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Adolescent Development and the Regulation of Youth Crime

Elizabeth S. Scott and Laurence Steinberg

Summary

Elizabeth Scott and Laurence Steinberg explore the dramatic changes in the law's conception of young offenders between the end of the nineteenth century and the beginning of the twenty-first. At the dawn of the juvenile court era, they note, most youths were tried and punished as if they were adults. Early juvenile court reformers argued strongly against such a view, believing that the justice system should offer young offenders treatment that would cure them of their antisocial ways. That rehabilitative model of juvenile justice held sway until a sharp upswing in youth violence at the end of the twentieth century led both public opinion and public policy toward a view that youths should be held to the same standard of criminal accountability as adults. Lawmakers seemed to lose sight of developmental differences between adolescents and adults.

But Scott and Steinberg note that lawmakers and the public appear now to be rethinking their views once more. A justice system that operates on the principle of “adult time for adult crime” now seems to many to take too little note of age and immaturity in calculating criminal punishment. In 2005 the United States Supreme Court abolished the juvenile death penalty as cruel and unusual punishment, emphasizing that the immaturity of adolescents made them less culpable than adult criminals. In addition, state legislatures recently have repealed or moderated some of the punitive laws they recently enacted. Meanwhile, observe the authors, public anger has abated and attitudes toward young offenders have softened somewhat.

In response to these changes, Scott and Steinberg argue that it is appropriate to reexamine juvenile justice policy and to devise a new model for the twenty-first century. In this article, they propose what they call a developmental model. They observe that substantial new scientific evidence about adolescence and criminal activity by adolescents provides the building blocks for a new legal regime superior to today's policy. They put adolescent offenders into an intermediate legal category—neither children, as they were seen in the early juvenile court era, nor adults, as they often are seen today. They observe that such an approach is not only more compatible than the current regime with basic principles of fairness at the heart of the criminal law, but also more likely to promote social welfare by reducing the social cost of juvenile crime.

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During the closing decades of the twentieth century, juvenile justice policy underwent major change. In less than a generation, a justice system that had viewed most young lawbreakers as youngsters whose crimes were the product of immaturity was transformed into one that stands ready to hold many youths to the same standard of criminal accountability it imposes on adults. These changes took place through far-reaching legal and policy reforms in almost every state that have facilitated adult prosecution and punishment of juveniles and expanded the use of incarceration in the juvenile system. As the reforms proceeded, often in a frenzy of public fear and anger about violent juvenile crime, lawmakers appeared to assume that any differences between adolescents and adults were immaterial when it comes to devising youth crime policies.

Today, lawmakers and the public appear to be having second thoughts about a justice system in which age and immaturity often are ignored in calculating criminal punishment. In 2005, the United States Supreme Court, in *Roper v. Simmons*, abolished the juvenile death penalty as cruel and unusual punishment in an opinion that emphasized that the immaturity of adolescents made them less culpable than adult criminals.¹ Further, legislatures recently have repealed or moderated some of the punitive laws enacted with enthusiasm just a few years ago. Meanwhile, opinion polls show that public anger has abated and that more paternalistic attitudes toward young offenders have resurfaced.

At such a time, it seems appropriate to reexamine juvenile justice policy and, if the contemporary regime proves unsatisfactory, to devise a better model for the twenty-first

century. In this article, we undertake this challenge, proposing what we call a developmental model of juvenile justice policy.² Our thesis is that a substantial body of new scientific knowledge about adolescence and about criminal activity during this important developmental period provides the building blocks for a new legal regime superior to today's policy. Under the developmental model, adolescent offenders constitute an intermediate legal category of persons who are neither children, as they were under the traditional rehabilitative model, nor adults, as they often are today. Not only is this approach more compatible than the current regime with basic principles of fairness at the heart of the criminal law, it is also more likely to promote social welfare by reducing the social costs of juvenile crime.

A Brief History of Juvenile Justice in America

The history of juvenile crime policy over the course of the twentieth century is a narrative about the transformation of the law's conception of young offenders. At the dawn of the juvenile court era in the late nineteenth century, most youths were tried and punished as adults. Much had changed by 1909 when Judge Julian Mack famously proposed in a *Harvard Law Review* article that a juvenile offender should be treated "as a wise and merciful father handles his own child."³ Like the other Progressive reformers who worked to establish the juvenile court, Judge Mack viewed youths involved in crime first and foremost as children; indeed, by his account, they were no different from children who were subject to parental abuse and neglect. The early reformers envisioned a regime in which young offenders would receive treatment that would cure them of their antisocial ways—a system in which criminal responsibility and punishment had no place. Because

of the juvenile court's rehabilitative purpose, procedures were informal and dispositions were indeterminate.

The rehabilitative model of juvenile justice seemingly thrived during the first half of the twentieth century, but it began to unravel during the 1960s. Youth advocates challenged the constitutionality of informal delinquency proceedings, and, in 1967, the Supreme Court agreed, holding, in *In re Gault*, that youths in juvenile court have a right to an attorney and other protections that criminal defendants receive.⁴ But the sharpest attacks on the juvenile court came from another

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direction. As youth crime rates rose during the 1980s, conservative politicians ridiculed the juvenile system and pointed to high recidivism rates as evidence that rehabilitation was a failure. According to some observers, the juvenile court may have met the needs of a simpler time when juveniles got into school yard fights, but it was not up to the task of dealing with savvy young criminals who use guns to commit serious crimes. Although in truth, the juvenile justice system had evolved considerably since the early days, its paternalistic rhetoric persisted, obscuring the changes; even to a sympathetic ear, descriptions of young criminals as wayward

children who would respond to the caring treatment of the juvenile court seemed to bear little relation to the reality of youth crime during the late twentieth century.

Proponents of more punitive policies cast the available options as either adult punishment or a “slap on the wrist,” suggesting that if teens are not held fully responsible for their crimes, they bear no criminal responsibility at all. Youth advocates often appeared to accept these constrained policy choices, so the debate pitted self-styled “child” advocates against those who favor “adult time for adult crime.” Thus, both sides implicitly accepted that youths charged with serious crimes would either be treated as children in juvenile court or tried and punished as adults. The new generation of reformers went beyond rejecting the paternalistic characterization of young offenders; some advocates for tough policies seemed to view juveniles involved in crime as *more* culpable and dangerous than adult criminals. John DiIulio's description of “super-predators” in the mid-1990s captured the image of remorseless teenage criminals as a major threat to society and was invoked repeatedly in the media and in the political arena.⁵

As juvenile crime rates—particularly homicide—rose during the 1980s and early 1990s, politicians across the country rushed to enact tough policies through several legislative strategies.⁶ First, the age of judicial transfer was lowered in many states to allow the criminal prosecution of teens aged fourteen and younger. Some legislatures expanded the range of transferrable offenses to include a long laundry list of crimes. But perhaps the most dramatic changes came in the form of automatic transfer statutes, under which many youths are categorically treated as adults when they are charged with crimes—

either generally (all sixteen-year-olds) or for specific crimes (all thirteen-year-olds charged with murder).⁷ These legal reforms resulted in the wholesale transfer of youths into the adult criminal system—more than 250,000 a year by most estimates. The new statutes avoid individualized transfer hearings, shifting discretion from juvenile court judges, who are seen as soft on crime, to prosecutors, who are assumed not to have this deficiency. At the same time, juvenile court dispositions today include more incarceration and for longer periods—extending well into adulthood under some statutes. Questions about whether juveniles should be subject to the same punishment as adults occasionally do get attention—usually when a very young juvenile commits a serious crime. Thus a national conversation was sparked by the case of Lionel Tate, the twelve-year-old Florida boy who was given a life sentence (later reversed) for killing a six-year-old neighbor girl.⁸ But the new policies play out in many more mundane cases involving drug sales and property crimes, which make up about half of the criminal court cases involving juveniles.

The upshot of this reform movement is that the mantra “adult time for adult crime” has become a reality for many young offenders. Through a variety of initiatives, the boundary of childhood has shifted dramatically in a relatively short time, so that youths who are legal minors for every other purpose are adults when it comes to their criminal conduct.

Supporters defend the recent reforms as a rational policy response to a new generation of dangerous young criminals that the juvenile court was unable to control. There is some truth to this claim. Young offenders today do cause more harm than their predecessors, largely because, with the ready availability of firearms, the injuries they inflict

are more likely to be fatal. Moreover, the juvenile system’s failure to deter or incapacitate violent young criminals fueled outrage that sometimes was legitimate. But close inspection reveals that the process of legal reform has been deeply flawed and often has had the hallmarks of what sociologists call a moral panic, a form of irrational collective action in which politicians, the media, and the public reinforce each other in an escalating pattern of alarmed response to a perceived social threat.⁹ Other features of a moral panic are evident in the response to juvenile crime that has led to the reforms—intense public hostility toward young offenders (often identified as members of minority groups), exaggerated perceptions about the magnitude of the threat, and the conviction that drastic measures in response are urgently needed. Reform initiatives often have been triggered by a high-profile crime that stirs public fears. In Arkansas, for example, legislative reforms lowering the minimum age of criminal adjudication for juveniles followed the Jonesboro school shootings in which two youths, aged eleven and thirteen, killed four schoolmates and a teacher. In some states, racial biases and fears appear to have played a role in reform initiatives. In California, for example, enthusiasm for Proposition 21, a sweeping referendum expanding criminal court jurisdiction over juveniles, was generated by sensational television ads in which African American gang members killed innocent bystanders in drive-by shootings.¹⁰ But by the time that California voters approved Proposition 21, juvenile crime had been on the decline for several years.¹¹

The politics of contemporary juvenile justice law reform leaves little reason to be confident about the soundness of the new regime—or even to believe that it reflects stable public desires for harsh policies. Although politicians

claim that the public demands tough policies, moral panics tend to dissipate when the crisis passes. As we will show at the end of this article, the evidence suggests that the public may demand tough policies in the short term, but not support them in the long term.

The fact that the law reform process has been deeply flawed and that the policies themselves are anomalous as a form of legal regulation of minors does not answer the critical question of whether the criminalization of juvenile justice is *substantively* deficient as legal policy. We turn now to this question.

Adolescence and Culpability: The Case for Mitigation

A substantive assessment of contemporary youth crime regulation begins by examining the punitive reforms in the framework of criminal law doctrine and principles. The heart of the analysis is the principle of proportionality, which, as first-year law students learn in their criminal law class, is the foundation of fair and legitimate state punishment. Proportionality holds that criminal sanctions should be based on the culpability of the actor as well as the harm he causes. It recognizes that two defendants who cause the same harm (killing another person, for example) can vary in their blameworthiness and in the punishment that society thinks they deserve.¹² Most criminals, of course, are held fully responsible for their crimes and receive whatever punishment the state deems appropriate for the harm they cause. But actors who are thought to be blameless (children, for example, or someone who kills in self-defense) deserve no punishment—and their crimes are excused. As we have seen, the history of youth crime policy during the twentieth century was an account of radical change in lawmakers' conception of young offenders—from innocent children under the

rehabilitative model to (often) fully responsible adults today.

But the criminal law does not view culpability in such binary terms; the concept of *mitigation* plays an important role in the law's calculation of blame and punishment and should be at the heart of youth crime policy. Mitigation applies to persons engaging in harmful conduct who are blameworthy enough to meet the minimum threshold of criminal responsibility, but who deserve less punishment than a typical offender would receive. Developmental research clarifies that adolescents, because of their immaturity, should not be deemed as culpable as adults. But they also are not innocent children whose crimes should be excused. The distinction between excuse and mitigation seems straightforward, but it is often misunderstood. In the political arena, as we have suggested, it is often assumed that unless young offenders are subject to adult punishment, they are off the hook—escaping all responsibility. Instead, under the developmental model, youths are held accountable for their crimes but presumptively are subject to more lenient punishment than adults. A justice system grounded in mitigation corresponds to the developmental reality of adolescence and is compatible with the law's commitment to fair punishment.

Research in developmental psychology supports the view that several characteristics of adolescence distinguish young offenders from adults in ways that mitigate culpability. These adolescent traits include deficiencies in decision-making ability, greater vulnerability to external coercion, and the relatively unformed nature of adolescent character. As we will show, each of these attributes of adolescence corresponds to a conventional source of mitigation in criminal law. Together

they offer strong evidence that young offenders are not as culpable as adults.

Diminished Decision-Making Capacity

Under standard criminal law doctrine, actors whose decision-making capacities are impaired—by mental illness or retardation, for example—are deemed less blameworthy than typical offenders. If the impairment is severe, their crimes are excused. Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices.

Although few would question this claim as applied to children, the picture is more complicated for sixteen- or seventeen-year-olds. The capacities for reasoning and understanding improve significantly from late childhood into adolescence, and by mid-adolescence, most teens are close to adults in their ability to reason and to process information (what might be called “pure” cognitive capacities)—at least in the abstract.¹³ The reality, however, is that adolescents are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults in processing information. In life, and particularly on the street, the ability to quickly marshal information may be essential to optimal decision making.

Other aspects of psychological maturation that affect decision making lag behind cognitive development and undermine adolescent competence. Research documents what most parents of adolescents already know—teenagers are subject to psychosocial and emotional influences that contribute to immature judgment that can lead them to make bad choices. Thus, even at ages sixteen and seventeen, adolescents’ developmental

immaturity likely affects their decisions about involvement in crime in ways that distinguish them from adults.

First, teens tend to lack what developmentalists call “future orientation.” That is, compared with adults, adolescents are more likely to focus on the here-and-now and less likely to think about the long-term consequences of their choices or actions—and when they do, they are inclined to assign less weight to future consequences than to immediate risks and benefits. Over a period of years between mid-adolescence and early adulthood, individuals become more future oriented.¹⁴

Substantial research evidence also supports the conventional wisdom that teens are more oriented toward peers and responsive to peer influence than are adults. Several studies show that susceptibility to peer influence, especially in situations involving pressure to engage in antisocial behavior, increases between childhood and mid-adolescence, peaks around age fourteen, and declines slowly during the late adolescent years.¹⁵ Increased susceptibility to peer pressure in early adolescence may reflect changes in individuals’ capacity for self-direction (as parental influence declines) as well as changes in the intensity of pressure that adolescents exert on each other. Some research evidence suggests that teens who engage in certain types of antisocial behavior may enjoy higher status among their peers as a consequence, perhaps because they appear to be independent of adult authority.¹⁶ The result is that adolescents are more likely than *either* children or adults to change their decisions and alter their behavior in response to peer pressure.

Peer influence affects adolescent judgment both directly and indirectly. In some contexts,

adolescents might make choices in response to direct peer pressure, as when they are coerced to take risks that they might otherwise avoid. But desire for peer approval (and fear of rejection) affects adolescent choices indirectly as well. Teens appear to seek peer approval especially in group situations. Thus, perhaps it is not surprising that young offenders are far more likely than adults to commit crimes in groups.¹⁷

Consider the case of Timothy Kane, a fourteen-year-old junior high school student who never had any contact with the justice system until one Sunday afternoon in January 1992. Tim was hanging out with a group of friends when a couple of older youths suggested that they break into a neighbor's house; Tim agreed to go along. On entering the house, the boys were surprised to find the elderly neighbor and her son at home—whereupon the two older boys killed them while Tim watched from under the dining room table. Interviewed years later as he served a life sentence under Florida's draconian felony murder law, Tim explained that he went along because he didn't want to stay behind alone—and he didn't want to be called a “fraidy-cat.” Tim's fatal decision to get involved in the break-in appears to be, more than anything else, the conduct of a fourteen-year-old worried about peer approval.¹⁸

Another psychosocial factor contributes to immature judgment: adolescents are both less likely to perceive risks and less risk-averse than adults. Thus, it is not surprising, perhaps, that they enjoy engaging in activities like speeding, unsafe sex, excessive drinking, and committing crimes more than adults do. The story is actually a bit more complicated. In the abstract, on paper and pencil tests, adolescents are capable of perceiving risks almost as well as adults. In the real world

however, risk preference and other dimensions of psychosocial immaturity interact to encourage risky choices.¹⁹ Thus, a youth who might be able to identify the risks of stealing a car if presented with a hypothetical case in a psychology lab may simply never consider these risks when he is on the street with his friends planning the theft.

Another (compatible) account of why adolescents take more risks than adults is that they may *evaluate* the risks and benefits of risky activity differently. Psychologists refer to the outcome of weighing risks and rewards as the “risk-reward ratio.” The higher the ratio, the less likely an individual is to engage in the behavior in question. Studies suggest that in calculating the risk-reward ratio that guides decision making, adolescents may discount risks and calculate rewards differently from adults. In studies involving gambling games, teens tend to focus more on potential gains relative to losses than do adults.²⁰ So, for example, in deciding whether to speed while driving a car, adolescents may weigh the potential rewards of the behavior (for example, the thrill of driving fast, peer approval, or getting to one's destination quickly) more heavily than adults would. Indeed, sometimes adults may view as a risk—fast driving, for example—what adolescents see as a reward. What distinguishes adolescents from adults in this regard, then, is not the fact that teens are less knowledgeable about risks, but, rather, that they attach different value to the rewards that risk-taking provides.²¹

In addition to age differences in susceptibility to peer influence, future orientation, and risk assessment, adolescents and adults also differ with respect to their ability to control impulsive behavior and choices. Thus, the conventional wisdom that adolescents are more reckless than adults is supported by research

on developmental changes in impulsivity and self-management. In general, studies show gradual but steady increases in the capacity for self-direction through adolescence, with gains continuing through the high school years. Research also indicates that adolescents are subject to more rapid and extreme mood swings, both positive and negative, than are adults.²² Although the connection between moodiness and impulsivity is not clear, it is likely that extreme levels of emotional arousal, either anger or elation, are associated with difficulties in self-control. More research is needed, but the available evidence indicates that adolescents may have more difficulty regulating their moods, impulses, and behaviors than do adults.

These psychosocial and emotional factors contribute to immature judgment in adolescence and probably play a role in decisions by teens to engage in criminal activity. It is easy to imagine how an individual whose choices are subject to these developmental influences—susceptibility to peer influence, poor risk assessment, sensation seeking, a tendency to give more weight to the short-term consequences of choices, and poor impulse control—might decide to engage in criminal conduct.

The following scenario is illustrative. A teen is hanging out with his buddies on the street, when, on the spur of the moment, someone suggests holding up a nearby convenience store. The youth does not go through a formal decision-making process, but he “chooses” to go along, even if he has mixed feelings. Why? First and most important, like Tim Kane, he may assume that his friends will reject him if he declines to participate—a negative consequence to which he attaches considerable weight in considering alternatives. He does not think of ways to extricate himself, as a more mature person might do.

He may fail to consider possible options because he lacks experience, because the choice is made so quickly, or because he has difficulty projecting the course of events into the future. Also, the “adventure” of the holdup and the possibility of getting some money are exciting. These immediate rewards, together with peer approval, weigh more heavily in his decision than the (remote) possibility of apprehension by the police. He never even considers the long-term costs of conviction of a serious crime.

This account is consistent with the general developmental research on peer influence, risk preference, impulsivity, and future orientation, and it suggests how factors that are known to affect adolescent decision making in general are likely to operate in this setting. As a general proposition, it is uncontroversial that teens are inclined to engage in risky behaviors that reflect their immaturity of judgment. Although it is not possible to study directly the decisions of teens to get involved in criminal activity, it seems very likely that the psychosocial influences that shape adolescents’ decision making in other settings contribute to their choices about criminal activity as well. Not every teen gets involved in crime, of course. That depends on a lot of things, including social context. But these psychosocial and emotional influences on decision making are *normative*—as psychologists use this term—that is, typical of adolescents as a group and developmental in nature.

Research over the past few years has increased our understanding of the biological underpinnings of psychological development in adolescence. Very recent studies of adolescent brain development show that the frontal lobes undergo important structural change during this stage, especially in the prefrontal cortex.²³ This region is central to

what psychologists call “executive functions”—advanced thinking processes used in planning ahead, regulating emotions, controlling impulses, and weighing the costs and benefits of decisions before acting. Thus, the immature judgment of teens may to some extent be a function of hard wiring.

Mitigation on the Basis of Extraordinary Circumstances

Another source of mitigation in the criminal law also applies to adolescents—and reinforces the conclusion that young offenders are less blameworthy than their adult counterparts. This form of mitigation involves situations in which a person offends in response to extreme external pressures. For example, a person who robs a bank in response to a credible threat that otherwise he will be physically injured may qualify for the defense of duress. The criminal law does not require exceptional forbearance or bravery—a defense (or a reduced sentence) may be available if an ordinary (that is, “reasonable”) person might have responded to the unusual situation in the same way the defendant did. Because of the coercive circumstances, the actor is deemed less blameworthy than other offenders.

Ordinary adolescents are subject to peer pressure, including pressure to commit crimes, to a far greater extent than adults. As we have suggested, most juvenile crimes are committed in groups, while most adult criminals act alone. In some high-crime neighborhoods, peer pressure to commit crimes is so powerful that only exceptional youths escape. As Jeffrey Fagan and others have explained, in such settings, resisting this pressure can result in loss of status, ostracism, and even vulnerability to physical assault.²⁴ The circumstances many teens face in these social contexts are similar to those involved in adult claims of mitigation due to duress,

provocation, necessity, or domination by co-defendants—and appropriately are deemed mitigating of culpability. As the Supreme Court recognized in *Roper v. Simmons*, in holding that imposing the death penalty on juveniles was unconstitutional, the case for mitigation on this ground is all the more compelling because, unlike adults, teens as legal minors are not free to leave their schools, homes, and neighborhoods.²⁵ When teens cross the line to legal adulthood, of course, the formal disabilities of youth are lifted. Young adults can avoid the pressure by removing themselves from social settings that make it difficult to avoid involvement in crime. Thus, adults have no claim to this kind of situational mitigation.

Unformed Character as Mitigation

A third source of mitigation in the criminal law is evidence that a criminal act was out-of-character. At sentencing, offenders often can introduce evidence of their general good character to demonstrate that the offense was an aberrant act and not the product of bad character. Here mitigation applies to the crimes of young offenders as well—not because of their good character *per se*—but because their characters are unformed.

Beginning with Erik Erikson, psychologists have explained that a key developmental task of adolescence is the formation of personal identity—a process linked to psychosocial development, which for most teens extends over several years until a coherent “self” emerges in late adolescence or early adulthood.²⁶ During adolescence, identity is fluid—values, plans, attitudes, and beliefs are likely to be tentative as teens struggle to figure out who they are. This process involves a lot of experimentation, which for many adolescents means engaging in the risky activities we have described, including

involvement in crime. Self-report studies have found that 80–90 percent of teenage boys admit to committing crimes for which they could be incarcerated.²⁷

But the typical teenage delinquent does not grow up to be an adult criminal. The statistics consistently show that seventeen-year-olds commit more crimes than any other age group—thereafter, the crime rate declines steeply.²⁸ Most adolescents literally grow out of their antisocial tendencies as individual identity becomes settled. How many adults look back on their risky adventures or mishaps as teenagers with chagrin and amazement—and often with gratitude that they emerged relatively unscathed?

Researchers find that much juvenile crime stems from experimentation typical of this developmental stage rather than from moral deficiencies reflecting bad character. It is fair to assume that most adults who commit crimes act on subjectively defined values and preferences—and that their choices can be charged to deficient moral character. Thus an impulsive adult whose “adolescent” traits lead him to get involved in crime is quite different from a risk-taking teen. Adolescent traits are not typical of adulthood. The values and preferences that motivate the adult criminal are not transitory, but fixed elements of personal identity. This cannot be said of the crimes of typical juvenile offenders, whose choices, while unfortunate, are shaped by developmental factors that are constitutive of adolescence. Like the adult who offers evidence of good character, most adolescent offenders lack a key component of culpability—the connection between the bad act and the offender’s bad character. In *Roper v. Simmons*, the Supreme Court recognized that adolescents’ unformed character mitigates culpability. The court observed that it is not possible

to be confident that “even a heinous crime by an adolescent is the product of an irretrievably depraved character.”²⁹

The reality, of course, is that not all young offenders grow up to be persons of good character. Some grow up to be criminals. Psychologist Terrie Moffitt, in a major longitudinal study, has placed adolescent offenders into two rough categories: a large group of what she calls “adolescence-limited” offenders—typical delinquents whose involvement in crime begins and ends in adolescence—and a much smaller group of youths that she labels “life-course-persistent offenders.” Many youths in this latter group are in the early stages of criminal careers: their antisocial conduct often begins in childhood and continues through adolescence into adulthood. In adolescence, the criminal conduct of youths in these two groups looks pretty similar, but the underlying causes and the prognosis are different.³⁰

This insight raises an important issue. Even if adolescents generally are less mature than adults, should immaturity not be considered on an individualized basis, as is typical of most mitigating conditions? Not all juvenile offenders are unformed youths. Adolescents vary in the pace of psychological development and character formation, and some may not deserve lenient treatment on the basis of immaturity.

The problem with individualized assessments of immaturity is that practitioners lack diagnostic tools to evaluate psychosocial maturity and identity formation on an individualized basis. Recently, courts in some areas have begun to use a psychopathy checklist, a variation of an instrument developed for adults, in an effort to identify adolescent psychopaths for transfer or sentencing purposes. This

practice, however, is fraught with the potential for error; it is simply not yet possible to distinguish incipient psychopaths from youths whose crimes reflect transient immaturity. For this reason, the American Psychiatric Association restricts the diagnosis of psychopathy to individuals aged eighteen and older. Evaluating antisocial traits and conduct in adolescence is just too uncertain.³¹

Other problems may arise if maturity is litigated on a case-by-case basis. Research evidence suggests that racial and ethnic biases influence attitudes about the punishment of young offenders; thus decision makers may be particularly inclined to discount the mitigating impact of immaturity in minority youths. The integrity of any individualized decision-making process is vulnerable to contamination from racist attitudes or from unconscious racial stereotyping that operates even among those who may lack overt prejudice.³²

In sum, the developmental evidence indicates that the immaturity of adolescent offenders causes them to differ from their adult counterparts in ways that mitigate culpability. Scientific knowledge also supports recognizing this difference through categorical classification of young offenders. The presumption underlying the punitive reforms—that no substantial differences exist between adolescents and adults that are relevant to criminal responsibility—offends proportionality, a core principle of criminal law. The developmental psychology evidence does not support a justice system that treats young offenders as children whose crimes are excused, but it does support a mitigation-based model that places adolescents in an intermediate legal category of offenders who are less blameworthy and deserve less punishment than typical adult offenders. Under our

developmental model, adolescence is a separate legal category for purposes of responding to youthful criminal conduct.³³

Social Welfare and the Regulation of Youth Crime

In reality, although the scientific evidence of adolescent immaturity is substantial, principle alone will not dictate juvenile crime policy. Ultimately, the most compelling argument for a separate, less punitive, system for dealing with young criminals is utilitarian. An important lesson of the research on juvenile crime by Moffitt and others is that most delinquent youths, even those who commit serious crimes, are “adolescence-limited” offenders who are likely to mature out of their antisocial tendencies. These youths are not headed for careers in crime—unless correctional interventions push them in that direction. This lesson is reinforced by developmental research showing that social context is critically important to the successful completion of developmental tasks essential to the transition to conventional adult roles associated with desistance from crime.³⁴ For youths in the justice system, the correctional setting is their social context. Youth crime policy should not lose sight of the impact of sanctions on the future life prospects of young offenders. Sanctions that effectively invest in the human capital of young offenders and facilitate their transition to adulthood are likely to promote the interests of society as well as those of young offenders—as long as they do not unduly compromise public safety.

Supporters of tough sanctions argue that contemporary policies promote society’s interest and point to the declining juvenile crime rates in the past decade as evidence of the effectiveness of the reforms. There is no question that reducing crime is a critical justification for more punitive sanctions, but

evaluating the impact of the reforms on the recent crime-rate trend is an uncertain business, with studies giving mixed reports. A few researchers have studied the effect of automatic transfer statutes, either by comparing two similar states with different laws, or by examining crime rates in a single state before and after a legislative reform. Their studies have found that punitive reforms have little effect on youth crime.³⁵ Only one substantial study has found that crime rates appear to decline under harsh statutes, and the methodology of that study has been sharply criticized.³⁶ Interview studies of incarcerated youths find that many express intentions to avoid harsh penalties in the future, but the extent to which these intentions affect behavior is unclear. Studies comparing recidivism rates of similar juveniles sentenced to adult and juvenile facilities have found higher rates of re-offending for youths sentenced to prison.³⁷ In short, little evidence supports the claim that adolescents are deterred from criminal activity by the threat of harsh sanctions, either generally or because their experience in prison “taught them a lesson.”

If the recent reforms have reduced juvenile crime at all, it is mostly through incapacitation. Long periods of incarceration (or incarceration rather than community sanctions) keep youths off the streets where they might be committing crimes and do indeed reduce crime, at least in the short run—but the costs are high in several respects. The economic costs of the recent law reforms have been substantial, as many states have begun to realize. According to a careful analysis of the costs and benefits associated with one state’s policy reforms increasing juvenile sanctions, serious youth crime declined 50 percent between 1994 and 2001, while spending in the juvenile justice system increased 43 percent.³⁸ The increased spending has oppor-

tunity costs as well; resources spent to build and staff correctional facilities to incarcerate more juveniles for longer periods are not available for other social uses. Economists explain that some amount of incarceration yields substantial benefits in terms of reducing crime, but that the benefits decrease (that is, fewer crimes are avoided) for each unit of increased incarceration.³⁹ Thus, incarceration may be justified on social welfare grounds for youths who are at high risk of re-offending. But no social benefit is gained, in terms of crime reduction, when youths are confined who would *not* otherwise be on the streets committing crimes. Moreover, if less costly correctional dispositions effectively reduce recidivism in some juvenile offenders, incarcerating those youths may not be justified on utilitarian grounds.

A substantial body of research over the past fifteen years has showed that many juvenile programs, in both community and institutional settings, can substantially reduce crime; the most promising programs cut crime by 20–30 percent.

Harsh policies carry other social costs as well—particularly if incarceration itself contributes to re-offending or diminishes youths’ future prospects. Almost all young offenders *will* be released at some point to rejoin society. Thus the impact of incarceration on re-offending and generally on their future lives must be considered in calculating its costs and benefits. The research on the

impact of adult incarceration on normative adolescent offenders is not yet extensive, but the available evidence suggests that imprisonment undermines social maturation and educational progress and likely contributes to recidivism. This finding is not surprising: adolescence is a critical developmental stage during which youths acquire competencies, skills, and experiences essential to success in adult roles. If a youth's experience in the correctional system disrupts educational and social development severely, it may irreversibly undermine prospects for gainful employment, successful family formation, and engaged citizenship—and directly or indirectly contribute to re-offending.

The differences between the juvenile and adult systems have blurred a bit in recent years, but, even today, juvenile facilities and programs are far more likely to provide an adequate context for development than adult prison. Prisons are aversive developmental settings. They are generally large institutions, with staff whose function is custodial and who generally relate to prisoners as adversaries; programs are sparse, and older prisoners are often mentors in crime or abusive to incarcerated youths.⁴⁰ The juvenile system, although far from optimal, operates in many states on the basis of policies that recognize that offenders are adolescents with developmental needs. Facilities are less institutional than prisons, staff-offender ratio is higher, staff attitudes are more therapeutic, and more programs are available.⁴¹

The effectiveness of juvenile correctional programs has been subject to debate for decades. Until the 1990s, most researchers concluded that the system had little to offer in the way of effective rehabilitative interventions; the dominant view of social scientists during the 1970s and 1980s was captured by the slogan

"nothing works" to reduce recidivism with young offenders.⁴² Today the picture is considerably brighter. A substantial body of research over the past fifteen years has showed that many juvenile programs, in both community and institutional settings, can substantially reduce crime; the most promising programs cut crime by 20–30 percent.⁴³ In general, successful programs are those that heed the lessons of developmental psychology. These programs seek to provide young offenders with supportive social contexts and authoritative adult figures and to help them acquire the skills necessary to change problem behavior and attain psychosocial maturity. Some effective programs focus directly on developing skills to avoid antisocial behavior, often through cognitive-behavioral therapy, a therapeutic approach with substantial empirical support.⁴⁴ Other interventions that have been shown to reduce crime focus on strengthening family support. One of the most effective treatment programs with violent and aggressive youths is Multisystemic Therapy, the dual focus of which is to empower parents with skills and resources to help their children avoid problem behaviors and to give youths the tools to cope with family, peer, and school problems that can contribute to reinvolvement in criminal activity.⁴⁵ Effective juvenile programs offer good value for taxpayers' dollars, and the benefits in terms of crime reduction far exceed the costs.⁴⁶

The success of rehabilitative programs does not mean that we should return to the traditional rehabilitative model of juvenile justice; punishment is an appropriate purpose when society responds to juvenile crime. Both adult prisons and juvenile correctional programs impose punishment, however, and the juvenile system is better situated to invest in the human capital of young offenders and facilitate the transition to conventional adult

roles—a realistic goal for youths who are adolescence-limited offenders. To be sure, the future prospects of juveniles in the justice system are not as bright as those of other adolescents. But developmental knowledge reinforces a growing body of empirical research indicating that juvenile offenders are more likely to desist from criminal activity and to make a successful transition to adulthood if they are sanctioned as juveniles in a separate system.

Under a mitigation model, most young criminals would be dealt with in the juvenile system. From a developmental perspective, punishing a sixteen-year-old car thief or small-time drug dealer as an adult is likely to be short-sighted—because these are typical adolescent crimes. But a justice policy that takes mitigation seriously is viable only to the extent that it does not seriously compromise public protection. In our view, older violent recidivists *should* be tried and punished as adults. These youths cause a great deal of harm and are close to adults in their culpability. They are also less likely to be normative adolescents and more likely to be young career criminals than most young offenders.⁴⁷ The authority to punish violent recidivists as adults constitutes a safety valve that is essential to the stability of the juvenile justice system. An important lesson learned from the collapse of the rehabilitative model is that juvenile justice policy must pay serious attention to the public's legitimate concerns about safety.

Looking to the Future

This is a good time to reflect on youth crime policy. The alarm that fueled the punitive juvenile justice reforms of the past generation has subsided as juvenile crime rates have fallen for several years. Even supporters of tough policies have had second thoughts. John DiIulio recently expressed regret about

characterizing young offenders as “super-predators” and acknowledged that his predictions about the threat of juvenile crime had not been realized.⁴⁸

The public too may be less enthusiastic about punitive policies than politicians seem to believe. In 2006, with colleagues, we conducted what is called a “contingent valuation survey,” probing how much 1,500 Pennsylvania residents were willing to pay (from their tax dollars) for either an additional year of incarceration or a rehabilitation program for juveniles. The alternatives were described (accurately, according to the research) as offering a similar prospect for reducing crime. We found that participants were willing to pay more for rehabilitation than for punishment—a mean of \$98.00 as against \$81.00. Of course, this kind of survey is somewhat artificial, since the willingness-to-pay question is hypothetical. Nonetheless, these findings should be interesting to policymakers, particularly in light of a fact that we did *not* disclose to our participants—that a year of juvenile incarceration actually costs five times as much as a year-long rehabilitation program.⁴⁹

Our study, together with other recent survey evidence, suggests that the public cares about safety but is quite open to rehabilitative programs as a way of reducing juvenile crime.⁵⁰ Politicians claim that the public has demanded “get-tough” policies, but this demand may often be a transitory response to a highly publicized juvenile crime. The research suggests that the political risk that policymakers face in responding cautiously to public pressure in the wake of these incidents may not be as great as they might surmise.

Legislatures also appear to be having second thoughts about the punitive laws that they

have enacted—partly because the juvenile crime rate has fallen and partly because adult prosecution and punishment of juveniles carry a high cost. In several states, punitive laws have been repealed or scaled back. For example, in 2005, Illinois repealed a statute mandating adult prosecution of fifteen-year-olds charged with selling drugs near schools or public housing projects, acknowledging that the statute had a substantial budgetary impact and was enforced disproportionately against minority youths.⁵¹ Other states have also changed course. Colorado abolished the

sentence of life without parole for juveniles, and Connecticut recently raised the age of adult court jurisdiction from sixteen to eighteen.⁵² Lawmakers may be ready to approach juvenile justice policy more thoughtfully today than they have in a generation. If so, a large body of recent research that was not available twenty years ago offers insights about adolescence and about young offenders. Using this scientific knowledge to shape the direction of juvenile justice policy will promote both social welfare and fairness.

Endnotes

1. *Roper v. Simmons*, 543 U.S. 541 (2005).
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3. Julian Mack, "The Juvenile Court," *Harvard Law Review* 23, no.104 (1909).
4. *In re Gault*, 387 U.S. 1 (1967).
5. John DiIulio, "The Coming of the Super-predators," *Weekly Standard*, 27 November 1995, p. 23. On June 28, 2007, the term "super-predator" generated 30,300 Google hits, suggesting its salience.
6. See the article by Jeffrey Fagan in this volume.
7. *Ibid.* During the three years between 1992 and 1995, eleven states lowered the age for transfer, twenty-four states added crimes to automatic/legislative waiver statutes, and ten states added crimes to judicial waiver statutes. See Patricia Torbet and others, *State Responses to Serious and Violent Juvenile Crime*, vol. 6 (Washington: Office of Juvenile Justice and Delinquency Prevention, 1996).
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16. Terrie Moffitt, "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy," *Psychological Review* 100 (1993): 674–701.

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18. Adam Liptak, "Jailed for Life after Crimes as Teenagers," *New York Times*, 3 October 2005, A1.
19. See Lita Furby and Ruth Beyth-Marom, "Risk Taking in Adolescence: A Decision-making Perspective," *Developmental Review* 12 (1992): 1–44.
20. Leonard Green, Joel Myerson, and Pawel Ostaszewski, "Discounting of Delayed Rewards across the Life Span: Age Differences in Individual Discounting Functions," *Behavioural Processes* 46 (1999).
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29. *Roper v. Simmons*, 543 U.S. 541 (2005).
30. Moffitt, "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior" (see note 16).
31. *American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders* (4th ed. 1994). See Daniel Seagrave and Thomas Grisso, "Adolescent Development and the Measurement of Juvenile Psychopathy," *Law and Human Behavior* 26 (2000): 219–39.
32. See the article by Alex Piquero in this volume; George S. Bridges and Sara Steen, "Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms," *American Sociological Review* 63 (1998): 554–70; Sandra Graham and Brian Lowry, "Priming Unconscious Racial Stereotypes about Adolescent Offenders," *Law and Human Behavior* 28, no. 5 (2004): 483–504.
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