

Adolescents, Maturity, And The Law

Why science and development matter in juvenile justice.

By Jeffrey Fagan
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Anthony Laster was a 15-year-old eighth-grader with an IQ of 58 who was described by relatives as having the mind of a 5-year-old. One day in 1998, shortly after his mother died, Anthony was hungry, so he reached into the pocket of another student in his Florida middle school and took \$2 in lunch money. The boy's family reported the crime to the authorities, and the local prosecutor, Barry Kirscher, decided to prosecute Anthony as an adult. It was Anthony's first arrest. He spent the next seven weeks -- including his first Christmas since his mother died -- in an adult jail waiting for his court date.

Anthony's story, reported by *60 Minutes II*, is, sadly, familiar. Every day, judges and prosecutors make complex decisions about whether young offenders should be tried as juveniles or adults. Sometimes the choice is made in a retail process repeated daily in juvenile courts or prosecutors' offices; at other times, the choice is made, wholesale, by legislative fiat in a process far removed from the juvenile courts.

These choices reflect deeply held assumptions about the nature of teen crime, how society should react to it, and adolescence itself. The two court systems reflect sharply contrasting ideas about adolescents who break the law -- their immaturity and culpability, whether they can be treated or rehabilitated, the security threats they pose, and the punishment they deserve. Sending a youth to adult criminal court usually is irreversible, and it often exposes young lawbreakers to harsh and sometimes toxic forms of punishment, not to mention more unsavory peer influences that in many cases have the perverse effect of increasing criminal activity.

In the original juvenile-court reform movement, as historian David Tanenhaus has noted, there was a presumption of "childhood"; only the most incorrigible youths were transferred to the adult criminal court, and the decision was made by the judge. Had Anthony's case arisen during the first three-quarters of the 20th century, he would almost certainly have remained in the juvenile court. But in the past 30 years, our assumptions have come nearly full circle, as states have decided that more adolescents like Anthony belong in adult criminal court.

This push to treat more kids as adults, however, is contradicted by new behavioral and biological research about maturity and criminal culpability, as well as evidence from the criminal-justice system about how adult court affects children. Brain development and the social psychological skills that it controls suggest that kids are actually immature far longer than we previously thought. My own research, and that of others, suggests that kids put into the adult system are likely to have worse outcomes.

Crime, Law, and Maturity

Historically, the courts' algebra of maturity was based mainly on social norms and popular legal comfort zones for other adult functions, such as driving, voting, marrying, and signing contracts -- typically 18, though occasionally 16. Juvenile courts assumed that young offenders similarly are not fully responsible for illegal behaviors. Because they were immature, they had "room to reform" before reaching adulthood. Juvenile courts also were designed to avoid both the stigma of a criminal conviction and exposure to the toxic influences of adult punishments. They emphasized treatment and education more than punishment, "in the best interests of the child."

Until recently, judges decided which youths were immature and “amenable to treatment” on a case-by-case basis, applying a series of criteria that were elevated from the norms of everyday practice to a set of constitutionally sanctioned standards identified in *Kent v. U.S.*, the landmark 1966 Supreme Court case that grappled with the concepts of “maturity” and “sophistication.” Judges relied heavily on the evaluations of social workers whose recommendations were usually persuasive to the juvenile court. Repeated appearances in juvenile court signaled to the judge that this kid needed tougher punishment or stronger treatment than the juvenile court could provide. Judges usually waived high-profile cases into adult criminal court, in part to avoid political criticism of the juvenile court itself.

As fears of a juvenile-crime epidemic rose in the 1970s, state legislatures across the country started to take away judicial discretion by carving out large sectors of the juvenile-court population -- as young as 13 years of age -- and removing them to the criminal court. In some states, the power to send a teenager to the criminal court was transferred from juvenile courts to prosecutors. And several states changed the rules to make juvenile offenders show why they should not be transferred.

Development, Immaturity, and Culpability

The recent push to lower the age threshold for treating juvenile offenders as adults assumes that adolescents are no different from adults in the capacities that comprise maturity and hence culpability, and that they have adult-like competencies to understand and meaningfully participate in criminal proceedings.

But the new science reliably shows that adolescents think and behave differently from adults, and that the deficits of teenagers in judgment and reasoning are the result of biological immaturity in brain development. The adolescent brain is immature in precisely the areas that regulate the behaviors that typify adolescents who break the law. Studies of brain development show that the fluidity of development is probably greatest for teenagers at 16 and 17 years old, the age group most often targeted by laws promoting adult treatment.

Teens at these ages tend to be poor decision-makers when it comes to crime. They often lack the several elements of psychosocial development that characterize adults as mature, including the capacity for autonomous choice, self-management, risk perception, and the calculation of future consequences.

For example, in laboratory experiments and studies across a wide range of adolescent populations, developmental psychologists show that adolescents are risk-takers who inflate the benefits of crime and sharply discount its consequences, even when they know the law. Adolescents take more risks with health and safety than do older adults, such as having unprotected sex, driving drunk, and engaging in other illegal behaviors. Adolescents are more impulsive than adults and insensitive to contextual cues that might temper their decisions. They lack the capacity for self-regulation of either impulses or emotions, and their tendency toward sensation seeking often trumps both self-regulation and social judgments or risks and consequences.

Adolescents also are far more prone to peer influence, often burying considerations such as legality, consequences, or risk. Their desire for peer approval can shape their behavioral decisions even without direct coercion. Peer influence interacts with risk taking and impulsivity to compound bad decisions: Recent studies have shown that people generally make riskier decisions in groups than they do alone. In a new study by psychologists Margo Gardner and Laurence Steinberg, teenagers took far more risks in a simulated-driving game called “Chicken” compared with persons over 18, and risk taking was greater when peers were present. Adolescents typically overstate rewards and underestimate risks. Imagine how this plays out in the decision to commit crimes, especially in the company of peers.

Teen Brains

Advances in neuropsychological research have produced a new body of knowledge showing that teen brains remain immature through early adulthood. These new studies have zeroed in on the areas of the brain where impulsivity, risk taking, and poor social judgment are regulated. Because adolescent brains are not fully developed, they do not achieve critical mechanisms of impulsivity and behavioral control until perhaps age 20 or beyond.

Beginning in the early 1990s, new forms of brain scans called “functional” MRIs provided images of brain functioning during tasks such as speech, perception, reasoning, and decision making. In one study, Dr. Jay Giedd, a neurologist at the National Institute of Mental Health, used this type of MRI to track the individual brains of 145 children and adolescents over a 10-year period into young adulthood. These studies showed that the frontal lobe, especially the prefrontal cortex, is maturing and developing dramatically during the teen years. Dr. Elkhonon Goldberg of the New York University School of Medicine shows that this is the region of the brain associated with decision making, planning, cognition, judgment, and other behavioral skills associated with criminal culpability. Dr. Nitin Gogtay, a psychiatrist at the National Institute of Mental Health, and his team used longitudinal MRI studies with subjects from ages 4 through 21 to show that the frontal lobe is one of the last areas of the brain to reach maturity.

It is not just brain or lobe size that matters. Using MRIs with groups of young people over time into early adulthood, professor Elizabeth Sowell of the University of California, Los Angeles and her colleagues have shown that during the period when cognitive functioning is improving in the frontal lobe, gray matter thins in a process of “pruning” that allows for tight connections to be built among the remaining neurons, in effect completing the circuitry that ties together impulsivity, control, and judgment. This pruning, which begins around age 11 in girls and 12 in boys, continues into the early or mid-20s, particularly in the prefrontal cortex, an area associated with “higher” functions such as planning, reasoning, judgment, and impulse control.

This evidence was an important part of the U.S. Supreme Court’s 2005 decision in *Roper v. Simmons* to ban executions of offenders who were younger than 18 when their crimes were committed. The science was presented to the Court in a brief from the American Psychological Association, which showed maturation continued through late adolescence in the brain regions that control essential behavioral functions linked to legal and popular conceptions of culpability. The Court ruled that it is cruel and unusual punishment to execute persons whose capacity for control and deterrence is compromised. Neither side in *Roper* challenged the scientific evidence, as they had in earlier decisions on the juvenile death penalty.

Immaturity, Public Safety, and Courtroom Competence

Adult court places juveniles in a very different legal context, and some of the developmental deficits of immaturity that make them less culpable may also make them less competent defendants and unreliable witnesses. Their immaturity makes them less likely to understand their rights and less able to make meaningful and informed decisions to help in their defense. Immature decision-makers are vulnerable to waiving their rights or to making statements without a lawyer present, even when they know their rights.

Experimental evidence and case autopsies show that adolescents may be prone to false confessions owing to their immaturity and collateral factors such as their suggestibility and vulnerability to coercion. It’s no surprise, then, that adolescents are overrepresented among defendants who give false confessions during police interrogation, including the 16-year-old defendant below age 17 in the Central Park jogger case. In one study, teenagers ages 15 to 16 were far more likely, compared with young adults 18 to 26, to confess to a mock crime when presented with false evidence of their guilt.

To some observers, the evidence of developmental psychology and brain science is less than conclusive. Few people doubt that the brains of 13-year-old teens differ from the brains of 25-year-old adults. But the research doesn't make the types of age-graded distinctions that the new waiver laws make, especially in the critical age span of 14 through 19. For example, Sowell reports average results for groups that span a wide age range -- comparing teens ages 12 to 16 with adults ages 23 to 30. The legislatures and the courts are much more concerned with the fine distinctions of 15 versus 16 versus 17 years of age. Nor are the results as reliable as advocates might wish. For example, we know next to nothing about how brains react under real-world conditions of threat, arousal, or peer provocation.

Still, the new developmental and neuropsychological research has strong value and importance for laws that funnel adolescents wholesale into the adult courts. Some adolescent offenders may have reached a threshold of maturity by 17 consistent with recent legal conceptions of maturity-culpability, but many others won't. The answer to this dilemma is neither surgical exclusions by legislators from juvenile court nor unregulated prosecutorial discretion to get maximum punishments. The remedy is to rely on case-by-case assessments by judges, much as the early juvenile courts did in deciding which youths were so incorrigible as to warrant expulsion from the juvenile court.

While brain science does not tell us all we need to know about every case, the evidence of what happens to adolescents removed to the adult criminal-justice system is all too clear. Several studies in the past decade -- in Florida, New York, New Jersey, Minnesota, Idaho, and other states -- show that re-arrest and re-incarceration rates are significantly higher for adolescents tried and punished in the criminal court compared with matched groups of teenage offenders who remained in the juvenile court. For example, comparing 15- and 16-year-old adolescents in the adult criminal court in New York with matched groups of comparable kids in the juvenile court in New Jersey, I showed, in two different studies 10 years apart, that the New York kids treated as adult criminals were re-arrested faster, more often, and for more serious crimes, and more often were returned to prison. The evidence is most clear in the case of violent crimes, the very crimes that threaten public safety and erode confidence in the courts. These are robust findings, based on good science that shows consistent results across a variety of research settings.

As legislatures move toward placing increasingly younger teens in adult criminal court, social and biological evidence suggests moving in the other direction. It's time for the law to change course and follow the science.

Jeffrey Fagan is a professor at Columbia University, a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, and vice chair of the Committee on Law and Justice at the National Research Council.