminal court should be determined not on the basis of the alleged offense, but through forensic evaluation (through competence testing, clinical interviews, etc.). This three-way classification scheme more appropriately recognizes the variability in development among individuals who are in the midst of adolescence and the resulting difficulty in drawing bright-line distinctions on the basis of chronological age.

Where, then, do we put the boundaries that define whether someone is a juvenile, a youth, or an adult? We're pretty sure that 5-year-olds are juveniles, and that 25-year-olds are adults. At what age do we start to doubt that a child should be presumed blameless or less blameworthy? And at what age is that doubt replaced by confidence that, in the absence of special circumstances, the person should be presumed to have the faculties of an adult? The challenge is to define this "gray area" as narrowly as possible, but to leave it wide enough that unwarranted assumptions are not made about youths whose maturity can vary significantly from that of their peers.

The transition from adolescence to adulthood does not occur at a fixed, well-defined age. Not only do different individuals mature at different rates and times, but different abilities may develop at different times as well. Accordingly, instead of asking where to draw the line between adolescence and adulthood for the purposes of making transfer policy, it is more sensible to ask at what ages individuals can be presumed to possess (or to not possess) the various attributes that are potentially relevant to transfer considerations.

To do this, we must be more specific about the aspects of development in question, and we must ask whether, how, and on what timetable these aspects of development change during the transition from adolescence to adulthood. The following three questions seem to us to be the most important:

1. *When do individuals become competent to be adjudicated in an adversarial court context?* This question concerns the proper venue for an adolescent's adjudication. Given the adversarial nature of criminal court proceedings, at what age are adolescents likely to possess the skills necessary to protect their own interests in the courtroom and participate effectively in their own defense?
2. *When do individuals meet the criteria for adult blameworthiness?* This question concerns the appropriate amount of punishment for a juvenile offender who has been judged to have committed the offense in question. Is there an age before which individuals, by virtue of "normal" psychological immaturity, should be considered to be of "diminished responsibility" and therefore held less accountable, and proportionately less punishable, for their actions?
3. *Is there a point in development at which individuals cease to be good candidates for rehabilitation, by virtue of the diminished likelihood of change in the psychological and behavioral characteristics thought to affect criminal behavior or because of diminished amenability to treatment?* This concerns the type of sanction imposed on an adolescent who is deemed responsible, and, more specifically, the relative emphasis placed on rehabilitation versus punishment. A fundamental tenet of

the juvenile justice system is that juveniles can be rehabilitated, because their character is not fully formed. In general, children are presumed to be more malleable than adults, but is there a predictable timetable along which individuals change from relatively changeable to relatively unchangeable?

In the following sections, we review the empirical and theoretical evidence regarding the development of competence, accountability, and amenability. Two categories of evidence are relevant: Direct evidence, while rare, is derived from developmental studies of the actual legal phenomena in question – that is, studies of adjudicative competence, criminal accountability, and amenability to rehabilitation. Indirect evidence is derived from studies of the intellectual and psychosocial phenomena presumed to underlie adjudicative competence, criminal accountability, and amenability to rehabilitation – phenomena such as hypothetical thinking, impulse control, or malleability. Although more research is needed to establish the links between these intellectual and psychosocial phenomena and the legal phenomena they are presumed to underlie, general trends in these domains are nevertheless informative.

Research and Theory on Adjudicative Competence

Two specific types of competencies are needed to be tried in criminal court. First, the individual must be competent to assist counsel. More specifically, the Supreme Court posited in *Dusky v. United States* (1960) that competence to stand trial requires that a defendant have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the proceedings against him.” Second, it has been argued that the individual must also demonstrate “decisional competence”: the ability to make decisions about waiving rights, entering pleas, proceeding *pro se*, etc.; this sort of decision-making competence is more advanced than that set out in the *Dusky* criteria (Bonnie, 1992).

Numerous cognitive and social-cognitive competencies that change during the adolescent years likely underlie the development of adjudicative competence, among them, the ability to engage in hypothetical and logical decision-making (in order to weigh the costs and benefits of different pleas), demonstrate reliable episodic memory (in order to provide accurate information about the offense in question), extend thinking into the future (in order to envision the consequences of different pleas), engage in advanced

social perspective-taking (in order to understand the roles and motives of different participants in the adversarial process), and understand and articulate one’s own motives and psychological state (in order to assist counsel in mounting a defense). Developmental research indicates that these abilities emerge at somewhat different ages, but that it would be highly unlikely that an individual would satisfy all of these criteria much before the age of 12. At the other extreme, research suggests that the majority of individuals have these abilities by age 16 (for analyses of these and other relevant abilities, see Grisso, 1997; Scott, Reppucci, & Woolard, 1995; Steinberg & Cauffman, 1996).

There is ample evidence to raise concerns regarding the competence of adolescents under age 15 to participate in criminal trials.

Although direct research regarding adolescents’ understanding of court proceedings is limited, there is ample evidence to raise concerns regarding the competence of adolescents under age 15 to participate in criminal trials. Much of this literature has been reviewed and summarized by Grisso (1997). Grisso cites a number of studies indicating that, at or below age 15, scores on standardized competence measures generally fall short of the thresholds below which the competence of *adults* is deemed questionable by experts, and that a third or more of 15- and 16-year olds do not have accurate conceptions of what a “right” is. General knowledge regarding trials and the roles of various participants, however, appears to be fairly well developed by age 13, although increases in familiarity with courtroom concepts continue beyond that age. Thus, although the majority of 13-year-olds would likely meet the minimal *Dusky* criteria, more detailed investigations of adolescents’ understanding of their rights and of the implications of courtroom decisions leave little doubt that even at age 15, a significant fraction of adolescents should not be assumed competent to protect their own interests in adversarial legal settings. Several recent cases of young offenders tried as adults, such as those of Nathaniel Brazill (the Florida 14-year-old convicted of having murdered a teacher), or Lionel Tate (the Florida 13-year-old convicted of having killed another child while wrestling with her), in which young adolescents were asked to make decisions about taking the stand in their own defense or accepting a plea agreement, highlight the importance of understanding when, and along what de-

Research and Theory on Culpability

velopmental timetable, individuals develop the capacities necessary to make such complicated courtroom decisions.

It is important to understand the implications of the fact that adolescents may not fully comprehend the meaning of their right to remain silent, or of a decision to accept a plea bargain or take the stand as a defendant. The juvenile court acknowledges diminished competence by having lower (if any) competency standards, by attempting to function in a way that protects the interests of the youngster who may not be able to participate fully in his or her own defense, and by limiting the punitiveness of the punishments to which a less-than-competent defendant might be exposed. The adversarial system of adult criminal courts, in contrast, relies in large part on the competence of the defendant to ensure that his or her attorney has the information necessary to prepare an effective defense, and that the defense is pursued in a manner consistent with the defendant's interests. In the criminal system, it is the defendant who must ultimately make plea decisions and other critical choices throughout the course of a trial.³ If an adolescent does not have the understanding necessary to make such decisions, the perspective to comprehend the long term consequences of such decisions, or the ability to articulate his or her priorities to counsel, criminal court is an inappropriate venue for adjudicating the offense or determining a sentence.

As we noted earlier, debates about whether and at what age juveniles might be tried as adults involve a complex array of concerns, of which developmental considerations relevant to competence are just one set. With respect to adjudicative competence, however, the available evidence regarding the development of relevant capabilities leads us to suggest that no youngster under the age of 13 should ever be tried in adult court. On the other hand, although more research is needed, especially on samples of poor and nonwhite youth, it is likely that the majority of individuals older than 16 would satisfy both the *Dusky* criteria as well as the broader criteria for "decisional competence." Whether and under what circumstances we should transfer *any* adolescents to the adult court is an important and reasonable question to raise, but regardless of the answer, it seems to us that individuals who are between the ages of 13 and 16 should be evaluated to determine their adjudicative competence before a transfer decision is made. (Similar conclusions were reached by Grisso, 1997.)

If adolescents below a certain age are less blameworthy than adults, perhaps they should receive less, or different, punishment as well.

The adult justice system presumes that defendants who are found guilty are responsible for their own actions and should be held accountable and punished accordingly. Historically, those who are guilty but less responsible for their actions (e.g., because of one or more mitigating factors, such as one's mental state at the time of the crime) receive proportionately less punishment (Fagan & Zimring, 2000). It is therefore worth considering whether, because of the relative immaturity of minors, it may be justified to view them as being less blameworthy than adults for the very same infractions – that is, whether developmental immaturity should be viewed as a relevant mitigating factor, in the way that we view mental illness or self-defense. If, for example, adolescents below a certain age cannot foresee the consequences of their actions, or cannot control their impulses, one should not hold them as blameworthy for their actions as one would hold an adult. And if adolescents below a certain age are less blameworthy than adults, perhaps they should receive less, or different, punishment as well.

Diminished responsibility as a result of developmental immaturity is less likely to be an issue in the adjudicatory phase of a juvenile's hearing (i.e., the phase during which innocence or guilt is established) than during the dispositional phase (i.e., the phase during which the sentence or placement is decided), because the threshold for culpability in the context of an adjudication is so minimal – the ability to form criminal intent and the capacity to appreciate the wrongfulness of one's actions. Absent some sort of mental illness or retardation (which if present in a juvenile should merit the same consideration as in the case of an adult), anyone who is 9 can form criminal intent and appreciate the wrongfulness of an action (Rest, 1983). (In fact, casual observation indicates that even 5-year-olds who willfully take each other's toys for their own benefit know that doing so is wrong.) The extent to which culpability is relevant to the transfer question concerns whether or how, during the dispositional phase of a hearing or trial, a juvenile's developmental immaturity is taken into account.

The rehabilitative ideal of the juvenile court argues against adjudicating a juvenile who is characterized by sufficiently diminished responsibility in a criminal court whose only response can be punitive.⁴ Are there age differences in

blameworthiness that are substantial enough to affect legal judgments about culpability? Specifically, is there an age below which we can presume sufficiently diminished responsibility to argue that immaturity is a mitigating factor which should prevent an individual from being tried as an adult? Is there an age beyond which we can presume sufficient maturity of judgment to hold an individual accountable enough to proceed with a trial in an adult venue and expose the person to the possibility of adult punishment?

Many of the cognitive and social-cognitive capabilities that are potentially relevant to the assessment of blameworthiness are the same as those that are relevant to the assessment of adjudicative competence. In order to be fully accountable for an act, for example, a person must commit the act voluntarily, knowingly, and with some ability form reasonable expectations of the likely or potential consequences of the act (Scott & Grisso, 1997). In this respect, logical decision-making and the ability to foresee the future ramifications of one's decisions are important to determinations of blameworthiness, just as they are to determinations of adjudicative competence. As we indicated in our earlier discussion of adjudicative competence, it is reasonable to assume that the average individual would be unlikely to have developed these abilities before age 12, but that the average individual would have developed these abilities by age 16.

Most studies of age differences in decision-making have focused on the cognitive processes involved (e.g., Fischhoff,

Judging an individual as blameworthy presumes certain capacities that are emotional and interpersonal, and not simply cognitive in nature.

1992). That is, they have considered the mechanics of decision-making in the absence of social and emotional factors that might influence the ways in which one's decision-making abilities are applied to real-world situations. These investigations have found few cognitive differences between adults and adolescents as young as 12 or 13. The prevailing wisdom, based on these studies, has been that cognitive differences between adolescents and adults are fewer and smaller than was previously believed. This has led some to argue that age differences in decision-making are due to age differences in concerns, not capabilities; if adolescents are more likely to act antisocially, it is because they have different values and priorities than adults, not different intellectual

abilities.

Judging an individual as blameworthy presumes certain capacities that are emotional and interpersonal, and not simply cognitive in nature, however. Among these psychosocial capabilities, for example, are the ability to control one's impulses, to manage one's behavior in the face of pressure from others to violate the law, or to extricate oneself from a potentially problematic situation. Many of these capabilities have been examined in research on what we broadly refer to as "judgment," because deficiencies in these realms would likely interfere with individuals' abilities to act in ways that demonstrate mature enough decision-making to qualify for adult-like accountability (e.g., Cauffman & Steinberg, 2000; Scott, Reppucci, & Woolard, 1995; Steinberg & Cauffman, 1996). In several previous publications (Cauffman & Steinberg, 1996, 2000; Steinberg & Cauffman, 1996) we have suggested that these psychosocial factors fall into three broad categories: *responsibility* (the capacity to make a decision in an independent, self-reliant fashion), *perspective* (the capacity to place a decision within a broader temporal and interpersonal context), and *temperance* (the capacity to exercise self-restraint and control one's impulses). Our interest is in whether age differences in decision-making may in fact be attributable to psychosocial factors, and not simply to differences in values and priorities.

We have explored the relations between judgment and several aspects of psychosocial maturity within a sample of over 1,000 individuals (Cauffman and Steinberg, 2000). In this research, we examined age differences among 12- to 48-year-olds in psychosocial maturity and in their performance on a series of hypothetical judgment tasks designed to assess their likelihood of engaging in antisocial behavior (e.g., shoplifting, smoking marijuana, joy riding in a stolen car). Three overall patterns of findings from this study are relevant to the present discussion.

First, we found clear and significant age differences on the measure of decision-making in antisocial situations, with adults significantly less likely than adolescents to respond to the dilemmas in ways indicative of antisocial inclinations. Second, we found significant age differences on a wide array of measures of responsibility, perspective, and temperance, with adults consistently demonstrating more responsibility, greater perspective, and more temperance. Third, and most importantly, individuals who scored higher on these measures of psychosocial maturity were more likely to make socially responsible decisions in the hypothetical situations than those who were less psychosocially mature. In fact, once the differences in responsibility, perspective, and temperance were accounted for, age was no longer a significant predictor of

judgment. In other words, adolescents make poorer decisions than adults because adolescents are more psychosocially immature.

This conclusion, while seemingly obvious, differs from conclusions drawn from previous research on the cognitive underpinnings of decision-making, which suggested that adolescents make poorer decisions than adults because they have different priorities, not because they have different developmental capacities. If the latter is true, however, as our work suggests it is, age differences in judgment may be based in psychosocial immaturity, and not just reflective of rationally-based decisions that are based on different priorities and values. Viewing a criminal act as the result of *immature* judgment, rather than as the outcome of *bad* judgment, has important implications for determinations of blameworthiness.

In sum, although there has been some research to date on the development of the various psychosocial factors potentially relevant to evaluations of blameworthiness, few studies have compared adolescents and adults directly on these dimensions, and fewer still have attempted to examine the relations between these psychosocial elements of judgment and decision-making in situations relevant to legal concerns. Nevertheless, it is clear from the little research that does exist (e.g., Cauffman & Steinberg, 2000) that few individuals demonstrate adult-like psychosocial maturity and, consequently, adult-like judgment, much before age 12, and that many individuals do not demonstrate adult-like psychosocial maturity or judgment even at age 17.

As we noted earlier, children as young as 9 have the capacity for intentional behavior and know the difference between right and wrong (Rest, 1983). As such, there is no reason why children of this age should automatically be held blameless for their conduct. But blameworthiness is a matter of degree, not a dichotomous condition, and it is clear that the vast majority of individuals below the age of 13 lack certain intellectual and psychosocial capabilities that need to be present in order to hold someone *fully* accountable for his or her actions *under certain circumstances*. These circumstances include situations that call for logical decision-making, situations in which the ultimate consequences of one's actions are not evident unless one has actually tried to foresee them, and situations in which sound judgment may be compromised by competing stimuli, such as very strong peer pressure to violate the law. Both the juvenile and criminal

courts have mechanisms available to take such mitigating factors into account, including probation, a discounted sentence, or transfer back to the juvenile court from criminal court.

The relevance of research on blameworthiness to the specifics of the transfer debate concerns the criminal court's ability to accommodate juvenile immaturity in sentencing decisions. One advantage of the juvenile court is that it is generally more flexible, and this flexibility permits juvenile court judges to take developmental immaturity into account in dispositional decision-making. To the extent that sentencing within the adult system is less flexible, or even inflexible (e.g., when there are mandatory sentences for certain crimes), the more important developmental immaturity becomes as an argument to retain juvenile court jurisdiction for immature offenders. Regardless of the venue, however, when the individual under consideration is younger than 17, it seems to us that developmentally-normative immaturity should be added to the list of possible mitigating factors, along with the more typical ones of self-defense, mental state, and extenuating circumstances.

One advantage of the juvenile court is that it is generally more flexible, and this flexibility permits juvenile court judges to take developmental immaturity into account in dispositional decision-making.

Research and Theory on Amenability

Amenability means something slightly different to developmental psychologists than it does under the law. In legal practice, amenability refers to the likelihood of an individual desisting from crime and/or being rehabilitated when treated with some sort of intervention that is available within the community at the time of adjudication. To developmental psychologists, however, amenability refers to the extent to which an individual's nature has the potential to change, regardless of his or her exposure to an intervention, and regardless of the type of intervention that is applied. In other words, to developmental psychologists, amenability refers to malleability or, as it is sometimes known, "plasticity."

Although these different definitions of amenability are similar, they present different standards by which to judge an individual's likelihood of desistance. An offender may be at a point in development where he or she is still malleable, but may have little likelihood of desisting from crime unless exposed to the proper set of environmental changes (such as an intensive intervention, relocation to a different community, a change of peer group, availability of legal employment, etc.).

Malleability (the extent to which one *can* change) is thus relevant only if it is taken advantage of by a rehabilitation program to which the individual is amenable (i.e., a program that makes effective *use* of the individual's malleability).

Amenability is probably the most practical basis on which to make decisions about how a serious juvenile offender should be treated. It makes little sense to invest the rehabilitative resources of the juvenile justice system in individuals who are unlikely to change and a great deal of sense to target such resources at those individuals most likely to respond to intervention or treatment. For this reason, amenability is frequently a factor in decisions regarding the transfer of juveniles to criminal court. In *Kent v. United States* (1966), the U.S. Supreme Court defined the due process requirements for transfer hearings, listing eight criteria to be considered in making transfer decisions. Foremost among these are the seriousness of the offense and the need to protect the community, the maturity of the juvenile, and the juvenile's amenability to treatment and rehabilitation. Although all states require consideration of the seriousness of the offense and community safety, however, not all require a consideration of the juvenile's amenability to treatment, or of the juvenile's maturity (Redding, 1997).

In practice, judgments about amenability are made on an individualized basis, with decision-makers taking into account a juvenile's current circumstances, psychological history, and responses to prior interventions, if any. From a developmental perspective, however, the amenability question can be reframed as a question about general tendencies toward malleability at given ages, rather than statements about particular individuals. In other words, developmentalists might ask whether there is an age below which one can presume that most individuals have the capacity to change and an age above which most people's amenability has diminished enough that they are unlikely to respond effectively to rehabilitation. If these questions could be answered definitively, at least some of the decision-making about an individual's amenability to treatment could be done on the basis of age.

Unfortunately, developmental research does not provide a satisfactory answer to these questions. The bulk of the data on the stability of personality traits suggests that indi-

viduals do indeed become less likely to change over the course of adolescence and adulthood, suggesting a possible decline in malleability over the course of development. But data on the over-time increase in the stability of personality characteristics do not speak to the question of whether change is *possible*, because estimates of personality stability do not inform questions about malleability. Observing boulders for long periods of time might suggest that they tend to remain where they are put, but provides no indication of whether these boulders might move if pushed. Similarly, even if it were shown that antisocial tendencies were stable over time, this does not tell us that such tendencies cannot be changed by altering the individual's environment – it only tells us that these tendencies do *not* change if the environment is *not* altered.

Because any judgment of amenability presumes not only individual malleability but at least some change in context – that is, amenability by definition under the law presumes some sort of intervention – it is impossible to evaluate an individual's amenability without considering the nature of the intervention to which the individual is going to be exposed, and whether there is reason to believe that this particular intervention will be effective for this particular individual. Rather than make amenability judgments on the basis of age, therefore, developmental research would indicate that such judgments should be made on the basis of past experience. A young-

ster who has been exposed to certain types of interventions in the past and who has not responded to them effectively is relatively unlikely to respond to them in the future. Without such evidence, however, one would presume malleability in response to intervention.

The evidence on the development of antisocial behavior seems, at first glance, to be paradoxical, at least as far as the interconnections among chronological age, amenability, and the debate over serious juvenile offenders is concerned. Despite our intuition that we can be more hopeful about individuals' potential for change when they are young than when they are older, there is fairly good evidence that the earlier a minor begins to engage in antisocial or violent behavior, the more likely it is that such behavior will persist to adulthood (Moffitt, 1993). In particular, minors whose first offense occurs in preadolescence are less likely to desist than

Developmentalists might ask whether there is an age below which one can presume that most individuals have the capacity to change and an age above which most people's amenability has diminished enough that they are unlikely to respond effectively to rehabilitation.

those whose first offense occurs during late adolescence. These findings seem to lead to the counterintuitive, if not outright peculiar, conclusion that we should view young juvenile offenders as inherently less amenable than older ones, that the best candidates for rehabilitation are older adolescents, and that the juvenile offenders who may most warrant incapacitation are the youngest, not the oldest, ones.

The argument crumbles, however, when one considers that these findings on age of onset and patterns of reoffending describe the natural course of desistance, rather than the effectiveness of intervention programs. There is a substantial literature in developmental psychology which suggests that patterns of problem behavior, if not corrected, become self-sustaining (Steinberg & Avenevoli, 2000). Antisocial youngsters, for example, often are rebuffed by their prosocial peers and, as a consequence, end up socializing with other antisocial youngsters, who likely encourage and reward further antisocial behavior (Cairns, Cairns, Neckerman, Gest, & Garipey, 1988). Thus, while younger offenders may be less likely to desist on their own (as one might reasonably expect in the absence of external corrective influences), they may nevertheless be more responsive to focused rehabilitation programs when they are applied, just as they seem to be responsive to the negative influence of antisocial peers. Common sense suggests that earlier intervention with juvenile offenders is more likely to succeed than later intervention, but there is a vital need for research on this subject.

Overall, however, there is no basis in the developmental literature from which to draw generalizations about differences in amenability as a function of age. Despite our optimistic notions about the inherent malleability of young people, or our pessimistic notions about the inability of old dogs to learn new tricks, there is no research that supports either of these contentions, and some research that actually challenges them. As a consequence, we can not recommend the implementation of age-based policies regarding the treatment of serious juvenile offenders solely on the basis of research and theory on amenability. More specifically, it is incorrect to suggest that there is an age below which individuals should remain treated as juveniles because they are especially likely to be amenable to change, or an age beyond which individuals should be categorically assumed to be too hardened to be helped. Amenability decisions should be made on a case-by-case basis and should focus on the prior history, rather than the chronological age, of the offender.

A Developmental Perspective on the Transfer of Juveniles to the Criminal Court

A developmental perspective can inform, but can not settle, the transfer debate. Even setting aside the weighty political, practical, and moral questions that impinge on the discussion, the developmental analysis we have presented here does not point to any one age that politicians and practitioners should use in formulating transfer policies or practices. Instead, we encourage those engaged in the debate to view young offenders as falling into three broad categories: juveniles, who should not be adjudicated in adult court; adults, who should; and youths, who may or may not be developmentally appropriate candidates for transfer depending on their individual characteristics and circumstances.

In general, it appears to us appropriate to raise serious concerns based on developmental evidence about the transfer of individuals under 13 to adult court owing to their limited adjudicative competence as well as the very real possibility that most individuals this young will not prove to be sufficiently blameworthy to warrant exposure to the harsh consequences of a criminal court adjudication; individuals younger than 13 should continue to be viewed as juveniles, regardless of the nature of their offense. At the other end of the continuum, it appears, from a developmental perspective, appropriate to conclude that the vast majority of individuals

Common sense suggests that earlier intervention with juvenile offenders is more likely to succeed than later intervention, but there is a vital need for research on this subject.

17 and older are not appreciably different from adults in ways that would prohibit their fair adjudication within the criminal justice system. Our sense is that variability among individuals between the ages of 13 and 16 requires that some sort of individualized assessment of an offender's competence to stand trial, blameworthiness, and likely amenability to treatment be made before reaching a transfer decision.

The irony of employing a developmental perspective in the analysis of transfer policy is that the exercise reveals the inherent inadequacy of policies that draw bright-line distinctions between adolescence and adulthood. Indeed, an analysis of the developmental literature indicates that variability among

adolescents of a given chronological age is the rule, not the exception. In order to be true to what we know about development, a fair transfer policy must be able to accommodate this variability. The most effective way to do this is to widen the “bright line” distinction between juveniles and adults into

a formally acknowledged “gray area” that includes youths for whom age alone is an unreliable indicator of their development and, hence, the appropriateness of their waiver to criminal court.

Notes

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² To be sure, the criminal court recognizes that *some* adults are incompetent, incapable of behaving responsibly, or excellent candidates for rehabilitation, and it even has options available for accommodating these special circumstances, but it historically has defined these cases as exceptional. Demonstrating that there exist adults who are as immature as juveniles may certainly warrant the maintenance of options for dealing with these special cases, but it does not necessarily follow that such evidence challenges the logic of having a standing age-based boundary between juveniles and adults, any more than this logic would be challenged by demonstrating that there are juveniles who are exceptionally mature for their age. That is, it is perfectly reasonable to erect age-based legal boundaries that are based on population averages while being cognizant of the fact that some individuals may end up being treated unfairly because their competencies are not typical for people of their chronological age. The issue is not whether age-based legal boundaries should exist, but whether the presumptions behind a particular boundary are reasonable ones.

³ Although juveniles tried in criminal court often have adults who ostensibly are helping them make these decisions (e.g., attorneys, parents), the law leaves no doubt that the ultimate decision-maker in these instances is the defendant, even when the defendant is young.

⁴ It is worth noting that some legal scholars have argued that criminal court is perfectly capable of taking into account juveniles’ diminished culpability by punishing juveniles less severely or in a qualitatively different fashion. This is, in fact, what Feld (1997) has argued in his writings on what he has called the “youth discount,” or what others believe can be accomplished through “blended sentencing” or through other administrative structures, such as New York City’s “youth part” of the criminal court (see Fagan & Zimring, 2000). For the most part, though, the criminal justice system is less flexible than the juvenile justice system in its ability to fit the punishment to the characteristics of the offender.

References

- Bishop, D., & Frazier, C. (2000). The consequences of transfer. In J. Fagan & F. Zimring (Eds.), *The changing borders of juvenile justice: Transfer of adolescents to the criminal court* (pp. 227-276). Chicago: University of Chicago Press.
- Bonnie, R. (1992). The competence of criminal defendants: A theoretical reformulation. *Behavioral Sciences and the Law, 10*, 291-316.
- Cairns, R., Cairns, B., Neckerman, H., Gest, S., & Gariepy, J. (1988). Social networks and aggressive behavior: Peer support or peer rejection? *Developmental Psychology, 24*, 815-823.
- Cauffman, E., & Steinberg, L. (1996). The cognitive and affective influences on adolescent decision-making. *Temple Law Review, 68*, 1763-1789.
- Cauffman, E., & Steinberg, L. (2000). (Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults. *Behavioral Sciences and the Law, 18*, 1-21.
- Dusky v. United States, 362 U.S. 402 (1960).
- Fagan, J., & Zimring, F. (Eds.). (2000). *The changing borders of juvenile justice: Transfer of adolescents to the criminal court*. Chicago: University of Chicago Press.
- Feld, B. (1997). Abolish the juvenile court: Youthfulness, criminal responsibility, and sentencing policy. *Journal of Crime and Criminology, 88*, 68-136.
- Fischhoff, B. (1992). Risk taking: A developmental perspective. In J. Yates (Ed.), *Risk-taking behavior* (pp. 133-162). New York: Wiley.
- Grisso, T. (1997). The competence of adolescents as trial defendants. *Psychology, Public Policy, and Law, 3*, 3-32.
- Grisso, T., & Schwartz, B. (2000). (Eds.). *Youth on trial: A developmental perspective on juvenile justice*. Chicago: University of Chicago Press.
- Kent v. United States, 383 U.S. 541 (1996).
- Moffitt, T. (1993). Adolescence-limited and life-course persistent antisocial behavior: A developmental taxonomy. *Psychological Review, 100*, 674-701.
- Redding, R. (1997). Juveniles transferred to criminal court: Legal reform proposals based on social science research. *Utah Law Review, 3*, 710-763.
- Rest, J. (1983). Morality. In J. Flavell & E. Markman (Eds.), *Handbook of child psychology, Volume 3: Cognitive development* (pp. 556-629). New York: Wiley.
- Scott, E., & Grisso, T. (1997). The evolution of adolescence: A developmental perspective on juvenile justice reform. *Journal of Criminal Law and Criminology, 88*, 137-189.
- Scott, E., Reppucci, N., & Woolard, J. (1995). Evaluating adolescent decision making in legal contexts. *Law and Human Behavior, 19*, 221-244.
- Steinberg, L., & Avenevoli, S. (2000). The role of context in the development of psychopathology: A conceptual framework and some speculative propositions. *Child Development, 71*, 66-74.
- Steinberg, L., & Cauffman, E. (1996). Maturity of judgment in adolescence: Psychosocial factors in adolescent decision-making. *Law and Human Behavior, 20*, 249-272.
- Zimring, F. (1998). *American youth violence*. New York: Oxford University Press.

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