

ADOLESCENT DEVELOPMENT AND ITS EFFECT ON JUVENILE JUSTICE POLICY

ALEXIA DAVIS

INTRODUCTION

The purpose of this paper is to provide insight into the impact of developmental changes that occur during adolescence and how those changes affect the culpability and competency of juveniles within the justice system. The conclusion reached is that youth are adversely affected by their lack of psychosocial development when faced with difficult choices. Currently, statutes that transfer youth from juvenile courts to the criminal system do not account for developmental discrepancies with regard to competency to stand trial. Consequently, a justice system, which supports the mitigation of crimes based upon developmental issues, would remain true to the purpose of creating a juvenile justice system.

STRUCTURE OF THE JUVENILE JUSTICE SYSTEM

The traditional juvenile justice system was based upon the legal theory of excuse, where the child was blameless and not punished at all. Conversely, the current system has a more punitive focus and is increasingly adjudicating more youth as adults. Dr. Laurence Steinberg and his colleagues believe that a juvenile system that encompasses the concept of mitigation is more consistent with the overall criminal law structure.¹ The basic tenets of mitigation are based upon the internal impairments in the actor's decision-making capabilities; the reasonableness of the person's actions in the circumstances; and the atypical behavior of the actor.² His articles suggest that the juvenile justice system should delineate between the three groups (juveniles, youth, and

¹ Laurence Steinberg, et al., *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1010 (2003)(hereinafter "*Less Guilty*").

² *Id.*

adults) that are present in the system because each group has similar developmental characteristics that determine their competency, culpability, and susceptibility to rehabilitation.

When comparing the adversarial adult criminal and the cooperative juvenile justice systems, the difference between the two is significant because of the roles the defendant plays in each, and the impact on the liberties and sentences imposed on the defendant. The types of competencies that are required by a criminal defendant encompass the ability of the defendant to understand the roles of those in the adversarial process; the ability to evaluate the consequences of pleas; the ability to assist in mounting a defense; and the ability to provide correct information about the alleged offense.³ In the juvenile system, the presumption of competence or lack thereof allows the court to take a more active role in the protection of the defendant.⁴ In the criminal justice system, competency of the defendant is presumed and is accompanied by the responsibility to make educated decisions regarding the best course of the trial and defense.⁵ Appropriately, the juvenile justice system is supposed to focus on the potential for rehabilitation of the delinquent while the adult justice system is punitive.⁶ The factors that affect the actor's culpability and comprehension of the proceedings should be taken into consideration when determining whether to mitigate the act regardless of the system in which the adolescent is tried.⁷ However, due to the structure of the adult justice system, it may be more difficult to prove that the act needs to be mitigated at all.⁸ The presumption of competency in the adult criminal law system is based upon complete decision-making maturity and does not account for those actors who enter the system as children who may not yet possess this maturity. During a criminal

³ Laurence Steinberg, et al., *The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders*, 6 Va. J. Soc. Pol'y & L. 389, 401-402 (1999)(hereinafter "*Elephant*").

⁴ *Id.* at 403.

⁵ *Id.*

⁶ *Id.* at 396.

⁷ *Elephant*, *supra* note 3, at 409.

⁸ *Id.* at 410.

proceeding, the adolescent is already viewed as having behaved in an adult manner, so it is more difficult to introduce evidence relying on developmental immaturity to mitigate or lessen the punishment.

An example of the juvenile justice system failing to account for the developmental differences in youth is *Johnson v. State* in which a fourteen-year-old boy was sentenced to a mandatory sentence of ten years in adult prison without the possibility of parole for committing sexual offenses against a six-year-old girl.⁹ Although the crime itself is appalling, evidence was presented that the child was one of the best-behaved youth to ever reside at the detention center.¹⁰ Additionally, preliminary evaluations showed that he would excel in a counseling program and was particularly amenable to rehabilitation.¹¹ The court denied his appeal challenging the sentence on the basis of it being a cruel and unusual punishment.¹² The statute under which the child was convicted allowed a thirteen year old to be transferred to criminal court and face a statutorily mandated minimum sentence of ten years in prison for certain enumerated violent felonies with no possibility for parole.¹³ While the judiciary is charged with enforcing the laws, some members recognize the importance of the protections afforded within the juvenile system. In a concurring opinion, Justice Sears made an appeal to the legislature to remember the foundations upon which the juvenile justice system was built, “(1) that children have not developed the problem-solving skills of adults; (2) that children, unlike adults, do not readily foresee the long-term consequences of their actions; and (3) that children are much more amenable to rehabilitation, redemption and reintegration into society than are adults.”¹⁴

⁹ *Johnson v. State*, 276 Ga. 57, 58 (2002).

¹⁰ *Id.* at 61.

¹¹ *Id.* at 62.

¹² *Id.* at 63.

¹³ GA. Code Ann. § 17-10-6.1(b) (2005); *See also* GA. Code Ann. § 15-11-30.2(a)(4) (2005) (delineating the ages and offenses that make a child eligible for transfer to criminal court).

¹⁴ *Johnson*, 276 Ga. 57 at 63.

The movement toward a more punitive juvenile system results from a widespread “*moral panic*.”¹⁵ “The elements of [] moral panic include an intense community concern that is focused on deviant behavior, an exaggerated perception of the seriousness of the threat and the number of offenders, and collective hostility toward the offenders, who are perceived as outsiders threatening the community.”¹⁶ Moral panic exacerbates by increased involvement in violent crime, sex, pregnancy and drug use, or simply “adult” activities.¹⁷

An additional effect of the moral panic may be reflected in disproportionate minority representation. Disproportionate minority confinement (DMC), a topic traditionally addressed with reference to adult prison populations, also applies to occurrences within the juvenile justice system. DMC is often defined as an instance in which the percentage of the population of minority youth confined in secure correctional facilities, secure detention centers, jails and lockups is higher than the actual percentage of the population at-large.²¹ The effect of the “moral panic” on minority youths can be societal indifference toward their well being because they represent a foreign threat that must be contained.²² They are not recognized as “kids” because they are not the children of those who are fueling the moral panic.²³ They are the “outsiders”

¹⁵ Elizabeth S. Scott, et al., *Blaming Youth*, 81 Tex. L. Rev. 799, 807 (2003).

¹⁶ *Id.* at 799.

¹⁷ Elizabeth Cauffman, et al., *The Cognitive and Affective Influences on Adolescent Decision-Making*, 68 Temp. L. Rev. 1763 (1995)(hereinafter “*Cognitive and Affective*”).

²¹ Eileen Poe-Yamagata, et al., *And Justice for Some: Differential Treatment of Minority Youth in the System*, , www.buildingblocksfor youth.org/justiceforsome/jfs.html (follow hyperlink “Introduction”).

²² *Blaming Youth*, *supra* note 15, at 799.

²³ *Id.* at 809-10.

and as such they are treated more harshly than if the juvenile justice system was more representative of society as a whole.²⁴

DEVELOPMENTAL RESEARCH

Though adolescents and adults may have similar cognitive capacities, their psychosocial differences have the most impact upon their decision-making.²⁵ Cognitive functioning reflects the capacity for reasoning, thinking, and understanding.²⁶ Cognitive development is almost complete by the age of fourteen and an adolescent has the approximate cognitive capacity of an adult.²⁷ Psychosocial capacity reflects an adolescent's emotional and social development and their impact on the use of cognitive skills.²⁸ Psychosocial development begins around age ten and is completed during the early twenties.²⁹ Dr. Steinberg proposes that a thorough examination of adolescent competency must necessarily involve a discussion of both sets of traits since the most significant difference between adolescents and adults stems from the psychosocial characteristics, which are rarely examined, and not the cognitive characteristics, which are similar among adolescents and adults.³⁰

The most important psychosocial traits affecting maturity of judgment are responsibility, perspective, and temperance.³¹ Autonomy, identity, and ego development compose the first prong of maturity of judgment – responsibility.³² Autonomy is affected by the influence of peers and parents; the control that peer groups have may be limited to certain situations and have a

²⁴ *Id.* at 810.

²⁵ *Less Guilty*, *supra* note 1, at 1012.

²⁶ *Cognitive and Affective*, *supra* note 17, at 1766.

²⁷ *Cognitive and Affective*, *supra* note 17, at 1768.

²⁸ Thomas Grisso, et al., *Youth on Trial: A Developmental Perspective on Juvenile Justice* 327 (Thomas Grisso & Robert G. Schwartz eds., University of Chicago Press 2000).

²⁹ Laurence Steinberg, et al., *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 *Law & Hum. Behav.* 249, 255 (1996)(hereinafter “*Maturity of Judgment*”).

³⁰ See generally *Less Guilty*, *supra* note 1.

³¹ *Cognitive and Affective*, *supra* note 17, at 1764.

³² *Id.* at 1774.

greater impact on the daily activities of the youth.³³ Typically, adolescents are more inclined to succumb to peer pressure, however their decisions are not always based upon exertion of external pressure but often from internal desires to fit in.³⁴ As adolescents age, the impact of peer influence diminishes. Between the ages of twelve and sixteen, they began to make decisions based upon their own values rather than that of their peer group. Researchers have also found that adolescents do not have the ability to withstand peer pressure and that most adolescents in similar situations would behave in similar fashions.

Identity is established as the adolescent becomes more confident and gains self-esteem. It is accompanied by gaining a sense of direction for the rest of the adolescent's life. Identity is most unstable during the first part of adolescence (eleven through fourteen), but begins to stabilize during the second half (fifteen through eighteen) and positive changes continue into adulthood.³⁵ The process of ego development is similar to "cutting the apron strings" because it is a time when the youth begins to establish an identity independent of his parents, yet he will still embody many of the ideas instilled in him by them.³⁶ Though autonomy, identity and ego development theories suggest increased responsibility of an adolescent with age, none of them are specifically supported by research linking the increase in age to the improved decision-making skills of an adolescent.

Perspective, the second prong of maturity of judgment, deals with the ability to recognize the short-term as well as long-term consequences of conduct.³⁷ Also known as future orientation, perspective refers to the idea that teens are less likely to be able to make decisions

³³ *Id.*

³⁴ *See Less Guilty, supra* note 1.

³⁵ *Cognitive and Affective, supra* note 17, at 1778-79.

³⁶ *Id.* at 1778.

³⁷ *Id.* at 1786.

about events far into the future in part because it is disproportional to the amount of time they have been alive.³⁸

The third prong of maturity of judgment, temperance, addresses impulse control and the impact of adolescent moodiness.³⁹ The perception of risk for adolescents is skewed because they have a greater preference for reward, so that it is difficult for them to place appropriate weights on the risks compared to the potential rewards.⁴⁰ Additionally, the phenomenon of “groupthink”, the theory suggesting that people make riskier decisions in a group than they would individually, affects their ability to make appropriate decisions when in a group setting.⁴¹ Since adolescents spend more time in groups than do adults, the opportunity for this diminished risk evaluation occurs more often.⁴²

Identity development research suggests that antisocial behavior at a young age is not permanent, but merely experimentation that can be outgrown when provided with the correct socialization.⁴³ The two theories of adolescent criminal behavior that have been developed by Terrie Moffitt are life-course-persistent offenders and adolescence-limited offenders. Life-course-persistent offenders are characterized by the onset of criminal behavior during childhood and its continuance into adulthood.⁴⁴ They are rare but are the product of “deficient socialization or neurobiological anomalies”.⁴⁵ In contrast, adolescence-limited offenders begin their antisocial behavior in adolescence [and] it concludes at the end of adolescence.⁴⁶ Adolescence-limiting

³⁸ *Less Guilty*, *supra* note 1 at 1009.

³⁹ *Cognitive and Affective*, *supra* note 17, at 1780.

⁴⁰ *See Less Guilty*, *supra* note 1.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Less Guilty*, *supra* note 1, at 1015.

⁴⁴ *Id.*

⁴⁵ *Id.* at 1009.

⁴⁶ *Id.*

offending is a result of normative psychological and emotional development that declines with the age of the actor.⁴⁷

IMPLICATIONS

Youth ranging from the ages of thirteen to sixteen should be evaluated on a case-by-case basis to determine where they lie on the development continuum.⁴⁸ Researchers and psychologists cannot categorical classify anyone within this age range as possessing specific skills related to psychosocial development.⁴⁹ As a result, some youth will possess sufficient capacity to be tried as adults while others will not. However at approximately seventeen or older, researchers are confident that the majority of individuals will have the cognitive and psychosocial development that would allow them to be tried as adults in the criminal justice system without significant risks.⁵⁰

Juveniles should not be adjudicated in adult court because they have not developed the psychosocial attributes that allow them to completely understand the consequences of their actions nor the autonomy to resist pressure to act antisocially.⁵¹ Though significant data exists on the effects or lack thereof of development on an adolescent's ability to make decisions, no clear-cut distinction establishes at which age these developments occur. As a result, care should be taken to avoid the negative effects that could be inadvertently imposed on youth who are imprisoned while socially, mentally, and emotionally vulnerable.⁵² Particularly relevant to juvenile justice reform is research, which establishes that antisocial behavior can be corrected but

⁴⁷ *Id.*

⁴⁸ *Cognitive and Affective*, *supra* note 17, at 415.

⁴⁹ *Id.*

⁵⁰ *Elephant*, *supra* note 3, at 409.

⁵¹ *Id.* at 414.

⁵² *Less_Guilty*, *supra* note 1, at 1016.

⁵⁴ *Id.*

will persist into adulthood if proper rehabilitative steps are not taken.⁵⁴ If the youth that are behaving antisocially are not placed in positive environments, the possibility that the negative and antisocial behavior will continue is very real. As such, it is imperative that juveniles be thoroughly evaluated for both cognitive and psychosocial competency in order to best serve the developmental needs of the youth and the protection of the community.

Research on the emotional and psychosocial development of adolescents shows that youth do not mature uniformly and do not begin to complete this developmental process until their late teens and often into their early twenties. This developmental discrepancy has severe implications when examined in the context of a juvenile justice system that allows youth to be transferred to criminal court to stand trial as adults. Although these youth may not have the full capabilities to assist in their own defense, they become entrenched in a criminal system focusing on punishment rather than rehabilitation. An ideal juvenile justice system would account for developmental discrepancies when drafting transfer statutes and only subject those youth, sixteen or older, who are capable of actively and effectively participating in their own defense.

Although a child may understand the basic tenets of right and wrong, the legal system does not operate under the same clear-cut distinctions.

Alexia D. Davis is a third year law student at Tulane University Law School. Ms. Davis may be reached at adavis@law.tulane.edu. To request hard copies of this article, please contact the SRBLSA Law Journal at blsa@samford.edu.