Challenges of Adolescence and Violence

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Thank you, John. It’s a pleasure to be with you today. Over at the medical school, it’s very easy to get caught up in the technical details of evaluating forensic cases and treating patients, and after awhile it can feel a little narrow. The Center for the Interdisciplinary Study of Religion has provided a wonderful chance for me to branch out. I’d like to thank John and the wonderful group he has assembled at the Center for the opportunity to meet and talk with an exciting group of scholars. Those discussions have stimulated my thinking in areas outside the usual bounds of psychiatry. So with a nod to the risks inherent in venturing outside one’s field, I’d like to share with you some of my thoughts on the question of criminal responsibility of delinquent youth. It’s a question that lies at the intersection of behavioral science, law, philosophy, and our intuitive understandings of childhood. I hope that I can further a conversation with those who approach this issue from other perspectives.

When I talk today about criminal responsibility I’m talking about blame-worthiness, or culpability. The question is the degree to which adolescents, or at least some adolescents, are less blameworthy than adults who commit similar acts. I’m not suggesting that less blame leads to their being not guilty. Rather, the question is whether certain aspects of adolescents mitigate what should happen to them in the justice system. What does an adolescent who has committed a violent act deserve? This question has
received relatively little attention, but I think ideas about it nevertheless drive much of our thinking about how we actually respond to violent youth.

One reason the question of adolescent culpability has received so little attention is that since the establishment of the juvenile court in 1899, the theoretical construct driving juvenile interventions has been rehabilitation. The juvenile court isn’t so interested — in theory — in punishing as in trying to get the kids better. Moral blame doesn’t enter, in a significant way, into juvenile court adjudications. However, the pendulum has really swung. Now we hear, “You do an adult crime, you do adult time.” The nature of the act rather than the nature of the actor is at issue. Culpability is particularly timely now because of its reference to the juvenile death penalty debate, and the juvenile death penalty, as I’m sure you know, was recently ruled unconstitutional. But similar issues are also relevant to such questions as the conditions under which a youth should be transferred to adult court, what interventions and sentences a juvenile convicted in juvenile court should receive, or what interventions and sentences a juvenile in adult court should receive.

So what do we know about adolescent violence? Time does not permit me a very full discussion, but there are few key points I’d like to raise for you to keep in the back of your mind as we discuss these issues. The first is that the onset of serious violence, and by serious violence I mean violence in which a weapon is used or someone is seriously hurt, is an adolescent phenomenon. About half the kids who will ever become violent become violent by age sixteen. If you get to age twenty-five and you have not committed a violent act, the likelihood that you ever will is extremely low. This has some interesting implications. For example, if you are talking to an adult spouse abuser and you ask the
man, “Tell me when you were violent as an adolescent,” and he says, “Oh, I wasn’t,” you can compute with about 99 percent certainty that he’s lying. The second key point to keep in mind is that adolescent violence is common. Here we’re working off data largely from self-report studies (studies on arrested youth give incomplete numbers). These studies suggest, depending on how they define violence, that between 30 and 40 percent of adolescents by the time they reach 17 have committed a violent act. The number for girls is about 15 to 30 percent. Almost half of the boys and a large number of the girls have committed a violent act. That is, violence is hardly uncommon in adolescence. It’s a relatively typical adolescent phenomenon. The third point is that adolescent violence, for most kids, is time-limited to adolescence. Fewer than 20 percent of violent adolescents go on to be adult criminals. The fourth point I want to make is the characteristics of juvenile crime are somewhat different from those of adult crime. First of all, juvenile crime tends to be group based. Youth offend in groups, as opposed to adult crime where you have typically more single actors committing the crimes. Second, adolescents don’t specialize, they are quite diverse in what they do. They cover the whole range of behaviors. Third, another myth many people have is that adolescent crime is race-related. Statistics suggest that if you correct for socio-economic status, the difference between white and African-American offending largely vanishes. The rates are essentially the same. This is not true, of course, of arrest rates: African-Americans are arrested at a much higher rate. The fifth point to keep in mind is the question of how much all of this is a mental health problem. We know that arrested juvenile offenders have triple the rate of mental health problems of juveniles in the normal population. Mental health problems are extremely common in this population. However, the extent to which this causes or
aggravates their violent behavior remains unclear and needs much more research. Last, I want to remind you of the recent history related to adolescent violence. In particular, there was a huge crime wave in adolescent violence beginning in the early eighties which peaked around 1993. In this period the adolescent homicide rate tripled. In 1993, for African-American urban youth, homicide was the leading cause of death. It exceeded all natural causes of death combined, including motor-vehicle accident deaths. It was a huge epidemic. This epidemic triggered a wave of great fear for public safety and led to legislative responses which were highly punitive. For example, the Georgia legislature, a little harsher than most but somewhat typical, passed what’s still known as Senate Bill 440 which mandates that any youth 13 years old and up who commits one of seven violent offenses (the most common of which is armed robbery with a firearm) is automatically sent to adult court — there to receive adult punishment and adult sentences. Since 1993, for reasons that remain unclear this crime rate has largely dropped. In the context of what’s happened over the last few days, school shootings also added to the sense of danger in public and particularly at schools, but I do want to point out that despite school shootings, schools statistically are one of the safest places that an adolescent can be.

I want to turn now briefly to Roper v. Simmons, for which the Supreme Court announced its decision on March 1st of this year, which highlights this issue. The court found a national consensus against the death penalty for juveniles and said at one point: “Today our societies view juveniles as categorically less culpable than the average criminal.” The court didn’t give a very clear account of what went into culpability and I want to go through the argument with you in some little detail. There are essentially three
main threads to the issue. The first is immaturity. Justice Stevens, writing for the majority in *Thomspon v. Oklahoma* in 1988, a case in which the Supreme Court found it unconstitutional to impose the death penalty for 15-year-old defendants, said, “Thus the court has already endorsed the proposition that less culpability attached to a crime committed by a juvenile than to a comparable crime committed by an adult. The basis for this conclusion is too obvious to require an extended explanation.” Notwithstanding that it was obvious, the following year the court held that executing 16 and 17 year olds was permissible. Then finally this year, of course, they found that it was not.

When the court took *Roper v. Simmons*, the professional associations became very interested in writing briefs to support a finding that the juvenile death penalty was unconstitutional. Most of the major associations, and certainly the American Psychiatric Association, already had taken as a formal position that the death penalty for adolescents was not justified. I happen to sit on the Commission on Judicial Action, which is the branch of the APA which both makes recommendations to the board as to what cases we should write briefs on and gets involved in what the content of those briefs should be, and it was very clear to that group that we thought it needed to be spelled out in some detail just how immature adolescents were. The organizations over time really worked to tighten their briefs so that the science they quoted was really rigorous science which could stand up to considerable challenge.

So what do we know about adolescent development? The first thing is that reasoning, by which I mean *cognitive* decision making, at age 15 is, by and large, similar to what you see in adults. There were a number of studies in this in the early nineties, particularly around issues such as being able to consent to medical treatment. These
findings were used to support other briefs to the Supreme Court arguing that adolescents were competent to consent to an abortion without parental oversight. This finding presents something of a problem, because the associations were now trying to argue that there are ways in which there is immaturity at 15. The distinction made was that what you have in adolescence is an immaturity of judgment, a construct referred to in some of the literature as “psycho-social immaturity.” It encompasses a number of components such as impulsiveness, adolescent sense of time, the relevance to the future, the ability to put oneself in another’s position, and resistance to peer pressure. Cauffman and Steinberg did a fascinating study of normal high school kids in which they rated psycho-social maturity, and then they also had the youth rate how likely they were to engage in antisocial acts under a variety of conditions (they also did this with adults). What they found was that psycho-social maturity was the best predictor of how anti-social the choices would be that the child made. Psycho-social maturity was a better predictor than age. While age and psycho-social maturity tended to go together, if you’re predicting whose going to be anti-social, then maturity was the better factor.

The second line of immaturity has to do with the notion that the brain is still developing. When I was in medical school, I was taught that the brain is essentially physiologically finished by age six. When I joined the faculty, they were saying that the brain develops up to the beginning of puberty. In the last five years, there has been considerable research showing that the brain continues to develop into the mid-twenties. (At my age, the brain continues to change, but the geriatric defendant is another talk.) The issue about brain development, I would point out, is more persuasive to lawyers than it is to many in the mental health field. We in the APA were very cautious about how
strong a conclusion you can draw from this research. While it is suggestive to see that
the areas that might be related to judgment light up or don’t light up on a PET scan or
FMRI (Functional Magnetic Resonance Imaging), you can’t really know from those
findings whether it’s correlated with judgment.

The court looked at all the scientific briefs, and as best I could tell summed it up
in one sentence that said, “As any parent knows, and as the scientific and sociological
studies tend to confirm, youth are more immature.” That seemed to be our effect on the
case.

There is a problem, however, with the immaturity argument, which is, immaturity
compared to what? In my job, I talk to a lot of people who have committed crimes, adults
as well as kids. I can tell you that if you talk to them about what they were thinking at the
time of the crime, you will not be impressed by their maturity of judgment. From a
treatment perspective, if you could raise most of these adult defendants to the level of an
average 15 year old you would consider this a huge therapeutic success. Since we hold
adults culpable for their acts and imprison them, if decision-making capacity is all there
is to blame-worthiness, once a person reaches a certain level of maturity — and that
level is probably way below that of the average adult — you should be held fully
culpable, although one might decide to punish differently for other reasons. This point
did not seem to make it into the professional association briefs. So we need more.

There are two other threads to the argument that adolescents are less culpable.
The first has to do with the external circumstances the adolescent finds himself in. My
lawyer colleagues tell me that for an adult, in most cases, being a product of a “rotten
social background” is not helpful in mitigation. The idea is that adults, in principle, can
change their circumstances. Adolescents, however, by and large cannot. You’re stuck with who your parents are, you don’t have choice of school, and you don’t have a choice of who the other kids are living on your block. Certainly to the extent that circumstances outside one’s control affect behavior, responsibility is reduced. A critical external circumstance for adolescents is their interpersonal milieu, particularly their peer group. There are a number of developmental considerations that highlight this. The first is to remember the point that adolescent crime is much more peer-based than adult crime. So, depending on who your peers are, you are much more likely to engage in crime. Second, adolescents as a group are much less resistant to peer pressure. Third, in the culture of the street, violent responses may be a reasonable coping strategy. If you aren’t prepared to use violence you may be seen as a patsy and actually be more likely to become a victim.

There’s also a moral argument here which is complicated. I’m going into a philosophical realm I’m not very familiar with, but I will pose it for your consideration. It’s the idea that responsibility has something to do with expectations. Consider a group in which a lot of people smoke, and then consider another group in which very few people smoke. You are likely to think of someone in the group where most people smoke as less responsible with making an independent choice than you when you judge the person in the group where very few people smoke. Blame-worthiness in some sense is related to an expectation of how people actually behave. Moral transgression should be deviant. Now recall, in this context, the frequency of adolescent violence. I think if I had asked at the beginning of this talk for estimates as to what percentage of male adolescents have engaged in a serious violent offense, relatively few of you would have picked a number between 30 and 40 percent. Most of us think of it as rare. If you change your
expectation that violence is much more common, it becomes, in some sense, less morally deviant.

The third line of reasoning has to do with the fact that an adolescent’s character is still developing. In a case on mitigation, *Johnson v. Texas* from 1993, the Court said: “The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient. As individuals mature the impetuousness and recklessness that may dominate in younger years can subside.” There is a line of argument that bad acts reflect bad character. Now here we need to distinguish between at least two senses of character. The first is the sense that an act may be “out of character.” The federal sentencing guidelines for non-violent crimes allow for the possibility that if a person leads a clearly blameless life, is a good citizen, and then does something that seems just out of character for that person, that unusual-ness can be taken into consideration as a mitigating factor in sentencing. Now we need to look at adolescents. There is a developmental progression of offenses in adolescents. Adolescents do not start with a serious violent offense. They tend to start with things like minor delinquency, vandalism, progress through substance abuse, and then go to aggravated assault, which is generally a precursor to rape and other crimes of that sort. There is a developmental progression. So a serious violent offense is, unfortunately, very much in character. There’s a second sense of character, though, that affects adolescents, which is that their character is not fully developed. We expect adolescents to change. We expect that at the end of adolescence the adolescent will be a different person than at the beginning. For example, if you put a 15 year old in prison for five years, the person who comes out at age 20 is going to be a very different person than the person who went in. The fact that
the person is changing alters what he deserves, although the philosophical basis of why this is true remains not worked out.

We want to allow personality to develop in a positive way, and providing adult sanctions doesn’t do this. To give another example of how this argument works, my friend the philosopher Dan Hausman has suggested that as we grow older we gradually come to reflect on what we have absorbed from our environment and either endorse it or break away. As we mature we increasingly reflect on the values and customs on those around us and our responsibility grows. Someone whose moral and intellectual capacity at age 45 are less than that of most 15 year olds may nevertheless be held more responsible because he has had an opportunity, despite limited abilities, to build his own life. Even a gifted 15 year-old, in contrast, who possesses far greater abilities, has not had the opportunity to choose a life for himself. To treat crimes committed by 15 year-olds like crimes committed by adults does not recognize that the 15 year-old has not had an opportunity to become an adult and to carry out the sort of reflection that makes his action reflect a fixed character for which unmitigated moral judgment and retribution are appropriate.

I don’t want it thought that I’m advocating that kids who do bad things should just get off. They do bear considerable responsibility for their acts. I also recognize there is more to punishment than moral transgression. Among other issues, we clearly need to maintain public safety. I am fully persuaded that there are bad kids out there from whom the public need to be protected and for whom relatively little can be done. It is instructive to look at the research, which is somewhat mixed but tends to find that if you punish adolescents with adult sanctions they recidivate at a higher rate, that is they
commit more crimes after they get out, than similar youth who are treated in the juvenile system. There are a number of implications to this. First, it is an argument for rehabilitation rather than punishment. In the 70’s it was commonly held that “nothing works” with these kids. The good news is that the mental health fields have come a long way, and we now have pretty good data for interventions that are cost-effective in reducing recidivism. They’re not wonderful and they don’t help everybody, but overall programs such as multi-systemic family therapy, intensive supervised probation, and certain social skills training programs have been shown to be useful in decreasing later offending.

In my view, a consideration of what delinquent adolescents deserve will move us away from the punitive approaches adopted over the past 15 years towards more individualized assessments of who should receive adult punishment and more services for those youth we can help.

Thank you.